

**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**

**APPELLEES**

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**BRIEF FOR APPELLANT**

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**ORAL ARGUMENT REQUESTED**

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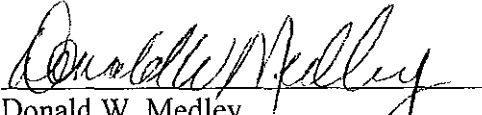
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**CERTIFICATE OF INTEREST PARTIES**

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The undersigned counsel of record certify that the following listed 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 Appeals may evaluate possible disqualification or recusal.

1. Samuel D. Jernigan - Plaintiff/Appellant
2. Mae Belle Jernigan - Defendant/Appellee
3. Amy Young - Defendant/Appellee
4. Terry Young - Defendant/Appellee

  
Donald W. Medley  
Attorney for Plaintiff/Appellant

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**STATEMENT OF ISSUES**

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- I. Whether there was mutual consent to a divorce based on the ground of irreconcilable difference as required by § 93-5-2 of the *Mississippi Code of 1972*, Annotated, as amended;
- II. Whether the property settlement is a full and correct financial disclosure as required by UCCR 8.05; and
- III. Whether there was an agreement between Samuel and Mae Belle that the Monroe County property was to remain Samuel's property, thus precluding Mae Belle from Deeding the property to her daughter.

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**STATEMENT OF THE CASE**

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**PROCEDURAL HISTORY**

Samuel and Mae Belle signed and filed a Joint Complaint for Divorce and Property Settlement Agreement on June 19, 2001. Subsequently, Samuel communicated withdrawal of his consent to the divorce to Mae Belle, due to issues regarding marital property. Thereafter, on October 16, 2001, Samuel signed his Withdrawal of Consent to the Divorce. The following day, October 17, 2001 the presiding Chancellor approved and signed the Final Decree of Divorce, which was filed on October 22, 2001. On October 26, 2001, Samuel's Withdrawal of Consent was filed with the Chancery Court. Subsequently, Samuel filed a Complaint for Divorce on the grounds of habitual cruel and inhuman treatment on November 20, 2001. On December 20, 2001, Samuel filed a Complaint to set aside prior Quitclaim and Warranty Deeds, remove clouds from the title, and receive preliminary and permanent injunctive relief to restrain Appellees from the Monroe County property. On December 26, 2001, Samuel moved to set aside the Final Decree of Divorce and for Other Relief. A Lis Pendens Notice was filed regarding the property on April 10, 2002. On October 5, 2009, Appellees filed their Motion for Summary Judgment and Supporting Brief. Samuel filed his Opposition on November 20, 2009. Thereafter, an Order granting Appellees' Motion for Summary Judgment, dismissing all related cases and releasing the Lis Pendens was filed on January

13, 2010. Appellant appeals from the Summary Judgment and seeks reversal of same.

### STATEMENT OF FACTS

On or about April 29, 1996, Samuel Jernigan was granted title to property located in Monroe County, Mississippi. Samuel and Mae Belle were married on March 6, 1997. On May 27, 1999, Samuel conveyed by Quitclaim Deed the Monroe County property to Mae Belle with the understanding that ownership of the property would be returned to him. Samuel and Mae Belle then separated on or about December 1, 1999. Despite the ownership agreement, Mae Belle provided a Warranty Deed conveying the Monroe County property to her daughter, Amy Young, on May 25, 2000. No consideration was given as to either conveyance.

On June 19, 2001, Mae Belle completed a "fill-in-the-blank" Joint Complaint for Divorce and Property Settlement Agreement, Cause Number 2001-319, which Samuel signed and Mae Belle filed in the Chancery Court of Monroe County, Mississippi. . However, Samuel communicated withdrawal of his consent to the divorce to Mae Belle, due to issues regarding marital property. On October 16, 2001, Samuel signed his Withdrawal of Consent to the divorce, which was filed October 26, 2001. On October 17, 2001, a Final Decree of Divorce was signed by the Chancellor, absent hearing or notice to Samuel, and filed on October 22, 2001.

Having withdrawn his consent, Samuel obtained legal counsel and filed a new Complaint for Divorce on November 20, 2001, Cause Number 2001-651, citing grounds of habitual cruel and inhuman treatment and sought ownership of several parcels of land, including that in Monroe County. Thereafter, 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, Cause Number 2001-710, the subject property being that located in Monroe County.

On December 26, 2001, Samuel filed a Motion to Set Aside Final Decree of Divorce in

Cause Number 2001-319, based on withdrawal of his consent. Samuel then filed a Lis Pendens Notice regarding the Monroe County property on April 10, 2002.

On October 5, 2009, Appellees filed their Motion for Summary Judgment and Supporting Brief, which was opposed by Appellant on November 20, 2009. On January 13, 2010, an Order was entered granting the Motion for Summary Judgment, Dismissing Pending Cases, and Releasing Lis Pendens.

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SUMMARY OF THE ARGUMENT

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The cornerstone of divorce based on irreconcilable differences is mutual consent. *Grier v. Grier*, 616 So.2d 337, 339 (Miss. 1993). Additionally, such actions must be on file prior to being *heard* and settlement of property between parties may be incorporated into the judgment only if the court finds such provisions *adequate and sufficient*. Miss. Code Ann. §93-5-2, emphasis added. Samuel executed his Withdrawal of Consent, no hearing was conducted by the Chancellor, nor did the court elaborate on the adequacy of the settlement, beyond the obligatory words of the statute. Additionally, the Property Settlement Agreement fails to comply with the requirements of a full and correct financial disclosure pursuant to Rule 8.05 of the Uniform Chancery Court Rules.

Also, Mae Belle is precluded from deeding the property as there existed an agreement between Samuel and Mae Belle in which she would hold the property until such time she would reconvey to Samuel. Regardless, as the equitable owner of the property, Samuel may divest Amy Young of the property as her in title is inherently suspect. Miss. Code Ann. §11-17-31. Case law has made clear that transaction between spouses are presumptively fraudulent.

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ARGUMENT

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STANDARD OF REVIEW

This Court reviews de novo the action of the trial court in sustaining a Motion for Summary Judgment. *Simpson v. Boyd*, 880 So.2d 1047, 1050 (Miss. 2004). A trial court may grant summary judgment only “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.” Miss. R. Civ. Pro. 56(c). Further, the evidence must be viewed in the light most favorable to the non-moving party. *Simpson* at 1050.

ARGUMENT

**I. Lack of Mutual Consent to Divorce based on Irreconcilable Differences**

“Divorce in Mississippi is a creature of statute.” *Gardner v. Gardner*, 618 So.2d 108, 111-13 (Miss. 1993) (citing *Massingill v. Massingill*, 594 So.2d 1173, 1175 (Miss. 1992)). In complying with certain statutory requirements “[t]he starting point is that an irreconcilable differences divorce in Mississippi requires that neither spouse contest its granting.” *Dissolution of Sanford v. Sanford*, 749 So.2d 353 (Miss. Ct. App. 1999); See Miss. Code Ann. §93-5-2(5) (1994). The cornerstone of the process is **mutual consent**.” *Grier v. Grier*, 616 So.2d 337, 339 (Miss. 1993) emphasis added.

While it is true that Samuel and Mae Belle executed a Joint Complaint for Divorce and

Property Settlement Agreement, Samuel withdrew his consent to a divorce on the ground of irreconcilable differences by executing a Withdrawal of Consent of October 16, 2001, the day before the Chancellor signed the Final Decree of Divorce. The Withdrawal of Consent must be deemed as irrefutable evidence that Samuel no longer agreed to a divorce based upon irreconcilable differences.

Prior to the Chancellor's approval of the Final Divorce Decree, Samuel informed Mae Belle that he no longer consented to the divorce and accompanying property settlement agreement. However, Mae Belle went forward, having had a final decree for divorce prepared and submitted for the Chancellor's signature, thus perpetrating a fraud upon the court. Without mutual consent, there can be no divorce.

Additionally, §93-5-2 (Supp. 1992) of the Mississippi Code Annotated provides, in pertinent part:

(4) Complaints for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being **heard**.

Miss. Code Ann. §93-5-2(4) (Supp. 1992) emphasis added.

There is no indication in the record that a hearing in the instant case was conducted by the Chancellor before his signature was affixed to the Final Decree. Further, there is no indication whether Samuel was even given notice that a Final Decree was to be presented to the Chancellor. Had there been a hearing, that was properly notice, Samuel could have voiced his withdrawal of consent to the divorce.

## **II. Insufficiency of Property Settlement**

Pursuant to §93-5-2(2) (Supp. 1992) of the Mississippi Code Annotated, a no-fault divorce as requires:

(2) If the parties provide by written agreement for the custody and maintenance of any children of that marriage and for the **settlement of any property rights** between

the parties and **the court finds that such provisions are adequate and sufficient**, the agreement may be incorporated in the judgment, and such judgment may be modified as other judgments for divorce.

Miss. Code Ann. §93-5-2 (Supp. 1992) emphasis added.

The *Grier* Court stated, “our prior cases have held that such agreements do not have force of law unless and until they are approved by the Chancellor.” *Grier* at 339-40.

In the instant matter, a provision in the Final Decree of Divorce states, “the provisions relating to the property and obligations of the parties have been divided to the mutual satisfaction of each party as stated in the Separation Agreement.” However, the court offered no further elaboration on the adequacy or sufficiency of the terms of the settlement agreement. In *Lowery v. Lowery*, 919 So.2d 1112, 1119 (Miss. Ct. App. 2005), the Court stated that “[t]he statutory requirement of §93-5-2(2) that the ‘court finds such provisions adequate and sufficient’ clearly anticipates more than just a mere recitation of the obligatory words of the statute.” *Id.*

Additionally, pursuant to Uniform Chancery Court Rule 8.05:

Unless excused by Order of Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures: (A) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the form attached hereto as Exhibit “A” and “B”; (B) Copies of the preceding year’s Federal and State Income Tax returns, in full form as filed, or copies of W-2’s if the return has not yet been filed; (C) A general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of divorce whichever is applicable.

Uniform Chancery Court Rules 8.05, Amended effective July 1, 1996.

The Property Settlement executed by Samuel and Mae Belle on June 15, 2001, is in no way a full and correct financial disclosure as contemplated by UCCR 8.05. Without the aforementioned financial documentation, the court does not have the proper tools to rule on whether the settlement was adequate and sufficient.

Because no record was made, we do not know whether the Chancellor even reviewed the agreement which was incorporated by reference into his Final Decree of Divorce which was granted on irreconcilable differences. However, we do know that the Final Decree does *not* recite that the Chancellor found the “provisions [of the written agreement for the settlement of any property rights] are adequate and sufficient” as required by Mississippi Code Annotated §93-5-2(2) (1992).

### III. Agreement Regarding Disposition of Property

Statutory law governing suits to confirm title or interest and to remove clouds on title provides, in pertinent part:

When a person not the rightful owner of any real estate, shall have any conveyance or other evidence of title thereto, or shall assert any claim, or pretend to have any right of title thereto, which may cast doubt, or suspicion on the title of the **real owner**, such real owner may file a bill in the chancery court to have such conveyance or other evidence or claim of title cancelled, and such cloud, doubt or suspicion removed from said title, whether such real owner be in possession or not, or be threatened to be disturbed in his possession or not, and whether the defendant be a resident of this state or not. Any person having the **equitable title** to land may, in like cases, fill a bill to **divest the legal title out of the person** in whom the same may be vested, and to **vest the same in the equitable owner**.

Miss. Code Ann. §11-17-31 (Supp. 1992) emphasis added.

It has been held that “transactions between husband and wife will be viewed with suspicion and, to prevent fraud as to creditors, they will be closely scrutinized to see that they are fair and honest.” *S.E. Bank of Broward, Fla., N.A. v. I.P. Sarullo Enter., Inc., et al.*, 555 So.2d 704, 707 (Miss. 1989) (citing *Fid. & Deposit Co. of Md. v. Lovell*, 108 F. Supp. 360, 365 (S.D. Miss. 1952)) (quoting 37 C.J.S., *Fraudulent Conveyances*, §252, p. 1085). The Court continues that “[o]ther cases have gone further, holding that when a voluntary conveyance is made between husband and wife, without consideration, it is presumptively fraudulent.” *Id.* (citing *First Natl. Bank in Kearney v. Bunn*, 195 Neb. 829, 241 N.W.2d 127, 128 (1976); *Miami Natl. Bank v. Willens*, 410 Pa. 505, 190

A.2d 438, 439 (1963); *Bank of Atkins v. Teague*, 205 Ark. 38, 166 S.W.2d 1017, 1018-19 (1942)).

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 (1940)). In the instant case, several badges of fraud are present and create, at the very least, suspicious circumstances which should be closely scrutinized, including: (1) the inadequacy of consideration, (2) the relationship of the grantor to the grantee, (3) the continued use of the property as storage by Samuel and (4) the insolvency of Samuel after the execution of the deed in question.

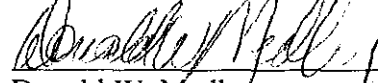
Further, even assuming the transaction was proper, Samuel and Mae Belle entered into an enforceable agreement that, despite the execution of the quitclaim deed, Samuel would retain an equitable interest in the property. The agreement provided that Mae Belle would hold the property in trust for Samuel and at some future date she would reconvey the property back to him. This agreement precludes Mae Belle from deeding the property to anyone other than Samuel, including her daughter, Amy Young.

### CONCLUSION

The Chancery Court of Monroe County granted summary judgment despite the existence of 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,



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