IN THE SUPREME COURT OF MISSISSIPPI
NO. 2007-CA-01648-COA

GEORGE E. TRIM — APPELLANT

V.

LISA MOSLEY TRIM — APPELLEE

REPLY BRIEF OF APPELLANT

APPEAL FROM THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

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ORAL ARGUMENT REQUESTED

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ARGUMENT

A. STANDARD OF REVIEW

In domestic actions, a chancellor's decision, when supported by substantial evidence, will not be reversed on appeal unless the chancellor "abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." (Citations omitted) *Walton v. Snyder,* 984 So. 2d 343, 347 (Miss. 2008). However, for questions of law, the standard of review is *de novo*. *Id.* (Citations omitted).

B. CONTEMPT

This case arose from Lisa Trim's filing of a Petition to Set a Aside Final Judgment of Divorce and/or Property Settlement Agreement on the allegation of fraud. Throughout Lisa's Brief, she repeatedly and consistently claims that her Petition was grounded on both fraud and a request to find George in contempt, citing her Petition at R. 1, 00083 - 88. (*E.g.* Appellee's Brief at 8). However, a close reading of Lisa's Petition reveals that there is no request for a contempt finding, nor even the mention of the word "contempt" in the pleading. (R. 1. 00083-88). In her prayer for relief, Lisa requests the court set aside the Property Settlement Agreement on the basis of fraud; that Respondent pay fifty percent of the proceeds from the buyout of his BCI stock as an equitable division of marital assets; and asks the court for sanctions if her allegations of fraud are well proven. (R.. 1. at 00087). In *Weston v. Mounts,* 789 So. 2d 822 (Miss. App. 2001), the court notes that ..."Weston makes general allegations of lack of good faith, but does not specifically state how Mounts has engaged in contemptuous behavior, nor does she request as relief that Mounts be found in contempt. Normally the failure to allege specific acts of contempt and request for relief would

preclude the granting of relief." Citing *Grace v. State,* 108 Miss. 767, 67 So. 212, 213 (1915). *Weston* at ¶ 16. Likewise, Lisa repeatedly argues throughout her brief that the chancellor found George in contempt which was the basis of his award to Lisa of court costs, attorneys' fees and expert fees. (*E. g.*, Appellee's Brief at 16.) Again, a close reading of the chancellor's opinion in this case reveals that while he found George guilty of fraud, he never specified that he was likewise guilty of contempt or even mentioned the word contempt in his opinion. (R. 1. at 000130-000144). Indeed, the court specifically found that it had the authority to award expert and attorneys' fees as well as costs to Lisa was based on George's malicious and fraudulent actions. (R. 1 at 000143). Thus, despite Lisa's repeated attempts to characterize the proceedings below as being based in part on a contempt of court, this issue was neither properly pled nor were any specific findings on same entered by the court.

C. THE CHANCELLOR WAS MANIFESTLY WRONG, APPLIED A CLEARLY ERRONEOUS LEGAL STANDARD AND/OR ERRED AS A MATTER OF LAW IN REFUSING TO DISMISS LISA'S PETITION AS NOT BEING TIMELY FILED WITHIN SIX MONTHS AS REQUIRED BY MRCP 60(b)(1).

In his opinion, the learned chancellor below discusses the distinction between fraud by an adverse party and fraud upon the court in the context of application of THE MRCP 60 (b) (1) six-month limitation in filing a petition or motion to set aside or modify a judgment. After analyzing *Brown v. Estate of Johnson,* 822 So. 2d 1072 (Miss. App. 2002) and *Tirouda v. State of Mississippi,* 919 So. 2d 211 (Miss. App. 2005), the court reluctantly concludes that George Trims's conduct does not rise to the level of a "fraud upon the court." (R. 1 at 000133-000135) However, citing general principals of equity and *Kalman v. Kalman,* 905 So. 2d 760 (Miss. App. 2004), the court

concludes that it can simply ignore MRCP 60(b) and grant Lisa Trim her requested relief to set aside and modify the judgment.

1.MRCP 60(b) is Applicable to and Must be Applied in the Case at Bar.

In her brief, Lisa argues that under the "narrow"authority of *Kalman,* the Chancery Court "...Properly Modified the Final Judgment of Divorce in this Matter Based on a Finding that the Appellant was in Contempt of Court."(Appellees Brief at 17). In *Kalman*, the parties had obtained an irreconcilable differences Judgment of divorce in 1998. Mr. Kalman had failed to tell his wife that a few months before filing the Joint Complaint, he had won 2.6 million dollars in the Ohio state lottery. Neither party filed a 8.05 financial statement. Mrs.Kalman subsequently found out about the lottery winnings and filed a Motion for contempt and to modify the final judgment of divorce. The Chancery Court modified the child support provisions but dismissed the motion for contempt and alimony. The Appellant Court reversed the lower court's finding of no contempt for the failure of Kalman to file the 8.05 financial statement, and remanded the case for further determination of a possible equitable distribution of the lottery winnings under the *Hemsley* factors.

It is submitted that the lower court's and Lisa's reliance on *Kalman* is misplaced. First, as noted above, the contempt issue was never raised by Lisa, nor considered by the lower court in the case at bar, thus removing this case from Lisa's own strict factual requirements necessary to invoke the authority of her "narrow" interpretation of *Kalman.* But more importantly, MRCP 60(b) was never raised, discussed or even mentioned by the Appellant Court. in *Kalman.* Lisa further cites two recent cases, *Shaw v. Shaw,* 985 So.2d 346 (Miss. App. 2008) and *De St. Germain v. De St. Germain,* 977 So.2d 412 (Miss. App. 2007), which she claims support her premise that MRCP can be ignored in cases involving fraudulent disclosures on Rule 8,05 financial statements. While

acknowledging that the motions to amend or modify were denied in both decisions on the ground that fraud or overreaching was not proved, Lisa suggests that discussions of *Kalman* in the decisions, much of which appears to be dicta, somehow "reaffirms" *Kalman*. This begs the question, however, as both decisions specifically acknowledge and recognize that the motions to modify must be brought under and are subject to MRCP 60(b). In *Shaw,* the parties obtained a judgement of divorce, which incorporated a property settlement agreement, in 1998. Mr. Shaw had prepared and given a 8.05 financial disclosure to his wife, but did not file it with the court. He omitted fully stating the value of his 401k account in his disclosure. In 2005, Mr. Shaw filed a petition to modify the judgment of divorce, along with a 8.05 statement. When Mrs. Shaw saw that he had the 401k account, she filed a motion for contempt and modification of the settlement agreement, requesting an equitable distribution of the 401k value. The Appellant Court affirmed the chancellor's finding that Mr. Shaw had not committed fraud against Mrs. Shaw or the court, and additionally pointed out that motions to modify a judgment on allegations of fraud must be made within 6 months under MRCP 60(b)(1). The court then stated "....Thus, under Rule 60 (b)(1), Mrs. Shaw needed to file her motion for contempt and modification by August 1998. She did not do so...."*Id.*, ¶ 10. In *De St. Germain,* the parties obtained an irreconcilable differences divorce with and incorporated amended property settlement agreement in 1999. The husband did not file a Rule 8.05 financial disclosure. In 2004, Mrs. De St Germain filed a motion to set aside the divorce or modify the property settlement agreement. The trial court's ruling dismissing the wife's complaint as being untimely under MRCP 60(b) was affirmed by the Appellant Court

The question of whether a petition for contempt and modification of a divorce judgment, based on an allegation of fraudulent omission in a Rule 8.05 financial disclosure, must be brought

under and comply with the time limitations of MRCP 60(b)(1) has been answered in the affirmative by this Court in the even more recent decision in *Walton v. Snyder,* 984 So. 2d 343 (Miss. App. 2008). In that case, Dr. and Mrs. Walton had obtained an irreconcilable divorce in 2002. Mrs.Snyder filed a petition against her former husband, Dr. Walton, for contempt and modification of the final judgment of divorce based on her allegation that Dr. Walton had fraudulently undervalued his adjusted gross income reported on his 8.05 financial disclosure form at the time of the divorce. The chancellor granted Mrs. Snyder's petition for modification by increasing the child support award based on a pro-rated portion of the understated gross income retroactive to the date of the original divorce. The Court of Appeals affirmed the increase in child support award from the date Mrs. Snyder filed her petition, but reversed the award from the date of the original divorce judgment up to the date of Mrs. Snyder's petition, based on her failure to file the petition with six months as required under MRCP 60(b)(1). The *Walton* court determined that the petition to modify child support from the date of the original divorce judgment to the date Mrs. Snyder filed her petition clearly was a modification of a judgment which fell within the requirements of MRCP 60(b)(1). Since Mrs. Snyder's petition was filed well beyond the six-month limitation, that part of the petition and relief sought had to be dismissed. The chancellor had expressed some doubt that Dr. Walton's undervaluation of his income on his 8.05 financial disclosure was simply a "mistake", but declined to find it fraudulent and dismissed the contempt charge. This Court affirmed the dismissal of the contempt charge and finding of no fraud on Dr. Walton's part, but reiterated that:

> . . . . Even if Dr. Walton's misstatement of income would have been found fraudulent it would have been fraud upon an adverse party falling within the Rule 60(b)(1) six-month time constraint because Dr. Walton would have been the sole witness committing perjury. However, it is irrelevant whether the trial court found Dr. Walton's statements fraudulent or not, because, as *Tirouda* explains, the only way to escape the six-month time constraints of Rule 60(b) is for there to be a

finding of fraud upon the court, such as where several witnesses perjure themselves. (citation omitted). *Id.* at ¶ 23.

Thus, the recent cases have uniformly held, with the exception of *Kalman*, that petitions or motions to modify divorce judgments, even when allegations of fraudulent omissions in Rule 8.05 financiial disclosures are involved, are governed by and must comply with the MRCP 60(b)(1) six-month limitation.

2. The Chancery Court's Inherent Broad Powers of Equity Do Not Override the Requirement That Lisa's Petition Must Comply With the MRCP 60(b)(1) Six-Month Limitation.

In her Brief, Lisa argues that her petition to modify should be allowed under the provission of sub-section (6) of MRCP 60(b). This provision allows relief from judgments predicated on "Any other reason justifying relief from the judgment", and does not require that the motion be filed within six-months from the date of the judgment. MRCP 60(b)(6). This argument has, however, been rejected in recent Mississippi decisions. In *Walton,* the court states:

> Mrs. Snyder cites to Rule 60(b)(6)to justify this award. However, in its opinion, the court does not specifically justify its relief under the catch-all provision of Rule 60(b)(6), which has been described as a "grand reservior of equitable power to do justice in a particular case." *M.A.S. v. Miss.Dep't of Human Services.*, 842So.2d 527, 530 (Miss.2003)(*quoting Briney v. U.S. Fid. & Guar. Co.,* 714 So.2d 962, 966 (Miss.1998)). Relief under this Rule "is reserved for exceptional and compelling circumstance" only. *Hartford Underwriters Ins. Co. v. Williams*, 936 So.2d 888, 893(¶14)(Miss. 2006)(quoting *Sartain v. White,* 588 So.2d 204, 212 (Miss. 1991)). However, relief under Rule 60(b)(6)cannot be based upon a reason which may be found under the first five subsections of the rule. *Mitchell v. Nelson,* 830 so.2d 6354, 639 (¶ 9)(Miss. 2002). *Id.* at ¶ 24.(emphases added).

In its opinion, the chancery Court finds that under current Mississippi case law, George's fraud cannot be characterized as a "fraud upon the court," to relieve Lisa's petition from having to comply with the six-month Rule 60(b)(1) filing limitation. However, the court then states that George should not profit from his ability to deceive Lisa and the court for more than six months,

and that his fraudulent conduct was so egregious as to allow the court to exercise it's inherent power of a chancery court to "...utilize any means and methods available to achieve justice and an equitable resolution of this matter."(R1at 000143). Thus, the lower court held that it could in effect ignore the clear limitation of MRCP 60(b)(1) and grant Lisa's petition to modify under its broad equitable powers. It is respectfully submitted that the court's utilization of its general powers of equity to overcome application of Rule 60(b)(1), flies in the face of *Tirouda, supra,* and Has been specifically rejected by this court in the in *Walton,* decision. In *Walton,* the Court of Appeals noted that the chancery court based its decision to ignore the Rule 60(b)(1) limitation and modify the child support provisions in the original judgment upon a misinterpretation of *Tirouda,* and the proposition that chancery courts are given broad power to correct judgments based upon fraud or mistake, as set out in *Webster v. Skipwith*, 26 Miss. 341 (Miss. 1853) and *Griffith, Mississippi Chancery Practice*, (Rev.2d 1991). The decision then states: "We find the trial court's citation to *Tirouda* and the *Griffith* treatise misplaced, because , as *Tirouda* explains, " the requirements of Rule 60(b) must nonetheless be met in order for the court to take corrective action." *Id.* at ¶ 22. The court then discussed the chancellor's reliance on the proposition that chancery courts are given the power to correct judgments where mistake or fraud has caused hardship or given unfair advantage to a party, as set out in *Skipwith,*. The court held that the *Skipwith* "...propositions were formulated long before the adoption of the Mississippi Rules of Civil Procedure, and while the *Skpwith* doctrine may still be utilized, its use must comply with the Rules of Civil Procedure unless the case is specifically not within the rules." *Id.* at ¶25.

D. CONCLUSION

Brown v. Estate of Johnson, supra, involved a suit by a former wife to set aside a final

judgment of divorce on the ground that her deceased former husband had fraudulently omitted disclosing assts in discovery and on his Rule 8.05 financial disclosure form. The suit was filed some 2 and 1/2 years after the judgment. After discussing the distinction between fraud against an adverse party and fraud upon the court, this court affirmed the chancellor's dismissal of the suit based upon the wife's failure to file the suit within the six month requirement of MRCP 60(b)(1). In reaching its decision, the court notes that Rule 60(b)(1) deals with resolving two completing concepts: first, that human nature being what it is, some parties and witnesses will misrepresent facts which will be difficult to contemporaneously discover; and , second, that at some point there must be finality to litigation. Rule 60(b)(1) deals with these competing concepts by providing a window, "albeit a relatively narrow one", for a party to discover and act upon improper conduct. However, once the window closes, it should bar any further actions attacking the validity of the judgment. *Brown* at 1074. All recent decisions on this MRCP 60(b)(1) issue, with the possible exception of *Kalman,* uniformly apply the six -month limitation window to actions to modify judgments of divorce based upon fraud. The learned chancellor erred in not dismissing Lisa's petition as untimely under the Rule.

George Trim re-adopts his argument and conclusion set out in his Original Brief that the record in this cause does not support a finding of clear and convincing evidence that George Trim knowingly and intentionally misrepresented the value of his BCI stock..

Dated this 18th day of August, 2008.

Respectfully submitted,
GEORGE TRIM, APPELLANT

By: _____
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CERTIFICATE OF SERVICE

THIS WILL CERTIFY that the undersigned counsel of record for the Appellant herein has this day served a true and correct copy of the above and foregoing Reply Brief of Appellant upon the following counsel of record, and Honorable Dewayne Thomas, Chancery Court Judge, by placing same in the United States Mail, postage fully prepaid, addressed as follows:

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SO CERTIFIED, this 18th day of August, 2008.

_____
WILLIAM L. COLBERT, JR.

must be filed within ten days of entry of judgment. Rule 62(a); and a motion for a directed verdict or for judgment, n. o. v. must be filed within ten days of entry of judgment, Rule 50(b).

Rule 58, as it now reads, requires that all final judgments must be entitled "Judgment." However, failure to properly title a judgment which fully adjudicates all claims in a case as to all parties will not be deemed to prevent that judgment form[1] being fully effective so long as it has been entered as required in M.R.C.P. 79(a). Where a notice of appeal in a civil case is not timely filed, if the failure to timely file was caused by an inappropriate or misleading title of judgment, such failure may, under proper circumstances, constitute "excusable neglect" under M.R.A.P. 4(g). As now amended, the rule effectively overrules Thompson v. City of Vicksburg, 819 So. 2d 717 (Miss. 2002), Mullen v. Green Tree Financial Corp.–Miss, 730 So. 2d 9 (Miss. 1998), and Roberts v. Gafe Auto Co., 653 So. 2d 250 (Miss. 1994) insofar as they hold that strict compliance with the titling requirement is mandatory and prevents finality, even in the absence of prejudice.

[Comment amended effective July 1, 1997; amended effective May 27, 2004].

[1]So in original.

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Mississippi; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Mississippi.

On a motion for a new trial in an action without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be filed not later than ten days after the entry of judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be filed with the motion. The opposing party has ten days after service to file opposing affidavits, which time may be extended for up to twenty days either by the court for good cause shown or by the parties' stipulation. The court may permit reply affi-

Initiative of Court. Not later than ten days after entry of judgment the court may on its own initiative order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed not later than ten days after entry of the judgment.

[Amended effective July 1, 1997.]

Advisory Committee Historical Note

Effective July 1, 1997, Rule 59(b), (c) and (e) were amended to clarify that motions for a new trial and accompanying affidavits, and motions to alter or amend a judgment, must be filed not later that ten days after entry of judgment. 689 So. 2d XLIX (West Miss. Cases).

Comment

Rule 59 authorizes the trial judge to set aside a jury verdict as to any or all parts of the issues tried and to grant a new trial as justice requires. This practice is not new to Mississippi, but the procedures set forth in this rule are. The grounds for granting new trials remain the same as under prior state practice; generally stated, however, the court has the power and duty to set aside a verdict and order a new trial whenever, in its sound judgment, such action is required. See generally 11 Miss. Digest, New Trial, Key numbers 13–108 (1972).

The motion must be filed within ten days after the entry of judgment. This is a departure from prior Mississippi practice, National Cas. Co. v. Calhoun, 219 Miss. 9, 67 So.2d 908 (1953) (new trial may be ordered any time prior to expiration of court term), and is authorized by MRCP 6(c). The ten-day period cannot be enlarged. MRCP 6(b)(2).

When the motion for new trial is based upon affidavits, they shall be filed and served with the motion; the opposing party then has a maximum of thirty days in which to serve counter-affidavits. MRCP 59(c).

Rule 59(d) allows the court on its own initiative to order a new trial, even though there was no motion for a new trial, for any reason for which the court might have granted a new trial on the motion of a party. Sanders v. State, 239 Miss. 874, 125 So.2d 923 (1961); National Cas. Co. v. Calhoun, supra. If the court exercises this power, it must specify in its order the grounds for the new trial.

If the court is acting entirely on its own initiative in ordering a new trial, it must make the order not later than ten days after the entry of judgment and may not make such an order after that period has expired.

A motion to alter or amend must be filed within ten days after the entry of judgment; the court is not permitted to extend this time period.

[Comment amended effective July 1, 1997.]

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders up until the time the record is transmitted by the clerk of the trial court to the appellate court and the action remains pending there-

in. Thereafter, such mistakes may be so corrected only with leave of the appellate court.

(b) Mistakes; Inadvertence; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) fraud, misrepresentation, or other misconduct of an adverse party;

(2) accident or mistake;

(3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(6) any other reason justifying relief from the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. Leave to make the motion need not be obtained from the appellate court unless the record has been transmitted to the appellate court and the action remains pending therein. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action and not otherwise.

Comment

Rule 60(a) prescribes an efficient method for correcting clerical errors appearing in judgments, orders, or other parts of a trial record; errors of a more substantial nature must be corrected in accordance with MRCP 59(e) or 60(b). Thus, the Rule 60(a) procedure can be utilized only to make the judgment or other document speak the truth; it cannot be used to make it say something other than was originally pronounced. See, e. g., West Virginia Oil & Gas Co. v. George E. Breece Lumber Co., 213 F.2d 702 (5th Cir. 1954). This procedure accords with prior Mississippi practice. See Miss.Code Ann. § 11–1–19 (1972); Ralph v. Prester, 28 Miss. 744 (1855) (this statute applies solely to the correction of judgments and decrees and cannot be extended so as to supply a judgment never rendered); Rawson v. Blanton, 204 Miss. 851, 35 So.2d 65 (1948) (judgment which is erroneous as to plaintiff's name involves merely a clerical error which may be corrected in the supreme court without reversal); Healy v. Just, 53 Miss. 547 (1876) (there is no time limit within which a correction to a judgment may be made); Wilson v. Town of Handsboro, 99 Miss. 252, 54 So. 845 (1911) (all courts have inherent power to correct clerical errors at any time and to make the judgment entered correspond to that rendered).

Under Rule 60(a), evidence dehors the record may be considered in making the correction; this also accords with prior Mississippi practice. See Wilson v. Town of Handsboro, supra (In making a determination as to whether the correction should be permitted, any evidence of parol or other kind is competent which throws material light on the truth of the matter. "The object of every litigation is to obtain . . . a final determination of the rights of the parties. That determination is invariably what the judges direct, and not invariably what the clerks record. The power of the court to make the record express the judgment of the court with the utmost accuracy ought not to be restricted."). See also 6A Moore's Federal Practice ¶¶ 60.01–.08 (1971); 11 Wright & Miller, Federal Practice and Procedure, Civil §§ 2851–2856 (1973).

Rule 60(b) specifies certain limited grounds upon which final judgments may be attacked, even after the normal procedures of motion for new trial and appeal are no longer available. The rule simplifies and amalgamates the procedural devices available in prior practice. Prior to MRCP 60(b), Mississippi recognized the following procedural devices for relief from judgments, other than by appeal:

Statute for Correction of Misrecitals, Miss.Code Ann. § 11–1–19 (1972). This statute, referred to in the preceding discussion of MRCP 60(a), supra, applied solely to corrections of judgments and decrees and could not be extended to supply a decree or judgment never rendered. See Ralph v. Prester, supra; Rawson v. Blanton, supra; V. Griffith, Mississippi Chancery Practice, § 634 (2d ed. 1950).

Writ of Error Coram Nobis. Generally, this device was for review of errors of fact, not of law, which substantially affected the validity of the judgment but which were not discovered until after rendition of the judgment. See Petition of Broom, 251 Miss. 25, 168 So.2d 44 (1964). It was instituted as an independent action.

Bill of Review for Error Apparent. This device was an original bill, and was filed and docketed as such. It cured a material error of law apparent on the face of the decree and the pleadings and proceedings on which it is based, exclusive of the evidence. However, Miss.Code Ann. § 11–5–121 (1972) placed a two-year limitation upon the period of time after the judgment was entered for filing the bill. See Brown v. Wesson, 114 Miss. 216, 74 So. 831 (1917); V. Griffith, supra § 635.

Bill of Review Based on Newly Discovered Evidence. Leave of court was required for the filing of a bill of review based on newly discovered evidence, but after leave was obtained the bill was considered as part of the action it sought to challenge. See V. Griffith, supra §§ 636–641. The two-year limitations of Miss.Code Ann. § 11–5–121 (1972) applied.

Bill in the Nature of a Bill of Review. This bill was available as an original action for vacating judgments tainted by fraud, surprise, accident, or mistake as to facts, not to law. See Corinth State Bank v. Nixon, 144 Miss. 674, 110 So. 430 (1926); City of Starkville v. Thompson, 243 So.2d 54 (Miss.1971); V. Griffith, supra § 642. This device did not require leave of court for filing, nor was it limited to two years' availability. Cf. Bill of Review for Error Apparent