**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2010-CA-01003-COA**

**GREGORY EUGENE JANSSEN** **APPELLANT**

**v.**

**ELIZABETH JANE JANSSEN** **APPELLEE**

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| DATE OF JUDGMENT: | 05/25/2010 |
| TRIAL JUDGE: | HON. CARTER O. BISE |
| COURT FROM WHICH APPEALED: | HARRISON COUNTY CHANCERY COURT |
| ATTORNEY FOR APPELLANT: | THOMAS E. PAYNE |
| ATTORNEYS FOR APPELLEE: | JACK PARSONS<br>TADD PARSONS |
| NATURE OF THE CASE: | CIVIL - DOMESTIC RELATIONS |
| TRIAL COURT DISPOSITION: | FINDING OF CONTEMPT AGAINST GREGORY JANSSEN AND REPLACEMENT COSTS OF MISSING ITEMS AND ATTORNEYS' FEES AWARDED TO ELIZABETH JANSSEN |
| DISPOSITION: | AFFIRMED - 3/20/2012 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

**BEFORE GRIFFIS, P.J., BARNES AND ISHEE, JJ.**

**BARNES, J., FOR THE COURT:**

¶1. Elizabeth Jane Janssen (E. Jane) filed for divorce from her husband, Gregory Eugene Janssen (Greg) on August 4, 2000. Six years later, the Chancery Court of the First Judicial District of Harrison County entered a judgment of divorce and a division of marital assets. At issue in this appeal is an award of family heirlooms to E. Jane that allegedly were in the marital home where Greg still resided. After E. Jane's attempts to procure the items were

unsuccessful, E. Jane filed a citation for contempt against Greg on September 26, 2007. The chancery court ordered Greg to allow E. Jane access to the home to collect the items; however, when she went to the home, E. Jane could not locate the items. She filed another citation for contempt, and the chancellor found Greg to be in contempt of the court's original orders and imposed thirty days of incarceration. The chancery court's judgment also awarded E. Jane the replacement value of the items and attorneys' fees. After reviewing Greg's appeal of the chancellor's judgment, we find no abuse of discretion by the chancellor and affirm.

## SUMMARY OF FACTS AND PROCEDURAL HISTORY

¶2. E. Jane and Greg were married in 1981 and lived in Gulfport, Mississippi. The couple separated in 2000. E. Jane filed a complaint for divorce with the Harrison County Chancery Court on August 4, 2000. The couple briefly reconciled but separated permanently in 2003. E. Jane moved from the marital home with the couple's minor teenage daughter, Erica. The couple have another child, a son, who is emancipated.

¶3. As no further action had been taken on E. Jane's initial complaint for divorce, the Harrison County Chancery Clerk issued a motion to dismiss for want of prosecution on August 25, 2003. E. Jane filed an amended divorce complaint on March 2, 2004. In June 2005, Greg suffered a stroke, and in August 2005, Hurricane Katrina damaged the marital home.

¶4. On February 15, 2006, the chancery court granted the parties a divorce on the ground of irreconcilable differences. The chancellor awarded the marital home to Greg, and the couple's farm in Perry County, Mississippi, was awarded to E. Jane. Pertinent to the issue

on appeal, the chancellor also awarded E. Jane some personal family heirlooms that were still in the marital home. In the order, the chancellor noted that "Greg had no objection to [E. Jane] taking as hers those items that were Walker heirlooms, although there was no description of such items."

¶5. On September 26, 2007, E. Jane filed a citation of contempt against Greg, claiming that he had violated the court's order by not allowing her access to the marital home to collect her personal items and heirlooms. In a letter to Greg's attorney dated January 16, 2008, E. Jane requested a date that she could "pick up her items from the house and the sooner the better." Greg denied that E. Jane was not given access to the home and stated that he no longer possessed some of the items. E. Jane filed a second citation for contempt on March 6, 2009.

¶6. After a hearing, the chancery court entered a judgment of contempt against Greg on September 25, 2009, and ordered him to allow E. Jane access to home to retrieve the heirlooms. The chancellor also awarded E. Jane $1,000 for attorneys' fees. The parties agreed that E. Jane would be allowed to enter the home on December 5, 2009, to retrieve the items at issue. However, when she was unable to locate the family heirlooms at the home, E. Jane filed a third citation of contempt on December 11, 2009, claiming that Greg had "destroyed, thrown away, and secreted away from her" the items. E. Jane sought incarceration of Greg for his contempt and requested reimbursement of the value of the personal property and attorneys' fees.

¶7. Another hearing was held on April 23, 2010, and for the first time since the start of the proceedings, Greg testified that the items likely were destroyed in Hurricane Katrina. On

May 25, 2010, the chancery court entered its judgment, finding that Greg's deliberate conduct of preventing E. Jane from retrieving her items constituted contempt of the court's previous judgments. The chancellor ordered Greg to be incarcerated for thirty days. E. Jane was awarded attorneys' fees of $5,761.56 and replacement value of the items ($9,748.98), if they were not received within ten days from the entry of the judgment.

¶8. On appeal, we find that the chancellor did not abuse his discretion in finding Greg in contempt and in awarding damages and attorney's fees. We affirm the judgment.

## STANDARD OF REVIEW

¶9. Our review of a chancellor's decision is limited. *Pulliam v. Bowen*, 54 So. 3d 331, 334 (¶10) (Miss. Ct. App. 2011) (citing *Nichols v. Funderburk,* 883 So. 2d 554, 556 (¶7) (Miss. 2004)). We will only reverse if "[t]he chancellor's determinations . . . were manifestly wrong, clearly erroneous, or when the chancellor applies an incorrect legal standard." *Id.* A chancellor's decision is reviewed for abuse of discretion; questions of law, however, are reviewed de novo. *Tillman v. Mitchell*, 73 So. 3d 556, 558 (¶8) (Miss. Ct. App. 2011) (citations omitted).

### I. Whether the chancellor abused his discretion in finding that Greg was in contempt.

¶10. In his May 25, 2010 order, the chancellor found Greg in contempt for his attempts to prevent E. Jane from obtaining certain personal family heirlooms, and Greg was incarcerated for thirty days "for his willful and contumacious contempt of the Court's judgment." The chancellor stated: "Greg's testimony does not square with the correspondence sent on his behalf . . . . This Court finds that he has engaged in a course of conduct designed to thwart

[E. Jane] Janssen's retrieval of her personal property and family heirlooms."

¶11. Whether to hold a party in contempt is subject to the discretion of the chancellor. *Kelley v. Day*, 965 So. 2d 749, 756 (¶18) (Miss. Ct. App. 2007) (quoting *R.K. v. J.K.,* 946 So. 2d 764, 777 (¶39) (Miss. 2007)). "Contempt is an issue of fact to be decided on a case-by-case basis." *Id*. The "[f]ailure to comply with a court order is prima facie evidence of contempt." *Evans v. Evans*, 75 So. 3d 1083, 1087 (¶14) (Miss. Ct. App. 2011) (citing *McIntosh v. Dep't of Human Servs*., 886 So. 2d 721, 724 (¶11) (Miss. 2004)). In order "[t]o rebut a prima facie case of contempt, a defendant must show . . . 'that performance was impossible.'" *Id*. (citation omitted). Greg argues that the chancellor abused his discretion by finding that Greg was in contempt as he did not possess the items at issue. Thus, Greg claims that he "did not comply because he could not comply."

¶12. As both parties note on appeal, the chancellor charged Greg with constructive criminal contempt. Criminal contempt punishes "for disobedience of a court order . . . and does not terminate upon compliance with the court order." *In re Williamson v. Miller*, 838 So. 2d 226, 237 (¶29) (Miss. 2002) (citing *Common Cause of Miss. v. Smith,* 548 So. 2d 412, 415-16 (Miss. 1989)). A finding of constructive criminal contempt "punishes a party for noncompliant conduct outside the court's presence." *Hanshaw v. Hanshaw*, 55 So. 3d 143, 147 (¶14) (Miss. 2011) (citing *Moulds v. Bradley,* 791 So. 2d 220, 224-25 (¶8) (Miss. 2001)). Here, the term of incarceration was for a definite period of time and was punishment for Greg's non-compliance with the court's order. "[I]n criminal contempt matters, the court proceeds ab initio to determine whether the record proves the alleged contemnor guilty of contempt beyond a reasonable doubt." *Davis v. Davis*, 17 So. 3d 114, 120 (¶24) (Miss. Ct.

App. 2009) (citation omitted). "In constructive contempt matters, defendants are required to be given procedural due process safeguards, including a specification of charges, notice, and a hearing. *Id.* at 199-20 (¶23) (citation omitted).

¶13. At the hearing for the divorce and division of assets, Greg stated:

> Q. Now, the heirlooms that's in your home that came from the Walker family, do you want her to have them?
>
> . . . .
>
> A. Yes.
>
> . . . .
>
> Q. You have no objection to her picking them up whenever it's convenience for her and yourself?
>
> A. Yeah.
>
> Q. Without any interference from you?
>
> A. I can't get into the attic.
>
> Q. I'm sorry?
>
> A. I can't get into the attic. If she's got anything up there, I can't get to it.

In the February 15, 2006 order granting the divorce and equitable distribution of marital assets, the chancery court noted that "Greg had no objection to E. Jane taking as hers those items that were Walker heirlooms, although there was no description of those items." The chancellor also concluded that Greg's testimony was unreliable and not trustworthy, as Greg's stroke caused confusion with memory and numbers.

¶14. On November 14, 2006, E. Jane sent Greg a list of personal items to be divided, which included items in the attic such as the "Marsh/Walker furniture and accessories." E. Jane

filed the citation for contempt on September 26, 2007, and sent an informal request to obtain a date to retrieve her items; Greg waited until August 20, 2008, to respond. In his response, he claimed that he "does not have some of the items that Petitioner requested, and Petitioner has had the opportunity to get the rest of the items." At a hearing on May 11, 2009, Greg testified that E. Jane came to the home once, and the attic was "nailed shut," presumably for safety reasons. When questioned, whether there was anything left on "E. Jane's list" in the home after Hurricane Katrina, Greg merely stated, "Nothing." However, E. Jane disputed that any damage to the attic was a result of Katrina, and she claimed that she was unable to look for the items.

> Q. And every time that you were supposed to be authorized to go pick up your property, even after August of 2008, have your been permitted to do so?
>
> A. No, I have not.
>
> Q. Now, what prevented you from going to do it?
>
> A. There was no one there at all, and no one answered the door. There were no vehicles there.

Furthermore, as the chancellor noted at the hearing, the judgment awarding the items was entered "post-Katrina." Yet, Greg said nothing about the unavailability of the items in 2006.

¶15. Greg was given a hearing on April 23, 2010, to address the December 11, 2009 citation for contempt. It was not until this hearing that Greg claimed that the family heirlooms either were destroyed in Hurricane Katrina or lost in the subsequent clean-up. This was four years after he was ordered by the chancery court to provide E. Jane with the items. Further, Erica testified that she saw the items in 2007 when she went to the home to

retrieve some of her personal belongings. E. Jane also stated that the items were there after Hurricane Katrina.

¶16. We find that the evidence showed, beyond a reasonable doubt, that Greg was not forthcoming with information regarding the status of the pertinent items during the entire course of the proceedings and that he was not cooperative in allowing E. Jane access to the items. Although E. Jane was awarded the heirlooms in 2006, she was unable to access the attic to search for the items until December 5, 2009. It was only at that point it became evident that the items were missing.

¶17. Accordingly, we find no abuse of discretion in the chancellor's finding of contempt.

**II. Whether the award of attorneys' fees was excessive.**

¶18. Greg contends that the award of attorneys' fees in the May 25, 2010 order was excessive, since it was for E. Jane's attorneys' fees since 2007. The award of attorneys' fees is "generally proper" if a party "is found in contempt of a previous judgment[.]" *Day v. Day*, 28 So. 3d 672, 677 (¶23) (Miss. Ct. App. 2010) (citing *Newell v. Hinton,* 556 So. 2d 1037, 1043 (Miss. 1990)). "[T]he purpose of an award of attorney's fees is to compensate the prevailing party for losses sustained by reason of a defendant's noncompliance with the judicial decree." *Jurney v. Jurney*, 921 So. 2d 372, 376 (¶14) (Miss. Ct. App. 2005) (citing *Hinds County Bd. of Supervisors v. Common Cause of Miss.*, 551 So. 2d 107, 125 (Miss. 1989)). "[W]here a party's intentional misconduct causes the opposing party to expend time and money needlessly, then attorney fees and expenses should be awarded to the wronged party." *Corporate Mgmt, Inc. v. Greene County*, 23 So. 3d 454, 466 (¶34) (Miss. 2009) (quoting *Mabus v. Mabus*, 910 So. 2d 486, 489 (¶8) (Miss. 2005)).

¶19. It does appear from the record that the attorneys' fees awarded were for all charges incurred throughout the entire contempt proceedings, less the $1,000 already awarded in the September 2009 order. However, the fee statement was admitted into evidence at the April 23, 2010 hearing without any objection from Greg. While Greg's attorney reserved the right to "voir dire" E. Jane's attorney regarding the fee statement, he never did so. Therefore, we find that Greg has waived this issue on appeal. *See Common v. Common*, 42 So. 3d 59, 62 (¶7) (Miss. Ct. App. 2010).

¶20. Nonetheless, there was nothing to indicate that any of the attorneys' fees were for any work unrelated to the contempt proceedings and the retrieval of these items. Furthermore, although Greg asserts that E. Jane provided no testimony that she was unable to pay the fees, this Court has held that "[a] specific finding of inability to pay is also not required when attorneys' fees are assessed against a party found to be in contempt." *Dickerson v. Dickerson*, 34 So. 3d 637, 649 (¶50) (Miss. Ct. App. 2010) (citing *Mount v. Mount,* 624 So. 2d 1001, 1005 (Miss. 1993)). We find no error in the award of attorneys' fees to E. Jane.

### III. Whether the award for replacement value was supported by credible evidence.

¶21. Greg contends that he paid E. Jane $18,500 under an agreed order (which was not presented to the chancery court until December 21, 2009) and that he was under the belief that this payment resolved all pending issues. Thus, he argues that she had no right to continue to "come after [him] for contempt over these items." He further claims that the items "had only emotional value."

¶22. Yet, in his Appellant's brief, Greg admits that he "believed that the Agreed Order and

lump sum payment resolved all pending contested issues; *however, the retrieval of the remaining personal property that had yet to be identified and agreed upon by the parties remained outstanding* according to the terms of the Agreed Order." (Emphasis added).

¶23. At the May 11, 2009, and April 23, 2010 hearings, E. Jane submitted into evidence a list of the missing items with their respective values. At both hearings, Greg's counsel objected to the evidence, arguing that no independent value of the items had been offered. However, "a party may testify as to the value of his or her own property." *Community Bank, Ellisville, Miss. v. Courtney*, 884 So. 2d 767, 774 (¶23) (Miss. 2004) (citing *Regency Nissan, Inc. v. Jenkins,* 678 So. 2d 95, 101 (Miss. 1996)). "We have not indicated whether this estimate of value must be rationally based. Nor have we required any predicate other than that of ownership." *Id.* at 774-75. At the May 2009 hearing, E. Jane testified:

> Q. Have you looked at all the sources and then arrived on the value of the property on your own judgment, not relying on something else?
>
> A. Yes, sir.
>
> Q. And this is what you have come to believe and tell the court under your oath that your best interest, the value of that property would be at the time that you were entitled to it?
>
> A. Yes, sir, that's correct.

¶24. Additionally, Greg did not provide any evidence to controvert the value of the items. As this Court recently held:

> The chancellors of this state are not responsible for the evidence that is presented at trial. . . . . [I]t is incumbent upon the parties, and not the chancellor, to prepare evidence touching on matters pertinent to the issues to be tried. Where a party fails to provide information, the chancellor is entitled to proceed on the best information available.

*Cox v. Cox*, 61 So. 3d 927, 937-38 (¶32) (Miss. Ct. App. 2011) (quoting *Irby v. Estate of Irby*, 7 So. 3d 223, 225 (¶38) (Miss. 2009)).

¶25. Accordingly, we find that there was credible evidence to support the award of replacement value for the missing items. This issue is without merit.

¶26. **THE JUDGMENT OF THE CHANCERY COURT OF HARRISON COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**LEE, C.J., GRIFFIS, P.J., ISHEE, ROBERTS, CARLTON, MAXWELL AND FAIR, JJ., CONCUR. RUSSELL, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY IRVING, P.J.**

**RUSSELL, J., DISSENTING:**

¶27. The majority affirms the chancellor's judgment of criminal contempt against Greg because he was "not forthcoming with information regarding the status" of E. Jane's heirlooms. The majority further found, as did the chancellor, that criminal contempt was proven beyond a reasonable doubt. In my view, the chancellor abused his discretion in holding Greg in criminal contempt, ordering him incarcerated for thirty days, and requiring him to pay the replacement value of the heirlooms. Therefore, I would reverse the judgment of contempt.

¶28. We review cases of criminal contempt ab initio. *In re Smith*, 926 So. 2d 878, 885 (¶9) (Miss. 2006). This Court proceeds ab initio to "determine whether the record proves the appellant guilty of contempt beyond a reasonable doubt." *Dennis v. Dennis*, 824 So. 2d 604, 608 (¶7) (Miss. 2002).

¶29. "A citation of contempt is proper when 'the contemnor has *willfully and deliberately* ignored the order or the court.'" *Westerburg v. Westerburg*, 853 So. 2d 826, 828 (¶6) (Miss.

Ct. App. 2003) (quoting *Bredemeier v. Jackson*, 689 So. 2d 770, 777 (Miss. 1997)) (emphasis added). Our supreme court has explained the difference between civil contempt and criminal contempt as follows:

> If the purpose of the proceedings is to coerce action or non-action by a party, the order of contempt is characterized as civil. This type [of] contempt proceeding is ordinarily instituted by one of the parties to the litigation who seeks to coerce another party to perform or cease performing an act. The order of contempt is entered by the court for the private benefit of the offended party. Such orders, although imposing a jail sentence, classically provide for termination of the contemnor's sentence upon purging himself of contempt. The sentence is usually indefinite and not for [a] fixed term. Consequently, it is said that the contemnor "carries the key to his cell in his own pocket." On the other hand, a criminal contempt proceeding is maintained solely and simply to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of an order of the court.

*Moulds v. Bradley*, 791 So. 2d 220, 224 (¶6) (Miss. 2001) (quoting *Newell v. Hinton*, 556 So. 2d 1037, 1044 (Miss. 1990)). In other words, "[i]f the primary purpose is to enforce the rights of private party litigants or to enforce compliance with a court order, the contempt is civil." *Purvis v. Purvis*, 657 So. 2d 794, 796 (Miss. 1994). In cases of civil contempt, "[o]ne may be jailed or fined for civil contempt, however, the contemnor must be relieved of the penalty when he performs the required act." *Id*. at 796-97. In contrast, "[c]riminal contempt penalties are designed to punish for past offenses and they do not end when the contemnor has complied with the court order." *Id*. at 797. Constructive criminal contempt "involves actions which are committed outside the presence of the court." *Moulds*, 791 So. 2d at 225 (¶8).

¶30. In *Scroggins v. Riley*, 758 So. 2d 467, 472 (¶20) (Miss. Ct. App. 2000), a divorced wife sought to have her former husband held in contempt for failing to provide certain items

of personal property, but the chancellor declined to do so. The chancellor noted that the "form of the contempt sought by [the former wife was] criminal in nature since she [sought] to punish [her former husband] for either negligently permitting or willfully causing her property to be damaged while in his safekeeping." *Id*. at 473 (¶23). However, the former wife "failed to present any evidence that [he] wilfully damaged her property, nor was there sufficient evidence that he negligently permitted her property to suffer damage while it was in his control after the judgment of divorce." *Id*. Because there was "no evidence of any negligence or want of care on [his] part in the time after entry of the divorce judgment[,]" a finding of contempt would have been improper. *Id*. Therefore, this Court affirmed the chancellor's denial of contempt. *Id*.

¶31. In the instant case, there was reasonable doubt as to whether Greg's actions were *willful* and *deliberate* as required to be held in contempt. *See id; see also Westerburg*, 853 So. 2d at 828 (¶6). The record reflects that Greg suffered three strokes in the year immediately preceding the divorce. The chancellor noted this fact in the judgment of divorce:

> As a preliminary matter, the court notes that Greg suffered a stroke in June, 2005. Since that date, he has remained *totally disabled* up through the date of trial. At trial, counsel for Greg examined him as to his ability to act on his own behalf without the appointment of a conservator. There was no medical testimony that Greg was incapable of acting on his own behalf. As Exhibit 6, a weekly income benefits claim form from Grey's employer was introduced, which showed a diagnosis of a cerebral vascular accident with right weakness occurring on or about June 16, 2005, releasing him to partial duties on August 17, 2005. Those records further note that this was his *third CVA in the past year*. He demonstrated "*mild confusion*" on his functional capacity assessment. The assessment noted *speech difficulty* which was being treated elsewhere. There was no additional medical proof. Based upon the demonstrated ability to respond to questions, the court allowed the matter to

> continue. The court notes that Greg is not reliable in his testimony. His memory is faulty. Regarding his 8.05, he was *hopelessly confused as to numbers and amounts*. *At best, he was not deceptive, but he was not reliable.* Needless to say, the court, having observed his demeanor, is of the opinion that he is not trustworthy.

(Emphasis added). At the divorce hearing, Greg testified how the strokes have adversely affected his memory, his ability to put thoughts into words, his ability to write, his ability to walk, and his ability to explain himself. He was also forced to retire from truck driving due to his stroke, and he was receiving – and continues to receive – disability income. At the subsequent contempt hearing, it was evident that Greg was still having problems explaining himself. The chancellor even stopped Greg's testimony and stated he was "concerned about whether or not we need to have a conservator set up [for Greg] and proceed from that point[,]" but the chancellor allowed Greg to continue. In my view, the chancellor abused his discretion in holding Greg in criminal contempt because Greg was clearly suffering from several problems due to the three strokes he suffered in the year immediately preceding the parties' divorce.

¶32. Furthermore, Greg also had a valid defense of impossibility. "Impossibility of performance of a court directive due to circumstances beyond the control of the alleged contemnor is a perfect defense to a contempt citation." *Ewing v. Ewing*, 749 So. 2d 223, 225 (¶7) (Miss. Ct. App. 1999). In *Ewing*, the husband was awarded two jet skis, which the wife failed to turn over to the husband. *Id*. at 223-24 (¶¶2-3). The wife alleged that the jet skis were stolen, and as such, she was unable to comply with the provisions of the judgment of divorce. *Id*. at 224 (¶3). Nevertheless, the chancellor held the wife in contempt, and wife appealed. *Id*. at 223 (¶1). On appeal, this Court reversed the judgment of contempt, finding

that the chancellor was not free to simply disregard the wife's evidence that the skis were stolen from her because if "the skis were actually stolen, then [the wife] simply cannot be in contempt for her failure to accomplish an act that was impossible to perform for reasons beyond her control." *Id*. at 225 (¶8).

¶33. Likewise, in the case before us, Greg repeatedly testified that he did not know where the items were, that they were destroyed by Katrina, or that he simply did not have the items. Greg testified at the divorce hearing as follows:

> Q: Now, the heirlooms that's in your home that came from the Walker family, do you want her to have them?
>
> . . . .
>
> A: Yes.
>
> . . . .
>
> Q: You have no objection to her picking them up whenever it's convenient for her and yourself?
>
> A: Yeah.
>
> Q: Without any interference from you?
>
> A: I can't get in the attic.
>
> Q: I'm sorry?
>
> A: I can't get in the attic. If she's got anything up there, I can't get to it.

(Emphasis added). Thus, Greg never testified that he was in possession of the heirlooms. He merely stated that "if" the heirlooms were in the attic, he could not get to them. At the subsequent contempt hearing, Greg testified that he did not have E. Jane's property:

Q: Okay. Let me ask you this. What, if anything, was left of Ejane's list in your home after the hurricane?
A: Nothing.

. . . .

Q: Are you hiding any property of your wife's?

A: No, sir.

Q: Okay. Are you intentionally telling this court anything that's not true?

A: No.

Additionally, the parties' son, Eric, testified that the entire roof was damaged from Katrina, and that nothing was in the attic when he helped his father with repairs shortly after the storm. Thus, if heirlooms were actually destroyed or lost in Katrina, then Greg cannot be in contempt for his failure to accomplish an act that was impossible to perform for reasons beyond his control. *See id*. Further, if the items were destroyed by Katrina as stated by Greg and Eric, Greg's actions could not have been deliberate or willful. *See Westerburg*, 853 So. 2d at 828 (¶6).

¶34. Finally, I note that the daughter, who did not get along with her father, testified she saw E. Jane's property in the attic in the summer of 2007, over a year after the parties were divorced on February 15, 2006 and after the 2005 roof damage by Katrina. E. Jane testified that she personally had been over to Greg's house post-Katrina approximately twenty (20) different times to do laundry, yet she admitted she never took the heirloom property. It is troublesome that she waited until September of 2007, a year and a half following the divorce, to file a complaint for contempt concerning the heirlooms. E. Jane provided no explanation why she did not retrieve her heirloom on her many visits to the house or why she waited so

long to file for contempt.

¶35. In summary, I find that the criminal contempt was not proven beyond a reasonable doubt. In my view, because Greg's actions did not rise to the level of deliberate or willful, I find that the chancellor abused his discretion in holding Greg in criminal contempt. Therefore, I would reverse the judgment of criminal contempt against Greg.

**IRVING, P.J., JOINS THIS OPINION.**