

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00619 COA**

**ANNE P. MACKE**

**APPELLANT**

**v.**

**C. R. BENNETT, ALAN CARPENTER, AND MARK  
MANUEL**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	MAY 15, 1996
TRIAL JUDGE:	HONORABLE PAT WISE
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	PAUL E. ROGERS
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	SUIT FOR DAMAGES DISMISSED
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
12/30/1997	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE THOMAS, P.J., HERRING, HINKEBEIN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Anne P. Macke appeals from an order of the Chancery Court of Hinds County granting the defendants' motion to dismiss. Mrs. Macke filed a notice of appeal from the order dismissing three of the defendants from the action. We are without jurisdiction and therefore dismiss.

**FACTS**

In July of 1981, Sylvester Macke, along with fellow candy brokers Mark Manuel, Claude Scott, and Frank Vetrano, incorporated their previously-formed partnership as Mid-South Brokers, Incorporated (Mid-South). The candy brokers acted as traveling salesmen and solicited buyers throughout the southeast. However, after several years, Scott and Vetrano withdrew from the

corporation and were replaced by C. R. Bennett and Alan Carpenter.

On August 5, 1991, the Chancery Court of Hinds County entered a judgment of divorce dissolving the marriage of Sylvester and Anne Macke. A property settlement agreement was incorporated into the final judgment which directed Mr. Macke to convey one-half of his thirty percent interest in Mid-South to Mrs. Macke. The court also directed Mr. Macke to pay Mrs. Macke one-half of his adjusted gross income from Mid-South as periodic alimony.

The day after the divorce decree, Mr. Macke filed letters of incorporation for New Mid-South Brokers, Incorporated (New Mid-South) listing himself as the sole incorporator of the corporation. A few days later, on August 9, Mr. Macke scheduled a meeting of New Mid-South. Mr. Macke, Bennett, Carpenter, and Manuel were appointed to serve as the initial directors of the corporation. During the meeting, each of the newly-appointed directors also entered into subscription agreements for various amounts of New Mid-South stock.

On August 16, a Mid-South shareholder meeting convened, and a majority of the shareholders acknowledged Mrs. Macke's ownership interest of fifteen percent of the corporate stock of Mid-South. After recognizing Mrs. Macke's interest in Mid-South, a resolution was proposed by a shareholder to dissolve the corporation. Over the objections of Mrs. Macke, the corporation was dissolved with Mr. Macke, Bennett, Carpenter, and Manuel each voting in favor of the resolution. However, unlike the rest of the shareholders in Mid-South, Mrs. Macke was not offered an ownership interest in the New Mid-South corporation.

On December 18, 1992, Mrs. Macke filed a complaint in her individual capacity and on behalf of (old) Mid-South alleging that Mr. Macke, Bennett, Carpenter, and Manuel wrongfully dissolved the corporation and breached their fiduciary duties. Mrs. Macke named New Mid-South as a defendant in the complaint claiming that the new corporation had appropriated the business, assets, and income of the old corporation. Mrs. Macke asserted that the customers, suppliers, employees, place of business, and principals, with the exception of herself, remained the same following the dissolution. Consequently, Mrs. Macke contended that Mr. Macke, Bennett, Carpenter, and Manuel breached their duties of good faith and loyalty. Mrs. Macke had also instituted separate contempt proceedings in the divorce proceedings on November 18, 1991. The same chancellor presided over the new suit and the divorce.

On December 12, 1995, the chancery court held that Mrs. Macke could not proceed as a representative of Mid-South. The court stated that it would grant leave for Mrs. Macke to amend the complaint. Subsequently, Mrs. Macke filed an amended complaint representing her individual interest. Following discovery by both parties, a trial commenced on May 14, 1996.

On May 15, 1996, the chancery court dismissed Bennett. The court also granted a motion to dismiss on behalf of Carpenter and Manuel on May 31, 1996. Mrs. Macke was allowed to proceed with her action against Mr. Macke and New Mid-South. At the close of the trial, the chancery court requested each of the remaining parties to submit memorandum briefs by June 14. The court stated that it would attempt to hand down a written opinion within twenty days of the filing of the briefs. Mrs. Macke filed a notice of appeal concerning the dismissal of Bennett, Carpenter, and Manuel on June 13, 1996, before any final judgment.

Although the record before us does not contain any documentation subsequent to the filing of the notice of appeal on June 13, the briefs and exhibits submitted by both parties indicate that the chancery court rendered its opinion relating to Mr. Macke and New Mid-South on October 21, 1996. A partial copy of the court's October 21 order was submitted with Mrs. Macke's brief. The court required Mr. Macke to convey fifteen percent of the outstanding stock in New Mid-South to Mrs. Macke. Furthermore, the partial order indicates that Mr. Macke was given the option to purchase Mrs. Macke's interest in New Mid-South.

### **DISCUSSION**

Mrs. Macke asserts that the chancery court erred in dismissing the defendants, Bennett, Carpenter, and Manuel, from the cause of action. Mrs. Macke contends that she presented evidence and solicited testimony which clearly established that the dismissed defendants were liable for wrongfully dissolving the Mid-South corporation.

A review of the record before us reveals that Mrs. Macke prematurely filed a notice of appeal. Mrs. Macke filed a notice of appeal on June 13 after the chancery court dismissed Bennett, Carpenter, and Manuel from the case. However, the court did not render its final judgment concerning the two remaining defendants, Mr. Macke and New Mid-South, until October 21.

The proper procedure for immediate review of the chancery court's dismissal of Bennett, Carpenter, and Manuel would have been for Mrs. Macke to file a motion for interlocutory appeal under Rule 5 of the Mississippi Rules of Appellate Procedure. Alternatively, Mrs. Macke could have requested certification of a final judgment under Rule 54(b) of the Mississippi Rules of Civil Procedure. "In the absence of express permission of the trial court under Rule 54(b), there can be no such [interlocutory] appeal." *Stanley v. Allstate Ins. Co.*, 465 So. 2d 1023, 1025 n. 2 (Miss. 1985). The appellate court must dismiss the appeal. *Id.* Our appellate rules "require that the appellant renounce the appeal to this Court or the first notice of appeal has no effect." *See In re Kimbrough*, 680 So. 2d 799, 801 (Miss. 1996) (refile under M.R.A.P. 4(d) after post-trial motions). Rule 2(a)(1) requires dismissal "if the notice of appeal was not timely filed pursuant to Rules 4 or 5." **M.R.A.P. 2(a)(1)**. Rule 4(a) requires that the notice be filed within 30 days *after* the final judgment.

**THE APPEAL OF JUDGMENT OF THE HINDS COUNTY CHANCERY COURT IS DISMISSED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.**