

SUPREME COURT OF MISSISSIPPI

Powers v. Tiebauer

939 So. 2d 749 (Miss. 2005) · No. No. 2003-CP-01877-SCT · Decided August 25, 2005

SUMMARY

The Mississippi Supreme Court affirmed a chancery court order changing a child's surname to that of her adjudicated biological father. The court held that the mother abandoned her challenge to the name change by failing to pursue her motion and was procedurally barred from raising a constitutional challenge to Mississippi Code section 93-9-9(1) for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Graves, Justice; Waller, P.J.; Graves, J.; Randolph, J.; Smith, C.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Dickinson, J.
JURISDICTION	Mississippi
DECIDED	August 25, 2005
DOCKET	No. 2003-CP-01877-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Powers appealed from a judgment of the Newton County Chancery Court concerning paternity and the change of her child's surname. The Mississippi Supreme Court affirmed, holding that Powers abandoned her challenge to the name change and procedurally barred her constitutional challenge to the governing statute.
STANDARD OF REVIEW	Factual findings of a chancellor are reviewed for substantial evidence and will not be disturbed absent an abuse of discretion, manifest error, clear error, or application of an erroneous legal standard. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jessica Powers f/k/a Jessica R. McDonald v. Eric Tiebauer

TOPICS

- paternity
- family law procedure
- appellate procedure
- preservation of error
- due process

PRACTICE AREAS

family law

constitutional law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the chancellor abused his discretion by finding that Powers abandoned her motion challenging the change of Rachel's surname.
2. Whether Powers was procedurally barred from raising for the first time on appeal her due process and equal protection challenge to Mississippi Code section 93-9-9(1).

HOLDINGS

1. The chancellor did not abuse his discretion in finding that Powers abandoned her motion to alter or amend the order changing Rachel's surname because she failed to notice the motion, set it for hearing, or otherwise pursue it for nearly three years.
2. Powers was procedurally barred from raising for the first time on appeal her constitutional challenge to Mississippi Code section 93-9-9(1), both because constitutional errors generally must be raised in the trial court and because she failed to provide the Attorney General the notice required by Mississippi Rule of Civil Procedure 24(d).

KEY QUOTATIONS

"We find that the facts support the chancellor's finding that Powers abandoned her claim; therefore, his decision was not an abuse of discretion." (752)

"Hence, Powers is procedurally barred from raising her constitutional challenge to Miss.Code Ann. § 93-9-9(1) for the first time on appeal." (755)

"Accordingly, we affirm the judgment of the Newton County Chancery Court." (755)

FACTUAL BACKGROUND

Rachel Caitlin McDonald was born out of wedlock to Jessica Powers. Paternity testing established Eric Tiebauer as Rachel's biological father, after which Tiebauer sought and obtained an order changing Rachel's surname to McDonald Tiebauer. Powers objected and filed a motion to alter or amend, but she did not set the motion for hearing or otherwise pursue it for almost three years. She first raised her constitutional challenge to Mississippi Code section 93-9-9(1) on appeal.

PROCEDURAL HISTORY

After paternity testing established Tiebauer as Rachel's biological father, the chancery court entered an order changing Rachel's surname to McDonald Tiebauer. Powers filed a motion to alter or amend the judgment but took no action to prosecute it for nearly three years. At the later final hearing, the chancellor deemed the motion abandoned and rejected Powers's constitutional challenge as procedurally barred; Powers appealed.

DISPOSITION

affirmed

CASES CITED

- Gannett River States Publishing Corp. v. City of Jackson, 866 So. 2d 462, 465 (Miss. 2004)
- Morgan v. West, 812 So. 2d 987, 990 (Miss. 2002)
- Cummings v. Benderman, 681 So. 2d 97, 100 (Miss. 1996)
- Ivison v. Ivison, 762 So. 2d 329, 333 (Miss. 2000)
- Mississippi State Tax Commission v. Medical Devices, Inc., 624 So. 2d 987, 990 (Miss. 1993)
- Bank of Mississippi v. Hollingsworth, 609 So. 2d 422, 424 (Miss. 1992)
- Harrison County v. City of Gulfport, 557 So. 2d 780, 784 (Miss. 1990)
- Stockstill v. State, 854 So. 2d 1017, 1023 (Miss. 2003)
- Marcum v. Hancock County School District, 741 So. 2d 234, 238 (Miss. 1999)
- Maston v. State, 750 So. 2d 1234, 1237 (Miss. 1999)
- Smith v. State, 477 So. 2d 191, 195-196 (Miss. 1985)
- Luckett v. State, 582 So. 2d 428, 429-430 (Miss. 1991)
- Jech v. Burch, 466 F. Supp. 714, 721 (D. Haw. 1979)
- Roe v. Conn, 417 F. Supp. 769, 783 (M.D. Ala. 1976)
- Jones v. McDowell, 53 N.C. App. 434, 281 S.E.2d 192, 194 (1981)
- Brill v. Hedges, 783 F. Supp. 333, 339 (S.D. Ohio 1991)
- Fulghum v. Paul, 229 Ga. 463, 192 S.E.2d 376, 377 (1972)
- Cockrell v. Pearl River Valley Water Supply District, 865 So. 2d 357, 360 (Miss. 2004)
- In re V.R., 725 So. 2d 241, 245 (Miss. 1998)
- Colburn v. State, 431 So. 2d 1111, 1114 (Miss. 1983)
- Pickens v. Donaldson, 748 So. 2d 684, 691-692 (Miss. 1999)
- Barnes v. Singing River Hospital System, 733 So. 2d 199, 202-203 (Miss. 1999)