

SUPREME COURT OF MISSISSIPPI

Mississippi Commission on Judicial Performance v. Osborne

977 So. 2d 314 (Miss. 2008) · Decided January 31, 2008

SUMMARY

The Mississippi Supreme Court reviewed disciplinary proceedings against County Court Judge Solomon C. Osborne arising from his efforts to stop the repossession of an automobile jointly owned by his wife and mother-in-law. The court held that Osborne’s conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice that brought the judicial office into disrepute. The court increased the recommended suspension from 90 to 180 days without compensation and assessed the proceeding costs against him.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Presiding Justice; Waller, P.J.; Smith, C.J.; Carlson, J.; Dickinson, J.; Randolph, J.; Lamar, J.; Graves, J.; Diaz, P.J.; Easley, J.
JURISDICTION	Mississippi
DECIDED	January 31, 2008
DISPOSITION	other
PROCEDURAL POSTURE	The Mississippi Commission on Judicial Performance recommended that County Court Judge Solomon C. Osborne be suspended for ninety days without compensation and assessed the costs of the disciplinary proceeding. On Osborne's appeal, the Mississippi Supreme Court independently reviewed the record, upheld the misconduct findings, rejected the recommended sanction as too lenient, and imposed a 180-day suspension without pay plus costs.
STANDARD OF REVIEW	The Supreme Court reviews Commission recommendations de novo and independently determines the appropriate sanction, while giving great weight to the Commission's factual findings because it observed witness demeanor.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Mississippi
PARTIES	Mississippi Commission on Judicial Performance v. Solomon C. Osborne

TOPICS

constitutional law appellate procedure standard of review remedies uniform commercial code

PRACTICE AREAS

judicial discipline constitutional law commercial law appellate procedure judicial ethics

QUESTIONS PRESENTED

1. Whether Osborne's conduct in attempting to stop the self-help repossession constituted willful misconduct in office and conduct prejudicial to the administration of justice that brought the judicial office into disrepute.
2. Whether a debtor or other person may invoke a right to protest self-help repossession by conduct that causes or contributes to a breach of the peace.
3. Whether the Commission's recommended ninety-day suspension was the appropriate sanction, or whether a greater sanction was warranted.

HOLDINGS

1. Osborne's conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice that brought the judicial office into disrepute. His public confrontation, interference with law enforcement, use of judicial prestige for family members, and violation of the Code of Judicial Conduct supported discipline.
2. Mississippi law permits peaceful protest of self-help repossession but does not permit either the secured party or the debtor or other protesting person to breach the peace. If possession cannot be obtained without force or violence, the parties must resort to judicial process.
3. A 180-day suspension without compensation and assessment of \$2,525.08 in costs was the appropriate sanction.

KEY QUOTATIONS

"However, neither the secured party nor-the debtor is permitted to breach the peace under Mississippi law. Both the secured party and-the debtor have access to the courts to recover collateral or damages from repossession without resort to the threat of (or actual) physical violence, or any other act beyond peaceful protest." (977 So. 2d at 322)

"A right to object to self-help repossession was not a justification for his actions." (977 So. 2d at 324)

"We find this conduct warrants a suspension for one hundred eighty days, without pay, and the assessment of the costs of the proceedings against Judge Osborne." (977 So. 2d at 327)

FACTUAL BACKGROUND

A Mercedes jointly owned by Osborne's wife and mother-in-law was subject to a secured-party repossession after loan payments became delinquent. Osborne pursued the tow truck through Greenwood with a client and

friend, blocked its path, confronted the repossession agent, struck and climbed onto the tow truck, attempted to prevent the repossession, and repeatedly invoked his status and legal knowledge as a judge and lawyer when police arrived. The prolonged public confrontation lasted approximately forty-five minutes to an hour, disrupted traffic, and resulted in the repossession agent's arrest and injury. Osborne had no ownership interest in the vehicle, had not verified the payment status, and had previously been publicly reprimanded for practicing law while serving as a judge.

PROCEDURAL HISTORY

The Commission issued Findings of Fact, Conclusions of Law, and Recommendations after a formal disciplinary hearing. It found that Osborne violated Canons 1, 2 A, 2 B, and 4 A of the Mississippi Code of Judicial Conduct and that his conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice that brought the judicial office into disrepute. Osborne contested the allegations and challenged the recommended penalty on appeal.

DISPOSITION

other

CASES CITED

- Miss. Comm'n on Judicial Performance v. Gunn, 614 So. 2d 387, 389-90 (Miss. 1993)
- In re Garner, 466 So. 2d 884, 885, 887 (Miss. 1985)
- Miss. Comm'n on Judicial Performance v. Peyton, 645 So. 2d 954, 956 (Miss. 1994)
- In re Quick, 553 So. 2d 522, 524, 527 (Miss. 1989)
- In re Anderson, 412 So. 2d 743, 745 (Miss. 1982)
- In re Nowell, 293 N.C. 235, 237 S.E.2d 246, 255 (1977)
- Miss. Comm'n on Judicial Performance v. Whitten, 687 So. 2d 744, 747-48 (Miss. 1997)
- Miss. Comm'n on Judicial Performance v. Chambliss, 516 So. 2d 506 (Miss. 1987)
- Hester v. Bandy, 627 So. 2d 833, 841 (Miss. 1993)
- Dearman v. Williams, 235 Miss. 360, 109 So. 2d 316, 320-21 (1959)
- Butler v. Ford Motor Credit Co., 829 F.2d 568 (5th Cir. 1987)
- Martin v. Cook, 237 Miss. 267, 114 So. 2d 669, 670-71 (1959)
- Commercial Credit Co. v. Cain, 190 Miss. 866, 1 So. 2d 776, 777-78 (1941)
- Ivy v. Gen. Motors Acceptance Corp., 612 So. 2d 1108, 1110 (Miss. 1992)
- Miss. Comm'n on Judicial Performance v. Teel, 863 So. 2d 973, 975 (Miss. 2004)
- Miss. Comm'n on Judicial Performance v. Walker, 565 So. 2d 1117, 1128-32 (Miss. 1990)
- Miss. Comm'n on Judicial Performance v. Sanders, 708 So. 2d 866, 877 (Miss. 1998)
- Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247, 1256, 1259 (Miss. 2005)
- Miss. Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000)
- Miss. Comm'n on Judicial Performance v. Whitten, 687 So. 2d 744 (Miss. 1997)

- Miss. Comm'n on Judicial Performance v. Bishop, 761 So. 2d 195, 197-98 (Miss. 2000)
- Miss. Comm'n on Judicial Performance v. Guest, 717 So. 2d 325, 326, 332 (Miss. 1998)
- In re Judge W. Glenn Soileau, 502 So. 2d 1083, 1090 (La. 1987)
- Miss. Comm'n on Judicial Performance v. Sanford, 941 So. 2d 209, 217 (Miss. 2006)
- Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004)

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