

Dodd MILES v. Byron SOUTHERN, Fred Hunt, and  
Wayland Roberts

88-176

760 S.W.2d 868

Supreme Court of Arkansas  
Opinion delivered December 5, 1988  
[Supplemental Opinion on Denial of Rehearing  
January 30, 1989.\*]

1. APPEAL & ERROR — SUBJECT MATTER JURISDICTION — SUPREME COURT MAY CONSIDER FOR THE FIRST TIME ON APPEAL. — The supreme court may consider subject matter jurisdiction for the first time on appeal.
2. COURTS — MUNICIPAL COURTS — NO AUTHORITY TO HEAR AND DECIDE ACTIONS CONCERNING DAMAGES TO LAND. — Under Arkansas constitutional and statutory law, municipal courts are provided no authority to hear and decide actions concerning damages to land, and the municipal court lacked subject matter jurisdiction of appellee's complaint setting forth a trespass claim.
3. APPEAL & ERROR — JURISDICTION — WHERE THE MUNICIPAL COURT LACKED SUBJECT MATTER JURISDICTION OF THE ORIGINAL ACTION, THE CIRCUIT COURT ACQUIRED NONE ON APPEAL. — Where the municipal court lacked subject matter jurisdiction of the appellee's original action, the circuit court acquired none on appeal.
4. TRIAL — DISMISSAL — WHERE APPELLANT FAILED TO ALLEGE FACTS TO STATE A CAUSE OF ACTION FOR MALICIOUS PROSECUTION, DISMISSAL WAS PROPER. — Because no counterclaim alleged a cause of action for malicious prosecution against the appellees since a plaintiff must allege and prove the original proceedings terminated in his favor, the appellant had failed to allege facts to state a cause of action for malicious prosecution and the trial court was correct in dismissing the claim.
5. TRIAL — DISMISSAL — WHERE APPELLANT FAILED TO STATE A CAUSE OF ACTION, DISMISSAL WITHOUT PREJUDICE WAS PROPER. — Where the appellant failed to state a cause of action, the court's dismissal should have been without prejudice.
6. TRIAL — SANCTIONS UNDER ARCP RULE 11 — CIRCUMSTANCES WHERE DENIAL OF SANCTIONS WAS NOT REVERSIBLE ERROR. — Where the circuit judge denied appellant's ARCP Rule 11 motion mentioning that the appellees had previously prevailed on the merits in municipal court, and where the judge had the municipal court record before him as well as the motions, extensive briefs and arguments, the circuit judge's determination deserved substantial deference and his decision was not so clearly wrong as to justify reversal; a trial court is not deprived from imposing Rule 11

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\*Holt, C.J., and Dudley and Newbern, JJ., dissent.

sanctions in an abbreviated proceeding where a party's claim is dismissed for want of jurisdiction, but based on the record in this case, the appellant had failed to demonstrate the trial court erred in denying those sanctions.

Appeal from Pulaski Circuit Court; *David B. Bogard*, Judge; affirmed and modified in part, reversed and remanded in part.

*Gill Law Firm*, by: *Joe D. Calhoun*, for appellant.

*Southern, Allen & James*, by: *Beth Briscoe Carson*, for appellees.

TOM GLAZE, Justice. The appellees initiated this litigation by filing in the Pulaski County Municipal Court a tort claim for trespass against the appellant, asserting the appellant's connecting pipeline to Little Rock's sewer system was wrongfully constructed on the appellees' property. The appellees claimed \$1,309.00 in damages to have the pipeline fixed and removed after they discovered and damaged the pipeline when excavating their property. Appellant denied these allegations, claimed the appellees had filed a frivolous lawsuit and prayed for damages for having to defend against the suit. The municipal court granted judgment to appellees. Appellant then appealed to the circuit court, and in that appeal, appellees moved to dismiss (nonsuit) their own claim and to dismiss appellant's counterclaim, which appellees suggested, "appears to be for malicious prosecution." Appellant responded by claiming he had an absolute right to a trial *de novo* on his counterclaim. Pursuant to ARCP Rule 11, appellant also moved for sanctions against appellees.

The circuit court granted appellees' motion to dismiss both the appellees' complaint and the appellant's counterclaim, and it further denied appellant's motion for sanctions. The court later denied appellant's motion for reconsideration and entered its order dismissing with prejudice both the appellees' complaint and appellant's counterclaim.

[1] On appeal, the appellant raises several issues which include his asserted right to a *de novo* trial in circuit court and the circuit court's improperly dismissing with prejudice both parties' actions and denying the appellant's request for ARCP Rule 11 sanctions against appellees. A paramount issue, however, is

whether the municipal court had subject matter jurisdiction to decide appellees' cause of action in the first place. Although this argument was not raised below, it is well settled that this court may consider subject matter jurisdiction for the first time on appeal. See *Venhaus v. Hale*, 281 Ark. 390, 663 S.W.2d 930 (1984).

In reviewing the record, we find the appellees' trespass claim was based on assertions that the appellant wrongfully constructed a sewer line on the appellees' property. Appellees sought damages from appellant because they were required to remove and repair the sewer line after appellant refused to do so. Clearly, appellees' claim was a trespass on land action, which is not cognizable in municipal court. In this connection, municipal court jurisdiction is set forth in amendment 64 to the Arkansas Constitution and Ark. Code Ann. §§ 16-17-206(a) and 16-17-704 (1987) which provide as follows:

Amendment 64:

[M]unicipal courts shall have jurisdiction concurrent with circuit courts (a) in matters of contract where the amount in controversy does not exceed three thousand dollars (\$3,000) excluding interest, (b) in suits for the recovery of personal property where the value of the property does not exceed three thousand dollars (\$3,000), and (c) in all matters of damage to personal property where the amount in controversy does not exceed three thousand dollars (\$3,000) . . . .

§ 16-17-206(a):

(a) Municipal courts and justices of the peace shall not have jurisdiction in civil cases where a lien on land or title or possession thereto is involved.

§ 16-17-704:

(a) The municipal court shall have original jurisdiction, coextensive with the county wherein the court is situated, over the following matters:

(1) Exclusive of justices of the peace and of the circuit court, over violations of all ordinances passed by the city council of the city or quorum court of the county wherein

the municipal court is situated;

(2) Exclusive of justices of the peace in townships subject to this subchapter and concurrent with the circuit court, over misdemeanors committed with the county and the issuance of search warrants within the county;

(3) Concurrent with justices of the peace, and exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars (\$100), excluding interest;

(4) Concurrent with the circuit court in matters of contract where the amount in controversy does not exceed the sum of three thousand dollars (\$3,000), excluding interest;

(5) Concurrent with the circuit court in actions for the recovery of personal property where the value of the property does not exceed the sum of three thousand dollars (\$3,000);

(6) Concurrent with the circuit court in matters of damage to personal property where the amount in controversy does not exceed the sum of three thousand dollars (\$3,000), excluding interest;

(7) Concurrent with the circuit court in matters of claims for personal injury or injury to persons where the amount in controversy does not exceed three thousand dollars (\$3,000).

(b) Municipal courts shall have jurisdiction to sit as examining courts, and to commit, discharge, or recognize offenders to the court having jurisdiction of the trial, and to bind persons to keep the peace or behavior.

(c) The jurisdiction of the courts as provided in this subchapter shall be coextensive with the county. In counties having two (2) judicial districts, the jurisdiction shall be limited to the district in which the court is situated.

[2, 3] As can be discerned from the foregoing, Arkansas law, constitutional and statutory, provides municipal courts with no authority to hear and decide actions concerning damages to

land. Accordingly, the municipal court lacked subject matter jurisdiction of appellees' original action in the instant case, and because the municipal court had no jurisdiction of appellees' cause, the circuit court acquired none on appeal. *See Bynum v. Patty*, 207 Ark. 1084, 184 S.W.2d 254 (1944). Thus, the circuit court should have reversed that part of the appellant's appeal from the municipal court's judgment with direction to dismiss appellees' original trespass on land action.

[4] We are still confronted with appellant's contention that he has an absolute right to a *de novo* trial in circuit court on his counterclaim for malicious prosecution and that the trial court erred in dismissing his claim with prejudice. The major problem with appellant's argument is that neither the abstract of record nor the transcript reflects a counterclaim that alleges a cause of action for malicious prosecution against the appellees.<sup>1</sup> In *Farm Service Corp. v. Goshen Farms*, 267 Ark. 324, 590 S.W.2d 861 (1979), the court enumerated the essential elements for the tort of malicious prosecution as follows:

- (1) A proceeding instituted or continued by the defendant against the plaintiff.
- (2) Termination of the proceeding in favor of the plaintiff.
- (3) Absence of probable cause for the proceedings.
- (4) Malice on the part of the defendant.
- (5) Damages.

As noted above, the court in *Goshen Farms* held that the plaintiff must allege and prove the original proceedings terminated in his favor. *Id.* Here, appellant has simply failed to allege facts to state a cause of action for malicious prosecution, and for this reason

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<sup>1</sup> The trial court apparently dismissed the appellant's counterclaim for malicious prosecution because the appellees prevailed in municipal court. On appeal, appellees appear to rely on the trial court's ruling, but also argue ARCP Rule 12(b)(6). Of course, we affirm the trial court where it is correct, but states the wrong reason for its ruling. *Ratliff v. Moss*, 284 Ark. 16, 678 S.W.2d 369 (1984). The trial court's decision to dismiss appellant's counterclaim was clearly correct regardless of whether it announced an erroneous reason for doing so.

alone, the trial court was correct in dismissing any such claim.

[5] Appellant also complains that when the trial court dismissed the counterclaim, the court should not have done so with prejudice. From the record, we are unable to determine why appellant's counterclaim was dismissed with prejudice, nor can we find where the appellant questioned the trial court's authority to do so except that appellant did appeal from the order of dismissal.<sup>2</sup> Because we have decided that the appellant failed to state a cause of action, the court's dismissal should have been without prejudice. *See Ratliff v. Moss*, 284 Ark. 16, 678 S.W.2d 369 (1984).

Appellant next argues the circuit court erred in refusing to impose sanctions against appellees pursuant to ARCP Rule 11. That rule provides (1) that the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper filed in the judicial proceeding, and (2) that, to the best of his knowledge, information and belief formed after reasonable inquiry, those documents are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. The rule further provides that the pleading, motion or other paper is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Rule 11 also provides for certain sanctions when the rule has been violated.

This court has had few opportunities to consider Rule 11. However, we believe the recent federal case of *O'Connell v. Champion Intern. Corp.*, 812 F.2d 393 (8th Cir. 1987) is worthy of note in our consideration of the Rule 11 issue argued here. In *O'Connell*, the defendant, the moving party for Rule 11 sanctions claimed the plaintiff had brought their actions knowing the statute of limitations would provide a good defense. While the district court agreed that the plaintiffs' respective claims were barred by the statute of limitations, it refused to impose sanctions

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<sup>2</sup> Appellant did specifically question the trial court's authority to enter the order with prejudice in a pleading captioned, "Defendant's Reply to Response to Defendant's Motion to Supplement," which was filed four months after the appellant filed his notice of appeal. There is nothing in the record that shows that issue was presented to the trial court.

against the plaintiffs. In upholding the trial court's ruling, the court of appeals said the following:

This determination that the plaintiffs' conduct was justified rests upon . . . the District Court's intimate familiarity with the case, parties, and counsel, a familiarity we cannot have. Such a determination deserves substantial deference from a reviewing court. Judged by this standard, the District Court's decision to deny sanctions is not so far out of bounds as to justify our coming to a different conclusion at the appellate level. The imposition of sanctions is a serious matter and should be approached with circumspection.

[6] In the present case, the circuit judge denied the appellant's Rule 11 motion, and in doing so, mentioned that the appellees previously had prevailed on the merits of their trespass claim in municipal court. While ruling on the parties' motions, the judge had the municipal court record before him as well as the motions, extensive briefs and arguments which were filed in circuit court. After a careful review of the record, we believe the circuit judge's determination deserves substantial deference on our part, and conclude that his decision is not so clearly wrong as to justify reversal. We in no way mean to suggest that a trial court is deprived from imposing Rule 11 sanctions in an abbreviated proceeding where a party's claim is dismissed for want of jurisdiction. Our holding merely reflects that, based on the record, the appellant failed to demonstrate the trial court erred in denying those sanctions.

In accordance with the above, we affirm the trial court's decision to dismiss the appellant's counterclaim but modify it to reflect the dismissal to be without prejudice; deny Rule 11 sanctions; and because the trial court did not have subject matter jurisdiction of appellees' suit on appeal, we reverse and remand with directions that the trial court reverse and dismiss the appellees' municipal court proceeding.