

IN THE SUPREME COURT OF MISSISSIPPI

**GREENE RURAL HEALTH CENTER AND
CORPORATE MANAGEMENT, INC.**

APPELLANTS

VS.

CASE NO.: 2008-CA-00122

GREENE COUNTY, MISSISSIPPI

APPELLEE

**BRIEF OF APPELLEE
GREENE COUNTY, MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

Appeal from the Chancery Court of Greene County, Mississippi

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CERTIFICATE OF INTERESTED PERSONS

The undersigned hereby certifies that the following persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate for possible disqualification or recusal.

Corporate Management, Inc.

H. Ted Cain

Plaintiff-Appellant

Honorable T. Kenneth Griffis, Jr.

Special Chancellor

John R. Reeves, Esq.

Attorney for Plaintiff-Appellant, CMI

Darren Gray, Esq.

Attorney for Plaintiff Appellant, CMI

Heber S. Simmons, III, Esq.

Christopher G. Henderson, Esq.

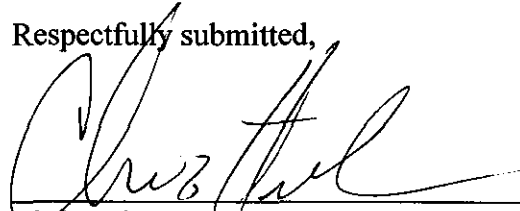
Attorneys for Defendant-Appellee Greene County Board of Supervisors

David M. Ott, Esq.

Attorney for Greene Rural Health Center

This, the 2nd day of October, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Henderson", written over a horizontal line.

Christopher G. Henderson (MS Bar No. [REDACTED])
Attorney for Defendant-Appellee

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STATEMENT OF THE ISSUES

1. Whether the trial court erred in finding Corporate Management, Inc. ("CMI") in contempt for violation of its Second Amended Final Judgment for attempting to enter into a management contract with the Greene Rural Health Center's Board of Trustees ("GRHC"), beyond December 31, 2007, until such time as it was known whether CMI would even have a right to manage the facility; and entering into a Lease Contract and Agreement on October 15, 2007.

2. Whether the trial court erred in finding CMI in contempt for violation of its Second Amended Final Judgment, for failing to produce documents to the Greene County Board of Supervisors, showing an itemized statement showing all expenditures made from GRHC's reserve fund and an itemized statement showing all purchases made by GRHC from one of CMI's affiliated entities.

STATEMENT OF THE CASE

Defendant/Appellee Greene County, Mississippi filed its Motion for Contempt and Other Relief, and for Expedited Hearing, on October 22, 2007. (R. 5). On December 4, 2007, Defendant's Motion came before the Chancery Court of Greene County, Mississippi, Special Chancellor Kenny Griffis presiding. On December 13, 2007, the trial court entered a written order granting Defendant/Appellee's respective Motion for Contempt, ruling that CMI attempted to enter into a management agreement with the Greene Rural Health Center Board of Trustees, on September 24, 2007, that extended beyond December 31, 2007, in direct contravention of the court's order. (R. 96). The trial court also found CMI in contempt for entering into a Lease Contract and Agreement, on October 15, 2007. (R. 96). The Court went on to find CMI in contempt for failure to produce itemized statements reflecting GRHC's expenditures and GRHC's purchases from CMI and its affiliates. (R. 96).

STATEMENT OF THE FACTS

On March 16, 2007, the trial court entered its Second Amended Final Judgment. (R. 15). The Second Amended Final Judgment directed the parties as to lease contracts and agreements for the sale or long term lease of Greene Rural Health Center. (R. 15). The Second Amended Final Judgment further ordered that CMI submit certain financial records and other documents to the trial court and copy GCBS's attorney. (R. 15).

On October 22, 2007, Defendant Greene County, Mississippi, filed its Motion for Contempt and Other Relief, and for Expedited Hearing. (R. 5). Said Motion was heard by the Court on December 4, 2007. (Supp. Vol. 2 of 2). The trial court entered its Order on Greene County's Motion for Contempt and Other Relief, and for Expedited Hearing, on December 13, 2007. (R. 86). Specifically, the Honorable T. Kenneth Griffis, Jr., Special Chancellor, found CMI to be in contempt and ordered as follows:

7. The Court finds that the actions of GRHC and CMI at the September 24, 2007, GRHC Board of Trustees meeting violates the terms of the final judgment. The Court finds that both GRHC and CMI are in contempt of Court for this violation of the final judgment and for interfering with Greene county's effort to lease the facility. (R. 92).

- A. CMI and GRHC Board of Trustees are found to be in contempt of this Court for the action taken at the September 24, 2007 meeting and the attempt to enter a management agreement beyond December 31, 2007 until such time as it is known whether CMI will even have a right to manage the facility;
- B. CMI and GRHC Board of Trustees are to cease and desist from entering into any further management contracts until and unless, Greene County

has failed to enter into a sale or long term lease of the Hospital and Nursing Home on or before December 31, 2007;

- C. CMI and GRHC Board of Trustees are to cease and desist from entering into any further management contracts until and unless, Greene County has failed to enter into a sale or a long term lease of the Hospital and Nursing Home on or before December 31, 2007;
- D. Within five business days of this Order, CMI shall submit to the Court, with a copy to Greene County's attorney, all documents tendered to GRHC in compliance with paragraphs 11(3)-(4), 13 and 15 of the final judgment; and
- E. The Court shall retain jurisdiction and will determine whether any damages, costs or attorney's fees are appropriate until after the documents are produced and reviewed by the Court.

(R. 96).

SUMMARY OF THE ARGUMENT

Mississippi law requires that, in order to show contempt, the moving party must merely show the existence of a valid order and that the respective order has been violated. CMI attempted to enter into a management agreement and lease agreement with the GRHC Board of Trustees, in violation of the trial court's Second Amended Final Judgment, as is clearly evidenced by the minutes from the September 24, 2007 meeting of the GRHC Board of Trustees and the "Lease Contract and Agreement" entered into between CMI and the GRHC Board of Trustees. (R. 53, 56). Greene County submitted proper evidence at the hearing on its Motion for Contempt and Other Relief, and Expedited Hearing to show CMI to be in contempt of the trial court's Second Amended Final Judgment. Further, Darren Gray and John Reeves, counsel for CMI, admitted to being in violation of Paragraph 11 of the trial court's order. (Supp. Vol. 2 of 2 - p. 21). This Court should affirm the trial court's ruling that found CMI in contempt.

ARGUMENT

I. Standard of Review

The standard of review for matters of contempt is to proceed *ab initio*. *King v. Pike County National Bank*, 952 So. 2d 1036, 1038 (¶9) (Miss. Ct. App. 2007). When reviewing a trial court's finding of contempt, appellate courts use a "manifest error" standard. *Chasez v. Chasez*, 957 So. 2d 1031, 1034 (¶4) (Miss. Ct. App. 2007). In other words, the "standard of review of a chancellor's finding of ultimate fact is limited." *Moses v. Moses*, 879 So. 2d 1036, 1038 (¶11) (Miss. 2004). "Generally speaking, contempt matters are committed to the substantial discretion of the trial court, which, by institutional circumstance and both temporal and visual proximity, is infinitely more competent to decide the matter than are we." *Cumberland v. Cumberland*, 564 So. 2d 839, 845 (Miss. 1990). The Mississippi Supreme Court states that "[t]he chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is to judge their credibility. He is best able to determine the veracity of their testimony, and this Court will not undermine the chancellor's authority by replacing his judgment with its own." *Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993)).

II. Whether the trial court erred in finding Plaintiff/Appellant CMI in contempt for failure to adhere to its Second Amended Final Judgment.

A party who moves for civil contempt must only show that a valid order exists, and that the order has been violated by the civil contemnor. *Wallace v. Jones*, 572 So. 2d 371, 372 (Miss. 1990); *Clements v. Young*, 481 So. 2d 263, 271 (Miss. 1985). Moreover, Miss. Code Ann. § 11-51-12 provides, in pertinent part:

- (4) The burden of proof in civil contempt shall be proof by a preponderance of the evidence.

(emphasis added).

CMI contends in its brief that Greene County has failed to put forth sufficient evidence of contempt. CMI incorrectly states that the evidentiary standard for contempt must be clear and convincing. Further, CMI contends that no evidence was offered by Greene County of contempt. Lastly, CMI states that there was no trial held.

On December 4, 2007, Defendant/Appellee Greene County brought before the lower court its Motion for Contempt and Other Relief and Expedited Hearing. By agreement of counsel for CMI, John Reeves, and counsel for Greene County, Mississippi, Heber S. Simmons III, the hearing on Greene County's Motion for Contempt was tape recorded. (Supp. Vol. 2 of 2 - p. 3). At this hearing, counsel for Greene County very clearly set forth evidence of CMI's attempt to secure a management agreement or lease past December 31, 2007, CMI's attempt to enter into an improper lease agreement, and CMI's failure/refusal to produce financial documents required by the trial court's Second Amended Final Judgment.

In its Second Amended Final Judgment, the trial court ruled that CMI and GRHC Board of Trustees should not enter into management agreements beyond December 31, 2007, until such time as it was known whether CMI would have the right to continue to manage the facility. (R. 16). In other words, CMI and the GRHC Board of Trustees could not enter into such a management agreement unless Greene County had not completed "the sale or long term lease of the Nursing Home and Hospital, by December 31, 2007. (R. 16).

On September 24, 2007, the GRHC Board of Trustees held a special meeting for the purposes of discussing and approving a contract with CMI. (R. 53). Greene County attached the minutes from the September 24, 2007 meeting of the GRHC Board of Trustees to its Motion for Contempt and other Relief, and for Expedited Hearing as Exhibit "C". (R. 53). In the minutes, the GRHC Board of Trustees took the following action:

Ricky Neel informed the trustees that the next item on the agenda is discussion and/or review of CMI's contract. Mr. Neel asked CMI to present and discuss the contract. The trustees were presented within their folders a copy of CMI's letter of intent to exercise an option to enter into a Long Term Management Contract, a copy of a letter from Bobby Higginbottom's law firm, and a proposed new management contract. Discussion among the trustees, and all read the contract. Discussion among the trustees, and all read the contract. The trustees were informed of some key differences in this contract from the one that would have gone into place on January 1, 2008. 1) Decreasing the amount of the management fees to 6% of gross revenues for the nursing home side of the contract, 2) Deletion of the lease/sale verbage, and 3) Strictly a management contract this time.

All trustees completed reading the proposed contract. Ricky Neel asked if anyone needed additional time to review the proposed contract. No one requested any additional time. Ricky Neel asked if there were any further questions or discussion at this time. No further questions were voiced. Ricky Neel asked if there were a motion. Lloyd Edwards made a motion to grant CMI a new contract and spread it upon the minutes as presented. A 2nd was made by Larry Brown. All trustees were unanimously in favor of approving the contract.

At this time Ricky Neel for the Board of Trustees as Chairman signed the contract as presented by CMI. Starann Lamier, Chief Operating Officer for CMI, signed the contract as presented. This was done in the presence of all trustees.

(R. 54).

The GRHC Board and CMI again violated the trial court's Second Amended Final Judgment, when, on October 15, 2007, the GRHC Board of Trustees and CMI entered into a ten year lease, commencing on January 1, 2008. (R. 56). Greene County attached the "Lease Contract and Agreement" between the GRHC Board of Trustees and CMI to its Motion for Contempt and other Relief, and for Expedited Hearing as Exhibit "D". (R. 56).

As to CMI's contention that no trial was held, orders are entered on motions brought by counsel, for various reasons, throughout the course of litigation. There is no authority that suggests that a party may not be found in civil contempt, in the manner that occurred herein. In the present matter, evidence was offered by Greene County in support of its Motion for Contempt and was considered by the trial court, along with the representations by CMI's attorneys. CMI offered no evidence to the contrary, and the trial court properly found CMI to be in civil contempt of its prior order. Accordingly, the procedural posture of this matter does not prevent CMI from being found in contempt herein.

CONCLUSION

CMI failed/refused to comply with and directly violated the trial court's Second Amended Final Judgment. The evidence before the trial court clearly proved that CMI entered into a long term Management Agreement and a Lease Contract and Agreement with the Greene Rural Health Center Board of Trustees, in contravention to the trial court's Second Amended Final Judgment. CMI proffered no evidence or testimony to the contrary. Further, CMI failed/refused to produce financial documents required by Paragraph 11 of the Second Amended Final Judgment, including "an itemized statement showing all expenditures made from GRHC's reserve fund and an itemized statement showing all purchases made by GRHC from one of CMI's affiliated entities". Again, CMI produced no evidence to the contrary, and even admitted that the documents had not been produced to the Greene County Board of Supervisors, as ordered. For these reasons and others stated herein, Defendant/Appellee Greene County, Mississippi respectfully requests that this Court affirm the trial court's findings of contempt against CMI.

This, the 2nd day of October, 2008.

Respectfully submitted,

GREENE COUNTY, MISSISSIPPI

By Its Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be mailed, by United States mail, postage prepaid, or hand delivered, a true and correct copy of the foregoing to the following:

T. Kenneth Griffis, Jr., Special Chancellor
Post Office Box 22847
Jackson, MS 39225

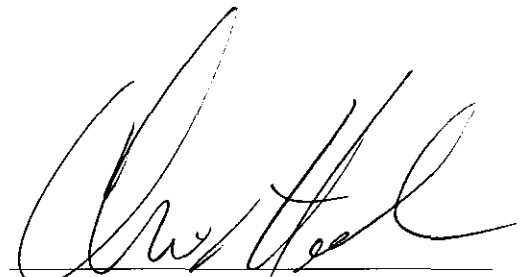
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