

IN THE COURT OF APPEALS 10/01/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01021 COA

JERRY ESTES HUNT

APPELLANT

v.

SHIRLEY ARNEY HUNT

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WOODROW WILSON BRAND JR.

COURT FROM WHICH APPEALED: OKTIBBEHA COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

GEORGE C. MCKEE

ATTORNEY FOR APPELLEE:

GARY GOODWIN

NATURE OF THE CASE: DOMESTIC - ALIMONY

TRIAL COURT DISPOSITION: CHANCERY COURT ORDERED APPELLEE TO PAY PAST
DUE ALIMONY

BEFORE THOMAS, P.J., COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Shirley Arney Hunt and Jerry Estes Hunt were divorced in 1991, but their disputes with each other continued. A new judgment was entered in 1995 for \$8,000 in unpaid alimony, plus interest on each installment. On appeal Mr. Hunt alleges one basic point: Mrs. Hunt should not be able to seek enforcement of the alimony obligation because she was in contempt of the same earlier order. The chancellor found her to have complied with her obligations, and we affirm.

FACTS

On November 20, 1991 the Chancery Court of Oktibbeha County entered a final decree awarding Jerry and Shirley Hunt a divorce. In addition to other items specifically listed in the decree, the court ordered Mrs. Hunt to relinquish "[a]ll other personal property which belonged to Jerry Estes Hunt as of May 12, 1991" She was awarded certain listed items, as well as alimony in the amount of \$1,000.00 payable immediately, and then \$250.00 per month. In 1992, the former spouses separately petitioned the court to enforce the divorce decree. On November 4, 1992, the court issued an order requiring that Mr. Hunt: (1) pay his ex-wife past alimony in the amount of \$1,750; (2) that Mrs. Hunt obtain a ring that she testified she had given to a third party and return it to Mr. Hunt; (3) that he be allowed to obtain possession of a certain computer; (4) that all costs of the proceedings be taxed equally between the parties; (5) that neither party could come before the court until such party had purged themselves of all actions in contempt of that and the prior decrees of the court; (6) that both parties have all appropriate actions of law available to them to adjust any property rights between them; and (7) that after full compliance with the prior decrees of the court, the parties each could have access to the court for any prior or future difficulties.

Disagreements remained. On April 19, 1995 Mrs. Hunt filed a complaint for past due alimony in the amount of \$7,250.00 plus interest, and attorney fees in the amount of \$750.00. Mr. Hunt's answer admitted the non-payment, but affirmatively pleaded that his ex-wife was barred from filing her complaint because she was also in contempt. The allegation was that she had not allowed him to obtain personal property he claimed belonged to him under the decree of divorce and the November 1992 order. The court after a hearing determined Mrs. Hunt had made the personal property available to Mr. Hunt. The Judgment was for an alimony arrearage of \$8,000, plus interest on each installment. Attorneys fees were not awarded, and no cross-appeal was taken.

DISCUSSION

Our scope of review in domestic relations matters is limited under the familiar rule that this Court will not disturb a chancellor's findings unless "manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard." *Johnson v. Johnson*, 650 So. 2d 1281, 1285 (Miss. 1994) (citing *McEwen v. McEwen*, 631 So. 2d 821, 823 (Miss. 1994)).

Mr. Hunt admits that he had not been paying alimony as ordered, but because his ex-wife had also not complied with the orders of the court, she was precluded from bringing a contempt action against him. He argues that the judge erroneously kept him from establishing that certain items in Mrs. Hunt's possession were his property and that she had "disposed of, concealed, and hindered" him from obtaining possession of the property pursuant to the divorce decree and the November 1992 order. He further argued that because Mrs. Hunt had not purged herself of all actions of contempt before she came before the court, as per item number five of the November 1992 decree, she was barred from bringing the contempt action because of the unclean hands doctrine.

Mississippi has long followed the maxim that "[h]e who comes into equity must come with clean hands." *Thigpen v. Kennedy*, 238 So. 2d 744, 746 (Miss. 1970). Furthermore, the law is that "no person as a complaining party can have the aid of a court of equity when his conduct with respect to the transaction in question has been characterized by wilful inequity. . ." *Brennan v. Brennan*, 605 So. 2d 749, 752 (Miss. 1992). At the July 13, 1995 hearing on Mrs. Hunt's complaint, the chancellor heard testimony that sufficiently established that Mrs. Hunt was in compliance with the November 1992 order. Direct and cross-examination established that she was not withholding any of the items she was required to relinquish. She testified that if there were items in her possession that rightly belonged to him, she would relinquish them in compliance with the court orders. The court accepted that testimony as true, and we do not find him manifestly in error in having done so. Should it prove not to have been true, additional relief from the court is available.

Based on this testimony, the chancellor concluded that alimony was owed through the date of the hearing together with statutory interest. There is no denial of the amount or the ultimate obligation. The only objection is based on the issue of "clean hands," which we have already discussed. We affirm the award of alimony.

Mrs. Hunt has filed a motion on appeal, acknowledging the failure to cross-appeal on the question of attorneys fees. She nonetheless seeks our award of such fees. A motion in the appellate court is not a substitute for a cross-appeal. The motion is denied.

THE JUDGMENT OF THE CHANCERY COURT OF OKTIBBEHA COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS ARE ASSESSED TO APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.