

SUPREME COURT OF MISSISSIPPI

Parker v. Livingston

817 So. 2d 554 (Miss. 2002) · Decided March 7, 2002

SUMMARY

The Mississippi Supreme Court reviewed an appeal involving Florida judgment creditors who sought to set aside allegedly fraudulent transfers of Mississippi mineral interests and other property. The court addressed the validity and enrollment of foreign judgments, renewal and limitations issues, evidentiary rulings concerning consideration, and whether the transfers were fraudulent. The excerpt indicates that the court affirmed the chancellor’s rulings on the issues discussed.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Graves, J.; Pittman, C.J.; McRae, P.J.; Smith, P.J.; Waller, J.; Diaz, J.; Easley, J.; Carlson, J.; Cobb, J.                                                                                                                                                                                                                                      |
| JURISDICTION          | Mississippi                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | March 7, 2002                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | affirmed_and_remanded                                                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | The defendants appealed, and the plaintiffs sought appellate relief, from a Jefferson Davis County Chancery Court judgment setting aside mineral-interest conveyances as fraudulent. The Supreme Court of Mississippi affirmed the judgment and remanded for execution upon the properties and determination of the plaintiffs' sanctions motion. |
| STANDARD OF REVIEW    | A chancellor's findings are reviewed for abuse of discretion, manifest error, or clear error; questions of law are reviewed de novo; admission or exclusion of evidence is reviewed for abuse of discretion and requires prejudice or harm affecting a substantial right for reversal.                                                            |
| PRECEDENTIAL VALUE    | Published Mississippi Supreme Court opinion                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Beverly A. Parker and the other defendants v. Dan Livingston, Robert L. Burklow, Melvin Burklow, James Wilson, and Eddie R. Burklow                                                                                                                                                                                                               |

TOPICS

- minerals
- real estate
- remedies
- evidence
- appellate procedure

## PRACTICE AREAS

real estate

mineral rights

remedies

civil procedure

evidence

## QUESTIONS PRESENTED

1. Whether the Florida judgments were void or expired because the plaintiffs failed to properly re-record them in Florida.
2. Whether the plaintiffs complied with Mississippi's statutory requirements for enrolling the Florida judgments.
3. Whether the plaintiffs properly renewed or preserved the foreign judgments in Mississippi and whether the fraudulent-conveyance action was timely.
4. Whether the trial court abused its discretion by excluding or discounting evidence of consideration allegedly paid by Beverly Parker.
5. Whether the evidence supported the finding that the transfers to Parker's family members were fraudulent for lack of valuable consideration.
6. Whether the plaintiffs' complaint was subject to dismissal under Mississippi Rule of Appellate Procedure 15 for failure to seek mandamus concerning the delayed judgment.
7. Whether the case should be remanded for execution upon the subject properties.
8. Whether the unresolved motion for sanctions should be remanded for determination.

## HOLDINGS

1. Failure to comply with Florida's judgment-lien extension procedure affected the lien period and priority, not the validity or underlying enforceability of the Florida judgments; the defendants' contrary argument was without merit.
2. The plaintiffs substantially, if not fully, complied with Mississippi Code section 11-7-305, and they should not be penalized for the circuit clerks' failure to perform the statutory ministerial duty of mailing notices.
3. The plaintiffs' fraudulent-conveyance action could proceed even if the Florida judgments had expired, because the underlying debt remained and the action satisfied the elements of a fraudulent-conveyance claim; alternatively, any limitations period was tolled while the plaintiffs were restrained by the bankruptcy stay.
4. The chancellor did not abuse his discretion by requiring corroboration beyond checks and discounting Beverly Parker's evidence of consideration.
5. The chancellor's finding that the transfers to Parker's relatives were fraudulent for lack of valuable consideration was not clearly erroneous or an abuse of discretion.
6. Dismissal was not required because the chancellor found excusable neglect and manifest injustice, and Rule 15 permits those findings to excuse the failure to seek mandamus within the prescribed period.
7. The case must be remanded for the trial court to order execution upon the subject properties to satisfy the indebtedness established by the plaintiffs.

8. The plaintiffs' unresolved motion for sanctions must be remanded for an appropriate determination because the final judgment omitted the issue and the reason for omission was not apparent from the record.

#### KEY QUOTATIONS

*“Assuming arguendo that the Florida judgments had expired, the underlying debt remained.”* (817 So. 2d at 562)

*“It would be a miscarriage of justice if this Court were to condone dismissals of plaintiffs’ action, simply because a court clerk fails to perform his/her ministerial duties.”* (817 So. 2d at 560)

#### FACTUAL BACKGROUND

The plaintiffs obtained summary final judgments in Florida in June 1990 for loans made to James E. Parker, Sr., and recorded those judgments. Before entry of the judgments, Parker transferred Mississippi mineral interests and other property to his wife and family members. The plaintiffs enrolled the Florida judgments in Mississippi and brought a fraudulent-conveyance action; after a bankruptcy stay, the chancery court set aside the transfers and found statutory compliance.

#### PROCEDURAL HISTORY

The plaintiffs obtained Florida judgments against James E. Parker, Sr., enrolled them in Mississippi, and filed a chancery action to set aside allegedly fraudulent conveyances of Mississippi mineral and property interests. After a bankruptcy stay, the chancery court tried the case and entered judgment for the plaintiffs, rejecting challenges to the enrollment and duration of the foreign judgments and setting aside the conveyances. The court did not rule on the plaintiffs' sanctions motion and did not direct execution upon the properties, so the parties sought review.

#### DISPOSITION

affirmed\_and\_remanded

#### REMAND INSTRUCTIONS

Affirm the chancellor's judgment and remand with directions to order execution upon the subject properties and conduct a hearing on and decide the plaintiffs' motion for sanctions against James E. Parker, Sr.

#### CASES CITED

- Reddell v. Reddell, 696 So. 2d 287, 288 (Miss. 1997)
- Bank of Miss. v. Hollingsworth, 609 So. 2d 422, 424 (Miss. 1992)
- Consolidated Pipe & Supply Co. v. Colter, 735 So. 2d 958, 961 (Miss. 1999)
- Hott Interiors, Inc. v. Fostock, 721 So. 2d 1236, 1237-1238 (Fla. Dist. Ct. App. 1998)
- Davis v. Davis, 558 So. 2d 814, 818 (Miss. 1990)
- Anderson-Tully Co. v. Brown, 383 So. 2d 1389, 1390 (Miss. 1980)

- Grace v. Pierce, 127 Miss. 831, 90 So. 590, 592 (1922)
- Kidd v. Kidd, 210 Miss. 465, 49 So. 2d 824, 826 (1951)
- Barrett v. Parker, 757 So. 2d 182, 188 (Miss. 2000)
- Lackey v. Fuller, 755 So. 2d 1083, 1086 (Miss. 2000)
- Hansen v. State, 592 So. 2d 114, 132 (Miss. 1991)
- Detrio v. Boylan, 190 F.2d 40, 41, 44 (5th Cir. 1951)
- Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1033 (Miss. 1990)
- Barbee v. Pigott, 507 So. 2d 77, 85 (Miss. 1987)
- Reed v. Lavecchia, 187 Miss. 413, 193 So. 439 (1940)
- O'Neal Steel, Inc. v. Millette, 797 So. 2d 869, 876 (Miss. 2001)
- Cole v. State, 608 So. 2d 1313, 1317 (Miss. 1992)
- Precision Interlock Log Homes, Inc. v. O'Neal, 689 So. 2d 778, 780 (Miss. 1997)