

IN THE CHANCERY COURT OF LAFAYETTE COUNTY MISSISSIPPI

FILED
STATE OF MISSISSIPPI
LAFAYETTE COUNTY
2023 SEP 18 PM 12:56
CHANCERY CLERK
BY DC

Robert Sullivant Sr.,
Plaintiff

v.

Robert Sullivant Jr.,
Defendant.

Case No. 2021-612(W)

Robert Sullivant Jr.,
Third-Party Plaintiff,

v.

Robert Sullivant Sr. and
Evelyn Stevens,
Third-Party Defendants

MOTION TO VOID THE ORDER QUASHING THE SUBPOENA
OF NON-PARTY WITNESS FRANK PERKINS

Comes now, Defendant and Third-Party Plaintiff Robert Sullivant Jr., and requests that the court VOID the *Order* filed in this matter on August 31, 2023, pursuant to Miss. R. Civ. Proc. 60(b)(1)(4)(6). This Order originated from the hearing on August 30, 2023, where the court granted the Motion of non-party witness Dr. Frank Perkins to quash the subpoena that was issued by JR related to his deposition.

As a result of this decision from Your Honor, and as is standard, an “agreed order”, was drafted (by Mr. Freeland) and circulated to the parties for approval. **Exhibit A.** Your Honor’s staff attorney, Ms. Samantha Weathersbee, was also copied on this correspondence. **Exhibit B.**

Immediately upon receiving a copy of this *Order*, JR responded with an email to all parties vehemently objecting to the language contained in the Order. *Id.* The agreed order offered by Mr. Freeland; (1) contained numerous grammatical and spelling errors, (2) cited the wrong

SCANNED

date of the conservatorship hearing, and (3), made multiple allegations that are incorrect and are unsupported by any reference to the record.

Despite JR's objections, Ms. Weathersbee responded by stating that she herself corrected the errors from Mr. Freeland and that she went ahead and filed the *Order* regardless of JR's objections and without his signature. Ms. Weathersbee then stated that she would not send JR a copy of the *Order*, instead referring him to the MEC or to the Clerk. *Id.*

Ms. Weathersbee further asserts that if JR "feels something was done in error as to this Order, [he] needs to file something." She then accuses him of being confused and points out that she cannot provide legal advice or assistance. This was after she edited and filed a document for Mr. Freeland.

ARGUMENT

All agreed orders must be signed by *all parties*, particularly ones containing disputed factual assertions, such as the one drafted by Mr. Freeland. This is not a grey area in Mississippi Law, or really anywhere for that matter; given the persistent use of the word "agreed" to refer to such orders. Per the Mississippi Supreme Court:

"A consent judgment is a final judgment, more like an *agreed order*, which "must be approved and signed by counsel for *all parties* . . . before being presented to the Chancellor for his signature." Unif. Chancery Court R. 5.03." *McNeese v. McNeese*, No. 2012-CP-00174-SCT, at *9 n.2 (Miss. Apr. 25, 2013).

"All agreed orders, or orders submitted where the Court deems the necessity, shall bear the signature of *all parties* or representatives or attorneys for the parties before the Court will sign same." *In re Local Rules*, No. 89-R-99015-SCT, at *1 (Miss. May 10, 2006)

Notably, the individual drafting and filing the *Order* without JR's approval (Mr. Freeland), is not even a party to this case. Therefore, the only signature *not* required on the agreed order, is Mr. Freeland's. Also notable, is that Mr. Freeland's own signature is not even on the *Order* that was signed by Your Honor. It is undeniably impossible for an "agreed order" to be valid without the signature of *any parties*, let alone the legal requirement that is *all parties* must sign it.

There are also multiple factual errors and/or highly relevant omissions that render the *Order* not based in fact, highly prejudicial to JR, and therefore void. This is aside

from the fact that JR never signed it and instantly objected to its content to all parties and this court.

First, the *Order* states that “The subpoena did not comply with the Mississippi Rules of Civil Procedure nor the Mississippi Rules of Evidence.” Nowhere in the agreed order is there any mention of a rule of procedure or evidence that was not followed by JR, and it is unclear what “rule of evidence” would even be relevant in disposing of a subpoena. If Mr. Freeland wishes to make such assertions, he must support them by citing the rules or procedures which he accuses JR of violating. JR asserts that he violated none.

Next, Mr. Freeland states that “the deposition was not to take place where Dr Perkins was located, nor did it provide for or tender compensation of Dr. Perkins to prepare and have his deposition taken.” This line is just dishonest and misleading, as Mr. Freeland knows that JR emailed him offering to move the deposition *to Dr. Perkin’s office*, a fact he willfully omits from the *Order*. He also conveniently omits the email from JR to Dr. Perkins, seeking an amicable discussion as to what time and location would be best for him. **See Exhibit C, (JR to Perkins)**, “Please let me know by tomorrow **when and where it is convenient for you**, or you may call me to discuss times or place.

Finally, Mr. Freeland asserts that “it has not been shown that the deposition was within the scope of discovery, but on issues the court has already heard and resolved.” There was no showing that the deposition JR intended to conduct was solely on issues “already heard and resolved”, and Mr. Freeland does not reference any rule or law that would even make this statement relevant.

Miss. R. Civ. Proc. 60(b) provides that on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) fraud, misrepresentation, or other misconduct of an adverse party;
- (2) accident or mistake;
- (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (6) any other reason justifying relief from the judgment.

Such relief, pursuant to subsections (1), (4), and (6), is appropriate as it relates to the agreed order. First, inconceivably, the agreed order that was filed with the court does not contain the signature of *any party to this matter*. **Exhibit D**.

The original order drafted by Mr. Freeland contains signature lines for himself, Ms. Ware, Mr. Davis, and JR, whose signature line is located directly underneath the words “Agreed as to Form”. **Exhibit A**. When JR did not agree to the *Order*, Mr. Freeland, with the assistance of Ms. Weathersbee, actually deleted all of the signature lines and filed it anyway. **Exhibit B**.

This is at the very least misrepresentation and misconduct, and worst, it is a fraud upon the court. It not logical for Mr. Freeland to retort with any assertion that JR is not required to sign the *Order*, when his original draft has a signature line for JR with the statement “Agreed as to Form”, right above it.

The *Order* signed by Your Honor is respectfully void. Mississippi Law requires the signature of all parties, including JR, to accompany any agreed order. A signature from a non-party attorney, who deliberately misrepresented facts, sent JR the *Order* knowing that his signature was required, and then erased his signature line and filed the *Order* anyway over JR’s objections, is not acceptable whatsoever. Mr. Alford and JR have had numerous agreed orders submitted in this matter, and there has never been such an issue as we see here.

CONCLUSION

JR disputed the facts contained within the proposed order immediately and properly communicated this to all attorneys. Mr. Freeland openly flouted the law when he chose to manipulate the original draft he sent JR, removing his signature line, and completely ignoring his objections. Submitting a document to the court that omits the required signatures of all parties and contains disputed facts, on top of unsubstantiated

allegations, is nothing less than highly improper and demonstrates a complete disregard for JR's rights. Moreover, Ms. Weathersbee's actions of editing and filing a document on behalf of Mr. Freeland, one which required JR's signature by law, and then refusing to send JR a copy of the filing, is not appropriate to say the least. Ms. Weathersbee is required to adhere to the same standards of impartiality as Your Honor, and editing and filing documents on behalf of one "party", and then filing the documents for that party, and then shutting out the other party and referring to them as "confused", is inappropriate and highly prejudicial to JR.

The *Order* submitted by Mr. Freeland and signed by Your Honor should be voided for the foregoing reasons, and for no less the reason that JR should be given the opportunity to at rebut the false allegations made by Mr. Freeland in the *Order*, before disputed issues and such false allegations are memorialized on the record.

WHEREFORE, JR respectfully requests that the court VOID the Order filed on August 31, 2023, and allow the parties to actually confer to reach a stipulated order that is "Agreed as to Form" by JR, which is what the law requires. If the parties cannot agree as to a stipulated order, then JR requests that he be allowed submit his own proposed order and leave it to the Court to determine what language remains.

Dated: September __, 2023

/s/ _____
Robert Sullivant Jr.
Defendant and Third-Party Plaintiff

CERTIFICATION

I, Robert Sullivant Jr, hereby certify that on September __, 2023, I served a copy of the foregoing Motion and all attachments referenced therein to the below counsel of record:

Swayze Alford, Esq. (MSB #8642)
Kayla Ware, Esq. (MSB #104241)
Post Office Drawer 1820
Oxford, Mississippi 38655
(662) 234-2025 phone
(662) 234-2198 facsimile

Attorneys For Robert Sullivant Sr.

Freeland Martz PLLC.
302 Enterprise Drive, Suite A
Oxford, MS 38655
Phone 662.234.17111
Fax 662.234.1739
hale@freelandmartz.com

Attorneys for Dr. Frank Perkins

/s/ _____
Robert Sullivant Jr.
1062 Crawford Cir.
Oxford, MS 38655
robert@steelandbarn.com
(512) 739-9915

Exhibit A

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT SR.

PLAINTIFF

v.

ROBERT SULLIVANT JR.

DEFENDANT

CAUSE NO. 2021-CV-612 (W)

ROBERT SULLIVANT JR.

THIRD PARTY PLAINTIFF

v.

**ROBERT SULLIVANT SR. and
EVELYN STEVENS**

THIRD PARTY CO-DEFENDANTS

ORDER

The Court has before it Dr. Frank Perkins' motion to quash the subpoena for deposition that was served on him at the behest of Robert Sullivant Jr.. The Subpeaon noted Dr Frank Perkisn address at 3521 Lakeland Dr., Ste 1060, Flowood, MS and "COMANDED" him to appear at the Lafayette County Chacery Courthouse in Oxford Mississippi. at 1:00 p, on Junee 22, 2023. (doc 112).

Dr Perkins was appointed an an expert to examine Robert Sullivant, Sr by the agreement of the parties. The Court heard the Counter/lomplaint filed by Robert Sullivant, Jr and the Motion to Appoint Robert Sullivant Sr. Dr. Perkins Medcail Affidavit ws field with the Court. He testified in open court regarding this matter, and Robert Sullivant Jr. had the opportunity to question him therein.

On May 17, 2023, in which the Court found by cealr and convncing evidence that Robert Sullivant incapable of managing his affairs and appointing Sherry Wall as his conservator. The Court enetred an order of May 18, 2023, holding that Mr. Sullivant had the testamentary capacity to execute a will for his estate.

The subpoena did not comply with the Misissippi Rules of Civil Proceeedure nor the Mississippi Rules of Evidence; the deposition was not to take place where Dr Perkins was

located, nor did it provide for or tender compensation of Dr. Perkins to to prepare and have his deposition taken. Moreover, it has not been shown that the deposition was within the scope of discovery, but on issues the court has already heard and resolved.

Accordingly, the Motion to quash is granted.

SO ORDERED, ADJUDGED, AND DECREED, this the ____nd day of September, 2023.

HON. ROBERT Q. WHITWELL, CHANCELLOR

Prepared by:

J. Hale Freeland, MSB No. 5525
FREELAND MARTZ PLLC
302 Enterprise Dr., Suite A
Oxford, Mississippi 38655
(662) 234-1711
hale@freelandsmartz.com

Kayla War, Bar No. _____
Attorney for Robert Sullivant, Sr.

Walt Davis, Bar No. _____
Attorney for Sherry Wall
Guardian/Conservator

Agreed as to Form:

Robert Sullivant, JR, pro se



Exhibit B

Robert Sullivant <robert@steelandbarn.com>

Re: Sullivant Order

8 messages

Hale Freeland <hale@freelandmartz.com>

Thu, Aug 31, 2023 at 9:09 AM

To: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>

Cc: Walt <waltdavis@hgd-oxford.com>, "Robert Sullivant, Jr" <robert@steelandbarn.com>, Swayze <salford@swayzealfordlaw.com>

Please see the order that has not been circulated

Hale

On Thu, Aug 31, 2023 at 8:28 AM Samantha Weathersbee <SWeathersbee@lafayettecoms.com> wrote:

Hale,

We are in a Lafayette term & need the order granting your motion to quash by lunch today.

Best,

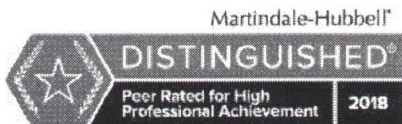
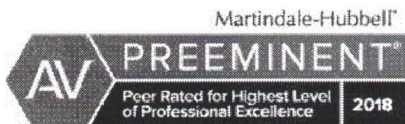
Samantha

Sent from my iPhone

--



J. Hale Freeland
 Admitted in MS, TN, and MO
 Freeland Martz, PLLC
 302 Enterprise Drive, Ste. A
 Oxford, MS 38655-2762
 T 662.234.1711 | Toll Free 844.671.1711
 hale@freelandmartz.com | www.freelandmartz.com



2 attachments

Perkins. Sullivant matter.pdf
51K

23.06.22 order to quash.docx
13K

Samantha Weathersbee <SWeathersbee@lafayettecoms.com>

Thu, Aug 31, 2023 at 9:50 AM

To: Hale Freeland <hale@freelandmartz.com>

Cc: Walt <waltdavis@hgd-oxford.com>, "Robert Sullivant, Jr" <robert@steelandbarn.com>, Swayze <salford@swayzealfordlaw.com>

Received. I made some corrections to it & the judge has signed it. It will be filed today.

Sent from my iPhone

On Aug 31, 2023, at 9:10 AM, Hale Freeland <hale@freelandmartz.com> wrote:

[Quoted text hidden]

<Perkins. Sullivant matter.pdf>

<23.06.22 order to quash.docx>

Robert Sullivant <robert@steelandbarn.com>

Thu, Aug 31, 2023 at 12:02 PM

To: Hale Freeland <hale@freelandmartz.com>

Cc: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>, Walt <waltdavis@hgd-oxford.com>, Swayze <salford@swayzealfordlaw.com>

First off the motion for conservatorship and request to execute will was on May 9th.

There are numerous sloppy spelling errors.

I ordered the transcript and will receive from Cecily soon as she gets it to me. I am going out of town next week.

I wish to have something more specific to what in the rules the subpoena violated. I had stated numerous times to Dr. Perkins, Swayze and the court that I was more than willing to go to Dr. Perkin's local. He just would not cooperate in allowing me to conduct the deposition at a place of his choosing, so that reason is not valid. I was more than willing to pay Dr. Perkins per the terms he testified on May 9th. That would have been reasonable per any rule there is to paying expert witnesses. I am a former CPA. I have done budget consulting work for two of the largest healthcare systems in US. No where in the US does a Psychiatrist get paid \$600, especially in Mississippi. So, that is not a rule violation. None of those were why the motion was quashed. Go back and read the transcript, and come up with something legitimate.

Also, I wish to have some documentation as to if the Perkins is rule 26 or 35 witness. Hale claimed rule 26 witness, but quotes MRE 706, although incorrectly, which pertains to rule 35 witnesses. Seems that was the issue that was argued 26 vs 35. Think something about that should be in the order. I will read transcript and propose some language.

Since we are getting in the order facts about two prior motions in this order, then lets put in this order that there were 3, which by the way is more than 2, attorneys arguing one side.

Hale, if you have an issue with correcting the sloppy, careless spelling, getting dates correct, getting a real substantive violation of MRCP, then I propose a conference with the Judge, and after I read the transcript and get back in town.

Hope everybody has a great day.

Robert Sullivant, Jr.

[Quoted text hidden]

Mail Delivery Subsystem <mailer-daemon@googlemail.com>

Thu, Aug 31, 2023 at 12:02 PM

To: robert@steelandbarn.com

Address not found



Your message wasn't delivered to **waltdavis@hgd-oxford.com** because the domain hgd-oxford.com couldn't be found. Check for typos or unnecessary spaces and try again.

LEARN MORE

The response was:

DNS Error: DNS type 'mx' lookup of hgd-oxford.com responded with code NXDOMAIN Domain name not found: hgd-oxford.com Learn more at <https://support.google.com/mail/?p=BadRcptDomain>

Final-Recipient: rfc822; waltdavis@hgd-oxford.com

Action: failed

Status: 5.1.2

Diagnostic-Code: smtp; DNS Error: DNS type 'mx' lookup of hgd-oxford.com responded with code NXDOMAIN Domain name not found: hgd-oxford.com Learn more at <https://support.google.com/mail/?p=BadRcptDomain>

Last-Attempt-Date: Thu, 31 Aug 2023 10:02:24 -0700 (PDT)

----- Forwarded message -----

From: Robert Sullivant <robert@steelandbarn.com>

To: Hale Freeland <hale@freelandmartz.com>

Cc: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>, Walt <waltdavis@hgd-oxford.com>, Swayze <salford@swayzealfordlaw.com>

Bcc:

Date: Thu, 31 Aug 2023 12:02:15 -0500

Subject: Re: Sullivant Order

----- Message truncated -----

Samantha Weathersbee <SWeathersbee@lafayettecoms.com>

Thu, Aug 31, 2023 at 1:19 PM

To: Robert Sullivant <robert@steelandbarn.com>

Cc: Hale Freeland <hale@freelandmartz.com>, Walt <waltdavis@hgd-oxford.com>, Swayze

<salford@swayzealfordlaw.com>

I made the spelling & grammar edits. The order has been signed & filed by Judge Whitwell today.

Mr. Sullivant, you can get a copy of it off of MEC or from the clerk. If you feel something was done in error as to this Order, you need to file something, & have it set. It will need to be set on a regular setting day with a court reporter so a telephonic hearing is out. Judge Whitwell wants a record of all matters in this cause. I understand your confusion, but again, you are held to the same standard a lawyer is & have to adhere to the rules & law. The court nor the attorneys that represent other sides from you can give you advice/guidance/clarification.

Further, many sides are represented in this matter. There is SR., JR., Dr. Perkins, Ms. Evelyn, & the conservator. Each side is entitled to representation. A side does not equal two as you have inferred. Like this suit, a pentagon has five sides & each 5 side/party is entitled to representation.

Best,

Samantha Weathersbee
Staff Attorney to Judge Whitwell

Sent from my iPhone

On Aug 31, 2023, at 12:02 PM, Robert Sullivant <robert@steelandbarn.com> wrote:

[Quoted text hidden]

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Thu, Aug 31, 2023 at 1:25 PM
To: Hale Freeland <hale@freelandmartz.com>, "waltdavis@dunbardavis.com" <waltdavis@dunbardavis.com>
Cc: "Robert Sullivant, Jr" <robert@steelandbarn.com>, Swayze <salford@swayzealfordlaw.com>

I am resending the correspondence with the Court and parties so that Walt is included. I think a wrong email for him was added.

[Quoted text hidden]

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Thu, Aug 31, 2023 at 1:25 PM
To: Robert Sullivant <robert@steelandbarn.com>, Hale Freeland <hale@freelandmartz.com>
Cc: "waltdavis@dunbardavis.com" <waltdavis@dunbardavis.com>, Swayze <salford@swayzealfordlaw.com>

From: Robert Sullivant <robert@steelandbarn.com>
Sent: Thursday, August 31, 2023 12:02 PM
To: Hale Freeland <hale@freelandmartz.com>
Cc: Samantha Weathersbee <SWeathersbee@lafayettecoms.com>; Walt <waltdavis@hgd-oxford.com>; Swayze <salford@swayzealfordlaw.com>
Subject: Re: Sullivant Order

First off the motion for conservatorship and request to execute will was on May 9th.

[Quoted text hidden]

[Quoted text hidden]

Samantha Weathersbee <SWeathersbee@lafayettecoms.com> Thu, Aug 31, 2023 at 1:25 PM
To: Robert Sullivant <robert@steelandbarn.com>
Cc: Hale Freeland <hale@freelandmartz.com>, "waltdavis@dunbardavis.com" <waltdavis@dunbardavis.com>, Swayze <salford@swayzealfordlaw.com>

From: Samantha Weathersbee
Sent: Thursday, August 31, 2023 1:20 PM
To: Robert Sullivant <robert@steelandbarn.com>
Cc: Hale Freeland <hale@freelandmartz.com>; Walt <waltdavis@hgd-oxford.com>; Swayze <salford@swayzealfordlaw.com>
Subject: Re: Sullivant Order

I made the spelling & grammar edits. The order has been signed & filed by Judge Whitwell today.

**Exhibit C**

Robert Sullivant <robert@steelandbarn.com>

deposition

Robert Sullivant <robert@steelandbarn.com>
To: fperkins@preciseforensicservices.com

Wed, Mar 1, 2023 at 5:48 PM

Dr. Perkins,

I retrieved your email from a resume Mr. Alford sent me.

I called your office this morning regarding setting up a time for a deposition regarding Sullivant Sr v Sullivant Jr. I am representing myself (Pro Se). I was told I would have to contact Swayze Alford to get in touch with you. Sorry to say that is not how it works. Per the Mississippi Rules of Civil Procedure, I arrange my own depositions without assistance from Mr. Alford. I would like to conduct the deposition of time and place of your convenience.

Please let me know by tomorrow when and where it is convenient for you, or you may call me to discuss times or place. The alternative is I will have to issue a subpoena per rule 30 that will be of a time and place of my convenience. I would prefer to schedule on a cordial, cooperative basis.

Please call me with any questions or concerns.

Robert Sullivant, Jr.
512-739-9915

Exhibit D

FILED
STATE OF MISSISSIPPI
LAFAYETTE COUNTY

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2023 AUG 31 AM 11:34

ROBERT SULLIVANT SR.

PLAINTIFF

CHANCERY CLERK

v.

ROBERT SULLIVANT JR.

DEFENDANT

BY DC _____

CAUSE NO. 2021-CV-612 (W)

ROBERT SULLIVANT JR.

THIRD PARTY PLAINTIFF

v.

**ROBERT SULLIVANT SR. and
EVELYN STEVENS**

THIRD PARTY CO-DEFENDANTS

ORDER

THIS CAUSE is before the Court on Dr. Frank Perkins' Motion to Quash the subpoena for deposition that was served on him at the behest of Robert Sullivant Jr. The Subpoena noted Dr. Frank Perkins' address at 3521 Lakeland Dr., Ste 1060, Flowood, MS and "COMANDED" him to appear at the Lafayette County Chancery Courthouse in Oxford Mississippi. at 1:00 p, on June 22, 2023. (doc 112).

Dr Perkins was appointed as an expert to examine Robert Sullivant, Sr by the agreement of the parties. The Court heard the Counter-Complaint filed by Robert Sullivant, Jr; and the Motion to Appoint Conservator by Robert Sullivant Sr. Dr. Perkins Medical Affidavit was filed with the Court. He testified in open court regarding this matter, and Robert Sullivant Jr. had the opportunity to question/cross-examine him therein.

On May 17, 2023, in which the Court found by clear and convincing evidence that Robert Sullivant, Sr. is incapable of managing his affairs and appointed Sherry Wall as his conservator. The Court entered an Order of May 18, 2023, holding that Mr. Sullivant, Sr. had the testamentary capacity to execute a will for his estate.

The subpoena did not comply with the Mississippi Rules of Civil Procedure nor the Mississippi Rules of Evidence; the deposition was not to take place where Dr Perkins was located, nor did it provide for or tender compensation of Dr. Perkins to prepare and have his deposition taken. Moreover, it has not been shown that the deposition was within the scope of discovery, but on issues the Court has already heard and resolved.

Accordingly, the Motion to Quash is GRANTED.

SO ORDERED, ADJUDGED, AND DECREED, this the 31st day of August, 2023.



HON. ROBERT Q. WHITWELL, CHANCELLOR

Prepared by:

J. Hale Freeland, MSB No. 5525
FREELAND MARTZ PLLC
302 Enterprise Dr., Suite A
Oxford, Mississippi 38655
(662) 234-1711
hale@freelandsmartz.com