

SUPREME COURT OF MISSISSIPPI

Shirley Ann James Hanshaw v. Larry Hanshaw

Shirley Ann James Hanshaw v. Larry Hanshaw · No. 2005-CT-01680-SCT · Decided July 29, 2005

SUMMARY

The Mississippi Supreme Court reviewed a contempt finding arising from Shirley Hanshaw’s failure to vacate the marital home pursuant to divorce-related court orders. The court held that the contempt proceeding required proper notice under Mississippi Rule of Civil Procedure 81, reversed the contempt finding and the Court of Appeals’ judgment in Shirley’s favor, and remanded for properly noticed contempt proceedings, including consideration of appropriate civil or criminal contempt sanctions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                             |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Waller, Chief Justice; Carlson, Presiding Justice; Graves, Presiding Justice; Dickinson, Justice; Randolph, Justice; Lamar, Justice; Kitchens, Justice; Pierce, Justice                                                                                                     |
| JURISDICTION          | Mississippi                                                                                                                                                                                                                                                                 |
| DECIDED               | July 29, 2005                                                                                                                                                                                                                                                               |
| DOCKET                | 2005-CT-01680-SCT                                                                                                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Following a chancery court contempt order in a divorce-related property-division matter, the Mississippi Court of Appeals reversed and rendered judgment for Shirley. The Mississippi Supreme Court granted certiorari and reviewed the notice and contempt-penalty issues. |
| STANDARD OF REVIEW    | Denial of a Rule 59 motion is reviewed for abuse of discretion. Civil-contempt orders are reviewed for manifest error, while contempt matters generally are subject to the chancellor's discretion.                                                                         |
| PRECEDENTIAL VALUE    | published, precedential Mississippi Supreme Court opinion                                                                                                                                                                                                                   |
| PARTIES               | Shirley Ann James Hanshaw v. Larry Hanshaw                                                                                                                                                                                                                                  |

TOPICS

contempt

service of process

family law procedure

appellate procedure

attorney fees

## PRACTICE AREAS

family law

civil procedure

appellate procedure

contempt

remedies

## QUESTIONS PRESENTED

1. Whether the trial court had jurisdiction to enter a contempt order against Shirley when she was not served with process consistent with Mississippi Rule of Civil Procedure 81.
2. Whether the trial court erred by assessing a \$500-per-hour contempt penalty against Shirley and imposing a \$12,000 sanction without findings regarding the injured party's damages, expenses, and attorney's fees.

## HOLDINGS

1. Because contempt proceedings are distinct actions, Shirley was entitled to notice and personal service of a Mississippi Rule of Civil Procedure 81 summons before the contempt proceeding. Her counsel's appearance did not cure the absence of proper notice, and the contempt finding and denial of her Rule 59 motion had to be reversed.
2. The Court of Appeals erred by rendering judgment in Shirley's favor. Because Shirley had failed to comply with at least two valid, unambiguous orders requiring her to vacate the marital home, the proper disposition was remand for contempt proceedings properly noticed under Rule 81(d)(2), rather than judgment eliminating the possibility of contempt.
3. The sanction was intended as civil contempt because it prospectively sought to compel compliance with the property-division judgment and was payable to Larry. A civil-contempt sanction must be supported by a finding of the injured party's damages, expenses, and attorney's fees and may not exceed those amounts. The chancellor committed manifest error by imposing the sanction without making those findings.
4. Shirley did not purge a potential civil-contempt finding merely because the deadline for performance had passed. On remand, any civil sanction had to be measured by Larry's damages and attorney's fees; any constructive criminal-contempt proceeding had to include the required procedural safeguards, with the amount of any criminal-contempt penalty left to the chancellor's discretion.

## KEY QUOTATIONS

*"Because contempt proceedings are distinct actions, they require notice consistent with Mississippi Rule of Civil Procedure 81(d)." (§9)*

*"Because Shirley did not receive proper notice or an opportunity to defend against the charges in a contempt hearing, we reverse the chancellor's contempt finding and subsequent denial of Shirley's motion to reconsider." (§10)*

*"But because civil contempt vindicates a private party's rights, the imposed sanction should not exceed the injured party's damages and expenses." (§13)*

*“Therefore, we find that the chancellor committed manifest error in not making this necessary finding for a civil-contempt citation.” (¶17)*

## FACTUAL BACKGROUND

In a contentious divorce, the chancery court ordered the Hanshaws' marital home sold and required Shirley to vacate it by specified deadlines. Shirley canceled a moving company's services shortly before the scheduled closing and did not leave the home by the court-ordered deadline. The chancellor imposed a \$12,000 fine payable to Larry without determining Larry's damages, expenses, or attorney's fees, and Shirley paid it from her share of the sale proceeds.

## PROCEDURAL HISTORY

The Lafayette County Chancery Court ordered Shirley to vacate the marital home and imposed a \$12,000 contempt fine after she failed to do so. The chancellor denied her Mississippi Rule of Civil Procedure 59 motion to reconsider. The Court of Appeals reversed and rendered judgment in Shirley's favor. The Supreme Court vacated the Court of Appeals' decision, reversed the contempt finding and denial of reconsideration, and remanded for properly noticed contempt proceedings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand to the Lafayette County Chancery Court for contempt proceedings consistent with the opinion and properly noticed under Mississippi Rule of Civil Procedure 81(d)(2). Any civil-contempt sanction must appropriately measure Larry's damages, expenses, and attorney's fees. Any constructive criminal-contempt proceeding must include the required procedural safeguards.

## CASES CITED

- Brooks v. Roberts, 882 So. 2d 229, 233 (Miss. 2004)
- Shavers v. Shavers, 982 So. 2d 397, 402 (Miss. 2008)
- Isom v. Jernigan, 840 So. 2d 104, 106 (Miss. 2003)
- Dennis v. Dennis, 824 So. 2d 604, 608 (Miss. 2002)
- Vincent v. Griffin, 872 So. 2d 676, 677, 679 (Miss. 2004)
- Weeks v. Weeks, 556 So. 2d 348, 350 (Miss. 1990)
- Purvis v. Purvis, 657 So. 2d 794, 796-97 (Miss. 1995)
- Matthews v. Matthews, 86 So. 2d 462 (Miss. 1956)
- Wyssbrod v. Wittjen, 798 So. 2d 352, 368 (Miss. 2001)
- Ladner v. Logan, 857 So. 2d 764, 773 (Miss. 2003)
- Corporate Mgmt., Inc. v. Greene County, 23 So. 3d 454, 466 (Miss. 2009)

- Moulds v. Bradley, 791 So. 2d 220, 224-25 (Miss. 2001)
- In re Williamson, 838 So. 2d 226, 237-38 (Miss. 2002)
- Common Cause of Mississippi v. Smith, 548 So. 2d 412, 415-16 (Miss. 1989)
- Hoops v. State, 681 So. 2d 521, 535 (Miss. 1996)
- Hanshaw v. Hanshaw, 2009 WL 4807649 (Miss. Ct. App. Dec. 15, 2009)

## OPINION

Shirley Ann James Hanshaw v. Larry Hanshaw

PER CURIAM.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2005-CT-01680-SCT

SHIRLEY ANN JAMES HANSHAW

v.

LARRY HANSHAW

ON WRIT OF CERTIORARI

DATE OF JUDGMENT: 07/29/2005

TRIAL JUDGE: HON. EDWIN H. ROBERTS, JR.

COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CHANCERY

COURT

ATTORNEY FOR APPELLANT: STEWART GUERNSEY

ATTORNEY FOR APPELLEE: THOMAS H. FREELAND, IV

NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS

DISPOSITION: REVERSED AND REMANDED - 01/20/2011

MOTION FOR REHEARING FILED: MANDATE ISSUED: EN BANC. WALLER, CHIEF JUSTICE, FOR THE COURT: ¶1. Following the chancery court's equitable division of the Hanshaws' property, Shirley was held in contempt for failure to leave the marital home by the court-ordered deadline. The Court of Appeals reversed and rendered judgment in Shirley's favor, and we granted certiorari. Although the court denied Shirley notice and a hearing, the record shows that she did not follow chancery court orders. Therefore, we vacate the Court of Appeals' decision, reverse the chancellor's contempt finding and subsequent denial of Shirley's motion to reconsider, and remand the case to the chancery court for contempt proceedings consistent with this opinion.

## FACTS AND PROCEEDINGS BELOW

¶2. The chancery court ordered the equitable division of assets and liabilities in the Hanshaws' extremely contentious divorce.<sup>1</sup> The court ordered the marital home to be sold by September 21, 2004. Shirley and Larry located a buyer and scheduled the closing for September 30, 2004.<sup>2</sup> Later, Shirley rescheduled the closing for October 5, 2004. ¶3. Although Shirley had arranged for a company to move her belongings, she cancelled its services a day before closing. Thus, on

October 4, 2004, counsel for both parties appeared before the court to express their concern that Shirley's failure to vacate the home could prevent the scheduled sale. On October 5, 2004, the chancellor ordered Shirley to vacate the home by 2:00 p.m. on the scheduled closing day. If she failed to comply, she would pay Larry a \$500-per-hour penalty for each hour she remained at the home, and she would be held in contempt. Shirley did not vacate the home as ordered. ¶4. On October 6, 2004, Larry filed a contempt motion, and the court ruled on the motion the next day. Because Shirley did not leave the home as ordered, the court imposed a \$12,000 fine. Shirley paid the fine to Larry from her share of the proceeds from the sale of their home. 1 The Court of Appeals' opinion includes additional facts that are omitted here for brevity. *Hanshaw v. Hanshaw*, 2009 WL 4807649 (Miss. Ct. App. Dec. 15, 2009). 2 The record does not show where the court approved a different deadline for the sale. Therefore, we assume that the closing deadline should have been September 21, 2004. 2 ¶5. The chancellor later denied Shirley's Rule 59 motion to reconsider the contempt finding. See M.R.C.P. 59. Shirley had argued that she should not be held in contempt because she did not receive notice and a hearing. The chancellor determined that Shirley's general appearance before the court during a hearing on one of Larry's motions had waived any jurisdictional deficiencies. ¶6. The Court of Appeals held that the chancellor erred in finding that Shirley had waived proper notice of the contempt action. *Hanshaw*, 2009 WL 4807649, at \*3. Then, the Court of Appeals reversed the chancellor's decision, rendered judgment in Shirley's favor, and taxed all costs of the appeal to Larry. *Id.*

## ISSUES

¶7. We rephrase and review the following issues raised by both parties. I. Whether the trial court had jurisdiction to enter a contempt order against Shirley Hanshaw when she did not receive service of process consistent with Mississippi Rule of Civil Procedure 81. II. Whether the trial court erred by assessing a \$500-per-hour contempt penalty against Shirley Hanshaw.

## DISCUSSION

I. Jurisdiction and notice ¶8. We review a chancellor's denial of a Rule 59 motion under an abuse-of-discretion standard. *Brooks v. Roberts*, 882 So. 2d 229, 233 (Miss. 2004). On appeal, the movant prevails by showing that the denied Rule 59 motion would have "correct[ed] a clear error of law. . . ." *Id.* 3 ¶9. Because contempt proceedings are distinct actions, they require notice consistent with Mississippi Rule of Civil Procedure 81(d). M.R.C.P. 81(d); *Shavers v. Shavers*, 982 So. 2d 397, 402 (Miss. 2008); *Isom v. Jernigan*, 840 So. 2d 104, 106 (Miss. 2003); *Dennis v. Dennis*, 824 So. 2d 604 (Miss. 2002). A chancery court's continuing jurisdiction to enforce a judgment does not waive the requirement for a Rule 81 summons in contempt actions. *Vincent v. Griffin*, 872 So. 2d 676, 677 (Miss. 2004). Where a party does not waive proper notice of a contempt action, we have reversed the contempt finding and remanded the matter to the chancery court. *Id.* at 679; *Weeks v. Weeks*, 556 So. 2d 348, 350 (Miss. 1990). ¶10. The Court of Appeals properly relied on this Court's opinions in *Isom* and *Dennis* to reverse the chancellor's contempt finding. *Hanshaw*, 2009 WL 4807649, at \*\*3-4. Here, the record does not indicate that Shirley

received proper notice of the October 4 proceeding which led to her contempt citation. While counsel for both parties appeared before the court on October 4, Rule 81 requires that a summons be personally served on Shirley before the contempt proceeding. M.R.C.P. 81(d). Further, the record does not indicate that a Rule 81 summons was ever issued after Larry filed his October 6 contempt motion or before the court's October 7 order holding Shirley in contempt. Because Shirley did not receive proper notice or an opportunity to defend against the charges in a contempt hearing, we reverse the chancellor's contempt finding and subsequent denial of Shirley's motion to reconsider. *Shavers*, 982 So. 2d at 402; *Brooks*, 882 So. 2d at 233. ¶11. But we also find that the Court of Appeals erred by rendering judgment in Shirley's favor. While the record is limited, Shirley clearly did not comply with the chancery court's orders to vacate the marital home. The chancellor had entered at least two valid orders that required Shirley to leave the marital home by specific dates. She did not comply with either order. Because Shirley did not follow unambiguous court orders, we remand this case to the chancery court for contempt proceedings properly noticed pursuant to Rule 81(d)(2). *Vincent*, 872 So. 2d at 679. II. Contempt penalty ¶12. With contempt matters, we defer to the chancellor's discretion. *Dennis*, 824 So. 2d at 608. When reviewing a chancellor's contempt finding, we first determine whether the contempt is civil or criminal. *Id.* (citation omitted). ¶13. Civil contempt orders enforce a private party's rights or compel compliance with a court's order. *Purvis v. Purvis*, 657 So. 2d 794, 796 (Miss. 1994). Hence, the contemnor pays any resulting penalty to the injured party. *Id.* We have allowed a chancellor wide discretion in "exerting his coercive powers to enforce his decrees." *Matthews v. Matthews*,

86 So. 2d 462 (Miss. 1956). See also Miss. Code Ann. § 9-5-87 (Rev. 2002). But because civil contempt vindicates a private party's rights, the imposed sanction should not exceed the injured party's damages and expenses. *Wyssbrod v. Wittjen*, 798 So. 2d 352, 368 (Miss. 2001). And generally, the court may award the prevailing party attorney's fees. *Ladner v. Logan*, 857 So. 2d 764, 773 (Miss. 2003). See *Corporate Mgmt., Inc. v. Greene County*, 23 So. 3d 454, 466 (Miss. 2009) (citation omitted) ("[W]here 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."). We apply a manifest-error standard of review to civil-contempt orders. *Purvis*, 657 So. 2d at 797. 5 ¶14. Conversely, constructive criminal contempt punishes a party for noncompliant conduct outside the court's presence. *Moulds v. Bradley*, 791 So. 2d 220, 224-25 (Miss. 2001). Along with proper notice and a hearing, criminal-contempt actions require additional procedural safeguards and a heightened burden of proof. In re *Williamson*, 838 So. 2d 226, 237-38 (Miss. 2002). The contemnor must pay constructive criminal-contempt fines to the court, rather than to an injured party. *Common Cause of Miss. v. Smith*, 548 So. 2d 412, 416 (Miss. 1989). ¶15. Shirley contends that the contempt finding was necessarily criminal. She argues that since the order finding her in contempt was entered after her contemptuous acts were completed, there was no way for her to purge herself of contempt.

Further, if the chancellor imposed criminal contempt, the court exceeded Mississippi Code Section 9-1-17, which allows a \$100 fine per contempt event.<sup>3</sup> But Shirley also argues that remand is now “futile” since she has “purged herself beyond cavil” of any contempt. ¶16. While disputed, the record shows that the chancellor intended to impose civil contempt. The primary purpose of the prospective penalty was to compel Shirley’s compliance with the court’s earlier judgment, which had required the home to be sold by September 21, 2004. Alternately, the penalty attempted to compel her to move by the rescheduled closing date of October 5, 2004. The contempt finding also enforced Larry’s 3 Shirley cites no relevant authority to support her related contentions that the contempt finding unjustly enriched Larry and that the amount of the sanction contributed to her “impoverishment by divorce.” We have no obligation to consider an assignment of error unsupported by reasons or authority. M.R.A.P. 28(a)(6); *Hoops v. State*, 681 So. 2d 521, 535 (Miss. 1996). 6 right to his portion of the proceeds from the sale. Finally, the court ordered Shirley to pay the fine to Larry, which further supports that the contempt was civil. ¶17. Here, the chancellor distributed the sanction to Larry without a finding on the damages, expenses, and attorney’s fees that Larry had incurred because of Shirley’s delay in leaving the home. Therefore, we find that the chancellor committed manifest error in not making this necessary finding for a civil-contempt citation. *Purvis*, 657 So. 2d at 797. ¶18. We further find that Shirley has not “purged” herself of a civil-contempt finding simply because the time for her performance has passed. See *Common Cause*, 548 So. 2d at 415 (citation omitted) (civil contemnnor purges contempt finding by paying costs and expenses and complying with terms of court’s order). On remand, any potential civil- contempt sanction should appropriately measure Larry’s damages and attorney’s fees. *Corporate Mgmt., Inc.*, 23 So. 3d at 466. Likewise, in any future constructive criminal- contempt proceeding, the court should allow Shirley the appropriate procedural safeguards. In *re Williamson*, 838 So. 2d 226 at 237-38. We leave the calculation of an appropriate penalty for a constructive criminal contempt finding to the chancellor’s discretion. Miss. Code Ann. § 9-1-17 (Rev. 2002).

## CONCLUSION

¶19. We reverse the decision of the Court of Appeals rendering judgment in Shirley’s favor. We also reverse the chancellor’s contempt finding and subsequent denial of Shirley’s motion to reconsider and remand this case to the chancery court for contempt proceedings consistent with this opinion. 7 ¶20. REVERSED AND REMANDED.

CARLSON AND GRAVES, P.JJ., DICKINSON, RANDOLPH, LAMAR,  
KITCHENS AND PIERCE, JJ., CONCUR. CHANDLER, J., NOT PARTICIPATING. 8