

IN THE SUPREME COURT OF MISSISSIPPI

TERRY FARMER AND WIFE
BRENDA FARMER

APPELLANTS

VERSUS

CASE NO. 2006-CA-01659

RICHARD RICHARDSON

APPELLEE

BRIEF OF APPELLANTS

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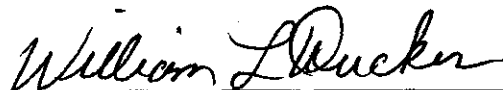
Attorney for Appellants

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

- 1) Judge James H. C. Thomas, Jr.
- 2) Justice Court Judge William Anderson
- 3) Hon. William E. Andrews, III, Attorney for Appellees
- 4) Hon. William L. Ducker, Attorney for Appellants
- 5) Terry and Brenda Farmer
- 6) Clyde Farmer
- 7) Richard Richardson

WITNESS MY SIGNATURE this, the 4th day of January, A. D., 2007.



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STATEMENT OF THE ISSUES

1) The Honorable Chancellor erred in entering the Court's Final Judgment republishing its Summary Judgment dismissing with prejudice all matters between the parties.

2) The decision of the arbitrator in Clyde Farmer's personal injury case should not preclude Terry Farmer and wife, Brenda Farmer, from litigating their separate causes of action for malicious prosecution, willful destruction of private property, and Brenda Farmer's cause of action for intentional infliction of emotional distress.

STATEMENT OF THE CASE

A. Nature of the Case, Proceedings and Disposition.

This appeal stems from the Honorable Chancellor's Summary Judgment (RE 10-12) and the subsequent Orders of Clarification and Dismissal (RE 7-9) and Final Judgment. (RE 5-7)

STATEMENT OF THE FACTS

B. Plaintiffs Farmer bring their appeal of Final Judgment (RE 5-6).

Terry and Brenda Farmer entered into a lease purchase agreement with Richard Richardson to purchase certain acreage in the Sumrall area in 1992 and later vacated the Richardson premises in 1996. The Farmers then were deeded a smaller tract by an adjoining landowner. Since the spring of 1996, the Farmers have experienced numerous problems with Richard Richardson. He commenced by blocking the driveway causing them to walk 150 yards to their trailer and later cut the water lines, which Terry Farmer had laid in order to connect to public water. When the Farmers moved, Richardson prosecuted Terry Farmer for stealing Farmer's own property. Although convicted in Justice Court, Farmer was acquitted in Circuit Court and Terry Farmer's malicious prosecution cause of action has never been given due process in any Court. Mrs. Brenda Farmer has a claim for intentional infliction of emotional distress, which arises from being verbally threatened to being almost run down by Richardson driving a tractor across the property lines, where Terry Farmer was erecting a fence. None of these three (3) causes of action have any connection with the case of Mr. Clyde Farmer, which was arbitrated in Lamar County Circuit Court, Cause No. 97 0053. (RE-16-18). Mr. Richardson has violated the existing injunction (RE 10-12) on several occasions, and the Farmers hope now something will be done about enforcing same.

In order to avoid a multiplicity of litigation, the Farmers would agree to one trial with the several counts being presented separately. All Terry and Brenda Farmer want is their day in Court. Summary Judgment, while not favored in this jurisdiction should

never be used to cut off justiciable causes of action. (RE 10-12) No testimony has ever been taken in this cause, but from the Order of Acquittal in the criminal case to the various incident reports filed with the Sheriff's Department concerning the destruction of private property and the threats of assault; there is certainly a prima facie case under three (3) of the counts in the Plaintiff's Amended Complaint. (RE 21-26)

SUMMARY OF THE ARGUMENT

Proposition I

The Honorable Chancellor erred in entering the Court's Final Judgment republishing its Summary Judgment dismissing with prejudice all matters between the parties.

Terry and Brenda Farmer have a multi-count cause of action against Richard Richardson, (RE 21-26) In one of the claims, the Court has ruled Terry Farmer's action for personal injuries subsequent to a fight with Richardson, is estopped by privity with his father's separate action. (RE 8) Plaintiffs have always maintained that while both Terry Farmer and Clyde were both injured as a result of an altercation with Richard Richardson on the same date the events are separate and distinct. The Appellants dispute certain findings that are not in evidence because none was ever presented in open Court. Summary Judgment was issued on all claims alleged by the Plaintiffs, however, only one count was ever challenged by the Defendant.

SUMMARY OF THE ARGUMENT

Proposition II

The decision of the arbitrator in Clyde Farmer's personal injury case should not preclude Terry and Brenda Farmer from litigating their separate causes of action for malicious prosecution, willful destruction of private property, and Brenda Farmer's cause of action for intentional infliction of emotional distress.

While the Plaintiffs' challenge the Order of Summary Judgment as same relates to Terry Farmer's claim for personal injuries, the Plaintiffs cannot understand the Chancellor's using the ruling of the arbitrator in Mr. Clyde Farmer's case, who is not a party to these proceedings, to dismiss with prejudice all their other claims. (RE 7-9) The ruling in Clyde Farmer's case has no relevance to Terry Farmer's suit for malicious prosecution. (RE 24) The order of acquittal (RE 27-28) and the surrounding circumstances certainly give Plaintiff Terry Farmer a viable cause of action that has not been litigated. Brenda Farmer has a separate claim for intentional infliction of emotional distress. Both Plaintiffs jointly claim damages for willful destruction of private property by Richard Richardson. How can the Court throw out three valid claims when considering the events in a light most favorable to the Defendant, only one count (Terry Farmer's personal injury suit) is cancelled by arbitration? Appellants are keenly aware that this Court reviews Summary Judgment in the light most favorable to the non-moving party, which in this case are Terry and Brenda Farmer. The Farmers just want one trial; they are not asking for three (3) separate and distinct hearings and if they loose, this

entire scenario is over. However, to cut them off on all four counts because of one arbitration decision in Clyde Farmer's case denies them due process of law.

PROPOSITION I

Terry and Brenda Farmer certainly have at least three (3) claims with individual sets of facts worthy of the Chancellor's consideration. In reviewing a trial Courts granting of Summary Judgment, the Court of Appeals and the Mississippi Supreme Court examine all the evidentiary matters before them, admissions in pleadings, answers to discovery requests, affidavits, etc. Hurdle v. Holloway, 848 So2d 183 (Miss. 2003). The evidence is reviewed most favorably to the party opposing the motion. Any probable set of facts asserted by the Plaintiffs, which suggest a genuine issue of material facts exists between the parties places the burden squarely on the Defendant to show that under no circumstances could such issue exist. Moore ex rel. Moore vs. Memorial Hospital of Gulfport, 825 So2d 658 (Miss. 2002).

“This Court conducts a de novo review of questions of law.” Weeks v. Thomas, 662 So2d 581 (Miss. 1995) Motions to dismiss lodged under MRCP (12(b)(6) must be shown to a certainty that there is no set of facts that could be proven under which a Plaintiff could recover in order to be sustained. Busching v. Griffin, 465 So2d 1037 (Miss. 1985) additionally in the decision of State v. Dampeer, 744 So2d 754 (Miss.1999), the Court found that to survive a Rule 12(b)(6) motion, a complaint only needs to assert a set of facts that would allow a Plaintiff some measure of relief by the Court. Although there was a considerable amount of interchange between the parties concerning the injunction (RE 10-12) the only evidence for the Court to base its decision on was the ruling of the arbitrator in Lamar County Circuit Cause No. 97 0053 styled Clyde M. Farmer vs. Richardson and the Order of Acquittal from Lamar County Circuit Court.

Richard Richardson and the Order of acquittal from Lamar County Circuit Court
in Cause No. AP-1487-2 (RE 27-28)

The Appellee will argue that because of the decision of Hogan V. Buckingham, 730 So2d 15 (Miss. 1998) that Plaintiff Terry Farmer is estopped from presenting his claim for personal injury suffered from a fight with Defendant Richardson. While Clyde and Terry Farmer both ended up at the emergency room after an incident that happened on the property line with Richardson the fact situations are different. Plaintiff, Terry Farmer, has video evidence of what transpired with his father and only after Richard Richardson put Mr. Clyde Farmer on the ground and kicked him did Terry Farmer ever enter the struggle. Terry Farmer is not a fighter and only wanted to get his father out of harm's way when he was struck and entered the maylay. He has had no opportunity to give evidence of his actions, which were some ten minutes after the argument commenced with Richardson, and Plaintiff's father, Clyde Farmer.

In the most recent review of an action where collateral estopped was applied the Miss. Supreme Court ruled thusly:

“The doctrine of collateral estoppel must never be seen as
anything other than an unusual exception to the general rule
that all fact questions should be litigated fully in each case.”

Mayor and Board of Alderman, City of Ocean Springs v Homebuilders
Association of Miss., Inc. et al, 932 So2d 44 (Miss. 2006)

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PROPOSITION II

The decision of the arbitrator in Clyde Farmer's personal injury case should not preclude Terry Farmer and wife, Brenda Farmer, from litigating their separate causes of action for intentional infliction of emotional distress, malicious prosecution, and destruction of private property.

(A) Terry Farmer's suit for malicious prosecution against Richard Richardson. This cause arose out of Richard Richardson's accusation that when the Farmers moved from his land that Terry Farmer stole certain personal property, including, sheet metal, roofing materials, etc. Charges were filed in Justice Court and Terry Farmer was convicted in Justice Court. The case was appealed to Lamar County Circuit Court in Cause No. AP-1 87-2 and there Terry Farmer was acquitted. (RE 27-28) The six (6) elements of the tort of malicious prosecution have been well settled in a line of cases from Gandy v. Parker, 251 Miss. 398, 169 So2d 819 (1964) to the decision of Strong v. Nicholson, 580 So2d 1288 (Miss. 1991). The substantive requirements for the tort are:

1. Institution of a criminal proceeding.
2. By or at the instance of the Defendant.
3. Termination of such proceedings in Plaintiff's favor.
4. Malice in instituting the proceedings.
5. Want of probable cause of the proceedings.
6. Plaintiff's suffering damages as a result.

Numbers 1-3 are obvious from the Order of Acquittal. The element of malice existed because the charges were Richardson's vengeance for the Farmers purchasing a smaller tract of land from an adjoining neighbor at a lesser price. When the Farmers moved their trailer, Richard Richardson threatened them. As the Chancellor noted in his

Order of Clarification and Dismissal, there are at least fourteen (14) instances where reports were filed with the Sheriff's Department or misdemeanor charges were filed.

Number Five (5) is want of probable cause. Terry Farmer produced receipts from several building supply houses at his trial, which clearly indicated all the material in question belonged to him. The damage Terry Farmer sustained was lost wages for two (2) shifts. The Plaintiff is a conductor on Amtrak and if he misses a day of work he misses his whole shift 7 to 9 days. Also, Plaintiffs had to hire an attorney to appeal the Justice Court conviction and represent Terry Farmer in Circuit Court. Appellants ask why this case should not be allowed to come to trial?

(B) The Farmers have a separate cause of action against Richard Richardson for destruction of private property. This includes digging up and cutting their water lines, knocking down their fence and poisoning their dog.

(C) Brenda Farmer has a separate suit for intentional infliction of emotional distress from being threatened on at least three (3) occasions and having the Defendant attempt to run over her with a tractor. This was a continuing tort. One, which was inflicted on her at least four instances that can be documented between the spring of 1996 and July 1998. Stevens v. Lake, 615 So2d 1177, Miss. 1993) Even after the Court issued its injunction (RE 10-12), the harassment continued. These causes have nothing to do with the Circuit court case of Clyde Farmer that was arbitrated. Both Terry Farmer and Brenda Farmer have been denied due process of law of Art 3 §14 of the Mississippi Constitution of 1890. Kellog v. Strickland, 191 So2d 536 (Miss. 1966) "Due process of

law requires essential fairness and justice in judicial proceeding. In the procedural aspect, the Constitutional guaranty of due process of law assures to every person his day in Court and the benefit of the general law” Mayor and Board of Alderman, City of Ocean Springs v. Homebuilders Association of Miss., Inc., et al, 932 So2d 44 (Miss. 2006).

CONCLUSION

Terry and Brenda Farmer have four (4) remaining claims before the Court. Three (3) are viable cases independent of any other previous action. The Honorable Chancellor erred in denying the Appellants their day in Court on those three (3) causes of action. There is no way a wrongful prosecution suit can be estopped by the decision in a personal injury suit. All the Appellants are pleading for is a reversal and remand for a hearing on the merits. One trial – no more delay.

CERTIFICATE OF SERVICE

I, William L. Ducker, do hereby certify that I have this date forwarded, via United States Mail, postage prepaid, an original and three (3) copies of the above and foregoing Brief of Plaintiffs to:

Honorable Clerk of the Supreme Court
State of Mississippi
P. O. Box 249
Jackson, MS 39205

One (1) copy was mailed postage prepaid to:

Judge James H. C. Thomas, Jr.
P. O. Box 807
Hattiesburg, MS 39403

Hon. William E. Andrews, III
P. O. Box 130
Purvis, MS 39475

WITNESS MY SIGNATURE this, the 4th day of January, A. D., 2007.


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