

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIAM L. PEEBLES

APPELLANT

VERSUS

CAUSE NO 2013-CA-02111

SANDRA PEEBLES

APPELLEE

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PARTIES

I, the undersigned counsel for the Appellee, do hereby certify that the following persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal:

William L. Peebles, Appellant

Sandra Shattles Peebles, Appellee

S. Christopher Farris, attorney for Appellant

Robert R. Marshall, attorney for Appellee

Honorable Ray Montgomery, Special Appointed Chancery Court Judge

Respectfully submitted this the _____ day of June, 2014.

Robert R. Marshall

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT'S MOTION TO DISMISS ON THE BASIS OF DISCHARGE IN BANKRUPTCY, RES JUDICATA AND WAIVER
- II. THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON THE BASIS OF ENTITLEMENT TO CREDIT FOR SOCIAL SECURITY PAYMENTS

STATEMENT OF THE CASE

On March 22, 2004, William L. Peebles and Sandra A. Peebles were granted a JUDGMENT OF DIVORCE - IRRECONCILABLE DIFFERENCES incorporating by reference the provisions of a PROPERTY SETTLEMENT AGREEMENT in the Chancery Court of Lamar County, Mississippi.(RE 5-RE20).

The JUDGMENT OF DIVORCE IRRECONCILABLE DIFFERENCES was prepared by the appellant in this cause "WILLIAM L. PEEBLES, Attorney for Husband..Ms Bar No 4089" (RE7) as was the PROPERTY SETTLEMENT AGREEMENT (RE20).

The PROPERTY SETTLEMENT AGREEMENT provided, in pertinent part,:

"II. PROPERTY DIVISION-Real Property. Wife shall receive absolute ownership of the home located as 151 West Shore Drive, Hattiesburg, Mississippi. Husband shall execute a Quitclaim Deed conveying all of his interest in and to the marital home to the Wife and Husband shall be responsible for said house note which included taxes and insurance....." (RE9)

"Husband's obligation to pay the costs of her major medical hospitalization and health insurance for the wife shall **remain in full force and effect until Wife qualifies and begins receiving Medicare benefits or until Wife's death or remarriage**".(Emphasis added)

VII. ALIMONY. Wife waives any claim to periodic or lump-sum alimony from the Husband and Husband waives any claim to periodic or lump-sum alimony from the Wife."

IX. RIGHTS. The parties to this *Agreement* each waive any and all right to the following:

d. **To make any claim against the retirement income, if any of the other.**
(emphasis added)

X. GENERAL PROVISIONS OF AGREEMENT

.....

Contract Between the Parties: "This Agreement constitutes a contract, and it is binding upon the parties on this date. This Agreement shall be submitted to the Chancery Court of Lamar County, Mississippi, for its approval and may be incorporated into a final judgment of divorce." (RE16)

XII. LEGAL REPRESENTATION. The husband, William L. Peebles, Attorney at Law is representing himself Pro Se in this matter, ..." (RE18)

Attorney Peebles paid as per the contractual terms for years until he apparently decided he had paid enough. He quit paying his contractual obligations, apparently in the mistaken belief that Sandra would be unable to find or unable to afford an attorney to represent her.

On June 30, 2011, a PETITION FOR CITATION FOR CONTEMPT was filed against Attorney Peebles, reciting that he was \$25,404.47 through May of 2011.

On November 10, 2011, Attorney Peebles filed an extensive pleading, the entirety of which is found at RE 23 through RE34, raising in these pleading for the first time in paragraph 3 affirmatively that he claimed he should have been given credit for the amounts of social security payment Mrs. Peebles began receiving in the amount of \$708 "... due to the fact that the Plaintiff/Counter-Respondent began to withdraw approximately \$708 per month from the Defendant/Counter petitioner's Social Security which should have been an offset to any payments that he owed to the Plaintiff Counter Respondent and such offsets have not been deducted from what he has paid."

This is the first mention of any intent to claim credit and is obviously more an excuse for

nonpayment of his contractual obligations than any relief belief that Attorney Peebles believes he should receive as credit for Sandra's social security payments, not Billy's, as the money Sandra receives is solely available to her and costs Attorney Peebles not the first penny from his income. Had this been intended by the parties, and not simply an excuse for not paying, then Attorney Peebles would have claimed a credit concurrently with the date Sandra began receiving her social security monthly payments, which he did not.

During the course of the contempt proceedings against him, Attorney Peebles filed a Bankruptcy Petition on June 12, 2012. A copy of the NOTICE OF CHAPTER 7, Bankruptcy Case, Meeting of Creditors, and Deadlines is attached as an exhibit.

The indebtedness to Sandra A. Peebles was listed in Schedule E-Creditors Holding unsecured Priority Claims under 'DOMESTIC SUPPORT OBLIGATIONS: A COPY OF THIS SCHEDULE IS ATTACHED HERETO AS AN EXHIBIT.

On October 9, 2012, Attorney Peebles received a discharge.

A copy of the front and back pages of the DISCHARGE OF DEBTOR is attached hereto as an exhibit.

The back of the DISCHARGE clearly sets forth under "**Debts That are Not Discharged:** Some of the common types of debts which are not discharged in a Chapter 7 bankruptcy case are:

c. Debts that are for domestic support obligations....."

RECALL THAT ATTORNEY PEEBLES DEBT TO HIS WIFE WAS LISTED AS A DOMESTIC SUPPORT OBLIGATION.

Subsequent to the issuance of the DISCHARGE OF DEBTOR the contempt litigation was resumed.

On July 14, 2013, Attorney Peebles filed a MOTION FOR SUMMARY JUDGMENT (RE35-37). Attorney Peebles asserted that he was protected from collection efforts by virtue of his discharge in bankruptcy and that he was entitled to a dollar for dollar credit “from all benefits the Plaintiff received from his social security benefits against his monthly support obligation.”

On July 10, 2013, a RESPONSE TO MOTION FOR SUMMARY JUDGMENT was filed by Sandra Peebles (RE55-57)

On September 19, 2013, Special Chancellor Ray Montgomery issued an ORDER overruling the motions for summary judgment.(R58)

On November 27 3013 a CONSENT JUDGMENT RESERVING RIGHT TO APPEAL was entered.(RE59,60) **NOTE: This CONSENT JUDGMENT reserved the right to appeal ONLY from the denial of Attorney Peebles request for credit for social security payments. “All parties and the Court agree that the Defendant, William L. Peebles shall have the right to seek an appeal from the Court’s pretrial ruling denying his request for credit for the social security payments the Plaintiff has been receiving as a result of Defendant’s contributions into social security....”**

For this reason alone, this Court should disregard the Bankruptcy arguments in the appeal, though Sandra will respond, the argument having been made in the appeal.

A NOTICE OF APPEAL was timely filed on November 16, 2013, bringing this matter before this Court.

SUMMARY OF THE ARGUMENT

Attorney William Peebles contracted with his then wife Sandra to pay certain debts, including her house note. He himself prepared the contract (PROPERTY SETTLEMENT AGREEMENT). Thus the provisions should be construed most strongly against him.

Attorney Peebles quit making the payments and was sued for contempt for failing to do so.

One of his claims is that he should receive a dollar for dollar credit against the sums he owes Sandra as a result of his contract with her because the Social Security monthly payments she receives are based on what he paid in while married to Sandra. The problem he has with this position is that social security was obviously considered at the time the agreement was drafted because one of the provisions included was a provision concerning insurance once Sandra began receiving Social Security. Had he intended to receive credit for Sandra's social security payment, this provision should have been included in the contract and was not. The change was not unanticipated at the time of the divorce. He knew Sandra was going to receive the money and knew the source.

A second problem is that he included a provision where neither could make a claim against the retirement of the other, which he now attempts to do. (See Page 1)

Attorney Peebles made a bargain and entered into a binding contract and should be required to live up to the provisions of his contract, which he certainly has the financial ability to do, since he discharged all his other debts in bankruptcy. Judging from the amount of unsecured debt he discharged, he never intended to pay anyone.

As far as his claim that the debt to Sandra was discharged in bankruptcy is concerned,

that matter was conceded at the trial court level. The debt was discharged and Bill knew the debt was discharged at the time he raised the question. He now raises the question again apparently solely for the purposes of obfuscation and confusion. If he truly believed that he was entitled to discharge this indebtedness, the proper place to litigate would be the bankruptcy Court which is fully familiar with the applicable law and can impose severe penalties for violation of the law.

ARGUMENT

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT'S MOTION TO DISMISS ON THE BASIS OF DISCHARGE IN BANKRUPTCY, RES JUDICATA AND WAIVER.

As I have previously pointed out, this issue is not properly before this Court, the sole issue "reserved" for appeal in the CONSENT JUDGMENT being whether or not Attorney Peebles is entitled to credit for Sandra's social security payments.

Since the matter has been raised, however, this issue will be addressed.

The major reason that this debt was not discharged is that debts of this class or not entitled to discharge by clear language of the bankruptcy petitions itself, based on the provisions of the BANKRUPTCY ABUSE AND PREVENTION CONSUMER PROTECTION ACT OF 2005. (See the exhibits attached and the copy of the bankruptcy discharge attached.

Even before the advent of the 2005 Act, however, a debt such as that before the Court was nondischargable. In the remarkably similar case of *LOWE ARTHUR HEWITT V. DEBORAH ETHERIDGE HEWITT*, CA No: 1:06CV4HSO-JMR (October 10, 2007, an agreement to pay a house note for a former wife was held to be nondischargable.(See RE39-RE48).

This case arose in the same district as the instant case and involved another local lawyer

who paid until he decided he had paid enough and quit paying, just as Attorney Peebles did, then sought every excuse for his actions and every way to evade his contractual obligations, including an unsuccessful attempt to discharge the obligation in bankruptcy. This case was decided under the old bankruptcy law. In HEWITT the Court made a factual determination that the agreement between Hewitt and Etheridge, obligating Hewitt to pay the monthly mortgage note on the marital home was in the form of support for Etheridge. There was no finding that the payments were in the nature of alimony, because, just like the instant cause, Attorney Peebles his property settlement agreement waives alimony at the same time making him contractual liable for the house payments.

As was pointed out to the Chancellor below, the proper court in which to determine a violation of the discharge provision of the BANKRUPTCY CODE is the Bankruptcy Court issuing the discharge. See SEYMOUR V. SEYMOUR, 869 So.2d 1035 (Miss App 2004). If the debt was discharged, which it is not, then Attorney Peebles can ask the bankruptcy court to enforce the discharge and for sanctions against me. He has not done so because he is well aware that his indebtedness to Sandra WAS NOT discharged in his bankruptcy.

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT'S MOTION FOR SUMMARY ON THE BASIS OF ENTITLEMENT TO CREDIT FOR SOCIAL SECURITY PAYMENTS.

THIS COURT SHOULD KEEP IN MIND THE FACT THAT ATTORNEY BILLY PEEBLES DRAFTED THE PROPERTY SETTLEMENT AGREEMENT AND THAT AN AGREEMENT IS CONSTRUED MOST STRONGLY AGAINST THE PARTY DRAFTING THE AGREEMENT.

Attorney Peebles attempts to convince this Court that the payments for the house constitute alimony.

Once again, Attorney Peebles attempts to bend the facts to suit his theory of the law in an

attempt to escape a contractual obligation. If the payment was alimony, he would have listed the payment as alimony in his bankruptcy petition, which he did not.

If the payment was alimony, he would have deducted that payment from his taxes, which he did, a fact which he neglects to mention here.

In his bankruptcy petition Attorney Peebles correctly listed the debt to his former wife as a domestic support obligation. He made an agreement to pay the house note and now, after living with the terms of the agreement for several years, now seeks to evade the consequences of that agreement through a modification of that agreement, which this Court should not allow, particularly of an attorney who himself drafted the property settlement agreement.

The whole appeal smacks of an appellant seeking an advisory opinion. The Supreme Court has no authority to issue advisory opinions, regardless of the importance of the question involved. **Gipson v. State, 36 So. 2d 154 (Miss 1948; Foster v. Foster, 788 So. 2d 799(Miss. App. 2000).**

The PROPERTY SETTLEMENT AGREEMENT is a contract between Sandra and Attorney Peebles(NO MODIFICATION UNLESS UNANTICIPATED AT THE TIME OF THE DRAFTING) We know this because of the general law covering Property Settlement Agreements and because the agreement recites in paragraph XX un der the heading CONTRACT BETWEEN THE PARTIES: “This agreement constitutes a contact, and is binding upon the parties on this date.; This agreement shall be submitted to the Chancery Clerk of Lamar County, Mississippi, for it’s approval and may be incorporated into a final judgment of divorce.”

The law is clear on this facet of this litigation-a property settlement agreement is a contract between the parties and, as regards any aspect other than periodic alimony or child

support, cannot be altered.

In Weathersby v. Weathersby, 693 So.2d 134r8 (Miss. 1997) the Court Stated:

Property settlement agreements are fixed and final, and may not be modified absent fraud or contractual provision allowing modification.”

In Pace v. Pace, 24 So. 3d 325(2009) the Court stated:

“In property and financial matters between the divorcing spouses themselves, there is no question that, absent fraud or overreaching, the parties should be allowed broad latitude. When the parties have reached an agreement and the chancery court approved it, we ought to enforce it and take as dim a view of efforts of modify it, as we ordinarily do when persons seek relief from their improvident contracts ...”

The Pace (supra) case deals with a former partner attempting to evade his contractual obligation to pay a mortgage payment for a former wife, just as Attorney Peebles does in the instant case.

Against this background, the Court should examine the contract entered into between Sandra and Attorney Peebles which was incorporated into the JUDGMENT OF DIVORCE-IRRECONCILABLE DIFFERENCES.

Under paragraph II, the parties contracted:

“A. Wife shall receive absolute ownership of the home located at 151 West Shore

Drive, Hattiesburg, Mississippi. Husband shall execute a Quitclaim Deed conveying all of his interest in and to the marital home to the Wife and Husband shall be responsible for said house note, which includes tax and insurance until on of the following ...” (None of the conditions has occurred)

Had the parties agreed that Sandra’s social security benefits would be substituted for the house payments when she began receiving payments, this is the point at which any such contractual obligation should appear. There was none and no such agreement. Attorney Peebles

now attempts to convince us that the mere fact that Sandra began receiving Social Security payments should entitle him to credit. He doesn't inform us how he thinks his former wife is going to eat and provide shelter for herself, should this credit be given.

This obligation is not alimony because paragraph VII ALIMONY of the Property Settlement Agreement provides: "Wife waives any claim to periodic or lump sum alimony from the Husband and Husband waives any claim to periodic or lump sum alimony from the Wife..."

One Mississippi case has held that such a mortgage payment was part of equitable distribution and that such payment was not child support. See **Brooks v. Brooks**, 76 So. 3d 2011 (Miss App 2011).

In **Hewitt** (*supra*) the bankruptcy Court uses the term "...such liability is in the nature of support for Deborah Etheridge Hewitt. The payment in neither case was "alimony"

Whatever the case, not being alimony and child support but being a clause in a contract, the obligation cannot be altered, only enforced. The obvious contractual intent was to support Sandra by relieving her of the obligation to make house payments and enable her to have a place to live and enable her to be able to provide a living for herself with her Social Security Payments. (Ironically, the Brandon Brooks involved in the **Brooks** (*supra*) case is also a Hattiesburg attorney, like Billy Peebles and Art Hewitt.) All have in common a desire to escape a financial obligation after getting rid of their wives and all apparently have no compunction in attempting to do so nor any compassion for the situation in which they place their former wives. Apparently their perception is "I promised to do so but I really didn't mean it because the promise was to my ex wife, and she can starve for all I care."

Attorney Peebles now asserts that he should receive credit against the house note and his

other obligations under his contract for the amounts Sandra receives from social security and is asking this Court to leave his former wife destitute and relieve him from a payment that is a minuscule amount of his monthly income, particularly now that he has discharged some \$800,000 in unsecured debt.

Like the Bankruptcy claim, this claim is more afterthought excuse for not complying with this Court's orders than any cognizable claim. Apparently Attorney Peebles only recently dreamed up this excuse because his failure and refusal to pay the obligations under his contract did not coincide with Sandra beginning to receive HER Social Security payments-and they were and are HER payments not part of Attorney Peebles payments. Had the application of Sandra's social security payments to the house note been part of the contract, such agreement would have been set forth in the Property Settlement Agreement and was not, though other incidents of receiving social security were covered. The receipt of social security payments was obviously contemplated by both parties and in the agreement he drafter Attorney Peebles specifically contracted to make no claim against Sandra's retirement in Paragraph IX. Rights he provided "The parties to this agreement each waive any and all rights to the following: To make any claim against the retirement income, if any, of the other.

Further, had Attorney Peebles actually believe that he was to receive credit for the payments from Sandra's social security entitlement against his contractual obligations, he would have written or notified Sandra there would be no more payments from him when she began to receive payments from social security, which he did not do and has not done to this day.

Under Paragraph III INSURANCE, we find the provision:" When Wife qualifies for Medicare, Husband shall be responsible for a supplemental insurance policy and shall continue to

pay for those medical expenses not covered by said insurance...

“Husband agrees to pay any and all reasonable and necessary costs for prescription medication incurred by the Wife, which are not covered by her Blue Cross Blue shield policy or medicare ...”

“Husband’s obligation to pay the costs for her major medical hospitalization and health insurance for the Wife shall remain in full force and effect until Wife qualifies and begins receiving Medicare benefits of until Wife’s death or remarriage ...”

Attorney Peebles and Sandra obviously considered retirement at the time of the execution of the Property Settlement Agreement, and he obviously knew that Sandra would receive a monthly payment from the Social Security administration, and he agreed to make no claim against her retirement. The Social Security Administration website at SSA.GOV reflects that the money is Sandra’s and Sandra’s alone. The benefits are Sandra’s and Sandra’s alone and detracts not a cent from what Attorney Peebles receives-the money is hers which she earned by being married to Attorney Peebles. There is absolutely no reason Attorney Peebles should receive any credit for money paid to Sandra that is Sandra’s against an obligation which he created by contract, particularly since he was well aware that she would receive social security retirement funds. If he wanted to include these funds as a part of his contract, he should have taken affirmative action to do so. He cannot now alter his agreement to claim credit for something over which he had and has no control and that is the sole property of Sandra’s. The money received by Sandra from social security is her separate estate . The money received by Attorney Peebles is his separate estate. **Reffalt v. Reffalt, 2010-CA-01013COA (December 2011)** discusses social security benefits and contractual obligations in detail.

CONCLUSION

For the reasons set forth herein and for the further reason that this court should refuse to allow an attorney to utilize a novel legal argument of first impression to justify his breach of contract drafted by him.. To allow attorney William L. Peebles to do so will reflect adversely on the entire legal profession.

Respectfully submitted this the 23rd day of June, 2014.

SANDRA PEEBLES by

/s/ Robert R. Marshall

Robert R. Marshall, her attorney

CERTIFICATE OF SERVICE

I, **Robert R. Marshall**, Attorney, do hereby certify that I have this date provided a true and correct copy of the above and foregoing *Brief of Appellee* to:

Chris Farris
6645 U.S. Highway 98 West, Ste. 3
Hattiesburg, MS 39402

DATED this the 23rd day of June, 2014.

/s/ Robert R. Marshall

Robert R. Marshall