

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 95-CA-01242-SCT**

EDGAR CAPLES

v.

GWENDOLYN RATLIFF CAPLES

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

DATE OF JUDGMENT:	11/16/95
TRIAL JUDGE:	HON. WILLIAM HALE SINGLETARY
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	BOB OWENS
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	REVERSED AND RENDERED - 2/6/97
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE PRATHER, P.J., PITTMAN AND SMITH, JJ.

SMITH, JUSTICE, FOR THE COURT:

On September 12, 1990, Edgar and Gwendolyn Caples were divorced in Texas. After moving to Mississippi, Gwendolyn filed a petition for modification of custody in the Chancery Court of the First Judicial District of Hinds County. On January 19, 1994, the court ordered the modification of child custody, visitation, and support and ordered Edgar to pay attorneys fees in the amount of \$ 2,093.75. Aggrieved, Edgar appealed to this Court. This Court, in *Caples v. Caples* (No. 94-CA-00509), reversed the modification because Edgar did not receive proper notice in accordance with Rule 81 of the Mississippi Rules of Civil Procedure.

Prior to the resolution of *Caples v. Caples* (No. 94-CA-00509), Edgar was held in contempt for failure to pay the attorneys fees ordered by the Chancellor in the January 19, 1994 order. Aggrieved by the contempt citation, Edgar appeals to this Court in the instant matter, *Caples v. Caples*, (No.95-CA-01242). We now hold that Edgar Caples cannot be held in contempt for failure to comply with a modification decree which has been reversed on appeal.

FACTS

This appeal stems from a divorce action which began in Texas almost seven years ago. The parties were originally divorced in 1990 after which Gwendolyn and her children returned to Jackson, Mississippi. On June 19, 1993, Gwendolyn filed a petition to modify the Texas divorce decree in the Hinds County Chancery Court. Matters affecting child custody, visitation, and support were modified by court decree on January 19, 1994 and Edgar was ordered to pay \$ 2,093.75 to Gwendolyn for attorneys fees associated with the modification. Aggrieved, Edgar appealed to this Court.

On September 14, 1995, Gwendolyn filed a motion for contempt alleging that Edgar failed to pay the attorneys fees as required by the January 19, 1994 modification decree. In his defense, Edgar maintained that he was unable to pay the amount of the attorneys fees, but did not wilfully or intentionally refuse to do so. In addition, Edgar argued that the January 19, 1994 decree was so vague and uncertain that he was not aware of what was required of him. Moreover, Edgar argued that he believed, albeit mistakenly, that the chancery court lacked jurisdiction while his case was pending on appeal and therefore, he did not pay the amount required by the judgment.

After entertaining argument and hearing testimony, the Chancellor found Edgar in contempt for failure to pay the attorneys fees. The court stated that it was not inclined to find that Edgar's conduct constituted willful contempt due to the apparent misunderstanding that payment was not required while the case was on appeal. The Chancellor ordered that a supersedeas bond be posted in the amount of the judgment within ten days and ordered Edgar to pay \$ 350.00 for attorneys fees associated with the contempt action. Aggrieved, Edgar appealed to this Court.

On December 19, 1996, this Court reversed and remanded the modification decree entered against Edgar in *Caples v. Caples* (No. 94-CA-00509), on the grounds that Edgar did not receive proper notice in accordance with Rule 81 of the Mississippi Rules of Civil Procedure.

DISCUSSION OF LAW

Although Edgar Caples raises several issues regarding the lower court's adjudication of contempt, we need only address the effect that the reversal of *Caples v. Caples*, (No. 94-CA-0509) has on the instant appeal. We are faced today with a situation wherein this Court has reversed and remanded the modification decree entered by the chancery court on the grounds that Edgar did not receive proper notice concerning the modification hearing. Specifically, this Court held that Edgar failed to receive a summons pursuant to Rule 81 of the Mississippi Rules of Civil Procedure.

This Court was faced with a similar situation in *Gadson v. Gadson*, 434 So. 2d 1345 (Miss.1983). In *Gadson*, this Court was faced with the effect of reversing the original divorce decree on a subsequent adjudication of contempt for failure to comply with the original decree. Like the case *sub judice*, the original decree in *Gadson* was reversed because it was entered without prior notice to Gadson or his attorney. In reaching a decision, this Court relied on *Sinquefield v. Valentine*, 160 Miss. 61, 133 So. 210 (1931) wherein this Court held:

The question, therefore, in the case is whether or not the father, in refusing to turn over the custody of his children to their grandfather, under a void order of the court, requiring him to do so, could be adjudged in contempt of court. On the authority of *McHenry v. State*, 91 Miss.

562, 44 So. 831, 833, 16 L.R.A. (N.S.) 1062, the question must be answered in the negative. . .

160 Miss. at 64-65, 133 So. at 210-211.

Because the original divorce decree was void for want of service of process, this Court concluded that the subsequent contempt judgment should be reversed and vacated. *See also McKinney v. McKinney*, 374 So. 2d 230 (Miss.1979); *Cox v. Cox*, 279 So. 2d 615 (Miss.1973).

Here, as in *Gadson*, *McKinney*, and *Cox*, a subsequent adjudication of contempt based on noncompliance with an order of the court reversed for lack of notice must also be reversed.

REVERSED AND RENDERED.

LEE, C.J., PRATHER AND SULLIVAN, P.JJ., PITTMAN, BANKS, McRAE, ROBERTS AND MILLS, JJ., CONCUR.