

2009-CP-1931T

CERTIFICATE OF INTERESTED PARTIES

The undersigned Appellant certifies that the following listed persons have an interest in the outcome of the case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Lester Clark, Jr. , and Nathan L. Clark, III, Ann Clark Adkins, Clark and Clark Attorneys, PLLC - Counsel for Appellees
2. Geraldine Yates - Administratrix Estate of McCullough
3. Jim Hood - Miss. Attorney General
4. Shawn Shurden - Assistant Attorney

This the 15th day of April, 2010,

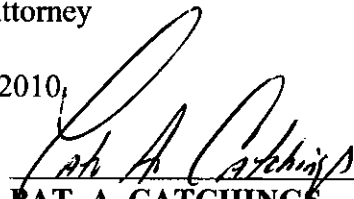

PAT. A. CATCHINGS

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TABLE OF AUTHORITIES

Case

McKee v. McKee, 418 So. 2d. 764, 767 (Miss. 1982).....

In Re Estate of Giles, 830 So. 2d 640 (Miss. 2002)

STATEMENT OF ISSUES

- I. The Chancellor decision in awarding appellant attorney fees and other fees was unreasonable and does not meet the standard of review as held in *McKee vs McKee*, 418 So. 2nd 764, 767 (Miss. 1982). The Judge abused her discretion in awarding of fees in this case.

STATEMENT OF THE CASE

I. Nature of Case

This action arises from an Estate matter. This case was appealed to the Mississippi Supreme Court to determine whether erred in her decisions.

II. Course of the Proceeding

The appellant properly preserving and pursuing her claim with the Hinds County Chancery, court by filing a Motion for Reconsideration and was rejected. Appellant properly included the Mississippi Attorney General in this action. Appellant now bring her case to the Mississippi Supreme Court.

III. State of the Facts

Appellant has submitted the facts of this case in a brief timeline form for the convenience and better understanding, of dates and occurrences related to matters in this appeal as follows:

10/19/2003	Date of Death: Thelma M. McCullough
01/06/2004	The Estate of Thelma M. McCullough was opened
02/03/2004	Petition to Determine filed
05/18/2004	Hearing held to Determine the Heirship of Thelma McCullough
02/08/2005	Judgment Determining Heirs entered
02/09/05	Petition to Close Estate filed
01/23/2006	On its own Motion, The Chancellor set aside her previous Judgment Determining Heirship (dated 02/08/2005)
11/28/2005	Order and Opinion of the jCourt
02/12/2007	Amended Petition Requesting Reconsideration of Prior Order
09/21/2007	Hearing on Amended Petition
01/08/2008	Final Judgment and Opinion of The Court

01/18/2008	Petitioners' Rule 59(e) Motion To Reconsider Final Judgment
01/05/2009	Order Denying Motion For Reconsideration
01/26/2009	Notice of Appeal filed by Appellant Morant's
07/02/2009	Appellee's Brief was filed
	Motion to Close Estate of McCullough
11/03/2009	Opinion Accepting Accounting, Discharge Administratrix and Surety Bond and to Close Estate
04/14/2009	Motion for Reconsideration of Fees in the Estate
08/21/2009	Hearing on Motion
10/09/2009	Order Denying Motion for Reconsideration
10/19/2009	Motion for Review of Reconsideration/ExParte
11/03/2009	Judge Closes Estate and reaffirm her original award

In response to the Judge Wise's Order Denying Motions for Reconsideration, wherein the Chancellor awarded appellant attorney fees without applying the *McKee's* factors. The appellant objects and appeal.

STANDARD OF REVIEW

Our appellate review is limited by familiar rules. This Court will not disturbed the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Bowers Window and Door Co., Inc., v ; Dearman*, 549 So.2d 1309, 1313, (Miss. 1989); *Bullard v. Morris* 547 So.2d 789, 791 (Miss.); *Johnson v. Hinds County*, 524 So.2d 937, 956 (Miss. 1988); *Gibson v. Manuel*, 534 So2d 199, 204 (Miss. 1988); *Bell v City of Bay St. Louis*, 467 So.2d 657, 661 (Miss. 1985).

SUMMARY OF ARGUMENT

The Appellant contend that the Chancellor decision on reconsideration in awarding fees was a clear abuse of discretion by not applying factors held in, McKee v. McKee, whereas appellant counsel for the Estate of McCullough should have been awarded reasonable attorney fees based on the number of hours spent on the case and at the hourly rate appellant customarily receive in accordance years of experience, as supported by her business records and accounting.

ARGUMENT

The matter before this court is whether the chancellor clearly and erroneously erred in her decision in awarding attorney fees, where Appellant provided documentation and accounting of her time spent in the case and proof of other award supporting the merit of her hourly rate in the McCullough Estate.

The Appellant alleges that Chancellor should have applied the McKee's factor in determining the amount of reasonable attorney fees in the case. Further, if Chancellor used the McKee factors the fees for valuable legal services rendered to the estate of McCullough would have been more than the amount awarded by the Chancellor.

The Courts held in McKee vs McKee, 418 So. 2d 764, 767 (Miss. 1982) that the Court can set a certain amount for hourly rate. That the rate should be based on several factors, namely, (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) likelihood, if parent to the client, that the acceptance of particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations

imposed by the client or by the circumstances; (6) the nature and length of professional relationship with the client; (7) the experience and reputation, ability, of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

The Courts have already established in *McKee vs McKee*, 418 So. 2d 764, 767 (Miss. 1982) that the Court can set a certain amount for hourly rate. That the rate should be based on several factors, namely,

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

In determining the number of hours accrued in the Estate of McCullough, the occurrence of events in conjunction with requests from the Chancellor and delay on hearings and the rendering of an Opinion, has spread this estate over six (6) years. The McCullough case was not a difficult case to handle, but it became lengthy wherein the Appellant exhausted many hours in bringing about closure in this estate matter.

a) The issue was are there heirs to Thelma McCullough, deceased. The Court had several hearings to determine heirs. The Judge wanted additional information, which was provided. Trips to different areas seeking information about any and all other known and unknown relatives, from distant relatives, former employers, family friends, associates, and records at the different Court houses as it relates to the deceased.

b) The Judge had three (3) law clerks or paralegals during this period of time, Mrs. Winters, Mrs. T'Shia Gordon and now Mrs. Kenya Johnson.

The Judge would make a decision that there are heirs and naming them on February 9, 2005 (while Mrs. LaShaundra Jackson- Winters was law clerk) and then send another Denying that there any Heirs on January 23, 2006 (while T'Shia Gordon was law clerk).

c) During the interim period, Motion and Order to Sell the Real and Personal Property in the Estate was filed and signed by the Judge to place all of the assets into an estate account on August 18, 2004. Estate did not hire an Auctioneer but the attorney did all of the work, advertising, inventory, etc. plus the sale of the property, to save on expenses for the estate.

e) The attorney did not hire Real Estate person to sell the house herein, but did all of the promotional work, advertising, most of the house showings, etc. to the final sale and conclusion of sale of property which included an Amended Motion and Order to Sell the Real Property by Administratrix as per the request of the Title Company for the sale on July 5, 2005. That the sale of the said property took place on August 3, 2005. On August 14, 2005 the Motion and Order was presented to the Judge to Approve the Sale of the Property. The Judge took the papers made remarks about the appraiser therein and held the same. Judge stated that she would review the same and get back with attorney later. (common phrase when she wants to review same). There have been many trips to the Judge's ex-parte day to get her to answer one way or the other about the heirs, signing of Orders presented, etc.

The Judge has waited from **August 14, 2005 to April 3, 2009** to sign the Order Approving the Sale of the Property.

In this case there is a pattern of leave the file, I'll review the papers, come back later, and when you go back the next week then she'll say come back later, she has not had time, or she's still looking into the matter, or another excuse. This keeps the lawyer constantly going back and forth (time working and waiting for the Judge to make a decision, which is counted as time on the case.

(2) likelihood , if parent to the client, that the acceptance of particular employment will preclude other employment by the lawyer;

This case did not preclude me from working on other cases, but it was time consuming having to go and forth on Motion Days for the Judge not to give you an Answer (one way or the other)

(3) the fee customarily charged in the locality for similar legal services;

The attorney herein presented a case to the Judge wherein she had been awarded \$200.00 per hour on another estate case, wherein she was told by this Judge that what another Judge allows in an estate case, she did not deem relevant.

This case before another Judge would have been closed a long time ago, but the problem of not being able to move forth with this Judge in resolving the matter, has been in large part on the Judge's schedule.

(4) the amount involved and the results obtained;

The amount involved is a little over \$300,000.00 and the results are that the Judge has refused to pay the attorney the fee requested or somewhere near that fee and to pay the house sitter a decent fee for over a year's worth of service of helping to preserve the house to get what was gotten at the sale.

The house sitter, Tony Williams, provided a valuable service to the estate. The property is in West Jackson, MS off Lynch St., the neighborhood is deteriorating and just behind the said house are HUD section 8 housing with people selling and having been arrested for illegal drugs, and houses that were being ruined. All of this was explained to the Judge, so that we could move forth with the sale. Any empty house in the direct area would be vandalized and destroyed, thus reducing its value considerably. By the house sitter having his Motor home parked in the drive way, cutting the grass, doing repairs and up keep on the property, and just being there constantly, kept the people who break in and destroy the property at bay. It was unfair for the Judge not to

pay this man a reasonable fee for staying at the property and keeping it up for almost a year.

- (5) the time limitations imposed by the client or by the circumstances; NONE.
- (6) the nature and length of professional relationship with the client;

Appellant has known the McCullough's for over 50 years from her childhood. Her professional relationship has been since 1998, as the attorney for Mr. McCullough (now deceased) and Mrs. McCullough thru her Conservatorship (her round the clock sitters would call about any and everything and for their requests for clothing for Mrs. McCullough, etc.) and thru the Estate

(7) the experience and reputation, ability, of the lawyer or lawyers performing the services; and The attorney has handled estates and been a member of the Mississippi Bar since 1973; and began working with Tucker and Smith in Jackson, MS. That civil Chancery matters is about 80% of her cases with Wills and Estates comprising about 50% of that.

(8) whether the fee is fixed or contingent

The fee is open not fixed, but the attorney asked for \$250.00 per hour. The fee of \$200.00 per hour has been presented as to another estate matter. Attorney worked for Mr. McCullough during his lifetime and was asked by him to look after the affairs of his wife, who had alzheimers and to follow his instructions to the end, which said attorney completed. No contract was signed at the time of the meetings with Mr. McCullough, and the worked was performed and the services should be paid for accordingly.

Further, the matter of attorney's fee was not decided until months after the first appeal in this case. The cost of having to answer the appeal to the MS Supreme Court in *Morant v. Yates, et al* #2009 CA-00149 SCT, was not considered or approved by the Judge. That was a lot of time, work and expense that went into not only the case, but also that appeal and the present appeal in this matter. At no time did the Judge state what fees she was including and what fees she was not including. Neither did she give a break down as to the hourly rate, wages, etc. In the Order was an arbitrary figure and no explanation of the fees therein.

In the *Morant* case (*supra*) the Mississippi Supreme Court decided that the *Morant* children were not the heirs of Mrs. Thelma McCullough. Judge Wise issued an Order placing the funds in the estate in the estate to the Hinds County Chancery Clerk office to be given to the State of Mississippi.

In the case at bar, Appellant attorney's fees of over 393.0 hours (which included the first appeal) and the present legal fees for second appeal should be deducted from the funds along with the fees of the house sitter before the funds are mailed to the State of Mississippi.

Appellant contends that she has provided and spent valuable time and services to this estate and the Chancellor in her discretion, did not use the McKee factor and relief should be rendered in this appeal.

CONCLUSION

Appellant urge the Court to find that the Chancellor erred in her decision of awarding reasonable attorney fees and other fees by clearly showing that she did not apply the McKee factors in considering the appellant time spent in properly administering the Estate of McCullough. .

The appellant ask the Court find that the Chancellor decision is an abuse of discretion, and award appellant the amount of her request for attorney fees and other fees in the Estate of McCullough.

CERTIFICATE OF SERVICE

I, PAT. A. CATCHINGS, Attorney for Petitioner, Patricia A. Catchings, certify that I have this day mailed postage pre-paid a true and correct copy of the Appellant's Brief and Record Excerpts to the following, to-wit:

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Judge Patricia Wise
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Jackson, MS 39205

This the 15th day of April, 2010.


PAT. A. CATCHINGS