NO. 2008-CA-00432

IN THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

C. A. DODSON — APPELLANT

-AGAINST-

GERAN DODSON — APPELLEE

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

BRIEF OF APPELLANT

ORAL ARGUMENT IS REQUESTED

SUBMITTED BY:
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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

C.A. DODSON	APPELLANT
VS.	NO. 2008-CA-00432
GERAN DODSON	APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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:

1. C. A. Dodson, Appellant;
2. Geran Dodson, Appellee;
3. Honorable Carter Bise, Chancellor;
4. Sharon Patterson Thibodeaux, Esq., Attorney for Appellant;
5. Robert C. Galloway, Esq., Attorney for Appellee;

Sharon Patterson Thibodeaux

SHARON PATTERSON THIBODEAUX

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1. Did the lower Court's failure to award C.A. Dodson a sum for Executor's fees constitute manifest error?

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STATEMENT OF THE CASE

A. Nature of Case, Course of Proceedings and Disposition

This is an appeal from the Judgment entered on January 30, 2007, and the Order on Post-Trial Motions entered on February 20, 2008, in the Chancery Court of the First Judicial District of Harrison County, Mississippi. The lower Court found that C. A. Dodson, Appellant (hereinafter "C.A."), was not entitled to an executor's fee based on the Court's findings that C.A. was statutorily barred from serving as fiduciary due to a prior felony conviction; that C.A. had engaged in self-dealing by acting as accountant for the estate for a fee; that C.A. had loaned monies from the estate to himself; and that C. A. failed to maintain adequate records for fees and expenses.

C.A.'s Notice of Appeal was timely filed on March 14, 2008.

B. Statement of Relevant Facts

VIRGINIA MARGARETTA DODSON, Deceased, died on October 20, 1995, in Jackson, Hinds County, Mississippi. At the time of her death, the Decedent was a resident citizen of the First Judicial District of Harrison County, Mississippi. The Decedent had previously, on August 31, 1992, executed her Last Will and Testament (C.P. 7) wherein numerous devisees were named, and the residual property was devised unto her step-sons, GERAN F. DODSON (hereinafter "GERAN"), JEFFREY L. DODSON (hereinafter "JEFFREY"), and CUYLER A. DODSON (hereinafter "C.A.")

On December 1, 1995, C.A. was appointed Executor of the Last Will and Testament of the Decedent and was further allowed to serve without posting bond as directed by the Decedent

in her Last Will and Testament. (C.P. 20) Four and one-half (4 ½) years later, on or about April 10, 2000, GERAN and JEFFREY filed their Motion for Order Removing Executor and for Other Relief. (C.P. 82). Chancellor Margaret Alfonso (the first of four Chancellors to hear a portion of this matter) did not remove C.A. as Executor, but rather required him to post an Executor's Bond in the amount of $250,000.00 and ordered C.A. to file a full and complete Accounting with the Court by May 15, 2000. (C.P. 87). C.A. obtained the required bond and filed his Accounting on May 15, 2000, as ordered. GERAN and JEFFREY filed their Renewed Motion for Order Removing Executor and for Other Relief on May 30, 2000. (C.P. 299). Subsequent to the filing of the Renewed Motion, Chancellor Alfonso recused herself from serving as trial judge in this matter. (C.P. 304). On June 27, 2000, Chancellor Thomas W. Teel entered his Judgment Removing Executor Temporarily and Appointing Temporary Administrator CTA, wherein Honorable Robert E. Williford, Attorney at Law, was appointed Temporary Administrator, C.T.A. (C.P. 305). Thereafter, on May 17, 2001, GERAN and JEFFREY filed their Second Renewed Motion for Order Removing Executor and for Other Relief (C.P. 311) based on the fact that C.A. had been convicted of a felony on November 17, 2000, and was incarcerated for a period of twenty-four (24) months. Additionally, during this same time period, counsel for C.A., William N. Patterson, Esq., became ill and subsequently passed away, and his partner, Sharon Patterson Thibodeaux, Esq., took over representation of C.A. and the Estate matters. On August 22, 2001, Chancellor Teel removed C.A. as Executor and appointed GERAN as Administrator *De Bonis Non Cum Testamento Annexo*. (C.P. 342). Various pleadings have been filed since GERAN was appointed Administrator in this matter, most dealing with accounting issues and allegations of contempt filed by both parties against the other.

On November 27, 2006, this matter was finally heard by Chancellor Carter Bise. At the conclusion of the hearing, Chancellor Bise required the parties to submit proposed Findings of Fact and Conclusions of Law. (C.P. 827, 838). The Chancellor's written Judgment was entered on January 30, 2007. (R.E. 09). Aggrieved by said Judgment, C.A. filed his Motion for a New Trial, or in the Alternative, to Alter or Amend Final Judgment on February 12, 2007. (C.P. 849). By letter dated October 10, 2007, Chancellor Bise requested from the attorneys for the parties the answers to three (3) specific 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 (see page 10-11 of the Judgment of January 30, 2007?

(R.E. 22).

After review of the parties' respective responses (C.P. 876, 879), Chancellor Bise issued his Order on Post-Trial Motions on February 20, 2008. (R.E. 25). C.A. filed his Notice of Appeal on March 14, 2008. (C.P. 895)

SUMMARY OF ARGUMENT

The Chancellor's decision in this matter is not supported by the evidence or testimony adduced at trial or the case law. The lower court erred in refusing to award C.A. an executor's fee based on case law or quantum meruit. The lower Court further erred in refusing to award C.A. the expenses itemized in his statement, which included mileage. C.A. requested reimbursement at the annual rate set by the government, in the same fashion/manner as GERAN, and GERAN's request was granted. An objective review of the Chancellor's rulings will reveal that they are clearly erroneous and capricious and constitute manifest error requiring a reversal of the Chancellor's decision.

ARGUMENT

1. Did the lower Court commit manifest error in failing to award C. A. Dodson a sum for executor's fees?

The Mississippi Court of Appeals has held, "It is well settled that the Court may not disturb the findings of a chancellor unless the chancellor was 'manifestly wrong, clearly erroneous or applied an erroneous legal standard.'" *Goode v. Village of Woodgreen Homeowners Assoc.*, 662 So.2d 1064 (Miss. 1995).

The uncontroverted testimony at the trial of this matter was that, after the death of his step-mother, VIRGINIA MARGARETTA DODSON, and prior to his appointment as Executor, C.A. was forced to handle all of the Decedent's matters as GERAN and JEFFREY did not even travel to Mississippi for her funeral. (T. 26). In fact, GERAN did not even come to Mississippi until some two (2) months later, when it was time to claim what he wanted from the Decedent's home. (T.26-27). C.A. handled all funeral arrangements. (T. 26). Upon his appointment as Executor and for a period of almost five (5) years thereafter, C.A. acted in the best interest of the Estate. He sold two (2) pieces of real property: a home in Gulfport, Mississippi, and a lot in Jackson County, Mississippi. Both pieces of property were situated approximately three (3) hours from the home of C.A. Prior to selling the home in Gulfport, C.A. spent numerous hours preparing the home to be sold, i.e. cleaning out the Decedent's personal property; sorting through the Decedent's documents; seeking and receiving estimates for repairs to the home; obtaining Court authority for and overseeing these repairs; obtaining the necessary repairs to the Decedent's RV and then facilitating the sale of the RV; securing appraisals of the pieces of jewelry in the Estate; and inquiring into the various dividend checks which were received.

In support thereof, C.A. would show that GERAN stated in his First Annual Account and Final Account of Geran F. Dodson, Administrator D.B.N., C.T.A., "All of the real property of the deceased was disposed of prior to the appointment of your Administrator D.B.N., C.T.A.; thus your Administrator D.B.N., C.T.A. has administered no real property and the Estate contains no real property at this time." (C.P. 536). He went on to state that "All properly probated claims were paid, and all specific bequests under the Last Will and Testament of the Deceased probated in this cause were paid, prior to the appointment of your Administrator D.B.N., C.T.A." (C.P. 536). Those actions were performed by C.A. Dodson. In fact, other than making a very few deposits into the Estate account and disbursing the checks to his brothers, GERAN did nothing to administer the Estate, as all necessary actions had been previously performed by C.A.

The lower Court found that C.A. had breached his fiduciary duties by loaning monies from the estate to himself and that he had engaged in "self-dealing" by acting as accountant for the estate for a fee. While C.A. denies that he breached his fiduciary duties, he admitted on the stand that he loaned himself money from his portion of the estate when he learned, after the death of the Decedent, that the Decedent, while serving as the treasurer of C.A.'s company and working therein, had failed to pay a Federal tax deposit for the corporation in the approximate sum of $15,000. C.A., having no way to pay the required sum, borrowed from the funds which he would be receiving from the Estate. C.A. disclosed the transfer on the First Accounting of Executor filed on May 15, 2000 (C.P. 193, 197), and on his Final Accounting filed herein on September 9, 2002 (C.P. 454). C.A. was not trying to steal from the Estate. As an heir, he had been devised funds greatly exceeding the sum he borrowed. He further testified that he paid $12,000 back to the Estate while he was still acting as Executor (T. 36),

and the record reflects that said sum was paid within sixty (60) days. These deposits are also evidenced on the Final Accounting filed by C.A. (C.P. 449).

C.A. further testified that for a period of over ten (10) years preceding the death of the decedent, his company, Mullen and Associates, prepared the tax returns for the Decedent and her husband, C.A.'s father. (T. 60). C.A. testified that he did not know he was required to get the Court's approval to continue to file the Decedent's tax returns:

> Q. And you did not get Court authority to hire Mullin and company to do that?
> A. No. If that was required, then that's something that's my mistake on doing that, yes, sir...So to continue that tradition of the ten years, maybe I made a mistake because I didn't get a Court order, but I was doing the same thing that when they were alive they wanted done.

(T. 60).

The mistakes that C.A. Dodson made were just that – mistakes. They were never hidden from anyone. They were not done to hurt the Estate or any of the heirs. In fact, there was not one shred of evidence or testimony that any of C.A.'s actions harmed the Estate in any way. GERAN admitted that he, too, made mistakes:

> Q. And do you recall that at that hearing an issue was raised about the fact that on your Exhibit A you reflected a Paine Weber mutual fund account with $5,812.43. Do you remember the fact that that issue was raised at the hearing?
> A. ***That was a mistake***. It should have been number of shares.
> Q. At the hearing, do you recall that when that issue was raised you said that the only thing that was missing was the Lord Abbett, but that you and your attorney continued to tell Judge Steckler there was also a Paine Weber account. Do you recall that happening at the hearing?
> A. I don't recall that. ***But I can tell you that it's a mistake***.
> Q. So if at the hearing you testified that there were actually a Lord Abbett and a Paine Weber account, you're now saying that was a mistake?

A. I'm saying that there was no cash of 5,812.43. We have stated that ***it was a mistake*** because of the Paine Weber mutual fund shares. I mean, you have something that's valued at considerably more than that, and we're reporting it less than that. It's a number of shares. ***It's a mistake.***

(Emphasis added.) (T. 16).

Additionally, GERAN filed two (2) incorrect accountings (C.P. 535, 564). These incorrect accountings were not corrected until after C.A. filed his Response and Objection to First Annual Account and Final Account of Geran F. Dodson, Administrator D.B.N., C.T.A. on January 21, 2004. (C.P. 607).

The Court further found that C.A. failed to disclose his felony conviction to the Court. This is true, as C.A. was unaware that his felony conviction many years prior disqualified him as fiduciary. The Decedent knew that C.A. was a convicted felon at the time she prepared and executed her Last Will and Testament appointing C.A. as Executor of her Estate. GERAN and JEFFREY knew of C.A.'s prior conviction at the time of his appointment as Executor by the Court on December 1, 1995, and on the date of filing of their first Motion for Order Removing Executor and for Other Relief (April 10, 2000), some four and one-half (4 ½) years later. GERAN and JEFFREY knew of C.A.'s prior felony conviction yet they sat on their laurels and allowed C.A. to do all the work in marshalling and preserving assets of the Estate; repairing and selling real and personal property of the Estate for their benefit; and disbursing all specific bequests. GERAN and JEFFREY received the benefit of C.A.'s labor and did so with personal knowledge at all times of C.A.'s prior felony conviction. The Chancellor noted in his Judgment entered on January 30, 2007, that GERAN "argues that he did not know that his brother was disqualified by virtue of the conviction until his second conviction". (C.P. 820).

It is important to note that at C.A. never denied that he was a convicted felon. Neither the Motion for Probate of Estate and Letters Testamentary (C.P. 1), nor the Oath of Executor (C.P. 12), which C.A. filed spoke to any prior criminal convictions. C.A. never misled the lower Court regarding his previous conviction, as he was unaware that it disqualified him in any way.

In the case of *Giglio v. Woollard*, 126 Miss. 6, 88 So. 401 (Miss. 1920), this Court stated as follows:

> "*Collateral Attack.* As a general rule a grant of administration which is not void, although it may be voidable, is not open to collateral attack either on the ground of irregularity in the proceedings, a mistake in the character of letters granted where a proper case for administration existed, that the grant was premature, or that the person to whom letters of administration have been granted was not entitled by priority to administer or lacked the required qualifications."

C.A. acted as Executor for four and one-half (4 ½) years. He performed the vast majority of the Estate work, petitioning for the lower Court's approval prior to finalizing any significant transactions such as selling the real property and making the initial disbursements to the heirs. Pursuant to Mississippi case law, his acts are not subject to collateral attack, so neither should payment for those services be subject to attack.

Admittedly, C.A. has a troubled past. He had a felony conviction in 1984, some eleven (11) years prior to the death of the Decedent. He had another felony conviction during the time he was serving as Executor. But no one has charged C.A. with lying under oath, which GERAN did at the hearing of this matter:

> Q. Now, when you say, the house, which house are you referring to, the one in –
> A. 107 Bayou View in Gulfport. ***I never saw the house that she lived in Brandon***. I have no idea what was taken out of that house.

(Emphasis added). (T.24).

He then testified:

> Q. And if I understood you correctly, you said you never visited the home in Rankin County:
> *A. **I was there one time.***

(Emphasis added). (T. 25)

GERAN further testified that C.A. took a Saint Louis Cardinals championship ring that was valued at $45,000. However, upon direct questioning by the Chancellor, GERAN changed his testimony.

THE COURT: Let me interrupt. Did you just say that he said it was worth $45,000?

THE WITNESS: I honestly don't remember.

(T. 23-24).

This Court held in *Ralston*, 188 Miss. 345, 351, 194 So. 923, 924 (Miss. 1940):

> There are numerous elements that enter into the consideration of what amount of compensation should be allowed within the limit fixed by law, and the mechanical work of making out the reports and of collecting the money and of disbursing it is not the only thing to be considered. The skill, the responsibility, and the amount involved are elements that the Court will take into consideration in fixing such compensation.

Surely, C.A. had the daunting task and immense responsibility of cleaning out the Decedent's household effects, selling the Decedent's properties and managing an Estate valued at over $450,000. This Court stated in *Estate of Thomas*, 740 So.2d 332, 338 (Miss. 1999),

> Finally, we note that a fiduciary's compensation under section 91-7-299 is affected, not only by the amount and degree of difficulty of his work, but also by 'the value and worth of the estate'...the fiduciary may be entitled to some measure of *extra* compensation based solely on the magnitude of the responsibility placed on his shoulders.

(Emphasis added).

C.A. has not requested *extra* compensation. C.A. has only requested what is rightfully due to him for the valuable services rendered on the behalf of the Estate.

C.A. would further show that the lower Court erred in finding that it was C.A.'s actions that were the cause of much expense to the Estate. (R.E. 21). C.A. would show that the fees of $14,824.84 paid to Patterson & Thibodeaux, P.A. in 2002 were legal fees for work performed to administer the Estate, whereas the fees of $15,750.00 awarded unto Butler, Snow, O'Mara, Stevens & Cannada in 2007, were for work performed in GERAN's vendetta against C.A., fostering his successful attempt to delay distributing to C.A. his rightful share of the Estate and to keep C.A. from being awarded a fee for the countless hours he expended in this matter. C.A. would further show that GERAN'S attorney fees through the entry of the Order on Post-Trial Motions entered on February 20, 2008, were paid by the Estate, while C.A.'s fees since 2002 have been borne by C.A. individually. C.A. would show that the lower Court erred in awarding GERAN his attorney fees for his numerous attempts to prevent C.A. from receiving his fair distribution from the Estate and to prevent C.A. from receiving a fee for the time and expenses incurred in furthering the Estate.

The lower Court further erred in ruling that C.A. was not entitled to mileage reimbursement and meal reimbursement without the proper documentation. (C.P.871-872). C.A. sought reimbursement for mileage and meals based on the respective federal rate/allotment for each year. (R.E. 54). He testified that, to save the Estate money, he stayed at the Decedent's house while he was in Gulfport. (T. 45). Although GERAN testified that he did not charge the Estate for meals, he did charge the Estate for hotel rooms. (R.E. 55). He also charged the Estate for mileage when he drove his car to Gulfport. (R.E. 55). For the lower

Court to grant GERAN's request for reimbursement for mileage and deny C.A. the same is clearly manifest error.

In the case of *Kalavros v. Deposit Guaranty Bank & Trust Company*, 158 So.2d 740 (Miss. 1963), the Court stated,

> The general rule is that where services are rendered by one person for another, which are knowingly and voluntarily accepted, without more, the law presumes that such services were given and received in the expectation of being paid for, and implies a promise to pay their reasonable worth...A promise to pay for services is implied when they are rendered and received in such circumstances as authorize the party performing to entertain a reasonable expectation of payment for them by the party benefited [sic].

"Quantum meruit recovery is a contract remedy which may be premised either on express or 'implied' contract, and a prerequisite to establishing grounds for quantum meruit recovery is claimant's reasonable expectation of compensation." *Estate of Johnson v. Adkins*, 513 So.2d 922 (Miss. 1987), citing *Wiltz v. Huff*, 264 So.2d 808 (Miss. 1972). The Court in *Estate of Johnson v. Adkins,* citing *Magnolia Federal Savings & Loan v. Randal Craft Realty,* 342 So.2d 1308 (Miss. 1977), went on to say that "...the basis for an action for 'unjust enrichment' lies in a promise, which is implied in law, that one will pay to the person entitled thereto which in equity and good conscience is his." 513 So.2d at 926. The Court went on to say, "Recovery in quantum meruit is measured by the reasonable value of materials or services rendered, while recovery in unjust enrichment is that to which the claimant is equitably entitled." Id. at 926. Whether for quantum meruit or unjust enrichment, C.A. is entitled to payment for his valuable services rendered to the Estate, which he performed with a reasonable expectation of payment for said services. C.A. spent numerous hours handling the affairs of the

Estate which took time away from his own business and his family. To deny C.A. payment for these services is manifest and reversible error.

2. Was the lower Court arbitrary and capricious in its findings and conclusions?

In *McGowan v. Miss. State Oil & Gas Bd.*, 604 So. 2d 312, 322 (Miss. 1992), this Court defined arbitrary and capricious as follows:

> "Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principal; not done according to reason or judgment, but depending upon the will alone, -absolute in power, tyrannical, despotic, non-rational, -implying either a lack of understanding of or a disregard for the fundamental nature of things. "Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.

The lower Court was obviously disenchanted by the felony convictions of C.A. However, it appears that the Court simply took GERAN'S completely uncorroborated testimony as truth.

The lower Court was capricious in its rulings. First, in its Judgment entered on January 20, 2007, the lower Court stated, "The Court finds 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.E.19). However, in its Order on Post-Trial Motions, the lower Court, when itemizing the issues included in the Judgment entered on January 20, 2007, stated "C.A. Dodson could retain the World Series ring(s) which he 'found'". (R.E. 25). There was no finding in the previous Judgment that C.A. had found the ring(s). In fact, the testimony of C.A. and his corroborating witness was that C.A. had been given the rings by his Aunt, Marion Mathes, whose father was a scout for the St. Louis Cardinals. (T. 34, 63). Only GERAN testified that C.A. found the rings in the home of the Decedent prior to GERAN traveling to

Mississippi to retrieve those items of desired personalty. GERAN offered no testimony whatsoever to prove that C.A. received the rings from the Decedent and not from Marion Mathes. Yet, the lower Court chose to accept the uncorroborated testimony of GERAN.

Second, the Court found in its January 20, 2007, Judgment that "...C.A. Dodson was derelict in his own performance. This is reflected by the Court file which shows that he effectively did little. He published Notice to Creditors. He sought the repair of and subsequently sold the residence of 107 Bayou Circle, Gulfport, Mississippi. He sought and made a partial distribution. He sold a piece of real property in Jackson, Mississippi." (R.E. 20). This finding is incorrect, capricious, and not supported by the volumes of documents contained in the Court file or the testimony. The following acts were performed by C.A. during his time as Executor:

A. He hired the firm of Patterson & Thibodeaux, P.A. to represent him in the Estate matters which included filing the Petition to open the Estate, appearing in the Harrison County Chancery Court and entering the Order opening the Estate. (C.P. 1);

B. He published the Notice to Creditors;

C. He met with appraisers, realtors and subcontractors to determine the best interest of the Estate in selling the home in Gulfport, Mississippi, either "as is" or making the needed repairs;

D. He petitioned the Court for approval to make the necessary repairs to the Gulfport home. (C.P. 29). He then oversaw the needed repairs to ensure the repairs were completed correctly;

E. He sold the lot located in Jackson County, Mississippi (not Jackson, Mississippi as indicated by the Chancellor);

F. He petitioned the Court for permission to make partial distribution to the heirs (C.P. 36) and then made the distribution to the eleven heirs, as well as obtained the Waivers from each heir;

G. He petitioned the Court for authority to enter into the contract to sell the residence in Gulfport, Mississippi. (C.P. 61);

H. He petitioned the Court for authority to enter into the contract to sell the lot in Jackson County, Mississippi. (C.P. 48);

I. He sold the Decedent's automobile for $12,000. (C.P. 448);

J. He closed out the Decedent's personal accounts. (C.P. 448);

K. He sold the Decedent's VCR, color television, refrigerator, bedroom set, TV/VCR Combo and office supplies. (C.P. 448-449);

L. He obtained appraisals for the Decedent's jewelry. (C.P. 355-357).

M. He attempted to determine if the Decedent held stock in Pharmacia, Solutia, GTE and Monsanto. (T. 38-39); and,

N. He obtained the necessary repairs for the Decedent's RV and sold same for $7,500.00 (after GERAN had attempted to purchase same for $2,000). (T. 33).

Clearly, the Court's finding that C.A. "effectively did little" was arbitrary and capricious.

Third, the Chancellor found in his Judgment entered January 30, 2007, that "Part of the fees and expenses for which C.A. seeks reimbursement are fees for tax preparation for the estate...". R.E. 18). C.A. would show that he has not sought reimbursement for any tax preparation fees, and none are reported on his detailed statement of services rendered and expenses. In fact, the uncontroverted testimony was that employees of Mullens and Associates (C.A.'s company) prepared the tax returns, not C.A. himself. (T. 59-60).

Fourth, the Chancellor found in his Judgment entered January 30, 2007, "From March, 1998, until April 2000, he did nothing else." (R.E. 20). As had been testified to in previous hearings and included in the Motion for a New Trial, or in the Alternative, to Alter or Amend Final Judgment filed by C.A. on February 12, 2007, C.A., having received dividend checks for various stocks believed to belong to the Decedent at the time of her death, was attempting to locate the missing court file for the Estate of the Decedent's mother in order to determine the identity, location and value of the stocks which he believed had been left to the Decedent by her mother. (C.P. 854-855).

Fifth, the Chancellor found in his footnote to the Judgment entered January 30, 2007 as follows:

> C.A. Dodson claims that this was never raised while C.A. Dodson was acting as Executor. However, on May 17, 2001, this was brought to the Court's attention, more than 5 years ago. Geran Dodson argues that he did not know that his brother was disqualified by virtue of the conviction until his second conviction.

(R.E. 16).

C.A. would show that the Second Renewed Motion for Order Removing Executor and for Other Relief filed on May 17, 2001, (C.P. 311), makes **absolutely no mention** of C.A. being disqualified to act as Executor at the time of his appointment as same. The record appears to be completely void of any reference to C.A.'s conviction that took place *prior to* his appointment as Executor or his being disqualified to act as Executor **at the time he was appointed** until July 8, 2004, approximately eight and a half (8 ½) years later, when GERAN filed his Response of Administrator D.B.N., C.T.A. to Petition for Approval of Final Accounting of Former Executor, C.A. Dodson, and Petition for Allowance of Executor Fees and Expenses. (C.P. 668). GERAN did not mention the fact that C.A. was statutorily barred from serving as

Executor in his Motion for Order Removing Executor and for Other Relief filed on April 10, 2000, in his Renewed Motion for Order Removing Executor and for Other Relief filed on May 30, 2000, or in his Second Renewed Motion for Order Removing Executor and for Other Relief filed on May 17, 2001.

CONCLUSION

The findings of the Chancellor were not amply supported by the testimony and documentary evidence. Further, the decision was arbitrary and capricious, and should, therefore, be reversed for manifest error.

C.A. Dodson has submitted a detailed, itemized statement for his services and expenses and has requested the sum of $28,151.23 for said services. Appellant respectfully moves this Court to reverse Chancellor Bise's decision and render a Judgment awarding C.A. Dodson the sum of $28,151.23 as his reasonable fee and costs.

This the 17th day of October, 2008.

Respectfully Submitted,

C.A. DODSON, APPELLANT

BY: Sharon Patterson Thibodeaux
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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 Brief of Appellant to the following:

Robert C. Galloway, Esq.
Attorney for Geran Dodson
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Post Office Box 4248
Gulfport, Mississippi 39502

Honorable Carter Bise
Chancellor
Post Office Box 1542
Gulfport, Mississippi 39502

This the 17th day of October, 2008.

Sharon Patterson Thibodeaux
SHARON PATTERSON THIBODEAUX