



**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2009-CA-01025**

FILED

In the Matter of the Estate of JOHN DAVIS, Deceased;

In the Matter of the Estates of DANIEL M. THOMPSON,
Deceased, and LOUISE THOMPSON, Deceased,
ALBERTA L. O'NEILL, Administratrix; and

**MAR 22 2010
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

In the Matter of the ESTATE OF LULA MAE DAVIS,
Deceased, ALBERTA L. O'NEILL

ELDON LADNER and REGINA LADNER DAVENPORT

APPELLANTS

Versus



ALBERTA L. O'NEILL

APPELLEES

**ON APPEAL FROM THE CHANCERY COURT
OF STONE COUNTY, MISSISSIPPI**

REPLY BRIEF OF THE APPELLANTS

ORAL ARGUMENT REQUESTED

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8370-1

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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. These 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.

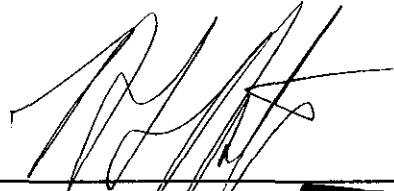
Eldon Ladner and Regina Ladner Davenport
Defendants in the Chancery Court and Appellant on Appeal

Honorable Carter Bise,
Stone County Chancery Court Judge

Alberta L. O'Neill, Appellee

Jack Parsons,
Appellee's Trial Counsel

Robin L. Roberts and Joel L. Blackledge
Montague Pittman & Varnado
Appellants' Trial Counsel

A handwritten signature in black ink, appearing to be 'RLR', is written over a horizontal line.

Robin L. Roberts, (MB: [REDACTED]) Attorney for
Eldon Ladner and Regina Ladner Davenport

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ARGUMENT

As has often been the case in this matter, Appellees continue their pattern of smoke and mirrors in their Brief. Appellees attempt to dissuade this Court by stating that Appellants reliance on Miss. R. Civ. Pro. 60(b)(6) is misplaced as “duress falls under 60(b)(1), misconduct of an adverse party.” Miss. R. Civ. Pro. 60(b)(6) provides “an avenue for relief from manifest injustice.” *January v. Barnes*, 621 So. 2d 915 (Miss 1992), referencing *Good Luck Nursing Home, Inc. v. Harris*, 204 U.S. App. D.C. 300, 636 F. 2d 572, 577 (D.C. Cir. 1980). To allow the agreed judgment in this case would be manifest injustice. And clearly, Miss. R. Civ. Pro. 60(b)(6) is the “catch-all” providing relief when relief is justified. Based on the facts of this case, the Appellants are clearly entitled to relief under Miss. R. Civ. Pro. 60(b)(6).

Furthermore, they state “(D)uress must be created by actions of the adverse party.” However, Appellees fail to cite any authority for such a ludicrous proposition and, in fact, “(I)t matters not from whom the duress emanates, if an instrument is signed under duress and known to have been so induced by the party in whose favor it redounds then duress is a proper defense to an action on that instrument.” *Associated Housing Corporation v. Keller Building Products of Jacksonville, Inc.* 335 So.2d 362 (Fla. 1976). As this Court can readily establish, Appellees offered no proof whatsoever at the Trial Court to show that no duress occurred. In fact, they offered no proof whatsoever. The only testimony introduced was that of the Appellants, Eldon Ladner and Regina Ladner Davenport. That testimony clearly established that both Eldon Ladner and Regina Ladner Davenport felt as though they were each “deprived of free exercise of his own will.” *R. L. Duckworth v. Allis-Chalmers Mfg. Co.*, 247 Miss. 198, 203-204 (Miss. 1963).

Secondarily, and only deserving a passing response, the Appellees state that “there was no evidence introduced that the Appellants were threatened with criminal prosecution.” But clearly, some threat of criminal prosecution (perhaps under the Elder Abuse statutes of this State) occurred as Regina Ladner Davenport testified that she felt like she had to sign the Substitute Agreed Judgment as her attorney “made several comments about an attorney general and an opinion by the attorney general, and we didn’t want to go there, and that it would be best if we go ahead and resolve the issues, and that he stressed the fact that - - he brought up attorney general several times.” “Even at 54, I was too old to have to go to jail” RE 3, Tr. 29. The fact that Regina Ladner Davenport may have been unclear about the prosecuting agency does not avoid the fact that the threats were made.

However, it must also be noted that the Appellees, in their brief filed herein, even admit that such threats, intimidation and duress existed. They state that “the consideration for the agreed judgment was to forego any further litigation **and pursuit of the Appellants**” (emphasis added). They further add “(T)he consideration was **to forego any further pursuit of Eldon Ladner and Regina Ladner Davenport** for their misdeeds and misappropriation of assets and funds from the estate” (emphasis added). If Appellees had not been pressing the Appellants, why would they now be turning to “the pursuit” of the Appellants as a defense?

Appellees continue their habits of arguing facts not in evidence before this Court (or the Trial Court) and innuendo in an attempt to dissuade this Court into believing that no duress occurred in the execution of the Agreed Order. Whether the Appellants acted faithfully and dutifully are questions that have never been tried. Whether they are excused from filing accountings has never been answered by the Trial Court. However, whether the Appellants,

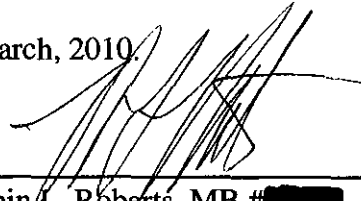
Eldon Ladner and Regina Ladner Davenport, were threatened and pressured to an extent which caused them to lose their free wills and, in doing so, executed an agreement to which they did not consent, is before this Court on review of the denial of the Motion for Relief under Miss. R. Civ. P. 60(b).

CONCLUSION

For the foregoing reasons, the Trial Court erred in denying the Motion of Eldon Ladner and Regina Ladner Davenport for Relief from and to Set Aside Judgment Pursuant to Miss. R. Civ. Pro. 60(b). The facts presented in testimony clearly establishes that the Substitute Agreed Judgment, and therefore, the settlement, entered in this case by the Trial Court came only as a result of intimidation and duress of Eldon Ladner and Regina Ladner Davenport. Furthermore, as no consideration was given by the Appellee for said settlement, the settlement must fail for lack of consideration. The Trial Court erred in denying relief from this Judgment.

The Trial Court committed clear error as more specifically argued herein. As such, this Court should reverse and render the decision of the Chancery Court of Stone County.

Respectfully submitted this the 22nd day of March, 2010.

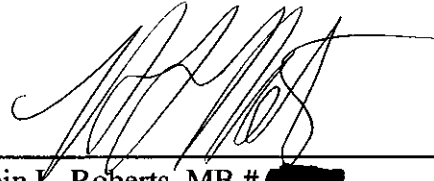


Robin L. Roberts, MB # [REDACTED]
Joel L. Blackledge, MB # [REDACTED]
Attorneys of Record for Eldon Ladner and
Regina Ladner Davenport

Certificate of Service

I, Robin L. Roberts, hereby certify that I have this day mailed a true and correct copy of the foregoing Appellants' Reply Brief to the following by first class United States mail, postage prepaid: Jack Parsons, P.O. Drawer 6, Wiggins, MS 39577; and, Hon. Carter Bise, P.O. Box 1542, Gulfport, MS 39502.

This the 22nd day of March, 2010.



Robin L. Roberts, MB # [REDACTED]
Joel L. Blackledge, MB # [REDACTED]
Attorneys of Record for Eldon Ladner and
Regina Ladner Davenport

Certificate of Filing

I, Robin L. Roberts, hereby certify that I have this day filed with the Clerk of the Supreme Court of the State of Mississippi the foregoing Appellants' reply brief by delivering an original and three copies to the clerk's office.

This the 22nd day of March, 2010.



Robin L. Roberts, MB # [REDACTED]
Joel L. Blackledge, MB # [REDACTED]
Attorneys of Record for Eldon Ladner and
Regina Ladner Davenport

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