

SUPREME COURT OF MISSISSIPPI

Lamar Bailey d/b/a G & B Auto Sales, Inc. v. Shannon B. Beard

813 So. 2d 682 (Miss. 2002) · No. No. 2000-CP-01377-SCT · Decided January 10, 2002

SUMMARY

The Supreme Court of Mississippi reviewed a default judgment entered against Lamar Bailey in favor of Shannon B. Beard. The court affirmed the denial of Bailey’s motions to set aside the entry of default and default judgment, finding sufficient evidence of personal service and no abuse of discretion. It reversed and remanded on damages because the circuit court did not make sufficient on-the-record findings explaining its compensatory and punitive damage awards.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	McRae, P.J.; Pittman, C.J.; Diaz, J.; Easley, J.; Graves, J.; Waller, J.; Smith, P.J.; Cobb, J.; Carlson, J.
JURISDICTION	Mississippi
DECIDED	January 10, 2002
DOCKET	No. 2000-CP-01377-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bailey appealed from the Madison County Circuit Court's denial of his motions to set aside the entry of default and default judgment entered in Beard's action for intentional infliction of emotional distress, fraud, and punitive damages.
STANDARD OF REVIEW	The denial of motions to set aside entry of default and default judgment was reviewed for abuse of discretion. The circuit court's factual determination that Bailey was personally served was upheld because the court heard competing testimony and accepted the proof of service.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Lamar Bailey d/b/a G & B Auto Sales, Inc. v. Shannon B. Beard

TOPICS

- default judgment
- service of process
- damages
- civil procedure
- appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

remedies

QUESTIONS PRESENTED

1. Whether the default judgment was void because Bailey was not served with a summons or complaint.
2. Whether the circuit court properly awarded actual and punitive damages after entering default judgment.
3. Whether judgment could properly be entered against Bailey d/b/a G & B Auto Sales, Inc.
4. Whether the circuit court abused its discretion in denying Bailey's motions to set aside the entry of default and default judgment.

HOLDINGS

1. The default judgment was not void for lack of service. The circuit court did not abuse its discretion in finding that Bailey was personally served and in denying Bailey's motions to set aside the entry of default and default judgment.
2. The damages portion of the default judgment had to be reversed and remanded because the record did not show the method by which the circuit court calculated the actual, emotional-distress, fraud, and punitive damages awards or whether the court considered the statutory punitive-damages factors.
3. The judgment against Bailey d/b/a G & B Auto Sales, Inc. was proper.

KEY QUOTATIONS

"In Willenbrock v. Brown, 239 So.2d 922, 924 (Miss.1970), we stated that an officer's return of process is presumed to be true." (813 So. 2d at 684)

"Consequently, this matter is reversed and remanded to the circuit court on the issue of damages and to direct the court to conduct a proper damages hearing and to allow the record to reflect how these damages are calculated." (813 So. 2d at 686)

"Fatal to Bailey's argument is the fact that there is simply no prohibition on a court's awarding punitive damages in a default action." (813 So. 2d at 688)

FACTUAL BACKGROUND

Beard purchased two vehicles from Bailey, became dissatisfied with them, and stopped making payments. Bailey repossessed the vehicles and initiated malicious-mischief charges against Beard, who was jailed briefly and later found not guilty. Beard then sued Bailey for intentional infliction of emotional distress and fraud and obtained a default judgment awarding \$376,000 in actual and punitive damages. Bailey claimed he had never been served, while the process server testified that he personally served Bailey at Bailey's place of business.

PROCEDURAL HISTORY

Beard filed suit against Bailey on November 23, 1999. After Bailey failed to answer, the circuit court entered default and then entered a default judgment awarding Beard \$376,000, consisting of \$126,000 in actual damages

and \$250,000 in punitive damages. Bailey moved to set aside the entry of default and default judgment, arguing that he had not been served, but the circuit court denied both motions. The Supreme Court of Mississippi affirmed the denial of the motions and the judgment as to liability and party capacity, but reversed and remanded the damages determination for an on-the-record damages hearing and findings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand is limited to the damages issue. The circuit court must conduct a proper damages hearing and make on-the-record findings explaining how the compensatory and punitive damages are calculated, including consideration of the statutory punitive-damages factors. The entry of default, liability, and judgment against Bailey d/b/a G & B Auto Sales, Inc. remain undisturbed.

CASES CITED

- Willenbrock v. Brown, 239 So. 2d 922, 924 (Miss. 1970)
- American 3-CI v. Farrow, 749 So. 2d 298, 299 (Miss. Ct. App. 1999)
- Journey v. Long, 585 So. 2d 1268, 1272 (Miss. 1991)

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