

**IN THE COURT OF APPEALS 08/20/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00396 COA**

**STERLING E. WILLIAMS, SR.**

**APPELLANT**

**v.**

**TODD COLEMAN, ADJUSTOR, AND THE CITY OF JACKSON, MISSISSIPPI**

**APPELLEES**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. PAT WISE

COURT FROM WHICH APPEALED: HINDS COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEES:

TERRY WALLACE

DEPUTY CITY ATTORNEY

NATURE OF THE CASE: PROPERTY DAMAGE

TRIAL COURT DISPOSITION: CASE DISMISSED FOR LACK OF JURISDICTION DUE TO  
LACK OF SERVICE OF PROCESS

BEFORE BRIDGES, P.J., KING, AND McMILLIN, JJ.

PER CURIAM:

Sterling E. Williams, Sr. sued the City of Jackson and one of its employees, Todd Coleman, in the Chancery Court of Hinds County, First Judicial District. The action was brought *pro se*, seeking damages alleged to have occurred to Williams' property when the City widened a drainage ditch and caused a tree to fall on a fence on the property. The cause of action asserted against Coleman involved certain alleged representations Williams claims that Coleman made during his investigation regarding what the City would do to rectify the situation.

The chancellor dismissed the case on motion of the defendants for lack of jurisdiction over their persons. They claimed that they were not properly served in accordance with the requirements of the applicable rules of procedure. The record reflects that the only summons issued in this case was a joint summons issued to both defendants and served upon Terry Wallace, who was at the time a deputy city attorney for the City of Jackson.

Mississippi Rule of Civil Procedure 4(d)(7) sets forth the mandatory procedure for serving a municipal corporation. It requires that a copy of the summons and complaint be delivered "to the mayor or municipal clerk of said municipal corporation." M.R.C.P. 4(d)(7). Wallace occupied neither office and was not, therefore, a proper agent for service of process.

Coleman, in his individual capacity, could have been served "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 . . . ." M.R.C.P. 4(d)(1)(A). There is no claim that Coleman was served personally. Williams argues on appeal that, because Wallace had previously represented Coleman in a related proceeding in Hinds County Justice Court, he was Coleman's "agent . . . by law" for purposes of service of process. M.R.C.P. 4(d)(1)(A). That is an incorrect statement of the law of agency.

Alternatively, Williams argues that service was sufficient as to both defendants under Mississippi Rule of Civil Procedure 5, which provides that "[w]henver under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney unless service upon the party himself is ordered by the court." M.R.C.P. 5. This argument is obviously flawed. Rule 5, on its face, deals with "every pleading subsequent to the original complaint." M.R.C.P. 5(a). "This rule presupposes that the court has already gained jurisdiction over the parties." M.R.C.P. 5 cmt. Wallace's involvement in the previous justice court proceeding did not make him Coleman's attorney of record in this proceeding. Neither is there any evidence that Wallace had appeared in this proceeding for the City of Jackson at the time the summons was served on him.

The chancellor was correct in dismissing this cause for lack of jurisdiction over the person of the defendants due to the plaintiff's failure to perfect service in accordance with our rules of procedure.

Williams' additional error alleged on appeal concerns the chancellor's refusal to permit him to dismiss Coleman as a defendant and amend his complaint against the City. Having previously dismissed the case for lack of jurisdiction, the chancellor was without authority to consider subsequent motions of this nature. She correctly so determined.

Williams also complains for the first time on appeal that he did not receive adequate notice under Mississippi Rule of Civil Procedure 6(d) of the hearing on the defendants' motion to dismiss. At the hearing, Williams affirmatively represented to the court that he was prepared for the hearing. Such matters, not presented for ruling at the trial level, may not constitute grounds for reversal on appeal. *Century 21 Deep S. Properties v. Corson*, 612 So. 2d 359, 371 (Miss. 1992).

Because this proceeding was properly dismissed for lack of jurisdiction at the trial level, it follows that this Court is without jurisdiction to hear the matter on appeal.

**THE APPEAL IS DISMISSED FOR LACK OF JURISDICTION. COSTS ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**