

IN THE SUPREME COURT OF MISSISSIPPI

BARBARA S. JACKSON

APPELLANT

VS.

NO. 2010-CP-00062

DAVID LOWE, ET AL.

APPELLE

BRIEF OF APPELLANT

No Oral Argument Requested

An Appeal from the Chancery Court of Madison County, MS

Prepared By:
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IN THE SUPREME COURT OF MISSISSIPPI

BARBARA S. JACKSON

APPELLANT

VS.

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Their representations are made in order that the Justices of the Supreme Court and/or the Justices of the Court of Appeals may evaluate possible disqualifications of recusal.

1. Honorable Cynthia Brewer, Chancery Court Judge
2. Barbara S. Jackson, Appellant
3. David J. Lowe, Appellee
4. Patricia Lowe, Appellee
5. Cleotha Lindsey, Appellee
6. Greta Lindsey, Appellee
7. Matthew S. Poole, Attorney for Appellant
8. Paul Hastings, Attorney for Appellant
9. Bernard S. Jones, Attorney for Appellee
10. C. Brent Jones, Attorney for Appellee

Prepared By:

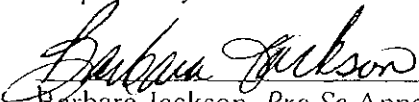

Barbara Jackson, *Pro Se* Appellant

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STATEMENT OF THE ISSUES

1. Standard of Review
2. Trial Court erred in granting Summary Judgment relied on unverified and undocumented theories and conclusions by Appellees.
3. The Trial court erred in voiding and setting aside Appellant's Circuit Court Judgment.
4. Trial court erred in denying Motion for Reconsideration.
5. Appellant had ineffective assistance of counsel.
6. Appellant is barred by Res Judicata.

STATEMENT OF THE CASE

Appellant, Barbara Jackson, homestead located at 144 North Pine Drive, Madison, Mississippi 39110, was foreclosed upon by her mortgage company on or about February, 2000. On or about September 2000, Ms. Jackson contacted Robert Blake of Bay City Mortgage to obtain financing to repurchase. Plaintiff was told by Mr. Blake that she could not obtain financing unless the foreclosure was set aside. Mr. Blake offered to finance the property with Mr. Cleotha Lindsey as the buyer. Mr. Blake and Mr. Lindsey changed the terms and the price listed on the contract after Ms. Jackson signed the contract. While making payments in accordance to the contract, Mr. Lindsey foreclosed on the property without following proper procedures and also improperly disposing of Ms. Jackson's personal property. Ms. Jackson filed a complaint January 31, 2002 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi (RE 6). An order Striking Defendants' Answers and Granting Final Judgment for Ms. Jackson was signed July 19, 2002(Judgment was filed in Madison County Chancery Records) (RE 16). After a trial on the merits, a final judgment was awarded to Ms. Jackson April 27, 2004(Judgment was also filed in Madison County Chancery Records)(RE 19). On September 12, 2008, Ms. Jackson met with Attorney Matthew Poole to discuss enforcing judgment. The following day, September 13, 2008, Ms. Jackson received a complaint from David and Patricia Lowe (RE 22). Mr. Poole answered complaint December 23, 2008(RE 34). On January 16, 2009, Mr. Poole faxed Appellee's counsel, Mr. Bernard Jones, a deposition request (RE 79). Appellee's attorney sent Discovery Request with no response to the deposition request (RE 40). Mr. Poole continued to request a deposition date. Mr. Poole did not answer admissions or discovery not at the request of Ms. Jackson. Mr. and Mrs. Lowe filed a Motion for Summary Judgment (RE 56). During this time, Mr. Poole did nothing to amend admissions. Instead, Mr. Poole filed a motion to

withdraw as counsel (RE 77). Mr. and Mrs. Lowe were granted Summary Judgment (RE 85). Ms. Jackson, along with her attorney Mr. Paul Hastings, filed a timely Motion for Reconsideration on Rule 60 of the Mississippi Civil Procedure for ineffective assistance of counsel (RE 90). Also, Ms. Jackson filed a complaint against Mr. Poole with the Mississippi Bar Association. Mr. Poole was sanctioned by the Mississippi Bar by way of Informal Admonitions for violating Rules 1.1, 1.2, and 1.4. On November 20, 2010, the Motion for Reconsideration was denied. Ms. Jackson timely appealed to the Supreme Court.

SUMMARY OF THE ARGUMENT

Ms. Jackson was not awarded the opportunity to prove her Circuit Court judgment. The Chancery Court Judge was given false and unverified information to base her decision to grant Summary Judgment to Appellees. Ms. Jackson's filed her lawsuit with the Circuit Court of the Second Judicial District of Hinds County, Mississippi two months prior to Appellees even purchasing home (RE 6). The allegations brought to the Chancery Court judge was unsupported claims.

The trial Court erred in voiding and setting aside Appellant's Circuit Court's Judgment. The Circuit Court of the Second Judicial District of Hinds County, Mississippi had subject matter jurisdiction. The Circuit Court's case was not a suit to confirm title, to cancel cloud or remove doubts to title, for trespass or ejectment. Rather, it is a lawsuit alleging multiple causes of action and demanding, among other things, declaratory judgment, which was granted by the Circuit Court.

The trial court erred in denying Motion for Reconsideration (RE 87). The Motion for Reconsideration was based on ineffective assistance of counsel. Mr. Matthew Poole did not answer discovery which was not at the request of the Appellant. It was mentioned in the Motion trial that Mr. Poole was in violation of the Mississippi Professional Rules of conduct. The Appellant was not educated in the law at the time to know the discovery timeline.

Appellant had ineffective assistance of counsel. The Appellant filed a complaint with the Mississippi Bar Association in which her attorney was sanctioned by informal admonishment for violating Rules 1.1, 1.2, and 1.4 of the Mississippi Rules of Professional Conduct. The appellant relied on her attorney's expertise in the case and was never awarded the chance to present her evidence.

Because this issue was already tried once, the appellant is barred by Res Judicata. If the four identities of res judicata are present, the parties will be prevented from relitigating all issues tried in the

prior lawsuit, as well as all matters which should have been litigated and decided in the prior suit. **Pray v. Hewitt**, 254 Miss. 20, 179 So. 2d 842 (1965); **Golden v. Golden**, 246 Miss. 562, 151 So 2d. 598 (1963).

This court should reverse the decision of the trial court and award Ms. Jackson the opportunity of due process to present her evidence and prove her Circuit Court's judgment is valid.

ARGUMENT

I. Standard of Review

This Court's standard of review for a grant or denial of a motion for summary judgment is well-established:

Our appellate standard for reviewing the grant or denial of summary judgment is the same standard as that of the trial court under Rule 56(c) of the Mississippi Rules of Civil Procedure. This Court employs a de novo standard of review of a lower court's grant or denial of summary judgment and examines all the evidentiary matters before it – admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If, in this view, there is not genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. Otherwise, the motion should be denied. Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another say the opposite. In addition, the burden of demonstrating that no genuine issue of fact exists is on the moving party. That is, the non-movant should be given the benefit of the doubt. **Arrechea Family Trust v. Adams**, 960 So. 2d 501, 504 (¶6)(Miss. Ct. App. 2006)(quoting **Heigle v. Heigle**, 771 So. 2d 341, 345(¶18)(Miss. 2000)).

II. The trial Court erred in granting Summary Judgment relied on unverified and undocumented theories and conclusions by Appellees.

To avoid summary judgment, the non-movant must set forth specified facts that demonstrate a genuine issue of material fact that merits trial instead of mere unsubstantiated allegations. **Richmond v. Benchmark Constr. Corp.**, 692 So. 2d 60,61(Miss. 1997)(quoting **Progressive Gulf Ins. v. Dickerson**, 965 So 2d 1050 (Miss. 2007)). The Appellant was never given a chance to state the facts of

the case. Judge Brewer based her ruling on the Appellees unverified facts of the Circuit Court's case. The Appellees stated they were in possession of the property in question before the Appellant's lawsuit began¹. The Appellant filed the complaint 2 months prior to the Appellees purchasing the home (RE 6). It was also stated that Mr. Cleotha Lindsey bought the home at a foreclosure sale and subsequently sold the property in question to the Appellees².

In Simmons v. Thompson Mach. of Miss, Inc., 631 So. 2d 798,801(Miss 1994)(emphasis added)(citing **Shaw v. Burchfield**, 481 So. 2d 247,252(Miss 1985)), this Court held:

Of importance here is the language of the rule authorizing summary judgment 'where there is no genuine issue of material fact.' The presence of fact issues in the record does not per se entitle a party to avoid summary judgment. The court must be convinced that the factual issue is a material one, one that matters in an outcome determinative sense... the existence of a hundred contested issues of fact will not thwart summary judgment where there is no genuine dispute regarding the material issues of fact.

The evidence must be viewed in the light most favorable to the non-moving party. See **Northern Electric Co.**, 660 So. 2d at 1281; **Russell**, 700 So. 2d at 622; **Richmond**, 692 So. 2d at 61; **Simmons**, 631 So. 2d at 802; **Tucker**, 558 So 2d. at 872.

To avoid summary judgment, the non-moving party must establish issue of material fact within the means allowable under the Rule. **Richmond**, 692 So. 2d at 61(citing **Lyle v. Mladinich**, 584 So. 2d 397, 398(Miss 1991)). "If any triable issues of fact exist, the lower court's decision to grant summary judgment will be reversed. Otherwise the decision is affirmed." **Richmond**, 692 So. 2d at 61.

¹ Appellees purchased home March 18, 2002. Appellant's complaint was filed January 31, 2002 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi.

² Mr. Lindsey purchased home for Ms. Jackson with an Lease Purchase Agreement. However the terms of the contract were changed which led to the Circuit Court's complaint.

The Court has also stated that “Where there is a reasonable doubt as to whether or not it should be vacated, such doubt should be resolved in favor of opening the judgment and hearing the case on its merits.” **Campbell v. Carter**, 231 Miss 658, 97 So.2D 526, 529 (1957)(quoting **Oaks v. Sellers**, 953 So. 2d 1077 (Miss. 2007)). The major issue for the summary judgment was Appellant’s attorney was in dispute with Appellees’ attorney on who was to depose first. Appellant’s attorney said he would not answer discovery until Appellees’ attorney set a deposition date³. Due to the faults of the appellant’s attorney, the appellees were awarded a summary judgment with material facts unestablished.

III. Trial court erred in voiding and setting aside Appellant’s Circuit Court’s Judgment.

“A judgment is void if ‘the court that rendered it lacked jurisdiction of the subject matter of the parties, or if it acted in a manner inconsistent with due process of the law.’” **Soriano v. Gillespie**, 857 So. 2d. 64,69(¶21)(Miss Ct. App. 2003)(quoting **Bryant, Inc. v. Waltes**, 493 So. 2d 933,938 (¶6)(Miss 1986)). “In considering whether a judgment should be set aside because it is a nullity, there is no discretion in the trial court. If a judgment is void it must be vacated.” **Bryant, Inc. v. Walters**, 493 So. 2d 933, 937 (Miss 1986). However, “ a judgment cannot be set aside simply because it is erroneous.” *Id*(quoting **Harvey v. Stone County**, 982 So. 2d 463 (Miss. 2008)).

The Circuit Court of the Second Judicial District of Hinds County had subject matter jurisdiction on the property in question. The Appellees assert that the Circuit Court’s Judgment should be null and void because it was not brought in the proper county as the land in dispute is situated in Madison County (RE 16, 19). One of the defendants in the case was found in the Second Judicial District of Hinds County; therefore, the complaint was brought where the defendant may be found. **Miss. Code Ann. § 11-11-3 (1972)**. The Circuit Court’s case was not a suit to confirm title, to cancel cloud or remove doubts to title, for trespass or ejectment. Rather, it is a lawsuit alleging multiple causes

³ Ms. Jackson was not in agreement of not answering discovery. She did not have anything to hide and wanted a chance to prove her case.

of action and demanding, among other things, declaratory judgment, which was granted by the Circuit Court.

We have found that a court has jurisdiction of the subject matter and of the parties, and renders judgment during the term of the court, it is without jurisdiction to set aside the judgment at a subsequent term. **Strain v. Gayden**, 197 Miss 353, 20 So. 2d 697 (1945). Federal courts interpreting this rule have stated that a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter of the parties, or if it acted in a manner inconsistent with due process of law. See **Wright & Miller, Federal Practice & Procedure**: Civil 2862, pp 199-200 (quoting **Bryant v. Walters**, 493 So. 2d 247 (Miss. 1985))

The Circuit Court of the Second Judicial District of Hinds County, MS had subject matter jurisdiction. Circuit courts in this state have jurisdictions of all matters not vested in some other court. **MS Const. Art. 6, § 156**. Both circuit and chancery courts in this state have concurrent jurisdiction to make final adjudications of title to land. **McCoy v. McRae**, 37 So.2d 353, 356 (Miss. 1948).

IV. Trial court erred in denying Motion for Reconsideration.

“Appellate review of Rule 60(b) motions is limited.” **Jenkins v. Jenkins**, 757 So. 2d 339,342(¶5)(Miss Ct. App. 2000)(citing **Stringfellow v. Stringfellow**, 451 So. 2d 219, 220 (Miss 1984)). “We will not reverse a trial court’s decision to deny relief under Rule 60(b) unless the trial court abused its sound discretion. Considerations of a Rule 60(b) motion requires a balancing between granting a litigant a hearing on the merits with the need to achieving finality in litigation.” Id (citing **Stringfellow**, 451 So. 2d at 220; **Briney v. U.S. Fidelity & Guar., Co.** 714 So. 2d 962, 966 (¶13) (Miss. 1998)). “Additionally, the allegations and indicated evidence should be such as would convince a court that what is sought is not simply an opportunity to litigate that which is already settled.” Id. (citing **Askew v. Askew**, 699 So. 2d 515, 520(¶22)(Miss 1997))(quoting **Harvey v. Stone County**, 982 So. 2d 463 (Miss. 2008)).

The Motion for Reconsideration was based on ineffective assistance of counsel (RE 87). Mr. Matthew Poole did not answer discovery which was not at the request of the Appellant. It was mentioned in the Motion trial that Mr. Poole was in violation of the Mississippi Professional Rules of conduct. The Appellant was not educated in the law at the time to know the discovery timeline.

V. Appellant had ineffective assistance of counsel

We have found no case law that could require counsel in a civil contempt to meet the familiar standard for ineffective assistance of counsel in a civil contempt to meet the familiar standard for ineffective assistance of counsel, i.e., whether counsel's performance was deficient and that this deficiency prejudiced his defense, in **Strickland v. Washington**, 466 U.S. 668, 689 (1984). Regardless, assuming such standard is applicable, "allegations of ineffectiveness must be made with specificity." **Jones v. State**, 922 So. 2d 31, 35(¶ 14)(Miss. Ct. App. 2006)(citing **Garner v. State**, 864 So. 2d 1005, 1008 (¶ 13)(Miss. Ct. App. 2003))(quoting **Chasez v. Chasez**, 957 So. 2d 1031 (Miss. 2007)).

The Appellant filed a complaint with the Mississippi Bar Association in which her attorney was sanctioned by informal admonishment for violating Rules 1.1, 1.2, and 1.4 of the Mississippi Rules of Professional Conduct. The appellant relied on her attorney's expertise in the case and was never awarded the chance to present her evidence.

VI. Appellant is barred by Res Judicata.

In **Dunaway v. W.H. Hopper & Associates, Inc.**, 422 So. 2d 749, 751 (Miss.1982), we said:

Generally, four identities must be present before the doctrine of res judicata will be applicable: (1) identity of the subject matter of the action, (2) identity of the cause of action, (3) identity of the parties to the cause of action⁴, and (4) identity of the quality or character of a person against who the

⁴ Parties to the cause of action- the parties to the second action must have also been parties to the first action, or have been privity with a party in the 1st action.

claim is made. **Mississippi Employment Security Commission v. Georgia-Pacific Corp.**, 394 So. 2s 299(Miss 1981); **Cowan v. Gulf City Fisheries, Inc.**, 381 So. 2d 158 (Miss 1980); **Standard Oil Co. v. Howell**, 360 So. 2d 1200(Miss 1978). If these four identities are present the parties will be prevented from relitigating all issues tried in the prior lawsuit, as well as all matters which should have been litigated and decided in the prior suit. **Pray v. Hewitt**, 254 Miss. 20, 179 So. 2d 842 (1965); **Golden v. Golden**, 246 Miss. 562, 151 So 2d. 598 (1963). In other words, “the doctrine of res judicata bars litigation in a second lawsuit on the same cause of action of all grounds for, or defenses to, recovery that were available to the parties(in the first actions), regardless of whether they were asserted or determined in the prior proceeding.” **Key v. Wise**, 629 F. 2d 1049, 1063 (5th Cir. 1980), reh. denied, 645 F. 2d. 72 (5th Cir. 1981), cert. denied, 454 U.S. 1103, 102 S. Ct. 682, 70L. Ed. 2d. 647 (1981)(quoting from **Brown v. Felsen**, 442 U.S. 127, 99 S. Ct. 2205 60 L Ed. 2d 767(1979)).

In addition to these four identities, res judicata applies only to judgments which are final, In re. **T.L.C.**, 566 So 2d 691, 697 (Miss. 1990). The prior judgment must also have been on the merits⁵. **Brown v. Bower**, 688 So. 2d 1374, 1384 (Miss 1997)(quoting **Anderson v. Levere**, 895 So. 2d 829 (Miss. 2004)). The Appellees were aware of the Circuit Court’s Judgment that was filed in Madison County Land records on July 19, 2002. The final judgment was valid April 4, 2004 and also filed in the Madison County Land Records. The Appellees did not initiate any type of legal proceedings to protect their rights during this time period and also were not able to file homestead exemption. In the interim of the Chancery Court case, the Appellees filed multiple Quit Claim deeds from themselves to themselves (RE 33)⁶.

⁵ The Final Judgment was awarded after hearing testimony, considering evidence and the arguments of the parties.


⁶ Quit claim deeds were filed in 2004, 2006, and 2008. The 2006 quit claim deed was inadvertently left off Appellees title deraignment. Deraignment also does not include Ms. Jackson’s Circuit Court Judgments that were filed in Madison County Land Records.

CONCLUSION

This court should reverse the decision of the trial court and award Ms. Jackson the opportunity of due process to present her evidence and prove her Circuit Court's judgment is valid.

Respectfully Submitted,

Pro Se Appellant

A handwritten signature in cursive script, appearing to read 'Barbara Jackson', written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Barbara Jackson *Pro Se* Appellant, do hereby certify that I have this day mailed by U.S.

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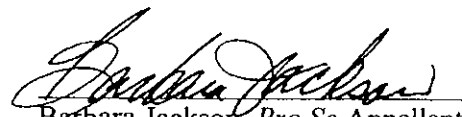
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DATED: This the 16 day of July 2010

By:

A handwritten signature in cursive script, appearing to read 'Barbara Jackson', is written over a horizontal line.

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