

IN THE COURT OF APPEALS 07/02/96
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00249 COA

AMRUT R. PATEL AND AMAR
ENTERPRISES, INC.
APPELLANT

v.

JOEL W. HOWELL, III
APPELLEE

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

TRIAL JUDGE: HON. BRELAND HILBUN JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

GORDON GARLAND LYELL III

ATTORNEY FOR APPELLEE:

H.D. GRANBERRY III

NATURE OF THE CASE: CIVIL: ATTORNEY'S FEES

TRIAL COURT DISPOSITION: AFFIRMED JUDGMENT OF COUNTY COURT JUDGE WHO
INCREASED JUDGMENT IN FAVOR OF APPELLEES

BEFORE BRIDGES, P.J., BARBER, AND COLEMAN, JJ.

BRIDGES, P.J., FOR THE COURT:

Joel W. Howell III sued Amrut R. Patel and Amar Enterprises in the County Court of the First Judicial District of Hinds County for a balance due for legal fees. A jury trial resulted in a \$5,052.00 verdict for Howell, but the verdict was amended and increased by the judge for a total sum of \$10,967.00. The Hinds County Circuit Court affirmed the judgment of the county court. Aggrieved, Patel appeals to this Court claiming that the lower court did not have jurisdiction to amend the verdict. We agree and reverse the judgment of the Hinds County Circuit Court in favor of Patel with instructions to reinstate the verdict of the jury.

STATEMENT OF THE FACTS

Amrut R. Patel (Patel), the owner of the Parkside Inn was sued by Rodeway Inn in a franchise dispute. Amar Enterprises, Inc. (Amar) retained attorney Joel W. Howell III (Howell) to represent the corporation in the dispute, as well as in any other action. Howell drafted a contract of employment between himself and Amar which was executed on behalf of the corporation by Patel as president. The contract provided that Howell's fee would be \$90.00 per hour plus out-of-pocket expenses as against the initial retainer of \$4,000.00. During the course of litigation, Howell also began working on a financing project involving the corporation. According to Patel, he and Howell agreed that Howell would be paid by contingency, based on Howell's work on the financing project.

At the end of the litigation concerning the dispute with Rodeway Inn, Howell believed that he was entitled to additional compensation because of the hours spent on the project. Amar disagreed. The corporation believed that \$4,000.00 adequately compensated Howell for work on the Rodeway Inn dispute. Amar claimed that any amount over the \$4,000.00 retainer which Howell was seeking was really for work done on the financing project which was to be paid to Howell on a contingency basis. As a result, Howell filed suit against Amar Enterprises, Inc., and Amrut R. Patel for \$10,121.57, which amount included interest and attorney's fees under the open account statute. He also alleged personal liability against Mr. Patel as the "alter ego" of Amar Enterprises, Inc. Patel answered Howell's complaint separately claiming that the dispute was strictly between Mr. Howell and Amar Enterprises, Inc., and that he was not the "alter ego" of the corporate entity. Amar enterprises answered separately stating that all money owed Howell had been paid by virtue of the \$4,000.00 retainer already paid to Howell at the beginning of the litigation with Rodeway Inn. The case went to trial before a jury which returned a verdict in favor of Mr. Howell in the amount of \$5,052.00. The judgment was entered on October 29, 1993. On November 3, 1993, Amar and Amrut Enterprises filed a motion for a JNOV or a new trial. There was no motion filed by the Plaintiff during the ten days following entry of the judgment.

Howell filed a motion on November 16, 1993. This motion was entitled "Motion for Additur of Interest And Attorney's Fees" and requested relief under Mississippi Rule of Civil Procedure 59. On January 19, 1994, Howell filed a similar motion this time requesting relief under Rule 60. On February 25, 1994, the county court ruled that all of Howell's motions under Rule 59 and Rule 60 were denied, but that the judgment should be altered and amended, pursuant to Rule 60(b)(6). The judge stated in this order that Howell should be awarded relief as to an award of interest and attorney's fees under Rule 60(b)(6) and that the original judgment should be increased to \$10,967.35. In response, Patel and Amar Enterprises, Inc. filed a motion for reconsideration, rehearing, new trial,

or amendment of judgment. The motion was overruled. The circuit court affirmed. As a result, Patel now appeals to this Court.

ARGUMENT AND DISCUSSION OF LAW

The trial court correctly denied Howell's Rule 59 motion to amend his judgment due to the fact that he filed after the allowable ten (10) day period. *See* M.R.C.P. 59. The trial court, however, found upon its own initiative that the judgment of the jury should be increased to account for interest under the contract and for attorney's fees under Rule 60(b)(6) of the Mississippi Rules of Civil Procedure. This rule reads as follows:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(b) **Mistakes; Inadvertence; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) fraud, misrepresentation, or other misconduct of an adverse party;
- (2) accident or mistake;
- (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (6) any other reason justifying relief from the judgment.

At the end of trial, the trial judge submitted an instruction to the jury which told the jury that it should deliberate only as to the principal amount owed under the contract and that he, being the judge would add interest and attorney's fees to the verdict. The jury returned a verdict of \$5,052.00. The verdict was entered as the final judgment, and as stated in the facts, the judge altered the judgment to include the interest and attorney's fees. The judge did not add legal interest to the judgment, but rather corrected the jury verdict by adding interest as provided by the contract. He could have done that under Rule 59, but not under Rule 60. Rule 60 provides for *relief* from a judgment. Howell is not entitled to relief from his own judgment and as such, should have filed his motion for an additur within the ten-day period provided in Rule 59. Accordingly, this issue is without merit. We therefore reverse the judgment of the lower court to reflect the original verdict of the jury.

THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS REVERSED AND REMANDED WITH INSTRUCTIONS TO REINSTATE THE VERDICT OF THE JURY. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.

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