

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ALAINA HILL ROGERS**

**APPELLANT**

**VS.**

**CAUSE NO. 2018-CA-008000**

**CASEY AND CO., LLC**

**APPELLEE**

**BRIEF OF APPELLEE**

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### **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 requirements are made in order that the Justices of the Supreme Court and/or the Judge of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Casey Moss member and manager of Casey and Co., LLC, Appellee
2. Alaina Hill Rogers, Appellant
3. R. Shane McLaughlin, counsel for Appellant
4. Rex F. Sanderson, counsel for Appellee
5. Honorable John Gregory, Trial Court Judge

/s/ Rex F. Sanderson  
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### **STATEMENT OF THE ISSUES**

- I. THE FINDINGS AND JUDGMENT OF THE TRIAL JUDGE WITHOUT A JURY MUST BE AFFIRMED.
- II. THE TRIAL COURT PROPERLY DETERMINED JUDGMENT IN FAVOR OF THE APPELLEE AGAINST THE APPELLANT FOR SERVICES RENDERED FOR APPELLANT'S WEDDING.
- III. THE TRIAL COURT PROPERLY AWARDED AN ATTORNEY FEE TO THE APPELLEE FOR THIS SUIT.

### **STATEMENT OF ASSIGNMENT**

This case involves the application of established Mississippi law. There are no novel issues presented in this appeal.

This case should be determined forthwith and affirm the judgment of the trial court.

### **STATEMENT OF THE CASE**

The Appellee, Casey & Co., LLC, sued Appellant, Alaina Hill Rogers, for florist service and materials supplied for the Appellant's wedding in May 2017. The Appellant's family operate a furniture store in Woodland, Mississippi. The account sued upon allowed a credit for furniture obtained by the Appellee in December 2016, from the Appellant's family store.

In January 2017, the parties agreed that the Appellee would provide florist services for the Appellant's wedding in May 2017. The parties met three times at the wedding venue in Kilmichael, Mississippi, (about 50 miles away) including the wedding date of May 13, 2019. The wedding date also fell on the weekend of Mother's Day, which Casey says is the second most busy day for a flower shop year.

The Complaint was filed in the Circuit Court of the First Judicial District of Chickasaw County, to which the Appellant answered and raised affirmative defenses that were denied by the Appellee. The case was tried by agreement before the Circuit Judge without a jury.

The Court permitted memoranda briefing and entered judgment in favor of the Appellee for the amount of the account minus a credit for the furniture and for sales tax. The Court awarded an attorney fee to be included in the judgment together with costs and interest.

### **STATEMENT OF THE FACTS**

This case is a suit by Casey & Co., LLC, Appellee, against Alaina (nee: Hill) Rogers, Appellant, for florist service at Appellant's wedding in May 2017 (T 5). The Appellant's family owns a furniture store, and she claims that Appellee was paid in full by means of receiving a piece of furniture before the florist planning for the wedding began. The Circuit Judge found for the Appellee. Judgment was entered and included an attorney fee and costs, minus a credit for the furniture, sales tax on the furniture, and an item Appellant claimed she did not see at the wedding. (CP 42-43)

Casey Moss is the manager and only member of Casey & Co., LLC (T 4) (hereafter "Casey"). She provided florist service for the planning and floral decoration for the wedding of Alaina Hill Rogers, the Defendant/Appellant herein (hereafter "Alaina"). Alaina and her father complained that the price Casey charged was too much; that they would not pay Casey; and they told Casey to contact their lawyer. (T 7) Casey filed suit in the Circuit Court to collect on the account accumulated for her preparation and performance of Alaina's wedding. (CP 2-5)

Alaina filed an answer denying the claim of Casey stating that there was no agreement to the amount sued on, and that she had paid all that was owed. That is, Alaina and her family have a furniture store, and Casey obtained a "sectional" from Alaina before the wedding planning began. Casey and Alaina discussed the sectional in December 2016, but they did not discuss the wedding until January 2017. They agreed on a price for the sectional in the amount of \$3,799.00. Casey gave credit of \$3,799.00 on her bill for the wedding. (T 12) The trial court found the credit was proper and allowed that in the judgment dated May 10, 2018. (CP 2-5).



The case was tried without a jury, and Alaina testified that she was completely satisfied with Casey's service; that there was only one item on the account that she did not recall as being supplied, and she said that she had not requested for the wedding. The trial court gave credit in the judgment of \$100 for that item. Alaina said that she and Casey visited the "venue" at another town (Kilmichael, Mississippi) on three occasions. (T 8) Casey said that Alaina was not concerned with the price since her father was paying for the service. (Exhibit P-4)

Casey presented copies of "text messages" between the parties showing the development of the account and the requested service and items to be supplied for the wedding. One such message showed Alaina's comment about her father not knowing how much she was spending on flowers for the wedding. Casey presented her notes taken during the planning stages for the wedding, and she included pictures that Alaina had provided to show the exact items she wished to have provided for the wedding. (Ex P-4)

The Circuit Judge found that the balance owed to Casey by Alaina was \$5,073.44, and he found attorney fee of \$2,536.72 should be added together with costs of \$219.30 for a total judgment of \$8,387.49. The court said that the attorney fee allowed was computed at "½ of the balance sued for." (CP 43)

### **SUMMARY OF THE ARGUMENTS**

FIRST: The Appellee would show that the facts determined by the Circuit Judge without a jury may not be disturbed without evidence that the judge abused his discretion. The Appellant has shown no proof that the trial judge abused his discretion. The argument of the Appellant addresses only whether the correct theory of law was presented by the Plaintiff at trial.

SECOND: The Appellee would show that the trial court determined from all facts presented that the Plaintiff was due to be paid for her services at the wedding of the Defendant. The court rejected the claim of the Appellant/Defendant that the charges were wrong.

THIRD: The Appellee would show that the trial court had evidence to determine and award a reasonable attorney fee in the judgment in favor of the Plaintiff.

This Court is requested to award an additional attorney fee and costs for the defense of this appeal.

### **STANDARD OF REVIEW**

The Appellant refers to the case of *Warren v. Derivaux*, 996 So. 2d 729(Miss. 2008) as authority for appeals to address questions of law *de novo*. However, *Warren* points out that the findings of fact of the trial court will not be disturbed except in extraordinary circumstances. This case was tried by the Circuit Judge without a jury. Therefore, his findings are absolute. Another case cited by the Appellant *Browder v Williams* No. 1999-CA-00625-SCT (Miss. 2000) under “*standard of review*” it is stated “This Court will not disturb the factual findings of a chancellor unless the chancellor was manifestly wrong or clearly erroneous.”

This case has been decided on findings of fact by the trial judge.

## ARGUMENT

### I. THE FINDINGS AND JUDGMENT OF THE TRIAL JUDGE WITHOUT A JURY MUST BE AFFIRMED.

The Appellant's brief suggests the trial court erred by enforcing a contract where both parties to the contract admitted there was no agreement as to price.

The Appellant ("Alaina") claims she does not owe the Appellee ("Casey") any money for supplying florist services to Alaina's wedding. She says she employed Casey for the wedding service, but that she did not agree to pay her except for furniture Casey received from Alaina's family business.

Alaina claims that there is no contract between the parties because there was no agreed, final price. She claims that the "sectional" was traded to Casey for the service for the wedding. The furniture exchange took place in December 2016, but Alaina and Casey did not meet for the planning of the wedding until January 2017. The wedding was to be held in May 2017. The trial court determined that the furniture was to be a credit against the final account that accumulated from January unto May 13, 2017, which was on the weekend of Mother's Day that year.

Alaina asserts that this case should have been considered for "quantum meruit" application. She relies in part on the case of *Estate of Johnson v. Adkins*, 513 So. 2d at 922, at 926, where the court discussed issues of quantum meruit and unjust enrichment. The court said "Even though the theory of unjust enrichment may not apply, the chancellor will be affirmed where he reaches a correct result under the law and facts, though for a wrong reason."

Casey would show that the court did not use the wrong reason, but even so, the right result appeared. The judgment of the court recites that the facts showed that (1) Casey supplied the flowers

for the wedding and that Alaina was satisfied with the service for the wedding; (2) that Alaina had not paid in full for the wedding; (3) that Alaina was in business of selling furniture, and the item she sold to Casey was priced at \$3,799.00; and, (4) that communication “by text” showed that the sectional would be credited on the final account for the wedding. (CP 42-43)

Alaina also references case of *Leach v Tingle*, 586 So. 2d 799 (Miss. 1991) saying “price is an essential term,” and where it is not stated, “the contract fails.” That case was about an agreement containing a buy back clause in a property sale. The court said “This does not mean that the price must be set out simply. Where from the terms of the contract, one familiar with elementary principles of mathematical reason may deduce with the sales price, the contract will not fail.” *Leach* at page 803

Alaina refers to *Ladner v. Manuel*, 744 So. 2d 390 (Miss. Ct. App. 1999) on the issue of quantum meruit. However, that case describes an oral contract for services that were modified over time and resulted in a dispute of the price. The jury found for the plaintiff and awarded damages. The court of appeals did not disturb the judgment of the trial court.

Alaina argues that Casey should have stated a claim of quantum meruit in the complaint, citing Rule 8 of Civil Procedure. That rule was designed to give notice, not to state facts and narrow the issues as was the purpose of pleadings in prior Mississippi practice. The rule at (a)(1) states the need of a “short and plain statement of the claim showing that the pleader is entitled to relief.” Casey’s complaint says she sued Alaina for money owed to her for her service at Alaina’s wedding. That is what is required to begin the lawsuit. Parties to lawsuits are not bound by form.

Casey called Melissa Murphy who said that she operates a flower shop in Amory, Mississippi, and she has been in that business for thirty-eight (38) years. Ms. Murphy had employed

Casey Moss for a time before Casey & Co., had opened shop in Houston. Ms. Murphy testified that Casey's charges were reasonable for servicing the wedding for Alaina. If quantum meruit was considered the trial court had sufficient information to make a finding in favor of Casey and enter judgment for her.

II. THE TRIAL COURT PROPERLY DETERMINED JUDGMENT IN FAVOR OF THE APPELLEE AGAINST THE APPELLANT FOR SERVICES RENDERED FOR APPELLANT'S WEDDING.

The Appellant suggests that the trial court erred by awarding attorney's fees since there was no statutory basis nor agreement to support such an award. She claims that a single transaction does not constitute an open account. Casey disagrees with this argument.

An "open account" is "An account the balance on which has not been ascertained; one which has not been closed, settled, or stated, and in which the inclusion of further dealings between the parties is contemplated." "A transaction some of the terms of which have not been agreed upon, such as the price to be paid or the time for payment." 1ALR 1060s. 39 ALR369, 57 ALR 201.

Some time after the wedding and before suit was filed, Alaina and her father met with Casey and told her the bill for the wedding was too much. They told her to contact their lawyer. This case was filed by Casey against Alaina after she made demand and allowed for a thirty (30) day period in which the account should be settled. Thereafter, Casey filed a complaint on the account as allowed by statute. §11-53-81 Miss. Code Ann. The trial court found that the account was proper and entered judgment.

Alaina's argument is that no attorney fee may be granted in the case because there was no open account, and that the court did not consider the factors listed in the Mississippi Rules of

Professional Conduct 1.5. The court was provided with an exhibit of time and effort by counsel for Casey, which included discovery, depositions of the parties, preparation for trial and the trial itself.

Therefore, the court determined that a proper and reasonable fee should be awarded to Casey in the amount of one-half of the debt owed by Alaina. The court judgment obviously took notice of the factors included in the rules. Alaina cites *Mauldin Co. V. Lee Tractor Co.*, 920 S0. 2d 513,(Miss. Ct. App. 2006 to say that this case is not about an open account. *Mauldin* was also a bench trial as was this case, and the court observed that the trier of facts was the County Court sitting without a jury. *Mauldin* was a controversy over a single purchase of mowers, and the parties disagreed on the specific price as listed on the invoices after delivery of the mowers. The holding by the Court of Appeals was to say that the trial court had wrongly determined that the contract was an open account. The facts of that case are very different than in this case. Here, Alaina continued to add items to her request for the floral decorations.

The judgment in this case does not specify that the court determined whether this is an “open account” case, but the language of the judgment treats the action as an open account. The testimony of the parties showed that Alaina hired Casey to prepare for her wedding. The proof showed that Casey followed the instructions of Alaina, and it developed that items were added progressively unto the day of the wedding.

Alaina testified that the wedding was done to her satisfaction. (T 10) Casey testified that she had cautioned Alaina about the cost of the quality and of the number of certain of the items supplied, and that Alaina was not concerned with the price. (T 9)

III. THE TRIAL COURT PROPERLY AWARDED AN ATTORNEY FEE TO THE APPELEE FOR THIS SUIT.

The Appellant suggests that the trial court erred by awarding attorney's fees in the absence of evidence of the *McKee* factors and with no *McKee* analysis.

Alaina argues that there is a failure to satisfy factors in *McKee v. McKee*, 418 So. 2d 764 (Miss. 1982) and Miss. R. Prof. Conduct 1.5 that the party seeking attorney's fee must present evidence for the Trial Court to consider. This case was tried almost a year after the wedding of Alaina Hill Rogers on May 13, 2017. And, on May 10, 2018, judgment was entered against Alaina in favor of Casey in the sum \$5,073.44 together with interest and attorney fee.

Alaina's wedding cost as determined by the exhibits was \$19,105.00. Melissa Murphy testified that she had been in the business of servicing weddings for 38 years, and the cost is because brides "... want what they want ..." (T 57)

Casey testified on cross examination that "A lot of work goes into these weddings. We hung 72 feet of garland on the trees. We prepared this wedding for over six months. . . These flowers are in five gallon buckets full of water and they are very heavy. . . " (T 24, 25)

She said that she did not charge for certain things that came up on the wedding day: "... They decided to add a bride and groom's table, so we did a centerpiece to go on it. We also did some flowers on the welcome sign . . . then we provided petals for the flower girls because they were unable to find the ones they bought to use . . . I had to hire at least three other people to tend to my shop and help with the wedding because of Mother's Day weekend being such a big occasion for the shop. " (T7, 8)

The detailed findings by Judge Gregory are clear and they define the result that he included



in this judgment. (CR 42-43)

### **CONCLUSION**

Alaina Rogers' appeal in this case is without any foundation, and it is without basis as was her refusal to pay for her wedding flowers. The judgment of the Circuit Court should be affirmed.

Further, this Court is requested to award additional attorney fee for the prosecution of this appeal.

RESPECTFULLY SUBMITTED, this the 12<sup>th</sup> day of April, 2019.

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**CERTIFICATE OF SERVICE**

I, Rex F. Sanderson, attorney for Appellee, in the above styled and numbered cause, do hereby certify that I have this day filed the **Brief of Appellee** via the Court's MEC e-filing system which supplied notice to all counsel of record. I have mailed a copy to the Trial Court Judge by placing said copy in the United States Mail.

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**CERTIFICATE OF FILING**

I, Rex F. Sanderson, attorney for Appellee in the above styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the **Brief of Appellee** via the Court's MEC e-filing system.

This, the 12<sup>th</sup> day of April, 2019.

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