2009-CA-01976 - RT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT

The central question is, in this case, the one that is so often before the court regarding review of a chancellor's finding is whether the Chancellor's ruling is against the overwhelming weight of the evidence. It is clear that the chancellor's finding will be reversed only when the chancellor was manifestly wrong. *Dobbins v. Coleman. 937 2d 1246. (Miss. 2006); Lzel Lzey v. McCormack. So. 2d 583. (Miss. 2009), and Map v Map. 23 So. 3rd 1096. (Miss. 2010).*

The questions presented here are as to whether the chancellor was manifestly wrong in:

1. Ruling that Diane Buccluch had no hope of success in her actions to remove James Buckalew as guardian and have herself appointed as guardian.
2. That the sum of $800 was a reasonable fee to award James Buckalew, the guardian, as a result of Diane having no hope of success on her pleadings.

Manifest is a strong word. It comes from Latin words meaning it gets your attention the same as being slapped on the jaw. The arguments used in Diane's brief, quite frankly, illustrate full well that the chancellor's ruling that Diane had no hope of success is not only even just wrong, but clearly correct.

While in her argument, Diane points out that it is well established "that

the pleadings themselves are not evidence," she uses it as a basis for almost her entire argument. She rests her argument on (1) a letter which was attached to Diane's pleading and (2) comments in the brief about her failure to appear in court. The explanations offered by Diane explaining why she did not pursue the matter in court are heard for the first time in her brief, there having been no testimony or evidence whatsoever regarding that matter. Diane's brief, resting on almost total fantasy as far as the record goes, is simply further illustration of why sanctions should be imposed.

The chancellor's original order simply awarded $800 as a reasonable fee, but the chancellor saw fit to issue an amended opinion after the appeal wherein he explained how he calculated the $800 award. He set out only four hours he attributed to the legal efforts necessary to combat the frivolous pleadings. James contends this is easily deemed manifestly wrong.

With all due respects, it is more than obvious that the entire hearing was held only because of the Rule 11 Motion. At the time of the hearing Diane had withdrawn her counterclaim to remove James as guardian and appoint herself and had removed herself from the house. The Rule 11 Motion was the only matter still pending for some time before the final hearing. The entire bill submitted in evidence as Exhibit 7 was obviously all necessary because of the filing of the frivolous counter complaint and the requirement of the hearing on Rule 11. That seems manifest when compared to the court's ruling that

there was no hope of success for Diane. The Court should not let the harm done to the other party as a result of frivolous pleadings be wiped out simply by the offending party dismissing those pleadings. In this case the dismissal came after Diane had squatted in the house rent free for a year, neglected the care of the house, and caused the guardianship to run up legal bills and other expenses (Exhibit 7 showing total of $8,570.00, lost rent $3909.00 (R. 33) and restoration of house $2295.09 ® 45-47). When called for an accounting for her filling such a serious matter she simply disappears and apparently expects to walk away, having gamed the system to achieve her goal.

Diane also relies on the so-called "agreement" she claims that she had with James, but this agreement, which was never proven is another fantasy which never materialized. The way it is described (by the attorney, not the witnesses) it is not an agreement that could in any way be legally enforced by Diane or James. Had there been some agreement, there is nothing even suggested by Diane Either one could have ended the agreement on simple notice to the other. With nothing in writing there is no question that the agreement claim is meaningless.

Diane mentions in her brief that the motion to strike to letter which was an exhibit to the pleading and that it was never heard. The counterclaim was dismissed on April 13, 2009 so there was no need to hear the motion to strike. The counterclaim had been voluntarily dismissed. The hearing on Rule 11 was

offered solely for the purpose of showing that Diane had filed a pleading on which she had no hope of success. Diane offered no testimony or evidence whatsoever on any of the allegations in the pleadings found to be without hope of success.

We will not labor the court by referring to the line by line record which is clear that none of the allegations contained in the pleadings offered were even remotely true. The testimony of James, his wife, Vicki, and sister, Diane was overwhelmingly supportive of James' position and overwhelmingly proved that nothing in Diane's pleading was anywhere near correct. Frankly, the pleading appeared to be total fantasy when the evidence was considered.

CONCLUSION

1. The Chancellor was clearly not manifestly wrong in finding that Diane had no hope of success. The case is overwhelming.

2. Appellant contend the Chancellor was clearly wrong in the manner in which he assessed the sanctions. Clearly, the entire time testified to by Appellant was necessary because of the hopeless pleadings filed by Diane. In fact, that was the total body of the case. Had it been confined to the simple eviction, that would have been, at most, one very short hearing, and more than likely, no appeal from that. Whereas, had the eviction been taken through the Justice Court they could have been appealed through the County and Circuit Courts and the matter could have been dragged out much longer. Nothing in

the evidence contradicts the fact that she had absolutely no defense to the motion to require her to leave the premises. In addition to essentially all the legal costs, the other costs, rent and repairs were also clearly costs directly caused by Diane using the courts to delay for her benefit.