

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

JAKE STATHAM

APPELLANT

VERSUS

ERIC MILLER

APPELLEE

APPEAL FROM

THE CIRCUIT COURT OF OKTIBBEHA COUNTY

STATE OF MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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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

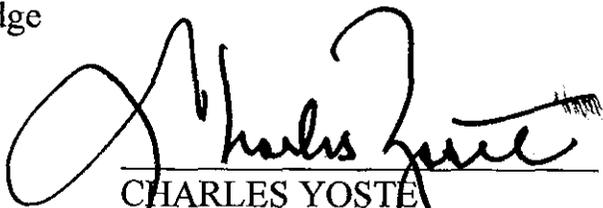
Eric Miller, Appellee

Charles Yoste, Attoreny for Jake Statham

Kevin D. Camp, Attorney for Eric Miller

Zachery M. Vaughn, Attorney for Eric Miller

Honorable James T. Kitchens, Jr., Trial Judge



CHARLES YOSTE
Mississippi Bar Number [REDACTED]
Attorney for Appellant

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STATEMENT OF THE ISSUE

THE TRIAL COURT ABUSED IT'S DISCRETION AND DENIED APPELLANT DUE PROCESS IN DISMISSING APPELLEE'S APPEAL WITHOUT MOTION AND WITHOUT NOTICE.

STATEMENT OF THE CASE

The Appellant, Jake Statham was assaulted by the Appellee, Eric Miller, on September 19, 2004, at 2:00 A.M. in Starkville, Mississippi (R.6-10). Statham filed suit against Eric Miller for damages in the Oktibbeha County Justice Court in the amount of \$2,500.00, for which he had \$3,119.95 in medical bills (R.6,11,12,13). Statham also sought court costs in the amount of \$54.00. Statham obtained judgement on Miller on February 9, 2005 in the amount of \$2,500.00, plus court cost of \$54.00 for a total of \$2,554.00 (R.4,5). On February 18, 2005, Miller's attorney, Zachery M. Vaughn faxed to the Circuit Clerk of Oktibbeha County, Mississippi, a Notice of Appeal. The Notice of Appeal stated that it was appealing the judgment of the Oktibbeha County Justice Court for Assault and Battery in the amount of \$2,500.00 rendered on February 9, 2005, against the above named defendant (Eric Miller). At the bottom of the Notice of Appeal, the name "Jake Statham" appeared over the signature of Zachary M. Vaughn (MSB 101666) signed for Kevin D. Camp, who was noted as the attorney of record in the case (R.2).

On February 24, 2005, the Circuit Clerk filed an original Notice of Appeal on behalf of Eric Miller appealing the Judgment from the Justice Court of Oktibbeha County in favor of Jake Statham in the amount of \$2,500.00 (R.16). This Notice of Appeal was received from lower court according to the list of Clerk's Papers (R.2).

This Notice of Appeal was in the name of Eric Miller and signed by Zachery M. Vaughn (101666) for Kevin D. Camp, attorney of record (R.16).

On March 8, 2006, Circuit Judge Lee J. Howard entered on behalf of Judge James T. Kitchens, Jr., an Order setting pre-trial conference for April 17, 2006, at 9:30 A.M. at the Oktibbeha County Courthouse Annex (R.18).

On April 11, 2006, Charles Yoste filed his Notice of Appearance (R.19) on behalf of Jake Statham and filed his Motion to Amend Ad Damnum Clause stating that the Plaintiff, Jake Statham, now had in excess of \$10,000.00 in medical bills and that he wanted to amend his Ad Damnum to include a claim for punitive damages against the Defendant for his egregious conduct, his assault on the Plaintiff, and for an award of attorney fees (R.21-23). There was no response filed by the Appellee Eric Miller.

On June 9, 2006, Circuit Judge James T. Kitchens, Jr., entered his Order dismissing the appeal by Eric Miller and reinstating the case on the docket of the justice court. This document was prepared by Kevin D. Camp, attorney for Appellee Miller (R.24-25).

On June 21, 2006, the appellant filed his Motion for Relief from Order Dismissing Appeal, claiming that the court should reconsider its Motion to Dismiss Appeal in that there had been no motion pending to dismiss the appeal; that the

attorney for the Appellant, Jake Statham, was not presented with any motion nor correspondence concerning the Order to the court which was entered dismissing the appeal; that the court had not ruled on the appellant, Statham's Motion to increase his Ad Damnum clause for damages; and claiming that Mississippi law does not provide for the dismissal of an appeal to be returned to the justice court from which it was appealed and that once appealed, the circuit court has original jurisdiction in the matter. The appellant's Motion further claimed that the dismissal of this action was not in accordance with Rule 41 MRCP and should be vacated (R.26-29).

On April 17, 2007, the court entered its own Order overruling Statham's Motion for Reconsideration of Dismissal of the Case from the Circuit Court and the Court further found that the Notice of Appeal was incorrectly filed, originally mistakenly citing the party for whom the appeal was being sought and therefore the court, pursuant to Rule 12.02 (A) of the Mississippi Uniform Circuit and County Court Rules, again dismissed the appeal with prejudice and cost (R.31).

SUMMARY OF THE ARGUMENT

Statham's only assignment of error is that the trial court abused its discretion and denied him due process in dismissing Appellee Miller's appeal without motion and without notice. Miller assaulted Statham. Statham sued Miller in justice court and obtained judgment against him. Miller, through the assistance of counsel, appealed this judgment to the Oktibbeha County Circuit Court. Statham, by and through his attorney, filed his Motion to Increase his Ad Damnum and for attorney fees and punitive damages. The trial court, without notice and without hearing, dismissed Miller's appeal. Statham filed for reconsideration of the trial court's ruling and the trial court proceeded to dismiss again with prejudice, the appeal in accordance with Rule 12.02 of the Uniform Rules of Circuit and County Courts which is a criminal procedural rule.

Statham complains that Miller had no vehicle to dismiss his appeal since the appeal to the circuit court granted it original jurisdiction and Mississippi Rules of Civil Procedure came into play. There is no provision for Miller to dismiss his appeal under the rules. Even so, the trial court dismissed the appeal on an order prepared by the Defendant's attorney even though there was no hearing or any motion pending to dismiss the appeal. Statham's attorney was never contacted nor even noticed that the appeal was being dismissed. Statham claims this violated his fundamental fairness

of fair-play by denying him due process. The trial court was in error again when it dismissed the appeal with prejudice citing rule 12.02 of the Uniform Rules of Circuit and County Courts, a criminal procedure rule which does not apply in this instance.

Accordingly, Statham requests this Court to remand to the trial court, allow the trial court to rule on his Motion to Increase his Ad Damnum and seek attorney fees and punitive damages, and set the case for trial.

ARGUMENT

THE TRIAL COURT DENIED APPELLANT DUE PROCESS IN DISMISSING THE DEFENDANT'S APPEAL WITHOUT MOTION AND WITHOUT NOTICE.

Jake Statham was assaulted by the Appellee, Eric Miller, on September 19, 2004, at 2:00 A.M. in Starkville, Mississippi (R.6). Statham filed suit against Eric Miller for damages in the Oktibbeha County Justice Court seeking damages in the amount of \$2,500.00. Statham had \$3,119.95 in medical and dental bills associated with the injuries from Miller's assault (R.6,15). Statham obtained judgment against Miller in the amount of \$2,554.00 and Miller appealed that judgment to the Oktibbeha County Circuit Court (R.2,4,16,17). The court set a date of April 16, 2006, for Pre-Trial Conference (R.18). Statham, by and through his attorney, filed a Motion for the court to increase his Ad Damnum upward from \$2,500.00 to an unspecified amount and to include a claim for punitive damages and attorney fees for Miller's outrageous conduct (R.21-23).

On June 9, 2006, the court entered its Order Dismissing the Appeal by Eric Miller and restating the case on the docket of the justice court (R.24,25). Statham subsequently filed his Motion for Relief from the Order Dismissing the Appeal, claiming that the court should reconsider its Order of Dismissal since there had been no motion pending to dismiss the appeal, and that nor was there any notice given to

Statham's attorney that the Appeal was being dismissed (R.26-29). This Motion was also overruled by the court using Rule 12.02 Uniform Rules of Circuit and County Court to dismiss the Appeal.

Statham submits that the Oktibbeha County Circuit Court was incorrect and without authority in dismissing the appeal and returning it to justice court. There was no motion to dismiss pending before the court by Miller. Once Miller perfected his appeal to the circuit court, then the circuit court had original jurisdiction of the case. The justice court judgment and prior proceedings were no longer valid, *Jacobs v. Johnson*, 36 So. 544 (Miss. 1904). As this Court also stated in *Lucedale Commercial Co. v. Strength*, 141 So. 769 (Miss. 1932) :

When a case is remanded to the circuit court on appeal from the justice of the peace court, the jurisdiction required was not in any proper sense appellate. The circuit court in such cases has no authority to merely review and affirm or reverse the judgement of the justice of the peace, but the case must be tried anew as if it had been originally instituted in the circuit court, with the single exception that written pleadings are not required. And the jurisdiction to consider such cases de novo on appeal and decide them according to the law and the evidence, independent of the ruling and the judgment of the lower court; and that such jurisdiction is original and not appellate.

Likewise, the Fifth Circuit Court of Appeals has addressed the issue of justice court appeals to the circuit court and the jurisdiction attaching thereto in *Calhoun v. City of Meridian, Mississippi*, 355 F. 2^d 209 (5th Cir. 1966). In this civil rights era case, the Fifth Circuit stated that the Supreme Court of Mississippi has held when an

appeal is taken from a justice court, the judgment of the justice court is vacated. Citing *Lucedale Commercial Co. v. Strength, supra*, the Fifth Circuit stated that when a cause is removed to the circuit court on appeal from a justice of the peace court, the jurisdiction required by the circuit court is not in any proper sense appellate. The court stated that on appeal from justice court the defendant stands in the circuit court in the same attitude of a defendant as he did in the justice of the peace court and as such is impotent to dismiss the case.

In a criminal case, a defendant can elect to appeal his case from the justice court to the circuit court, and when he does this Court has held that once a defendant in a criminal case elects to take a trial de novo he is powerless to dismiss the new trial and accept the earlier verdict instead. He stands in the court in the same attitude of a defendant as he did in the court of the justice of the peace and as such is impotent to dismiss the case. *Thigpen v. State*, 39 So. 2d 768 (Miss. 1949). Accordingly, the appeal to the circuit court from the justice court by Miller, stands in the circuit court as if his case had never been tried in the justice court.

When Miller's attorney appealed his case to the Oktibbeha County Circuit Court, the Mississippi Rules of Civil Procedure applied. Dismissals of actions are governed by Rule 41 of the Mississippi Rules of Civil Procedure. Unfortunately for the Appellee Miller, there are absolutely no provisions in Rule 41 M.R.C.P. that provide the defendant with the ability and authority to have the circuit court dismiss

his complaint upon his motion to the court. But there was no motion to dismiss ever filed by Miller.

Statham submits that the Oktibbeha County Circuit Court, for whatever reason, dismissed the matter of *Statham v. Miller* without authority. It would appear also that this was done ex parte between the court and the Appellee Miller since there was no motion pending before the court. Appellee Miller's attorney submitted to the court, unilaterally, an Order of Dismissal which was signed by the court and entered on the clerk's docket. There is no documentation of any Certificate of Service to appellant's counsel of any pleading or correspondence and presentation to the court of any order as required by Rule 5 M.R.C.P..

Statham has been denied fundamental due process in that the case was dismissed by the trial court without motion or hearing. While a trial court may unilaterally dismiss a complaint for lack of prosecution to control its own docket, it depends on the individual circumstances of each case. See *Link v. Wabash R.R.*, 370 U.S. 262; 82 S.Ct. 1386; 8L. Ed. 2d 734 (1962); *Miss. Dept. Of Human Services v. Guidry*, 830 So. 2d 628 (Miss. 2002). Here, Statham had done nothing wrong. He was prosecuting his case appealed by Miller in an orderly fashion by filing his Motion to Increase Ad Damnum and seeking attorney fees and punitive damages. The trial court just summarily dismissed the case. "The fundamental requirement of due process is the opportunity to be heard upon such notice and proceedings as are

adequate to safeguard the right for which the constitutional protection is invoked. *Anderson National Bank v. Lockett*, 321 U.S. 233; 64 S.Ct. 599; 88 L. Ed 629 (1944).

The Appellant further states to the court that the subsequent dismissal, as stated in the circuit court's order of April, 2007, on Statham's Motion for Reconsideration was because the Notice of Appeal contained the name of an improper party, that is, Jake Statham was named, rather than Eric Miller in the facsimile Notice of Appeal faxed to the clerk's office from the Appellee's attorney. The Notice of Appeal was proper though and named Eric Miller as the person appealing the judgment. The circuit court, evidently, was determined to dismiss the appeal when it misused Rule 12.02 of the Uniform Rules of Circuit and County Court in dismissing the appeal. Rule 12.02 is a rule pertaining to criminal matters before the circuit and county courts and not civil matters.

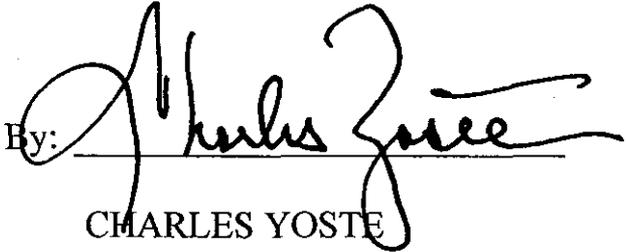
CONCLUSION

The trial court has abused its discretion in dismissing the appeal. Statham was denied due process in the dismissal of the appeal in that there was no motion pending to dismiss the appeal and the court entered its order without a hearing. The 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 3rd day of October, 2007

Respectfully Submitted,

Jake Statham

By: 
CHARLES YOSTE
Attorney for Appellant

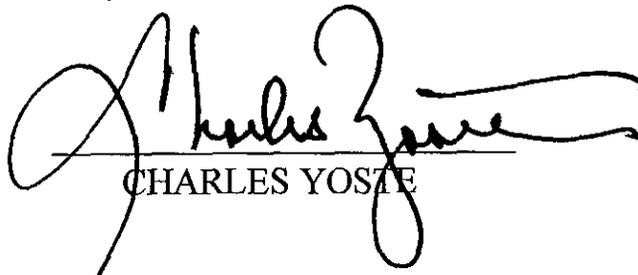
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CERTIFICATE OF SERVICE

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 Brief of Appellant to the following:

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

DATED this the 3rd day of October, 2007.



CHARLES YOSTE

AMENDED CERTIFICATE OF SERVICE

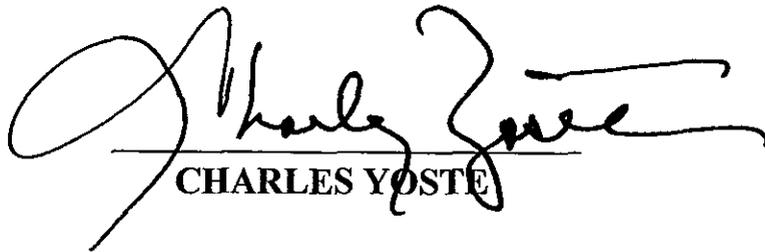
I, Charles Yoste, attorney for Appellant, Jake Statham, hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following:

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

And

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

DATED this the 3rd day of October, 2007.


CHARLES YOSTE