

IN THE COURT OF APPEALS 09/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-01099 COA

ELLA LOUISE STEWART WOOTEN

APPELLANT

v.

DEPARTMENT OF HUMAN SERVICES,

STATE OF MISSISSIPPI

APPELLEE

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

TRIAL JUDGE: HON. W.O. DILLARD

COURT FROM WHICH APPEALED: HINDS COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

ELLA WOOTEN, PRO SE

ATTORNEY FOR APPELLEES: HERMINE PEEL

NATURE OF THE CASE: CHILD SUPPORT ARREARAGE

TRIAL COURT DISPOSITION: ORDER FOR WITHHOLDING WAS APPROPRIATE AND
ARREARAGE IN CHILD SUPPORT AFFIRMED.

BEFORE FRAISER, P.J., KING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This domestic relations appeal involves various issues but centers on one question: Was the order for wage withholding regarding Ella's child support arrearage proper? We believe that it was correct and

affirm the chancery court in all respects.

FACTS

Ella and Willie Wooten were ceremonially married in 1976. At that time, Ella was apparently also married to another man. Ella and Willie subsequently had two children. In 1986,

they separated, and in 1990 Willie filed for divorce. In June 1991, the Hinds County Chancery Court signed a final judgment of divorce granting Willie a divorce from Ella on the ground that Ella had been married to another man at the time of Ella and Willie's ceremonial marriage.

Various motions and cross-motions were subsequently filed and in July 1993, the court held a hearing on a motion to modify. The court entered a final judgment awarding custody of the children to Willie, visitation rights to Ella, and child support to be paid by Ella to Willie. The judgment also finalized certain property settlement arrangements between the parties. In March 1994, the Mississippi Department of Human Services, on behalf of Willie, filed a delinquency notice regarding Ella's child support arrearage of \$700.00. Ella filed a motion to stay and hearings by a family master followed. The resultant family master's report found that a previous order for wage withholding was appropriate, and that Ella owed \$1,000.00 in delinquent child support payments as of May 19, 1994. Ella filed an objection in chancery court, and at a subsequent hearing she agreed to pay \$100.00 per month in child support. The court entered a judgment denying the relief that Ella requested and approving the family master's report. Ella now appeals that judgment, raising eight issues. In May 1995, the Department of Human Services moved to dismiss. In August 1995, the Mississippi Supreme Court determined that the motion should be considered with the merits of the case.

Here, we decline to discuss: (1) the timeliness under the rules of the grounds for certain of Ella's allegations; (2) the difficulty in identifying Ella's citation to authority; and (3) the preservation of Ella's allegations for purposes of appeal. We will therefore address her issues on the merits.

ISSUES AND ANALYSIS

I. WAS THE FINAL JUDGMENT OF DIVORCE BETWEEN ELLA AND WILLIE VALID?

Ella argues that the divorce granted to Willie was void because the actual judgment was not entered on the last day of the hearing. Willie argues that the judgment was properly entered according to the Mississippi Rules of Civil Procedure and chancery court rules.

Uniform Chancery Court Rules 5.01 through 5.06 contemplate that a judgment must be entered following the date of the hearing(s). Unif. Chan. Ct. R. 5.01-5.06. In the present case, the court heard the divorce complaint on February 7 and June 11 and 12, 1991. The court signed and filed the final judgment, which contained no reference to the hearing dates, on June 21, 1991.

We believe that the judgment's omission of the hearing dates, and the fact that the judgment was not entered on the last day of the hearing have no bearing on the validity of the judgment itself. This issue therefore lacks merit.

II. DOES THE LANGUAGE OF THE FINAL JUDGMENT FOR DIVORCE AFFECT THE VALIDITY OF THE JUDGMENT IN THIS CASE?

Ella contends that the language within the divorce judgment voids the judgment. Willie frames this issue as Ella's contention that omission of the word "the" from the signature lines of the final judgment of divorce voids the judgment. However, his argument consists of how the judgment's language follows the Mississippi Rules of Civil Procedure and chancery court rules. Specifically, he believes that the final page of the judgment follows: (1) court rules requiring counsel who composes the judgment to submit it to opposing counsel for criticism of form only and (2) forms within the appendix to the rules of civil procedure for the attorney signature lines.

Uniform Chancery Court Rules require that counsel who is directed to draw the judgment must submit it to opposing counsel for criticism as to form only. Unif. Chan. Ct. R. 5.04. We believe that the judgment language properly follows this rule. Moreover, we believe that any omission of the word "the" from the signature lines of the judgment is harmless and irrelevant to the judgment's validity.

III. WAS WILLIE'S MARRIAGE TO ANOTHER WOMAN SUBSEQUENT TO THE ENTRY OF ELLA AND WILLIE'S FINAL JUDGMENT OF DIVORCE RELEVANT TO THE JUDGMENT THAT FOUND ELLA IN ARREARS REGARDING CHILD SUPPORT PAYMENTS?

Ella's argument regarding this issue seems somewhat buried within her pro se brief. However, we agree with Willie's characterization of her argument regarding this issue--that is, her belief that Willie's marriage subsequent to his divorce from Ella somehow is relevant to whether or not Ella owes him child support payments.

The Mississippi Rules of Appellate Procedure state that a party has a lawful right to file a notice of appeal within thirty days following the date of entry of a judgment or order. M.R.A.P. 4(a). Here, Ella has certainly failed to appeal from her final judgment of divorce, and any attempt relating her divorce to her obligation to pay Willie child support is clearly irrelevant. Moreover, any complaint as to Willie's marriage to another woman following the final judgment of divorce between Ella and Willie is likewise irrelevant to the judgment that found her in arrears for child support payments.

IV. DOES A GRAMMATICAL ERROR IN THE FINAL JUDGMENT OF DIVORCE JUSTIFY VOIDING THE JUDGMENT AND RELIEVING ELLA OF CHILD SUPPORT PAYMENTS?

Ella appears to argue that a grammatical error regarding a singular noun and a plural verb within the judgment of divorce voids the judgment. Willie believes that Ella contends that the singular noun/subject "custody" and the plural verb "are," both part of the language of the divorce judgment, actually give her custody of the children. Willie also believes that Ella says that she should not have to pay child support because she should have custody of the children due to the grammatical error. Willie argues that, although a grammatical error appears, it does not void the judgment. He believes that the intent of the judgment was clear--Willie was to have custody of the children, and Ella was to pay child support.

The Mississippi Rules of Civil Procedure state that clerical mistakes in judgments and errors from oversight or omission may be corrected by the court or upon motion of any party. M.R.C.P. 60. The prescribed procedure may be used only to make the judgment entered speak the truth and to correspond to the judgment rendered, and not to make it say something other than that originally pronounced. *Id.* cmt.

Here, the judgment stated that "custody of the 2 minor children . . . are [sic] hereby awarded to Willie Ernest Wooten with reasonable rights of visitation awarded to Ella Louise Stewart Wooten." Although neither the court nor either party has requested any clerical mistake be corrected under Rule 60, we believe that a grammatical error does exist which does not affect the judgment rendered. That judgment clearly gave Willie both custody of the children and rights to child support payments from Ella. The error within the judgment regarding custody is harmless, particularly in light of the court's clear intent, and grammatically correct language, that Ella was to be awarded reasonable visitation rights. The court would certainly not award visitation rights to the party who was also to have custody of the children. The court clearly gave Willie the rights to both custody and child support payments. The grammatical error within the divorce judgment does not void the judgment.

V. WERE THE ATTORNEYS WHO REPRESENTED THE PARTIES IN THE PREVIOUS PROCEEDINGS INEFFECTIVE AND UNETHICAL?

Ella contends that the attorneys who appeared on behalf of the parties in previous court proceedings were both ineffective and unethical. She has apparently filed complaints with the Mississippi Bar against certain individuals. However, we believe that this issue is properly resolved by another authority, namely the Bar itself, and is irrelevant to the issue of whether Ella owes Willie past due child support payments.

VI. DO VARIATIONS WITHIN THE CAPTIONS OF THE PLEADINGS, MOTIONS,

ORDERS, AND JUDGMENTS IN THE LOWER COURT RENDER THE FINAL JUDGMENT VOID?

Ella argues that the variations in the captions of the pleadings, briefs, motions, and judgments that have been filed since this cause began require the final judgment to be declared void.

The record indicates that only three parties have ever been involved in this litigation: Ella, Willie, and the State of Mississippi on behalf of Willie. Each party has alternately been labeled as either plaintiff, defendant, respondent, movant, appellant, or appellee, depending on the particular designation of a specific party at any given time. Moreover, division two the Chancery Court of the First Judicial District of Hinds County that has consistently retained jurisdiction over this case and the civil action number has consistently been No. 142,602. If any error in the captions ever existed, we believe it was harmless and does not affect *any* final judgment in this case. Ella's contentions regarding the changing captions, the vertical, horizontal, and crisscross forms, the backward "L" shape, and the "recteetretor" forms do not affect *any* final judgment of the chancery court, and certainly are not relevant to the issue of child support arrearage.

VII. DID THE HINDS COUNTY CHANCERY COURT HAVE JURISDICTION OVER THE PARTIES AND OVER THE SUBJECT MATTER?

Ella contends that the chancery court lacked jurisdiction over the parties and the subject matter in order to properly rule on the issues.

Mississippi statutory law clearly allows the chancery court the power to grant divorces on various grounds and to provide for a minor child's custody, financial support, and maintenance. Miss. Code Ann. §§ 93-5-1, -7, -11, 93-11-65 (1972). Proper jurisdiction lies in the chancery court of the county in which the divorce defendant resides, if that defendant resides in this State. Miss. Code Ann. §§ 93-5-11 (1972). Moreover, collection of child support payments and delinquency procedures are statutory in nature. *Id.* §§ 43-19-35, 93-11-105.

In the present case, jurisdiction over the parties and subject matter at all times vested in the chancery court of the First Judicial District of Hinds County. Ella and Willie have both resided in Hinds County from the time of their marital separation until the time of this appeal. This argument is without merit.

VIII. SHOULD WILLIE'S MOTION TO DISMISS, STRIKE, OR CLARIFY BE CONSIDERED ALONG WITH THE MERITS OF THE CASE?

Willie argues that his motion to dismiss, to strike, or to clarify, and for other relief should be determined in his favor because Ella's contentions are frivolous, confusing, and time-barred. He believes that the only appealable issue is the question of child support arrearage. He states that Ella admitted that she did not pay the child support, and that she was willing to pay it, and that the judgment clearly ordered her to pay. The Mississippi Supreme Court entered an order passing on

Willie's motion and determined that it should be considered along with the merits of the case. We believe that Willie's motion is now moot because we have considered the substance of Ella's appellate issues and have determined that none of her issues have merit.

Willie also requests that double costs, attorney's fees, and damages be awarded to the State of Mississippi on his behalf under Mississippi Rule of Appellate Procedure 38 because he believes Ella's appeal is frivolous. However, on October 18, 1994, Ella filed a notice of appeal regarding the judgment entered against her on October 4, 1994, that found her \$1,000.00 in arrears in her child support payments. The Mississippi Rules of Appellate Procedure allow a party thirty days to file an appeal from the date of entry of an adverse judgment. M.R.A.P. 4. Regardless of how disjointed and confusing her appellate brief may have been, and regardless of whether any appeals of her final divorce and custody judgments were time-barred, she did timely file her appeal regarding the \$1,000.00 arrearage judgment. As such, the validity of the arrearage judgment was the only question to be decided by this Court. The record indicates no error in the chancery court's determination that Ella owed the child support arrearage. Although Ella's extraneous issues surrounding her complaint that she does not owe child support may be frivolous, we do not find that the entire appeal is frivolous. Therefore, we do not believe that double costs, attorney's fees, or damages are warranted in this case.

CONCLUSION

We believe that the court's order for wage withholding for child support payments was proper. All other issues raised have no merit. Ella has simply failed to show that the chancery court was in error in determining that she owed Willie for past due child support. We therefore affirm the chancery court's judgment regarding Ella's child support arrearage.

THE JUDGMENT OF THE HINDS COUNTY CHANCERY COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE TO BE ASSESSED AGAINST THE APPELLANT. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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