

IN THE COUNTY COURT OF JACKSON COUNTY, MISSISSIPPI

MARK PRIMO MILLER

PLAINTIFF/APPELLANT

VERSUS

CO 2012-20,671

PASCAGOULA SCHOOL DISTRICT

DEFENDANT/APPELLEE

MOTION TO DISMISS

COMES NOW the Defendant/Appellee, Pascagoula School District (“District”), by and through its counsel of record, and files this its Motion to Dismiss the Appeal, and in support of said motion would show unto the Court the following to wit:

I.

On or about April 24, 2012, the Honorable Justice Millender of the Jackson County Justice Court entered a Judgment in favor of the District. On or about May 22, 2012, Plaintiff/Appellant Mark Miller (“Miller”), filed a Notice of Appeal to the Jackson County County Court. A copy of the Notice of Appeal is attached to the motion as Exhibit A. As this Court is well aware, appeals from Justice Court to County Court are governed by the Uniform Circuit and County Court Rules. Rule 5.04 states the following:

A copy of that notice (of appeal) must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing.

UCCCR5.04

II.

In the case at bar, Miller has failed to comply with Rule 5.04 and his appeal was not perfected. A copy of the notice of appeal was not provided by Miller to the District or its counsel of

record. Counsel for the District became aware of the existence of the notice through independent means. More importantly, the Notice of Appeal was not accompanied by a certificate of service. Respectfully, the court clerk should not have accepted the Notice of Appeal without a certificate of service, and there has been no direction by this Court in writing to have done so. Accordingly, since the Notice of Appeal was not properly perfected, this Court has no jurisdiction over this appeal. Thus, Miller's appeal must be dismissed.

III.

In Spencer v. State, 880 So. 2d 1044 (Miss. 2004), the Mississippi Supreme Court upheld the dismissal of an appeal from Justice Court to Circuit Court. The Supreme Court found that the appeal had not been properly perfected as the appellant had not timely filed a cost bond. However, the Court in Spencer noted that "in reviewing the record, the circuit court found that Spencer's notice of appeal did not provide a certificate of service pursuant to Rule 5.04 of the Uniform Circuit and County Court Rules." The Supreme Court affirmed the dismissal of the appeal.

Cases from other jurisdictions have held that the failure to properly serve the other parties in an appeal was fatal to the appeal. See Logic v. City of South Milwaukee Board of Canvassers, 277 Wis. 2d 421, 689 10.W.2d 692 (Ct. App. Wis. 2004) (court held that one party's failure to serve Notice of Appeal upon other party meant court had no jurisdiction over appeal.) Rabo Agrifinance, Inc. v. Rock Creek Farms, 813 N.W. 2d 122 (S. Da. 2012) (Court upheld dismissals of parties due to appellant's failure to serve notices of appeal.)

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the Court dismiss the present appeal due to Miller's failure to comply with UCCR5.04 and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

PASCAGOULA SCHOOL DISTRICT

BY: 
A. KELLY SESSOMS (MSB #9466)

OF COUNSEL:
PHELPS DUNBAR LLP
2901 Magnolia Street
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CERTIFICATE OF SERVICE

I, A. Kelly Sessoms, do hereby certify that I have this day hand delivered a true and correct copy of the above and foregoing Motion to Dismiss to Mr. Mark P. Miller, 4500 Scarlett Oak Drive, Gautier, Mississippi 39553.

THIS the 22 day of June, 2012.


A. KELLY SESSOMS

EXHIBIT "A"

NOTICE OF APPEAL TO COUNTY COURT

FILED
MAY 22 2012
JOE W. MARTIN, JR., CLERK
By _____ D.C.

MILLER MARK PRIMO PE

Plaintiff

vs

Book 212 Page 1121

PASCAGOULA SCHOOL DISTRICT

Defendant

CO2012-20,671

Comes now the above Mark Miller Primo PE and gives notice of appeal pursuant to Rule 5.08 of the Uniform Rules of Circuit and County Court and in accordance with said rule states the following:

1. The person taking this appeal is the above Plaintiff
2. This an appeal of a judgment of the Justice Court of Jackson County Mississippi:

| | |
|--------------------|------------------|
| Judgment date | 04/24/2012 |
| In favor of | DEFENDANT |
| Judgment amount \$ | plus court cost |
| Judgment Type | CIVIL SUIT 2 DEF |
3. This appeal is taken for a trial de novo.
4. This appeal is addressed to the County Court of Jackson County, Mississippi

Mark Miller
Attorney or Appellant

Attorney for Appellant



A. KELLY SESSOMS
Partner
Pascagoula
(228) 549-2026 Direct Line
kelly.sessoms@phelps.com

June 22, 2012

Client/Matter No.
26796/0077

Mr. Joe W. Martin, Jr., Clerk
Jackson County Circuit Court
Jackson County Courthouse
3104 Magnolia Street
Pascagoula, MS 39568

RE: *Mark Primo Miller v. Pascagoula School District*
County Court of Jackson County, Mississippi
Cause No.: CO 2012-20,671

Dear Mr. Martin:

Enclosed for filing in the above-referenced cause please find Pascagoula School District's Motion to Dismiss.

Thank you for your assistance.

Sincerely,

PHELPS DUNBAR LLP



A. Kelly Sessoms

AKS/rkp
Enclosure

cc: Mark Miller (w/encl.) ✓

A. KELLY SESSOMS
Partner
Pascagoula
(228) 549-2026 Direct Line
kelly.sessoms@phelps.com

June 22, 2012

Client/Matter No.
26796/0077

Hon. T. Larry Wilson
County Court Judge
Jackson County Courthouse
P. O. Box 998
Pascagoula, MS 39568-0998

RE: *Mark Primo Miller v. Pascagoula School District*
County Court of Jackson County, Mississippi
Cause No.: CO 2012-20,671

Dear Judge Wilson:

Enclosed please find a copy of the Pascagoula School District's Motion to Dismiss.

Thank you for your consideration.

Sincerely,

PHELPS DUNBAR LLP



A. Kelly Sessoms

AKS/rkp
Enclosure

cc: Mark Miller (w/encl.) ✓