IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-00997

MICHAEL T. HENDON, SHERRY HENDON
AND CHARLES HENDON — APPELLANTS

VS.

BEVERLY LANG AND ROBERT C. LANG — APPELLEES

APPEAL FROM THE CIRCUIT COURT
OF COPIAH COUNTY, MISSISSIPPI

REPLY BRIEF FOR APPELLANTS MICHAEL T. HENDON, SHERRY HENDON AND CHARLES HENDON

ORAL ARGUMENT 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 representatives 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.

Appellants:

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Charles Hendon
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Appellee:

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Crystal Springs, Ms.

Robert C. Lang
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Counsellor for Appellee:

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Marc Brand (Former Attorney of record.)
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The Honorable Isadore W. Patrick
Circuit Court Judge Warren County
Post Office Box 351
Vicksburg, Ms. 39180

SO CERTIFIED this the 16 day of November, 2009.

MICHAEL J. BROWN,
Attorney of record for Appellants

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ARGUMENT

ISSUES

1) DID THE TRIAL JUDGE COMMIT REVERSIBLE ERROR; FIRST FOR HIS DECISION TO SET ASIDE HIS ORDER TO CONFIRM "REQUESTS FOR ADMISSION", AND SECOND FOR HIS DECISION TO ALLOW THE DEFENDANTS, BEVERLY AND ROBERT LANG, TO ANSWER THE "REQUESTS FOR ADMISSION", THAT THEY HAD EITHER REFUSED OR IGNORED TO ANSWER, THAT WERE OVER 90 DAYS PAST THE DEADLINE DATE AS PRESCRIBED UNDER RULE 36 OF MISSISSIPPI RULES FOR CIVIL PROCEDURE?

Counsel for the Appellees contends that the Answers that his clients failed to answer did not go to any omission of any wrong doing, however that would not be true as both Request for Admission No. 19 and No. 20 go directly to culpability and they were not answered, but that's not the issue; the issue is what does Rule 36 state, and that is any Request for Admission not answered in 30 days is deemed admitted. The Appellants still contend that the Trial Court erred when he allowed the Defendants to have the Order which confirmed as admitted the Requests for Admissions set aside. There is no reasonable reason that Appellees gave in why they did not answer all the Requests for Admissions and therefore they should not get any relief, they basically told the Court that the reason they did not answer all the Requests for Admissions was the fault of Billy Palmer, although Mr. Palmer was neither a lawyer or a party to this action at the time the Requests for Admissions had been filed. They told the court that they had filed the answers to the Requests for Admissions and had received the Requests for Admissions at their place of residence. Further, the Defendants stated under oath that they knew they had to answer all of the Requests for Admissions

within 30 days.

The Mississippi Supreme Court has ruled in **Amiker v. Drugs for Less, Inc.**, 796 So. 2d 942, 951 (Miss 2000) "While the severest of sanctions should be reserved for extreme circumstances, the district court does not abuse its discretion by imposing the sanctions of dismissal when a party demonstrates flagrant bad faith and callous disregard for its responsibilities." and when the Defendants failed to answer the 14 other Requests for Admissions and failed to answer or show up for court on the Plaintiffs' Motion to Confirm as Admitted under Rule 36, then these Defendants have showed nothing but a callous disregard and flagrant bad faith towards the Court and the Legal system.

Rules of Court are meant to be followed even by those who fire their attorney and then proceed Pro Se. The Supreme Court held in **Harvey v. Stone County School District**, 862 So.2d 545, 549 (Miss 2003), that "pro se parties should be held to the same rules of procedure and substantive law as represented parties." **Dethlefs v. Beau Maison Dev. Corp.**, 511 So.2d 112, 118 (Miss 1987). The Defendants in this case did everything they could do to delay and obstruct the court process, and by not reversing the Court decision here, and reinstating the original Order of October 20, 2006, then justice will not be served. Further, if the Court fails to reverse the lower Court's decision, then what will the purpose be to have any time limit on Requests for Admissions to be answered or any procedure time limit.

2) DID THE TRIAL JUDGE COMMIT REVERSIBLE ERROR IN HIS DECISION NOT TO GRANT THE PLAINTIFFS' ATTORNEY'S "MOTION FOR A MIS-TRIAL" AFTER THE DEFENDANTS' ATTORNEY HAD VIOLATED RULE 403 AND RULE 408 MISSISSIPPI RULES OF EVIDENCE WHEN HE STATED TO THE JURY THAT FORMER DEFENDANTS

GLENDA AND BILLY PALMER HAD BEEN DISMISSED FROM THIS LAWSUIT AFTER THEY HAD SETTLED WITH THE PLAINTIFFS AND HAD RECEIVED A SETTLEMENT OF ZERO DOLLARS?

Counsel for the Appellees contends that there was no harm in the statement issued by their client's counsel during the trial. However, the Appellants still contend that the Trial Judge committed reversible error when he failed to Order a mistrial at the time the Defendants' attorney made the remarks that the other Defendants that were original in this case had been dismissed and stated to the jury that the Plaintiffs had paid the other Defendants (The Palmers') zero dollars in settlement. There was no possible remedy to correct this statement other than to order a mistrial. This statement was in complete violation of Mississippi Rule of Evidence 403 and 408 and had a great deal of impact upon the outcome of this trial in the jury in ruling in favor of the Defendants. The Mississippi Supreme Court has ruled in **Smith v. Payne**, 839 So. 2d 482, (Miss 2002) that "to inform a jury of the amount of a settlement prior to its returning a verdict for a joint tortfeasor or co-defendant will certainly and unnecessarily influence a jury in its decision." **Whittley v. City of Merdidian**, 530 So. 2d 1341, 1346 (Miss. 1998). If this Court fails to reverse the lower Court's decision, then no justice will be served and future parties will not fear any repercussion from violating Mississippi Rules of Evidence.

3) DID THE TRIAL JUDGE ERROR WHEN HE ISSUED AN ORDER THAT STATED THAT HE NO LONGER HAD JURISDICTION TO ENFORCE A PREVIOUS ORDER OF HIS COURT, PENDING THE OUTCOME OF THE APPEAL, ALTHOUGH THE ENFORCEMENT OF HIS PREVIOUS ORDER HAD NO ISSUE ON APPEAL?

The Appellants still contend that the original Court still retains jurisdiction and authority over

its' execution of orders it has issued even after a case has been removed to a higher court. The Supreme Court ruled in **Pittman v. Commonwealth National Life Ins. Co.**, 562 So.2d 73, 74 (Miss, 1990) "The trial court also lost jurisdiction as to the merits, Miss. R. Civ. P. 59 and 60, but still retains jurisdiction to cause its orders to be executed." that is exactly the issue here, the Trial Court had entered an Order on the Hearing of March 23, 2007 in which he ordered the defendants to pay all attorneys fees and costs of the Plaintiffs' attorney for their behavior. The Court has refused to follow its' own order. The Defendants' attorney did not dispute the fee and cost presented to the Court in the amount $39,337.50, and therefore the Court should award said amount.

CONCLUSION

The decision of the Circuit Court in regards to his ruling on reversing his Order on the Requests For Admissions under Rule 36 should be reversed and rendered in favor of the Appellants or Rule 36 has no meaning in the future.

This Court should find that the statement made by the Defendants' Attorney in regards to the fact that another Defendant received zero dollars from the Plaintiffs and in regards to them being dismissed from the case as part of settlement should have caused the trial court to grant Plaintiffs' Motion for a Mis-trial and therefore the lower Court's decision should be reversed and be remanded.

This Court should rule that the lower Court still has jurisdiction to enforce an Order that it has ordered against the Defendants in a matter regarding attorney's fees and costs and should be reversed and remanded or should be reversed and rendered in the amount of $39,337.50.

RESPECTFULLY SUBMITTED, this the 16 day of November,2009.

Michael T. Hendon, Sherry Hendon
And Charles Hendon
APPELLANTS

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CERTIFICATE OF SERVICE

I, Michael J. Brown, attorney for Appellants, do hereby certify that I have forwarded and deposited by Hand Delivered on November 16, 2009, an original and three (3) copies of the Reply Brief of Appellants, to the Clerk of the Mississippi Supreme Court and have also forwarded and deposited by First Class United States Mail on November 16, 2009, postage prepaid, one (1) copy of the above and foregoing Reply Brief of Appellants to the following:

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The Honorable Isadore W. Patrick
Circuit Court Judge Warren County
Post Office Box 351
Vicksburg, Ms. 39180

This the 16 day of November, 2009.

Respectfully Submitted,

Michael J. Brown, MSB[redacted]