

SUPREME COURT OF MISSISSIPPI

Copiah County School District and Kenneth Funches v. Charles Buckner

Copiah County School District v. Buckner · No. No. 2010-IA-00343-SCT · Decided February 5, 2010

SUMMARY

The Mississippi Supreme Court held that the plaintiff failed to establish good cause or excusable neglect for failing to serve the defendants within the 120-day period under Mississippi Rule of Civil Procedure 4(h). Because the statute of limitations had expired before service, the court reversed the trial court and rendered judgment for the defendants. The case involved a personal-injury claim against a county school district and a school-bus driver under the Mississippi Tort Claims Act.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Justice Chandler; Chief Justice Waller; Presiding Justice Carlson; Presiding Justice Dickinson; Justice Randolph; Justice Lamar; Justice Pierce; Justice King
JURISDICTION	Mississippi
DECIDED	February 5, 2010
DOCKET	No. 2010-IA-00343-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendants petitioned for and obtained an interlocutory appeal from the trial court's denial of their motion to set aside an order extending the time for service of process and for summary judgment.
STANDARD OF REVIEW	A decision whether to set aside an order granting an extension of time for service is reviewed for abuse of discretion; the trial court's factual finding concerning good cause or excusable neglect is left to its discretion and will be reversed if unsupported by substantial evidence. A motion to dismiss or motion for summary judgment is reviewed de novo. On summary judgment review, evidentiary matters are considered in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	published opinion
PARTIES	Copiah County School District, Kenneth Funches v. Charles Buckner

TOPICS

service of process

statute of limitations

summary judgment

interlocutory appeal

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

personal injury

municipal law

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by granting and refusing to set aside an extension of time for service when Buckner failed to show good cause or excusable neglect for not serving the defendants within the initial 120-day period under Mississippi Rule of Civil Procedure 4(h).
2. Whether summary judgment and dismissal with prejudice were proper because the statute of limitations expired before the defendants were served.

HOLDINGS

1. A plaintiff who fails to serve process within Rule 4(h)'s 120-day period must demonstrate good cause, requiring at least a showing equivalent to excusable neglect and a diligent effort to effect timely service. Counsel's reliance on a process server's erroneous representation, without adequate follow-up or review of the file, constituted mistake or inadvertence rather than good cause.
2. Filing a complaint tolls the applicable statute of limitations during Rule 4(h)'s 120-day service period, but if service is not effected within that period and no extension is justified, the limitations period resumes running.
3. Because the statute of limitations had expired before the defendants were served, dismissal with prejudice and judgment in favor of the defendants were proper.

KEY QUOTATIONS

"To establish 'good cause' the plaintiff must demonstrate at least as much as would be required to show excusable neglect, 'as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice.'" (§14)

"Filing a complaint tolls the applicable statute of limitations 120 days, but if the plaintiff fails to serve process on the defendant within that 120-day period, the statute of limitations automatically begins to run again when that period expires." (§22)

"Because the statute of limitations had expired, the complaint was subject to dismissal with prejudice." (§32)

FACTUAL BACKGROUND

Buckner alleged that on December 15, 2006, Kenneth Funches, a school-bus driver, failed to stop at an intersection and collided with Buckner's vehicle. Buckner filed suit against the Copiah County School District and Funches on October 30, 2007, but neither defendant was served within 120 days. Counsel mistakenly relied on a process server's statement that service had occurred and did not discover the failure until after the

limitations period had expired. The defendants were served on June 4 and June 5, 2009, after the trial court's additional 120-day extension had expired.

PROCEDURAL HISTORY

Buckner filed a personal-injury complaint on October 30, 2007, but did not serve either defendant within Mississippi Rule of Civil Procedure 4(h)'s initial 120-day period. After the statute of limitations had expired, the trial court granted an additional 120 days for service. Buckner served the defendants after that extension expired. The trial court denied the defendants' motion to set aside the extension order and for summary judgment, and the Supreme Court of Mississippi granted interlocutory review.

DISPOSITION

reversed_and_remanded

CASES CITED

- Johnson v. Thomas, 982 So. 2d 405 (Miss. 2008)
- Long v. Memorial Hospital at Gulfport, 969 So. 2d 35 (Miss. 2007)
- Price v. Clark, 21 So. 3d 509 (Miss. 2009)
- Webster v. Webster, 834 So. 2d 26 (Miss. 2002)
- Watters v. Stripling, 675 So. 2d 1242 (Miss. 1996)
- Montgomery v. Smithkline Beecham Corp., 910 So. 2d 541 (Miss. 2005)
- Holmes v. Coast Transit Authority, 815 So. 2d 1183 (Miss. 2002)
- Peters v. United States, 9 F.3d 344 (5th Cir. 1993)
- Foss v. Williams, 993 So. 2d 378 (Miss. 2008)
- Heard v. Remy, 937 So. 2d 939 (Miss. 2006)
- In re Holtzman, 823 So. 2d 1180 (Miss. 2002)
- Page v. University of Southern Mississippi, 878 So. 2d 1003 (Miss. 2004)
- Lee v. Memorial Hospital at Gulfport, 999 So. 2d 1263 (Miss. 2008)
- Thornburg v. Magnolia Regional Health Center, 741 So. 2d 220 (Miss. 1999)
- Delta Regional Medical Center v. Green, 43 So. 3d 1099 (Miss. 2010)
- Owens v. Mai, 891 So. 2d 220 (Miss. 2005)
- Guidant Mutual Insurance Co. v. Indemnity Insurance Co., 13 So. 3d 1270 (Miss. 2009)