IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES M. JOHNSON — APPELLANT

VERSUS — CAUSE NO. 2010-CP-01356

E.H. ANDERSON, RUBY ANDERSON AND THOMAS KOHLER — APPELLEES

CERTIFICATE OF INTERESTED PERSONS

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 or Court of Appeals may evaluate possible disqualification or recusal.

1. James M. Anderson, Pro Se Appellant;
2. E.H. Anderson, Appellee;
3. Ruby Anderson, Appellee;
4. Thomas Kohler, Appellee;
5. Jason B. Purvis, Esq., Attorney for E.H. Anderson and Ruby Anderson;
6. Robert T. Schwartz, Esq. and Jeffrey W. Bertucci, Esq., Attorneys for Thomas Kohler.
7. Honorable Margaret Alfonso, Former Chancery Court Judge; and
8. Honorable Jennifer Schloegel, Currently Presiding Chancery Court Judge.

RESPECTFULLY SUBMITTED,

ATTORNEY OF RECORD FOR
THOMAS KOHLER

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STATEMENT OF THE ISSUES

The Appellee, Thomas Kohler, by and through its undersigned counsel of record asserts the following issues for review by this Court:

I. Johnson's brief is facially defective, fails to cite any legal authority and, therefore, should be stricken by this Court.

II. The Chancellor did not abuse her discretion by denying Johnson's Motion to Set Aside the Default Judgment.

III. The Chancellor did not abuse her discretion in granting Kohler's Motion to Intervene.

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition Below.

This case arises from a tax sale occurring on or about August 28, 2006, in which the Harrison County Tax Collector sold certain real property to Appellees, E.H. Anderson and Ruby Anderson (collectively the "Andersons") for the delinquent ad valorem real property taxes for the 2005 tax year. At the time of the sale the subject real property was assessed to the Appellant, James M. Johnson ("Johnson"). Following the expiration of the redemption period, the tax sale to the Andersons matured. Thereafter on October 8, 2008, the Chancery Clerk of Harrison County, John McAdams, conveyed the property by tax deed to the Andersons.

On August 26, 2009, the Andersons filed a Complaint to Confirm and Quiet Title (the "Complaint"), naming Johnson, *inter alia*, as a party defendant to the action.[1] The action was subsequently removed to the United States District Court for the Southern Division of Mississippi, on September 28, 2009[2], and then remanded to the Chancery Court of Harrison County, Mississippi, on October 21, 2009[3]. The Andersons attempted personal service upon Johnson, but following numerous attempts at service which were unsuccessful, Andersons' counsel issued a Summons to Johnson by publication in accordance with Mississippi law.[4] Following said publication and after Johnson failed to file an answer or enter any appearance in the matter, the Andersons applied for and received a Docket Entry of Default from the Harrison County Chancery Court Clerk on January 4,

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[1] Trial Record at Page 1; Appellee's Record Excerpt # 2.

[2]Trial Record at Pages 12-20;

[3]Trial Record at Pages 23-24.

[4] Trial Record at Page 31.

2010.[5] All remaining defendants answered the Complaint by claiming no interest in the real property in dispute.[6] Based upon the same, the Harrison County Chancery Court entered a Judgment confirming and quieting the Andersons' title to the property on January 5, 2010 (the "Judgment").[7]

Following receipt of the Judgment confirming title, the Andersons conveyed the property to the Appellee, Thomas Kohler ("Kohler"). Shortly thereafter, on February 1, 2010, Johnson filed a Motion to Set Aside Default Judgment.[8] On February 18, 2010, the Andersons filed a Motion to Dismiss, praying that Johnson's motion be denied[9]. On March 8, 2010, the Andersons filed a Motion for Preliminary Injunction, Permanent Injunction and Temporary Restraining Order. After a hearing thereon, the Court entered a Temporary Restraining Order against Johnson based upon evidence that Johnson had taken actions to interfere with the record title owner's right to quiet enjoyment of the property[10]. On March 22, 2010, the chancery court entered a Preliminary Injunction against Johnson to prevent him from interfering with the record title owner's right to quiet enjoyment[11].

On April 19, 2010, a Motion to Intervene was filed by Kohler, based upon the fact that he was the record title holder to the property, having acquired the same from the Andersons subsequent

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[5] Trial Record at Page 33; Appellee's Record Excerpt # 3.

[6] Trial Record at Pages 21-22 and 25-27.

[7] Trial Record at Pages 38-40; Appellee's Record Excerpt #4.

[8] Trial Record at Pages 41-42.

[9] Trial Record at Pages 53-60.

[10] Trial Record at Pages 69-70.

[11] Trial Record at Page 77-78.

to the chancery court's Judgment confirming and quieting the Andersons' title.[12] On the same day, a hearing was held before the Honorable Chancellor Margaret Alfonso (the "Chancellor") on Johnson's motion to set aside the Judgment, at which time the parties presented oral arguments and documentary evidence in support of their respective positions. Kohler was granted authority to intervene in the case as a necessary and indispensable party[13]. At the end of the hearing, the Chancellor allowed Johnson time to provide a written supplemental brief which was filed with the chancery court on May 3, 2010.

After considering the same, the chancery court entered an Order on July 7, 2010, denying Johnson's motion to set aside the default, finding: (1) that he was properly served with a copy of the Summons and Complaint by publication and subsequently failed to appear and (2) the property was not under the jurisdiction of the United States Bankruptcy Court during the chancery court's proceedings.[14] Johnson filed his notice of appeal on August 6, 2010.[15]

II. Statement of the Facts

The Appellee, Kohler, is the record owner of certain real property located at 954 ½ Howard Avenue in Biloxi, Mississippi and more particularly described as follows:

> Lots 20, 21, 22, 23 and 24, in Block One (1) of Biloxi Forrest Park Subdivision in the City of Biloxi, Second Judicial District, Harrison County, Mississippi, as per map or plat thereof recorded in Copy Book 4, Page 23 of the Records of Plats on file in the Office of the Chancery Clerk, Harrison County, Second Judicial District, Mississippi.

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[12] Trial Record at Pages 85-90.

[13] Trial Record at Pages 91-92.

[14] Trial Record at Pages 113-118; Appellee's Record Excerpt # 5.

[15] Trial Record at Pages 119-20.

LESS AND EXCEPT:

A parcel of land situated in the Southwest 1/4 of the Southwest 1/4 of Section 25, Township 7 South, Range 10 West, Harrison County, City of Biloxi, Mississippi, being more particularly described as follows:

Beginning at the northwest corner of Lot 24, Biloxi Forest Park Subdivision, a subdivision as per the official map or plat thereof on file and of record in the Office of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi, in Plat Book 19, Page 35; thence S 00 Degrees 01'30"W 110 .00 feet to an iron rod set; thence S 00 Degrees 01'30"W 50.00 feet to an iron rod set; thence N83 Degrees 11'13"W 100.00 feet to an iron rod set; thence N 00 Degrees 01'30"E 50.00 feet to the point of beginning, containing 5,000.00 square feet.

(the "subject property"). Kohler purchased the subject property from the Andersons on January 22, 2010.[16]

Prior thereto, the Andersons purchased the subject property at a tax sale on August 28, 2006, by paying to the Harrison County Tax Collector monies for the delinquent 2005 ad valorem real property taxes. At the time of the sale, the subject property was assessed to Johnson. After Johnson failed to redeem the subject property within the two-year statutory redemption period, the Andersons were conveyed the property by virtue of a Chancery Clerk's Conveyance of Land Sold for Taxes dated October 8, 2008, and filed of record in the Office of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi, bearing Instrument No. 2008-34140-J2 (the "tax deed").[17]

Thereafter, the Andersons sought to confirm their title to the subject property and filed their complaint for the same (the "Complaint").[18] The Complaint named the defendants as follows: (a)

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[16] A true and correct copy of the vesting deed is included as Appellee's Record Excerpt #6.

[17] A true and correct copy of the tax deed is included is Appellee's Record Excerpt #7.

[18] Trial Record at Page 1; Appellee's Record Excerpt #2.

James M. Johnson, (b) Harrison County, Mississippi; (c) Jim Hood, in his capacity as Attorney General of the State of Mississippi, (d) Cono Caranna, in his capacity as District Attorney for Harrison County, Mississippi, (e) Regions Bank f/k/a Union Planters Bank, National Association, (f) U.S. Small Business Administration; and (g) all other persons, firms and corporations having or claiming any legal or equitable interest in the real property. The Andersons attempted to serve Johnson with a copy of the Summons and Complaint on two separate occasions through personal service at Johnson's last known address located at 954 ½ Howard Avenue.[19] After both attempts were unsuccessful, the Andersons served Johnson through publication as he was not found in Harrison County, Mississippi, after a diligent search and inquiry.[20]

The Summons by Publication was issued on October 2, 2009, and was published in The Sun Herald, a paper of general circulation in Harrison County, Mississippi, on October 9, 2009, October 16, 2009, and October 23, 2009. Proof of publication was filed with the chancery court on November 2, 2009.[21] All other defendants were properly served and either failed to answer or answered the Complaint by claiming no interest in the subject property.[22]

Johnson failed to file a response to the Andersons' Complaint or enter an appearance in the matter within the time prescribed by the Mississippi Rules of Civil Procedure. As a result, the Andersons received an Entry of Default against Johnson. On January 5, 2010, the chancery court entered a Judgment confirming the Andersons' title to the subject property. In the Judgment, the

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[19] Trial Transcript at Page 3 and 24.

[20] *Id.*

[21] Trial Record at Page 31.

[22] Trial Record at Pages 21-22 and 25-27.

Chancellor noted that "[n]o answer or other responsive pleading [had] been filed by any party asserting legal or equitable interest in the [subject property], and more than thirty days has elapsed since the date of the first publication of the Summons."[23]

It was not until almost one month later and after the Andersons conveyed the subject property to Kohler that Johnson filed a Motion to Set Aside the Default Judgment entered against him. Johnson's motion was premised on two arguments: (1) that the Andersons failed to conduct a diligent search and inquiry to ascertain Johnson's whereabouts, and therefore, service by publication was not proper and (2) the chancery court lacked jurisdiction over the matter because the subject property was under the jurisdiction of the United States Bankruptcy Court during the course of the chancery court's proceedings.[24] The Andersons subsequently filed a Motion to Dismiss alleging that the chancery court had subject matter jurisdiction over the matter and personal jurisdiction over Johnson at the time the Judgment was entered. Thereafter, Kohler filed a Motion to Intervene as the real party in interest.

A hearing was held on April 19, 2010. At the hearing, the Andersons presented evidence that they attempted personal service on Johnson at the subject property located 954 ½ Howard Avenue in Biloxi. The Andersons provided the Chancellor with copies of the Harrison County Tax Assessor's tax rolls along with Johnson's personal bankruptcy filings as of June 2008, which listed the subject property (i.e. 954 1/2 Howard Avenue) as Johnson's last known address.[25] The Andersons also provided the Chancellor with the process server's return which stated that he was

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[23] Appellee's Record Excerpt # 3.

[24] Trial Transcript at Pages 14-17.

[25] Trial Transcript at Pages 34-38, 56.

unable to locate Johnson at the Howard Avenue address or elsewhere.[26] In addition, the record reflects that the Andersons' counsel stated by sworn affidavit that he had not been able to ascertain, after diligent search and inquiry, the post office address or street address for Johnson.[27]

Johnson did not challenge the validity of the publication of the Summons, but rather argued that the Andersons were not permitted to serve by publication because the Andersons failed to conduct a diligent search and inquiry to serve him personally.[28] Specifically, Johnson argued that he should have been served at 230 C Baker Street in Biloxi, which he alleged was his proper address.[29] However upon questioning by the learned Chancellor, Johnson admitted that there was no water or electricity at the Baker Street address and that he did not reside there, but only received some mail.[30] In fact, it was shown that Johnson maintained multiple addresses over the years that he used for various purposes. Upon further inquiry, Johnson admitted that his last known address was the Howard Avenue address and that he used the Baker Street address as a forwarding address for mail sent to the subject property.[31] Finding that the Andersons attempted to locate Johnson by reasonable measures and used his last known address of record, the Chancellor held that a diligent search and inquiry as to Johnson's whereabouts were made, and the subsequent service through a

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[26] Trial Transcript at Pages 33 and 37.

[27] Trial Record at Page 34.

[28] Trial Transcript at Pages 15-16.

[29] See trial transcript at Pages 16.

[30] *Id.* at Pages 31-32.

[31] Trial Transcript at Page 15-16.

summons by publication was proper.[32]

Johnson also argued that the chancery court lacked subject matter jurisdiction over the dispute because the subject property was part of Johnson's bankruptcy estate at the time the Complaint was filed pursuant to his first bankruptcy filing. In addition, Johnson argued that the automatic stay precluded the chancery court from maintaining jurisdiction over him at the time the Judgment was entered. Johnson acknowledged that he originally filed for bankruptcy on April 28 2008, approximately twenty (20) months after the subject tax sale.[33] The evidence presented before the Chancellor revealed that Johnson's bankruptcy case was dismissed by the United States Bankruptcy Court on August 19, 2008, his attempt to reinstate the case was subsequently denied and his bankruptcy case was closed on September 10, 2008, approximately one month before the Chancery Clerk's conveyance was issued to the Andersons.[34] Johnson attempted to file a second bankruptcy case on August 19, 2008, and that case was later dismissed on January 6, 2010.[35]

After reviewing the evidence, relevant provisions of the Bankruptcy Code and case law, the Chancellor found that Johnson and/or the bankruptcy trustee did not exercise his right of redemption and there was no right of redemption remaining in the bankruptcy estate after the Chancery Clerk's Conveyance was issued.[36] In addition, the Chancellor found that no automatic stay was present when the chancery court entered its Judgment as a result of Johnson's second bankruptcy filing,

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[32] Record Excerpt # 5.

[33] Trial Transcript at Page 17.

[34] Trial Transcript at Pages 42, 61-62.

[35] Trial Transcript at Page 25.

[36] Record Excerpt # 5.

given that it was filed within one year of the dismissal of his previous bankruptcy case.[37] Having found that the chancery court had both subject matter jurisdiction over the dispute and personal jurisdiction over Johnson when the Judgment was entered, the chancery court entered an Order denying Johnson's Motion to Set Aside the Default Judgment. It is from that Order, that Johnson now appeals.

SUMMARY OF THE ARGUMENT

In the case *sub judice*, the Appellant, Johnson, is attempting to interfere with the Appellee, Kohler's, right to ownership and possession of the subject property through prolonged judicial proceedings. Not only has Johnson failed to file any semblance of a brief which conforms to the requirements of M.R.A.P. 28, but he has further failed to provide this Court with any argument or citation of legal authority that would entitle him to a reversal of the Chancellor's decision. This represents one in a series of actions instituted by Johnson which have been filed for the sole purpose of delaying the true owners of the subject property from asserting their rightful interest in the same. It should be noted from the outset that despite Johnson's attempts to litter the record with irrelevant facts and documents, the only real issue before this Court is whether the Chancellor abused her discretion by failing to set aside the Judgment entered against Johnson.

Having considered the evidence and arguments of the parties, the Chancellor correctly acknowledged that the overwhelming weight of the evidence shows: (1) Johnson was properly served with a copy of the Summons and Complaint through service by publication, (2) that the chancery court maintained both subject matter jurisdiction over the Andersons' Complaint and personal jurisdiction over Johnson and (3) Johnson failed to answer or otherwise file an appearance in the

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[37] *Id.*

case prior to the chancery court's entry of the Judgment.[38] Further, the Chancellor properly found that Johnson failed to raise any issue that would warrant setting aside the Judgment.[39]

Without citing any facts or providing this Court with an argument and/or analysis of supporting case law, Johnson appears to rest on the arguments presented before the Chancellor as his grounds for reversal in this case. Kohler would assert that these omissions procedurally bar Johnson's arguments before this Court. Notwithstanding, Kohler would show that the Chancellor's findings are well grounded in the evidence presented before her as well as Mississippi law and do not warrant reversal. In addition, Johnson raises additional issues for the first time on appeal not presented to the chancery court, including but not limited to the Chancellor's decision to grant Kohler's Motion to Intervene. Therefore, these issues are not ripe for review.

For all of these reasons, the decision of the Harrison County Chancery Court should be affirmed.

ARGUMENT

I. Johnson's brief is facially defective and cites no legal authority and, therefore, his claims are procedurally barred.

Before addressing Johnson's arguments (or in reality the total lack thereof), Kohler would note that Johnson's brief fails to comply with M.R.A.P. 28, in that it does not include a "Certificate of Interested Persons," "Table of Contents," "Statement of the Case" and "Summary of the Argument." *See* M.R.A.P. 28(a). In addition, Johnson's "Statement of Facts" and "Argument" are incomplete and/or wholly insufficient as each consists of three to four sentences that do not properly

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[38] Appellee's Record Excerpt # 5.

[39] *Id.*

address the issues before this Court. Johnson has knowingly and willfully submitted this incomplete and defective brief despite being granted an extension of time of an additional thirty (30) days to complete the same.[40]

More important, Johnson fails to cite any legal authority in support of his allegation that the Chancellor's decision should be reversed. This omission alone serves as a recognized procedural bar to this Court's consideration of his claims. *Dampier v. State*, 973 So. 2d 221, 228 (¶ 20)(Miss. 2008). He further fails to specifically identify assignments of error as required by the Mississippi Rules of Appellate Procedure, which this state's appellate courts have also held to be a procedural bar. *Reed v. State*, 987 So. 2d 1054, 1056-57 (¶¶ 6-8)(Miss. Ct. App. 2008)(citing M.R.A.P. 28(a)(3)). Based upon the same, Kohler would move that Johnson's brief be stricken by this Court.

The fact that Johnson is representing himself in this matter does not alleviate his obligation to comply with this state's rules of procedure. *See Dethlefs v. Beau Maison Dev. Corp.*, 511 So. 2d 112, 118 (Miss. 1987)(stating "[p]ro se parties should be held to the same rules of procedure and substantive law as represented parties."). Further, the Mississippi Supreme Court has previously held that an appellate court is under no duty to consider allegations in a pro se litigant's brief which contains no legal authority. *See Johnson v. State,* 154 Miss. 512, 513, 122 So. 529 (1929). In *Johnson*, this Court was presented with a similar brief submitted by another pro se appellant which included only asserted errors of law that were not clear or self-evident. *Id.* at 529. Despite this fact, the pro se appellant failed to cite one single authority or make a definite statement of any particular principle of law to be applied to said errors. *Id.* In examining the issue, our supreme court stated

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[40] A true and correct copy of this Court's Order for extension of time is included as Appellee's Record Excerpt # 8.

that it was the duty of the appellant to make more than an assertion in his brief. *Id.* This required him to state the reasons for his propositions and cite authorities in support of the same, otherwise **they will not be considered**. *Id.* (emphasis added).

In reviewing Johnson's brief, it is clear that it contains nothing more than a group of papers and documents that include Johnson's own handwritten notations. Though some of the documents contain the proper headings as required by M.R.A.P. 28(a), Johnson has failed to specifically assign any errors for review by this Court. In addition, the "Table of Authorities" asserted by Johnson is incomplete and/or facially defective in that it cites exactly one rule that could be considered a legal authority in this case, that being M.R.C.P. 4. The bulk of Johnson's so-called "authorities" is nothing more than documentary exhibits that are irrelevant to the substantive issues on appeal. To compound matters, Johnson fails to provide the Appellees or this Court with anything that could remotely be considered an argument or analysis of how Rule 4 supports his prayer for relief from this Court.

The Mississippi Court of Appeals has held that citations of this nature are not sufficient to warrant consideration by our state's appellate courts. *See Pittman v. Dykes Timber Co., Inc.*, 18 So. 3d 923, 925 (¶ 8)(Miss. Ct. App. 2009)(holding that appellant's arguments were procedurally barred where the appellant's brief included a "Table of Citations" page at the beginning of his brief, but it contained no actual citations to legal authority). As recognized by the court of appeals in *Pittman*, "[t]he supreme court instructs that it is [Johnson's] duty to provide legal authority to support his argument." *Id.* (citing *Jones v. Howell*, 827 So. 2d 691, 702 (¶40)(Miss. 2002)). "Arguments without supporting legal authority are considered abandoned, and this Court need not consider them." *Id.* Because Johnson failed to include any legal authority in support of his contentions in his

brief, all of his arguments, if any, are procedurally barred. *Id.* Accordingly, Johnson's appeal should be dismissed, and the chancery court's Judgment should be affirmed.

II. The Chancellor did not abuse her discretion by denying Johnson's Motion to Set Aside the Default Judgment.

Notwithstanding the procedural bar, Kohler would assert that the Chancellor properly denied Johnson's motion to set aside the Judgment under Rule 60 of the Mississippi Rules of Civil Procedure. Given the deficiencies of Johnson's brief, Kohler can only assume that his argument before this Court is the same as the argument he presented before the chancery court.

A. Standard of Review

The standard of review when the trial court denies relief under Rule 60 of the Mississippi Rules of Civil Procedure is abuse of discretion. *R.N. Turnbow Oil Invs. v. McIntosh*, 873 So. 2d 960, 963 (¶ 12)(Miss. 2004). When this Court considers a matter under an abuse-of-discretion standard, it must first determine whether the trial court applied the correct legal standard. *Burkett v. Burkett*, 537 So. 2d 443, 446 (Miss. 1989). "If so, [the Court] then consider[s] whether the decision was one of those several reasonable ones which could have been made." *Id.* This Court must affirm the trial court unless there is a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors." *Cooper v. State Farm Fire & Cas. Co.*, 568 So. 2d 687, 692 (Miss. 1990)(citation omitted).

Though Johnson never explicitly asserted a Rule 60 argument before the chancery court, he appeared to argue that the Judgment was void on both personal and subject matter jurisdictional grounds. Johnson's motion was premised on two arguments: (1) the Andersons' service by publication was improper and (2) the chancery court lacked jurisdiction over the subject matter as

because the subject property was part of Johnson's bankruptcy estate and protected by the automatic stay.

B. The Chancellor did not err by finding that Johnson was properly served by publication.

It must be noted from the outset that Johnson makes no assertion either in the record or on appeal that the actual summons or process by which the Andersons completed service by publication was defective. In fact he has actually admitted that he was served through publication.[41] Without providing any legal authority, Johnson only argues that the service of process by publication was improper because the Andersons failed to conduct a diligent search and inquiry as to Johnson's whereabouts.[42] Based upon the same, the question before this Court is whether the Chancellor erred by finding that the Andersons did conduct a diligent search an inquiry in order to effectuate personal service upon Johnson prior to serving him through publication.

M.R.C.P. 4 allows a resident defendant in a chancery court proceeding to be served through process by publication where the defendant cannot be found within the state after diligent search and inquiry. *See* M.R.C.P. 4(c)(4). The Mississippi Court of Appeals has recognized that "[t]here is no bright line rule as to how many efforts must be made by a plaintiff to locate a named defendant to satisfy the requirement of diligent inquiry." *Page v. Crawford*, 883 So. 2d 609, 611-12 (¶ 11)(Miss. Ct. App. 2004)(disagreed with on other grounds). Instead, the court should balance the quality of those inquiries with their quantity. *Id.* at 612 (¶ 11). "Beyond that, it becomes a matter of balancing quantity, quality and the interests of the parties." *Id.*

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[41] Trial Transcript at Page 15.

[42] Trial Transcript at Page 15-16.

The Chancellor in this case was provided an extraordinary amount evidence showing that the Andersons made a diligent search and inquiry as to Johnson's address prior to serving him through publication. It is clear, based upon the Chancellor's review of the evidence, that she balanced the quality of the Andersons' inquiries with their quantity. The testimony presented at the hearing reflects that the Andersons attempted to personally serve Johnson on two separate occasions at 954 ½ Howard Avenue, which was stated in the Andersons' Complaint as Johnson's last known address.[43] Despite Johnson's contentions, the evidence and testimony presented before the Chancellor further confirms that Johnson was using this address at the time process was issued.

First, the Chancellor was presented with copies of the Harrison County tax rolls which listed the Howard Avenue address as Johnson's last known address at the time the Andersons attempted to effectuate personal service. Second, the Andersons presented the Chancellor with copies of Johnson's own bankruptcy filings in 2008, in which Johnson listed the Howard Avenue address as his primary residence. The record also reflects that a return was executed by the Andersons' process server which acknowledged Johnson could not be found in Harrison County, Mississippi and, therefore, the summons was returned unserved. Finally, the Chancellor recognized that Andersons' counsel stated by sworn affidavit that he had not been able to ascertain, after diligent search and inquiry, the post office address or street address for Johnson.

Johnson attempted to rebut this evidence by stating that the Howard Avenue address was his mailing address, and he resided at 230 C Baker Street in Biloxi.[44] However after being probed on the issue by the Chancellor, Johnson eventually admitted that he did not actually reside at the Baker

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[43] Trial Transcript at Pages 3, 24 and 35; Appellee's Record Excerpt #2.

[44] Trial Transcript at Pages 15-16.

Street address. In fact, Johnson admitted that the Baker Street address did not contain running water or electricity. Instead, Johnson confirmed that his actual residence at the time of the sale was at the subject property located on Howard Avenue and alleged that the same had been "lost" in his first bankruptcy case.[45]

What is apparent from Johnson's testimony and arguments before the Chancellor is that he maintained many addresses that he used for various asserted purposes, making him very difficult to locate.[46] Essentially, Johnson maintained (1) an address (Howard Avenue) where he actually resided and/or used when having to list his personal residence on public records, (2) a forwarding address (230C Baker Street) that he used to forward mail from the Howard Avenue address and (3) an address (222 Baker Street) where he allegedly resided.[47] The evidence considered by the Chancellor makes it abundantly clear that litigation is a matter that is not foreign to Johnson, and he maintained these unknown addresses and temporary residences in order to evade service of process, an argument that was not lost on Andersons' counsel or the Court.[48] Based upon the same, the Andersons were left no other choice but to serve Johnson though publication in order to protect their rights and pursue confirmation of their tax deed.

More important, Johnson has failed to provide this Court either in the record or on appeal with any evidence or legal authority showing that the Chancellor abused her discretion or made a mistake of law in finding that the Andersons could not personally serve Johnson after diligent search

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[45] Trial Transcript at Pages 31-32.

[46] Trial Transcript at Pages 31-34.

[47] *Id.*

[48] Trial Transcript at Page 33.

and inquiry and, therefore, service by publication was proper. Even more telling in this case is the fact that Johnson's own bankruptcy filings acknowledge the real property taxes being due, the failure to pay the same resulted in the issuance of the tax deed[49]. Accordingly, Johnson's argument is without merit, and this Court should affirm the Chancellor's decision.

C. The Chancellor did not err by finding that the subject property was not under jurisdiction of the bankruptcy court.

Johnson next attempts to argue the chancery court lacked subject matter jurisdiction to hear the dispute. Johnson bases this argument on the assertion that at the time the subject property was sold for taxes and/or the time the Andersons' Complaint was filed, the subject property was part of Johnson's bankruptcy estate and the statutory redemption period was tolled.

Mississippi grants the owner of real property sold for taxes a two-year right of redemption. *See* Miss. Code Ann. §27-45-3 (1972). Specifically, Section 27-45-3 of the Mississippi Code provides that "[t]he owner . . . or any person interested in land sold for taxes, may redeem the same . . . at any time within two (2) years after the day of sale by paying to the Chancery Clerk . . . the amount of all taxes for which the land was sold . . . ." *Id.* As previously stated, the tax sale at issue occurred on August 28, 2006. It is undisputed that Johnson was not under the jurisdiction of the bankruptcy court at the time of the tax sale as his first case was not filed until April 28, 2008. Therefore under general principals, Johnson had until August 28, 2008, to redeem the delinquent taxes on the subject property.

Johnson does not dispute that he failed to redeem the subject property prior to the expiration of the redemption period. Instead, Johnson argues (1) that by filing his first petition for bankruptcy,

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[49] Trial Record at 83 ("David V. Larosa, Sr.-Tax Collector-Creditor").

the subject property became part of the bankruptcy estate, tolling the redemption period under the automatic stay. Therefore, he asserts that the chancery court was precluded from having jurisdiction over the matter when the Complaint was filed and/or the Judgment was entered. The Chancellor was not persuaded by Johnson's plea and, once again, Johnson has failed to cite any legal authority both in the record or on appeal that would support the same.

In rendering her judgment, the Chancellor correctly acknowledged that because Section 27-45-3 fixes a specific time period from which Johnson had to cure his delinquency on the subject property by redeeming the same, the determination of whether the redemption period is altered by Johnson's bankruptcy filing is controlled by Section 108 of the United States Bankruptcy Code.[50] Section 108 states in pertinent part:

> Except as provided in subsection (a) of this section, if applicable non-bankruptcy law, an order entered in a non-bankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under § 1201 or § 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of-
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> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) 60 days after the order for relief.

11 U.S.C. § 108(b). As a result, a debtor is only guaranteed a minimum of 60 days to redeem under the Bankruptcy Code, and the automatic stay does not toll the running of the redemption period.

In addition, the Chancellor correctly relied on *In re Isom*, 342 B.R. 743 (Bkrtcy. N.D. Miss. 2006), where the federal bankruptcy court of this state considered the very same issues presented by

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[50] Appellee's Record Excerpt #6.

Johnson in this case, i.e. a bankruptcy debtor's rights with respect to real property sold at a pre-petition tax sale.[51] *Isom*, 342 B.R. at 744. In *Isom*, the Tax Collector of Sunflower County, Mississippi, conducted a tax sale and sold the residential real property owned by Mary A. Isom to On Point, LLC for delinquent taxes. *Id.* Ms. Isom filed a voluntary petition for bankruptcy relief under Chapter 13 of the Bankruptcy Code approximately twenty (20) months after the tax sale. *Id.* The court recognized that at the time of the bankruptcy filing, the tax collector had already sold Ms. Isom's property for delinquent taxes. *Id.* at 745. The court stated that "[t]he right to redeem property from a tax sale is an asset that becomes property of the estate . . . [but] **[t]he real property involved in the sale is not itself an asset**." *Id.* (emphasis added). Further, "[w]here the redemption period has not expired as of the date the petition is filed, [11 U.S.C.A. §108] applies to guarantee a minimum redemption period of sixty days after the entry of the order for relief." *Id.* Consequently, the court opined "that once the tax sale was conducted . . . only [Ms.] Isom's equitable right of redemption became property of the bankruptcy estate when she filed [for bankruptcy]." Applying Section 108 to the facts, the bankruptcy court determined:

> since the state law redemption period had not expired before the bankruptcy filing date, Isom had the balance of the two year period to redeem the tax sale as opposed to the shorter sixty day period which would apply only if the state law period expired earlier than sixty days post-petition. Therefore, the redemption period, **which is not tolled by the automatic stay** . . . expired [two years from the date of sale].

Id. at 746 (citation omitted)(emphasis added).

Like *Isom*, the evidence considered by the Chancellor revealed that Johnson did not file his first petition for bankruptcy until April 28, 2008, approximately twenty (20) months after the subject property was sold for taxes to the Andersons. In keeping with Section 108(b) of the Bankruptcy

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[51] *Id.*

Code and the bankruptcy courts holding in *Isom*, the Chancellor correctly opined that Johnson, on the date of his bankruptcy filing, possessed only the statutory right to redeem the subject tax sale afforded by Miss. Code Ann. § 27-45-3.[52] Under *Isom*, Johnson's right of redemption was not tolled by the automatic stay. Instead, Johnson had the balance of the two year period to redeem the tax sale pursuant to Section 108(b)(1), as there were approximately four (4) months remaining on Johnson's redemption period at the time of his first bankruptcy filing. The evidence considered by the Chancellor unequivocally showed that Johnson never excised his right of redemption, resulting in a tax deed being issued to the Andersons on October 8, 2008. Therefore, the Chancellor was correct in holding that the subject property did not become a part of the bankruptcy estate, and there was no right of redemption remaining at the time the Andersons' Complaint to confirm and quiet title was filed which would preclude the chancery court's jurisdiction. *See Isom*, 342 B.R. at 746.

Alternatively, Johnson attempted to argue that even if the automatic stay was extinguished upon the dismissal of his first bankruptcy case in August 2008 (well before the filing of the Andersons' Complaint), the automatic stay was revived by his second bankruptcy filing and in place at the time the Judgment was entered.[53] The record reflects that on August 19, 2008, upon dismissal of Johnson's first bankruptcy case, he immediately filed a second bankruptcy petition in the hopes of further delaying the action being taken against the subject property (and others). Johnson's second bankruptcy case was not dismissed until January 6, 2010. Based upon the same, he contends that the automatic stay was in place during his second bankruptcy case and precluded that chancery court from entering its Judgment in connection with the subject property.

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[52] Appellee's Record Excerpt #5.

[53] Trial Transcript at Pages 17, 48-49. Trial Record at Pages 94-96.

Relying on the provisions of the United States Bankruptcy Code, the Chancellor correctly held that the mere filing of the second bankruptcy case did not serve to extend the automatic stay to preclude the chancery court from taking jurisdiction over him at the time the Judgment was entered. Section 362(c)(3) of the United States Bankruptcy Code states in pertinent part:

> if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--
>
> > (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor on the 30th day after the filing of the later case** . . . .

11 U.S.C.A. §362(c)(3)(emphasis added).

It is clear from the record that Johnson filed his second bankruptcy case within one year of the pendency of his first filing. Accordingly, the automatic stay in connection with Johnson's second bankruptcy case was only in effect for a thirty day period, absent some extension of the same. Under Section 362(c), the automatic stay can only be extended on motion of a party in interest filed before the expiration of the thirty-day period. *Id.* After being questioned by the Chancellor, Johnson admitted that he has never filed for an extension of the automatic stay pursuant to his second bankruptcy filing.[54] Therefore, Johnson's second automatic stay expired on September 18, 2008, well before the Andersons' Complaint was filed and the Judgment was entered against him. Accordingly, the Chancellor was correct in her determination that Johnson's second bankruptcy filing did not preclude the same. This issue is without merit.

Having correctly determined that the chancery court maintained both jurisdiction over the

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[54] Trial Transcript at Page 50 and 62-63.

subject matter of the Andersons' Complaint and personal jurisdiction over Johnson at the time the Judgment was entered, the Court did not abuse its discretion by denying Johnson's motion to set aside the Judgment. The evidence is clear that the Judgment is valid. Johnson has failed to provide this Court with any citation in the record or any legal authority to dispute this fact. Therefore, the decision of the Chancellor should be affirmed.

III. The Chancellor did not abuse her discretion in granting Kohler's Motion to Intervene.

Finally, for the first time on appeal, Johnson asserts an objection to Kohler's motion to intervene in the case. The record is void of any such objection being asserted in the pleadings or the hearing before the Chancellor. Kohler would assert that Johnson's failure to voice his objection to the chancery court, waives the issue for appeal.

Kohler's motion to intervene was filed on April 19, 2010, and premised on the fact that Kohler is the record title holder to the subject property and, therefore, he is the real party in interest to the dispute. Johnson was granted opportunities both in the pleadings and at the hearing to voice his objection to Kohler's motion. However, the record clearly reveals that Johnson failed to properly raise this issue. Therefore, the Chancellor was correct in granting the motion.

It is well established that "[f]ailure to raise the issue in the trial court bars it from being raised for the first time on appeal." *Zurich American Ins. Co. of Illinois v. Beasley Contracting Co.*, 779 So.2d 1132, 1134 (Miss. App. 2000)(citing *Riggs v. State*, 744 So. 2d 365(¶ 26)(Miss. Ct. App.1999). Accordingly, this Court is not compelled to address this issue as it is procedurally barred since this is the first time Johnson has raised this issue up to this point. *See Id.*

Notwithstanding the procedural bar, Kohler would contend that as the record title holder of

the subject property, he maintained a right to intervene in the chancery court action over the objection of Johnson. Mississippi Rule of Civil Procedure 24(a)(2) allows a party to intervene in an action "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." M.R.C.P. 24(a)(2). "To intervene one must assert a 'direct, substantial, legally protectable interest' in the proceedings." *Perry County v. Ferguson*, 618 So. 2d 1270, 1272 (Miss. 1993)(citation omitted). "Economic interest alone is insufficient; a legally protected interest is required for intervention under Rule 24(a)(2)." *Id.* "A chancellor's ruling on a motion to intervene is reviewed under an abuse-of-discretion standard." *Hayes v. Leflore County Bd. of Supervisors*, 935 So. 2d 1015, 1017(¶ 7)(Miss. 2006).

Johnson has failed to demonstrate how Kohler had no right of intervention under Rule 24(a)(2). It is without question that Kohler has a legal interest to protect in this matter (i.e. his title to the subject property). Given that the subject of the chancery court action concerned the confirmation of Kohler's title, it was necessary for him to make an appearance in the proceeding to protect his legal interest as a matter of right. Additionally, Johnson is procedurally barred from raising the issue by once again failing to provide this Court with any legal authority to show that the Chancellor abused her discretion in granting Kohler's Motion to Intervene. Accordingly, the issue is without merit and the Chancellor's decision to grant Kohler's motion should be affirmed.

CONCLUSION

It is an elementary principle that in an appeal to this Court the duty is on the appellant to show why the decision of a trial court should be reversed. This requires the appellant to direct the

Court's attention to certain errors assigned to the trial court and citations to legal authority which supports the appellant's arguments for reversal. Other than filing a blanket appeal, Johnson has failed to provide this Court with any argument or citation of any legal authority that would entitle him to a reversal of the chancery court's decision. Because Johnson failed to include any legal authority in support of his contentions in his brief, his arguments are all procedurally barred. Accordingly, Johnson's brief should be stricken by this Court, and his appeal should be dismissed.

Notwithstanding, the record simply does not support the contention that the Chancellor abused her discretion by denying Johnson's motion to set aside the Judgment. Despite Johnson's jurisdictional arguments in the chancery court proceedings, the evidence considered by the Chancellor support her finding that the Andersons conducted a diligent search and inquiry of Johnson's whereabouts prior to serving him by publication. The unequivocal evidence shows that the Andersons attempted to personally serve Johnson at his last known address according to all records available to the Andersons and confirmed by Johnson's own admission. In addition, the Court's holding in *Isom* and the relevant provisions of the United States Bankruptcy Code support the Chancellor's decision that the subject property was not part of the bankruptcy estate when the Andersons filed their Complaint, and the automatic stay was not in place when the chancery court entered its Judgment. Accordingly, both the subject matter and Johnson were well within the chancery court's jurisdiction when the Complaint was filed and the Judgment was entered.

Johnson has presented nothing to this Court that would even raise a question as to the Chancellor's findings. He certainly has not provided this Court with anything that would lead to a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors," as is required under this Court's standard

of review. Accordingly, the judgment of the Harrison County Chancery Court should be affirmed and all costs of this appeal should be assessed to the Appellant, Johnson.

RESPECTFULLY SUBMITTED.

THOMAS KOHLER
BY: SCHWARTZ, ORGLER & JORDAN, PLLC

BY: _____
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CERTIFICATE OF SERVICE

I, Robert T. Schwartz, an attorney with the firm of Schwartz, Orgler & Jordan, PLLC, attorneys for the Appellee, Thomas Kohler, do hereby certify that I have this date served the foregoing Appellee's Brief via first class mail the following addresses:

James M. Johnson
230-C Baker Street
Biloxi, MS 39530

Jason B. Purvis, Esq.
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Gulfport, MS 39501

Hon. Margaret Alfonso
Hancock County Chancery Court
P.O. Box 457
Gulfport, MS 39502

This March 1st, 2011.

ROBERT T. SCHWARTZ

ATTACHMENT OF RULES/STATUTES

West's Annotated Mississippi Code Currentness
Mississippi Rules of Court State
Mississippi Rules of Appellate Procedure (Refs & Annos)
General Provisions
Rule 28. Briefs

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) *Certificate of Interested Persons.* This certificate shall list all persons, associations of persons, firms, partnerships, or corporations which have an interest in the outcome of the particular case.

If a large group of persons or firms can be specified by a generic description, individual listing is not necessary.

The certificate shall be in the following form:

Number and Style of Case.

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

(Here list names of all such persons and identify their connection and interest.)

_____

Attorney of record for

_____

Governmental parties need not supply this certificate.

(2) *Tables.* There shall follow a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(3) *Statement of Issues.* A statement shall identify the issues presented for review. No separate assignment of errors shall be filed. Each issue presented for review shall be separately numbered in the statement. No issue not distinctly identified shall be argued by counsel, except upon request of the court, but the court may, at its option, notice a plain error not

identified or distinctly specified.

(4) *Statement of the Case.* This statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the court below. There shall follow the statement of facts relevant to the issues presented for review, with appropriate references to the record.

(5) *Summary of the Argument.* The summary, suitably paragraphed, should be a succinct, but accurate and clear, condensation of the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed two (2) and never five (5) pages.

(6) *Argument.* The argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on.

(7) *Conclusion.* There shall be a short conclusion stating the precise relief sought.

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of Rule 28(a) except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," or "plaintiff."

(e) References in Briefs to the Record and Citations. All briefs shall be keyed by reference to page numbers (1) to the record excerpts filed pursuant to Rule 30 of these Rules, and (2) to the record itself.

(1) The Supreme Court and the Court of Appeals shall assign paragraph numbers to the paragraphs in all published opinions. The paragraph numbers shall begin at the first paragraph of the text of the majority opinion and shall continue sequentially throughout the majority opinion and any concurring or dissenting opinions in the order that the opinions are arranged by the Court.

(2) All Mississippi cases shall be cited to either:

(i) the *Southern Reporter* and, in cases decided prior to 1967, the official Mississippi Reports (e.g., *Smith v. Jones*, 699 So.2d 100 (Miss. 1997); *Thompson v. Clark*, 251 Miss. 555, 170 So.2d 225 (1965)); or

(ii) for cases decided from and after July 1, 1997, the case numbers as assigned by the Clerk's Office (e.g., Smith v. Jones, 95-KA-01234-SCT (Miss.1997)).

(3) Quotations from cases and authorities appearing in the text of the brief shall be cited in one of the following ways:

(i) preceded or followed by a reference to the book and page in the Southern Reporter and/or the Mississippi Reports where the quotation appears (e.g., Smith v. Jones, 699 So.2d 100, 102 (Miss.1997)); or

(ii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears (e.g., Smith v. Jones, 95-KA-01234-SCT (¶ 1) (Miss.1997)); or

(iii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the book and paragraph number in the Southern Reporter where the quotation appears (e.g., Smith v. Jones, 699 So.2d 100 (¶ 1) (Miss.1997)); or

(iv) in cases decided prior to July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears when the case is added to the Court's Internet web site in the new format, i.e., with paragraph numbers (e.g., Smith v. Jones, 93-CA-05678-SCT (¶ 1) (Miss.1995)); or

(v) preceded or followed by a parallel citation using both the book citation and the case number citation.

(f) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires the study of statutes, rules, or regulations, etc., they shall be reproduced in the brief or in an addendum at the end and they may be supplied to the court in pamphlet form.

(g) Length of Briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the statement with respect to oral argument, any certificates of counsel, table of contents, tables of citations, and any addendum containing statutes, rules, or regulations.

(h) Briefs in Cases Involving Cross-Appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief for appellee shall contain the issues involved in the appellee's appeal as well as the answer to the brief for appellant.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any

appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of counsel after the party's brief has been filed, or after oral argument or decision, the party may promptly advise the clerk of the Supreme Court, by letter with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(k) Disrespectful Language Stricken. Any brief containing language showing disrespect or contempt for the trial court will be stricken from the files, and the appropriate appellate court will take such further action as it may deem proper.

(l) Other Briefs. Any brief submitted other than those listed in Rule 28(a), (b) and (c) shall conform to Rule 28(d), (e), (g), and (k). Any brief filed prior to the filing of the brief of the appellant shall contain a certificate of interested persons as required by Rule 28(a)(1). Any brief exceeding 10 pages in length shall contain tables of contents and authorities in compliance with Rule 28(a)(2).

(m) Filing of Briefs on Electronic Media. All parties filing a brief on the merits of any case with the Clerk of the Supreme Court shall file with that brief a copy thereof in an electronically formatted medium (such as USB Flash Drive or CD-ROM), and the Clerk shall receive and file such with the papers of that case. All electronic media and electronic files stored thereon must be in an industrial standardized format with the electronic brief stored in the Adobe Portable Document Format (PDF). All electronic media shall be labeled to include the following information:

(1) the style of the case, and,

(2) the number of CD-ROMs, i.e., "1 of 2, 2 of 2, etc."

CREDIT(S)

[Amended December 28, 1995; December 22, 1997; amended effective May 27, 2004 to make filing of briefs on electronic disks mandatory; amended effective July 1, 2009.]

Current with amendments received through October 1, 2010

END OF DOCUMENT

West's Annotated Mississippi Code Currentness
Mississippi Rules of Court State
Mississippi Rules of Civil Procedure
Chapter II. Commencement of Action: Service of Process, Pleadings, Motions, and Orders
Rule 4. Summons

(a) Summons: Issuance. Upon filing of the complaint, the clerk shall forthwith issue a summons.

(1) At the written election of the plaintiff or the plaintiff's attorney, the clerk shall:

(A) Deliver the summons to the plaintiff or plaintiff's attorney for service under subparagraphs (c)(1) or (c)(3) or (c)(4) or (c)(5) of this rule.

(B) Deliver the summons to the sheriff of the county in which the defendant resides or is found for service under subparagraph (c)(2) of this rule.

(C) Make service by publication under subparagraph (c)(4) of this rule.

(2) The person to whom the summons is delivered shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be dated and signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons, except where service is made by publication, may contain, in lieu of the names of all parties, the name of the first party on each side and the name and address of the party to be served. Summons served by process server shall substantially conform to Form 1A. Summons served by sheriff shall substantially conform to Form 1AA.

(c) Service.

(1) *By Process Server.* A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for

service of process may be taxed as recoverable costs in the action.

(2) *By Sheriff.* A summons and complaint shall, at the written request of a party seeking service or such party's attorney, be served by the sheriff of the county in which the defendant resides or is found, in any manner prescribed by subdivision (d) of this rule. The sheriff shall mark on all summons the date of the receipt by him, and within thirty days of the date of such receipt of the summons the sheriff shall return the same to the clerk of the court from which it was issued.

(3) *By Mail.*

(A) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.

(B) If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint may be made in any other manner permitted by this rule.

(C) Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing the notice and acknowledgment of receipt of summons.

(D) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(4) *By Publication.*

(A) If the defendant in any proceeding in a chancery court, or in any proceeding in any other court where process by publication is authorized, by statute, be shown by sworn complaint or sworn petition, or by a filed affidavit, to be a nonresident of this state or not to be found therein on diligent inquiry and the post office address of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another for the plaintiff or petitioner, that such post office address is unknown to the affiant after diligent inquiry and he believes it is unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit. The summons shall be substantially in the form set forth in Form 1-C.

(B) The publication of said summons shall be made once in each week during three successive weeks in a

public newspaper of the county in which the complaint or petition, account, cause or other proceeding is pending if there be such a newspaper, and where there is no newspaper in the county the notice shall be posted at the courthouse door of the county and published as above provided in a public newspaper in an adjoining county or at the seat of government of the state. Upon completion of publication, proof of the prescribed publication shall be filed in the papers in the cause. The defendant shall have thirty (30) days from the date of first publication in which to appear and defend. Where the post office address of a defendant is given, the street address, if any, shall also be stated unless the complaint, petition, or affidavit above mentioned, avers that after diligent search and inquiry said street address cannot be ascertained.

(C) It shall be the duty of the clerk to hand the summons to the plaintiff or petitioner to be published, or, at his request, and at his expense, to hand it to the publisher of the proper newspaper for publication. Where the post office address of the absent defendant is stated, it shall be the duty of the clerk to send by mail (first class mail, postage prepaid) to the address of the defendant, at his post office, a copy of the summons and complaint and to note the fact of issuing the same and mailing the copy, on the general docket, and this shall be the evidence of the summons having been mailed to the defendant.

(D) When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the plaintiff may have publication of summons for them and such proceedings shall be thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.

(E) Where summons by publication is upon any unmarried infant, mentally incompetent person, or other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate, summons shall also be had upon such other person as shall be required to receive a copy of the summons under paragraph (2) of subdivision (d) of this rule.

(5) *Service by Certified Mail on Person Outside State.* In addition to service by any other method provided by this rule, a summons may be served on a person outside this state by sending a copy of the summons and of the complaint to the person to be served by certified mail, return receipt requested. Where the defendant is a natural person, the envelope containing the summons and complaint shall be marked "restricted delivery." Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked "Refused."

(d) Summons and Complaint: Person to Be Served. The summons and complaint shall be served together. Service by sheriff or process server shall be made as follows:

(1) Upon an individual other than an unmarried infant or a mentally incompetent person,

(A) by delivering a copy of the summons and of the complaint to him personally or to an agent authorized by appointment or by law to receive service of process; or

(B) if service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(2)(A) upon an unmarried infant by delivering a copy of the summons and complaint to any one of the following: the infant's mother, father, legal guardian (of either the person or the estate), or the person having care of such infant or with whom he lives, and if the infant be 12 years of age or older, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above.

(B) upon a mentally incompetent person who is not judicially confined to an institution for the mentally ill or mentally deficient or upon any other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate by delivering a copy of the summons and complaint to such person and by delivering copies to his guardian (of either the person or the estate) or conservator (of either the person or the estate) but if such person has no guardian or conservator, then by delivering copies to him and copies to a person with whom he lives or to a person who cares for him.

(C) upon a mentally incompetent person who is judicially confined in an institution for the mentally ill or mentally retarded by delivering a copy of the summons and complaint to the incompetent person and by delivering copies to said incompetent's guardian (of either the person or the estate) if any he has. If the superintendent of said institution or similar official or person shall certify by certificate endorsed on or attached to the summons that said incompetent is mentally incapable of responding to process, service of summons and complaint on such incompetent shall not be required. Where said confined incompetent has neither guardian nor conservator the court shall appoint a guardian ad litem for said incompetent to whom copies shall be delivered.

(D) where service of a summons is required under (A), (B) and (C) of this subparagraph to be made upon a person other than the infant, incompetent, or incapable defendant and such person is a plaintiff in the action or has an interest therein adverse to that of said defendant, then such person shall be deemed not to exist for the purpose of service and the requirement of service in (A), (B) and (C) of this subparagraph shall not be met by service upon such person.

(E) if none of the persons required to be served in (A) and (B) above exist other than the infant, incompetent or incapable defendant, then the court shall appoint a guardian ad litem for an infant defendant under the age of 12 years and may appoint a guardian ad litem for such other defendant to whom a copy of the summons and complaint shall be delivered. Delivery of a copy of the summons and complaint to such guardian ad litem shall not dispense with delivery of copies to the infant, incompetent or incapable defendant where specifically required in (A), and (B) of this subparagraph.

(3) Upon an individual confined to a penal institution of this state or of a subdivision of this state by delivering a

copy of the summons and complaint to the individual, except that when the individual to be served is an unmarried infant or mentally incompetent person the provisions of subparagraph (d)(2) of this rule shall be followed.

(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) Upon the State of Mississippi or any one of its departments, officers or institutions, by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi.

(6) Upon a county by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors.

(7) Upon a municipal corporation by delivering a copy of the summons and complaint to the mayor or municipal clerk of said municipal corporation.

(8) Upon any governmental entity not mentioned above, by delivering a copy of the summons and complaint to the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

(e) Waiver. Any party defendant who is not an unmarried minor, or mentally incompetent may, without filing any pleading therein, waive the service of process or enter his or her appearance, either or both, in any action, with the same effect as if he or she had been duly served with process, in the manner required by law on the day of the date thereof. Such waiver of service or entry of appearance shall be in writing dated and signed by the defendant and duly sworn to or acknowledged by him or her, or his or her signature thereto be proven by two (2) subscribing witnesses before some officer authorized to administer oaths. Any guardian or conservator may likewise waive process on himself and/or his ward, and any executor, administrator, or trustee may likewise waive process on himself in his fiduciary capacity. However, such written waiver of service or entry of appearance must be executed after the day on which the action was commenced and be filed among the papers in the cause and noted on the general docket.

(f) Return. The person serving the process shall make proof of service thereof to the court promptly. If service is made by a person other than a sheriff, such person shall make affidavit thereof. If service is made under paragraph (c)(3) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. If service is made under paragraph (c)(5) of this rule, the return shall be made by the sender's filing with the court the return receipt or the returned envelope marked "Refused". Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any

process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

(h) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

CREDIT(S)

[Amended effective May 1, 1982; March 1, 1985; February 1, 1990; July 1, 1998; January 3, 2002.]

Current with amendments received through October 1, 2010

END OF DOCUMENT

West's Annotated Mississippi Code Currentness

Title 27. Taxation and Finance

Chapter 45. Ad Valorem Taxes--Redemption of Land Sold for Taxes

§ 27-45-3. Persons entitled to redeem

The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it, where it is separable by legal subdivisions of not less than forty (40) acres, or any undivided interest in it, at any time within two (2) years after the day of sale, by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent (5%) damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent (1- 1/2 %) per month, or any fractional part thereof, from the date of such sale, and all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1- 1/2 %) per month, or any fractional part thereof; saving only to infants who have or may hereafter inherit or acquire land by will and persons of unsound mind whose land may be sold for taxes, the right to redeem the same within two (2) years after attaining full age or being restored to sanity, from the state or any purchaser thereof, on the terms herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two (2) years from the date of the sale of the lands for taxes. Upon such payment to the chancery clerk as hereinabove provided, he shall execute to the person redeeming the land a release of all claim or title of the state or purchaser to such land, which said release shall be attested by the seal of the chancery clerk and shall be entitled to be recorded without acknowledgment, as deeds are recorded. Said release when so executed and attested shall operate as a quitclaim on the part of the state or purchaser of any right or title under said tax sale.

CREDIT(S)

Laws 1932, Ch. 286, § 1; Laws 1995, Ch. 468, § 15, eff. from and after passage (approved March 27, 1995).

Current through the 2010 Regular and 1st and 2nd Extraordinary Sessions

END OF DOCUMENT

Effective:[See Notes]

United States Code Annotated Currentness
Title 11. Bankruptcy (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)
§ 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2556; Pub.L. 98-353, Title III, § 424, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 257(b), Oct. 27, 1986, 100 Stat. 3114; Pub.L. 109-8, Title XII, § 1203, Apr. 20, 2005, 119 Stat. 193.)

2005 Acts. Amendments by Pub.L. 109-8 effective, except as otherwise provided, 180 days after April 20, 2005, and inapplicable with respect to cases commenced under Title 11 before the effective date, see Pub.L. 109-8, § 1501, set out as a note under 11 U.S.C.A. § 101.

Current through P.L. 111-349 (excluding P.L. 111-296, 111-309, 111-314, 111-320, and 111-322) approved 1-4-11

END OF DOCUMENT

Effective: December 22, 2010

United States Code Annotated Currentness
Title 11. Bankruptcy (Refs & Annos)
Chapter 3. Case Administration (Refs & Annos)
Subchapter IV. Administrative Powers
§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning

the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding--

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[**(5) Repealed.** Pub.L. 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-886]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of--

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer--

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property--

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of--

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each in-

dividual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors, if--

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is

in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that--

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in in-

terest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless--

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended--

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)(1) Except as otherwise provided in this subsection, subsection (b) (22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that

would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)--

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b) (23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied--

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)--

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor--

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply--

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if--

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2570; Pub.L. 97-222, § 3, July 27, 1982, 96 Stat. 235; Pub.L. 98-353, Title III, §§ 304, 363(b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371; Pub.L. 99-509, Title V, § 5001(a), Oct. 21, 1986, 100 Stat. 1911; Pub.L. 99-554, Title II, §§ 257(j), 283(d), Oct. 27, 1986, 100 Stat. 3115, 3116; Pub.L. 101-311, Title I, § 102, Title II, § 202, June 25, 1990, 104 Stat. 267, 269; Pub.L. 101-508, Title III, § 3007(a)(1), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 103-394, Title I, §§ 101, 116, Title II, §§ 204(a), 218(b), Title III, § 304(b), Title IV, § 401, Title V, § 501(b)(2), (d)(7), Oct. 22, 1994, 108 Stat. 4107, 4119, 4122, 4128, 4132, 4141, 4142, 4144; Pub.L. 105-277, Div. I, Title VI, § 603, Oct. 21, 1998, 112 Stat. 2681-886; Pub.L. 109-8, Title I, § 106(f), Title II, §§ 214, 224(b), Title III, §§ 302, 303, 305(1), 311, 320, Title IV, §§ 401(b), 441, 444, Title VII, §§ 709, 718, Title IX, § 907(d), (o)(1), (2), Title XI, § 1106, Title XII, § 1225, Apr. 20, 2005, 119 Stat. 41, 54, 64, 75, 77, 79, 84, 94, 104, 114, 117, 127, 131, 176, 181, 182, 192, 199; Pub.L. 109-304, § 17(b)(1), Oct. 6, 2006, 120 Stat. 1706; Pub.L. 109-390, § 5(a)(2), Dec. 12, 2006, 120 Stat. 2696; Pub.L. 111-327, § 2(a)(12), Dec. 22, 2010, 124 Stat. 3558.)

2005 Acts. Amendments by Pub.L. 109-8 effective, except as otherwise provided, 180 days after April 20, 2005, and inapplicable with respect to cases commenced under Title 11 before the effective date, see Pub.L. 109-8, § 1501, set out as a note under 11 U.S.C.A. § 101.

Current through P.L. 111-349 (excluding P.L. 111-296, 111-309, 111-314, 111-320, and 111-322) approved 1-4-11

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West's Annotated Mississippi Code Currentness
Mississippi Rules of Court State
Mississippi Rules of Civil Procedure
Chapter IV. Parties
Rule 24. Intervention

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action:

(1) when a statute confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) when a statute confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency, or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) Intervention by the State. In any action (1) to restrain or enjoin the enforcement, operation, or execution of any statute of the State of Mississippi by restraining or enjoining the action of any officer of the State or any political subdivision thereof, or the action of any agency, board, or commission acting under state law, in which a claim is asserted that the statute under which the action sought to be restrained or enjoined is to be taken is unconstitutional, or (2) for declaratory relief brought pursuant to Rule 57 in which a declaration or adjudication of

the unconstitutionality of any statute of the State of Mississippi is among the relief requested, the party asserting the unconstitutionality of the statute shall notify the Attorney General of the State of Mississippi within such time as to afford him an opportunity to intervene and argue the question of constitutionality.

Current with amendments received through October 1, 2010

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