

DOCKET # 2009-EC-00806-SCT
IN THE SUPREME COURT OF MISSISSIPPI

TIM ROGERS

APPELLANT,

V.

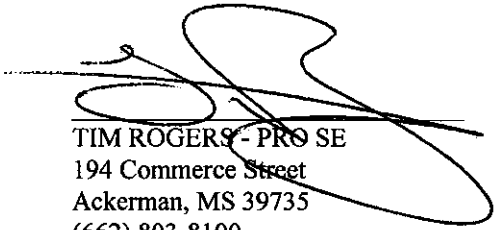
RICHARD CAIN, THE TOWN OF
ACKERMAN, MISSISSIPPI, and
THE ELECTION COMMISSION
OF THE TOWN OF ACKERMAN, MS

APPELLEE

CIRCUIT COURT CAUSE NO.
2009-0034-CV

CASE NO. 2009-EC-00806-SCT

BRIEF OF APPELLANT
TIM ROGERS
ON APPEAL FROM THE CIRCUIT COURT OF
CHOCTAW COUNTY, ACKERMAN, MISSISSIPPI



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CERTIFICATE OF INTERESTED PERSONS

CASE # 2009-EC-00806-SCT

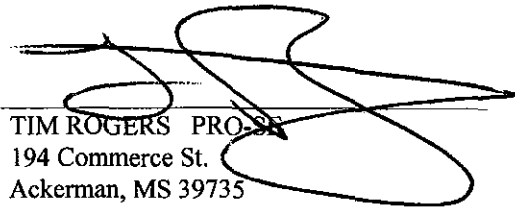
TIM ROGERS

v.

RICHARD CAIN, THE TOWN OF
ACKERMAN, MISSISSIPPI, and
THE ELECTION COMMISSION
OF THE TOWN OF ACKERMAN, MS

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 are/or the judges of the Court of Appeals may evaluate possible disqualification.

1. Tim Rogers - Appellant
2. Richard Cain, The Town of Ackerman, Mississippi, and
The Election Commission of The Town of Ackerman, MS - Appellee
3. Judge Edward C. Prisock - Special Circuit Court judge
4. Thomas Jones - Counsel for Appellees
5. Rodney Faver - Counsel for Appellees
6. Joe Griffin - Counsel for Appellees



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2.

Section 23-15-361

2.

Section 23-17-19

3.

STATEMENT OF THE ISSUES

1. The Circuit Court erred in holding that it lacked jurisdiction because of paragraph 4, section 23-15-963 of the Mississippi Code of 1972, and the finding that section 4 of said code section required an appeal within 15 days.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

On May 15, 2009 Appellant brought before the Circuit Court of Choctaw County, MS his challenge of Cain's "Candidate Petition". Appellee filed a motion for dismissal, which by the court was sustained.

B. COURSE OF THE PROCEEDINGS

On January 14, 2009 Appellee submitted a Qualifying Statement of Intent to have his name placed on the ballot as an independent candidate for the office of Mayor of the Town of Ackerman, MS. Appellant filed a petition with the Election Commission to disqualify Appellee, the hearing was initially set to be heard on the 16th of April, but was postponed and rescheduled by opposing counsel for April 21st 2009. Appellant's objections were heard by the Election Commission, with no relief granted. On April 30, 2009, Appellant filed his petition for Judicial Review with the Choctaw County Circuit Court; On May 15th 2009 Appellee Cain filed a motion for dismissal, which by the court was sustained. The judgment entered at that hearing is as follows: "It is accordingly the opinion of this Court that this case should be dismissed for want of jurisdiction".

C. DISPOSITION IN THE COURT BELOW

Trial Court sustained Appellee's motion to dismiss.

D. STATEMENT OF THE FACTS

The trial court without hearing case on the merits on May 15th 2009, dismissed Appellants complaint.

SUMMARY OF ARGUMENT

The Court erred when it sustained Appellee's motion to dismiss for want of jurisdiction.

ARGUMENT

The Circuit Court erred in holding that it lacked jurisdiction because of paragraph 4, section 23-15-963 of the Mississippi Code of 1972, and the finding that section 4 of said code Section required an appeal within 15 days.

Appellant avers that Section 23-15-963 applies only to challenge qualifications brought pursuant to 23-15-359 which section (6) specifically excludes municipal elections qualifying petitions. Section (6) reads as follows:

“ The provisions of this section shall not apply to municipal elections or to the election of the offices of justice of the Supreme Court of Appeals, circuit judge, chancellor, county court judge, and family court judge.”

Section 23-15-361 is the only section applicable to municipal elections qualifying petitions. There is no statute applicable to challenges brought pursuant to 23-15-361.

The court relied on Section 23-15-963 in it's judgment dismissing the cause from which this appeal. We call to the courts careful attention to Section 23-15-963 paragraphs (1) and (7) which recites,

(1) “Any person desiring to contest the qualification of another person who has qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, as a candidate for any office elected at a general election, shall file a petition specifically setting forth the grounds of the challenge not later than thirty one (31) days after the date of the first primary election set forth in Section 23-15-191, Mississippi Code of 1972. Such petition shall be filed with the same body with whom the candidate in question qualified pursuant to Section 23-15-359, Mississippi Code of 1972.”

(7) "The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office who qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, may be challenged prior to the time of his election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law."

We would like to call the court's careful attention to Section 23-17-19, Mississippi Code of 1972 which states as follows:

"Secretary of Stated to design petitions. The Secretary of State shall design the form each sheet of which shall contain the following: "WARNING, EVERY PERSON WHO SIGNS THIS PETITION WITH ANY OTHER THAN HIS OR HER TRUE NAME, KNOWINGLY SIGNS MORE THAN ONE OF THESE PETITIONS RELATING TO THE SAME INITIATIVE MEASURE, SIGNS THIS PETITION WHEN HE OR SHE IS NOT A QUALIFIED ELECTOR OR MAKES ANY FALSE STATEMENT ON THIS PETITION MAY BE PUNISHED BY FINE, IMPRISONMENT, OR BOTH".

If no statutes prescribes the path for relief then the court has said; "Supreme Court of Mississippi Travis L. PRISOCK Sr. V. Dr. Fred PERKINS as Superintendent of Louisville Municipal School District. 735 So2d 440 (Miss 1999) In Charter Medical Corp. v. Mississippi Health Planning Dev. Agency, 362 So2d 180,181 (Miss 1999), "we stated that where there is no statutory scheme for appeal from a decision of a state board or agency and the injured party does not have a full, plain, complete and adequate remedy at law. Therefore, the chancery court has jurisdiction for judicial review of the board or agency decision. Here there is no statutory scheme for appealing the school board's decision awarding a hunting and fishing lease, and Prisock lack's a complete and adequate remedy at law. Therefore, the chancery court would have jurisdiction of an original action for injunction to judicially review the school board's decision. Accordingly, we will not reach the additional issues raised by this appeal. Instead, we reverse and remand this case to the Winston County Circuit Court with instructions to transfer the case to the Winston County Chancery Court pursuant to Miss. Const. Art. 6, 157."

If in fact, paragraph 4, section 23-15-963 Of the Mississippi Code of 1972 does apply, counsel for Appellee is responsible for the postponment of the hearing set to be heard by The Election Commission on April 16, 2009; as opposing counsel was unable to attend, and the hearing was rescheduled by The Election Commission and held on April 21, 2009. Thereby; counsel for appellee having request the postponment waved or should be estopped from raising any objection to the (15) days required under section 4. Appellant should be entitled to his day in court; and if Appellant would be permitted to present

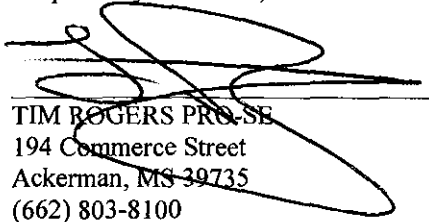
his case, the court would find the petition lacks the 50 signatures to qualify Appellee's qualifying petition.

Appellant in the list of witnesses filed with the trial court was ready to present a qualified hand writing expert and other competent and relevant evidence in support of the complaint challenging Appellee Cain's petition averring the petition lacked fifty qualified signatures, and said petition should have been disallowed by the Election Commission; and upon a full hearing by the trial court disallowed and Appellee Cain's name removed from the ballot. Appellant was deprived of his day in court.

CONCLUSION

The Circuit erred in holding that it lacked jurisdiction because of paragraph 4, Section 23-15-963 of the Mississippi Code of 1972. This section is only applicable to Section 23-15-359 which excludes Municipal General elections paragraph (6) which states, "The provisions of this section shall not apply to municipal elections. Appellant avers that if Section 23-15-963 applies, then it should have been waived on the basis that opposing counsel postponed the initial hearing and consented to the hearing held on April 21st 2009. With the Election Commission. The Appellant urges this honorable court for emergency relief, and further; to stay proceedings of the election on June 2nd 2009 until cause can be heard on the merits. Appellant urges this honorable court to reverse the trial court and to remand the case to the Circuit Court of Choctaw County and/or the Chancery Court of Choctaw County.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, TIM ROGERS do hereby certify that I have mailed a copy of the above and foregoing document upon all counsel for record in this cause, by the United States mail postage prepaid, to their proper office addressed, as shown below on May 22, 2009.

Judge Edward C. Prisock
Special Circuit Court Judge
201 South Jones Avenue
Louisville, MS 39339

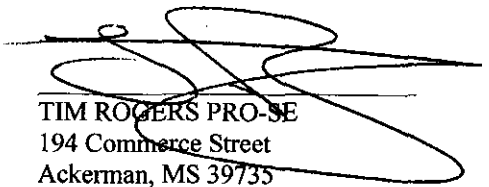
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