

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO.: 2007-CA-00728

JAKE STATHAM

APPELANT

VERSUS

ERIC MILLER

APPELLEE

APPEAL FROM

THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

BRIEF FOR THE APPELLEE

ATTORNEY FOR APPELLEE:

**KEVIN D. CAMP, MSB # [REDACTED]
The Camp Law Firm, PLLC
1764 Liela Drive
Jackson, MS 39216
601-948-5800**

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO.: 2007-CA-00728

JAKE STATHAM

APPELLANT

FILED

VERSUS

JAN 03 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

ERIC MILLER

APPELLEE

AMENDED 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.

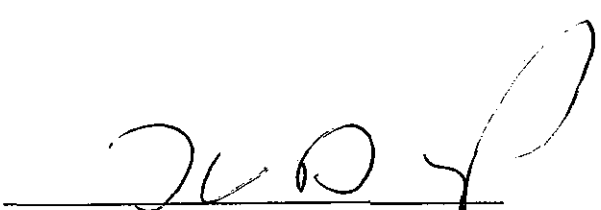
Jake Statham, Appellant

Eric Miller, Appellee

Charles Yoste, Attorney for Jake Statham

Kevin D. Camp, Attorney for Eric Miller

Honorable James T. Kitchens, Jr., Trial Judge



Kevin D. Camp
Mississippi Bar Number [REDACTED]
Attorney for Appellee

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO.: 2007-CA-00728

JAKE STATHAM

APPELLANT

VERSUS

ERIC MILLER

APPELLEE

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.

Jake Statham, Appellant

Eric Miller, Appellee

Charles Yoste, Attorney for Jake Statham

Kevin D. Camp, Attorney for Eric Miller

Honorable James T. Kitchens, Jr., Trial Judge

TABLE OF CONTENTS

<u>INDEX</u>	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITES	iii
STATEMENT OF ISSUES.....	1
STATEMENT OF CASE.....	2
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT	
I. THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION WHEN IT CONSIDERED APPELLANT'S MOTION FOR RELIEF FROM THE ORDER DISMISSING THE APPEAL AND DENIED IT.....	5
A. The Circuit Court had judicial discretion to dismiss the appeal.....	5
B. Appellee had the right to voluntarily withdraw the appeal from the Circuit Court.....	6
C. The apparent reason(s) for which the Appellant wishes to have the Circuit Court's decision reversed have no merit.....	7
II. THE APPELLANT WAS NOT DEPRIVED OF HIS RIGHT TO DUE PROCESS BECAUSE THE CIRCUIT COURT HEARD HIS MOTION FOR RELIEF FROM THE ORDER DISMISSING THE APPEAL.....	9
CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13

TABLE OF AUTHORITIES

United States Supreme Court Cases

<i>Anderson Nat'l Bank v. Lockett</i> , 321 U.S. 233 (1944).....	10
--	----

Mississippi State Supreme Court Cases

<i>Carter v. Clegg</i> , 557 So.2d 1187 (Miss.1990).....	5,6
<i>City of Pascagoula v. Advertiser Publishing Co., Inc.</i> , 84 So.2d 157 (Miss.1955).....	5,6,7
<i>Hobbs Auto Co. v. Jones</i> , 105 So. 764 (Miss.1925).....	5,7,8
<i>Lamar County v. Tally & Mayson</i> , 77 So. 299 (Miss.1918).....	6
<i>Lucedale Commercial Co. v. Strength</i> , 141 So 769 (Miss. 1932).....	10,11
<i>W.N. Pass v. Milton Payne</i> , 63 Miss. 239 (Miss.1885).....	6
<i>Wolf v. MS Valley Trust Co.</i> , 93 So. 581 (Miss.1922).....	6,7
<i>Zerkowsky v. Kerkowsky</i> , 131 SO. 647 (Miss. 1931).....	6

Mississippi State Statutes / Rules

Miss. Code Ann. § 9-11-9.....	8
Miss. R. Civ. Pro. 42(d).....	11

Secondary Sources

5 C.J.S. Appeal and Error § 751.....	6
--------------------------------------	---

STATEMENT OF THE ISSUES

- I. WHETHER THE TRIAL COURT WAS WITHIN ITS DISCRETION WHEN IT GRANTED APPELLEE'S MOTION TO DISMISS HIS OWN APPEAL AND DENIED APPELLANT'S MOTION FOR RELIEF FROM THE ORDER DISMISSING THE APPEAL.
- II. WHETHER THE APPELLANT WAS DEPRIVED OF DUE PROCESS WHEN THE TRIAL COURT DISMISSED THE APPELLANT'S APPEAL AND DENIED HIS MOTION TO RECONSIDER THE DISMISSAL OF THE APPEAL.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal of an order entered by the Circuit Court of Oktibbeha County, Mississippi, on April 17, 2007, dismissing the appeal of a judgment entered against Eric Miller (Appellee) as the defendant in the Justice Court of Oktibbeha County, Mississippi.

B. Course of Proceedings and Disposition of the Courts Below

This case involves the initial appeal of a judgment rendered against the Appellee in the amount of \$ 2,500.00 on February 9, 2005 in the Justice Court of Oktibbeha County. (R. at 4,5). The Appellee appealed this judgment to the Circuit Court of Oktibbeha County and the original appeal was date stamped and filed with the court on February 24, 2005. (R. at 16).

More than twelve months later on March 8, 2006, Circuit Judge Lee J. Howard entered an Order setting pre-trial conference for April 17, 2006, at 9:30 A.M. at the Oktibbeha County Courthouse Annex. (R. at 18).

On April 11, 2006, Charles Yoste filed his Notice of Appearance on behalf of Jake Statham and simultaneously filed a Motion to Amend Ad Damnum Clause. (R. at 19-23).

On April 17, 2006, Kevin Camp, attorney for Appellee, and Charles Yoste, attorney for Appellant, were present at a pre-trial conference held in the chambers of Circuit Judge James T. Kitchens, Jr. Kevin Camp presented an oral Motion to Dismiss the Appeal of Eric Miller. Circuit Judge James T. Kitchens, Jr., agreed to allow 30 days to have an Order sent to him for his signature.

On June 9, 2006, Circuit Judge James T. Kitchens, Jr., signed an order filed by the Appellee dismissing the appeal filed by Eric Miller and reinstating the case on the docket of the Justice Court of Oktibbeha County. (R. at 24-25).

On June 21, 2006, a Motion for Relief from Order Dismissing Appeal was filed by attorney for Appellant. (R. at 26-29).

On April 17, 2007, a hearing was held in the chambers of Circuit Judge James T. Kitchens, Jr., to consider the Motion for Relief from Order Dismissing Appeal. The counsel for both Appellant and Appellee were present and made oral arguments. After hearing these arguments, Circuit Judge James t. Kitchens, Jr., entered an Order Denying Motion for Relief from Order Dismissing Appeal. (R. at 31).

SUMMARY OF THE ARGUMENT

This is a case about a Circuit Court Judge exercising the judicial discretion vested within the position by the statutes and common law of this State. This is not a case about due process because the facts show that all parties to this appeal received ample notice and a chance to be heard by the Circuit Court.

The Oktibbeha County Circuit Court was within the bounds of its discretion when it dismissed the appeal of the Appellee. Matters of dismissal are within the discretion of the trial court. And appellants are permitted to withdraw their own appeal so long as the appellee is not prejudiced. This too is a determination made by the trial court. The Oktibbeha County Circuit Court exercised its judicial discretion when it granted Appellee's oral motion for dismissal of the appeal.

Due Process requires that a party be given notice and an opportunity to be heard. The Appellant's attorney was present at the pre-trial conference held on April 17, 2006, heard the oral motion to dismiss made by counsel opposite, and thus had notice. The Appellant was also given the opportunity to be heard when his motion for reconsideration was heard by the Circuit Court. Therefore, the Appellant was not denied due process of the law when the Appellee was allowed to voluntarily dismiss his appeal.

ARGUMENT

I. THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION WHEN IT DISMISSED THE APPELLANT'S APPEAL AND DENIED HIS MOTION FOR RELIEF FROM THE ORDER DISMISSING THE APPEAL.

This Court has held that the granting or denying of motions for dismissals is within the discretion of trial courts. See *Carter v. Clegg*, 557 So.2d 1187 (Miss.1990). This Court has also held that an appeal to a circuit court may be withdrawn by the appellant. See *City of Pascagoula v. Advertiser Publishing Co., Inc.*, 84 So.2d 157 (Miss.1955). And finally, this Court has held that the reason for which the Appellant wishes to have the Circuit Court's decision reversed, to increase the amount of damages, cannot be allowed if it would defeat the jurisdiction of the Justice Court. See *Hobbs Auto Co. v Jones*, 105 So. 764 (Miss.1925).

A. The Circuit Court had judicial discretion to dismiss the appeal.

This Court stated in *Carter v. Clegg* that since the adoption of the Mississippi Rules of Civil Procedure, "[i]t is clear that the granting of motions for dismissals is subject to the sound discretion of the trial court." 557 So.2d 1187, 1190 (Miss.1990). The trial court's decision to dismiss shall not be disturbed by this Court unless there has been an abuse of judicial discretion. *Id.* Furthermore, "the trial court must assure fairness and protection for those affected by the dismissal." *Id.*

In *Carter*, the plaintiffs filed and were granted a motion for non-suit on the condition that they pay the defendant's legal fees. 557 So.2d at 1189. The defendants objected to the granting of the motion. *Id.* This Court found that the trial court was well within its discretion in granting the dismissal. *Id.* at 1191.

Like the trial court in *Carter*, the Circuit Court of Oktibbeha County was within its discretion when it granted Appellee's motion to dismiss and denied Appellant's motion for relief. The Circuit Court held a conference where Appellee's oral motion to dismiss was heard and later granted. (R. at 24). The Circuit Court granted the Appellee's motion, taxed the costs to the Appellee, and reinstated the case on the docket of the Justice Court of Oktibbeha County. (R. at 24). By taxing costs to the Appellee and reinstating the trial on the docket of the lower court, the Circuit Court ensured fairness and protection for the Appellant.

B. Appellee had the right to voluntarily withdraw the appeal from the Circuit Court.

This Court has firmly established on numerous occasions that an appellant may dismiss his or her own case on appeal. See, e.g., *City of Pascagoula v. Advertiser Publishing Co., Inc.*, 84 So.2d 157 (Miss.1955); *Zerkowsky v. Zerkowsky*, 131 So. 647 (Miss.1931); *Wolf v. Mississippi Valley Trust Co.*, 93 So. 581 (Miss.1922); *Lamar County v. Tally & Mayson*, 77 So. 299 (Miss.1918); *W.N. Pass v. Milton Payne*, 63 Miss. 239 (Miss.1885). This view has also been endorsed in the *Corpus Juris Secundum*. "Unless it is apparent that prejudice will result to the appellee, in a proper case the appellant may voluntarily dismiss or withdraw an appeal. An appellant, being under no obligation to appeal, will, as a rule, be permitted to withdraw or to dismiss an appeal." 5 C.J.S. Appeal and Error § 751.

In *Wolf*, the appellants sought to dismiss their appeal because the land involved in the dispute had been sold by the appellants and the appellees had already filed a supplemental bill praying for cancellation of the deed. *Wolf v. Mississippi Valley Trust*

Co., 93 So. 581, 581 (Miss.1918). This Court held that "[t]he right of an appellant to dismiss his appeal is not absolute, but can be exercised only by leave of the court, which will usually be granted unless some special reason be shown for refusing it." *Wolf*, 93 So. at 581.

In *City of Pascagoula*, the appellants sought to dismiss their appeal to the Circuit Court and pay the taxes owed to the city. *City of Pascagoula v. Advertiser Publishing Co., Inc.*, 84 So.2d 157, 157 (Miss.1955). This Court held that "[t]he taxpayer. . . had the right to voluntarily dismiss its appeal to the circuit court." *Id.*

Like the appellants in both of these cases, appellee herein sought, and was granted, the right to voluntarily withdraw his appeal to the Circuit Court of Okitbbeha County. (R. at 24). The court found that the appellant herein would not be prejudiced by a dismissal in light of the fact that the verdict of the Okitbbeha County Justice Court would be reinstated and the costs of the appeal would be assessed to the appellant, appellee herein. (R. at 24).

C. The apparent reason(s) for which Appellant wishes to have the Circuit Court's dismissal reversed have no merit.

Notwithstanding the fairness and protection granted to the Appellant by the Circuit Court, the Appellant is in no position to appeal the Circuit Court's verdict. The Appellant is attempting to appeal so that he may be heard on his motion to amend ad damnum clause. The Appellant would still not be allowed to amend his damages to seek punitive damages if the Circuit Court's decision to dismiss were reversed.

In *Hobbs Auto Co. v. Jones*, this Court held that a plaintiff may not amend the amount of damages on appeal to an amount that would defeat the Justice Court's

jurisdiction. 105 So. 764, 765 (Miss.1925). In *Hobbs*, the plaintiff was awarded a judgment in Justice Court which was appealed to the Lauderdale County Circuit Court. *Id.* at 764. While the appeal was pending in the Circuit Court, the plaintiff attempted to increase the amount of damages to reflect damages incurred from the time the suit was originally filed in Justice Court to the present appeal. *Id.* This Court held that the plaintiff could not increase the damages to an amount that was over the jurisdictional limit of the Justice Court. *Id.* at 765.

Like the plaintiff in *Hobbs*, the Appellant made a motion on appeal to the Circuit Court to increase the amount of damages that he claimed had accrued in between the filing of the suit in Justice Court and the appeal to the Circuit Court. (R. at 21). Also like the plaintiff in *Hobbs*, the increase in damages that the Appellant seeks would defeat the jurisdiction of the Justice Court because it would be greater than \$2,500.00, and \$2,500.00 is the ceiling on civil claims in Mississippi Justice Courts. Miss. Code Ann. § 9-11-9. Therefore, the amount of damages that the Appellant wishes to seek, and the apparent reason for this appeal, cannot be allowed because it would defeat the jurisdiction of the Okitbbeha County Justice Court.

**II. THE APPELLANT WAS NOT DEPRIVED OF HIS RIGHT TO DUE PROCESS
BECAUSE HE HAD NOTICE OF THE MOTION TO DISMISS AND THE CIRCUIT
COURT HEARD HIS MOTION FOR RELIEF FROM THE ORDER DISMISSING
THE APPEAL AND THE VERDICT OF THE JUSTICE COURT WAS
REINSTATED.**

The Appellant alleges that his constitutional rights of due process were violated because "[t]he trial court just summarily dismissed the case." *Brief of Appellant* at 10. However, a pre-trial conference was held and counsel for the Appellant was present when a motion to dismiss the appeal was orally presented to the Circuit Court Judge. (R. at 18). Appellant's counsel even sent correspondence relating to the status of the case that confirms the presence of Appellant's counsel at the pre-trial conference. This correspondence, dated June 1, 2006, requests notification of the status of Appelle's decision as to whether to voluntarily dismiss the appeal. (Appellee Record Excerpts A). The status conference where the oral motion was made occurred on April 17, 2006. (R. at 18).

Furthermore, Appellant does not contest the fact that the Circuit Court held a hearing to consider Appellant's motion for reconsideration. (R. at 30). The Circuit Court still believed that the appeal should be dismissed after hearing Appellant's reasons for reinstating the appeal. (R. at 31). Appellant does not contest any of these facts.

The authority used by the Appellant in his brief does not support his allegation that he was not heard. The United States Supreme Court quote used by the Appellant to support his allegations states that fundamental to due process is the opportunity to be

heard. *Brief of Appellant* at 10-11 (citing *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233, 246 (1944)). Appellant had the opportunity to be heard at the Circuit Court during the pre-trial conference and at the hearing on his motion to reconsider. (R. at 30). Appellant must not confuse an unfavorable decision with a failure to be heard.

Appellant also had the opportunity to be heard by the Oktibbeha County Justice Court. Appellant had a trial before a Justice Court Judge. (R. at 4). This alone satisfied Appellant's due process rights. The fact that the Justice Court verdict was appealed by Appellee herein does not give Appellant another bite at the apple.

Appellant misconstrues this Court's definition of "original jurisdiction" when he claims that the judgment and prior proceedings of the Oktibbeha County Justice Court were no longer "valid" due to Appelle's appeal to the Circuit Court of Oktibbeha County. *Brief of Appellant* at 8. Appellant properly cites this Court's opinion in *Lucedale Commercial Co. v. Strength*, however, Appellant does not properly apply this Court's opinion. *Brief of Appellant* at 8 (citing *Lucedale Commercial Co. v. Strength*, 141 So. 769 (Miss.1932)).

In *Lucedale*, this Court addressed a Circuit Court's standard of review for an appeal from a Justice Court. 141 So. at 769. "And the jurisdiction to consider such cases de novo on appeal, and, decide them according to the law and the evidence, independent of the rulings and judgment of the lower court, is original and not appellate." *Id.* This Court was referring to the standard of review for appeals to a Circuit Court from a lower court. This Court was not implying that the entire trial, proceedings, and disposition of the lower court disappeared into thin air once an appeal was filed.


The Court in *Lucedale* emphasized this point towards the end of its opinion when it wrote “[a] judgment by a justice of the peace court is vacated or superseded by appeal, subject only to revival by a dismissal of appeal. . .” *Lucedale*, 141 So. at 770. That is exactly what occurred to appellee’s appeal to the Circuit Court of Okitibbeha County; the appeal was dismissed by the Circuit Court and the verdict of the Okitbbaha County Justice Court was reinstated. (R. at 24). The fact that Appellant was given an opportunity to fully litigate his case remains notwithstanding Appelle’s appeal to the Circuit Court of Okitbbaha County.

The Appellee would also call the Court’s attention to the fact the appeal from the Justice Court to the Circuit Court of Oktibbeha County sat stale on the Circuit Court’s docket of over twelve months. Based on this fact, the clerk of the Circuit Court could have used M.R.C.P. 42(d) and noticed the Appellee on the lack of prosecution. Miss. R. Civ. Proc. 42(d). With such notice, the Appellee, appellant in the lower court, would have chosen to let the case be dismissed.

CONCLUSION

In light of the foregoing, the decision of the Circuit Court of Oktibbeha County to grant Appellee's motion to dismiss and deny Appellant's motion to reconsider should be affirmed.

Respectfully submitted, this the 21st day of December, 2007.



KEVIN D. CAMP
Mississippi Bar Number [REDACTED]
Attorney for Appellee

The Camp Law Firm, P.L.L.C.
1764 Lelia Drive
Jackson, Mississippi 39216
Telephone 601.948.5800

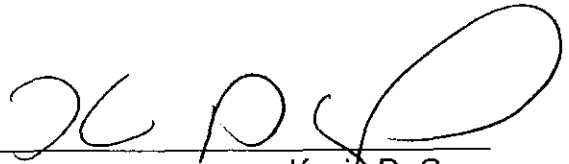
CERTIFICATE OF SERVICE

I, Kevin D. Camp, attorney for Appellee, Eric Miller, hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellee to the following:

Charles Yoste, Esq.
P.O. Box 802888
Starkville, MS 39759

Honorable James T. Kitchens, Jr.
P.O. Box 1387
Columbus, MS 39703

This service effective this, the 21st day of December, 2007.



Kevin D. Camp
Mississippi Bar Number [REDACTED]
Attorney for Appellee

The Camp Law Firm, PLLC
1764 Lelia Drive
Jackson, Mississippi 39216
Telephone 601.948.5800