

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2004-CA-00238-COA

**IN THE MATTER OF THE ESTATE OF CLYDE V.
WOODFIELD, DECEASED, AND IN THE MATTER
OF THE CONSERVATORSHIP OF MICHAEL A.
WOODFIELD: JOHN V. WOODFIELD**

APPELLANT

v.

**SHARON MCCOY WOODFIELD,
ADMINISTRATRIX OF THE ESTATE OF CLYDE V.
WOODFIELD, DECEASED, AND ALFRED R.
KOENENN, GUARDIAN AD LITEM AND
TEMPORARY CONSERVATOR OF MICHAEL A.
WOODFIELD**

APPELLEES

DATE OF JUDGMENT:	10/17/2003
TRIAL JUDGE:	HON. WILLIAM L. GRIFFIN, JR.
COURT FROM WHICH APPEALED:	HARRISON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	JOHN VERNON WOODFIELD, PRO SE
ATTORNEYS FOR APPELLEES:	TIMOTHY LEE MURR ALFRED R. KOENENN
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
TRIAL COURT DISPOSITION:	CHANCELLOR DECLINED TO ADMIT SUBSEQUENT WILL TO PROBATE
DISPOSITION:	REVERSED AND REMANDED - 03/21/2006
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, P.J., CHANDLER AND GRIFFIS, JJ.

LEE, P.J., FOR THE COURT:

PROCEDURAL HISTORY AND FACTS

¶1. Clyde V. Woodfield died on September 29, 2001 in Gulfport. Clyde was survived by his wife, Sharon McCoy Woodfield, and two adult sons, John and Michael.

¶2. Michael, Clyde's younger son, was in a debilitating accident in 1997. Michael suffered a severe brain injury which rendered him a quadriplegic and totally incapacitated. Clyde's older son, John, who is Michael's half-brother, was appointed as Michael's conservator shortly after the accident. John served as Michael's conservator until September 2002 when the court substituted Alfred Koenenn as Michael's guardian ad litem and temporary conservator.

¶3. On October 9, 2001, John filed Sharon's petition to probate Clyde's will which Clyde executed on September 26, 2001 (hereinafter the 2001 will). The will was admitted to probate on October 9, and Sharon was appointed as the executrix of the estate.

¶4. John is an attorney practicing on the Gulf Coast, thus the chancellors of the Eighth Chancery Court District recused themselves from the case on February 19, 2002. Shannon Clark was appointed to serve as a special judge; however, on April 11, Clark recused himself as well. On May 16 the supreme court appointed William L. Griffin, Jr. to serve as a substitute special chancellor in the case.

¶5. Koenenn filed a petition contesting the 2001 will on October 21, 2002. Sharon filed a counterclaim seeking probate of a will dated January 11, 1973, as a "lost will" (hereinafter 1973 will). During trial, Sharon testified that she met John at the courthouse the day they submitted Clyde's will to probate, and she surrendered the 1973 will to John at that time. Sharon testified that she was unaware that the September 2001 will existed and she thought that the probate proceedings pertained to the 1973 will. Sharon testified that she was not aware that the September 2001 will had been admitted to probate until Mr. James Steel, her attorney at the time, called it to her attention two months after Clyde's death.

¶6. The 2001 will was withdrawn from probate on March 10, 2003. The parties agreed to bifurcate the trial, and part I of the trial was held eight days later regarding the following three issues:

(1) whether the 2001 will, though withdrawn by John as an instrument of disposition and probate, survived as an independent instrument of revocation; (2) whether Clyde died intestate; and (3) whether the original 1973 will was lost or destroyed but not revoked by Clyde prior to his death and should, therefore, be admitted to probate as Clyde's last will and testament.

¶7. The chancellor found that the 2001 will was void due to a breach of John's fiduciary duty pursuant to *In re Estate of Smith*, 827 So. 2d 673 (Miss. 2002). The chancellor further admitted the 1973 will to probate and appointed Sharon as administratrix cum testamento annexo. Sharon was also granted a judgment against John in the amount of \$22,155.78, and the conservatorship was granted a judgment against John in the amount of \$15,220.78.

¶8. On June 26, 2003, John filed a motion seeking Judge Griffin's recusal, which Judge Griffin denied but certified for interlocutory appeal. On September 5 the supreme court denied John's motion for interlocutory appeal.

¶9. On October 13, 2003, part II of the trial commenced. The three issues presented to the chancellor were Clyde's meaning and intent in the clause "[m]y homestead and all of my furniture, fixtures and appliances located therein to my wife, Sharon Jeanne McCoy Woodfield"; the extent of John's debts to the Estate; and the ownership of certain items of Clyde's personal property.

¶10. The chancellor granted the Estate a judgment of \$261,558.15 against John and ordered John to pay \$7,710 in attorneys' fees to Michael's guardian ad litem, as well as \$7,500 in partial attorneys' fees payable to Sharon. The chancellor further ruled that the term "homestead" as used in the 1973 will encompassed the 324 acres of Clyde's farm.

¶11. John now appeals to this Court, arguing seven assignments of error which we have framed as follows: (1) the trial court erred in finding that the 2001 will was void; (2) trial court erred in awarding attorneys' fees; (3) the trial court erred in touring Woodfield Farms without a court

reporter; (4) the chancellor erred in failing to recuse himself; (5) the trial court erred in finding that the 1973 will was a copy of a lost will; (6) the trial court erred in finding that the use of the term “homestead” in the 1973 will devised the entire 324 acres of Woodfield Farms.

¶12. Finding error, we reverse and remand for a new trial.

STANDARD OF REVIEW

¶13. In reviewing a will contest, chancellors have broad discretion, and their findings of fact will only be disturbed on appeal if they were manifestly wrong, there was an abuse of discretion, or an erroneous legal standard was applied. *Estate of Grantham v. Roberts*, 609 So. 2d 1220, 1223 (Miss. 1992). “This Court must affirm a chancellor on a question of fact unless, upon review of the record, it is ‘left with the firm and definite view that a mistake has been made.’” *In re Estate of Grubbs*, 753 So. 2d 1043, 1046 (¶7) (Miss. 2000) (quoting *Rice Researchers, Inc. v. Hiter*, 512 So. 2d 1259, 1264 (Miss. 1987)).

I. DID THE TRIAL COURT ERR IN FINDING THAT THE 2001 WILL WAS VOID?

¶14. The chancellor ruled that the 2001 will was void pursuant to *In re Estate of Smith*, 827 So. 2d 673 (Miss. 2002). In Mississippi there is a presumption of undue influence where there is a bequest by a testator to one in a fiduciary relationship with the testator if the fiduciary has any involvement in the preparation of the will. *Id.* at 678 (¶4). To overcome a presumption of undue influence, John must show the following by clear and convincing evidence:

1. The beneficiaries must have acted in good faith.
 - a. Who initiated the procurement of a will?
 - b. Where was the will executed and in whose presence?
 - c. What consideration was paid?
 - d. Who paid the consideration?
 - e. was there secrecy or openness in the execution?
2. The [testator] must have had full knowledge and deliberation in the execution.
 - a. Was the [testator] aware of [his] total assets and their general value?
 - b. Did the [testator] understand who [his] natural inheritors were?

- c. Did the [testator] understand how the change would legally effect prior wills?
 - d. Did the [testator] know that non- relative beneficiaries would be included?
 - e. Did the [testator] know who controlled [his] finances and by what method?
 - [i]. How dependent is the [testator] on those handling [his] finances?
 - [ii]. How susceptible is [he] to influence by those handling [his] finances?
3. The [testator] must have exhibited independent consent and action.

In re Estate of Smith, 722 So. 2d 606, 612 (¶22) (Miss. 1998).

¶15. The 2001 will was prepared at John's office by John's paralegal on September 26. John testified that he was not present when Clyde came to his office to have his will retyped. Nick Thornton, John's former paralegal, testified that although he had not worked for John full-time since June of 2000, he occasionally visited the office to use the computer and provide limited assistance.

¶16. Thornton testified that he was at the office on September 26, 2001, when Clyde appeared at John's office with his 1973 will. Clyde asked Thornton where John was, to which Thornton replied that he did not know. Clyde then asked Thornton to retype the will exactly like the 1973 will but without Michael's name included. Thornton further testified that he asked Clyde why he was removing Michael from the will, to which Clyde responded that he did not want the government seizing some of the farm assets and he was certain John and Sharon would take care of Michael. Thornton testified that the will which Clyde presented to him appeared to be the original 1973 will.

¶17. Thornton testified that he retyped the will as requested and then asked Clyde if they were going to execute the will, for he would need another witness to properly execute the will. Clyde told Thornton that he was leaving to visit Danny Leggett, a family friend, and he would return later. Thornton testified that he and Leggett witnessed as Clyde executed the will later that day.

¶18. Leggett testified that on September 26, Clyde came to his store and asked him to accompany him to John's office to sign some papers. Leggett met Clyde at John's office and inquired where John was, to which Clyde replied that John was out of town. At the office Clyde told Leggett that

he wanted to change his will, and Clyde handed the new will to Leggett. Leggett testified that he began to read the will, but Clyde told him to “turn the darn thing over and sign.” Clyde then explained that he was taking Michael out of the will so that Michael could continue to receive support from the government, and for Sharon and John to take care of the family matters. Leggett testified that he, Clyde and Thornton were the only ones present at the office when the will was executed.

¶19. The chancellor found that, because the will was drafted at John’s office while John was Michael’s conservator, the will was void. The chancellor wrote, “[t]his court specifically finds that pursuant to [*In Re Smith*], 827 So. 2d 673 (Miss. 2002), that the Last Will and Testament of Clyde Woodfield, dated September 26, 2001, is void due to a breach of confidential relationship and a breach of fiduciary duty of John V. Woodfield.”

¶20. This was an erroneous decision because *In Re Smith* does not apply to this case. In *Smith*, the will was invalidated because the attorney preparing the will received a bequest from the testator, raising a presumption of undue influence. *Id.* at 678 (¶4). In the case sub judice, John did not prepare the will, as evidenced by the testimony of the person who actually prepared the will. Additionally, the two subscribing witnesses testified that John was not present when the will was executed. From the testimony presented to the trial court, John had nothing to do with the procurement of the 2001 will. Because John was not involved in creating the will the presumption of undue influence derived from *In Re Smith* does not apply, as it addresses the fiduciary duty between the attorney drafting the will and the testator. Whether the actions of John’s office assistant resulted in a breach of fiduciary duty to Michael has not been fully developed in the record and in the court’s ruling. Regardless of the existence of such a breach, the chancellor’s conclusion that the

breach occurred is not supported by *In Re Smith*, and it was error to find such. As such, we reverse.

II. DID THE TRIAL COURT ERR IN AWARDING ATTORNEY’S FEES?

¶21. “Unless the chancellor is manifestly wrong, his decision regarding attorney’s fees will not be disturbed on appeal.” *In re Conservatorship of Williams*, 724 So. 2d 1022, 1027 (¶12) (Miss. Ct. App. 1998) (quoting *Bredemeier v. Jackson*, 689 So. 2d 770, 778 (Miss. 1997)). Without either contractual or statutory authority, attorneys’ fees cannot be awarded unless punitive damages are also proper. *Mississippi Power & Light Co. v. Cook*, 832 So. 2d 474, 486 (¶40) (Miss. 2002). Rule 1.5 of the Mississippi Rules of Professional Conduct addresses the reasonableness of attorneys’ fees, in pertinent part, as follows:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

¶22. The chancellor did not consider any of these factors in awarding Sharon attorneys’ fees along with the conservatorship’s attorneys’ fees in his November 2003 judgment. Furthermore, the chancellor awarded the attorneys’ fees “not as sanctions, but as an equitable matter considering the litigation of this matter as outlined above [in the opinion of the court].” We do not agree that this finding was sufficient to substantiate such an award. The trial court failed to determine whether the attorneys’ fees were reasonable, and he failed to outline why such a measure was necessary and appropriate.

¶23. In the April 2003 judgment, the chancellor ordered John to pay Sharon \$22,155.78 in attorneys' fees as a sanction pursuant to Rule 11 of the Mississippi Rules of Civil Procedure. The conservatorship was also awarded Rule 11 sanctions against John for \$15,220.78 in attorneys' fees. The chancellor sanctioned John "due to the untimely withdrawal of the [September 2001 will] when [John] had been previously notified of the [p]etition to [c]ontest the [w]ill as early as July 11, 2002 by the Guardian Ad Litem." The trial court found that John proceeded as a proponent of the September 2001 will until thirteen days before trial, causing "all parties and their counsel to spend unnecessary legal and expert costs during the period John V. Woodfield knew the will was 'tainted.'"

¶24. Under M.R.C.P. Rule 11(b) the court may award reasonable expenses and attorneys' fees against a party or his attorney, or both, whose pleading or motion (1) is frivolous or (2) is filed for the purpose of harassment or delay. In determining whether an action is frivolous we look to the facts known at the time the complaint was filed. *Bean v. Broussard*, 587 So. 2d 908, 912 (Miss. 1991). "[A] pleading or motion is frivolous within the meaning of Rule 11 only when, objectively speaking, the pleader or movant has no hope of success." *Tricon Metals & Servs., Inc.*, 537 So. 2d 1331, 1336 (Miss. 1989).

¶25. The chancellor sanctioned John for supporting the September 2001 will despite notice that Koennan was going to contest the will. We do not agree that the actions of the chancellor were proper, and we do not find that John filed a frivolous petition in seeking the probate of the September 2001 will. Looking at the facts at the time the petition was filed, John reasonably concluded that the September 2001 will was a legitimate testamentary writing. Furthermore, we do not agree that John had no hope of success in supporting the September 2001 will.

¶26. The judgments awarding attorneys' fees against John were in error.

III. DID THE TRIAL ERR COURT IN TOURING WOODFIELD FARMS WITHOUT A COURT REPORTER?

¶27. John argues that the trial court improperly toured Woodfield Farms without a court reporter. John argues that Judge Griffin engaged in improper discussions with Sharon and others while touring the estate's property. We note that Judge Griffin made a statement on the record that he, John's attorney, Sharon's attorney, and Koennan toured Woodfield Farms together, and that he toured the farm with the consent of the attorneys of record. As such, John has waived his objection to the tour. His attorney consented to the tour, and John has failed to direct us to any portion of the record which would indicate that he requested a court reporter and his request was refused.

¶28. Additionally, the Mississippi Rules of Appellate Procedure provide an avenue for correcting a deficiency in the record.

If no stenographic report or transcript of all or part of the evidence or proceedings is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of the appeal

M.R.A.P. Rule 10(c). The record does not contain a filing memorializing the conversations during the tour of Woodfield Farms, and we decline to speculate as to the nature and consequence of any purported conversations. This issue is without merit.

IV. DID THE TRIAL COURT ERR IN FAILING TO RECUSE HIMSELF?

¶29. In refuting John's contention that Judge Griffin erred in refusing to recuse himself, Sharon points to the supreme court's denial of John's petition for interlocutory appeal. Sharon argues that the supreme court's denial of the petition effectively determined the recusal issue in her favor and, therefore, constitutes the "law of the case," precluding appellate review of this issue. We disagree.

¶30. The law of the case doctrine provides that "whatever is once established as the controlling legal rule of decision, between the same parties in the same case, continues to be the law of the case,

as long as there is a similarity of facts.” *Mauck v. Columbus Hotel Co.*, 741 So. 2d 259, 266-67 (¶22) (Miss. 1999). An appellate court's refusal to entertain an interlocutory appeal should not be viewed as an indication of how the issue will be resolved upon appeal from a final judgment. *Id.* at (¶28). Accordingly, we review this issue on appeal.

¶31. “When a judge is not disqualified under the constitutional or statutory provisions, ‘the propriety of his or her sitting is a question to be decided by the judge, and on review, the standard is manifest abuse of discretion.’” *Farmer v. State*, 770 So. 2d 953, 956 (¶6) (Miss. 2000) (quoting *Ruffin v. State*, 481 So. 2d 312, 317 (Miss. 1985)). “In determining whether a judge should have recused himself, this Court must consider the trial in its entirety and examine every ruling to determine if those rulings were prejudicial to the moving party.” *Hathcock v. Southern Farm Bureau Cas. Ins. Co.*, 912 So. 2d 844, 849 (¶11) (Miss. 2005). As we consider this issue, we are mindful that on appeal, a trial judge is presumed to be qualified and unbiased, and this presumption may only be overcome by evidence which produces a reasonable doubt about the validity of the presumption. *Jones v. State*, 841 So. 2d 115, 135 (¶60) (Miss. 2003). A judge should disqualify himself in any “proceeding in which his impartiality might reasonably be questioned” Mississippi Code of Judicial Conduct Canon 3(E)(1).

¶32. In support of his argument for recusal, John points to a \$500 campaign contribution made by Koenenn to Judge Griffin in October 2002 during Judge Griffin’s campaign. In his order granting interlocutory appeal on this issue, Judge Griffin wrote, “[t]he [c]ourt has candidly noted all possible conflicts, stated that he knew of the campaign contribution, was not influenced by it, reviewed the Code of Judicial Conduct on such issue, and denied the *ore tenus* [m]otion to recuse.”

¶33. John argues that the contribution was made in the midst of the Woodfield estate litigation and during the conservatorship of Michael Woodfield. John further argues that the contribution was

made prior to Koenenn's testimony as guardian ad litem, which resulted in a judgment of \$22,155.78 against John for Sharon's attorney's fees, a judgment against John in the amount of \$6,675 for guardian ad litem fees incurred by Koennen, as well as \$7,1341.28 for payment of Paul Newton, Jr. who was hired by Koenenn as special counsel. Judge Griffin also ordered John to pay \$1,204.50, representing the cost of the guardian ad litem's expert witness.

¶34. John further argues that Judge Griffin's impartiality is called into question due to Judge Griffin's friendship with Chancellor Wes Teel, whose brother, Tom Teel, is Sharon's attorney's law partner.

¶35. In his judgment dated November 24, 2003, Judge Griffin wrote that John "apparently has difficulty in financially supporting himself." Judge Griffin further ruled that John "breached his fiduciary duty to Michael, his half-brother and [w]ard, and that this action is an unforgivable breach of justice to Michael. Specifically, the [c]ourt finds that John's actions in the preparation and execution of the September 26, 2001, document not only eliminated Michael's interest, but gave Michael's interest to John, his conservator." As discussed in Section I of this opinion, the finding that John participated in the preparation of the 2001 will was in error. These rulings evidence a bias against John, and we find that a reasonable person, knowing all the circumstances, would question Judge Griffin's impartiality.

¶36. Judge Griffin further ordered Sharon's attorney to refer John's behavior to the Harrison County District Attorney's Office and the Mississippi Bar. This ruling further calls into question whether the chancellor was impartial.

¶37. The chancellor's failure to recuse himself constitutes error. We reverse the judgment of the trial court and remand this cause to the Harrison County Chancery Court for a new trial on all issues.

V. DID THE TRIAL COURT ERR IN FINDING THAT THE 1973 WILL WAS LOST AND NOT REVOKED?

VI. DID THE TRIAL COURT ERR IN FINDING THAT THE TERM “HOMESTEAD” DEvised ALL OF WOODFIELD FARMS?

¶38. We decline to address these issues as they are not dispositive of the appeal.

¶39. THE JUDGMENT OF THE CHANCERY COURT OF HARRISON COUNTY IS REVERSED AND REMANDED FOR A NEW TRIAL. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEES.

KING, C.J., CHANDLER, GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. MYERS, P.J., DISSENTS WITHOUT A SEPARATE WRITTEN OPINION. SOUTHWICK AND IRVING, JJ., NOT PARTICIPATING.