

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REBECCA E. REEVES AND
JAMES REEVES,

Appellants

vs.

Supreme Court No.:
2008-CA-01605-COA

JOHN PETERSON,

Appellee

APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSISSIPPI
HONORABLE LAMAR PICKARD, PRESIDING

BRIEF IN REPLY TO APPELLEE'S ARGUMENT
ORAL ARGUMENT REQUESTED

WAYNE SMITH, MSB [REDACTED]
151 WEST MAIN STREET
P O BOX 525
LIBERTY MS 39645
PHONE: (601) 657-8994
FACSIMILE: (601) 657-8987

ATTORNEY FOR APPELLANTS
REBECCA E. REEVES AND
JAMES REEVES

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REBECCA E. REEVES AND
JAMES REEVES,

Appellants

vs.

Supreme Court No.:
2008-CA-01605-COA

JOHN PETERSON,

Appellee

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record, in accordance with Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, 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 this Court may evaluate possible disqualifications or recusal.

Rebecca E. Reeves and James Reeves, Appellants

Wayne Smith, Attorney for Appellants

John Peterson, Appellee

Robert E. Clark, Attorney for Appellee


WAYNE SMITH
Attorney for Appellants

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

REPLY TO APPELLEE'S ARGUMENT. 1

CONCLUSION 4

CERTIFICATE OF SERVICE 5

TABLE OF AUTHORITIES

CASES:

Cox v. F-S Prestress, Inc.
797 So.2d 839. 2

Ferrera v. Walters
919 So.2d 876. 2

OTHER AUTHORITIES:

Mississippi Code of 1972 Annotated
Section 95-5-10. 2, 4

REPLY TO APPELLEE'S ARGUMENT

1. Should the trial court have allowed an oral argument in a motion for reconsideration and, in the alternative, a new trial, under Rule 59 of the Mississippi Rules of Civil Procedure?

Yes. The Appellee in this case stated that the Reeves did not request an oral argument in their motion.

A motion in Circuit Court is set by the Court Administrator. A specific request was made to the Court Administrator to set this motion for hearing. This request was made and the response was a ruling from the Court without a hearing. There was a specific statement in the Reeves motion dealing with the newly discovered evidence and a hearing should have been granted in order to argue or otherwise submit this evidence for the Court's review.

There was substantial newly discovered evidence and the trial court did not allow any form of a hearing that would allow a presentation of the evidence.

The newly discovered evidence in this case dealt with the location of the boundary line between Reeves and Peterson. Mr. Peterson had indicated the location of the boundary line between the parties. Immediately following the trial, it was discovered that the boundary line indicated by Peterson was not the actual boundary line between the parties. The Appellants contend that Peterson willfully misled the Court as to the location of the boundary line. Further, that the trial court should have allowed a new trial based on these facts.

2. Did the Court apply the wrong standard in determining the value of the timber removed from the property of Rebecca E. Reeves and James Reeves?

Yes. The lower court applied the figures and calculations of the Appellee's expert witness. These opinions were based on a comparative bid sale by William Harold Brown, Jr., who was the expert witness for the Appellee.

Mr. Brown testified that his comparison was from sales that he had made around the time the timber was cut on the Appellants' property. This is clearly not the value of the timber as it stood. The opinions of Mr. Brown were the values of the timber that the landowner would receive.

Miss. Code Ann. Section 95-5-10(1) provides as follows:

"If any person shall cut down, deaden, destroy or take away any tree without the consent of the owner of such tree, such person shall pay to the owner of such tree a sum equal to double the fair market value of the tree cut down, deadened, destroyed or taken away..."

The value of the timber has been clearly defined in *Cox v. F-S Prestress, Inc.*, 797 So.2d 839.

"The fair market value of trees harvested on the disputed property is the value of the trees as they stand in the woods."

This case was a bench trial by agreement of the parties. The case law in this instance generally deals with the findings of a chancellor. In this case, the Circuit Judge made the decision. There are numerous cases dealing with this issue in Chancery Court. In *Ferrera v. Walters*, 919 So.2d 876, the Supreme Court has found

that where an erroneous standard has been applied, a judgment should be overturned.

The standard in this case is clear and the Court simply did not follow this standard. Again, the values of the timber that were adopted by the Court are the landowner's values and not the values as the timber stood in the woods.

CONCLUSION

The motion for reconsideration and new trial, based on newly discovered evidence, should have been heard by way of oral argument. When the Court failed to allow this hearing, Mr. and Mrs. Reeves were unable to fully present their motion.


The second point of error deals with the application of the damages. Mississippi Code Section 95-5-10 defines the specific damages in this type of case. The case law stated within this brief sets out the latest rulings of the Appellate and Supreme Courts of this state. In reviewing the evidence and the ruling of the Circuit Court, the wrong standard was applied and this case should be remanded to determine the appropriate damages in this case.

CERTIFICATE OF SERVICE

I, Wayne Smith, do hereby certify that I have this date mailed
by United States mail, postage prepaid, a true and correct copy of
the above and foregoing document to:

Robert E. Clark
Attorney at Law
P. O. Box 888
Vidalia, LA 71373-0888

This the 3rd day of August, A.D., 2009.


WAYNE SMITH