

COPY

IN THE COURT OF APPEAL OF THE STATE OF MISSISSIPPI

ANGELA WILBANKS COSSITT

APPELLANT

V.

CASE NO. 2006-CA-02087

JOHNNY KEVIN COSSITT

FILED

APPELLEE

MAY 29 2007

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SUPREME COURT
COURT OF APPEALS

REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Kevin argues in his brief that because he corrected some of his willful violations of Judgment of Divorce after the Complaint was filed against him, he should be excused from all of his willful violations of the Court's Judgment of Divorce; that the Mother of children has the primary responsibility to financially support the parties minor children, while Kevin, the father, can use any "Lame" excuse to avoid his responsibilities and be rewarded for his belated efforts.

The Trial Court departed substantially from what is "right" and what is "wrong", and it is in the best interest of these children. The foundation of our laws concerning the care of children is the Bible and I Timothy 8, says: " But if any provide not for his own, especially for those of his own house, he hath denied the faith and is worse than an infidel" Therefore, the differences in the issues as seen by and between the parties is this are very wide. While Kevin feels he should be congratulated, Angie feels he is selfish, self-centered and feels no responsibility to anyone, except himself, not even his children.

The Complaint in this action was filed on March 20, 2005. (R.1, L 21) and contained the issues that were tried before the Trial Court and are in this Court on appeal. Katrina did not hit the Gulf Coast until August 29, 2005. (T 3. pp 57-58) Kevin's response to Katrina is nothing except an attempt to use prejudice to overcome his failure. Prior to the filing of the Complaint for Citation for Contempt and prior to Katrina, Kevin made no attempt to get a full time job; refused to correct the amount of child support after being asked to do so; concealed the amount of his income on more than

one occasion; concealed his unreported tips, had not paid child support on his unreported tips; had not paid support on his tax refunds; had made improper deductions when determining his adjusted gross income; refused to pay one-half (1/2) of his daughter's car tag for seven (7) months; accused Angie of committing crimes and threatened her; sent indecent emails to his daughters; and, refused to provide health insurance for his children or reimburse Angie for the Premiums she was required to pay. All of these willful acts occurred prior to Katrina and while Kevin's income was between \$36,000.00 to \$47,000.00 per year. Kevin's attempts to blame Katrina for his willful acts, was and is not well placed.

After the Complaint for Citation for Contempt was filed against Kevin, he got a full-time job; brought his child support current, so far as Angie was aware of his income; evidently made efforts to provide health insurance for his children; paid child support on his tax refunds; and, adjusted, at least, some of the improper deduction when determining his adjusted gross income. All of the above corrections were sufficient to purge Kevin of his willful contempt of Court as to the matters corrected, but the Trial Court substantially abused its discretion when using the efforts of Kevin to correct such matters to justify the other willful contempt acts by Kevin of the Court's Judgment of Divorce.

However, Kevin has not, to the date of the hearing, produced a policy of full coverage health insurance to provide coverage for his children, even though he has had many opportunities to do so, which was required by the Judgment of Divorce. Kevin was never punished for concealing his income on more than one (1) occasion; covering the date of deposit on his pay check stub; he was never required to fully reimburse Angie for the

Heath Insurance premiums she has paid for the parties' children because of Kevin's failure to provide insurance coverage. Kevin has never been punished for making accusations and threats against Angie. Kevin has not been punished nor restricted from sending additional indecent emails to his daughters.

With all that Angie accomplished after filing her suit and before the hearing, all that she accomplished at the hearing of the case, the errors the Trial Court made virtually requiring this appeal, the Trial Court abused its discretion in failing to make Angie whole by allowing attorney fees and her costs.

We do not understand why the Trial Court would not require Kevin to send copies of any emails to his daughters to Angie to deter exposing the children to further indecent and improper influences.

The Trial Court evidently did not understand that football tickets, a place to live and food provided by a sorority are necessary to a child's college education. Even a parking ticket must be paid before a student can get their grades. If Kevin does not help pay, then Angie must pay the entire costs. The Trial Court abused its discretion by reducing the MSU estimate of costs and Angie's actual costs of college from \$13,000.00 to \$9,000.00, giving Kevin credit for all scholarships, and requiring Angie to pay almost all the costs.

The Trial Court abused its discretion by interpreting the agreement and judgment regarding college expenses to relieve Kevin of his responsibilities, regardless of the child's ability, the GPA they had at the time of the hearing and the grades they made after the hearing.

Kevin's Brief pointing out that Angie did not sufficiently prove Kevin's responsibility to pay for one-half (1/2) of the cost of damages or the entire deductible to Ashley's car

for the damages sustained in an auto accident, are correct. Counsel did not show that the accident had occurred just prior to the hearing; that a letter advising Kevin's counsel of that issue was not introduced; the policy covering the car was not introduced and the statement of damage to the car was not introduced. In fairness to Angie, should this Court remand the case, the Court is hereby requested to allow Angie to amend and make the appropriate proof concerning that issue.

FAILURE TO REPORT INCREASE OF INCOME

Kevin argues that since he had sent Angie three (3) check stubs prior to the divorce being granted, Kevin had no duty to comply with the Court's Order requiring him to report his increase income to the Court. This argument not only flies in the face of the Court directive, but there is no proof that Angie could have determined what Kevin's salary was because he was working part time and Angie could not have known if he was filling in for an employee, during the summer vacation period.(T 33, L12 – p 153 L. 8).

We note that Kevin does not rely on the authorities that the Trial Court used in determining that Kevin was not in contempt of Court. Allred v. Allred, 753 So2 1064 (Miss. 1999) and Masonite Corp. v. International Woodworkers of Am., 206 Miss. 171 (Miss 1967). The effect of Kevin's refusal to argue those cases admits that the Trial Court's reliance on those cases for it's decision are not applicable to the facts of this case and is Trial Court error.

Kevin's statement in his brief that Angie admitted that Kevin's income was revealed to her is incorrect and misleading. The amount of three (3) paychecks does not reveal the annual or monthly income of Kevin.

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CHILD SUPPORT

Because Kevin caught up his child support after the Complaint was filed, and because he paid at least \$400.00 each month does not acquit him from the deliberate act of defeating the Judgment of Divorce by putting liquid paper over the deposit date of his check stub, so that Angie could not tell when he received his income and could not tell if he was paying the correct amount. The very purpose of the Trial Court's Judgment of Divorce provision to require Kevin to provide Angie a copy of his pay check stub (R. p. 12) was to insure that Angie could tell how much and when Kevin received his wages. Kevin defeated one of the purposes of the Judgment by concealing the deposit date on his check stub and clearly should be held in contempt of Court and punished. *Shelton v. Shelton*, 653 So2 283 (Miss 1995); *Watkins v. Watkins*, 2006 So2 (2005-CA-00257-COA)(Miss. 2005). Kevin argues that the dates of the work period remained on the check stub. However, he never paid and is not required to pay child support until he receives his wages.

FULL COVERAGE HEALTH INSURANCE

The Divorce Judgment required Kevin to provide full coverage health insurance for his children by August 1, 2003. Kevin did not do so. Kevin gave no reason for not doing so, and the Trial Court found no reason why Kevin was unable to maintain full medical coverage for his children. (R 2 p135. R.E. p 20).

Kevin's statement in his brief (p 21) that "both parties acknowledged at trial that the language of the provision was ambiguous" is a production of the imagination of the person who wrote Kevin's Brief, and is totally untrue.

Indeed, the Trial Court found that the proof was that Angie provided insurance for the children on March 1, 2004 (T. p 158-L 21- p 160, L 7), because Kevin had not done so and Angie could not afford to pay 25% of a large medical bill.

Four (4) months after the Complaint for Citation for Contempt was filed, in July 2005 Kevin claimed to have the children covered. Thereafter, the Insurance Company was said to be changed in a month and said to have been changed again on January 1, 2006, but no policy was ever delivered, (T p 158-164) and then to be changed again when Kevin resumed his work in August 2006. The Divorce Judgment required Kevin to deliver a policy to Angie. (R. p 7). No policy was ever delivered, even on the last day of the hearing for Contempt in the Trial Court. (T p 136, L 23-p 137, L 19). It is clear that the purpose of the delivery of the policy to Angie was to show that the children were covered and that there was full coverage. Even if Kevin had full coverage for the children, at any time, which is very doubtful, he was in contempt of court for failure to deliver the policy, so that Angie could be assured that there was coverage and she could then drop her coverage.

The Trial Court would not require Kevin to reimburse Angie for all the premiums she had paid because of Kevin's refusal to provide the insurance. The law and fairness requires that Angie be compensated for the costs she paid, in full and Kevin's responsibility continue until there is proof that he has the daughters fully insured.

VIOLETING PRIVACY

The transcript (T. p. 26 L 10 – p 29 L. 9) reveals the constant accusations and threats that Angie had to endure from Kevin. Our Courts have provided relief to the party who is suffering such abuse. Hill v. Gray, 2004 So2 (2002-CA-02106-SCT).

COLLEGE EXPENSES

The refusal of a father to offer his children the same educational opportunities that the Father had, says something about his selfishness and lack of love for his children. When these daughters failed to attain a 2.0 GPA their first semesters in college, a loving and caring father has only one choice, and that is to try to offer guidance and try to help fix the problem and when the daughters substantially improve, get on the right tract and improve their grades to well over a 2.0 GPA, a descent father should be very pleased and encouraged, and should congratulate and encourage the daughters and even take pride in the daughters accomplishments.

Not Kevin. Kevin is pleased, relieved and celebrates the results of the grades of the First Semester, and his only interest is that he believes he has an opportunity to stop helping his daughters get a college education, so that he can afford to take trips to Jamaica, afford to own and operate a motorcycle and a jet ski.

The problem for these daughters is compounded, when the Trial Court looks to the selfish interests of Kevin, rather than the best interest of these children. The Trial Court abused it's discretion when failing to recognize that the intentions of the parents, when signing the divorce agreement, was to provide a college education for their children. The Trial Court abused it's discretion when it failed to recognize the ability of these children, and the circumstances they had just experienced; and finally, the Trial Court abused it's discretion when it failed to provided one of several remedies it had to promote the best interest of the children. Some of the remedies available to the Trial Court are set for in the Appellant's brief, page 18.

INDECENT EMAILS

We suppose that the way one views the emails that Kevin sent his daughters, determines if the content of the emails is a joke or perverted. Kevin and the Trial Court saw them as a joke, we see them as perverted, when a father sends his daughters material of such nature. We do not understand why the Trial Court could not deter Kevin from sending such materials to his daughters again.

ATTORNEY FEES

The result of the filing of the Complaint for Citation of Contempt resulted in Kevin getting a full-time job, bringing current his child support, made his first efforts to secure health insurance for his children, paid child support on tax refunds, unreported tips and on adjustments he was forced to make in determining his adjusted gross income. The result of the hearing of the case in the Trial Court corrected Kevin's "interpretations" as to his requirement to secure health insurance for his children; rendered a judgment against Kevin in the amount of \$2150.48 for reimbursement of Insurance Premiums and for \$140.00 for Ashley's education expenses. In this case Angie was right and Kevin was wrong and forced Angie to seek relief from the Trial Court. Angie was entitled to attorney fees for her attorney's efforts in the Trial Court. Angie is also entitled to attorney fees for this appeal because of the many errors committed by the Trial Court.

DAMAGES TO DAUGHTER'S CAR

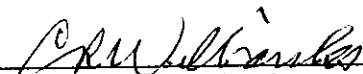
Kevin, again, avoided as much as possible, the support of his children. The Judgment for Divorce provides: "AUTOMOBILES: Husband and Wife shall each be responsible for and shall pay for one-half (1/2) of all repairs....." Kevin only pays one-half (1/2) of

the minimum liability coverage, and Angie pays for the collision coverage. The costs of repairs was approximately \$2600.00 and the insurance paid all except \$1000.00 deductible. It is Angie's position that Kevin owes her either the entire deductible or one-half of the damages to the car. The accident occurred a very short time prior to the hearing, when the case was set for hearing and counsel did not feel it was in the best interest of Angie to delay the hearing for a third time.

Even though Angie's counsel notified Kevin's counsel by letter that he wished to bring the issue before the Court, after reviewing the record, Counsel failed to make a sufficient record to substantiate Angie's loss, and concedes that point, but Angie hereby requests the Court to allow an amendment and an opportunity to present that claim to the Trial Court, if this case is remanded.

CONCLUSION


We believe that the question in this case is whether Kevin's interests or the children's interest is the most important.


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CERIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day mailed, by U. S. Mail, postage prepaid, a true and correct copy of the foregoing Appellant's Reply Brief to: Chancellor Stuart Robinson, P. O. Box 686, Jackson, MS 39205-0686 and to: Hon. John Robert White, P. O. Box 824, Ridgeland, MS 39158-082.

SO CERTIFIED, this the 29th day of May, 2007.


Charles R. Wilbanks, Sr.