

IN THE SUPREME COURT OF MISSISSIPPI

TUNICA COUNTY, MISSISSIPPI AND CALVIN HAMP, SR.,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS SHERIFF OF TUNICA COUNTY

APPELLANTS

VS.

CAUSE NO. 2008-CA-00756

THE HAMPTON COMPANY NATIONAL SURETY, LLC,
A MISSISSIPPI LIMITED LIABILITY COMPANY; JAMES
DEAN, AN INDIVIDUAL; AND JAMES HAMPTON GARDNER,
AN INDIVIDUAL

APPELLEES

REPLY BRIEF OF APPELLANTS

APPEAL FROM CIRCUIT COURT OF TUNICA COUNTY,
MISSISSIPPI, CAUSE NO. 2005-0391

JOHN S. HILL, MS BAR NO. [REDACTED]
STEPHEN P. SPENCER, MS BAR NO. [REDACTED]
MITCHELL, MCNUTT & SAMS, P.A.
105 SOUTH FRONT STREET
POST OFFICE BOX 7120
TUPELO, MS 38802-7120
(662) 842-3871
ATTORNEYS FOR TUNICA COUNTY AND
CALVIN HAMP, SR.

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ARGUMENT AND AUTHORITIES

I. FEDERAL ACTION

Hampton and Dean seemingly suggest that the Fifth Circuit Court of Appeals agreed with Judge Webster in declaring that Sheriff Hamp improperly suspended the bail bonding privileges of Hampton and Dean. See Brief of Appellees pp. 2-3. Not only is that wrong but the Fifth Circuit decision is completely irrelevant to the case *sub judice* for several reasons. First, the Fifth Circuit opinion addresses federal due process rights and monetary claims for relief under federal law. As the Fifth Circuit explained in its opinion, “We note in this context that both parties claimed after oral argument that they see no basis to expect the state appellate courts will address issues relevant here.” Hampton Co. Nat. Sur., LLC v. Tunica County, Miss., 2008 WL 4274462, 6 (5th Cir. 2008). By their own admission Hampton and Dean therefore state that the Fifth Circuit action is irrelevant to the present action.

Second, the Fifth Circuit did not adopt Judge Webster’s reasoning. In lieu of deciding the issue itself or certifying the issue, the Fifth Circuit noted that the federal trial court was left with great discretion in deciding the relevance of the present case. “If a stage is reached in the resolution of the other matters remanded by our decision today that makes addressing this issue desirable, but the state appellate system has not yet resolved the companion case, the district judge may

hear from the parties as to whether in fact they both still take the position that the state decision is irrelevant to the county's liability on the Due Process claim. In sum, the district court can decide how to proceed in the most efficient manner.” Hampton Co. Nat. Sur., LLC, 2008 WL 4274462 at 6. The Fifth Circuit did not adopt Judge Webster’s reasoning and its decision is therefore irrelevant to the case *sub judice*. Further, Tunica and Hamp have petitioned the Fifth Circuit for rehearing arguing that federal liability cannot be applied retroactively based on an intervening state trial court decision. The Fifth Circuit decision is not final and has no impact on this action.

II. DECLARATORY RELIEF

A. LIMITED AUTHORITY

Sheriff Hamp’s acts of suspending the licenses of Hampton and Dean were taken pursuant to valid authority established in Baldwin v. Daniels, 250 F.3d 943, 946 (5th Cir. 2001) (citing Richards v. City of Columbus, 92-7359, 1993 WL 413911 (October 12, 1993) (unpublished) (copy attached to Baldwin decision)) and pursuant to Mississippi Code Annotated § 19-25-67. Hampton and Dean continue to attempt to distinguish every decision regarding bonding rendered prior to Hamp’s actions and all statutory authority that contradicts Mississippi Code Annotated § 83-39-1et seq. Hampton and Dean argue that none of the authority referenced by Hamp and Tunica County is binding despite the fact that Hampton

and Dean have not submitted **any** relevant decisions in support of their position interpreting Mississippi law other than the decision of the trial court in this matter. Instead, Hampton and Dean rely entirely on an Arkansas decision interpreting Arkansas law and the trial court's decision in the present case.

Hampton and Dean's argument that a sheriff possesses absolutely no authority to suspend the license of a limited surety bonding company and/or its agents in his county presents several legal as well as practical problems. First, the symbiotic relationship between a sheriff and a bonding company warrants providing some discretion to a sheriff. Throughout this litigation, Hampton and Dean argue repeatedly that a sheriff should have no authority to suspend a bonding agent's privileges because he could not become financially liable since Hampton is a limited surety. However, the mere fact that a sheriff might not become personally financially liable when a bond is forfeited or a prisoner not returned is of no consequence because the sheriff is still responsible for ensuring that prisoners under his jurisdiction and control appear timely for their hearings. Likewise, a sheriff is responsible for ensuring that no illegal bonding practices are perpetrated under his watch. Miss. Code Ann. § 19-25-67 (1995). Simply stated, according to Hampton and Dean, a sheriff is required to accept all bonds from any limited surety or its agent regardless of the illegal or dilatory conduct perpetrated by the surety and/or its agent. According to Hampton and Dean, in the event of

illegal or improper conduct of a bonding company or its agent a sheriff in Mississippi can do nothing but wait on the office of the insurance commissioner to take action while he loses all control of his jail and is reprimanded by trial court judges angry over the dilatory actions of the bonding companies. This is impractical.

The obvious intent of the legislature in Mississippi Code Annotated § 19-25-67 was to provide a sheriff with some authority regarding bonding of criminal defendants and the control of his jail. The legislature, as well as several courts, have recognized that a sheriff is an integral part of the bonding process and has to retain some limited authority since he can become liable for failing to obey applicable laws. The Baldwyn and Richards courts, as well as Olibas v. Gomez, 481 F. Supp. 2d 721, 727 (W.D. Tex. 2006), all recognized that the Mississippi legislature left some authority to sheriffs in the bonding process. Sheriff Hamp simply exercised his limited authority to exert control over the jail in his county. The entire argument before this Court hinges upon whether Sheriff Hamp has any limited authority to control bonding procedures in his county and accordingly to control jail operations. Hampton and Dean argue that he does not based entirely on a restrictive reading of Mississippi Code Annotated § 83-39-1 *et seq.* However, Mississippi Code Annotated § 19-25-67 is a catchall statute granting sheriffs broad powers to keep the peace and ensure that their jails are run properly. The fact that

the statute specifically refers to bonding issues demonstrates clearly that the legislature did not intend for the insurance commission to be the sole authority regarding all bonding practices. Thus, the trial court erred in declaring that Sheriff Hamp had no authority to suspend the bonding privileges of Hampton and Dean.

B. DEAN SUSPENSION - INJUNCTIVE RELIEF

Finally, Hampton and Dean argue that Dean's suspension is improper because he was allegedly not informed of the reasoning behind his continued suspension until after this litigation began. See Brief of Appellees pp. 5, 17. Even if true, this does not cure the fact that Dean admittedly loaned money to an officer with the Tunica County Sheriff's Department in direct violation of Mississippi Code Annotated § 83-39-27. (Exhibit 1, pp. 29-30). Hamp readily admits that Dean's suspension was initially related to his failure to timely produce defendants bailed out of jail by the Hampton Company. However, in the interim, the Tunica County Sheriff's Office had launched an investigation regarding whether Dean illegally provided monetary support to a deputy jailer with the Tunica County Sheriff's Department. The investigation confirmed this to be true and Sheriff Hamp refused to allow Dean back on the bonding roster after the present matter was mediated and Hampton was allowed back on the roster. The fact that Dean may or may not have been informed immediately of the reasoning behind his continued suspension does not relieve him of his suspension for providing illegal

monetary contributions to a member of the Tunica County Sheriff's Department. Dean has never argued, nor submitted any evidence, indicating that these allegations are false. Accordingly, the trial court erred in declaring that Tunica County must allow Dean back on its bonding roster despite Dean's confession to loaning money to an officer in violation of Mississippi Code Annotated § 83-39-27.

CONCLUSION


The Mississippi legislature clearly did not intend for the Mississippi Department of Insurance to be the sole authority regarding bonding procedures and practices as the legislature enacted several statutes, including Mississippi Code Annotated § 19-25-67, that grant sheriffs the right to take limited action in regard to bonding procedures. Section 19-25-67 is a catchall statute granting sheriffs broad authority to maintain peace and to control and administer the jail facility in his county. Sheriff Hamp cannot do so if he must rely on the Department of Insurance as the exclusive means to govern the actions of bail bonding agents. Neither Sheriff Hamp nor any other sheriff in this state should be required to acquiesce to a bail bondsman's violation of the law or dilatory practices but instead rely on the Mississippi Department of Insurance to address the issue in a timely and appropriate manner. This emasculates the sheriff and his ability to govern his jail.

Finally, even if Dean's claims are true that he was not informed of the reasoning behind his continued suspension in a timely manner, this does not excuse his actions. The fact remains that Dean admittedly loaned money to an officer with the Tunica County Sheriff's Department and that this act is illegal. Dean's license should remain suspended in Tunica County.

Sheriff Hamp and Tunica County submit respectfully that the trial court erred in granting declaratory and injunctive relief and ask this court to reverse the decision and render judgment for the defendants.

DATED: October 9, 2008.

TUNICA COUNTY, MISSISSIPPI
AND CALVIN HAMP, SR.,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS SHERIFF
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APPELLANTS



JOHN S. HILL, MB# [REDACTED]
STEPHEN P. SPENCER,
MB# 102298

OF COUNSEL:

MITCHELL, MCNUTT & SAMS, P.A.
105 SOUTH FRONT STREET
POST OFFICE BOX 7120
TUPELO, MS 38802-7120
(662) 842-3871

CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the above and foregoing Reply Brief of the Appellants on the attorneys for the appellees and the trial judge, by placing said copy in the United States Mail, postage prepaid, addressed to them at their usual addresses as follows:

James D. Harper, Esq.
Stroud & Harper, P.C.
Post Office Box 210
Southaven, MS 38671

William B. Ryan, Esq.
Donati Law Firm, LLP
1545 Union Avenue
Memphis, TN 38104

Hon. Charles E. Webster
Post Office Drawer 998
Clarksdale, MS 38614

DATED: October 9, 2008.



JOHN S. HILL

CERTIFICATE OF FILING

I hereby certify that I have filed via first class, United States mail, postage prepaid, the original and three copies of the Reply Brief of Appellants and an electronic diskette containing the same on October 9, 2008, addressed to Ms. Betty W. Sephton, Supreme Court of Mississippi, Carroll Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201-1082.

SO CERTIFIED, this the 9th day of October, 2008.



JOHN S. HILL