

IN THE COURT OF APPEALS 01/14/97

OF THE

STATE OF MISSISSIPPI

NO. 96-CC-00126 COA

MISSISSIPPI TRANSPORTATION COMMISSION

APPELLANT

v.

BRACKEN CONSTRUCTION COMPANY, INC.

APPELLEE

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

TRIAL JUDGE: HON. WILLIAM HALE SINGLETARY

COURT FROM WHICH APPEALED: HINDS COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

OFFICE OF THE ATTORNEY GENERAL

BY: ROY M. TIPTON

ATTORNEY FOR APPELLEE:

MARK P. CARAWAY

NATURE OF THE CASE: STATE BOARDS AND AGENCIES - MISSISSIPPI
TRANSPORTATION COMMISSION

TRIAL COURT DISPOSITION: TRIAL JUDGE REMANDED TO THE APPEALS BOARD TO
DETERMINE WHETHER THE CONDUCT WAS WILLFUL OR WANTON

BEFORE McMILLIN, P.J., BARBER, COLEMAN, JJ.

McMILLIN, P.J., FOR THE COURT:

This case comes before this Court on appeal from a judgment of the Chancery Court of Hinds County. That court was considering an appeal by Bracken Construction Company, Inc. of a fine assessed by the Mississippi Transportation Commission based on the detection of one of Bracken's trucks traveling a public road while substantially over the allowed weight limit. The fine was originally assessed at over \$11,000.00, but was subsequently lowered by the commission's Appeals Board to \$9,750.00. Bracken perfected a chancery appeal of the reduced fine under section 65-1-46 of the Mississippi Code of 1972. The chancellor vacated the fine and remanded the matter for further proceedings at the administrative level on the conclusion that such a fine could not be imposed without a preliminary finding that the offense was the result of willful, wanton or reckless conduct on the part of the violator. The commission, dissatisfied with that holding, perfected this appeal.

I.

Facts

Bracken, involved in a project that required the transport of equipment exceeding the normal weight limit, obtained a temporary trip permit from the appropriate state agency to carry an overweight load. Such permits limit the transporter to specifically designated routes, apparently for the purpose of permitting the load to be routed in a manner designed to accomplish the hauler's purposes while attempting to minimize damage to the State's roadways. According to evidence presented at the administrative hearing, after Bracken's truck entered the State, the driver received instructions from his employer to change his route in order that he might assist in another Bracken project. The new destination was not accessible by the route designated in the overweight permit; however, the driver followed his employer's directive and embarked on a route that carried him some ten miles off his proper path. The truck was stopped by enforcement officers of the Department of Transportation while on this unauthorized route. According to portable scales employed by the officers, the vehicle weighed 182,250 pounds. The weight limit on the road where the truck was stopped was 80,000 pounds. The penalty, assessed according to the provisions of section 27-19-89(c) of the Mississippi Code, was calculated at \$11,247.50. The Appeals Board reduced the fine to \$9,750.00, apparently giving Bracken the benefit of some evidence it presented that a more accurate weighing of the rig indicated its actual weight was closer to 167,000 pounds.

II.

Discussion

The chancellor, in reaching his decision, relied on the case of *Mercury Motor Transport, Inc. v. State* to support his conclusion. *Mercury Motor Transp., Inc. v. State*, 197 Miss. 387, 21 So. 2d 25 (1945). That case involved a fine imposed on Mercury Motor Transport for failure to pay a one-time permit fee of \$14.52. *Mercury Motor Transp., Inc.*, 21 So. 2d at 26. The proof showed that the driver had, upon entering the State, attempted to pay the permit fee, but that it had been refused by the

responsible state official because the truck was not carrying evidence of having complied with another state statute requiring that the permit be kept "in the possession of the operator of the truck covered thereby." The evidence indicated that this other form had been obtained and the driver was carrying what he thought was the proper form, but that the one in his possession was actually for another Mercury Motor truck and the two had been accidentally switched. *Id.* The court noted that the fine imposed for noncompliance was substantially in excess of the permit fee, and concluded that, due to the penal nature of the fine, ". . . there can be no recovery of the same without proof of a wilful, wanton or reckless failure of the defendant to pay the normal tax" *Id.* at 29.

In this case, the proof showed that the overweight permit obtained by Bracken to travel from Monticello to Natchez cost \$704.90. Though there is no direct proof in the record, we assume that a permit to travel to the alternate destination would have cost approximately the same. Thus, it appears that the substantial deviation between the permit fee and the penalty for non-compliance is sufficiently large to demonstrate the highly penal nature of this statute and to suggest that the rule announced in the *Mercury Motor Transport* case would have some application.

We note that subsection (c) of section 27-19-89 now under consideration is preceded by two subsections governing somewhat related regulation of commercial transportation on the State's roads, and both these subsections contain the caveat that "it shall not be necessary to show that such owner or operator was guilty of willfulness, gross negligence or wantonness, but the offense shall be complete upon the failure or refusal to obtain the required permit." Miss. Code Ann. § 27-19-89 (a) - (b) (1972). Such language is conspicuously absent, however, from subsection (c). *Id.* § 27-19-89(c). The commission suggests that subsection (c) should be interpreted to contain the same provisions by implication. Bracken, on the other hand, argues that the failure of the legislature to specifically include the language in subsection (c) is unequivocal evidence that the legislature intended the rule announced in the *Mercury Motor Transport* case continue to apply.

We agree with Bracken on this point. We are convinced that the State ought to be required, as a prerequisite to imposing such a substantial fine, to show some measure of culpability on the part of the violator, at least in an instance such as this, where the legislature, given the opportunity, has failed to negate such a requirement when it has by clear language removed it from two related provisions.

However, we conclude that the language of the *Mercury Motor Transport* case, properly interpreted, does not require that civil fines may only be assessed in retaliation for conduct so egregious that it would warrant the imposition of punitive damages in a civil case. We say this while acknowledging the similarity in language used to define the conduct for which these respective sanctions may be applied. Thus, insofar as the term "willful" is used, we interpret that to mean nothing more than "purposeful." At the *de novo* hearing before the Appeal Board, the commission presented clear evidence that Bracken's driver was aware of the route designated for him to carry his overweight load, and that he purposely deviated from that route. The deviation was for a distance of approximately ten miles, and thus cannot be dismissed as a *de minimis* violation. Such evidence established the willfulness or purposefulness of the offending conduct necessary to assess the fine. We do not believe that the board's decision to assess the fine based on this evidence must be preceded by a finding on the record that the offending conduct was willful, wanton, or reckless any more than a guilty verdict in a criminal trial must be preceded by the jury's separate determination that the defendant's actions were willful. Just as the jury's verdict of guilt carries with it by

implication the necessary underlying findings on the elements of the crime, we conclude that the board's decision to impose the fine on the evidence presented carried with it by necessary implication a finding that Bracken's conduct was willful. Since there was substantial evidence in the record to support such a conclusion, there is no basis to disturb the decision of the board. *Harris v. Canton Separate Pub. Sch. Bd. of Educ.*, 655 So. 2d 898, 901-02 (Miss. 1995).

While we agree with the chancellor as to the necessary prerequisite for the imposition of this penalty, we disagree that the matter must be remanded to the administrative level for a specific finding of fact that is implicit in the imposition of the fine itself -- a finding that is substantially supported by the evidence presented to the appeals board.

THE JUDGMENT OF THE CHANCERY COURT OF HINDS COUNTY IS REVERSED AND RENDERED. COSTS ARE ASSESSED TO THE APPELLEE.

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