IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-CA-00432

C. A. DODSON

Appellant

vs.

GERAN DODSON

Appellee

Appeal of the Judgment and Order on Post-Trial Motions of the Chancery Court of the First Judicial District of Harrison County, Honorable Carter Bise, Chancery Judge in In the Matter of the Estate of Virginia Margaretta Dodson, Deceased, Case No. P-5681

BRIEF OF APPELLEE GERAN DODSON

ORAL ARGUMENT IS NOT REQUESTED

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GERAN DODSON

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CERTIFICATE OF INTERESTED PERSONS

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

1. C. A. Dodson, Appellant
2. Geran Dodson, Appellee
3. Jeffrey L. Dodson, Residual Legatee
4. Sharon Patterson Thibodeaux, Counsel for Appellant
5. PATTERSON & THIBODEAUX, Counsel for Appellant
6. Robert C. Galloway, Counsel for Appellee
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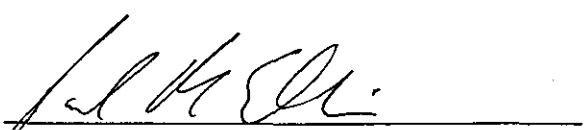

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STATEMENT OF ISSUES

1. A Chancellor has discretion to disallow executor fees and expenses in the event the executor is found to have maladministered the estate. The Chancellor found that appellant C.A. Dodson ("C.A") had "unclean hands" and was "derelict in his . . . performance" as Executor. In particular, the Chancellor found that C.A.: (a) appropriated $15,000 from the Estate without court disclosure or approval and never fully repaid these monies; (b) engaged in self-dealing by hiring his own firm to perform tax preparation services for the Estate without court disclosure or approval; (c) disregarded the Court's order to file his Final Accounting within 30 days; (d) took no action on the Estate for a period of two years which resulted in his removal as Executor; (e) caused much of the expense to the Estate; (f) served as Executor when he was statutorily barred due to a previous felony conviction; and, (g) was convicted of a felony while serving as Executor. The only issue in this appeal is whether the Chancellor abused his discretion in denying C.A. Dodson executor fees and expenses due to his maladministration of the Estate.

STATEMENT OF THE CASE

A. Nature of the Case, Course of the Proceedings and its Disposition Below.

This is an appeal from the Judgment and Order on Post-Trial Motions entered by the Chancery Court for the First Judicial District of Harrison County, Mississippi on January 30, 2007 and February 20, 2008, respectively. The lower court ruled that C.A. Dodson ("C.A.") was barred from recovering any executor fees and expenses due to his "unclean hands" and because he was "derelict in his . . . performance" while serving as Executor. (R. at 00824.) C.A. filed his Notice of Appeal on March 14, 2008.

B. Statement of the Facts Relevant to the Issues Presented for Review.

C.A.'s Brief ignores and glosses over a number of facts that support the lower court's decision barring him from recovering any executor fees and expenses. The following summary highlights the evidence supporting the Chancellor's decision.

Virginia Margarette Dodson ("Decedent") died on October 20, 1995 in Hinds County, Mississippi, and was a resident of the First Judicial District of Harrison County, Mississippi. (R. at 00001.) Decedent's Last Will and Testament devised her residual property in equal shares unto her step-sons, Geran F. Dodson ("Geran"), Jeffrey L. Dodson ("Jeffrey"), and Cuyler A. Dodson ("C.A."). (R. at 00007-11; Ap.[1] R.E. at 7-11.) The Will named C.A. as Executor unless he was "unable . . . so to act." (R. at 00007; Ap. R.E. at 7.) In the event C.A. was unable to serve as Executor, the Will named Geran as Alternate Executor. (*Id.*)

On December 1, 1995, C.A. was appointed Executor by the Chancery Court for the First Judicial District of Harrison County, Mississippi. (R. at 00020-25.) Between 1995 and 1998, C.A. filed a petition to repair Decedent's Gulfport residence, a petition for partial distribution, a

[1] References to Appellee's Record Excerpts shall be designated "Ap. R.E.".

petition to sell property in Hinds County, and a petition to sell Decedent's residence. (R. at 00029-32, 00036-40, 00048-51, 00072-73.) For two years thereafter, from March 1998 to April 2000, C.A. failed to take any action whatsoever on the Estate. (R. at 00072-73, 00082-86.)

On April 10, 2000, Geran and Jeffrey filed a motion to remove C.A. as Executor based on his failure to take any action over the past two years, his failure to close the Estate in a timely manner, and his failure to file any accountings. (R. at 00082-86; Ap. R.E. at 15-19.) The motion also claimed that C.A. was no longer competent to handle estate proceedings due to his dependency on alcohol and/or controlled substances. (R. at 00083; Ap. R.E. at 16.)

On May 1, 2000, the Honorable Margaret Alfonso ordered C.A. to post a $250,000 bond and to file an accounting on or before May 15, 2000. (R. at 00087-89; Ap. R.E. at 20-22.) After C.A. filed his accounting, Geran and Jeffrey renewed their motion to remove C.A. as Executor alleging that his accounting was deficient as it (a) failed to list any assets of the Estate, (b) made no mention of the Decedent's personal property, and (c) failed to include monthly reports for the months of August and November of 1996, January, June and October of 1997, July, August or December of 1999, or any of months after January of 2000. (R. at 00299-301; Ap. R.E. at 26-28.) The Honorable Thomas W. Teel granted the motion and temporarily removed C.A. and appointed Robert Williford ("Williford") as Temporary Administrator, C.T.A. (R. at 00305-308; Ap. R.E. at 29-32.)

On May 17, 2001, Geran and Jeffrey filed a second renewed motion to remove C.A. as Executor due to his recent conviction in federal court for possession of crack cocaine. (R. at 00311-334; Ap. R.E. at 33-56); *see also* (Tr. at 55:27-56:16.) The court also learned that C.A. had been convicted of a felony in 1984 and had served 24 months in prison. (Tr. at 56:10-19.)

At some point during this period of time, C.A. hired his own company, Mullen and Associates, to perform tax preparation services for the Estate. (R. at 00451, 453-55; R.E. at 72-75.) C.A. did not disclose his ownership of Mullen and Associates and did not obtain court approval to retain its services. (Tr. at 59:1-13.) As Executor, C.A. paid his own firm over $2,600.00 in Estate funds.[2] (R. at 00451, 453-55; Ap. R.E. at 72-75.)

On or around December 11, 1996, C.A. appropriated $15,000 from the Estate without court disclosure or approval. *See* (R. at 00193; Ap. R.E. at 24.) C.A. did not disclose this transfer of money until *more than three years later* when he filed his First Accounting on May 15, 2000. (Tr. at 58:12-19.) C.A., however, buried the transfer of these monies in his woefully inadequate "Accounting" (R. at 0090-298.), listed the recipient as Employer Plus, Inc. (another of C.A.'s companies), and made no annotation whatsoever as to the nature of the transfer on the check or in the Accounting. (R. at 00193, 00197; Ap. R.E. at 24-25.) Furthermore, C.A. did not list the $15,000 as a loan from the Estate and did not list the repayment of the loan as an asset of the Estate. *See* (R. at 0090-298.) C.A. never fully repaid these monies to the Estate. (Tr. at 58:12-15.)

In C.A.'s Brief, he states that he needed to "borrow" the $15,000 because Decedent had failed to pay a federal tax deposit when she worked at Employer Plus. (Apt. Br. at 7.) Thus, C.A. not only took $15,000 from Decedent's Estate without court disclosure or approval, but also seeks to place all blame for his wrongdoing on the Decedent.

On August 22, 2001, Chancellor Teel granted C.A.'s motion to withdraw as Executor and appointed Geran to act as Administrator D.B.N., C.T.A. (R. at 00342-344; Ap. R.E. at 57-59.)

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[2] C.A. also paid Mullen and Associates $820.70 "[f]or storage tubs & boxes, cleaning supplies, tools, and to pay Bill Weaver for work on RV (Fix electrical system, charge batter and repair crack on side) Rental of pressure washer to clean outside of house to get ready for painting. Labor for washing house and trimming shrubs back for preparation of painting & labor. Purchae of cordless phone." (R. at 00451; Ap. R.E. at 72.)

The Chancellor ordered C.A. to transfer all assets and records of the Estate to Geran and to file his accounting within 30 days. (*Id.*)

Nearly nine months later, C.A. still had not filed his accounting with the Court. On May 6, 2002, Geran filed a petition to hold C.A. in contempt of court for failing to file his accounting. (R. at 00409-412; Ap. R.E. at 65-68.) Geran also filed a petition seeking a partial distribution of assets in which he informed the court that C.A. had appropriated $15,000 in Estate funds for personal use and requested that C.A.'s distribution from the Estate be withheld until C.A. repaid these monies. (R. at 00404-408; Ap. R.E. at 60-64.)

On May 31, 2002, the Court entered its Order permitting a partial distribution to Geran, Jeffrey and C.A., but directed that C.A.'s inheritance be held in trust until he filed his accounting and repaid any monies that he owed the Decedent and/or the Estate. (R. at 00428-429.) The Court also awarded C.A. his attorneys' fees, costs and expenses in the amount of $14,824.84. (R. at 00430-444.)

On September 9, 2002, approximately one year after the Court had ordered C.A. to file his accounting and nearly seven years after opening of the Estate, C.A. filed his Final Accounting. (R. at 00445-519.)

Thereafter, C.A. filed an Emergency Petition for Partial Distribution, as well as demanding costs, sanctions and seeking to hold Geran in contempt of court. (R. at 00520-532.) In his Petition, C.A. alleged that he had filed his First and Final Accounting but had not received his partial distribution of $30,566.58. (*Id.*) Even though C.A. had not repaid the Estate the full amount of monies he owed, an Agreed Order was entered permitting Geran to make a partial distribution of $31,000 to C.A. (R. at 00533-534.)

On November 12, 2003, Geran filed his First and Final Accounting and filed his Supplemental First and Final Accounting nine days later. (R. at 00535-606.) Geran did not seek reimbursement for any executor fees. (*Id.*).

Shortly thereafter, C.A. filed his Response and Objection to the First and Final Accounting of Geran Dodson, his Second Petition for Citation for Contempt, and his Petition for Approval of his First and Final Accounting. (R. at 00607-657.) C.A. requested a fee for 942.55 hours of service as executor and reimbursement of expenses in the amount of $4,556.89. (*Id.*)

The Honorable Carter Bise heard testimony and arguments on the various petitions by C.A. and Geran Dodson, including C.A.'s Petition for Approval of his First and Final Accounting in which he requested payment for executor fees and expenses.

On January 30, 2007, the Chancellor entered his Judgment ruling that C.A. Dodson was barred from recovering any claimed fees and expenses for service as Executor due to his "unclean hands" and because he was "derelict in his . . . performance . . . ." (R. at 00813-825; Apt.[3] R.E. at 20.) Specifically, the Chancellor found that C.A.:

- was at all times statutorily barred from serving as Executor because he had previously been convicted of a felony and incarcerated for 24 months. (R. at 00815, 00820 & 00824; Apt. R.E. at 11, 16 & 20.)
- was charged and convicted of possessing crack cocaine and being a convicted felon in possession of a firearm while serving as Executor. (R. at 00815; Apt. R.E. at 11.)
- violated his fiduciary duties by loaning himself $15,000 from Estate funds without court approval and failing to fully repay these monies. (R. at 00822 & 00824; Apt. R.E. at 18 & 20.)
- engaged in self-dealing by paying his own firm, Mullens and Associates, for providing tax preparation services to the Estate without court approval and without disclosing the relationship between himself and his firm. (*Id.*)
- was "direlect in his own performance" and "effectively did little." (R. at 00824; Apt. R.E. at 20.)

[3] References to Appellant's Record Excerpts shall be designated "Apt. R.E.".

- was ordered to file an accounting within 30 days, but did not do so until approximately one year later (and did so only after Geran moved to hold him in contempt of court and his inheritance was placed in trust pending the submission of his accounting and repayment of the monies he borrowed from the Estate). (R. at 00815 & 00816; Apt. R.E. at 11 & 12.)
- did nothing for a two year period of time, which required his removal and replacement as Executor. (R. at 00814 & 00824; Apt. R.E. at 10 & 20.)
- caused much of the expense to the Estate. (R. at 00825; Apt. R.E. at 21.)

C.A. filed a Motion for a New Trial, or in the Alternative, to Alter or Amend the Final Judgment. (R. at 00849-859.) C.A. argued, *inter alia*, that he was entitled to executor fees and expenses under theories of quantum meruit and unjust enrichment. (*Id.*)

In a letter dated October 10, 2007, Chancellor Bise requested the parties to submit answers to the following three questions: "(1) Is Cuyler A. Dodson entitled to be reimbursed for his duties as fiduciary on the basis of quantum merit, and if so, in what amount should that reimbursement be, and on what basis? (2) Should the Judgment be set aside to allow additional testimony, and if so, what additional testimony is sought that was not available as of the date of the trial in this matter on November 27, 2006? (3) Did the Court err in its allocation of sums due to C.A. Dodson as beneficiary of the Estate . . . ." (R. at 00865-866; Apt. R.E. at 23-24.)

After reviewing the parties' responses to the above questions, Chancellor Bise issued his Order on Post-Trial Motions, ruling that C.A. was not entitled to any executor fees and expenses for several reasons. He was not entitled to any fees or expenses (other than attorneys' fees and expenses) under quantum meriut or unjust enrichment because "his request is so over-inflated as to be totally unbelievable to the Court." (R. at 00867-876; Apt. R.E. at 25-31.) For example, C.A. claimed 10.0 hours for a 10/20/95 attorney conference for which his attorneys reported only .25 hours. (R. at 00871; Apt. R.E. at 29.) He also sought reimbursement for 190 hours to "sort papers" and to make trips to and from Jackson between 10/21/95 and 11/30/95. (*Id.*)

Additionally, C.A. sought mileage and meal reimbursement without any documentation as required by Uniform Chancery Court Rule 6.11. (R. at 00872; Apt. R.E. at 30.)

The Court found that C.A.'s requests were "so overstated as to leave it with no basis to determine what is or not verifiable or reasonable." (R. at 00871-72; Apt. R.E. at 29-30.) Moreover, the Court ruled that C.A. was not entitled to recover any executor fees and expenses under quantum meriut or unjust enrichment for the same reasons the Court found that he was barred in its January 30, 2007 Judgment – specifically, "his failure to disclose his felony conviction to the Court, his self-dealing, [and] his violation of the rules of court [and] the statutes of this state." (R. at 00872; Apt. R.E. at 30.)

CA brought the instant appeal arguing that the Chancellor's decision barring him from recovering his claimed executor fees and expenses was manifest error and arbitrary and capricious.

SUMMARY OF THE ARGUMENT

The Chancellor has broad discretion and authority to disallow C.A. any executor fees and expenses due to C.A.'s misconduct and maladministration of the Estate. *Estate of Collins v. Collins*, 742 So. 2d 147, 150 (Miss. Ct. App. 1999); *Scott v. Hollingsworth*, 487 So. 2d 811, 815 (Miss. 1986).

C.A. appropriated $15,000 from the Estate without court disclosure or approval and never fully repaid these monies. He also engaged in self-dealing by hiring his own firm to perform tax preparation services for the Estate without Court disclosure or approval. He flagrantly disregarded the court's order to file his Final Accounting within 30 days. He never filed any annual accountings and it took him approximately seven years to file his Final Accounting. C.A. took no action on the Estate for a period of two years which resulted in his removal as Executor.

Not only was C.A. statutorily barred from serving as Executor due to a previous felony conviction, he was also convicted of a felony while serving as Executor.

C.A. does not deny that he committed the foregoing acts and omissions. Putting aside his irrelevant arguments, C.A.'s only defense to the above misconduct is that the Chancellor should have accepted his *excuses* for "borrowing" money from the Estate, his self-dealing, and his other violations of State law.

The Chancellor heard testimony from the parties and witnesses and considered the respective arguments and evidence. The Chancellor was well within his discretion to reject C.A.'s excuses and to find that his misconduct rose to the level of maladministration, unclean hands, and a dereliction of duty, and that he should therefore be barred from recovering any executor fees and expenses other than $14,824.84 for his attorneys' fees and expenses.

ARGUMENT AND AUTHORITIES

I. Standard of Review

"The decision whether to award . . . execut[or's] fees is a matter addressed to the sound discretion of the chancery court. In the absence of an abuse of that discretion, this Court will not disturb the chancellor's rulings." *In re Last Will and Testament of Lynn*, 878 So. 2d 1052, 1057 (Miss. Ct. App. 2004) (quoting *Estate of Collins v. Collins*, 742 So. 2d 147, 149 (Miss. Ct. App. 1999)).

The Mississippi Supreme Court "will not disturb findings of the chancellor unless the chancellor was manifestly wrong, clearly erroneous or applied an erroneous legal standard." *Goode v. Village of Woodgreen Homeowners Association*, 662 So. 2d 1064, 1070-71 (Miss. 1995). "Where there is substantial evidence to support the chancellor's findings, this Court is without the authority to disturb his conclusions, although this Court might have found otherwise as an original matter." *Id.*

II. The Chancellor's Decision Barring C.A. From Recovering Any Executor Fees and Expenses Was Not an Abuse of the Court's Discretion.

In *Estate of Collins v. Collins*, 742 So. 2d 147 (Miss. Ct. App. 1999), a chancellor ruled that an executrix was not entitled to receive any of her claimed fees or expenses because she had administered the estate in a "grossly negligent" manner by failing to comply with the court's orders. The Mississippi Court of Appeals affirmed the chancellor's decision holding "in the event that the executrix is found to have maladministered the estate, the chancellor is within his discretion to disallow fees." *Id.* at 150. *Accord Scott v. Hollingsworth*, 487 So. 2d 811, 815 (Miss. 1986).

Here, C.A. failed to comply with the court's Order to file his First and Final Accounting within 30 days. He flagrantly disregarded the Order and filed his accounting nearly one year later. C.A. also violated the statute disqualifying him from serving as Executor[4], failed to follow a statute prohibiting an Executor from loaning himself estate funds[5], failed to follow clearly established law prohibiting a fiduciary from engaging in self dealing[6], failed to follow Uniform Chancery Court Rule 6.11 requiring a fiduciary to maintain adequate records of claimed fees and expenses[7], and committed a felony by possessing crack cocaine during the time he was serving

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[4]Miss. Code Ann. § 91-7-35 (1972): "A person shall not be capable of being executor who, at the time when letters testamentary ought to be granted, is . . . convicted of a felony."

[5]Miss. Code Ann. § 91-7-253 (1972): "No executor . . . may borrow or use for his own benefit, directly or indirectly, any of the funds or property of the estate committed or entrusted to him by such court . . . ."

[6]*Id.*; *see also Estate of Bodman v. Bodman*, 674 So. 2d 1245, 1249 (Miss. 1996).

[7]Uniform Chancery Court Rule 6.11: "Every petition by a fiduciary for the allowance of commissions, or for compensation for extra services and expenses, shall show the total amount of the estate coming into his hands, the total amount disbursed, the balance on hand, the nature and extent of the service rendered and expense incurred by him, and the total amount previously allowed to him on account thereof. . . . ."

as Executor. In addition, C.A. took no action on the Estate for a two year period of time which resulted in his removal as Executor. C.A. delayed approximately seven years in filing his First and Final Accounting, and the fees and expenses for which he sought reimbursement were "so over-inflated as to be totally unbelievable." Such acts and omissions by C.A. clearly rise to the level of maladministration, and the Chancellor was well within his discretion to disallow C.A. any fees and expenses.

In his Brief, C.A. does not argue the Chancellor based his ruling on erroneous facts. Instead, he argues the Chancellor should have accepted his excuses. For example, C.A. admits that he took the $15,000 from the Estate without court approval, but argues the Chancellor should not have held this fact against him because "[a]s an heir, he had been devised funds greatly exceeding the sum he borrowed" and that he eventually returned $12,000 of the $15,000 he appropriated for himself. (Apt. Br. at 7.)

C.A. does not deny that he engaged in self dealing by hiring his own firm, Mullen and Associates, to perform tax preparation services for the Estate without court approval. He argues, however, that the Chancellor should have excused such self-dealing because "he did not know he was required to get the Court's approval . . . ." (*Id.* at 8.)[8]

Despite C.A.'s statement to the contrary, C.A. knew that he needed the Court's permission to spend Estate funds because he had already filed various petitions asking to do so. C.A. knew that he even needed the Court's permission to spend money to repair the Decedent's house. C.A.'s arguement that he did not know he needed the Court's permission to make a

[8] "Mississippi jurisprudence on this issue is . . . deeply rooted. 'It is a familiar rule that ignorance of the law excuses no one, or that every person is charged with knowledge of the law.'" *Garrison v. State*, 950 So. 2d 990, 993 (Miss. 2006) (quoting *Hoskins v. Howard,* 59 So. 2d 263, 269 (Miss. 1952)).

$15,000 transfer of Estate monies to himself or to pay his business Mullen and Associates over $2,600 for tax preparation services for the Estate is beyond belief.

C.A. also admits that he had a felony conviction in 1984 and that he was convicted of another felony during the time he was serving as Executor, but argues that he "was unaware that his felony conviction many years prior disqualified him as fiduciary" and that "he never denied that he was a convicted felon." (Apt. Brief at 9, 10.) C.A. states in his Brief: "It is important to note that at (sic) C.A. never denied that he was a convicted felon. Neither the Motion for Probate of Estate and Letters Testamentary, nor the Oath of Executor which C.A. filed spoke to any prior criminal convictions. C.A. never misled the lower Court regarding his previous conviction . . . ." (*Id.* at 10.)

These statements are misleading and false – C.A. did in fact represent to the court that he was competent to serve as Executor. For example, in paragraph six of C.A.'s Motion for Probate of Estate and Letters Testamentary, he states: "Movant, C.A. DODSON, is . . . fully competent to so serve" and has "been advised of [his] duties and responsibilities as set forth in Section 91-7-1, et. seq. of the Mississippi Code of 1972, as amended." (R. at 00002-3; Ap. R.E. 2-3.) In his Affidavit, C.A. swore that he "is the duly appointed, qualified . . . Executor of the Estate of VIRGINIA MARGARETTA DODSON . . . ." (R. at 00013-00014; Ap. R.E. 12-13.). C.A. made these same representations in numerous other filings with the Court.

The Chancellor was well within his discretion to reject C.A.'s specious excuses and to reach his own conclusion that C.A.'s acts and omissions constituted unclean hands and a dereliction of duty.

Furthermore, C.A.'s Brief conveniently glosses over the fact that he failed to take any action on the Estate for a two year period of time, which led to his removal as Executor, and that

he flagrantly disobeyed the Chancellor's Order to file a Final Accounting within 30 days. C.A.'s Brief also fails to address the Chancellor's finding that his requests for reimbursement were "so over-inflated as to be totally unbelievable", such as claiming 10.0 hours for a 10/20/95 attorney conference for which his attorneys reported only .25 hours, and claiming 190 hours to "sort papers" and to make trips to and from Jackson between 10/21/95 and 11/30/95.

The majority of C.A.'s Brief consists of recriminations, finger pointing and accusations against Geran that are not only false but completely irrelevant to the issue before the Court. For example, C.A. makes an off-handed attack on the Chancellor's award of attorneys' fees/expenses to Geran. (Apt. Br. at 12.) There's no cogent argument in support of this attack and no authority cited for the argument. In any event, it certainly was not an abuse of discretion to award Geran's attorneys' fees/expenses, especially when the court awarded C.A. his attorneys' fees/expenses.

C.A.'s Brief also spends considerable time disputing completely irrelevant factual findings that served no basis for the Chancellor's decision disallowing C.A. executor fees and expenses. For example, he discusses at length the Chancellor's rulings on certain World Series rings. The Chancellor in his January 20, 2007 Judgment stated that "there is no sufficient showing to satisfy the Court that the World Series rings belong to the Estate. C.A. Dodson shall retain those items." (R. at 00823.) But, in the Order on Post-Trial Motions, the Chancellor stated C.A. could retain the World Series rings which he "found." (R. at 00867.) C.A. argues that the Chancellor's factual finding that C.A. "found" the rings is clearly erroneous because "there was no finding in the previous Judgment that C.A. had found the ring(s)" and that he and another witness testified that C.A.'s aunt gave him these rings. (Apt. Br. at 14) Beside the fact that Chancellor Bise awarded the rings to C.A. and that Geran has not appealed that ruling, this

argument has nothing to do whatsoever with the Chancellor's factual findings as to why C.A. should be disallowed any executor fees and expenses.

The few cases that C.A. cites in support of his position are likewise misplaced. He cites *Giglio v. Wollard*, 88 So. 401 (Miss. 1920), but the language quoted is nowhere to be found in that case. In any event, he cites *Giglio* for the proposition that because an executor's acts are not subject to collateral attack, "neither should payment for such acts be subject to attack." (Apt. Br. at 10.) No citation of authority is provided for this dubious proposition.

The *Giglio* case does not hold that an executor's acts are not subject to collateral attack and it certainly does not stand for the proposition that a Chancellor has no authority to disallow an executor claimed fees and expenses based on the executor's maladministration of the Estate. In *Giglio*, the Court held that "[t]he appointment of an administrator who has not the necessary qualification is not absolutely void, but only voidable, and the acts . . . performed between the appointment and the removal are valid, unless they are subject to attack for some matter which would defeat the act of said administrator if he were qualified lawfully to act." *Giglio*, 88 So. at 403. The Court held that the mere fact that the administratix was under the lawful age when she was appointed did not avoid a contract made by the administratix with the approval of the court. *Id.* The Court reasoned that such a rule was necessary to protect third parties who enter into a court approved transaction with the estate. *Id.* No acts of C.A. that involve third parties are at issue in this appeal. Therefore, *Giglio* does not support C.A.'s position.

C.A. also cites *Ralston v. Bank of Clarksdale*, 194 So. 923 (Miss. 1940), and *Estate of Thomas*, 740 So. 2d 332 (Miss. 1999), which are inapposite to the issue before the Court. These cases discuss the factors a Chancellor should consider when awarding executor fees and expenses, such as the degree of difficulty of work performed, the size of the estate, and the

amount of work performed. These cases are not applicable because the Chancellor ruled that C.A. was barred from collecting *any* executor fees and expenses due to his maladministration of the Estate.

C.A.'s argument that he is entitled to executor fees and expenses under quantum meriut or unjust enrichment is equally misplaced. Quantum meruit "is a contract remedy which may be premised either on express or 'implied' contract . . . ." *Estate of Johnson v. Adkins*, 513 So. 2d 922, 926 (Miss. 1987). Unjust enrichment, on the other hand, "is an equitable remedy . . . 'and applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another . . . .'" *Id.* (quoting *Hans v. Hans,* 482 So. 2d 1117 (Miss. 1986)).

As a threshold matter, C.A. does not identify with whom he allegedly entered into a contract to provide services. In any event, even if C.A. theoretically *could* recover executor's fees and expenses under quantum meriut or unjust enrichment, this does not mean that he *should* recover them. Again, C.A. misses the import of the Chancellor's ruling. The Chancellor ruled that C.A. was **barred** from recovering any of his claimed fees and expenses due to his "unclean hands" and because he was "derelict in his . . . performance" while serving as Executor, and the record is replete with uncontested facts supporting the Chancellor's ruling. This decision "is a matter addressed to the sound discretion of the chancery court." *In re Last Will and Testament of Lynn*, 878 So. 2d 1052, 1057 (Miss. Ct. App. 2004) (quoting *Estate of Collins v. Collins*, 742 So. 2d 147, 149 (Miss. Ct. App. 1999)). Because C.A. has not shown that the Chancellor abused his discretion in finding that C.A.'s claim for executor's fees and expenses should be disallowed, he is not entitled to recover them – under any theory.

CONCLUSION

For the foregoing reasons, Appellee Geran Dodson respectfully requests that this Court affirm the decision of the lower court.

THIS, the 18th day of December, 2008.

Respectfully submitted,

GERAN DODSON

By: _____

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CERTIFICATE OF SERVICE

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

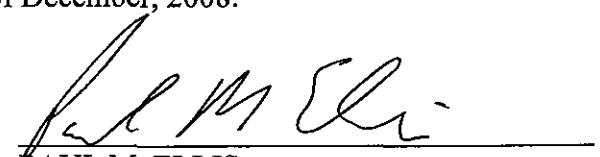
Honorable Carter Bise
Post Office Box 1542
Gulfport, MS 39502

CHANCERY COURT JUDGE

Sharon Patterson Thibodeaux
Patterson & Thibodeaux, P.A.
Post Office Box 5367
Brandon, MS 39047

COUNSEL FOR APPELLANT

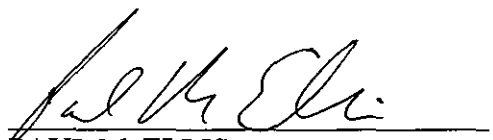
SO CERTIFIED, this the 18th day of December, 2008.



PAUL M. ELLIS

CERTIFICATE OF FILING

I, Paul M. Ellis, certify that I have hand-delivered the original and three copies of the Brief of Appellee Geran Dodson and an electronic diskette containing same on December 18, 2008, addressed to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.



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