

IN THE SUPREME COURT OF MISSISSIPPI

CHRISTOPHER STEVEN PRINZ

**PLAINTIFF
(APPELLEE)**

VERSUS

**CAUSE NO.:C2401-00-00019(2)
SUPREME COURT NO. 2007-TS-00156**

TAMMY (PRINZ) PRUETT

**DEFENDANT
(APPELLANT)**

**APPEAL FROM THE CHANCERY COURT OF HARRISON COUNTY,
MISSISSIPPI
FIRST JUDICIAL DISTRICT
BRIEF OF APPELLEE/PLAINTIFF-(CHRISTOPHER STEVEN PRINZ)**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel for Plaintiff (Appellee), Certifies the following parties have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

1. Tammy (Prinz) Pruett, Defendant (Appellant)
2. Henry B. Zuber, III, Esq. Counsel for Defendant (Appellant)
3. Michael J. Vallette, Esq. Counsel for Plaintiff (Appellee)
4. Christopher Steven Prinz, Plaintiff (Appellee)


MICHAEL J. VALLETTE

STATEMENT REGARDING ORAL ARGUMENT

Appellee, Christopher Steven Prinz, respectfully submits that oral argument is not necessary in this case. This case involves well-settled straight forward principles of law which are neither close nor complex. The briefs of the parties adequately address the legal issues raised and the Chancery Courts Opinion is concise and well-reasoned. Further, the undisputed facts are abundantly clear from the record and oral arguments would not be of benefit to the Appellate Court.

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STATEMENT OF THE CASE

The parties hereto were married on September 6, 1986 in Chalmette, Louisiana. There were three children from this marital union, namely, Amanda Danielle Prinz, a female child born on September 26, 1984 (Amanda was adopted by Mr. Prinz); Steven Scott Prinz, a male child, born on October 13, 1988; and Alex William Clay Prinz, a male child, born on October 2, 1998.

The parties and were subsequently divorced by the Chancery Court of Harrison County, Mississippi, First Judicial District, on August 30, 2000. An Amended Judgment of Divorce was entered on September 22, 2000. The primary difference between the two Judgments was a change in visitation times and the month of visitation granted to Christopher Steven Prinz was specified as being from July 1, until July 31 each Summer.

The divorce granted Joint Legal Custody of the minor children, Steven Scott Prinz and Alex William Clay Prinz to the parties with the Defendant herein, Tammy Prinz Pruett, being granted primary physical custody of these two children. The Court reserved custody ruling on the child Amanda Danielle Prinz. Since the divorce of the parties, there has been no further custody ruling on Amanda Danielle Prinz. Amanda Danielle Prinz is now over twenty-one years of age, and is married.

In typical fashion the Judgment and Amended Judgment of Divorce, awarded child support to be paid by Christopher Steven Prinz, and also granted him visitation rights, with the two younger children.

On September 23, 2000, less than 30 days after the parties divorced, Tammy (Prinz) Pruett, moved to Gaffney, South Carolina and married her current husband, James Pruett. Mrs. Pruett has one child by this marriage, namely, Jamison Pruett, a female child, born on February 28, 2003.

Subsequent to the divorce the parties had difficulties concerning the exchange of the two youngest children, for visitation, which resulted in Mr. Prinz filing for a Modification of Custody in late 2000, which was dismissed, and for Modification of Visitation and Contempt against Mrs. Pruett for interfering with Mr. Prinz' visitation, which was filed in 2002. At this time in 2002 Mrs. Pruett filed an action in South Carolina. The Harrison County Chancery Court after conferring with the Court in South Carolina, retained jurisdiction for purposes of enforcing its Orders, but the South Carolina Court retained jurisdiction for purposes of modifying child support. At that time Mr. Prinz hired counsel in South Carolina and the Family Court of South Carolina, in Cause No. 02-DR-11-446, entered an Order dated September 16, 2002, increasing Mr. Prinz' child support to \$500.00 per month.

In June of 2006, the parties middle child, Steven Scott Prinz was getting ready to go into his Senior year in high school in Gaffney South Carolina. He was enrolled in a program wherein he went to boot camp in the South Carolina National Guard, during the Summer of 2006, and he would graduate from boot camp in August 2006, and complete his Senior year in high school during the 2006-2007 school year.

While Steven Scott Prinz was in boot camp, Mrs. Pruett packed up the parties youngest child, Alex William Clay Prinz, and her child by her current husband and left her husband and the State of South Carolina. Mrs. Pruett dropped off Alex William Clay Prinz with his father, Christopher Steven Prinz in Gulfport, Mississippi for his 30 day Summer visitation period, for the month of July 2006.

During the month of July 2006 is when Mr. Prinz learned that Mrs. Pruett left the State of South Carolina and her current husband. Throughout the month of July 2006 Mr. Prinz attempted to obtain from Mrs. Pruett and her mother, Betty Duke, her current address and phone number. Because of the prior problems that Mr. Prinz had had with Mrs. Pruett concerning visitation and because of her evasiveness in giving him an address or a phone number where he could reach her, Mr. Prinz initiated the current action on August 1, 2006, by filing a Petition For Entry of Ex Parte Order and Petition for Modification of Custody.

The Chancery Court of Harrison County, Mississippi on August 2, 2006 entered a Temporary Ex Parte Order granting Temporary Custody of the minor child Alex William Clay Prinz to Christopher Steven Prinz, until the matter could be heard on its merits on August 30, 2006. At the request of the Chancellor, and counsel for Mrs. Pruett, the hearing scheduled for August 30, 2006 was moved up to August 8, 2006, at which time physical custody of the minor child Alex William Clay Prinz was returned to Mrs. Pruett with assurances from her that she would notify Mr. Prinz and the Court of any future changes of her address, which at that time was Ardmore,

Oklahoma, at her sisters house.

Upon Mrs. Pruett's leaving the State of Mississippi after the hearing on August 8, 2006, she went to her mothers in Coldwater, Mississippi and then to Stevens graduation from boot camp, in South Carolina and then she flew directly to Littleton Colorado, and began living there. The middle child of the parties, Steven graduated from boot camp on August 11, 2006, and moved to Mississippi and began living with his father, Christopher Steven Prinz.

The trial on the issue of Modification of Custody of Alex Willaim Clay Prinz and Steven Scott Prinz was held on December 4, 2006. On December 19, 2006, the Chancellor entered a partial Judgment, modifying Custody of Alex and Steven, and granting their custody to Chris. On January 19, 2007 the Chancellor entered her full Judgment modifying physical custody of the parties two younger children and granting their custody to Christopher Steven Prinz. The parties still hold Joint Legal Custody of the two minor children. The Judgment dated January 19, 2007 also ordered Mrs. Pruett to pay child support to Mr. Prinz and granted Mrs. Pruett visitation, neither of which is in issue in this appeal.

On February 12, 2007, the Chancellor requested counsel for the parties appear in her Court for an update on the status of the case and to advise Counsel for the Appellant that his clients failure to comply with the Courts Judgments of December 19, 2006 and January 19, 2007, could negatively impact her future visitation with the children. The purpose of this status conference was due to the fact that Tammy had

refused to turn Alex over to Chris pursuant to the Judgments of December 19, 2006, and January 19, 2007, which ultimately caused Chris to hire counsel in Colorado to file a Habeas Corpus action in Colorado to obtain physical custody of Alex, which was accomplished some time in March 2007.

STATEMENT OF THE FACTS

Chris and Tammy Prinz divorced on August 30, 2000. Their marriage produced three children, namely, Amanda, born on September 26, 1984, who was adopted by Mr. Prinz, (TR. 75) and who was over twenty-one at the time of the filing of this matter, and was married; (TR. 75); Steven, born on October 13, 1988 who was 18 at the time of the hearing (TR. 75); and Alex, born October 2, 1998, who was 7 years of age, at the time of the filing of the Petition by Mr. Prinz, and 8 years old at the time of the hearing on December 4, 2006. (TR. 76) On or about September 23, 2000, Tammy married James Pruett, and moved to Gaffney, South Carolina. (TR. 74) Tammy and Mr. Pruett had one child, namely, Jamison “Jamie” Pruett, a female child born on February 23, 2003, who was three years old at the time of the hearing on December 4, 2006. (TR. 74-75)

From the time of the divorce, Mr. Prinz has alleged that Mrs. Pruett has interfered with his visitation, and has filed at least two other court actions in this cause prior to filing the current action to modify custody of Steven and Alex. There have been times when Chris would drive to the parties pre-arranged meeting point at the welcome station near the

Alabama-Georgia State line, and Mrs. Pruett would fail to show with the children. (TR. 157)

This fact was substantiated by Robella Prinz, Mr. Prinz' mother. (TR. 260)

Further, Mr. Prinz testified that Mrs. Pruett would monitor and cut short his conversations with Steven and Alex (TR. 158-159). As testified to by Steven, the Mrs. Pruett would not let Steven call his father until he got his cell phone. (TR. 238)

Steven Prinz, was enlisted in boot camp in the South Carolina National Guard, during the summer of 2006, between his Junior and Senior year in high school. Upon his graduation in mid-august, 2006, he had planned to enter his Senior year in high school at the high school he had been attending in South Carolina. However, unbeknownst to Steven, (TR. 231) his mother, Tammy Pruett, picked up his brother Alex, and his half-sister, Jamie and left the Gaffney, South Carolina area, took Alex to his Mr. Prinz' for his Summer visitation and went to visit her mother in Coldwater, Mississippi. (TR. 46) Upon leaving Coldwater, Mississippi Mrs. Pruett testified she went to Ardmore, Oklahoma to live with her sister. (TR. 45-46) She further testified that she had no plans to move from the Ardmore, Oklahoma area. (TR. 58)

On August 8, 2006 the Court held a full hearing on the Ex Parte hearing that had been held on August 1, 2006. At the conclusion of this hearing Tammy Pruett testified she once again went to visit her mother in Coldwater, Mississippi and then she, her mother, Alex and Jamie traveled to South Carolina to watch Steven graduate from boot camp. (TR. 77) At the completion of the graduation Mrs. Pruett testified that she went back to her mothers house in Coldwater, Mississippi, and then flew directly to Littleton, Colorado, because as she

testified, she had been granted a promotion and a transfer. (TR. 78-79) Mrs. Pruett never even returned to Ardmore, Oklahoma to retrieve her belongings. (TR. 79) She testified her work had her belongings picked up for her and she, from that point on resided on Gallop Street in Littleton, Colorado. (TR. 79)

During the hearing to extend or quash the Ex Parte Order, which was held on August 8, 2006, Mrs. Pruett, when asked if she knew a gentleman by the name of Ken Davis, denied knowing who he was. (TR. 50) Mr. Prinz, in trying to locate an address on one of the toll-free phone numbers that Tammy had given him to contact her, had learned that one of the numbers was registered to Ken Davis. (TR. 36) While Tammy, according to her

testimony, did not even Ken Davis, on August 8, 2006, (TR. 50) we came to learn that she was working for him and seeing him occasionally beginning in mid-August 2006. (TR. 82) Even more suspicious, by the time of the hearing on December 4, 2006, it is apparent from the record and to the Chancellor that Tammy and Mr. Ken Davis were living together in Mr. Davis' former marital home. (TR. 309-312) At the time of the trial of this matter, Mr. Davis was still married to his wife. (TR. 82,100).

The reason Tammy Pruett gave the Court for leaving South Carolina with her two youngest children, Alex and Jamie, without telling Steven, her husband, James, or her ex-husband Chris, was allegedly, because her current husband, James Pruett was abusive to her. (TR. 51-52; 287). However, when questioned about the alleged abuse, Steven, who had been living in the home with Tammy and James, until going to boot camp in June 2006 testified

that he never witnessed any abuse. (TR. 224) In fact, his testimony was that Tammy was the one who started the confrontations. (TR. 224)

The Chancellor also heard testimony about the living arrangement and conditions in Tammy's South Carolina home, when she resided there with James Pruett. Steven Prinz testified that Tammy did not keep a clean house, did not adequately watch Alex and that she allowed her oldest daughter Amanda, and her then boyfriend, Matt, (now her husband), to cohabitate in the home for approximately two and one-half years before they married. (TR. 225-226).

Specifically, Steven testified that there were three bedrooms upstairs in the home. One was his room, one was Alex's room and the other is the room where Amanda and Matt slept. (TR. 232) Tammy Pruett, according to Steven, knew of this arrangement, even though she denied it. Tammy testified that she was not aware that this was taking place. She said Amanda knew the rules and that she was not supposed to be sleeping with Matt. Those were my rules. (TR. 296). Mrs. Pruett further compounded this deception by, according to Steven, requiring Matt to sleep in Steven's room when her mother, Betty Duke, came to visit. (TR. 226) According to Steven, in contradiction to Tammy's testimony, Matt did not, as a general rule sleep in his room with him. (TR. 226) Matt and Amanda slept in their room, unless Tammy's mother, Betty Duke was coming to visit. (TR. 226) Amanda and Matt's bedroom was right down the hall from Alex's bedroom. (TR. 232).

There was further testimony supporting the Trial Courts ruling that it was not in Alex's best interest that Tammy continue to have physical custody him. The Chancellor in

speaking with Alex, learned that Ken Davis, who Tammy at times referred to as a friend, (TR. 82) and other times referred to someone, "who would be in the children's lives" (TR. 111-112) and who Alex referred to as "Daddy Ken" (TR. 98, 309) was staying with Tammy, Alex and Jamie in the Littleton, Colorado home she had made for herself. (TR. 313)

Naturally, Tammy denied that Ken Davis spent the night in the home. (TR. 83) But it is apparent to the Court, from Alex's testimony, that Tammy was not being candid with the Trial Court. It is also interesting to note that Tammy testified that her daughter, Jamie, also refers to Ken Davis as "Daddy Ken" (TR. 98).

The final bit of evidence supporting the Chancellor's ruling that it was not in Alex's best interest to remain in the custody of his mother, was the DVD video introduced by the Plaintiff. (TR. 89-93) This bit of evidence, which is probably the least convincing of all of the evidence the Chancellor had before her, showed the vehicle's of Tammy and Ken Davis in front of Tammy's home in Littleton Colorado in the early morning hours of November 27, 2006. It further showed Ken Davis coming out of Tammy's home, scraping the ice off of the windows of the vehicle, putting Jamie in the vehicle and leaving. Approximately an hour later that same morning, the video showed and Tammy testified that she exited her home with Alex, got in her vehicle and left the residence. (TR. 91) While being the least convincing bit of evidence, it does tend to show that Ken Davis was living at the home of Tammy, and it substantiates the testimony of Alex, that "Daddy Ken" was living in the home with Tammy in Littleton, Colorado. (TR. 313).

SUMMARY OF THE ARGUMENT

The Trial Court after hearing all of the evidence presented, applied the law as it relates to modification of custody of minor children. The Chancellor followed the law and found that there was a substantial change in circumstances, which adversely affected the best interest of the minor child Alex Prinz. Further, the Chancellor's decision was not manifestly wrong, clearly erroneous, an abuse of discretion, nor did the Chancellor apply an erroneous legal standard. The Chancellor has the responsibility to evaluate the credibility of the witnesses and evidence, and the appellate courts should not arbitrarily substitute its judgment for that of the Chancellor, who in the best position to evaluate all factors relating to the best interest of the child. As a result of the foregoing, and taking into account, the totality of the circumstances, the judgment of the Trial Court should be affirmed.

ARGUMENT

The Standard for review in custody modification cases is well settled in this State. "A chancellor's decision cannot be disturbed unless the chancellor abused his discretion, was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied". Barnett v. Oatout, 883 So.2d 563, 566 (¶6) (Miss. 2001), quoting Blevins v. Bardwell, 784 So.2d 166, 168 (¶ 12) (Miss, 2001). "The Chancellor has the sole responsibility to determine the credibility of witnesses and evidence, and the weight to be given to each". Lee v. Lee, 798 So.2d 1284, 1288 (¶ 14) (Miss. 2001), citing Chamblee v. Chamblee, 637 So.2d 850, 860

(Miss. 1994). “We will not arbitrarily substitute our judgment for that of a chancellor who is in the best position to evaluate all factors relating to the best interest of the child.” Ash v. Ash, 622 So.2d 1264, 1266 (Miss. 1993) quoting Yates v. Yates, 284 So.2d 46, 47 (Miss. 1973).

The law with regard to modification of child custody is well settled. As stated in Ash v. Ash, 622 So.2d 1264, 1265, 1266 (Miss. 1993), quoting from Pace v. Owens, 511 So.2d 489, 490 (Miss. 1987), “First the moving party must prove by a preponderance of the evidence that, since the entry of the judgment or decree sought to be modified, there has been a material change in circumstances which adversely affects the

welfare of the child. Second, if such an adverse change has been shown, the moving party

must show by like evidence that the best interest of the child requires the change of custody.” The Court in Ash, id at 1266. went on to state that “Above all, in modification cases, as in

original awards of custody, we never depart from our ‘polestar consideration: the best interest and welfare of the child.’” Quoting from Marascallo v. Marascallo, 445 So.2d 1380, 1382

(Miss. 1984), which was citing Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983).

Finally, this Court has held that the “...totality of the circumstances must be considered.”

Brocato v. Brocato, 731 So.2d 1138, 1141(¶ 9) (Miss 1999) (quoting Ash v. Ash 622

So.2d1264, 1266 (Miss. 1993) (citing Tucker v. Tucker, 453 So.2d 1294, 1297 (Miss. 1984).

The Chancellor in this case wrote a very thorough, well-reasoned, and well-

substantiated, thirty-three page opinion in which she acknowledged and cited the cases

applicable to modification of child custody. (Pages 19-27 of the Judgment of the Trial Court). After citing the applicable law on custody modification in this State, the Chancellor specifically found that "...the Court finds that a material change in circumstances has occurred *which is detrimental* (emphasis added) to the best interest of Alex. The evidence shows clearly that Alex should be in the of his father." (Pages 19-20 of the Judgment of the Court).

Subsequent to her analysis regarding the prerequisites to a child custody modification, the Chancellor then, thoroughly went through each of the Albright factors in detail. (Pages 21-27 of the Judgment of the Court). Counsel for Tammy Pruett calls into question the Chancellors statement in the Judgment that Tammy "most likely engaged in unlawful cohabitation" and questions, the fact that the Chancellor allowed the DVD into evidence, and further indicates that the Chancellor "heavily relied" on the DVD for her determination that Tammy was engaged in unlawful cohabitation with Mr. Ken Davis.

The DVD was introduced in the trial to rebut Tammy's statement that Mr. Davis did not spend the night at her home in Littleton, Colorado. As stated in the record, the DVD contains no audio whatsoever. It only shows what transpired in the driveway at Tammy's house on the morning of November 27, 2006. Tammy identified the residence as hers, and the automobiles in the driveway as hers and Mr. Ken Davis'. (TR. 94) Tammy herself identified and authenticated the of the DVD. The DVD does not state in

any manner that Tammy and Mr. Davis were unlawfully cohabitating. What it does show is that Mr. Davis' vehicle was parked in Tammy's driveway at approximately 7:15 A.M., and that he walked out of her house, started his Chevy Suburban and scrapped the ice off of his windows, just prior to placing Jamie in the back seat of the vehicle and driving off with her alone. Approximately one hour later Tammy came out of the house, got in her vehicle with Alex and drove off.

Even if the DVD were not in the record at all, it would be hard to believe that the Chancellors decision would have been any different. The DVD is not the only evidence the Chancellor had before her on the issue of Tammy's unlawful cohabitation with a married man. Counsel for Tammy Pruett completely overlooks the testimony of Alex Prinz, who testified before the Judge. During this testimony the Chancellor asked Alex about phones in his house in Colorado. Alex testified that "...Daddy has one in his office area."

The Chancellor then asked Alex which daddy he was talking about, and Alex replied, "Daddy Ken". (TR. 309). In response to the Chancellors further questioning of Alex, Alex went on to tell the Chancellor that Ken Davis' children, "pre-teen Ken" and Brent, spend the night at the house as well as "big Ken" (TR. 131). Alex went on to state that at Thanksgiving 2006, he, Tammy, Jamie, Brent, and Brianna, Alex's cousin all went to Florida and stayed in a hotel. (TR. 313). Alex finally, towards the end of the questioning by the Chancellor stated that Daddy Ken stays with us. But on the weekends he picks up his boys and they come over too. (TR. 313).

If, the Chancellor relied on any one thing to determine that Tammy was unlawfully cohabiting with Ken Davis, Plaintiff would show that it was most likely the testimony of Alex, that indicates that Tammy was unlawfully cohabitating with Ken Davis in the presence of Alex as well as Alex's half-sister, Jamie.

However, rather than relying on just the DVD, Chris would sow that it was more than likely a culmination of all of the circumstances, concerning Mr. Davis, that the Chancellor relied on to modify custody. The fact that Tammy allowed Amanda and Matt to unlawfully cohabitate for two and one-half years in the home where Alex lived; The fact that Tammy hid from her mother, that Amanda and Matt lived together in her home; The circumstance that Tammy and Ken Davis became such close friends so quickly, even to the extent that Tammy put Mr. Davis on the children's check-out list at school; The fact that both Alex and Jamie referred to Ken Davis as "Daddy Ken", and Tammy allowed it; The fact that Alex testified that Ken Davis and his children did spend the night at Tammy's home in Colorado; Finally, the fact the through-out all of the above, Tammy continued to maintain that there was no romantic relationship with Ken Davis, and that she tried, as the Chancellor put it, to enlist Alex to continue this deception.

Counsel for Tammy Pruett lastly argues that it was manifest error for the Trial Judge not to address the issue of the separation of the siblings, Alex and Jamie prior to modifying custody. The Plaintiff acknowledges that in Mississippi there is a strong preference not to separate siblings, unless unusual circumstances justify their separation. Sellers v. Sellers, 638 So.2d 481, 484 (Miss 1994). Plaintiff would show that this "strong preference" not to

separate siblings does not amount to manifest error, as alleged by Defendant. This is especially so in this case, where the facts are such that the Chancellor was in a position of separating siblings no matter what she decided, because Tammy Pruett had already indicated to the Court that since Steven wanted to live with his dad, he could do so. (TR. 138). The Chancellor was in the peculiar position of separating Alex from his half-sister Jamie, or separating Alex from his brother Steven, who was already living with his father. Plaintiff would show that this case is one of those cases that constitutes an unusual circumstance which justifies the Court in allowing siblings to be separated. In any event Plaintiff would show that the Defendant did not raise this issue at the trial court level, and if the Chancellor was in error in not addressing this issue, any such error was not manifest error. Plaintiff would show that substantial evidence supported the chancellor's decision and her decision was not manifestly erroneous, and did not constitute error. Holmes v. Holmes, 2005-CA-01711-062607, (¶ 23) (Miss. Ct. App. 2007). Further, the Trial Court provided sufficient findings that is was in Alex's best interest that he be removed from his mother's primary physical custody. See Sellers v. Sellers, 638 So.2d 481, 494 (Miss. 1994).

This Court has further held in Holmes v. Holmes, 2005-CA-01711-062607 (¶ 18) (Miss. Ct. App. 2007) that "...in limited circumstances, adverse effects exist if, it is shown that it is reasonably foreseeable that a child will suffer adverse effects because the child's present custodial environment is clearly detrimental to his or her well being." Saveall v. Morrison, 929 So. 2d 414, 418-19 (¶ 13) (Miss. Ct. App. 2006) (citing Johnson v. Gray, 859 So. 2d 1006, (¶39) (Miss. 2003). The Court went on to say in Saveall, that "Likewise, the

child does not have to suffer actual injury before a court can find an adverse effect.” Holmes, *Id.*

CONCLUSION

Plaintiff would show that the Judgment of the Trial Court should be affirmed on all issues. The Chancellor heard all of the evidence, determined that there was a material change in circumstances, since the Judgment of Divorce, which adversely affected the best interest of the minor child. The Chancellor evaluated the credibility of the witnesses and evidence and her decision was not manifestly wrong, clearly erroneous, an abuse of discretion, nor did she apply an erroneous legal standard.

MICHAEL J. VALLETTE

