

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEAL OF THE STATE OF MISSISSIPPI
NO. 2008-CA-00668**

**CONTESSA GRAY
APPELLANT**

VERSUS

**JESSIE LEE WILLIAMS, JR.
APPELLEE**

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

BRIEF OF APPELLEE

**MICHAEL W. CROSBY
Attorney for the Appellant
MS Bar No. [REDACTED]
2111 25th Avenue
Gulfport, Mississippi 39501
Telephone: (228) 865-0313
Facsimile: (228) 865-0337**

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Michael W. Crosby, Esq. , Attorney for Appellee, and approved by the Chancery Judge to represent the Estate of Jessie Lee Williams, Jr., Deceased
2. John H. Whitfield, Esq., Attorney for Appellee, and approved by the Chancery Judge to represent the Estate of Jessie Lee Williams, Jr., Deceased
3. Terry Williams, approved by the Chancery Judge to administrate the Estate of Jessie Lee Williams, Jr., Deceased
4. Judge Jim Persons, Chancery Court Judge
5. Bruce B. Smith, Esq., Attorney for Appellant, and never approved to represent the Estate of Jessie Lee Williams, Jr. Deceased



MICHAEL W. CROSBY

MICHAEL W. CROSBY
Attorney for the Appellant
MS Bar No. [REDACTED]
2111 25th Avenue
Gulfport, Mississippi 39501
Telephone: (228)
Facsimile: (228) 865-0337

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STATEMENT OF ISSUES FOR REVIEW

- I. WAS THE CHANCERY COURT JUDGE MANIFESTLY WRONG AND CLEARLY ERRONEOUS IN HOLDING THAT THE COURT LACKED JURISDICTION TO TAKE A PORTION OF THE ATTORNEYS FEES FROM ANOTHER ATTORNEY WHO WAS RETAINED BY THE COURT APPROVED ADMINISTRATOR OF THE ESTATE TO PROSECUTE A WRONGFUL DEATH LAWSUIT, AND WHO HAD FILED AND OBTAINED APPROVAL OF HIS ATTORNEY FEE CONTRACT, IN A CASE WHERE ALL SEVEN (7) OF THE LAWFUL HEIRS WERE MINORS?

STATEMENT OF THE CASE

On February 4, 2006, Jessie Lee Williams, Jr. was assaulted at the Harrison County Jail, in Gulfport, Mississippi, and on February 8, 2006, the six (6) minor children¹, through their two (2) mothers, entered into a contract with Michael W. Crosby to prosecute their claim in federal court; further, they all selected Jessie Lee Williams, Jr.'s adult brother (their uncle) Terry Williams to be the Administrator for the Wrongful Death Lawsuit on behalf of the Estate. (R.E. 7-9; C.P. 8-10)² A few days later, February 14, 2006, a petition was filed to open the estate, Terry Williams was appointed as the Administrator, the Oath was taken, the Letters of Administration were issued, and the contract of Michael W. Crosby was approved by the Chancery Court Judge. (R.E. 2; C.P. 2) The Wrongful Death Case was filed and prosecuted by Terry Williams acting as the Chancery Court Approved Administrator, and Michael W. Crosby³ acting as the Chancery Court approved attorney of the Estate on behalf of the minor children. The case was eventually settled in excess of one million dollars⁴, and after a court hearing, the Chancery Judge approved the settlement, approved the attorney's fees, authorized the Administrator to pay the fees, ordered the Administrator to have D.N.A. testing conducted, and then open a Guardianship for each minor child wherein each minor child would have place an equal share of the proceeds. (R.E. 32-34; C.P. 12-14). Subsequently, Bruce B. Smith, Esq. filed a motion to attempt to take a portion of the attorney's fees earned by Michael W. Crosby, Esq. for Michael

¹ Please note that there were seven (7) minor children, but one was later determined by D.N.A. testing to be parented by another father.

² For the convenience of the Court and parties, the Appellee will utilize the Record Excerpts of the Appellant in that all necessary documents to prepare the Appellant's Brief are contained within the same excerpts.

³ Michael W. Crosby, Esq. associated John H. Whitfield, Esq. assist in the representation.

⁴Part of the monetary amount of the settlement was required to be confidential.

W. Crosby's representation of the Estate. (R.E. 35-38; C.P. 15-18) After a telephonic hearing, the Chancery Judge denied the request stating as follows:

This matter came on the Petition filed by Attorney Bruce B. Smith in which he requested the court to allocate and distribute attorney's fees different from the prior Order of this court, and the court having heard and considered the same by an agreed telephonic conference on December 11, 1007, and listened to arguments of counsel and authorities presented, finds that this matter is a contractual dispute between Mr. Crosby and Mr. Smith and the court is without jurisdiction to hear the motion and the motion is therefore denied. (R.E. 48; C.P. 19)

Thereafter, Bruce b. Smith, Esq., filed a copy of a contract he had from a minor child, born from a female in a separate relationship with the deceased, and another motion asking for an in court hearing. (R.E. 79-83; C.P. 20-24) In that hearing the, the Chancery Court Judge addressed Bruce B. Smith, Esq and stated as follows:

THE COURT: Well, I, you know - - my understanding of the Wrongful Death Act is that I approved the filing of the lawsuit and the wrongful death representative, being the brother of Mr. Jessie Lee Williams. I did not know of your involvement in this case at that time. I later saw you in court as we were setting up guardianships and getting to a point of dealing with the settlement.

I did not know that you had - - Frankly, I always wondered why you were here coming down from Simpson County on a guardianship, something that we could have - - I did not know that you were involved in the underlying claim against the County and the sheriff's department. I did not know that until I had already done - - approved everything. I just did not know. (R.E. 91; . 32)

The Chancery Judge then entered an Order Denying the Motion (R.E. 84-85; C.P. 25-26)

SUMMARY OF ARGUMENT

The standard of review is whether the Chancery Court was manifestly wrong and clearly erroneous.

While incarcerated at the Harrison County Jail, Jessie Lee Williams, Jr. was killed by the deputies. He has six minor children with two mothers who entered into an attorney fee contract with Michael W. Crosby, and they selected Terry Williams, brother of Jessie Lee Williams to be the Administrator of the Estate. The Court approved the attorney fee contract, and after opening the Estate, the Court approved Terry Williams to hire Michael W. Crosby, Esq. to represent the children in the Wrongful Death Lawsuit. After the case was settled in federal court, and the Administrator was authorised to pay attorney's fees for Michael W. Crosby, Bruce B. Smith, Esq., attempted to take part of the attorney's fees because he had a contract from another minor child who D.N.A. proved to be a seventh minor heir from a third woman, despite the fact that he did nothing in the wrongful death federal case, and that he never obtained approval from the Chancery Judge for his attorney fee contract. **The Chancery Judge was not manifestly wrong or clearly erroneous in denying Smith's claim for attorney's fees in the wrongful death case.**

ARGUMENT

ISSUE:

THE CHANCERY COURT JUDGE WAS NEITHER MANIFESTLY WRONG NOR CLEARLY ERRONEOUS IN HOLDING THAT THE COURT LACKED JURISDICTION TO TAKE A PORTION OF THE ATTORNEYS FEES FROM ANOTHER ATTORNEY WHO WAS RETAINED BY THE COURT APPROVED ADMINISTRATOR OF THE ESTATE TO PROSECUTE A WRONGFUL DEATH LAWSUIT, AND WHO HAD FILED AND OBTAINED APPROVAL OF HIS ATTORNEY FEE CONTRACT, IN A CASE WHERE ALL SEVEN (7) OF THE LAWFUL HEIRS WERE MINORS

The Appellee agrees with the Appellant that the legal standard of review is whether the Chancellor's decision is manifestly wrong and clearly erroneous. *Pannell v. Guess*, 671 So. 2d 1310 (Miss 1996). After both a telephonic hearing and a hearing in court, the Chancery Judge opined that this issue was a contract dispute between Bruce B. Smith, Esq. and Michael W. Crosby, Esq.

In the Appellant's Brief, the Appellant cited three cases, *Franklin v. o 2d. 110 (Miss. 2003)*, *Long v. McKinney*, 897 So. 2d 160 (Miss. 2004) & *Willing v. Benz*, 958 So 2d 1240 (Miss 2007), for the proposition that heirs in a Wrongful Death lawsuit have the right to hire separate counsel to represent their interests. However, whether an heir has the right to hire his/her own attorney is not the issue. What is the issue is whether an attorney who did nothing in a case, never made an appearance, never argued a motion, never fought for anything whatsoever, can attempt to take another attorney's fees, after a case is settled. In the case at bar, all of the plaintiff's were minor children. **The Chancery Judge was not manifestly wrong or clearly erroneous in denying Smith's claim for attorney's fees in the wrongful death case.**

On February 4, 2006, Jessie Lee Williams, Jr. was assaulted at the Harrison County Jail, in Gulfport,

Mississippi, and on February 8, 2006, the six (6) minor children⁵, through their two (2) mothers, entered into a contract with Michael W. Crosby to prosecute their claim in federal court; further, they all selected Jessie Lee Williams, Jr.'s adult brother (their uncle) Terry Williams to be the Administrator for the Wrongful Death Lawsuit on behalf of the Estate. (R.E. 7-9; C.P. 8-10)⁶ A few days later, February 14, 2006, a petition was filed to open the estate, Terry Williams was appointed as the Administrator, the Oath was taken, the Letters of Administration were issued, and the contract of Michael W. Crosby was approved by the Chancery Court Judge. (R.E. 2; C.P. 2) The Wrongful Death Case was filed and prosecuted by Terry Williams acting as the Chancery Court Approved Administrator, and Michael W. Crosby⁷ acting as the Chancery Court approved attorney of the Estate on behalf of the minor children. The case was eventually settled in excess of one million dollars⁸, and after a court hearing, the Chancery Judge approved the settlement, approved the attorney's fees, authorized the Administrator to pay the fees, ordered the Administrator to have D.N.A. testing conducted, and then open a Guardianship for each minor child wherein each minor child would have place an equal share of the proceeds. (R.E. 32-34; C.P. 12-14). Subsequently, Bruce B. Smith, Esq. filed a motion to attempt to take a portion of the attorney's fees earned by Michael W. Crosby, Esq. for Michael W. Crosby's representation of the Estate. (R.E. 35-38; C.P. 15-18) After a telephonic hearing, the Chancery Judge denied the request stating as follows:

⁵ Please note that there were seven (7) minor children, but one was later determined by D.N.A. testing to be parented by another father.

⁶ For the convenience of the Court and parties, the Appellee will utilize the Record Excerpts of the Appellant in that all necessary documents to prepare the Appellant's Brief are contained within the same excerpts.

⁷ Michael W. Crosby, Esq. associated John H. Whitfield, Esq. assist in the representation.

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This matter came on the Petition filed by Attorney Bruce B. Smith in which he requested the court to allocate and distribute attorney's fees different from the prior Order of this court, and the court having heard and considered the same by an agreed telephonic conference on December 11, 1007, and listened to arguments of counsel and authorities presented, finds that this matter is a contractual dispute between Mr. Crosby and Mr. Smith and the court is without jurisdiction to hear the motion and the motion is therefore denied. (R.E. 48; C.P. 19)

Thereafter, Bruce B. Smith, Esq., filed a copy of a contract he had from a minor child, born from a female in a separate relationship with the deceased, and another motion asking for an in court hearing. (R.E. 79-83; C.P. 20-24) In that hearing the, the Chancery Court Judge addressed Bruce B. Smith, Esq and stated as follows:

THE COURT: Well, I, you know - - my understanding of the Wrongful Death Act is that I approved the filing of the lawsuit and the wrongful death representative, being the brother of Mr. Jessie Lee Williams. I did not know of your involvement in this case at that time. I later saw you in court as we were setting up guardianships and getting to a point of dealing with the settlement.

I did not know that you had - - Frankly, I always wondered why you were here coming down from Simpson County on a guardianship, something that we could have - - I did not know that you were involved in the underlying claim against the County and the sheriff's department. I did not know that until I had already done - - approved everything. I just did not know. (R.E. 91; . 32)

The Chancery Judge then entered an Order Denying the Motion (R.E. 84-85; C.P. 25-26) The Wrongful Death lawsuit was filed and prosecuted, in its entirety, and to its conclusion, by Michael W. Crosby, Esq., without the assistance or involvement of Bruce B. Smith, Esq., and regardless of whether or not Bruce B. Smith, Esq., could have participated, the fact is, he did not participate, and thus, the Chancery Court Judge acted well within his authority in denying the request of Bruce B. Smith, Esq., to take fees from another attorney.

CONCLUSION

CONCLUSION

The Chancery Court Judge was not manifestly wrong nor clearly erroneous in denying Bruce B. Smith's, Esq. claim for attorney's fees in a case where he did nothing.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "M. Crosby", written in dark ink.

Michael W. Crosby

CERTIFICATE OF SERVICE

I, Michael W. Crosby, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing to the office of:

Bruce B. Smith, Esq.
119 First Street SE
Post Office Box 395
Magee, Mississippi 39111

Honorable Jim Persons
Chancery Court Judge
P.O. Box 457
Gulfport, MS 39501

This the date of December 22, 2008.

Respectfully submitted



Michael W. Crosby

Michael W. Crosby
Attorney At Law
2111 25th Ave.
Gulfport, MS 39501
228-822-2727
MS Bar No. [REDACTED]