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IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM T WHITE

APPELLANT

V.

CAUSE NO.

209-CA-00537

**MISSISSIPPI DEPARTMENT OF HUMAN
SERVICES STATE OF MISSISSIPPI**

APPELLANT'S RESPONSE TO APPELEE'S BREIF

Mr. Holmes response to White's first point on effective date of order

Mr. Holmes would contend that because White was present on the day the court handed down its bench opinion and that because White was present he had to have heard and remembered all of the ruling announced by the court.

White would offer that if the courts were relying on defendants and plaintiff to simply remember all that they heard and orders given by the court then there would be no need to have the orders put into writing. For Mr. Holmes to even begin to offer unto this court a recollection of what White did or did not hear in court on February 19, 2008 is ludicrous. The courts ruling, was transcribed to 22 pages and upon hearing that Ms. Farrell would be given custody of the children, I did not hear anything else the court said. This ruling was nothing close to what my attorney had prepared me for and I was stunned to put it lightly.

Mr. Holmes would suggest, that "one would naturally infer that the next first of the month would be March 1, 2008".

After spending hundred of hours and thousands of dollars on attorneys one would think that in concluding such an undertaking, that the court as well as the attorneys involved would take the time to eliminate any need for one to infer anything. Expecting

clients to have to “infer” after these proceedings does not serve the clients and defeats the purpose pursuing litigation.

Mr. Holmes is attempting to down play the importance of preparing, signing and filing of an order in his use of the word “mere” in his position that, “it would be grossly unfair to steal two months of the children’s support, due to a **mere delay in the preparing of the Court Order.**

White contends that he has over paid support of more than \$12,000 and that Ms. Farrell presented unto the Chancery Court that she was unemployed. Due to the fact that Ms. Farrell was unemployed and had been for 8 years, the court ruled that White would be allowed to claim the children as dependants on his tax returns and the fact that she was unemployed and a stay at home mom was the basis for awarding custody to Ms. Farrell. The facts are that MS. Farrell claimed both children for the tax year 2007 despite the courts ruling and the fact that MR. White had joint custody of both children **all** of 2007. If anyone has stolen anything from these children it is Ms. Farrell and the Chancery Court of Pike County. The money that White did not receive from the IRS would have been used in support of the children and this amount far exceeds the two month increase totaling \$340 that MR. Holmes claims I am attempting to steal.

Mr. Holmes made comment as to he and the Family Master had a difference of opinion on the exact date that the support should increase.

This is just another example how officers of the court can and have misunderstood the Order in question. The Laws are clear that a party can not be held in contempt when an order is clearly ambiguous.

MR. Holmes argues that the filing of the order is “merely a ministerial act required by Rule 58 of the Rules of Civil Procedure” and that the failure of Ms.

Farrell's attorney Mark Holmes, to timely prepare the order does not effect the dates for the increase in support.

White would point out that even in the Original filed DHS petition Mr. Holmes has hand written that the increased support payment were to have increased on April 14, 2008. When contacting Mr. Holmes in November 2008 concerning our hearing date of December 11, 2008, White questioned Mr. Holmes as to when an order was to go into effect and his response was "It is the day the judge signs the order". Now Mr. Holmes is arguing a different position. These different positions provide additional evidence as to the ambiguity of the order.

Mr. Holmes refers to Rule 5.04 of the Uniform Chancery Court Rules and states it would be a misapplication of Rule 5.04 to allow it to be used as a technicality to negate an otherwise valid verbal ruling, when the delay was due to a procrastinating attorney.

White would offer that the Rule 5.04 is there to protect against situations just like the one we are now arguing. Had counsel for both parties and the residing judge followed the rules as described we would not be having these discussion now. The Rules give specific time periods for preparing the order as well as giving the court instructions as to what should be done when the time periods are not being met and no request for additional time have been made. The court and the attorneys involved erred in not following Rule 5.04 of the Uniform Chancery Court Rules.

White finds it ironic that Mr. Holmes would call Mr. Mark Holmes a procrastinating attorney, when in fact Mr. Holmes procrastinated in issuing subpoenas for our December 11, 2008 hearing date and when he failed to respond to this appeal before this court. Mr. Holmes claimed to have not been getting notices of the appeal due to the wrong address. I would respectfully request that the court review all notices of service by

White and the Chancery Clerk of Pike County upon MR. Holmes and DHS. The court will find that not only were all notices sent to the correct address but in fact the appellants brief was hand delivered and receipt was verified via phone two days later.

Mr. Holmes requested not to be sanctioned but the facts are he misrepresented the facts to this court in his attempts to make excuses as to why he procrastinated in his response to this appeal.

Mr. Holmes states that the verbal opinion of the order on February 19, 2008, is reflected in the order that was signed on April 14, 2008 and filed on April 18, 2008.

White would point out that while the order should have reflected the courts bench opinion as read, the facts are that changes were made to this order by Mark Holmes.

Mr. Holmes would make comment that White should have contacted his attorney when the order sign on April 14, 2008, did not perfectly recite the February 19, 2008, hearing.

White would like to state that in March 2008, when White was inquiring as to the hold up of the order, White did in fact instruct his attorney not to sign the order when the attorney received it. White would also like to state that he was not allowed to review the order prior to the court signing it and did not receive a copy until the first week of May 2008.

Mr. Holmes seems to like to offer unto this court, actions by White of which he has no knowledge of.

It is DHS's position that White should not be allowed to seize upon a possible ambiguity, when this ambiguity did not exist earlier.

White would point out that MR. Holmes recognized that the order was ambiguous

in his letter to the Family Master as well as in his response to White's appeal. Ambiguity in this order has existed from day one and will continue unless the order is readdressed. The facts are that White had chosen to let things slide and has tried to work with Ms. Farrell to iron out any ambiguous language but Ms. Farrell has refused and instead of discussing these matter chose to involve DHS, which is why we are here today.

White contends that the Family Master erred in his calculations first in considering the \$250 August payment in question. A motion for contempt which included this payment was before the court in December 2007 and in the February 19, 2008, ruling. White was found not to be in contempt. While the court did not specifically address each and every item in the motion it did address the motion. White can only state that if White is going to be held responsible for the \$250 in question then the court should also use the same precedent to give him credit for the more than \$12,000 in over payments he made for support.

White states that the April 18, 2008 filing date is the actual effective date of the order and that had Ms. Farrell's attorney prepared the order in a timely manner the possibility of the order being ambiguous would be less. White would contend that the additional \$170 in monthly support was not due until May 1, 2008. White feels like the Family Master erred in this area by \$340.

Mr. Holmes and the Family Master are taking the position that the right to claim the children for the 2007 tax year was a first come first serve basis.

For Mr. Holmes and the Family Master to take the position that just because MS. Farrell filed her returns prior to White and the Order on April 14, 2008, is an injustice. While the court should have addressed the 2007 tax year it did not and one can only suggest that the court felt no need to be that specific due to the fact that Ms. Farrell

claimed no taxable income on her 8.05 for 2007, as presented to the court and that Ms. Farrell had not been employed by her own choosing for 8 years. White would request that the court either order MS. Farrell to refile her 2007 returns without claiming the two children or give White credit toward his support payments, for the loss he incurred by not being able to claim the children.

Mr. Holmes contends that the Family master was correct in not allowing White a setoff against support payment for money he paid for extracurricular activities and school expenses.

White contends that MS. Farrell did not deny that these payments were made when the two parties were before the Family Master. White would also like to point out that White has no legal custody of the two children and that in order for the children to participate in the activities in which these expense were incurred, Ms. Farrell not only had to approve but also had to transport or allow someone to transport the children to the ball games. White would offer that Ms. Farrell has always looked to White to provide athletic equipment and support for all sports the children participate in. Records of such payments even for her son Mikey of which White supported for 8 years are reflected in the Chancery Court.

Conclusion

1. White would request that this court reverse the contempt charge found by the Family Master of Pike County.
2. Find that White's payments for fees and equipment for athletics for the children be credited to White.

3. Find that the effective date for the increased child support payments, to be May 1, 2008.
4. Order that White be allowed to claim children on 2007 tax returns as the court intended.
5. Find that the August 2007 payment of \$250 to be offset with over payments made that are on record with the Chancery Court of more than \$12,000.
6. Request Chancery Court to review the over payments made as entered in to the Chancery Court of Pike County and apply any and all applicable payments as credit to White for future support.

Respectfully submitted,

By:



Pro Se William T. White

William T White
1054 Murray Rd.
McComb, Ms. 39648
601-248-1759
whitesandsrealty @cableone.net

CERTIFICATE OF SERVICE

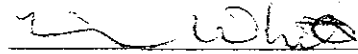
I certify that I have mailed by U.S. Mail, postage prepaid, the above Appellant's Response to Appellee's brief to:

Russell Holmes
P.O. Box 665
McComb, Ms. 39648

Hon. Debbra K. Halford
Chancellor 4th Judicial Dist.
P.O. Box 575
Meadville, MS. 39653

Hon. Lem Mitchell
Family Master, Pike County Chancery Court
P.O. Box 230
Magnolia, MS. 39652

on this the 10th day of November, 2009.

A handwritten signature in dark ink, appearing to read "W. T. White", is written over a horizontal line.

William T White