

SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO.: 2010-TS-878

RT

IN THE ESTATE OF GEORGE WILLIAM MACE, DECEASED

PATTY M. MACE STEWART,  
LYNETTE WINSTON O'NEAL, ET AL

APPELLANTS

v.

PATRICIA HAYES GARDNER

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned Appellants certifies that the following 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 judges of the Court of Appeals may evaluate possible overturn the memorandum and opinion:

1. Honorable Judge Dewayne Thomas, Hinds County Chancellor, Second Judicial District
2. Mrs. Lynette Winston O'Neal, on behalf of 11 heirs of George Mace Jr., Appellant
3. Mrs. Patty M. Mace Stewart, on behalf of 11 heirs of George Mace, Jr., Appellant
4. Ms. Patricia Hayes Gardner, Appellee
5. R. Louis Field, Esq., Attorney for Patricia Gardner (Appellee)
6. Mrs. Ruth Mace Colbert, Other Party
7. Davey Tucker, Esq., Attorney for Other Party

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## **STATEMENT OF ISSUES**

- I. APPELLANTS' BRIEF FAILURE TO MEET THE REQUIREMENTS OF RULE 28 IS NOT FATAL AND STRIKING THE BRIEF FOR LACK OF COMPLIANCE WOULD BE TOO HARSH A SANCTION WHEN ARGUMENTS ARE CLEAR.
  - II. APPELLEE'S ARGUMENT ON THE PROPRIETY OF THE CHANCELLOR'S DECISION LACKS MERIT.
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## STATEMENT OF THE CASE

### **I. The Nature of the Case.**

This case involves the probating of the Last Will and Testament of George William Mace, the last living child of George Mace, Sr.

A Petition to Open the Estate and Appointment of Executrix were filed on March 16, 2009, and an Amended Petition to Open the Estate and Appoint Executrix was filed on April 30, 2009. (See exhibit, Hinds County Chancery Court Docket, pages 49 and 55, respectively.) An Order Opening Estate and Appointing Patricia Hayes Gardner Executrix was filed on May 13, 2009 along with the Notice to Creditors, with Affidavit, and the Oath of Executrix and Letters Testamentary. (See exhibit, Hinds County Chancery Court Docket.) The Appellant Lynette O'Neal filed her Petition for Injunction and Restraining Order on March 4, 2009. Exhibit, *supra*. Executrix Patricia Gardner filed answers and other defenses to said Petition on August 27, 2009. Appellant Patty Mace Stewart filed her similar Petition for Injunction and Restraining Order, along with a Petition Contesting the Will on September 18, 2009. Answer and Other Defenses to Petition Contesting the Will, and also a Motion for Summary Judgment was filed by Executrix Patricia Hayes Gardner on September 24, 2009. Also on September 24, 2009, Executrix filed her Motions for Summary Judgment against both Appellants O'Neal and Stewart. On March 30, 2010, a hearing was held on Executrix' Summary Judgment motions.

### **IV. The Course of the Proceedings.**

George William Mace died testate in Hinds County, Mississippi on February 20, 2009. A Last Will and Testament made and declared by George William Mace was admitted to probate by order of the Hinds County Chancery Court on May 13, 2009, in Chancery Court Cause Number P-2009-21 W/4. Patricia Gardner (Appellee, herein) was nominated by the decedent as his

Executrix and was appointed and issued Letters Testamentary by the Chancery Court. On March 4, 2009, Lynette Winston O'Neal filed her Petition for Injunction or Restraining Order in the Matter of the Estate of George William Mace, which was designated Cause Number 2009-16, but was later consolidated with Chancery Cause Number 2009-21. An Answer and Other Defenses was filed by Appellee on June 29, 2009.

Patty Mace Stewart (Appellant, herein), filed her Petition for Injunction and Restraining Order in the Matter of the Estate of George Mace on September 18, 2009. Appellee filed an Answer to this Petition. On September 18, 2009 Appellant filed her Petition For Contesting the Last Will and Testament of George William Mace, and Appellee filed her Answer on September 24, 2009, along with Motions For Summary Judgment seeking the dismissal of the Petitions filed by both O'Neal and Stewart.

At the hearing on the Summary Judgment motions before Chancellor J. Dewayne Thomas held on March 30, 2010, Appellants's retained counsel, Attorney Gary Silberman, was allowed to withdraw as counsel sua sponte for Patty M. Mace Stewart. Appellant Stewart informed the court that Attorney Silberman held certain documents she would need to prove her status as an heir and potential creditor of the George William Mace estate, and the court gave Appellant Stewart and Attorney Silberman ten (10) days to file evidentiary briefs. Attorney Silberman failed to provide Appellant with any of the documents he still held, and both Appellant O'Neal and Silberman failed to file the court's requested briefs. On May 19, 2010, Chancellor Thomas entered separate Memorandum Opinions and Orders dismissing the Appellant's Petition for Injunction and Restraining Order, and also her Petition to Contest the Will of George William Mace. On May 25, 2010, both Appellant O'Neal and Appellant Stewart filed Notice(s) of Appeal from Chancellor Thomas' Order dismissing their respective Petitions. On June 10, 2010, both

Appellant O'Neal and Appellant Stewart filed Motion(s) to Reconsider, which Chancellor Thomas never conducted a hearing on. On July 30, 2010, Appellant O'Neal and Appellant Stewart filed their respective Appellants's Brief.

## **II. Disposition.**

On May 19, 2010, the Chancellor J. Dewayne Thomas issued his Memorandum Opinion and Order of the Court dismissing the Appellants' Petitions.

## **III. Statement of Relevant Facts.**

George William Mace was born on September 1, 1906, and died on February 20, 2009. George William Mace had seven (7) brothers and sisters. The siblings were Virgie Mace, Atward Mace, Annie Mace Wallace, Pattie Rea Mace, Roosevelt Mace, and, of course, George Mace, Jr. All of his siblings predeceased George William Mace.

The oldest of these siblings was George Mace, Jr., who predeceased George Mace, Sr. George Mace Jr. was married to Esther Mace, who predeceased him. Together, George, Jr. and Esther had eleven (11) children born of this marital union, all of whom were his sole heirs.

George Mace, Sr. died intestate on October 16, 1943. On July 14, 1944, the estate of George Mace, Sr. was opened, with Letters of Administration being filed. Over the course of the next sixty-five (65) years, the seven siblings died, with none of them, save George Mace, Jr., having any children as heirs at the times of their deaths.

As stated earlier, George Mace, Jr. was one of the eight (8) siblings who had children; when he died on January 15, 1939, predeceasing his father George Mace, Sr., who died on October 16, 1943, his one-eighth (1/8th) share of George Mace, Sr.'s estate became immediately vested and seized in his eleven (11) children, his wife Esther Mace having predeceased him, according to Mississippi Code Annotated Section 91-1-3.

immediately vested and seized in his eleven (11) children, his wife Esther Mace having predeceased him, according to Mississippi Code Annotated Section 91-1-3.



## **SUMMARY OF THE ARGUMENT**

### **APPELLEE'S ARGUMENT:**

The sufficiency of Appellants' Brief under Rule 28, Mississippi Rules of Appellate Procedure.

### **APPELLANTS' RESPONSE:**

Penalizing the Pro Se Appellants further by striking their appellant brief for failure to comply would be overly harsh and would go against the Court's history of abhorring such actions when the argument and purpose of the non-attorney party is still plain and understandable. Appellants are not trained lawyers and lack the knowledge and skills of attorneys. The Court should take this into account when reading their brief. Further, Appellants have filed Motions to Amend the Brief.

### **V. APPELLEE'S ARGUMENT:**

The propriety of the Chancellor's decision in granting Summary Judgment dismissing the Petition for Injunction and Restraining Order filed by Lynette Winston O'Neal and the Petition for Injunction and Restraining Order and Petition for Contesting the Last Will and Testament of George William Mace filed by Patty Mace Stewart.

### **APPELLANTS' RESPONSE:**

Appellants respond that the dismissal of their Petitions with prejudice was too harsh a sanction and the dismissal without prejudice would have been more appropriate, along with granting the Motion for Rehearing and finding for the Appellants.

## **CONCLUSION**

The Chancery Court Chancellor J. Dewayne Thomas erred when he dismissed, with

prejudice, the Appellants' Petitions for Injunction and Restraining Order, and Petition to Contest the Last Will and Testament of George William Mace. The lesser sanction of dismissal without prejudice, at the most, was available and should have been so executed; Appellants ask this court to reverse Chancellor Thomas' judgment/order and remand this case back to the Chancellor for a proper hearing on the merits of those Petitions.

So submitted, this the 19<sup>th</sup> day of November, 2010.

  
Appellant Patty Mace Stewart, Pro Se

  
Appellant Lynette Winston O'Neal, Pro Se

## SUMMARY OF ARGUMENT and CONCLUSION

It is the argument of the Appellants that filing what may or may not be a non-compliance Appellants' Brief and/or any other document is not intentional. In fact it is simply due to lack of knowledge of the procedures, rules, etc.

The Appellants will like to thank Attorney Field for bring to the attention the M.R.A.P., allowing the appellants to research and seek help to research what it needed to be done to make the matter correct and fair to all.

The Appellants ask for the mercy of the Court, and ask that the attached Amended Appellants' Brief be allowed into the file and evidence, simply because although we do not know what and how to do things, we the Appellants only know what it is we are trying to do. An appeal is different from documents filed in lower Courts.

So submitted, this the 19<sup>th</sup> day of November, 2010.)



Appellant Patty Mace Stewart, Pro Se



Appellant Lynette Winston O'Neal, Pro Se

CERTIFICATE OF SERVICE

We, Patty M. Mace Stewart, and Lynette Winston O'Neal, do hereby certify that we have this date sent by regular U. S. Mail, postage paid, a true and correct copy of the above and foregoing Appellants's Response to Appellee's' Brief to:

Chancellor J. Dewayne Thomas  
P. O. Box 686  
Jackson, MS 39205-0686

R. Louis Field, Esq.  
Way, Field & Bodron Attorneys at Law  
1001 Locust Street  
Vicksburg, MS 39183

Davey Tucker, Esq.  
Tucker & Tucker, Attorneys at Law  
P. O. Box 1261  
Jackson, MS 39215-1261

SO CERTIFIED this the 19<sup>th</sup> day of November, 2010.

  
PATY M. MACE STEWART, pro se

  
LYNETTE WINSTON O'NEAL, pro se