

SUPREME COURT OF MISSISSIPPI

Aaron B. Bennett v. Rebecca McCaffrey

Bennett v. McCaffrey · No. No. 2005-IA-00277-SCT · Decided January 24, 2005

SUMMARY

The Mississippi Supreme Court reviewed an interlocutory appeal concerning whether the plaintiff had shown good cause and excusable neglect for delayed service of process under Mississippi Rules of Civil Procedure 4(h) and 6(b)(2). The court held that the plaintiff’s diligent efforts to locate and serve the defendant supported both extensions of time and that the interlocutory appeal was timely. The court affirmed and remanded the circuit court’s ruling.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Graves, Justice; Cobb, P.J.; Carlson, J.; Graves, J.; Smith, C.J.; Waller, P.J.; Diaz, J.; Easley, J.; Dickinson, J.
JURISDICTION	Mississippi
DECIDED	January 24, 2005
DOCKET	No. 2005-IA-00277-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bennett sought an interlocutory appeal from the denial of his motion to dismiss McCaffrey's personal-injury complaint for allegedly untimely service of process and failure to establish good cause or excusable neglect for extensions of time.
STANDARD OF REVIEW	A trial court's legal determination concerning an extension of time is reviewed de novo or plenary; otherwise, the decision is reviewed for abuse of discretion. Fact-based findings are reviewed for abuse of discretion and substantial evidence.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential value is not otherwise specified in the text.
PARTIES	Aaron B. Bennett v. Rebecca McCaffrey

TOPICS

- service of process
- motions to dismiss
- interlocutory appeal
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

personal injury

QUESTIONS PRESENTED

1. Whether Bennett's petition for interlocutory appeal was timely under the 2004 version of Mississippi Rule of Appellate Procedure 5(a).
2. Whether the circuit court abused its discretion by finding good cause under Mississippi Rule of Civil Procedure 4(h) for McCaffrey's failure to serve Bennett within the original 120-day period and the first extension.
3. Whether the circuit court abused its discretion by finding excusable neglect under Mississippi Rule of Civil Procedure 6(b)(2) and granting a second extension after expiration of the first extension.

HOLDINGS

1. The interlocutory appeal petition was timely because the 2004 version of Mississippi Rule of Appellate Procedure 5(a) permitted a petition within fourteen days after entry of an order granting or denying trial-court certification, including an amended order, and Bennett filed within fourteen days of the January 24, 2005 amended order.
2. The circuit court did not abuse its discretion in finding good cause for McCaffrey's failure to serve Bennett within the original 120-day period and the first sixty-day extension.
3. The circuit court did not abuse its discretion by granting a second sixty-day extension because McCaffrey established excusable neglect for the delay after expiration of the first extension.

KEY QUOTATIONS

"To the degree that a trial judge's decision to grant or deny a motion for an extension of time is based upon a precept of law, the standard for this Court's review shall be "plenary"; otherwise this Court shall apply the abuse-of-discretion standard." (¶ 8)

"Under the specific facts of this case, we find that the circuit court did not abuse its discretion in granting McCaffrey's second motion for an additional sixty days to service process because McCaffrey established good cause and excusable neglect for the delay." (¶ 16)

FACTUAL BACKGROUND

A four-vehicle accident occurred on January 8, 2000, in Hancock County, Mississippi. McCaffrey filed a personal-injury complaint against Bennett and others on January 7, 2003, but initial service attempts at Bennett's known address were unsuccessful because he had moved or the address was incorrect. McCaffrey searched for Bennett, attempted service by publication, subpoenaed the Commissioner of Insurance to obtain information about Bennett's whereabouts, obtained extensions of time, and ultimately personally served Bennett on October 22, 2003.

PROCEDURAL HISTORY

McCaffrey filed her complaint on January 7, 2003. After unsuccessful attempts to serve Bennett, the Hinds County Circuit Court granted two extensions of time, and Bennett was personally served on October 22, 2003. The circuit court denied Bennett's motion to dismiss, and the Mississippi Supreme Court granted interlocutory review. The Supreme Court held that the petition was timely, affirmed the denial of the motion to dismiss, and remanded for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the Hinds County Circuit Court was affirmed, and the case was remanded for further proceedings consistent with the opinion.

CASES CITED

- Rains v. Gardner, 731 So. 2d 1192, 1198 (Miss. 1999)
- Triple C Transport, Inc. v. Dickens, 870 So. 2d 1195, 1197-98 (Miss. 2004)
- Moore ex rel. Moore v. Boyd, 799 So. 2d 133, 136 (Miss. Ct. App. 2001)
- Black v. Carey Canada, Inc., 791 F. Supp. 1120, 1126-27 (S.D. Miss. 1990)