IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

IN THE MATTER OF THE ESTATE OF
LOUIS LABASSE, JR., DECEASED

WENDY CHESTER, INDIVIDUALLY AND
AS EXECUTRIX OF THE ESTATE AND
PAMELA L. LABASSE (ORTIS) APPELLANTS

VERSUS CAUSE NO. 2016-TS-00414

RUBY D. LABASSE APPELLEE

PETITION FOR WRIT OF CERTIORARI

APPEAL FROM CHANCERY COURT
OF PEARL RIVER COUNTY

AND

PETITION FOR WRIT OF CERTIORARI
FROM THE MISSISSIPPI COURT OF APPEALS

G. CHARLES BORDIS, IV, ESQ.
BORDIS & DANOS, PLLC
1215 Government Street
Ocean Springs, MS 39564
228-215-1367
228-215-1358-fax
MS BAR ID. 3695

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed 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.

1. Wendy Chester. . . . . Appellant
2. Pamela L. Labasse (Ortis). . . . . Appellant
3. Ruby D. Labasse. . . . . Appellee
4. G. Charles Bordis, IV, Esq.. . . . . Attorney for Appellants
5. James L. Gray, Esq.. . . . . Attorney for Appellee
6. Honorable Deborah Gambrell. . . . . Chancellor of Pearl River County

/s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Other Authorities

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PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioners, WENDY CHESTER, Individually and as Executrix of the Estate and PAMELA L. LABASSE (ORTIS), by and through their attorney of record, Bordis & Danos, PLLC, who, pursuant to Rule 17 of the Mississippi Rules of Appellate Procedure and other relevant laws, file this their Petition for Writ of Certiorari, and in support thereof, would state that review should be granted in that the Court of Appeals has rendered a decision which is in conflict with prior decisions of the Court of Appeals and Supreme Court of Mississippi and which fails to take into consideration the constitutional rights, including the due process rights of the Petitioners. In support of the Petition for Writ of Certiorari, the Petitioners would show unto this Honorable Court the following, to-wit:

I.

The matter being appealed from the Chancery Court of Pearl River County, Mississippi involves an estate administration in which statutorily required necessary parties were never made parties to the proceeding. Further, there is no transcript from the lower court because there was never a single matter considered in open court. The beneficiaries of the Last Will and Testament of

the decedent, LOUIS LABASSE, JR., were divested of a portion of their interest in real property which was devised unto them, without the benefit of notice and an opportunity to be heard.

II.

The Mississippi Court of Appeals affirmed the actions of the lower court. A copy of the Opinion of the Mississippi Court of Appeals which was issued on September 12, 2017 is attached hereto as Appendix 1.

The Petitioners timely filed a Motion for Rehearing in the Mississippi Court of Appeals following receipt of the Opinion issued by the Mississippi Court of Appeals. A copy of the Motion for Rehearing is attached hereto as Appendix 2 to the Petition for Writ of Certiorari. On or about February 20, 2018, the Mississippi Court of Appeals denied the Motion for Rehearing, and a copy of the denial is submitted as Appendix 3 to this Petition.

III.

With all due respect for the Court of Appeals, the decision handed down by the Mississippi Court of Appeals overlooks many legal principles which have been part of Mississippi jurisprudence for years.

First, as far back as 1842, this Honorable Court held in Campbell v. Brown, 6 Howard 230 (1842) as follows:

> "No man can be considered to lose his life, liberty or property by a Judgment or Decree who has no notice of the proceedings against him and consequently no opportunity to contest it."

WENDY CHESTER, a Petitioner herein, was devised a one-half interest in her father's real property, subject only to the life estate devised to RUBY D. LABASSE by the decedent.

Pursuant to the Last Will and Testament of the decedent, the real property of the decedent

descended to the legatees upon his death. Campbell v. Brown, 6 Howard 230 (1842).

Pursuant to the Judgment of the Pearl River County Chancery Court, the Petitioners were divested of their interest in the real property when the lower court awarded the surviving spouse, RUBY D. LABASSE, a one-third interest in the property.

RUBY D. LABASSE, never sought a one-third ownership in the real property yet the lower court ordered such. Even if renunciation of the will is considered, the trial court must consider the value of the widow's separate estate. If the value of the separate estate exceeds the value of the decedent's estate, the widow is precluded from renouncing the will. The lower court simply did not comply with Mississippi Code Annotated §91-5-29 which requires that value of the widow's separate estate be considered.

IV.

The Petitioners were never made parties to RUBY D. LABASSE's Petition to Contest the Will, for Accounting and for Widow's Allowance, despite the requirements of Mississippi Code Annotated §91-7-21 (1972, as Amended).

> "Any one desiring to contest a will presented for probate may do so before probate by entering in the clerk's office in which it shall be presented his objection to the probate thereof, and causing all parties interested and who do not join him in such objection to be made parties defendant. Thereupon the issue devisavit vel non shall be made up and tried, and proceedings had as in other like cases. When an objection to the probate of a will has been made in writing, filed with the clerk, probate shall not be had of such will without notice to the objector."

It is undisputed that Petitioner, PAMELA L. LABASSE (ORTIS), was never made a party to RUBY D. LABASSE's Petition to Contest Will nor was WENDY CHESTER served with process.

The Chancery Court is without authority to hear a Petition to Contest Will where movant

failed to properly designate the beneficiaries of the Last Will and Testament as interested and necessary parties. Padron v. Martell, 651 So.2d 1052 (Miss. 1995)

Further, heirs-at-law of the decedent who would take property of the deceased in absence of a will are necessary parties to a Petition to Contest Will. Provenza v. Provenza 201 Miss. 836; 29 So.2d 669 (1947)

V.

In a separate matter involving lack of notice and opportunity to be heard, the Pearl River County Chancery Court proceeded to enter a Final Decree in absence of any notice to a creditor that had a claim which was filed, registered and probated. The Petition to Close the Estate stated that "there are no claims probated against the estate." The decision of the lower court condones actions which ignore the valid claims of creditors.

Not only was the creditor not noticed of the hearing on the final accounting, but the devisees and beneficiaries of the Last Will and Testament of the decedent and the heirs-at-law of the decedent were not notified.

Mississippi Code Annotated §91-7-293, §91-7-295 and §91-7-297 require the Petition to include the names and addresses of the heirs and devisees and further requires that a Summons shall be issued to the heirs and devisees. The intent of the statute is to afford the interested parties an opportunity to be heard as to whether or not the final accounting should be approved. See, Smith ex rel Young v. Estate of King, 501So.2d 1120 (Miss. 1987).

VI.

It is ironic that the Mississippi Court of Appeals appears to be aware of the requirements of notice and due process, yet the justification for affirmation of the Pearl River County Chancery Court

ruling is that the devisees were not parties below. With this legal reasoning, one must question whether or not less than all of the heirs can proceed with estate administration by intentionally failing to provide notice to all heirs in an effort to obtain a greater share of the estate? Are the heirs who are not notified of estate proceedings now precluded from objecting simply because they were not made parties to the proceedings? The issue is that the devisees must be parties and the only way to cure defects is to reverse the decision of the lower court. The lower court and Mississippi Court of Appeals should not be allowed to "look the other way" when considering statutes that requires that all intended parties should be noticed.

CONCLUSION

In light of the foregoing facts and analysis, the Petitioners respectfully contend that the decision by the lower courts to grant and affirm the decisions of the Pearl River County Chancery Court was reversible error as the decisions are contrary and inconsistent with clear statutory requirements and long standing principles found in case law regarding estate administration.

The decision of the Mississippi Court of Appeals will have far reaching effects on future estate administration in Mississippi. The decision encourages one to complete an estate administration in a manner which ignores the requirements regarding notice to beneficiaries and heirs-at-law of the decedent.

Respectfully, this seems like a case which had a simple solution on appeal. If the case is sent back to the Chancery Court, everyone is afforded the opportunity to be heard and no party will be prejudiced by such.

It is blatantly unfair to be denied the right to participate and be heard in an estate involving the Last Will and Testament of the Petitioners' father–one in which the Petitioners were devised the

decedent's real property, only to be divested of the same without any notice and opportunity to be heard.

As such, it is hereby respectfully requested that this Honorable Court grant the Petition for Writ of Certiorari and reverse the decision of the Mississippi Court of Appeals

RESPECTFULLY SUBMITTED, this the 1st day of March, 2018.

WENDY CHESTER AND
PAMELA L. LABASSE (ORTIS),
Petitioners

By: /s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV
Attorney for Petitioners

CERTIFICATE OF SERVICE

I, G. Charles Bordis, IV, of counsel for the Petitioners, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Petition for Writ of Certiorari, to the following individuals at their usual mailing addresses:

1. James L. Gray, Esq., Attorney for Appellee; and,

2. Honorable Deborah Gambrell, Chancellor of Pearl River County Chancery Court.

THIS the 1st day of March, 2018.

/s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV

G. CHARLES BORDIS, IV, ESQ.
BORDIS & DANOS, PLLC
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2016-CA-00414-COA

IN THE MATTER OF THE ESTATE OF LOUIS LABASSE, JR., DECEASED: WENDY CHESTER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF LOUIS LABASSE, JR.	**APPELLANT**
v.	
RUBY D. LABASSE	**APPELLEE**

DATE OF JUDGMENT:	02/08/2016
TRIAL JUDGE:	HON. DEBORAH J. GAMBRELL
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	G. CHARLES BORDIS IV
ATTORNEY FOR APPELLEE:	JAMES L. GRAY
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
DISPOSITION:	AFFIRMED - 09/12/2017
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, C.J., BARNES AND CARLTON, JJ.

CARLTON, J., FOR THE COURT:

¶1. Louis Labasse Jr. died on June 11, 2014. He was survived by his wife, Ruby Labasse, and his daughters from a prior marriage, Wendy Chester and Pamela Ortis. The Pearl River County Chancery Court granted Wendy's petition to probate her father's last will and testament and to be appointed executor of his estate. Throughout the probate proceedings, Ruby filed multiple petitions and motions requesting various relief. Aggrieved by the chancellor's grant of relief to Ruby, Wendy appeals and argues the chancellor erred by: (1) considering Ruby's petition to contest the will; (2) ruling upon the final accounting, the

petition to close the estate, and Ruby's objections to the final accounting; (3) awarding Ruby a one-third interest in Louis's estate; (4) ruling on Ruby's "Motion for Citation of Contempt" against Wendy; and (5) awarding Ruby attorney's fees. Through two motions filed at the same time as her appellate brief, Ruby raises additional issues for this Court's consideration: (1) whether Pamela should be dismissed as an appellant from this appeal; and (2) whether she is entitled to attorney's fees and expenses on appeal.

¶2. Upon review, we affirm the chancellor's judgment. We also find Ruby's motion to dismiss Pamela as an appellant is well taken, and we therefore dismiss Pamela in this matter. However, although Wendy's claims on appeal ultimately prove unsuccessful, we decline to find her appeal frivolous. We therefore deny Ruby's motion for attorney's fees and expenses on appeal.

FACTS

¶3. On May 22, 2014, less than a month before his death, Louis published and declared an instrument that purported to be his last will and testament. Subject to certain restrictions, the will left Ruby a life estate in real property that served as the couple's homestead. Ruby also received Louis's interest in the couple's joint checking account. Louis's daughters Wendy and Pamela received the remainder of Louis's property. On July 18, 2014, Wendy filed a petition to probate her father's will and to be appointed executor of his estate. On July 24, 2014, the chancellor entered an order to admit the will to probate in common form and to appoint Wendy executor.

¶4. On October 10, 2014, Ruby renounced the bequest and devise of the probated will and filed a spousal-share election pursuant to Mississippi Code Annotated section 91-5-25 (Rev. 2013). The following month, on November 20, 2014, Ruby filed a petition to contest the will and remove Wendy as executor, and she requested an accounting and a widow's allowance. The same day, Ruby also filed a petition to establish her widow's right to the possession and use of the couple's homestead.

¶5. On February 11, 2015, the chancellor entered an order on Ruby's various petitions. The chancellor found that Wendy had changed the locks on Louis and Ruby's homestead and had removed property from the homestead. In addition, the chancellor determined that, prior to Louis's death, Wendy used a power of attorney to write checks to herself and withdraw $24,795.98 in funds from Louis and Ruby's joint checking account. In her February 11, 2015 order, the chancellor (1) dismissed Ruby's petition to contest the will after acknowledging that Ruby had withdrawn the petition; (2) denied Ruby's petition for a widow's allowance; (3) denied Ruby's petition to remove Wendy as executor, subject to Wendy's compliance with the requirements the chancellor established in the order; (4) granted Ruby's petition to establish her right to the possession and use of the homestead; and (5) granted Ruby a spousal-share election and awarded her a one-third interest in Louis's estate. In addition to the other requirements, the chancellor ordered Wendy to return all the personal property she had removed from the homestead and to deliver the homestead keys to Ruby.

¶6. On May 18, 2015, Ruby filed a "Motion for Citation of Contempt" against Wendy, claiming that Wendy had willfully disobeyed the chancellor's February 11, 2015 order. Following a hearing on Ruby's contempt motion, the chancellor entered an agreed order that, among other things, directed Wendy, as estate executor, to file an inventory and accounting, place certain funds into the account for Louis's estate, and pay Ruby attorney's fees related to the contempt action.

¶7. On July 2, 2015, Wendy filed her inventory and accounting, to which Ruby timely objected. At a telephonic hearing, the chancellor ruled that, in lieu of ordering Wendy to deposit certain funds into the estate account, she would award Ruby a monetary judgment against Wendy. Thus, on September 2, 2015, the chancellor entered an order awarding Ruby $18,795.98 plus interest against Wendy for Wendy's failure to comply with the chancellor's earlier order. The chancellor reserved a ruling on Ruby's request for attorney's fees until the close of Louis's estate.

¶8. On November 24, 2015, after Wendy failed to comply with the chancellor's order to file a final accounting and close the estate, the attorney for the estate signed and filed the final accounting and the petition to close the estate and discharge Wendy as executor. On February 8, 2016, the chancellor granted the petition to close the estate. Aggrieved by the chancellor's grant of Ruby's various requests for relief, Wendy appeals.

STANDARD OF REVIEW

¶9. This Court declines to disturb a chancellor's factual findings unless the findings were

manifestly wrong or clearly erroneous or the chancellor applied an erroneous legal standard. *Turnage v. Brooks*, 213 So. 3d 103, 105 (¶2) (Miss. Ct. App. 2016). "As long as substantial evidence supports the chancellor's findings, an appellate court is without authority to disturb them, even if it would have found otherwise as an original matter." *Id.* (citing *Joel v. Joel*, 43 So. 3d 424, 429 (¶14) (Miss. 2010)). However, we review questions of law de novo. *Id.*

DISCUSSION

I. Whether Pamela should be dismissed as an appellant.

¶10. As an initial matter, we address the issue raised in Ruby's motion that Pamela should be dismissed as an appellant from this appeal. Mississippi Code Annotated section 11-51-3 (Rev. 2012) provides for an appeal "from any final judgment of a circuit or chancery court in a civil case, not being a judgment by default, by *any of the parties or legal representatives of such parties* . . . ." (Emphasis added). The Mississippi Supreme Court has explained that "statutes which allow a 'party' to appeal, as a rule, limit the right to those who were original parties to the action or proceeding." *Ridgway v. Scott*, 237 Miss. 400, 405, 114 So. 2d 844, 845 (1959) (citation omitted). As Ruby correctly asserts, Pamela was never a party to this matter at the trial level and only purportedly became a party once the matter was appealed. We therefore grant Ruby's motion to dismiss Pamela as an appellant from this appeal. We next turn to a review of Wendy's various assignments of error before addressing the final issue Ruby raises in her second motion.

II. Whether the chancellor erred by considering Ruby's petition to contest the will.

¶11. Wendy argues the chancellor erred by "considering, hearing, and adjudicating" Ruby's petition to contest the will. According to Wendy, error occurred because Ruby failed to join Pamela as a necessary party to the will contest. *See Garrett v. Bohannon*, 621 So. 2d 935, 937 (Miss. 1993) (recognizing that a decedent's heirs-at-law generally constitute necessary and interested parties to a will contest). However, as just discussed, the record reflects that Pamela was never a party to this matter in chancery court. In addition, the chancellor's February 11, 2015 order reflects that Ruby withdrew her petition to contest the will and that the chancellor thereafter dismissed the petition without prejudice. Thus, despite Wendy's assertions, the record fails to demonstrate that the chancellor ever considered, heard, or adjudicated the merits of Ruby's petition to contest the will. In fact, as Wendy herself admits, no hearing was ever conducted in open court, and "no evidence in the form of exhibits or live testimony on the record was presented." For these reasons, we find this assignment of error lacks merit.

III. Whether the chancellor erred by ruling upon the final accounting, the petition to close the estate, and Ruby's objections to the final accounting.

¶12. Wendy next argues that the chancellor erred by considering the final accounting, the petition to close the estate, and Ruby's objections to the final accounting. Wendy contends that the final accounting and the petition to close the estate were neither signed by her nor contained "a statement under oath [that] set forth the names and addresses of [Louis's] devisees, legatees[,] and [heirs-at-law.]" Wendy further argues that, after the filing of the

final accounting and the petition to close the estate, no summons ever issued for Pamela, Pamela was never served with process, no notice of hearing ever issued, and the chancellor never conducted a hearing. Finally, Wendy claims that, "[d]espite the fact that the heirs and creditors were never listed in the pleadings and never served with process, the [chancellor] proceeded without a hearing and entered a ['Final Order Closing the Estate[,'] which awarded Ruby . . . a one-third (1/3) interest in real estate."

¶13. The record shows that, pursuant to her February 11, 2015 order, the chancellor ordered Wendy, as executor, to file an estate inventory and accounting. However, Wendy failed to do so, which partially prompted Ruby to file her May 18, 2015 "Motion for Citation of Contempt." On June 8, 2015, the chancellor entered an agreed order directing Wendy to file the inventory and accounting "within ten . . . days[or] on or before June 18, 2015[,]" and to "take all necessary steps to properly administer and close [the estate] by August 30, 2015." The chancellor then entered a second agreed order granting Wendy an extension until July 3, 2015, to file the inventory and accounting. On July 2, 2015, Wendy filed the inventory and accounting, to which Ruby timely objected. In her September 2, 2015 order on Ruby's objections, the chancellor awarded Ruby a judgment against Wendy and directed Wendy to "take all necessary steps to properly administer and close [the estate] by September 30, 2015." However, the final accounting and the petition to close the estate and discharge Wendy as the executor were not filed until November 24, 2015. As the parties agree, these documents were signed by the estate attorney alone.

¶14. Our supreme court has explained that "[a]n appellant cannot complain on appeal of alleged errors which he invited or induced." *Ill. Cent. R.R. Co. v. Jackson*, 179 So. 3d 1037, 1044 (¶15) (Miss. 2015) (quoting *HWCC-Tunica Inc. v. Jenkins*, 907 So. 2d 941, 942 (¶4) (Miss. 2005)).[1] The record reveals that Wendy repeatedly failed to comply with the chancellor's orders. As executor, Wendy bore a responsibility to administer and close the estate, and she cannot now complain of errors she caused by failing to properly fulfill her duty.[2] Furthermore, the record shows that Wendy failed to object—either contemporaneously or through posttrial motions—to the estate attorney signing and filing the final accounting and the petition to close the estate. As our caselaw clearly states, "a trial judge cannot be put in error on a matter which was never presented to [her] for decision." *City of Hattiesburg v. Precision Constr. LLC*, 192 So. 3d 1089, 1093 (¶18) (Miss. Ct. App. 2016) (citation and internal quotation marks omitted). Accordingly, we find this assignment of error lacks merit.

IV. Whether the chancellor erred by awarding Ruby a one-third interest in Louis's estate.

¶15. Wendy next asserts that the chancellor erred by awarding Ruby a one-third interest in Louis's estate after allowing Ruby to renounce Louis's will and file a spousal-share election.

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[1] *See* Miss. Code Ann. § 91-7-49 (Rev. 2013) (discussing the executor's duty to publish notice so creditors can probate their claims); *In re Estate of Carter*, 912 So. 2d 138, 144 (¶21) (Miss. 2005) (stating that an executor is an officer of the court, has a fiduciary relationship to all parties with an interest in the estate, and is held to the same standard of care as a general trustee).

[2] *See Harper v. Harper*, 491 So. 2d 189, 194 (Miss. 1986) (holding that an executor must act in good faith and employ the same vigilance, diligence, and prudence a person of intelligence and discretion would employ in the management of his own affairs).

¶16. Section 91-5-25 allows a widow to renounce her husband's will and to instead elect her legal share of her husband's estate. As section 91-5-25 states:

> When a husband makes his last will and testament and does not make satisfactory provision therein for his wife, she may, at any time within ninety (90) days after the probate of the will, file in the office where probated a renunciation to the following effect, viz.: "I, A B, the widow of C D, hereby renounce the provision made for me by the will of my deceased husband, and elect to take in lieu thereof my legal share of his estate." Thereupon she shall be entitled to such part of his estate, real and personal, as she would have been entitled to if he had died intestate[.]

¶17. As discussed, Wendy filed a petition in Pearl River County Chancery Court to probate her father's will, and the chancellor granted the petition on July 24, 2014. Within the ninety-day time period established by section 91-5-25, Ruby filed in the same chancery court a renunciation of the provision made for her in the will and her intention to elect her spousal share. Although the record before us contains no trial transcript, the chancellor's February 11, 2015 order acknowledged that she conducted a hearing on Ruby's renunciation and spousal-share election. The chancellor's order further found that Ruby had complied with section 91-5-25 in electing her spousal share. As a result, pursuant to section 91-5-25, the chancellor awarded Ruby a one-third interest in Louis's estate. *See* Robert A. Weems, *Mississippi Practice Series: Wills and Administration of Estates in Mississippi* § 6:6 (3d ed. 2003) ("Where the deceased spouse left two children, [the surviving spouse's legal share] is one-third." (citing Miss. Code Ann. § 91-5-25)).

¶18. Despite Wendy's argument that the chancellor erred by awarding Ruby a one-third interest in Louis's estate, we find that substantial evidence supports the chancellor's

judgment. *See Turnage*, 213 So. 3d at 105 (¶2). As a result, we find this assignment of error lacks merit.

V. Whether the chancellor erred by ruling on Ruby's "Motion for Citation of Contempt" against Wendy.

¶19. On May 18, 2015, Ruby filed a "Motion for Citation of Contempt" against Wendy, in Wendy's capacity as estate executor. The chancellor subsequently entered an order awarding Ruby attorney's fees against Wendy, as executor of the estate. On appeal, Wendy asserts the chancellor's order violated her individual due-process rights because she never received proper notice of the contempt action. She therefore asks this Court to reverse the chancellor's order.

¶20. As an initial matter, we note that Ruby argues her May 18, 2015 filing was a "motion." She further argues the filing was governed by and complied with the service requirements of Rule 5 of the Mississippi Rules of Civil Procedure. However, Ruby's "motion" actually constituted a petition for contempt and was therefore subject to the service requirements established in Rule 81 of the Mississippi Rules of Civil Procedure. *See Pearson v. Browning*, 106 So. 3d 845, 849 (¶¶15-18) (Miss. Ct. App. 2012).

¶21. "Calling a 'petition for contempt' a 'motion' and using motion procedures with contempt actions is incorrect according to Rule 81." *Pearson*, 106 So. 3d at (¶17) (citing *Harris v. Harris*, 879 So. 2d 457, 458 n.1 (Miss. Ct. App. 2004)). "Motions may be served by first-class mail." *Id.* at (¶18) (citing M.R.C.P. 5(b)). However, "[t]he procedural mechanisms that apply to motions do not apply to contempt matters." *Id.* (citing *Sanghi v.*

Sanghi, 759 So. 2d 1250, 1256 (¶30) (Miss. Ct. App. 2000)). "[I]n Rule 81 matters, a Rule 81 summons must be issued; otherwise, service is defective. Actual notice does not cure defective process." *Clark v. Clark*, 43 So. 3d 496, 499 (¶12) (Miss. Ct. App. 2010) (internal citations omitted).

¶22. The record here reflects that Ruby's attorney mailed a copy of the contempt "motion" to the estate attorney and that the chancery court issued a Rule 81(d) summons to Wendy in "care of" the estate attorney. These actions, however, failed to constitute proper service of process. Our caselaw and rules of civil procedure establish that Wendy, not the estate attorney, should have been served with Ruby's contempt "motion" and the Rule 81 summons. *See* M.R.C.P. 4; M.R.C.P 81; *Sanghi*, 759 So. 2d at 1255-58 (¶¶27-37). Having found that Ruby failed to properly serve notice to Wendy of her contempt action, we next determine whether Wendy waived the issue for appeal.

¶23. "It is a long-established rule in this state that a question not raised in the trial court will not be considered on appeal." *Taylor v. Taylor*, 201 So. 3d 420, 421 (¶6) (Miss. 2016) (citations omitted). Mississippi caselaw has also repeatedly held that a defendant who appears and defends against the merits of a Rule 81 matter without asserting his or her objection to insufficient service waives the claim for appeal. *See Reasor v. Jordan*, 110 So. 3d 307, 311-12 (¶¶14-17) (Miss. 2013); *Dennis v. Dennis*, 824 So. 2d 604, 610-11 (¶¶16, 18) (Miss. 2002); *Chasez v. Chasez*, 935 So. 2d 1058, 1062 (¶12) (Miss. Ct. App. 2005). *See also Schustz v. Buccaneer Inc.*, 850 So. 2d 209, 213 (¶15) (Miss. Ct. App. 2003) ("[A]

defendant appearing and filing an answer or otherwise proceeding to defend the case on the merits in some way—such as participating in hearings or discovery—may not subsequently attempt to assert jurisdictional questions based on claims of defects in service of process.").

¶24. As previously discussed, Ruby filed her contempt "motion" against Wendy in her capacity as estate executor. The attorney for Louis's estate, on Wendy's behalf, then filed a response to Ruby's contempt "motion." The response presented a defense on the merits of Ruby's Rule 81 contempt action without asserting an objection to the sufficiency of the service of the "Motion for Citation of Contempt." The record further reflects that, along with the estate attorney, Wendy, as estate executor, electronically signed the response to the contempt "motion." The chancellor subsequently entered an order on June 8, 2015, which, among other things, directed Wendy to pay Ruby's attorney's fees related to the contempt action.

¶25. Despite participating in the response to the merits of Ruby's Rule 81 contempt action without objecting to defective service, Wendy still contends on appeal that the record shows a clear violation of her due-process rights. To support her claim, Wendy points to a letter the court reporter below sent to the Mississippi Supreme Court Clerk's Office, in which the court reporter stated she found no recorded proceedings in the instant matter. According to Wendy, this letter demonstrates "[t]here was definitely no hearing conducted or evidence received by the [chancellor]" related to the contempt action.

¶26. In addressing Wendy's assertions, we first note that, at the beginning of her June 8,

2015 order, the chancellor acknowledged that the matter before her had "come on for consideration at the joint request of the parties" and that she had reached her decision after "having been fully advised in the premises" of the matter. The chancellor then went on to award attorney's fees to Ruby and direct Wendy to take certain other specified actions. In addition, the chancellor entered a subsequent "agreed order" on July 2, 2015, in which she granted Wendy an extension to comply with the obligations imposed in the June 8, 2015 order. The record reflects that, without asserting any objection to the chancellor's previous order awarding attorney's fees, both Ruby's attorney and the estate attorney, on behalf of Wendy as the executor, signed the July 2, 2015 agreed order. In addition, in referencing the earlier order that awarded attorney's fees, the chancellor's July 2, 2015 order once again acknowledged that the matter before her had "come on for consideration at the joint request of the parties[.]"

¶27. Upon review, we find that, despite the improper service of Ruby's Rule 81 contempt action, Wendy failed to raise the issue at her "first opportunity" or at any time thereafter in the proceedings before the chancellor. *See Chasez*, 935 So. 2d at 1062 (¶12); *S&M Trucking LLC v. Rogers Oil Co. of Columbia*, 195 So. 3d 217, 223 (¶24) (Miss. Ct. App. 2016). Wendy not only participated in responding to the merits of the contempt action without objecting to the defective service, but the estate attorney, on Wendy's behalf, also signed a subsequent agreed order without raising the issue. As a result, we conclude that Wendy has waived the issue for appeal. *See Reasor*, 110 So. 3d at 311-12 (¶¶14-17); *Dennis*, 824 So.

2d at 610-11 (¶¶16, 18); *Chasez*, 935 So. 2d at 1062 (¶12). We therefore find this argument lacks merit.

VI. Whether the chancellor erred by awarding Ruby attorney's fees.

¶28. In her June 8, 2015 order, the chancellor ordered Wendy, as estate executor, to pay $1,500 in attorney's fees related to Ruby's action for contempt. On appeal, Wendy now challenges the award of attorney's fees.

¶29. Our caselaw establishes that contempt matters, including whether to award related attorney's fees, are matters largely within a chancellor's discretion. *See Gardner v. Gardner*, 130 So. 3d 1162, 1167 (¶21) (Miss. Ct. App. 2013); *McDonald v. McDonald*, 850 So. 2d 1182, 1192 (¶36) (Miss. Ct. App. 2002). "Awarding costs and attorney[']s fees because a contemptuous party has necessitated the holding of a hearing to enforce a prior order of the court is appropriate." *McDonald*, 850 So. 2d at 1192 (¶40) (citing *Mount v. Mount*, 624 So. 2d 1001, 1005 (Miss. 1993)). As this Court has explained:

> [I]n contempt actions, a chancellor is justified in awarding attorney's fees that are incurred in pursuing a contempt motion. Although chancellors are instructed to apply the factors in *McKee v. McKee*, 418 So. 2d 764 (Miss. 1982), when granting or denying attorney's fees, this Court has held that establishment of the *McKee* factors is not necessary for a contemnee to recover attorney's fees where the contemnor has willfully violated a lawful court order. A specific finding of inability to pay is not required when attorney's fees are assessed against a party found to be in contempt.

Vincent v. Rickman, 167 So. 3d 245, 251 (¶22) (Miss. Ct. App. 2015) (internal citations and quotation marks omitted).

¶30. In her May 18, 2015 "Motion for Citation of Contempt," Ruby asserted that Wendy

had willfully disobeyed the chancellor's February 11, 2015 order. After a hearing on the matter, the chancellor awarded Ruby $1,500 in attorney's fees for the necessity of filing the contempt action. Because the record indeed reflects that Wendy failed to comply with the chancellor's prior order, we find sufficient evidence to support the chancellor's award of attorney's fees related to Ruby's action for contempt. *See id.* at 252 (¶24). We therefore find no abuse of discretion. *Id.* As a result, this assignment of error lacks merit.

VII. Whether Ruby is entitled to attorney's fees and expenses on appeal.

¶31. As previously stated, along with her brief, Ruby filed two motions on appeal. In addition to requesting Pamela's dismissal as an appellant, Ruby argues she is entitled to attorney's fees and expenses because Wendy's claims on appeal are frivolous. Although we conclude that Wendy's assignments of error lack merit, we find that she raised a nonfrivolous issue. We therefore decline to find her appeal frivolous.

¶32. Furthermore, in asserting her claim to attorney's fees and expenses on appeal, Ruby fails to cite any relevant statutory law, caselaw, or rules. *See* Miss. Code Ann. § 11-55-5 (Rev. 2012); M.R.A.P. 11; M.R.A.P 38. Instead, she cites two divorce cases in which the court awarded appellate attorney's fees either based on the husband's failure to prosecute the appeal or the wife's inability to pay. *See Bullock v. Bullock*, 201 Miss. 180, 183, 29 So. 2d 79, 79 (1947); *Hall v. Hall*, 77 Miss. 741, 741, 27 So. 636, 637 (1900). Our supreme court has previously declined to award attorney's fees where the party making the request cited no "authority beyond the bare code section and rule numbers" and failed to argue the point.

Theobald v. Nosser, 784 So. 2d 142, 147 (¶15) (Miss. 2001).[3]

¶33. Because we find that Wendy asserted a nonfrivolous issue on appeal, and because Ruby failed to cite relevant authority to support her claim, we deny Ruby's request for attorney's fees and expenses on appeal.

¶34. **AFFIRMED.**

LEE, C.J., IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, FAIR, GREENLEE AND WESTBROOKS, JJ., CONCUR. WILSON, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.

[3] *See also* M.R.A.P. 28(a)(7) ("The argument shall contain the contentions of [the party] with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on.").

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN THE MATTER OF THE ESTATE OF
LOUIS LABASSE, JR., DECEASED

WENDY CHESTER, INDIVIDUALLY AND
AS EXECUTRIX OF THE ESTATE AND
PAMELA L. LABASSE (ORTIS) APPELLANTS

VERSUS CAUSE NO. 2016-TS-00414

RUBY D. LABASSE APPELLEE

APPEAL FROM CHANCERY COURT
OF PEARL RIVER COUNTY

MOTION FOR RE-HEARING

ORAL ARGUMENT IS NOT REQUESTED

G. CHARLES BORDIS, IV, ESQ.
BORDIS & DANOS, PLLC
1215 Government Street
Ocean Springs, MS 39564
228-215-1367
228-215-1358-fax
MS BAR ID. 3695

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed 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.

1.	Wendy Chester	Appellant
2.	Pamela L. Labasse (Ortis)	Appellant
3.	Ruby D. Labasse	Appellee
4.	C. Charles Bordis, IV, Esq.	Attorney for Appellants
5.	James L. Gray, Esq.	Attorney for Appellee
6.	Honorable Deborah Gambrell	Chancellor of Pearl River County

/s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Other Authorities

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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VERSUS CAUSE NO. 2016-TS-00414

RUBY D. LABASSE APPELLEE

MOTION FOR RE-HEARING

COMES NOW, Appellants, Wendy Chester, individually and as Executrix of the Estate and Pamela L. Labasse (Ortis) by and through counsel of record who file this their Motion for Re-Hearing in accordance with Rule 40 of the Mississippi Rules of Appellant Procedure and in support thereof would show unto this Honorable Court the following, to-wit:

ISSUE NO. 1

PAMELA L. LABASSE (ORTIS) SHOULD NOT
BE DISMISSED AS AN APPELLANT

This Honorable Court decided in its September 12, 2017 Opinion that "since Pamela was never a party to the matter at the trial level" she should be dismissed from this appeal. The Appellants contend that this Honorable Court has overlooked the impact and effect of such a decision.

In the September 12, 2017 Opinion, this Honorable Court recognized the fact that the

decedent, Louis Labasse, Jr., executed a Last Will and Testament on April 22, 2014 which made specific bequest and devises to his widow, Ruby, and his two children, Wendy Chester and Pamela Labasse Ortis.

The Last Will and Testament of the decedent devised his real estate to his two daughters, the Appellants herein, subject only to a life estate which he left to his wife, Ruby.

It is undisputed that Pamela is an heir-at-law of Louis Labasse, Jr., as well as, a beneficiary of his Last Will and Testament. In addition, it is likewise undisputed that Pamela Labasse Ortis was never made a party to the administration of the estate in the lower Court nor did she execute a Waiver of Process or Joinder. Further, neither Pamela nor Wendy were made parties to the Petition to Contest Will, for Accounting, and for Widow's Allowance.

In the case sub judice, the Chancellor divested Pamela of part, but not all, of her interest in the real property devised unto her. Pursuant to the Last Will and Testament of the decedent, Pamela was devised a one-half interest in the decedent's real estate. The lower Court Judgment awarded Ruby a one-third interest in the real property and divested Pamela of a fractional part of her interest (i.e. a one-sixth interest). As such, Pamela still retained a one-third interest in the property according to the lower court's ruling.

The Mississippi Supreme Court has previously held that "parties have standing to sue or intervene when they assert a colorable interest in the subject matter of the litigation or experience on adverse affect from the conduct of the defendant, or otherwise authorized by law." See Desoto Times Today v. Memphis Publishing Co., 991 So.2d 609 (Miss. 2008), and

Fordice v. Bryan, 651 So.2d 998, 1003 (Miss. 1995), and Posey v. Pope, 130 So.3d 1183 (Miss. Ct. Appeals 2014).

"A party's claim must be grounded in some legal right recognized by law, whether by statute or by common law and that party must be able to show that it has a present, existing actionable title or interest." In Re City of Biloxi, 113 So.3d 565 (Miss. 2013); and Posey v. Pope, 130 So.3d 1183 (Miss. Ct. Appeals 2014).

Here, Pamela has exhibited that she has a legal right recognized by law as she is an heir-at-law and beneficiary of the Last Will and Testament of her deceased father. Based upon such, real property passed to her upon the death of her father and she has vested rights in the property.

Pamela was a necessary party to proceedings in Chancery Court and was never made a party. Having shown that she possesses an actionable, present interest, this Honorable Court should not turn Pamela away and deny her due process.

"Any Court of this state sitting as an appellate court has the inherit authority to allow additional parties to participate in an appeal upon timely application or upon the court's invitation." Cummings v. Benderman, 681 So.2d 97 (Miss. 1996)."

Pamela timely filed an appeal in the matter and set forth many legitimate issues for consideration. By denying Pamela access to the court, substantial harm and injustice came upon her through no fault of hers. This Honorable Court had the opportunity to consider similar issues in Posey v. Pope, 130 So.3d 1183 (2014). In Posey, the appellant was

dismissed. Family members who were not parties to a proceeding involving deeds to real property perfected on appeal. This Honorable Court held that the appellant lacked standing to appeal because the lower court's decision set aside deeds and the parties no longer possessed a present, actionable interest in the property. The case now before the court is easily distinguishable because Pamela does have a present, actionable interest.

This Honorable Court simply found that since Pamela was not a party to the action in the lower court, she was prohibited from participating in an appeal. Based upon that finding, the Court overlooked many well established principles of law and statutes which dictate the process of an estate administration and/or probate of a will.

First, the Court has overlooked the fact that real estate descends to legatees and/or heirs of a decedent upon death. See Campbell v. Brown, 6 Howard 230 (1842). Based upon more than a century of jurisprudence in this state, title to the real estate of the decedent vested in Wendy Chester and Pamela Labasse Ortis by the terms of the decedent's Last Will and Testament subject only to a life estate which was granted to Ruby D. Labasse. In dismissing Pamela, this Honorable Court made no reference to the issue raised by Pamela with respect to her vested interest in real estate and its impact on her right to protect her vested interest in estate assets. Pursuant to the Last Will and Testament of the decedent, Pamela was vested with a one-half interest in all of the real estate owned by the decedent. This Honorable Court's Opinion affirmed the decision of the lower court which divested Pamela of a portion of her vested interest in the property without notice and an opportunity

to be heard. This Honorable Court's decision to award Ruby a one-third interest in the decedent's real estate has violated the due process rights of Pamela. It is respectfully requested by the Appellants that this Honorable Court carefully review Campbell v. Brown. As stated previously by the Appellants, the Campbell decision provides a similar scenario where heirs and legatees were not served with process. In Campbell, the highest court of Mississippi determined that a decree of the probate court that was rendered without notice to the heirs was void and inoperative. The Campbell court held, in part, as follows:

> "No man can be considered to lose his life, liberty, or property by a Judgment or Decree who has no notice of the proceeding against him and consequently no opportunity to contest it."

Pamela stands in the shoes of those heirs in the Campbell case who received no notice of any proceeding regarding probate matters. Like those in Campbell, Pamela lost her vested property right by the Judgment of the lower court which was subsequently affirmed by this Honorable Court.

Therefore, the question must be asked as to exactly what is the impact of this Honorable Court's decision to affirm the lower Court's ruling and Judgment. The Opinion of this Honorable Court allows an estate to be fully administered or it allows a will to be completely probated without providing any notice whatsoever to heirs-at-law of the decedent or beneficiaries of the Last Will and Testament of the decedent. The Opinion condones the actions of the lower Court in ignoring the statutes which set forth the process and procedures regarding estate administration and probate. The Opinion further condones the failure to

notify heirs-at-law and creditors who have filed valid claims and beneficiaries of a Last Will and Testament of the assets and liabilities of an estate, and further condones the distribution of property in complete contrast to the wishes and intent of the testator. Even more alarming is the fact that an heir-at-law or beneficiary who receives no notice or opportunity to be heard is denied the right to seek relief at the appellant level although the heir-at-law or beneficiary of a Last Will and Testament has a vested interest in all of the assets and the estate.

It is apparent that the issues pled by Pamela and the discussions and arguments made by Pamela were well taken. By dismissing Pamela, the review of her arguments was avoided and as a result, Pamela was denied due process. This Honorable Court should exercise its authority to allow Pamela to continue her request for justice and due process.

ISSUE NO. 2

WHETHER THE CHANCELLOR ERRED BY CONSIDERING RUBY'S PETITION TO CONTEST THE WILL

The next fact that the Appellants contend that this Honorable Court overlooked was the failure of Ruby to serve the heirs-at-law and beneficiaries of the Last Will & Testament with process upon the filing of her Petition to Contest the Last Will and Testament, for Accounting, and for Widow's Allowance. Clearly Miss. Code. Ann. § 91-7-21 and Miss. Code. Ann. § 91-7-25 (1972, as amended) requires that all interested parties be made defendants in an action to contest the will. Here, this Honorable Court decided that since the Petition filed by Ruby to contest the Last Will and Testament of the decedent was dismissed, that somehow the error of failing to join a necessary and interested party could be overlooked. By overlooking the requirements of the statute, the Court has failed to consider Pamela and Wendy's opportunity and statutorily protected right to respond to the Petition. Based upon the ruling of this Court, Wendy and Pamela were denied the right to respond to the Petition filed by Ruby. It was the duty of Ruby, the objector to the will, to make Wendy and Pamela party defendants to her Petition. By complying with the requirement of making Wendy and Pamela party defendants, Wendy and Pamela would have had the opportunity to become involved in the estate and protect the vested rights that they possessed. Once served with process, Pamela would have been afforded the opportunity to file responsive pleadings. In this case, Ruby filed a Petition to Contest a Will, obtained what she wanted by a handshake with the administrator's attorney and then withdrew her Petition to Contest the

Will. Pamela was denied the right to participate in negotiations and was denied the right to be heard on issues which impacted her interest in the estate.

The lower Court has no authority to proceed with the proceeding to contest the validity of a will until all necessary and interested parties are joined.

Interested parties are those whose direct, pecuniary interests will be either detrimentally or advantageously affected by the probate of a will. Included in this group would ordinarily be a decedent's heirs at law, beneficiaries under earlier wills and beneficiaries under the will being contested. See Garrett v. Bohannon, 621 So.2d 935 (1993). Without knowing all necessary parties, the Court is without jurisdiction over the proceeding. In the matter of the Last Will and Testament of True v. True, 220 So.3d 276 (Miss. Ct. Appeals 2017). A Judgment entered in a will contest "absent joinder of all necessary parties is void and must be set aside." Garrett v. Bohannon, 621 So.2d 935 (1993). Further, the failure to join a necessary party may be raised for the first time on appeal, even by a party who participated below and failed to join the missing parties. Garrett v. Bohannon, 621 So.2d 935 (1993), Moore v. Jackson, 247 Miss. 854, 157 So.2d 785 (1963). Clearly, this well established principle of law gives Wendy standing to raise the issue on appeal. Both appellants, Wendy and Pamela are necessary parties who were not served with process or made parties to Ruby's Petition. Until such time as Pamela and Wendy are made parties, the lower court has no jurisdiction over the matter and has no ability to ever consider a request by Ruby to dismiss. It has been stated by our Mississippi Supreme Court as

follows:

> "Moore remains good law insofar as it holds trial proceedings must be held in abeyance until all necessary parties are joined in a suit contesting a will."

See Garrett v. Bohannon, 621 So.2d 935 (1993). Based upon the clear pronouncement of the Mississippi Supreme Court, the lower court had no authority to consider any aspect of Ruby's Petition until such time as Pamela and Wendy were joined as necessary parties. Until such time as all necessary parties are joined, the matter is stayed. The lower court is not in a position to make any determination with respect to the petition and that includes considerations required to dismiss an action.

This Honorable Court has acknowledged that there was no record of any hearing or trial in the lower court; however, this Honorable Court has also determined in its September 12, 2017 Opinion that the Chancellor's order "acknowledged that she conducted a hearing on Ruby's renunciation and Spousal Share Election." If this Honorable Court accepts the fact that the February 11, 2015 Order on motions (CP 48-54), as an acknowledgment and proof that a hearing was conducted, it must also find that the lower court conducted a hearing on the Petition to Contest Will, for Removal of Executrix, for Accounting and for Widow's Allowance.

The February 11, 2015 Order on Motions of the lower court provides as follows:

> THIS MATTER having come on for hearing on the 14th day of January 2015 on the following petitions filed herein by Ruby D. Labasse:

1. Spousal Share Election filed on October 10, 2014;
2. Petition to Establish Widow's Right to Possession and Use of Homestead filed on November 20, 2014; and
3. Petition to Contest Will, for Removal of Executrix, for Accounting and for Widow's Allowance filed on November 20, 2014,

and the Court having considered the oral evidence and documentary proof and being fully informed in the premises finds as follows:

The law clearly states that the Court is without jurisdiction to proceed on the petition until all necessary parties are joined. The lower court was without authority to proceed on the Petition to Contest Will, for Removal of Executrix, for Accounting and for Widow's Allowance. The entire petition was to be held in abeyance until all necessary parties were served.

The February 11, 2015 Order on Motions clearly states that the lower court "heard" the Spousal Share Election Claim, Petition to Establish Widow's Right to Possession and Use of Homestead and Petition to Contest Will, for Removal of Executrix, and for Widow's Allowance. "Hearing" the petition constitutes proceedings on the matter without jurisdiction since necessary parties were not joined. Requests for relief set forth in the Petition to Contest Will, for Removal of Executrix, and for Widow's Allowance were granted to Ruby in the February 11, 2015 Order.

ISSUE NO. 3

THE CHANCELLOR ERRED BY RULING ON RUBY'S MOTION FOR CITATION FOR CONTEMPT AGAINST WENDY

This Honorable Court acknowledged that the service of process with respect to Ruby's Motion for Contempt was insufficient and improper. This Honorable Court went on to find that Wendy waived the defenses regarding the defective service of process.

The Appellants would point out and show unto this Honorable Court that it failed to consider the fact that the Judgment entered by the lower Court was a personal judgment against Wendy as opposed to a Judgment against the fiduciary of the estate. This Court acknowledged that the Rule 81(d) Summons issued by Ruby was issued "in care of" the estate attorney. The Appellants contend that this Court overlooked Uniform Chancery Court Rule 6.01 which requires "every fiduciary to retain an attorney to represent and advise and assist during the whole term of office." As such, the attorney renders advice to the position rather than the individual. The Appellants also contend that this Court has overlooked the fact that upon the filing of a Motion for Contempt, Wendy, in her individual capacity, had the right to seek counsel of her own choosing. The attorney to be selected by Wendy could have been different from that which was selected as the attorney representing her in her capacity as the Executrix of the estate.

The intent of Rule 81 is to command a Defendant to appear and defend at a time and place, either in term time or vacation, at which the same shall be heard. It is undisputed that there was no hearing with respect to the Motion for Contempt. This Honorable Court has

somehow concluded that the entry of what was termed an Agreed Order waived all the Rule 81 deficiencies. In Rule 81 matters, affirmative defenses are not required to be pled and can be raised at the trial on the merits. Wendy was denied the right to assert her affirmative defenses because there was no hearing conducted.

The Agreed Order referred to and cited by this Honorable Court in its September 12, 2017 Opinion was not signed by Wendy Chester nor was it signed by the estate attorney Edwin Peckinpaugh, Esq. It is hard to fathom how these deficiencies in the principles of due process can be overlooked with such frequency as they were in the case below. An Agreed Order represents that there was a meeting of the minds. In this case, all evidence and proof indicated there was never even a discussion between the parties.

This Honorable Court then concluded that in contempt proceedings the lower Court had discretion with respect to attorney's fees. While it is a true general statement of law, the Judgment entered by the Court on June 8, 2015 failed to adjudicate Wendy to be in contempt of court and therefore she could not be determined to be a contemptuous party. The Appellants have raised on appeal the issuance of the award of attorney's fees without any consideration or findings being noted as to factors set forth in McKee v. McKee, 418 So.2d 764 (Miss 1982). There was no basis for the amount of attorney's fees awarded. There was no determination by the Court that $1,500.00 was a reasonable sum as attorney's fees nor a prevailing rate in the community. This Honorable Court has overlooked the fact that there was no trial on the merits conducted. Based upon the complete record in this cause,

apparently, there was a preparation of a Motion for Contempt with no further legal services rendered with respect to contempt. Fifteen hundred dollars for the preparation of a Motion for Contempt seems to be inequitable in this cause. This Honorable Court has overlooked the fact that the Motion for Contempt was filed by Ruby on May 18, 2015. The Rule 81 Summons was issued to Wendy Chester, care of the estate attorney, on May 28, 2015. As noted in this Court's Opinion, the response to the Motion for Citation of Contempt was filed on June 8, 2015 and the Agreed Order referred by this Honorable Court was issued on the same date June 8, 2015. Neither the estate attorney nor Wendy Chester signed the alleged "Agreed Order". A handwritten notation by the Chancellor on the June 8, 2015 order indicates that the parties did not have a meeting of the minds. An examination of the June 8, 2015 Agreed Order reflects that this Honorable Court has overlooked the fact that Wendy Chester, as Executrix of the estate, was not adjudicated to be in willful contempt of court. The order very carefully assigns certain directives to the Executrix all to be completed in a time frame of ten (10) days. Also overlooked by this Honorable Court is the fact that the June 8, 2015 "Agreed Order" makes no finding that Wendy Chester was derelict in any of her duties or responsibilities nor does it state that she willfully and contumaciously violated any order of the court. Lastly, this Honorable Court has overlooked the specific language of paragraph 9 of the June 8, 2015 Agreed Order which requires Wendy Chester as Executrix of the estate to pay Ruby Labasse the sum of $1,500.00 in attorney's fees. This award of attorney's fees is certainly vague and unclear as it appears to direct the Executrix of the estate

to pay Ruby Labasse the sum of $1,500.00 in attorney's fees from estate assets. It cannot be disputed that Wendy Chester, individually is not ordered to pay Ruby Labasse attorney's fees of $1,500.00. It should be the goal of this Honorable Court "to get matters right". In this particular case, it is unclear after reviewing the lower court Judgments, as well as, the September 12, 2017 Opinion of this Court as to whether Judgments were rendered against Wendy Chester, individually or against the Executrix of the estate.

Respectfully submitted,

WENDY CHESTER, Individually and as Executrix of the Estate and PAMELA L. ORTIS

/s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV

CERTIFICATE OF SERVICE

I, G. Charles Bordis, IV, of counsel for the Appellants, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Motion for Re-Hearing, to the following individuals at their usual mailing addresses:

1. James L. Gray, Esq., Attorney for Appellee; and,
2. Honorable Deborah Gambrell, Chancellor of Pearl River County Chancery Court.

THIS the 26th day of September, 2017.

/s/ G. Charles Bordis, IV
G. CHARLES BORDIS, IV

G. CHARLES BORDIS, IV, ESQ.
BORDIS & DANOS, PLLC
1215 Government Street
Ocean Springs, MS 39564
228-215-1367
228-215-1358-fax
MS BAR ID. 3695

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Muriel B. Ellis
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

February 20, 2018

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 20th day of February, 2018.

Court of Appeals Case # 2016-CA-00414-COA
Trial Court Case # 14-0142-PR-G

In the Matter of the Estate of Louis Labasse, Jr., Deceased: Wendy Chester, Individually and as Executrix of the Estate of Louis Labasse, Jr. v. Ruby D. Labasse

The motion for rehearing is denied. Tindell, J., not participating.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.courts.ms.gov under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.