

IN THE SUPREME COURT OF MISSISSIPPI

**IN THE MATTER OF THE ESTATE
OF PATRICIA McDANIEL LANGSTON**

MANSFIELD LANGSTON

APPELLANT

VS.

CAUSE NO. 2008-TS-01090

ETHEL WILLIAMS

APPELLEE

**Appeal from Final Judgment of the Chancery Court of
Sunflower County, Mississippi, Cause No. 2005-0225,
the Honorable Janace Harvey-Goree, by Special Appointment Presiding**

REPLY BRIEF OF APPELLANT

(ORAL ARGUMENT REQUESTED)

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INTRODUCTION

Appellee, Ethel Williams, in her brief sets forth factual assertions which are inaccurate and incorrect. Moreover, Appellee relies upon factual assertions and positions to support the Trial Court's finding of a confidential relationship that are in direct conflict with each other. Finally, Appellee erroneously maintains that the seven factors of In Re Estate Dabney, 740 So. 2d 915 (Miss. 1999) apply in a long-term marriage to set aside inter vivos transfers between a husband and wife. As will be seen hereinafter, Appellee's position would establish extremely bad precedent whereby the factors of mutual confidence, love, trust, and a close relationship in a marriage would be used to the detriment of a surviving spouse.

INACCURACIES IN APPELLEE'S STATEMENT OF FACTS

In her brief, Appellee, Ethel Williams, sets forth numerous facts which are inaccurate and incorrect.

For instance, at Page 3 of Appellee's Brief, she maintains that as a result of Patricia McDaniel Langston's use of the drug Fen-Phen she developed leaking heart valves "which had aggravated her existing heart condition." Page 62 of the Trial Transcript does not support this conclusion. In fact, April Frierson, Patricia McDaniel Langston's sister, testified as follows:

Q. Were her medical conditions aggravated in anyway - the existing conditions that she had were aggravated as a result of the Fen-Phen?

A. They didn't appear to be worse. It was just a chronic condition. T. 62.

Appellee also states that Attorney Herbert Lee testified that he observed Patricia McDaniell had two black eyes when meeting with him, and that she appeared to be fearful of her husband, Mansfield Langston. Pages 3-4 of Appellees Brief. Attorney Lee was the only witness who made this assertion, and his testimony was impeached by the introduction of Exhibit D-3. This exhibit was a sworn affidavit given by Mansfield Langston against Attorney Lee and in support of two plaintiffs who were suing Attorney Lee in Circuit Court, for alleged mishandling of settlement funds. T. 245-246. Thus, proof was furnished by Mansfield Langston that clearly showed the bias and prejudice of Attorney Lee. Moreover, no other witness, not even Ethel Williams or April Frierson, Patricia McDaniell Langston's mother and sister, could corroborate Attorney Lee's assertion that he observed Mrs. Langston with black eyes. T. 99-101, 58-71.

Additionally, at Page 4 of her brief, Appellee states that Mansfield Langston had made threats to harm Patricia McDaniell Langston physically, and made constant accusations of infidelity. The alleged physical threat was testified to by Keith White, one of Patricia McDaniell Langston's surviving adult sons by her prior marriage. On cross-examination, it was clarified that this alleged physical threat occurred one time and that was before the parties married in 1994 – more than eight years before the deed in question was executed and nine years before the investment of the certificate of deposit. T. 362-63. Other than that self-serving comment by Keith White (a will beneficiary of Patricia McDaniell Langston), there is no proof in the record of any physical threats made by Mansfield Langston to Patricia McDaniell Langston at any time during their marriage.

1. Mansfield described their marriage relationship as "very good and loving." Appellee's brief at page 3.
2. "They trusted each other." Appellee's brief at page 3.
3. "Patricia helped him in his businesses in Inverness." Appellee's brief at page 3.
4. "They also went to church together." Appellee's brief at page 3.
5. "Mansfield would transport Patricia to doctors ... and assisted in providing her medications." Appellee's brief at page 3.
6. "Mansfield ... assisted in her care." Appellee's brief at page 8.
7. "Mansfield and Patricia had a close relationship." Appellee's brief at page 8.

claimed facts:

Appellee, in her brief to establish a confidential relationship, relies upon the following

**APPELLEE RELIES UPON FACTUAL ASSERTIONS AND POSITIONS THAT
ARE IN DIRECT CONFLICT WITH EACH OTHER**

September 4, 2003. T. 207.

Also, at Page 5 of her brief, Appellee, Ethel Williams, states that Patricia McDaniel Langston had never done banking with Guaranty Bank & Trust before receiving some settlement funds in 2001, and that Mr. Langston had been doing business with that bank well prior to Mrs. Langston. Not only is there no proof in the record to support this assertion, this is directly contrary to the testimony of Banker Paul Townsend, who clearly testified that he met both Mr. and Mrs. Langston at the same time, when they came in together as customers. T. 211. Thus, he had been doing business with them as customers for the same amount of time, and for about one to two years before the investment of the certificate of deposit on

relationship, where they trusted each other, attended church together, and helped each other

Thus, Appellee asserts that Mansfield and Patricia Langston had a close, loving

- A. "Patricia had two black eyes." Appellee's brief at page 3.
- B. "Appeared to be fearful of Mansfield." Appellee's brief at pages 3-4.
- C. Mansfield alienated Patricia from her closest friend. Appellee's brief at page 4.
- D. "Patricia appeared to be in fear and became quiet as Mansfield sat beside her." Appellee's brief at page 4.
- E. "Mansfield had made threats to harm Patricia physically." Appellee's brief at page 4.
- F. "[Mansfield] made constant accusations of infidelity...." Appellee's brief at page 4.

to establish a confidential relationship. Appellee, in her brief, asserts that:

Conclusions of Law) relied upon facts directly in contradiction with the foregoing assertions

Then, Appellee, in her brief (as well as the Trial Court in its Findings of Fact and

8. "They took care of each other and trusted each other." Appellee's brief at page 8.
9. "They also attended church together." Appellee's brief at page 8.
10. "Patricia sometimes helped Mansfield in his businesses in Inverness." Appellee's brief at page 8.
11. "Mansfield provided transportation for Patricia to go to doctors..." Appellee's brief at page 8.
12. "Mansfield and Patricia maintained joint bank accounts." Appellee's brief at page 8.

in their businesses. Appellee asserts that Mansfield provided transportation for Patricia to go to doctors and assisted in her care and that they shared joint bank accounts. Yet, despite their close, loving, and trusting relationship, where they shared so much, Appellee asserts that Patricia McDaniel Langston was fearful of her husband, that he alienated her from her friends, that he made physical threats to her, and that he constantly accused her of infidelity. A confidential relationship where the presumption of undue influence arises is, pursuant to the seven factors set out in Dabney, supra, one where a subservient party is seduced out of his/her property by the dominant party who has built up a relationship of trust and confidence. It is by guile, not force and intimidation, that the confidential relationship is established and the subservient party seduced to part with his/her property. In Appellee's efforts to attack Mansfield Langston, she has painted just the opposite picture of a confidential relationship where she seeks to establish not a loving and trusting relationship between Mansfield Langston and Patricia McDaniel Langston, but a relationship of fear and threats. Appellee cannot have it both ways. The overwhelming proof and truth in this record is that Mansfield Langston and Patricia McDaniel Langston had a very good marriage in which their relationship was close, loving, and based upon mutual confidence. They attended church together, worked together, and shared their property together. It was the type marriage that is to be encouraged by the law, and not a relationship whereby this couple's decisions to share their property with survivorship rights was the result of any undue influence.

**APPELLEE ERRONEOUSLY MAINTAINS THAT THE
SEVEN FACTORS OF IN RE ESTATE DABNEY, 740 So. 2d 915 (Miss. 1999)
APPLY IN A LONG-TERM, NON-CONTRIVED MARRIAGE**

Appellant and Appellee have a very strong difference of opinion as to whether the seven factors which are noted in Dabney, supra, apply in analyzing whether there is a confidential relationship in a non-contrived, long-term marriage. Appellant, Mansfield Langston, will not recite the authorities set forth in his original brief, but would point out that if Dabney were to be the law in long-term, non-contrived marriages, then husbands and wives in long-term marriages that are emotionally and financially prosperous could never have any confidence that inter vivos transfers made between them would withstand attack by the heirs or will beneficiaries of the first to die. Moreover, the reality would be that a practicing attorney would never be able to advise a husband and wife that their jointly owned assets with survivorship clauses would survive an after-death attack by the will beneficiaries or heirs-at-law of the first to die.

The factors noted by Appellee, Ethel Williams, in pages 8 and 9 of her brief relative to the relationship of Mansfield Langston and Patricia McDaniel Langston are exactly the factors that one would hope for in a good marriage. That is, one hopes for love, a close relationship, trust, and mutual confidence. These are not factors which should be used to the detriment of the surviving spouse to set aside jointly owned, marital property, with survivorship rights.

CONCLUSION

It is respectfully submitted that as a matter of law, the Trial Court committed reversible error in applying the seven factors of Dabney, supra, to the non-contrived, long-term marriage of Mansfield Langston and Patricia McDaniel Langston relative to their joint ownership with survivorship rights of their marital home and certificate of deposit. As a matter of law, the very factors upon which Appellee relies to establish an alleged confidential relationship, should, in this case, validate the jointly owned property with survivorship rights. These factors simply prove a good and close marital relationship, where the husband and wife relied upon each other, trusted each other, and shared their assets.

Moreover, for purposes of argument only, even if the seven factors of Dabney, supra, were to apply in this case, the proof of Patricia McDaniel Langston's intelligence and strong and independent will relative to her husband is so overwhelming, that as a factual matter this Court should reverse and render on the question of a confidential relationship. It was manifest error to find that, under the facts of this case, Patricia McDaniel Langston was a subservient person whose will was dominated by Mansfield Langston.

This Court should reverse and render a decision in favor of Mansfield Langston on both the certificate of deposit and marital home, holding that he is the sole owner of these assets under the survivorship clauses in the certificate and deed.

I, Lindsey C. Meador, do hereby certify that I have this day mailed by regular United States mail, a true and correct copy of the above and foregoing Reply Brief of Appellant to the following:

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RESPECTFULLY SUBMITTED on this the 8th day of July, 2009.

By: 
LINDSEY C. MEADOR, MSB NO. 

Honorable Janace Harvey-Goree
Chancellor
116 E. China St.
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SO CERTIFIED on this the 8th day of July, 2009.

LINDSEY C. MEADOR

