IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO.: 2009-CA-01349-COA

DR. RICK HOOVER **APPELLANT**

VERSUS

DR. ROBERT HOLBERT **APPELLEE**

REPLY BRIEF FOR APPELLANT

ON APPEAL FROM THE
CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI
CIVIL ACTION NUMBER 2008-00527

KRISTOPHER W. CARTER (MSB# [redacted]
DENHAM LAW FIRM, PLLC
424 Washington Avenue
Post Office Drawer 580
Ocean Springs, MS 39566-0580
228.875.1234 Telephone
228.875.4553 Facsimile

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES:

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO.: 2009-CA-01349

DR. RICK HOOVER **APPELLANT**

VERSUS

DR. ROBERT HOLBERT **APPELLEE**

I. CLARIFICATION OF FACTS

As an initial matter, Appellee both misstates facts and attempts to mislead the Court by manufacturing "facts" which appear nowhere in the record. For instance, Appellee states that George Murphy was Hoover's attorney, which appears nowhere in the record; from the evidence in the record, it appears Mr. Murphy simply prepared the Asset Purchase Agreement for both parties to transfer the Gautier Medical Clinic and its assets. Appellee's Brief, p. 6. Appellee then mischaracterizes the integration clause as "boilerplate," when the only evidence in the record regarding the clause (the affidavit of George Murphy) specifically states the opposite: that the parties specifically contemplated putting the integration clause in the Asset Purchase Agreement in order to signify that the document represented the entire agreement between the parties with regard to the sale of the Clinic and its assets. Appellee's Brief, p. 6; CIRCUIT C.P. 112.

II. ARGUMENT

Appellee's arguments as to why the integration clause should not be enforced, and as to why the prior promissory note should be allowed to vary the unambiguous terms[1] of the subsequent Asset Purchase Agreement, can best be described as scattershot.

[1] Appellee admits that the Asset Purchase Agreement is facially valid, thus without ambiguity. Appellee's Brief, p. 5.

First, Appellee contends that there were different signatories to the promissory note than the Asset Purchase Agreement, and that this should preclude enforcement of the integration clause. Appellee's Brief, p. 7.[2] In reality, the only parties that signed both documents (other than as witnesses) were Dr. Hoover and Dr. Holbert; there was simply an extra line in the Asset Purchase Agreement where Dr. Holbert signed a second time. CIRCUIT C.P 68. Further, Appellee drafted the promissory note on his own computer, and is responsible for any ambiguity as to the meaning of his signatory line. Appellee himself testified that the only purpose of the promissory note, in his mind, was to increase the total purchase price of the Clinic from $300,000 to $400,000, and that, "There was nothing separated out." CIRCUIT C.P. 80. This admission defeats also Appellee's self-contradicting argument that the promissory note was for "remuneration and services," not for property and assets.[3] Appellee's Brief, p.1.

Interestingly, Appellee next attempts to argue that the Asset Purchase Agreement should not be considered because, he contends, *it* violates the Parole Evidence rule. Appellee's Brief, p. 8. Aside from the other obvious flaws of this argument, Appellee cannot raise this argument for the first time on appeal. To attempt to get around this issue of black letter law, Appellee cites *Estate of Parker v. Dorchak*, 673 So. 2d 1379 (1996). Had he bothered to read the case, however, he would have seen that the Mississippi Supreme Court unequivocally stated that a Parole Evidence Rule objection *cannot* be raised for the first time

---

[2] Appellee cites no authority whatsoever for this argument, and it should thus be disregarded for that reason alone. *See Turner v. State*, 721 So. 2d 642, 648 (¶20) (Miss. 1998) (quoting *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993)).

[3] Counsel for Dr. Hoover attempted to bring this fact to the attention of the Circuit Court at the hearing on both parties' motions for summary judgment, but the trial judge would not let him further remark after making his ruling from the bench. See hearing of July 16, 2009, hearing, p. 15.

on appeal; it must be raised prior to the beginning of the appellate process. *Dorchak*, 673 So. 2d at 1383.

Because Appellee's arguments are completely without merit, the relief sought by Dr. Hoover should be granted, and judgment entered in his favor.

Respectfully submitted on this the 17 day of May, 2010.

DR. RICK HOOVER

BY: DENHAM LAW FIRM, PLLC

BY: _____
KRISTOPHER W. CARTER

CERTIFICATE OF FILING AND SERVICE

I, KRISTOPHER W. CARTER, of DENHAM LAW FIRM, PLLC, do hereby certify that I have mailed this day, first-class postage prepaid, true and correct copies of the *Reply Brief for Appellant* to the following at their usual mailing address:

Kathy Gillis, Clerk of Appellate Courts
Court of Appeals of the State of Mississippi
Post Office Box 22847
Jackson, MS 39225-2847

Hon. Robert P. Krebs
Circuit Court of Jackson County
Post Office Box 998
Pascagoula, MS 39568-0998

William T. Reed, Esq.
Oswald & Reed
P.O. Box 1428
Pascagoula, MS 39568-1428
Attorney for Appellee

SO CERTIFIED that I have deposited the *Reply Brief for Appellant* in the United States mail on this the 17 day May, 2010.

_____
KRISTOPHER W. CARTER

KRISTOPHER W. CARTER, MS Bar N[redacted]
DENHAM LAW FIRM, PLLC
424 Washington Avenue
Post Office Drawer 580
Ocean Springs, MS 39566-0580
228.875.1234 Telephone
228.875.4553 Facsimile