IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00552 COA

IRENE FLEMING

APPELLANT

v.

CITY OF YAZOO CITY, PUBLIC SERVICE COMMISSION

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. ROBERT LEWIS GIBBS

COURT FROM WHICH APPEALED: YAZOO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JOHN S. KNOWLES

ATTORNEY FOR APPELLEE:

JOSEPH L. MCCOY

NATURE OF THE CASE: CIVIL- TORT - JURY SELECTION - *BATSON*

TRIAL COURT DISPOSITION: JUDGMENT FOR PLAINTIFF/APPELLANT

MANDATE ISSUED: 7/22/97

BEFORE BRIDGES, P.J., BARBER, AND MCMILLIN, JJ.

BARBER, J., FOR THE COURT:

Irene Fleming brought suit against Yazoo City, a Mississippi municipality, alleging that the city was negligent in failing to install or maintain a water meter box causing a dangerous condition which resulted in Fleming falling and injuring herself. Fleming prevailed in the Circuit Court of Yazoo County and was awarded damages for her injuries. Fleming now appeals to this Court asserting that the trial court's denial of two of her peremptory challenges to jurors constitutes reversible error. Yazoo City argues on cross appeal that the trial court was in error in awarding Fleming pre-judgment interest against a political subdivision of the State of Mississippi.

FACTS

During voir dire, Fleming exercised several peremptory challenges to remove jurors from the panel. Two of these peremptory challenges were denied by the trial court concluding that Fleming failed to articulate a race-neutral reason for the challenges and that the reasons offered were merely pretextual. Fleming had exercised the peremptory challenges in an attempt to remove Dudley Pillow and William Perry, Jr. from the jury. Fleming is black, and both Pillow and Perry are white.

Fleming's objection to Dudley Pillow was based on the fact that he was a self-employed farmer. Regarding Pillow, Fleming's counsel stated that "he sat there and wouldn't look at me when I did the voir dire with his arms crossed the whole time." Furthermore, Fleming's counsel stated that he did not believe that Pillow would be "a very receptive juror in this case." After hearing Fleming's arguments for a race-neutral reason to justify her peremptory challenge of Pillow and Yazoo City's counter arguments, the trial court reinstated Pillow to the jury. The trial court concluded that the reasons offered by Fleming for the peremptory challenge to Pillow were not legitimate nondiscriminatory reasons.

Regarding the peremptory challenge to Perry, Fleming's counsel complained that Perry was an insurance agent who "works for a local company here in town that may have some sort of insurance dealings with these people." Additionally, counsel stated that Perry's age was a factor of concern. Again, after giving Yazoo City an opportunity to respond to the reasons offered by Fleming, the trial court concluded that Perry would be restored to a position on the jury. In neither of these challenges did the trial court make an on-the-record finding detailing its analysis of the merits of the parties' arguments.

ISSUES

I. WHETHER THE CIRCUIT COURT ERRED IN DISALLOWING FLEMING'S PEREMPTORY CHALLENGES TO JURORS DUDLEY PILLOW AND WILLIAM PERRY JR.

II. WHETHER THE CIRCUIT COURT ERRED IN IMPOSING PRE-JUDGMENT INTEREST ON A POLITICAL SUBDIVISION OF THE STATE OF MISSISSIPPI IN ITS APPLICATION OF SECTION 75-17-7 OF THE MISSISSIPPI CODE.

ANALYSIS

Irene Fleming argues that the trial court acted erroneously in disallowing her peremptory challenges of two of the jurors in her civil case against Yazoo City. The trial court scrutinized Fleming's challenges under a *Batson* analysis, requiring that she provide race-neutral reasons for the peremptory challenges of these jurors. *See Batson v. Kentucky*, 476 U.S. 79, 89 (1986) (holding peremptory challenges of jurors based solely on racial considerations to be violative of Equal Protection Clause of the Fourteenth Amendment to the United States Constitution). In order to understand the issues raised by Fleming, a short review of *Batson* is necessary. Although *Batson* was originally designed to protect criminal defendants, the Supreme Court subsequently held that it also applies to civil cases. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 630 (1991); *see Dedeaux v. J.I. Case Co*., 611 So. 2d 880, 883 (Miss. 1992) (acknowledging applicability of *Batson* to civil cases). The United States Supreme Court also extended *Batson* to allow either party to raise the issue of racial discrimination in the jury selection process. *Edmonson*, 500 U.S. at 630. Additionally, the more recent Supreme Court opinions hold that the Equal Protection right being protected by *Batson* and its progeny is that of the jury member "not to be excluded from [the jury] on account of race." *Powers v. Ohio*, 499 U.S. 400, 409 (1991). This is therefore a right no longer unique to the criminal defendant.

Under *Batson*, the party raising an objection to his opponent's exercise of a peremptory challenge must present matters to the court that would suggest a prima facie case that racial discrimination was the sole motivation for the challenge in question. *Batson*, 476 U.S. at 95-96; *see also Lockett v. State*, 517 So. 2d 1346, 1348-49 (Miss. 1987) (holding that opponent of peremptory challenge must establish prima facie showing of discrimination). It is only after the objecting party has made a prima facie case of racial discrimination that the burden shifts to the opposing party to come forward with race-neutral reasons to support its peremptory challenge. *Batson*, 476 U.S. at 97. However, some trial courts ignore the prima facie case inquiry and require the opposing party to state race-neutral reasons to support the peremptory challenge, merely upon the objecting party's assertion that racial discrimination motivated the challenge. The Supreme Court has stated that if the trial court ignores the prima facie case inquiry, and "rule[s] on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot." *Hernandez v. New York*, 500 U.S. 352, 359 (1991). Thus, the trial court is allowed to proceed directly into an inquiry as to the existence of race-neutral reasons supporting the peremptory challenge at issue.

In determining if a race-neutral reason exists, the trial court's findings are reviewed with great deference "and will not be overturned unless there appears an error that is against the overwhelming weight of the evidence." *Harper v. State*, 635 So. 2d 864, 868 (Miss. 1994); *see also Hatten v. State*, 628 So. 2d 294, 299 (Miss. 1993) (holding that only clearly erroneous findings will be overturned on appeal). In analyzing a party's reason offered to support a peremptory challenge objected to on *Batson* grounds, the proper inquiry is not whether the reason offered is reasonable, but whether or not it is genuine. *Purkett v. Elem*, 115 S. Ct. 1769, 1771 (1995). Perfectly sound reasons may be rejected by the trial court if found to be pretextual, and even "silly or superstitious" reasons, if honestly advanced, do not automatically fall before a *Batson* challenge. *Purkett*, 115 S. Ct. at 1771. Of paramount consideration is that the reasons offered need not "rise to the level justifying exercise of a challenge for cause." *Batson*, 476 U.S. at 97. Again, the Supreme Court has stated that "[u]nless a discriminatory intent is inherent in the [party's] explanation, the reason offered will be deemed race-

neutral." *Hernandez*, 500 U.S. at 360. This is a factual determination within the sound discretion of the trial court. *See Lockett v. State*, 517 So. 2d 1346, 1350 (Miss. 1987) (stating that trial court is "proper forum for resolution of factual controversies").

To assist an appellate court in its review of a trial court's analysis of the arguments made during a *Batson* inquiry, the Mississippi Supreme Court requires that the trial court make an on-the-record factual determination of the merits of the reasons offered by the proponent of the peremptory challenge at issue. *Hatten v. State*, 628 So. 2d 294, 298 (Miss. 1993); *see also Henderson v. State*, 641 So. 2d 1184, 1185 (Miss. 1994) (noting importance of requiring trial court to make on-the-record determination in order to assist appellate court in effectively reviewing trial court's ruling). The *Hatten* requirement of an on-the-record finding dictates that the trial court may not simply consider the arguments and rule on the *Batson* issue, without explaining the basis of its ruling. Pursuant to *Hatten*, the trial court is bound to conduct an on-the-record review of the allegedly race-neutral reasons, including an explanation of the court's assessment of the merit (or lack thereof) of the reasons offered. *Hatten* clearly requires the trial court to dictate into the record a factual determination of the merits of the reasons cited by a party as the basis for its peremptory challenges. By creating a record of the trial court's analysis, the appellate court is freed from having to speculate as to which of the reasons offered was determinative in the trial court's decision. *Hatten*, 628 So. 2d at 298; *see also Henderson*, 641 So. 2d at 1185 (stating that it is "nearly impossible" to review whether prospective juror was deprived of right to serve on jury because of race, in absence of on-the-record determination by trial court).

In the case at issue, the trial court failed to make on-the-record findings to explain its analysis of the reasons offered by Fleming in support of her peremptory challenges to jurors Pillow and Perry. Accordingly, we must remand this matter to the trial court for on-the-record findings stating the court's reasons for rejecting the challenges at issue. The trial court may base its findings solely by examining the transcript of the hearing on the challenges or by conducting such other proceedings as it believes are justified.

Regarding Yazoo City's assignment of error on cross appeal, we hold that the trial court acted erroneously in assessing pre-judgment interest against Yazoo City, a political subdivision of the State of Mississippi. As the Mississippi Supreme Court stated in *City of Jackson v. Reed*, 103 So. 2d 6, 8 (Miss. 1958), it is well established in Mississippi jurisprudence that a political subdivision of the state is not liable for interest on a judgment, in the absence of a contract or statute which specifically provides for such interest. *Reed*, 103 So. 2d at 8; *see also City of Mound Bayou v. Roy Collins Constr. Co.*, 457 So. 2d 337, 340 (Miss. 1984) (holding political subdivision not liable for interest on judgment). The provisions of section 75-17-1 of the Mississippi Code do not specifically make political subdivisions liable for interest. Accordingly, interest should not have been taxed against the Defendant/Cross Appellant City of Yazoo City. Therefore, we reverse the order of the circuit court on this issue.

THIS CAUSE IS REMANDED TO THE CIRCUIT COURT OF YAZOO COUNTY FOR A MAXIMUM PERIOD OF FORTY-FIVE (45) DAYS WITHIN WHICH THE COURT IS DIRECTED TO CONDUCT A *BATSON/McCOLLUM* REVIEW OF FLEMING'S CHALLENGES IT DENIED. THE CIRCUIT COURT SHALL INCLUDE A TRANSCRIPT OF THE REASONS FOR ITS REJECTING THE TWO CHALLENGES, STATED ON THE

RECORD OF ANY HEARING OR SEPARATELY ENTERED IN WRITING, IN ACCORDANCE WITH THE PRINCIPLES ANNOUNCED IN *HATTEN*. UPON OUR RECEIPT, THIS COURT WILL RESUME PROCEEDINGS ON APPEAL.

COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY FRAISER, C.J., BRIDGES, P.J., AND PAYNE, J.