

IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

CASE NO. 2007-TS-02082

NANCY LOTT

APPELLANT

VERSUS

HARRIS D. PURVIS AND BRJ, INC.

APPELLEES

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 Supreme Court may evaluate possible disqualification or recusal.

1. Hon. Prentiss Harrell
Circuit Court Judge of Lamar County
2. Brian B. Hannula, Esq.
Attorney for Appellees Harris D. Purvis & BRJ, Inc.



ATTORNEY FOR APPELLANT

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ARGUMENT

The Circuit Court of Lamar County erred as a matter of law when it denied the Motion of Nancy Lott to set aside the Summary Judgment entered for the Defendants.

Defendants contend that this appeal should be considered under the standard of review for appeals from denials of Rule 59 (b) motions. Even under that standard, Lott is entitled to have the summary judgment set aside, because the grant of summary judgment could not be sustained by a plain language reading of Rule 56. A decision by the court that misinterprets a statute or other positive law constitutes an abuse of discretion. *Board on Law Enforcement Officer Standards and Training v. Voyles*, 732 So.2d 216, 219 (¶10) (Miss. 1999).

Defendants also misstate Lott's arguments. Rule 56 is an excellent jumping off point to demonstrate how the Circuit Court of Lamar County erred. Rule 56 states expressly that a motion for summary judgment must be properly made and supported before it must be responded to. MRCP 56 (e). "A motion for summary judgment unsupported by affidavit or other sworn statements should not be sustained." *Ratliff v. Ratliff*, 500 So. 2d 981 (Miss. 1986). No sworn statements or any other evidence were offered.

The ordering of a summary judgment contrary to Rule 56, and the case law of the state of Mississippi constitutes an abuse of discretion by the Circuit Court of Lamar County. Coincidentally, it also results in this case in a gross miscarriage of justice. The facts are inescapable: counsel for the Defendants agreed to permit an amendment of the

complaint in this matter, and secured the agreement of counsel for Lott on an amended scheduling order. It is not cricket for that same counsel to suggest that a motion for summary judgment whose grant does not comply with Rule 56 or the common law of this state can withstand even the most deferential review.

Defendants erroneously argue that they are not bound by URCCC 4.03 (2). While many courts for various reasons do not enforce the requirement that a motion for summary judgment be accompanied by a separate brief, that does not mean the rule is a nullity. It is a requirement under the rules of court that the moving party meet its procedural burden, which in this matter the Defendants failed to do every step of the way.

CONCLUSION

The failure of the Circuit Court of Lamar County to properly apply Rule 56 to the motion for summary judgment filed by the Defendants, and to grant the motion to reconsider, constitute an abuse of discretion. The motion for summary judgment should never have been granted in the first place; it failed procedurally to meet the standard for a motion for summary judgment, in that it was unaccompanied by sworn statements or affidavits proving the factual basis for the motion, nor was it accompanied by a separate brief.

Lott's counsel's presence at the October 2 motion hearing date would likely have forestalled the grant of summary judgment. The Court intimated as much at the hearing to set aside the order granting summary judgment. But that presence would have been strictly prudential; it was not required by the Rules, and since the motion for summary judgment that was presented that day was fatally procedurally flawed, a prudent Court

would not have granted it anyway. It is clear from the transcript of the October 2 hearing that the sole reason for granting the motion was absence of counsel for Lott.

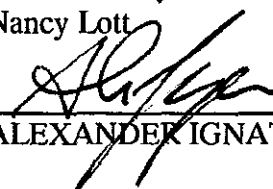
That is not an appropriate basis to grant a defective motion for summary judgment.

For the foregoing reasons, this Court should reverse the decision of the Circuit Court of Lamar County denying the motion of Lott to set aside the motion for summary judgment, and remand this matter for a trial on the merits.

Respectfully submitted, this the 16 day of May, 2008

Nancy Lott

BY:


ALEXANDER IGNATIEV, ESQ.

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CERTIFICATE OF SERVICE

I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed for filing, via United States mail, postage prepaid, the original and four (4) copies of the foregoing Brief of the Appellant to the Clerk of the Supreme Court of Mississippi, Ms. Betty Sephton, Post Office Box 249, Jackson, Mississippi, 39205-0249.

THIS the 16th day of May, A.D. 2008.

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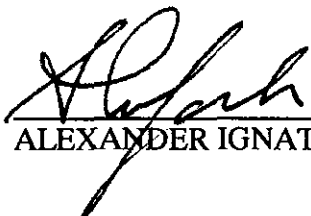
I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a copy of the foregoing Brief of the Appellant to the following:

Hon. Prentiss Harrell
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THIS the 16th day of May, A.D. 2008.



ALEXANDER IGNATIEV