

SUPREME COURT OF MISSISSIPPI

Herbert Lee, Jr. v. Gloria Thompson and Deborah Dixon

Herbert Lee, Jr. v. Gloria Thompson and Deborah Dixon · No. No. 2012-CA-01260-SCT · Decided August 1, 2012

SUMMARY

The Mississippi Supreme Court affirmed a judgment arising from the settlement of thirteen diet-drug claims and disputes over attorney fees and refunds of common-benefit MDL fees. The Court held that its prior decision controlled under the law-of-the-case doctrine, rejected an argument that the plaintiffs were bound by a prior damages calculation in a letter brief, and found the appellant's misconduct claims procedurally barred. The court also admonished counsel regarding factual assertions contradicted by the record.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, J.; Waller, C.J.; Dickinson, P.J.; Randolph, P.J.; Lamar, J.; Kitchens, J.; Pierce, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	August 1, 2012
DOCKET	No. 2012-CA-01260-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Second appeal following remand from the Mississippi Supreme Court. After a jury trial on the contingency-fee contract issue and a trial-court determination of the MDL-fee distribution, Lee appealed the final judgment affirming damages awarded to Thompson and Dixon.
STANDARD OF REVIEW	Issues concerning application of the law-of-the-case doctrine and procedural bars were reviewed as legal questions. The Court also considered whether the plaintiffs' alleged misconduct warranted dismissal as a sanction, while noting that issues raised for the first time on appeal are procedurally barred.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Herbert Lee, Jr. v. Gloria Thompson, Deborah Dixon

TOPICS

contracts

appellate procedure

waiver

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PRACTICE AREAS

Contracts

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Remedies

QUESTIONS PRESENTED

1. Whether the Mississippi Supreme Court should revisit its holding in Lee I that MDL 1203 Pre-Trial Order 2152 required Lee to pay the six-percent MDL fee from his attorney fee.
2. Whether a letter brief by the plaintiffs' counsel constituted a binding admission limiting Thompson's recovery to \$140,000 and Dixon's recovery to \$60,000.
3. Whether alleged misconduct by Thompson and Dixon warranted dismissal of their case with prejudice or otherwise barred their recovery.

HOLDINGS

1. The law-of-the-case doctrine barred Lee from asking the Court to reconsider whether MDL Pre-Trial Order 2152 required him to pay the six-percent MDL fee from his attorney fee. The prior issue had been decided in Lee I, and no exceptional circumstances or manifest injustice justified reconsideration.
2. The plaintiffs' letter brief did not constitute a binding admission limiting Thompson's recovery to \$140,000 and Dixon's recovery to \$60,000.
3. Lee's request to dismiss the plaintiffs' case as a sanction was procedurally barred because he had not requested sanctions in the trial court. In any event, Lee failed to show that Thompson or Dixon made false statements or misrepresentations warranting dismissal.

KEY QUOTATIONS

“A second appeal after remand is not an opportunity for an appellant to posit new arguments on legal issues finally determined in the first appeal.” (¶ 20)

“Lee’s assertion that the pretrial orders did not require him to pay the entire MDL fee is barred by the law of the case doctrine because the Court decided the issue in Lee I and no exception applies.” (¶ 29)

FACTUAL BACKGROUND

Thompson and Dixon retained Lee in litigation arising from their use of Fen/Phen diet drugs. Lee participated in the MDL 1203 common-benefit arrangement, under which six percent of the gross recovery in state-federal coordinated cases was assessed for common-benefit fees. After the \$32 million global settlement, Lee allocated the MDL fee partly to himself and partly to the clients; after the MDL court ordered a partial refund, he retained forty-five percent of the refund as attorney compensation and distributed the remainder equally among thirteen clients. The trial court later determined that the MDL pretrial orders required Lee to bear the MDL fee through his attorney fee and awarded Thompson and Dixon the resulting damages.

PROCEDURAL HISTORY

Thompson and Dixon sued Lee over the amount of his contingency fee and his allocation of a refunded MDL common-benefit fee. The trial court initially granted summary judgment to Lee on the contract issue and to the plaintiffs on the MDL-fee issue. In Lee I, the Mississippi Supreme Court reversed and remanded for a trial on the contract issue while affirming the MDL-fee ruling and directing distribution consistent with MDL Pre-Trial Order 2152. On remand, the jury found that the original fee agreements provided for a forty-percent fee but that the plaintiffs entered the settlement agreement without coercion; the trial court awarded Thompson \$420,000 and Dixon \$180,000 for the improperly allocated MDL fee. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lee v. Thompson, 43 So. 3d 1104 (Miss. 2010)
- Simpson v. State Farm Fire & Casualty Co., 564 So. 2d 1374 (Miss. 1990)
- Mississippi College v. May, 241 Miss. 359, 128 So. 2d 557 (1961)
- Continental Turpentine & Rosin Co. v. Gulf Naval Stores Co., 244 Miss. 465, 142 So. 2d 200 (1962)
- J.K. v. R.K., 30 So. 3d 290 (Miss. 2009)
- Brewer v. Browning, 115 Miss. 358, 76 So. 267 (1917)
- MacDonald v. General Motors Corp., 110 F.3d 337 (6th Cir. 1997)
- Rogers v. Rogers, 662 So. 2d 1111 (Miss. 1995)
- Pierce v. Heritage Properties, Inc., 688 So. 2d 1385 (Miss. 1997)
- McNeese v. McNeese, 119 So. 3d 264 (Miss. 2013)
- Barrett v. Jones, Funderburg, Sessums, Peterson & Lee, LLC, 27 So. 3d 363 (Miss. 2009)