

IN THE COURT OF APPEALS 08/20/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00702 COA

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION

APPELLANT

v.

SHIRLEY M. ROBERTS

APPELLEE

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

TRIAL JUDGE: HON. JANNIE M. LEWIS

COURT FROM WHICH APPEALED: HOLMES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANTS:

JAN D. GARRICK

ATTORNEY FOR APPELLEE:

N/A

NATURE OF THE CASE: STATE BOARD AND AGENCIES

TRIAL COURT DISPOSITION: UNEMPLOYMENT BENEFITS ALLOWED

BEFORE BRIDGES, P.J., KING, AND McMILLIN, JJ.

BRIDGES, P.J., FOR THE COURT:

Shirley M. Roberts was fired from the Goodman B.P. Station on November 7, 1994. Subsequently,

her unemployment benefits were denied pursuant to section 71-5-513 and due to the circumstances surrounding her termination. Roberts appealed the referee's opinion to the Mississippi Employment Security Commission (MESC) Board of Review. The board of review affirmed the decision of the referee, and Roberts appealed to the circuit court of Holmes County. The circuit court reversed the board's decision and reinstated Roberts' benefits. MESC and Goodman B.P. Station have perfected their appeal and submitted their brief to this Court. No brief has been submitted by Roberts.

THE FACTS

For three months prior to November 7, 1994, Shirley M. Roberts worked at the Goodman B.P. Station in Goodman, Mississippi, as a cook and cashier. On November 7, 1994, Jill Crider, the store manager, called an employee meeting to discuss issues concerning job duties, as well as employee attitude problems. The meeting was held in the store during business hours. Although there has been no indication that the attitude critique was directed at Roberts, she apparently took it as such. Roberts began to argue with Crider which, in turn, caused a general disruption in the store.

Fearing the effect on the customers and other employees of a further escalation of the argument, Crider asked Roberts to leave the store. Roberts refused to leave and professed that she could not be fired. Crider responded by firing Roberts and again asking her to leave. Roberts again refused to leave, and did not do so until the police had been called.

ARGUMENT AND DISCUSSION OF THE LAW

As noted previously, Roberts has not filed a brief in response to the appeal of MESC and Goodman B.P. Station.

If an appellee fails to file the appellee's brief as required, such brief if later filed may be stricken from the record on motion of appellant or on the court's own motion. An appellee who fails to file a brief will not be heard at oral argument except by permission of the court.

M.R.A.P. 31(d). Although not addressed in Rule 31(d), the Mississippi Supreme Court has previously stated that "the failure of the appellee to file a brief is tantamount to a confession of error and will be accepted as such unless we can with confidence say, after considering the record and brief of appellant, that there was no error." *Snow Lake Shores Property Owners Corp. v. Smith*, 610 So. 2d 357, 360 (Miss. 1992); *see also Queen v. Queen*, 551 So. 2d 197, 199 (Miss. 1989); *Sparkman v. Sparkman*, 441 So. 2d 1361, 1362 (Miss. 1983); *Burt v. Duckworth*, 206 So. 2d 850, 853 (Miss. 1968). Because we cannot say with confidence that there was no error in the circuit court's decision, we will accept the failure of Roberts to file a brief as a confession of error at the lower court level.

Moreover, the court has also stated that "[s]ince the appellant's brief makes out an apparent case of error, we do not regard it as our obligation to look to the record to find a way to avoid the force of the appellant's argument." *Westinghouse Credit Corp. v. Deposit Guar. Nat'l Bank*, 304 So. 2d 636, 637 (Miss. 1974).

THE JUDGMENT OF THE CIRCUIT COURT OF HOLMES COUNTY IS REVERSED

AND JUDGMENT IS RENDERED FOR THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION AND GOODMAN B.P. STATION. ALL COSTS OF THIS APPEAL ARE TAXED TO SHIRLEY M. ROBERTS.

FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.