

IN THE COURT OF APPEALS 03/26/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01353 COA

IRL DEAN RHODES, BRENDA RHODES, AND HELEN RHODES ROBBINS

APPELLANTS

v.

**THE STATE OF MISSISSIPPI, EX REL. MIKE MOORE, ATTORNEY GENERAL, AND
STEVEN A. PATTERSON, AUDITOR OF PUBLIC ACCOUNTS, FOR THE USE AND
BENEFIT OF RANKIN COUNTY, MISSISSIPPI, AND OMNIBANK**

APPELLEES

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

TRIAL JUDGE: HON. FRANCIS S. BOWLING

COURT FROM WHICH APPEALED: RANKIN COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

JOHN C. MCLAURIN, JR.

ATTORNEYS FOR APPELLEES:

LARRY E. CLARK

SANDRA M. SHELSON

ATTORNEY GENERAL'S OFFICE

EILEEN SHAFFER BAILEY

FOR OMNIBANK

NATURE OF THE CASE: SUIT TO CANCEL DEEDS AS CONVEYANCES INTENDED TO

DEFRAUD JUDGMENT CREDITORS

TRIAL COURT DISPOSITION: CANCELED DEEDS TO DEBTOR'S WIFE AND DEED OF TRUST FROM DEBTOR'S WIFE TO DEBTOR'S MOTHER BUT DID NOT CANCEL DEBTOR'S DEED TO DEBTOR'S MOTHER

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

COLEMAN, J., FOR THE COURT:

The Rankin County Chancery Court canceled five deeds which the Appellant, Irl Dean Rhodes, executed and delivered to his wife, the Appellant, Brenda Rhodes, and one deed of trust executed and delivered by Brenda Rhodes to the Appellant, Helen Rhodes Robbins, mother of Irl Dean Rhodes, pursuant to an Amended Complaint filed by the Attorney General and the Auditor of Public Accounts for the use and benefit of Rankin County. The chancellor did not set aside a deed from Irl Dean Rhodes to his mother, Helen Rhodes Robbins, for what had originally been her homestead. Irl Dean Rhodes, his wife, Brenda Rhodes, and his mother Helen Rhodes Robbins, appealed only to challenge the special chancellor's cancellation of the five deeds from Irl Dean Rhodes to Brenda Rhodes and the deed of trust from Brenda Rhodes to Helen Rhodes Robbins. The State of Mississippi and Omnibank did not cross-appeal. We affirm.

I. Facts

On the 12th day of September, 1991, the Chancery Court of Rankin County entered an agreed judgment for the use and benefit of Rankin County against Irl Dean Rhodes for "\$100,000.00 plus interest at the rate of eight percentum (8%) from and after September 1, 1991" Eight days later, on September 20, 1991, the Hinds County Circuit Court entered its summary judgment against Irl Dean Rhodes and George E. Wynne, jointly and severally, in the amounts of \$212,725.05 and \$993,324.70 for a total amount of \$1,206,049.75 together with interest at the rate provided in the promissory notes which Rhodes and Wynne had executed and delivered to Omnibank of Mantee, a Mississippi banking corporation. After the entry of these two judgments, other creditors of Irl Dean Rhodes obtained additional judgments against him. The total amount of all these judgments exceeded \$4,000,000.00.

Before any of these judgments had been entered, Irl Dean Rhodes executed and delivered the following described quitclaim deeds to his wife, Brenda Rhodes:

1. A quitclaim deed to an office building located in Crossgates [Crossgates office building] in Rankin County dated February 28, 1991, which was filed for record on August 21, 1991.
2. A quitclaim deed to his homestead, which he had owned before he married Brenda Rhodes, located at 159 Dogwood Place, Flowood, Mississippi, dated April 5, 1991, which was filed for record on August 20, 1991.

3. A quitclaim deed to the "old funeral home property" located in Rankin County, dated May 1, 1991, which was filed for record on August 21, 1991.

4. A quitclaim deed to "the Evergreen lot", located in Rankin County, dated June 28, 1991, which was filed for record on September 13, 1991.

5. A quitclaim deed to two lots not otherwise denominated, located in Rankin County, dated August 29, 1991, which was filed for record on September 10, 1991.

Before any of these judgments had been entered, Irl Dean Rhodes also executed and delivered a quitclaim deed to his mother, Helen Rhodes Robbins, by which he conveyed to her his interest in what had always been her home located at 107 Airline Terrace, Pearl, Mississippi. This quitclaim deed was dated June 28, 1991, and was filed for record on September 19, 1991. The last instrument involved in this litigation was a deed of trust which Brenda Rhodes executed and delivered to John C. McLaurin as trustee for Helen [Rhodes] Robbins as beneficiary to secure a debt of \$75,000 which, the deed of trust recited, she owed Mrs. Robbins. This deed of trust was dated June 28, 1991, and it was filed for record on September 13, 1991. This deed of trust encumbered the old funeral home property which Irl Dean Rhodes had conveyed to his wife by quitclaim deed dated May 1, 1991.

These six quitclaim deeds and one deed of trust were the subject of the amended complaint to set aside fraudulent conveyances which the State of Mississippi, through its Attorney General and Auditor of Public Accounts, filed against the Appellants for the use and benefit of Rankin County on May 14, 1993.

II. Litigation

Roger Clapp, Chancellor of the Rankin County Chancery Court, recused himself from this case by order of recusal, pursuant to which the Mississippi Supreme Court appointed Retired Supreme Court Justice Francis S. Bowling to serve as special chancellor pursuant to section 9-1-105(1), (6), and (11) of the Mississippi Code of 1972. Thus, we refer to the judge who tried this case as special chancellor.

The State of Mississippi called Irl Dean Rhodes as an adverse witness, and then rested, as did Omnibank. The Rhodes and Mrs. Robbins then called Brenda Rhodes, and they rested. The chancellor issued his amended opinion in which he listed the circumstances to be considered carefully when the issue was whether conveyances ought to be canceled. The Mississippi Supreme Court listed these circumstances in *Southeast Bank v. I. P. Sarullo Enterprises*, 555 So. 2d 704, 707-08 (Miss. 1989):

Inadequacy of consideration . . . [t]ransfer in anticipation of possible future litigation . . . length of delay in recording the deed . . . [r]elationship of the grantor to the grantee . . . [i]nsolvency . . . and [c]ontrol.

The chancellor noted that the instruments in question had been executed primarily during pending negotiation for settling the State's claim against Irl Dean Rhodes. He next commented that the primary question was, "What was the intent of the parties?" With regard to Irl Dean Rhodes' homestead, the chancellor found from Irl Dean Rhodes' testimony that Brenda Rhodes later conveyed all her interest in her husband's homestead to her husband's son, Scott R. Rhodes. About Brenda Rhodes' conveyance of her interest in Irl Dean Rhodes' homestead to Scott R. Rhodes, the chancellor found "[i]n addition to other elements of continued control by the defendant, Irl Dean Rhodes, this conveyance is further evidence of [his] securing complete control."

The chancellor next pondered Irl Dean and Brenda Rhodes' testimony about her loan of approximately \$62,089 to her husband. We summarize those details as follows:

August 14, 1989 Withdrawal from her savings account in Trustmark
National Bank \$8,000.00

June 12, 1990 Part of proceeds from sale of her house \$5,000.00

1991 Withdrawal from her state employees' retirement account

which she had accumulated from working fifteen years in
the Rankin County Chancery Clerk's Office \$20,600.00

1991 Liquidation of Heritage Asset Fund \$28,248.00

TOTAL OF ALL LOANS: \$61,848.00

The chancellor noted that Brenda Rhodes testified that when she transferred these sums to her husband, she did not request a note from him and that in her deposition, which was taken in January, 1993, she testified that she had no written evidence of a debt which her husband owed her. Nevertheless, "[a]t the trial of this cause, a copy of a note was produced dated August 4th, 1989, for \$8,000.00 'on demand.'" The chancellor concluded that from this testimony, it was "obvious that there was not an intention to collect on this [note for \$8,000] found a few days before trial."

The chancellor proceeded to the matter of Irl Dean Rhodes' control over the properties which were the subject of these five quitclaim deeds and one deed of trust. He found that the evidence was clear that "Mr. Rhodes continued control over the property conveyed to his wife Brenda." He then found "that there never was any 'intention' as required by the authorities that her husband repay the money

she advanced him during their marriage." He then found that there was no "present" consideration for the conveyances, a fact to which the litigants stipulated.

The chancellor concluded as follows:

I am forced to hold that the State has made a case under Section 15-3-3 and that the five [quitclaim] deeds of conveyances . . . are canceled under the terms of said section. It follows that the deed of trust . . . also should be held void and canceled.

With regard to Irl Dean Rhodes' quitclaim deed to his mother, Mrs. Robbins, the special chancellor found that "[a] different situation entirely is presented." He found that checks evidencing transfers of money from Mrs. Robbins to her son as loans were in evidence as were two notes in the total sum of \$150,000 which Irl Dean Rhodes had executed in favor of his mother. Thus, he concluded:

It is clear from the authorities and the evidence that the conveyance from Rhodes to his mother does not meet the requirements of Section 15-3-3. The Court holds that the conveyance was not fraudulent and was to give his mother clear title to her home because of the above mentioned loans and possibly other help at other times."

As we earlier remarked, the State of Mississippi filed no cross-appeal, and the efficacy of the quitclaim deed from Irl Dean Rhodes to his mother is not an issue in this appeal.

Pursuant to his opinion, the special chancellor rendered and entered a final decree which canceled the five quitclaim deeds from Irl Dean Rhodes to his wife and the deed of trust from his wife to his mother. After the entry of this final decree, the Rhodes and Mrs. Robbins filed a motion to amend findings and judgment, or in the alternative, for new trial. Here for the first time they argued that the special chancellor erred because he disregarded the case of *Mississippi Cottonseed Products Co. v. Phelps*, 196 Miss. 252, 16 So. 2d 854 (1944). The Rhodes and Mrs. Robbins argued that this case controlled on transactions between a husband and wife, "the only condition being that there must be existing between husband and wife a valid indebtedness equal to the fair market value of the property conveyed." *Id.* at 854 (emphasis added). The special chancellor entered an order denying this motion, and the Rhodes and Mrs. Robbins have appealed.

III. Issue and the Law

The Rhodes and Mrs. Robbins compose but one issue on which they seek this Court's favorable resolution. It is:

The lower court erred in denying Appellants' motion to amend findings and judgment or, in the alternative, for new trial.

The State of Mississippi restates its one issue in the following language:

The special chancellor's decision was fully supported by the factual record and the applicable law and should be sustained.

Whatever the text employed to state the issue, the question becomes whether the special chancellor erred when he canceled the five quitclaim deeds from Irl Dean Rhodes to his wife, Brenda Rhodes, and the deed of trust from Brenda Rhodes to Helen Rhodes Robbins, Irl Dean Rhodes' mother. We begin our consideration and analysis of this issue by establishing the appropriate standard of review.

In *Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993), the Mississippi Supreme Court recapitulated the appropriate standard of review in cases like this one where an appellate court must review the decision rendered by a chancellor:

On appeal this Court will not reverse a Chancery Court's findings, be they of ultimate fact or of evidentiary fact, where there is substantial evidence supporting those findings.

We must consider the entire record before us and accept all those facts and reasonable inferences therefrom which support the chancellor's findings.

The findings will not be disturbed unless the chancellor abused his discretion, was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied.

And the chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is to judge their credibility. He is best able to determine the veracity of their testimony, and this Court will not undermine the chancellor's authority by replacing his judgment with its own. (citations omitted).

The heart of the Rhodes' and Mrs. Robbins' appeal is their contention that the special chancellor applied "an erroneous legal standard." In their reply brief, they assert that the special chancellor's application of an erroneous legal standard in reaching his decision to cancel the five quitclaim deeds and deed of trust "is their basis for arguing reversal by this [appellate] court." They earnestly assert that the special chancellor "totally failed to address the ruling of *Mississippi Cottonseed Products Co. v. Phelps*, 196 Miss. 252, 16 So. 2d 854 (1944), in which the Mississippi Supreme Court held that:

[A] husband, though insolvent, has a right to prefer his wife, and protect her interest by conveying his property to her, even though by so doing his other creditors are defeated of their rights, and even though the conveyance is made on account of pendency of suits by other creditors against him; the only condition being that there must be existing between husband and wife a valid indebtedness equal to the fair value of the property conveyed.

Phelps, 16 So. 2d at 854. First of all, we note that while the supreme court quoted this concept with approval, it decided the case oppositely to it. In *Phelps*, Mississippi Cottonseed Products [MCP]

sought to set aside the deed from its debtor, Henry V. Phelps, to his wife, Mrs. Dorothy Cole Phelps, by which Phelps conveyed his plantation and personal property to her. *Id.* When MCP rested its case as complainant, the special chancellor sustained the Phelps' motion to exclude the evidence and dismiss MCP's bill of complaint. *Id.* Thus as the supreme court noted, the only question was whether MCP's evidence, "tested by the rules of law this court has announced in such cases, makes out a prima facie case for setting aside said deed [from the husband to the wife]." *Id.*

The following quotation from *Phelps* indicates a striking similarity between the facts in that case and the case *sub judice*:

It is also shown, as a fair inference from this record, that Phelps, after the execution of this deed, did not own sufficient property out of which this debt could be made, and that Mrs. Phelps knew of his financial condition, the collapse of the negotiations, and of the action to foreclose the trust deed.

Phelps, 16 So. 2d at 855. In the case *sub judice*, Irl Dean Rhodes testified that the only assets he owned were four lots in Florence which he valued at approximately \$15,000. Brenda Rhodes' testimony elucidates her understanding of her husband's financial difficulties, which are similar to those of Henry V. Phelps. The Mississippi Supreme Court reversed and remanded the case in *Phelps* because MCP had made a *prima facie* case for setting aside the deed from husband to wife as a fraud upon its rights. *Phelps*, 16 So. 2d at 855. This Court will not reverse the special chancellor's decision on precedent which appears to support his decision even if there is included in that precedent a principle which the Appellants view as favorable to their position on that issue.

Instead, this Court finds *Blount v. Blount*, 231 Miss. 398, 95 So. 2d 545 (1957), to be the more apposite precedent on which to rest its decision in the case *sub judice*. In *Blount*, three separate cases, including the wife's suit for divorce and alimony, were consolidated for trial. *Blount*, 95 So. 2d at 550. The special chancellor set aside two deeds of conveyance from the husband, Thomas H. Blount, to his father, H. E. Blount. *Id.* These two deeds conveyed approximately 900 acres of land on which the husband had conducted a dairy operation. *Id.* at 547. The wife, Billie Ruth Blount, charged that her husband had executed and delivered these two conveyances to his father for the purpose of defrauding her of her right to alimony and child support for her two minor *children*. *Id.* at 547.

On appeal to the Mississippi Supreme Court, the husband and his father defended the conveyances of land from the son to the father on the grounds that "Thomas H. Blount, at the time the deeds were executed, was indebted to [his father] 'in an amount exceeding \$21,000,' and that [his father] had an equitable interest in part of the property by reason of the fact that [the father] had advanced to the said Thomas H. Blount a part of the purchase price." *Id.* at 549. The Mississippi Supreme Court affirmed the special chancellor's cancellation of the two deeds. In doing so, the supreme court opined:

We do not doubt the proposition maintained on the appellant's behalf that a debtor in failing circumstances may prefer one creditor to another, even though the creditor be his father, and that he may convey or encumber his property to secure a bona fide debt, even though the effect of the conveyance or encumbrance is to deprive other creditors, equally

meritorious, of the opportunity to obtain security for their claims. But the proposition, we think, falls to the ground in the present case, for want of clear and convincing evidence of a bona fide preexisting debt in excess of the value of the property conveyed.

Id. at 554-55. The court then reviewed in detail the evidence of the son's indebtedness to his father. For example, it recited that the father "produced no original books of account to sustain such claim, and the only written acknowledgment of an indebtedness offered in evidence was the chattel deed of trust on cattle which was dated February 5, 1954, and which was filed for record on June 17, 1954, two weeks after the divorce suit was filed, and which purported to secure a promissory note for the sum of \$18,208." *Id.* at 555. Then, the supreme court stated this rule:

The rule is well settled that, in a case of this kind, where it is claimed that a conveyance was made to satisfy or secure an antecedent indebtedness, there must be clear and convincing proof of the existence of a valid debt, including disclosure of details as to the items and amount of such debt, and it must clearly appear that the conveyance was in fact made in consideration of the debt. The necessity of clear and satisfactory proof of indebtedness particularly exists in the case of conveyances to near relatives, as in the case of conveyances between husband and wife, or between parent and child.

Where an immediate member of a family is preferred as a creditor there must be clear and satisfactory proof of a valid and subsisting debt which would be enforced and payment exacted regardless of the fortune or misfortune of the debtor.

Id. at 557-58 (citations omitted). The supreme court then concluded:

After considering all the evidence in the case the chancellor had a right to conclude, and doubtless did conclude that the financial assistance rendered by the appellant to [Thomas H. Blount] over a period of several years, for which no records were kept, was not intended to be treated as a debt at the time such assistance was rendered, and that the purpose to treat the same as a debt was not formed until the prospect of a decree for alimony in favor of the appellee was imminent.

Blount, 95 So. 2d at 559.

With the precept of *Blount* that "there must be clear and satisfactory proof of a valid and subsisting debt which would be enforced and payment exacted regardless of the fortune or misfortune of the debtor" firmly in mind, we now recall the special chancellor's findings that it was "obvious that there

was not an intention to collect on this [note for \$8,000] found a few days before trial" and "that there never was any 'intention' as required by the authorities that [Irl Dean Rhodes] repay the money [Brenda Rhodes] advanced him during their marriage." Pursuant to the *Blount* opinion, these findings mean that the Rhodes and Mrs. Robbins lose on this issue unless this Court can say, pursuant to the previously quoted standard of review, that he was manifestly wrong or that these findings were not supported by substantial evidence. Moreover, we remember that we ought not to substitute our judgment for that of the special chancellor's just because it complies with the evidence as well as his findings do.

Brenda Rhodes testified that she thought she had lost the note for \$8,000.0. However, she testified that within a few weeks of the trial, she found it. A creditor intent on preserving her right to recover her debt could hardly be so careless about her means of recovery as to lose the note and not be concerned about its loss. Neither would a creditor loan additional sums exceeding \$50,000 without any documentation of the debts whatsoever. There are no other notes or written contracts between the Rhodes about the other sums which Brenda Rhodes loaned her husband. The test is whether payment can be exacted "regardless of the fortune or misfortune of the debtor." The evidence adduced by the Rhodes to meet this test was simply not substantial, and the special chancellor's findings reflected the insubstantiality of the evidence. Thus, pursuant to our standard of review we affirm the special chancellor's findings relevant to the issue of whether Irl Dean Rhodes could favor his wife over his creditors by conveying his real property to her pursuant to *Mississippi Cottonseed Products Co. v. Phelps*. The consequence of our upholding the special chancellor's findings on this issue is that he could not have applied the principle that "[a] husband, though insolvent, has a right to prefer his wife and protect her interest by conveying his property to her, even though by so doing his other creditors are defeated of their rights, and even though the conveyances are made on account of pendency of suits by other creditors against him; the only condition being that there must be existing between husband and wife a valid indebtedness equal to the fair value of the property conveyed." The special chancellor would have erred had he applied this principle to the evidence in this case because the evidence failed to establish that a valid indebtedness existed between Irl Dean Rhodes as husband and Brenda Rhodes as wife. Therefore, we find that the special chancellor did not apply an erroneous legal standard.

IV. Summary

The principle of a husband's favoring his wife over other creditors by conveying property to her under his own financial distress on which the Rhodes and Mrs. Robbins have appealed can not be applied to the facts in this case because, as the special chancellor correctly found, the requisite debt which Irl Dean Rhodes owed his wife, Brenda Rhodes, was not supported by substantial evidence. The thoroughness with which the special chancellor dealt with his findings of fact and his application of the appropriate legal standards to those facts can only result in our affirming the final decree which he entered in this case.

**THE FINAL DECREE OF THE RANKIN COUNTY CHANCERY COURT IS AFFIRMED.
COSTS ARE ASSESSED TO APPELLANTS.**

FRAISER, C.J., THOMAS, P.J., BARBER, DIAZ, KING, McMILLIN AND SOUTHWICK,

JJ., CONCUR. BRIDGES, P.J., AND PAYNE, J., NOT PARTICIPATING.