

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00894 COA**

J.L. GARRETT AND NOMA GARRETT

APPELLANTS

v.

CHARLES HUDSON AND LORETTA HUDSON

APPELLEES

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

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| DATE OF JUDGMENT: | 07/26/95 |
| TRIAL JUDGE: | HON. TIMOTHY E. ERVIN |
| COURT FROM WHICH APPEALED: | TISHOMINGO COUNTY CHANCERY COURT |
| ATTORNEY FOR APPELLANTS: | PRO SE |
| ATTORNEY FOR APPELLEES: | DUNCAN LOTT |
| NATURE OF THE CASE: | CIVIL - OTHER |
| TRIAL COURT DISPOSITION: | GARRETTS FOUND IN CONTEMPT OF PRIOR ORDER DIRECTING THEM TO PAY ATTORNEY FEES AND SURVEY COSTS AS ORDERED PREVIOUSLY, PLUS 8%. |
| DISPOSITION: | AFFIRMED -11/18/97 |
| MOTION FOR REHEARING FILED: | 11/26/97 |
| CERTIORARI FILED: | 2/4/98 |
| MANDATE ISSUED: | 4/30/98 |

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

KING, J., FOR THE COURT:

The instant case involves a land boundary dispute. The Garretts appeal from a contempt judgment rendered on July 26, 1995, which (1) held them in contempt for failure to pay land survey costs of \$355 and attorney's fees of \$500 pursuant to a trial judgment rendered on November 21, 1994, (2) determined that stakes placed by the Garretts near a boundary, gravel road were not in violation of the trial judgment and (3) invalidated a previous contempt order. The Garretts assign the following errors on appeal: (1) the original complaint is full of discrepancies as listed in the answer and counterclaim, (2) a telephone deposition of Harold Walker, a grantor of the Garretts' land, was not authorized by the chancellor, (3) notice that a judgment had been rendered on November 21, 1994, was not given to the Garretts, (4) land description errors do not exist in the Garretts' deeds, (5) the

chancery court improperly entered a judgment dated November 2, 1994, and (6) the chancery court improperly moved the case to Prentiss, Mississippi. Finding that the Garretts' assignments of error are procedurally barred, we affirm the chancery court's judgment.

FACTS

Charles and Loretta Hudson owned land in Tishomingo county located across from J. L. and Noma Garrett's land. On January 9, 1990, the Hudsons filed a complaint in the Tishomingo County Chancery Court alleging that the Garretts' land overlapped their land. Before going to trial in November of 1990, the Hudsons filed a complaint for a temporary restraining order requesting the chancery court to order the Garretts to remove boulders from the roadway in front of the Hudson's land. The chancellor issued the temporary restraining order on June 1, 1990. Subsequently, a hearing regarding the Hudsons' complaint for preliminary injunction was held and a preliminary injunction was entered on June 20, 1990, requiring the Garretts to remove the rocks and boulders and permitting the Garretts to place two or three stakes at the location where the Garretts' property fronted the roadway.

On August 13, 1990, the Hudsons filed a petition for citation of contempt alleging that the Garretts had again obstructed the roadway. A hearing was held and an order of contempt requiring the Garretts to pay \$500 in fines and \$250 in attorney's fees was entered on September 14, 1990.

A trial on the merits was held in this matter and judgment was rendered on November 21, 1994, determining that the gravel roadway was the dividing point between the parcels of land and requiring that the Garretts pay an additional \$355 in survey costs incurred by the Hudsons and \$500 in attorney's fees. On February 24, 1995, the Hudsons filed a second petition for citation of contempt based on the Garretts' alleged interference with the use of the roadway and failure to pay the attorney's fees. A hearing was held on July 24, 1995, and an order was entered on July 26, 1995, finding specifically:

- (1) The petition for contempt based upon the order of contempt dated September 14, 1990 and based upon the preliminary injunction dated June 20, 1990 could not be sustained.
- (2) The order dated September 14, 1990 was not an enforceable order because it should have been signed by another chancellor.
- (3) An opinion and judgment was entered on November 21, 1994, establishing a boundary line between the parties as the existing gravel road. The proof presented as to the stakes placed on the north side of the [existing boundary gravel] roadway by the Garretts did not show clear violation of the court's order of November 21, 1994, without testimony from a competent surveyor.
- (4) The proof showed that the Garretts' failed to pay the survey and attorneys fees as ordered by Order dated November 21, 1994 and the Garretts were in willful and obstinate contempt of the Court's order.
- (5) Plaintiffs were awarded a judgment in the sum of \$855.00, jointly and severally, with interest accruing thereon at the rate of 8% per annum.

(6) No further assessment of attorney's fees shall be made against the Garretts' on the Hudsons' petition for citation of contempt, and all court costs incurred were assessed equally between the parties.

The Garretts now appeal the July 26, 1995 judgment to this Court.

ANALYSIS OF THE ISSUES AND THE LAW

The Garretts appeal the July 26, 1995 contempt judgment which examines only the Garretts' failure to pay attorney's and surveyor fees, acts by the Garretts placing metal stakes in the boundary road, and the invalidation of a previous contempt order. They contend that (1) the original complaint filed by the Hudsons is full of discrepancies, (2) a telephone deposition of Harold Walker, a grantor of the Garretts' land, was not authorized by the chancellor, (3) the chancellor stated that a judgment would be rendered from the bench on a specific date, but it was not rendered until November 21, 1994 and proper notice was not given to the Garretts, (4) land description errors do not exist in the Garretts' deed, (5) the chancery court improperly entered a judgment dated November 2, 1994 and, (6) the chancery court improperly moved the case to Prentiss, Mississippi. We find that the aforementioned issues extend beyond matters covered by the July 26, 1995 contempt judgment. The Garretts request resolution of matters that were addressed in the trial held on December 16, 1993 and the November 21, 1994 judgment. The time to appeal those matters has expired. M. R. A. P. 4(a). Having failed to timely appeal these issues from the proper judgment, we find that the Garretts' issues are procedurally barred. We affirm the chancery court's judgment.

THE JUDGMENT OF THE TISHOMINGO COUNTY CHANCERY COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.