

COPY

IN THE SUPREME COURT OF MISSISSIPPI

**LA'KIMBERLY DUDLEY
DEFENDANT**

APPELLANT-

VS.

FILED

**NO. 2006-~~18~~-01733
CA**

AUG 14 2007

**METYOR HARRIS
PLAINTIFF**

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

APPELLEE-

**APPEAL FROM THE CHANCERY COURT OF
LOWNDES COUNTY, MISSISSIPPI
HONORABLE ROBERT L. LANCASTER, CHANCELLOR**

NO ORAL ARGUMENTS REQUESTED

**BRIEF OF APPELLEE
METYOR HARRIS**

**Curtis H. Austin, MSB. No. [REDACTED]
Attorney at Law
P. O. Box 264
Columbus, MS 39703
Telephone No.: (662) 328-6127
Facsimile No.: (662) 327-2361**

August 15, 2007

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PERSONS.....	1
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE CASE	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	5
STANDARD OF REVIEW	6
CONCLUSION	6
CERTIFICATE OF SERVICE	7

IN THE SUPREME COURT OF MISSISSIPPI

LA'KIMBERLY DUDLEY

APPELLANT-DEFENDANT

VS.

NO. 2006-ts-017333

METYOR HARRIS

APPELLEE-PLAINTIFF

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an of the Supreme and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

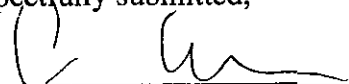
La'Kimberly Dudley
1605 22nd Street North
Columbus, MS 39701

Hon. Jeffery J. Hosford, Esq.
Attorney at Law
115-A South Lafayette Street
Starkville, MS 39759

Ned "Tres" McDonald III, Esq.
Counsel for Appellant
P. O. Box 436
Tupelo, MS 38802

Honorable Robert L. Lancaster
Lowndes County Chancery Court
Post Office Box 708
Columbus, MS 39703-0708

Respectfully submitted,



Curtis H. Austin
Attorney for the Plaintiff
MSB No. 01664
P. O. Box 364
Columbus, MS 39703-02641

TABLE OF AUTHORITIES

Cases	Page
<i>Albright v. Albright</i> 437 So. 2 nd 1003 (Miss, 1983)	5
<i>Bell v. Parker</i> 563 So 2 nd 594, 596-97 (Miss, 1990).	6
<i>Newson v. Newson</i> 557 So 2 nd 511, 514 (Miss, 1990).	6

IN THE SUPREME COURT OF MISSISSIPPI

LA'KIMBERLY DUDLEY

APPELLANT-DEFENDANT

VS.

NO. 2006-ts-017333

METYOR HARRIS

APPELLEE-PLAINTIFF

STATEMENT OF THE CASE

This case originated in an action brought by the Department of Human Services, seeking child support for the minor child, Jeremy L. Dudley. A stipulated agreement was entered into between the Defendant and Metyor Harris where he agreed to pay the sum of \$125.00 per month. He became delinquent in 2002 and was ordered to pay an additional \$40.00 per month to cover the arrearage. See Exhibit "A". Prior to the action brought by the Appellee in September 2006, the court had never adjudicated the issue of child custody. After hearing testimony from several witnesses, the Chancellor issued a ruling awarding custody to the Appellee. Appellant appealed.

SUMMARY OF THE ARGUMENT

Appellant argued the Chancellor's decision awarding custody to the Appellee was erroneous and an abuse of discretion. Appellant's basis for argument is that the Chancellor failed to consider all of the Albright factors and that those factors he did consider were not supported by the evidence. However, the Appellee would argue that so long as their creditable evidence in the record to support the Chancellor's findings of fact, his or her decision should be upheld.

ARGUMENT

The Chancellor failed to consider all the Albright factors in awarding custody.

In all a case of custody the determining issue is what is in the best interest of the child.

In making that determination the Chancellor must consider what is commonly referred to as the Albright factors which consists of making a finding of fact as to which of the factors favor which parent. *Albright v. Albright* 437 So. 2nd 1003 (Miss, 1983)

The Chancellor's finding that the stability of the home and employment favor the father. the school record favors the father. The age and sex favor the father. The parenting skills favor the father; and, finding the moral factor favors the father.

The factor which the Appellant alleges the Chancellor failed to address were those factors which could be determined by the observation of the Chancellor during the trial. The reason the Court gives such weight to the Chancellor's finding of fact is their ability to observe the witness and parties in person. The Chancellor considered all the relevant Albright factors in awarding custody to the father. See Exhibit "D".

2. The Chancellor was clearly erroneous in his decision to modify child custody.

First of all, the issue of custody had never been adjudicated. The Chancellor found six (6) factors which favor the father. In making these findings of fact, the Chancellor was able to observe the credibility and demeanor of the witness. It is this ability to observe the witness in person which is critical in determining the weight to be given in the testimony offered at trial. See Exhibit "C and D".

STANDARD OF REVIEW

The Court is limited in its scope of review and should only overturn a Chancellor's findings of fact and conclusion of law, if it was "manifestly wrong, clearly erroneous or on erroneous legal standard was applied. *Bell v. Parker* 563 So 2nd 594, 596-97 (Miss, 1990). In other words, "on appeal we are required to report the findings of fact made by the Chancellor supported by credible evidence and not manifestly wrong". *Newson v. Newson* 557 So 2nd 511, 514 (Miss, 1990). The Chancellor as the finder of facts is in a much better position to judge the credible and demeanor of the witness.


CONCLUSIONS

This court should uphold the Chancellor's decision in the above matter and not pick and choose, but considered this case in its totality.

Respectfully submitted,

METYOR HARRIS

BY: 

CURTIS H. AUSTIN, MSB 
Attorney at Law
Attorney for the Plaintiff
Post Office Box 264
Columbus, MS 39703-0264
Telephone No.: (662) 328-6127
Telecopier No.: (662) 327-2361

CERTIFICATE OF SERVICE

I, **CURTIS H. AUSTIN**, Attorney for the Plaintiff, Johnny Herron, do certify that I have this day served by First Class Mail, postage pre-paid, a true and correct copy of the above and foregoing **BRIEF OF APPELLEE** to the following, to-wit:

La'Kimberly Dudley
1605 22nd Street North
Columbus, MS 39701

Hon. Jeffery J. Hosford, Esq.
Attorney at Law
115-A South Lafayette Street
Starkville, MS 39759

Ned "Tres" McDonald III, Esq.
Counsel for Appellant
P. O. Box 436
Tupelo, MS 38802

Honorable Robert L. Lancaster
Lowndes County Chancery Court
Post Office Box 708
Columbus, MS 39703-0708

SO CERTIFIED this the 14 day of August, A. D., 2007



CURTIS H. AUSTIN, MSB No. [REDACTED]

Attorney at Law

P. O. Box 264

Columbus, MS 39703

Telephone No.: (662) 328-6127

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

DEPARTMENT OF HUMAN SERVICES
STATE OF MISSISSIPPI

PLAINTIFF

VS.

FILED
FEB 20 2003

CIVIL ACTION
FILE NO: 2001-0702

METYOR HARRIS
SSN: 331629821

DEFENDANT

Charles J. Gandy
Chancery Clerk
JUDGMENT APPROVING STIPULATED AGREEMENT AND PAYMENT SCHEDULE FOR
DELINQUENT CHILD SUPPORT

A STIPULATED AGREEMENT AND PAYMENT SCHEDULE FOR DELINQUENT CHILD SUPPORT HAVING BEEN FILED IN THIS ACTION AND PRESENTED FOR APPROVAL, AND THE COURT HAVING CONSIDERED SAME FINDS, ORDERS, AND ADJUDGES:

1.

THE COURT HAS JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER.

2.

THE STIPULATED AGREEMENT AND PAYMENT SCHEDULE FOR DELINQUENT CHILD SUPPORT, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A", IS HEREBY APPROVED IN ALL RESPECTS AND IS INCORPORATED BY REFERENCE INTO THIS JUDGMENT.

3.

COURT COSTS ARE HEREBY ASSESSED TO PLAINTIFF AND PLAINTIFF IS GRANTED A MONEY JUDGMENT AGAINST DEFENDANT FOR SAID COSTS.

SO ORDERED AND ADJUDGED, ON THIS THE 20th DAY OF

Feb, 18 2003.

[Signature]
CHANCELLOR

PRESENTED TO THE COURT BY:

[Signature]
~~TRACE BONES~~ JASON BAYLES
POST OFFICE BOX 1347
COLUMBUS, MS 397031347
TELEPHONE: (662) 329-5742
A519 BAR NO: 10803

299/521



IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

METYOR HARRIS

JUL 20 2006

PLAINTIFF

VERSUS

Steph Younger Hesse
Chancery Clerk

NO.: 2001-0702 *L*

LA'KIMBERLY DUDLEY and
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

DEFENDANTS

PETITION FOR CUSTODY AND VISITATION

COMES NOW, METYOR HARRIS, Natural Father of Jeremy Dudley, minor, and Metyor Harris, Individually and file this his Petition for Custody and Visitation against LA'KIMBERLY DUDLEY, natural mother of the said minor herein, who would show unto the Court the following facts, to-wit:

I.

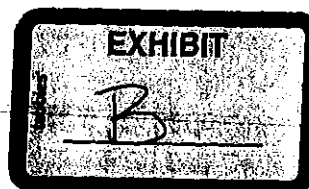
That said minor, Jeremy Dudley was born on June 06, 1997 in Lowndes County, Mississippi. Further, that said minor; Jeremy Dudley presently resides with La'Kimberly Dudley and has done so since his birth.

That Metyor Harris, natural father of the minor child Jeremy Dudley, is an adult resident citizen of Lowndes County, Mississippi whose present post office and resident address is 302 Dowdle Drive, Columbus, Mississippi 39702.

That La'Kimberly Dudley, natural mother of said minor, Jeremy Dudley, is an adult, resident citizen of the State of Mississippi whose current post office and resident address is 1605 22nd St. North, Columbus, Mississippi. Said Defendant can be served with notice by personal service of process.

That the Mississippi State Department of Human Services can be served with notice through its registered agent, Jim Hood, Mississippi State Attorney General, whose address is Office of the Attorney General, State of Mississippi, High Street, Jackson, Mississippi.

II.



IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

MEYTOR HARRIS

PLAINTIFF

VS.

01-702

LA'KIMBERLY DUDLEY

DEFENDANTS

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE TRIAL OF
THE ABOVE-STYLED AND NUMBERED CAUSE, BEFORE THE HONORABLE
ROBERT L. LANCASTER, CHANCELLOR, ON THE 28TH DAY OF AUGUST,
2006

VOLUME I of I

APPEARANCES:

Present and Representing the Plaintiff:

CURTIS AUSTIN, Esquire
P.O. Box 296
Columbus, MS 39703

Present and Representing the Defendant:

LA'KIMBERLY DUDLEY, Pro Se

EXHIBIT

C

COPY

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

METYOR HARRIS

PLAINTIFF

VERSUS

SEP - 8 2006

NO. 01-702

LA'KIMBERLY DUDLEY

DEFENDANT

Steph Younger Hesse
Chancery Clerk

JUDGEMENT

This cause is before the Court upon the Plaintiff's complaint for custody. The Defendant was lawfully served and appeared and defended pro se. The Court heard proof and argument and now finds and adjudges as follows:

The subject child, Jeremy L. Dudley, was born on June 6, 1997. On October 29, 2001, this cause was begun with the filing of the Plaintiff's stipulated agreement of support and admission of paternity. The agreement was supported by genetic testing results dated October 5, 2001 showing a probability of paternity in the Plaintiff of 99,999%. On November 8, 2001, an order was entered approving the stipulated agreement pursuant to the statute and paternity was established. No award of custody was made but the Plaintiff was ordered to pay child support to the mother of the child in the amount of \$125.00 per month.

In December 2002, the Plaintiff was in arrears in child support in the amount of \$1,350.00 and was ordered to pay the arrears at the rate of \$40.00 per month by order dated February 2003. On July 20, 2006, the Plaintiff filed the instant complaint for custody. There being no previous judgement awarding custody and the Plaintiff having assumed the responsibilities of parenthood by the order of November 8, 2001, the determination of custody is made by a consideration of the Albright factors.

The proof which addressed these factors is stated as follows: The child is a nine year old

