

IN THE CHANCERY COURT OF LAFALETTE COUNTY, MISSISSIPPI

FILED
STATE OF MISSISSIPPI
LAFALETTE COUNTY

ROBERT SULLIVANT, SR

2022 DEC 12 P 1:29

PLAINTIFF

VS.

CHANCERY COURT

CAUSE NO.: 2021:612(W)

ROBERT SULLIVANT, JR

BY DC [Signature]

DEFENDANT

DEFENDANT’S EMERGENCY EX-PARTE MOTION FOR TEMPORARY ORDER RESTRAINING AND PRELIMINARY INJUNCTION FREEZING ACCOUNTS

COMES NOW, Defendant ROBERT SULLIVANT JR (“JR”), and requests this Court to freeze the assets and accounts of Plaintiff ROBERT SULLIVANT SR (“SR”). As will be further detailed in the request below, the Plaintiff’s attorney was to hold in a trust account the proceeds from the sale of land owned jointly by Plaintiff and Defendant, until further notice of the court. He has not done so, and upon information and belief, these funds were released directly to the Plaintiff and put into a joint account shared with Evelyn Stevens.

I. INTRODUCTION

The Plaintiff’s reckless spending and inability to manage his finances is well-documented. So much so, that Attorney Alford has finally conceded the need for a conservator, after refusing for months to submit the Plaintiff to a second IME and despite knowing for months that this was necessary. Predictably, the Plaintiff has continued to spend money and write checks since the conception of this case, including for the purchase of an automobile for Ms. Stevens which cost over \$42,000.00.

Neither Mr. Alford, nor Ms. Stevens are capable of overseeing the Plaintiff’s financial affairs and well-being. Ms. Stevens is likely taking advantage of the Plaintiff’s diminished capacity, and Mr. Alford has failed to follow this court’s order regarding maintaining a trust account for the proceeds of the aforementioned land sale. (See Ex. A, ¶ 6 & 7.)

The Plaintiff’s inability to manage his finances led to the creation of the original power of attorney held by Defendant from 2017-2021. His subsequent cognitive decline and likely nefarious influence of Ms. Stevens led to him to revoking the power of attorney and to continue to spending recklessly, albeit this time with money and/or gifts going to Ms. Stevens.

The Defendant was notified through a subpoena response from FNB Bank that the Plaintiff has had access to proceeds from the land sale and is spending it without discretion and under undue influence. Ms. Stevens also has access to these funds as a joint account holder and should

not be anywhere near the Plaintiff's finances, let alone able to access and withdraw from them. Because Ms. Stevens has access to this money; because the Plaintiff is in need of a conservator and has been this entire time, as both parties agree, and because Attorney Alford has foregone his duty to keep funds in a trust and preserve the Plaintiff's finances; emergency relief is required in order to maintain the Plaintiff's finances and shut down access to his account at the earliest possible time to prevent fraud and other malicious activity from occurring.

II. STANDARD OF REVIEW

A temporary restraining order (TRO) may be issued where "immediate and irreparable injury, loss, or damage will result to the applicant" before such time as a hearing on the matter can be held. Miss.R. Civ. P. 65(b)(1).

Mississippi Rule of Civil Procedure 65(b)(1) and (2). Rule 65(b) states that a TRO may be granted, without notice to the adverse party or his attorney[,] if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and reasons supporting his claim that notice should not be required.

The decision to grant a TRO is within the chancellor's discretion. C.M. v. R.D.H. Sr., 947 So.2d 1023, 1027 (¶ 11) (Miss.Ct.App.2007).

III. ARGUMENT

The aforementioned 65 authorizes parties to seek temporary restraining orders (TROs) and preliminary injunctions in civil cases in which permanent injunctive relief or other relief is being sought. A party may move for, and in appropriate circumstances, obtain a TRO and/or a preliminary injunction before the merits of the case are resolved. In re Rules of Civil Procedure; No. 89-R-99001-SCT (Miss. Jun. 9, 2014).

To obtain a TRO without notice to the adverse party, the party seeking relief must show, by affidavit or verified complaint, that it will suffer immediate and irreparable injury before the adverse party can be heard in opposition. In addition, the attorney for the party seeking the TRO must certify to the court in writing the efforts made to give the adverse party notice and the reasons why the notice to the adverse party should not be required. *Id.*

This Motion became relevant and necessary upon learning that Attorney Alford had violated this Court's order to maintain the proceeds from the February land sale.

Defendant's prior counsel, Attorney Brad Golmon, negotiated a deal with Attorney Alford that the proceeds from the sale of land sale would both be held by Attorney Alford in trust. (See Ex. B, pg 3-5). This agreement was also memorialized the Agreed Order for Independent Medical Exams. (See Ex. A, ¶ 6, 7).

There has been growing concern from the Defendant over the Plaintiff's finances and the manner in which they are being controlled. In order to confirm that Mr. Alford was indeed protecting the plaintiff's funds, Defendant subpoenaed FNB Bank for all records related to Plaintiff's accounts. Upon receiving these records, it was evident very quickly that the Plaintiff's land sale proceed funds were not being held in trust by Mr. Alford, but are in control of the Plaintiff, and Evelyn Stevens. The Plaintiff has continued his pattern of reckless spending.

Of equal concern is the fact that Mr. Alford never received the funds from the land sale and those funds, in violation of this Court's order, were distributed directly to the Plaintiff for him to do what he pleases in his diminished mental state. Mr. Alford has nefariously ignored his responsibility to his client, and to this Court.

On May 23, 2022 the Second Set of Combined Discovery was served upon the Plaintiff, which a discovery to obtain the sale's records of a purchased truck. Mr. Alford never satisfied the request. On July 6th, 2022, Defendant's former counsel Mitchell Driskell sent Mr. Alford multiple discovery requests for documents related to the Plaintiff's account and specifically for the sales documents related purchase of a truck costing over \$40,000.00, that the Plaintiff has no use for. Mr. Alford never communicated with Mr. Driskell regarding to comply with the request and has refused to produce the sales documents.

On August 28th, Mr. Driskell and Mr. Alford entered into a verbal agreement for the written agreed order for the production of the sales documents. (See Ex. C). Mr. Alford reneged on the agreement. In October 2022 in a conference between Defendant and Mr. Alford at Mr. Alford's office, he said he would produce the sales documents, and also stated that Ms. Stevens' name was on the truck. Mr. Alford has had this information and could produce it at any time. His unwillingness to participate in this discovery is concerning, and borderline suspicious.

Mr. Alford's omissions are particularly burdensome given that a third-party has access to the Plaintiff's account and this third party (Evelyn Stevens), introduced the Plaintiff to Mr. Alford and attended every meeting between the two, found Defendant's power of attorney and drove Plaintiff to have it revoked, and has been receiving gifts and an expensive automobile from the Plaintiff. All of this was within Mr. Alford's knowledge and he let it happen. He let it happen

despite the fact that he has an affirmative ethical duty to keep his clients funds protected and an order from this Court stating the same.

Mr. Alford has not only failed to hold the Plaintiff's accounts in trust, but he has also allowed a third-party access to the account and he has sat back and watched while the Plaintiff recklessly writes checks and submits to scams, including the most malicious scam, Ms. Stevens and her psychological manipulation of a mentally incapacitated elderly individual. Put bluntly, Mr. Alford has aided and abetted elder abuse to be committed against his client and he did it knowingly and in an arrogant and bold defiance of the ethics of his profession, the rules of conduct, and this Court's order.

Mr. Swayze and Ms. Stevens' behavior at Ms. Stevens deposition was indicative of evasiveness, coaching, and gamesmanship. First, Mr. Alford threatened to oppose the deposition without any valid objection, although the Defendant overcame the objection and proceeded.

When the deposition finally did take place, Ms. Stevens and Mr. Alford were on the same side of the table, facing each other. For every question asked, the witness looked at Mr. Alford and he would either nod or say 'you can answer'. It was well-documented by the court reporter as Ms. Stevens struggled with the word "Yes" quite frequently, instead just nodding her head. It was stipulated that all objections to questions would be made at trail. However, at one point during the deposition, Mr. Alford emphatically told the witness not to answer the question regarding the conversation in his office with the Plaintiff where she was present. (Ex.D, pg 7, 73:74). It was insisted by the Defendant that she answer, and both were reminded that her testimony is not protected by attorney client privilege. He still commanded her not to answer, which is an egregious violation of decor in depositions as Attorney Alford should know. When no valid objection follows a command not to answer a question, malfeasance can be reliably inferred. Mr. Alford's attempt to save face at very end of the deposition and allow the witness to answer a question from some time prior in the deposition, does not mitigate his unwarranted outburst in the middle of questioning, and demanding the silence of a witness while the Defendant is attempting to ask legitimate and relevant questions.

Further, Ms. Stevens continually failed to affirmatively answer questions, trepidatiously looking to Mr. Alford for guidance throughout the deposition. Ms. Stevens would constantly answer questions in the following manner:

1. "Witness nods head up and down"; (Ex. D, pg 7, 14:14, 37:6, 39:8, 39:18, 61:5).
2. "Um-hmm" or "uh-huh"; (Ex.D, pg 7, 18:1, 22:14, 34:9, 34:11, 41:6)

It is evident from the record, the foregoing facts, the attached Affidavit and Certification of Robert Sullivant Jr, that Mr. Alford is incapable of adhering to his duty to protect his Clients funds in trust. Mr. Alford cannot be relied upon to follow rules, ethics, or even court orders. His malpractice and malfeasance is explicitly violative of the Mississippi Rules of Professional Conduct, and quite possibly, Mississippi law. Further, misappropriation of Client funds typically ends with disbarment. See Mathes v. Mississippi Bar, 637 So.2d 840, 847 (Miss. 1994).

Miss. Prof. R. Cond. 8.4(c) dictates that it is professional misconduct or an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." This Court has defined dishonesty "as a `breach of honesty or trust, as lying, deceiving, cheating, stealing, or defrauding . . ." Townsend v. State, 605 So.2d 767, 771 (Miss. 1992) (Pittman, J., dissenting) (quoting State v. Page, 449 So.2d 813, 816 (Fla. 1984)). Fraud "involves **breach of duty, trust, or confidence**, it includes **all acts, omissions, or concealments by which another is injured, or an undue or unconscientious advantage is taken.**" Cumbest v. State, 456 So.2d 209, 217 (Miss. 1984) (quoting Smith v. State, 107 Miss. 486, 496, 65 So. 564, 567 (1914)). Deceit is "[a] fraudulent and deceptive misrepresentation, artifice, or device, used by one . . . to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon." Black's Law Dictionary 405 (6th ed. 1990). And a misrepresentation is a "false statement of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead." *Id.* at 1001.

Rule 8.4(d), which provides that it is professional misconduct for an attorney to "engage in conduct prejudicial to the administration of justice." The Supreme Court has held that conduct prejudicial to the administration of justice is synonymous with "**conduct unbecoming a member of the bar' [or] conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts.**" In re Snyder, 472 U.S. 634, 645(1985). For the most part this rule has been applied to those situations where an attorney's conduct has a prejudicial effect on a judicial proceeding or a matter directly related to a judicial proceeding. Model Rules of Professional Conduct Rule 8.4 (1996).

Most relatedly, Rule 1.15 - Safekeeping Property; dictates that;

- (a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds and other property shall be kept and preserved by the lawyer for a

period of seven years after termination of the representation.

(c) When a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests.

Mr. Alford has failed to adhere to these rules by allowing the Plaintiff to receive funds that were blocked by court order from him receiving; allowing Ms. Stevens access to these funds, and allowing the Plaintiff, who Mr. Alford has known for quite some time is in need of a conservator for his finances, to recklessly dissipate his assets. Moreover, Ms. Stevens access to these funds and the plaintiff's reckless spending should have been reported to the court due to the harm it could cause the plaintiff, not to mention to prevent the fraudulent and criminal activity of Ms. Stevens. As Rule 3.3 of Prof. Conduct states;

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

Rule 4.1(b), similarly states the following:

In the course of representing a client a lawyer shall not knowingly: fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Mr. Alford's inability to adhere to the Rules of Conduct as well as to protect his client's funds, and his attempts to cover up and conceal the finances of the Plaintiff and his relationship with Ms. Stevens renders him incapable of being trusted by the Court to responsibly maintain a trust account for the Plaintiff and his assets. Mr. Alford has blatantly allowed for fraud to be perpetuated upon the Plaintiff and is evasive and deceitful in trying to cover it up. As such, he is absolutely unqualified to be in charge of any financial accounting of the Plaintiff and Emergency Relief must be granted in order to cease and mitigate the Plaintiff's hemorrhaging accounts, being squeezed by both Ms. Stevens, and various other scams.

IV. CONCLUSION

Mr. Alford neglected to instruct Mitchell & McNutt to send him the proceeds per the negotiated the Agreed Order. He negotiated the order in bad faith with Defendant's prior counsel Brad Golman; knowing well that he was never going to put the funds in his trust account. Mr. Alford was at best indifferent to protecting the funds from a known risk. It was more likely a premeditated deceit showing his disrespect for this tribunal's objective of protecting his client. Mr. Alford is not serving his client's best interest. His motivation is to keep his incapacitated client happy, and turning the cash flow stream from the Plaintiff into an annuity. This must be stopped a the earliest possible time to prevent irreparable harm to the Plaintiff and his finances.

WHEREFORE, Defendant ROBERT SULLIVANT JR requests an order to temporarily restrain the Plaintiff from withdrawing funds from his financial accounts; and to prevent any further transactions from taking place until the matter of conservatorship is settled, by temporarily freezing the following accounts: FNB Bank Account Nos., **10822583** and **10822831**.

Respectfully Submitted: December 12th, 2022

A handwritten signature in black ink, appearing to read 'Robert Sullivan Jr', written over a horizontal line.

Robert Sullivan Jr
Defendant, Pro Se

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