

IN THE COURT OF APPEALS 10/15/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-00258 COA

PAUL D. SISTRUNK

APPELLANT

v.

**CHARLES W. CROWE AND ASSOCIATED CONSTRUCTORS, INC., A MISSISSIPPI
CORPORATION**

APPELLEES

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. ROBERT LOUIS GOZA, JR.

COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

G. JOSEPH DIAZ, JR.

ATTORNEYS FOR APPELLEES:

ROY A. SMITH

SAMANTHA A. THOMAS

J. TUCKER MITCHELL

NATURE OF THE CASE: TORT - NEGLIGENCE

TRIAL COURT DISPOSITION: DISMISSED WITH PREJUDICE

BEFORE THOMAS, P.J., BARBER, AND MCMILLIN, JJ.

PER CURIAM:

This is a case arising out of an automobile accident which occurred on November 17, 1983. On this day, Sistrunk's vehicle became disabled on a Mississippi highway. Sistrunk was standing near his vehicle when he was struck by an automobile driven by Defendant Crowe.

On August 18, Sistrunk, represented by counsel, instituted this action in the Rankin County Circuit Court. Several trial dates were scheduled and then later continued. The last scheduled trial date, which was entered on January 27, 1992 and signed by Sistrunk's counsel, was set for April 7, 1992. On March 27, 1992, notice of a pretrial hearing scheduled for April 1, 1992 was hand delivered to Sistrunk's attorney of record. Counsel for both Defendants appeared at the pretrial conference but counsel for Sistrunk failed to appear. The trial court entered an order that if Sistrunk and his attorney failed to appear at the April 7 trial, Sistrunk's action would be dismissed. A copy of this order was hand delivered to Sistrunk's attorney of record on April 1, 1992.

On April 7, 1992, the case was called for trial. The Defendants and their counsel were present and announced ready for trial. Sistrunk and his counsel, however, failed to appear. The trial court subsequently entered an order of dismissal with prejudice on that date. On the same day, a copy of the order of dismissal was sent to Sistrunk's attorney of record.

On October 9, 1992, more than six months after the entry of the order of dismissal, Sistrunk, through newly obtained counsel, filed a motion for relief under Mississippi Rule of Civil Procedure 60(b)(6) to have the dismissal with prejudice set aside. An evidentiary hearing on the motion was held on December 4, 1992. At the hearing, Sistrunk was called as the only witness in support of the motion. He testified that he had retrieved his file from his former attorney sometime in the spring of 1992. Although he was not sure of the specific date, he believed it was sometime prior to the trial. Sistrunk claimed that he never knew that a trial date had been set for his case.

After the hearing on the motion, the trial judge issued a memorandum of findings of fact and conclusions of law which set forth his reasons for denying the motion. The denial of the request for relief under Rule 60(b) is the subject of this appeal. After reviewing the briefs and the record, we

conclude that the trial court was correct for the reasons stated in its opinion of December 4, 1992 and accordingly affirm the judgment.

THE JUDGMENT OF THE RANKIN COUNTY CIRCUIT COURT DENYING THE MOTION FOR RELIEF FROM JUDGMENT IS AFFIRMED. COSTS ARE ASSESSED TO

THE APPELLANT.

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