

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CA-01253-SCT



JANICE C. COOPER

APPELLANT

V.

CAROLYN C. GUIDO

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

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 justices of the Supreme Court and/or Court of Appeals may evaluate possible disqualification or recusal.

1. Janice C. Cooper
Natchez, Mississippi
(Appellant)
2. Rick D. Patt, Esq.
Patt Law Firm, PLLC
Jackson, Mississippi
(Attorney for Appellant on Appeal)
3. Daniel J. O'Beirne, Esq.
Natchez, Mississippi
(Attorney for Appellant in Lower Court)
4. Carolyn Cooper Guido
Natchez, Mississippi
(Individually and as Executrix of the Estate
of J. Wesley Cooper, deceased, Appellee)

5. W. Bruce Lewis, Esquire
Gwin, Lewis & Punches, LLP
Natchez, Mississippi
(Attorneys for Appellee)
6. Deborah Lynn Cooper Hill
(Sister of Appellee & Will Beneficiary)
7. Honorable E. Vincent Davis
Chancellor, Adams County and
Seventeenth Judicial Chancery District.

Respectfully submitted, this the 22nd day of December, 2010.



W. BRUCE LEWIS,
Counsel of Record for Appellee,
Carolyn C. Guido, Individually and
as Executrix of the Estate of J. Wesley
Cooper, deceased

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I. STATEMENT OF THE ISSUES

I. Whether the chancellor was manifestly wrong, clearly erroneous or applied an incorrect standard when he determined that J. Wesley Cooper and Janice C. Cooper had freely and voluntarily executed a valid Antenuptial Agreement which precluded Janice C. Cooper, after the death of J. Wesley Cooper, from contesting his will, renouncing his will, and challenging an intervivos deed executed during his lifetime.

II. STATEMENT OF THE CASE

A. Procedural History

The Appellee, Carolyn Guido (“hereinafter Carolyn”), Individually and as Executrix of the Estate of her deceased father, J. Wesley Cooper, except for some self-serving recitations of undocumented and unproven allegations contained in the Appellant’s Statement of the Case, concurs with the Statement of the Case set out by the Appellant regarding the procedural history of the case. However, Carolyn does point out that in the second full paragraph on Page 3 of the Brief of Appellant, Mrs. Cooper refers to the Antenuptial Agreement dated February 27, 2010, which obviously is a mistake, the agreement being dated February 27, 1998. Likewise, in the second line from the bottom of Page 3 of Appellant’s Brief, she refers to the Motion to Void Deed of Gift being filed on December 22, 2010, and which date should be 2008. Finally, as a correction to the Statement of the Case, Carolyn points out that in the last paragraph on Page 4 of Appellant’s Brief, the Appellant referred to the Chancellor signing a Judgment on June 3, 2010, ruling that the issues raised by Mrs. Cooper did rise to a dispute of material facts. The Appellant left out the word “did not” in front of the words “rise to a dispute of material facts.” A review of

the Record cited on Page 4 of Appellant's Brief clearly shows that the Chancellor ruled that the issues raised by Mrs. Cooper did not create a dispute of material facts. Otherwise, the Statement of the Case with regard to the Procedural History is sufficiently stated.

B. Statement of Facts Relevant to the Issues

J. Wesley Cooper and Janice Cooper were married on February 27, 1998. Prior to the marriage, the parties entered into an Antenuptial Agreement where by parties agreed not to make any claims against the others' assets in the event of divorce or in the event of death. Janice Cooper had provided information concerning her assets to J. Wesley Cooper so that it could be incorporated into the Antenuptial Agreement. (Depo. J. Cooper, p. 37, R. 161, R. 169). Mrs. Cooper testified under oath that the reason that she provided the assets and their values to Mr. Cooper prior to coming to Natchez was so that he could put that information into the Antenuptial Agreement (Depo. J. Cooper, p. 37, R. 169). Mrs. Cooper knew at the time they left going to the lawyer's office for the purpose of signing an Antenuptial Agreement that the purpose of going to the lawyer's office was to sign the Agreement, and she further testified that she lodged no protest to the execution of the Antenuptial Agreement at any time. (Depo. of J. Cooper, p. 37, R. 169). She did not protest it to Mr. Cooper when he asked her for the information concerning her assets well in advance of the marriage, did not protest it to Mr. Cooper on the morning as they traveled to the lawyer's office, and did not protest it while she was in the lawyer's office to execute the Antenuptial Agreement (Depo. J. Cooper, p. 44, R. 170). Furthermore, during the entire ten (10) year period that Mr. and Mrs. Cooper lived together prior to their separation and subsequent divorce proceeding, Mrs. Cooper never protested the Antenuptial Agreement to Mr. Cooper or to anyone else. (Depo. J. Cooper, p. 44-45 R.170-171). Mrs. Cooper never raised any concern or

protest about the Antenuptial Agreement during her divorce proceeding when she was represented by her own independent counsel and never expressed any concern to her independent counsel that she had been coerced or duressed into signing the Antenuptial Agreement (Depo. J. Cooper, p. 45, R. 171). Mrs. Cooper admitted that, after she executed the Antenuptial Agreement on February 27, 1998, she never during Mr. Cooper's lifetime asked him to change, alter, amend or revoke the Antenuptial Agreement and admitted that only after his death did she now challenge it. (Depo. J. Cooper, p. 47, R. 173).

Mrs. Cooper was a well educated person living in Texas prior to the marriage, having been a business major at North Lake Community College, in Irving, Texas, and then at the University of Texas. After college was she engaged in business as part of the management team managing multi-family properties and the leasing thereof while working in the business of commercial real estate development and leasing of high rise office buildings and garden office buildings in Texas. At the time of the marriage, she was working in Texas for an educational services company hiring instructors for courses in schools, colleges and universities. She also held a real estate license issued by the state of Texas at the time of their marriage. (Depo. J. Cooper, p. 55-56, R. 176-177).

After Janice provided information to be incorporated into the Antenuptial Agreement prior to coming to Natchez, Mr. Cooper and Janice traveled that morning to the law office of Deborah Blackwell for the purpose of executing the Antenuptial Agreement. When they arrived at the office, Donald G. Ogden who, at that time, was practicing law in Natchez, Mississippi, appeared and represented Mrs. Cooper at that meeting regarding the Antenuptial Agreement. Deborah Blackwell had prepared the contract prior to the date of execution but did not have all of

the information necessary to complete the contract prior to the meeting. At the meeting, Mrs. Cooper provided additional information to be inserted into the contract which included her then existing liabilities (Depo. J. Cooper, p. 28, R. 163), and a listing of other assets that she had at the time of the execution of the Antenuptial Agreement (Depo. J. Cooper, p. 28-29, R. 163-164). When asked on deposition where she arrived at the value of her Texas townhouse, she stated that she had obtained that value from comparable houses in the area. (Depo. J. Cooper, p. 28, R. 163). Likewise, when asked how she came to the value of her apartment complex interest in Texas, she stated that value had come from a monthly statement she had received and reviewed prior to coming to the meeting regarding the Antenuptial Agreement. She went on further to state that the value that she assigned to her other personal property was obtained prior to the meeting date by reviewing appraisals that had been conducted on that personal property. (Depo. J. Cooper, p. 28-29, R. 163-164). She obviously came prepared to the meeting on the Antenuptial Agreement to fairly disclose her assets by prior consideration of the asset valuations.

At the meeting at the attorney's office, Mrs. Cooper admitted that they reviewed not only her assets and liabilities but also the assets, liabilities and income of J. Wesley Cooper. She recalled specifically the assets that were listed on the disclosures, as well as the liabilities and income statements. (Depo. J. Cooper, p. 31, R. 165). Those disclosures were clearly made, discussed and understood during the meeting. Mrs. Cooper did ask questions of her attorney, Donald G. Ogden, and he answered all of her questions. (Depo. J. Cooper, p. 53, R. 175). Although there are several references in the Appellant's Brief about Mrs. Cooper being coerced to sign or being under duress to sign the Antenuptial Agreement, such statements are inserted without any reference to the record. It is clearly an undisputed fact from the record that when

asked this question, "Was there any duress, any threats made to you if you didn't sign this"?

Mrs. Cooper answered, "Oh, no. No." (Depo. J. Cooper, p. 36, R. 168).

After the parties executed the Antenuptial Agreement, they married and remained husband and wife until Mr. Cooper's death notwithstanding the fact that the parties had separated prior to his death, and there was presently and currently pending a divorce proceeding at the time of his death. Mrs. Cooper did readily admit, however, that during the marriage, Mr. Cooper had deeded to her one-half (½) of Molasses Flats, which is land and property in Natchez, Adams County, Mississippi. She admitted that she accepted that gift from Mr. Cooper under paragraph 2.4 of the Antenuptial Agreement. (Depo. J. Cooper, p. 34, R. 167). Paragraph 2.4 of the Antenuptial Agreement provides that either party may make gifts to the other notwithstanding the other agreements and restrictions contained in the contract. (R. 47).

The Antenuptial Agreement is a contract consisting of seven typewritten pages, an eighth page containing the signatures of J. Wesley Cooper and Janice C. Cooper which was executed in the presence of two witnesses, a ninth page consisting of acknowledgments by a notary public of Mr. and Mrs. Coopers' signatures, and pages ten and eleven being the required disclosures of assets, liabilities and income of Mr. and Mrs. Cooper. When the parties arrived at the attorney's office to execute the Antenuptial Agreement, Mrs. Cooper, after reviewing the document, caught the error of her name being referred to as Janice S. Cooper when, in fact, it is Janice C. Cooper, that change was made in the very first paragraph of the agreement, also on page eight immediately below her signature and also on page nine in the notary paragraph of her signature. In addition, at the meeting with the attorneys she provided information regarding her liabilities to be inserted on page 11 of the contract setting forth the current amount of her credit card debt.

During the review of the Agreement, she also provided the name of her former husband to be inserted into the contract in Paragraph II. After her former husband's name was inserted in Paragraph II and the name of her attorney in Paragraph 1.1, Janice Cooper initialed those written interlineations.

Paragraph 1.1 of the Antenuptial Agreement which does bear the initials J.C. (Janice Cooper) next to the name of Donald G. Ogden provides as follows:

1.1. Each party has received the advice of legal counsel of each party's own selection. Janice acknowledges that she has sought and received legal independent advice from Donald G. Ogden, and Wesley acknowledges that he has sought and received independent legal advice from Deborah W. Blackwell. Each party has reviewed this agreement in detail with his or her respective legal counsel and is entering into the agreement freely, voluntarily, and with full knowledge of its contents and consequences.

After the parties had separated and divorce proceedings were pending, J. Wesley Cooper executed his Last Will and Testament which was admitted to probate in the Chancery Court of Adams County, Mississippi, and also deeded his undivided interest in other property in Adams County, Mississippi, to his only two (2) daughters, Carolyn Cooper Guido and Deborah Lynn Cooper Hill.

After both J. Wesley Cooper and Janice C. Cooper executed the Antenuptial Agreement in 1998, and after Janice C. Cooper accepted benefits pursuant to Paragraph 2.4 of the Antenuptial Agreement by gift of an interest in other land in Adams County, Mississippi, from J. Wesley Cooper during the marriage, Janice C. Cooper waited over ten (10) years and after the separation and divorce proceedings of the parties had been initiated, and even after the death of J. Wesley Cooper, before she voiced any objection to the execution and enforceability of Antenuptial Agreement and contract. (Depo. J. Cooper, p. 47, R. 173).

III. SUMMARY OF ARGUMENT

The Chancellor correctly granted summary judgment to Carolyn Guido, Individually and as Executrix of the Estate of J. Wesley Cooper, by finding a valid and binding Antenuptial Agreement executed by J. Wesley Cooper and Mrs. Janice C. Cooper. The Court stated its finding in its bench opinion and entered a Judgment finding that the Antenuptial Agreement was freely and voluntarily executed in a procedurally correct manner and then entered Judgment based on that summary judgment dismissing with prejudice the attempt by Janice C. Cooper to contest the Last Will and Testament of J. Wesley Cooper, or in the alternative, to renounce the Last Will and Testament of J. Wesley Cooper and to also attack the intervivos disposition of property evidenced by a deed from J. Wesley Cooper to his only two (2) children, namely, Carolyn C. Guido and Deborah Lynn C. Hill.

The Chancellor found no material facts in dispute which would preclude the entry of summary judgment because it was undisputed that Janice C. Cooper provided input and information into the formation of the Antenuptial Agreement, knew and understood at the time she went to the attorney's office that she was going for the purpose of entering into an antenuptial agreement, that she freely and voluntarily, and without duress, executed the Antenuptial Agreement and lodged no protest regarding the Antenuptial Agreement prior to the execution of the agreement, during the meeting at the attorney's office where the agreement was executed, for ten (10) years after the execution of the agreement, including to her own independent counsel during divorce proceedings between her and J. Wesley Cooper, and did not lodge any protest or complaint concerning the validity of the Antenuptial Agreement until after the death of J. Wesley Cooper. The Court found that there was insufficient or no evidence under

Rule 56 to preclude the entry of summary judgment and found that there was no genuine issue as to any material fact that would preclude the entry of judgment as a matter of law.

It is clear from the evidence and the sworn testimony of Mrs. Cooper that she executed the agreement at a time when she was under no duress. It is also clear from the evidence that Mrs. Cooper provided input into the contract and even initialed a paragraph of the contract that indicated that Donald G. Ogden was representing her and that she fully understood and appreciated all of the conditions and consequences of the contract. The provisions contained in the Antenuptial Agreement are clear and unambiguous and specifically protect against the prospects of litigation such as those attempted by Mrs. Cooper in filing a will contest, a renunciation of the will, and a motion to set aside a deed executed by Mr. Cooper during his lifetime to his children.

Although the law is clear that antenuptial agreements, as other contracts are valid and enforceable in the state of Mississippi, this Court should reaffirm in the same strong language utilized in Ware v. Ware and Mabus v. Mabus, that parties to a contract cannot admit that they signed it, accepted benefits under the contract, and then seek to challenge or deny that the contract expresses the agreement she made or to allow her to admit that she signed it but did not read it and know its stipulations. Such a principle of law as urged by the Appellant would absolutely destroy the value of all contracts in the state of Mississippi. The Appellee respectfully urges the Court to affirm the decision of the Chancellor and determine that he did not abuse discretion, was not manifestly wrong, clearly erroneous or that he applied an incorrect legal standard.

IV. ARGUMENT

A. Standard of Review of Chancellor's Ruling

The Appellee agrees that the Appellant has set forth the correct standard of review and agrees that before this Court should overturn this Chancellor's decision, it must determine that there has been an abuse of discretion or that the Chancellor was manifestly wrong, clearly erroneous, or that an erroneous legal standard was applied.

B. Issue of Antenuptial Agreement

The entire Antenuptial Agreement executed by these parties is contained in the record, inclusive of exhibits, at pages 132-142. The parties had the standard language of most contracts in Section 12 which provides that the agreement shall inure to the benefit of and shall be binding upon the heirs, executors and administrators of the parties. (R. 138). One of the considerations stated by the parties for the contract was Paragraph 5.5 of the contract which provided that it was the mutual desire of the parties that the Antenuptial Agreement and Contract control so that the parties could avoid any future litigation. (R. 137). However, as soon as the lips of J. Wesley Cooper were sealed by death, Janice Cooper elects to institute litigation by filing a will contest in the Chancery Court of Adams County, Mississippi, and subsequently filing a renunciation of the will in the event the will contest is not successful. She then later files a Motion to Void the Intervivos Deed whereby J. Wesley Cooper conveyed certain property in Adams County, Mississippi, to his only two (2) children, Carolyn C. Guido, and Deborah Lynn C. Hill.

Section 4.2 of the Antenuptial Agreement specifically provides that “. . . each of the parties hereto agrees to refrain from any action or proceeding that may tend to void or nullify to any extent or any particular the terms of any such will of the other; and forever waives, releases, and relinquishes any right or claim which he or she now has or may have or shall have, pursuant to the provisions of the laws of the state of Mississippi, as said laws may exist now or hereafter, to elect to take in contravention of the terms of any will of the other, including in the Last Will, now executed or which may be executed hereafter, or any disposition of property made by the other during his or her lifetime.” (R. 135).

An early provision in Paragraph 4.2 provided as follows:

This provision is intended to and shall serve as a waiver and release of both Parties’ right of election to take against the other’s Will in accordance with any statutory requirement.” (R. 135).

These provisions of the Antenuptial Agreement are clear and unambiguous contractual provisions that were entered into by both parties where by both parties agreed not to contest the will of the other, not to renounce the will of the other, and not to challenge any lifetime disposition of property of the other. Mrs. Cooper, by her pleadings in this cause, sought to do all three.

Section 1.1 of the Antenuptial Agreement provides as follows:

Each Party has reviewed this Agreement in detail with his or her respective legal counsel and is entering into this Agreement freely, voluntarily, and with full knowledge of its contents and consequences. (R. 133).

Section 1.4. of the Contract and Agreement provides as follows:

1.4. All matter embodied herein, as well as all questions pertinent hereto, have been fully and satisfactorily explained to each Party by his or her respective legal counsel; each Party has given due consideration to all such matters in question; and each Party clearly understands and consents to all of the provisions hereof.

C. The Chancellor Correctly Decided that the Antenuptial Agreement Was Freely and Voluntarily Executed and Correctly Enforced the Provisions of the Antenuptial Agreement by Dismissing the Will Contest, the Renunciation Of the Will and Motion to Void the Lifetime Disposition Of Property By Deed.

After reviewing the Motion for Summary Judgment and all of the evidence offered in support thereof and in opposition thereof, the Court made its finding based upon the undisputed material facts as follows:

There is nothing before the Court to indicate that it was not voluntary. It may not have been a wise decision, but there is nothing before the court to indicate that it was anything other than voluntary. There is nothing before the Court to indicate that it was unconscionable in anyway and the fact remains that this was signed in 1998 and apparently, according to the pleadings, according to her sworn deposition testimony, that the first time anything ever came up in court with regard to Ms. Cooper expressing some problem or concern with the agreement is once the estate was opened, and she filed some pleadings at that time indicating that she should not be held to the Agreement but from a legal standpoint the Court has no choice but to say that, but to find that it was a valid Antenuptial Agreement, that there was nothing procedurally wrong with the execution of it. There are no facts in dispute that would indicate that it was anything wrong with the procedural execution of the document. (R.E. 13, p. 42).

The Court later in its findings and bench opinion stated that based upon the undisputed facts the Antenuptial Agreement was a valid agreement and that Mrs. Cooper would be bound by the terms of that agreement. (R.E. 13, pp. 43-44). The Court thereafter entered its Judgment denying the Motion to Reconsider the Summary Judgment entered in this cause. (R. 234). The summary judgment entered in this case specifically found that the Antenuptial Agreement was a valid and binding contract and that the issues raised by Mrs. Janice Cooper did not rise to a dispute of material fact which would preclude or prevent the entry of summary judgment, and the

Chancellor dismissed the will contest, the renunciation of the will, and the motion to set aside the deed with prejudice. (R. 221-222).

Appellee respectfully submits to the Court that an antenuptial agreement is a contract, and that an antenuptial agreement in Mississippi is just as enforceable as any other contract. Smith v. Smith, 656 So.2d 1143, 1147 (Miss. 1995); Mabus v. Mabus, 890 So.2d 806, 818 (Miss. 2003); Estate of Hensley v. Estate of Hensley, 524 So.2d 325, 327 (Miss. 1998). Further, the construction of the contract and antenuptial agreement can be a matter of law. City of Grenada v. Whitten Aviation, Inc., 755 So.2d 1208, 1214 (Miss. Ct. App. 1990); Martin v. Fly Timber, 925 So.2d 691, 695 (Miss. Ct. App. 2002); G.B. "Boots" Smith Corp. V. Cobb, 860 So.2d 774, 777 (Miss. 2003); Parkerson v. Smith, 817 So.2d 529, 532 (Miss. 2002); Mississippi State Highway Commission v. Patterson Enters., Ltd., 627 So.2d 261, 263 (Miss. 1993). It also a principle of law that whether or not a person reads all, any portion of, or none of a document and contract that he or she signs, that he or she is bound by the contents of the contract as a matter of law. Stephens v. Equitable Life Assurance Society of the United States, 850 So.2d 78, 92 (Miss. 2003); Cherry v. Anthony, 501 So.2d 416, 419 (Miss. 1987); Ballard v. Commercial Bank of DeKalb, 991 So.2d 1201, 1206-1207 (Miss. 2008); Oak v. Sellers, 953 So.2d 1077, 1082 (Miss. 2007); Andrews v. Ellis, 887 So.2d 175, 180 (Miss. 2004).

The Supreme Court in the Ballard case summarizes distinctly the holding in these cases when it states:

To permit a party when sued on a written contract to admit that he signed it but to deny that it expresses the agreement he made or to

allow him to admit that he signed it but did not read it or know its stipulations would absolutely destroy the value of all contracts.

991 So.2d at 1207 (Miss. 2008).

In the case before this Court, Mrs. Cooper claims that she did not read all of the agreement or understand or know all of its stipulations. Two of Mrs. Cooper's bases for attacking the Antenuptial Agreement are that she was hurried to sign the agreement and that she did not read and understand the contract she signed. (Depo. J. Cooper, pp. 49 and 53, R. 174, 175). Notwithstanding these defenses and allegations, the law is clear that in Mississippi a person is charged with knowing the contents of any document he or she executes. J. R. Watkins Co. v. Runnels, 172 So.2d 567, 571 (Miss. 1965). The Supreme Court has been steadfast in stating as a matter of law that a person cannot avoid a written contract which he or she has entered into on the ground that he or she did not read it or have it read to him or her. Russell v. Performance Toyota, Inc., 826 So.2d 719, 726 (Miss. 2002).

Like Mrs. Cooper, Patti Ware in the case of Ware v. Ware, So.3rd 271 (Miss. Ct. App. 2008), claimed that she was somewhat pressured into signing the agreement, did not have an opportunity to read the agreement, or to have an attorney review it before she signed it, but the court there remained firm to judicial precedent in reaffirming that the a person is under an obligation to read a contract before signing it and will not as a general rule be heard to complain thereafter.

Mrs. Cooper seems to also claim that she did not have the benefit of effective counsel. (Depo. J. Cooper, pg. 53, R. 175). This argument also fails as a matter of law. Even if Mr. Donald G. Ogden, attorney representing Mrs. Cooper, did not provide effective counsel to Mrs.

Cooper, which is strongly denied, there is no requirement to have a valid antenuptial agreement that there be any independent counsel. Mabus v. Mabus, 890 So.2d 821 (Miss. 2003); Ware v. Ware, 7 So.3rd 271, 277 (Miss. Ct. App. 2008). Furthermore, the Ware court provides authority at page 277 of the opinion for the principle of law that Mrs. Cooper cannot be heard to complain about counsel when the very agreement she executed, the Antenuptial Agreement, provides that she has sought and received independent legal advice from Mr. Ogden, reviewed the agreement in detail with counsel, and entered into the agreement freely, voluntarily, and with full knowledge of its contents and consequences. (Antenuptial Agreement, par. 1.1, R. 133). She further acknowledged over her signature that all matters embodied in the Antenuptial Agreement were fully and satisfactorily explained to her by her attorney and that she clearly understood and consented to all of the provisions in the contract. (Antenuptial Agreement, p. 2, par. 1.4, R. 133).

In Ware, Mrs. Ware did not have any counsel, but the antenuptial agreement she signed stated that she did have counsel. There the Court had this to say:

It is Patti's contention that the agreement is invalid because it provides that she obtained advice from an attorney when she had not done so. Patti cannot argue that the chancellor erred in upholding an agreement that she signed on the basis that the agreement reached a conclusion that was not true when, had she read the agreement, she would have discovered that it contained such a statement.
7 So.3rd at 277.

In the present case, Mrs. Cooper admitted that she was not threatened or under duress to sign the Antenuptial Agreement. (Depo. J. Cooper, pg. 36, R. 168).

Several times in the brief of Mrs. Cooper, she alludes to the fact that she had no input into the formation of the Antenuptial Agreement. However, she admitted to not only providing information prior to the date the Antenuptial Agreement was executed, but she also provided

information on the day the Antenuptial Agreement was finalized prior to execution. She also makes an argument in her brief about the fairness of the Antenuptial Agreement, but a careful review of the Antenuptial Agreement clearly discloses that the Antenuptial Agreement was binding on both parties, and both parties had agreed to be bound by the same conditions, restrictions and conditions after a complete and full disclosure. In Mabus v. Mabus, 890 So.2d 819, Julie Mabus claimed that the financial schedules attached to the antenuptial agreement were not disclosed to her, and that there was not a full and fair disclosure prior to the execution of the antenuptial agreement. To the contrary, in the case now before the Court, Mrs. Cooper was completely aware of the financial disclosures and even contributed information for her disclosures both before the date of the contract and on the date of the execution of the contract. (Depo. J. Cooper, pp. 26-27, R. 161 and 162).

The Antenuptial Agreement itself states, above the signature of Mrs. Cooper, that there has been no concealment, and that there was full disclosure, such as to provide to each, a thorough understanding of the property held by the other. (Antenuptial Agreement, p. 2, par. 1.3., R. 133). Mrs. Cooper further acknowledged in writing that she clearly understood and consented to all provisions of the contract. (Antenuptial Agreement, p. 2, par. 1.4., R. 133). Mrs. Cooper's complaints of fairness are contradicted by the very terms of the Antenuptial Agreement that she signed and which she seeks now to attack. The law pertaining to such allegations is clear as set out in Ballard v. Commercial Bank of DeKalb, 991 So.2d 1201 (Miss. 2008).

A plaintiff's reliance on an allegedly fraudulent representation, concealment or non-disclosure is not reasonable as a matter of law if the representation is

contradicted by the written terms of a written contract he signed.
991 So.2d at 1207.

Unlike many of the cases cited herein, where the validity of the contracts and the antenuptial agreements that were signed were challenged by the parties signing them for a number of varying reasons during the lifetime of the other signing party, Mrs. Cooper never objected to the Antenuptial Agreement at any time before she executed same, during the meeting with the attorneys to execute the contract, during the following ten (10) years of marriage to Mr. Cooper (including meetings with her independent attorney, during the pendency of divorce proceedings between the two of them), or at any other time until after the death of Mr. Cooper. (Depo. J. Cooper, pgs. 44, 45, 46 and 47, R. 170, 171, 172, 173).

In view of the undisputed material facts presented to the Chancellor in support of the Motion for Summary Judgment and when applying those undisputed material facts to the law of the state of Mississippi, the Chancellor was correct in his ruling that the Antenuptial Agreement executed by Mr. and Mrs. Cooper prior to their marriage was freely and voluntarily executed and, as admitted by Mrs. Cooper in her deposition, while under no duress or coercion whatsoever.

While Appellant throughout her brief refers to terms such as victimization, underhanded means, vulnerable, health deprived and/or aged individual, none of those terms are applicable to the execution of this Antenuptial Agreement by the parties prior to their marriage. Appellant suggests that "for every wrong, a remedy" somehow hoping to suggest to the Court that there has been a wrong committed in this matter. There is nothing wrong or unnatural about an aging father who has separated from his wife, and in the midst of divorce proceedings, from changing his will to leaving all of his property to his only two (2) children, and then deeding his lands

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during his lifetime to those only two children. The only wrong committed herein is a breach of contract by a person who has accepted benefits from that contract and now, after the lips of J. Wesley Cooper have been forever sealed by his death, seeking to challenge the validity of that contract. The statement of the Supreme Court in the Ballard case becomes even more meaningful after the death of one of the contracting parties. The Court, as referred to earlier, at page 1207 of its decision in Ballard, states that a person cannot admit that she signed the contract, and then seek to avoid the provisions of the contract claiming that she did not read it or know its stipulations. Such practice would be dangerous, especially after the death of one of contracting parties and as the Court noted would absolutely destroy the value of all contracts. The Appellant has requested the Court to change the law of the state of Mississippi to allow such a contest, but such is not the law of the state of Mississippi, and Appellee respectfully suggests that it should not be and that the decision of the Chancellor in enforcing the validity of the Antenuptial Agreement was absolutely correct.

V. CONCLUSION

The Appellee, Carolyn Cooper Guido, Individually and as Executrix of her father's estate, respectfully urges this Court to affirm the decision of the Chancellor and determine that he did not abuse his discretion and that he was not manifestly wrong, clearly erroneous, or applied an incorrect legal standard. It is clear, from the undisputed facts, that while Mrs. Cooper accepted transfers and gifts of assets from Mr. Cooper during their marriage pursuant to 4.2. of the Antenuptial Agreement, she decided after his death to attack the validity of the Antenuptial Agreement.

Such contracts are necessary in today's society and in the state of Mississippi where many parties remarry later in life. To adopt, as Appellant suggests, a public policy of the state of Mississippi which would allow and encourage a post-death attack on an Antenuptial Agreement would prevent parties from having the assurances and peace of mind currently and correctly given to them by the law of the state of Mississippi. Appellee respectfully suggests to this Court that adoption of such law as public policy of the state of Mississippi is not in the best interest of the state of Mississippi and its citizens.

Respectfully submitted, this the 22nd day of December, 2010.

CAROLYN C. GUIDO, Individually and
as Executrix of the Estate of J. Wesley
Cooper, Appellee

By: W. Bruce Lewis
W. Bruce Lewis, Her Attorney

W. BRUCE LEWIS
MSB NO. [REDACTED]
GWIN, LEWIS & PUNCHES, LLP
P. O. BOX 1344
NATCHEZ, MS 39121
(601) 446-6621
COUNSEL FOR APPELLEE

CERTIFICATE

The undersigned attorney does hereby certify that he has this day sent by United States Postal Services, postage pre-paid, first class mail, the original and three (3) copies of the within and foregoing instrument of writing to:

Office of the Clerk
Supreme Court of Mississippi
P. O. Box 249
Jackson, Mississippi 39205-0249

and one (1) copy of the foregoing instrument of writing to:

Rick D. Patt, Esquire
Patt Law Firm, PLLC
P. O. Box 1080
Jackson, MS 39215-1080

Honorable E. Vincent Davis, Chancellor
P. O. Box 1144
Natchez, MS 39121

SO CERTIFIED, this the 22nd day of December, 2010.



W. BRUCE LEWIS