

Serial: **183838**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2012-M-01701

RE: RAY CHARLES SPIVEY

EN BANC ORDER

This matter comes before the Court sitting en banc on the Motion for Reconsideration/Rehearing filed by Ray Charles Spivey. On November 28, 2011, the Circuit Court of Scott County dismissed Spivey’s action due to excessive filings. The court enjoined Spivey from filing – and the Scott County Circuit Clerk’s office from accepting – any further filings in this action. Spivey filed a motion for relief in this Court, which was denied.

Spivey then filed a motion to reconsider, and we ordered the circuit court to provide us with “the authority which allows the Scott County Circuit Court to enjoin Petitioner from further filings in cause no. 08-CV-018-SC-C.” The circuit judge responded that his authority to prohibit Spivey from any future filings in the case was based on his authority and duty to manage the court’s docket.

Section 24 of our Constitution says that our courts belong to – and must remain open for – the people.¹ And Section 25 could not be more clear: “No person shall be debarred from prosecuting or defending any civil cause.”² Although the trial judge correctly

¹Miss. Const. art. 3 § 24 (“All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.”)

²Miss. Const. art. 3 § 25.

concluded that trial judges have a right – indeed a duty – to control their courts’ dockets, that duty must be balanced against the constitutional right granted by Section 25. Here, the judge barred Spivey from prosecuting his claim in the circuit court, in direct violation of Section 25.

IT IS THEREFORE ORDERED that the Motion for Reconsideration/Rehearing filed by Ray Charles Spivey is granted.

IT IS FURTHER ORDERED that all language in the “Order Dismissing and Preventing the Acceptance of Further Filings” enjoining Spivey from filing, or the Scott County Circuit Clerk’s office from accepting, further filings in cause no. 08-CV-018-SC-C be struck.

SO ORDERED, this the 14th day of May, 2013.

/s/ Jess H. Dickinson

JESS H. DICKINSON, PRESIDING
JUSTICE

TO GRANT: DICKINSON, P.J., KITCHENS, CHANDLER, KING AND COLEMAN, JJ.

RANDOLPH, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY WALLER, C.J., LAMAR AND PIERCE, JJ.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2012-M-01701

RE: RAY CHARLES SPIVEY

RANDOLPH, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. I would concur with today's order had Ray Charles Spivey timely sought relief. His Motion to Precede [sic] was filed on October 15, 2012, approximately ten and a half months after entry of the order from which he seeks relief. If Spivey had attempted to file timely a notice of appeal,³ as required by Mississippi Rules of Appellate Procedure 3 and 4, of the November 28, 2011, order, and if the circuit clerk had refused to file it, then consideration of a mandamus action might had been appropriate, at that *time*. M.R.A.P. 3, 4. However, under the record presented herein, the action was dismissed. No attempt to appeal the order was taken within the time prescribed by law. M.R.A.P. 4. Thus I would deny his Motion to Precede [sic].

WALLER, C.J., LAMAR AND PIERCE, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.

³Or even if Spivey mistakenly filed his notice of appeal in this Court. *See* M.R.A.P. 4(a).