

**BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**RODNEY REDIX**

**APPELLANT**

**VERSUS**

**CAUSE NO: 2008-CA-00039**

**THERESA REDIX NICHOLS**

**DEFENDANT**

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Appeal from the Chancery Court of Jackson County, Mississippi

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**BRIEF OF APPELLANT**

**ORAL ARGUMENT NOT REQUESTED**

WOODROW W. PRINGLE, III  
MSB NUMBER [REDACTED]  
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GULFPORT, MS 39501  
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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for Appellant 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 this Court may evaluate possible disqualifications or recusal:

**Chancellor:**

HONORABLE JAYE A. BRADLEY  
Chancellor  
P. O. Box 998  
Pascagoula, MS 39568

**Appellant:**

RODNEY REDIX  
16500 Robinson Road  
Gulfport, MS 39503

**Appellee:**

THERESA NICHOLS  
c/o Michael J. Vallette, Esq.  
900 Washington Avenue  
Ocean Springs, MS 39564

**Attorney for Appellant:**

WOODROW W. PRINGLE, III  
Attorney at Law  
2217 Pass Road  
Gulfport, MS 39501

**Attorney for Appellee:**

MICHAEL J. VALLETTE, ESQ.  
Attorney at Law  
900 Washington Avenue  
Ocean Springs, MS 39564

**Interested Party:**

Department of Human Services  
c/o James Smallwood, Esq.  
Attorney at Law  
P. O. Box 1317  
Gulfport, MS 39502

**RESPECTFULLY SUBMITTED**, this the 22 day of May, 2008.

  
WOODROW W. PRINGLE, III

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**STATEMENT REGARDING ORAL ARGUMENT**

The Appellant does not request oral argument.

## **STATEMENT OF ISSUES**

1. The trial court erred in awarding Theresa Redix Nichols attorney fees.

### **STATEMENT OF THE CASE**

Rodney Redix initiated this action by filing a Motion for Modification and Contempt. Theresa filed an Answer and Counter Claim. Rodney's Motion for Modification was granted as to the visitation with the minor child. As a result of Rodney's Motion, the Court directed the Department of Human Services file an accounting of all sums received from Rodney's employer. The Court reserved the issue of arrearage. A hearing was conducted October 18, 2007. The parties stipulated that an arrearage had existed but was paid in March 2007. The only issue was attorney fees.

Theresa was employed throughout the litigation except for a period of time when she voluntarily did not seek employment. Theresa also owns a home in Jackson County, Mississippi.

Rodney was not held in contempt. The Court determined that because an arrearage existed that Theresa should receive an attorney fee. The hours expended by Theresa's counsel, at least in part, were not directly related to the litigation.



## STATEMENT OF FACTS

The parties were divorced by Judgment filed October 1, 2001. (RE 24-28). Pursuant to the Judgment, Rodney was ordered to pay Theresa \$300.00 per month child support. March 11, 2003, Rodney filed a Motion for Modification and Contempt. (RE 8-10). June 19, 2003, Theresa filed an Answer and Motion for Citation of Contempt. (RE 11-18). Rodney filed an Answer June 25, 2003. (RE 19).

March 3, 2004, Rodney filed a Motion to require the Department of Human Services to provide an accounting of child support funds received and disbursed. The Department of Human services had seized Plaintiff's income tax refunds and obtained funds from his unemployment benefits. Rodney requested that DHS be required to provide an accounting of all funds received and to disburse those funds to Theresa. Rodney alleged DHS withheld funds in excess of the child support owed. (RE 21-23). Judgment was entered September 10, 2004. The Judgment modified the Judgment as it pertained to visitation with the minor child, pursuant to the Motion filed by Rodney. The Court retained jurisdiction to determine whether or not an arrearage was owed. The Court directed that the Department of Human Services file an accounting of all sums received from Rodney's employer. The Court reserved all issues concerning any alleged arrearage pending the accounting. (RE 30-31).

March 27, 2006, the Court entered an Order removing the case from the trial docket and providing dismissal without prejudice, *ipso facto*. (RE 32). January 12, 2007, the Court entered an Order reinstating the case and placing back on active docket. (RE 33).

A hearing was conducted October 18, 2007. The only issue considered during the hearing was the matter of the attorney fees. (RE 40).

During the hearing Theresa testified to the following:

1. On June of 2003 I resided in Hawaii. I obtained a job in July of 2003. (RE 43).
2. I earned \$11.00 an hour and worked 40 hours per week. (RE44).
3. In August of 2004 I was laid off. I took six months off to be with Bryce. I looked for employment but I didn't do it diligently. I drew unemployment. After six months I obtained employment. (RE 44).
4. I earned \$1,950.00 per month. I was married and my husband was in the military. We were provided military housing. I maintained this employment until we moved back to the mainland in December 2005. We returned to Ocean Springs, Mississippi. (RE 45).
5. Upon returning to Ocean Springs, we moved into the home I own at Quail Creek Drive.
6. Upon my return to Ocean Springs I obtained employment at the Isle of Capri earning \$10.30 per hour working 40 hours a week. (RE 46).
7. Subsequently I became employed at Capital Trust Mortgage for two months and then applied for disability. February of 2007 I began receiving disability. I receive \$1,199.00 for myself and \$599.00 for Bryce. (RE 47).

The parties stipulated there was a arrearage in child support that was paid in March, 2007.

Michael J. Vallette, Theresa's counsel, testified as follows:

1. My hourly rate is \$150.00 an hour. I expended 20.5 hours for a total of \$3,075.00.
2. Mr. Vallette's time and expenses was marked as an exhibit. (RE 37-38).
3. August 14, 2003, it says receipt and review of re-notice of trial setting, that was a notice that Mr. Redix filed. In order to try to have the motion for trial setting heard. (RE 52).
4. July 11, 2004, it says receipt and review of motion to compel settlement, that was a motion filed on behalf of Mr. Redix asking that a judgment be entered based upon a settlement between the parties. (RE 52).
5. Between September 2004 and July 13, 2006, I did not file a motion on behalf of Theresa to have the matter set for trial or hearing. (RE 53).
6. July 13, 2006, court appearance in Gulfport dealt with a motion filed in Harrison County asking DHS for an accounting. (RE 54).
7. July 14, 2006, filed a motion to reinstate case to active trial docket. (RE 54).
8. At least from September 10, 2004, until July 14, 2006, nothing had been filed on behalf of Theresa. (RE 54).
9. January 12, 2007, prep and file order reinstating case to active trial docket dealt with the July 16, 2006, motion. (RE 54).

### **SUMMARY OF THE ARGUMENT**

The evidence is insufficient to establish Theresa had the inability to pay attorney fees. A finding of contempt was not made. Therefore, an award of attorney fees was inappropriate.

Alternatively, in the event attorney fees should have been awarded, the amount awarded was excessive. The time and labor allegedly required by Theresa's counsel was, at least in part, not directly related to the litigation. The amount awarded was incorrect and should be reduced.

## ARGUMENT

The general rule is that where a party is financially able to pay her attorney, an award of attorney fees is not appropriate. *Magee v. Magee*, 661 So.2d 1117 (Miss. 1995); *Martin v. Martin*, 566 So.2d 704 (Miss. 1990). In *Cheatham v. Cheatham*, 537 So.2d 435 (Miss. 1988), the Supreme Court held that a chancellor abused his discretion in awarding attorney fees where there was insufficient evidence in the record to establish the wife's inability to pay.

The allowance of attorney fee should be only in such amount as will compensate for the services rendered. The fee depends on consideration of . . . The time and labor required . . . *McKee v. McKee*, 418 So.2d 764 (Miss. 1982).

There was not a judicial finding that Rodney was in contempt for failure to comply with the previous orders of the Court. There were questions concerning the collection of sums by the Department of Human Services. The Court directed that the Department of Human Services file an Accounting.

The evidence presented during the hearing reflects Theresa was employed, except for when she voluntarily did not seek employment. She owns a home in Jackson County, Mississippi. There is insufficient evidence to support a finding that she did not have the ability to pay her attorney fees. The Court's ruling does not indicate Theresa has an inability to pay. The ruling is based on the fact that the Court found an arrearage existed and the Court therefore awarded attorney fees.

If this Court determines that an award of attorney fees was appropriate, the amount awarded was not based on "the time and labor required" for the litigation before the Court. There are numerous entries in counsel's bill which are not directly related to the collection of the alleged arrearage. These include the following:

1. August 8, 2003, receipt and review of Motion for Trial Setting. Rodney filed the Motion because he could not obtain an agreed setting.
2. August 14, 2003, receipt and review of ReNotice of Trial Setting. Again, Rodney could not obtain an agreed setting.
3. July 11, 2004, receipt and review of Motion to Compel Settlement. Rodney filed the Motion when Theresa would not sign the Judgment.
4. July 13, 2006, court appearance in Gulfport. This was a Motion between the Department of Human Services and Rodney. It did not require Theresa's attorney.
5. July 14, 2006, prep and filing Motion to reinstate case to active trial docket. Theresa did not pursue her counter claim and the Court entered an Order dismissing the cause.
6. January 12, 2007, prep and filing of Order reinstating the case to active trial docket. Again, Theresa did not take action to keep the matter on the docket and the Court entered an Order dismissing the cause.
7. August 22, 2007, continuance of trial setting. The matter was continued as a result of DHS failure to file the accounting.

The total hours not required for the litigation of the arrearage is 6 hours. Counsel's hourly rate is \$150. The total fee not related to litigation is \$900.00. This leaves a balance of \$2,175.00.

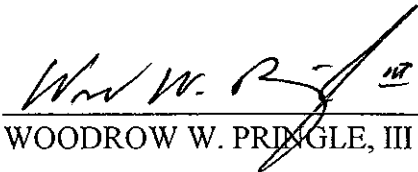
**CONCLUSION**

The award of attorney fees was not supported by the evidence and should be reversed. Alternatively, time and labor required submitted by counsel for Theresa is not supported by the evidence and should be reduced to \$2,175.00.

**RESPECTFULLY SUBMITTED**, this the 22 day of May, 2008.

RODNEY REDIX

BY:

  
WOODROW W. PRINGLE, III

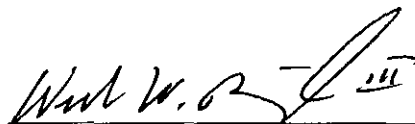
**CERTIFICATE OF SERVICE**

I, WOODROW W. PRINGLE, III, certify that I have this date forwarded by  
United States Mail, postage prepaid, a true and correct copy of the above and foregoing  
BRIEF OF APPELLANT, postage prepaid, to the following at their usual mailing  
address:

Hon. Jaye A. Bradley  
Chancellor  
P. O. Box 998  
Pascagoula, MS 39568

Michael J. Vallette, Esq.  
Attorney at Law  
900 Washington Avenue  
Ocean Springs, MS 39564

SO CERTIFIED this the 22 day of May, 2008.

  
WOODROW W. PRINGLE, III

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