

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BARNWELL COUNTY  
Family Court

Dale M. Gable, Family Court Judge

Ex parte:

Belinda Davis Branch,

Respondent.

In re:

Larry Solomon,

Plaintiff

v.

Betty Jean Solomon,

Appellant

FINAL BRIEF OF RESPONDENT

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DEC 11 9 2011

SC Court of Appeals

Zipporah Sumpter, Esquire  
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## STATEMENT OF ISSUES ON APPEAL

**I. Does the Family Court Judge have authority to enforce its own Order which includes an agreement entered into by the parties wherein each party agreed to pay their own attorney fees.**

**A. The Family Court has subject matter jurisdiction to enforce its own Order.**

**I. Respondent seeks enforcement of the Family Courts Final divorce decree dated March 24, 2008, and not enforcement of an award of attorney fees.**

**B. The case of Huff v. Jennings 319 S.C.142, 1995, is distinguishable from the present case.**

**II. Respondent has standing to seek relief in a Contempt action.**

## STATEMENT OF THE CASE

On March 24, 2008, the Honorable Agnes Dale Moore Gable issued a Final Divorce Decree in the matter of Larry Solomon v. Betty Jean Solomon . The Decree included an agreement which a provision that each party shall pay for their own attorney fees. The agreement was incorporated and merged into the Final Divorce Decree. A period of two years passed and Respondent, attorney for Appellant during the divorce matter, did not receive the attorney fees as approved/ordered by the Final Divorce Decree. Further the Appellant never disputed the fee or the amount of the fee. On April 29, 2010, Respondent filed a Rule to Show Cause action with the Barnwell County Clerk of Court seeking enforcement of the Final Divorce Decree and an Order of Contempt for Appellant's failure to comply with the Decree. On June 17, 2010, Judge Gable granted Respondent's Motion for Contempt. On June 25, 2010, a bench warrant was issued and an Order of Contempt was filed with the Barnwell County Clerk of Court. On October 25, 2010, Appellant filed a Motion to Set Aside the Contempt Order or Amend Judgment, which was denied by Judge Gable on December 2, 2010. On December 30, 2010, Appellant filed a Notice and Rule 59 Motion to Alter or Amend Judgment, which was denied by Order dated June 9, 2011, and filed on June 17, 2011.

## FACTS

Respondent was attorney for Appellant at her final divorce hearing on March 10, 2008.

On March 24, 2008 Judge Agnes Dale Moore Gable issued a Final Divorce Decree which approved an agreement which stated that, "Each party shall pay his/her own attorney's fees, costs and expenses associated with this action." Although a period of two years passed, Appellant failed to pay the attorney fees. Respondent filed a Rule to Show Cause action seeking enforcement of the trial's court's March 24, 2008, Final Divorce Decree. The trial court found Appellant in contempt for violating the Final Decree.

## **ARGUMENTS**

### **I. THE FAMILY COURT HAS SUBJECT MATTER JURISDICTION TO ENFORCE ITS OWN ORDER.**

The Family Court has jurisdiction in domestic matters: in all cases or proceedings within the county against all persons charged with failure to obey an order of the court made pursuant to authority conferred by law. See South Carolina Code of Law, § 63-35-30 (A) 13. Further, S.C. Code § 63-3-620 authorizes the court to hold in contempt an adult who willfully violates, neglects or refuses to obey or perform a lawful order of the court. An adult found in contempt of court may be punished by a fine, imprisonment, or community work, or any combination of all three in the discretion of the court.

All provisions contained in the Final Divorce Decree including the provision in the agreement approving/ordering the Appellant to pay her own attorney fees are subject to the trial court's jurisdiction. The Family Court has jurisdiction to enforce its own Orders. Moreover, there were numerous findings of facts and conclusions of law throughout the Final Divorce Decree and the Appellant should not be allowed to choose the one (s) she will or will not comply with.

Appellant is a person within the meaning of the statute, who willfully violated, neglected or refused to obey the trial court's order. As such the trial court has correctly exercised its statutory power by enforcing its own order.

**A. RESPONDENT SEEKS ENFORCEMENT OF THE COURT'S FINAL DIVORCE DECREE DATED MARCH 24, 2008 AND NOT ENFORCEMENT OF AN AWARD OF ATTORNEY FEES.**

Appellant argues that the South Carolina Legislature has set forth a method for collecting unpaid attorney fees and suit money when awarded to a party by the Family Court, pursuant to §20-3-120, 20-3-130H, 20-3-145, 20-3-125 . See Appellant's brief at 3. However, Respondent does not seek attorney fees based on an award by the trial court. Rather, Respondent seeks the enforcement of the trial court's Final Decree of Divorce which incorporated the agreement of the parties that stated, each would pay their own attorney fees. Thus Appellant's argument is inapplicable to the present case and the Decree is thereby enforceable and subject to the contempt powers of the trial court as stated in the Decree. (R. p. 13, line 1 and 2 ).

**B. THE CASE OF HUFF V. JENNINGS 319 S.C. 142, 1995, IS DISTINGUISHABLE FROM THE PRESENT CASE**

The case of Huff v. Jennings 319 S.C. 142, 1995, is distinguishable from the present case. In Huff, the parties were ordered to pay their own attorney fees. Jennings represented the wife who did not pay her. Jennings placed a lien for her attorney's fees on the joint property belonging to the parties. Huff filed suit against Jennings alleging that she filed an invalid lien against his property. The court in Huff,

concluded that Jennings had not been awarded attorney fees within the meaning of S .C. Code Ann.§20-3-145. Respondent agrees that in Appellant's divorce case she was not “awarded” attorney fees and has never asserted such claim. Rather, Respondent seeks enforcement of an order issued by the trial court. In Appellant's divorce case the parties entered into an agreement which included a provision that both parties agreed to pay their own attorney's fees. This agreement was approved by the trial court, merged and incorporated into the court's Final Divorce Decree. The Decree included a provision that the agreement was enforceable by the contempt powers of the court. Thus providing Respondent with an avenue to seek court relief by way of a Contempt action which makes Huff distinguishable from the present case.

## **II. RESPONDENT HAS STANDING TO SEEK RELIEF IN A CONTEMPT ACTION**


The present case involves the trial court 's enforcement powers pursuant to S.C. Code § 63-3-620. Respondent filed a contempt action against Appellant. In a contempt action, the parties include a person seeking to have part of, if not all, of an order enforced and the other is the person who has failed to abide by the order. Herein, Respondent was seeking the enforcement of the trial court's order against the Appellant who failed to abide by the order. Respondent has a personal stake in the subject matter of the agreement incorporated in the court's March 24, 2008, order which would have benefited Respondent by receiving payment for services rendered. Thus Respondent' does have an “real, actual, material or substantial interest in the subject

matter" the Contempt action. Bailey v. Bailey, 312 S.C.454,458(1994).

### CONCLUSION

This is a matter of the trial court enforcing its own Order and not an enforcement of an award of attorney fees. The Appellant entered into an agreement which in part stated that that she agreed to pay her own attorney fees. The court approved, merged and incorporated the agreement into the Order thereby making it a part of its Final Divorce . Decree. The Final Decree also contained a provision that the Order was enforceable by its contempt powers. Certainly, the trial court has jurisdiction to enforce its own order. A party does not have the authority to pick and choose which provisions it wants to abide by. To hold otherwise, would allow parties to ignore the court's order in part.

The Respondent, as a party to the contempt action filed in the present case had standing to seek enforcement of the trial court's order against Appellant who failed to abide the order. Respondent has a personal stake in the subject matter of the agreement thus making her interest, "real, actual, material, and substantial". Bailey v. Bailey, 312 S.C.454,458(1994). Based on the aforementioned , the trial court's previous ruling should be affirmed.

  
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**December 14, 2011**



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In the Court of Appeals

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APPEAL FROM BARNWELL COUNTY  
FAMILY COURT

Dale M. Gable, Family Court Judge

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SC Court of Appeals

Case No. 2011196006

Larry Solomon,

Respondent,

vs.

Betty Jean Solomon,

Appellant.

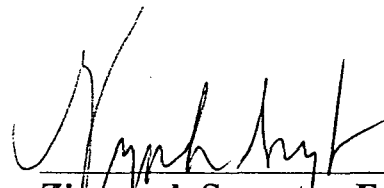
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CERTIFICATE OF COMPLIANCE

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This is to certify that the Final Brief of Respondent Belinda Davis-Branch complies with Rule 211(b).

December 14, 2011



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BARNWELL COUNTY  
FAMILY COURT

Dale M. Gable, Family Court Judge

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Case No. 2006-DR-06-424

Larry Solomon,

Respondent,

vs.

Betty Jean Solomon,

Appellant.

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CERTIFICATE OF SERVICE

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This is to certify that I, Zipporah Sumpter, attorney for Respondent Belinda Davis-Branch in the above referenced matter have this 14<sup>th</sup> day of December, 2011 served three copies of the Respondent's Final Brief by depositing same into the United States Postal Service with sufficient postage affixed thereon and addressed to following persons:

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