

APR 4 1963

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

OCTOBER TERM 1962-63

41357

1 Div. 5

Dairy Fresh Corporation

v.

John N. Stanford

Appeal from Baldwin Circuit Court

LIVINGSTON, CHIEF JUSTICE.

John N. Stanford brought suit in the Circuit Court of Baldwin County, Alabama, against Dairy Fresh Corporation. The complaint contained one count in Code form, on open account, claiming the sum of \$2826.90. The case was tried to a jury and the verdict returned for plaintiff for \$1500.00. Judgment was rendered thereon. A motion for a new trial was

2.

filed in due course and overruled. Dairy Fresh Corporation appealed to the Court of Appeals of Alabama.

The record was filed in the Court of Appeals on June 19, 1961. On the same day, it was transferred to the Supreme Court of Alabama under the provisions of Title 13, Sec. 96, Code of 1940.

Upon petition, this court granted appellant additional time for filing briefs. Appellant filed its brief on August 7, 1961.

The appellee was granted additional time in which to file his brief, which was filed on September 6, 1961. On the same day, September 6, 1961, appellee moved this court to affirm the judgment of the Circuit Court of Baldwin County and assigned as grounds therefor the noncompliance with Supreme Court Rules 1 and 9, Title 7, Code 1940, Appendix.

When the transcript of the record was filed in this court on June 19, 1961, it contained 25 assignments of error written on the transcript, in accordance with Supreme Court Rule 1, Title 7, Code 1940, Appendix. On September 18, 1961, the appellant filed a motion in this court styled "Motion To Attach Assignment of Errors to Transcript," accompanied by assignments of error numbered 1 to 12, inclusive.

If these assignments of error are intended as additional assignments of error, the effort to include them in the transcript is abortive because there has been no compliance with Supreme Court Rule 2, Title 7, Code 1940, Appendix. In any event, they cannot be considered by this court because Supreme

3.

Court Rule 1, Title 7, Code 1940, Appendix, requires that assignments of error must be written on the transcript before the errors will be considered by this court. Assignments of error, made upon a separate sheet of paper and merely filed with the transcript, subject to easy removal, do not comply with Supreme Court Rule 1, and in such case, there is nothing before this court to be considered. C. E. Patton et al. v. Colbert County, 265 Ala. 682, 92 So. 2d 691, and cases therein cited.

It is axiomatic that assignments of error not argued in brief are thereby waived.

We have before us a most unusual transcript and brief by the appellant.

In the motion to attach assignments of error to the transcript, filed on September 18, 1961, appellant states:

"1. The Assignment of Errors was inadvertently omitted from the Transcript when the same was forwarded to the Court of Appeals which Court was an incorrect designation of the Court to which the Transcript should have been directed, the Record having been filed as provided by law in the Supreme Court.

"2. All of these identical Assignment of Errors were included in the Brief filed by the Appellant and served upon the Attorney for the Appellee, and the Appellee has been appraised [sic] of all the Assignment of Errors and has filed a Brief on the merits to these Assignment of Errors."

The only assignments of error mentioned in appellant's brief are the 12 assignments of error which have never been written on the transcript. The 25 assignments of error contained in the original transcript are not mentioned in appellant's brief. It is true that some of the 12 assignments of error not written on the transcript are the same assignments of error which are written on the transcript, but in only one instance is the numbering of the assignments of error the same in both assignments of error, and that assignment of error is so general as to state nothing for review.

The appellant's brief and the record before us typifies the confusion which can arise from the failure to follow Supreme Court Rules, in this instance, Rules 1, 2 and 9 of Title 7, Code 1940, Appendix.

On this record, we have 25 assignments of error, neither one of which is mentioned specifically by number or otherwise in brief. Also, there are 12 assignments of error which are not written on the transcript and cannot be considered.

The case is due to be affirmed.

AFFIRMED.

Lawson, Goodwyn and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 5,

Dairy Fresh Corporation, Appellant

vs.

John H. Stanford, Appellee,

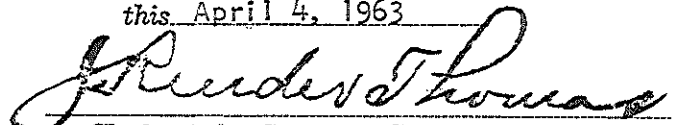
From Baldwin Circuit Court.

The State of Alabama,  
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to four inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the  
Supreme Court of Alabama,

this April 4, 1963

  
Clerk of the Supreme Court of Alabama

**THE SUPREME COURT OF ALABAMA**

October Term, 19 62-63

1st Div., No. 5

Dairy Fresh Corporation

*Appellant,*

vs.

John N. Stanford

*Appellee.*

From Baldwin Circuit Court.

**COPY OF OPINION**

BROWN PRINTING CO., MONTGOMERY 1962

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>62-63</sup>

To the Clerk of the Circuit Court,  
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court  
of said county, in a certain cause lately pending in said Court between  
Dairy Fresh Corporation, Appellant,

and  
John N. Stanford, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

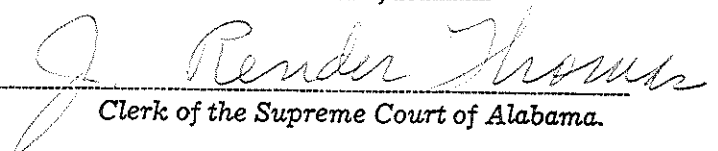
NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by  
our Supreme Court, on the 4 day of April, 19<sup>63</sup>, that said  
judgment of said Circuit Court be in all things

affirmed, and that it was further considered, ordered, and adjudged that the appellant, ~~and~~  
Dairy Fresh Corporation, and Mary Estrid Smith and Ruby

I. Meyer, sureties on the supersedeas bond, pay the amount of the  
judgment of the Circuit Court, and ten per centum (10%) damages thereon,  
and interest, and the costs of appeal and proceedings of this  
Court and of the Circuit Court.

~~x the costs accruing on said appeal in this Court and in the Court below for which costs let execution~~  
~~issue~~ And it appearing that said parties have waived their rights  
of exemption under the laws of Alabama, it was ordered that  
execution issue accordingly.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 4 day of  
April, 19<sup>63</sup>

  
Clerk of the Supreme Court of Alabama.

4357

THE SUPREME COURT OF ALABAMA

October Term, 19 62-63

1 Div., No. 5

Dairy Fresh Corp.

Appellant,

vs.

John N. Stanford

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF  
AFFIRMANCE

The State of Alabama,

Baldwin County. } Filed

this 4 day of April 19 63

Alfred Duck



STATE OF ALABAMA  
BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO: ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Dairy Fresh Corporation to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of John N. Stanford.

Witness my hand this the 25 day of July, 1960.

Alice J. Duck  
Clerk

JOHN N. STANFORD,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
DAIRY FRESH CORPORATION,	X	BALDWIN COUNTY, ALABAMA
Defendant.	X	AT LAW
	X	4357

COUNT ONE:

The Plaintiff claims of the Defendant Two Thousand Eight Hundred and Twenty-six Dollars and Ninety Cents (\$2,826.90), due from it by account on the 1st day of July, 1960, which sum of money, with the interest thereon, is still unpaid.

CHASON & STONE

By: [Signature]  
Attorneys for Plaintiff

Defendant's Address: Prichard, Alabama  
c/o Mr. Lem Morrison

FILED  
JUL 25 1960

ALICE J. DUCK, Clerk

Received 26 Day of July 1960  
and on 28 Day of July 1960  
I served a Copy of the within LL & C  
on Dairy Fresh Corporation  
by service on Sam Morrison, mgr

RAY D. BRIDGES, Sheriff  
By F. T. Benson D. S.

2250

4357

171

JOHN N. STANFORD,  
Plaintiff,

vs.

DAIRY FRESH CORPORATION,  
Defendant.

\* \* \* \* \*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

& \* \* \* \* \*

SUMMONS AND COMPLAINT

\* \* \* \* \*

FIL D  
JUL 25 1960  
ALICE J. DUCK, Clerk

LAW OFFICES  
CHASON & STONE  
BAY MINETTE, ALABAMA

*here the jury found for the  
Plaintiff and awarded \$500.00*

*Shed Manee  
Shannon*

Div. No. \_\_\_\_\_

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 4357

Baldwin County, Circuit Court.

JOHN N. STANFORD

Plaintiff.

vs.

DAIRY FRESH CORPORATION, A Corporation  
Defendant.

I, Alice J. Duck Clerk of Circuit Court,  
of Baldwin County, Alabama, hereby certify that in the  
cause of John N. Stanford plaintiff,  
vs.

DAIRY FRESH CORPORATION, A Corporation defendant,  
which was tried and determined in this Court on the 15th day of  
March 1961, in which there was a judgment for One Thousand Five  
Hundred Dollars, in favor of the plaintiff, (~~on judgment~~  
~~for defendant~~), the Defendant on the 18 day of  
April 1961, took an appeal to the Court of Appeals Court  
of Alabama to be holden of and for said State.

I further certify that Dairy Fresh Corporation, a Corp.  
filed security for cost of appeal, to the Court of Appeals Court, on  
the 18 day of April 1961, and that Dairy Fresh Corporation, a Corp.  
by: J.L. Morrison, with Mary Estrid Smith, & Ruby I. Meyer,  
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the 20  
day of April 1961, served on Chason & Stone  
as attorney of record for said appellee, and that the amount sued for  
was Two Thousand Eight Hundred & Twenty-Six & 90/100 Dollars. (~~on certain bonds~~)  
(~~on personal property~~)

Witness my hand and the seal of this Court, this the 19  
day of April 1961.

Alice J. Duck  
Clerk of the Circuit Court of

Baldwin County, Alabama.