

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2009 CA 1056**

**STACEY GRIFFIN THOMAS**

**VERSUS**

**GIFT WORLD, INC. AND JAMES R. GRIFFIN**

*Ⓢ*

*JRW*

Judgment Rendered: December 23, 2009

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*VGW by JRW*

On Appeal from the 22nd Judicial District Court  
In and For the Parish of St. Tammany  
Trial Court No. 2008-13519, Division "H"

Honorable Donald M. Fendlason, Judge Presiding

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**BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.**

## **HUGHES, J.**

This is an appeal of a judgment that ordered the reinstatement of the corporate status of Gift World, Inc. For the following reasons, we affirm.

### **FACTS**

Gift World, Inc. is a corporation that owns and manages rental properties. Defendant/appellant James R. Griffin (Griffin) is the President of the corporation and his daughter, plaintiff/appellee Stacey Griffin Thomas (Thomas), is its only other shareholder.

Griffin was arrested on charges of felony incest and child pornography. While awaiting trial, he was held as a pre-trial detainee at St. Tammany Parish Jail. After his arrest, Thomas filed a petition to be appointed receiver for the corporation. In the petition, Thomas alleged that her father had mismanaged the corporation's assets and had failed to pay the corporation's debts, placing the corporation at risk of foreclosure. On June 30, 2008 an order was signed granting Thomas the receiver status she had requested.

Thereafter, on July 28, 2008, Thomas filed a supplemental and amending petition alleging that in 2003 Griffin had fraudulently filed for dissolution of the corporation by affidavit. Specifically, she alleged that her signature on the affidavit filed by Griffin with the secretary of state was forged and that in the affidavit he falsely claimed that "the corporation is not doing business, owes no debts, and owns no immovable property." In her petition, Thomas requested that the court issue an order reinstating the corporation, pursuant to LSA-R.S. 12:142.1(B).<sup>1</sup>

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<sup>1</sup> Louisiana Revised Statutes 12:142.1(B) provides:

The secretary of state shall reinstate a corporation which has been dissolved pursuant to this Section only upon receipt of a court order directing him to so reinstate the corporation.

Griffin answered the petition and denied that the signature on the Affidavit of Dissolution was forged. He further asserted that the corporation did not “carry on business” after its dissolution, that any monies borrowed were borrowed in his name, and that since his arrest, Thomas had negligently run the corporation and stolen from him.

The hearing was held on September 17, 2008. At that time, Griffin was an inmate in the St. Tammany Parish Jail and was not present for the hearing. The transcript indicates that although the court was aware of Griffin’s location, it nevertheless conducted the hearing without his presence and ultimately ruled in favor of Thomas. The corporate status of Gift World, Inc. was reinstated.

Griffin appealed the judgment and on January 30, 2009 the St. Tammany Parish clerk filed a motion to dismiss Griffin’s appeal on the basis that he had not paid the estimated costs pursuant to LSA-C.C.P. art. 2088. An order dismissing Griffin’s appeal was signed on February 6, 2009.<sup>2</sup> Thereafter, Griffin made numerous attempts to save the appeal and ultimately succeeded. The appeal of the September 17, 2008 judgment was reinstated.

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<sup>2</sup> Louisiana Code of Civil Procedure article 2126 provides, in pertinent part, that:

E. If the appellant fails to pay the estimated costs, or the difference between the estimated costs and the actual costs, within the time specified, the trial judge, on his own motion or upon motion by the clerk or by any party, **and after a hearing**, shall:

- (1) Enter a formal order of dismissal on the grounds of abandonment; or
- (2) Grant a ten day period within which costs must be paid in full, in default of which the appeal is dismissed as abandoned. (Emphasis added.)

Therefore, a plain reading of the statute makes it clear that a hearing was required prior to any order of dismissal and no hearing was held in this case. However, the trial court’s reinstatement of the appeal negates our need to address this issue.

## **LAW AND ANALYSIS**

Under LSA-R.S. 12:142.1, if a corporation is not doing business, owes no debts, and owns no immovable property, it may be dissolved by filing an affidavit with the secretary of state, executed by the shareholders. Thomas argues that the district court was correct in reinstating Gift World, Inc.'s corporate status because: 1) her purported signature, as a shareholder of Gift World, Inc., was a forgery; and 2) the fact that Gift World, Inc. was doing business, owed debt, and owned immovable property, should have precluded the dissolution by affidavit.

Griffin denied that the affidavit was a forgery. He further argues that the failure of the court to transport him for the hearing prejudiced his defense. He concludes that the judgment should therefore be overturned.

### **1. GRIFFIN'S ABSENCE AT THE HEARING**

When an inmate is a party to civil judicial proceedings, the trial judge, in his discretion, may order the presence of the inmate in court pursuant to LSA-C.C.P. art. 197, which states that:

A. As used in this Article, "inmate" means a person confined in any prison, jail, correctional or training institution operated by the state, any of its political subdivisions, or any sheriff either while awaiting disposition of contemplated or pending criminal charges, pursuant to a sentence imposed by a court following the conviction of a crime, or pursuant to the judgment of a juvenile court.

B. When in any judicial proceeding the testimony of an inmate is required by law to be given in open court, when an inmate is a party to a judicial proceeding under circumstances giving him the legal right to be present in open court at any stage of the proceeding, or when the presence of an inmate witness in open court is requested timely by a party to litigation and is justified under the facts and circumstances of the case, the trial judge, in his discretion, may order any of the following:

(1) The court be convened and the testimony of the inmate be taken or the proceedings conducted at the institution wherein the inmate is confined.

(2) The testimony of the inmate be taken, or the proceedings conducted, by teleconference, video link, or other available remote technology approved by the judge, or by telephone if agreed to by all parties and approved by the judge.

(3) If the interests of justice require the presence of the inmate in open court and if no other methodology authorized hereunder is feasible, the court may order that the prisoner be transported to the courthouse pursuant to R.S. 15:706(D).

It is not unusual for individuals who are incarcerated to be parties to civil litigation, either as plaintiff or defendant, and a *writ of habeas corpus ad testificandum* is the means for such individuals to be present in court. **Falcon v. Falcon**, 07-491, pp.3-4 (La. App. 5 Cir. 12/27/07), 975 So.2d 40, 42-43, writ denied, 2008-0295 (La. 3/28/08), 978 So.2d 311; see Ardoin v. Bourgeois, 2004-1663, p.3 (La. App. 3 Cir. 11/02/05), 916 So.2d 329, 333. Prisoners who are parties to litigation utilize this mechanism to obtain their presence and the presence of witnesses who are also incarcerated in court. **Ardoin**, 2004-1663 at p. 3, 916 So.2d 332-33. Griffin admittedly was served with notice of the proceedings and with notice of the September hearing. Following the prior jurisprudence cited above, we conclude that if Griffin had found it necessary to be present at trial, it was incumbent upon him to seek the proper relief to ensure his own appearance. The record does not show that he made any attempt to do so.

## 2. THE REINSTATEMENT OF THE CORPORATION

Griffin alleges error in the trial court's reinstatement of Gift World, Inc.'s corporate status. Gift World, Inc. was dissolved by affidavit pursuant to LSA-R.S. 12:142.1, which states that:

A. In addition to all other methods of dissolution, **if the corporation is not doing business, owes no debts, and owns no immovable property, it may be dissolved by filing an affidavit** with the secretary of state executed by the shareholders, or by the incorporator if no shares have been issued, attesting to such facts and requesting that the corporation be dissolved. Thereafter, the shareholders, or the

incorporator if no shares have been issued, shall be personally liable for any debts or claims, if any, against the corporation in proportion to their ownership in the shares of the corporation.

B. The secretary of state shall reinstate a corporation which has been dissolved pursuant to this Section only upon receipt of a court order directing him to so reinstate the corporation. (Emphasis added.)

The evidence admitted at the hearing includes:

1. Mortgage on immovable property between Gift World, Inc. and Central Progressive Bank in the principal amount of \$141,344.35, executed on November 7, 2000;
2. Affidavit of Dissolution executed by Griffin (and purportedly executed by Thomas) stating that Gift World, Inc. was “not doing business, owes no debts, and owns no immovable property”;
3. Mortgage on immovable property between Gift World, Inc. and Central Progressive Bank in the principal amount of \$80,800.00, executed on June 21, 2004;
4. Property Management Agreement executed by Griffin, as owner of Gift World, Inc., and Marion B Real Estate, Inc. on April 28, 2008, wherein Marion B Real Estate, Inc. would manage immovable property of Gift World, Inc.

It is clear from the evidence that Gift World, Inc. was doing business, owned property, and owed debt at the time that the affidavit of dissolution was executed. Moreover, Griffin continued to do business and acquire debt in the name of the corporation even after he filed for its dissolution. Therefore, Gift World, Inc. did not meet the statutory requirements for dissolution by affidavit and the trial court was correct in reinstating its corporate status.

### **CONCLUSION**

The judgment of the district court is affirmed. All costs of this appeal are assessed against James R. Griffin.

**AFFIRMED.**