

SUPREME COURT OF MISSISSIPPI

LaFontaine v. Holliday

110 So. 3d 785 (Miss. 2013) · Decided April 11, 2013

SUMMARY

The Mississippi Supreme Court dismissed LaFontaine’s appeal because it arose from a nonfinal order. The order set aside a prior reinstatement of the case and referred the pending motion back to the judge who had entered the original dismissal, leaving the case unresolved on the merits.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Lamar; Waller; Dickinson; Randolph; Kitchens; Chandler; Pierce; King; Coleman
JURISDICTION	Mississippi
DECIDED	April 11, 2013
DISPOSITION	dismissed
PROCEDURAL POSTURE	LaFontaine appealed an order setting aside a prior order that had reinstated her case after its dismissal for want of prosecution. The Mississippi Supreme Court dismissed the appeal for lack of appellate jurisdiction because the order was nonfinal.
STANDARD OF REVIEW	Appellate jurisdiction was reviewed de novo as a question of law; the court determined whether the order appealed from was a final judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Shirley LaFontaine v. John Harley, William Holliday d/b/a Holliday General Contracting

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the January 27, 2012 order setting aside the prior reinstatement order was a final judgment appealable to the Mississippi Supreme Court.
2. Whether the Supreme Court had appellate jurisdiction over an appeal from an order that left LaFontaine's motion to set aside the dismissal pending before the circuit court.

HOLDINGS

1. The order was not a final judgment because it did not adjudicate the merits, left LaFontaine's motion pending before Judge Clark, and left further action for the circuit court to take.
2. The Supreme Court lacked appellate jurisdiction to entertain LaFontaine's appeal from the nonfinal order and therefore dismissed the appeal.

KEY QUOTATIONS

“It is well settled that “appeals to the Supreme Court from the circuit court lie only from a final judgment.””
(110 So. 3d at 787)

“An order is considered final if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” (110 So. 3d at 787)

“Furthermore, “the mere fact that an otherwise premature appeal may result in saving expense or delay does not allow an exception to this rule.”” (110 So. 3d at 787)

FACTUAL BACKGROUND

LaFontaine sued John Harley and William Holliday in the Circuit Court of Hancock County. After twelve months with no action of record, the clerk moved to dismiss the case for want of prosecution under Rule 41(d), and Judge Clark dismissed the case without prejudice. Judge Gargiulo later reinstated the case, then set aside that reinstatement order and directed that LaFontaine's pending motion be considered by Judge Clark, who had entered the original dismissal.

PROCEDURAL HISTORY

After twelve months of inactivity, the circuit clerk moved to dismiss the case under Mississippi Rule of Civil Procedure 41(d), and Judge Roger T. Clark dismissed it without prejudice. LaFontaine moved to set aside the dismissal and reinstate the case; Judge John C. Gargiulo granted that motion, but later set aside his reinstatement order and referred the motion back to Judge Clark. LaFontaine appealed the latter order, and the Supreme Court dismissed the appeal as taken from a nonfinal judgment.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The case was remanded to the Circuit Court of Hancock County for consideration of LaFontaine's pending motion by Judge Clark, the judge who entered the original dismissal.

CASES CITED

- Cotton v. Veterans Cab Co., Inc., 344 So. 2d 730, 731 (Miss. 1977)
- Sanford v. Board of Supervisors of Covington County, 421 So. 2d 488, 491 (Miss. 1982)
- Mississippi Waste of Hancock County, Inc. v. Board of Supervisors of Hancock County, 818 So. 2d 326, 330 (Miss. 2001)
- Banks v. City Finance Co., 825 So. 2d 642, 645 (Miss. 2002)
- Catlin v. United States, 324 U.S. 229, 233 (1945)
- Sawyers v. Herrin-Gear Chevrolet Co., Inc., 26 So. 3d 1026 (Miss. 2010)
- M.W.F. v. D.D.F., 926 So. 2d 897 (Miss. 2006)
- Michael v. Michael, 650 So. 2d 469, 471 (Miss. 1995)

OPINION

LAMAR, J.

LAMAR, Justice, for the Court: ¶ 1. Shirley LaFontaine (“LaFontaine”) appeals from an order which we find to be a nonfinal judgment. Because her appeal is not properly before us, we dismiss her appeal and remand this case to the Circuit Court of Hancock County. FACTUAL BACKGROUND ¶ 2. LaFontaine filed suit against John Harley (“Harley”) and William Holliday d/b/a Holliday General Contracting (“Holli-day”) in the Circuit Court of Hancock County, Mississippi.

The record reveals the case was assigned to Judge Roger T. Clark. After twelve months of inactivity in the case, during which no action of record occurred, the circuit court clerk filed a motion to dismiss the case for want of prosecution under Rule 41(d) of the Mississippi Rules of Civil Procedure.¹ On December 12, 2011, Judge Clark entered an order dismissing the case without prejudice for want of prosecution. ¶ 3.

LaFontaine filed a “motion to set aside the judgment of dismissal and to reinstate causes of action.” LaFontaine mailed her motion to the post office box used for all the judges at the Circuit Court of Hancock County, her filing letter was directed to “Dear Sir/Madam,” and her proposed order was for the “presiding Judge’s signature.” LaFontaine argued in her motion to set aside judgment that her attorneys did not receive notice of the clerk’s motion to dismiss.

LaFontaine’s counsel argued that, had they received notice of the clerk’s motion, “they would have taken the appropriate steps to prevent the dismissal of Plaintiffs causes of action.” ¶ 4. Judge John C. Gargiulo signed and entered an order reinstating the case.

The order to reinstate simply sets forth that the circuit court “is of the opinion that [LaFontaine’s motion to reinstate her case] should be GRANTED in all respects.” The record does not reveal why Judge Gargiulo considered and ruled on LaFontaine’s motion when the case was assigned to Judge Clark. ¶ 5. Holliday, acting pro se, filed a motion to reconsider the order reinstating the case.

Holliday argued that Judge Gargiulo had abused his discretion in granting LaFontaine’s motion without holding a hearing, and that LaFontaine’s motion should be struck because her foreign pro bono attorney had failed to comply with Mississippi’s pro hac vice rules, and he requested a hearing. ¶ 6.

On January 27, 2012, Judge Gargiulo entered an order setting aside his prior order reinstating the case. Judge Gargiulo determined that LaFontaine’s motion to set aside the dismissal and to reinstate her case “should be addressed to and considered by the judge who, on December 12, *7872011, entered the ‘Order Dismissing Case for Want of Prosecution.’ ” ¶ 7.

LaFontaine now appeals from Judge Gargiulo’s January 27 order.² LEGAL ANALYSIS ¶ 8. It is well settled that “[a]ppeals to the Supreme Court from the circuit court lie only from a final judgment.”³ “[A]n appeal is not a matter of right but is subject to the statutory provisions, and the basic requirement is that appeals are proper only if from a final judgment.”⁴ Generally, a final judgment is one that adjudicates the merits of the controversy and settles all issues between all parties.⁵ In other words, “[a]n order is considered final if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”⁶ Furthermore, “the mere fact that an otherwise premature appeal may result in saving expense or delay does not allow an exception to this rule.”⁷ ¶ 9.

In this case, the order appealed from is not a final judgment. The January 27 order did not adjudicate the case on its merits; rather, the order set aside a previous order reinstating the case, without addressing the merits of the case. Indeed, Judge Gargiulo’s January 27 order specifically stated that LaFontaine’s motion to set aside judgment of dismissal and reinstate causes of action should be considered by Judge Clark, as he was the judge who dismissed the case on December 12, 2011.

In substance, Judge Gargiulo undid any action he had taken on LaFontaine’s motion to reinstate her case, and referred her pending motion back to Judge Clark. ¶ 10. As the January 27 order left a pending motion to be dealt with by Judge Clark, the order is not a final judgment that ends the litigation on its merits and leaves the circuit court with nothing left to do but to execute the judgment.

Because LaFontaine appeals from a nonfinal judgment, we are without appellate jurisdiction to entertain her appeal.⁸ For the foregoing reasons, we dismiss LaFontaine’s appeal, with costs assessed to LaFontaine. ¶11. APPEAL DISMISSED. *788WALLER, C.J., DICKINSON AND

RANDOLPH, P.JJ., KITCHENS, CHANDLER, PIERCE, KING AND COLEMAN, JJ., CONCUR.. Rule 41(d) provides that, in any case in which there has been no action within the preceding twelve months, the clerk of court shall mail notice to the parties that the case will be dismissed unless, within thirty days from mailing of notice, action is taken or an application is made to the court to show good cause why the case shall be continued as a pending case.

Miss. R. Civ. P. 41(d). The Rule also provides that the court shall dismiss each such case without prejudice if no action is taken or good cause is not shown. *Id.*.. LaFontaine does not appeal Judge Clark's December 12, 2011, order dismissing her case for want of prosecution, and it does not appear from the record that Judge Clark has ruled on her motion to set aside judgment of dismissal..

Cotton v. Veterans Cab Co., Inc., 344 So.2d 730, 731 (Miss.1977).. *Sanford v. Bd. of Supervisors, Covington County*, 421 So.2d 488, 491 (Miss.1982) (citations omitted). See also *Mississippi Waste of Hancock County, Inc. v. Bd. of Supervisors of Hancock County*, 818 So.2d 326, 330 (Miss.2001) (citing Miss.Code Ann. § 11-51-3)). Mississippi Code Section 11-51-3 reads in relevant part: "[a]n appeal may be taken to the Supreme Court from any final judgment of a circuit or chancery court in a civil case...." Miss.Code Ann. § 11-51-3 (Rev.

2012).. *Mississippi Waste*, 818 So.2d at 330 (citing *Sanford*, 421 So.2d at 491).. *Banks v. City Fin. Co.*, 825 So.2d 642, 645 (Miss.2002) (citing *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 L.Ed. 911 (1945)), overruled on other grounds by *Sawyers v. Herrin-Gear Chevrolet Co., Inc.*, 26 So.3d 1026 (Miss.2010).. *Sanford*, 421 So.2d at 491 (citation omitted)..

See *M.W.F. v. D.D.F.*, 926 So.2d 897 (Miss.2006) (dismissing appeal from non-final judgment for lack of appellate jurisdiction); *Michael v. Michael*, 650 So.2d 469, 471 (Miss.1995) (same); *Cotton*, 344 So.2d at 730 (same).