

2007-CC-01778

RE

MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY

APPELLANT

VS.

CAUSE NO. 2007-CC-01778

KEVIN HARBIN D/B/A
H & H ELECTRONICS

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 representative 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. Mississippi Department of Employment Security, Appellant
2. Honorable Albert Bozeman White, Esq. Attorney for Appellant
3. A. E. (Gene) Harlow, Sr. Attorney for Appellee
4. Kevin Harbin, Appellee
5. Mr. Franklin Glasper, Claimant
6. Honorable W. Swan Yerger, Circuit Court Judge - Hinds County, Mississippi

This the 12th day of July, 2008.



A. E. (Gene) Harlow, Sr.

TABLE OF CONTENTS

CERTIFICATION OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF CASES AND OTHER AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	2
SUMMARY OF THE CASE	2
ARGUMENT	2
Statement of Review	2
Applicable Law	2
Record Evidence	2
CONCLUSION	3
CERTIFICATE OF SERVICE	4

APPELLEE'S TABLE OF CASES AND OTHER AUTHORITIES

Appellee Harbin is unaware of any revelant cases of other authorities not already addressed in either Appellant MDES's brief or in Judge Yerger's decision.

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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APPELLEE

REPLY BRIEF OF APPELLEE

STATEMENT OF ISSUES AS FRAMED BY APPELLANT ARE AS FOLLOWS:

1. Whether the July 11, 2003 decision of the Mississippi Department of Employment Security (hereinafter "MDES") finding that Franklin Glasper was an employee of Kevin Harbin d/b/a H&H Electronics (hereinafter "Harbin" or "H & H Electronics") under M.C.A. Section 71-5-11 I (14)(1972, as amended) was supported by substantial evidence; and thus, should have been affirmed by the Circuit Court?
2. Whether the Circuit Court erred by failing to affirm that the MDES' decision finding that Franklin Glasper was an employee of Harbin, pursuant to M.C.A. Section 71-5-11 I(14) (Rev. 1995); and should be reversed?
3. Whether pursuant to M.C.A. Section 71-5-11 I (14) (Rev. 1995), Harbin failed to meet its burden of proving that Franklin Glasper was an independent contractor?
4. Whether the Circuit Court acted arbitrarily and capriciously, and substituted its opinion for that of MDES, by reversing the MDES' decision finding that Franklin Glasper was an employee of Harbin, pursuant to M.C.A. Section 71-5-11 I(14)(Rev. 1995)?

STATEMENT OF THE CASE

An exhaustive statement of the case is set forth in the opinion of Honorable W. Swan Yerger which was filed with record excerpts by the Appellant; and, Appellee Harbin will not burden this Honorable Court by repeating those things set forth in the exhaustive decision of Judge Yerger, which was based upon the record as set forth in that decision.

SUMMARY OF THE ARGUMENTS OF APPELLEE

The decision of Judge Yerger, reversing MDES was properly predicated upon the lack of proof in the record that Glasper was an employee of Harbin; and, the proof which clearly showed Glasper to be an independent contractor.

ARGUMENT

Standard of Review

Appellee Harbin takes no issue with the fact that if the decision of MDES was supported by substantial evidence then it should be followed by the Court; however, it is respectfully submitted that Judge Yerger correctly concluded that the decision of MDES was not supported by substantial evidence.

Applicable Law

The applicable law is addressed in Judge Yerger's opinion and there exists no reason for Appellee Harbin to burden this Honorable Court with repetition thereof.

Record Evidence

The record evidence which is relevant is set forth in Judge Yerger's detailed decision, copy of which has already been furnished to this Honorable Court both in the record and in the record excerpts of Appellant MDES's .

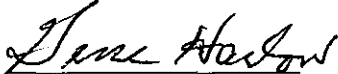
CONCLUSION

Appellee's conclusion of issues is addressed as follows:

1. Whether the July 11, 2003 decision of the Mississippi Department of Employment Security (hereinafter "MDES") finding that Franklin Glasper was an employee of Kevin Harbin d/b/a H&H Electronics (hereinafter "Harbin" or "H & H Electronics") under M.C.A. Section 71-5-11 I (14)(1972, as amended) was supported by substantial evidence; and thus, should have been affirmed by the Circuit Court? The answer is no!
2. Whether the Circuit Court erred by failing to affirm that the MDES' decision finding that Franklin Glasper was an employee of Harbin, pursuant to M.C.A. Section 71-5-11 I(14) (Rev. 1995); and should be reversed? The answer is no!
3. Whether pursuant to M.C.A. Section 71-5-11 I (14) (Rev. 1995), Harbin failed to meet its burden of proving that Franklin Glasper was an independent contractor? The answer is no!
4. Whether the Circuit Court acted arbitrarily and capriciously, and substituted its opinion for that of MDES, by reversing the MDES' decision finding that Franklin Glasper was an employee of Harbin, pursuant to M.C.A. Section 71-5-11 I(14)(Rev. 1995)? The answer is no!

Based on the foregoing, this Honorable Court should sustain the decision of Judge Yerger in that the decision of MDES was not only not supported by substantial evidence, it was really not supported at all by the evidence, rather the evidence clearly shows that Glasper was an independent contractor.

Respectively submitted this the 12th of July, 2008.



Kevin Harbin

By: A. E. (Gene) Harlow, Sr.

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CERTIFICATE OF SERVICE

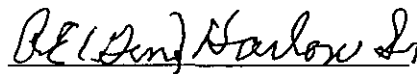
I, A. E. (GENE) HARLOW, SR., Counsel for Kevin Harbin, certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to:

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Honorable W. Swan Yerger
Circuit Court Judge
P.O. Box 327
Jackson, MS 39205-0327

This, the 12th day of July, 2008.


A. E. (Gene) Harlow, Sr.