

IN THE SUPREME COURT OF MISSISSIPPI

Case No. 2007-CA-01868

RHONDA B. (KITTRELL) FARRIOR

APPELLANT

VERSUS

KENDALL K. KITTRELL, SR.

APPELLEE

APPEAL FROM THE CHANCERY COURT OF
GREENE COUNTY, MISSISSIPPI

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT NOT REQUESTED

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

Cases

Page(s)

Brawdy v. Howell

841 So. 2d 1175 (Miss. COA 2003)

1

Other References

Black's Law Dictionary, 6th Edition

2

Merriam-Webster's Dictionary, On-Line Edition

2

REPLY ARGUMENT

I. THE CHANCERY COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT DISREGARDED THE “CLEAN-HANDS” DOCTRINE.

At the conclusion of the trial, the Chancery Court specifically found that

Kendall is in contempt of the former orders of this Court for failure to maintain medical insurance as required by said orders, failure to pay his portion of the medical expenses for the minor children as ordered by this Court, and failure to pay child support in accordance with the previous orders of this Court and that as a result of said contemptuous behavior, Rhonda Lynn Blackwell Kittrell Farrior, hereinafter referred to as “Rhonda” is entitled to a Judgment against Kendal in the amount of \$10,705.80. [RE-38]

The Chancery Court also awarded Rhonda a “Judgment for attorney fees in the sum of \$4,500.00”.

In Appellee’s Brief, Kendall cites the case of *Brawdy v. Howell*, 841 So. 2d 1175 (Miss. COA 2003) for the proposition that because the Chancery Court’s Order [RE-36] herein did not contain the words “willful” nor “contumacious”, then the “clean hands doctrine” cannot be applied. Kendall’s argument fails for two reasons. First, reliance upon *Brawdy* is misguided. In *Brawdy* the Court of Appeals found that as to the trial court order, “[i]f anything, there appears to have been a misunderstanding regarding the effect of the sometimes conflicting and sometimes silent provisions of the previous orders.” *Brawdy* at 1181. The Greene County Chancery Court in the case at hand made it clear in the final Order [RE-36] that Kendall was in contempt for violating the clear orders of the Court.

Kendall's argument also fails as the use of "willful" and/or "contumacious" before the word contempt would be redundant. Black's Law Dictionary, 6th Edition, defines **Contempt** as "[a] willful disregard or disobedience of a public authority." Merriam-Webster's Dictionary, On-Line Edition defines **Contempt** as "willful disobedience to or open disrespect of a court, judge, or legislative body." Black's also defines **Contumacious** as "[w]illfully stubborn and disobedient conduct, commonly punishable as contempt of court. *See Contempt*". By its definition, contempt is willful.

II. THE CHANCERY COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT GAVE MR. KITTRELL CREDIT TOWARDS PAST DUE MEDICAL INSURANCE, MEDICAL BILLS AND CHILD SUPPORT.

No reply is required as to this issue.

III. THE CHANCERY COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT FAILED TO PROVIDE SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

The trial court entered a Pre-Trial Order [RE-34] which stated in part, "that the Court may listen to the tapes of this matter heard by Judge Bradley, Judge Pierce, and Judge Watts, hear testimony, review all documents placed in evidence and make findings of fact and apply all the applicable law and enter judgment in this cause. Based upon counsel orally requesting the Court make findings of fact and conclusions of law, the Court asking both counsel to provide findings of fact and conclusions of law, Counsel did not file a written motion. Furthermore, the only part of the cited portion of the Pre-Trial

Order which counsel understood the word "may" applied, was the first part in reference to the tapes of testimony heard by the other judges in the case. It was understood by all, that the trial court would do everything else, especially to make findings of facts and conclusions of law. If not, why would the Court have requested proposed findings of fact and conclusions of law from each counsel.

Respectfully submitted:



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Attorneys for Appellant

CERTIFICATION OF SERVICE

I do hereby certify that I served a copy of the foregoing Appellant's Reply Brief on all parties to this matter by first class mailing to the attorneys and on the date listed below:

Hon. D. Neil Harris
GREENE COUNTY CHANCERY JUDGE
P. O. Box 998
Pascagoula, MS 39568-0998

Hon. Jack Parsons
PARSONS LAW OFFICE
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This the 2nd day of October, 2008.



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