

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, by and through)	
the Alabama Historical Commission,)	
Plaintiff,)	
)	
v.)	CIVIL ACTION: 1:19-00423-KD-N
)	
THE UNIDENTIFIED SHIPWRECKED)	IN ADMIRALTY
Vessel believed to be the Schooner)	RULE 9(h) FRCP
CLOTILDA, its Apparel, Tackle,)	
Appurtenances, and Cargo,)	
Defendant (<i>in rem</i>).)	

ORDER

This matter is before the Court on Plaintiff's motion for summary judgment (Doc. 28).

The Plaintiff State of Alabama, by and through the Alabama Historical Commission (AHC), filed an in rem Complaint against the Schooner CLOTILDA. The CLOTILDA was used to illegally transport enslaved persons into the United States in 1860. Following archeological investigation, the AHC believes the wreck of the Schooner CLOTILDA has been located. AHC filed this lawsuit in order to establish that the State of Alabama (through the AHC), has ownership over the wreck or remains of the Schooner CLOTILDA, and to establish all rights attendant thereto. AHC filed a Motion for Summary Judgment and Incorporated Memorandum of Law. (Doc. 28). Having considered the arguments and grounds set forth in the Motion, the Court finds it is well taken and due to be **GRANTED**.

Accordingly, the Court finds and concludes, as follows:

The Plaintiff's first cause of action asserts a "Statutory Ownership Claim" based on the Abandoned Shipwreck Act, 43 U.S.C. §§ 2101, *et seq.* Pursuant to the Abandoned Shipwreck Act, the United States holds title to any abandoned shipwreck that it, *inter alia*, embedded in the submerged lands of a State. 43 U.S.C. § 2105 (a)(1). The title held by the United States to any abandoned shipwreck pursuant to the Act is transferred to the State in or on whose submerged lands the *res* is located. *Id.* at § 2105 (c).

Thus, the inquiry under the ASA is twofold: Whether a shipwreck is "abandoned," and if the wreck is "embedded" within State lands. *See generally* Fathom Exploration, L.L.C. v. Unidentified Shipwrecked Vessel or Vessels, 857 F. Supp. 2d 1269, 1279–1280 (S.D. Ala. 2012). With respect to abandonment of the shipwreck believed to be the Schooner CLOTILDA, the factual evidence submitted by AHC demonstrates that the *res* was abandoned by owners. First, this passage of time will support such a finding. In the 260 years since the illegal voyage was completed and the vessel burned by its captain, no one came forward to assert any claims of ownership. Next, and as referenced above, the captain of the vessel scuttled and burned the ship upon discharge of the enslaved persons in 1860. Taking steps to hide one's criminal activity suggests an abandonment of the object at issue. Finally, AHC published notice of this action pursuant to local rule. No one came forward to claim ownership or other interest in the *res*. With respect to historic shipwrecks, the Court can infer abandonment in the event no owner comes forward to prosecute a claim. *See* Columbus-America Discovery Group v. Atlantic Mut. Ins. Co., 974 F.2d 450, 461-462 (4th Cir. 1992).

Evidence with respect to location of the vessel demonstrates it is embedded in the submerged lands of the State of Alabama. The Affidavit of the Assistant State Archeologist (Eric Sipes) was submitted with the Motion. Mr. Sipes' Affidavit, along with the "Report" prepared by the archeological team working on this project (found at AHC.Alabama.Gov/Clotilda), confirm that the *res* is located in the underwater lands and/or riverbed of the Mobile River, at a point below the mean high watermark. Taken together, the factual support warrants a conclusion that the wreck is embedded within State lands.

Having concluded that the *res* is both abandoned and embedded in State lands, it is appropriate that title be vested to the United States and simultaneously transferred to the State. 43 U.S.C. § 2105(c).

Count Two states a claim requesting the Court establish, "Rights Attendant to Ownership and Injunctive Claim." Alabama has enacted a statute entitled, "Alabama Underwater Cultural Resources Act." Ala. Code §§ 41-9-290, *et seq.* The AHC is charged with the task of developing and implementing a management plan for underwater cultural resources. Ala. Code § 41-9-293(a). This work is to be done in coordination with the Alabama Department of Conservation and Natural Resources. Id. The CLOTILDA clearly falls within the statutory definition of a "cultural resource:

All abandoned shipwrecks or remains of those ships and all underwater archaeological treasures, artifacts, treasure troves, or other cultural articles and materials, whether or not associated with any shipwreck, that are contained in or on submerged lands belonging to the State of Alabama and the sea within the jurisdiction of the state, and that have remained unclaimed for more than 50 years, excluding therefrom sunken logs, cants, and timber resources of any other type not associated as part of a shipping vessel, and are eligible for, or listed in, the National Register of Historic Places or the Alabama Register of Landmarks and Heritage.

Ala. Code § 41-9-291(3).

The Court agrees with the position advanced by the AHC: *i.e.*, the AHC is charged with the statutory obligation to develop and implement a management plan for underwater cultural resources, such as the CLOTILDA. This will include permitting exploration and excavation (as appropriate) of the Shipwreck Schooner CLOTILDA, as well as taking all necessary steps to preserve, document and protect the *res*.

WHEREFORE, having made the foregoing findings and conclusions, and considering the evidence presented to the Court, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

The Shipwreck believed to be the Schooner CLOTILDA has been abandoned, and is embedded in the submerged lands belonging to the State of Alabama; and

Under the Abandoned Shipwreck Act, title to the *res* belongs to the United States but is transferred – by statute – to the State of Alabama, 43 U.S.C. § 2105 (c); and,

The Plaintiff Alabama Historical Commission is the proper state agency to undertake appropriate actions attendant to the rights of ownership of the Shipwreck believed to be the Schooner CLOTILDA; and

Pursuant to the Alabama Underwater Cultural Resources Act, Ala. Code §§ 41-9-290, *et seq.*, the AHC should take all necessary and appropriate steps to preserve, document and protect the Shipwreck believed to be the Schooner CLOTILDA.

DONE and ORDERED this the **12th** day of **April 2021**.

/s/Kristi K. DuBose
KRISTI K. DuBOSE
CHIEF UNITED STATES DISTRICT JUDGE