

FILED



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SUPREME COURT
COURT OF APPEALS

IN THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2009-^{CA}~~18~~-01827

JAMES DAVIS

Appellant,

-against-

GUARANTY BANK & TRUST

Appellee.

BRIEF FOR APPELLANT

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JAMES DAVIS

Appellant,

-against-

NO. 2009-TS-01827

GUARANTY BANK & TRUST

Appellee.

CERTIFICATE OF INTERESTED PERSONS

COMES NOW, the undersigned counsel of record and certify that the following listed person and corporation have an interest in the outcome of this case:

1. James Davis, Appellant;
2. Guaranty Bank & Trust, Appellee;
3. Doug Springer, President of Cleveland Guaranty Bank & Trust.

Respectfully Submitted by



Chaka Smith

Attorney of Record for James Davis



James Davis



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QUESTIONS PRESENTED

- A. Whether the Chancellor abused his discretion by ruling that the title of the vehicle remained with Mr. James Davis, giving Guaranty Bank & Trust an equitable lien in the vehicle, and ordering James Davis to return the vehicle?
- B. Whether the Chancellor abused his discretion by holding Mr. James Davis in contempt of court for failure to return the vehicle to Guaranty Bank & Trust?

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Appellee.

BRIEF FOR APPELLANT

OPINIONS BELOW

The opinion of the trial court is unreported and appears in the Transcript of Record at page 1-13.

APPLICABLE STATUTORY PROVISION

Miss. Code Ann. § 75-2-403 (1)(a)-(d):

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though (a) the transferor was deceived as to the identity of the purchaser, or (b) the delivery was in exchange for a check which is later dishonored, or (c) it was agreed that the transaction was to be a "cash sale," or (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

STATEMENT OF THE CASE

This Court is being asked to reverse the decisions by the Chancery Court of Bolivar County, Second Judicial District that Mr. James Davis was ordered pay a judgment in the amount of \$17, 885.99 plus 8% interest, title to the collateral, which was 2000 Chevrolet truck, was to remain with James Davis and Guaranty Bank & Trust given an equitable lien, James Davis being ordered to return the 2000 Chevrolet truck to the possession of Guaranty Bank & Trust and that Mr. James Davis failure to do so resulted in contempt of court.

On October 20, 2008, Mr. James Davis purchased a 2000 Chevrolet truck from Mr. Doug Springer, president of Guaranty Bank & Trust. On October 28, 2008 and January 9, 2009, loans agreements were executed in which the 2000 Chevrolet was used as collateral. Because of issues with the vehicle, James Davis informed Doug Springer that he wanted to sale the

vehicle. James Davis was given permission by Doug Springer to sell the vehicle. (R. 6) Therefore, James Davis received a certificate of title and sold the vehicle to Mr. Troy Stephens on May 26, 2009.

On October 15, 2009, Mr. James Davis appeared pro se before the Court to defend the complaint filed in Chancery Court. On October 15, 2009, a judgment was entered by the Court against Mr. Davis for the loan amounts of \$17, 885.99 plus 8% interest. Furthermore, Guaranty Bank & Trust was given an equitable lien and Mr. Davis was ordered to return the vehicle to Guaranty Bank & Trust.

As a result of not being able to return the vehicle, Mr. Davis was held in contempt of court and served nine days in jail. A motion was filed to set aside the order of contempt, but denied. Mr. Davis notice of appeal was filed on November 9, 2009.

SUMMARY OF THE ARGUMENT

The chancellor was manifestly wrong and applied an erroneous legal standard in giving Guaranty Bank & Trust an equitable lien, ordering James Davis to return a sold vehicle to the possession of Guarantee Bank & Trust, and holding James Davis in contempt of court for not being able to comply with the Court's order. James Davis sale of the vehicle to Troy Stephens was constructed in good faith and constituted a valid sale. James Davis presented documentation to the Court that the vehicle was previously sold; however, he

was ordered to return the vehicle despite the evidence presented to the Court. The Court's order to have him return the vehicle was impractical.

Furthermore, once Mr. Davis inability to return the vehicle was presented to the Court, the Court failed to address the issue accordingly and did not take into account that James Davis would never be able to purge himself of the contempt since the vehicle was sold nor could he have purged himself of the contempt at the time the order was signed.

The decisions of the trial court should be reversed. The chancellor obviously abused his discretion by failing to review and consider all evidence presented before the Court.

ARGUMENT

The Chancellor abused his discretion by making a clearly erroneous ruling and applying an erroneous legal standard by ruling that title of the vehicle remained with Mr. James Davis, giving Guaranty Bank & Trust an equitable lien, ordering that James Davis return the vehicle to the possession of Guaranty Bank & Trust and holding Mr. Davis in contempt of court for failure to return the vehicle to Guaranty Bank & Trust.

A Chancellor has abused his discretion when it is found that the Chancellor's findings were clearly erroneous, manifestly wrong, or that the Chancellor applied an erroneous legal standard. *Pearson v. Pearson*, 761 So.2d 157, 162 (Miss. 2000). When it has been found that the Chancellor did error, the ruling of the trial court should be reversed.

In the present case, the Chancellor's findings were clearly erroneous,

manifestly wrong, and an erroneous legal standard was applied. The Chancellor was wrong in disregarding the documentation presented by James Davis proving that he was no longer in possession of the vehicle.

Furthermore, the Chancellor applied an erroneous legal standard when denying Mr. Davis motion to set aside the order of contempt. The Chancellor failed to consider Mr. Davis' inability to comply with the order and failed to consider whether there was a willful disobedience.

A. Whether the Chancellor abused his discretion by ruling that the title of the vehicle remained with Mr. James Davis, giving Guaranty Bank & Trust an equitable lien in the vehicle, and ordering that James Davis return the vehicle?

The Chancellor was manifestly wrong in ordering title to remain with James Davis despite a bill of sale presented to the Court noting that the vehicle was sold to a third party who purchased the vehicle in good faith. Furthermore, the Chancellor erred in ordering James Davis to return the vehicle to Guaranty Bank & Trust.

As stated in Miss. Code Ann. § 75-2-403 (1):

- (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value.

James Davis purchased Doug Springer's personal vehicle which was a 2000 Chevrolet truck. The transaction was a voluntary transaction in which

Mr. Davis was given possession of the vehicle after payment was made. At the time of the purchase, Guaranty Bank & Trust did not have an interest in the vehicle. Nevertheless once the vehicle was used as collateral and a lien attached, the sale of the vehicle to a third party developed a good faith purchase; therefore, making the third party a good faith purchaser for value who obtained title from Mr. Davis. After the sale of the vehicle to the third party, James Davis no longer had title or possession of the vehicle. The third party purchaser of the vehicle obtained good title which should not have been revoked by the Court.

Yet, the Chancellor failed to make this distinction or even acknowledge that the vehicle was sold to a third party who now had title. The Chancellor erred in ordering that title remained with James Davis and that the vehicle should be returned.

B. The Chancellor abused his discretion by holding James Davis in contempt of court.

The purpose of a civil contempt is to enforce or coerce obedience to the orders of the Court. *Jones v. Hargrove*, 516 So.2d 1354, 1357 (Miss. 1987). See also *Hinds County Bd. of Supervisors v Common Cause of Mississippi*, 5551 So.2d 107,120-21 (Miss. 1989); *Smith v. Smith*, 545 So.2d 725, 727 (Miss. 1989). When evidence is introduced as to failure of a party to abide by the order then the burden shifts and the non-complying party must show any

inability to abide by the order or other defense. Furthermore, it may be shown by way of defense that failure to comply with a Court's decree was not willful or intentional and without fault on the individual's part. *Prestwood v. Hambrick*, 308 So.2d 82, 84 (Miss. 1975).

During the trial, Mr. Davis testified and presented documentation that he no longer owned the vehicle in question. He presented the Court with a notarized bill of sale and certificate of title signed by the new owner. He informed the Court that the new owner refused to return the vehicle when Mr. Davis informed him of the Court's order. Yet to try to comply with the Court's order, Mr. Davis tried to retrieve the vehicle back from the owner by going to the owner's residence, but to no avail. Despite Mr. Davis' efforts and the documentation before the Courts, he was held in contempt of court and incarcerated for a total of nine days. A motion to set aside the order of contempt was denied.

The trial court is obliged to consider all evidence properly before it in a contempt hearing when concluding whether a present inability to comply is evident or there exist deliberate defiance. *Maggio v. Zeitz*, 333 U.S. 56 (1948).

Mr. Davis informed the Court at the trial and it was again reiterated at the motion hearing that an inability to comply existed as it pertained to Mr. Davis returning the vehicle. However, the Court disregarded this evidence. The Court did not weigh the evidence properly to determine whether there was a

present inability to comply with the order. Furthermore, Mr. Davis showed the Court by taking actions to retrieve the vehicle that his failure to comply was not intentional, willful and without fault on his part. Mr. Davis simply could not return a vehicle that he no longer possessed nor had control over.

CONCLUSION

For the foregoing reasons, the judgment and order of the Chancery Court of Bolivar County, Second Judicial District, State of Mississippi should be reversed, and the judgment of the lower court finding Mr. Davis guilty of contempt discharged.