Rel: November 20, 2026

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2026-2027

CL-2026-0359

Dalton Boley, Regina Williams, and Dale Liles v. Chris Blankenship, in his official capacity as the Commissioner of the Alabama Department of Conservation and Natural Recourses; Charles Sykes, in his official capacity as Director of Wildlife and Freshwater Fisheries, Alabama Department of Conservation and Natural Resources; Chad Howell, in his personal capacity and in his official capacity as Game Warden, Alabama Department of Conservation and Natural Resources; Jarrod Poole, in his personal capacity and in his official capacity as Game Warden, Alabama Department of Conservation and Natural Resources; and Bradley Hasamear, in his personal

capacity and in his official capacity as Game Warden, Alabama Department of Conservation and Natural Resources
Appeal from Lauderdale Circuit Court
(CV-25-900155)

MEMORANDUM DECISION

PER CURIAM.

In May 2025, Dalton Boley, Regina Williams, and Dale Liles ("the plaintiffs") filed in the Lauderdale Circuit Court ("the trial court") a complaint against Chris Blankenship, in his capacity as Commissioner of the Alabama Department of Conservation and Natural Resources ("DCNR"); Charles Sykes, in his capacity as Director of Wildlife and Freshwater Fisheries; Chad Howell, in his individual capacity and in his capacity as a game warden employed by DCNR; Jarrod Poole, in his individual capacity and in his capacity as a game warden employed by DCNR; and Bradley Hasamear, in his individual capacity and in his capacity as a game warden employed by DCNR.[1] The facts in the complaint were generally that Williams and Liles owned real property that was not developed and that, in the furtherance of their duties and under the authority granted by Ala. Code 1975, § 9-2-65(a)(6), "[t]o enter

[1]Hasamear was not named as a defendant in the original complaint, but he was made a party in an amended complaint.

upon any land or water in the performance of their duty," Howell, Poole, and Hasamear ("the game wardens") had entered the real property owned by Williams and Liles without a search warrant.[2] The facts in the complaint regarding Boley revealed that Liles had granted Boley a license to use her property for recreational and family purposes; Boley does not own or lease that property. None of the plaintiffs have been charged with any violation of the hunting or wildlife laws of the state.

In their complaint, the plaintiffs sought a judgment declaring that § 9-2-65(a)(6) violates Art. I, § 5, Ala. Const. 2022, both on its face and as applied to the plaintiffs. Specifically, the plaintiffs contended that Art. I, § 5, which provides "[t]hat the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation" differs from the Fourth Amendment of the U.S. Constitution because it uses the word "possessions" instead of "effects" and therefore, unlike the Fourth Amendment, includes protection against searches of real property outside the curtilage of one's dwelling place. See Hester v. United States,

[2]Williams alleged that Poole and Hasamear had entered onto her property; Liles alleged that Howell had entered onto his property.

265 U.S. 57, 58 (1924) (holding that "the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields"); Oliver v. United States, 466 U.S. 170, 176-77 (1984) (same). The plaintiffs requested that the game wardens and DCNR be permanently enjoined from entering the real property owned by Williams and Liles and any other real property. Because they contended that the authority granted the game wardens under § 9-2-65(a)(6) was unconstitutional, they also sought nominal damages for alleged trespasses committed by the game wardens to the real property owned by Williams and Liles.

DCNR and the game wardens filed a motion to dismiss the plaintiffs' complaint. DCNR argued that Art. I, § 5, extended protection from warrantless searches and seizures only to persons' homes and to the curtilage of those homes. See Brown v. State, 48 Ala. App. 84, 86, 261 So. 2d 914, 916 (Crim. App. 1971). That is, DCNR and the game wardens contended that Art. I, § 5, like its federal counterpart -- the Fourth Amendment of the U.S. Constitution -- does not extend to prevent warrantless searches of open fields. See Hester, 265 U.S. at 58; Oliver, 466 U.S. at 176-77. Thus, DCNR and the game wardens posited that §

9-2-65(a)(6) was not unconstitutional and that the plaintiffs' trespass claims could not be sustained. The plaintiffs filed an opposition to the motion to dismiss, and DCNR and the game wardens fled a reply to the plaintiffs' response. The plaintiffs then filed a letter, which they denied was a sur-reply to the reply filed by DCNR and the game wardens.

The trial court entered an order on April 9, 2026, dismissing the plaintiffs' claims in their entirety. That order incorporates by reference a memorandum authored by the trial court's law clerk. The memorandum characterized the plaintiffs' claims as an "unreasonable search claim" and trespass claims. Regarding the "unreasonable search claim," the memorandum concluded that the real property owned by Williams and by Liles were "open fields" such that they fell outside the protections afforded by the Fourth Amendment and outside the identical protections afforded by Art. I, § 5. That is, the memorandum rejected the plaintiffs' argument that the use of the term "possessions" in Art. I, § 5 provided more protection to real property than that provided under the Fourth Amendment. Based on that conclusion, the memorandum determined that § 9-2-65(a)(6) did not violate any constitutional protection afforded by Art. I, § 5, and, therefore, that the claims that the

game wardens had trespassed failed as a matter of law. The plaintiffs appeal.

DCNR and the game wardens first contend that the plaintiffs lack standing to challenge the constitutionality of § 9-2-65(a)(6). They are correct that the plaintiffs must establish standing because their action is a "public-law action," which is an action involving "constitutional or other challenges to the actions of officials or administrative agencies." Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 44 (Ala. 2013); see also Black's Law Dictionary 1486 (11th ed. 2019) (defining "public law" as "[t]he body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together").

> "'A party who seeks to have an act of the legislature declared unconstitutional, must not only show that he is, or will be injured by it, but he must also show how and in what respect he is or will be injured and prejudiced by it. Injury will not be presumed; it must be shown.'"

Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004) (quoting Jones v. Black, 48 Ala. 540 (1872)). Put another way,

> "'[a] party establishes standing to bring a challenge [on constitutional grounds] when it demonstrates the existence of (1) an actual, concrete and particularized "injury in fact" -- "an invasion of a legally protected interest"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision."'"

Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, LLC, 890 So. 2d 70, 74 (Ala. 2003) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).

In Poiroux v. Rich, 150 So. 3d 1027, 1039 (Ala. 2014), our supreme court concluded that bail-bond companies had standing to challenge the constitutionality of Ala. Code 1975, § 12-19-311, because those companies were likely to suffer the injury alleged in their complaint -- payment of an allegedly unconstitutional filing fee imposed by that statute. However, the supreme court concluded that the criminal defendants who were also party plaintiffs lacked standing to challenge the constitutionality of § 12-19-311 because they could not establish that they were likely to be arrested and be subjected to bond proceedings again in the future, i.e., the supreme court determined that the likelihood of their being subjected to future harm under the statute was speculative. Although DCNR argues that the plaintiffs are like the criminal

defendants in Poiroux because they cannot demonstrate that the game wardens will trespass onto their property in the future, we disagree. The criminal defendants in Poiroux were subjected to the fee imposed in the statute only if they were arrested. The plaintiffs are subject to having a game warden enter onto their property under the authority provided in § 9-2-65(a)(6) at any time. Thus, we conclude that the plaintiffs have standing to pursue their claims, and we will consider the merits of their appeal.

The main impetus behind the plaintiffs' complaint is their desire to have Art. I, § 5 construed to preclude the application of the open-fields doctrine and to have § 9-2-65(a)(6) declared unconstitutional. The parties -- and the trial court -- referred to the claim as an "unreasonable-search claim." However, the claims the plaintiffs assert are more properly viewed as a claim under the declaratory-judgment statute and a request for a permanent injunction preventing game wardens from making future entry onto private property.

> "Section 6-6-223, Ala. Code 1975, provides: 'Any person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.' We have long held that a declaratory-judgment

action is the appropriate way to challenge the legality of an official action:

> "'[T]he declaratory judgment statute will be extended to cases involving public rights or important public matters and to controversies in which the legality of action of public officials or public agencies is challenged. We have said in effect that where official action done or threatened is challenged as unlawful, whether the lack of authority appears in the provisions of a statute or because of its unconstitutionality, the controversy can be determined under the declaratory judgment statute....'"

Ex parte Glover, 801 So. 2d 1, 6-7 (Ala. 2001) (quoting Morgan v. Board of School Comm'rs of Mobile Cnty., 248 Ala. 22, 25, 26 So. 2d 108, 110 (1946)).

Although the trial court's order purports to dismiss the plaintiffs' claims seeking a declaratory judgment and a permanent injunction, a reading of the analysis contained in the incorporated memorandum indicates that, instead, the trial court determined the issue presented by the claim for a declaratory judgment by deciding that Art. I, § 5 does not extend protection to open fields and, therefore, that § 9-2-65(a)(6) does not violate Art. I, § 5 and is constitutional. Thus, the issue before us in this appeal regarding that claim is whether, as the plaintiffs contend, the trial court erred by so concluding. Because the trial court's judgment

adjudicated the declaratory-judgment claim on its merits, we will not apply the standard of review applicable to the dismissal of a declaratory-judgment action; instead, we will apply the standard of review applicable to a judgment resolving a constitutional challenge to a statute, which is de novo. Richards v. Izzi, 819 So. 2d 25, 29 n.3 (Ala. 2001) ("Our review of constitutional challenges to legislative enactments is de novo.").

As DCNR contends, the appellate courts of this state have indicated that Art. I, § 5 provides the same protection as the Fourth Amendment, despite the slight difference in the wording between the two provisions. As early as 1927, our supreme court pronounced that "[c]learly enough these provisions of the federal and state Constitutions[, i.e., the Fourth Amendment and Art. I, § 5,] are in substance the same and have a common purpose. The federal amendment may be regarded historically as the parent of the like provision in the state Constitution." Tranum v. Stringer, 216 Ala. 522, 524, 113 So. 541, 542 (1927).

In 1971, the Alabama Court of Criminal Appeals considered the exact argument presented here: whether the fact that Art. I, § 5 uses the word "possessions" instead of the word "effects" expands the protection from search and seizure to real property other than that in the curtilage

of a residence or business. See Brown v. State, 48 Ala. App. 84, 86, 261 So. 2d 914, 916 (Crim. App. 1971).

> "It does not appear that the Appellate Courts of Alabama have ever extended the protection afforded by [Art. I, § 5, Ala. Const. 1901,] to open fields or pasture land beyond the curtilage of the home or business establishment. The appellant argues that the word 'possession' in the said constitutional provision should be held to include more than houses, homes, and the curtilage thereof and be broad enough to include land where there is occupancy and full dominion exercised over it. The Supreme Courts of Tennessee and Mississippi have adopted this view, holding in cases involving the operation of stills in open lands, beyond the curtilage of the defendant's home, that evidence secured without a search warrant, was illegal and inadmissible. Barnard v. State, 155 Miss. 390, 124 So. 479 [(1929)]; Welch v. State, 154 Tenn. 60, 289 S.W. 510 [(1926)].
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> "However, in the cases of Hester v. United States, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 [(1924)]; Atwell v. United States, 5 Cir., 414 F.2d 136 [(1969)]; Stark v. United States, 8 Cir., 44 F.2d 946 [(1930)]; Koth v. United States, 9 Cir., 16 F.2d 59 [(1926)], the federal courts have held that the protection of the 4th Amendment to the Constitution of the United States does not extend to open fields.
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> "Our research indicates that the present weight of authority, state and federal courts, supports the above cited cases. See 74 A.L.R. 1454 and 89 A.L.R.2d 780, for many cases collected on this subject. The states of Kentucky, Texas, Oklahoma, Indiana and Missouri hold to this view.
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> "The word 'possession' does not appear in the 4th Amendment, supra, but it is provided that 'the right of the people to be secure in their persons, houses, papers and Effects, against unreasonable searches and seizures, shall not

> be violated, etc.' In the opinion of the court the words 'possession' and 'effects' are not so dissimilar in their meaning with regard to property as to call for different interpretation. The two words have a common meaning as related to the question raised in this case.
>
> "....
>
> "This court sees no good reason to depart from the time-honored understanding of the Bar and Courts that Article 1, § 5, Constitution of 1901 does not extend to open land outside of the curtilage, nor do we think that the framers of the Constitution of 1901 intended it to be so inclusive. We prefer to follow the rule laid down, supra, in the Federal Courts, and hold that the search of the pasture land was not illegal and the court was not in error in overruling the motion to exclude this evidence."

Brown, 48 Ala. App. at 86-87, 261 So. 2d at 916-17.

The adoption of the open-fields doctrine in Brown was recognized in Adair v. State, 53 Ala. App. 251, 254, 298 So. 2d 671, 674 (Crim. 1974), and reaffirmed in Skipper v. State, 387 So. 3d 261, 263 (Ala. Crim. App. 1980), which stated that "[i]t has been definitely settled in Alabama that the use of the word, 'possessions,' in the Alabama Constitution as distinguished from the word, 'effects,' does not manifest any intent to enlarge the protection against unreasonable search and seizure provided by the United States Constitution." Similarly, our supreme court has equated the protections provided by both provisions, stating that "[t]he

Fourth Amendment to the United States Constitution and Article I, § 5, of the Alabama Constitution protect people from unreasonable searches and seizures of their persons, houses, papers, and possessions. This protection applies to the area immediately surrounding one's home, often referred to as the curtilage." Ex parte Maddox, 502 So. 2d 786, 788 (Ala. 1986).

Although the plaintiffs urge this court to reconsider this issue anew, because, they contend, we are not bound by what they have described as poorly reasoned decisions of the Court of Criminal Appeals or by what they describe as dicta in Ex parte Maddox, we are not inclined to accept their invitation. The Court of Criminal Appeals decided this issue in 1971, and, in 1927 and 1986, our supreme court appears to have recognized that the federal and the state provisions provide the same protections. Because Alabama law as it currently stands supports the conclusion that the open-fields doctrine applies despite the difference in the language of Art. I, § 5 and of the Fourth Amendment, we affirm the trial court's determination that § 9-2-65(a)(6) is not unconstitutional.

Based on our affirmance of the conclusion that § 9-2-65(a)(6) is constitutional, it follows that the trial court correctly determined that the

plaintiffs' allegations failed to state a claim for trespass. "'Trespass' has been defined as '[a]ny entry on the land of another without express or implied authority.'" Central Parking Sys. of Alabama, Inc. v. Steen, 707 So. 2d 226, 228 (Ala. 1997) (quoting Foust v. Kinney, 202 Ala. 392, 393, 80 So. 474, 475 (1918)). Pursuant to § 9-2-65(a)(6), which the trial court found to be constitutional, the game wardens had legal authority to enter the real property owned by Williams and Liles without a warrant. Thus, their actions could not have formed a trespass. Accordingly, we affirm the dismissal of the trespass claims asserted against the game wardens.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

All the judges concur.