

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00893 COA

DANA L. TURNER

APPELLANT

v.

**MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE AND ROBERT
MCCARTY**

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON.ROBERT GIBBS

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEYS FOR APPELLEES:

JOE RAGLAND AND LEONARD MCCLELLAN

NATURE OF THE CASE: WRIT OF MANDAMUS

TRIAL COURT DISPOSITION: DENIAL OF WRIT OF MANDAMUS AGAINST STATE
DEPARTMENT OF AGRICULTURE

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

SOUTHWICK, J., FOR THE COURT:

Dana L. Turner appeals from the Hinds County Circuit Court's denial of writ of mandamus. The requested writ would have forced the defendants to allow him to market a pesticide in Mississippi. Since that time, and indeed prior to the preparation of Turner's appellate brief, the State has registered his product and permitted its sale. We therefore dismiss this case as moot.

STATEMENT OF FACTS

In 1990, Dana Turner developed a product designed to kill fire ants. In the fall of that year he formed a corporation to market the product. He has had difficulty at least with the states of Texas and Mississippi regarding the proper certifications. At times he disputed whether the product was a pesticide, or was instead a "soil amendment" or "plant nutrient." Different product names have been used, and disputes have arisen regarding whether each is the same pesticide-like product. There has been litigation in Texas, as well as litigation in a Mississippi federal district court. *See Turner v. State*, 850 S.W. 2d 210 (Tex. Ct. App. 1993); *Turner v. United States EPA*, 848 F.Supp. 711 (S.D. Miss. 1994). The federal court dismissed his complaint, and Turner took no appeal. The mandamus action that is the subject of this appeal was filed prior to final judgment in the federal district court.

The Hinds County Circuit Court denied the request for writ of mandamus on July 29, 1994. While Turner's motion for rehearing was pending, he filed a notice of appeal. This procedural defect was waived by the supreme court in an order entered on February 14, 1995. The court "suspend[ed] the operation of Rule 4(d) on its own motion in order to prevent manifest injustice." The supreme court also denied the state's motion to dismiss.

As became obvious later, the United States Environmental Protection Agency has now registered the products that Turner wished to sell. Consequently, the State of Mississippi's appropriate authorities have registered those products. Turner himself in his appellate brief of March 27, 1995, said that a writ of mandamus would now be "a waste of time for this most honorable state court," meaning at least the supreme court to which he addressed his brief. What he still wishes, however, is for some court to award him costs and "pro se attorney fees."

DISCUSSION

No transcript of proceedings in the circuit court was ordered by the appellate Turner. All we have to review are the pleadings and other court filings, including a final opinion. The case has reduced itself to a fairly simply legal question. Is there any action by the Mississippi Department of Agriculture and Commerce which would now justify the awarding of costs to him and his pro se attorney's fees? Whether attorney's fees for pro se litigation are appropriate is a matter that we need not resolve, for reasons that we now state.

The statute controlling the actions of the Mississippi Department of Agriculture and Commerce is section 69-23-7(3) of the Mississippi Code. There is no authority for Mississippi to register the product until it is first registered by the EPA. His complaints with the EPA were the subject of a suit he brought in federal court that was still pending when he brought this mandamus action in state court. *Turner*, 848 F.Supp. at 711.

Turner admits in his brief that once the EPA registered his product, the state Defendants did so as well. That registration occurred after he filed this mandamus action. Not only is his substantive claim

moot, he has also not alleged any basis, such as unreasonable delay, that could form even the beginnings of an argument for improper action by the Mississippi Defendants.

This appeal is from an order of July 29, 1994, that affirmed the Mississippi Department of Agriculture and Commerce's decision not to register Turner's product. That order is now moot, and we therefore dismiss the appeal and all related requests for relief.

THE APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY OF JULY 29, 1994, AFFIRMING THE DECISION OF THE MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE, IS DISMISSED AS MOOT. ALL COSTS ARE ASSESSED TO THE APPELLANT.

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