

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01226 COA**

**STATE OF MISSISSIPPI EX REL. DEPARTMENT
OF PUBLIC WELFARE**

APPELLANT

v.

ALFRED JULIAN WILLIAMS

APPELLEE

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

DATE OF JUDGMENT:	10/12/95
TRIAL JUDGE:	HON. H. GERALD HOSEMANN
COURT FROM WHICH APPEALED:	WARREN COUNTY COUNTY COURT
ATTORNEY FOR APPELLANT:	GREGORY WEBER
ATTORNEY FOR APPELLEE:	W. B. DUGGINS, JR.
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	FINDING BY COUNTY COURT JUDGE THAT APPELLEE WAS IN ARREARS IN CHILD SUPPORT IN THE AMOUNT OF \$1, 000.
DISPOSITION:	APPEAL DISMISSED FOR LACK OF JURISDICTION- 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

The State of Mississippi, on behalf of what was once the State Department of Public Welfare but is now the Department of Human Services, has appealed a judgment of contempt rendered by the County Court of Warren County directly to the Mississippi Supreme Court, which deflected its appeal to this court, Section 11-51-79 of the Mississippi Code notwithstanding.⁽¹⁾ The appellee, Alfred Julian Williams, has filed no brief in this appeal, although he was represented by counsel at the trial of this case in the County Court of Warren County. Because Section 11-51-79 does not

authorize an appeal from a county court directly to the Mississippi Supreme Court, this Court dismisses this case because it finds *sua sponte* that it lacks jurisdiction of the appeal.

I. FACTS

On March 7, 1985, the County Court of Warren County entered its judgment by which it ordered the appellee, Alfred Julian Williams, to pay to the Warren County Department of Public Welfare the sum of \$100 per month for the support of his two minor children, Alfred D. Sylvester and Evita Williams, pursuant to the provisions of Section 43-19-31 of the Mississippi Code of 1972. Marilyn S. Williams was the mother of both of these children. On May 15, 1995, the State of Mississippi on behalf of what is now the Department of Human Services filed a motion to set child support arrears, in which it alleged that Alfred J. Williams was in arrears in the total amount of \$12,000 as of March 30, 1995, on the original judgment which the Warren County County Court had entered on March 7, 1985.

During the hearing on the motion to set child support arrears, both Alfred Williams and Marilyn Williams testified. The gist of Alfred Williams' testimony was that he and Marilyn Williams had married after the judgment was entered on March 7, 1985, and that while they lived together, he had supported the two children in whose interest the March 7, 1985, judgment had been entered and a third child who had been born after they were married. He had supported them either by giving his wife, Marilyn Williams, his paycheck which she cashed, or he cashed his paycheck and just gave her the money. However, he admitted that he had not paid even one dollar to the Warren County Department of Public Welfare as that judgment required. Marilyn Williams testified that he had given her nothing for the support of her children from March 7, 1985, until the date of the hearing, October 3, 1995.

The Williamses were divorced by judgment of divorce which the Warren County Chancery Court awarded on April 13, 1993. In its judgment of divorce, the chancery court ordered Alfred Williams to pay Marilyn Williams child support in the amount of \$100 per month.

At the conclusion of the hearing in the case *sub judice*, the county court judge ruled from the bench as follows:

I'm assessing him a thousand dollars in arrearage, although I think it's probably more, but the proof is not clear, and the lady got up and said she was fooling with him.

In the judgment of contempt, the judge awarded the State of Mississippi a judgment against Alfred Williams in the amount of \$1,000 and ordered Williams to continue to pay \$100 per month and beginning November 1, 1995, to pay an additional \$40 per month until the arrearage of \$1,000 was paid in full. The county court also entered an order for Alfred Williams' employer's withholding the child support payments from Williams' paychecks, which order of withholding was to take effect immediately.

According to the State of Mississippi, Williams owed a total of \$12,000 for the ten year period from March 7, 1985, the date of the original judgment, until March 1, 1995, because he had made no payment of child support during this period to the Warren County Department of Public Welfare, as the original judgment had ordered him to do. Section 43-19-37 provides: "Any payments made by the absent parent to the recipient or applicant in violation of the court order shall not be deemed to be a

support payment and shall not be credited to the court-ordered obligation of said absent parent" Miss. Code Ann. § 43-19-37 (Rev. 1993). Among the issues which the State of Mississippi raised in its appeal to the Mississippi Supreme Court was that the county court judge had erred by awarding it a judgment in any amount less than \$12,000 since Alfred Williams had admitted that he had not paid the Warren County Department of Welfare anything at all pursuant to the March 7, 1985, judgment.

II. Dismissal of Appeal

Section 9-9-21 of the Mississippi Code of 1972 establishes the jurisdiction of the county court.⁽²⁾ Section 11-51-79 of the Mississippi Code of 1972 provides that "[a]ppeals from the law side of the county court shall be made to the circuit court, and those from the equity side shall be made to the chancery court" **Miss. Code Ann. § 11-51-79 (1972)**. Section 11-51-79 provides for no direct appeal from a county court to the Mississippi Supreme Court. It does specify the conditions under which an appeal from a county court to either the circuit or the chancery court can be appealed from the circuit or the chancery court to the supreme court.⁽³⁾

In *Keeton v. State*, 197 Miss. 11, 19 So.2d 477, 477 (1944), the Mississippi Supreme Court dismissed an appeal because it found that it had no jurisdiction pursuant to Section 1617, Code 1942, predecessor of Section 11-51-81 of the Mississippi Code of 1972, which provided, among other things, that "there shall be no appeal from the circuit court to the Supreme Court of any case civil or criminal which originated in a justice of the peace, municipal or police court and was thence appealed to the county court and thence to the circuit court unless in the determination of the case a constitutional question be necessarily involved and then only upon the allowance of the appeal by the circuit judge or by a judge of the Supreme Court." The supreme court had no jurisdiction pursuant to Section 1617 of the Mississippi Code of 1942 because no constitutional issue had been presented to the circuit court before Keeton appealed to the supreme court.

The appellee, Albert Julian Williams, filed no brief, and he has filed no motion to dismiss the appeal of the State of Mississippi because of this Court's lack of jurisdiction pursuant to Section 11-51-79. Nevertheless, in *Wells v. Boatner*, 216 Miss. 108, 61 So. 2d 662, 663 (1952), the Mississippi Supreme Court opined that "[w]e may consider all appeals *ex mero motu*, in order to test our jurisdiction."

Section 11-51-79 provides for no direct appeal from the county court to the supreme court, which has deflected the case *sub judice* to this Court. Without statutory authority to exercise our appellate jurisdiction in the case *sub judice*, we are compelled to dismiss this appeal *ex mero motu*.

THIS CASE IS DISMISSED FOR LACK OF THIS COURT'S JURISDICTION. COSTS OF APPEAL ARE ASSESSED TO APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

1. The portion of Section 11-51-79 which is relevant to our disposition of this case reads as follows:

Appeals from the law side of the county court shall be made to the circuit court, and those from the equity side to the chancery court on application made therefor and bond given according to law, except as hereinafter provided. . . . Judgments or decrees of affirmance [of the circuit or chancery court], except as otherwise hereinafter provided, may be appealed to the supreme court under the same rules and regulations and under the same penalties, in case of affirmance, as appertain to appeals from other final judgments or decrees of said courts, but when on appeal from the county court a case has been reversed by the circuit or chancery court there shall be no appeal to the supreme court until final judgment or decree in the court to which it has been appealed. When the result of an appeal in the supreme court shall be a reversal of the lower court and in all material particulars in effect an affirmance of the judgment or decree of the county court, the mandate may go directly to the county court, otherwise to the proper lower court.

Miss. Code Ann. § 11-51-79 (1972).

2. Section 9-9-21 provides:

The jurisdiction of the county court shall be as follows: It . . . shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of Fifty Thousand Dollars (\$50,000.00)

Miss. Code Ann. § 9-9-21 (Rev. 1991).

3. Section 11-51-111 of the Mississippi Code of 1972 authorizes appeals directly from the Harrison County Court to the Mississippi Supreme Court "in the same manner and to the same extent and on the same terms as appeals, writs of error and other like remedies are authorized to be taken from the circuit, chancery and county courts holden in the different counties of the state.

Miss. Code Ann. § 11-51-111 (1972).