

SUPREME COURT OF MISSISSIPPI

Pre-Paid Legal Services, Inc., Harland C. Stonecipher, Brooks
Werkheiser, Dyre Law Firm, PLLC, and Arnold D. Dyre v. Malcom
Taylor, et al.

No. No. 2003-CA-00808-SCT, Supreme Court of Mississippi (April 8, 2003)

SUMMARY

The Supreme Court of Mississippi considered whether the defendants were entitled to reopen the time for filing an appeal under Mississippi Rule of Appellate Procedure 4(h) because they did not receive timely notice of entry of the trial court's judgment. Relying on Pre-Paid Legal Services, Inc. v. Anderson, the court held that the defendants' specific factual denials rebutted the presumption of receipt and that the trial court abused its discretion in denying the motion. The order was reversed and the case was remanded with instructions to reopen the appeal period.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Dickinson, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	April 8, 2003
DOCKET	No. 2003-CA-00808-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed the denial of their motion under Mississippi Rule of Appellate Procedure 4(h) to reopen the time for filing a notice of appeal after they asserted that they had not received timely notice of entry of the trial court's final order and judgment.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion
PARTIES	Pre-Paid Legal Services, Inc., Harland C. Stonecipher, Brooks Werkheiser, Dyre Law Firm, PLLC, Arnold D. Dyre v. Malcom Taylor, et al.

TOPICS

appellate procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court committed reversible error by refusing under Mississippi Rule of Appellate Procedure 4(h) to reopen the time for filing a notice of appeal after defendants submitted affidavits specifically denying timely receipt of notice of entry of the order and judgment.

HOLDINGS

1. A specific factual denial of receipt of notice rebuts and destroys the presumption that notice was received; therefore, the circuit court abused its discretion by denying the defendants' Rule 4(h) motion to reopen the time for appeal.

KEY QUOTATIONS

“Because defendants provided a specific factual denial of the receipt of the notice, the presumption of the receipt of notice was rebutted and destroyed.” (¶ 9)

FACTUAL BACKGROUND

Taylor and 26 other plaintiffs filed a civil contract-related action against Pre-Paid Legal Services, its officers, and the Dyre defendants. The trial court granted Taylor's motion for partial summary judgment concerning the absence of an applicable arbitration clause and entered a final judgment. Defendants submitted affidavits stating that they had not received timely notice of the opinion, order, or judgment, while Taylor offered no affidavit or other proof from the circuit clerk showing that notice had been sent or received.

PROCEDURAL HISTORY

Taylor and 26 other plaintiffs sued the defendants in the Claiborne County Circuit Court for alleged deceptive trade practices, conspiracy, fraud, negligence, and related matters, including a request for a declaration that the claims were not subject to arbitration. The circuit court granted Taylor's partial summary judgment motion concerning the absence of an applicable arbitration clause and entered a final judgment, but defendants contended they did not receive notice of the judgment as required by Mississippi Rule of Civil Procedure 77(d). The circuit court denied defendants' Rule 4(h) motion to reopen the appeal period, and the Mississippi Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Claiborne County Circuit Court was directed to reopen the time for filing a notice of appeal as provided in Mississippi Rule of Appellate Procedure 4(h).

CASES CITED

- Pre-Paid Legal Servs., Inc. v. Anderson, 873 So. 2d 1008 (Miss. 2004)

INSTRUCTIONS FOR AN AI ASSISTANT

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