

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

CASE NO. 2018-CA-01280

**GUY CARPENTER INDIVIDUALLY, AND
AS ADULT PARENT AND NEXT FRIEND OF
COLE CARPENTER, A MINOR**

APPELANT

V.

KENNETH MARVIN CONWAY

APPELLEE

BRIEF OF APPELLEE

On appeal from the Chancery Court of Perry County, Mississippi

Honorable Rhea H. Sheldon presiding

ANTHONY SAKALARIOS, MSB#6415
SAKALARIOS BLACKWELL & SCHOCK
PO DRAWER 1858
HATTIESBURG, MS 39403-1858
Telephone: 601-544-3343
Facsimile: 601-544-9814
asakalarios@morris-sakalarios.com

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 Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Guy Carpenter.....APPELLANT

Kenneth Conway.....APPELLEE

Daniel M. Waide Esq.

and the law firm of

Johnson, Ratliff & Waide, PLLC.....ATTORNEYS FOR APPELLANT

Anthony Sakalarios

And the law firm of

Sakalarios, Blackwell & Schock, PLLC.....ATTORNEYS FOR APPELLEE

Honorable Rhea H. Sheldon.....PRESIDING JUDGE IN

PERRY COUNTY CHANCERY COURT

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not required in this matter. The allegations and the law are clear in this matter such that oral argument is not necessary.

STATEMENT OF THE ISSUES

- I. Judicial Estoppel was correctly applied by the trial court, as: (1) the Plaintiff had taken an inconsistent position in the same Court in previous litigation, (2) the Court had accepted Plaintiff's previous position, and (3) Plaintiff's inconsistent position was not inadvertent.

- II. The trial Court was correct in ruling that Plaintiff was collaterally estopped from relitigating the issue he raised in this case, and the Court was justified in dismissing his claims pursuant to Miss. R. Civ. P. 12(b)6. Plaintiff actually litigated the issue of what property his wife owned at death in the probate of her estate, (2) the property that belonged to the estate was determined in and by the former action; and (3) the determination of her property at death was essential to the judgment in the probate.

BRIEF

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings

This appeal is before the court following the granting of Defendant's Rule 12(b)6 Motion of the 21st of September, 2016 [ROA 54-73]. Defendant's motion was filed as a response to Plaintiff's Motion pursuant to Rule 12(b)6 for Judgment on the Pleadings, of July 21, 2016 [ROA 28-53].

Plaintiff Guy Carpenter (hereinafter "Guy") was married to Terry Conway Carpenter (hereinafter "Terry") on November 24, 2002 [ROA 5]. Their son, Cole Conway, was born on October 14, 2006 [ROA 5]. Prior to the marriage, three parcels of land were conveyed to Terry. The first, a 7.1 acre parcel, was conveyed by J. M. Conway and Addie Mae Conway in fee simple to Terry. Subsequent to her marriage, Terry and Guy would mortgage the 7.1 acre property and use the loan to construct the marital home on this property. [ROA 55]. Terry declared her homestead exemption only on this 7.1 acre property [ROA 56]. As Defendant Kenneth Conway noted in his Motion for Judgment on the Pleadings, Miss Code Annotated 85-3-27 makes the declaration of homestead exemption by one spouse legally binding on the other [ROA 57].

Two other properties were also conveyed to Terry prior to the marriage, in separate deeds: a 56.6 acre tract of property deeded by J.M. Conway and Addie Mae Conway to Terry, with a life estate reserved by the grantors J.M. Conway and Addie Mae Conway, and

another 40 acre property deeded by Kenneth Conway, Terry's brother, again with a life estate granted to J.M. Conway and Addie Mae Conway [ROA 55].

At no point in her life did Terry have a right of possession to either the 40 acre parcel, nor the 56.6 acre parcel, nor did she or Guy use them for any purpose [ROA 55, 62-72]. In fact, J.M. Conway and Addie Mae Conway, who had a life estate on the properties, rented part of them out for agricultural use [ROA 71-72].

After Terry contracted terminal cancer, her relationship with Guy deteriorated, and she consulted with an attorney, the Hon. Eric Lowery of Hattiesburg, Mississippi, to seek a divorce from Guy [ROA 47]. Terry informed Guy that she was deeding the 40 acre parcel and the 56.6 acre parcel, which were not marital property, to her parents at that time, who already held life estates on both properties. She executed those deeds on March 3, 2011 [ROA 7]. Guy took no action to attempt to prevent the transfer [ROA 47].

Terry passed away from cancer intestate on April 22, 2011 [ROA 5]. Guy secured counsel and opened her estate, and was appointed Administrator thereof in Perry County Chancery Court Case No. 2011-0034-P-W on or about November 19, 2011 [ROA 7]. Throughout the probate process, in his role as Administrator, Guy never listed the 40 acre and 56.6 acre properties at issue in this suit as property which Terry possessed at the time of her death, neither did he pursue any cause of action on behalf of the estate relating to the combined 96.6 acres which Terry had been deeded prior to the marriage (subject to life estates), and which she divested herself of prior to her death [ROA 4].

B. Course of Proceedings

Approximately four years after the Final Order was entered in Terry's estate, on or about June 16, 2016, Guy filed suit against Defendant Kenneth Conway (hereinafter "Conway") in Perry County Chancery Court seeking a declaratory judgment that the deeds executed by Terry prior to her death in 2011 were void, based on two theories: that the 40 acre and 56.6 acre properties in question were part of the marital homestead, and that Terry was not competent to transfer them at the time of transfer due to her cancer and the treatment thereof [ROA 5-19].

On July 21st, 2016, Conway filed his Answer [ROA 20-27]. Guy filed his Motion for Judgment on the Pleadings on September 15, 2016, and Conway filed his Response on September 21, 2016. Guy also filed a Motion to Amend his Complaint on January 25, 2017. Conway filed a Response in opposition to this Motion to Amend on February 20, 2017. However, the issue of Guy's Motion to Amend was never noticed to be heard before the trial date by the plaintiff, as the court after a full hearing on the Motions for Judgment on the Pleadings, entered an Order dismissing the case on August 8, 2017 [ROA 3].

SUMMARY OF ARGUMENT

The trial court was correct in dismissing Guy's case on grounds of judicial estoppel. Guy initiated a prior proceeding in the same court in which he took an inconsistent position. He was appointed administrator of his deceased wife's estate in probate, and represented (correctly) to the court that the 7.1 acre homestead parcel was all of Terry's real property owned at the time of her death. The court accepted this prior position. The inconsistency between the first position and the second was not inadvertent but intentional, and to Guy's benefit. Guy was able to complete the probate process and directly inherit the property from his wife's estate that was not in controversy by representing to the court in probate that it was all of the property. He then went back to the same court years later with a new claim that his wife had other property at the time of her death. Guy admits that the new claim was not based on newly discovered facts, but on property and claims known to him at the time of the first proceeding.

The trial court was equally correct in finding that Guy was collaterally estopped from pursuing the present case, and the court was right to dismiss it on that basis. The issue of what property Terry possessed at the time of her death was fully litigated in the probate of her estate, and indeed, was an essential and central part of the final judgment in the probate process. Guy, who initiated that probate proceeding and was administrator of the estate, is therefore collaterally estopped from relitigating this issue in a new proceeding.

The Court was justified on either ground in dismissing Appellant's case on the Miss. R. Civ. P. 12(b)6 Motion for Judgment on the Pleadings.

STANDARD OF REVIEW

Motions to dismiss under either Mississippi Rule of Civil Procedure 12 or Rule 56 raise questions of law and are reviewed de novo. *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So. 2d 1206, 1209-10 (Miss. 2001). Rule 12(b)(6) tests the legal sufficiency of a complaint, and provides that dismissal shall be granted to the moving party where the plaintiff has failed to state a claim upon which relief can be granted. “[I]n applying this rule ‘a motion to dismiss should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim.’” *Children's Med. Group, P.A. v. Phillips*, 940 So. 2d 931, 934 (Miss. 2006) (quoting *Missala Marine Servs. v. Odom*, 861 So.2d 290, 294 (Miss. 2003)). Motions to dismiss under Rule 12(b)(6) are considered on the face of the pleadings alone. *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So.2d 1206, 1211 (Miss. 2001).

A trial court's imposition of judicial estoppel is subject to review under an abuse of discretion standard. *Superior Crewboats, Inc. v. Primary P & I Underwriters*, 374 F.3d 330, 334 (5th Cir.2004) (citing *Hall v. GE Plastic Pacific PTE Ltd.*, 327 F.3d 391, 396 (5th Cir.2003)). When reviewing a dismissal pursuant to Miss. R. Civ. P. 12(b)6 that is based on judicial estoppel, the court must first review the application of judicial estoppel under the abuse of discretion standard, then after deciding if the doctrine was correctly applied, it must review the 12(b)6 motion *de novo* in light of that finding. *Adams v. Graceland Care Ctr. Of Oxford LLC*, 208 So. 3d 575, 579 (Miss. 2017).

The issue of collateral estoppel is subject to *de novo* review on appeal. *McCoy v. Colonial Baking Co., Inc.*, 572 So.2d 850 (Miss., 1990)

ARGUMENT

- I. Judicial estoppel applies to the Plaintiff/Appellant because (1) he took a position in this case that is inconsistent with the position he took in a prior case, (2) the Court accepted his prior position, and (3) there is no evidence that Plaintiff/Appellant took said inconsistent position inadvertently.**

Judicial estoppel is reviewed under an “abuse of discretion” standard. Therefore, the issue on appeal is not whether or not the Court’s ruling was right or wrong in the view of the appellate Court, but whether or not the Court’s decision regarding judicial estoppel was “arbitrary and clearly erroneous.” *Adams v. Graceland Care Ctr. Of Oxford LLC*, 208 So. 3d 575, 579 (Miss. 2017).

In *Adams* the Mississippi Supreme Court ruled that even in a review of a ruling on a motion for summary judgment, which is reviewed *de novo*, if that ruling is based on judicial estoppel, then the application of the doctrine of judicial estoppel must be reviewed with an “abuse of discretion” standard first.

The three elements of judicial estoppel are (1) the party has taken a position inconsistent with one taken in prior litigation, (2) a court accepted the previous position, and (3) the party did not inadvertently take the inconsistent positions. *Kirk v. Pope*, 973 So.2d 981 (Miss. 2007).

Guy first argues that the claims he made regarding the homestead in probate and then in this case are not inconsistent. Guy argues that the first claim was simply “incomplete”. In probating his wife’s estate, Guy represented to the Court that the homestead was 7.1 acres. In this suit, in the same Court, Guy has now claimed that the homestead was the 96.6 acres and the 7.1 acres. The argument that this is not inconsistent, but “incomplete” rests on the Guy’s

contention that the 7.1 acres originally designated as the homestead by Guy are contained within the 96.6 acres he designated as the homestead in the later suit. However, the 7.1 acres was not contained in the 96.6 acres but was a separate 7.1 acre tract conveyed by warranty deed.

To claim that it is not inconsistent to submit sworn pleadings to the same Court that in one instance identify a homestead as 7.1 acres and in another identify it as that parcel, and two other parcels that are together several times larger, is contrary to reason and asks the court to ignore the plain meaning of the word "inconsistent". If there is no difference between the homestead Guy claimed in probate and the homestead he claims in this suit, there is no reason for Guy to proceed with the suit. It is no different than a party pleading that their age was twenty-one in a complaint, filing another complaint a year later stating that their age was forty, and claiming the two statements were not inconsistent because plaintiff must have reached the age of twenty-one to reach the age of forty. This sort of argument might be considered unserious or even frivolous. It is the sole argument advanced by Guy regarding the inconsistency of his positions, which is the first prong of the three required under *Kirk*.

Guy's brief does not argue the second prong of the test for judicial estoppel from *Kirk*. He therefore concedes that in having the Court probate his wife's estate, and thereby accepting his designation of the homestead as the 7.1 acres, the Court accepted his position on that issue.

The third prong of the analysis under *Kirk* regards inadvertence. Analysis of this factor of the test for judicial estoppel under *Kirk* focuses on two factors: (1) knowledge of the facts giving rise to the inconsistent position, and (2) motivation to conceal the second claim: "A debtor's non-disclosure is 'inadvertent' only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." *Kirk v. Pope*, 973 So.2d 973, 991

(Miss. 2007). Moreover, “It is the debtor's burden to prove that her non-disclosure was inadvertent.” *Jethroe v. Omnova Solutions, Inc.*, 412 F.3d 598, 600 (5th Cir. 2005) in *Rogers v. Gulfside Casino P'ship*, 206 So.3d 1274 (Miss. App., 2016).

At no point in his brief or elsewhere in the record does Guy claim that he was at any point unaware of the additional acreage which is the subject of this case. In fact, he admits that he was aware of the claim in the present case at the time of the probate of the estate. In the footnote 2 on page 9 of Appellant's Brief, Guy states that the current claim was withheld from the probate estate “based on advice of counsel”. This is an admission that he knew of the claim at the time of the probate case, and that the omission was certainly not inadvertent.

The fact that Guy concealed this from the Court in the probate matter on advice of counsel is irrelevant to the analysis of judicial estoppel under *Kirk*: “The question is not whether the debtor subjectively knew at the time of her bankruptcy that she had a legal duty to disclose the claim in her bankruptcy proceeding. Rather, a debtor is deemed to have had “knowledge” of her claim so long as she was aware “of the facts giving rise to” it. *Rogers v. Gulfside Casino P'ship*, 206 So.3d 1274 (Miss. App., 2016).

Terry declared only the 7.1 acre parcel on which she and Guy resided to be their homestead when paying their property tax. According to Miss Code Ann. §85-3-27:

Homestead Declaration; effect The declaration, for not more than one hundred sixty (160) acres, and not exceeding in value Seventy-Five Thousand Dollars (\$75,000.00); or, if the homestead be in a city, town or village, not exceeding in value Seventy-five Thousand Dollars (\$75,000.00) after being filed for record, shall be notice to all persons to be affected thereby; and shall bind the exemptionist, the spouse of the exemptionist if the exemptionist be married, and the creditors of the exemptionist until the exemptionist shall execute and file a new declaration which shall nullify the preceding one, and otherwise

have like effect; and shall moreover entitle the exemptionist thereafter to hold the same as exempt to the extent of such value; but subject to contest and legal designation or allotment, if the exemptionist had delared for too much, or has insufficiently or improperly described the premises; and to contest by creditors on the ground that the exemptionist was not entitled to a homestead, and by the spouse of the exemptionist on the ground that it was intended to defraud or circumvent such spouse. Miss Code Ann. §85-3-27

Homestead declaration; effect

Thus by statute Terry's Homestead declaration bound both her and Guy as it "...shall bind the exemptionist, the spouse of the exemptionist if the exemptionist be married...". Guy followed the requirements of this statute in his role as administrator of Terry's estate, and said probate proceeding is the root cause of Guy's estoppel in the present proceeding. His decision to follow the law regarding designation of homestead in the probate case was not in any way inadvertent. It was the only way to proceed in compliance with the law and for him to receive the homestead in that proceeding, which he did.

Furthermore, Terry could not claim the parcels as her and Guy's homestead even had she or he considered them to be. According to the administrative code of the Mississippi Department of Revenue:

35.VI,03.05 Mississippi Administrative Code

Part VI, Sub-Part 03, Chapter 5

100

An applicant must have some legal title to the property on which exemption is sought. The tax responsibility is his. Legal Title must be present to seek exemption, The definition of eligible title for homestead purposes is limited to the following.

...

2. Life Estate

This type of ownership has a special condition. A person can deed property to another and retain a life estate interest in that property. As long as the person with the life estate interest is living, that person has rights and privileges to that property. Only the person with the life estate interest is eligible for homestead exemption. It is possible for more than one person to have a life estate interest in property. In that instance, they will be treated as joint owners with each having his proportional share in the exemption. Miss. Admin. Code § 35.VI.03.01

Thus, Guy was bound by statute by Terry's description of the homestead. He agreed with it during the marriage. And had he disagreed, he would still have been unable to include the disputed properties as part of the homestead because of the life estates reserved to Terry's parents on the properties. All of these legal issues confronted Guy when he had the opportunity assert or abandon any claim to the properties at question in this case when he served as Administrator to his wife's estate. He chose to proceed through the whole probate process without either asserting the claim on behalf of the estate, or listing it as a contingent interest of the estate. The trial court was correct in ruling that the conclusion of the probate process therefore estops him from bringing these claims on the same land, over the same issues, years later in a new proceeding.

Guy asserts that any inconsistency in the positions was unintentional. He does not address the issue of motive in his brief. The courts have provided guidance on the issue of motive in two recent cases involving bankruptcy estates. The situation in each parallels that of the probate estate in the instant case.

In *Adams*, the plaintiff did not disclose the existence of a pending cause of action to the bankruptcy court so that it could be administered as part of the bankruptcy estate. When the pending cause of action was later filed, the defendant in *Adams* claimed that the plaintiff was judicially estopped from pursuing said claim by her failure to disclose the potential future cause of action. The Court inferred motive from the fact that the future cause of action would be shielded from any creditors of the bankruptcy estate. “Further, it is obvious that Adams had a motive to conceal the claim, as she is the sole beneficiary of her suit and her mother's estate.” *Adams v. Graceland Care Ctr. of Oxford, LLC*, 208 So.3d 575, 581 (Miss. 2017). As in *Adams*, Guy in this case was the main beneficiary of both the present suit and his deceased wife’s estate. By not disclosing the claim in this case in probate, it was shielded from creditors of Terry’s estate. Likewise, Guy benefited by receiving a portion of Terry’s estate through probate, and having full possession of it prior to pursuing his further claims in this case. Said properties if included in the estate would have been subject to the claims of creditors since said properties contained life estates and decedent had no possessory interest.

In *Rogers v. Gulfside Casino P’ship* 206 So.3d 1274 (Miss. App. 2016) the Court again found that a failure to disclose a pending claim in a federal bankruptcy case judicially estopped a plaintiff from pursuing that claim later in a different court.

Very similar facts were addressed by the Court in the case of *Johnson v. Herron*, 33 So.3d 1160 (Miss. App. 2010). In this case the Court held that failure to disclose a claim in probate of an estate judicially estopped a party from pursuing that claim in a later cause of action. In that case, Plaintiff sued for title to property he claimed should have been included as part of his father’s estate. However, Plaintiff had been co-administrator of his father’s estate and had never included the property in the first proceeding. He had a statutory duty to do so:

¶ 23. When an administrator or executor undertakes to close an estate: he shall take all proper steps to acquire possession of any part [of the estate] that may be withheld from him, and shall manage the same for the best interest of those concerned, consistently with the will, and according to law. He shall have the proper appraisements made, return true and complete inventories except as otherwise provided by law, shall collect all debts due the estate as speedily as may be, pay all debts that may be due from it which are properly probated and registered, so far as the means in his hands will allow, shall settle his accounts as often as the law may require, pay all the legacies and bequests as far as the estate may be sufficient, and shall well and truly execute the will if the law permit. He shall also have a right to the possession of the real estate so far as may be necessary to execute the will, and may have proper remedy therefore.

Miss.Code Ann. § 91-7-47(1) (Supp.2008).

Thus, Johnson had a duty to discover all of the assets of his father's estate before he agreed to close the estate. *Johnson v. Herron*, 33 So.3d 1160 (Miss. App., 2010). Likewise, in the present case, Guy had a duty to disclose his current property claims in the probate of his late wife's estate, and having chosen not to do so, is judicially estopped from doing so later.

III. The trial Court was correct in ruling that Guy was collaterally estopped from relitigating the issue he raised in this case, and the Court was justified in dismissing his claims pursuant to Miss. R. Civ. P. 12(b)6.

The doctrine of collateral estoppel—often considered a cousin of res judicata—serves a "dual purpose" and "protects litigants from the burden of re-litigating an identical issue with the same party or his privy" and "promotes judicial economy by preventing needless litigation". Collateral estoppel precludes relitigating a specific issue, which was: (1) actually litigated in the former action; (2) determined by the former action; and (3) essential to the judgment in the former action. *Gibson v. Williams, Williams & Montgomery, P.A.*, 186 So. 3d 836 (Miss. 2016).

Collateral estoppel is also widely known in modern jurisprudence as issue preclusion, as opposed to the related doctrine of res judicata, which is a type of claim preclusion.

“Collateral estoppel is a broad rule, which unlike res judicata, does not require technical privity between the parties or a requirement that the causes of action in the two suits be the same....” *McCoy v. Colonial Baking Co., Inc.*, 572 So.2d 850, 853 (Miss. 1990).

Probate of a will is “of the nature of a proceeding in rem, and to allow the contestants to challenge the will in a different court “would unsettle all proceeds in rem.” *Strait v. McPhail*, 145 So.3d 696 (Miss. App. 2014). A primary and essential issue in any probate of an estate is determining what are the assets of said estate, including any contingent interests from possible causes of action. Miss. Code Ann. § 91-7-61 specifically empowers an Administrator of an estate to file suits on behalf of the estate.

Miss. Code Ann. § 91-7-67 sets forth the Oath of the Administrator, which Guy in this case signed and filed with the court on October 11, 2011:

"I do swear that _____, deceased, died without any will, as far as I know or believe, and that I, if and when appointed, will well and truly administer all the goods, chattels, and credits of the deceased, and pay his debts as far as his goods, chattels, and credits will extend and the law requires me, and that I will make a true and perfect inventory of the said goods, chattels, and credits, and a just account, when thereto required. So help me God." Miss. Code Ann. § 91-7-67.

Guy swore to make a “true and perfect inventory” of the decedent’s land. He did not list the land that he maintains in the case *sub judice* that she owned at the time of her death. Nor was this omission due to lack of knowledge of the facts leading to his claim. Guy chose not to pursue this claim. Instead, he submitted a Petition for Approval of First and Final Accounting to the court on March 14, 2012, which did not disclose either (a) his belief that

the decedent had title to the land, or (b) any contingent interest that might exist due to a right for the estate to sue for any interest in the land. On May 4, 2012, the Final Order Approving First and Final Accounting, and Distributing Assets and Discharge of Administrator was signed and filed by the Court.

This constituted a final judgment regarding the property of the estate of Terry Conway Carpenter. As such, it precludes any recovery of a loss that could have been recovered in the first action:

This Court now follows *Choctaw's* lead and adopts the American Law Institute's ("ALI") recommended approach:

(1) When a loss resulting from injury to a person may be recovered by either the injured person or another person [e.g., for loss of consortium]:

(a) A judgment for or against the injured party has preclusive effects on any such other person's claim for the loss to the same extent as upon the injured person.

(b) A judgment for or against any such other person precludes recovery by or on behalf of the injured person of any loss that could have been recovered in the first action.

McCoy v. Colonial Baking Co., Inc., 572 So.2d 850, 854, 855 (Miss. 1990).

The central issue in the present case is whether or not Terry Conway Carpenter did or did not have title to the 96.6 acres which are the subject of this suit at the time of her death.

Under the ALI guideline quoted above, adopted by the Court in *McCoy*, if Appellant could have pursued his claims regarding this property during probate, and did not, then his recovery is precluded in a subsequent proceeding. Under Miss. Code Ann. § 91-7-67, as Administrator of the estate, he was specifically empowered to pursue these claims in that proceeding. On

October 11, 2011, he swore to the Court that he would pursue any such claims. On March 3, 2012, he represented to the Court that no such claims regarding this property existed, and on May 4, 2012, the Court accepted his representation and issued its Final Order in the case.

Thus, the subject of what property belonged to Terry Conway Carpenter at the time of her death was an issue litigated during the probate of her estate. Said issue was fully and finally adjudicated prior to the case *sub judice*, and the trial court rightly applied the doctrine of collateral estoppel .

CONCLUSION

The trial court, in its order dismissing Guy's case, cited two legal principles: judicial estoppel and collateral estoppel. Guy is judicially estopped from relitigating the issue of his wife's property at the time of her death because (1) he has taken a position inconsistent with one taken in prior litigation, (2) a court accepted the previous position, and (3) he did not inadvertently take the inconsistent positions

Guy is judicially estopped from arguing the issue that his wife owned the property in question at the time of her death. He probated her estate, had himself appointed administrator, and swore to the court that he had given a correct accounting of the assets of the estate. Thereby, he inherited property from the estate, thus benefitting. Only after securing this benefit of his inheritance did he then return to the court, with a new position: that actually there was other property that should have been included in the estate. But appellant sought and obtained a final order from this same court on this same issue. He is judicially estopped from relitigating it now. This issue is reviewed for an abuse of discretion. He must prove that the court's decision was

clearly erroneous, or the issue of judicial estoppel alone requires dismissal of his current cause of action. Appellant presents no evidence or arguments that would approach this standard.

In the course of the administration of his late wife's estate, Guy made certain assertions regarding the facts, both in sworn pleadings and under oath. These concern the facts at issue in the present case: what was the property of the decedent at the time of her death? These are exactly the issues addressed in the estate proceeding that Guy initiated and oversaw in the same court he now returns to for relief.

Guy is judicially and collaterally estopped from pursuing his claims in this case, and the trial court was correct to dismiss his claims.

Respectfully submitted, this the 5th day of February, 2019.

KENNETH MARVIN CONWAY

s/ Anthony Sakalarios

ANTHONY SAKALARIOS, MSB# 6415

Anthony Sakalarios, MSB#6415

Sakalarios Blackwell & Schock

PO Drawer 1858

Hattiesburg, MS 39403-1858

601-544-3343 Office

601-544-9814 Fax

asakalarios@morris-sakalarios.com

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellant, do hereby certify that on this date, I have electronically filed the foregoing Brief of the Appellee with the Clerk of the Supreme Court using the MEC system which sent notification of such to the following:

Hon. Daniel M. Wade

dwaide@jhrlaw.net

I, the undersigned attorney for the Appellee, do hereby certify that on this date, I have electronically filed the foregoing Brief of the Appellee with the Clerk of the Supreme Court using the MEC system and have forwarded a true and correct copy of the same to each of the following:

Hon. Chancellor Rhea Sheldon

250 Broad St Ste 12

Columbia, MS 39429-2905

This, the 5th day of February, 2019.

s/ Anthony Sakalarios

ANTHONY SAKALARIOS, MSB# 6415