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Argument

The federal court docket sheets, their legitimacy vel non, the relevancy of the docket sheets to the subject matter of Prewitt v. Lee, No. 2003-223, and whether the trial court judge should have converted the 12(b)(6) motion to a summary judgment, are the principal issues in this appeal. Thus, the result reached by the trial court in this case will be determined by the relevance, per 401-403 of the Mississippi Rules of Evidence (MRE), of the federal court docket sheets to the contractual issues in Prewitt v. Lee, and by Rules 8, 12, and 56 of the Mississippi Rules of Civil Procedure.

The distinguished and honorable trial court judge recognized her legal quandary, and sought to convince the appellate reviewers that she did not stray beyond the boundaries of the complaint in reaching her decision. Judge Carey-McCray wrote, on page 2 of her decision, that **"The Court has considered only matters alleged in the Complaint to determine whether a 12(b)(6) dismissal is warranted. The undersigned judge, however, also was the trial judge in George Dunbar Prewitt v. David Lee, Washington County 2003-223CI and has used the official titles of motions informally referenced in the Complaint for clarity. Defendant's Motion to Dismiss has not been converted into a motion**

for summary judgment." (emphasis added). Yet, on page 4 of her decision, Judge Carey-McCray wrote that **"the documents attached to the pleadings filed in the matter of George Dunbar Prewitt v. David Lee, 2003-223CI, were relevant to Defendant's request for sanctions."**

Obviously, Judge Carey-McCray was confused, when writing her opinion, because the documents in question, i.e., the federal court docket sheets, were attached to the defendant's cross-motion for summary judgment in Prewitt v. Lee and not to the plaintiff's complaint in Prewitt v. Lee, as the trial court judge recognized on page 3 of her opinion.

Even Phillips acknowledged, on page 1 of his brief, that **"These docket sheets were attached in support of Dr. Lee's Cross-Motion for Summary Judgment...."** (emphasis added).

Somehow, on page 4 of her opinion, Judge Carey-McCray mistakenly concluded that Phillips' summary judgment motion in Prewitt v. Lee was a pleading, in contravention of Rule 7(a), Mississippi Rules of Civil Procedure(M.R.C.P.), and Rule 12(b), M.R.C.P.,. Rule 12(b), M.R.C.P., provides that **if, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion**

shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56; however, if on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15(a)." (emphasis added). Even if Judge Carey-McCray did not venture beyond the scope of the complaint in Prewitt v. Phillips, she was still obliged to permit an amendment of the complaint following her granting of the 12(b)(6) motion. No leave to amend was granted by the trial court judge.

However, Judge Carey-McCray had to return to Prewitt v. Lee in order to determine the relevancy of the docket sheets to the contractual issues in Prewitt v. Lee, and having done that, the trial court judge was obligated to convert the 12(b)(6) motion into a summary judgment motion. See Wilbourn v. Equitable Life Assurance Society, 2005-CT-02244-SCT, ¶13 (Miss. 2008). However, the trial court judge never converted the 12(b)(6) motion into a summary judgment motion, and that legal oversight constitutes reversible error.

Phillips tries to construct an appellate record for this court, with respect

to the Prewitt v. Lee case. But this Court is bound by the allegations in the complaint and the trial court judge's decision in Prewitt v. Phillips, No. 2007-73, for the purposes of determining whether the judicial privilege is applicable in this 12(b)(6) case. Appellee Phillips claims, on page 2 of his brief, that his statements are privileged "because they were made in a judicial proceedings...." (emphasis added). But, in McCorkle v. McCorkle, 811 So. 2d 258 (¶18) (Miss. Ct. App. 2001), the Court held that to be privileged, the statements must also be "relevant to the subject matter of the action." And even if relevant, Walker v. Benz, 914 So.2d 1262, 1270 (¶33) (Miss. Ct. App. 2005) posits that "M.R.E. 403 is the ultimate filter through which all evidentiary objections eventually flow."

Phillips confesses, in footnote 4 of his brief, that "The docket sheets were attached for the purpose of providing the trial court with examples of how other courts have dealt with Prewitt." Now, it is certainly appropriate for an attorney, like Phillips, to try and win every case in which he or she is involved, but it is shortsighted for attorneys to hitch their personal fortunes to those who are busily engaged in corrupting this legal profession to which we are all indebted in one way or the other. The complaint in this case details federal court corruption at the highest levels, and that corruption

should be a sore spot for all who have long worked for fairness and justice in our respective court systems. So I invite each member of the Mississippi Bar to take a close look at those federal court docket sheets, to note the prima facie absence of any jurisdictional basis, to note the absence of any documents filed in that case, to note the complete absence of a complaint or an answer in a case ostensibly premised on 28 U.S.C. 1331 and allegedly based on the well-pleaded complaint doctrine, to note the complete absence of opposing parties with adversarial interests, and then, afterward, I invite each member of the Mississippi Bar to ponder Phillips' statements in that proper context. People like Phillips, to quote the Bible, "strain at a gnat, and swallow a camel"; but what is at stake is our hope for a better society forged out of a need for equality, and we cannot reach that ideal if we are content to genuflect before those who exercise power in a corrupt manner in our midst, in plain view of us all.

Finally, Phillips claims that the defamatory statements are either true or opinions. Well, which is it, are the statements true or are the statements opinions? Recall Phillips' words as alleged in paragraph 1 of my complaint; Phillips wrote that the federal court "has assessed sanctions or attorney's fees against Plaintiff for his behavior." (emphasis added).

That type of inchoate, unspecified accusation is the handiwork of Gehenna, but note that Phillips claims that his spawn may be privileged because it is an opinion. However, the Mississippi Supreme Court has held that a statement, although framed like an opinion, may still be defamatory. Hamilton v. Hammons, 792 So. 2d 956 (¶16) (Miss. 2001).

Conclusion

For all of the foregoing reasons, I ask that the distinguished trial court judge be reversed. I also ask this Court to recall that Prewitt v. Lee was filed because a dentist kept my money and the partial denture he had made for me. Now, the dentist was entitled to keep one or the other, but not both. It also happens that the trial judge is a patient of the same dentist and that fact was revealed at the dispositive motion hearing.

Respectfully,



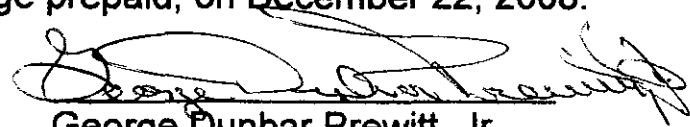
George Dunbar Prewitt, Jr.

P.O. Box 1226

Greenville, MS 38702-1226

Certificate of Service

I certify that I will mail an original and three copies of the foregoing brief to the Supreme Court Clerk, P.O. Box 249, Jackson, MS 39205, and a copy to P. Scott Phillips at his address of P.O. Box 1856, Greenville, MS 38702, by first class mail, postage prepaid, on December 22, 2008.



George Dunbar Prewitt, Jr.

Certificate of Service

I certify that I have served a copy of the Appellant's briefs on the
Honorable Margaret Carey-McCray by email on December 23, 2008.

A handwritten signature in black ink, appearing to read "George Dunbar Prewitt, Jr.", is written over a horizontal line.

George Dunbar Prewitt, Jr.
P.O. Box 1226
Greenville, MS 38702-1226