

IN THE COURT OF APPEALS 01/30/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00226 COA

**IN RE: THE ESTATE OF LAWRENCE THOMAS JEFFERSON: SAM PARKER AND
PAUL WAGNER**

APPELLANTS

v.

**JESSIE W. JEFFERSON, ADMINISTRATOR OF THE ESTATE OF LAWRENCE
THOMAS JEFFERSON**

APPELLEE

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

TRIAL JUDGE: HON. HYDE RUST JENKINS, II

COURT FROM WHICH APPEALED: WILKINSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

DAVID N. WILKERSON

ATTORNEY FOR APPELLEE:

R. L. NETTERVILLE

NATURE OF THE CASE: CIVIL: CONFLICT OF LAWS DISPUTE CONCERNING CHOICE
OF USURY STATUTE APPLICABLE TO A PROMISSORY NOTE

TRIAL COURT DISPOSITION: PROMISSORY NOTE PAYABLE IN ALASKA FOUND
USURIOUS UNDER MISSISSIPPI LAW.

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

COLEMAN, J., FOR THE COURT:

Lawrence Thomas Jefferson died intestate in Wilkinson County on March 22, 1992. The chancery court of that county appointed his son, Jesse Wilford Jefferson, administrator of his estate. Sam Parker and Paul Wagner, Alaska residents, probated their claim for payment of a promissory note which Jefferson executed in Alaska to become payable in Alaska. The chancellor applied the "center of gravity test" to find that Mississippi law had the most significant relationship to the events and parties. He further found that the note was against the public policy of Mississippi. He accordingly held that the note was void and dismissed with prejudice Wagner and Parker's claim for payments of Jefferson's debt which the note evidenced. We reverse and remand.

I. FACTS

The deceased debtor, Lawrence Thomas Jefferson, was born in Wilkinson County, Mississippi, in 1915. In 1951 Jefferson moved to Alaska where he went to work in various construction jobs and later became a self-employed contractor. In 1952, Jefferson and his wife purchased a tract of land known as Fairview Plantation in Wilkinson County, Mississippi. Because Jefferson continued to work in Alaska, he only made periodic visits to the plantation. While Jefferson was working in Alaska, his wife, his son, and his wife's sister and her sister's husband lived on and managed the operation of Fairview Plantation at different times. The record reflects that Jefferson and his wife never applied for homestead exemption on any part of Fairview Plantation, probably because Jefferson's motor vehicles bore Alaska license plates. In January of 1992, Jefferson returned to his wife and Fairview Plantation in Wilkinson County because of his poor health. He died on March 27, 1992.

While in Alaska, Jefferson executed a promissory note in the amount of \$26,000 that was made payable in Fairbanks, Alaska. This note was dated July 15, 1987, and the debt which it evidenced bore interest at the rate of 30% per annum from January 27, 1987, the day the debt was incurred, until paid. The note was secured by a deed of trust on Jefferson's property in Wilkinson County. The original payee of the note, Ron Tarrant, had assigned 77% of the debt which the note evidenced to Sam Parker and 23% of the debt to Paul Wagner on March 4, 1987. Because Jefferson had paid nothing on the debt of \$26,000, Wagner and Parker probated their claims for payment of this debt against Jefferson's estate. Parker's claim was for \$54,049.70, which represented his 77% share of principal and accrued interest, and Wagner's claim was for \$16,144.71, which represented his 23% share of principal and accrued interest. After a series of hearings on the Administrator's objection to paying these claims which Wagner and Parker had probated, the chancellor entered an opinion and judgment in which he ordered and adjudged as follows:

The July 15, 1987, note in the amount of \$26,000.00 made to Ron Tarrant and assigned to Sam Parker and Paul Wagner is also void and the probated claim for that note is dismissed with prejudice.

The mortgage of March 13, 1987 recorded in Deed of Trust Book 101 at page 53 of the Records of Mortgages and Deeds of Trust in the office of the Chancery Clerk of Wilkinson County, Mississippi, is void for the reasons stated above, and the claim on said mortgage is dismissed with prejudice.

In that opinion and judgment, the chancellor found:

The State of Mississippi has the most significant relationship to the events and the parties and has the greatest concern with specific issues herein and rights of parties. With respect to the contact Wilkinson County, Mississippi has to this action, the Court finds:

(1) The deceased, Lawrence Thomas Jefferson, was a resident citizen of Wilkinson County, Mississippi.

(2) The Deed of Trust claimed by the creditors and probated is on land located in Wilkinson County, Mississippi.

(3) This estate is being administered in the Chancery Court of Wilkinson County, Mississippi.

(4) The claims are probated in the Chancery Court of Wilkinson County, Mississippi.

(5) The Chancery Court of Wilkinson County, Mississippi has jurisdiction of the assets and liabilities of the estate.

(6) The Administrator and heirs of the estate are residents of Wilkinson County, Mississippi.

(7) Any claim probated and paid must be paid from the assets of the estate.

(8) The financing, if any, for the estate would be in Wilkinson County, Mississippi.

(9) The disbursement of the estate is in Wilkinson County, Mississippi.

Therefore, the laws of the State of Mississippi are controlling in this matter. (*Fells v. Bowman*, 274 So. 2d 109).

USURY

The two notes carry an interest rate of 30% per annum, and, therefore, both notes are void as to principal and interest. Generally, where a note is executed in one state and due and payable in another, rights and obligations of the parties are governed by laws of the state where the note is payable. (*Consumers Credit Corp. of Miss. v. Stanford*, 194 So. 2d 868 (Miss. 1967)).

. . . .

In reading the pertinent cases, it seems to me that the issue is whether or not these particular notes are against the public policy of Mississippi, and if they are against the public policy of Alaska. A contract by a borrower waiving directly or indirectly the usury laws is against public policy. (*Georgia State Building & Loan Ass'n. v. Grant*, 34 So. 84 (Miss. 1903)). There is no question in the Court's mind that a note calling for 30% interest per annum is against the public policy of the State of Mississippi. The very language of the note plainly shows that it is also against the public policy of the State of Alaska. A court applying Mississippi choice of law rules may refuse to apply the law of another state if to do so would be contrary to the deeply ingrained and strongly felt public policy of Mississippi. (*Dees v. Hallum*, 721 F. Supp. 789 (N.D. Miss. 1989)). This may be a closer call if the note itself complied with the usury law of the State of Alaska, but since the note itself calls for circumvention of the Alaskan law, there is no valid foreign state law from which to make a choice. . . . This Court further finds that the July 15, 1987, note is usurious and is, therefore, barred. The Court is further of the opinion that the void note upon which the Deed of Trust of March 13, 1987 in favor of Ron Tarrant recorded in Deed of Trust Book 101 at page 53 of the Records of the Chancery Clerk of Wilkinson County, Mississippi renders that Deed of Trust void.

III. ISSUES AND THE LAW

In their brief, Wagner and Parker state the two issues which, they assert, require the reversal of the trial court's judgment as follows:

Is a promissory note executed in Alaska and made payable in Alaska by a Mississippi decedent governed by the usury law of Alaska or the usury law of Mississippi?

Did the chancellor err in holding the January 27, 1987 note executed by the decedent usurious under Alaska law?

Jessie W. Jefferson, administrator of the estate of Lawrence T. Jefferson, states the issues differently in his brief as follows:

1. The chancellor was correct in holding that Lawrence Thomas Jefferson was a resident citizen and domiciled Wilkinson County, Mississippi at the time of his death.
2. That the validity of the two notes was to be determined by Mississippi law.
3. The note involved herein was usurious.
4. The note was void as to both principal and interest.

We think that Wagner and Parker's first issue and Jefferson's Issue 2. are the same issue, although the litigants state them differently. Thus we shall address Jefferson's Issue 2. as a part of our discussion and analysis of Wagner and Parker's first issue. We also think that Wagner and Parker's second issue and Jefferson's Issues 3. and 4. are the litigants' dissimilar statements of the same issue. Thus, we shall address Jefferson's Issues 3. and 4. as a part of our discussion and analysis of Wagner and Parker's second issue. We shall reserve our consideration of Jefferson's Issue 1. for the conclusion of this opinion.

Issue One

Is a promissory note executed in Alaska and made payable in Alaska by a Mississippi decedent governed by the usury law of Alaska or the usury law of Mississippi?

The standard for appellate review is that the chancellor's finding is affirmed "unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Crow v. Crow*, 622 So. 2d 1226, 1228 (Miss. 1993). We quoted from the chancellor's opinion to establish that in it, he observed --we think correctly -- that:

Generally, where a note is executed in one state and due and payable in another, rights and obligations of the parties are governed by laws of the state where the note is payable.

In *Greenlee v. Hardin*, 157 Miss. 229, 127 So. 777 (Miss. 1930), the Mississippi Supreme Court dealt with a promissory note executed and payable in the state of Florida but on which the maker, Mrs. Hattie Greenlee, a married woman, was sued in Mississippi. *Greenlee*, 127 So. at 778. Florida law provided that a promissory note signed by a married woman was void. *Id.* at 777. The trial court entered judgment against Greenlee. She appealed, and the supreme court reversed the trial court's judgment against her and rendered judgment for Greenlee. *Id.* at 779. The supreme court held that a promissory note executed and made payable in another state, *i. e.*, Florida, was "of course, governed by the laws of that state." *Id.* at 778.

A promissory note that is made payable in another state will not become subject to Mississippi law simply because the note is secured by property located in Mississippi. *Dodds v. Pyramid Securities Co.*, 165 Miss. 269, 147 So. 328 (Miss. 1933). In *Dodds*, the notes were executed in Biloxi, Mississippi, where the loan proceeds were delivered to the borrowers. *Dodds*, 147 So. at 329. The notes were secured by a deed of trust which encumbered Mississippi land; however, the notes were payable in Louisiana and thus invoked Louisiana law. *Id.* Regardless of the fact that the security for the debt was in Mississippi, the supreme court applied the doctrine announced in *Greenlee v. Hardin* to hold that the notes were governed by Louisiana law. *Id.*

In *Abraham v. Friendly Finance Co. of Biloxi*, 38 So. 2d 323, 324 (Miss. 1949), the debtors had filed their bill to set aside as usurious their note and deed of trust. The chancellor dismissed their bill, and the debtors appealed. The Mississippi Supreme Court concluded that with regard to the debtors' loan, Mississippi's usury laws had no application where the borrowers and lender consummated the transaction in Louisiana and understood that Louisiana's laws would govern the transaction. *Id.* at 324. Under Mississippi law, the note was usurious; under Louisiana law it was not. The supreme court affirmed the dismissal of the debtors' bill to set aside as usurious their note and deed of trust. *Id.*

In the case at bar, the chancellor's rationale for applying Mississippi law to Jefferson's note for \$26,000 rested on the "most significant relationship rule" that was first announced in *Mitchell v. Craft*, 211 So. 2d 509 (Miss. 1968). We have already quoted the nine reasons which the chancellor recited in his opinion to support his determination that "[t]he State of Mississippi has the most significant relationship to the events and the parties and has the greatest concern with specific issues herein and rights of parties." *Mitchell*, a tort case, dealt with an automobile accident between two Mississippi residents that occurred in Louisiana. *Id.* at 510. In choosing to apply Mississippi law, the Mississippi Supreme Court cited *The Restatement (Second) Conflict of Laws* as it pertains to the appropriate situs for a *tort* action. *Id.* at 515 (emphasis added). The "most significant relationship rule" enumerated in *Mitchell* does not apply to the issues in the case *sub judice* because here we deal with contract law -- and not tort law. Moreover, *The Restatement (Second) Conflict of Laws* § 214(1) states:

The obligations of the maker of a note and of the acceptor of a draft are determined, . . . by the local law of the state designated in the instrument as the place of payment.

Restatement (Second) of Conflict of Laws § 214(1) 1968.

This provision clearly illustrates the applicability of Alaska law to Jefferson's promissory note. Moreover, the comment to the *Restatement* points out that notes readily pass from hand to hand; and, therefore, subsequent holders rely on the provisions of the instrument itself as to which law governs the obligations of the maker or acceptor. *Id.* cmt. This comment stresses the need to protect the interests of Parker and Wagner, to whom Ron Tarrant assigned this note. The record contains no evidence that Jefferson, Tarrant, Parker, or Wagner understood that Mississippi law would apply to this transaction.

In the case *sub judice*, Jefferson executed the \$26,000 note in Alaska. The note was payable in Alaska to residents of Alaska. Pursuant to *Greenlee, Dodds, and Abraham*, we can only hold that the issues which the Jefferson estate raises in this case are governed by Alaska law. Thus we conclude that when the chancellor applied the tort doctrine of "most significant relationship rule" to issues of a contractual nature, he applied an erroneous legal standard to those issues. In *Greenlee, Dodds, and Abraham*, the Mississippi Supreme Court followed and applied the legal standard that "[t]he obligations of the maker of a note and of the acceptor of a draft are determined . . . by the local law of the state designated in the instrument as the place of payment." This is the principle which the chancellor ought to have applied to ascertain whether Alaska or Mississippi law applied to the issue of whether Jefferson's note for \$26,000.00, which bore interest at the rate of thirty percent (30%), was usurious. In accordance with our previously cited standard of review, we hold that the chancellor applied the wrong legal standard to determine that Mississippi law applied to the question of whether this note was usurious, and we hold that Alaska law applies to this issue.

Issue Two

Did the chancellor err in holding the January 27, 1987 note executed by the decedent usurious under Alaska law?

Because Jefferson's promissory note is governed by Alaska law, we need only look to Alaska Statute, Section 45.45.010 which states:

(a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section. (b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. *A contract or loan commitment in which the principal amount exceeds \$25,000 is exempt from the limitation of this subsection.* (emphasis added).

Alaska Stat. § 45.45.010 (1995) (emphasis added).

Alaska Statute, Section 45.45.010, exempts from its limitation promissory notes which exceed \$25,000.00. The sum of Jefferson's note, \$26,000.00, exceeds the amount exempted by \$1,000.00. Therefore, we find that his note in the principal amount of \$26,000.00 is not usurious under the laws of the state of Alaska. Thus, the chancellor erred when he held that this note was usurious under Alaska law.

The chancellor further sought to fortify his denial of Parker and Wagner's claim on the grounds of public policy. We have previously noted that in his opinion he wrote:

There is no question in the Court's mind that a note calling for 30% interest per annum is against the public policy of the State of Mississippi. . . . A court applying Mississippi choice of law rules may refuse to apply the law of another state if to do so would be contrary to the deeply ingrained and strongly felt public policy of Mississippi. (Dees v. Hallum, 721 F. Supp 789 (N.D. Miss. 1989)). This may be a closer call if the note itself complied with the usury law of the State of Alaska, but since the note itself calls for circumvention of the Alaskan law, there is no valid foreign state law from which to make a choice.

In *King v. City of Jackson*, No. 92-CA-00866-SCT, slip op. at 1 (Miss. Nov. 30, 1995), the Mississippi Supreme Court emphasized:

[T]his court is committed to the doctrine that the public policy of the state must be found in its constitution and statutes, and when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials.

Is it not contradictory to assert that a Mississippi court may "refuse to apply the law of another state if to do so would be contrary to the deeply ingrained and strongly felt public policy of Mississippi.", when the state's supreme court has held in at least three cases, *Greenlee*, *Dodds*, and *Abraham*, that another state's law is the applicable law? The Mississippi Supreme Court instructs this Court that "[t]he public policy of the state must be found in its constitution and statutes, and when they have not directly spoken, then in the decisions of the courts." *King*, No. 92-CA-00866-SCT, slip op. at 1. Moreover, the chancellor commented that "[t]his may be a closer call if the note itself complied with the usury law of the State of Alaska" We have found that the note complied with the usury laws of Alaska. We conclude that the chancellor erred by finding that the note's interest rate of thirty percentum per annum violated the state's public policy against usurious rates, the consequence of which was to bar Parker and Wagner's claim.

Issue Three

The chancellor was correct in holding that Lawrence Thomas Jefferson was a resident citizen and domiciled in Wilkinson County, Mississippi at the time of his death.

We find no error in the Chancellor's finding that Lawrence Thomas Jefferson was a resident citizen of and domiciled in Wilkinson County when he died. However, based on our resolution of the first two issues in this appeal, this issue becomes irrelevant to our stated reasons for reversing and remanding this case to the chancery court for further proceedings consistent with this opinion.

III. Conclusion

Pursuant to Mississippi Supreme Court precedent, the chancellor erred by applying an incorrect standard of law to the issues in this case. The chancellor wrote in his opinion that "[w]here a note is executed in one state and due and payable in another, rights and obligations of the parties are governed by laws of the state where the note is payable." Yet he held that under the "most significant relationship rule," a doctrine applicable in tort cases, Mississippi law, not Alaska law, applied to the question of whether Jefferson's note was usurious. The correct legal standard was Alaska law. He then held that even under Alaska law, were it applicable, the note was usurious; but we find that under the relevant Alaska statute, which exempted notes for debts in excess of \$25,000.00 from its enforcement, the note was not usurious. Therefore, we reverse and remand this case for further proceedings in the chancery court which are consistent with this opinion.

THE JUDGMENT OF THE CHANCERY COURT OF WILKINSON COUNTY, MISSISSIPPI IS REVERSED AND REMANDED FOR PROCEEDINGS WHICH ARE CONSISTENT WITH THIS OPINION. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.

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