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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FRANK LEWIS

APPELLANT

VS.

NO. 2009-CA-00956

**JAMES L. NELSON, JR.
APPELLEES
NEWTON COUNTY BANK**

BRIEF FOR THE APPELLEE

STATEMENT OF FACTS

James L. Nelson, Jr. filed a petition in the Chancery Court of Newton County, Mississippi on April 17, 2009 seeking the appointment of James L. Nelson, Jr. as conservator of Frank Lewis.

Newton County Bank filed a Complaint for Interpleader on April 22, 2009 setting out the number of accounts that Frank Lewis had on deposit at the Newton County Bank. Some of the accounts were listed Frank Lewis or James L. Nelson, Jr.. The Chancery Court of Newton County, Mississippi entered an Agreed Judgment on May 6, 2009. The Agreed Judgment

appointed the guardian of the estate of Frank Lewis and appointed Franklin D. Lewis, son of respondent Frank Lewis, Guardian of the person of Frank Lewis.

Newton County Bank was authorized and directed to honor all outstanding checks on Account No. 2804362108 and dismissed the Newton County Bank as defendant.

Constance Slaughter-Harvey was employed by Frank Lewis to represent him in the pending actions.

ARGUMENT

ISSUE I.

WHETHER SERVICE OF PROCESS IS REQUIRED UNDER RULE 4 OR RULE 81 OF THE MISSISSIPPI RULES OF COURT, 1-35, 11-1-43, 11-1-45, 11-1-47, 11-1-49, 11-5-151 THROUGH 11-5-167, AND 11-17-33, MISSISSIPPI CODE OF 1972.

The Newton County Bank is not an adversary party in this litigation and has been dismissed by the Chancery Court of Newton County, Mississippi from said action and Newton County Bank has paid over all funds it has on deposit in the name of Frank Lewis.

The Newton County Bank had no obligation to pursue an appeal in this case. Its only objection is to see that justice is done and for this reason it will file its brief.

This Appellee admits that allegations set out under Rule 81 of Mississippi Code of the Mississippi Rules of Court, Mississippi Code of 1972. The Appellee has attempted to show that the Chancery Court of Newton County, Mississippi did not have jurisdiction to appoint Constance Slaughter-Harvey as Guardian because process was never served on Frank Lewis. Jurisdiction of the person can be gained by service of process upon him or by voluntary appearance.

"The person does not become a party to an action by mere naming of him in the title of actions. Voluntary appearance aside, a person becomes a party of the action only by the service of process upon him."

Frank Lewis and his attorney, Constance Slaughter-Harvey appeared at the Court and participated in the Court action and executed an Agreed Judgment; therefore, giving the Court jurisdiction of his person.

The Appellant is misguided in that he has confused the establishment of a conservatorship or the appointment of a guardian and the two actions are separate and distinct and that Frank Lewis submitted himself to the jurisdiction of the Court and his appearance at the Court with his attorney. Through communications with Frank Lewis, his lawyer and Judge Clark, Frank Lewis admitted he was in need of someone to help him with his assets and that he trusted his lawyer, Constance Slaughter-Harvey as his guardian upon his request.

ISSUE II.

WHETHER THE CHANCELLOR ERRED IN THE ESTABLISHMENT OF THE CONSERVATORSHIP IN LIGHT OF THE REQUIREMENT OF THE FILING OF THE CERTIFICATES FROM TWO PRACTICING PHYSICIANS WAS NOT MET.

The Chancery Court did not appoint a conservator of Frank Lewis but appointed him a guardian and the Court followed the law in appointing Constance Slaughter-Harvey as his guardian upon his request. The Chancery Court of Newton County did not commit error in the appointment.

ISSUE III.
WHETHER SERVICE OF PROCESS IS REQUIRED UNDER RULE
4 OR RULE 81 OF MISSISSIPPI RULES OF CIVIL PROCEDURE
FOR A COMPLAINT FOR INTERPLEADER.

Frank Lewis appearing with his lawyer, Constance Slaughter-Harvey at the hearing and participated in the hearing, waived service of process and no process was necessary, and no error was committed by the Newton County Chancery Court.

ISSUE IV.

WHETHER COUNSEL FOR APPELLANT IN THE CHANCERY COURT ACTION ACTED PROPERLY BY ACCEPTING APPOINTMENT AS CONSERVATOR WHEN SHE WAS HIRED BY THE APPELLANT TO PREVENT THE ESTABLISHMENT OF THE CONSERVATORSHIP.

The Appellant attempts to show that Constance Slaughter-Harvey, as counsel for Frank Lewis, did not act properly by accepting appointment as conservator. Constance Slaughter-Harvey was not appointed conservator but was appointed guardian of his estate by the court. The Appellant has not charged that Constance Slaughter-Harvey did not act properly in the interest of Frank Lewis to protect his interest and his estate. He has not cited any authority to show that this was in error and should not be considered by the court. He has not charged that she did not act properly in the interest of his estate.

Rule 1.1 of Rules of Professional Conduct, under Client-Lawyer Relationship states as follows:

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation required the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 of Rules of Professional Conduct, under Client-Lawyer Relationship states as follows:

RULE 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, a lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after consultation.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that a lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

The Appellant has not shown that Constance Slaughter-Harvey has any conflict of interest and has not acted properly in his interest, and has not shown that she is not qualified to be his guardian of his and, therefore,

cannot be considered as an error by this court.

CONCLUSION

The Chancery Court of Newton County, Mississippi had personal jurisdiction over Frank Lewis when it appointed Constance Slaughter-Harvey as his guardian by his appearance and participation in the court action and he waived any right he had to personal process.

The court properly appointed Constance Slaughter-Harvey guardian of Frank Lewis upon his request and Constance Slaughter-Harvey is a qualified, able and responsible attorney. She has done nothing but protect the interest of her client, Frank Lewis.

The Court and Constance Slaughter-Harvey have not committed any error that this court should overturn the Order of the Chancery Court of Newton County, Mississippi. This order should be affirmed.

NEWTON COUNTY BANK

BY: James B. Everett
JAMES B. EVERETT, Their Attorney

CERTIFICATE OF SERVICE

I, **JAMES B. EVERETT**, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

Honorable H. David Clark, II
Chancellor
Newton County Chancery Court
P.O. Box 434
Forest, Mississippi 39074

Honorable Robert M. Logan
The Logan Law Firm
Post Office Box 218
Newton, Mississippi 39345

Honorable Constance Slaughter-Harvey
Post Office Box 88
Forest, Mississippi 39074

Honorable Al Shiyou
SHIYOU LAW FIRM
Post Office Box 310
Hattiesburg, Mississippi 39403-0310

SO CERTIFIED, this the 27th day of January, 2010.



JAMES B. EVERETT

CERTIFICATE OF MAILING

I, James B. Everett, do certify that I have this date, mailed via United States mail, postage prepaid, first class, an original and three (3) copies of the Brief of Appellee to the Clerk of the Supreme Court and this Brief of Appellee and copies thereof are being deposited into the United States Mail on this, the 27th day of January, 2010, as required by M.R.A.P. Rule 25 (a) for filing of same to be deemed as of this date.

This the 27th day of January, 2010.

James B. Everett
James B. Everett