

IN THE MISSISSIPPI COURT OF APPEALS

2010-WC-01516-COA

CARDIE BLACKWELL

APPELLANT

VERSUS

HOWARD INDUSTRIES

APPELLEE

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record for the appellant hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Cardie Blackwell

Ray T. Price, Esquire

Howard Industries and its shareholders

Douglas S. Boone, Esquire and Gilchrist Sumrall Yoder & Boone

Respectfully Submitted, this the 22nd day of February, A.D. 2011.

CARDIE BLACKWELL

BY: 

RAY T. PRICE, ESQUIRE

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STATEMENT OF THE ISSUES

WHETHER THE CIRCUIT COURT ERRED IN DISMISSING MR. BLACKWELL'S APPEAL AS A SANCTION FOR AN ALLEGED MINOR NON-COMPLIANCE WITH THE FORM OF A BRIEF?

- A. Whether the Court erred in requiring Mr. Blackwell to file a brief in the first instance?
- B. Whether a minor non-compliance with Rule 28 of the Mississippi Rules of Appellate Procedure warranted dismissal without notice from the Clerk and an opportunity to correct the alleged defect?

STATEMENT OF THE CASE

Cardie Blackwell injured his elbow while at work at Howard Industries on May 22, 2002. Howard placed Cardie on temporary total disability and paid for surgery recommended for left ulnar nerve transposition. When a disagreement later arose over proper treatment, Cardie filed a Petition to Controvert with the Mississippi Workers' Compensation Commission on January 31, 2003. Howard responded with a motion to terminate benefits, which the first administrative judge denied after a lengthy delay while awaiting the results of an independent medical examination she ordered..

At the hearing before the second administrative law judge, held on December 6, 2007, the parties stipulated that the claimant sustained a work-related injury to his left elbow on May 23, 2002, that Howard had paid temporary total disability benefits through that date at \$268.59 per week and that Mr. Blackwell had reached maximum medical improvement on August 5, 2005. The principle dispute was whether Mr. Blackwell was permanently and totally disabled as a result of complex regional pain syndrome, also known as reflex sympathetic dystrophy. The judge issued an opinion on February 27, 2009 finding that Mr. Blackwell's injury was limited to his left arm and that future medical treatment would be severely restricted. Mr. Blackwell appealed to the full Commission which heard arguments August 31, 2009. After it upheld her decision he appealed to the Circuit Court of Jones County, First Judicial District. (Cp. 8, R.E.

After several months passed with no action by the Circuit Court, Mr. Blackwell filed a motion for oral argument before the Court. Howard responded with a motion to dismiss for failure to prosecute and after a hearing the Court had the Clerk issue a notice of deficiency allowing Mr. Blackwell fourteen days to file a brief. Mr. Blackwell filed his brief on June 3,

2010 (Cp. 26). Howard responded with another motion to dismiss on July 2, 2010, this time complaining that Mr. Blackwell's brief did not comply with Rule 28 of the Mississippi Rules of Appellate procedure. The Court dismissed the appeal without having the clerk issue a notice of deficiency (Cp. 98), then denied Mr. Blackwell's motion to reconsider. This appeal ensued. As this case was dismissed because of the above procedural process, these are all of the facts necessary to address this appeal and no separate recitation of facts will follow since the substance of the case is not yet before the Court.

SUMMARY OF THE ARGUMENT

WHETHER THE CIRCUIT COURT ERRED IN DISMISSING MR. BLACKWELL'S APPEAL AS A SANCTION FOR AN ALLEGED MINOR NON-COMPLIANCE WITH THE FORM OF A BRIEF?

A. Whether the Court erred in requiring Mr. Blackwell to file a brief in the first instance?

The statute setting out the appellate procedure in Workers' Compensation cases clearly sets out the procedure for an appeal. The circuit court is directed to take up the matter as soon as possible, on the record only and issue its decision without any further action by the parties. The circuit court in this case erred in ordering a brief to be filed at all, then further compounded that error by dismissing the appeal for deficiencies in the format of the brief filed.

B. Whether a minor non-compliance with Rule 28 of the Mississippi Rules of Appellate Procedure warranted dismissal without notice from the Clerk and an opportunity to Correct the alleged defect?

Even if the circuit court were correct in requiring a brief, it erred in dismissing the appeal because of the non-compliance with Rule 28 of the Mississippi Rules of Appellate Procedure. The proper action for the court to take would have been to have the clerk give Blackwell a notice of deficiency and allow him fourteen days to correct the deficiency. Dismissal without such opportunity was clearly in error and this matter should be remanded to the circuit court with directions to hear the appeal on the merits.

ARGUMENT

WHETHER THE CIRCUIT COURT ERRED IN DISMISSING MR. BLACKWELL'S APPEAL AS A SANCTION FOR AN ALLEGED MINOR NON-COMPLIANCE WITH THE FORM OF A BRIEF?

A. Whether the Court erred in requiring Mr. Blackwell to file a brief in the first instance?

The Workers' Compensation system is entirely a creature of statute and as such its statutes should be strictly construed. City of Durant v. Laws Construction Company, Inc., 721 So.2d 598, para. 17 (Miss. 1998). See also Etheridge v. Harold Case & Company, Inc., 960 So.2d 474 (Miss.App. 2006), The duties of the parties, the Commission and the Courts are clearly set forth in the statutes and specifically do not include the obligation of any party to file a brief on appeal to the Circuit Court. In fact, the entire procedure for the appeal is laid out by statute and the parties have no further duties once the notice of appeal is filed with the Workers' Compensation Commission. Instead, it is entirely incumbent upon the circuit court to take up and decide the appeal.

Upon the filing of the appeal, "the commission shall under its certificate transmit to the circuit court of the county where the injury occurred all documents and papers on file in the matter, together with a transcript of the evidence, the findings, and award, which shall thereupon become the record of the cause. Appeals shall be considered only upon the record as made before the commission." Miss. Code Ann. Sec. 71-3-51 (1972, as amended) (emphasis added). The statute goes on to direct that "[t]he Circuit Court shall always be deemed open for hearing of such appeals, the circuit judge may hear the same at term time or in vacation at any place in his

district, and the same shall have precedence over all civil cases except election contests.” (Id.) (emphasis added).

The language of the statute could not be more clear. It is incumbent on the circuit court to itself review the entire record once received and to give the matter precedence. Nowhere in the court’s order nor in Howard’s motions to dismiss are cited any law to the contrary requiring that a brief be filed or any other action taken by the parties to a workers’ compensation appeal. Rule 5.06 of the Uniform Circuit and County Court rules, cited by Howard and obviously relied upon by the circuit court, does not compel the filing of a brief in any particular case. It merely states that where a brief is to be filed, it should comply with the Rules of Appellate Procedure. The circuit court clearly erred in requiring a brief to be filed at all, much less in dismissing the case completely for failure to follow mere rules of formatting. We ask the Court to so decide and remand the case to the circuit court for a speedy decision on the merits.

- B. Whether a minor non-compliance with Rule 28 of the Mississippi Rules of Appellate Procedure warranted dismissal without notice from the Clerk and an opportunity to correct the alleged defect?

To be candid, Mr. Blackwell’s attorney was completely unaware of Rule 5.06 of the Uniform Circuit and County Court rules prior to the issue arising late in this case. While ignorance is certainly no excuse, in nearly twenty years of practice, briefs in the form of that submitted in this case have been accepted as sufficient by the trial courts and never objected to as improper. This case presented a simple, single issue of law stated on page one of the seventeen page brief submitted on Mr. Blackwell’s behalf. The court was well aware of who the parties and their attorneys were and did not need a statement of interested parties to advise it of that. A table of contents, statement of the issues, statement of the case, summary of the argument and a

table of cases all are, with the utmost of respect for the rules, simply busy work on a one-issue, fact-intensive case such as this.

Even were the Circuit Court correct to determine that the brief must conform to M.R.A.P. Rule 28, this Court and the Supreme Court of Mississippi have on numerous occasions held that the proper remedy for failure to properly prosecute an appeal is the procedure set forth in Rule 2(a)(2) by having the clerk of court issue a notice of the deficiency to be cured. In Van Meter v. Alford, 774 So.2d 430 (Miss. 2000) the Supreme Court held that the appellant's due process rights and the plain language of Rule 2(a)(2) require that the appellant be given notice and fourteen days opportunity to cure any deficiencies in his appeal prior to dismissal being considered as a remedy. This rule was noted and relied on by this Court in two later cases, Brown v. Robinson Property Group, 24 So.3d 320 (Miss. App. 2009) and Fields v. City of Clarksdale, 27 So.3d 464 (Miss.App. 2010). In the first, this Court upheld the lower court's ruling allowing the appellant to cure defects after receiving notice. In the second, this Court reversed the lower court's dismissal of the appeal without first having the clerk give the required notice and fourteen days to cure the deficiency. Mr. Blackwell's case is identical to Fields, and this Court should reverse and remand to the circuit court with directions to either accept the brief already filed or allow Mr. Blackwell's counsel an opportunity to add the omitted formalities.

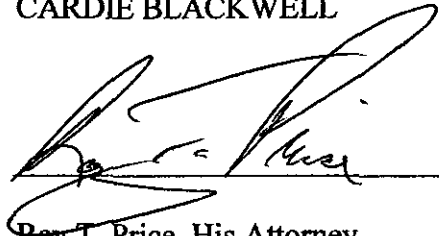
CONCLUSION

The circuit court's dismissal of Mr. Blackwell's appeal in this case was a draconian remedy for a minor infraction concerning the form of a brief. As we have demonstrated, the circuit court erred in even requiring Mr. Blackwell to file a brief, as the circuit court has the duty to promptly review the record from the Workers' Compensation Commission as soon as it is filed. Alternatively, the circuit court should have followed the procedure mandated by the Rules of Appellate procedure and had the clerk issue a notice of deficiency to Mr. Blackwell prior to summarily dismissing the appeal. Either way, this case should be reversed and remanded to the circuit court to consider the merits of the appeal.

Respectfully Submitted, this the 22nd day of February, A.D. 2011.

CARDIE BLACKWELL

BY:


Ray T. Price, His Attorney

CERTIFICATE OF SERVICE

I, Ray T. Price, attorney for Cardie Blackwell, certify that I have this day caused to be served, via U.S. Mail, a true and correct copy of the above and foregoing Brief of Appellant to Douglas S. Boone, Esquire, P.O. Box 106, Laurel, MS 39441-0106 and upon the Honorable Billy Joe Landrum, P.O. Box 685, Laurel, MS 39441.

