

Number 2006-CP-01789

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SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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2006

Bonnie Harvey,

Appellant,

Versus

Stone County School District,

Appellee

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On appeal from the lower court's denial  
of Bonnie Harvey's motion to vacate

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IN THE CIRCUIT COURT OF STONE COUNTY, MISSISSIPPI  
Case number No. 2001—0060

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Appellant's opening brief

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Bonnie Harvey  
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April 9<sup>th</sup> 2007

## Certificate of interested persons, Rule 28(1)

Appellant, Bonnie Harvey, identifies the following persons, associations of persons, partnerships, corporations, affiliates, parent corporations, guarantors, insurers, parent or subsidy corporations, or other legal entities who or which may have a financial interest in the outcome of this litigation:

Bonnie Harvey;

Stone County School District.

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### Statement of issues

Whether the trial court grossly abused discretion by denying Bonnie Harvey's motion to vacate the trial court's award of summary judgment for and in favor of Stone County School District where the underlying record shows that the trial court was deprived of subject matter jurisdiction to make inferences regarding the ultimate facts of the case sans trial on the merits equating to a denial of Bonnie Harvey's rights secured by the Constitution including the right to due process of law, equal protection of the laws, and the same privileges and immunities afforded citizens of other states. This Court is charged with the knowledge that were party is deprived of due process, the proceedings are facially void and the court issuing the void judgment, after being placed on notice, has a non-discretionary duty to vacate the void judgment.

### Statement of the case

Counsel representing Bonnie Harvey brought suit in Stone County for personal injury naming Stone County School District as respondent. Ms. Harvey's counsel abandoned the cause; the reasons why are not important to this appeal. Bonnie Harvey, in the true spirit of American civil jurisprudence, chose to proceed pro se. Counsel for Stone County School District moved to dismiss alleging Bonnie Harvey had not complied with a discovery request. Bonnie Harvey had complied to the best of Bonnie Harvey's ability but noticed the court that one medical facility was closed and that facility's records were not instantly available. The court below, relying on unverified statements of counsel, dismissed Bonnie Harvey's petition with prejudice without examining the record. Bonnie Harvey appealed. In that appeal, number 2002-CA-01777, Bonnie Harvey prevailed and the matter was remanded for further proceedings. The trial repeatedly refused Bonnie Harvey meaningful access to court and ultimately, *sua sponte*, decided the facts of the case based on the un-sworn, unverified, undocumented theories and conclusions of Trace D. McRaney. In favoring McRaney with it's ruling, the lower court also totally ignored the un-rebutted, sworn testimony of Bonnie Harvey and disregarded Bonnie

Harvey's repeated notices to the Court that McRaney had acted in utmost bad faith by refusing to comply with Bonnie Harvey's requests for production of documents and open harassment and bullying. No person learned in the law can say with any degree of candor that Bonnie Harvey was afforded due process perhaps best described as fair hearing at any point say for this Court's prior appeal handling.

### Summary of the argument

The court below lacked discretion to deny vacation of the judgment against Bonnie Harvey which obtained in clear contravention of due process of law.

### Arguments

(1). Trial Courts operating in a procedurally proper manner in America lack authority to determine the disputed facts of a case: See *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993); *Short v. Columbus Rubber & Gasket Co.*, 535 So. 2d 61, 63 (Miss. 1988).

(2). Where party is denied due process of law the ensuing judgment is void:

In defining a void judgment, this Court has repeated the federal rule, which states that "a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986). See *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993); *Short v. Columbus Rubber & Gasket Co.*, 535 So. 2d 61, 63 (Miss. 1988).

(3). Where the record reveals that a judgment is void the court lacks discretion; the court must vacate the void judgment. A void judgment is just

that, void. *Roberts v. Roberts*, 866 So.2d 474 at ¶ 12, (Miss.App. 10/07/2003). A litigant cannot be held in contempt of a void judgment. *McKinney v. McKinney*, 374 So. 2d 230, 234 (Miss. 1979). Precedents support that a void judgment can be attacked whenever, wherever and however the issue arises. *Goodsell v. Delta & Pine Land Co.*, 72 Miss. 580, 18 So. 452, 453 (1895) (whenever and however); *Hamilton v. Homer*, 46 Miss. 378, 388 (1872) (whenever and wherever). A void judgment can be attacked directly or collaterally anywhere and at any time. *BRYANT v. LOVITT*, et al., 231 Miss. 736 at [12] (Miss.10/28/1957). There is no six-month time limit on a 60(b)(4) motion. The only limitation is that the motion

be made" within a reasonable time. . . . "Miss. R. Civ. P. 60. Federal authority has interpreted this to mean that there is no effective time limit, with the rationale being that no amount of time or delay may cure a void judgment. 7 J. Moore & J. Lucas, Moore's Federal Practice 60.25[4] 2d ed. 1987; 11 C. Wright & A. Miller, Federal Practice and Procedure 2862 (1973); *In re Whitney-Forbes, Inc.*, 770 F. 2d 692 (7th Cir. 1985); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y. 1986) *OVERBEY v. MURRAY*, 569 So. 2d 303 at [26] & [27] (Miss. 10/17/1990). In defining a void judgment, this Court has repeated the federal rule, which states that" a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. "*Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986). The trial court has no discretion in dealing with a void judgment. If the judgment is void, it must be set aside. *Walters*, 493 So. 2d at 937. In addressing a void judgment the Mississippi Supreme Court has stated that "[t]he grant or denial of a 60(b) motion is generally within the discretion of the trial court, unless the judgment in question is found to be void. In that case the trial court has no discretion; it must set the void judgment aside." *Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991). The supreme court has also stated that "no amount of time or delay may cure a void judgment."



*Overbey v. Murray*, 569 So. 2d 303, 306 (Miss. 1990). . . . a void judgment can furnish no basis for any subsequent action. *Southern Trucking Serv., Inc. v. Mississippi Sand & Gravel, Inc.*, 483 So.2d 321, 324 (Miss. 1986). Equally clear are this Court's words in *Overbey v. Murray*, 569 So.2d 303, 306 (Miss. 1990). Exemplary or punitive damages are recoverable where the garnishment was not only wrongful but also malicious or vexatious; but they are not recoverable unless actual damage is shown. The malice which will sustain an award of such damages is actual malice, and not that which is implied in law from a groundless act." 38 C.J.S. 613. This rule is also applicable for the wrongful issuance of other process, such as an attachment and execution when issued upon a void judgment. See 6 Am. Jur. 2d Attachment and Garnishment 615 (1963); 21 Am. Jur. Executions 646 (1939). Under Miss. R. Civ. P. 60 (b)(4) our courts have the power to grant relief from a void judgment. A void judgment must be set aside. See *Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991). A judgments is void if "the court that rendered it lacked jurisdiction of the subject matter of the parties, or if it acted in a manner inconsistent with due process of law." *Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986). The court must set the void judgment aside. *Soriano v. Gillespie*, 857 So.2d 64 at [50] (Miss.App. 04/08/2003). if the judgment in question is deemed to be void, the grant of a

Rule 60(b)(4) motion is mandatory. *Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991). In such a case the lower court has no discretion--the court must set the void judgment aside. *Brackin v. Burton*, 755 So.2d 462 at [38] (Miss.App. 02/23/1999). Rule 60(b) provides an opportunity for relief from a judgment or order, but only where one of the following exists: fraud, accident or mistake, newly discovered evidence, void judgment, judgment has been satisfied or otherwise vacated, or any other reason justifying relief. When reviewing a lower court's denial of a Rule 60(b) motion, we will reverse only if the lower court abused its discretion in denying the motion. *Askew v. Askew*, 699 So. 2d 515, 519 (¶17) (Miss. 1997) (citing *Stringfellow v. Stringfellow*, 451 So. 2d 219 (Miss. 1984); *Clarke v. Burkle*, 570 F.2d 824 (8th Cir. 1978)). In order to succeed, Cook must show that "exceptional circumstances" warranted the granting of his motion. "[T]he general rule is that Rule 60(b) provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances. . . . A party is not entitled to relief merely because he is unhappy with the judgment. . . ." *Stringfellow*, 451 So. 2d at 221 (citations omitted). Because the law favors a trial of the issues on the merits, a dismissal for lack of prosecution is employed reluctantly. There is no set time limit on the prosecution of an action once it has been filed, and dismissal for failure to prosecute will be

upheld only where the record shows that a plaintiff has been guilty of dilatory or contumacious conduct. Dismissal with prejudice is an extreme and harsh sanction that deprives a litigant of the opportunity to pursue his claim, and any dismissals with prejudice are reserved for the most egregious cases. *Mississippi Dept. of Human Services v. Guidry*, 820 S0.2d 628 (Miss. 2002).

(4). Attack on a void judgment can never be time-barred: A void judgment can be attacked directly or collaterally anywhere and at any time. *BRYANT v. LOVITT*, et al., 231 Miss. 736 at [12] (Miss.10/28/1957). There is no six-month time limit on a 60(b)(4) motion. The only limitation is that the motion be made" within a reasonable time. . . . "Miss. R. Civ. P. 60. Federal authority has interpreted this to mean that there is no effective time limit, with the rationale being that no amount of time or delay may cure a void judgment. 7 J. *Moore & J. Lucas*, *Moore's Federal Practice* 60.25[4] 2d ed. 1987; 11 C. Wright & A. Miller, *Federal Practice and Procedure* 2862 (1973); *In re Whitney-Forbes, Inc.*, 770 F. 2d 692 (7th Cir. 1985); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y. 1986) *OVERBEY v. MURRAY*, 569 So. 2d 303 at [26] & [27] (Miss. 10/17/1990). The supreme court has also stated that "no amount of time or delay may cure a void judgment." *Overbey v. Murray*, 569 So. 2d 303, 306 (Miss. 1990). . . . a

void judgment can furnish no basis for any subsequent action. *Southern Trucking Serv., Inc. v. Mississippi Sand & Gravel, Inc.*, 483 So.2d 321, 324 (Miss. 1986). Equally clear are this Court's words in *Overbey v. Murray*, 569 So.2d 303, 306 (Miss. 1990).

### Conclusion

It reflects poorly on Mississippi jurisprudence and subjects the Mississippi judicial system to unkind but accurate commentary where: (a). a party is forced to file two pretrial non-interlocutory appeals just because the party is pro se, (b). the trial court judge refuses to enforce a pro se litigants discovery requests, (c). the trial court judge permits the bar-licensed attorney to bully and harass the pro se litigant, and (d). the trial court demonstrates either a lack of competency in the law and/or open contempt for the rule of law.

The cause of justice requires: (i). vacating the trial court's summary judgment ruling, and (ii). Remand to the lower court with instruction to enforce Bonnie Harvey's discovery requests with admonition to Mr. McRaney that summary judgment will be awarded to Bonnie Harvey based on Bonnie Harvey's un-rebutted testimony unless within twenty days of the remand, competent fact witnesses rebut the testimony of Bonnie Harvey and furnish Bonnie Harvey with all requested discovery materials. This Court is

noticed: complicity with this conclusion affords Stone County School District since it is painfully obvious that Stone County is not represented by competent counsel.

Prepared and submitted by: \_\_\_\_\_

Bonnie Harvey

### CERTIFICATE OF SERVICE

I, Bonnie Harvey, certify that April 9<sup>th</sup> 2007, I mailed a true and correct copy of the above and foregoing appellant's opening brief via first class mail to:

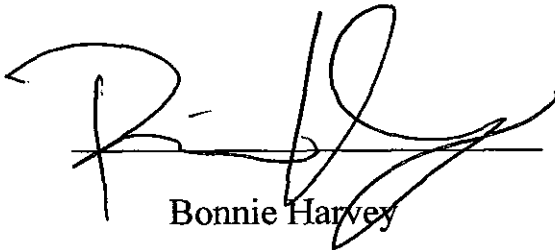
Trace D. McRaney  
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Post Office Drawer W.  
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Bonnie Harvey

### CERTIFICATE OF SERVICE

I, Bonnie Harvey, certify that April 16<sup>th</sup> 2007, I mailed a true and correct copy of the Appellant's opening brief, Appellant's Appendix and Appellant's statement regarding record excerpts in Supreme Court Case No. 2006-CP-01789 via first class mail to:

Judge Steve Simpson  
P.O. Box 1461  
Gulfport, Ms. 39502



Bonnie Harvey