

**IN THE SUPREME COURT OF
THE STATE OF MISSISSIPPI
NUMBER 2009-CA-00011**

WILLIE JAMES CLARK

PLAINTIFF/APPELLANT

V.

AILEEN BROWN CLARK

DEFENDANT/APPELLEE

**ON APPEAL FROM THE CHANCERY COURT OF
COAHOMA COUNTY, MISSISSIPPI**

REBUTTAL BRIEF FOR APPELLANT

ORAL ARGUMENT NOT REQUESTED

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TABLE OF CONTENTS

| | <u>Page</u> |
|------------------------------|-------------|
| TABLE OF CONTENTS | i |
| TABLE OF AUTHORITIES | ii |
| REBUTTAL ARGUMENT | 1 |
| CONCLUSION | 1 |
| CERTIFICATE OF SERVICE | 2 |

TABLE OF AUTHORITIES

| Cases | Page No. |
|--|----------|
| <i>Brown vs. Riley</i> 580 So. 2d 1234, 1237 (MS 1991) | 1 |

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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REBUTTAL ARGUMENT

The Wife's entire argument relies on the fact that, although the Husband was not served with a Rule 4 Summons, he had actual knowledge of the date and time of the hearing.

This Court, in *Brown vs. Riley* 580 So. 2d 1234, 1237 (MS 1991) tells us that the Wife's reliance does not hold water.

[1] [2] It goes without saying that the most important safeguard involving any person who stands to suffer from some official action is prior notice. This gives the recipient an opportunity to prepare himself and be heard. Notice, therefore, by far is the paramount factor and purpose of all process. *First Jackson Securities Corp. v. B.F. Goodrich Co.*, 253 Miss. 519, 176 So.2d 272 (1965); *Mid-South Pipeline Contractors, Inc. v. Citizens Nat'l Bank of Meridian*, 239 Miss. 621, 124 So.2d 697 (1960). This, however, is not the entire story. Certain statutory formalities attend every process, and as this Court held in *McCoy, et al. v. Watson*, 154 Miss. 307, 122 So. 368, 370 (1929), actual knowledge by a defendant of the pendency of a suit against him is immaterial, "unless there has been a legal summons or a legal appearance." Also, *Mosby v. Gandy* 375 So.2d 1024 (Miss. 1979).

[3] Aside from notice, therefore, courts examine whether a summons has "substantially" complied with process statutes. *Dunn v. Sims*, 218 Miss. 227, 67 So. 2d 261 (1953); 62 *Am. Jur.2d Process* § 7 (1972).

CONCLUSION

The Husband, being served with a Rule 81 Summons in a Divorce Action, did not confer jurisdiction on the Lower Court.

Respectfully Submitted, this the 28th day of April, 2009.



ROBERT D. EVANS, Attorney for Appellant

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Robert D. Evans, do hereby certify that I have this day mailed a true and correct copy
of the above and foregoing document to:

Cheryl Ann Webster, Esquire
P.O. Box 1342
Clarksdale, MS 38614

Hon. William G. Willard, Jr.
Coahoma County Chancery Court Judge
P.O. Box 22
Clarksdale, MS 38614

This, the 28th day of April, 2009.



ROBERT D. EVANS, [REDACTED]