

No. 2009-CA-00785

**IN THE SUPREME COURT OF
MISSISSIPPI**

**STEVEN J. BELLINO, II,
Appellant**

v.

**MARGARET BELLINO,
Appellee**

**Appeal from the Chancery Court of
Forrest County, Mississippi**

APPELLANT'S REPLY BRIEF

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INTRODUCTION

We come to this action due to the Trial Court's mislabeling of the AGE account as "Wal-Mart Stock" in the Court's Final Judgment. The Appellee and her thirty-two page brief postures many arguments and questions, except for the one argument that goes to the heart of this matter, and that is outcome determinative. And the question is, to whom does the AGE account belong to? The simple answer is Steve. The Trial Court realized the clerical mistake and mislabeling in the Final Judgment of Divorce, and half-corrected the problem by granting Appellant's Rule 60(a) Motion to Correct Clerical Mistake, but then the Trial Court was mistaken that Steve was able to access the AGE account, and have at his disposal after the divorce.

I. That the AG Edwards (hereinafter referred to as "AGE") funds were the rightful property of Stephen Bellino as designated by the Court in the Final Judgment of Divorce.

A. The AGE funds were purchased with the inheritance proceeds of Stephen Bellino, and therefore his sole property.

In the Memorandum Opinion of the court dated March 30, 2006, the Court stated that "the Wal-Mart stock valued at \$146,000.00 which was purchased with funds received by Plaintiff as an inheritance from his father (trial exhibit 18)" R.E. #3 (the court mistakenly labeled the funds as "Wal-mart stock"). Trial exhibit #18 was actually an AGE account statement (it was later adjudicated by the court in its' Order of April 10, 2009, that where the court was referring to "Wal-mart stock", the court meant the AGE account. On May 2, 2006, in the Final Judgment of Divorce,

paragraph 8 “that Steve’s Wal-Mart account was purchased with his inheritance proceeds and is not marital property subject to division here, and shall remain in Steve’s sole ownership, use and possession.” R.E. #7. The court clearly intended for Stephen J. Bellino (hereinafter referred to as “Steve”) to receive these funds, and further, that Margaret Bellino (hereinafter referred to as “Appellee”) was to retain no interest, use, possession or ownership of the funds. Appellee has never disputed that the funds she is now making a claim to, are the funds that Steve received as inheritance from his father.

B. That the April 10, 2009, Order clarified that the AGE funds were the property of Stephen Bellino.

After a fury of litigation as to the ownership of the funds by the Appellee, the court never retreated from its decision that the AGE account was rightfully Steve’s. Steve’s Estate filed a Rule 60(a) Motion to Correct Clerical Mistake, which was granted by the court, and the court recognized that it had mistakenly referred to the AGE account as “Wal-Mart stock” in the Memorandum and the Final Judgment of Divorce. R.E. #83-85. The trial court had never ruled on Steve’s Motion to Amend or Clarify because of his untimely death. For this reason, the funds were never at Steve’s disposal subsequent to the divorce as the trial court has stated. From the moment Steve Bellino was awarded the AGE account in the divorce action, until the day of his death, Steve was never able to gain access of those funds, and therefore, the funds were never “at his disposal” as the court stated.

II That Stephen Bellino Made Every Effort to Assert His Control Over and Ownership of the AGE Account Prior to his Death.

A. Steve understood from the Court ruling that the AGE account was awarded to him.

That Steve's actions signify that he had no intention of sharing the AGE account with the Appellee subsequent to the divorce. Once the funds were awarded to Steve in the Final Judgment of Divorce, Steve contacted AGE and forwarded the Final Judgment of Divorce, so that he could exercise sole ownership and possession over the account. Upon finding that the language of the Final Judgment was not sufficient to allow Steve to exercise control over the account, (AG Edwards noticed that the Final Judgment nor the Memorandum Opinion did not specifically address the AGE account in a way the AG Edwards felt comfortable in releasing the funds and/or changing the account over to Steve). Steve filed a motion with the court to clarify the language so that he could exercise control over the AGE account. R.E. #11-13. Unfortunately, this motion was never heard due to Steve's tragic death, and this is where from the litigation began. The Appellee later realized the opportunity of this circumstance, and some eleven (11) months after Steve's death, begins to file a claim for the AGE account. The Appellee did not specifically mention the AGE account in her response to Steve's Motion to Clarify or Amend, nor did she raise an issue of "a non-reported asset" of Steve in her June 16, 2006, response. R.E. #14-16.

B. That Appellee was aware from the Court ruling that she retained no interest in the AGE account subsequent to the divorce.

The Appellee's filing of her Motion to Alter or Amend Judgment on in the divorce action stated that the reason she needed relief from the court was because that since Steve's death, her alimony payments had ceased, and that she stated she was no longer able to meet her living expenses. This begs the question of why didn't Appellee make a prior attempt to access any funds from the AGE account if she truly believed she had any interest in the funds. There is no evidence of such an attempt by Appellee, because Appellee was fully aware during the entire time, that the AGE funds belonged solely to Steve. In the course of the divorce proceedings, Steve was asked by Appellee in his deposition if the funds mentioned on Appellee's Rule 8.05 Financial Disclosure, where in fact, the funds Steve used with his inheritance, to which Steve responded, "Yes". R.E. #71-74. Approximately eleven months after the death of Steve, the Appellee retained new counsel, and saw the opportunity to gain access to the funds, by first stating that Steve had hidden the asset during the divorce action, and therefore, since it was a tenants in common account, she should receive not less than her fifty percent. R.E. #86-90. Then later claimed that Steve did not necessarily hide the AGE account as an asset, but that upon his death, she should get 100% of the funds because she is the rightful survivor. Neither is true. Steve did not hide the asset. The AGE account was

considered by the Court and Trial Exhibit #18 is in fact the AGE account that was mislabeled. R.E.#31-35. The mislabeling of the account hindered Steve's ability to access, transfer, sell and/or remove Appellee's name from the account. Just because Steve was unable, due to the mislabeling of the account that was awarded to Steve, the Appellee should not be allowed to take this opportunity (the death of Steve) to claim the benefit of the account that the Court awarded to Steve solely.

Steve, or his Estate, never gained control of the AGE funds until the trial court granted Steve's Rule 60 (a) Motion to Correct Clerical Mistake, but in that same Order granting the clerical mistake, the court awarded the AGE account to Appellee under the wrong assumption that ownership of the funds was at Steve's "disposal subsequent to the divorce". From the time the Memorandum Opinion and Final Judgment was issued, Steve never had the AGE account at his disposal because of the AGE account being mistakenly referred to as "Wal-mart stock" by the court. Had the clerical mistake not been made, Steve would have been able to access the funds, and change the account to him being sole owner. However, this was not the case. The clerical mistake was made, and Steve tragically died before the error could be corrected.

III Appellant's Rule 60 (a) Motion was not time barred.

Rule 60 (a) of the Mississippi Rules of Civil Procedure states that, "Clerical mistakes in Judgments, Orders, or other parts of the record and errors

therein arising from oversight or admission may be corrected by the court at any time on its own initiative or on the motion of any party. . .” state that Appellant’s Rule 60 (a) Motion was not a direct attack on the Court’s Judgment, but simply to seek clarification to correct the court’s clerical mistake. *R. N. Turnbow Oil Investments vs. McIntosh* 873 So. 2d 960 (Miss. 2004) In *Turnbow Oil Investments vs. McIntosh*, this Court stated that Rule 60 (a) provides relief from clerical mistakes by allowing the court to amend decrees and correct any clerical errors irregardless of the passage of time. The Court goes on to define a clerical error as an error resulting from a small mistake or inadvertence, and not from judicial reasoning or determination. Such is the case at hand, that the clerical error corrected by the trial court on April 10, 2009, was not a substantial error but rather a clerical error in mislabeling by the trial court. Since the error in question was a clerical one rather than a substantial one, the trial court’s granting of Appellant’s Rule 60 (a) Motion was proper.

IV As a Matter of Equity, the AGE Account Should Not be Awarded to Margaret Bellino.

Steve and Margaret Bellino had a very contentious divorce. Steve was granted a divorce from Appellee on the grounds of uncondoned adultery. The court also found that Appellee had berated Steve about sexual inadequacies. R.E. #2. Steve was awarded his AGE account because the court determined those funds

not to be marital property since the account was opened with inheritance proceeds received by Steve from his father. In its Memorandum Opinion and Final Judgment, the court mistakenly referred to the AGE account as “Wal-mart stock”, and this kept Steve from gaining sole use and ownership of the funds as the court had intended. Steve promptly filed a Motion to Alter or Amend Judgment to have the error corrected. Before his Motion could be heard, Steve died tragically. The trial court later decided that the court had in fact mistakenly referred to the AGE account as “Wal-mart stock”, and again, awarded the funds to Steve posthumously. R.E. #83-85. However, the court erred in stating that “present ownership” of the funds would be determined by the AG Edwards account agreement since the account was at Steve’s disposal subsequent to the divorce. Steve could not without a Court Order alter, transfer, or liquidate the funds in the AGE account. This is what Steve was trying to do with his Motion to Alter or Amend Judgment. The court is mistaken as to Steve’s abilities to exercise his control of the funds. These funds were rightfully Steve’s, the court used the language of “sole ownership, use and possession” and the death of Steve did not change the ownership of the funds to give Appellee an interest in those funds. But for a clerical mistake, Steve Bellino was not able to access, transfer, sell or liquidate the funds, and therefore, the funds were never at his disposal or control as stated by the trial court. That Steve prior to his death not only expressed his intent but made contact with AGE and had to come to the court in

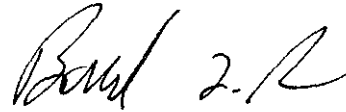
order to get an order from the court to exercise his rightful ownership of the funds in the AGE account. Appellee states that Steve failed to change the account prior to his suicide when in fact Steve was doing everything that he could to change the account by contacting AGE and further by coming and filing his Motion to Alter or Amend Judgment before the court. The funds were never at Steve's disposal because the clerical mistake in judgment prevented Steve from altering or accessing the account in any way.

CONCLUSION

In Conclusion, the Appellees are playing their own "shell game" by not admitting the facts that exist in this case. That being, the court and both parties acknowledged the AGE Account in the divorce action. The confusion came as a result of Steve calling the AGE account, the "Wal-mart account". Steve listed these funds in his Financial Declaration, and his Interrogatory response, and Margaret listed the account in her Financial Declaration as well as asked Steve about the account in his deposition. The court even acknowledged the account and awarded it solely to Steve. The court just mislabeled the account, and thus here we are today. Also, the court clearly identified the account when referring to Trial Exhibit #18 as Steve's "Wal-mart Stock". As mentioned before, Trial Exhibit #18 was the AGE account statement and balance. R.E. #31-35. This account was never hidden from the court.

But for the trial court's clerical mistake, Steve would have been able to access, alter, liquidate, etc. the AGE account, but he could not do that since the account was never at his disposal as the trial court mistakenly ruled. For these reasons, the Appellants respectfully ask that this Court reverse the trial court's ruling awarding the AGE account to Appellee.


Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brandon L. Brooks", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, BRANDON L. BROOKS, certify that today, May 20, 2010, a copy of the reply brief for appellant, a copy of the record excerpts, and the official record in this case, consisting of one volumes of the pleadings, one volume of transcript, and one volume of supplemental record, were served upon Hon. Judge James Thomas, Jr. Chancery Court Judge, P.O. Box 807, Hattiesburg, MS 39403; Hon. Glenn White, Attorney at Law, P.O. Box 672, Petal, MS 39465; Hon. Sam McHard, Attorney at Law, 32 Millbranch Road, Suite 50, Hattiesburg, MS 39402, and Hon. William Gault, Jr., Attorney at Law, P.O. Box 12314, Jackson, MS 39236.



BRANDON L. BROOKS