

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-00668

CONTESSA GRAY

APPELLANT

VERSUS

JESSIE LEE WILLIAMS, JR.

APPELLEE

BRIEF OF APPELLANT

Oral Argument Not Requested

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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 may evaluate possible disqualification or recusal.

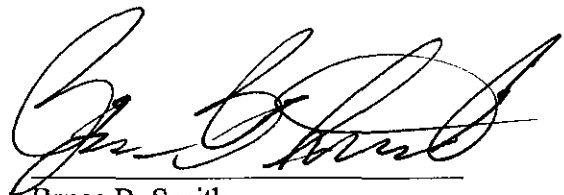
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Bruce B. Smith, Esquire

Attorney for Jyshawn Micheal Gray

A handwritten signature in black ink, appearing to read 'Bruce B. Smith', written over a horizontal line.

Bruce B. Smith
Attorney For Appellant

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STATEMENT OF THE ISSUE

Whether the Chancery Court below erred in denying the motion to pay unto the attorney for one (1) of the seven (7) wrongful death beneficiaries his pro-rata share of the attorney's fees awarded in the wrongful death case.

STATEMENT OF THE CASE

This is another attorney's fees dispute arising from a wrongful death case. This case arose from the beating death of Jessie Lee Williams while in the custody of the Harrison County Sheriff's Department on February 4, 2006. Jessie Lee Williams' wrongful death beneficiaries (as determined by the Harrison County Chancery Court) (Rec. Ex. at 12-14) are his seven (7) minor children. Jessie L. McCall, Cornelieus E. McCall, Jessie L. Williams, Jermanine Ratcliff, Quamaine Ratcliff, and Ashlae Ratcliff (by their mothers) contracted with Michael W. Crosby to represent them in the wrongful death action (Rec. Ex. at 8-10). Jyshawn Micheal Gray (by his mother) contracted with Bruce B. Smith to represent him in the wrongful death action (Rec. Ex. at 20-21). Mr. Crosby has never represented Jyshawn Micheal Gray and has never claimed to.

The standard of review in this type of case is whether or not the Chancellor's decision is manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Pannell V. Guess* 671 So. 2d 1310 (Miss 1996). In the case *sub judice* the Chancellor applied an erroneous legal standard and his decision was clearly erroneous.

On March 14, 2006, a wrongful death action was filed by Mr. Crosby and John Whitfeild in the Federal District Court of the Southern District of Mississippi seeking to recover damages for the wrongful death of Jessie Lee Williams. On March 21, 2006, Mr. Smith began corresponding with Mr. Crosby advising him that Mr. Smith was representing Contessa Gray who was pregnant with Jessie Lee Williams' child (Rec. Ex. at 33).

In subsequent conversations between Mr. Crosby and Mr. Smith, they discussed various aspects of the case, including the participation by Mr. Smith in the handling of the wrongful death action. Mr. Smith offered to assist with the expenses and work of preparing the lawsuit for trial (Rec. Ex. at 33-34); however, Mr. Crosby was very concerned about the adverse publicity that might be

generated if it was discovered that Jessie Lee Williams had another out-of-wedlock child by another mother (Rec. Ex. at 28-30). Mr. Crosby was already aware of six (6) out-of-wedlock children by two (2) different mothers and did not know how many more might appear when publication for wrongful death beneficiaries began. Because of the very real concerns regarding bad publicity and the adverse effect it would have on the potential settlement value of the case (which would adversely affect all of the children) , Mr. Crosby concluded (with the concurrence of Mr. Smith) that the best thing Mr. Smith and Contessa Gray could do was to do nothing! Just keep quiet, stay behind the scene, don't push for a DNA test, don't enter an appearance in the Federal suit, don't talk to the media, don't let anyone know about Jyshawn Micheal Gray. Since discovery had been abated (Rec. Ex. at 27) it was unlikely the defense would learn about Jyshawn Micheal Gray; therefore, the potential bad publicity would be avoided. So that is exactly what was done.

There was no further mention of Jyshawn Micheal Gray in any court proceeding or media broadcasts until a Rule 81 Summons was issued to Bruce B. Smith, Attorney for Contessa Gray, mother of Jyshawn Micheal Gray (Rec. Ex. at 11) after the wrongful death case had been settled. (It should be noted that said Summons was not served on Contessa Gray, or mailed to Contessa Gray; the Summons was mailed to Bruce B. Smith, attorney for Contessa Gray, proving that Mr. Crosby and Mr. Whitfield knew that Mr. Smith was representing Contessa Gray in the wrongful death action and not just the guardianship matters, which had not been opened, as the Honorable Chancellor mistakenly thought) (Rec. Ex. at 32).

On or about December 5, 2007, while reviewing with Mr. Whitfield proposed Petitions and Orders to establish and fund the minor's Guardianship accounts, Mr. Smith first learned that Mr. Crosby and Mr. Whitfield planned to divide all of the previously approved attorney's fees (40%- \$1,480,000.00) (Rec. Ex. at 31) between themselves and not pay Mr. Smith any attorney's fees. Until

that date, Mr. Smith thought and believed, based on current Mississippi case law and his conversations with Mr. Crosby, that he would receive one-seventh (1/7) of the attorney's fees - the amount attributable to his client. On December 7, 2007, a Motion To Allocate and Distribute Attorney's Fees (Rec. Ex. at 15-18) was filed seeking payment to Mr. Smith of that portion of the attorney's fees attributable to his client. This Motion was denied by Order dated December 13, 2007 (Rec. Ex. at 19). In this Order, the Honorable Chancellor mistakenly construes this as a "contractual dispute" between Mr. Crosby and Mr. Smith. This is not a "contractual dispute". Mr. Crosby did not associate Mr. Smith, did not hire Mr. Smith to assist him, and did not enter into any type of contract with Mr. Smith. Mississippi case law is clear that all wrongful death beneficiaries are entitled to hire their own attorneys and those attorneys are entitled to their pro-rata share of the attorney's fees. Contessa Gray hired Mr. Smith to represent her and Mr. Smith is entitled to a pro-rata share of the attorney's fees regardless of any contract or lack of a contract with Mr. Crosby.

Mr. Smith was unaware that the Court had entered the aforesaid December 13, 2007 Order (Rec. Ex. at 19) and on December 20, 2007 filed a Motion To Set Aside or Amend Order Disbursing Funds (Rec. Ex. at 22-24). This Motion was denied by Order filed March 14, 2008 (Rec. Ex. at 25-26).

SUMMARY OF THE ARGUMENT

In recent years this Court has gone to great length, in explicit detail, to explain to attorneys and judges the manner in which wrongful death actions, with their multiple filings, parties, attorneys, and related disputes should be handled. Mississippi law is crystal clear that wrongful death beneficiaries in the same action may be represented by the attorney of their choice; that they are not bound or obligated to the attorney who wins the race to the Courthouse. Likewise, Mississippi law is crystal clear that the attorney representing a wrongful death beneficiary is entitled to his pro-rata share of the attorney's fees upon the conclusion of the case.

The Honorable Chancellor erred in denying the motions to pay Mr. Smith his pro-rata portion of the attorney's fees and erred in determining that this is a contract dispute between Mr. Crosby and Mr. Smith.

ARGUMENT

THE CHANCERY COURT ERRED IN DENYING THE MOTION TO ALLOCATE AND DISTRIBUTE ATTORNEY'S FEES.

The Mississippi Supreme Court in *Long v. McKinney*, 897 So. 2d 160 (Miss. 2004) explained and clarified, in detail, the proper procedure and manner in which wrongful death cases should be handled when there are multiple plaintiffs with multiple attorneys. Contessa Gray, without question, had every right to retain her own attorney to represent her in this matter as established by *Long*, at 176, where it states that:

“This court finds the wrongful death statute in no way precludes individual wrongful death claimants from joining the first filed suit and having their own attorney represent them and this court is respectful of each client’s right to retain their individual attorney...” (emphasis added)

The Mississippi Supreme Court re-affirmed this decision in *Willing v. Benz*, 958 So. 2d 1240, 1256 (Mississippi 2007). In both *Long* and *Willing* there were multiple wrongful death beneficiaries who retained separate counsel to represent their interest. The Court said in clear, unequivocal language that this was absolutely permissible.

This Court further confirmed in both *Long*, at 176 and *Willing*, at 1256 that the separate attorneys are entitled to a portion of the attorney’s fees based on the amount of the recovery attributable to their clients. In other words, in a situation such as this case where there are seven (7) wrongful death beneficiaries, Mr. Crosby represents six (6) beneficiaries, Mr. Smith represents one (1) beneficiary, then Mr. Crosby should received six-sevenths (6/7) of the attorney’s fees and Mr. Smith should receive one-seventh (1/7) of the attorney’s fees. Based on this Court’s rulings in the aforementioned cases there can be no argument that Contessa Gray was permitted to retain her own counsel and that her chosen counsel is entitled to a portion of the attorney’s fees.

Long does not require that there be a contract, or even an agreement, among the attorney's representing the various beneficiaries in order to receive a portion of the attorney's fees. Whether or not there was a contract or agreement between Mr. Crosby and Mr. Smith regarding allocation of attorney's fees is totally irrelevant. Both attorneys had contracts with wrongful death beneficiaries; therefore, both attorneys are entitled to their pro-rata share of the attorney's fees.

The only issue that is even open to any argument is the amount of attorney's fees to be allocated to the respective attorneys. *Long* at 176 states:

"that so long as an attorney is reasonably involved, and makes a reasonable contribution to all aspects of the litigation, no deduction should be made from his or her fees."

The failure to compensate each beneficiary's attorney according to the provision of their employment contracts will create a dilemma for attorneys involved in wrongful death cases. In *Franklin V. Franklin*, 858 So. 2d 110, 123, this Court, in addressing the potential dilemma for attorneys, stated that:

"They are contractually and ethically bound to diligently pursue their client's claims but are left not knowing if they will be paid for their efforts if their client was not the first to file."

The Court went on to say that this procedure penalizes any beneficiary who wants their own attorney to represent them and are willing to pay their attorney from their share of the recovery. All beneficiaries have the right to hire their own attorney and that attorney has the right to expect to be paid.

In determining the allocation of attorney's fees in *Franklin* the Court considered which attorney prepared and answered interrogatories and requests for production of documents, retained experts, took depositions, and prepared for trial (*Franklin* settled the day of trial). In the case *sub judice*, discovery was abated, (Rec. Ex. at 27), and the case was settled long before trial.

There were no interrogatories, requests for production of documents, depositions, retaining of experts, or preparation for trial. This is not meant to infer that Mr. Crosby and Mr. Whitfield did not work diligently on this case, because they did. This is merely to point out that this case settled before much of the usual pre-trial matters that take up a significant portion of the attorney's time were performed.

Mr. Crosby made it clear (Rec. Ex. at 28, 29) that he and Mr. Whitfield concentrated their efforts on making public appearances, meeting with the media, projecting a good public image, and trying to obtain a quick settlement before any bad publicity got out that would adversely affect the value of the case. Some of this "bad publicity" was Jyshawn Micheal Gray, yet another of Jessie Lee Williams' children. Mr. Crosby and Mr. Smith agreed to a plan to keep the birth of Jyshawn Micheal Gray and paternity by Jessie Lee Williams from becoming public so that the settlement value of the case would not be diminished. The plan was successful and a fair settlement was achieved.

There is no dispute that Mr. Crosby contributed much more to the settlement of this case than Mr. Smith. There is no dispute that Mr. Crosby should receive a greater portion of the attorney's fees than Mr. Smith. However, Mr. Smith fully cooperated with Mr. Crosby and Mr. Whitfield, did not pursue a DNA test, maintained control over his client, kept the birth and paternity of Jyshawn Micheal Gray out of the media, and did not generate any adverse publicity. Without a doubt, these actions increased the settlement value of the case which enured to the benefit of all the wrongful death beneficiaries. Surely this constitutes being "reasonably involved" as required by *Long*.

In *Franklin* there were two (2) wrongful death beneficiaries, each was represented by their own attorney. The Supreme Court awarded Attorney Bill Waller, Sr. one-half (½) of the attorney's fees, according to the provisions of his employment contract, even though he admitted that the other attorneys did most of the work and it was uncontradicted that Waller did only 10% of the work.

Franklin at 116, 118. Mr. Smith has not requested one-half ($\frac{1}{2}$) of the attorney's fees, not one-fourth ($\frac{1}{4}$) of the attorney's fees, even one-sixth ($\frac{1}{6}$) of the attorney's fees; he is only asking for payment of one-seventh ($\frac{1}{7}$) of the attorney's fees, the amount that is attributable to his client. This is not an unreasonable or unjustified request.

CONCLUSION


The foregoing case law and argument clearly establish that Contessa Gray had every right to hire Mr. Smith to represent her and Jyshawn Micheal Gray in the wrongful death action, and that Mr. Smith was reasonably involved in the litigation justifying payment to him of one-seventh (1/7) of the attorneys fees. The decision of the Chancellor should be reversed.

Respectfully submitted this 15th day of August, 2008.

Contessa Gray, Guardian of
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By: 

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CERTIFICATE OF SERVICE

I, the undersigned attorney for appellants, do hereby certify that a true and correct copy of the foregoing Brief of Appellants was sent via United States mail, first-class postage prepaid, to the following counsel of record and Chancellor.

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So certified this 15th day of August, 2008.



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