

SUPREME COURT OF MISSISSIPPI

Kirkpatrick v. Munn

181 So. 2d 150 (Miss. 1965) · Decided December 17, 1965

SUMMARY

The Mississippi Supreme Court held that sureties on a supersedeas appeal bond were not liable for a judgment entered after the appealed judgment was affirmed as to liability but reversed and remanded for a new trial on damages. The court concluded that the appeal had been prosecuted "with effect," the judgment appealed from had not been affirmed, and the bond therefore was not breached.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Inzer, Justice; Inzer; Ethridge; Gillespie; Jones; Brady
JURISDICTION	Mississippi
DECIDED	December 17, 1965
DISPOSITION	reversed
PROCEDURAL POSTURE	Kirkpatrick appealed a circuit-court judgment imposing liability on him as a surety on a supersedeas appeal bond.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Mississippi; precedential.
PARTIES	Jimmy Kirkpatrick v. Jane Munn, administratrix of the estate of M. N. Munn

TOPICS

- appellate procedure
- remedies
- civil procedure
- costs

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Suretyship and bonds
- Remedies

QUESTIONS PRESENTED

- Whether a surety on a supersedeas appeal bond is liable when the appealed judgment was affirmed as to liability but reversed and remanded for a new trial on damages.
- Whether the phrase "prosecute said appeal with effect" and the condition "if the same be affirmed" were satisfied when the appellant obtained a partial reversal and remand.

HOLDINGS

1. A surety on a supersedeas appeal bond is not liable for a judgment entered after remand when the Supreme Court affirmed liability but reversed the appealed judgment and remanded for a new trial on damages.

KEY QUOTATIONS

“We hold that the surety is not liable under such circumstances.” (150)

“We hold that the phrase “prosecute said appeal with effect” requires that the appeal be prosecuted successfully.” (152)

“The obligation of the sureties on his supersedeas bond was not breached, and it became void.” (153)

“For this reason this case must be reversed and judgment entered here for appellant.” (153)

FACTUAL BACKGROUND

P. O. Scott appealed a \$2,500 judgment with a supersedeas bond executed by Jimmy Kirkpatrick and W. V. Crump as sureties. The Supreme Court affirmed Scott's liability but reversed and remanded for a new trial limited to damages, after which the circuit court entered a \$2,250 judgment against Scott. Munn then sued the sureties for the retrial judgment and obtained a judgment against them.

PROCEDURAL HISTORY

Jane Munn obtained a judgment against P. O. Scott for injuries arising from an automobile accident. Scott appealed with a supersedeas bond signed by Kirkpatrick and Crump; the Supreme Court affirmed liability but reversed and remanded for a new trial on damages. After a \$2,250 judgment was entered on retrial, Munn sued the sureties, and the circuit court entered judgment against them. Kirkpatrick appealed, arguing that the appeal bond had not been breached and that venue should have been transferred.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Supreme Court directed that judgment be entered for Kirkpatrick.

CASES CITED

- Aetna Life Ins. Co. v. Thomas, 166 Miss. 53, 144 So. 50, 146 So. 134 (1932)
- Howie v. Bonds, 87 Miss. 698, 40 So. 227
- Barry v. Wingfield, 126 So. 842 (Miss. 1930)
- Kibble v. Butler, 27 Miss. 586

