

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CP
NO. 2006-~~TS~~-01942-SCT

ROBERT S. SCRUGGS

PLAINTIFF/APPELLANT

V.


JOE CALDWELL
CLERK OF THE CIRCUIT COURT
OF ALCORN COUNTY

DEFENDANT/APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons or entities 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 disqualification or recusal.

1. Robert Scruggs, Plaintiff/Appellant;
2. Joe Caldwell, Clerk of the Circuit Court of Alcorn County, Defendant/Appellee;
3. Robert J. Mims, Esq., Daniel Coker Horton & Bell, P.A., P.O. Box 1396, Oxford, Mississippi 38655, attorney for Defendant/Appellee;
4. Honorable Rodney Shands, Chancery Court Judge, P. O. Box 30, New Albany, Mississippi, 38652.


ROBERT J. MIMS
Attorney for Defendant/Appellee

OF COUNSEL:

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STATEMENT REGARDING ORAL ARGUMENT

The appellee does not believe that oral argument is necessary.

STATEMENT OF ISSUES

Whether the appellee has failed to comply with the appellant's request under the Mississippi Public Records Act, codified at Miss. Code Ann. § 25-61-1 *et seq.*

STATEMENT OF THE CASE

The appellant filed the civil action in the Chancery Court of Alcorn County, alleging that the Circuit Clerk of Alcorn County had failed to comply with the provisions of the Mississippi Public Records Act, specifically Miss. Code Ann. § 25-61-5. Miss. Code Ann. § 25-61-13 provides that any person denied the rights granted under § 25-61-5 may institute a suit in the Chancery Court of the county in which the public body is located. The Honorable Rodney Shands, Chancellor, held a hearing on the merits on October 10, 2006, at which time the Court issued a ruling from the bench that certain documents be produced to the appellant. Once the appellee had filed a Notice of Service indicating that the documents had been produced to the appellant, the Court entered a Judgment of Dismissal with Prejudice, finding that there was no further controversy between the parties. The appellant, apparently believing that there are still documents in the possession of the Alcorn County Circuit Clerk's office which have not been produced, has filed his Notice of Appeal.

STATEMENT OF THE FACTS

The appellant is currently incarcerated in the Mississippi Department of Corrections System after pleading guilty to various charges pertaining to the possession and sale of cocaine. [R117-118] In an apparent and continuing attempt to reverse his incarceration by contesting the indictment, the appellant has made multiple requests for documents pertaining to his criminal charges from the Alcorn County Circuit Clerk. [R2-18] Many of the documents requested by the appellant pertained to the proceedings of the grand jury that indicted him. [R13, Transcript]¹ The Alcorn County Circuit Clerk's office has made every effort to comply with the appellant's requests and with the provisions of the Mississippi Public Records Act by providing copies of the requested documents to the appellant. [Transcript] However, the appellant has requested certain documents that are not in the possession of the Alcorn County Circuit Clerk. [Transcript]

The appellant apparently believes that the appellee is withholding documents and accordingly filed this suit in the Chancery Court of Alcorn County pursuant to the provisions of Miss. Code Ann. § 25-61-13. [R2-18] This matter was set for hearing on the merits on October 10, 2006. [R63] After hearing testimony and arguments from both parties, the Court issued a ruling from the bench requiring the appellee to produce certain documents to the appellant. [Transcript 55-57] The Court indicated that once the

¹ For any citation herein to the transcript, it is difficult to cite to a specific page; however, the transcript in general contains a good explanation of the documents requested by the appellant, the efforts of the appellee to comply with the requests, and the difficulty in satisfying the appellant.

enumerated documents were produced to the appellant, the appellant's cause of action would be dismissed. [Transcript 55-57] On October 17, 2006, the appellee filed a formal Notice of Service reflecting that copies of all documents required to be produced by the Court had been served upon the appellant. [R102-103]² On or about October 26, 2006, the Court entered a Judgment of Dismissal with Prejudice, finding that the required documents had been produced and that there was no further legitimate controversy between the parties. [R125-126]

² In his brief, appellant has complained that certain documents produced to him are not legible. The documents to which he is referring are copies of the exhibits in the underlying criminal case. As explained by the deputy clerk, the Clerk's office doesn't have the original exhibits, but rather only has pictures of the exhibits. [Transcript 30] The original exhibits have been sent to the Supreme Court. [Transcript 30] The appellant was provided copies of the pictures of the exhibits. Most of the exhibits consist of tangible items, such as money, so that a picture of the exhibit is all that could be provided.

SUMMARY OF THE ARGUMENT

The appellee's argument is a simple one—it has provided all of the documents in its possession pertaining to the indictment and criminal charges against the appellant. The appellant appears to believe that there are more documents in the possession of the Alcorn County Circuit Clerk, but that is simply not the case.

ARGUMENT

While the appellant's position, as set forth in his brief, is a little hard to follow, it appears that the appellant still maintains that the appellee has failed to provide him with all of the requested records. The appellee is well-aware of its duties under Miss. Code Ann. § 25-61-5. Every time the appellant has made a request for records, the appellee has provided the appellant with a copy of the records, so long as the records were in the possession of the Alcorn County Circuit Clerk. The appellant has requested records that are not in the Clerk's possession (and that may not exist), making it impossible for the appellee to produce those records. The appellee has explained to the appellant that it is not in possession of some of the records that have been requested, but the appellant remains unsatisfied.

At the hearing on the merits, there were certain additional records that had not previously been produced which the appellee was ordered by the Court to produce. One such document was a certified copy of the indictment in Cause No. CR 98-016. The appellee had previously provided a copy of the indictment, but the appellant was not satisfied since the copy was not certified. The appellee was agreeable to providing a certified copy and did so on or about October 17, 2006. Two other documents required by the Court to be produced were certified copies of the minutes pertaining to the grand jury report filed January 23, 1998 and pertaining to the Alcorn County Circuit Court filed August 6, 1998. There had apparently been some confusion over what the appellant was

requesting, but once this issue was clarified in the hearing on the merits, the appellee complied with the request by producing the documents to the appellant on or about October 17, 2006. Finally, the Court ordered that the appellee produce copies of all exhibits in Cause No. CR 98-016. The exhibits, which had only recently been requested by the appellant, pertained to a criminal action eight (8) years earlier. They had been in storage and had been difficult to locate. A few days before the hearing, the Deputy Clerk located photographs of the exhibits (the original exhibits had previously been sent to the Supreme Court) and brought them with her to the hearing. Copies of the exhibits were made for the appellant at the conclusion of the hearing, but the appellant refused to sign a document acknowledging receipt of the copies. Accordingly, copies of the exhibits were provided to the appellant along with the other aforementioned documents by certified mail on or about October 17, 2006. When the appellee filed a Notice of Service with the Court indicating that the required documents had been produced to the appellant, the Court dismissed the appellant's cause of action with prejudice.

There is simply nothing more for the appellee to produce. The appellant has offered no proof that the appellee is in possession of any other documents that have been requested by the appellant but that have not been produced by the appellee.

CONCLUSION

The issue presented by the appellant is factual rather than legal. There is no dispute as to what the appellee's obligations are under the Mississippi Public Records Act. The question is simply whether or not the appellee has complied with the provisions of the Act. The appellant has failed to provide any proof that the appellee has failed to comply with the Act and accordingly, the appellee respectfully requests that the appellant's appeal be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. J. Mims", is written over a horizontal line.

Robert J. Mims

Attorney for Joe Caldwell, Circuit Clerk
of Alcorn County, Defendant/Appellee

CERTIFICATE OF SERVICE

I, Robert J. Mims, counsel for defendant/appellee Joe Caldwell, Circuit Clerk of Alcorn County, do hereby certify that I have mailed, via United States mail, a true and correct copy of the foregoing instrument to:

Robert S. Scruggs, #79644
EA-36 DCF
3800 County Rd. 540
Greenwood, MS 38930

This the 10th day of April, 2007.



Robert J. Mims

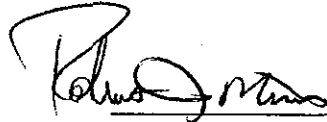
AMENDED CERTIFICATE OF SERVICE

I, Robert J. Mims, counsel for defendant/appellee Joe Caldwell, Circuit Clerk of Alcorn County, do hereby certify that I have mailed, via United States mail, a true and correct copy of the foregoing instrument to:

Robert S. Scruggs, #79644
EA-36 DCF
3800 County Rd. 540
Greenwood, MS 38930

Honorable Rodney Shands
Chancery Court Judge
P. O. Box 30
New Albany, MS 38652

This the 16th day of April, 2007.



Robert J. Mims