

NO. 2007-CA-00030

IN THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES CALVIN CHAPMAN

APPELLANT

-AGAINST-

DEBBIE WARD

APPELLEE

ON APPEAL FROM THE
CHANCERY COURT OF
MADISON COUNTY, MISSISSIPPI

BRIEF FOR APPELLANT

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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.

James Calvin Chapman, Appellant

Debbie Ward, Appellee

Sharon Patterson Thibodeaux , Attorney of Record for Appellant

Robert W. Long, Attorney of Record for Appellee

Honorable William Joseph Lutz, Trial Chancellor

Honorable Cynthia Brewer, Current Chancellor



SHARON PATTERSON THIBODEAUX
ATTORNEY OF RECORD FOR
JAMES CALVIN CHAPMAN

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STATEMENT OF ISSUES

- 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 the Appellee received from the Social Security Administration for lump sum back payments on behalf of the minor children of the parties?**
- 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?**

STATEMENT OF THE CASE

A. Nature of Case, Course of Proceedings and Disposition

This is an appeal from the Amended Opinion and Final Judgment entered on December 28, 2006, in the Chancery Court of Madison County, Mississippi. The parties were divorced by entry of a Judgment of Divorce on March 12, 2002, nunc pro tunc July 9, 2001. This action was commenced on March 9, 2006, with the filing by James Calvin Chapman (Appellant herein) of a Petition to Find Defendant in Contempt and to Modify Judgment of Divorce. On June 14, 2006, Debbie Ward (Appellee herein) filed her Answer to Petition to find Defendant in Contempt and to Modify Judgment of Divorce and Counterclaim for Citation for Contempt and Modification. A hearing was held on July 10, 2006 and the Court took the case under advisement. The Court's Opinion and Final Judgment was filed on August 15, 2006. On August 25, 2006, Mr. Chapman filed his Motion for a New Trial, or in the Alternative, to Alter or Amend Opinion and Final Judgment. The motion hearing was held on December 18, 2006. On December 28, 2006, the Court filed its Amended Opinion and Final Judgment.

JAME'S Notice of Appeal was timely filed on January 5, 2007.

B. Statement of Relevant Facts

James Calvin Chapman ("JAMES") and Debbie Ward Chapman ("DEBBIE") were divorced by entry of a Judgment of Divorce on March 12, 2002, *nunc pro tunc* July 9, 2001. The parties have four (4) children, namely: Lynnzy 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. DEBBIE was awarded the primary physical custody of the minor children with the parties being awarded joint legal custody. At the time of the divorce, JAMES was unemployed as a result of a work-related accident and was awaiting a hearing on his Workers' Compensation claim. The Judgment of Divorce, which was prepared and submitted to the Court by counsel for DEBBIE, included the following provision in Paragraph 5:

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

It is undisputed that JAMES has not been employed at any time since the divorce hearing nor has he "earned a paycheck". Subsequent to the entry of the Judgment of Divorce, JAMES received various payments from the Mississippi Workers' Compensation Commission. This is also undisputed. DEBBIE did not introduce any exhibits whatsoever at trial to verify the various payments received. In its Amended Opinion and Final Judgment, the Court ruled that the payments received by JAMES totaled Fifty-Four Thousand Four Hundred Fifteen Dollars and Ninety-Two Cents (\$54,415.92). Despite the Court's specific Order as set forth hereinabove that

JAMES was to pay child support the first month he "earned a paycheck", the Court looked to the trial transcript and determined that JAMES owed 24% of these various Workers' Compensation Commission payments, plus interest, to DEBBIE.

Ultimately, JAMES was determined by the Social Security Administration to be totally disabled. The undisputed testimony at trial was that after this determination of JAMES' total disability, DEBBIE received three (3) lump sum back child support payments from the Social Security Administration for the benefit of three of the minor children – Candice, Teresa and James, Jr. It was undetermined whether DEBBIE ever received a lump sum back child support check for Lynnzy. However, the lump sum back child support payments DEBBIE did receive totaled \$25,407.00 (\$8,469.00 each). The Court refused to allow JAMES any credit and/or off-set whatsoever for the three (3) lump sum back child support payments paid to DEBBIE by the Social Security Administration.

SUMMARY OF ARGUMENT

The Chancellor's decision in this matter is not supported by the evidence or testimony adduced at trial nor the case law. The lower court erred in refusing to grant the Appellant credit/off-set against his child support arrearage for sums the Appellee received from the Social Security Administration for lump sum back payments on behalf of the minor children of the parties in the amount of \$25,407.00 being \$8,469.00 for each of the three children. The lower court further erred 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 Court's own Judgment of Divorce entered on March 12, 2002, nunc pro tunc July 9, 2001.

An objective review of the rulings of the Chancellor will reveal that they are clearly erroneous and capricious, constitute manifest error, and evidence an application of an erroneous legal standard requiring a reversal of the Chancellor's decision.

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 the Appellee received from the Social Security Administration for lump sum back payments on behalf of the minor children of the parties?

The testimony at trial revealed that DEBBIE is receiving monthly benefit checks from the Social Security Administration for the benefit of her three minor children, Candice, Theresa, and James, Jr., as a result of the total disability of their father, JAMES. (T. 50, 106) Additionally, the testimony at trial was uncontroverted that DEBBIE also received lump sum back payments on behalf of these three (3) minor children of the parties totaling \$25,407.00, which was \$8,469.00 for each of the three children. (T. 50, 106, 130; R.E. 17) Despite testimony at trial and argument at the hearing on the post-trial motion, Chancellor Lutz refused to allow JAMES any credit/off-set whatsoever for these lump sum back payments received by DEBBIE on behalf of the minor children. This is clearly error.

In Section 11.02 (7) of her treatise, *BELL ON MISSISSIPPI FAMILY LAW*, Professor Deborah H. Bell states as follows:

Child support arrearages are offset by social security or disability benefits paid to a child as a result of the payor's employment.

Professor Bell cites the cases of Hammett v. Woods, 602 So.2d 825 (Miss. 1992) and Mooneyham v. Mooneyham, 420 So.2d 1072 (Miss. 1982), in support of this assertion.

The 1982 *Mooneyham* case was the first Mississippi case involving this issue. This Court, after reviewing the decisions of other states, determined this issue stating:

(W)here the father who has been ordered to make child support payments becomes totally and permanently disabled, and unconditional Social Security payments for the benefit of the minor children are paid to the divorced mother, the father is entitled to credit for such payments by the government against his liability for child support under the divorce decree. (Citing Andler v. Andler, 217 Kan. 538, 538 P.2d 649, 654 (1975))

In 1992, the Supreme Court looked at this issue once again. In the *Hammett* case, this Court upheld its previous ruling in *Mooneyham* stating "We have held that SSI benefits received by a minor child based on his parent's disability or retirement are considered an *alternative source of payment* which should be credited toward satisfaction of child support obligations." (Emphasis added).

Finally, in the case of Spalding v. Spalding, 691 So.2d 435 (Miss. 1997), this Court considered whether the rulings of *Mooneyham* and *Hammett* regarding child support arrearages would also be applicable in alimony arrearages. The *Spalding* Court, finding that the ruling should also be extended to alimony arrearage cases, cited the Georgia case of Horton v. Horton, 219 Ga. 177, 132 S.E.2d 200 (1963), which stated:

Social Security disability payments represent money which an employee has earned during his employment and also that which his employer had paid for his benefit into a common trust fund under the Social Security Act. 42 U.S.C. 301, et seq. These payments are for the purpose of replacing income lost because of the employee's inability to work upon becoming disabled....

In the case at bar, it is clear that JAMES is totally disabled. It is undisputed that DEBBIE received lump sum back child support payments from the Social Security Administration as a result of JAMES disability for the benefit of their minor children. It is equally clear that the Chancellor erred in refusing to grant JAMES a credit/offset for these Social Security payments against any child support that might have accrued under the terms of the Decree of Divorce, if any.

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?

The Judgment of Divorce was entered in this matter on March 12, 2002, at which time it became a "final" judgment pursuant to the provisions of Rules 54 and 58 of the *Mississippi Rules of Civil Procedure*. No post-trial motions were filed. A Court may act and speak only through its written orders. Hernando Bank v. Davidson, 250 Miss. 23, 164 So.2d 403 (Miss. 1964). However, in the case at bar, Judge Lutz disregarded his own Judgment and looked to the trial transcript in determining that JAMES owed a child support obligation on the Workers' Compensation Commission payments that he received. (R.E. 21-24)

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 pay check and continuing on the 1st day of each month until the minor children are emancipated and with the appropriate withholding order entered.

(R.E. 3)

It is undisputed that JAMES has not "earned a paycheck" since the entry of the Judgment of Divorce. It is undisputed that no "appropriate withholding order" was ever entered. However, in determining that JAMES owed DEBBIE the sum of \$14,840.85 in child support arrearage, Chancellor Lutz looked to the wording of the trial transcript rather than the Judgment of Divorce to interpret his own order. (R.E. 22) This is clearly erroneous and constitutes manifest error.

CONCLUSION

The rulings of the Chancellor in this matter were manifestly wrong and reflect the application of an erroneous legal standard. Clearly, JAMES has not "earned a paycheck" and, pursuant to the terms of the Judgment of Divorce, owes no child support arrearage unto DEBBIE. However, *arguendo*, should it be determined that JAMES does, in fact, owe DEBBIE \$14,840.85 in child support arrearage, then the \$25,407.00 received by DEBBIE from the Social Security Administration as lump sum back child support on behalf of JAMES has fully and completely satisfied any child support arrearage. Therefore, this case should be reversed and rendered.

Appellant respectfully moves this Court to reverse Chancellor Lutz' decision and to determine that the child support arrearage of JAMES to DEBBIE, if any, has been completely satisfied.

This the 22nd day of October, 2007.

Respectfully Submitted,

JAMES CALVIN CHAPMAN, APPELLANT

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CERTIFICATE OF SERVICE

I, Sharon Patterson Thibodeaux, Attorney for James Calvin Chapman, hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following:

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Chancellor
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This the 8th day of October, 2007.


SHARON PATTERSON THIBODEAUX