

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ANITA WILLIAMS SIMPSON, APPELLANT**

**VS.**

**NO. 2006-CA-00670**

**ESTATE OF ROBERT J. WILLIAMS, II and  
DEBORAH W. AVERY, ADMINISTRATRIX**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualifications or recusal.

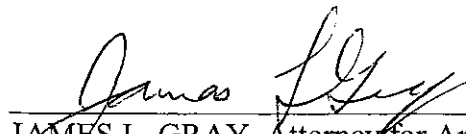
Anita Williams Simpson

Deborah Williams Avery

Jeffrey Dean Williams

Robert Joshua Williams, III

SO CERTIFIED this 23 day of March, 2007.

  
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*Turner v. Terry*, 799 So.2d 25 (Miss. 2001)  
*TXG Intrastate Pipeline Co. v. Grossnickle*, 716 So. 2d 991 (Miss. 1997)

## **STATEMENT OF THE ISSUES**

- I. Whether the lower court erred in not determining whether the funds in R. J. Williams, II account at First National Bank of Picayune belonged to Anita Williams or the Estate of R. J. Williams, II, prior to the four known heirs signing the bank's debit slip on September 4, 1996.
- II. Whether the lower Court erred by not determining the owner of the account after R. J. Williams death and then determining that after September 4, 1996 the monies in the account belonged to the Estate.

## **STATEMENT OF THE CASE**

### **Procedural Background**

On or about September 7, 1999, Anita Williams Simpson, formerly known as Anita Williams and Anita Williams Dupre filed a hand-written petition in the probate of the estate of Robert Joshua Williams II in the Chancery Court of Pearl River County, Mississippi in Cause no. 96-0352-GN-D. This Petition alleges that the Estate of Robert Joshua Williams owes to Anita Williams the sum of \$63,714.00 plus interest because of the transfer of the money from the checking account of R. J. Williams, II that was closed, and the money transferred into the account of the Estate of Robert Joshua Williams, II. Although the Petition filed by Anita Williams on September 7, 1999 was not properly sworn to, the Court later allowed Anita Williams Simpson to amend her petition by Order entered on October 17, 2000. This Order was in response to the Motion to Amend Petition filed on July 19, 2000 by Anita Williams Simpson which was signed by her attorney, Thomas McNeely. Again the Motion to Amend the Petition was not properly sworn to by Anita Williams Simpson as required in Chancery Court cases in which supplement relief is sought.

On September 14, 2000, Sebe Dale, Jr. and the other Chancery Judges, James H. C. Thomas, Jr. and Johnny L. Williams recused themselves because one of the litigants, Deborah Williams Avery, was a practicing attorney in their district. Pursuant thereto, the Supreme Court of the State of Mississippi appointed the Honorable James L. Roberts, Jr. as a Special Chancery Judge to hear the claim filed by Anita Williams Simpson in the Estate of Robert Joshua Williams, II. An Answer to the Petition of Anita Williams Simpson was filed by James L. Gray as attorney for the Administratrix on October 8, 1999, and the Administratrix filed a Response to

the Original and Amended Petition of Anita Williams Simpson on January 19, 2001.

After completing discovery, the trial was held on the Petition of Anita Williams Simpson on November 13, 2001 in the Chancery Court of Pearl River County, Mississippi at the Chancery Courthouse in Poplarville. After hearing the testimony and reviewing the exhibits offered at the trial of this matter, the Honorable James L. Robert, Jr. issued a written opinion which was signed on June 25, 2002 and filed in the record in this cause on June 27, 2002. After some disagreement on the wording of the Judgment that was prepared based upon the opinion of Judge Roberts, a Judgment on the Amended Petition of Anita Williams Simpson was signed on March 10, 2006 and filed for record on March 20, 2006. It is from that Judgment that Anita Williams Simpson has taken this appeal.

### **Legal Issues**

The Appellee would show that the case centers upon the actions of Anita Williams on or about September 4, 1996. Robert Joshua Williams, II died in testate on June 9, 1996 leaving four children as the sole and only heirs at law. These children were Robert Joshua Williams, III, Jeffrey Dean Williams, Deborah Williams Avery, and Anita Williams Simpson, formerly Anita Williams Dupre. Deborah Williams Avery, an attorney, was granted Letters of Administration on June 20, 1996. During his lifetime, Robert Joshua Williams, II was the owner of a certain checking account at First National Bank of Picayune bearing the account no. 50-888-8. At the time of his death, this account had a balance of \$63,714.61.

On or about September 4, 1996, the four children and sole heirs of Robert Joshua Williams, II had a meeting to discuss some matters of the estate. The undisputed testimony is that inheritance taxes would be owed by the Estate, and they need to pay certain administrative

expenses so that they could be deducted from the Estate tax return to save taxes. At some point during this meeting, the signature card of the above referenced account, being **Exhibit 1** introduced at the trial of this matter, was produced and examined by the heirs. Further, the undisputed evidence is that the attorney for the Administratrix, M. D. Tate, II, was requested to prepare a Release Agreement which was introduced as **Exhibit "3"** to the trial of this matter. There is no dispute that all four of the heirs signed this release agreement which, in effect, released any right title of interest that any of the heirs might have to the money in the decedent's checking account, and to allow that those funds to be deposited into the Estate account at First National Bank. Further, there is no dispute on that day or the next day a debit memo card (**Exhibit "2"**) was signed by all four heirs at the bank which in effect closed account no. 50-888-8 and the money was deposited into the Estate checking account at First National Bank. A check was drawn on First National Bank for the amount of \$63,714.61 on September 5, 1996 that purports to close out account no. 50-888-8, said check being introduced at the trial of this matter as **Exhibit "4"**.

The contention by the Appellant that the trial court erred in making no finding regarding the ownership of the decedent's account at First National Bank in account no. 50-888-8 is without merit. It is the position of the Appellee that the trial judge did not error in making this determination because he found that the Release Agreement, **Exhibit 3**, rendered the issue of the ownership of the account after the death of R.J. Williams, II moot.

## SUMMARY OF THE ARGUMENT

The issues raised on appeal by the Appellant, Anita Williams Simpson, should be rejected by this Court because there has been no showing that Judge Roberts made any error by not determining whether or not the funds in R. J. Williams, II's banking account were the property of the Estate or the property of Anita Williams Simpson. Judge Roberts properly found that the release agreement signed by Anita Williams Simpson was of her own free will and accord, and that she was not coerced or incompetent when she signed this agreement. Therefore, she is bound by her act of releasing all her right, title interest that she may have owned to the funds in said bank account. The legal principle of waiver applies to this case as will be more fully set out in the argument hereinafter. A waiver is a voluntary or intentional relinquish of a known right or abandonment of a known right or privilege. By signing the Release Agreement (**Exhibit 3**), Anita Williams Simpson, formerly Anita Williams Dupre, waived any right, title, or interest that she had in the subject property. The language in the Release Agreement was clear and unambiguous, and no evidence was offered at the trial of this matter to show that Anita Williams Simpson was defrauded, tricked, or coerced into signing said agreement, nor was and evidence offered to that she incompetent to sign such release agreement.



## ARGUMENT

**Issue I. Whether the lower court erred in not determining whether the funds in R. J. Williams, II's account at First National Bank of Picayune belonged to Anita Williams or the Estate of R J. Williams, II, prior to the four known heirs signing the bank's debit slip on September 4, 1996.**

The Appellant, in her brief, states that it was error for the trial judge to not resolve the issue as to whether or not the money in the account of R. J. Williams, II in account no 50-888-8 at First National Bank of Picayune was the property of Anita Williams Simpson after the death of R. J. Williams, II. It was the contention of the Appellee of the Court property found that the true ownership of that account was a moot issue after the signing of the release agreement on September 4, 1996. **(Exhibit 3)**

The Release Agreement signed by all four of the heirs of Robert Joshua Williams, II was in essence a waiver by said persons. A waiver is the intentional relinquishment of a known right. *Gault v. Branton*, 75 So.2d 439 (Miss. 1954) A waiver can be distinguished from estoppel in that a waiver is a voluntary surrender or relinquishment of some known right, benefit, or advantage, while estoppel is the inhibition to assert it. *Sentinel Industrial Contracting Corp v. Kimmins Industrial Corp.*, 743 So.2d 954, 964 (Miss. 1999) A waiver is an ordinary or intentional relinquishment of an abandonment of a known right or privilege and similar standards of waiver should be applied to the rights secured by the Mississippi Constitution. *Robinson v. State*, 345 So.2d 104, 1045 (Miss. 1977) Finally, a waiver may not be claimed by one whose false representation is the foundation of the waiver. *Home Ins. Co. v. Thunderbird Inc.*, 338 So. 2d. 391, 394 (Miss. 1976) A waiver presupposes a full knowledge a right existing, and an intentional surrender or relinquishment of that right. *Fletcher v. U.S. Restaurant Properties*, 881

So.2d 333, 338 (Miss.App. 2004) To establish a waiver, there must be shown an act or omission on the part of the one charged with waiver fairly evidencing an intention permanently to surrender the right alleged to have been waived. *Id.*, p.338

The Release Agreement introduced as **Exhibit 3** to the trial of this matter is simple, clear, and unambiguous. The language reads as follows “ the undersigned hereby release any and all right, title, and interest in and to funds held in account no. 000508888 at First National Bank of Picayune unto Deborah Williams Avery, Administratrix of the Estate of Robert Joshua Williams, II , deceased”. The testimony at the trial of this matter clearly shows that Anita Williams Simpson signed this agreement in the presence of the other heirs when the affixed their signatures thereto. (Transcript, p. 55) Upon cross examination, Anita Williams Simpson, admitted that she had seen the signature card (**Exhibit 1**), and that she saw that her name appeared on the signature card as beneficiary. (Transcript, p. 59) Further, Anita Williams Simpson admitted that she did not ask anybody at the meeting why her name appeared in that place on the signature card. (Transcript, p. 59). Anita Williams Simpson admitted that she did not ask her sister nor the bank officer what it meant for her name to be listed on the account card as beneficiary. (Transcript, p. 60). In her direct testimony, Anita Williams Simpson states that she did know that she had any beneficiary rights to the account. (Transcript, p.54) However, the Trial Judge, as the trier of fact, obviously did not believe her on this point. There was ample testimony at the trial of this matter to support the Judge’s conclusion that she had waived her rights to this account. Upon cross examination, Anita Williams Simpson admitted that she knew that there were large amounts of inheritance taxes that had to be paid, and the purpose of transferring the money of the estate was to pay administrative expenses so that they could be

deducted on the inheritance tax return.. (Transcript, p. 60). Further, Anita Williams Simpson admitted that at the time she was being sued for divorce by her husband, and that there was an order signed by a Chancery Judge imposing a lien against any proceeds that she would receive from the estate. (Transcript, p. 63). Anita Williams Simpson asked the Court to believe that she had signed the Release Agreement without being told what it was for and exactly what she was releasing. (Transcript, p. 68). Obviously, Judge Roberts, as the trier of fact, found her story was not creditable when lined up against the other evidence.

The testimony of M. D. Tate, II , the attorney for the Administratrix, also clarifies the circumstances surrounding the signing of the Release Agreement. **(Exhibit 3)** Mr. Tate testified that he doesn't recall why he was asked to prepare the Release Agreement, but that he would not have prepared it unless he had been requested to do so. (Transcript, p. 90) Further, Mr. Tate testified that he did not have any specific recollection of the event, but it would not be in his ordinary course and practice to advise someone who is not his client, but he would advise them to see a lawyer if they did not understand what it was that they were signing. (Transcript, p. 91). Also, testimony of Deborah Williams Avery stated that all four of the heir were aware that Anita was listed as beneficiary on the account when they signed the Release Agreement. Further, she stated the heirs had discussed freely and openly the need to transfer the money from that account in order to avoid losing benefits of the tax deductions that they would get for paying administrative expenses before filing the inheritance tax return. (Transcript, p. 95) This conversation was further substantiated by the testimony of Jeffrey Dean Williams. (Transcript, p. 113).

Therefore, ample evidence was offered at the trial of this matter to substantiate the Judges

findings that the Release Agreement signed by Anita Williams Simpson was a voluntary waiver of any rights that she might have to the funds in that account. The trial judge was obviously was not convinced that Anita was unaware that she had the right to draw the funds from that account at the time she signed the Release Agreement. The fact that she was in the middle of a divorce, and there was a lien placed against any proceeds that she received from her father's estate, might have been an incentive for her to have those funds transferred to the estate account. Further, since the inheritance taxes were her responsibility along with the other heirs, she had other reasons to allow the estate to have these funds in order to pay administrative expenses so they could be deducted from the inheritance tax returns. For these and other reasons, Judge Robert found that Anita Williams Simpson freely and voluntarily signed the release agreement, and that she knew the legal significance in which she was signing and her rights to that account at the time she signed it. Further, Judge Roberts found that she was under not deceived, defraud or coercion to sign it. In fact, Anita Williams Simpson was free to obtain and seek her own separate and legal advice prior to signing this Release Agreement. No evidence was introduced at the trial of this matter to indicate that she was impeded from seeking her own independent legal advice or that she was rushed into signing this Release Agreement without obtaining her own legal advice.

The Appellant makes the argument in her brief that the signing of the debit memo, **(Exhibit 2)** might be a gift inter vivos. The Appellee is not arguing that Anita Williams Simpson was attempting to make inter vivos gift, but that she simply knowingly and intelligently waived any right, title, and interest, that she might have to the funds in the account referenced herein above. The issue of a gift was not addressed by the trial judge in his opinion and was not an issue at the trial of this matter.

**ISSUE II. Whether the lower Court erred by not determining the owner of the account after R. J. Williams' death and then determining that after September 4, 1996, the monies in the account belonged to the Estate.**

This issue was addressed in the above argument. The ownership of the money in R. J. Williams, II's checking account no. 55-888-8 after his death and before the signing of the Release Agreement on September 4, 2006 is moot once the trial Judge determined that the signing of the Release Agreement was a valid waiver.

**Standard of Review**

The Supreme Court (and by extension the Court of Appeals) is exclusively a court of appeals, and as such, its powers are confined to correcting errors committed in the trial courts. *Sansing v. Thomas*, 52 So.2d 478 (Miss. 1951) The Supreme Court will only reverse lower courts on questions of law if there has been an erroneous interpretation or application of law. *State v. Baptist Memorial Hospital - Golden Triangle*, 726 So.2d 554, 557 (Miss. 1998) The appellate court will not disturb the findings of a circuit court sitting without a jury unless they are manifestly wrong or clearly erroneous, or unless an erroneous legal standard was applied. *Turner v. Terry*, 799 So.2d 25, 30 (Miss. 2001) And, also if a chancellor makes no specific finding of fact on a particular issue, the appellate court should proceed on the assumption that he resolved all such factual issues in favor of the appellees. *McNeil v. Hester*, 753 So.2d 1057, 1073 (Miss. 2000) With regard to issues of fact as to which the Chancellor did not make a specific finding, the appellate court is required to assume that the Chancellor resolved all such factual issues in favor of the appellee. *In Re the Estate of Horrigan*, 757 So.2d 165, 168 (Miss. 1999) When there is no specific finding of fact in a non-jury case, the Supreme Court will assume that the trial court

made a determination of facts sufficient to support its judgement. *TXG Intrastate Pipeline Co. v. Grossnickle*, 716 So. 2d 991, 1025 (Miss. 1997)

In view of the law cited above, the failure of Judge Roberts in not making a finding as to the ownership of the decedent's checking account after his death cannot be grounds of reversal since the doctrine of waiver will apply in this case. Although, Judge Roberts did not specifically find that Anita Williams Simpson knew that she had the rights to withdraw funds from such checking account, this Court must assume that he found, based upon the evidence, that she did have such knowledge when she signed the Release Agreement on September 4, 1996. This Court cannot assume from the absence of such a finding the prior fact did not find that she knew what rights she had to such account when she signed the Release Agreement which acts as a waiver in this case.

## CONCLUSION

In summary, the Trial Court did not make any error in failing to find as fact as to owned the funds in account no. 55-888-8 at First National Bank of Picayune after the death of Robert Joshua Williams, II. Such a finding was not necessary because the trier of fact found that the Release Agreement (**Exhibit 3**) was, in effect, a waiver of a right signed by Anita Williams Simpson, and that she knowingly and intelligently waived all her rights to such account free and clear of any fraud deceit, trickery, coercion, and that she was competent when she signed such the Release Agreement. Sufficient evidence was introduced at the trial of this matter to show reason why Anita Williams Simpson may have signed such Release Agreement with the knowledge that she had the right to withdraw funds from such account as being the beneficiary thereof. Further, Judge Robert's failure to make a specific finding that Anita Simpson knew her interest in the checking account money at the time she signed the Release Agreement must be resolved in assuming that Judge Robert made such a finding.


For the foregoing reasons, this Court should affirm the Judgment of the Trial Court signed on March 10, 2006 and filed with the Clerk of the Chancery Court of Pearl River County, Mississippi on March 20, 2006. Further, all costs of this appeal should be taxed to the appellant.

## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, do hereby certify that a true and correct copy of the foregoing Appellee's Brief was served by U.S. postage prepaid mail, to the following on this the 23 day of March, 2007

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