

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2006-CA-01126-COA

*JAMES ALBERT WIGGINS**Appellant***FILED**

v.

OCT 12 2007

*BILLY RAY PERRY*OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS*Appellee***APPELLEE'S BRIEF ON THE QUESTION OF WHETHER THE APPEAL IS AN
INTERLOCUTORY APPEAL AND PROPERLY BEFORE THE COURT**

COMES NOW Appellee, Billy Ray Perry, by and through counsel and would show that the Appeal is improperly before the Court wherein the Appeal is not an interlocutory appeal and is from a final judgment, and the only error alleged is that the Trial Court lacked subject matter jurisdiction over the issues presented.

I. FACTS

In November of 2005, the Trial Court granted summary judgment in favor of Mr. Billy Ray Perry, (hereinafter "Mr. Perry"), against the Defendant, James Albert Wiggins, (hereinafter "Mr. Wiggins"). The Order Granting Summary Judgment settled the main issue in the case, which was that Mr. Perry was the proper owner of the property at issue. (At that time, the Court reserved its ruling on whether Mr. Perry was entitled to payment of back rent due and whether Mr. Perry was entitled to payment for costs and attorney's fees). In February of 2006, the Trial Court properly denied Mr. Wiggins' attempt to have the Order Granting Summary Judgment set aside and his attempt to have the case dismissed for lack of subject matter jurisdiction. In March of 2007, this Honorable Court denied Mr. Wiggins' Petition

for Permission to File an Interlocutory Appeal based on the Trial Court' denial of his request to set aside the summary judgment ruling or to dismiss the case based on lack of subject matter jurisdiction. In May of 2006, the Trial Court entered its **"Final Judgment"** in the matter, ratifying and incorporating the earlier summary judgment ruling and denying Mr. Perry's request for attorney's fees. The **"Final Judgment"** denies Mr. Perry's request for attorney's fees and retains jurisdiction over whether Mr. Wiggins would be required to pay Mr. Perry future rents should he holdover during the appeal process.

II. LAW AND ARGUMENT

A. The Judgment rendered by the inferior Court is a final judgment.

The document as signed by the Trial Court is entitled **"Final Judgment."** Furthermore, in keeping with its title , the judgment clearly resolves all issues presented to the Court as to title, back rent owed to Mr. Perry, and attorney's fees. The only issue over which the Court retained jurisdiction involved possible rent Mr. Wiggins could owe to Mr. Perry if he failed to vacate the premises while any appeal from the final judgment was pending.

The Court's decision to retain jurisdiction over possible additional rents due to Mr. Perry has no effect on the Judgment's finality. Rather, the retaining of jurisdiction over possible future rents due was simply added as a means to enforce the Final Judgment (which granted Mr. Perry title to the property) and to reduce the chance that Mr. Wiggins would improperly holdover while any appeal proceeded. Retaining jurisdiction over future rents

is tantamount to the Court retaining jurisdiction over enforcement of child support orders and cannot be construed to alter the finality of the Judgment.

- B. The final judgment entered is not properly before this Court for review, wherein the only error alleged is that the lower Court lacked subject matter jurisdiction.

Mississippi law simply does not permit this Court to review a final judgment for lack of subject matter jurisdiction. Article 6, § 147 of the Mississippi Constitution states:

No judgment or decree in any chancery or circuit court rendered in a civil cause shall be reversed or annulled on the ground of want of jurisdiction to render said judgment or decree, from any error or mistake as to whether the cause in which it was rendered was of equity or common-law jurisdiction; but if the Supreme Court shall find error in the proceedings other than as to jurisdiction, and it shall be necessary to remand the case, the Supreme Court may remand it to that court which, in its opinion, can best determine the controversy.

MS Const. Art. 6, §§ 147

In United States Fidelity & Guaranty Company v. Estate of Francis ex rel. Francis, 825 So.2d 38, 46 (Miss. 2002), the Supreme Court of Mississippi recognized appellate relief may not be granted where the only alleged error of the trial Court is based on lack of jurisdiction. The Court stated:

But this Court, as previously stated, has also recognized the restraints imposed by Section 147 of the Constitution once a final judgment has been rendered. Since a final judgment has

been rendered in this matter and there is no evidence of another error other than subject matter jurisdiction, as relates to USF & G's assignments of error, it would be against the weight of established judicial precedent and Article 6, §§ 147 of our State's Constitution to reverse the case on this basis.

Id. Therefore, as in U.S. Fidelity, this Honorable Court simply cannot grant appellate relief where the only error alleged is lack of subject matter jurisdiction.

Furthermore, it should be noted that Mr. Wiggins has already properly sought interlocutory review of the issue of subject matter jurisdiction before the Final Judgment was entered, and in March of 2007, this Honorable Court denied Mr. Wiggins' Petition for Permission to File an Interlocutory Appeal on the issue. Thus, at the proper time, before a final judgment had been entered, the Court denied Mr. Wiggins' relief requested on the very same issue. Now, Mr. Wiggins attempts to have "a second bite of the apple" so to speak and has filed an untimely Appeal on the subject matter jurisdiction issue. Mississippi law is clear, however, that after a final judgment has been entered in a case, Mississippi courts simply have no authority to reverse a final judgment based on lack of subject matter jurisdiction.

III. CONCLUSION

The present appeal is not interlocutory, and the "**Final Judgment,**" as its title suggests is final. The Trial Court's retaining jurisdiction over possible rents due to Mr. Perry during the appellate procedure simply allows the Court to better enforce the terms of the Final Judgment. Mississippi law is quite clear that where a final judgment has been entered in a matter, a Mississippi Appellate Court has no authority to reverse a final judgment based on an allegation that the inferior Court lacked subject matter jurisdiction. Therefore, Mr. Perry would respectfully request that the Court deny Mr. Wiggins the relief sought and dismiss his

appeal. The appeal is non-interlocutory and an appeal from a final judgment that solely asserts as its ground lack of subject matter jurisdiction. Hence, the Trial Court cannot be reversed for this alleged error.

CERTIFICATE OF SERVICE

I, Lindsey C. Meador, do hereby certify that I have this day mailed by regular United States mail, a true and correct copy of the above and foregoing *Appellee's Brief on the Question of Whether The Appeal Is an Interlocutory Appeal and Properly before the Court* to the following:

Honorable William H. Gresham, Jr./
Christopher Kittell
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Honorable William G. Willard, Jr.
Chancellor
Eleventh Chancery Court District
P.O. Box 22
Clarksdale, MS 38614

SO CERTIFIED on this the 12th day of October, 2007.



LINDSEY C. MEADOR