IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2004-CA-01610-COA

RHENO S. PATTERSON **APPELLANT**

v.

MELBA WILLIAMS PATTERSON (BROACH) **APPELLEE**

DATE OF JUDGMENT:	7/20/2004
TRIAL JUDGE:	HON. TALMADGE D. LITTLEJOHN
COURT FROM WHICH APPEALED:	ITAWAMBA COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	RHETT R. RUSSELL
ATTORNEY FOR APPELLEE:	T. VICTOR BISHOP
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	JUDGMENT OF CONTEMPT ENTERED
DISPOSITION:	REVERSED AND RENDERED: 11/22/2005
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

KING, C.J., FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

¶1. Rheno Patterson served in the U.S. military during the Korean War. During that service, particularly 1950 or 1951, Mr. Patterson purchased a life insurance policy. Rheno and Melba Patterson married on January 23, 1957. The Patterson's marriage deteriorated, and on January 4, 1974, Mr. Patterson and Mrs. Patterson executed a "Separation Agreement" incident to their marital problems. On April 2, 1974, the Itawamaba County Chancery Court incorporated that agreement into the Patterson's divorce decree. Mrs. Patterson remarried in July of 1974.

¶2. Mr. Patterson and Mrs. Patterson did not communicate again until 2003. On August 14, 2003, Mrs. Patterson filed a contempt action against Mr. Patterson. Mrs. Patterson alleged that Mr. Patterson was in contempt of the 1974 divorce decree because he stopped paying alimony after her 1974 remarriage. Additionally, Mrs. Patterson alleged that Mr. Patterson was in contempt of the 1974 decree because he changed Mrs. Patterson's status as the beneficiary of his life insurance policy. Mr. Patterson responded and argued that he was not in contempt of court because his obligation to pay alimony to Mrs. Patterson ceased when she remarried. Further, Mr. Patterson argued that Mrs. Patterson's claim was barred by the statute of limitations, and that the doctrine of laches precluded enforcement of Mrs. Patterson's claim.

¶3. The Itawamba County Chancery Court conducted a hearing on the matter on February 19, 2004. Afterwards, the chancellor sustained Mrs. Patterson's contempt claim and determined that Mr. Patterson owed Mrs. Patterson $13,650 in unpaid alimony. Further, the chancellor held that Mr. Patterson was in contempt of the 1974 decree when he changed Mrs. Patterson's status as the beneficiary of his life insurance policy. Finally, the chancellor held that Mr. Patterson was responsible for $2,312.50 in Mrs. Patterson's attorney's fees. Mr. Patterson filed a motion to put on proof as to his inability to pay, but the chancellor denied Mr. Patterson's motion.

¶4. On July 27, 2004, the chancellor issued a written order incorporating his findings following the February 2004 contempt hearing. Mr. Patterson filed a motion to reconsider or, alternatively, a motion to reduce the supersedeas bond. On August 25, 2004, the chancellor denied Mr. Patterson's motion to reconsider, but the chancellor did reduce Mr. Patterson's supersedeas bond. Aggrieved, Mr. Patterson appeals and advances six allegations of error in the chancery court, listed verbatim:

1. Whether or not the lower court erred in viewing the January 4, 1974, Property Settlement Agreement incorporated by reference in the April 2, 1974, Divorce Decree as court directives instead of viewing the terms.

2. Whether or not the lower court erred in concluding that Mr. Patterson had an obligation of support to his former wife, Mrs. Broach, through periodic alimony payments after the time that she had remarried to another husband.

3. Whether or not the lower court erred in finding substantial, credible evidence that Mr. Patterson willfully and deliberately ignored or disobeyed the April 2, 1974, Divorce Decree of the parties.

4. Even if *prima facie* evidence of Mr. Patterson's failure to comply with the lower court's 1974 Divorce Decree existed, whether or not the lower court erred in not allowing Mr. Patterson to testify and present evidence as to his present inability to pay arrearages so as to purge himself from contempt of court.

5. Even if *prima facie* evidence of Mr. Patterson's failure to comply with the lower court's1974 Divorce Decree existed, whether or not Mr. Patterson should avoid contempt of court after providing a combination of defenses: statute of limitations, laches, and present inability to pay arrearage.

6. Whether or not the attorney fees and court costs should be assessed against Mr. Patterson instead of Mrs. Broach.

Finding error, we reverse and render.

STANDARD OF REVIEW

¶5. It is well-settled law that contempt matters are committed to the substantial discretion of the chancellor. *Varner v. Varner*, 666 So.2d 493, 496 (Miss.1995). This Court will not reverse a contempt citation where the chancellor's findings are supported by substantial credible evidence. *Id.* "With respect to issues of fact where the chancellor made no specific finding, this Court proceeds on the assumption that the chancellor resolved all such fact issues in favor of the appellee, or at least in a manner consistent with the decree." *Smith v. Smith*, 545 So.2d 725, 727 (Miss. 1989) (quoting *Tedford v. Dempsey*, 437 So. 2d 410, 417 (Miss. 1983)).

ANALYSIS

1. DID THE CHANCELLOR ERR IN FINDING THAT MR. PATTERSON WAS IN CONTEMPT FOR FAILING TO PAY ALIMONY TO MRS. PATTERSON?

¶6. The Pattersons executed what was styled as a "Separation Agreement" on January 4, 1974. This separation agreement included the following provisions:

> III
>
> That Husband shall pay unto Wife the sum of $150.00 per month as alimony, the first payment to commence on September 1, 1976 and a like amount due and payable on the first day of each successive month thereafter until said Wife departs this life.
>
> VIII
>
> That Husband shall maintain in full force and effect that certain life insurance policy presently insuring his life and shall maintain and designate and enjoin himself from changing the beneficiary from that of said Wife, said policy being a Veterans' policy in the amount of Ten Thousand Dollars ($10,000.00).

¶7. This Agreement was attached as exhibit A to the Bill for Divorce filed by Mrs. Patterson. The Pattersons' divorce decree, which was entered on April 24, 1974, provided, "That the Agreement attached to the Bill for Divorce and marked Exhibit 'A' is hereby approved by this Court, and incorporated herein by reference." By approving this separation agreement and incorporating its provisions by reference, the Chancery Court adopted the agreement as part of the final decree. *Switzer v. Switzer*, 460 So.2d 843, 845-46 (Miss. 1984). Therefore, the final decree subjected Mr. Patterson to possible punishment for contempt, should he violate the court's directives in the decree.

¶8. While incorporating by reference the separation agreement, the chancellor, consistent with making the agreement his directive, modified the provision dealing with periodic alimony, consistent with the well-established law of this State, to provide for the termination of alimony upon the remarriage of Mrs. Patterson. *Sides v. Pittman*, 167 Miss. 751, 150 So. 211, 212 (Miss. 1933). What is commonly referred to as periodic alimony terminates automatically upon the death of the paying spouse or the remarriage of the receiving spouse. *Waldron v. Waldron*, 743 So. 2d 1064,1065 (¶5), (Miss. Ct. App. 1999).

Because this was periodic alimony, the alimony terminated when Mrs. Patterson became Mrs. Broach in July of 1974.

¶9. It was therefore error to find Mr. Patterson in contempt for not paying alimony, which he was no longer obligated to pay.

2. DID THE CHANCELLOR ERR IN FINDING MR. PATTERSON IN CONTEMPT FOR CHANGING MELBA'S STATUS AS THE BENEFICIARY OF MR. PATTERSON'S LIFE INSURANCE POLICY?

¶10. This divorce case was decided prior to the recognition of equitable distribution by our supreme court in *Ferguson v. Ferguson*, 639 So. 2d 921, 927 (Miss. 1994). Thus the only reasons for which the chancellor could have required that the former Mrs. Patterson be retained as the named beneficiary on the life insurance policy would have been to insure the payment of child support or alimony. (*See Johnson v. Pogue*, 716 So.2d 1123, 1134 (¶42) (Miss. Ct. App. 1998); *Arthur v. Arthur*, 691 So.2d 997, 1001 (Miss. 1997)).

¶11. When this action for contempt was started, the child of the parties was well into adulthood, so that the obligation to pay child support had ended. *Caldwell v. Caldwell*, 823 So. 2d 1216, 1220 (¶12) (Miss. Ct. App. 2002) (citing Miss. Code Ann. §§ 93-5-23, 93-11-65 (Supp. 2001)). Likewise, the obligation to pay alimony ceased when Mrs. Patterson became Mrs. Broach less than four months after the divorce. *West v. West*, 891 So. 2d 203, 212 (¶21) (Miss. 2004) (citing *East v. East*, 493 So. 2d 927, 931 (Miss. 1986)). There being no acceptable reason to maintain Mrs. Broach as the beneficiary of the life insurance policy, the chancellor committed error in holding Mr. Patterson in contempt.

¶12. The purpose of civil contempt is first and foremost to obtain compliance with the lawful directives of a court. *Witters v. Witters*, 864 So. 2d 999, 1004 (¶18) (Miss. Ct. App. 2004) (citing *Lahmann v. Hallmon*, 722 So. 2d 614, 620 (¶19) (Miss. 1998)). Mr. Patterson technically violated the directive of

the court by removing Mrs. Broach as the beneficiary of his life insurance policy. However, our supreme court has stated:

> It is axiomatic that before a person may be held in contempt of a court judgment, the judgment must 'be complete within itself--containing no extraneous references, leaving open no matter or description or designation out of which contention may arise as to the meaning. Nor should a final decree leave open any judicial question to be determined by others, whether those others be the parties or be the officers charged with execution of the decree. . . .'"

Wing v. Wing, 549 So.2d 944, 947 (Miss. 1989) (quoting *Morgan v. U.S. Fidelity & Guaranty Co.*, 191 So.2d 851, 854 (Miss.1966)). Since Mr. Patterson no longer had any financial obligation to Mrs. Broach, the validity of the insurance beneficiary provision of the divorce decree was called into question. Although Mr. Patterson should have sought to have the decree modified prior to changing the beneficiary on his life insurance policy, a finding of contempt is a seemingly harsh result in light of the circumstances. To require Mr. Patterson to comply with the provision of the decree in question would result in Mrs. Broach's being unjustly enriched. Because the reasons for requiring that Mrs. Patterson be maintained as the designated beneficiary on Mr. Patterson's veterans life insurance policy had ended, this Court finds that the chancellor committed error by holding Mr. Patterson in contempt on this matter, and therefore we reverse and render.

3. DID THE CHANCELLOR ERR WHEN HE ORDERED MR. PATTERSON TO PAY MRS. PATTERSON'S ATTORNEY'S FEES AND ALL COURT COSTS?

¶13. Because we reverse and render this matter, we find that the chancellor erred in awarding attorney's fees to Mrs. Patterson. *Walters v. Walters*, 383 So.2d 827, 828 (Miss. 1980).

¶14. THE JUDGMENT OF THE ITAWAMBA COUNTY CHANCERY COURT IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.

LEE AND MYERS, P.JJ., IRVING AND GRIFFIS, JJ., CONCUR. ISHEE, J., CONCURS IN PART. BRIDGES, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY CHANDLER, BARNES AND ISHEE, JJ.

BRIDGES, J., CONCURRING IN PART, DISSENTING IN PART:

¶15. On one aspect, I agree with the majority. The chancery court should not have held Mr. Patterson in contempt for failing to pay Mrs. Broach alimony after Mrs. Broach remarried. However, I feel that the majority is incorrect in holding that the chancellor erred when he found Mr. Patterson in contempt for changing the beneficiary of his life insurance policy. Accordingly, I respectfully and humbly dissent.

¶16. This Court must review this domestic relations case under a strictly limited standard. *Witters v. Witters*, 864 So.2d 999 (¶9) (Miss. Ct. App. 2004). "We will not disturb the findings of a chancellor unless we find an abuse of discretion, an erroneous application of law, or a manifest error." *Id*. Thus, if we find substantial evidence in the record to support the chancellor's findings, we will not reverse. *Id*.

¶17. The majority cites the principle that "[t]he purpose of civil contempt is first and foremost to obtain compliance with the lawful directives of the court." *Id*. at (¶18). Then the majority concedes that "Mr. Patterson technically violated the directive of the court by removing Mrs. Broach as the beneficiary of his life insurance policy." I agree.

¶18. Next, the majority cites *Wing v. Wing*, 549 So.2d 944, 947 (Miss. 1989) for its discussion of certain qualifiers to a finding of contempt. As a matter of law, a party may not be held in contempt of a judgment unless that judgment is "complete within itself" with no "extraneous references." *Id*. Also, a party may not be held in contempt of a judgment if that judgment contains a description or designation that could create contention over its meaning. *Id*. Finally, a party may not be held in contempt of a judgment if that judgment leaves an open judicial question which others must determine. *Id*.

¶19. Despite the majority's citation to *Wing*, the majority does not tell us exactly how this language from *Wing* renders the insurance beneficiary provision of the divorce decree unenforceable. Is the divorce decree somehow incomplete within itself? Does it contain some extraneous reference? Does it leave open a contentious or ambiguous description? Is it overly vague? I think not. The decree ordered Mr. Patterson to maintain Mrs. Broach as the beneficiary of his insurance policy. There is nothing unclear or ambiguous about this.

¶20. Instead, the majority concludes that the insurance policy provision of the divorce decree is called into question because Mr. Patterson had no obligation to support Mrs. Broach. The majority further undergirds its position when it states that "[t]his case was decided prior to the recognition of equitable distribution by our supreme court in *Ferguson v. Ferguson*, 639 So.2d 921, 927 (Miss. 1994)." Not to split hairs, but a more accurate description is that our supreme court, through an evolution of case law, abandoned the title theory method of distribution of marital assets and had *evolved* into an equitable distribution system. *Id*. (emphasis added). That language implies that our supreme court recognized equitable principles in distributing marital property prior to *Ferguson*. *See Bowe v. Bowe*, 557 So.2d 793, 794 (Miss. 1990); *Draper v. Draper*, 627 So.2d 302 (Miss. 1993).

¶21. Nevertheless, then the majority concludes that "the only reason for which the chancellor could have required that the former Mrs. Patterson be retained as the named beneficiary on the life insurance policy would have been to insure the payment of child support or alimony." That is one of many possible conclusions, but there is no language in the decree that suggests that was the chancellor's intent when he issued his decree in 1974.

¶22. The majority concedes that Mr. Patterson should have attempted to modify the decree before changing the beneficiary of his life insurance policy. However, where the majority suggests that a finding of

contempt is a "seemingly harsh result in light of the circumstances," I would hold that it is a necessary conclusion. The divorce decree is crystal clear. The chancellor ordered Mr. Patterson to maintain Mrs. Broach as the beneficiary of his insurance policy. Mr. Patterson did not. He removed Mrs. Broach as the beneficiary of his insurance policy. While I can agree that it seems inequitable under the circumstances, I would hold that Mr. Patterson should have attempted to modify the decree before changing beneficiaries. If we do not require this, we leave open questions as to when a party may violate judgments without attempting modification with no concern that they may be later found in contempt. We leave chancellors and parties without any direction at all and encourage them to apply their own conclusions and their own will to contempt actions. "In the absence of manifest abuse of discretion, coupled with the presence of substantial credible evidence, we should not disturb the learned chancellor's decision substituting our judgment for that of the chancellor." *Mabus v. Mabus*, 910 So.2d 486 (¶6) (Miss. 2005). In my view, the majority is substituting its view for the chancellor's.

¶23. The majority states that Mrs. Broach would be unjustly enriched if we require Mr. Patterson to maintain her as the beneficiary of his insurance policy. I concede that this is a conclusion that warrants consideration. However, I feel that a party's duty to seek modification of a judgment and the orderly and predictable transaction of proper legal procedure outweigh the risk of Mrs. Broach's unjust enrichment.

¶24. At any rate, by reversing and rendering, the majority must conclude that the chancellor either abused his discretion, arrived at his conclusion under an erroneous application of law, or committed a manifest error. I humbly and most respectfully disagree. The chancellor was faced with a clear decree and an obvious violation of that decree. I would hold that substantial evidence supported the chancellor's decision and that we should affirm on that basis.

¶25. What is more, Mr. Patterson did not argue that the divorce decree was vague, ambiguous or otherwise. Instead, Mr. Patterson argued that Mrs. Broach's contempt action was barred by the statute of limitations and defeated by the doctrine of laches.

¶26. According to Mr. Patterson, Mrs. Broach's attempt to enforce the obligations in the agreement is barred by the statute of limitations listed at Section 15-1-49 of the Mississippi Code. We disagree. That section sets forth the limitations period applicable to actions "not otherwise specifically provided for." Miss. Code Ann. § 15-1-49 (Rev. 2003). Mrs. Broach claimed that Mr. Patterson was in contempt of the chancellor's judgment of divorce, as it incorporated their agreement. It is not the agreement that serves the basis of Mrs. Broach's claim, but the decree. Because Section 15-1-43 of the Mississippi Code details the limitations period "applicable to actions founded on domestic judgments or decrees," Section 15-1-49 does not apply. Miss. Code Ann. § 15-1-43 (Rev. 2003). That is, a contempt claim alleges that one party is in violation of a judgment or, as here, a decree. Section 15-1-43 applies to actions founded on domestic judgments or decrees. Since the limitation period regarding Mrs. Broach's claims was "specifically provided for," that limitation period connected to actions "not otherwise specifically provided for" does not apply. Put simply, a specific statute of limitation applies, so the catch-all limitation period is inapplicable.

¶27. According to Section 15-1-43, "[a]ll actions founded on any judgment or decree rendered by any court of record in this state, shall be brought within seven years next after the rendition of such judgment or decree, and not after, and an execution shall not issue on any judgment or decree after seven years from the date of the judgment or decree." Reviewing the record, there is little information to guide this Court. Mrs. Broach testified that she only found out Mr. Patterson changed her status as the beneficiary of his Veteran's policy six months before she filed her contempt action. The record does not reflect the exact date that Mr. Patterson changed the beneficiary of his life insurance policy. It is possible that Mrs. Broach should have

known Mr. Patterson changed his policy when he made the change, but there is no way to know when Mr. Patterson changed his policy. Additionally, we do not know how Mrs. Broach discovered that Mr. Patterson changed his policy. One who asserts the statute of limitations as an affirmative defense bears the burden of proof that the defense applies. *Graham v. Pugh*, 417 So.2d 536, 540-41 (Miss. 1982). Because Mr. Patterson did not prove the statute of limitations bars Mrs. Broach's claim, we cannot find that the chancellor erred in failing to apply the statute of limitations.

¶28. Mr. Patterson also asserted laches as a defense to Mrs. Broach's contempt action. However, laches does not apply under the circumstances. Laches does not apply "where a claim has not yet been barred by the applicable statute of limitations." *Mississippi Dept. of Human Services v. Molden*, 644 So.2d 1230, 1232 (Miss. 1994) (citations omitted).

¶29. Because the majority holds that the chancellor erred when he found Mr. Patterson in contempt, for all the reasons stated above, I most humbly dissent.

CHANDLER AND BARNES, JJ., JOIN THIS SEPARATE WRITTEN OPINION. ISHEE, J., JOINS THIS SEPARATE WRITTEN OPINION IN PART.