

IN THE EIGHTH JUDICIAL DISTRICT FOR THE STATE OF TENNESSEE

FENTRESS COUNTY CHANCERY COURT SITTING AT JAMESTOWN

DOUGLAS VERNON FRAVEL,)

PLAINTIFF,)

VS.)

NO. 02-57

DIANA MARIE STEVENSON FRAVEL,)

DEFENDANT)

Filed: 23rd day of October 2003
Time 10:35 A. m
Kathryn T. Robbins, Clerk & Master

OPINION, JUDGMENT AND ORDER OF REFERENCE

This cause came on to be heard on the 29th day of September, 2003, before Gerald L. Ewell, Sr., Retired Circuit Judge, acting as Chancellor of the Eighth Judicial District pursuant to a designation of the Chief Justice of the Supreme Court of Tennessee dated September 3, 2003. The matter was before the Court on the Motion for Sanctions against the Plaintiff, Douglas Vernon Fravel, under Rule 11, TRCP, filed June 9, 2003 by the Defendant, Diana Marie Stevenson Fravel.

After hearing oral testimony and argument of counsel, the Court took the motion under advisement, and now after having considered the entire record in this cause, including the complaint, the answer thereto filed by the Plaintiff, the oral testimony adduced in open Court, and having considered the law applicable to the facts, renders the following Opinion, Judgment and Order of Reference:

The gist of the motion filed by the Defendant seeking sanctions against the Plaintiff is that plaintiff attempted to fraudulently mislead the Court into believing that it had subject matter

jurisdiction in this divorce litigation by averring that Plaintiff was a resident of Fentress County, Tennessee and further attempted to perpetrate a fraud on the Court by making an affidavit that the Defendant's location was unknown thereby authorizing service of process by publication, when in truth and fact, as shown by his own testimony in the deposition taken December 6, 2002, the Plaintiff was not a resident of Fentress County, Tennessee, never had been, had never lived in Tennessee more than 3 months, and further that he had not been a resident of the State of Tennessee for 6 months thus granting subject matter jurisdiction to this Court to grant him a divorce for grounds allegedly committed by Defendant outside the State of Tennessee; (which he doesn't claim, but "To my knowledge, the best of my knowledge, I would say, 'No.' But she may have. I don't know"-Plaintiff's deposition, page 47); that he in fact knew the whereabouts of the Defendant at the time of making the affidavit to justify service of process by publication, ie, that she lived in the State of Maryland with the son of the parties, making said affidavit a false swearing although he unconvincingly claims this to be the result of a misunderstanding between him and his attorney. It is interesting to note that Defendant alleges that Plaintiff has never furnished to Defendant copies of his military service record to assist him in substantiating his claim of residence in Tennessee (at least no such documents existed in the record as of the date of the hearing).

Upon consideration of the entire record, it is apparent to the Court that plaintiff, Douglas Vernon Fravel, contrary to his assertions by way of the evidentiary hearing that he considered himself domiciled in Fentress County, Tennessee at the time of the filing of his complaint for divorce, nevertheless attempted to perpetrate a fraud on the Court by alleging that this Court had subject matter jurisdiction over his divorce action, when in truth and fact the record is replete with evidence that no such jurisdiction existed in Fentress County, Tennessee and that in furtherance of said fraud

he swore falsely that he did not know the whereabouts of his wife so that service by publication would be justified. Mr. Fravel's deposition and his manner of testifying at the evidentiary hearing supports in great part the above conclusion of the Court. The Court agrees with Defendant's assertion that "Plaintiff was pretending to be a Tennessean by various shallow artifices undertaken after Defendant challenged the Court's jurisdiction..." such as obtaining a Tennessee driver's license on October 9, 2002 and registering to vote and registering his car in November 2002 after Defendant's answer was filed on September 26, 2002. Plaintiff has now, after the hearing, furnished certain Navy records that the Court suggested might be helpful, but again, these are records of actions taken by the Plaintiff *after* the Defendant had raised a question relative to the residence of the Plaintiff. Further, Plaintiff's dismissal of his divorce action in Tennessee lends credence to the belief that not even he, notwithstanding his protestations to the contrary at the evidentiary hearing, believes that this Court had subject matter jurisdiction of his divorce action.

The Court notes that in his answer to the Motion for Sanctions and in his letter of transmittal of certain Navy records, Plaintiff asserts that the filing of the Motion for Sanctions after the expiration of 30 days from the entry of the order of dismissal therefore makes said Motion too late. This issue was not addressed at the hearing by either party, but the Court is aware of no such limitation on the filing of a Rule 11 motion. In fact Rule 11.03(a) specifically directs that a motion for sanctions *shall* be made separately from other motions or requests and imposes no time limitation in that regard.

Further, the prayer in the Motion that the Plaintiff be held in contempt is not supported in the record.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for

Sanctions filed by the Defendant against the Plaintiff on June 9, 2003 be and the same is hereby granted.

It is the further judgment of the Court that the Plaintiff shall have the choice of:

1. Paying to Defendant the sum of \$1000 as sanctions for violation of Rule 11, the Court being mindful of the admonition in Rule 11 that any sanction imposed

shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated

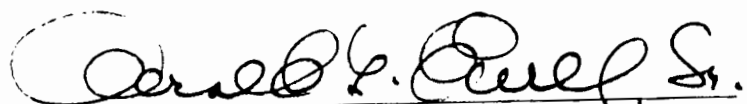
the Court taking judicial knowledge that Defendant expended at least this amount in pursuing the motion for sanctions, or,

2. The matter will be referred to the Clerk & Master who will take proof *only* as to the expenses incurred by Defendant in pursuing the motion for sanctions, the Court specifically finding and holding that amounts expended in attempts to negotiate a settlement of the divorce proceedings shall not be considered in this regard.

Plaintiff shall have until November 15, 2003 to make his decision of which of the above two options he elects and unless he deposits with the Clerk the above sum of \$1000 plus all accrued costs by November 15, 2003 the Clerk and Master will take proof and report her findings to the Court within 60 days from the date of entry hereof, from which report the Court will decide what monetary sanctions will be imposed upon the Plaintiff in the premises.

Until the occurrence of one of the above two events all other matters are reserved.

Enter this the 23rd day of October, 2003.


CHANCELLOR BY DESIGNATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this document has been mailed to all parties in interest, or their attorneys via U.S. Mail.

This 24th day of October, 2003
Kathryn T. Robbins, Clerk & Master

IN THE CHANCERY COURT FOR FENTRESS COUNTY, TENNESSEE

DOUGLAS VERNON FRAVEL,
Plaintiff,

v.

DIANA MARIE STEPHENSON FRAVEL,
Defendant.

Filed: 11th day of Dec. 2003
Time 11:45 A. m
Kathryn T. Robbins, Clerk & Master


Case No. 02-57

ORDER

Pursuant to the Order of the Honorable Gerald Ewell, Sr., substitute Judge for the Chancery Court for Fentress County, Tennessee, Douglas Fravel has deposited \$1,000.00 in the account of Kathryn Robbins, Clerk and Master, for the Chancery Court of Fentress County, Tennessee.

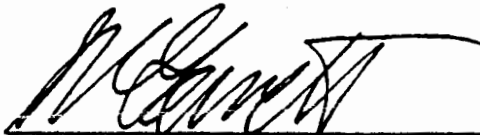
IT IS ACCORDINGLY ORDERED that the Clerk and Master shall issue a check in the amount of \$1,000.00 made payable to the defendant, Diana Marie Fravel.

ENTERED this 11 day of Dec, 2003.

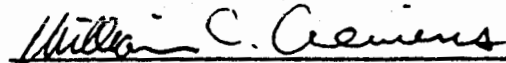


CHANCELLOR or SUBSTITUTE JUDGE

APPROVED BY:



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CERTIFICATE OF SERVICE

My undersigned attorney hereby certifies that he has filed a copy of the foregoing pleading to the court record for all other parties in this case at the following address:
[Address] with sufficient postage to insure delivery.

Entered: _____ Minute Book 11
Pages: 221 Date: 12-11-03