CERTIFICATE OF INTERESTED PERSONS

SAMUEL D. JERNIGAN
Plaintiff-Appellant

v. NO. 2010-CA-00304

MAE BELLE JERNIGAN,
AMY YOUNG, AND TERRY YOUNG
Defendants-Appellees

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 judges of this Court may evaluate possible disqualification or recusal.

1. Honorable Talmadge Littlejohn, Chancery Court Judge
   First Judicial District, Monroe County

2. Don Medley
   Attorney for the Plaintiff-Appellant

3. Michael Malski
   Initial trial counsel for Amy Young

4. Luanne Thompson
   Trial and Appellate Counsel for Amy Young

5. Samuel Jernigan, Appellant

6. Amy Young, Appellee

7. Mae Belle Jernigan, Defendant

8. Terry Young, Defendant

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STATEMENT OF THE CASE

Procedural History

Samuel Jernigan (hereinafter "Samuel") and Mae Belle Jernigan (hereinafter "Mae Belle") were married on March 6, 1997. Samuel conveyed property, 7271 Will Robbins Highway, Nettleton, Mississippi, by quitclaim deed to his wife Mae Belle on May 27, 1999. R. 7. The deed was properly recorded on July 2, 1999. *Id.* On May 25, 2000, Mae Belle conveyed the property to her daughter, Amy L. Young (hereinafter "Amy"), which was also properly recorded on May 30, 2000. R. 9.

On June 19, 2001, Samuel and Mae Belle filed a Joint Complaint for Divorce and a Property Settlement Agreement in the Monroe Chancery Court. R. 11, 15. Four months later, on October 22, 2001, Samuel and Mae Belle were divorced by a Final Decree entered in the Monroe Chancery Court. R. 6.

Samuel filed numerous pleadings in three different cause numbers with the Monroe Chancery Court in his attempt to reclaim the property he had conveyed prior to the divorce. On October 7, 2009, Amy filed a Motion for Summary Judgment in the cases for which a hearing was held December 14, 2009. Judge Littlejohn granted summary judgment which resulted in dismissal of the Complaint for Divorce, the Complaint to Set Aside Quit Claim Deed, etc, the

Motion to Set Aside Final Decree, and cancellation of the Lis Pendens Notice on the subject property. The order granting summary judgment was filed on January 13, 2010. R. 4.

Facts and Extraneous Pleadings

Samuel and Mae Belle filed their Joint Complaint for Divorce and Property Settlement Agreement along with accompanying affidavits on June 19, 2001 in Monroe Chancery Cause Number 2001-319 for which a Final Decree of Divorce was entered on October 22, 2001. R. 11, 15, 6.

On October 26, 2001, four days after he was divorced, Samuel filed a Withdrawal of Consent in cause number 2001-319 in a case which was closed by virtue of the final decree having been filed. R. 21.

Twenty-nine days after he was divorced, Samuel filed a Complaint for Divorce on November 20, 2001 in cause number 2001-651 without benefit of an order setting aside the Final Decree in cause number 2001-319. R. 22. As part of his relief in his divorce complaint, Samuel seeks ownership of the property at 7271 Will Robbins Highway, Nettleton in spite of the fact that the property had already been conveyed to a third party prior to either of the divorce complaints having been filed.

On December 21, 2001, Samuel filed a Complaint to Set Aside Quitclaim Deed and Warranty Deed, Remove Cloud on Title, Preliminary and Permanent Injunction and Other Relief in cause number 2001-710. R. 28. The subject property of the complaint is the property at 7271 Will Robbins Highway, Nettleton. While admitting in his complaint that he conveyed the property to his wife, Mae Belle and that subsequently, Mae Belle conveyed the property to Amy, Samuel fails to include in his complaint the very significant fact that he and Mae Belle were already divorced and that no issue existed as to the subject property at the time he signed the affidavits for the Property Settlement Agreement and the Joint Complaint for Divorce on June 15, 2001.

After a lapse of sixty-five days and on December 26, 2001, Samuel finally filed a Motion to Set Aside Final Decree of Divorce and for Other Relief in cause number 2001-319. R. 35. His sole argument for setting aside the final decree is that he filed his withdrawal of consent *after* the entry of the final decree.

In April of 2002, Samuel filed a Lis Pendens Notice on the property located at 7271 Will Robbins Highway, Nettleton, Mississippi with the Chancery Court of Monroe County by erroneously claiming that the property was subject to property division in a divorce between Samuel and Mae Belle. R. 40.

SUMMARY OF THE ARGUMENT

At the heart of all of the litigation is the piece of property, .38 of an acre, located at Will Robbins Highway in Nettleton. Samuel is aggrieved that he no longer owns the property and, by virtue of all of his filings, successfully tied up the property with his numerous frivolous pleadings. Amy finds herself not only in the position of defending her rightful ownership of the property, but, additionally, defending against all of the pleadings filed by Samuel in an effort to finally release her property. There is no genuine issue of material fact as to any of the litigation and, therefore, the Court was not erroneous in granting summary judgment, dismissing the various pleadings, and canceling the lis pendens notice.

ARGUMENT

WHETHER SUMMARY JUDGMENT WAS GRANTED ERRONEOUSLY IN:

A. DISMISSING THE COMPLAINT FOR DIVORCE
B. DISMISSING THE COMPLAINT TO SET ASIDE THE DEEDS
C. DISMISSING THE MOTION TO SET ASIDE THE FINAL DECREE
D. RELEASING THE LIS PENDENS

This Court reviews a trial court's grant or denial of a motion for summary judgment or a motion to dismiss under a de novo standard. *Monsanto v. Hall,* 912 So.2d 134, 136 (Miss.2005). Pursuant to Rule 56 of the Mississippi Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c). The court views the evidence in the light most favorable to the nonmoving party. *Univ. of Miss. Med. Ctr. v. Easterling*, 928 So.2d 815, 817 (Miss. 2006). "The moving party bears the burden of demonstrating there is no genuine issue of material fact." *Id.*

Samuel and Mae filed their Joint Complaint for Divorce on June 19, 2001. R.11. Filed simultaneously with the complaint was a Property Settlement Agreement in which it is recited that the parties "have divided to their mutual satisfaction all real and/or personal property brought by them into their marriage."

R. 15. Both the complaint and settlement agreement are properly supported by signed and attested to affidavits executed on June 15, 2001. *Id.* Additionally, the agreement provides blank spaces for the parties to indicate which property each should have the exclusive use, possession, title, and ownership. R. 15. In both spaces for both parties, the word "none" is hand written. *Id.*

Four months after the filing of the joint complaint and the settlement agreement, on October 22, 2001, the parties were granted their divorce when the final decree was filed. R. 6. On October 26, 2001, Samuel filed a Withdrawal of Consent in the closed case which was four days after the entry of the Final Decree. R. 21.

The withdrawal of consent was improperly filed and fails to preserve Samuel's statutory right to stop the divorce action prior to the entry of the final decree of divorce. Samuel lost his right to withdraw his consent to the divorce when he did not contest the divorce by filing his withdrawal prior to the entry of the final decree regardless of the reason for his failure. See *Irby v. Estate of Irby,* 7 So.3d 223 (Miss. 2009). Later, when Samuel filed his motion to set aside the final decree on December 26, 2001, two months after filing his Withdrawal of Consent, he would argue that he was entitled to relief under Mississippi Rule of Civil Procedure 60(b)(2) and (6).

Mississippi law provides that a complaint for divorce on the ground of irreconcilable differences must have been on file for sixty days before being heard. Miss. Code Ann. §93-5-2(4). The Code further provides that, "no divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial." Miss. Code Ann. §93-5-2(5). Samuel now attempts to do that which he had every legal right to do statutorily during the four months between the filing of the complaint and the final decree. Indeed, he attempts to circumvent the statute in obtaining relief.

Long standing law in Mississippi recognizes that the Mississippi Rules of Civil Procedure have limited applicability in actions for divorce and that divorce actions are governed by the divorce and alimony provisions of section 93, chapter 5 of the Mississippi Code. *Holmes v. Holmes,* 628 So.2d 1361, 1363 (Miss. 1993), *Rawson v. Buta,* 609 So.2d 426, 430 (Miss. 1992). "The procedural provisions of this chapter limit the applicability of the Mississippi Rules of Civil Procedure, which govern only where the divorce statute stands silent." *Id.*

The procedures under the statute clearly provide a remedy for an individual wishing to no longer proceed with divorce on the basis of irreconcilable differences and that remedy is the filing of a contest or withdrawal of consent; however, the contest or withdrawal of consent must be filed *prior* to entry of the

final decree. Merely signing a withdrawal of consent in the office of an attorney prior to the entry of divorce is inadequate and does not qualify statutorily. The statute must be adhered to in order to gain relief. Samuel had four months in which to follow the appropriate statutory procedure by filing a withdrawal of consent. Because Samuel did not follow what is clearly provided under the statute, he cannot now supplant statutory law by sliding his withdrawal of consent in the back door by way of Mississippi Rule of Civil Procedure 60.

Interestingly enough, the parties sought their no-fault divorce as *pro se* litigants. As admitted in his motion to set aside the divorce, Samuel was clearly represented by counsel when he decided to withdraw his consent prior to the entry of the final decree. While he may have signed his withdrawal of consent on October 16, 2001 prior to the entry of the final decree, the failure to timely file the same rests entirely with Samuel, not Mae Belle.

A. DISMISSING THE COMPLAINT FOR DIVORCE

When Samuel filed his Complaint for Divorce on November 20, 2001, he did so at a time when he was already divorced. Additionally, he filed his complaint without benefit of having this Court rule on whether the final decree in Monroe Chancery 2001-319, the no-fault divorce, should be set aside.

Understandably, Samuel had not scheduled a hearing for determination of whether the final decree should be set aside since, as of the date of the filing of his contested complaint, he had not even filed a motion to set aside the final decree in the no-fault divorce. Samuel did not file his Motion to Set Aside the Final Decree until December 26, 2001. R. 35. Therefore, the filing of the Divorce for Complaint in which Samuel attempts to reclaim real property previously conveyed, is premature.

The Chancellor did not make an erroneous ruling when he granted summary judgment and dismissal with regard to the Complaint for Divorce. There is no genuine issue of material fact in cause 2001-651. The complaint recites the same day of marriage, March 6, 1997, as recited in the joint complaint in which a final decree had already been entered.

B. DISMISSING THE COMPLAINT TO SET ASIDE THE DEEDS

In December of 2001, Samuel filed a Complaint to Set Aside Quitclaim Deed and Warranty Deed, Remove Cloud on Title, Preliminary and Permanent Injunction and Other Relief in cause number 2001-710. R. 28. By admission in his own complaint, Samuel states that he conveyed by quitclaim deed the subject property, 7271 Will Robbins Highway, Nettleton, Mississippi to wife Mae Belle

during the marriage. R. 7. He further complains that his wife conveyed the property to her daughter, Amy, during the marriage between Samuel and Mae Belle. R. 9. Additionally, Samuel states in his complaint that the interest in ownership of the property by Mae Belle, and later Amy, is adverse to him and that neither Mae Belle nor Amy had any right or interest in the property. R. 28. Samuel further seems to question the validity of a conveyance of real property by a quitclaim deed. Id.

By his own hand, Samuel signed the quitclaim deed to Mae Belle on May 27, 1999. With regard to the effect of a quitclaim deed, the Mississippi Code states:

> A conveyance of quitclaim and release shall be sufficient to pass all the estate or interest the grantor has in the land conveyed, and shall estop the grantor and his heirs from asserting a subsequently acquired adverse title to the lands conveyed.

Miss. Code Ann.§89-1-39. By statute, Samuel is estopped from asserting a claim on the property at 7271 Will Robbins Highway, Nettleton.

It is presumed that the grantor of a properly executed deed was mentally competent at the time of its execution. *In re Moran v. Necaise,* 821 So. 2d 903, 906 (Miss. Ct. App. 2002). Generally, in order to set aside a deed in this state, it must be shown by clear and convincing evidence that the grantor lacked the

mental capacity at the moment of execution to understand the legal consequences of his or her actions. *Id.* There is no allegation that Samuel lacked the mental capacity to understand the legal consequences of his actions.

Instead, Samuel asserts in his complaint to set aside the deeds that there was no consideration between Mae Belle and Samuel for the property and, additionally, that "it was understood that the Property [sic] was to remain Plaintiff's Property [sic]." It is well settled law in this state that in a voluntary conveyance, the grantor cannot set aside a deed because of a lack of consideration absent an allegation of fraud. *Rebuild America v. Milner,* 7 So.3d 972, 977 (Miss. Ct. App. 2009) (citing *Covington v. Butler,* 242 So.2d 444, 447 (Miss. 1970) (quoting *Campbell v. State Highway Comm'n,* 54 So.2d 654, 656 (Miss. 1951))). There is no allegation of fraud in the complaint.

Samuel further complains that there was no consideration in the conveyance between mother and daughter when Mae Belle deeded the property to Amy on May 25, 2000. "Under Mississippi law, love and affection are considered consideration. It was reasonable for Louie to give his property to his daughter as a gift." *Holmes v. O'Bryant,* 741 So.2d 366, 371 (Miss. Ct. App. 1999) (quoting *Mullins v. Ratcliff,* 515 So.2d 1183, 1190 (Miss. 1987) ("[i]nter vivos deeds of gift are a perfectly respectable mode of conveyance.") and *Herrington v. Herrington,*

232 Miss. 244, 250-251, 98 So.2d 646, 649 (1957) (quoting *Burnett v. Smith,* 93 Miss. 566, 47 So. 117, 118 (Miss. 1908)) ("A man of sound mind may execute a will or a deed from any sort of motive satisfactory to him, whether that motive be love, affection, gratitude, partiality, prejudice, or even a whim or caprice.")) Therefore, as between mother and daughter, consideration in the conveyance is not an issue.

The pleadings are silent as to why Mae Belle would know that "it was understood that the Property [sic] was to remain Plaintiff's Property [sic]." It is presumed that the basis for the property being placed in the name of Mae Belle but somehow remaining his is not grounded in any effort to defraud the government. In Mississippi, one cannot seek to use "the chancellor's hands to draw equity from a source his own hands ha[d] polluted." *Ellzey v. James,* 970 So.2d 193, 196 (Miss. Ct. App.2007). Ellzey found himself in the unfortunate position of deeding his mineral interests to a third party in order to qualify for Medicaid. *Id.* The Court of Appeals affirmed the ruling of the lower Court which found James to be the sole owner based upon the fact that Ellzey invoked the aid of the Chancellor to remedy a problem created by his own fraudulent act. *Id.*

Samuel's complaint to set aside the deeds on the property located at 7271 Will Robbins Highway, Nettleton, Mississippi is completely meritless. The

Chancellor did not make an erroneous ruling when he granted summary judgment and dismissed the complaint. There is no genuine issue as to material fact in the complaint to set aside the deeds. A quitclaim deed conveys any and all interest a grantor may have in real property and, by statute, the grantor is estopped from reasserting the interest previously conveyed.

Samuel's reliance on lack of consideration in both transactions is misplaced. The complaint does not allege lack of mental capacity on the part of Samuel nor is fraud alleged in the complaint. The basis for his assertion that Mae Belle understood the property was to remain his matters not. A valid conveyance occurred which then enabled Mae Belle to do as she wished with the property. Dismissal of the complaint was proper. There is no genuine issue of material fact. The Chancellor properly granted summary judgment.

C. DISMISSING THE MOTION TO SET ASIDE THE FINAL DECREE

On December 26, 2001, Samuel filed a Motion to Set Aside Final Decree of Divorce and for Other Relief in cause number 2001-319 in which he argues that the final decree granting the divorce in the no-fault proceeding should be set aside based upon his filing of a withdrawal of consent *after* the entry of the final decree in the divorce. Samuel argues that after the joint complaint was filed on June 19,

2001 and "without further discussion between the parties, Mae Belle had a final decree for divorce prepared and filed on October 22, 2001."

Besides the obvious fact that the Mississippi Code does not require "further discussion" between parties who have filed a joint complaint for divorce on the ground of irreconcilable differences, Samuel missed the boat when he failed to adhere to the requirements of the statute by filing his withdrawal of consent prior to the entry of the final decree. Samuel complains that he executed his withdrawal of consent at his attorney's office on October 16, 2001 but that due to "unexplainable delay" it was not filed until October 26, 2001. He further states in his motion that he filed his divorce complaint on November 20, 2001 due to his "being unaware" that the final decree of divorce had been filed in the no-fault proceeding. Samuel contends that he is entitled to have the final decree set aside based upon Mississippi Rule of Civil Procedure 60(b)(2) and (6).

"As a general rule, the 'extraordinary relief' provided for by Rule 60(b), will be granted 'only upon an adequate showing of exceptional circumstances,' and gross negligence, ignorance of the rules, ignorance of the law, or carelessness on the part of the attorney will not provide sufficient grounds for relief." *Accredited Sur & Cas. Co. v. Bolles,* 535 So. 2d 56, 59 (Miss. 1988) (citing *Stringfellow v. Stringfellow,* 451 So.2d 219, 221 (Miss. 1984)).

In the case of *Buie v. Buie,* 772 So.2d 1079 (Miss. Ct. App. 2000), the appellant sought relief under Rule 60 seeking to set aside a judgment of divorce where her attorney, out of neglect, failed to attend her divorce hearing and the divorce was granted against her. The Court of Appeals considered the issue of whether attorney neglect could justify relief under Rule 60. In reaching its ruling affirming the denial of relief, the Court cited *Stringfellow,* 451 So.2d at 221, for the proposition that, "incompetence or ignorance on the part of a party's attorney does not give rise to Rule 60(b)(2) relief."

"Unexplainable delay" in filing the withdrawal of consent does not rise to the level of affording "extraordinary relief" especially under the circumstances in this case. There is no genuine issue of material fact. All parties would agree that Samuel filed his withdrawal of consent after entry of the final decree in the no-fault divorce. The law clearly prohibits granting of relief under Rule 60(b). This Court should grant judgment as a matter of law in favor of the Defendants and dismiss the Motion to Set Aside Final Decree filed by Samuel.

D. RELEASING THE LIS PENDENS

In April of 2002, Samuel filed a Lis Pendens Notice in cause number 2001-710, on the property located at 7271 Will Robbins Highway, Nettleton,

Mississippi, property which is in the name of Amy, the daughter of Mae Belle. R. 40. While Samuel filed his Lis Pendens Notice in the complaint to set aside the deeds, Samuel asserts in the notice, "This action being for property division between Samuel D. Jernigan and Mae B. Jernigan."

Because a final decree has already been entered adjudicating the division of property between the parties in Monroe Chancery cause number 2001- 319 and because the Complaint for Divorce filed in 2001-651 was improperly and prematurely filed, there was no action for property division between Samuel and Mae Belle pending in any Court. Mississippi Rule of Civil Procedure 60 clearly states:

> A motion under this subdivision does not affect the finality of a judgment or suspend its operation.

Therefore, the Chancellor was correct in canceling the lis pendens. The assertion by Samuel in his notice that the property is subject to property division is frivolous when the parties are already divorced. No genuine issue of material fact exists.

CONCLUSION

There is no genuine issue of material fact as to any of the issues advanced by Samuel. The Chancellor was correct in granting summary judgment and dismissing all the complaints and motion as well as canceling the lis pendens notice.

CERTIFICATE OF SERVICE

I, Luanne Thompson, certify that today, September 10, 2010, a copy of the brief for the Appellee was served upon the following by U.S. Mail, postage prepaid:

Honorable Talmadge Littlejohn
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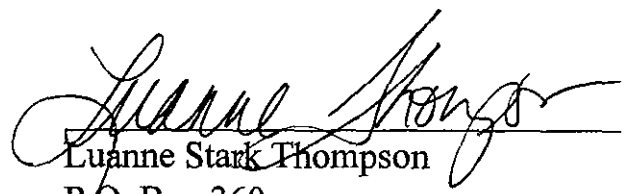

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CERTIFICATE OF FILING

I, Norma Springfield, certify that today, September 10, 2010, I have mailed the following documents to the Clerk of this Court by U.S. Mail, postage prepaid:

1. 1 original and 3 copies of the Brief of Appellee;

2. 4 copies of the Record Excerpts of the Appellee;

3. 1 flash drive containing the Brief of Appellee; labeled with the style and the number of the case; and formatted in pdf.

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