

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CIVIL ACTION NO. 2006-CA-01637

STACY FISHER
Appellant

V.

MYRTIS DEAN PATTON, EXECUTRIX OF THE
ESTATE OF WILLIAM H. PATTON
Appellee

Appeal from the
Chancery Court of the Second Judicial District
of Jones County, Mississippi
Civil Action Cause Number 2005-0810
Judge Franklin C. McKenzie, Jr., Presiding

BRIEF OF APPELLEE,
MYRTIS DEAN PATTON, EXECUTRIX OF THE
ESTATE OF WILLIAM H. PATTON °

ORAL ARGUMENT NOT REQUESTED

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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 representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Stacy Fisher, Appellant

Myrtis Dean Patton, Appellee

John L. Jeffries, Attorney for Appellee

Robin L. Roberts, Attorney for Appellant

Brandon L. Brooks, Attorney for Appellant



JOHN L. JEFFRIES,
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Myrtis Dean Patton, Executrix of
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STATEMENT OF ISSUES

1. Whether or not Stacy Fisher, Appellant, was in contempt of court for failure to comply with the order of the court dated November 21, 2005
2. Are attorney's fees a proper sanction for civil contempt?

STATEMENT OF THE CASE

Myrtis Dean Patton , Executrix of the Estate of William H. Patton, Jr., filed a motion in the Chancery Court of the Second Judicial District of Jones County, Mississippi, for Stacy Fisher and William W. Patton, Decedent's children, to turn over assets of the estate to her and for an inventory of assets in their possession.

On November 21, 2005, the Chancery Court of the Second Judicial District, Jones County, Mississippi, entered an order (RE8) which stated as follows:

- “3. Stacy Fisher and William W. Patton will return all assets of the estate, to the Executrix, with the estate bearing the cost of delivery of any property removed prior to the death of William H. Patton. Stacy Fisher and William W. Patton will bear the cost of delivery of any property to be returned which was removed after the death of William H. Patton.
4. Stacy Fisher and William W. Patton will make a complete inventory of all the assets belonging to the decedent that is in their possession.
5. The following vehicles which are jointly titled to Myrtis Dean Patton are not property of the estate and are controlled by the title to the vehicles....”
[3 vehicles enumerated]

Stacy Fisher and William W. Patton failed to comply with the order of the court and on February 28, 2006, Myrtis Dean Patton filed a Motion to Compel compliance with the November 21, 2005 order (RE10).

On June 1, 2006, the Chancery Court of the Second Judicial District of Jones County, Mississippi, entered its order holding Stacy Fisher and William W. Patton in contempt of court and

ordered them to make a complete inventory of all assets belonging to William H. Patton and in the possession and under the control of assets which may now be in their possession and under their control that they were aware of and location of said assets. Said order set a hearing on August 10, 2006, to determine which sanctions, if any, should be imposed upon Stacy Fisher and William W. Patton. (RE14)

At the hearing on August 10, 2006, an order was entered awarding Myrtis Dean Patton a judgment against Stacy Fisher in the amount of \$3,046.75 for attorney fees. (RE6)

STATEMENT OF FACTS

William H. Patton, Jr., died September 7, 2005. He left a last will and testament which has been probated in the Chancery Court of the Second Judicial District of Jones County, Mississippi. His widow, Myrtis Dean Patton, is the named and appointed Executrix of his estate.

The Pattons were separated at the time of Mr. Patton's death, and Mrs. Patton did not learn of his death until September 14, 2005. (RE24)

Mrs. Patton discovered that almost all of Mr. Patton's personal effects had been removed from their home. In an effort to recover these assets, Mrs. Patton filed a Motion for Stacy Fisher and William W. Patton to return the assets and to make a full and complete inventory of the assets of the decedent in their possession. On November 21, 2005, the Court entered its order for Stacy Fisher and William W. Patton to return all assets of the estate to the Executrix and to make a complete inventory of all of the assets belonging to the decedent that was in their possession. (RE8)

In an effort to collect these assets, Mrs. Patton went to the home of Stacy Fisher in Texas; however, she was greeted with a Criminal Trespass Warning and was not permitted to recover any assets (RE13)

In February 2006, Mrs. Patton filed a Motion to Compel compliance with the Court's Order dated November 21, 2005; and requested that Stacy Fisher and William W. Patton be held in contempt of court for failure to comply with the order of the court. (RE10)

On June 1, 2006, the Court entered its order holding Stacy Fisher and William W. Patton in contempt of Court. The order further directed them to "make a complete inventory of all assets belonging to the decedent in their possession, under their control, or assets which may not be in their possession or under their control, but that they are aware of the location of said assets". The case was continued to August 10, 2006, for a hearing to determine what sanctions, if any, would be imposed upon them for failure to comply with the court's order (RE10)

On June 7, 2006, Stacy Fisher filed an inventory. The only items listed were three automobiles and a man's gold ring with seven clear stones.

Stacy Fisher's inventory was not complete because at the hearing on August 10, 2006, she testified as to various other items she had failed to list, explaining that she only listed items that in her opinion were "substantial." (RE21)

On August 24, 2006, the Court entered a judgment against Stacy Fisher in the amount of \$3,045.75 for attorney fees incurred by the Executrix to enforce the order of the court dated November 21, 2005. (RE6)

SUMMARY OF THE ARGUMENT

1. Appellant was found to be in civil contempt of court and the sanctions imposed by the Court were proper.
2. The factual findings of the Chancellor should be affirmed unless manifest error is present and apparent.

ARGUMENT I .

APPELLANT WAS GUILTY OF CIVIL CONTEMPT OF COURT

Appellant has attempted to convince this Court that she was found guilty of construction criminal contempt of court for her failure to comply with a discovery rule under Rule 37, *Miss. Rules of Civil Procedure*. Such is clearly not the case.

Appellant was ordered to turn over assets of the Estate of William H. Patton, Jr., to the Executrix and to make a full and complete inventory of the assets in her possession. The Appellant refused to comply with the order; and even after being found in contempt, Appellant remained in wilful defiance of the order. It was for this reason sanctions were imposed against Appellant in the form of attorney fees.

Rule 70, *Miss. Rules of Civil Procedure* provide that if a party fails to comply with an order to perform specific acts, the court may adjudicate the party in contempt. Appellant repeatedly failed to comply with the court order; and, therefore, was found in contempt.

The distinction of the types of contempt is well set out in *Purvis v. Purvis*, 657 So. 2d 794 (Miss. 1994). This court differentiated the type of contempt as follows:

...If the primary purpose is to enforce the rights of private party litigants or to enforce compliance with a court order, the contempt is civil. (p. 796)

Conduct directed against the court's dignity and authority is criminal contempt. It involves an act "which tends to bring the court into disrepute or disrespect. Conduct amounting to criminal contempt must be directed against the court or against a judge acting judicially rather than individually. (p. 797)

Also, in *In Re Williamson*, 838 So.2d 226 (Miss. 2002) this court states:

...If the primary purpose of the contempt order is to enforce the rights of private party litigants or enforce compliance with a court order, then the contempt is civil.

[13-17] ¶31. There are two forms of criminal contempt, direct and constructive:

Direct criminal contempt involves words spoken or actions committed in the presence of the court that are calculated to embarrass or prevent the orderly administration of justice. Punishment for direct contempt may be meted out instantly by the judge in whose presence the offensive conduct was committed.

Unlike direct contempt constructive contempt involves actions which are committed outside the presence of the court. In the case of constructive criminal contempt, we have held that defendants must be provided with procedural due process safeguards, including a specification of charges, notice and a hearing. (p.237)

Clearly Appellant's contempt was civil and not criminal. It is further submitted that the Court followed the proper procedures in finding Appellant in contempt and imposing sanctions. In *Tinnon v. Martin*, 716 So.2d 604 (Miss. 1998), the Court stated:

In contempt proceedings to determine whether or not a party has deliberately and intentionally violated an order of the trial court, the inquiry is limited to the issues as to whether or not the order was violated, whether or not it was possible to carry out the order of the court, and if it was possible, whether or not such violation was an intentional and wilful refusal to abide by the order of the court. (p. 716)

A trial court cannot tolerate the wilful defiance of its orders. See *Cooper Tires & Rubber Co. v. McGill*, 890 So.2d 854 (Miss. 2004). Therefore, Rule 70, *Miss. Rules of Civil Procedure*, allows the court to adjudicate a party in contempt for failure to comply.

Sanctions are also proper in civil contempt proceedings. In *Illinois Cent. R. Co. v. Winters*, 815 So.2d 1168 (Miss. 2002), Illinois Central Railroad was held in civil contempt of court.

Although this court found the expenses allowed the other parties were excessive, the case was remanded to the lower court to reduce the amount of the award to the reasonable expenses, including attorney's fees which were actually caused by Illinois Central's failure to comply with a court order.

The only sanctions granted against the Appellant were reasonable attorney fees of \$3,043.75, which represented reasonable attorney's fees incurred by the Appellee to enforce the order of the lower court. (RE 7).

ARGUMENT II .


THE FINDINGS OF THE CHANCELLOR SHOULD BE AFFIRMED.

It is a well settled principle of law that the findings of a chancellor should not be disturbed unless there is manifest error. The same principle applies to findings of contempt. See *Purvis v. Purvis*, 657 So.2d 794 (Miss. 1994).

CONCLUSION

Appellant's total disregard for the order of the Chancery Court was a wilful effort on her part to hinder the appellee in the administration of the Estate of William H. Patton, Jr. The Chancellor was justified in holding her in contempt and awarding attorney fees to appellee. The judgment of the lower court should be affirmed.

RESPECTFULLY SUBMITTED,


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CERTIFICATE OF SERVICE

I, JOHN L JEFFRIES, of counsel for appellee, do hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing **BRIEF OF APPELLEE** to:

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This the 10th day of May, A. D., 2007.


JOHN L. JEFFRIES