IN THE COURT OF APPEALS 07/02/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00395 COA

EARL BLOODWORTH AND WIFE,

OPAL R. BLOODWORTH

APPELLANTS

v.

TERRY MCCORD AND WIFE, RHONDA MCCORD, SUNBURST BANK, FRANK E. GOODMAN, CHARLES MCCO

RD, BANK OF MISSISSIPPI, SAM WAITS, ROLAND THOMAS, ALBERT WHITE, JR., ANTHONY R. ARNOLD, WILLIAM EARL DOUGLAS, TALLAHATCHIE COUNTY BANK, JOHN WHITTEN, JR., G.D. COX, SUE LITTLE COX, WINFRED O. WARD, RUBY C. WARD, G.L. ROSS AND SADIE ROSS

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JON M. BARNWELL

COURT FROM WHICH APPEALED: TALLAHATCHIE COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

WILLIAM L. MAXEY

ATTORNEY FOR APPELLEES:

JOHN W. WHITTEN, III

NATURE OF THE CASE: PROCEDURAL: RULES 59 AND 60.

TRIAL COURT DISPOSITION: PRESCRIPTIVE EASEMENT FOUND TO EXIST

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

DIAZ, J., FOR THE COURT:

On October 20, 1994, the Tallahatchie County Chancery Court entered a judgment determining that the Appellants (the Bloodworths) had acquired a prescriptive easement on the Appellees' (the McCords) property. Since the easement cuts across the McCord's front yard, the chancellor allowed the easement to be re-routed along the edge of the McCords' yard. The chancellor ordered that if the parties do decide to re-route the easement, a plan must be submitted to the court within ten days of the entry of judgment. By March of the following year, the parties had not yet settled the dispute. On March 6, 1995, the chancellor held a hearing determining the placement of the easement and entered a subsequent judgment modifying the judgment entered on October 20, 1994.

Aggrieved, the Bloodworths appeal asserting the following issues: 1) whether the chancellor abused his discretion when he subsequently modified the order entered on October 20, 1994; and 2) whether the Bloodworths were denied due process when the court modified the October 20, 1994 order without notice to the Bloodworths. Finding no reversible error, we affirm the decision of the lower court.

FACTS

Although the record is scant, we are able to draw from it the following facts. On October 20, 1994, the chancery court entered an order resolving a dispute between the parties regarding an easement. In that order, the chancellor did not find that a public road existed; however, he did find that the Bloodworths had acquired a prescriptive easement. Because the prescriptive easement was found to bisect the front yard of the McCords, the court allowed a reasonable re-routing of the easement so that the McCords could maximize the use of their yard. Any changes to the easement were to be at the expense of the Bloodworths. The order stated that if the McCords do decide to re-route the road, a plan should be submitted to the court within ten days of the entry of the order. Due to inclement weather and other obligations, the engineer whom the McCords had contacted did not timely prepare the survey.

On November 30, 1994, the Bloodworths filed a complaint to enforce the order of October 20, 1994. The McCords responded on December 16, 1994.

By March 6, 1995, the parties still had not agreed where to place the easement; therefore, the chancellor held another hearing to determine the placement of the easement. At this hearing, the chancellor formed a plan to utilize the existing track through the south side of the McCords' property, and then turn the route of the easement in order to avoid cutting though the center of the McCords' yard. The chancellor ordered the Bloodworths to pay for any damage to a sewage septic tank and line which would be located at the intersection of the original track and the re-routed track as placed by the court. In the order filed March 13, 1995, the chancellor implied that any previous orders filed regarding this matter were only temporary orders. The chancellor stated that the March

13, 1995 order superseded any temporary orders.

The McCords argue that the order issued on October 20, 1994 differs from the bench order after the original hearing. They argue that in the interest of equity, this Court should enforce either the original bench order, or the March 13, 1995 order, but not the October 20, 1994 order. They contend that the Bloodworths should not benefit from one order (the October 20, 1994 order), which did not comply with either Rule 59 (e) or Rule 60 (b), but then allege error in another order (the March 13, 1995 order), issued under similar circumstances.

The Bloodworths argue that if the McCords were dissatisfied with the October order issued by the court, they had thirty days to perfect an appeal to this Court, which they failed to do. They assert that the order issued by the court on October 20, 1994 was a final order, and that according to Rule 60 (b) and Rule 59(e) of the Mississippi Rules of Civil Procedure, the chancellor did not have the authority to amend or modify the order.

DISCUSSION

Upon review of the record, we find that the October 20, 1994 order was not a final judgment because the language was patently contingent upon certain events occurring, or not occurring. Ambiguous portions of the order are set out below:

> 6. That Terry McCord, and wife, Rhonda McCord may submit a reasonable plan of re-routing of said road in order to have the greatest benefit of area that is their front yard. Said plan shall conform to the guidelines as set out in the finding of facts by this Court and shall be submitted to the Court within ten (10) days from the date of entry of this order. in[sic] the event a plan is not submitted within the time frame, the prescriptive easement shall cover the road that is in existence at this time. In the event a plan is submitted, said plan for re-routing must be approved by the Court. In the event a re-routing plan is submitted and approved or modified by the Court, the prescriptive easement shall be established and contained as in the plan approved by the Court.
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> 7. That until a plan is submitted and either approved or modified by the Court, or in the alternative, a plan is not submitted within the time allotted by the Court, the prior Order concerning use of said road by the Bloodworth's shall remain in effect.

The supreme court has held that a final judgment of the circuit court is a judgment adjudicating the merits of the controversy. *Roach v. Black Creek Drainage Dist.* 41 So. 2d 5, 5 (Miss. 1949); *see* Miss. Code Ann. § 11-51-3 (Supp. 1995). Drawing from the language of the order at issue, we do not find that it adjudicates the merits of the controversy. Much is left contingent upon the actions of the parties. The McCords *may* submit a re-routing plan that may or may not be approved by the court. The outcome is left unresolved. Of course, no appeal is allowable from a lower court judgment unless the judgment is in all respects a final judgment. *State ex rel. Rice v. Large*, 171 Miss. 330, 332 (1934). According to the October order, the plan, if submitted was still subject to approval from the chancellor. Therefore, it would only seem proper that in the event a plan was not submitted, the chancellor would then enter a final judgment determining the rights and duties of the parties, which

he did so accordingly in March 1995.

DUE PROCESS

The Bloodworths also argue that their due process rights were violated because they did not have notice of the March hearing in which the chancellor ordered the placement of the prescriptive easement. Looking at the final order, we find it stated that the court met with attorneys for both the Appellants and the Appellees. Before one may be judicially deprived of an important right, one must be given reasonable advanced notice of the hearing, and one must be afforded a meaningful opportunity to assert and defend that right. *American Fidelity Fire Ins. Co. v. Athens Stove Works, Inc.* 481 So. 2d 292, 295 (Miss. 1985). Due process only requires that reasonable notice be given. *In re Litdell*, 232 So. 2d 733, 735 (Miss. 1970). Because the Bloodworths' attorney was at the March 6, 1995 hearing, we conclude that some sort of reasonable notice of the hearing must have been given, and that as their attorney, he was representing their interests. The Bloodworths were adequately represented by counsel at the hearing, and therefore, their due process rights were not violated.

CONCLUSION

Since we find that the October 20, 1994 order was not a final judgment, we hold that the chancellor had the authority to enter a final judgment to adjudicate and resolve all the issues of the claim. Therefore, the order filed on March 13, 1995 was the final judgment in the lower court, and is accordingly affirmed.

THE JUDGMENT OF THE TALLAHATCHIE COUNTY CHANCERY COURT DATED MARCH 13, 1995 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

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