

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CAUSE NO. 2006-CA-02107

Hosea Hines, Appellant, vs. State of Mississippi, Appellee

APPEAL
From the Youth Court of the City of Pearl, Mississippi

APPELLEE'S REPLY BRIEF

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Oral argument is not requested.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	Page 1
TABLE OF CASES AND AUTHORITY	Page 3
STATEMENT OF THE CASE.....	Page 4
STATEMENT OF THE FACTS	Page 5
SUMMARY OF THE RESPONSE	Page 5
ARGUMENT	Page 6
CONCLUSION.....	Page 13
CERTIFICATE OF SERVICE	Page 10

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APPELLEE

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HOSEA HINES

APPELLANT

CERTIFICATE OF INTERESTED PARTIES

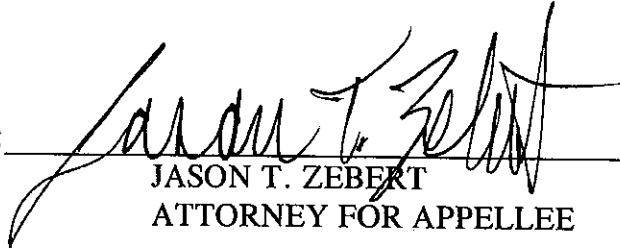
The undersigned counsel of record of Appellee certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justice of this Court may evaluate possible disqualification or recusal.

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Respectfully submitted,

STATE OF MISSISSIPPI
CITY OF PEARL

By: _____

A handwritten signature in black ink, appearing to read "Jason T. Zebert", is written over a horizontal line. The signature is stylized with a large initial 'J' and a prominent 'Z'.

JASON T. ZEBERT
ATTORNEY FOR APPELLEE

TABLE OF CASES AND AUTHORITY

TABLE OF CASES

Purvis v. Purvis, 657 So.2d 794, 796-97 (Miss. 1994).....	Page 11
Cooper Tire & Rubber Co. v. McGill, 890 So.2d 859, 868 (Miss. 2004)	Page 9
Common Cause of Miss. v. Smith, 548 So.2d 412, 415-16 (Miss. 1989)	Page 9
In Re Williamson, 838 So.2d 226, 237-38 (Miss. 2002)	Page 9
Moulds v. Bradley, 791 So.2d 220, 224-25 (Miss. 2001).. ..	Page 9
Wyssbrod v. Wittjen, 798 So.2d 352 (Miss. 2001)	Page 9
Murrell v. State, 655 So.2d 881, 887 (Miss. 1995)	Page 9
Wolf v. State, 260 So.2d 425, 433 (Miss. 1972)	Page 9, 10
In Re Linda A. Hampton, No. 2004-KM-01089-SCT (Miss. 2004)	Page 9, 10

TABLE OF STATUTES

M.C.A. §43-21-101	Page 6
M.C.A. §43-21-153	Page 6, 7, 12
M.C.A. §43-21-203	Page 8, 12
M.C.A. §43-21-309	Page 7

TABLE OF RULES

Mississippi Rules of Appellate Procedure	
M.R.A.P. Rule 28(k).....	Page 5
Mississippi Rules of Civil Procedure	
M.R.C.P. Rule 1	Page 6
M.R.C.P. Rule 81	Page 6

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APPELLEE'S REPLY BRIEF

STATEMENT OF THE CASE - PROCEDURAL HISTORY

On October 31, 2006, a Shelter Hearing was held at which Reverend Hosea Hines was present (Appellant's Brief, Page 4)(Transcript 6-7). A Shelter Order was entered on October 31, 2006, prohibiting discussions with J.A., J.A. and J.M. and setting a Shelter Review on the 14th day of November, 2006 (Record 9). On November 8, 2006, for good cause shown, an Order of No Contact with Hosea Hines was entered. This matter was also set for the same day that the Review Hearing was set (Record 12). Reverend Hines was contacted by Detective James Thompson at the Pearl Police Department and informed of the No Contact Order, and that he was to be in Court on the previously ordered court day of November 14, so that the No Contact Order could be explained to him. Reverend Hines indicated he understood (Transcript 43). Reverend Hines did not show up on that date as instructed (Transcript 45). A Show Cause Contempt Warrant was issued for Reverend Hines for his violation of the Court Order dated October 31, 2006 (Record 13). Reverend Hines was arrested on November 15, 2006 (Record 59). Reverend Hines was released on a \$1,000.00 bond and instructed by the bondsman to appear in City of Pearl Court, not the City Youth Court on November 30, 2006 (Record 60). Reverend Hines was subsequently correctly directed to appear in the Pearl Youth Court on December 5, 2006, at 8:30 a.m. (Record 15). On December 4, 2006, a formal

Motion for Contempt was filed (Record 16 – 17). A Show Cause Hearing was held on December 5, 2006, and December 12, 2006 (Record 25–27)(Record 52-58). Reverend Hines was found to be in civil contempt and ordered to inform the Court that he will in the future obey all court orders (Record 52-58).

STATEMENT OF THE FACTS

The facts of the case are sufficiently covered in the procedural history section of the brief. The brief of the Appellant contains language that is disrespectful to the lower Court. Pursuant to Rule 28(k) of the Mississippi Rules of Appellate Procedure, Appellee would request that language be stricken.

SUMMARY OF THE RESPONSE

A youth court judge has the authority to compel the attendants of a party at a court hearing. Failure to attend the court hearing or follow any order as prescribed by the youth court judge is subject to the contempt powers of the youth court. The contempt proceedings as held against Reverend Hines, were held in accordance with applicable statutory and case law and were held in such a way as to protect the potential identifying information regarding the children that were involved in the original Youth Court matter. Judge Shirley properly presided over the contempt that was before him under any of the applicable statutory and case law regarding contempt and was, in fact, fair and impartial. Finally, Judge Shirley's October 31, 2006, Order did not violate the First Amendment to the United States Constitution. It did, however, protect a minor child, which is the very intent of the Youth Court Law. The finding of Reverend Hines to be in contempt should be upheld and stand.

ARGUMENT

Issue 1: WHETHER A YOUTH COURT JUDGE CAN COMPEL A NON-PARTY'S ATTENDANCE IN COURT FOR A REVIEW/SHOW CAUSE HEARING IN THE ABSENCE OF A WRITTEN ORDER DULY SERVED ON THE PERSON WHOSE PRESENCE IS COMMANDED

The first issue addressed by appellant is best reviewed as follows: First, we must look to the rules, specifically the Mississippi Rules of Civil Procedure.

Rule 1 of the Mississippi Rules of Civil Procedure specifically states that "These rules govern procedure in the circuit court, chancery courts and county courts . . ." (M.R.C.P. 1). This case is in the Pearl Municipal Youth Court, therefore the Mississippi Rules of Civil Procedure do not apply. Rule 81 of the Mississippi Rules of Civil Procedure again lets us know that the Mississippi Rules of Civil Procedure are "subject to limited applicability" (M.R.C.P. 81(a)) in "proceedings pursuant to Youth Court Law and the Family Court Law"; (M.R.C.P. 81(a)(3)). The comment section of Rule 81 of Mississippi Rules of Civil Procedure directs us to the statutes pertaining to Youth Court Law. (Comment to Rule 81 of M.R.C.P.).

Once we go into the statutes cited as Youth Court Law §43-21-101 et. seq. of the Mississippi Code of 1972, as amended, we begin to see the power and authority of the Youth Court Judge and the process by which the Court may conduct proceedings.

Our first statute is §43-21-153 which endows the Court with "full power and authority to issue all writs and processes . . . necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter." (Miss. Code Ann. §43-21-153(1)). The Youth Court Judge has the inherent authority to carry on the business of their Court.

The very next section of that statute deals with the issue of contempt. "Any person who willfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred

dollars (\$500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.” (Miss. Code Ann. §43-21-153(2)). Reverend Hines was given an oral order from Judge Shirley to appear in Court on a day and time certain so that a no contact order could be explained to him. That oral order notice came to Reverend Hines through Detective James Thompson (Transcript Page 43-44). Reverend Hines indicated he understood. Reverend Hines did not show up (Transcript Page 45). Reverend Hines made no attempt to inform Detective Thompson that he had a problem with attending Court on that date (Transcript Page 51-52).

Are oral orders regarding a notice to appear in court sufficient? Under Youth Court Law, the answer is yes. Under Mississippi Law, the Youth Court is empowered to use “reasonable oral or written notice” for children, parents, guardians, custodians, guardian *ad litem* and counsel in detention and shelter hearings (Ms. Code Ann. §43-21-309(2)). If reasonable oral notice is sufficient for these parties in hearing where it is possible for the child to lose their liberty or a parent to temporarily lose custody, then surely it is sufficient for an adult to appear in court and have a no contact order explained to them.

To require the Youth Court to serve a written order or notice on any party or person prior to being able to take any action would tie the hands of the Youth Court and endanger the children that the Court was designed to protect.

Reverend Hines had sufficient notice of the purpose, time, place and date of his appearance. He failed to appear. He was then given an opportunity to appear and explain why he was not at the prior hearing. He appeared, but offered no defense, explanation or apology to the Court. Even after being given the opportunity to purge himself of the contempt by simply “by appearing before the Court and sincerely informing the Court that in the future he

will follow orders of the Court even if he disagrees with any such order” (Record 57).

Reverend Hines refused and appealed that decision to this Honorable Court.

Issue 2: WHETHER A YOUTH COURT JUDGE ABUSES HIS DISCRETION WHEN HE DENIES A NON-PARTY'S REQUEST TO HOLD ANY CONTEMPT PROCEEDINGS AGAINST THE NON-PARTY IN OPEN COURT WHEN THE CONTEMPT MATTER TO BE TRIED DOES NOT REQUIRE THAT ANY CONFIDENTIAL MATTERS PERTAINING TO YOUTHS BE DIVULGED.

Youth Court proceedings are closed proceedings, and the general public is excluded. (MS. Code Ann. §43-21-203). The matter currently before the Court is based on a show cause/contempt arising out of a Youth Court proceeding. Prior to hearing any testimony or being presented with proof there is no way for the youth Court Judge or counsel to know what information will be presented. There is no way to un-ring the bell. The paramount consideration in the Youth Court is to do whatever is in the best interest of the children. The right to confidentiality is the child's right and should not be endangered because a party or non-party wants an audience and believes they are entitled to it. The Appellant was represented by counsel, and the hearing was recorded. His rights were protected. To have opened the courtroom would have created the potential for identifying information regarding the children to be released. That potential is unnecessary and unacceptable.

The cases cited by Appellant are not relevant in this cause because this was a Youth Court proceeding in that it stems directly from a Youth Court order and it is therefore closed. The Appellant placed himself into the proceedings in Youth Court by attending prior hearing in the matter (Transcript 6-7), by allegedly assisting the alleged perpetrator in his defense (Record 57) and by making statements that prior no contact orders did not apply to him (Record 54).

*Issue 3: WHETHER A YOUTH COURT JUDGE ABUSES HIS DISCRETION WHEN
THE YOUTH COURT JUDGE PRESIDES OVER A CONSTRUCTIVE
CONTEMPT MATTER.*

Response to Issue No. 3 is that Reverend Hosea Hines was held in civil contempt of the Youth Court (Record 52-58). If we examine the punishment that was meted out for a violation of the Court Order, it would appear that Reverend Hines would be able to purge himself of the contempt and stop the “punishment” that was given to him simply by agreeing to comply with the Court Orders in the future, thus, falling under the definition of a civil contempt. *Cooper Tire & Rubber Co. v. McGill*, 890 So.2d 859, 868 (Miss. 2004) (citing *Common Cause of Miss. v. Smith*, 548 So.2d 412, 415-16 (Miss. 1989)). If, however, it is interpreted that although Reverend Hines was found to be in civil contempt it should be criminal contempt, then we must examine the difference between direct criminal and constructive criminal contempt.

As this Court is aware, generally, direct criminal contempt is reserved for offenses that are committed in the presence of the Court and require no hearing or substitution of the judge to determine the actual contempt. *In Re Williamson*, 838 So.2d 226, 237-38 (Miss. 2002) (citing *Moulds v. Bradley*, 791 So.2d 220, 224-25 (Miss. 2001)).

Generally, the failure to appear before the Court when required to do so is seen as constructive contempt, (*Wyssbrod v. Wittjen*, 798 So.2d 352 (Miss. 2001); *Murrell v. State*, 655 So.2d 881, 887 (Miss. 1995); *Wolf v. State*, 260 So.2d 425, 433 (Miss. 1972)) however, it can be direct contempt in instances where there is a willful and intentional failure to appear before the Court. *In Re Linda A. Hampton*, No. 2004-KM-01089-SCT (2004) (citing *Wyssbrod v. Wittjen*, 798 So.2d 352 (Miss. 2001); *Murrell v. State*, 655 So.2d 881, 887

(Miss. 1995); *Wolf v. State*, 260 So.2d 425, 433 (Miss. 1972)). In the instant case, Reverend Hines was, in fact, informed of his requirement to appear before the Court to answer regarding whether or not he understood a No Contact Order. Reverend Hines indicated that he understood the requirement (Transcript 43-44); however, he did not show up on the appointed day and time after having communicated to the mother of the minor child that he had other things that he needed to do (Transcript 44). Although this particular bit of information was stricken from the record of the Show Cause Hearing, Judge Shirley would have been aware of it from prior hearings which, pursuant to statute, were not required to be recorded. If a judge is not required to leave his common sense at the door, why should he be required to leave his memory at the door?

This indication from Reverend Hines that his lack of appearance was, in fact, willful and deliberate, would place the case into being interpreted as a direct criminal contempt, pursuant to *In Re Linda A. Hampton*, No. 2004-KM-01089-SCT (2004). In Hampton, the trial court was informed that the attorney's intention, as communicated to the clerk, was she was not sure whether or not she was going to show up for the particular day's hearing as previously instructed by the court. In the case at bar, Reverend Hines' communication to the mother, which was reported to the Court, would indicate his intent to willfully violate the Court's instruction to him. Direct criminal contempt can be punished immediately without the need of a hearing and would have been proper or appropriate in this particular case. Even if this Honorable Court's eventual interpretation of Reverend Hines' actions should be held to be constructive criminal contempt then the actions taken by Judge Shirley would still comply with the standards for constructive criminal contempt. For constructive criminal contempt, Reverend Hines would have been entitled to a hearing prior to being held in

contempt. Reverend Hines was, in fact, afforded a hearing to show cause why he should not be held in contempt. Reverend Hines during the hearing offered no explanation and no defense as to why he did not show up for Court as required and ordered by the Judge.

Additionally, Appellant raises the question as to whether or not Judge Shirley should have sat as the trier and finder of fact on the contempt. As noted in the Purvis case, (*Purvis v. Purvis*, 657 So.2d 794, 796-97 (Miss. 1994), there needs to be some type of personal attack on the Judge and the Judge should have a personal stake in the prosecution before he should recuse himself. In the case at bar, it should be noted that there was no personal attack upon the judge and he had no significant interest in the prosecution. There was only the failure to follow a Court Order. Accordingly, there was no reason for Judge Shirley to recuse himself nor does the record reflect any undue bias against the Defendant. Under any theory of contempt, civil, direct criminal or constructive criminal, Reverend Hines' rights were not violated, and he was rightfully held to be in contempt of the Court Order for his failure to appear in Court.

Issue 4: WHETHER THE YOUTH COURT'S OCTOBER 31, 2006, ORDER BARRED REVEREND HOSEA HINES FROM COMMUNICATING WITH HIS CHURCH MEMBERS WHO ARE UNDER THE JURISDICTION OF THE YOUTH COURT.

If the issue of contempt was dismissed as to Reverend Hines violating the October 31, 2006, Order, then that point should be moot. However, since the Appellant has discussed the issue in his brief, the State will briefly reply. The Youth Court Judge, based on all of the information provided to him during the course of multiple hearings, made certain findings in his Order of December 19, 2006 (Record 52-58).

The October 31, 2006, Order was clear. “No one except the guardian *ad litem*, Department of Human Services, law enforcement and the Child Advocacy Center shall discuss issues with the children” (Record 9). Reverend Hines was not on that list. Reverend Hines was present in Court when that hearing took place (Transcript 6-7). He had the opportunity to object, to clarify and have any question answered. Reverend Hines told the natural mother that the No Contact Order did not apply to him (Record 13). Further, the Youth Court Judge had received reports that matters other than faith and well being were being discussed with the victims. Transcripts of those hearings were not recorded because they were shelter hearing and pursuant to Mississippi Code Annotated §43-21-203(7), shelter hearings are not required to be recorded. No contact orders are designed to protect the children, whether it be from attempts to taint their testimony or from re-living the trauma or any other reason that the Court believes is in the child’s best interest. Again, Reverend Hines had multiple opportunities to communicate his intent and position to the Court. He chose not to.

If the children’s ability to attend church is being restricted, then the children, their parents, or guardian has the right to appeal or object. None of those parties are before this Court asking for relief.

Issue 5: WHETHER THE YOUTH COURT COULD BAR REVEREND HINES AND HIS ATTORNEYS FROM DISCUSSING THE CONTEMPT PROCEEDINGS WHERE NO MATTERS PERTAINING TO MINORS WERE DISCUSSED

Judge Shirley’s authority to restrict the actions of parties can be found in Mississippi Code Annotated §43-21-153(1) which states “The youth court shall have full power and authority to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.” (Ms. Code Ann. §43-21-153). If

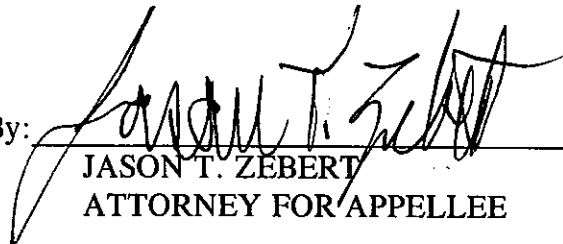
the Youth Court has specific authority to issue injunctions to carry out the purpose of the Youth Court Law and any court has inherent authority to order parties and counsel not to discuss cases, then Judge Shirley had the authority to restrict the dissemination of information regarding Reverend Hines' hearing. The confidentiality of the Youth Court again, belongs to the child. It should be left up to the judge to determine whether or not information is released and what may be released, not the layperson or their counsel. The likelihood of some type of identifying information being broadcast and the minor losing their confidentiality is the concern of the Youth Court. When weighed against Reverend Hines "right" to tell the public, the child must win.

CONCLUSION

The Judgment should stand, and Reverend Hines should purge himself of the contempt by promising to abide by all future court orders whether he agrees with them or not.

Respectfully submitted,

STATE OF MISSISSIPPI
CITY OF PEARL

By: 
JASON T. ZEBERT
ATTORNEY FOR APPELLEE

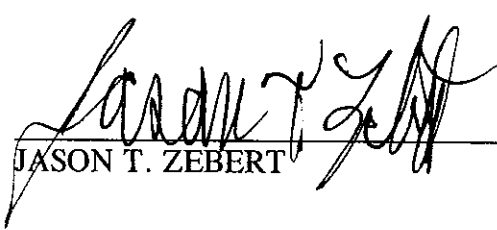
CERTIFICATE OF SERVICE

I, Jason T. Zebert, do hereby certify that I have this day served a true and correct copy of the above and foregoing Appellee's Reply Brief by U.S. mail, postage prepaid, upon the following:

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SO CERTIFIED, this the 1st day of October, 2007.



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APPELLANT

CERTIFICATE OF SERVICE

I, Jason T. Zebert, do hereby certify that I have this day served a true and correct copy of the above and foregoing Appellee's Reply Brief by U.S. mail, postage prepaid, upon the following:

Honorable John Shirley
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This service effective this, the 1st day of October, 2007.


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