

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-CA-01764-COA

MARVIN HAYES HUNT

APPELLANT

v.

MARINA HUNT

APPELLEE

DATE OF JUDGMENT:	10/16/2017
TRIAL JUDGE:	HON. H.J. DAVIDSON JR.
COURT FROM WHICH APPEALED	OKTIBBEHA COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	TOM P. CALHOUN III
ATTORNEY FOR APPELLEE:	RODNEY PURVIS FAVER
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED - 08/06/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., GREENLEE AND McCARTY, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. Marina Hunt filed a petition for a citation of contempt against her former husband, Marvin Hayes Hunt (Hayes), seeking to enforce a “personal effects” provision of their marital property settlement agreement that was incorporated by reference into their divorce decree. The provision listed specific personal property items belonging to Marina that Hayes was to return to her. This petition was Marina’s second contempt petition about the same issue. The Oktibbeha County Chancery Court had denied Marina’s first contempt petition, finding that although Marina asserted that Hayes possessed the property, Hayes had sworn under oath that he did not possess the property and did not know where it was. In that same order, however, the chancery court instructed Hayes that he must “diligently search and . . .

make any reasonable inquiries as to the whereabouts of the property and return it to Marina or inform her about its whereabouts immediately.”

¶2. After a hearing on Marina’s second contempt petition, the chancery court found Hayes in contempt of the divorce decree and the court’s prior order on Marina’s first contempt petition. The chancery court also ordered Hayes to pay Marina the attorney’s fees she incurred in pursuing her second contempt petition. Hayes appealed, asserting that the chancery court manifestly erred in finding him in contempt and awarding attorney’s fees based on that contempt determination. Finding no error, we affirm the chancery court’s judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

¶3. Marina filed a complaint for divorce, child custody, and other relief against Hayes in September 2013. The fault grounds set forth in the divorce complaint were eventually withdrawn and the parties agreed to a divorce in accordance with a “Child Custody and Property Settlement Agreement” which the parties executed on March 31, 2015. On November 6, 2015, the chancery court entered a supplemental order granting the Hunts a “full and final dissolution of their marriage and divorce from each other. . . .”

¶4. Less than a month later, Marina filed a contempt petition against Hayes that included, among other matters, a request that Hayes be ordered to “return [Marina’s] personal effects as set out in the marital [property] settlement agreement.” The “personal effects” provision in the property settlement agreement provides as follows:

[Hayes is required to] return all of the clothes, and personal effects, books, the big mirror from the living room, big picture that used to hang over the living room couch which Marina received from her grandmother, all of [Marina's] [c]hina and furniture and furnishings that [Marina] brought to the marriage, correspondence, her desk and hutch, [Andy's¹] desk, Christmas decorations [that Marina] brought to marriage, credenza from the foyer with the black granite top, kitchen table with six chairs, the table with the glass top and four chairs, and the decorative rocks that he dug out from the front yard, provided, however, that [Hayes] is only obligated [to return] such items in his possession or which he knows the whereabouts of, within sixty days.

After a hearing,² the chancery court ruled on Marina's contempt petition and entered its order on March 28, 2016. With respect to Marina's request for her personal effects and certain personal property as set forth in the property settlement agreement, the chancellor first described the parties' testimony at the hearing, as follows:

What we have is Marina testifying that she was to receive certain items of personal property, but has not received them. She blames Hayes for his refusal to hand over those items. Hayes, on the other hand, says he cannot hand over those items he doesn't have and denies knowing of their whereabouts.

The chancellor then quoted from the property settlement agreement and determined that in the light of the parties' conflicting testimony and the terms of the property settlement agreement, he was prevented from finding Hayes in contempt on the personal property issue.

The chancellor elaborated as follows:

The agreement provides that Hayes[] "is only obligated [to return] such items in his possession or which he knows the whereabouts of, in sixty days."

¹ Marina and Hayes had one child together. He is a minor and is referred to as "Andy" to protect his identity.

² The chancery court order stated that a hearing was held on this matter. The record, however, does not contain a transcript of this hearing.

Contempt by law is the wilful and contumacious violation of a Court's valid order without legal justification. In order that the Court find Hayes in contempt, there would have to be a wilful act of violation of the decree. It is his word against hers without any persuasive proof that would constitute a preponderance of the evidence. This combined with the exonerating language of the agreement prevents the Court from finding Hayes in contempt for this allegation.

The chancellor also explicitly instructed Hayes in his order about his obligation to search for and return any personal property to Marina, as follows:

[I]t should not be lost on the parties that the agreement and the decree affirm title to those properties in Marina and Hayes is not merely allowed to claim he can't find them. He is instructed to diligently search and to make any reasonable inquiries as to the whereabouts of the property and return it to Marina or inform her about its whereabouts immediately. If the property or evidence of its whereabouts is revealed within the next sixty days, Hayes shall not have any further request for sanctions for contempt but shall cooperate with Marina to seek its return to her. . . . Hayes has sworn under oath that he does not have the property, nor does he know its whereabouts. His liability to return or make known the whereabouts shall continue as long as provided by law. Hayes shall be at his own peril.

¶5. In August 2016 Marina filed a second contempt petition against Hayes that again sought return of her personal effects and certain personal property items. The parties were heard on this issue and other issues not relevant to this appeal on August 22, 2017.

¶6. At the hearing, Marina testified that after she was permitted to view Hayes's shop in 2017,³ she did so and found items that belonged to her, including some of her clothes, books,

³ In August 2016 Marina filed a "Motion to View Property" owned or controlled by Hayes, including his shop in Sturgis, Mississippi, and a home in Sturgis, Mississippi, where Hayes's mother was living. The record does not contain an order on this motion, but in his final judgment the chancellor explained that he had permitted Marina to view Hayes's shop, which she did.

and Christmas decorations. Photos of these items were admitted into evidence as plaintiff's exhibit 1. The chancellor questioned Marina at the hearing and established that these are all items listed in the "personal effects" provision of the property settlement agreement. As to these items, the chancellor specifically asked Hayes's counsel whether there was any dispute that these items were in Hayes's shop. During the following exchange, Hayes's counsel confirmed that there was no dispute as to these items:

THE COURT: Mr. Crull [counsel for Hayes], . . . is there any dispute with the items [Marina] has testified to as being in that shop?

[MR. CRULL]: As I understand it, she has testified that items on this Paragraph 3 [of the property settlement agreement] that she said are in the shop are clothes, her clothes and her children's clothes[,] and some stuff, personal property of her children. I think she testified there were a few books and a little bit of Christmas decorations that's off this list. . . . Judge, we agree with those things, those three categories.

Hayes was called as an adverse witness as part of Marina's case, and he also admitted during his testimony that these items were in his shop.

¶7. Brittany Allen, Hayes's daughter from another marriage, was Marina's next witness. It was brought out in direct examination that she was currently a party in an action pending before the same court in which she and her father were adversaries.⁴ Brittany then testified

⁴ On cross-examination Hayes's counsel sought to further question Brittany about the ongoing lawsuit between her and her father, arguing that it went to her credibility and motive for testifying. The chancellor allowed limited cross-examination on that issue.

about the whereabouts of specific items listed in the “personal effects” provision of the parties’ property settlement agreement that were to go to Marina. According to Brittany, her father (Hayes) had moved these items to his shop, a fire truck outside of his shop, or to her grandmother’s home in Sturgis, Mississippi. She testified that these items included Marina’s Russian china, the gold-rimmed mirror, the large picture from Marina’s grandmother, the hutch, the credenza with the black granite top, the large decorative rocks, and Christmas decorations. Brittany further testified that Hayes had made remarks to her on numerous occasions about these items, including remarks like “Hell would freeze over, or he would burn all the s---, or take it where nobody could find it. [Marina] wasn’t getting it back.”

¶8. After Marina rested, Hayes presented his case. Hayes testified on his own behalf. His attorney asked him about the value of “all of the personal items that [Marina] says that you have either hidden, disposed of, or just secret[ed] in some way.” Hayes did not deny having these items, but simply responded that the property is “probably worth \$1,000, \$1,500, whatever, but it’s not worth what it cost me in attorney fees.” Hayes was also asked about Brittany’s testimony that he still has other items listed in the property settlement agreement that were to go to Marina and that he would burn them before Marina would get them. Hayes denied having these items and denied having said anything “foul” about burning them.

¶9. Following the August 2017 hearing, the chancery court entered its final judgment in which the court found Hayes in willful contempt and ordered that Hayes “tender over to Marina the property granted to her in the property settlement agreement.” The chancellor

also ordered Hayes to pay Marina’s attorney fees “in the amount as submitted of \$5,032.67.”⁵

¶10. Hayes moved for a new trial, to alter or amend the final judgment, and/or for relief from the final judgment. He asserted that Marina had the granite-topped foyer piece moved into storage. Hayes asserted that the fact that these movers were employed and this piece of furniture was moved was newly discovered evidence and thus entitled him to the requested relief. The chancery court denied Hayes’s motion, finding that the evidence was not “newly discovered,” but was, in fact, “capable of presentation and exploration at the trial.” The chancery court further found that “the singular piece of personal property [described in Hayes’s motion] is only a portion of the personal property ordered to be returned and does not address totally [Hayes’s] failure to comply with the Court’s order.” Hayes appeals.

STANDARD OF REVIEW

¶11. “The purpose of civil contempt is to compel parties to obey the orders of the court.” *Lewis v. Pagel*, 172 So. 3d 162, 178 (¶39) (Miss. 2015). “[C]ontempt matters are committed to the substantial discretion of the trial court,” and the findings of the chancery court “will not be disturbed unless manifestly wrong.” *Gutierrez v. Gutierrez*, 153 So. 3d 703, 713 (¶31) (Miss. 2014).

DISCUSSION

¶12. Hayes asserts on appeal that the chancery court manifestly erred in finding him in

⁵ Hayes appeals the chancery court’s final judgment with respect to these two issues. To avoid repetition we detail the chancellor’s findings below in our discussion of Hayes’s assignment of error.

contempt of court and in awarding Marina attorney fees based upon its contempt determination. We disagree. A contempt citation is proper when “the contemnor has willfully and deliberately ignored the order of the court.” *Lewis*, 172 So. 3d at 178 (¶39).

I. Contempt of Court

¶13. The chancellor references ample evidence in his final judgment that supports his determination that (1) Hayes willfully and deliberately ignored the “personal effects” provision of the marital property settlement agreement that was part of the Hunts’ divorce decree; and (2) Hayes willfully and deliberately ignored the chancellor’s judgment on Marina’s first contempt petition on the same issue. The chancellor found that there were items in Hayes’s shop that were items listed in the “personal effects” provision of the property settlement agreement and that he had ordered to be turned over to Marina in his order on Marina’s first contempt petition. These items included clothes, books, and Christmas decorations belonging to Marina. The fact that Hayes had these items in his possession is corroborated by Marina’s testimony at the hearing, photographs of the objects that were entered into evidence as plaintiff’s exhibit 1, and Hayes’s own admission at the hearing that these items were in his shop. Indeed, Hayes’s counsel assured the chancellor at the hearing that there was no dispute that these items were in Hayes’s shop.

¶14. Hayes asserts that the chancellor’s judgment was based upon speculation because there were some items mentioned at the hearing that were not listed in the “personal effects” provision of the property settlement agreement. We find no merit in this argument because

the chancellor made it clear in his final judgment that in making his contempt determination he did not consider any item that was not “specifically identified in the agreement.”

¶15. Hayes also asserts that the chancellor’s decision was speculative because Hayes “specifically denied” having some of the items listed in the “personal effects” provision of the property settlement agreement. We also find no merit in this argument. As we have recognized above, Hayes did admit that he had some of Marina’s items. This admission alone is enough to support the chancellor’s determination that Hayes willfully ignored the property settlement agreement and the chancellor’s order on Marina’s first contempt petition. The chancellor did not find Hayes in contempt in the first order, but he expressly “instructed [Hayes] to diligently search and to make any reasonable inquiries as to the whereabouts of the property and return it to Marina or inform her about its whereabouts immediately.” Hayes failed to comply with that directive.

¶16. Further, “a chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is in the best position to judge their credibility.” *Chance v. Chance*, 191 So. 3d 1293, 1300 (¶24) (Miss. Ct. App. 2016) (quoting *In re Estate of Carter*, 912 So. 2d 138, 143 (¶18) (Miss. 2005)). In this regard, the chancellor was well within his discretion to believe Brittany’s testimony that numerous other items listed in the property settlement agreement were still in Hayes’s possession or that Hayes knew where these items could be

found, despite Hayes's testimony at the hearing that he did not have them.⁶ We accordingly affirm the chancellor's contempt determination against Hayes.

II. Attorney's Fees

¶17. We also find no merit in Hayes's assertion that the chancery court erred in awarding attorney fees to Marina based upon its contempt determination against him. "Unless the chancellor is manifestly wrong, his decision regarding attorney fees will not be disturbed on appeal." *Zeman v. Stanford*, 789 So. 2d 798, 806 (¶30) (Miss. 2001). As this Court has determined, "[t]he award of attorneys' fees is generally proper if a party is found in contempt of a previous judgment." *Janssen v. Janssen*, 96 So. 3d 23, 29 (¶18) (Miss. Ct. App. 2012) (internal quotation marks omitted); see *Mabus v. Mabus*, 910 So. 2d 486, 489 (¶8) (Miss. 2005) ("Where a party's intentional misconduct causes the opposing party to expend time and money needlessly, then attorney fees and expenses should be awarded to the wronged party."). Further, "[t]he purpose of an award of attorney fees is to compensate the prevailing party for losses sustained by reason of a defendant's noncompliance with the judicial decree." *Janssen*, 96 So. 3d at 29 (¶18).

¶18. In this case the chancellor found that Hayes was in contempt of both the divorce

⁶ As detailed above, Hayes's daughter Brittany testified that she saw specific items listed in the property settlement agreement at her father's shop, a fire truck outside the shop, or her grandmother's home in Sturgis, Mississippi, and saw her father moving at least some of these items to those locations. These items include Marina's Russian china, a gold-rimmed mirror, a large picture, a hutch, a credenza with a black granite top, and large decorative rocks.

decree incorporating the marital property settlement agreement and the court's prior order on Marina's first contempt petition. Accordingly, we find no error in the chancellor's decision to award attorney's fees to Marina. Nor do we find any error in the amount awarded. Indeed, Hayes does not assert that the amount of attorney's fees is excessive, and, in any event, the chancellor's award of \$5,032.67 in attorney fees was based solely upon the fees and expenses Marina incurred in bringing her second contempt petition, as reflected in plaintiff's exhibit 3 that was admitted into evidence at the hearing. We therefore affirm the chancellor's award of attorney's fees in this case.

¶19. **AFFIRMED.**

**BARNES, C.J., J. WILSON, P.J., GREENLEE, WESTBROOKS, TINDELL,
McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.**