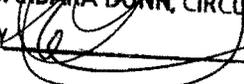


FILED
JAN -7 2013
BARBARA DUNN, CIRCUIT CLERK
BY  D.C.

**IN THE CIRCUIT COURT OF HINDS COUNTY, FIRST JUDICIAL
DISTRICT OF THE STATE OF MISSISSIPPI**

**Ashley deJanae Stowers, individually and as
Wrongful Death Beneficiary of Rodney
Sandrell Stowers;
Delie A. Shepard, Individually and as Administratrix
of the Estate of Rodney Sandrell Stowers, and on behalf
of all the Wrongful Death Beneficiaries of Rodney
Sandrell Stowers**

PLAINTIFFS

VS.

Civil Action No. 2251-12-548

**Robert G. Germany, Both Individually and as
Agent/Employee/Representative/Partner/Associate/
Officer/Director of Pittman, Germany, Roberts & Welsh,
L.L.P.; Pittman, Germany Roberts & Welsh, L.L.P.;
And John Does 1-10**

DEFENDANTS

**COURT'S FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND OPINION ON PLAINTIFFS' MOTION
TO DISQUALIFY DEFENDANTS AS ATTORNEYS
FOR DEFENDANTS**

This matter is before this Court on Motion of Plaintiffs seeking to disqualify the Brunini Law Firm as attorneys for Defendants. The motion was heard by the Court and after hearing the scholarly argument of the attorneys the Court requested each participant to prepare and present to the Court their respective Findings of Fact and Conclusions of Law, which was timely done. The Court has reviewed with interest the well researched and well written documents and the outstanding briefs presented in their support and has given mature consideration to all and does now hereby Find, Adjudicate, Determine and Order as follows:

1. : .

FACTS

This matter is what is sometime referred to as a Case within a Case. Some 21 years ago Rodney Sandrell Stowers was an outstanding defensive back for Mississippi State University. MSU was playing the University of Florida on the Gators home field. Rodney Stowers was injured in the contest and was returned to the hospital in Columbus, Mississippi where he underwent treatment for a broken leg. Rodney Stowers died on November 3, 1991 from the alleged malpractice of his attending physician and others who furnished him medical attention.

On October 1, 1993 the firm of Pittman, Germany, Roberts & Welsh, LLP filed a Complaint on behalf of Rodney Stowers' mother, Delie Shepard and all Wrongful Death Beneficiaries of Rodney. This lawsuit languished in the Circuit Court until it was dismissed by Circuit Judge Lee Howard for the failure of Plaintiff's attorneys to prosecute the case. Judge Howard found Delie Shepard's lawyers had been dilatory in allowing the case to remain on the docket without proper action and the case was dismissed with prejudice.

July 29, 2009 Pittman-Germany gave notice of Appeal of Judge Howard's dismissal order. Judge Howard was ultimately affirmed by the Court of Appeals and the Supreme Court denied review.

April 2, 2010 Michael Todd Crowley, Esq. filed a legal malpractice action against Pittman-Germany, et al. This complaint was filed on behalf of Delie Shepard and Ashley Stowers the daughter of Rodney Stowers who attained her majority while the case was pending. (Hereinafter Shepard-Stowers)

May 13, 2010 Pittman-Germany hires the Brunini firm to represent them in the Legal

Malpractice action filed on behalf of Shepard-Stowers and advises Crowley of their employment.

May 19, 2010 Pittman-Germany file a Motion for Additional Time to file appellate brief in the underlying action stating in their motion:

Counsel for Appellants' have associated the firm of Brunini Grantham, Grower & Hewes PLLC ("Brunini Law Firm") to assist in the preparation of the Brief of Appellant and related papers and in further prosecution of this appeal. The Brunini Law Firm entered its appearance on May 19, 2010.

Given this new development, Appellants request until June 4, 2010 within which to prepare and serve the Brief of Appellants and related papers.

The Motion is signed by Robert G. Germany and lists the Brunini Law Firm as being OF COUNSEL. Pittman-Germany did not advise Shepard-Stowers that Brunini had been engaged as Co-Counsel to assist in the appeal of the Underlying Case.

The engagement of Brunini as Co-Counsel without the consent of Ms. Shepard was contrary to the terms of her employment contract of October 16, 1991 with Pittman-Germany.

Also on May 19, 2010 Joseph A. Sclafani, Esq., R. David Kaufman, Esq and Christopher A. Shapley, Esq. all of the Brunini Law Firm executed and filed in the Court of Appeals case (the underlying action) individual Entry of Appearance forms advising the Court of Appeals they each had been associated with Pittman-Germany in the prosecution of the appeal of the dismissal Order by Judge Lee Howard and each informed the Clerk of the Court of Appeals that Christopher A. Shapley, Esq. was lead counsel.

May 20, 2010 Brunini informs Crowley that Brunini represents Pittman-Germany in the Legal Malpractice case then pending but does not inform Crowley of their being Co-Counsel of

Ms Shepard in the appeal of the underlying action.

May 24, 2010 Brunini files motion to withdraw as one of Shepard-Stowers attorneys in

Court of Appeals in the underlying action stating:

COMES NOW, Appellant, Delia Shepard Individually and as Administratrix of the Estate of Rodney Stowers, Deceased (Appellant) and respectfully request that Christopher A. Shapley, R. David Kaufman and Joseph A. Sclafani of the law firm of Brunini, Grantham, Grower & Hewes, PLLC be permitted to withdraw as counsel of record for Appellant.

This Motion is executed by Christopher A. Shapley, "One of her Attorneys"

October 7, 2010 upon motion of Brunini the pending Legal Malpractice case was dismissed as being premature because the underlying case was on appeal and had not been decided.

August 11, 2010 Court of Appeals affirms Judge Howard's dismissal Order.

April 26, 2012 Supreme Court refuses review.

May 9, 2012 Crowley raises question of Brunini's alleged conflict.

June 29, 2012 Crowley files legal malpractice suit against Germany and Pittman-Germany law firm.

July 16, 2012 Crowley files Motion to Disqualify Brunini, et al alleging conflict because of Brunini's appearance and alleged previous representation of Shepard-Stowers.

It is undisputed the Brunini Firm never had a conversation with either Shepard or Stowers and neither Shepard nor Stowers knew of Brunini's involvement in the underlying case and neither Shepard nor Stowers employed the Brunini firm as their attorney nor gave their consent for their employment.

It is undisputed that Robert G. Germany, Esq and the Pittman-Germany Law Firm was employed to represent Shepard-Stowers in the underlying action on October 16, 1991.

DISCUSSION

The Court believes this is a case of first impression for Mississippi but this entanglement reminds the Court of playing the game of marbles in its youth. Those of us who were not as proficient at the game as our opponent always tried to exact an agreement from all parties that each player was entitled to at least two "Slips". When Slips was invoked the shooter was granted a replacement shot at the marbles . A major problem would arise when there was a question of when it was a true Slips or just poor shooting.

Brunini contends that it never represented Shepard-Stowers, that an attorney-client relationship had not been established and therefore Brunini could not have a conflict. Brunini argues since Shepard-Stowers did not know of their involvement, did not consent to their representation and therefore an attorney-client relationship could not have been established, either in fact or by implication citing Baker Donelson Bearman Caldwell & Berkowitz v. Seay 42 So. 3d 474, 486 (Miss.2010) and others cited therein. These cases reach the conclusion that the Attorney-Client relationship does not arise by passivity. Each of the cases cited by Brunini are Legal Malpractice cases and it is true in a malpractice action there must be an attorney client relationship for there to be a cause of action but Brunini is not charged with legal malpractice in the case under consideration. As the Court sees it Brunini with the aid of Pittman-Germany is accused of using the Court or "The System" to manipulate, maneuver or steer the underlying action to the benefit of its client Pittman-Germany therefore having an interest in the case in

conflict with that of Shepard-Stowers whom they represented according to the documents filed by Brunini and Pittman-Germany.

Brunini is adamant that it has no conflict, never spoke with Shepard-Stowers, was never employed by them and in fact Shepard-Stowers nor their present attorney, Crowley, knew of their involvement in the underlying case until it was discovered by Crowley.

Brunini's position reminds the Court of the facts in a very old case, Odeneal vs. Henry 70 Miss 172, 12 So. 154 (1892) which was a contest over the alleged wrongful termination of the Plaintiff. The Plaintiff was charged with being unfaithful to the employer, employer fired Plaintiff apparently without complete knowledge of Plaintiff's unfaithfulness and our Supreme Court states:

The inquiry on trial is, had the employee been unfaithful at the time of the discharge? If yea, it would be remarkable indeed, if He should be permitted, in a court of justice to say:

"True I was unfaithful and merited my discharge but my employer did not know then of my unfaithfulness and I must be recompensed for my proper discharge because of my employer's ignorance of my misconduct"

Brunini also contends it would be extremely harsh to disqualify them because they have spent many hours preparing Pittman-Germany's defense but have been adequately compensated and it would be unmerciful to make Pittman-Germany lose the benefit of Brunini's work. The Court would normally agree, however Pittman-Germany brought Brunini into this fray by its motion before the Court of Appeals advising that Brunini had been associated to help prepare Appellant's Brief, seeking a delay, and announcing Brunini to be Of Counsel. May 13, 2010 Pittman-Germany hired Brunini to represent them in the Legal Malpractice action that was

ultimately dismissed April 26, 2012, because the matter giving rise to the cause of action was on appeal before the Court of Appeals. Six days later, May 19, Pittman-Germany files its motion for time to prepare and present Appellant's Brief (Shepard's Appeal) advising the Court Brunini was Of Counsel. On the same day Brunini files Notice of Appearance in the Court of Appeals advising the Court it represents Shepard in the underlying action, and the next day, May 20, Brunini informs Crowley that Brunini represents Pittman-Germany in the first legal malpractice suit filed on behalf of Shepard failing to mention Brunini's Notice of Appearance

It would appear if anyone should suffer Pittman-Germany should be among the group. Why? They violated the terms of their contract with the kin of Rodney Stowers when they engaged Brunini to assist in the preparation of the Appellate Brief without the knowledge or consent of their client; allowed Brunini to file Notice of Appearance in the Court of Appeals certifying their representation of Stowers when 6 days earlier they had employed Brunini to defend them in the malpractice suit filed by Shepard, and never notified Shepard of their actions.

Brunini would have the court believe the only reason three of its members filed their Notice of Appearance in the Court of Appeals was simply so they could monitor the progress of the case on appeal in order to better protect the interest of their client, Pittman-Germany. Reminding the Court the form furnished them by the Clerk of Court did not have a box, or place to be checked, advising the Court they were not really Of Counsel, just Monitors. They are correct, the form does not inquire if they wish to be mere Monitors. The Court is informed the procedure if one wishes to only monitor a case is to simply write the Clerk of the Court a letter expressing the lawyer's intent.

There is a Standard of Conduct which the legal profession is expected to uphold.

Requiring every lawyer to adhere to the requirements of the law, using the law's procedures only for legitimate purposes and not to harass or intimidate others, demonstrating respect for the legal system and those who serve it.. The Court is of the opinion this Standard has been breached by Brunini as well as Pittman-Germany. How? When Pittman-Germany surreptitiously filed their Motion for Additional Time, averring Brunini had just been employed as Co-Counsel and needed time to prepare Shepard's Appellant Brief with no notice to Shepard or her attorney and Brunini was already representing Pittman-Germany in the malpractice case filed by Shepard. When three members of the Brunini firm announced to the Court of Appeals that they were Co-Counsel for Shepard, confirming this later by requesting to be allowed to withdraw and advising the Court of Appeals that Brunini was ONE OF HER ATTORNEYS. The Court is of the opinion and hereby finds that Brunini became an attorney for Shepard by professing to be so and waived its right to disclaim representation by failing to seek a waiver of the conflict of interest.

It is true the alleged Brunini representation was only for a few days, however in these few days Brunini was placed in a position to possibly orchestrate matters in the Shepard appeal, manipulating Shepard's case on behalf of their real client, Pittman-Germany. If not improper it certainly appears so. Any other view is repugnant to the fair treatment of litigants and the administration of justice.

The Court again returns to antiquity, Webster v. Skipwith 26 Miss 341 in which our Supreme Court states: "...the doctrine is laid down that in all cases where, by accident, mistake, or fraud, or otherwise, a party has an unfair advantage in proceeding in a court, which must necessarily make that court an instrument of injustice, and is therefore against conscience that he

should use that advantage, a court of equity will interfere and restrain him from using that advantage..”

The Court finds further that the former and current representation of Plaintiff Shepard by Brunini concerns the precise and exact same factual dispute creating a substantial conflict of interest and the Plaintiff’s Motion to Disqualify the Brunini firm as attorneys for Defendants, Pitman-Germany, et al should be granted.

The Motion to Invoke “Slips” should be denied.

CONCLUSION

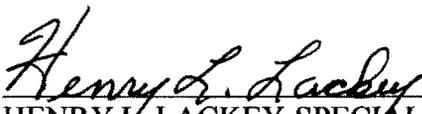
The Brunini Law Firm has a substantial conflict of interest to the Plaintiffs and the Plaintiffs’ Motion to Disqualify Counsel should be granted.

The Court further finds that because of the integral participation of Pittman-Germany in creating this dilemma Brunini should not be ordered to disgorge any fees received to date.

Brunini should be ordered to maintain and preserve any/all material of any sort relating to this matter, as evidence, until final disposition of this cause.

The attorney for the Plaintiff is hereby directed to prepare a final order in keeping with the Court’s findings and conclusions contained herein.

SO ORDERED AND ADJUDGED ON THIS THE 1ST DAY OF JANUARY, 2013.


HENRY L. LACKEY-SPECIAL JUDGE
P.O. DRAWER T.
CALHOUN CITY, MS. 38916
662-628-5755