

NO. 2008-CA-00432

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IN THE  
SUPREME COURT OF THE STATE OF MISSISSIPPI

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C. A. DODSON

APPELLANT

-AGAINST-

GERAN DODSON

APPELLEE

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

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REPLY BRIEF OF APPELLANT

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## **TABLE OF AUTHORITIES**

### **Case:**

*Giglio v. Woollard*, 126 Miss. 6, 88 So. 2d 401 (1920) 2

### **Statute:**

Mississippi Code Annotated, § 91-7-299 2

## **REPLY ARGUMENT**

Appellee, GERAN DODSON, (hereinafter "GERAN") completely fails to acknowledge the issue addressed in the Brief of Appellant, C.A. DODSON (hereinafter "C.A."): that the Chancellor's decision was *arbitrary and capricious* and, as such, should be reversed for manifest error. (Apt. B. at 14).

GERAN attempts to lead this Court completely away from the fact that the Chancellor's findings were not supported by the weight of the evidence. All of the evidence and testimony supports the fact that C.A. actually performed the services itemized on his statement. At no time has anyone, including GERAN, produced evidence or provided testimony that C.A. did not perform the services. While GERAN and the other heirs were sitting around and impatiently waiting for their share of the Estate, C.A. was performing all of the work on the Estate. C.A.'s statement (R.E. 32-54) has not once been contradicted by anyone other than the Chancellor and he only found one (1) item which was misrepresented by either C.A. or his attorney. A review of C.A.'s statement (R.E. 32-54) indicates that C.A. made twenty-one (21) trips to the Decedent's home in Gulfport, Mississippi, within the six (6) month period following the death of the Decedent - twenty-one (21) trips to Gulfport and twenty-one (21) trips back to his home in Jackson, Mississippi. Considering it is easily a three (3) hour drive each way, C.A. spent 126 hours just traveling there and back. C.A. used his own vehicle and his own gasoline to make those twenty-one (21) round trips. (R.E. 54) C.A. did so believing that he would be reimbursed by the Estate for his time and his expenses. C.A. took time off from his business to administer the needs of the Estate, not only believing that he would be reimbursed by the Estate for his time and expenses, but believing that his time and expenses were certainly increasing the value of the Estate for himself and all of the other heirs. Any person who has ever had the unfortunate task of

clearing out a deceased parent's home full of years of mementos, clothing, and furnishings, and then readying that home full of memories for the market knows that this is not a task completed quickly or painlessly. C. A. performed this task without the aid of a single other heir. GERAN has simply chosen to concentrate on the Chancellor's arbitrary findings and not on the valuable service performed by C.A.

Mississippi Code Annotated Section 91-7-299 provides, in part, as follows:

*The court **shall allow** to an executor or administrator, as compensation, for his trouble, either in partial or final settlements, such sum as the court deems proper considering the value and worth of the estate and considering the extent or degree of difficulty of the duties discharged by the executor or administrator... (emphasis added)*

The mere fact that the Chancellor deemed the services of C.A. to be valued at zero clearly demonstrates that the court's ruling is arbitrary and capricious. The fact that the mistakes made by Geran were excused while the mistakes made by C.A. were used to deny him of any compensation for the hours and hours he expended in the furtherance of the Estate is also evidence of the arbitrary and capricious nature of the Chancellor's decision.

As previously asserted in Appellant's brief, the case of Giglio v. Woollard, 126 Miss. 6, 88 So. 401 (1921), provides clear evidence that the acts performed by C.A. under his appointment as Executor were **valid acts**. The Court in Giglio stated:

*The appointment of an administrator who has not the necessary qualification is not absolutely void, but only voidable, and the acts of the de facto administrator acting under an appointment of the court is valid to the same extent as the act of a qualified administrator. He is subject to removal, but 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 citing Davis v. Miller, 106 Ala. 154, 17 So. 323; M., K. & T. R. R. Co. v. McWherter, 59 Kan. 345, 53 Pac. 137; Wimberly v. Boland, 72 Miss. 243, 16 So. 905.

GERAN further asserts that C.A. fails to identify with whom he has a contractual relationship supporting a payment under the theory of quantum meruit. His contractual relationship was with the Court who appointed him as the Executor pursuant to the desire of the Deceased and with the other heirs who were notified of his appointment and acquiesced to same

Despite acts and/or omissions by C.A., he is still entitled to just compensation for the services rendered and the work faithfully completed. No one has ever raised an issue with any service C. A. rendered or any work he completed. Clearly the Chancellor's decision to disallow C. A. any compensation whatsoever is an abuse of the Chancellor's discretion and should be reversed.

### CONCLUSION



The decision of the Chancellor was arbitrary and capricious, and an abuse of his discretion. C. A. renews his request that this Court reverse the Chancellor's decision, and render a Judgment awarding C.A. Dodson his reasonable fee and costs as supported by the documentary evidence.

This the 4<sup>th</sup> day of February, 2009.

Respectfully Submitted,

C.A. DODSON, APPELLANT

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**CERTIFICATE OF SERVICE**

I, Sharon Patterson Thibodeaux, Attorney for C. A. Dodson, hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing

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This the 4<sup>th</sup> day of February, 2009.

  
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