Alabama Rules of Evidence

Article III. Presumptions in Civil Actions and Proceedings

Rule 301.

Presumptions in general in civil actions and proceedings.

(a) *Conclusive and rebuttable presumptions.* Except for presumptions that are conclusive under the law from which they arise, a presumption is rebuttable.

(b) *Types of rebuttable presumptions.* Every rebuttable presumption is either:

(1) A presumption that affects the burden of producing evidence by requiring the trier of fact to assume the existence of the presumed fact, unless evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or

(2) A presumption affecting the burden of proof by imposing upon the party against whom it operates the burden of proving the nonexistence of the presumed fact.

(c) *Procedural impact.* Unless otherwise provided by statute, a presumption established primarily to facilitate the determination of the particular action in which the presumption is applied, rather than to implement public policy, is a presumption affecting the burden of producing evidence.

(d) *Inconsistent presumptions.* If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight, neither presumption applies.

Advisory Committee's Notes

Section (a). Conclusive and rebuttable presumptions. The law of presumptions is expansive and much debated. Virtually all discussions in this regard begin with the famous statement by Dean McCormick: "One ventures the assertion that 'presumption' is the slipperiest member of the family of legal terms, except for its first cousin, 'burden of proof.' " E. Cleary, McCormick on Evidence § 342 (3d ed. 1984).

The first issue in this area is that of when a presumption arises. Rule 301 does not attempt to resolve this issue. Recognition of presumptions is left to statutes, case law, and other rules of court. Suffice it to say, however, that a presumption is a creature of law that

assists in the matter of proof by providing that in certain situations proven facts may be strong enough that from them the trier of fact may conclude that the presumed fact exists. Presumptions may be conclusive or rebuttable. Conclusive presumptions, not governed by this Rule 301, are those applied when because of certain proven facts the law requires the finder of fact to find another – presumed – fact. On the other hand, rebuttable presumptions, found throughout the legal system, are those under which a certain quantum of evidence gives rise to an inference of some other fact, but as to which fact the opposing party may offer evidence in rebuttal. Rebuttable presumptions are generally created by law – under statutes, case law, or rules of court – for such reasons as the promotion of some public policy (as in presumptions favoring the legitimacy of children), because the presumption is based upon human experience (illustrated by the presumption against suicide), or because of the peculiarities of the case affecting the ability to produce evidence (illustrated by the statutory presumption that upon proof of certain facts a railroad is presumed negligent). *Alabama Great S. R.R. v. Morrison*, 281 Ala. 310, 202 So.2d 155 (1967). See C. Gamble, McElroy's Alabama Evidence § 456.05 (4th ed. 1991).

Section (b). Types of rebuttable presumptions. Once a presumption applies in regard to an issue, it then becomes necessary to determine its procedural impact – i.e., whether it shifts to the opposing party the burden of proof or persuasion as to that issue or whether it merely shifts the burden of going forward with the evidence on that issue. When a presumption has that second effect (giving a presumption that effect is commonly referred to as applying the "bursting bubble" theory), the burden of going forward with evidence then shifts to the party against whom the presumption is directed. This burden of going forward with evidence, however, is not to be confused with the burden of proof or persuasion, which remains, unless otherwise provided by law, with the party upon whom it originally was cast. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981) (holding that employment discrimination plaintiff's prima facie case shifts burden of going forward to the employer but does not shift to employer the burden of persuasion).

This rule rejects the principle found in Fed.R.Evid. 301 under which all presumptions, unless otherwise provided by statute or rule of evidence, are deemed to be of the bursting bubble type – i.e., those that shift the burden of going forward with the evidence but do not shift the burden of proof.

Section (c). Procedural impact. If a presumption is created by statute and the impact of the presumption is provided for in the statute, then the presumption has the impact the statute provides for. In the case of a presumption whose impact is not provided for by a statute, the court is to determine its impact by looking at the policy underlying the presumption. If that policy is merely to facilitate the proof process at trial, then the presumption is interpreted as one affecting the burden of going forward with the evidence and not as one affecting the burden of proof.

The shifting of the burden of going forward, upon the activation of a presumption, is consistent with preexisting Alabama practice. See *Louisville & Nashville R.R. v. Marbury Lumber Co*., 125 Ala. 237, 28 So. 438 (1900). Although not all of the presumptions applicable in Alabama do so, many of them shift to the opponent the burden of going forward, to be distinguished from the burden of proof or persuasion. *Cruse-Crawford Mfg. Co. v. Rucker*, 220 Ala. 101, 123 So. 897 (1929). See C. Gamble, McElroy's Alabama Evidence § 451.01(5) (4th ed. 1991). In an action upon a life insurance policy, for example, the insurer has the burden of

proof relative to a defense that the insured committed suicide. If the insurer offers into evidence a death certificate showing suicide as the cause of death, the burden of going forward shifts to the beneficiary, who then must introduce evidence warranting a finding that the death was not by suicide. *Birmingham Trust & Sav. Bank v. Acacia Mut. Life Ass'n*, 221 Ala. 561, 130 So. 327 (1930). See W.E. Shipley, Annotation, *Effect of Presumption as Evidence Upon Burden of Proof, Where Controverting Evidence is Introduced*, 5 A.L.R.3d 19, 27 (1966). Despite this shift, however, the overall burden of proof remains upon the defendant-insurer to reasonably satisfy the trier of fact that the death was suicide. *Jefferson Standard Life Ins. Co. v. Pate*, 290 Ala. 110, 274 So.2d 291 (1973) (holding that the law presumes that normal persons do not commit suicide and that the defendant insurer has burden of proving suicide). A second illustration lies in the historic principle, based upon confidence in the American postal system, that proof that a letter was properly addressed, stamped, and mailed gives rise to a presumption that it was received by the addressee. *Franklin Life Ins. Co. v. Brantley*, 231 Ala. 554, 165 So. 834 (1936); *DeJarnette v. McDaniel*, 93 Ala. 215, 9 So. 570 (1891). See E. Cleary, McCormick on Evidence § 343 (3d ed. 1984). This latter presumption is not conclusive and may be rebutted, for example, when the addressee testifies that the letter was not received. *Calkins v. Vaughan*, 217 Ala. 56, 114 So. 570 (1927). See also *DeBardeleben v. Tynes*, 290 Ala. 263, 276 So.2d 126 (1973).

Section (d). Inconsistent presumptions. There are occasions when two presumptions at work in the same case clash. When such a conflict arises, the presumption prevails which is based upon the weightier policy considerations. *Cross v. Rudder*, 380 So.2d 766 (Ala.1979). Should the policy weight of such presumptions be equal, neither applies. Compare *Gulf States Paper Corp. v. Hawkins*, 444 So.2d 381 (Ala.1983).