

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REBECCA E. REEVES AND
JAMES REEVES,

Appellants

vs.

Supreme Court No.:
2008-TS-01605

JOHN PETERSON,

Appellee

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

BRIEF OF APPELLEE
ORAL ARGUMENT NOT REQUESTED

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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 justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Rebecca E. Reeves and James Reeves, Appellants

Wayne Smith, Attorney for Appellants

John Peterson, Appellee

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STATEMENT OF THE CASE

John Peterson cut timber on property that had been awarded to his ex-wife, Rebecca E. Reeves, in their community property partition by the Family Court of East Baton Rouge Parish, Louisiana. (CP 36-41) James Reeves is a party plaintiff in the law suit as he was deeded an undivided one-half interest in the property by Rebecca E. Reeves. (CP 6)

The Reeves filed a lawsuit in Jefferson County, Mississippi, on May 26, 2006. (CP 5-11) John Peterson filed an Answer to Complaint, setting forth a general denial with affirmative defenses on July 28, 2006. (CP 19-21) The Reeves filed on August 3, 2006, and then served John Peterson with Plaintiff's First Set of Request for Admissions to Defendant and Plaintiff's Combined First Set of Interrogatories and Requests for Production of Documents and for Things to Defendant, (CP 23-41) which were answered by John Peterson on October 2, 2006. (CP 117-124)

A Subpoena for Deposition and Notice to Take Deposition were filed by the Reeves on October 19, 2006. (CP 126-129) Following the deposition of John Peterson, the Reeves filed a Motion for Summary Judgment on December 11, 2006. (CP 156-159) John Peterson filed his Opposition to Summary Judgment on January 23, 2007. (CP 166-167) The Reeves filed a Response to Opposition of Summary Judgment on January 18, 2007. (CP 161-165)

On January 22, 2007, the trial court granted the Reeves' Motion for Summary Judgment and ordered a Writ of Inquiry, reserving to John Peterson the right to challenge the Reeves' appraisal of damages within 30 days. (CP 233-235)

On February 20, 2007, John Peterson filed his Response to Writ of Inquiry, which consisted of an expert forester's opinion as to the value of the timber cut on the Reeves' property by John Peterson. (CP 236-270)

The Reeves decided to change attorneys sometime in April, 2007, and the trial court signed an Agreed Order Allowing Substitution of Counsel on October 8, 2007. (CP 274-298)

The Writ of Inquiry was tried on December 3, 2007, and the trial court, after the presentation of the evidence from both expert witnesses and the parties, took the case under advisement and ordered the parties to submit findings of facts and conclusions of law. (Supplemental 71)

On February 25, 2008, the Reeves filed a Motion to Re-Open Case for Additional Evidence, which was denied by the trial court on May 7, 2008. (CP 300-303)

On August 6, 2008, the trial court filed its Memorandum and Order, which ordered John Peterson to pay the total sum of \$92,901.60 to the Reeves as damages for the cutting of the timber. (CP 304-308)

On August 13, 2008, the Reeves filed a Motion for Reconsideration or, in the Alternative, a New Trial, requesting a ruling on pre and/or post judgment interest and a new trial based upon recently obtained new evidence. (CP 310-312) John Peterson responded to Motion by Objection on August 25, 2008, and the trial court issued an Order granting post-judgment interest at the rate of 8% and denying all other issues. (CP 313-314)

Aggrieved by the decision of the trial court herein, the Reeves filed their Notice of Appeal, Designation of the Record, and Certificate of Compliance with Rule 11 (b)(1) on September 25, 2008. (CP 319-326)

SUMMARY OF THE ARGUMENT

The Reeves' timely filed a Motion for Reconsideration or, in the Alternative, a New Trial, which John Peterson opposed by written opposition. The trial court granted post-judgment interest, denied prejudgment interest, and denied a new trial. (CP 313) The motion set forth the reasons for a new trial to be "...recently obtained new evidence." (CP 311) This new evidence was alleged to be a survey. (CP 311) The motion did not set forth sufficient allegations to require the trial court to set a hearing, nor did the Reeves' file a Notice of Hearing with the Motion.

The second issue concerning the correct fair market value of the timber cut is without merit. Both experts based their fair market values upon the same criteria, using the same methodology. The Reeves argue the trial court accepted John Peterson's expert's opinion and that the opinion was based upon the incorrect standard to determine damages under Section 95-5-10, Mississippi Code, 1972, Annotated, as amended. The Reeves' expert used the same criteria to determine his opinion as to the damages. (CP 14-17) Both experts used the correct standard to determine the damages. The trial court chose the better documented opinion. (CP 305) There was no error by the trial court.

ARGUMENT AND AUTHORITIES

The Reeves filed their Motion for Reconsideration or, in the Alternate, a New Trial. (CP 310-312) John Peterson filed his Objection, and the trial court made its ruling without allowing oral argument. (CP-313-314) The Reeves did not ask for oral argument in their motion. The trial court's denial of a motion for reconsideration, or new trial, is reviewed for abuse of discretion. LeClerc v. Webb, 419 F. 3rd 405, 412 n. 13 (5th Cir. 2005) (citing Westbrook v. Commissioner of Internal Revenue, 68 F. 3rd 868, 879 (5th Cir. 1995)). The trial court carefully considered both expert witnesses' testimonies and formed an informed opinion based upon the law and the evidence. The facts of this case do not justify the "extraordinary remedy" of "...reconsideration of a judgment after its entry...." Id. (quoting Templet v. HydroChem, Inc., 367 F. 3rd 473, 479 (5th Cir. 2004)). The trial court did not abuse its discretion in its failure to allow oral argument on the motion.

The second issue concerns the standard of damages under Section 95-5-10, Mississippi Code, 1972, Annotated, as amended. Both experts testified as to their fair market values of the timber cut, and the difference between the amounts was less than \$4,000.00.

The trial court accepted John Peterson's expert's values because of "...the independent documentation of those values." (CP 305)

Both experts based their values on an estimate of the number of board feet of each species of tree based upon the diameter of the stump. (CP 44, 238) The Reeves are complaining that the wrong values were placed upon the timber cut, however both experts used the same method of computation of the value of the timber, that is, price times number of board feet. (Supplemental Vol. 1, 28-31, 45-48)

The Reeves complain the trial court committed reversible error by using John Peterson's expert's values, however the Reeves' expert used the same methodology to compute his values.

The trial court applied the correct standard to compute the damages under Section 95-5-10, Mississippi Code, 1972, Annotated, as amended.

CONCLUSION

The trial court's decision should be affirmed. The motion filed by the Reeves did not set out on its face sufficient grounds for the trial court to grant a hearing on their motion. The trial court did not abuse its discretion.

Both experts used the same method to compute their values for the timber removed. The record contains the fair market value of the timber as set forth by each expert, and their values were less than \$4,000.00 apart. The trial court accepted John Peterson's expert's opinion as it was more documented. The trial court's decision was proper based upon the evidence and the law.



CERTIFICATE OF SERVICE

I, Robert E. Clark, do hereby certify that I have placed in the United States Mail, postage prepaid, a true and correct copy of the foregoing Appellee's Brief addressed to:

Honorable Lamar Pickard
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Post Office Box 310
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So certified on this the 16th day of June, 2009.


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