

PHILLYS ANN MILLS CARSON

APPELLANT-PLAINTIFF

VS.

NO. 2009-CA-01836

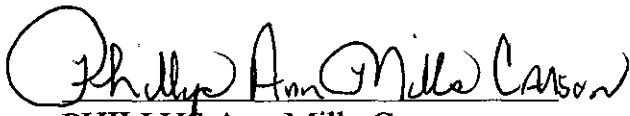
DONALD K. SOWELL AND SOUTHERN APPELLEES-DEFENDANT
COMPUTER SERVICES, INC.

APPEAL FROM THE CIRCUIT COURT OF
DESOTO COUNTY, MISSISSIPPI
HONORABLE ROBERT P. CHAMBERLIN

CERTIFICATE OF INTERESTED PERSONS

The undersigned pro se appellant certifies that the following 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 the Appeals may evaluate possible disqualification or recusal.

Phyllis Ann Mills Carson
Attorney David Walker
Progressive Insurance Company
Dr. Steven Tencer



PHILLYS Ann Mills Carson
Pro Se Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	3
TABLE OF CASE, STATUTES, AND OTHER AUTHORITIES.....	3
STATEMENT OF ISSUES	3
STATEMENT OF THE CASE.....	3
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
I. THE EVIDENCE PRESENTED BY WALKER AS TO THE PLAINTIFF'S ACCEPTANCE OF THE SETTLEMENT AGREEMENT WAS NOT CREDIBLE, PERSUASIVE, OR IN CONFORMITY WITH THE ACTUAL PROOF PRESENTED AT THE HEARING	3
II. FORCING PLAINTIFF TO SETTLE WITHOUT GIVING HER APPROVAL DEPRIVES HER OF HER RIGHT TO TRIAL UNDER M.R.C.P. AND PREVENTS HER FROM SEEKING FULL COMPENSATION FOR HER PERSONAL INJURY DAMAGES.	3
CONCLUSION.....	3
CERTIFICATE OF SERVICE.....	3

TABLE OF CASE, STATUTES, AND OTHER AUTHORITIES

Cases

<i>Fortenberry v. Parker</i> ,	11
754 So. 2d 561 (Miss. App. 2000)	
<i>Parmley v. 84 Lumber Co., et al.</i> ,	9, 10
911 So. 2d 569 (Miss. App. 2005)	
<i>U.S. Fidelity and Guaranty Co. v. Estate of Doris Francis</i> ,	13
825 So. 2d 38 (2002)	
<i>Writz v. Switzer</i> ,	11
1997 Miss. Lexis 608, (1997)	

Statutes

M.R.C.P. Rule 38 (Miss. Statutes 2010).....	13
---	----

STATEMENT OF ISSUES

1. Whether or not a Plaintiff Mills can be forced to sign a settlement agreement and give away her right to sue for full compensation for her damages, when she was never notified of a settlement agreement by her attorney, regarding her personal injuries and no evidence was presented indicating that the \$19,000 actually compensated her for the damages incurred as a result of the accident.
2. Whether the evidence presented by Plaintiff Mills' prior attorney, David Walker regarding the settlement agreement was sufficient reliable evidence to find that Plaintiff intended to accept 19,000 as a settlement of her personal injury case and force her to sign a settlement agreement and release of claim.

STATEMENT OF THE CASE

This is an action by an attorney, seeking to force his client to sign a settlement agreement in regards to her personal injury case. Ms. Mills was involved in a motor vehicle accident in October of 2007. In January of 2008 she hired Attorney David Walker to represent her. David Walker filed a complaint in the matter on September 24, 2008 and on November 25, 2008 he filed a Motion to Enforce Settlement

Agreement against Ms. Mills. On October 5, 2009 a hearing was had, and on October 8, 2009 the court entered an order granting Walker's motion and mandating that Ms. Mills sign the settlement agreement/release and dismissing the case with prejudice. Ms. Mills timely filed a notice of appeal on November 9, 2009.

STATEMENT OF THE FACTS

On October 5, 2007 Ms. Mills was involved in a vehicular accident in which she sustained injury. (R- 24) The driver, Donald K. Sowell was in a company vehicle owned by Southern Computer Services. (R-24). Ms. Mills was referred to Attorney Walker by her chiropractor Dr. Tencer. (R-25). Progressive Insurance Company was the insurance company handling Ms. Mills damages claim. (T-25). Ms. Mills received numerous settlement offers from Progressive Insurance Company- including one for \$8972, one for \$11, 288, one for \$13,000, and one for \$18,000, all of which were rejected. (R26-R27). Attorney Walker presented each one of these offers to Ms. Mills in writing. (R-40)

Attorney Walker himself admits to the fact that for every offer up to the \$18,000 he sent Ms. Mills a letter informing her of the offer and its amount. (R-47). Ms. Mills testified that \$18,000 was the last settlement offer that she was presented with by Walker and that she wasn't aware the case had settled into she received a

call at work from her chiropractor thanking her for paying the bill. (R. 38). Ms. Mills testified over and over that David Walker never notified her of the \$19,000 settlement offer. (R-27, 29, 33,35,36, 37, 44) Attorney Walker admitted that he never sent Ms. Mills a settlement letter regarding the \$19,000 because he was very, very, busy. (R. 47) He claimed that he notified Ms. Mills by telephone(R. 47). A fact, which Ms. Mills denied. Attorney Walker paid Dr. Tencer's bill before the settlement because the Dr. stated he was having financial difficulties. (R. 48).

After the hearing the court entered an order for Walker stating that since he was an agent with authority he could enter into the settlement agreement on her behalf and bind her. (R. 48)

SUMMARY OF THE ARGUMENT

Under Rule 38 of Mississippi rules of civil procedure, a person has the right to take their case to trial. Ordering Ms. Mills to sign a settlement agreement based on unsupported testimony by her attorney in effect forced her to give up her right to seek full compensation for her injuries and denied her right to trial. The court in arriving its decision ignored the lack of documentary evidence to support Attorney Walker's testimony. Every settlement offer that Plaintiff had been presented prior to the alleged offer of \$19,000 was in the form of a letter from Attorney Walker

informing her of the amount. There was no letter in regards to the proposed \$19,000 settlement offer. Walker's failure to present the proper documentation to back up his authorization to settle should not be deemed the fault of the injured party nor should she have to suffer further financial loss as a result.

It is well settled personal injury law that an individual is to entitled full compensation for their damages, which include both past and future economic loss (medical expenses, loss of wages, general damages, pain and suffering). In forcing Ms. Mills to accept the settlement agreement the court did not conduct an inquiry as to whether the settlement amount actually compensated her for her losses, nor was there any evidence presented as to the extent of her injuries, pain and suffering, etc.

There is no case law on point with the facts of this case. Likely due to the constitutional implications of requiring a Plaintiff to settle a case against an insurance company if they feel that they have not been fully compensated for their injuries. This settlement agreement in effect denies the Plaintiff the right to go to trial. Although an attorney can do many things if his client doesn't take his advice, including filing a lien on any future settlements or judgments to become fully compensated- he cannot singlehandedly make the decision that the client cannot avail herself of the legal process and must accept a settlement that she feels is not compensation for the variety of elements of damages that she is entitled to as a

matter of law.

ARGUMENT

I. THE EVIDENCE PRESENTED BY WALKER AS TO THE PLAINTIFF'S ACCEPTANCE OF THE SETTLEMENT AGREEMENT WAS NOT CREDIBLE, PERSUASIVE, OR IN CONFORMITY WITH THE ACTUAL PROOF PRESENTED AT THE HEARING

Settlements are contracts, which are enforceable according to their terms.

Parmley v. 84 Lumber Co, et al, 911 So. 2d 569, 572 (Miss. App. 2005) (*quoting*) McManus v. Howard, 569 So. 2d 1213, 1215 (Miss. 1990) In order for there to be a settlement there must be a meeting of the minds. Id. Mississippi law requires that the party claiming benefit from the settlement must prove by a preponderance of the evidence that there was a meeting of the minds. Id. (*quoting*) Hastings v. Guillot, 825 So. 2d 20 (Miss. 2002). This agreement can be established by the actions of the parties or of the parties' respective agents. Id.

The issue facing the court in Parmley was "whether an agent of the Plaintiff with actual or apparent authority, agreed to a settlement of the case". Id. The court enforced the agreement and held that Parmley's attorney did extend an offer of

settlement on behalf of his client, which was in turn accepted by Appellees, and that this finding was supported by substantial credible evidence in the record. Id. at 573.

Parmley is not in line with our set of facts. In Parmley the main action between the parties was a breach of contract action not a personal injury action. Counsel represented both sides; this wasn't an action of an attorney seeking to enforce a settlement agreement upon a client who didn't feel she would be fully compensated by the amount. Instead an action by Defendant's that entered into good faith settlement negotiations. There was no evidence presented that Ms. Mills and Attorney Walker had a meeting of the mind regarding the \$19,000. In fact testimony presented at the hearing shows the exact opposite.

In Parmley, the Plaintiff sued 84 Lumber, Jason Gartman and Tim Gaffney under the theory of breach of contract. Id. at 571. Plaintiff's attorney later sent out all defendants a notice that he would settle for the fee of \$18,000. Id. A settlement letter that the Plaintiff testified that he authorized the attorney to send. Id. A later notice was sent by Plaintiff's attorney that he would agree to settle for \$9000. Id. Defendants 84 Lumber and Gaffney sent Parmley a check for \$9000 plus a release. The other defendants sent \$4000 dollars collectively. Id. Two months later the Plaintiffs attorneys sent a letter to 84 lumber and Gaffney indicating that his client refused to sign the settlement documents and that he had withdrawn as counsel. Id.

The court's decision in fact was largely based on these two documents.

The other case cited in the court's order was unreported one, like *Parmley* it isn't in line with our set of facts. In *Wirtz*, the question was whether or not an oral settlement agreement was sufficient to enforce a Plaintiff to execute a proposed settlement. Wirtz v. Switzer, 1997 Miss. Lexis 608, at 5. In *Wirtz* the court ordered the parties counsel to negotiate a settlement agreement while at the courthouse. Id. at 9, 10. An oral agreement was reached and agreed to by Plaintiff, but when the document was drawn up the Plaintiff refused to sign based on wording. Id. at 15. The court enforced the settlement agreement based on the fact that the Plaintiff testified that she did in fact agree to the terms of the agreement. Id. at 18.

In another case in which a settlement agreement was enforced, Fortenberry, the court made its ruling again based on the fact that the Plaintiff had at one point agreed to the terms of the settlement agreement. See, Fortenberry v. Parker, 754 So. 2d 561, 565 (Miss. App. 2000).

Unlike our set of facts, it was the plaintiff in *Parmley* that tendered the original settlement offer. To which the defendant's accepted and acted on by tendering a check and release. In the case of a personal injury, the defendant in fact offers various settlement agreements to the Plaintiff in the hopes that one will be accepted to avoid trial. Trial is always an option, which Plaintiff has the right to

exercise. Also important to note is that the offers made by the Plaintiff in Parmley were in documentary form one a letter and the other an email. In our facts there is no documentation at all regarding the settlement offer of \$19,000 or its presentation to the Plaintiff. There is only the testimony of the party standing to benefit from the matter, Attorney Walker, that he called Plaintiff to notify her, but did not send a letter like he had with every other settlement offer instance because he was “very, very, busy”.

The only documentary proof offered by Attorney Walker, was only a letter dated November 4, 2009 in which he basically indicates to the Plaintiff that has singled handedly named the decision that her damages where no more than \$19,000, and that she had no more say in the matter for, “as far as I am concerned, this case is settled” (Hearing Exhibit 2). There was no documentary proof at all that he provided any notice to Plaintiff prior to settling the case on her behalf.

Even though an attorney is presumed to have the authority to speak for and bind his client, he is also duty bound to act in her best interests. There is not substantial credible evidence to supporting the record to support the finding that her attorney had actual or apparent authority to settle for the 19,000. The fact that no letter was sent presenting this offer to client is not a trifling instance to be overlooked. In fact, its weight is pivotal; the lack of the letter indicates the lack of

client's knowledge of the offer as she continuously testified to. Settlement offers tend to increase, especially if new facts come to light during the discover process. Parties are often sent to conduct final negotiations before trial, which also can increase the settlement amounts. In this matter, the Plaintiff isn't being afforded a chance to avail her self of any of these instances in which she could gain additional compensation for legally liable damages she suffered.

Even applying the analysis that settlement agreements are indeed contracts, there was no meeting of the minds. Walker testified that he got her oral acceptance of the offer, when in fact in order for that to be a binding agreement on her part under the Statue of Frauds an oral indication of acceptance is not legally permissible. In every other settlement offer she was given, it was given in writing. Not so for the \$19,000. In fact her prior attorney gives a cursory answer as to why he didn't follow proper protocol when it came to notifying and securing his clients acceptance.

II. FORCING PLAINTIFF TO SETTLE WITHOUT GIVING HER APPROVAL DEPRIVES HER OF HER RIGHT TO TRIAL UNDER M.R.C.P. AND PREVENTS HER FROM SEEKING FULL COMPENSATION FOR HER PERSONAL INJURY DAMAGES.

The right of trial by jury, as declared by the Constitution or any statute of the

State of Mississippi shall be preserved to the parties inviolate. M. R. C .P. Rule 38 (2010). Each suit for personal injury must be decided by the facts shown in that particular case. United States Fidelity and Guaranty Co. v. The Estate of Doris Francis., 825 So.2d 38, 47 (Miss. 2002). The amount of physical injury, mental and physical pain, present and future, temporary and permanent disability, medical expenses, loss of wages, and wage earning capacity, sex, age, and health of the injured Plaintiff are all variables to be considered by the jury in determining the amount of damages to be awarded. Id. In computation for damages a person is to be made whole or complete satisfaction is to be made or he is to receive the value of the property destroyed.

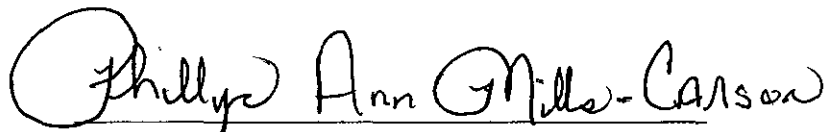
Forcing Plaintiff to execute the settlement agreement effectively is depriving her of her right to trial. In making its decision, the court didn't consider the issue of Plaintiff's damages to determine whether or not the settlement amount being forced upon her by Attorney Walker in fact compensated her in full for her injuries. Ms. Mills indicated that she wished to go to trial, and that she didn't feel the \$19,000 would fully compensate her for her damages. This is a decision that by law she was allowed to make.

CONCLUSION

The settlement agreement should not be enforced. Plaintiff wasn't aware of an offer of \$19,000 by the insurance company, and did not agree to settle her case for this amount. Forcing her to sign a settlement agreement that would preclude her from seeking full compensation for her injury in court was improper, especially when there was no evidence presented as to what sufficient or reasonable compensation for her injuries was. Therefore Plaintiff Carson respectfully requests that the decision of the Circuit Court be reversed

This the 10th day of January, 2010

BY: PHILLYS ANN MILLS-CARSON

A handwritten signature in black ink that reads "Phillys Ann Mills-Carson". The signature is written in a cursive style with a large initial "P" and is underlined.

(PRO SE)

1046 Church Road West.
No. 106-232
South Haven, MS 38671
(901)550-6824

CERTIFICATE OF SERVICE

I, PHILLYS Ann Mills-Carson, certify that I have this day served a copy of Appellant's Brief by United States mail with postage prepaid on the following person at this address:

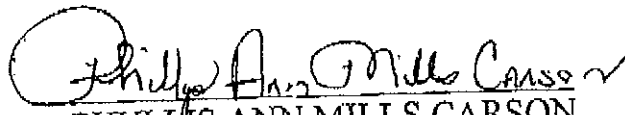
David L. Walker
Attorney at Law
P.O. Box 719
Batesville, MS 38606-0719

Cam Auerswald
Upshaw, Williams, Biggers & Beckham, LLP
P.O. Box 8230
Greenwood, MS 38935-8230

CERTIFICATE OF SERVICE

I, PHILLYS Ann Mills-Carson, certify that I have this the 14 day of January, 2011 served a copy of Appellant's Brief by United States main with postage prepaid on the following person at this address:

Hon. Robert P. Chamberlin, Jr.
Circuit Court Judge
P.O. Box 280
Hernando, MS 38632


PHYLLIS ANN MILLS CARSON
1046 Church Road West
No. 106-232
South Haven, MS 38671
(901) 550-6824