

IN THE COURT OF APPEALS 05/21/96
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00421 COA

CHARLES MCNAIR AND LAURA MCNAIR

APPELLANTS

v.

DEPARTMENT OF HUMAN SERVICES

APPELLEE

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

TRIAL JUDGE: HON. ROBERT G. EVANS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF COVINGTON COUNTY

ATTORNEY FOR APPELLANTS:

TRAVIS H. BRYANT

ATTORNEY FOR APPELLEE:

DEBORAH D. KENNEDY

NATURE OF THE CASE: CHILD SUPPORT: RECOVERY OF COLLECTED PAYMENTS

TRIAL COURT DISPOSITION: DISMISSED WITHOUT PREJUDICE

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

PAYNE, J., FOR THE COURT:

Charles McNair filed suit in the Circuit Court of Covington County seeking to recover funds that he

claims were wrongfully collected by the Department of Human Services of Covington County. The circuit court, finding that this action should have been filed in chancery court, dismissed McNair's action without prejudice upon motion by DHS. McNair argues that the trial court erred in dismissing his cause. Finding that because this was not a final judgment this Court does not have jurisdiction of this appeal, we dismiss the appeal.

STATEMENT OF THE FACTS

On March 11, 1980, in its "Order of Filiation and For Child Support," the Chancery Court of Covington County declared Charles McNair to be the legal father of two children born to Laura Gatlin and ordered McNair to pay \$150 per month in child support to the Covington County Department of Human Services to reimburse DHS for funds it had paid to Laura Gatlin under AFDC for the support of the two children. The AFDC payments stopped in August, 1984, when Charles McNair married Laura Gatlin. The county DHS continued to collect monies from Charles McNair in order to recover all monies paid to Laura Gatlin in the form of AFDC benefits.

McNair filed the present action in the Circuit Court of Covington County seeking to recover funds that he claims were collected by DHS over and above what DHS supplied to Laura Gatlin as AFDC. DHS filed a motion to dismiss based, in part, upon lack of subject matter jurisdiction. The circuit court held a hearing on the motion and granted the motion dismissing the cause without prejudice.

DISCUSSION

The circuit court acknowledged in its judgment of dismissal that the basis for the suit originated in the Chancery Court of Covington County under its "Order of Filiation and For Child Support." The circuit court also recognized that the chancery court would be the more appropriate forum and dismissed the matter without prejudice. Rule 12(h)(3) of the Mississippi Rules of Civil Procedure provides the basis for the circuit court's action and states:

Whenever it appears by suggestion that the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action or transfer the action to the court of proper jurisdiction.

M.R.C.P. 12(h)(3). The comment to Rule 12(h) includes:

This provision preserves the traditional Mississippi practice of transferring actions between the circuit and chancery court's, as provided by Miss. Const. §§ 157 (all causes that may be brought in the circuit court whereof the chancery court has jurisdiction shall be transferred to the chancery court) and 162 (all causes that may be brought in the chancery court whereof the circuit court has exclusive jurisdiction shall be transferred to the circuit court), but not reversing for a court's improperly exercising its jurisdiction, Miss. Const. § 147. *Cazeneuve v. Curell*, 70 Miss. 521, 13 So. 32 (1893).

Id. cmt.

The Mississippi Supreme Court recently reaffirmed that "[w]hether raised by the parties or not, this Court is required to note its own lack of jurisdiction." *Michael v. Michael*, 650 So. 2d 469, 471 (Miss. 1995) (citations omitted). The jurisdiction of this Court is proper only upon a "final judgment." Miss. Code Ann. § 11-51-3 (Supp. 1995). "A final judgment has been defined by this Court as a judgment adjudicating the merits of the controversy which settles all the issues as to all the parties." *Sanford v. Board of Supervisors*, 421 So. 2d 488, 491 (Miss. 1982). McNair's appeal is not from a final judgment and therefore is not properly before this Court on appeal. *See Sanford*, 421 So. 2d at 490-91. Under the foregoing authority, this Court does not have jurisdiction of this appeal, and it is dismissed.

APPEAL DISMISSED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANTS.

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