

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of records 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



**Robin L. Roberts, Attorney of
Record for Stacy Fisher**

2006 CA-01637-SCT
Appellant
Brief

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STATEMENT OF ISSUES

The issues in this case are as follows:

- A. Did the Chancellor err in finding that the Petitioner, Stacy Fisher, was in contempt of court for violating a November 21, 2005, court Order which contained no deadline for compliance?
- B. Was the contempt judgment entered by the Court civil contempt, criminal contempt, or constructive criminal contempt?
- C. Did the Court's failure to use proper procedural safeguards invalidate his finding of criminal contempt?
- D. Did the Court err by allowing Myrtis Dean Patton to present a complaint for contempt when she had unclean hands?
- E. Were any violations of the court Order so insignificant as to be *de minimis*?

STATEMENT OF THE CASE

Nature of the Case and Proceedings Below

In November 2004, William H. Patton, Jr., decedent, and his wife Myrtis Dean Patton, Executrix, separated and divorce proceedings ensued. (RE 24) On September 7, 2005, while the divorce proceeding was pending, and shortly before a scheduled trial on the matter, William H. Patton died, leaving a will which is being probated by Myrtis Dean Patton. In the underlying litigation, Stacy Fisher, and William W. Patton, the decedent's children, filed a petition for constructive revocation of the will. This matter arises out of court orders regarding marshaling the estate's property and providing information through inventory, chancery discovery processes.

Stacy Fisher appeals from a judgment of contempt for alleged violation of a court Order related to filing an inventory and turning over certain property "of the decedent." The Court

found her in contempt, without denominating it criminal or civil, and awarded attorney's fees to opposing counsel in the amount of \$3,043.75. (RE 6)

Statement of Facts

On November 21, 2005, the Chancery Court of Jones County, Mississippi, entered an Order (RE 8) 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] (Emphasis added)

The November 21, 2005, Order does not set a particular date for the filing of the inventory or return of property.

On January 14, 2006, at approximately 2:00 a.m., (RE 30) Myrtis Dean Patton went to the residence of Stacy Fisher in Washington County, Texas, and attempted to retrieve the automobiles which had been determined to be non-property of the estate.¹

Myrtis Dean Patton, in a late night phone call, informed the Fishers that no one would leave the property until the vehicles were turned over to her, and also admits that she had been watching the property since approximately midnight. Stacy Fisher and her husband notified the

¹In fact, by that time, a Motion to Compel production of those automobiles had been served upon Stacy Fisher by the Bankruptcy Court in Arizona, where Myrtis Dean Patton had filed bankruptcy. At the hearing on this matter, the parties agreed that the vehicles were property of the bankruptcy estate. (RE 41)

police that Myrtis Dean Patton was trespassing, and the police issued a warning citation to Myrtis Dean Patton. Myrtis Dean Patton admits a hostile attitude toward the officers.

On February 28, 2005, Myrtis Dean Patton filed a Motion to Compel compliance with the Court's Order of November 21, and requested that Stacy Fisher "be found in contempt of this Court for their failure to comply with the Order of this Court, and be confined to jail until such time as they are willing to comply with the same, and your Executrix should be awarded reasonable attorney's fees to be paid by Stacy Fisher and William W. Patton for being required to file this Motion...." (RE 10) Following a hearing, the Court entered an Order dated June 1, 2006 (RE 14), stating as follows:

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that *within fourteen (14) days of entry of this order*, Stacy Fisher and William W. Patton be and *(they are hereby)* held in contempt of this Court for failure to comply with the order of this Court dated November 21, 2005. (Italics added)

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED that Stacy Fisher and William W. Patton make a complete inventory of all assets belonging to William H. Patton that are in their possession under their control or assets which may be in their possession or under their control, that they are aware of the location of said assets.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED that this matter be and is hereby continued to 9:30 o'clock a.m. on Thursday, August 10, 2006, for a hearing to determine what sanctions, if any, and other penalties shall be imposed upon Stacy Fisher and William W. Patton for failure to comply with the order of this Court." (Emphasis added)

Notably, the ambiguous order still sets no date for compliance and is hopelessly ambiguous on whether contempt is immediately applicable or only after non-compliance for 14 days. No one should be held in contempt for failure to follow a non-comprehensible order.

On June 7, 2006, seven days after the Order, Stacy Fisher filed an inventory of items in her possession listing the three automobiles, previously adjudicated by the Court not to be property of the estate, but which were in her possession, and a man's gold ring with seven clear stones. (RE 16) At a hearing before the Court on August 10, 2006, Stacy Fisher produced the gold ring in her possession, as well as an old leather wallet, a small amount of cash, some credit cards, a used watch, and a blank checkbook (RE 20), all of which items she had picked up from the hospital following her father's death.

Myrtis Dean Patton made a claim for approximately \$10,000.00 in expenses for which she had no substantiation and for which no award was made. The Court awarded the attorney's fees in the amount of \$3,046.75 as punishment for failing to comply with the Order.

SUMMARY OF THE ARGUMENT

1. The Court is without authority to issue sanctions and penalties against a party unless there has been a violation of a Court order. *Tinnon v. Martin*, 716 So.2d 604 (Miss. 1998).
Stacy Fisher did not violate the Court's order because the initial order of the Court provided no deadline for compliance, and she fully complied with the second order, notwithstanding its ambiguity.
2. The primary purpose of the Court's judgment of contempt was to punish Stacy Fisher for failing to comply with the Court's order, and, therefore, the Court's judgment was a constructive criminal contempt order. A person charged with constructive criminal contempt must be afforded certain procedural safeguards of which the Plaintiff, Stacy Fisher, did not have the advantage. *Cooper Tire & Rubber Co. v. McGill*, 890 So.2d 859, 864 (Miss. 2004)

3. The means and manner by which the Executrix, Myrtis Dean Patton, had conducted herself with regard to the return of the property gave her “unclean hands,” and, therefore, she is prohibited from receiving relief from any misconduct by Stacy Fisher. The Court failed to adequately consider the unclean hands doctrine, and, therefore, the imposition of sanctions was error.
4. Any failure on the part of Stacy Fisher to return property falls under the legal *maxim de minimis non curat lex*.

ARGUMENT

A. Standard of Review.

The supposed violation of Stacy Fisher in this case is very much akin to a discovery violation, though the obligation was imposed by a Court order rather than the Rules of Civil Procedure. She was to produce a list of items and turn over certain items, if any, in her possession. Analytically this is no different from Interrogatories and Requests for Production of Documents or Things.

Courts have two sources of authority for imposing sanctions or penalties. First comes from Miss. Rule of Civ. Pro. 37, and, of course, the Court has inherent power to protect the integrity of its orders and processes. *Cooper Tire & Rubber Co. v. McGill*, 890 So.2d 859, 864 (Miss. 2004). However, under either source of authority, a finding of contempt must be made. *Id.* Matters of contempt involving the violation of a Court’s order are ordinarily committed to the trial Court’s sound discretion because “by institutional circumstance in both temporal and visual proximity the Court is infinitely more competent to decide” than an appellate court.

Cumberland v. Cumberland, 564 So.2d 839, 845 (Miss. 1990). However, deference to the trial Court's determination is not tantamount to a rubber stamp.

If the contempt finding is one of criminal contempt, the appellate Court proceeds *ab initio* to determine based on the record whether a person is guilty of criminal contempt beyond a reasonable doubt. *Cooper Tire*, 890 So.2d at 868 (Miss. 2004). Unlike civil contempt matters the Court's review is not confined to review for manifest error. *Id.*, citing *Cumberland, supra*.

B. There can be no imposition of sanctions without violation of a Court order.

In order to impose sanctions on Stacy Fisher she must be found to have violated the Court order. In this case, the November 21, 2005, Court Order provided no particular time in which she must comply with filing of an inventory or production of property. Following the Motion to Compel, the best reading of the June 1, 2006, Order (RE 14) (recited at length above) is that Stacy Fisher had fourteen days in which to comply with filing the inventory or be held in contempt. She met the deadline. As far as turning over property, again there is no deadline. Moreover, the only property in her possession were those items obtained from the hospital which she brought to the courtroom on August 10, the hearing date set by the Court. Incidentally, that was her first chance to re-visit Mississippi from Texas. Thus, given the ambiguity of the Order and the conduct of Stacy Fisher, she did not violate the Court Order. The Court lacks authority to penalize Fisher without a clear holding of contempt and violation of the Court's Order. *Tinnon v. Martin*, 716 So.2d 604 (Miss. 1998).

C. The Court's Order was a punishment for criminal contempt.

To apply the proper standard of review, the court must determine whether the contempt found by the trial court is civil or criminal. *Cooper Tire*, 890 So.2d at 868. 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. *Purvis v. Purvis*, 657 So.2d 794, 796 (Miss. 1994). The person held in contempt is relieved of the penalty upon purging himself of civil contempt. *Id.* at 796-797. Criminal contempt on the other hand, is different from civil contempt in that it is an offense upon the dignity of the Court, and any fine should be paid to the Court. *Illinois Central Railroad Company v. Winters*, 815 So.2d 1168, 1180 (Miss 2002). The Appellate Court is not bound by the trial court's determination of whether or not the conduct should be classified as civil or criminal. *Purvis*, 657 So.2d at 796. *See also, Common Cause of Mississippi v. Smith*, 548 So.2d 412, 415 (Miss. 1989). Further, criminal contempt may be either direct, in the court's presence, or constructive, outside of court. *In Re: Williamson*, 838 So.2d 226, 228 (Miss. 2002). In matters of constructive criminal contempt, the accused has the right to procedural safeguards, such as recusal of the trial judge. *Cooper Tire*, 890 So.2d at 868.

Applying the foregoing rules to the case at hand, the Court apparently held Stacy Fisher to be in constructive criminal contempt. The Order of June 1, 2006, though ambiguous as previously discussed, appears to give Stacy Fisher fourteen days in which to comply with the Court's Order. She filed her inventory within seven days, and brought the materials in her possession which were transportable to the next hearing. Thereafter, the Court simply ruled that she must pay the sanctions of attorney's fees for perceived past non-compliance with the Order. In other words, she was being penalized after the fact so that her compliance with that Order did not relieve her of the Court's contempt. Focusing on the primary purpose, as the law requires, more than mitigates the fact that the money was being paid to counsel.

This can only be characterized as criminal contempt. As the Courts found in the *Cooper Tire* case, penalties imposed after the fact are criminal in nature and certain procedural requirements must be met in order to impose them. None of those requirements were met in this case.

D. Myrtis Dean Patton came to the Court with unclean hands.

According to *O'Neal v. O'Neal*, 551 So.2d 228, 233 (Miss. 1989), the doctrine of unclean hands means that "no person as a complaining party can have the aid of a Court of equity when his conduct with respect to the transaction in question have been characterized by willful inequity..." Griffith Mississippi Chancery Practice, § 42 (2nd Ed. 1950). Amplifying this definition was *Thigpen v. Kennedy*, 238 So.2d 744, 746 (Miss. 1970), in which the Court stated:

Whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle in his prior conduct, then the doors of the Court will be shut against him in limine; the Court will refuse to interfere on his behalf to acknowledge his right or reward him any remedy.

(Citing, Pomeroy's Equity Jurisprudence, 4th Ed., § 397.)

In order to seek equity from this Court, Myrtis Dean Patton must come to the Court with clean hands. Her conduct in going to the Fishers' home at midnight, threatening them over the telephone, and being cited by the police for trespass at 3:55 a.m. based on the Fishers' call, clearly shows that she came to the Court without clean hands. She is attempting to enforce a court Order while her own conduct with regard to the same Order was in bad faith. Further, her stated purpose was to get the automobiles, which were not estate assets of her late "husband" but property of the bankruptcy trustee. (RE 41)

E. The property sought to be turned over by Stacy Fisher is legally *de minimis*.

Mississippi recognizes the principle of *de minimis non curat lex*. When it would be to sacrifice great interest for small considerations the rule to be applied is *de minimis non curat lex*. Such sacrifices will not be tolerated. *Turner v. Brown*, 3 Smeads and M. 425, 1844 WL 3278 (Miss. 1844). Stacy Fisher had an old wallet, some keys, a dead cell phone, a little bit of cash and some personal credit cards of the decedent. All of these matters were personal effects turned over to the daughter by the hospital where Mr. Patton died. To charge her with sanctions of a punitive nature with regard to the production of these insignificant and insubstantial items would not be equitable and would elevate small interest over substance. Under the doctrine herein cited, these items are legal *de minimis* and should not be the subject for contempt. In the very least, it should show an abuse of discretion that the Court seemed more interested in punishing Stacy Fisher for her perceived noncompliance than it did in getting compliance with the orders. (RE 44-53)

CONCLUSION

Given the ambiguity of the Orders entered by the Court, Stacy Fisher did not violate the court Orders. Thus, no sanctions can be issued against her. The Order issued by the Court is properly classified as constructive criminal contempt, and the procedural safeguards required in such matters have not been met. Myrtis Dean Patton comes to the Court with unclean hands and should not be allowed to seek equity in matters where her conduct has been unconscionable. The property sought to be turned over by Stacy Fisher was legally *de minimis* and the punitive sanctions imposed in light of the property involved is out of proportion, and therefore an abuse of discretion.

Stacy Fisher requests this Court to overturn the lower Court's Finding of Contempt and reverse and render the judgment requiring her to pay attorney fees.

Respectfully submitted, this the 27th day of March, 2007.



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CERTIFICATE OF SERVICE

I certify that a copy of this instrument has been served on the following:

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by placing same in the U.S. Mail, postage prepaid and properly addressed, this 27th day of March, 2007.



Robin L. Roberts, Appellant's Attorney