

1 copy

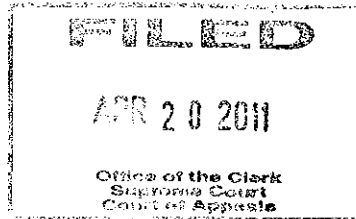
IN THE SUPRTEME COURT OF THE STATE OF MISSISSIPPI

CAUSE NO. 2010-CP-01356

JAMES M. JOHNSON

APPELLANT

VERSUS



E.H. ANDERSON, RUBY ANDERSON

APPELLEES

APPEAL FROM JUDGEMENT OF THE CHANCERY

COURT OF HARRISON COUNTY, MISSISSIPPI,

FIRST JUDICIAL DISTRICT CAUSE NO. C2402-09-00678 JULY 7, 2010

REBUTTAL BRIEF OF APPELLANT, JAMES M. JOHNSON

James M. Johnson
230 C Baker Street
Biloxi, Ms. 39531
601-407-8878

Pro Se

IN THE SUPREMEM COURT OF THE STATE OF MISSISSIPPI

JAMES M. JOHNSON

APPELANT

V.

CASE NO. 2010-CP-01356

E.H. ANDERSON AND RUBY T. ANDERSON

APPELLEES

CERTIFACTE OF INTERESTED PERSONS

The undersigned pro se of record certifies that the following listed persons have an interest in the out come of this case.

E. H. Anderson and Ruby T. Anderson by:

Jason B. Purvis

Deutsch, Kerrigan & Stiles, L.L.P.

2510 14th Street, Suite 1001

Gulfport, MS. 39501

Attorneys for Appellees

Thomas Kohler by:

Robert T. Schwartz, Esq.

P.O. Box 4682

Biloxi, MS. 39533

Attorney for Intervener

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Issue	1
A. Whether the trial Court aside its discretion in refusing to set aside its Judgment of January 5, 2010	
Statement of the Case	
Summary of the Argument	
Argument	
Conclusion	
Certificate of Service	

TABLE OF AUTHORITIES

CASES

STATUTES

11 U.S.C.

§ 501-506

Mississippi Statutes

§ 15-1-17. Limitations applicable to actions or suits to cancel tax titles.

RULES

FRBP

Chapter 13 Bankruptcy

§1304 (a) (b) (c)

§1305 a (1)

§1306 a (1) (2) b

M.R.C.P. Rule 4 Summons a (1) 2 (b) c (3)

STATEMENT OF THE ISSUE

A. Whether the lower court abused its discretion by not setting aside its Judgment on July 7, 2010, not considering the appellant brief

1. FACT page 2
2. Issue and Argument page 3
3. Conclusion page 4
4. Summons Notice to Defendant page 6
5. Mississippi Rules of Civil Procedure page 7-8
6. § 15-1-17 Limitations Applicable to Actions or Suits to Cancel Tax Titles page 11
7. Tax Card Parcel # 1210G-03-019.000 page 12

B. All bankruptcy issues were not considered by the lower court abused its discretion by not considering all bankruptcy issues in there entirety containing this case. The defendant letter brief filed on May 3, 2010 with John McAdams, Chancery Clerk State of Mississippi Second Judicial District Court.

1. Label Matrix for Local Noticing 0538-1 Case 08-51391-NPO Case No. 08-50737 page 19 of the appellant brief.

Trial Transcript

Page 9 Line 3-24

Page 20 Line 20-25

Page 21 Line 1-7

Page 25 Line 23-25

STATEMENT OF THE CASE

The pro se appellant response too the appellee statement on page 2 of his reply brief. The appellant argued that the exhibit 1 page 3 tax card property description showed that the property was a small mobile home park, and exhibit 1 page 11-19 property was being used a for a business with one mobile on it. Exhibit 2 page 15-27 shows how the property was listed and being used for income. The page title was Schedule I current income of individual debtor. This schedule I show the occupations of debtor, line 17 of schedule I page 15 of exhibit 2. Also asked for any increase and decrease of any income anticipated in the following years. Schedule I proves that lots 20,21,22,23 and 24 was expected to be used for income to support the bankruptcy plan payment. The appellant brief exhibit 1-9 filed with chancery court on March 7, 2010 support my case. Exhibit 2 page 1 summary of schedules E shows the taxes being paid under the bankruptcy plan. Exhibit 2 page 2 shows taxes and certain other debts owed to government units (from schedule E). Exhibit 2 to shows on page 3 real property and page 4 of exhibit 2 shows personal property and its address. Page 5 of exhibit 2 schedule B shows personal property. Page 8 of exhibit 2 shows schedule D creditors holding secured claims. As pro se debtor it was my understanding that the creditors holding unsecured priority claims. Must file a claim and there were listed on schedule page 11 of exhibit 2.

Exhibit 1 page 3 Tax Card Property Description

Exhibit 1 page 11-19 Property was used for business with one mobile home on it

Exhibit 1 page 34-35

Exhibit 2 page 1 Summary of Schedules E

Exhibit 2 Page 2

Trial Transcript

Page 5 Line 19-23

Page 7 Line 3-23

Page 8 Line 17-22

SUMMARY OF THE ARGUMENT

The appellee attempted too stop the operation of a business on said property that was under chapter 13 bankruptcy. Stating rule M.R.A.P. 28 on page 9 of his brief. It is supersede by chapter 13 bankruptcy rule § 1304 debtors engaged in business. This section shows that lower court has no jurisdiction over the property under the chapter 13 bankruptcy. At the time of the tax sale the tax assessor knew that their had been a chapter 13 bankruptcy file page 15 line 9-24 of the transcript hearing. Also the matrix included in exhibit 1-9 filed with the lower court, shows the address of the tax assessor. The tax assessor had knowledge of the first bankruptcy filed April 28, 2008 case # 08-50737 and second bankruptcy filed August 19, 2008 case # 08-51391. The lower court also heard testimony pages 17, 18, 19 line 18 -24 ending on page 19 line 24. This section gives a history of the property being used for business by pro se owner. The appellee attorney argued that I pro se, never attempted to redeem the property. I the appellant transcript hearing show that on page 62 line 1-25 every attempt was made to buy the property back from the Anderson and there attorney.

Trial Transcript

Page 15 Line 9-24

Page 7 Line 3-23

Page 17, 18, 19 Lines 18-24

Page 62 Line 1-25

ARGUMENT

The appellee argument on page 7 discusses the service of process and the pro se default judgment. It also discusses the M.R.C.P. The pro se response to the argument is that federal rule of civil procedure supecede state rule. Statue 11 U.S.C. §501-506 F.R.B.P. § 1304 (a) (b) (c), 1305 a (1) and 1306 (1) (2) b. These statue and rules supersede state rules.

The appellee also argued that the appellant search and inquiry was diligent. The appellee argued that a diligent search for the appellant was made. Page 47 line 11-25 and page 48 line 1-7 of the trial transcript covered the summon being mailed to the appellant address. Exhibit 5 and 6 introduce to the court during the hearing, discussed on page 50 line 6-15 shows that the appellant could be located by mail. The appellee also argued on page 8 of his brief about failure to redeem property by the appellant. The transcript trial hearing the appellant on page 62 line 1-25, talks about how a pleading was made to the Anderson about the property that was sold for taxes.

Trial Transcript

Page 47 line 11-25

Page 48 line 1-7

Page 49 line 11-25

Page 50 line1-5 & 6-15

Page 62 line 1-25

Page 65 line 17-19

11 U.S.C.

FRBP §501-506

§1304 (a) (b) (c) §1305 a (1) §1306 a (1) (2) b

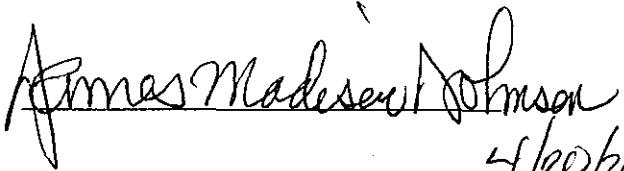
CONCLUSION

The rules and statutes in state and federal court does not support the lower court decision in denying the motion to set aside the judgment. In according to the tax code the description of the property that ruled upon by the lower court, the taxes assessment of the property was wrong. Mississippi Statutes § 15-1-17. Limitations applicable to actions or suits to cancel tax titles. The other important factor of the defense of the defendant defense is the summons which require diligent search by the appellee. Exhibit 5 & 6 enter during the transcript hearing clearly shows a summon in its proper form by one of the appellee attorney.

The lower court erred in not having the intervene attorney present it motion to intervene before the trial. The transcript file shows on page 65 line 17-19 when the intervene attorney presented his motion. In according to all premises to be considered the judgment of the Harrison County Chancery Court should be reversed.

Respectfully Submitted

James M. Johnson
230- C Baker Street
Biloxi, Ms. 39531
601-407-8878


James Madison Johnson pro se 4/20/2011

CERTIFICATE OF SERVICE

I James M. Johnson pro se hereby certify that a copy of the rebuttal brief and foregoing pleading has been served upon the following via United States Mail, First Class, postage prepaid:

Robert T. Schwartz, Esq.

P.O. Box 4682

Biloxi, Ms 39533

Attorney for Intervenor

Hon. Margaret Alfonso

P.O. Box 7017

Gulfport, Ms. 39506

Trial court judge

Jason B. Purvis

Deutsch, Kerrigan & Stiles, L.L.P.

2510 14th street Suite 1001

Gulfport, Ms. 39501

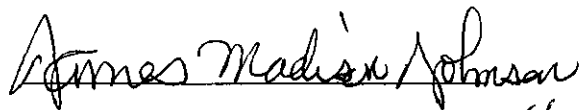
Attorney for Appellees

James M. Johnson

230-C Baker Street

Biloxi, Ms. 39531

601-407-8878


James Madison Johnson pro se 4/20/201