

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-1926

**DR. CLAUDIA A. LIMBERT, individually and as
President of Mississippi University for Women;
MISSISSIPPI UNIVERSITY FOR WOMEN; and
MISSISSIPPI BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING**

APPELLANTS

v.

**MISSISSIPPI UNIVERSITY FOR WOMEN
ALUMNAE ASSOCIATION, INC.**

APPELLEE

APPELLEE'S BRIEF IN SUPPORT OF MOTION TO VACATE STAY

Rule 8 of the Mississippi Rules of Appellate Procedure provides that a party may move to vacate a lower court's decision to stay a final judgment pending appeal. M.R.A.P. 8(c), cmt. In this case, upon the motion of the Defendants/Appellants, the chancellor entered an order granting a partial stay of her judgment. Although a lower court has the option, upon conducting the necessary analysis, to stay a judgment and return a litigant's situation to the *status quo* pending the outcome of an appeal, the chancellor abused her discretion in granting the stay through an amendment of her original opinion and judgment.

BACKGROUND INFORMATION

In 2006, the Mississippi Board of Trustees of State Institutions of Higher Learning (hereinafter "the IHL Board") instituted a new policy requiring that all universities enter into affiliation agreements with their respective associated entities. The policy required these entities to agree to certain procedures and policies intended to increase public confidence in the affiliated entities' work on behalf of their respective universities, while still respecting the independent nature of these affiliated entities. Mississippi University for Women Alumnae Association

(hereinafter “the Association”), with its 118-year history of supporting Mississippi University for Women (hereinafter “the University”), qualified for status as an affiliated entity under the IHL Board policy.

Negotiations between the Association and Dr. Claudia A. Limbert (hereinafter “Limbert”) on the affiliation agreement did not proceed smoothly. Limbert insisted on measures that allowed her to control the internal governance of the Association, while the Association insisted that it should be able to control its own day-to-day operations. Finally, under threat of losing all affiliation with the University, the Association entered into an affiliation agreement with the University on October 25, 2006.

As part of the newly signed affiliation agreement, the Association was required to submit a new constitution and bylaws to Limbert for her approval within sixty days of the date of the agreement. Again, Limbert attempted to exert control over the Association’s internal governance, to the point that she created her own proposed bylaws and demanded that the Association sign them. The Association attempted to negotiate with Limbert and acquiesced on a number of matters in the spirit of cooperation, but the Association would not and could not agree to give up its governance to Limbert’s control.¹ Limbert would not negotiate, and on February 1, 2007, Limbert announced her intention to disaffiliate the Association and terminated the affiliation agreement by invoking the sixty-day termination clause. The very next day,

¹ During this period of intense negotiations, the Association, fearing disaffiliation and in an attempt to reach a final agreement on the bylaws, agreed that it would submit to all of Limbert’s demands, with the following exceptions: (1) Limbert demanded that there be no succession of officers, in stark contrast to the Association’s current structure that allowed for the Vice-President to succeed to President-Elect and then President, in order to ensure ample time for training and continuity; (2) Limbert demanded that the Director of Alumni Relations, a University employee, chair the Association’s nominating committee and have the power to appoint four of the seven members of that committee (the nominating committee prepares a slate of officers for the Association’s elections); (3) Limbert demanded that, during elections, any nominations from the floor be approved by a 75% vote of the members present before being placed on the ballot for a vote; and (4) Limbert demanded that the Vice-President of Institutional Advancement, a University employee, approve any awards given by the Association.

Limbert announced the creation of a new committee appointed to establish a new alumni association for the University.

The Association worked over the following weeks to persuade Limbert to continue the relationship with the Association and to honor the affiliation agreement. When it became clear that Limbert intended to move forward with a new, appointed alumni association – Limbert entered into an affiliation agreement with a twelve-member appointed group on March 25, 2007, several days before the sixty-day termination clause expired – the Association took legal action to stop Limbert from disaffiliating the Association and replacing it with her appointed group.

PROCEDURAL HISTORY

The Association's executive committee filed a petition for injunctive relief against Limbert on March 29, 2007, in Lowndes County Chancery Court. On April 2, 2007, the chancellor ordered that the petition be amended to name the University and the IHL Board and that the Association as a whole, not just the executive committee, be the named plaintiff. The amended petition was filed on April 5, 2007. The amended petition sought a temporary restraining order and permanent injunctive relief. The parties agreed that hearings before the chancellor would be consolidated so that the chancellor could enter a final judgment. The chancellor held hearings on May 8, 2007, and June 5, 2007. Thereafter, the chancellor requested post-trial briefing, which the parties submitted on July 29, 2007.

On October 1, 2007, the chancellor entered an opinion and final judgment, granting a permanent injunction to the Association. In her order, the chancellor held as follows:

An injunction mandating that Dr. Limbert uphold the existing and valid affiliation agreement between the Association and the University, dated October 25, 2006, and that Dr. Limbert operate under the affiliation agreement in good faith for the duration of the Agreement is hereby ordered and issued. Since the actions of Dr. Limbert in terminating the agreement were in bad faith, actions taken by her to form a new alumnae association and enter into a new affiliation agreement were also in bad faith. Therefore, Dr. Limbert and IHL are mandated to rescind any

affiliation agreements made by Dr. Limbert with any other alumni group. Obviously, the request by Defendants for injunctive relief is denied.²

The Defendants did not file any post-trial motions within the prescribed ten-day period, and the chancellor's judgment became final. On October 26, 2007, the Defendants/Appellants filed their notice of appeal. The Defendants/Appellants also filed a motion to expedite the appeal, which the Mississippi Supreme Court denied.

On December 13, 2007, the Defendants/Appellants filed a motion for stay of judgment pending appeal with the chancery court.³ The Association opposed the motion.⁴ Additionally, on December 19, 2007, the Association filed a motion to enforce judgment with the chancery court.⁵ Following a hearing on February 19, 2008, the chancellor took the matter under advisement. She then entered a written opinion,⁶ dated February 20, 2008, and an order, dated February 25, 2008, granting a partial stay and denying the Association's motion to enforce. It is from this order and opinion that the Association appeals.

² Exhibit A: Opinion and Judgment of the Court, dated October 1, 2007, granting an injunction in favor of the Association.

³ Exhibit B: Defendants/Appellants' Motion for Stay Pending Appeal and Brief in Support.

⁴ Exhibit C: Plaintiff/Appellee's Response to Motion for Stay and Brief in Support.

⁵ The Association's motion to enforce, as a separate motion from the Defendants/Appellants' motion for stay, is not included as part of this motion to vacate the stay. Although the chancellor did not treat the two motions separately, addressing both the motion for stay and the motion to enforce in one opinion and allowing unified argument on both motions, the Association interprets the Mississippi Rules of Appellate Procedure to require that the Association appeal the two portions of the chancellor's opinion separately, despite the fact that the issues, namely the chancellor's abuse of discretion and lack of jurisdiction, are identical. Accordingly, absent further direction from this Court, the Association appeals that portion of the chancellor's order related to the Defendants/Appellants' motion for stay under M.R.A.P. 8 and will appeal the jurisdictional issues raised in the chancellor's order related to the Association's motion to enforce judgment as a separate appeal under M.R.A.P. 4.

⁶ Exhibit G: Opinion, dated February 20, 2008, granting a partial stay of the injunction pending appeal and corresponding Order, filed February 25, 2008.

STANDARD OF REVIEW

This Court reviews a lower court's order granting or denying a motion for stay of judgment pending appeal under an abuse of discretion standard. M.R.C.P. 62, cmt (stating that the power of a lower court to grant a stay of an injunction pending appeal "necessarily goes to the discretion of the court."). See also Journey v. Berry, 953 So. 2d 1145, 1162 (¶62) (holding that "the court did not abuse its discretion in ordering the amount to be paid for the supersedeas bond" in granting a stay of judgment pending appeal.).

ANALYSIS

In her opinion granting a partial stay of the judgment pending appeal, the chancellor stated as follows:

Based on the pleadings and argument of counsel, the Court will grant a partial stay of the judgment. Specifically, the Court stays that provision of the judgment whereby the university and Dr. Limbert were mandated to disaffiliate with the new alumni association. There is no IHL policy which prevents a university president from affiliating with any or as many alumni associations that it desires. While it is too late for the Court to amend its judgment, it was clearly the intent of the Court that the President not replace the alumnae association, the plaintiff, with a new association. All other aspects of the final judgment are to remain in effect and the stay is denied.

Exhibit G. This language indicates not only that the chancellor harbored a desire to amend her opinion, but that she actually did so. Moreover, the chancellor's comments also constitute an attempt to explain and/or clarify her original opinion. Based on the procedural posture of this case, the chancellor was wholly without jurisdiction to enter this opinion.

Rule 59(e) of the Mississippi Rules of Civil Procedure provides that "a motion to alter or amend the judgment shall be filed no later than ten days after the entry of the judgment." The comment to the rules provides the court may not extend that ten day period. M.R.C.P. 59, cmt. Accordingly, any attempt by the chancellor to alter or amend her ruling at this time, more than

four months following the entry of judgment, exceeds the chancellor's jurisdiction and constitutes an abuse of her discretion.

Additionally, where an appeal of an original judgment is pending, although Mississippi Rule of Civil Procedure 62 grants a lower court the power "to determine the issues concerning a stay of the final judgment, bond, and enforcement of the judgment," a chancellor is "without jurisdiction to broaden, amend, modify, vacate, clarify or rehear the final judgment." Bert Allen Toyota, Inc. v. Grasz, 947 So. 2d 358, 363 (¶8) (Miss. Ct. App. 2007) (citation omitted).

The Mississippi Court of Appeals' decision in Bert Allen Toyota is instructive in this case. In that case, Grasz entered into a contract with Bert Allen Toyota for the purchase of a particular vehicle, a 2003 model vehicle. When that vehicle was not made available, Grasz sued in the chancery court for specific performance. Id. at 359-62 (¶¶4). The chancellor ordered specific performance, requiring Bert Allen Toyota to provide Grasz with a vehicle matching the description of the vehicle listed in the contract. Bert Allen Toyota appealed that decision. While that decision was pending, Grasz filed a motion for enforcement of the judgment. Id. The chancellor granted that motion and held that Bert Allen Toyota could specifically perform the contract by providing Grasz with a "model 2003 or later" vehicle. Bert Allen Toyota appealed, arguing that the chancellor abused his discretion and exceeded his jurisdiction by expanding the judgment regarding the means of specific performance from the unused 2003 model vehicle to a "model 2003 or later" vehicle.

The Mississippi Court of Appeals agreed that the chancellor did not have jurisdiction to expand the original judgment. As the Court of Appeals held, "the filing of a notice of appeal transfers jurisdiction of a matter from the lower court to the appellate court, divesting the lower court of authority to amend, modify, or reconsider its judgment." Id. at 362 (¶7). A chancellor's jurisdiction following notice of appeal is limited to "issues concerning a stay of the final

judgment, bond, and enforcement of the judgment.” *Accordingly, any order that attempts “to broaden, amend, modify, vacate, clarify or rehear the final judgment” is an order that “exceeds the subject matter jurisdiction of the lower court and must be vacated as null and void.”* *Id.* at 363 (¶¶7, 8) (citation omitted) (emphasis added).⁷

In this case, the chancellor attempted “to broaden, amend, modify, vacate, clarify or rehear the final judgment” by altering her reasoning for granting the injunction and by commenting on the impact she intended the final judgment to have on the relationship between the parties. In the original judgment, the chancellor found that Limbert acted in bad faith when she attempted to disaffiliate the Association. The chancellor further held that “[s]ince the actions of Dr. Limbert in terminating the agreement were in bad faith, actions taken by her to form a new alumnae association and enter into a new affiliation agreement were also in bad faith. Therefore, Dr. Limbert and IHL are mandated to rescind any affiliation agreements made by Dr. Limbert with any other alumni group.”

In the order granting a partial motion to stay the judgment pending appeal, however, the chancellor held that she was lifting that portion of the stay ordering Limbert to disaffiliate with her appointed group only because “[t]here is no IHL policy which prevents a university president from affiliating with any or as many alumni associations that it desires.” Exhibit G. This language alters the original judgment by changing the chancellor’s reasoning for granting the injunction. The chancellor issued the injunction requiring disaffiliation with the appointed group as a means to correct Limbert’s bad faith. Regardless of what the relevant IHL policy may or may not permit, in this case, Limbert’s bad faith required the chancellor to limit Limbert’s

⁷ The court’s opinion and the legal principle set forth in the opinion did little to benefit Bert Allen Toyota because the Mississippi Court of Appeals, in upholding the order of specific performance in the original appeal, gave the chancellor permission to craft a different means of specific performance in the event that the particular vehicle listed in the sales contract was no longer available. *Id.* at 363-64(¶9), n.3. The legal principle itself, however, is sound, and is applicable in this case.

actions in order to create an equitable remedy for the Association. The chancellor's decision to stay that portion of the injunction based solely on the IHL policy completely disregards the finding of bad faith in the original opinion and judgment and constitutes an abuse of discretion because it exceeds the chancellor's current jurisdiction.

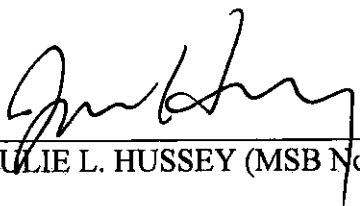
The comment to Mississippi Rule of Civil Procedure 62 sets forth a four-part test to be used in determining whether a party is entitled to a stay pending appeal. The chancellor could only grant the partial stay if the Defendants/Appellants proved the following: (1) a strong showing of likelihood of success on the merits of the appeal; (2) irreparable injury to themselves absent a stay; (3) no substantial harm to other interested parties; and (4) that a stay would do no harm to the public interest. See M.R.C.P. 62, cmt. (citations omitted). In this case, the chancellor took the motion for stay under advisement after reading the briefs and hearing the arguments of counsel. The chancellor set forth her analysis and reason for granting the stay in a written opinion. In that written opinion, the chancellor's analysis was wholly contained in her statement that "[t]here is no IHL policy which prevents a university president from affiliating with any or as many alumni associations that it desires." The chancellor's sole reason for granting a partial stay was an abuse of her discretion because it constituted an amendment to her judgment. Because the chancellor's *reasoning* and simultaneous amendment to the original judgment constituted an abuse of discretion, the *resulting order* granting a partial stay was also an abuse of discretion. Accordingly, the chancellor's order granting the partial stay, including the dicta contained in the corresponding opinion, must be declared null and void.

For these reasons, the Association respectfully requests that this Court declare the chancellor's opinion, dated February 20, 2008, and corresponding order, dated February 25, 2008, granting a partial stay of the injunction pending appeal null and void. The Association also requests any such relief that the Court deems necessary and proper.

This, the 4th day of March 2008.

Respectfully submitted,

BY:



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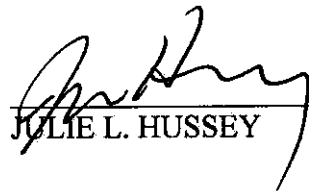
CERTIFICATE OF SERVICE

I, JULIE L. HUSSEY, one of the attorneys for Plaintiff, do hereby certify that I have, this day, served via electronic mail and United States mail, a true and correct copy of the above and foregoing to the following:

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THIS the 4th day of March 2008.



JULIE L. HUSSEY