

FILED

JUN 02 2015

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

CARTER CARROLL and
KIM BRADLEY

Forrest Adams
FORREST COUNTY CIRCUIT CLERK
PLAINTIFFS

VS.

CAUSE NO. CI 14-0212

JOHNNY L. DUPREE, *in his official
capacity as Mayor of the City of Hattiesburg*

DEFENDANT

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER AND SET
ASIDE OR IN THE ALTERNATIVE TO GRANT A NEW TRIAL**

Come now the plaintiffs, Kim Bradley and Carter Carroll, and respond to Defendant's Motion to Reconsider and Set Aside, or in the alternative, to Grant a New Trial. For cause thereof, Plaintiffs would show as follows:

1. In his motion, Defendant takes issue with this Court's finding of civil contempt against him for two reasons: 1) Defendant argues the finding of civil contempt against him was not supported by any evidence; 2) Defendant argues that his due process right to an evidentiary hearing was violated. Both bases on which Defendant criticizes the finding of this Court are clearly without merit.

2. On May 7, 2015, this Court made a contempt finding in response to Plaintiffs' Motion for Status Conference, filed April 8, 2015. At the time of the hearing on this Motion, this Court had as its disposal the evidence presented in *Plaintiffs' Complaint for Mandamus*, *Plaintiffs' Motion for Summary Judgment*, *Plaintiffs' Statement of Undisputed Facts*, *Defendant's Answer*, *Plaintiffs' Motion for Modification of Order*, and *Defendant's Response to Plaintiffs' Motion for Modification*, each of which set forth enough evidence alone to support a finding of contempt. Moreover, Plaintiffs' Motion for Status Conference plainly sets forth a sufficient basis for a finding of contempt, as it summarizes the events and inaction of the Defendant spanning the past two (2) years of his service as mayor and his failure to comply with prior Orders of this Court. See

Plaintiffs' Motion for Status Conference at ¶¶ 2-6. Accordingly, Defendant's claim that a finding of contempt against him was unsupported by evidence is frivolous at best.

3. Defendant's claim that his due process right to an evidentiary hearing has been infringed is plainly without merit, as Defendant had his "opportunity to be heard at a meaningful time and in a meaningful manner" at the properly noticed hearing on Plaintiffs' Motion for Status Conference on Thursday, May 7, 2015. *Zebert v. Guardianship of Baker*, 129 So. 3d 972, 980 (Miss. Ct. App. 2014)(quoting *Vincent v. Griffin*, 872 So. 2d 676, 678 (¶6) (Miss. 2004))("with regard to a contempt proceeding, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner"). Plaintiffs' *Motion for Status Conference* provided ample notice to the Defendant that the hearing on the same would require him to defend his actions and inactions with regard to his compliance with the Orders of this Court. As such, and because the Defendant appeared for and defended the same, his due process rights have clearly not been violated.

It is further notable that the Defendant did not object, whatsoever, at the hearing upon this Court's finding of civil contempt. In *Dennis v. Dennis*, the Mississippi Supreme Court held that a contemnor waived his claim of due process and defective service where he did not object to the same until appeal. *Dennis v. Dennis*, 824 So. 2d 604, 611 (Miss. 2002)(citing *EEOC v. Local 28 of the Sheet Metal Workers Int'l Ass'n*, 247 F.3d 333 (2d Cir. 2001)(contemnor waived claim that its due process rights were violated where it did not raise a due process argument until after court had rendered its decision); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313 (9th Cir. 1998)(contemnor waived claim of due process violations where he failed to raise a due process objection before the court)).


4. Moreover, before concluding the hearing on May 7, 2015, this Court set a hearing for June 4, 2015,¹ at which time Defendant's evidence is to be heard and considered before any order is made adjudicating the contempt of the Defendant. Clearly, the Defendant's rights cannot have been infringed where adverse action has yet to be taken against him and where there is already a hearing set at which he may show cause as to why no such action should be carried out. Finally, even if Defendant's arguments regarding due process had any merit despite his being heard on May 7, 2015, which they do not, his motion regarding potential infringement upon his rights is plainly premature given the show cause hearing set for June 4, 2015.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this Court deny Defendant's Motion to Reconsider and Set Aside, or in the alternative, to Grant a New Trial, and for such other and further relief as to which they may be entitled.

Respectfully submitted, this the 1st day of **June, 2015**.

**CARTER CARROLL and
KIM BRADLEY**

By: _____


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¹ This Court originally set Defendant's hearing on contempt for May 21, 2015; however, this Court notified the parties on May 18, 2015 that the hearing on the same was rescheduled for June 4, 2014 at 11:00 a.m.

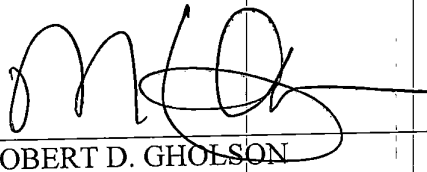
CERTIFICATE OF SERVICE

I, Robert D. Gholson, hereby certify that a copy of the above and foregoing document has been served on the following, by directing same to their office/ mailing addresses through first-class, United States mail, postage prepaid, on this the 1st day of **June, 2015**:

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June 1, 2015

Honorable Lou Ellen Adams
Forrest County Circuit Clerk
P.O. Box 992
Hattiesburg, MS 39403-0992

**Re: *Carroll & Bradley v. Dupree*
*Cause No. CI14-0212***

Dear Ms. Adams:

Enclosed for filing in the above matter the Plaintiffs' Response to Defendant's Motion to Reconsider and Set Aside or in the Alternative to Grant a New Trial, along with an extra copy to be stamped filed and returned in the self-addressed, stamped envelope provided.

If you have any questions, please feel free to give me a call.

Sincerely yours,



Robert D. Gholson

RDG/mm
Enclosures

cc: Honorable L. Breland Hilburn
Charles Lawrence, Esq.
Shawn O'Hara
Elisha Jackson

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