

IN THE COURT OF APPEALS 02/25/97

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00989 COA

HIRAM EASTLAND, JR.

APPELLANT

v.

PECAN FARM, 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. HON. GRAY EVANS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEE:

PHILIP MONSOUR, JR.

NATURE OF THE CASE: APPEAL OF JUSTICE COURT AGREED ORDER OF EVICTION TO
CIRCUIT COURT

TRIAL COURT DISPOSITION: DISMISSED APPEAL

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

COLEMAN, J., FOR THE COURT:

Hiram Eastland, Jr., appeals from an order of the Sunflower County Circuit Court which dismissed his appeal to that court from a justice court judgment of eviction against Eastland, which judgment of eviction was entered as an agreed order between Eastland and the Appellee, Pecan Farm, Inc. (Pecan Farm). We are constrained to reverse and to remand this case to the Sunflower County Circuit Court.

I. Litigation

On February 3, 1994, Pecan Farm filed an affidavit in the Justice Court of Sunflower County in which it alleged that Eastland was holding over after the lease for a certain Adair Plantation residence had expired. This house was located three miles east of Doddsville, Mississippi. Pursuant to the issuance and service of a writ which Eastland designates as a summons to remove or show cause, the Sunflower County Justice Court entered an Agreed Order on the 11th day of August, 1994. Relevant portions of the Agreed Order read as follows:

AGREED ORDER

This matter having come before the court on the Complaint in Eviction filed by Pecan Farm, Inc., against Hiram Eastland, Jr.; and the Court, having been advised that the parties hereto have reached an amicable resolution to this action, hereby finds as follows:

1.

That this Court has jurisdiction over the parties hereto and subject matter herein.

2.

That the Plaintiff and Defendant have agreed on a resolution of this dispute, without either party admitting liability to the other, the agreement being that Hiram C. Eastland, Jr., along with his family, will voluntarily vacate the subject premises on or before June 15, 1994, and not return to said property except upon the express permission of Pecan Farm, Inc., or any subsequent successors to title to said property.

3.

The Court finds that the Plaintiff, Pecan Farm, Inc., is entitled to the relief prayed for in its Complaint in Eviction.

4.

The Court further finds that if the Defendant remains on the premises after June 15, 1994, then [Pecan Farm, Inc.] shall be entitled to any and all remedies available to him (sic) through the powers of this Court for forcible removal of said Hiram Eastland, Jr., from the above described premises.

5.

It is understood and agreed that the parties hereto and their attorneys, by execution of this

agreement, acquiesce and agree that the relief ordered herein is consented to by all parties hereto.

ORDERED AND ADJUDGED this the 11 day of August, 1994.

S/John Burrell

JUSTICE COURT JUDGE

Charles Fuller, agent for Pecan Farm, Philip Monsour, Jr., attorney for Pecan Farm, Inc., Eastland, and Michael A. Boland, Eastland's attorney, signed this Agreed Order. Beneath all four of their signatures, Eastland wrote in his handwriting the following sentence:

I, Hiram Eastland, sign this Agreed Order without admitting liability but to resolve this dispute as I understand it and only upon the terms of the March 22, letter from my attorney, Mr. Boland, to Mr. Mansour.

The letter from Mr. Boland to Mr. Mansour dated March 22, 1994, to which Eastland refers contained the following provisions:

This letter is to confirm our settlement agreement of this above referenced matter. It is my understanding of the agreement that:

1. You will prepare a Consent Decree to be forwarded to me for approval;
2. Once the Consent Decree is signed by the Judge, you agree to hold it in your file and file it of record at the Court;
3. Hiram agrees to vacate the Adair property on or before June 15, 1994, and agrees not to return;
4. Once Hiram has vacated the property you agreed to enter an order dismissing the eviction action with prejudice, rendering the aforesaid Consent Decree moot; and
5. You will contact the Court reference today's hearing to advise that we have settled the case by agreement and we will be submitting a Consent Decree for approval.

Please call me immediately if my understanding of our agreement is different than yours.

On August 24, 1994, Eastland filed in the office of the Sunflower Circuit Clerk his notice of appeal from the agreed order which the justice court rendered on August 11, 1994. Eastland's notice of appeal was dated August 19, 1994. On September 21 and 22, Eastland and Pecan Farm argued the issue of whether Eastland's appeal from the justice court to the circuit court ought to be dismissed. On September 27, 1994, the circuit court rendered an order of dismissal, which was filed the next day, September 28, 1994.

Eastland, *pro se*, filed his notice of appeal to the supreme court on the 29th day of September, 1994. On October 3, Eastland filed in the circuit court an application for approval of supersedeas bond and

for stay of order pending appeal, in response to which Pecan Farm filed its response. The circuit court denied Eastland's application for approval of supersedeas by its order dated October 14, 1994. On October 12, 1994, Eastland filed an emergency motion for allowance of supersedeas and stay in the Mississippi Supreme Court, in response to which that court found in its order rendered on December 13, 1994, that there existed "a question of whether Eastland's appeal was timely filed so as to provide [the circuit court] with jurisdiction over the case." The supreme court then remanded the case to the circuit court "for a written finding by the circuit court of whether the appeal from justice court was timely filed and if so, for determination of appropriate supersedeas."

Upon remand to it, the circuit court found that the appeal from justice court had been timely filed because "the [ten] day limit for appeal from the justice court as set by Section 11-51-85 of the Mississippi Code is applicable to this case." The circuit court then granted supersedeas conditioned upon several requirements of Eastland, among which were insuring the premises for the total amount of \$200,000 and paying rent for the premises at the rate of \$750.00 per month beginning with the month of September 1994. These events and facts are related to establish that the timeliness of Eastland's appeal from justice court to the circuit court is not at issue in this case.

The Mississippi Supreme Court assigned this case to this Court by its order dated November 1, 1995.

II. Issues

In this appeal, Eastland presents the following four issues in his brief for this Court's review, analysis, and resolution:

I. Appellant is entitled to appeal a justice court consent decree [agreed order] to the circuit court for a trial de novo.

II. The circuit court erred in denying appellant's offer of proof that the consent decree [agreed order] and underlying initial settlement agreement could be collaterally attacked and should be set aside.

III. The consent decree [agreed order] is in any event invalid and void, since there was no longer consent between the parties at the time the consent decree [agreed order] was signed and rendered by the justice court.

IV. The consent decree [agreed order] is in any event invalid and void, since it was signed by a justice court judge that had previously recused himself.

III. Review, analysis, and resolution of the issues

A. IV. The consent decree [agreed order] is in any event invalid and void, since

it was signed by a justice court judge that had previously recused himself.

The record of the proceedings in the Sunflower County Justice Court which was certified to the Sunflower County Circuit Court establishes that Justice Court Judge John Burrell executed: (1) the affidavit on which the summons to remove or show cause was issued, (2) the summons to remove or show cause, and (3) the agreed order from which Eastland appealed to the circuit court. The record of those proceedings contains nothing to indicate that Burrell recused himself at any time as Eastland claims. The only basis on which this Court might rest such a finding of recusal would be Eastland's bald assertion that Judge Burrell did indeed recuse himself in favor of another Sunflower County justice court judge.

In *Vinson v. Johnson*, 493 So. 2d 947, 950 (Miss. 1986), the Mississippi Supreme Court reiterated the necessity of the record's including the basis for the allegation of error in the following language:

What we have said in this opinion about the necessity of making a record of any alleged error is a belabored repeat of the obvious. Because attorneys continue to allege in briefs facts on which a record is blank, we are constrained to once again make the point. If something happens in a trial court about which a party feels aggrieved, he will not be allowed to complain of it on appeal unless he gets it in the record.

Because the record of the proceedings in justice court which was certified to the circuit court contains no evidence that justice court judge Burrell recused himself, we need proceed no further with our review of this issue; and we resolve this issue against Eastland.

B. III. The consent decree [agreed order] is in any event invalid and void, since there was no longer consent between the parties at the time the consent decree [agreed order] was signed and rendered by the justice court.

Other than Eastland's statement which he made to the circuit court during its hearing on whether to dismiss his appeal that he had in fact withdrawn his consent to the entry of the agreed order by justice court judge Burrell on August 11, 1994, the record again contains nothing to support his assertion that he had in fact withdrawn his consent to the entry of the agreed order before the justice court judge entered it. Thus, we again rely on our previous quotation from *Vinson* to resolve this issue against Eastland because this Court will not review an issue if the record is devoid of anything to support the error of which the litigant complains.

C. I. Appellant is entitled to appeal a justice court consent decree [agreed order] to the circuit court for a trial de novo.

We begin our review of Eastland's first issue by quoting from an opinion written for the Mississippi

Supreme Court in 1955, the subject of which is the doctrine of *stare decisis*:

The doctrine of *stare decisis* is the bedrock of our system of jurisprudence. It has given direction and stability to the common law whose precepts constitute the larger part of the rules by which we live and are governed. It demands definiteness in the law, and that its rules be consistent so that they may be known. It has been said to be the most fundamental characteristic of the common law as distinguished from other systems.

Laurel Daily Leader, Inc. v. James, 224 Miss. 654, 681, 80 So.2d 770, 780-81 (1955) (Gillespie, J., Special Opinion).

Pecan Farm cites some of the same cases which Eastland cites to support its contention that a consent judgment cannot be appealed regardless of the court from which the appeal is sought. Yet one hundred and eight years ago, the Mississippi Supreme Court resolved the issue of whether a consent judgment rendered by a justice of the peace court, the predecessor of today's justice court, could be appealed to circuit court in *James v. Woods*, 65 Miss. 528, 5 So. 106, 106-07 (1888). The facts in *James* were as follows: A. A. Woods sued Peter James before a justice of the peace. *Id.* at 106. Apparently James anticipated that the justice of the peace would enter a judgment against him, so he sent his son, whom he armed with an affidavit and an appeal bond, to the justice of the peace court. *Id.* The justice of the peace approved the appeal bond before he entered judgment against James. *Id.* After Woods had presented his case, the justice of the peace inquired of James' son if he had any thing to say in his father's defense, to which the son replied that he had nothing to say. *Id.* The justice of then peace then prepared and entered a "judgment by confession or consent." *Id.* After the case had been appealed to circuit court, Woods moved to dismiss the appeal because no appeal lay from the judgment "being by consent." *Id.* The circuit court sustained Woods' motion to dismiss the appeal, and James then appealed to the Mississippi Supreme Court. *Id.*

About the issue of whether a "judgment by confession or consent" rendered in justice of the peace court could be appealed to the circuit court, the Mississippi Supreme Court wrote:

If it be insisted here, as it was done on the motion to dismiss in the circuit court, that the judgment in the justice's court was by confession, and therefore could not be appealed from, it is sufficient to say that the statute which denies appeal from judgments by consent or confession does not apply to justices' courts. Code § 2309. Reversed and remanded."

James, 5 So. at 106-07. The successor of Section 2309 of the Mississippi Code of 1880, cited in the previous quotation, which is Section 11-51-3 of the Mississippi Code of 1972, reads as follows:

An appeal may be taken to the Supreme Court from any final judgment of a circuit or chancery court in a civil case, not being a judgment by default, by any of the parties or legal representatives of such parties; and in no case shall such appeal be held to vacate the judgment or decree.

Miss. Code Ann. § 11-51-3 (Supp. 1996).

Section 11-51-3 was last amended in 1991, when it's present version became effective July 1, 1991. The immediately preceding version of Section 11-51-3 read as follows:

An appeal may be taken to the Supreme Court from any final judgment of a circuit court in a civil case, *not being a judgment by confession* or from any final decree of the chancery court, *not being by consent*, by any of the parties or legal representatives of such parties; but such appeal shall operate as a supersedeas only when the party applying for the same shall comply with the terms hereinafter prescribed; and in no case shall such appeal be held to vacate the judgment or decree.

Miss. Code Ann. § 11-51-3 (1972) (emphasis added) (amended 1991). The legislature's elimination of the prohibition against appealing to the supreme court a judgment by confession from the circuit court and a consent decree from the chancery court in the current version of Section 11-51-3 is consistent with *James v. Woods*.

We further recognize that while the case *sub judice* is a civil, and not a criminal, case, the law is settled that a defendant who pleads guilty to a misdemeanor in justice court may nonetheless appeal his resulting conviction to circuit court for a trial *de novo*. See *Neblett v. State*, 75 Miss. 105, 21 So. 799 (1897). Finally, the trial court generated *sua sponte* its reason for dismissing Eastland's appeal. Although Pecan Farm's motion to dismiss was not filed and docketed in the circuit clerk's office, the copy of that motion which was attached as "Exhibit D" to Pecan Farm's response to Eastland's motion for supersedeas filed in the Mississippi Supreme Court did not include the ground that an agreed order could not be appealed from justice court to circuit court. Moreover, Pecan Farm does not contest the circuit court's finding that Eastland's appeal was timely filed in that court. The circuit court so found pursuant to the supreme court's remand of this case to it for the purpose of determining whether Eastland's appeal had been timely filed.

This Court acknowledges the doctrine of *stare decisis* by relying on the Mississippi Supreme Court's decision in *James v. Woods* to hold that the circuit court erred when it dismissed Eastland's appeal of the justice court order of eviction, even though it was an order upon which Eastland and Pecan Farm had agreed. Thus, we reverse and remand this case to the circuit court for a trial *de novo* of this case.

D. II. The circuit court erred in denying appellant's offer of proof that the consent decree [agreed order] and underlying initial settlement agreement could be collaterally attacked and should be set aside.

Our reversal and remand of this case to the circuit court for a trial *de novo* renders our review of this issue unnecessary because our reversal and remand of this case has rendered Eastland's second issue moot.

THE ORDER DISMISSING APPEAL OF THE SUNFLOWER COUNTY CIRCUIT COURT IS REVERSED AND REMANDED. COSTS ARE ASSESSED AGAINST APPELLEE.

BRIDGES, C.J., THOMAS, P.J., DIAZ, KING, AND PAYNE, JJ., CONCUR. McMILLIN, P.J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY THOMAS, P.J. AND SOUTHWICK, J. BARBER AND HERRING, JJ., NOT PARTICIPATING.

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McMILLIN, J., CONCURRING:

I concur with the majority that, under established case law of this state, Eastland had a right to perfect an appeal from the justice court judgment even though he had previously consented to its entry. *James v. Woods*, 65 Miss. 528, 5 So. 106 (1888).

I write separately to suggest that this result does not necessarily mean, in my opinion, that Eastland is entitled to a trial on the merits as they existed prior to the settlement reached between him and Pecan Farms. In the event the terms of that subsequent agreement, apparently evidenced by documents additional to the judgment itself, can be shown to be a contractual resolution of an existing dispute, the terms of the agreement may be enforceable in the circuit court to the same extent that they were in justice court prior to the perfection of the appeal. Thus, for example, Eastland's agreement to quit the premises by a certain date may be enforceable by virtue of the separate binding agreement, and not by the justice court judgment vacated by this appeal. This could render Eastland liable for

damages for breach of his agreement measured from the time set in the agreement, and not from any subsequent order to abandon the premises that may be entered by the circuit court when this case is heard on remand. *See* Miss. Code Ann. § 89-7-25 (1972). The fact that Eastland had available a legal means to temporarily halt the judicial enforcement of a binding agreement to move out is not the equivalent of a finding that he had no such legal obligation.

THOMAS, P.J., AND SOUTHWICK, J., JOIN THIS SEPARATE WRITTEN OPINION.