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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2007-2008

2060794

Antonio Saldana Hernandez and Sandy Herman-Hernandez

v.

City of Hoover and Jacob Pugh

**Appeal from Jefferson Circuit Court
(CV-06-3669)**

MOORE, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala. R. App. P.; Ernst & Young, LLP v. Tucker, 940 So. 2d 269, 284 (Ala. 2006); Ex parte Cranman, 792 So. 2d 392 (Ala. 2000); Matthews v. Alabama

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Agric. & Mech. Univ., 787 So. 2d 691 (Ala. 2000); Smith v. Union Bank & Trust Co., 653 So. 2d 933, 934 (Ala. 1995); Lott v. Toomey, 477 So. 2d 316, 319 (Ala. 1985); and Thurmond v. City of Huntsville, 904 So. 2d 314, 319 (Ala. Civ. App. 2004).

Pittman, Bryan, and Thomas, JJ., concur.

Thompson, P.J., dissents, with writing.

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THOMPSON, Presiding Judge, dissenting.

"For a summary judgment to be proper, there must be no genuine issue of material fact and the movant must be entitled to a judgment as a matter of law. Ala. R. Civ. P. 56(c), Tripp v. Humana, Inc., 474 So. 2d 88 (Ala. 1985). Further, on review of a summary judgment we must view all the evidence in a light most favorable to the nonmovant and we must entertain all reasonable inferences from the evidence in favor of the nonmovant. Fincher v. Robinson Bros. Lincoln-Mercury, 583 So. 2d 256 (Ala. 1991)."

First Fin. Ins. Co. v. Tillery, 626 So. 2d 1252, 1254 (Ala. 1993).

Because I believe that the evidence contained in the record on appeal, when viewed in a light most favorable to the plaintiffs, created a genuine issue of material fact to be decided by a jury, I would reverse the summary judgment in favor of the defendants.

Therefore, I respectfully dissent.