

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

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

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

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**BRIEF OF THE APPELLANTS**

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ORAL ARGUMENT REQUESTED

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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.

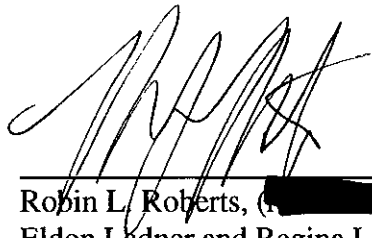
Eldon Ladner and Regina Ladner Davenport  
Defendants in the Chancery Court and Appellant on Appeal

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 read 'R. Roberts', is written over a horizontal line.

Robin L. Roberts, (REDACTED), Attorney for  
Eldon Ladner and Regina Ladner Davenport

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## **STATEMENT OF THE ISSUES**

1. The Chancery 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).

2. Based on the undisputed evidence presented, ere the defendants subjected to duress when entering into an Agreed Judgment under threat of criminal prosecution for conduct which was not a crime?

3. Is the Agreed Judgment void for lack of consideration?

## **STATEMENT OF THE CASE**

### **I. Nature of the Case and Course of Proceedings Below**

This appeal comes to this Court from the Chancery Court of Stone County and involves the Estate of John Davis, deceased, the Estates of Daniel M. Thompson and Louise Thompson, deceased, and the Estate of Lula Mae Davis, deceased. Eldon Ladner and Regina L. Davenport served as Co-Administrators (by Order dated October 30, 1996) for the Estate of John Davis, Deceased, Cause No. 96-0192-4. Eldon Ladner served as sole Conservator (by Orders dated April 27, 1990) for the Estates of Daniel M. Thompson and Louise Thompson Deceased, Cause No. 2006-00144-4, and as sole Administrator (by Order dated June 11, 1991) for the Estate of Daniel M. Thompson. Eldon Ladner and Regina Ladner Davenport served as Co-Administrators (by Order dated October 30, 1996) for the Estate of Lula Mae Davis, Deceased, Cause Nos. 96-0193 and 2006-0034-4. In 2006, Alberta L. O'Neill filed a motion requesting the removal of Eldon Ladner and requesting a detailed accounting of all assets, monies and inventory of the estates, and requesting replacement by Ladner and Davenport of all funds not properly accounted for in the various estates. No complaint was filed with the Court. She was appointed substitute administrator.

A trial of the matter was started; the trial did not reach a conclusion, but was set over for another day.

During the interim period, an Agreed Judgment (RE 21; R1, 1) assessing Eldon Ladner and Regina Ladner Davenport with joint obligation for \$110,000 was entered. Thereafter, the Appellants herein filed their Motion for Relief from and to Set Aside Judgment Pursuant to Miss. R. Civ. Pro. 60(b), claiming Eldon Ladner and Regina Ladner Davenport were coerced, under

threats of criminal action and other forms of duress, into executing the Agreed Judgment. The Chancery Court denied the Rule 60 motion (RE 27; R1, 44), and this appeal ensued without bond. Collection through garnishment is being made under the Judgment against the wages of Regina Davenport.

In the meantime, Petitioner sought collection by contempt and incarceration and the Motion for Contempt was sustained. An interlocutory appeal was granted by this Court and the contempt matter was stayed by this Court's order. That appeal is pending before the Supreme Court as Cause No. 2009-IA-01953.

## II. Statement of the Facts

Eldon Ladner and his daughter, Regina Ladner Davenport, served as conservators and/or administrators over multiple estates as set out above. While alive, funds of the wards were used for the wards' support and medical care. Eventually, as their various relatives died, the Appellants opened estates to administer decedents' of the assets. The Appellants engaged a local attorney, James Hall, to represent them in their offices. Despite the Appellants routinely delivering documents, receipts and related material to their attorney, Hall failed to prepare and file accountings.

On April 7, 2006, Alberta L. O'Neill, filed a Motion to Remove requesting the removal of Eldon Ladner and Rachel Ladner Davenport and an accounting and reimbursement of the estates by him and Regina Ladner Davenport. On September 28, 2006, an Order was entered by the lower Court requiring Eldon Ladner and/or Regina Ladner Davenport to render a detailed accounting. James Hall had since left the practice of law and closed his office. The records retrieved from his office were incomplete and in a state of disarray. On April 3, 2008, Eldon



Ladner and/or Regina Ladner Davenport, acting in good faith, filed their accounting, reconstructed by a CPA from partial records retrieved from Attorney James Hall's office.

A trial was begun on April 7, 2008, with Eldon Ladner and Regina Ladner Davenport appearing with new counsel, Richard Smith. The Court recessed the trial to another day to obtain the testimony of the CPA. Meanwhile, Appellants met with their attorney, and the following transpired:

Q. Can you tell me the circumstances under which you agreed to it?

A. Regina and I were summoned to Mr. Smith's office down in Gulfport, and he told us it was in our interest to sign this, and if we didn't do so, that Regina could lose her job, be sent to jail, and several other things. I don't remember at this time. But he definitely said Ms. - - he definitely said that Gina could wind up going to jail and losing her job.

Q. Did you feel like you had to sign it?

A. Yes, sir.

(RE 27; R2, 44).

Further, Regina Ladner Davenport testified as follows:

Q. Could you explain to the court what your understanding was of what the consequences were of not signing the document?

A. My understanding was that there were possible criminal actions, possible forfeiture of my ability to be able to teach in the community college system or the university system, and that any political aspirations I may have would be terminated.

Q. And how did you receive that understanding? How did that come to be conveyed to you?

A. In a confrontation with Mr. Smith; my father, Eldon Ladner; and myself.

(RE 28; R2, 30).

Eldon Ladner and Regina Ladner Davenport were coerced, under threats of criminal action, threats against her employment, and other forms of duress, into executing an Agreed Judgment whereby they would (1) pay the sum of \$110,000.00 into the Estates of Daniel M. Thompson and Louise Thompson, Lula Mae Davis and John Davis; (2) release any and all claims they have or may have against these estates (Eldon Ladner stood to take his portion under the estates); (3) transfer any interest Eldon Ladner had in the Estate of Palma Ladner to Edward Ladner (Note: this estate was not even before the Court); and, (4) transfer their interest in and to the estates upon being requested to do so. This “settlement” was a total capitulation on all counts. It is patently one-sided, especially against Regina Ladner Davenport, who had limited involvement.

No direct testimony was presented by the Petitioners in the Chancery Court. The statements of Eldon Ladner and Regina Ladner Davenport are uncontradicted.

### **SUMMARY OF THE ARGUMENT**

The Agreed Judgment in this case was not entered into voluntarily by the defendants. Eldon Ladner and Regina Ladner Davenport were improperly coerced, under false threats of criminal action and other economic and personal duress, into executing an Agreed Judgment which was clearly not in their interest. The evidence proves they were deprived of the exercise of free will by the dominant party, their attorney. See, *R. L. Duckworth v. Allis-Chalmers Mfg.*, 247 So.2d 163 (Miss. 1963). As such, pursuant to Miss.R.Civ.Pro. 60(b), the Chancery Court erred by failing to relieve Eldon Ladner and Regina Ladner Davenport from the Substitute Agreed Judgment entered October 28, 2008, *nunc pro tunc* to October 14, 2008, by the Trial Chancery Court.

## **ARGUMENT**

### **1. Standard of Review**

This Court conducts *de novo* review of pure questions of law. *Planters Bank & Trust Co. v. Sklar*, 555 So.2d 1204 (Miss. 1990); *Countrywide Home Loans, Inc. v. Parker*, 975 So.2d 233 (Miss. 2008). The Chancellor's factual findings are reviewed under the manifest error/abuse of discretion test. *Cassell v. Cassell*, 970 So.2d 267 (Miss.App. 2007).

### **2. Analysis**

A. The Agreed Judgment was not voluntary because, under the applicable subjective test, the defendants acted under duress.

1. Rule 60 provides authority for relief.

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). This rule "was intended to preserve the delicate balance between the sanctity of final judgments . . . and the incessant command of the court's conscience that justice be done in light of all the facts." *Id.* (citing *Bankers Mortgage Co. v. United States*, 423 F.2d 73, 77 (5th Cir.), cert. denied, 399 U.S. 927, 90 S.Ct. 2242, 26 L.Ed.2d 793 (1970) (emphasis in original)).

2. The Agreed Judgment is a contract.

The Judgment entered on May 20, 2009, by the Chancery Court is in the form of a settlement agreement as it states ". . . and the Court having been advised by the parties that the matter had been compromised and settled. The Court finds the parties' agreement and settlement is as follows . . ." (RE 21; R1, 1). As such, pursuant to Mississippi law, this judgment is, in

essence, a contract. *Davis v. Davis*, 832 So.2d 534, 536 (Miss. 2001). Contract law analysis is applied to settlement agreements. Furthermore, Mississippi favors “the settlement of disputes by agreement of the parties and, ordinarily, will enforce the agreement which the parties have made, **absent any fraud, mistake, or overreaching**. *Chantey Music Publ., Inc. v. Malaco, Inc.*, 915 So.2d 1052, 1055-1056 (Miss. 2005) (emphasis added). See also *Hastings v. Guillot*, 825 So.2d 20, 24 (Miss. 2002) (citing *First Nat'l Bank v. Caruthers*, 443 So.2d 861, 864 (Miss. 1983)). The traditional defenses to a contract, such as duress, also apply.

3. The law of duress centers on lack of voluntary assent.

This Court has previously found “that to constitute duress the actor's manifestation must be made for the purpose of coercing the other; must have for its object the securing of undue advantage with respect to the other; must be of such a character that it is adapted to overpower the will of the other and is reasonably adequate for the purpose; must in fact deprive the other to act to his detriment.” *Askew v. Askew*, 699 So.2d 515, 518 (Miss. 1997) (citing *Libel v. Libel*, 5 Kan.App.2d 367, 616 P.2d 306 (1980)). In its Judgment of May 20, 2009, the Chancery Court failed to follow established Mississippi law in not removing the burdens placed on the Appellants Eldon Ladner and Regina Ladner Davenport by a judgment which was procured through threats, intimidation and duress. According to *Duckworth*, 247 So.2d 163, 165:

Duress and compulsion go to the question of reality of consent to a contract. The ultimate fact for determination is whether the complaining party was deprived of free exercise of his own will. The conduct of the dominant party must have been such as to override the volition of the victim. 17 C.J.S. Contracts § 168b; *Wherry v. Latimer*, 103 Miss. 524, 60 So. 563, 642 (1913); *Clark v. Magee*, 234 Miss. 252, 105 So.2d 753 (1958); *Cunningham v. Lockett*, 216 Miss. 879, 63 So.2d 401 (1953). It is not sufficient that one party insisted upon a legal right and the other party yielded to such insistence. It cannot be predicated upon a demand which is lawful, or upon doing or threatening to do that which a party has a legal right to

do. 17A Am.Jur., Duress and Undue Influence, sec. 7; 17 C.J.S. Contracts § 177, p. 536; 5 Williston, Contracts (rev.ed. 1937), sec. 1618; Anno., 79 A.L.R. 655 (1932). (Emphasis added)

*Duckworth v. Allis-Chalmers Manufacturing Company*, 247 Miss. 198, 203 (Miss. 1963) (citing 17 C. J. S., Contracts, sec. 168(b); *Wherry v. Latimer*, 103 Miss. 524, 60 So. 563, 642 (1913); *Clark v. Magee*, 234 Miss. 252, 105 So.2d 753 (1958); *Cunningham v. Lockett*, 216 Miss. 879, 63 So.2d 401 (1953)).

Dealing with the issue of sufficiency of the duress, the law is clear that the pressure put on Eldon Ladner and Regina Ladner Davenport makes the contract void.

In other words, duress sufficient to render a contract void consists of the actual application of physical force that is sufficient to, and does, cause the person unwillingly to execute the physical document; as well as the threat of application of immediate physical force sufficient to place person in position of the signer in actual, reasonable, and imminent fear of death, serious personal injury or actual imprisonment. (Emphasis added)

28 Williston on Contracts § 71:8 (4<sup>th</sup> ed.).

In the instant case, undisputed testimony abounded that both Eldon Ladner and Regina Ladner Davenport's agreement to the Substitute Agreed Judgment was not freely given and therefore taken under duress. Regina Ladner Davenport testified that her understanding of not executing the Substitute Agreed Judgment "was that there were possible criminal actions, possible forfeiture of my ability to be able to teach in the community college system or university system, and that any political aspirations (she) may have would be terminated." (RE 28; R2, 30). Furthermore, she 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 29; R2, 29). Regina Ladner Davenport further testified that her attorney was very upset with the situation, raising his voice at times, “although he’s normally a very mild, calm person.” (RE 30; R2, 31). She also testified that she was placed into a position where she had “no other options” (RE 31; R2, 32) and felt as though she had no free will (RE 32; R2, 33). She “**did not sign willingly.**” (RE 32; R2, 33). Eldon Ladner testified likewise, even seemingly placing more emphasis on the protection of his daughter, Regina Ladner Davenport. He testified that he was told that if he refused to execute the Substitute Agreed Judgment, “Regina could lose her job, be sent to jail and several other things” (RE 27; R2, 44). He stated that he felt like he had to sign it. (RE 33; R2, 45) and that he signed it “on behalf of my daughter, same thing you would have done on behalf of your sons (RE 34; R2, 46). Again, Regina Ladner Davenport testified, he stated that he did not take any money from any of the estates (RE 35; R2, 48).

The test for causation, *i.e.*, whether the duress contributes substantially to the claimant’s decision to assent, is subjective, considering all surrounding circumstances, such as the background and relationship of the parties and the emotional condition of the party claiming duress. *Sudan v. Sudan*, 145 S.W.3d 280 (Tex.App.) (citing Restatement (Second) of Contracts § 175 cmt. c.). Mississippi cases have always stated that the test is whether the complaining party lost his own free will, not the will of the reasonable person. This is a subjective standard. That Regina Ladner Davenport’s understanding of the role of the attorney general is mistaken is not conclusive of the duress involved in threatening criminal prosecution. She testified:

THE WITNESS: I understood that if an issue went before the attorney general, that it had surpassed civil circuit courts, and that it was an issue that was now in the hand of the chief attorney for the State of Mississippi, and that as far as I knew - - and I have a very limited knowledge - - that it would be a criminal issue or very possibly.

(RE 36; R2, 42)

There is further evidence of the attempt at duress in that Jack Parsons, attorney for the petitioners, apparently wrote a letter offering to keep the settlement quiet. (RE 37; R2, 38) The threat is implicit – settle and we’ll keep it quiet, refuse and – well, we will see how it plays. Mr. Parsons is not very subtle.

4. The conduct of the Appellants was in good faith and in no way criminal.

For duress to apply, “[i]t is not sufficient that one party insisted upon a legal right and the other party yielded to such insistence. It cannot be predicated upon a demand which is lawful, or upon doing or threatening to do that which a party has a legal right to do.” *Duckworth v. Allis-Chalmers Manufacturing Company*, 247 Miss. 198, 203-204 (Miss. 1963) (citing 17A Am. Jur., Duress and Undue Influence, sec. 7; 17 C. J. S., Contracts, sec. 177, p. 536; 5 Williston, Contracts (rev. ed. 1937), sec. 1618; Anno., 79 A. L. R. 655 (1932)). However, that was not the case here: there was no legitimate threat of criminal prosecution (especially in the Thompson estates where Regina Ladner Davenport held no office), just a lawyer in a superior position bullying a client for reasons of his own.

Regina Ladner Davenport testified that she and Eldon Ladner had engaged James Hall, to represent, advise and assist them during the term of their offices (RE 39; R2, 24). She testified that she “took everything, and I went repeatedly,” to James Hall’s office, “but it was to no avail” (RE 40; R2, 34). She testified that based on the advice of James Hall, she made the documents

requested by James Hall available to him (RE 41; R2, 35). She testified that she and Eldon Ladner received no moneys from the estates (RE 42; R2, 36) and had “checks and cancelled checks and payments” (RE 43; R2, 37). They hired a CPA to reconstruct the records strewn over kindom come by their previous attorney.

Regina Ladner Davenport testified, and the docket makes clear, that she held no office with regard to Daniel or Louise Thompson, was not their executor or administrator, (RE 44; R2, 23) and held no legal responsibilities in relation to them (RE 39; R2, 24). There certainly could be no allegation of criminal conduct against her in those matters.

The Substitute Agreed Judgment, and therefore the settlement, entered in this case did not distinguish the settlement terms between the Estate of John Davis, deceased, the Estates of Daniel M. Thompson and Louis Thompson, deceased and the Estate of Lula Mae Davis, deceased. It was offered as an all or nothing deal.

The disparate bargaining power of the individuals involved strongly indicates a lack of volition. Eldon Ladner and Regina Ladner Davenport were being told they had to do this by their own attorney. It was he who kept insinuating jail. In these circumstances it is no wonder Eldon Ladner and Regina Ladner Davenport felt like they had no choice.

Finally, the inequity of the bargain indicates duress. This was not really a negotiation, but a total capitulation. They could hardly do worse by losing at trial. Certainly “a disproportionate exchange of values or to give up something for nothing” is a strong vector favoring duress. See, *Burgen v. First Alabama Bank*, 591 F.2d 291 (1979).



B. The Agreed Judgment contract is void.

As with any contract, “the settlement agreement must contain an offer, acceptance, and consideration.” *Davis v. Davis*, 832 So.2d 534, 537 (Miss. 2001), citing *Gatlin v. Methodist Med. Ctr., Inc.*, 772 So.2d 1023, 1029 (Miss. 2000). For this Agreed Judgment contract there was no consideration. The only consideration that can be argued that was given to Regina Ladner Davenport and Eldon Ladner, for their agreement, would be the non-prosecution of them or avoidance of other consequences related to it. However, Regina Ladner Davenport and Eldon Ladner were not criminally liable, and as such, the alleged consideration, that is, the non-prosecution of them, fails as consideration. If this matter had been allowed to proceed to trial, but for the duress placed on them, Regina Ladner Davenport and Eldon Ladner would have presented evidence that all estate money expended had been properly expended on the care and maintenance of the deceased and their estates. As previously stated, Regina Ladner Davenport testified that the receipts, checks and cancelled checks were delivered to James Hall’s office. His failure to properly file annual accountings should not fall on the backs of his clients, Regina Ladner Davenport and Eldon Ladner. Regina Ladner Davenport and Eldon Ladner received nothing in return for the Agreed Judgment. Furthermore, as Regina Ladner Davenport’s role was extremely limited, non-prosecution of her in the other matters as consideration is pure fantasy. Yet, the judgment is a sledge-hammer applying as a joint and several obligation against her.

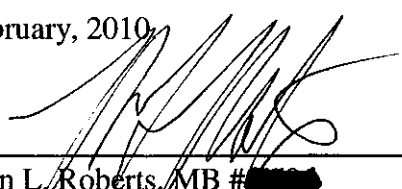
Simply put, this Substitute Agreed Judgment and the “settlement” it reflected was procured by duress, was therefore void *ab initio*, and should not have been entered. Once the duress was brought to the attention of the Chancery Court, the Chancery Court should have promptly set it aside and allowed the parties to continue to trial.

## CONCLUSION

For the foregoing reasons, the Chancery 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 Chancery 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 Chancery Court did erred denying relief from this Judgment.

The Chancery Court committed clear error as more specifically argued herein. Appellants request this Court to reverse the Agreed Judgment and remand the case to the Chancery Court of Stone County, for a new trial on the issue of the accounting.

Respectfully submitted this the 1<sup>st</sup> day of February, 2010.



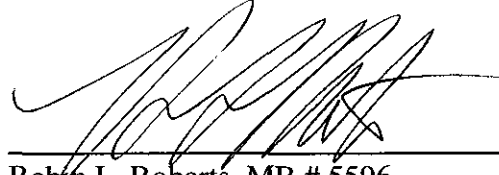
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Robin L. Roberts, MB # [REDACTED]  
Joel L. Blackledge, MB # [REDACTED]  
Attorneys of Record for Eldon Ladner and  
Regina Ladner Davenport

**Certificate of Service**

I, Robin L. Roberts, hereby certify that I have this day mailed a true and correct copy of the foregoing Appellants' 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 15<sup>th</sup> day of February, 2010.



Robin L. Roberts, MB # 5596  
Joel L. Blackledge, MB # 10606  
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' brief by delivering an original and three copies to the clerk's office.

This the 15<sup>th</sup> day of February, 2010.



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