

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SAMUEL D. JERNIGAN

APPELLANT

V.

NO. 2010-CA-00304

MAE BELLE JERNIGAN,
AMY YOUNG, AND TERRY YOUNG

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APPELLEES

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TABLE OF AUTHORITIES

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ARGUMENTS

Plaintiff, Samuel D. Jernigan (hereinafter "Samuel"), reaffirms and incorporates all arguments set forth in his previously filed Brief and for the sake of brevity will not repeat previously submitted arguments.

I. Lack of Mutual Consent to Divorce

Defendant Mae Belle Jernigan (hereinafter "Mae Belle") contends that Samuel's withdrawal of consent is only valid if *filed* prior to the entry of the final decree and cites *Irby v. Estate of Irby*, 7 So.3d 223 (Miss. 2009) as support for this proposition. While *Irby* requires leave of court in order to withdraw consent during the commencement of an action, Mae Belle fails to point out that such applies to those parties of an irreconcilable divorce who consent to allow the court to decide disputes regarding child custody and property rights. Miss. Code Ann. § 93-5-2(3). A situation which does not apply to the instant matter. Samuel consented merely to an irreconcilable divorce and subsequently withdrew his consent, both verbally to the Mae Belle and in writing prior to the entry date of the Final Decree of Divorce.

Next, Mae Belle states that statutory authority provides the only remedy for an individual no longer wishing to proceed with a divorce on the basis of irreconcilable differences. She claims one must *file* a withdrawal of consent *prior* to the final decree. Upon review of the applicable statutes,

no such specific rule is found. Based upon case law, Courts overwhelmingly determine that “[t]he cornerstone of the process [of an irreconcilable differences divorce] is mutual consent.” *Grier v. Grier*, 616 So. 2d 337, 339 (Miss. 1993). Here, Samuel not only withdrew his consent to the divorce in writing, but he verbally withdrew his consent directly to Mae Belle prior to the filing of the Final Decree, which was submitted without his knowledge and prior to the commencement of any proceeding.

Further, Mae Belle completely fails to address Samuel’s arguments regarding the lack of hearing as required pursuant to Miss. Code Ann. §93-5-2(4) and lack of notice of hearing.

II. DISMISSAL OF COMPLAINT FOR DIVORCE

Based upon Samuel’s good faith belief that his withdrawal of consent to the joint complaint for divorce had been received by the court, Samuel filed his Complaint for Divorce. Samuel’s purpose in withdrawing his consent was based upon the premise that Mae Belle refused to honor the agreement that she would return Samuel’s pre-marital property to him.

III. DISMISSAL OF COMPLAINT TO SET ASIDE THE DEEDS

First, Mae Belle claims Samuel is estopped from asserting a claim on the property, however, her reliance on Miss. Code Ann. § 89-1-39 is misplaced. Mississippi Code Annotated § 89-1-39, also known as the after-acquired doctrine, applies only to those grantors who deed property on the *belief* that s/he had good title to the land, but in reality did not. The doctrine estops a grantor from disposing of property s/he does not own, then reclaiming it as his/her own after s/he acquires actual title. In the instant matter, Samuel properly acquired title to the property on April 29, 1996, almost a year prior to his marriage to Defendant and three years prior to the quitclaim deed in dispute. Thus § 89-1-39 is not applicable.

Mae Belle continues that a deed cannot be set aside because of lack of consideration absent an allegation of fraud. Mae Belle accepted receipt of the subject property to hold in constructive trust for Samuel, until a later time at which title was to be returned. Further, Samuel originally consented to the settlement agreement based on Mae Belle's confirmation that title to the property would still be returned to him. Yet, Mae Belle submitted the settlement agreement to the court without Samuel's knowledge and knowing of his withdrawal of consent, and further defaulted on her agreement to return the property.

To determine whether a conveyance is fraudulent, "a court searches for certain 'badges of fraud,' or suspicious circumstances, which usually accompany a fraudulent conveyance." *S.E. Bank of Broward*, 555 So.2d at 707 (quoting *Reed v. Lavecchia*, 187 Miss. 413, 193 So. 439 (Miss. 1940)). For instance, several badges of fraud are present and create, at the very least, suspicious circumstances, including: (1) the inadequacy of consideration, (2) the relationship of the grantor to the grantee, (3) the continued use of the property by Samuel (4) Samuel's valuable personal property remaining on the site and (5) the insolvency of Samuel after the execution of the deed in question. Further, Mae Belle's argument regarding consideration between mother and daughter matters not, as Mae Belle never acquired title to the property in which she could convey.

Finally, Mae Belle asserts that Samuel has "unclean hands" created by his transfer of the property to her, and as such can not now reclaim that property. However, Mae Belle offers no evidence that Samuel's hand were "unclean" during the underlying transaction, but for her own meritless assumptions.

Again, Mae Belle fails to address Samuel's arguments regarding the Chancellor's failure to properly approve the settlement division as required pursuant to Miss. Code Ann. § 93-5-2 and the

parties non-compliance with Uniform Chancery Court Rule 8.05 regarding full and correct financial disclosure.

IV. DISMISSAL OF MOTION TO SET ASIDE FINAL DECREE

Mae Belle further implies that Rule 60 of the Mississippi Rules of Civil Procedure is inapplicable and even if applicable, the filing of the withdrawal after the entry of the final decree does not amount to “extraordinary relief” as provided by Rule 60(b) of the Mississippi Rules of Civil Procedure. Yet, Samuel did not cite Rule 60(b) for the proposition that a mistake was made, but for fraud or misconduct of an adverse party. Samuel informed Mae Belle that he no longer consented to the divorce due to the accompanying property settlement agreement. In *Lowrey v. Lowrey*, 919 So.2d 1112 (Miss. 2005), the Court stated that if a settlement agreement is unenforceable, the parties would remain divorced, yet the issues of property division would remain unresolved. However, despite this knowledge, Mae Belle had the final decree for divorce prepared and submitted for the chancellor’s signature. For all intents and purposes, in doing so Mae Belle perpetrated a fraud upon the court.

Further arguments made by the Mae Belle are mere recitations of her previously discussed arguments and do not warrant further response.

V. RELEASE OF LIS PENDENS


The filing of a lis pendens is merely a notice in the chain of title to real property to warn that such property is the subject of litigation and is subject to its outcome. Mae Belle states that the matters in dispute regarding the subject property are closed and the lis pendens should be removed without regard for this pending appeal. However, the outcome of this very matter could affect the property and any potential purchaser or lienholder is entitled to notice. Although Mae Belle argues

that the matter cited on the notice (i.e. property division between the parties) was not the matter in which the notice was filed, Samuel's intention is plainly evident regardless of whether the legally appropriate language was used. Samuel intended to give notice to innocent third parties that the property in question is subject to pending legal action.

VI. CONCLUSION

The Chancery Court of Monroe County granted summary judgment despite the lack of testimony and the existence of numerous genuine issues of material fact which constitute reversible error. Such issues include: whether Samuel withdrew consent to a divorce on the grounds of irreconcilable differences; whether Mae Belle had knowledge of Samuel's withdrawal of consent; whether the settlement agreement was adequate and sufficient; whether full financial disclosures were made; whether the property conveyance between Samuel and Mae Belle was fraudulent; whether Mae Belle's conveyance of marital property to her daughter was fraudulent; and whether there was an agreement between Samuel and Mae Belle regarding the future disposition of the property. Based on the foregoing, Appellant respectfully requests this Court reverse the decision of the Chancery Court of Monroe County, Mississippi as there are genuine issues of material fact in dispute.

Respectfully Submitted,

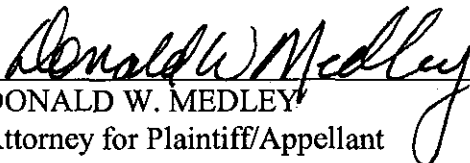

Donald W. Medley
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Donald W. Medley, attorney for Appellant, Samuel Jernigan, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Reply to:

Luanne S. Thompson
Attorney at Law
P.O. Box 360
Amory, MS 38821

This the 24 day of September, 2010.



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CERTIFICATE OF COMPLIANCE

I, Donald W. Medley, attorney for Appellant, Samuel Jernigan, do hereby certify that the foregoing instrument is in compliance with the Mississippi rules of Appellate Procedure.

This the 24 day of September, 2010.



DONALD W. MEDLEY
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Donald W. Medley, attorney for Appellant, Samuel Jernigan, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Reply to:

Honorable Talmadge Littlejohn
Monroe County Chancery Court Judge
P.O. Box 869
New Albany, MS 38652

This the 24th day of September, 2010.



DONALD W. MEDLEY
Attorney for Plaintiff/Appellant