

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-00101

BETTY MARIE NELSON AND EARL LAVON NELSON,
Appellants

VERSUS

HUDSON HOLLIDAY AND DARRIN HARRIS
Appellees

APPEAL FROM

THE CHANCERY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT IS NOT REQUESTED

PARSONS LAW OFFICE

JACK PARSONS, *MS BAR* [REDACTED]

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APPELLANTS' REPLY ARGUMENT

COME NOW Appellants, Betty Marie Nelson and Earl Lavon Nelson, and file this, their reply argument, and would show to the Court the following to wit:

The Nelsons once again urge this Honorable Court to hold that there is a genuine material question of fact in answering the question whether or not the home they placed upon their land was a “mobile” home or a “modular” home, that summary judgment was inappropriate, and to remand the action back to the lower court for a full trial on the matter.

The Mississippi Supreme Court and Court of Appeals review records **de novo** to determine if summary judgment has been properly granted. Daniels v. GNB, Incorporated and Southern Battery Company of Mississippi, Inc., 629 So.2d 595, 599 (Miss 1993). Summary judgments should be “viewed with great skepticism,” and “if the court is going to err, it is better to err on the side of denying the motion.” Mink v. Andrew Jackson Casualty Ins. Co., 537 So.2d 431, 433 (Miss. 1988). “A motion for summary judgment should be overruled unless the trial court finds, **beyond any reasonable doubt**, that the plaintiff would be unable to prove any facts to support his claim.” McFadden v. State, 580 So.2d 1210, 1213 (Miss. 1991) (emphasis added). “If facts are in dispute, it is not the province of the trial court to grant summary judgment thereby supplanting a full trial with its ruling.” Brown v. Credit Center, Inc., 444 So.2d 358, 362 (Miss. 1983). “The party moving for summary judgment bears the burden of persuading the trial court that no genuine issue of material fact exists, and that they are, based on the existing facts, entitled to judgment as a matter of law.” Skelton v. Twin County Rural Elec., 611 So.2d 931, 935 (Miss. 1992).

As in Mantachie, the Nelsons swear they purchased a “modular” home and Holliday says it is a “manufactured” home. The issues of fact sufficient to require denial of a motion for

summary judgment are obviously present in this situation. Especially if one views the evidence in the light most favorable to the party against whom the motion has been made, the Nelsons. The evidence being that they have the documentation from the State Fire Marshall's Office, stating their home is a "modular" home, and **not** a "manufactured" home. It is important to note that the Chief Deputy State Fire Marshall, and his employees, are "designated by the commissioner [Commissioner of Insurance of the State of Mississippi] to implement and enforce this chapter [The Uniform Standards Code for Factory-Built Homes Law]." §75-45-3 *Miss. Code Ann. (1972)*. The State Fire Marshall, through his employees, were implementing and enforcing this chapter when they determined the home purchased by the Nelsons was a modular rather than a manufactured home. It should also be noted that this determination was made in the usual course of business, as shown by the date of February 8, 2008, stamped on all the documentation sent from the State Fire Marshall's office, which was before the home was delivered to the Nelsons' property. These documents were designated as pages 19 – 46 of Appellants' Record Excerpts.

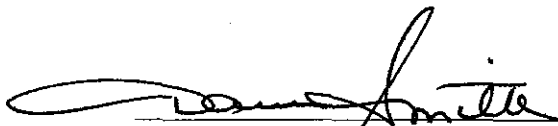
The determination by the State Fire Marshall's office that the home purchased by the Nelsons was a modular home should have prevented the lower court from granting the summary judgment since, in light of this determination, it could not find "beyond a reasonable doubt" that the Nelsons could not prove any facts to support their claim.

The party moving for summary judgment, Holliday, could not have met his burden of persuading the trial court that no genuine issue of material facts existed, because the Nelsons had previously filed their own motion for summary judgment, indicating both sides strongly held the belief that their position was the correct one, although they were directly opposite of each other.

CONCLUSION

The home purchased by the Nelsons is a modular home according to the State Fire Marshall's office, the office designated to enforce the Uniform Standards Code for Factory-Built Homes Law. Summary judgment was inappropriate as there are obviously issues of fact sufficient to require denial of the motion for summary judgment. As our Supreme Court held in Mink, at 433, and McFadden at 1213, motions for summary judgments are to be "viewed with great skepticism" and "should be overruled unless the trial court finds, **beyond any reasonable doubt**, that the opposing party would be unable to prove any facts to support his claim." The trial court could not have found, beyond a reasonable doubt, that the Nelsons would be unable to prove any facts to support their claim, because the evidence they have absolutely supports their claim. The Nelsons deserve their day in court in order to be able to put on all their evidence in an effort to keep the home they purchased, but have not yet been able to enjoy, and they therefore, respectfully request this Honorable Court to reverse the decision of the trial court and remand it back to that court for a trial on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dawn Smith", is written over a horizontal line.

DAWN SMITH
ATTORNEY FOR BETTY MARIE NELSON and
EARL LAVON NELSON

CERTIFICATE OF SERVICE

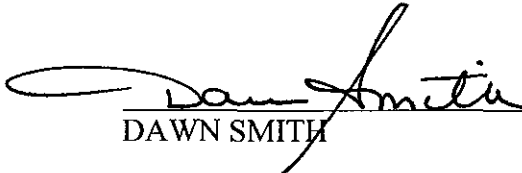
The undersigned counsel hereby certifies that a true and correct copy of the above instrument was mailed, postage prepaid, to the following:

Joe Montgomery, Esq.
Williams, Williams & Montgomery
PO Box 113
Poplarville, MS 39470

Judge Dawn H. Beam
250 Broad Street, Suite 12
Columbia, MS 39429

Judge Sebe Dale, Jr.
PO Box 1248
Columbia, MS 39429-1248

SO CERTIFIED, on this the 30th day of June, A.D., 2011.


DAWN SMITH

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