

**IN THE SUPREME COURT OF MISSISSIPPI  
CASE NO.: 2007-CA-00728**

**JAKE STATHAM**

**APPELLANT**

**VERSUS**

**ERIC MILLER**

**APPELLEE**

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**APPELLANT'S REPLY BRIEF**

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MSB #6643

## TABLE OF AUTHORITIES

### CASES:

<i>Carter v. Clegg</i> , 557 So.2d 1187 (Miss. 1990)	3
<i>City of Pascagoula v. Advertiser Publishing Co., Inc.</i> , 84 So.2d 157 (Miss. 1955)	3
<i>Walmart et al., v. Long</i> , 852 So.2d 568 (Miss. 2003)	4

### OTHER AUTHORITIES:

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§ 9-7-81 MCA (1972)	4

## ARGUMENT

### 1. Dismissal of the Appeal

Appellee cites in his brief that the Circuit Court of Oktibbeha County was within it's right to dismiss the appeal he filed from justice court. The Appellee cites *Carter v. Clegg*, 557 So.2d 1187 (Miss. 1990) and *City of Pascagoula v. Advertiser Publishing Co., Inc.*, 84 So.2d 157 (Miss. 1955). These two cases do stand for the proposition that a party may dismiss his appeal, but the reason the court upheld the dismissal was that the case was "non-suited" in accordance with § 11-7-125 MCA (1972). However, this statute was repealed by the Mississippi Legislature in 1990. Accordingly, the Appellee's argument as to the Appellee Miller's right to dismiss his appeal is invalid based on his authorities.

### 2. Jurisdiction

Appellee Miller also claims that the Circuit Court could not allow Appellant Statham to increase his Ad Damnum clause in accordance with the Motion he filed with the court in that the Circuit Court would lose jurisdiction being it was more than the jurisdiction of the Justice Court in the amount of \$2,500.00. This is also a false argument. The amount Statham sued for in the Oktibbeha County Justice Court was \$2,500.00, plus costs. Circuit courts and justice courts in Mississippi have concurrent jurisdiction for all claims in excess of \$200.00. Therefore, Appellee Miller could have filed his case originally in the Circuit Court of Oktibbeha County which had

concurrent jurisdiction. See § 9-7-81 MCA (1972).

As to Miller's argument that the Circuit Court would be without authority to grant an increase in appeal, the Supreme Court has ruled in *Walmart et al., v. Long*, 852 So.2d 568 (Miss. 2003), this Court allowed approval of the lower court granting Plaintiff leave to increase the Ad Damnum clause from \$75,000.00 to \$750,000.00 and to transfer jurisdiction to the circuit court. This Court ruled that by doing so the county court divested itself of jurisdiction and the case was transferred to the circuit court which assumed jurisdiction. Appellee Miller's argument again fails.

3. Conclusion

The trial court abused its discretion in dismissing the appeal from justice court to circuit court. There was no motion pending to dismiss the appeal and the court entered its order without a hearing and not in accordance with *MRCP* 41 pertaining to dismissal of actions. The Oktibbeha County Circuit Court's subsequent dismissal in accordance with 12.02 *Uniform Rules of Circuit and County Court* was improper. The matter should be remanded to the trial court for trial on the merits.

Dated this the 4<sup>th</sup> day of January, 2008.

Respectfully Submitted,  
Jake Statham

By: 

CHARLES YOSTE  
Attorney for Appellant

CERTIFICATE OF SERVICE

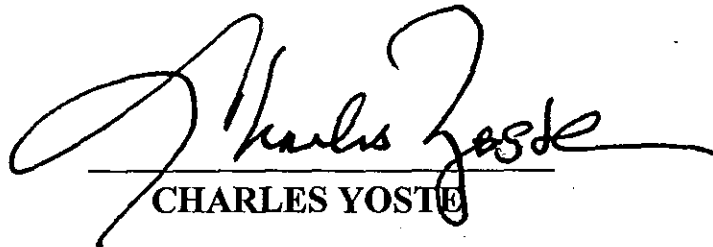
I, Charles Yoste, attorney for Appellant, Jake Statham, hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Appellant's Reply Brief to the following:

Kevin D. Camp, Esquire  
The Camp Law Firm  
1764 Lelia Drive  
Jackson, MS 39216

and

Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
Post Office Box 1387  
Columbus, MS 39703

DATED this the 4<sup>th</sup> day of January, 2008.



CHARLES YOSTE