

CAUSE NO. 2007-CA-00030

**IN THE
SUPREME COURT OF THE STATE OF MISSISSIPPI**

JAMES CALVIN CHAPMAN

APPELLANT

VERSUS

DEBBIE WARD

APPELLEE

**ON APPEAL FROM THE
CHANCERY COURT OF
MADISON COUNTY, MISSISSIPPI
(ORAL ARGUMENT NOT REQUESTED)**

**BRIEF OF APPELLEE
DEBBIE WARD**

**SUBMITTED BY:
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IN THE
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JAMES CALVIN CHAPMAN

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. James Calvin Chapman, Appellant
2. Sharon Patterson Thibodeaux, Attorney of Record for Appellant
3. Debbie Ward, Appellee
4. Robert W. Long, James M. Crews, III, and James H. Herring, counsel for Appellee
5. Honorable William Joseph Lutz, Trial Chancellor
6. Honorable Cynthia Lee Brewer, Current Chancellor

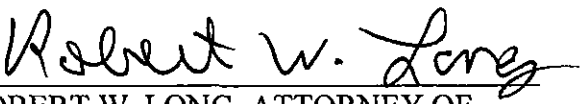

ROBERT W. LONG, ATTORNEY OF
RECORD FOR DEBBIE WARD

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STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings and Disposition

James Calvin Chapman ("James") filed his Petition to Find Defendant in Contempt and to Modify Judgment of Divorce against Debbie Ward ("Debbie") on March 9, 2006 in the Chancery Court of Madison County, Mississippi. As stated in the petition, the Judgment of Divorce dated March 12, 2002, *nunc pro tunc* July 9, 2001 awarded James and Debbie the joint legal custody of the minor children and Debbie the primary physical custody of the minor children of the parties, namely: Lynnyzy V. N. Chapman, a female child, born on March 31, 1986; Candice L. Chapman, a female child, born on November 27, 1989; Teresa J. Chapman, a female child, born on July 31, 1995; and James O. C. Chapman, Jr., a male child, born on January 15, 1997, subject to specific visitation rights awarded to James. The petition further alleged that the Judgment of Divorce ordered James to pay child support to Debbie in a sum equal to 24% of his adjusted gross income with said support due the first month he earns a paycheck and continuing on the 1st day of each month until the minor children are emancipated.

James, in his petition, sought to have the Judgment of Divorce modified, due to his total disability, to require that the Social Security benefits payable for the benefit of the minor children stand in lieu of any past and future child support payments.

Debbie filed her Answer to Petition to Find Defendant in Contempt and to Modify Judgment of Divorce along with her Counterclaim for Citation for Contempt and Modification on June 14, 2006. In her counterclaim, Debbie asked the Court to hold James in contempt for his failure to pay child support in a sum equal to 24% of any lump sum award of unemployment compensation benefits and/or workers' compensation benefits he had received along with 24% of any monthly unemployment compensation benefits and/or workers' compensation benefits he

had received. (R.E. 5). Attached as Exhibit "A" to Debbie's counterclaim was the Court's transcript of its ruling on the parties' divorce matter on July 9, 2001. (R.E. 9 - 30).

An Opinion and Final Judgment was entered on August 15, 2006 in which the Court held, *inter alia*, that James had failed to pay to Debbie, as child support, twenty-four percent (24%) of workers' compensation benefits he had received. As a result, the Court ordered James to pay Debbie the sum of Fifteen Thousand Eight Hundred Forty-Four and 29/100 Dollars (\$15,844.29) by September 11, 2006. In addition, the Court relieved James of his child support obligation to Debbie due to the children's receipt of Social Security benefits as a result of James' disability.

On August 25, 2006, James filed his Motion for a New Trial, or in the Alternative, to Alter or Amend Opinion and Final Judgment. The hearing was held on December 18, 2006 and on December 28, 2006, the Court entered its Amended Opinion and Final Judgment. The Court amended its previous ruling by ordering James to pay to Debbie the sum of Fourteen Thousand Eight Hundred Forty and 85/100 Dollars (\$14,840.85) as child support from the workers' compensation benefits he had received. In addition, the Court stated that the workers' compensation benefits did not include any social security payments or benefits. (R.E. 41).

On January 5, 2007, James filed his Notice of Appeal from the lower Court's Amended Opinion and Final Judgment entered on December 28, 2006.

B. Statement of Relevant Facts

The Judgment of Divorce entered herein on March 12, 2002, *nunc pro tunc* July 9, 2001 included the following provision pertaining to child support:

That the Husband shall pay child support 24% of his adjusted gross income with said support due the first month he earns a paycheck and continuing on the 1st day of each month until the minor children are emancipated and with the appropriate withholding order entered.

At the hearing held on July 10, 2006, James testified that at the time of the divorce hearing on July 9, 2001, he had pending a workers' compensation claim stemming from work related injuries sustained back in May, 2001. (T. 55). James further testified on direct examination that he knew he was to pay to Debbie 24% of any income he made. (T. 23). James was awarded the sum of \$21,864.86 in temporary total benefits in October, 2002. After a deduction for attorney's fees, James received approximately \$16,000.00. (T. 61). In addition, James received the sum of approximately \$300 per month for one year. (T. 62). The final award of workers' compensation benefits in the form of permanent disability was in the sum of \$35,000.00. James actually received the sum of \$26,250.00 in May, 2004 after the deduction for attorney's fees. (T. 63). James failed to pay Debbie any child support from the workers' compensation benefits. (T. 65).

James' claim that the lower Court looked to the transcript of its previous ruling to determine that he owed 24% of his workers' compensation benefits is totally unsupported by the record. The lower Court was clearly guided by statutory authority that James owed child support to Debbie from any income, from whatever source. (T. 57). As stated in the lower Court's Opinion and Amended Opinion, the Court looked to *Mississippi Code Annotated* §43-19-101(3)(a) for its conclusion that James owed child support to Debbie from the workers' compensation benefits.

James was determined to be disabled by the Social Security Administration. The record is void of any evidence as to the date the Social Security Administration made its decision. More importantly, the record is void of any evidence as to the date the Social Security Administration determined that James first became disabled within the meaning of the Social Security Act. Debbie testified that she received a check in the sum of \$8,469.00 each for Candice, Teresa and James, Jr. as a result of James' disability determination. (T. 122, 123).

SUMMARY OF ARGUMENT

The Chancellor's decision in this case was supported by credible evidence presented at a hearing of this matter. The lower Court did not commit manifest error when it ruled that James owed Debbie the sum of Fourteen Thousand Eight Hundred Forty and 85/100 Dollars (\$14,840.85) as child support from the workers' compensation benefits he had received. Further, the lower Court did not commit manifest error by refusing to allow James a credit/off-set against this arrearage for sums received by Debbie from the Social Security Administration as a result of James' disability.

There was no credible evidence that the lower Court looked to the transcript of its previous ruling of July 9, 2001 to interpret James' child support obligation. The evidence clearly showed the lower Court followed the statutory authority set forth in Miss. Code Ann., §43-19-101 (1972) in reaching its conclusion that James owed Debbie child support from his workers' compensation benefits. Therefore, the Court did not commit manifest error in this regard.

ARGUMENT

1. Did the lower Court commit manifest error when it failed to grant the Appellant credit/off-set against his child support arrearage for sums Appellee received from the Social Security Administration for lump sum back payments on behalf of the minor children of the parties?

In this case, Debbie submits that the lower Court's findings and ultimate decisions in its Amended Opinion and Final Judgment dated December 28, 2006 were supported by credible evidence and that no manifest error occurred. Therefore, the Amended Opinion and Final Judgment should be affirmed in its entirety by this Court. This Court's standard of review on appeal in cases dealing with domestic relations matters is well-settled. The Supreme Court "will

not disturb a Chancellor's findings unless manifestly wrong, clearly erroneous or if the Chancellor applied an erroneous legal standard". R. K. v. J. K., 946 So. 2d 764 (Miss. 2007).

The uncontroverted evidence at trial was that James received the sum of \$54,415.92 in workers' compensation benefits over a period commencing October, 2002 and continuing through May, 2004. (T. 61-63). These payments were received as a result of work related injuries James sustained in May, 2001. (T. 55). Upon receipt of these benefits, James failed to pay 24% to Debbie as child support. (T. 65). Eventually, James was determined to be disabled by the Social Security Administration. As a result, Debbie received checks in the sum of \$8,469.00 each for Candice, Teresa and James, Jr. (T. 122, 123). James now complains to this Court that the Social Security payments received by Debbie should be off-set or credited against his child support arrearage created by his failure to pay Debbie 24% of his workers' compensation benefits. Since James failed to present any evidence as to the date the Social Security Administration determined that he first became disabled, it is not possible for this Court to now determine the time period represented by the Social Security payments to Debbie for Candice, Teresa and James, Jr. Therefore, Debbie submits that no manifest error occurred.

Pursuant to Miss. Code Ann., §43-19-101 (3)(a), adjusted gross income is defined, in part, as income received from workers' compensation and disability. Debbie submits to this Court that it is clear from the plain language of the statute that workers' compensation and disability are mutually exclusive sources of income. There is no indication from the statute that off-sets are allowed as to the difference sources of income. James, as authority for this off-set, cites the cases of Mooneyham v. Mooneyham, 420 So. 2d 1072 (Miss. 1982) and Hammett v. Woods, 602 So. 2d 825 (Miss. 1992). In Mooneyham, this Court held that Social Security payments received by the mother on behalf of the minor child would be credited against the father's child support obligation. In so ruling, this Court acknowledged the relationship between

child support payments from the father and social security payments to the mother on behalf of the child as a result of the father's employment. Debbie submits the lower Court correctly applied Mooneyham in relieving James of his obligation to pay child support in the future. However, there is no authority in Mooneyham which supports James' contention that social security payments off-set workers' compensation benefits that Debbie was otherwise entitled to pursuant to Miss. Code Ann., §43-19-101 (1972). Had James paid Debbie 24% of the workers' compensation benefits in a timely manner, he would not now be in the position of asserting his alleged right to an off-set. Clearly, to allow James to benefit from this delay is inequitable and would produce an unjust result of denying Debbie child support which she is otherwise entitled to.

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In Hammett, this Court ruled that Supplemental Security Income (SSI) benefits received by a child based on his parent's disability or retirement were considered an alternative source of payment which should be credited toward satisfaction of child support obligations. The rulings in Hammett and Mooneyham are consistent in that they both addressed the relationship between payments made pursuant to the Social Security Act and child support. However, neither case is factually similar to the case at hand. Neither Mooneyham nor Hammett addressed the issue of allowing payments under the Social Security Act to off-set an otherwise viable source of income (i.e. workers' compensation benefits) under Miss. Code Ann., §43-19-101 (1972). For these reasons, it is clear the lower Court did not commit manifest error.

Although James does not appear to directly address the issue in his brief, he did argue in his Motion for a New Trial, or in the Alternative, to Alter or Amend Opinion and Final Judgment that Debbie was "double-dipping" by receiving child support from James' workers' compensation benefits and social security payments. James argued that the social security payments he received were reduced because of the workers' compensation settlement. However,

James presented no evidence to support this argument. The record is void of any evidence as to the date the Social Security Administration determined he first became disabled or how the social security payments were calculated pursuant to the Social Security Act. Without this evidence, his argument is not credible. It certainly can not be said that the lower Court committed manifest error in this regard.

2. Did the lower Court commit manifest error in looking to the transcript of the Court's ruling of July 9, 2001 in interpreting the child support obligation of the Appellant rather than looking at the Judgment of Divorce entered on March 12, 2002, *nunc pro tunc* July 9, 2001?

Paragraph Five (5) of the Judgment of Divorce states as follows:

That the Husband shall pay child support 24% of his adjusted gross income with said support due the first month he earns a paycheck and continuing on the 1st day of each month until the minor children are emancipated and with the appropriate withholding order entered.

James argues that the lower Court disregarded its own Judgment and looked to the transcript of the Court's previous ruling to determine that he owed child support from his receipt of workers' compensation benefits. Not only is there no evidence in the record to support this contention but this contention is directly contradictory to the evidence presented. During the cross-examination of James, the lower Court makes reference to Miss. Code Ann., §43-19-101 (1972) (T.57). The lower Court states in its dialogue at this juncture that the law requires James to pay child support from any income, from whatever source. (T. 57). This is consistent with the language contained in the Judgment of Divorce that James is to pay 24% of his adjusted gross income as child support. Miss. Code Ann., §43-19-101 (1972) defines adjusted gross income to include workers' compensation benefits. It is clear the lower Court made its decision based on

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the child support statute and not from the lower Court's previous ruling. Therefore, Debbie submits that the lower Court did not commit manifest error in this regard.

James cites Hernando Bank v. Davidson, 250 Miss. 23, 164 So. 2d 403 (Miss. 1964) as his authority that the lower Court committed manifest error by looking to the transcript. The Court in Hernando Bank focused on a decision of the Mississippi Banking Board concerning its approval of the application for a new state bank to be known as the Bank of DeSoto. The central question involved in Hernando Bank was whether, on timely application, where proper notice was given, the appellant from an administrative board ruling is entitled to have the recorded minutes of the board insofar as they apply to the matter under consideration made a part of the record on appeal, where the appeal statute does not expressly provide that the minutes be sent up as a part of the appeal record. The Court in Hernando Bank did not address the issue at hand in this case. The Court's pronouncement that a Court may act and speak only through its written orders was merely dictum. As a result, Debbie submits that James has failed to provide authority to this Court that the lower Court committed manifest error if it looked to the transcript of its previous ruling. Failure to cite authority precludes this Court from considering this issue on appeal. Boutwell v. Boutwell, 829 So. 2d 1216, 1223 (Miss. 2002).

If this Court believes the lower Court made its decision based entirely on its previous transcript, Debbie submits that this does not constitute manifest error. In the case of Crist v. Lawrence, 738 So. 2d 267 (Miss. App. 1999), the Court held that divorce decrees are quasi-contractual in nature, and where ambiguities may be found, the agreement should be construed much as is done in the case of a contract, with the Court seeking to gather the intent of the parties and render its clauses harmonious in the light of that intent. In this case, once James testified he did not feel he was required to pay Debbie child support from his workers' compensation benefits, the lower Court was well within its discretion to allow James to be examined

concerning its ruling dated July 9, 2001 and his understanding of same. The relevant portions of the July 9, 2001 transcript revealed that James understood he would owe child support from workers' compensation benefits if he was successful in his attempt to obtain them. (T. 55-61; R.E. 23, 28)

Debbie submits that the issue of when James' child support would be due (i.e. when he earned a paycheck and when the appropriate withholding order was entered) is not germane to this appeal. Since James was not held in contempt by the lower Court for his failure to pay child support, this issue is a mute point. The issue of whether James owed child support to Debbie from his workers' compensation benefits is a separate and distinct one.

Finally, it is clear from the record that James never objected to the line of questions concerning the July 9, 2001 transcript. (T. 58-60). James further failed to object to the lower Court taking judicial notice of the July 9, 2001 transcript. (T. 61). Therefore, this Court is not required to address this issue. Dennis v. Dennis, 824 So. 2d 604, 611 (Miss. 2002). If no contemporaneous objection is made, the error, if any, is waived. Carr v. State, 655 So. 2d 824, 832 (Miss. 1995).

CONCLUSION

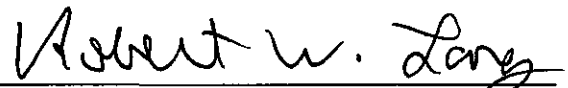
Debbie respectfully submits that the decision of the Madison County Chancery Court in this matter as reflected in its Amended Opinion and Final Judgment dated December 28, 2006 requiring James to pay to Debbie the sum of \$14,840.85 in back due child support is supported by substantial and credible evidence and thus, should be affirmed. The evidence clearly established that James failed to pay unto Debbie 24% of his workers' compensation benefits as child support as required by Miss. Code. Ann., §43-19-101 (1972). There was no authority presented by James that he is entitled to a credit/off-set against the child support arrearage as a result of Debbie's receipt, on behalf of the minor children, of social security benefits as a result

of James' disability. However, *arguendo*, if this Court finds that James is entitled to a credit/off-set, Debbie submits that James failed to show by credible evidence the date that he first became disabled. Therefore, he failed to show that any portion of the social security benefits were a part of or included in the workers' compensation benefits he received.

There is simply no evidence before this Court that the lower Court looked to the transcript of its previous ruling of July 9, 2001 in determining James' child support obligation to Debbie. The evidence presented and the lower Court's dialogue clearly established that the lower Court looked directly to Miss. Code Ann., §43-19-101 (1972) in determining that James owed Debbie child support in the sum of 24% from the workers' compensation benefits he previously received. As a result, the Madison County Chancery Court's Amended Opinion and Final Judgment dated December 28, 2006 should be affirmed in its entirety.

RESPECTFULLY SUBMITTED,

DEBBIE WARD, APPELLEE

BY: 
**ROBERT W. LONG, ATTORNEY FOR
APPELLEE**

CERTIFICATE OF SERVICE

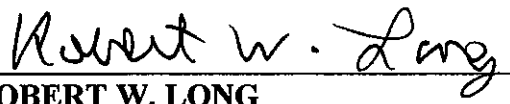
I, Robert W. Long, Attorney for Debbie Ward, hereby certify that I have this day delivered via U. S. Mail, postage prepaid, a true and correct copy of the foregoing Brief of the Appellee to the following:

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Honorable William Joseph Lutz
Trial Chancellor
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Honorable Cynthia Lee Brewer
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This the 14th day of January, 2008.


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