

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00818 COA**

IN THE INTEREST OF B.W.: M.W.W.

APPELLANT

v.

J.W.D. AND C. D.

APPELLEES

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

DATE OF JUDGMENT:	6/18/96
TRIAL JUDGE:	HON. JANE ADAMS PERDUE
COURT FROM WHICH APPEALED:	RANKIN COUNTY YOUTH COURT
ATTORNEY FOR APPELLANT:	J. EDWARD RAINER
ATTORNEY FOR APPELLEES:	LISA B. MILNER
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	DENIAL OF MOTION TO SET ASIDE THE ADJUDICATION ORDER.
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

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

THOMAS, P.J., FOR THE COURT:

M.W.W. appeals the denial of his motion to vacate and set aside an adjudication order of abuse that the Rankin County Youth Court entered on June 17, 1994 raising the following issue as error:

I. WHETHER THE YOUTH COURT JUDGE MANIFESTLY ERRED IN DENYING APPELLANT A HEARING ON HIS MOTION TO SET ASIDE AND VACATE THE JUDGMENT ENTERED ON JUNE 17, 1994, BASING THE DENIAL ON A RULING THAT THE MOTION WAS NOT FILED WITHIN A REASONABLE TIME AS REQUIRED PURSUANT TO MRCP, RULE NUMBER 60(b).

Finding no error, we affirm.

FACTS

On June 17, 1994, the Rankin County Youth Court entered an order of adjudication indicating that B.W. was abused by her father, Appellant, and relinquished jurisdiction to the Chancery Court of Rankin County. Custody of B.W. remained with her mother, who resided with her parents, J.W.D. and C.D., Appellees. The father filed an amended counter-motion for vacating and setting aside this order, or in the alternative a modification of this order on September 28, 1995. The grandparents filed a response to the father's amended counter-motion. The mother had filed an earlier motion to dismiss. A hearing was scheduled for October 10, 1995 but was not heard because the mother committed suicide before the hearing.

The youth court held a hearing on June 14, 1996. After both parties were able to present what their respective motions were, Youth Court Judge Perdue determined that the filing of the father's motion on September 28, 1995, over a year from the time the original adjudication order was entered, was not filed timely pursuant to Mississippi Rule of Civil Procedure 60(b).

ANALYSIS

I.

WHETHER THE YOUTH COURT JUDGE MANIFESTLY ERRED IN DENYING APPELLANT A HEARING ON HIS MOTION TO SET ASIDE AND VACATE THE JUDGMENT ENTERED ON JUNE 17, 1994, BASING THE DENIAL ON A RULING THAT THE MOTION WAS NOT FILED WITHIN A REASONABLE TIME AS REQUIRED PURSUANT TO MRCP, RULE NUMBER 60(b).

At the outset we must note that B.W.'s full name, not her initials, appear throughout the record and the appellate briefs. The Mississippi Supreme Court clearly held in *In the Interest of R.R.B., a Minor*, 394 So. 2d 907 (Miss. 1981), that when a statutory appeal is taken from a youth court, the statute, **Mississippi Code Annotated § 43-21-651**, mandates that the minor's name should not appear in the records or briefs submitted on appeal. The Court held that only the minor's initial's shall appear in the record. *Id.* at 908. The Court did not reverse on this issue, but noted from then on the name "should be blotted from all documents that are forwarded to the clerk of the Mississippi Supreme Court or any justice thereof." *Id.* We remind the court and the parties that in the future they should follow this mandate.

The father argues that the order of the court below, entered on June 18, 1996, should be overruled because the court's order was based on incorrect legal standards that lead to a manifestly erroneous conclusion.

Mississippi Code Annotated § 43-21-561(4) (Rev. 1993) provides in part that an order of adjudication shall only recite that a child is found to be an abused child and that the statute forbids recitation of facts and circumstances in such an order. This section states in pertinent part: "No decree or order of adjudication concerning any child shall recite any of the facts or circumstances upon which the adjudication is based" The father argues that the order of adjudication entered by the youth court on June 17, 1994 included facts and circumstances in violation of this statute, which causes the order to be void.

The father also argues that the youth court violated his due process rights. In youth court decisions the burden of proof is by a preponderance of the evidence. The father opines that if a youth court order of adjudication names specific facts and circumstances and the person the court believes abused a child, and pronounces him guilty, the person named has been deprived of due process of law. Thus, the father argues he has been deprived of his constitutional right to a trial by jury and as the order stands now, the grandparents can use this order during a custody hearing in the Rankin County Chancery Court of Rankin County, Mississippi and further violate his due process rights. Therefore, the father believes the judgment before the youth court judge was void, and Mississippi Rule of Civil Procedure 60(b)(4) should be applied.

The father argues that in the alternative this Court should reverse the youth court's determination that he untimely filed his motion based on 60(b)(6), any other reason justifying relief. He opines that there are facts and circumstances that the lower court should have given him an opportunity to be heard on as a matter of equitable consideration in connection with his motion.

"Motions that seek relief from judgment pursuant to Rule 60, Miss. R. Civ. P. are addressed to the sound discretion of the trial court, and the only question asked on appeal is whether the trial court's ruling on such a motion amounts to an abuse of discretion." *Accredited Sur. and Cas. Co. v. Bolles*, **535 So. 2d 56, 58 (Miss. 1988)** (citing *Stringfellow v. Stringfellow*, 451 So. 2d 219, 221 (Miss. 1984)).

"As a general rule, the 'extraordinary relief' provided for by Rule 60(b), will be granted 'only upon an adequate showing of exceptional circumstances,' and gross negligence, ignorance of the rules, ignorance of the law, or carelessness on the part of the attorney will not provide sufficient grounds for relief." *Bolles*, **535 So. 2d at 58** (quoting *Stringfellow*, 451 So. 2d at 221). When ruling in 60(b) motions "a balance must be struck between granting a litigant a hearing on the merits with the need and desire to achieve finality in litigation." *Stringfellow*, **451 So. 2d at 221**(citation omitted). "Rule 60(b) is not an escape hatch for litigants who had procedural opportunities afforded under other rules and who without cause failed to pursue those procedural remedies." *State of Mississippi ex rel. v. One (1) Chevrolet Nova Automobile*, **573 So. 2d 787, 790 (Miss. 1990)** (citing *King v. King*, 556 So. 2d 716 (Miss. 1990)).

Rule 60(b) states in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) fraud, misrepresentation, or other misconduct of an adverse party;
- (2) accident or mistake;
- (3) newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed, or otherwise vacated, or it is no longer equitable that the judgment

should have any prospective application;

(6) any other reason justifying relief from the judgment.

Miss. R. Civ. Pro. 60(b).

Upon a motion, made within a reasonable time, and for reasons (1), (2), and (3) not more than six months, the court may relieve a party for the above-mentioned reasons. "Therefore, the rule itself accommodates concerns over finality by setting an outer time limit while simultaneously inviting a flexible application depending on the circumstances of each individual case by use of the 'reasonable time' standard." *Bolles*, 535 So. 2d at 58-59. When ruling in 60(b) motions "a balance must be struck between granting a litigant a hearing on the merits with the need and desire to achieve finality in litigation." *Stringfellow*, 451 So. 2d at 221 (citation omitted).

Under Rule 60(b)(4), (5) and (6) the movant is required to act in a reasonable time after a judgment is entered because the parties have relied on the judgment and have acted according to its provisions. In other words, the parties have certain settled expectations. "[A] judgment is void only if the court that rendered [the decision] lacked jurisdiction of the subject matter, or of the parties, or it acted in a manner inconsistent with due process of law." *Overby v. Murray*, 569 So. 2d 303, 306 (Miss. 1990) (quoting *Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986)).

We have reviewed the order of adjudication that the youth court judge filed June 15, 1994. In his order, the judge delineated the factors that lead to his finding that B.W. was a sexually abused child. The order stated that: 1) the overwhelming weight of the evidence presented by the doctor and social worker who treated B.W. proved that the father sexually abused his daughter; 2) that the conflicting testimony presented by the father's doctor was insufficient to overcome the overwhelming weight of the evidence; 3) that B.W. showed no indication that she was coaxed or encouraged to make the accusations against her father by her mother; 4) that B.W. should be protected from unsupervised visitation with her father; and 5) that the youth court was relinquishing jurisdiction to the chancery court because the parents were wanting a divorce.

While the pertinent statute, **Miss. Code Ann. § 43-21-561(4)**, states that an order of adjudication shall not recite the facts or circumstances upon which the adjudication is based, the order filed on June 15, 1994 does not recite the facts and circumstances of sexual abuse. This order, three pages long, merely explains how the youth court judge based his decision, mere surplusage to the final conclusion that B.W. was a sexually abused child. Notwithstanding, if the father felt that the youth court's adjudication order was overreaching and not in accordance with the statute, his proper vehicle would have been a motion to strike the portion of the order that was merely surplusage. The father's proper procedure should have been, and could still be, a motion to strike portions of the order.

Next we will address the father's argument that the grandparents will be able to use the adjudication order in a subsequent custody hearing. The father does not cite any authority to support this proposition. Failure to cite authority in support of claims of error precludes appellate review of alleged errors. *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359, 370 (Miss. 1992). Thus, we are under no obligation to address this part of the father's argument; however, we also find that this argument has no merit. In *In the Interest of D.K.L. v. Hall*, 652 So. 2d 184, 189-90 (Miss. 1995), the Mississippi Supreme Court discussed the jurisdiction between the chancery

court and the youth court in abuse and neglect matters. In this decision the Court stated that the youth court shall have exclusive original jurisdiction in proceedings concerning an abused child except when the charge of abuse first arises during a custody action. *Id.* at 189 (citing Miss. Code Ann. 43-21-151(1)(c) (Supp. 1994)). The issue of B.W.'s abuse before the youth court did not arise in the course of a custody action. The youth court, after hearing and considering the entire therapist's and case worker's testimony, thought B.W. was sexually abused by her father. The father's due process rights were not violated in the youth court proceeding. The youth court allowed him ample opportunity to present his evidence. If the father felt his due process rights were violated at the youth court level his course of action would have been to appeal this adjudication order.

If the father wanted to attack the 1994 order of the youth court, he should have filed an appeal within ten days of the entry of this order. **Miss. Code Ann. § 43-21-651 (Rev. 1993)**. The filing of a motion to set aside does not replace or do away with statutory limitations. *Bank of Edwards v. Cassity Auto Sales, Inc.*, 599 So. 2d 579, 582 (Miss. 1992). The time for perfecting an appeal is jurisdictional and the failure timely to appeal leaves this court without jurisdiction to consider the adjudication. *Id.*

The father did not appeal the adjudication of abuse and should not be allowed to usurp the appellate procedure. The youth court's decision, that the father's motion was untimely filed, was not an abuse of discretion and will not be overturned here on appeal.

THE JUDGMENT OF THE RANKIN COUNTY YOUTH COURT OF DENIAL OF A MOTION TO VACATE AND SET ASIDE AN ADJUDICATION ORDER IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. BRIDGES, C.J., NOT PARTICIPATING.