
IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-00016

ANGELA STOKES

APPELLANT

VERSUS

JACKSON COUNTY MEMORIAL PARK

APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI
CAUSE NO. 14,716

APPELLANT'S BRIEF

(ORAL ARGUMENT REQUESTED)

Russell S. Gill, MSB No. [REDACTED]
Shannon Ladner, MSB No. [REDACTED]

RUSSELL S. GILL, P.L.L.C.

638 Howard Avenue

Biloxi, Mississippi 39530

Telephone: (228) 432-0007

Facsimile: (228) 432-0025

ATTORNEY FOR APPELLANT

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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. The 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. Angela Stokes, Appellant
2. Donald P. Sigalas and DONALD P. SIGALAS, P.A., Attorney for Appellant
3. Russell S. Gill and RUSSELL S. GILL, P.L.L.C., Attorney for Appellant
4. Shannon Ladner and RUSSELL S. GILL, P.L.L.C., Attorney for Appellant
5. Jackson County Memorial Park, Appellee
6. Jamie Dent, Receiver
7. Joseph Q. White, Jr., Attorney for Receiver

Respectfully submitted, this the 12th day of August, 2009.

ANGELA STOKES, APPELLANT

BY: Shannon Ladner
for RUSSELL S. GILL, MSB No. [REDACTED]
SHANNON LADNER, MSB No. [REDACTED]
DONALD P. SIGALAS, MSB No. [REDACTED]

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STATEMENT OF THE ISSUES

Appellant Angela Stokes presents the following issues for the Honorable Court's consideration:

1. Whether the Chancery Court erred in denying Appellant Angela Stokes' claim of account against Jackson County Memorial Park.
2. Whether Angela Stokes' judgment is a priority claim on the Receivership of Jackson County Memorial Park.

STATEMENT OF THE CASE

I. Nature of the Case and Course of Proceedings Below

This appeal to the Supreme Court of Mississippi stems from an order entered by the Honorable D. Neil Harris, Sr., Chancery Court Judge for Jackson County, Mississippi, on November 21, 2008, wherein the Court denied the claim of account filed by Angela Stokes ("Stokes") against the receivership of Jackson County Memorial Park ("JCMP"). (R. at 5-12)¹; (R.E. at 48-55)². This matter was set for a hearing on October 20, 2008, whereupon counsel appeared before Chancellor D. Neil Harris, Sr. ("Chancellor Harris"), on behalf of Stokes' claim of account. (Tr. at 1-97)³; (R.E. at 66-162). Subsequent to the hearing on October 20, 2008, counsel appeared before Chancellor Harris on November 20, 2008, to make further arguments on behalf of Stokes' claim of account. (Tr. at 98-139); (R.E. at 163-204). The Court heard arguments of counsel regarding Stokes' claim of account, as well as arguments of counsel for additional claimants. (Tr. at 1-139); (R.E. at 66-204).

After taking the arguments of counsel under advisement, Chancellor Harris stated his decision in the form of the aforesaid Order dated November 21, 2008, and denied Stokes' claim of account. (R. at 5-12); (R.E. at 48-55). Subsequent to the Court's entry of its Order, Stokes timely filed her Notice of Appeal on December 19, 2008. (R. at 13-14); (R.E. at 56-57).

¹ "R." is the abbreviation used by Appellant Angela Stokes to cite to the page number of the Record prepared by the Chancery Court of Jackson County, Mississippi.

² "R.E." is the abbreviation used by Appellant Angela Stokes to cite to Appellant's Record Excerpts, which are submitted herewith pursuant to M.R.A.P. 30.

³ "Tr." is the abbreviation used by Appellant Angela Stokes to cite to the page number of the Transcript Excerpts of proceedings on October 20, 2008, and November 20, 2008.

II. Statement of the Facts

Appellant Angela Stokes ("Stokes") was involved in an automobile accident with an employee of the subject cemetery, JCMP, owned by Nell Morgan, individually. (Tr. at 9); (R.E. at 74). As a result of said automobile accident, Stokes suffered a severe head injury, which resulted in permanent injuries, and thereafter filed suit against Bonny F. Wilson and Nell Morgan, d/b/a Jackson County Memorial Gardens Cemetery, in the Circuit Court of Jackson County, Mississippi, Cause No. 2004-00,310(3). (R. at 2-3); (R.E. at 46-47) and (Tr. at 9); (R.E. at 74). The Court ultimately entered a Final Judgment against said defendants after a trial on the matter, wherein Nell Morgan appeared, and stated the following, in pertinent part:

THIS MATTER having come before the Court, sitting without a jury, for trial, and the Plaintiff being and appearing with counsel of record; and the Defendant, Bonny F. Wilson, upon being called in open court failed to respond or otherwise appear and judgment by default being entered against her; and the Defendant, Nell Morgan, d/b/a Jackson Memorial Gardens Cemetery, appearing pro se; and it appearing to the Court that a clerk's entry of default was entered against the Defendant, Nell Morgan, d/b/a Jackson County Memorial Gardens Cemetery, on August 4, 2006, for failure to answer or otherwise defend the Complaint exhibited herein; and the Court having considered the evidence submitted herein, both oral and documentary, finds that the Plaintiff, Angela D. Stokes, is entitled to have and recover damages of and from the Defendants, jointly and severally, in the sum and amount of FIVE-HUNDRED, TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$525,000.00).

(R. at 2); (R.E. at 46).

Upon obtaining the aforesaid judgment, dated March 7, 2007, Stokes enrolled the judgment with the Court. (Tr. at 123); (R.E. at 188). Thereafter, Joseph Q. White, Jr. ("White"), Attorney for Receiver, notified undersigned counsel regarding the Receivership of Gulf South Perpetual Care Cemetery/Jackson County Memorial Park, whereupon undersigned counsel filed a Claim of Account in the amount of \$525,000.00 on September

19, 2008. (R. at 1); (R.E. at 45). Chancellor Harris held a hearing on October 20, 2008, which was scheduled for the Court to address each of the Claimants regarding the Receivership for JCMP, and stated, "this is a receivership in the nature of a bankruptcy. This court inherited this perpetual care cemetery because it is insolvent." (Tr. at 4); (R.E. at 69). The Court heard from counsel for Stokes, Donald P. Sigalas ("Sigalas"), who made arguments in support of Stokes having a viable priority claim. (Tr. at 10); (R.E. at 75). The Court stated the following regarding Stokes' claim:

The Court finds that the \$525,000 judgment of Angela Stokes, dated March 7th, 2007, in the Circuit Court of Jackson County, is not a valid judgment against Gulf South Perpetual Care Cemetery d/b/a Jackson County Memorial Park or any real or personal property or assets held by the Chancery Clerk of Jackson County, Mississippi; however, The Court does find that the judgment of Angela Stokes, dated May 7th, 2007, is still a valid judgment against Nell Morgan.

(Tr. at 77); (R.E. at 142). The Court gave the following reasoning:

The real property is indexed as a cemetery and platted and dedicated as such. The real and personal property was approved as a perpetual care cemetery by the supervisors of Jackson County, Mississippi and the City of Pascagoula. The real and personal property is tax exempt as a perpetual care cemetery. The real and personal property used for the cemetery is in the nature of a trust and operated for trust purposes for the use and benefit of all of those who have such property for burial or for those previously interred. The perpetual care cemetery has received all of the benefits of a perpetual care cemetery allowed by law, including tax exemptions. Nell Morgan had no right to use the property as her own, but only as a perpetual care cemetery. The perpetual cemetery property was not for private use by Nell Morgan and she only had limited control. The real and personal property of the perpetual care cemetery is now in receivership in Jackson County Chancery Court and is not subject to the foregoing judgments.

(Tr. at 77-78); (R.E. at 142-43).

In response, Stokes' counsel presented additional arguments to the Court, and the Court suspended its ruling until the reset hearing date of November 20, 2008, for further investigation regarding the title to the subject cemetery property. (Tr. at 95); (R.E. at 160).

When the interested parties reconvened on November 20, 2008, Stokes' counsel presented further arguments in support of her claim. Notwithstanding the arguments of counsel and Stokes' enrolled judgment, Chancellor Harris nonetheless denied Stokes' claim at the conclusion of the hearing on November 20, 2008 (Tr. at 131); (R.E. at 196), and memorialized his decision in an Order dated November 21, 2008 (R. at 5-12); (R.E. at 48-55).

SUMMARY OF THE ARGUMENT

The trial court erred in denying Angela Stokes' claim of account on the Receivership of Jackson County Memorial Park. Angela Stokes obtained a judgment in Jackson County Circuit Court against Nell Morgan, d/b/a Jackson County Memorial Gardens Cemetery. Nell Morgan is the owner of Jackson County Memorial Park. Upon appearing in court on October 20, 2008, to present Angela Stokes' claim, the Court stated its intention of denying the claim. After further research into the cemetery property, the Court held a hearing on November 20, 2008, wherein the parties hereto appeared before the Court, and the Court ultimately denied Angela Stokes' claim of account.

Angela Stokes has a viable priority claim on said Receivership, and the Court's denial of the claim was manifestly wrong and is reversible error.

ARGUMENT

I. The Chancery Court erred in denying Appellant Angela Stokes' claim of account against Jackson County Memorial Park.

In *David M. Cox, Inc. v. Pitts*, the Mississippi Court of Appeals stated the following regarding standard of review: "On review, we generally defer to a chancery court's findings of fact unless [the findings] are manifestly wrong or clearly erroneous. We use a de novo standard of review when examining questions of law decided by a chancery court." *David M. Cox, Inc. v. Pitts*, No. 2008-CA-00499-COA, 2009 WL 2152278, at *5 (Miss. Ct. App. July 21, 2009)(quoting *Bailey v. Estate of Kemp*, 955 So.2d 777, 781 (Miss. 2007)(internal citation omitted)). The *Pitts* Court went on to quote the Mississippi Supreme Court, and stated the following:

Where the Chancellor was the trier of facts, his findings of fact on conflicting evidence cannot be disturbed by this Court on appeal unless we can say with reasonable certainty that these findings were manifestly wrong and against the overwhelming weight of the evidence. Even if this Court disagreed with the lower court on the finding of fact and might have arrived at a different conclusion, we are still bound by the [C]hancellor's findings unless manifestly wrong.

Id. at *8 (quoting *In re Extension and Enlarging of Boundaries of the City of Laurel, Mississippi*, 922 So.2d 791, 795 (Miss. 2006)). The Court further stated:

The Chancellor's role as fact finder parallels that of a juror.... [A]s [the] sole judge [] of the facts in this case, [he] determine[d] what weight and what credibility [would] be assigned the testimony and supporting evidence of each witness in this case. [He][was] required to use ... good common sense and sound, honest judgment in considering and weighing the testimony of each witness. A Chancellor is afforded the favor of observing the demeanor of witnesses and he is called upon to exercise his discretion, as we similarly mandate jurors.... [T]his Court held, the credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation, are primarily for the chancellor as the trier of facts. [It was] further stated that if the issue is one of fact, the Chancellor's decision *will not be disturbed unless it is manifestly wrong*. As with any finder of fact, he is entitled to consider the interests witnesses may have in the outcome.

Id.

In the case *sub judice*, Stokes avers that the findings of the lower court are manifestly wrong and erroneous. As set forth herein above, the Court relied upon the fact that the subject property is a perpetual cemetery, tax exempt, and is, therefore, not subject to Stokes' claim⁴. (Tr. at 77-78); (R.E. at 142-43). The Attorney for the Receivership argued that although the Court has the power to protect the cemetery, "the Court would have the inherent power to use [the unplatted part] for purposes of satisfying the creditors." (Tr. 125); (R.E. at 190). The Court did not accept this argument due to the fact that the unplatted portion of the subject property had traditionally been tax exempt, along with the platted portion. However, in an opinion from the Mississippi Attorney General, the Attorney General held that the Court has the power to dissolve a trust if it is necessary, which indicates that the lower court had great powers in the instant case to satisfy creditors, but it chose not to do so. Op. Att'y Gen. 2001-0606 (Sept. 28, 2001). In fact, the Court stated, "[t]he fact that part of it is platted and part of it is not platted is of no moment in this Court's mind." (Tr. at 127); (R.E. at 192).

The Court acknowledged in the hearings on October 20, 2008 and November 20, 2008, that there is very little case law to provide direction in the instant situation; therefore, the Attorney for the Receivership stated, "Judge, I have recommended that we give this to the attorney general's office and let them handle it." (Tr. 103); (R.E. at 168). The Court did not take this recommendation.

⁴ The attorney for the receivership argued the inherent power of the Court to protect JCMP, and cited *Hengen v. Perpetual Care Cemeteries, Inc.*, as authority for the case *sub judice*, in that the Mississippi Supreme Court held, "[c]ourts of equity have inherent power to protect trusts and may order a sale of part of the trust property, if such action is necessary for execution of the trust purposes." 230 So.2d 795 (Miss. 1970).

In response to the Court's distinction of Stokes' judgment as against Nell Morgan d/b/a Jackson County Memorial Gardens Cemetery, and not against JCMP, Stokes' counsel made arguments at the November 20, 2008, hearing regarding Nell Morgan's individual ownership of the cemetery property, and particularly an unplatted section of the subject property, which should not be included in the receivership, and should be subject to Stokes' judgment. (Tr. at 117-118); (R.E. at 182-183). Stokes' judgment is against Nell Morgan, individually. (R. at 2-3); (Tr. at 46-47). As a result, Stokes' judgment encumbers all property owned by Nell Morgan, including the unplatted portion of the subject cemetery property, thus, "[i]t has nothing to do with this receivership, and you cannot boot strap it in here by saying Nell Morgan owns it." (Tr. at 117-18); (R.E. at 182-83). On the one hand, the Court relied on the named judgment debtor as Nell Morgan d/b/a Jackson County Memorial Gardens Cemetery, and not JCMP, to support its denial of the claim, and on the other hand relied on the fact that Nell Morgan owns the entirety of the property to include it all in the receivership. This reasoning is inconsistent and erroneous. If Nell Morgan owns the property, not JCMP, and Stokes' judgment is against Nell Morgan, it is impossible for the Court to deny her claim because it "fails to name Jackson County Memorial Park as the real party in interest." (Tr. at 128); (R.E. at 193). Nell Morgan is the real party in interest.

The Court relied, in part, on Miss. Code Ann. § 27-31-1, which states, "The following shall be exempt from taxation: (a) All cemeteries used exclusively for burial purposes." Miss. Code Ann. § 27-31-1(a) (1972). The Court used the tax-exempt status of JCMP to deny Stokes' claim against it, including the portion that is not platted for burial purposes. In his argument to the Court, Sigalas stated the following in support of Stokes' claim:

I can find no authority whatsoever for a court in a receivership to disallow a judgment that is a lien against the properties in the receivership.

But another distinction that I think is very significant is all of this property owned by Nell Morgan is not part of this cemetery, as Mr. White pointed out. He's got a picture of it, an aerial photograph, and he refers to it by a parcel number, Parcel Number 41230161.00 has nothing to do with this cemetery. That's a piece of property that has never been platted. It's never had [anything] to do with this cemetery. It's just adjacent to it. They're not afforded any protection by virtue of being next door to a cemetery.

(Tr. at 124); (R.E. at 189) and (R. at 22); (R.E. at 65).

The Court went on to support its denial of Stokes' claim by finding that Nell Morgan holds all of the subject real estate "in a de facto trust for the benefit of the public." (Tr. at 129); (R.E. at 194). Nonetheless, as cited above and set forth by the Attorney for the Receivership, the lower court had the inherent authority to dissolve said "de facto trust" for the purposes of satisfying judgment creditors. *Hengen*, 230 So.2d at 798. It was established by counsel in the hearings on this matter that there is an unplatted portion of cemetery property. The Court simply chose not to use its inherent power to satisfy Stokes' claim.

In light of the foregoing authority, it is clear that the denial of Angela Stokes' claim in the instant matter was reversible error. As such, the decision of the trial court must be reversed, and the case remanded back to the trial court.

II. Angela Stokes' judgment is a priority claim against the Receivership of Jackson County Memorial Park.

Stokes' counsel set forth arguments in favor of her judgment as a priority claim of account. In *Humphreys v. Stafford*, the Mississippi Supreme Court addressed preferential claims of a receivership, and held that judgments are declared preference claims. 13 So. 865, 865 (Miss. 1893). Miss. Code Ann. § 11-7-191 states the following:

A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after the rendition of the judgment.

Miss. Code Ann. § 11-7-191 (1972).

Furthermore, due to the lack of Mississippi law regarding priority in receiverships, the undersigned directs the Court to the Fletcher Cyclopedia of the Law of Corporations, § 7945, which states: "Lien holders ordinarily are entitled to a priority over unsecured creditors in the distribution of receivership assets. Judgment creditors ordinarily are entitled to a preference over unsecured or simple contract claims, provided the judgment was procured before the receivership." 16 Fletcher Cyc. Corp. § 7945. It is clear from the law set forth herein that Stokes' judgment should be given preference over all other unsecured creditors.

CONCLUSION

The trial court erred in denying Angela Stokes' claim of account on the Receivership of Jackson County Memorial Park. Angela Stokes has a viable priority claim on said Receivership, and the Court's denial of said claim is reversible error.

For the reasons stated herein, Appellant Angela Stokes respectfully requests this Court to reverse the decision of the Chancery Court.

Respectfully submitted, this the 12th day of August, 2009.

ANGELA STOKES, APPELLANT

BY:

Shannon Ladner

RUSSELL S. GILL, MSB No. [REDACTED]

SHANNON LADNER, MSB No. [REDACTED]

DONALD P. SIGALAS, MSB No. [REDACTED]

CERTIFICATE OF SERVICE

Pursuant to M.R.A.P. 31(c), I hereby certify that I have delivered, via Unites States first class mail, the original and three (3) true and correct copies of the above and foregoing Appellant's Brief to Betty W. Sephton, Clerk, Mississippi Supreme Court, Post Office Box 249, Jackson, Mississippi 39205-0249.

I further certify that I have this date delivered, via Unites States first class mail, a true and correct copy of the above and foregoing Appellant's Brief to the following:

Joseph Q. White, Jr., Esq.
Attorney at Law
Post Office Box 1868
Pascagoula, Mississippi 39568

Honorable D. Neil Harris, Sr.
Jackson County Chancery Court
Post Office Box 998
Pascagoula, Mississippi 39568

I further certify that, pursuant to M.R.A.P. Rule 28(m), I have also mailed an electronic copy of the above and foregoing on an electronic disk and state that this brief was written on Microsoft Word format.

SO CERTIFIED, this the 12th day of August, 2009.

for Shannon Ladner

RUSSELL S. GILL
SHANNON LADNER
DONALD P. SIGALAS

Russell S. Gill, MSB No. [REDACTED]
Shannon Ladner, MSB No. [REDACTED]
RUSSELL S. GILL, P.L.L.C.
638 Howard Avenue
Biloxi, Mississippi 39530
Telephone: (228) 432-0007
Facsimile: (228) 432-0025

Donald P. Sigalas, MSB No. [REDACTED]
DONALD P. SIGALAS, P.A.
912 Convent Avenue, Suite C
Post Office Box 1262
Pascagoula, Mississippi 39568
Telephone: (228) 769-6935
Facsimile: (228) 769-6931