IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIAN BRITT **APPELLANT**

VS. **NO. 2015-TS-01292**

CRAIG BRADLEY ORRISON **APPELLEE**

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

APPEAL FROM THE DECISION OF THE
CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

COUNSEL FOR APPELLEE

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BRIAN BRITT **APPELLANT**

VS. **NO. 2015-TS-01292**

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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 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. Brian Britt, Appellant
2. Craig Bradley Orrison and The Shed, Inc., Appellees
3. Nathan L. Prescott and the law firm of Page, Mannino, Peresich & McDermott, PLLC, Attorneys for Appellees
4. Honorable D. Neil Harris, Sr., Chancellor.

/s/ Nathan L. Prescott
NATHAN L. PRESCOTT
MS State Bar #101288
Attorney of record for Appellees

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STATEMENT OF ASSIGMENT

The Appellees, Craig Bradley Orrison and The Shed, Inc., respectfully suggest that this case be assigned to the Court of Appeals. The Court of Appeals entered its judgment on a prior appeal in this matter on June 29, 2021, and, therefore, has historical knowledge of the facts and issues being litigated between the parties.[1]

[1] *See Brian Britt v. Craig Bradley Orrison and The Shed, Inc.*, 323 So. 3d 1135 (Miss. Ct. App. 2021).

STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

Back in 2012, Appellant Brian Britt and Appellees Craig Orrison and his business, The Shed, Inc. (collectively, "Orrison"), were involved in a dispute regarding the purchase of a log house. (R. 45-46). On September 19, 2012, the parties entered into a settlement agreement, which was incorporated into an agreed court order. (R. 49; 100) (hereinafter, "settlement agreement"). One of the provisions of the agreement stated that Orrison was to move the log house from its present location within twenty-eight days of the order. (R. 50; 100). Orrison did not move the log house within twenty-eight days, and Britt filed a motion for contempt. (R. 51). Orrison responded with a motion to set aside the settlement agreement based on Britt's misrepresentation of the log house's condition. (R. 51). The chancellor ultimately granted Orrison's motion to set aside the settlement agreement and found Britt's motion for contempt moot. (R. 52). Britt appealed and raised twenty-one issues. (R. 45). The Court of Appeals reversed and rendered the chancellor's decision to set aside the settlement agreement and reversed and remanded the contempt issue. *See Brian Britt v. Craig Bradley Orrison and The Shed, Inc.*, 323 So. 3d 1135 (Miss. Ct. App. 2021) (R. 44-68).

On remand, after a hearing, the chancellor denied Britt's motion for contempt. (R. 95). Britt appeals again, this time raising fifteen issues.

B. STATEMENT OF THE FACTS.

The Court of Appeals included a detailed and very thorough recitation of the facts leading up to the prior appeal, and Orrison will not duplicate those facts here. (R. 45-57).

However, very important for this appeal are some facts that Britt failed to disclose to the Supreme Court/Court of Appeals in his last appeal. In fact, Britt came extremely close

to perpetrating a fraud upon the chancery court and the appellate courts, if not actually doing so. At the very least, Britt omitted a vital material fact that resulted in the Court of Appeals issuing a ruling that cannot be enforced.

As mentioned above, following the chancellor's ruling setting aside the settlement agreement, Britt filed a motion for new trial on January 27, 2017. (R. 56). One of the issues raised in his motion was that the chancellor erred when he set aside the settlement agreement. (R. 56). After the chancellor denied Britt's second motion for new trial and after he entered his final judgment, Britt filed a notice of appeal on May 15, 2017. (R. 10 (Doc. No. 126)). Again, one of Britt's main issues on appeal was whether the chancellor erred by setting aside the settlement agreement. (R. 45; 58). And indeed, the Court of Appeals agreed with Britt and *reversed and rendered* the chancellor's decision to set aside the settlement agreement. (R. 68).

However, on August 11, 2016, prior to both his second motion for new trial and his notice of appeal, Britt conveyed the log house – the property at issue in the settlement agreement – to the City of Gautier. (R. 104). Thus, even though the settlement agreement could not possibly be enforced – because the sole property at issue had been conveyed to a third party – Britt went forward with both a motion for new trial and an entire appeal, without disclosing this fact to the chancery court or the Supreme Court/Court of Appeals, AND while still requesting both courts to reinstate the settlement agreement and award him damages.

It was only after these additional facts were brought out during the contempt hearing on remand that the chancellor denied Britt's motion for contempt.

SUMMARY OF THE ARGUMENT

A chancellor has broad equity powers. *See, e.g.*, *Devore v. Devore*, 725 So. 2d 193 (Miss. 1998) ("Considering the broad discretion granted to chancellors to do what equity and justice

require[.]"). Here, after a hearing, the chancellor, in a very reasoned opinion, determined that Britt could not seek to hold Orrison in contempt, because (1) Britt "secreted" the conveyance of the log house from everyone, (2) the conveyance of the log house was the sole basis of his contempt motion, and (3) he "willfully and intentionally destroyed any ability of [the] Court to enforce" the settlement agreement. (R. 98). Orrison respectfully submits that the chancellor did not abuse his discretion in doing so and, therefore, asks the Court to affirm his order.

The remainder of Britt's arguments on appeal are procedural in nature and should also be denied.

ARGUMENT

Standard of Review

Appellate courts review a chancellor's decision on a motion for contempt under an abuse of discretion standard. *See, e.g.*, *Jacobs v. Jacobs*, 918 So. 2d 795, 798 (Miss. 2005).

1. The chancellor's judgment denying Britt's motion for contempt was not an abuse of discretion.[1]

As aforementioned, a chancellor enjoys broad equity powers. *See, e.g.*, *Devore v. Devore*, 725 So. 2d 193 (Miss. 1998) ("Considering the broad discretion granted to chancellors to do what equity and justice require[.]") (emphasis added). "'[I]t is the **broad inherent equity powers of the chancery court** that give it the authority to act."' *Humphries v. Humphries*, 904 So. 2d 192, 198 (Miss. Ct. App. 2005) (citation omitted) (emphasis added). "'**General equity principles of fairness** undergird this authority."' *Id.* (citation omitted) (emphasis added). Chancellors are to further the interests of fairness, expediency and justice. *In re Estate of Carter*, 912 So. 2d 138, 147 (Miss. 2005) (emphasis added).

[1] Britt raises this same issue multiple times in his Brief – specifically, in arguments No. 2, 3, 4, 5, 6, 7, 8, 9, 13 and 14. Orrison's response in Section 1 is in response to all of these arguments.

"*It is one of the oldest and most universal of principles required to be observed by the court of chancery that, when a party seeks the interposition and aid of that court*, such a party **must show** that in **good faith and to the best of his ability and understanding** he on his part has **rendered unto the opposite party all the rights to which the latter is entitled** in respect directly to the subject matter of the suit or petition[.]" *Taliaferro v. Ferguson*, 38 So. 2d 471, 472 (Miss. 1949) (emphasis added). "'He who seeks equity must do equity.'" *Id.* at 473. "'He who comes into equity must come in with clean hands.'" *Id.* When neither party has clean hands, the chancellor is correct in declining to find one party in contempt. *See, e.g.*, *Cossitt v. Cossitt*, 975 So. 2d 274, 279-80 (Miss. Ct. App. 2008).

Here, in a well-reasoned opinion, the chancellor determined that Britt could not seek to hold Orrison in contempt, because (1) Britt "secreted" the conveyance of the log house from everyone, (2) the conveyance of the log house was the sole basis of his contempt motion, and (3) he "willfully and intentionally destroyed any ability of [the] Court to enforce" the settlement agreement.[2] (R. 98).

In essence, the chancellor basically determined that the parties should go their separate ways after this eleven-year saga. And this determination is certainly fair and equitable, given the facts in this case. The parties reached an agreement in 2012 that required Orrison to pay Britt $20,000 in cash, to deed two and one-half acres of property to Britt, and to move the log house within a certain time period. (R. 100). As stated above, Orrison did not move the log house within the stated time period, but he paid Britt the $15,150.00 that Britt incurred when he moved the log house himself. (R. 56). Britt's argument that Orrison's actions somehow torpedoed his business plans are entirely unconvincing, as Britt asserts repeatedly in his brief that the log house was "his"

[2] When asked at the contempt hearing if he was ready to deliver the log house to Orrison, Britt answered "It is gone." (R. 116-17).

to "do with as he pleased" in *2013*. *See, e.g.*, Britt's Brief at pp. 27-28. The $20,000 cash was never paid, the two and one-half acre parcel was never conveyed, and the log house was conveyed to Gautier in 2016.

Thus, the parties' current position is the position that they were in prior to the 2012 settlement agreement and, respectfully, the chancellor did not abuse his discretion by declining to find Orrision in contempt, after Britt's "secretion" of essential information regarding the log house, and his forcing Orrison to endure an almost five-year-long appeal that resulted in an unenforceable judgment. Based on the controlling law as cited above, Orrison respectfully submits that the chancellor did not abuse his discretion in denying Britt's motion for contempt, and he asks the Court to affirm his judgment.

Should the Court decide to reverse the chancellor's judgment, Orrison would respectfully request that the contempt issue be limited on remand. Britt argues strenuously on the one hand that the only facts relevant to his contempt petition are the facts that existed in 2012, but he then also argues that he should be granted $729,301.00 in damages, all the way up until 2021. (Britt's Brief at p. 50). So if the Court reverse the chancellor's judgment, Orrison asks that the Court make it clear that the only facts to be considered by the chancellor are the facts as they existed on the day Britt's motion for contempt was filed in 2012. After all, a motion for contempt is not akin to a negligence action, in which one can recover any and all damages they allegedly suffer in perpetuity. Rather, the damages in a contempt action are limited to a party's actual expenses that result from the other party's violation, as established at the hearing.

2. Orrison has not been unjustly enriched.

Britt actually argues with (apparently) a straight face that Orrison has been unjustly enriched, and that public policy demands that Orrison pay him the $20,000 and convey the two

and one-half acre parcel. (Britt's Brief at pp. 47-49). In response, Orrison will simply point out that he does not own and does not have possession of the log house. Additionally, he has been forced to spend thousands in legal fees to respond to an appeal filed by Britt in bad faith. Suffice it to say, Orrison certainly has not been unjustly enriched through this process.

3. Britt's argument regarding notice of the judgment is not properly before the Court.

Britt argues that his equal protection and due process rights were violated because he allegedly did not receive a copy of the chancellor's judgment and was therefore allegedly unable to file a post-trial motion. (Britt's Brief at pp. 42-44). First, this issue is not properly before the Court, as Britt did not present this argument to the chancellor. *See, e.g.*, *Gilmer v. Gilmer*, 297 So. 3d 324, 338 (Miss. Ct. App. 2020) ("'The well-recognized rule is that a [chancellor] will not be put in error on appeal for a matter not presented to [him] for decision.'").

Secondly, according to email correspondence with the chancery clerk's office, there is a notation in the file that an attested copy of the judgment *was* mailed to Britt at the address he provided. *See* Email, attached hereto as Appendix "A."

4. Britt's arguments regarding Judge Harris's recusal are not properly before the Court.

Britt argues that Judge Harris should have recused himself and that forcing him to go forward before an "overwhelmingly biased and openly hostile court" violated his equal protection and due process rights. (Britt's Brief at pp. 37-42). But again, this argument is not properly before the Court on appeal.

On the same day that the contempt hearing was reconvened, Britt filed a motion for recusal, which the chancellor denied from the bench. (R. 93; 110). But Britt did not request that the chancellor reduce his ruling to writing, and his notice of appeal includes only the chancellor's

order of January 18, 2022, which contains no discussion of – or even a mention of – Britt's motion for recusal. (R. 145; 95). Thus, this issue is not properly before the Court in this appeal.

5. The Court of Appeals' prior judgment regarding fees speaks for itself.

Britt's first issue on appeal is that the chancellor erred when he did not enter a judgment for court costs. (Britt's Brief, pp. 9-11). In response, Orrison will simply say that the Court of Appeals' mandate speaks for itself.

CONCLUSION

Chancellors are tasked with promoting equity and fairness and have broad discretion to achieve these goals. Here, the chancellor weighed all of the facts and denied Britt's motion for contempt, and he did not abuse his discretion in doing so. Additionally, none of Britt's other arguments have merit, as shown above. Orrison therefore requests the Court to affirm the chancellor's judgment in full.

Respectfully submitted,

PAGE, MANNINO, PERESICH & MCDERMOTT, PLLC
Attorneys at Law
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759 Howard Avenue
Biloxi, MS 39530
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BY: */s/ Nathan L. Prescott*
Nathan L. Prescott
Attorney for Appellees

CERTIFICATE OF SERVICE

I, Nathan L. Prescott, do hereby certify that I have this day electronically filed the above and foregoing with the Clerk of the Court using the MEC system, which sent notification of such filing to all counsel of record.

I, Nathan L. Prescott, do hereby further certify that I have this day mailed, via First Class U.S. Mail, postage prepaid, a copy of the Appellee's Brief to the following:

Honorable D. Neal Harris, Sr.
P.O. Box 998
Pascagoula, MS 39568

Mr. Brian Britt
416 Billy Davis Road
Silver Creek, MS 39663

SO CERTIFIED on this the 5th day of May 2023.

/s/ Nathan L. Prescott
NATHAN L. PRESCOTT
Certifying Attorney

Laura Murphy

From: Laura Murphy
Sent: Tuesday, April 25, 2023 4:03 PM
To: 'Taylor Heck'; Nathan Prescott
Subject: FW: Question re, service

Laura Dubaz Murphy, Paralegal
PAGE, MANNINO, PERESICH
& MCDERMOTT, P.L.L.C.
Tele: (228) 374-2100
Fax: (228) 432-5539

From: Whitfield, Carol <Carol_Whitfield@co.jackson.ms.us>
Sent: Tuesday, April 25, 2023 4:01 PM
To: Laura Murphy <Laura.Murphy@pmp.org>
Subject: RE: Question re, service

It is noted that an attested copy was mailed to Mr. Britt at the address he provided to MEC

From: Laura Murphy <Laura.Murphy@pmp.org>
Sent: Tuesday, April 25, 2023 3:45 PM
To: Whitfield, Carol <Carol_Whitfield@co.jackson.ms.us>
Subject: Question re, service

Hi Ms. Whitfield,
I have a procedural question. I need to know if the court/clerk maintains any type of record when they mail something to a pro se party. For instance, attached is an excerpt from the clerk's papers in a case currently on appeal showing a docket entry for MEC Doc. 228. Pro se, Britt claims in his notice of appeal that he never received the final judgment in this matter but the attached shows he was notified by "other means". Is there any mechanism in place to prove something was mailed to a pro se party? Thank you for your help. Please call if you would like to discuss further.

Laura Dubaz Murphy, Paralegal
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APPENDIX "A"

not retain a copy.

From: mec.nef@mec.ms.gov <mec.nef@mec.ms.gov>
Sent: Tuesday, January 18, 2022 3:51 PM
To: mec.nef@mec.ms.gov
Subject: Activity in Case 30CH1:12-cv-01736-DNH BRIAN BRITT vs. CRAIG BRADLEY ORRISON Judgment (Generic)

Joshua Eldridge
Jackson County Chancery Clerk
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Sixteenth Chancery Court District

Notice of Electronic Filing

The following transaction was entered on 1/18/2022 at 3:51 PM CST and filed on 1/18/2022

Case Name: BRIAN BRITT vs. CRAIG BRADLEY ORRISON
Case Number: 30CH1:12-cv-01736-DNH
Filer:
WARNING: CASE CLOSED on 01/18/2022
Document Number: 228

Docket Text:
Judgment Signed by D Neil Harris on 01/18/2022. (Collins, Savannah)

30CH1:12-cv-01736-DNH Notice has been electronically mailed to:

Calvin Taylor ctaylor39567@gmail.com, ctaylor.lawfirm@gmail.com, taylorlawfirm39567@gmail.com, tylercoxlaw@gmail.com

Nathan Prescott Nathan.Prescott@pmp.org, amy.gillen@pmp.org, laura.murphy@pmp.org

Ryan A Frederic rfrederic@cityofpascagoula.com, pricks@cityofpascagoula.com

Matthew Paul Pavlov matthew@pavlovlawfirm.com, liz@pavlovlawfirm.com

30CH1:12-cv-01736-DNH Notice will be delivered by other means to:

BRIAN BRITT
416 Billy Davis Rd.
Silver Creek, MS 39663

30CH1:12-cv-01736-DNH Parties to the Case:

APPENDIX "A"

BRITT, BRIAN (Plaintiff)
ORRISON, CRAIG BRADLEY (Defendant)
THE SHED, INC (Defendant)
Pavlov, Matthew (Guardian Ad Litem)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:\\co.jackson.ms.us\users\data\savannah_collins\Desktop\MEC Scans\BrittJ.pdf
Electronic document Stamp:
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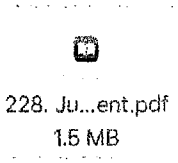

APPENDIX "A"