

IN THE SUPREME COURT OF MISSISSIPPI
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARDIE BLACKWELL

APPELLANT

VS.

CASE NO. 2010-TS-01516

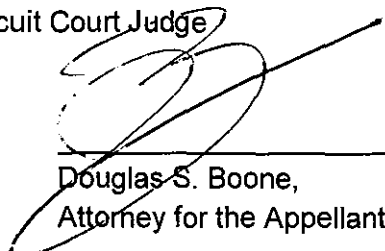
HOWARD INDUSTRIES, INC.

APPELLEE

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 Court evaluate possible disqualification or recusal.

1. Judge Cindy P. Wilson, Administrative Law Judge for the Mississippi Workers' Compensation Commission
2. Honorable Douglas S. Boone and his law firm,
Gilchrist Sumrall Yoder & Boone, PLLC,
Attorney of record for Howard Industries, Inc.
3. Honorable Ray Price
Attorney for Claimant/Appellee
4. Mississippi Workers' Compensation Commission
5. Howard Industries, Inc.
6. Safety Risk Services
7. Cardie Blackwell
8. Honorable Billy Joe Landrum
Jones County Circuit Court Judge



Douglas S. Boone,
Attorney for the Appellant

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Contents	ii
Table of Authorities	iii
Statement of Issue	1
Statement of the Case	2
Statement of the Facts	3
Summary of the Argument	6
Standard of Review	8
Argument	9
Conclusion	15
Certificate of Service	17
Certificate of Service as to Filing	18

CITED AUTHORITIES

CASES

<i>Fields v. City of Clarksdale</i> , 27 So. 3d, 464, 468 (Miss. Ct. App. 2010)	7,14
<i>Roebuck v. City of Aberdeen</i> , 671 So. 2d 49, 50 (Miss. 1996).....	8
<i>Russell v. Mitchell – Putnam Signs</i> , 754 So 2d. 1256 (Miss. Ct. App. 1999).....	6
<i>Stuart v. Pub. Employees’ Ret. Sys. of Miss.</i> , 799 So. 2d 886, 888 (¶ 8) (Miss. Ct. App. 2001).....	8
<i>Thomas v. Five County Child Development Program, Inc.</i> , 958 So. 2d 247 (Miss. Ct. App. 2007).....	8,9,10
<i>Traux v. City of Gulfport</i> , 931 So. 2d 592, 598 (Miss. Ct. App. 2006).....	7,10,11
<i>Walker v. Parnell</i> , 566 So. 2d 1213, 1216 (Miss. 1990)	8
<i>Zurich Am. Ins. Co. v. Beasley Contr. Co.</i> , 779 So. 2d 1132, 1134 (8)(Miss. Ct. App. 2000).....	9

RULES

Mississippi Rule of Appellate Procedure 2(a)(1)	10
Mississippi Rule of Appellate Procedure 2(a)(2)	2,4,10,14,15
Mississippi Rules of Appellate Procedure 28(a)(1-7)	4, 6,7,11,12,13,15
Mississippi Rule of Appellate Procedure 31(a)	9
Mississippi Rule of Appellate Procedure 31(b)	3,10,15
Mississippi Rule of Appellate Procedure 31(d)	3,6,10
Rule 5.04 of the Uniform Rules of Circuit and County Court Practice	3,15
Rule 5.06 of the Uniform Rules of Circuit and County Court Practice	3,6,7,9,13,15

STATEMENT OF THE ISSUE

1. Did the Circuit Court abuse its discretion in dismissing the Appellant's appeal of the Mississippi Workers' Compensation Commission Order.
 - A. The Circuit Court sits as an Appellate Court when reviewing final decisions of the Mississippi Workers' Compensation Commission.
 - B. Appellant received a Notice of Deficiency from the Circuit Clerk of the Second Judicial District of Jones County, Mississippi.
 - C. The Circuit Court properly dismissed the case after the Appellant failed to timely file the Appellant's Brief in accordance with the Notice of Deficiency and failed to respond or appear at the hearing of Appellee's Motion to Dismiss.

STATEMENT OF THE CASE

1. On September 2, 2009, the Mississippi Workers' Compensation Commission issued its Final Order.
2. On October 2, 2009, the Appellant filed a Notice of Appeal of the Decision of the Mississippi Workers' Compensation Commission in the Circuit Court of the Second Judicial District of Jones County, Mississippi.
3. The Appellant did not pay the cost associated with the appeal until November 16, 2009.
4. The Appellant did not file a brief but on or about April 8, 2010, Appellant filed a Motion for Oral Argument on Appeal.
5. On April 16, 2010, Appellee filed its Response to Appellant's Motion for Oral Argument on Appeal and Motion to Dismiss.
6. On May 18, 2010, the Circuit Court of the Second Judicial District of Jones County issued an Order in accordance with Rule 2(a)(2) of the Mississippi Rules of Appellate Procedure instructing the Clerk to serve a Notice of Deficiency to the Appellant. The Order further states that if the Appellant fails to file the Appellant's Brief within fourteen (14) days upon notification of deficiency, the Appeal shall be dismissed without further notice.
7. On July 2, 2010, the Appellee filed its Motion to Dismiss.
8. On July 27, 2010, the Circuit Court of the Second Judicial District of Jones County, Mississippi, entered an Order of Dismissal.
9. On August 6, 2010, the Appellant filed a Motion to Reconsider.
10. On August 12, 2010, the Appellee filed its Response to Appellant's Motion to Reconsider.
11. On August 17, 2010, the Circuit Court of the Second Judicial District of Jones County, Mississippi, entered an Order denying the Appellant's Motion for Reconsideration.
12. On September 17, 2010, the Appellant filed a Notice of Appeal with the Mississippi Supreme Court.

STATEMENT OF THE FACTS

On September 2, 2009, the Mississippi Workers' Compensation Commission issued its Final Order. On October 2, 2009, the Appellant filed a Notice of Appeal of the Decision of the Mississippi Workers' Compensation Commission in the Circuit Court of the Second Judicial District of Jones County, Mississippi. The Appellant did not pay the cost associated with the appeal until November 16, 2009. The Appellant did not file a brief but on or about April 8, 2010, Appellant filed a Motion for Oral Argument on Appeal. On April 16, 2010, the Appellee, Howard Industries, Inc., filed its Response to Appellant's Motion for Oral Argument on Appeal and Motion to Dismiss. In said motion, the Appellee noted that the Appellant failed to perfect his appeal in accordance with Rule 5.04 of the Uniform Rules of Circuit and County Court, and failed to timely file his Brief in accordance with Mississippi Rule of Appellate Procedure 31(b) and Rule 5.06 of the Uniform Rules of Circuit and County Court. (R. pg. 12) (R.E. pg.1). Rule 5.06 of the Uniform Rules of Circuit and County Court states as follows:

Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. Consequences of failure to timely file a brief will be the same as in the Supreme Court.

Rule 31(b) of the Mississippi Rules of Appellate Procedure states in part as follows:

The appellant shall serve and file the Appellant's Brief within forty (40) days after the date on which the record is filed.

The record on appeal was filed on October 20, 2009, and as of the date Appellee's Motion, the Appellant had yet to file his Appellant's Brief, said Brief was approximately 135 days past the deadline set forth in Rule 31(b) of the Mississippi Rules of Appellate Procedure. The consequences of failure to file briefs are set out in Rule 31(d) of the Mississippi Rules of Appellate Procedure as follows, to-wit:

If an appellant fails to file the appellant's brief within the time provided by this Rule or within the time as extended, the appeal

may be dismissed on motion of Appellee or on the Supreme Court's own motion, as provides in Rule 2.

After hearing on the matter, the Circuit Court issued an Order in accordance with Rule 2(a)(2) of the Mississippi Rules of Appellate Procedure instructing the Circuit Clerk to serve a Notice of Deficiency to the Appellant. Said Order also stated that if the Appellant failed to file the Appellant's Brief within fourteen (14) days upon notification of deficiency, the appeal shall be dismissed without further notice. (R. pg. 23) (R.E. pg. 4). A Notice of Deficiency was issued by the Circuit Clerk in accordance with the above referenced Order by certified mail and the return receipt was received by the Circuit Clerk and filed on May 27, 2010. (R. pgs. 24 & 25) (R.E. pgs. 5 & 6).

The Appellant filed a document with the Circuit Clerk on June 3, 2010. The document submitted by the Appellant conformed with none of the guidelines set forth in Rule 28(a)(1-7) entitled *Brief of Appellant, of the Mississippi Rules of Appellate Procedure*. The document contained no certificate of interested persons, tables, statement of issues, statement of the case, summary of the argument, argument or conclusion. Additionally, no exhibits referenced in the documents nor record excerpts were included with the filing of said document. (R. pg. 26).

On June 16, 2010, Attorney for Appellant hand delivered a letter with two exhibits to the Circuit Clerk for the Second Judicial District of Jones County. In said letter, it was admitted that the Appellant failed to include said exhibits with his Brief and also stated that a copy of the original Brief was being served on the Appellee's attorneys because it was apparently not received due to Appellant's omission when filed. (R. pg. 44) (R.E. pg 7). The above referenced exhibits and letter were filed with the Circuit Clerk on June 16, 2010, which is well beyond the fourteen (14) days in which Appellant was to have filed the Appellant's Brief in accordance with the Court's Order issued on May 18, 2010, and the Notice of Deficiency received by the Appellant on May 27, 2010.

On July 2, 2010, the Appellee, filed a Motion to Dismiss citing Appellant's failure to submit a brief in accordance with Rule 28(a)(1-7) of the Mississippi Rules of Appellate

Procedure and Appellant's failure to include exhibits with the document filed on June 3, 2010, until after the fourteen (14) day deadline specified in the Circuit Court's Order dated May 18, 2010. (R. pg. 90) (R.E. pg. 8). Notice of Hearing of the above referenced Motion to Dismiss was properly served upon the Appellant setting the motion hearing for July 26, 2010. (R. pg. 96). Appellee was present to present its argument in favor of its Motion to Dismiss on July 26, 2010, however, Appellant was not in attendance nor did Appellant file any written response to Appellee's Motion to Dismiss. Therefore, on July 27, 2010, the Circuit Court entered an Order of Dismissal, dismissing the Appellant's appeal with prejudice to the re-filing of the same. (R. pg. 98) (R.E. pg. 14).

On August 6, 2010, the Appellant filed a Motion to Reconsider with the Court and noticed said motion for hearing on August 16, 2010. (R. pg. 99). During said motion hearing, the Appellant was asked by the Court why he failed to appear at the motion hearing regarding Appellee's Motion to Dismiss. (T. Pg. 15 Lines 4-6) (R.E. pg. 52). The Appellant stated that he did receive notice of the hearing but that he was operating without a secretary at the current time and just didn't get it on his calendar to get it handled without showing up. (T. Pg. 15 Lines 10-15) (R.E. pg. 52). On August 17, 2010, the Circuit Court entered an Order denying Appellant's Motion for Reconsideration and Dismissing Appeal. (R. pg. 124) (R.E. pg. 35). The Appellant then filed a Notice of Appeal with the Mississippi Supreme Court on September 17, 2010. (R. pg. 125).

SUMMARY OF THE ARGUMENT

The Appellant has repeatedly failed to comply with the Uniform Rules of Circuit and County Court Practice and the Mississippi Rules of Appellate Procedure throughout this action. Appellant failed to file his Appellant's Brief in accordance with Rule 5.06 of the Uniform Rules of Circuit and County Court and Rule 31(d) of the Mississippi Rules of Appellate Procedure. The Circuit Court correctly issued an Order in accordance with Rule 31(d) and Rule 2 of the Mississippi Rules of Appellate Procedure. The Circuit Clerk then issued a Notice of Deficiency to Appellant's counsel. (R. pg. 24) (R.E. pg. 5). Said notice was received by Appellant's counsel and an executed return receipt was filed of record in the Circuit Clerk's office on May 27, 2010. (R. pg. 25) (R.E. pg. 6). Appellant then failed to file a Brief in accordance with Rule 28(a)(1-7) of the Mississippi Rules of Appellate Procedure within fourteen days upon notification of deficiency by the Court. The document filed by the Appellant contained no Certificate of Interested Persons, Tables, Statement of Issues, State of the Case, Statement of Facts, Summary of the Argument, Argument or Conclusion. Additionally, no exhibits referenced in the documents nor record excerpts were included with the filing of said document.

Appellee then filed a Motion to Dismiss and properly noticed said motion, however, Appellant did not attend the motion hearing nor did Appellant file any written response to Appellee's Motion to Dismiss.

The Circuit Court then properly dismissed the action and its decision is supported by *Russell v. Mitchell – Putnam Signs*, 754 So 2d. 1256, 1258 (Miss. Ct. App. 1999). The Appellant then filed a Motion to Reconsider with the Court and on hearing of said Motion the Appellant responded to the Court's question as to why he failed to appear at the motion hearing regarding the Appellee's Motion to Dismiss as follows:

Mr. Price: Your Honor, I was not consulted about that date and was not available on that date and just - -

The Court: You didn't get notice?

Mr. Price: I got notice, Your Honor. And I'm operating without a secretary at this current time. And I just didn't get it on my calendar to get it handled without showing up.

(T. Pg. 15 Lines 4-15) (R.E. pg. 52).

Although Appellant was properly served with a Notice of Deficiency by the Circuit Clerk, the Appellant argues in his brief submitted to this Honorable Court that he was not served with said notice. Even if that were true, which it is not, the issue is raised for the first time on appeal and the issue is barred due to Appellant's failure to raise said issue before the trial court. *Traux v. City of Gulfport*, 931 So. 2d 592, 598 (Miss. Ct. App. 2006). Appellant certainly could have raised the issue in his Motion to Reconsider.

The Appellant has repeatedly failed to follow the Uniform Rules of Circuit and County Court Practice and the Mississippi Rules of Appellate Procedure. Appellant failed to timely file his Appellant's Brief, failed to file the Appellant's Brief in accordance with Mississippi Rule of Appellate Procedure 28(a)(1-7) after receiving Notice of Deficiency from the Circuit Clerk and failed to appear and respond to Appellee's Motion to Dismiss. Appellant now states that the Mississippi Rules of Appellate Procedure do not apply to this case, although, the Mississippi Supreme Court and this Honorable Court have found that they do apply. *Fields v. City of Clarksdale*, 27 So. 3d, 464, 467-468 (Miss. Ct. App. 2010), *Wheeler v. Miss. Dept of Env'tl. Quality Permit Bd.*, 856 So. 2d 700, 704 (Miss. Ct. App. 2003), *Bowling v. Madison County Bd. of Supervisors*, 724 So. 2d 431, 442 (Miss. Ct. App. 1998). Appellant's counsel states that he was "completely unaware of Rule 5.06 of the Uniform Circuit and County Court Rules," and that adhering to Rule 28(a)(1-7) of the Mississippi Rules of Appellate Procedure is simply "busy work." Appellee would dare to think that these rules are in place for a reason. Appellee respectfully requests the Court of Appeals uphold the Circuit Court's decision to dismiss this action.

STANDARD OF REVIEW

The power to dismiss for failure to prosecute is inherent in any court of law or equity, being a means necessary to the orderly expedition of justice and the court's control of its own docket. *Stuart v. Pub. Employees' Ret. Sys. of Miss.*, 799 So. 2d 886, 888 (¶ 8) (Miss. Ct. App. 2001) (quoting *Walker v. Parnell*, 566 So. 2d 1213, 1216 (Miss. 1990)). The decision of whether to grant such a motion to dismiss is within the trial court's discretion, and we will not reverse the decision absent an abuse of that discretion. *Id.*, (citing *Roebuck v. City of Aberdeen*, 671 So. 2d 49, 50 (Miss. 1996), *Thomas v. Five County Child Development Program, Inc.*, 958 So. 2d 247 (Miss. Ct. App. 2007)).

ARGUMENT

Did the Circuit Court abuse its discretion in dismissing the Appellant's appeal of the Mississippi Workers' Compensation Commission Order.

A) The Circuit Court sits as an Appellate Court in reviewing the final Order of the Commission.

In *Thomas v. Five County Child Development Program, Inc.*, 958 So. 2d 247 (Miss. Ct. App. 2007), the Appellant claimed that the Circuit Court had a duty to rule on the record notwithstanding her failure to file a brief. The Appellant has posed that very same argument in this case. A Circuit Court sits as an Appellate Court in reviewing the final order of the Workers' Compensation Commission. *Zurich Am. Ins. Co. v. Beasley Contr. Co.*, 779 So. 2d 1132, 1134 (8)(Miss. Ct. App. 2000). Uniform Circuit and County Court Rule 5.06 provides that "Briefs filed on appeal on the record must conform to the practice of the Supreme Court, including form, time of filing and service....The consequences of failure to timely file a brief will be the same as in the Supreme Court." URCCC 5.06, *Thomas v. Five County Child Development Program, Inc.*, 958 So. 2d 247, 250 (Miss. Ct. App. 2007). In *Thomas*, this Honorable Court goes on to explain the filing of briefs in the Supreme Court as follows:

The practice of the Supreme Court as it pertains to the filing of briefs is set forth in Mississippi Rule of Appellate Procedure 31, which states:

(a) **Notice of Briefing Schedule.** Immediately upon filing of the record in the office of the clerk of the Supreme Court, the clerk shall notify counsel of the filing of the record. *However, failure of the clerk to give, or of a party to receive, notice of the filing of the record shall not excuse any delay in filing briefs.*

(b) **Time for Filing and Service of Briefs.** *The appellant shall serve and file the appellant's brief within 40 days after the date on which the record is filed.* M.R.A.P. Rule 31(a)(b) (Emphasis added). *Id.*

The record on appeal in this case was filed on October 20, 2009. The Appellant did not file a brief but on April 8, 2010, Appellant filed a Motion for Oral Argument on Appeal. Appellee filed its Response to Appellant's Motion for Oral Argument on Appeal and Motion to Dismiss on April 16, 2010. The Appellant had yet to file his Appellant's Brief, said brief was approximately

one hundred thirty-five days past the deadline set forth in Rule 31(b) of the Mississippi Rules of Appellate Procedure.

In *Thomas*, this Court stated that failure to file a brief in the Circuit Court bears the same consequences as failure to file a brief in the Supreme Court. *Id.* Rule 31(d) of the Mississippi Rules of Appellate Procedure sets forth the consequences of the failure to file a brief in the Supreme Court. Rule 31(d) provides that “If an Appellant fails to file the Appellant’s Brief within the time provided by this rule or within the time as extended, *the appeal may be dismissed on motion of Appellee or on the Supreme Court’s own motion as provided in Rule 2, as referenced in Rule 31(d), provides in pertinent part as follows:*

(a) Dismissal of Appeal

(1) *Mandatory Dismissal.* An appeal shall be dismissed if the notice of appeal was not timely filed pursuant to Rules 4 or 5.

(2) *Discretionary Dismissal.* An appeal may be dismissed upon motion of a party or on motion of the appropriate appellate court (i) when the court determines that there is an obvious failure to prosecute an appeal; or (ii) when a party fails to comply substantially with these rules. *When either court, on its own motion or on motion of a party, determines that dismissal may be warranted under this Rule 2(a)(2), the clerk of the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen (14) days after the notification, the appeal shall be dismissed by the clerk of the Supreme Court. Thomas v. Five County Child Development Program, Inc., 958 So. 2d 247, 250-251 (Miss. Ct. App. 2007) (citing M.R.A.P. 2(a)(1) and (2) (Emphasis added)).*

After both parties were heard, the Circuit Court issued an Order in accordance with Rule 2(a)(2) of the Mississippi Rules of Appellate Procedure and instructed the Circuit Clerk to issue a Notice of Deficiency to the Appellant on May 18, 2010. (R. pg. 23) (R.E. pg. 4). Even if Appellant’s allegation that he was not served a Notice of Deficiency were true, which it is not, the issue is raised for the first time on appeal and is barred due to Appellant’s failure to raise said issue before the trial court. *Traux v. City of Gulfport*, 931 So. 2d 592, 598 (Miss. Ct. App. 2006). Appellant certainly could have raised the issue in his Motion to Reconsider.

B) Appellant received a Notice of Deficiency from the Circuit Clerk of the Second Judicial District of Jones County, Mississippi.

On May 18, 2010, the Circuit Court issued a Deficiency Notice to Appellant's counsel informing said counsel that Appellant had substantially failed to prosecute this appeal by failing to file the Appellant's Brief and if the brief of the Appellant was not received by the Circuit Clerk fourteen (14) days from the date of the letter, the appeal shall be dismissed. (R. pg. 24) (R.E. pg. 5). The Circuit Clerk mailed said Notice of Deficiency to Appellant's counsel and received a return receipt executed by said counsel on May 27, 2010. (R. pg. 25) (R.E. pg. 6). Therefore, Appellant's allegation that the Court failed to issue a Notice of Deficiency prior to dismissing the appeal is false. As stated above, the Circuit Court issued an Order directing the Circuit Clerk to issue a Notice of Deficiency to the Appellant, the Circuit Clerk then issued a Notice of Deficiency to the Appellant and said Notice of Deficiency was received by Appellant's counsel as shown on the return receipt filed on May 27, 2010. Even if Appellant's allegation that he was not served a Notice of Deficiency was true, which it is not, the issue is raised for the first time on appeal and the issue is barred due to Appellant's failure to raise said issue before the trial court. *Traux v. City of Gulfport*, 931 So. 2d 592, 598 (Miss. Ct. App. 2006). Appellant certainly could have raised the issue in his Motion to Reconsider.

C) The documents submitted by the Appellant conformed with none of the guidelines set forth in Mississippi Rule of Appellate Procedure 28(a)(1-7) entitled *Brief of Appellant*.

After receiving the Notice of Deficiency on or about May 27, 2010, the Appellant filed a document with the Circuit Clerk on June 3, 2010. (R. pg. 26). However, the attorney for Appellee was not served with a copy of said document by the Appellant at that time. The document submitted by the Appellant conformed with none of the guidelines set forth in Rule 28(a)(1-7) entitled *Brief of Appellant*, of the Mississippi Rules of Appellant Procedure. The document contained no certificate of interested persons, tables, statement of issues, statement of the case, summary of the argument, argument or conclusion. Additionally, no exhibits referenced in the document nor record excerpts were included with the filing of said document.

On June 16, 2010, attorney for Appellant hand-delivered a letter with two exhibits to the Circuit Clerk for the Second Judicial District of Jones County. (R. pg. 44) (R.E. pg 7). In said letter, it was admitted that the Appellant failed to include said exhibits with the brief and also stated that a copy of the original brief was being served on the Appellee's attorneys because it was apparently not received due to Appellant's omission when filed. The above referenced exhibits and letter were filed with the Clerk on June 16, 2010, which is well beyond the fourteen (14) days in which Appellant was to file its Appellant's Brief in accordance with the Court's Order issued on May 18, 2010, and the Notice of Deficiency received by the Appellant on or about May 27, 2010. Therefore, the Appellant failed to attach his exhibits to the document filed on June 3, 2010, or serve a copy of said document upon Appellee until June 16, 2010 which was clearly outside of the fourteen (14) days from Appellant's receipt of the Notice of Deficiency. Even after attaching the exhibits and serving the document upon Appellee's counsel, it still did not meet the definition of an Appellant's Brief in accordance with Rule 28(a)(1-7) entitled *Brief of Appellant, of the Mississippi Rules of Appellant Procedure*. For those reasons, the Appellant filed a Motion to Dismiss on July 2, 2010 and noticed the Motion for hearing on July 26, 2010. (R. pgs. 90, 96) (R.E. pg. 8). The Appellant was properly served with said Motion to Dismiss and a Notice of Hearing. Appellee was present to present its argument in favor of its Motion to Dismiss on July 26, 2010, however, Appellant was not in attendance nor did Appellant file any written response to Appellee's Motion to Dismiss. The Circuit Court then entered an order dismissing the case on July 27, 2010. (R. pg. 98) (R.E. pg. 14).

On August 6, 2010, the Appellant filed a Motion to Reconsider with the Court and noticed said motion for hearing on August 16, 2010. (R. pgs. 99, 102). During said motion hearing, the Appellant was asked by the Court why he failed to appear at the motion hearing regarding Appellee's Motion to Dismiss, Appellant responded as follows:

Mr. Price: Your Honor, I was not consulted about that date and was not available on that date and just - -

The Court: You didn't get notice?

Mr. Price: I got notice, Your Honor. And I'm operating without a secretary at this current time. And I just didn't get it on my calendar to get it handled without showing up.

(T. Pg. 15 Lines 4-15) (R.E. pg. 52).

In the Appellant's Brief to this Honorable Court the Appellant's attorney states he was completely unaware of Rule 5.06 of the Uniform Circuit and County Court Rules prior to the issue arising late in this case. However, Appellant was made aware of Rule 5.06 of the Uniform Circuit and County Court Rules on April 16, 2010, when Appellee filed its Response to Appellant's Motion for Oral Argument on Appeal and Motion to Dismiss. Yet the Appellant did not even attempt to file a brief until June 3, 2010, after the Clerk had properly issued a Notice of Deficiency. Appellant filed a document on June 3, 2010, with the Circuit Clerk that conformed with none of the requirements of Mississippi Rule of Appellate Procedure 28(a)(1-7), failed to provide exhibits referenced in the document and failed to serve a copy of said document upon counsel opposite. On July 2, 2010, Appellee then filed its Motion to Dismiss noting the above mentioned discrepancies and the fact that Appellant's counsel submitted a letter to the Circuit Clerk after the expiration of the fourteen (14) days given in the Notice of Deficiency enclosing exhibits and stating that he, by his own omission, failed to provide a copy of the document upon counsel opposite when it was filed with the Circuit Clerk. Appellant didn't even bother to show up for the hearing on Appellee's Motion to Dismiss regarding the above mentioned discrepancies nor did he file a written response or engage in any correspondence with Appellee's counsel or the Court.

Appellant states in his brief before this Honorable Court that adhering to the rules set forth in Mississippi Rule of Appellate Procedure 28(a)(1-7) simply amounts to "busy work". Apparently, Appellant's counsel believes that anything he deems to be "busy work", should not have to be done. Whether that be filing a brief in accordance with the Mississippi Rules of Appellate Procedure or appearing before the Circuit Court for a motion hearing.

Appellant has not simply been in minor non-compliance with the Mississippi Rules of Appellate Procedure as he alleges in his brief before this Honorable Court. Appellant has been in what seems to be perpetual non-compliance with the Mississippi Rules of Appellate Procedure and even now states that they do not apply in this case. However, this Honorable Court and the Supreme Court have recognized that the Mississippi Rules of Appellate Procedure apply to an appeal to Circuit Court. *Fields v. City of Clarksdale*, 27 So. 3d, 464, 467-468 (Miss. Ct. App. 2010). *Wheeler v. Miss. Dept of Env'tl. Quality Permit Bd.*, 856 So. 2d 700, 704 (Miss. Ct. App. 2003), *Bowling v. Madison County Bd. of Supervisors*, 724 So. 2d 431, 442 (Miss. Ct. App. 1998). Appellant alleges in his brief before this Honorable Court that his case is identical to *Fields*, however, that statement is simply untrue. In *Fields*, this Honorable Court held that the former employee was entitled to Notice of Deficiencies in the administrative appeal and fourteen days to correct them. *Id.* at 468. *Fields* did not receive a Notice of Deficiency from the circuit clerk prior to his case being dismissed. *Id.* In the present case, Appellant clearly received a Notice of Deficiency from the Circuit Clerk. Again, Appellant is not in minor non-compliance with the Mississippi Rules of Appellate Procedure but has wholly disregarded said rules repeatedly throughout the course of this action.

The Circuit Court clearly did not abuse its discretion in dismissing this case for the reasons set forth hereinabove. Appellant failed to adhere to the Uniform Rules of Circuit and County Court and the Mississippi Rules of Appellate Procedure. The Circuit Court issued an Order in accordance with Rule 2(a)(2) of the Mississippi Rules of Appellate Procedure and the Clerk issued a Notice of Deficiency giving the Appellant fourteen (14) days in which to file the Appellant's Brief. The Circuit Court then properly dismissed the case upon Appellant's failure to appear at the hearing on Appellee's Motion to Dismiss. The Circuit Court also properly denied Appellant's Motion to Reconsider upon Appellant's counsel's admission to the Court that the Notice of Hearing regarding Appellee's Motion to Dismiss was received and he simply failed to appear at the hearing. Clearly the Circuit Court did not abuse its discretion and overturning the

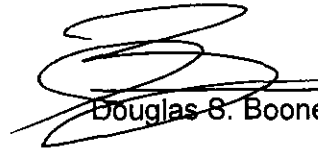
decision of the Circuit Court in this matter would establish a precedent that the rules simply do not matter.

CONCLUSION

Appellant failed to timely perfect his appeal in accordance with Rule 5.04 of the Uniform Rules of Circuit and County Court. Also the Appellant failed to file the Appellant's Brief in accordance with Rule 5.06 of the Uniform Rules of Circuit and County Court and Rule 31(b) of the Mississippi Rules of Appellate Procedure. Appellant then failed to file the Appellant's Brief in accordance with Rule 28(a)(1-7) of the Mississippi Rules of Appellate Procedure after the Court issued an Order in accordance with Rule 2(a)(2) of the Mississippi rules of Appellate Procedure giving Appellant fourteen (14) days upon receipt of a notice of deficiency in which to file the Appellant's Brief. Further, Appellant failed to file a written response and attend the hearing of Appellee's Motion to Dismiss on July 26, 2010, after being served with said Motion and a Notice of Hearing. The Appellant has displayed a clear record of delay and contumacious conduct throughout this appeal. Appellant repeatedly failed to or refused to comply with the Mississippi Rules of Appellate Procedure despite the fact that the Mississippi Supreme Court and this Honorable Court have ruled that said rules apply to this appeal as stated hereinabove.

The Circuit Court properly dismissed the case upon Appellant's failure to appear at the hearing on Appellee's Motion to Dismiss. The Circuit Court also properly denied Appellant's Motion to Reconsider upon Appellant's Counsel's admission to the Court that the Notice of Hearing regarding Appellee's Motion to Dismiss was received and he simply failed to appear at the hearing. The Circuit Court did not abuse its discretion dismissing this case and overturning the decision of the Circuit Court in this matter would establish a precedent that the rules simply do not matter. As a consequence the Circuit Court's dismissal of Appellant's appeal should be affirmed.

Respectfully submitted this the 14th day of April, 2011.



Douglas S. Boone

Douglas S. Boone, MSB # [REDACTED]
Parker F. Leggett, MSB # [REDACTED]
Gilchrist Sumrall Yoder & Boone, PLLC
P. O. Box 106
Laurel, MS 39441-0106
601-649-3351

IN THE SUPREME COURT OF MISSISSIPPI
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARDIE BLACKWELL

APPELLANT

VS.

CASE NO. 2010-TS-01516

HOWARD INDUSTRIES, INC.

APPELLEE

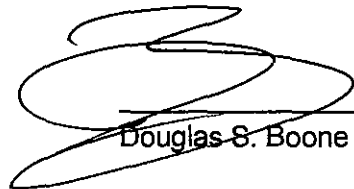
CERTIFICATE OF SERVICE

I, Douglas S. Boone, do hereby certify that I have this day served a true and correct copy of the above and foregoing **BRIEF OF APPELLEE** by mailing a true and correct copy of the same, postage prepaid to the following, to-wit:

Honorable Ray Price
P.O. Box 1546
Hattiesburg, MS 39403

Honorable Ray Price
301 Humble Avenue, Suite 112
Hattiesburg, MS 39401

This the 14th day of April, 2011.



Douglas S. Boone

IN THE SUPREME COURT OF MISSISSIPPI
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARDIE BLACKWELL

APPELLANT

VS.

CASE NO. 2010-TS-01516

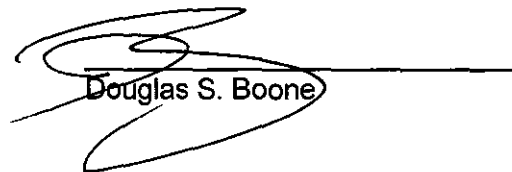
HOWARD INDUSTRIES, INC.

APPELLEE

I, Douglas S. Boone, attorney of record for Appellant in Civil Action No. 2009-WC-00840-COAdo hereby certify that pursuant to Mississippi Rules of Appellant Procedures 25 and 31, I have this day delivered for filing the original and three copies of the foregoing **BRIEF OF THE APPELLEE** by placing same in United States Mail, postage prepaid, to:

Ms. Kathy Gillis
Clerk of the Mississippi Supreme Court and the Court of Appeals
P.O. Box 249
Jackson, Mississippi 39205-0249

This the 14th day of April, 2011.


Douglas S. Boone

IN THE SUPREME COURT OF MISSISSIPPI
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARDIE BLACKWELL

APPELLANT

VS.

CASE NO. 2010-TS-01516

HOWARD INDUSTRIES, INC.

APPELLEE

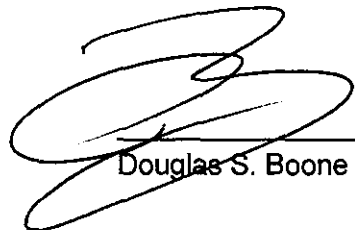
CERTIFICATE OF SERVICE

I, Douglas S. Boone, do hereby certify that I have this day served a true and correct copy of the above and foregoing **BRIEF OF APPELLEE** by mailing a true and correct copy of the same, postage prepaid to the following, to-wit:

Honorable Billy Joe Landrum
Circuit Court Judge
P. O. Box 685
Laurel, MS 39441-0685

Honorable Ray Price
1201 Melwood Drive
Forest, MS 39074

This the 15th day of April, 2011.



Douglas S. Boone