Alabama Rules of Civil Procedure

VII. JUDGMENT

Rule 54.

Judgments; costs.

(a) *Definition; form.* ”Judgment” as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) *Judgment upon multiple claims or involving multiple parties.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. Except where judgment is entered as to defendants who have been served pursuant to Rule 4(f), in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) *Demand for judgment.* A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party’s pleadings.

(d) *Costs*. Except when express provision therefor is made in a statute, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, and this provision is applicable in all cases in which the state is a party plaintiff in civil actions as in cases of individual suitors. In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security.

Costs may be taxed by the clerk without notice. On motion served within five (5) days of the receipt of notice of such taxation, the action of the clerk may be reviewed by the court.

(dc) *District court rule*. Rule 54 applies in the district courts.

[Amended 1-4-82, eff. 3-1-82; Amended 5-16-83, eff. 7-1-83; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

Subdivision (a). The short and simple forms of judgment which this subdivision contemplates are illustrated in the Appendix of Forms. The procedure for rendition and entry of judgment is regulated in some detail by Rule 58.

Subdivision (b). These rules provided for a much wider joinder of claims and parties than that heretofore permitted in Alabama. This subdivision regulates the relation of that joinder to the usual requirement, in Alabama as elsewhere, that appeal must be only from a final judgment, save in unusual circumstances. See Code of Ala., § 12-22-3. In general the rule adopts equity practice of a "split judgment." See Equity Rule 69. The rule provides that, in the absence of affirmative action by the judge, no decision is final until the entire case has been adjudicated. The one exception is that where the court has completely disposed of one of a number of claims, or one of multiple parties, and has made an express determination that there is no just reason for delay, the court may direct the entry of judgment on that claim or as to that party. The judgment so entered is a final judgment in all respects, and may be appealed, even though prior to the adoption of these rules it might not have been possible to enter final judgment in such a situation until all the claims, or the rights and liabilities of all the parties, had been adjudicated. *Sears Roebuck & Co. v. Mackey*, 351 U.S. 427, 76 S.Ct. 895, 100 L.Ed. 1297 (1956); *Cold Metal Process Co. v. United Engineering & Foundry Co.*, 351 U.S. 445, 76 S.Ct. 904, 100 L.Ed. 1311 (1956); 3 Barron & Holtzoff, *Federal Practice and Procedure*, § 1193 (1958); 6 Moore's *Federal Practice*, ¶¶ 54.26-54.42 (2d ed. 1971). The validity of the rule seems settled also by such cases as *Wood v. City of Birmingham*, 247 Ala. 15, 22 So.2d 331 (1945); *Wilkinson v. McCall*, 247 Ala. 225, 23 So.2d 577 (1945). Subdivision (b) is expressly applicable to a suit involving multiple parties as well as a suit involving multiple claims.

Subdivision (c). The first sentence of this subdivision states the traditional view, based upon the fundamental unfairness of giving greater or different relief in a judgment from that of which the defendant was given notice by the complaint, in cases where he does not appear and defend against the action. See *National Discount Corp. v. O'Mell*, 194 F.2d 452 (6th Cir.1952). Present Alabama doctrine, both in law and equity, is to the same effect. *Carothers v.*

Callahan, 207 Ala. 611, 93 So. 569 (1922); Tilley, *Alabama Equity Pleading and Practice* 96 (1954).

The second sentence of subdivision (c) implements the general principle of Rule 15(b), that in a contested case the judgment is to be based on what has been proved rather than what has been pleaded. It is a necessary rule in a merged system of law and equity. Thus it has been held that a party may be awarded damages though he asked for equitable relief. *Truth Seeker Co. v. Durning*, 147 F.2d 54 (2d Cir.1945); and vice versa *Blazer v. Black*, 196 F.2d 139 (10th Cir.1952). And he may be awarded relief on a quantum meruit basis though he sued on a contract, *Del Balso v. Carozza*, 136 F.2d 280, (D.C.Cir.1943), or damages for breach of contract though the complaint alleged a tort, *Thomas v. Pick Hotels Corp*., 224 F.2d 664 (10th Cir.1955). A different result would mean preservation of the distinctions between law and equity and of the various forms of action which these rules are intended to abolish. But this rule is only applicable where the proof supports the relief finally given, and where, therefore, pursuant to Rule 15(b), the pleadings could be deemed to be amended to conform to the evidence. See *Roberge v. Cambridge Cooperative Creamery Co*., 243 Minn. 230, 67 N.W.2d 400 (1954). See 3 Barron & Holtzoff, Wright ed., § 1194 (1954).

Subdivision (d). This subdivision, modelled on Federal Rule 54(d) adopts the law practice of costs to the prevailing party unless the court otherwise directs, Code of Ala., Tit. 11, § 65, in preference to the equity practice which commits the entire matter to the discretion of the court. Equity Rule 112. Presumably, the use of the phrase “unless the court otherwise directs” would authorize the court to decline to tax costs at all. However, the failure to tax costs may affect finality of judgment. The last half of the first sentence, making the provision as to costs applicable to the state, and the second sentence, referring to cases where security for costs have been given, are taken from the Alabama statute cited above.

Committee Comments to Amendment to Rule 54(b)
Effective March 1, 1982

Subdivision (b) is amended so as to harmonize it with the provisions of Rule 4(f) dealing with judgment against one or more defendants where other defendants have not yet been served with process. Thus, a judgment which disposes of fewer than all the parties is final where the parties as to whom there has been no judgment have not yet been served with process. See *Ford Motor Credit Co. v. Carmichael*, 383 So.2d 539 (Ala.1980), for a contrary result under Rules 4 and 54 prior to the proposal of this revision.

Committee Comments to October 1, 1995,

Amendment to Rule 54

The amendment is technical. No substantive change is intended.

District Court Committee Comments

[Comments omitted effective July 1, 1983.]