

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JACKIE KEITH

APPELLANT

VERSUS

CAUSE NO. 2007-CA-00495

DEANNA PURVIS

APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF  
FORREST COUNTY, MISSISSIPPI

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BRIEF OF APPELLEE

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(ORAL ARGUMENT NOT REQUESTED)

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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 conflicts, disqualifications, or recusal:

Jackie Keith

Appellant

Deanna Purvis

Appellee

Deborah J. Gambrell, Esq.

Attorney for Appellant

Robert R. Marshall, Esq.

Erik M. Lowrey, P. A.

Attorney for Appellee

Judge Sebe Dale, Jr.

Forrest County Chancery Court Judge

Respectfully submitted, this the 28<sup>th</sup> day of August, 2007.

  
ROBERT R. MARSHALL

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JACKIE KEITH

APPELLANT

VERSUS

CAUSE NO. 2007-CA-00495

DEANNA PURVIS

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## **WAVIER OF ORAL ARGUMENT**

The Appellee, Deanna Purvis, submits that oral argument would **not** be necessary or beneficial to the resolution of this case, and submits that the record and brief should be sufficient for the Appellate Court to determine the case.

## **STATEMENT OF THE ISSUES**

**ONLY ONE ISSUE NEEDS TO BE DECIDED BY THIS COURT:**

**WHETHER OR NOT THE APPELLANT IS ENTITLED TO A REFUND OF COURT  
ORDERED CHILD SUPPORT PAYMENTS OF \$350.00 PER MONTH WHEN  
SUBSEQUENT DEPENDANT SOCIAL SECURITY DISABILITY PAYMENTS WERE  
MADE COVERING THE SAME PERIOD**

## **STATEMENT OF THE CASE**

NOTE: The JUDGMENT entered in this cause on March 2, 2007, apparently because of a scrivener's error, does not include relief admitted by the appellee at the lower court level, and, to the best of appellee's attorney's recollection, granted by the Court. The Judgment was prepared by appellant's attorney and examined and approved by appellee's attorney, both of whom failed to note the omission, which is critical to this appeal and dispositive of one of the issues presented by the appellant; that is, the Judgment should have included the provision requested by Jackie Keith in his PETITION TO MODIFY JUDGMENT by including "an Order ordering that child support for the minor child shall be the sum of \$940.40 per month paid directly to the minor by the Social Security Benefits as support from her father Jackie Keith, in the lieu of the \$350.00 ordered by this court on the 14<sup>th</sup> day of December, 2000."(RE4. CP6) This omission was not noted by appellee's attorney until reading appellant's brief. Both appellant and appellee have in fact operated as if this relief were granted, as appellee has accepted the social security money in lieu of the previously Court ordered child support and as appellant last paid the \$350 per month Court ordered child support in August of 2006.

### **A COPY OF AN AGREED ORDER GRANTING THIS RELIEF WHICH HAS BEEN FORWARDED TO APPELLANT'S ATTORNEY IS SET FORTH HEREAFTER:**

IN THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

JACKIE KEITH

PLAINTIFF

VERSUS

CA NO 00-0197-GN-D

DEANNA PURVIS

DEFENDANT

#### SUPPLEMENTAL JUDGMENT

This cause having come on for hearing on the PETITION TO MODIFY JUDGMENT filed in this

Cause by Jackie Keith on November 6, 2006, and the ANSWER TO PETITION TO MODIFY JUDGMENT AND COUNTER PETITION FOR CITATION FOR CONTEMPT AND MODIFICATION filed herein by Deanna Purvis on January 11, 2007, and the Court having entered a JUDGMENT on these pleading on March 2, 2007, and the Court having been apprised my motion *ore tenus* pursuant to the provisions of Rule 60 (b) (2) and (6) that a portion of the relief requested should have been granted and was inadvertently omitted from the Judgment, the Court is of the opinion that the following relief should be, and the same hereby is, granted, and to that extent the JUDGMENT of March 2, 2007, is amended. In all other respects the March 2, 2007, judgment remains in full force and effect.

IT IS, THEREFORE, ORDERED AND ADJUDGED as follows:

1. Jackie Keith is relieved of his Court ordered obligation set for in the judgment of this Court on December 14, 2000, so long as Social Security Disability Payments are received for and on benefit of his minor child.
2. The monthly Social Security Disability Payment of \$900.40 per month shall be deemed to be the child support payments of Jackie Keith, along with any automatic increase in the current amount until further order of this Court, beginning with the September 2006 payment.
3. Either party may petition the Court for further orders concerning child support upon a proper change of circumstances, including but not limited to a cessation of Social Security Disability Payments prior to the time the minor child becomes emancipated.

SO ORDERED AND ADJUDGED this the \_\_\_\_ day of August, 2007, *nunc pro tunc* March 2, 2007.

\_\_\_\_\_  
CHANCELLOR SEBE DALE, JR.

APPROVED AND AGREED:

\_\_\_\_\_  
Attorney for Jackie Keith

\_\_\_\_\_  
Attorney for Deanna Purvis

On December 15, 2000, the Chancery Court of Forrest County, Mississippi, entered a Judgment of Paternity (RE2 CP 406-412).



This Judgment after determining Jackie Keith to be the natural father of Jade Danielle Purvis, born February 10, 1993, to the appellee Deanna Purvis, (RE2, CP 406) ordered Jackie Keith to pay to Deanna Purvis the sum of \$350.00 per month “as his contribution towards the support and maintenance of the minor child, **commencing on the 1<sup>st</sup> day of January 2001, and continuing to be paid on the 1<sup>st</sup> day of each month through the registry of the Chancery Clerk’s Office of Forrest County, Hattiesburg, Mississippi, until further order of this Court.**”(RE2, CP 410).

This judgment was “**...READ, AGREED TO AND UNDERSTOOD BY: “Jackie Keith , Plaintiff and Appellant here; Deanna Purvis, Defendant, and appellee her, and their counsel and signed by the Chancellor on December 14, 2000.**

Jackie Keith continued to pay the \$350.00 per month child support until August of 2006, when he ceased paying this amount of child support directly because of an award to the minor child Jade Danielle Purvis of Social Security disability benefits. The social security Disability Benefits were in the amount of \$900.40 per month beginning in December 2005, and a lump sum award of \$20,164.00 was paid covering twenty two(22) months between December of 2005 and September of 2006.

On November 6, 2006, Jackie Keith filed a PETITION TO MODIFY JUDGMENT (RE 4, CP4-7) asking for the following relief:

- **That he be reimbursed the sum of \$7,836.50, said sum representing the child support payments made at the rate of \$350.00 per month for 22 months;(RE4, CP5); and,**
- **That the Court ordered that child support for the minor child be set at the sum of \$900.40 per month paid directly to the minor by the Social Security Benefits in lieu**

**of the previously ordered \$350.00 per month(RE4,CP6).**

On March 2, 2007, the lower court entered a JUDGMENT(RE3, CP 180-182), denying *inter alia* and in pertinent part, the reimbursement in the amount of \$7,386.50 as requested by Jackie Keith.

As was pointed out in the NOTE: preceding this section, this Judgment should have included but did not grant the relief of substituting the social security payment for Court ordered child support. An agreed order granting the relief has been forwarded to the attorney for the appellant for entry at the lower Court.

**NATURE OF THE CASE AND COURSE OF PROCEEDINGS BELOW**

Jackie Keith filed his PETITION TO MODIFY JUDGMENT on November 6, 2006(R4) Deanna Purvis filed her ANSWER TO PETITION TO MODIFY JUDGMENT AND COUNTER PETITION FOR CITATION FOR CONTEMPT AND MODIFICATION on January 11, 2007(RE5); and Jackie Keith filed his ANSWER TO COUNTERCLAIM FOR CONTEMPT on January 23, 2007.

As the appellant points out, the Chancery Court of Forrest County entered its judgment on March 2, 2007, and refused to grant Jackie Keith a judgment awarding him \$7,836.50, which he claimed was an overpayment by virtue of the fact that he paid \$350.00 per month during the same period of time the Social Security benefits subsequently paid a lump sum based on an award of \$900.40 per month to a minor dependent.

The Judgment did not, as appellant states "refuse to substitute the monthly Social Security payment for Keith's existing monthly child support obligation.(R3). A provision in the Judgment granting this relief was omitted by mistake of counsel, and appellee admits that this

provisions should have been included in the Judgment. NOTHING in the judgment denies this relief.

### **STATEMENT OF THE FACTS**

By JUDGMENT OF PATERNITY entered in the Chancery Court of Forrest County, Mississippi, on December 15, 2000, Jackie Keith was adjudged to be the father of Jade Danielle Purvis, born February 10, 1993, to Deanna Purvis.(RE2, CP 406-412)

By this same Judgment Jackie Keith was ordered to pay the sum of \$350.00 per month “as his contribution towards the support and maintenance of the minor child, commencing on the 1<sup>st</sup> day of January 2001, and continuing to be paid on the 1<sup>st</sup> day of each month through the registry of the Chancery Clerk’s Office of Forrest County, Hattiesburg, Mississippi, until further order of this Court....”(RE2, CP 410).

Jackie complied with the Court’s Order, just as he should have done and was required to do on penalty of contempt until he ceased making the Court ordered payments of \$350.00 per month until August of 2006, when he unilaterally ceased making the Court ordered \$350.00 per month payments, technically placing himself in contempt, since he has made NO Court ordered payment since.

In September of 2006, however, his minor child, Jade Danielle Purvis, was awarded Social Security Disability Payments of \$900.40 per month beginning retroactively in December of 2005; therefore, the minor child would from September of 2006 forward receive \$900.40 Social Security Disability Benefits.

The child also received a lump sum award of \$20,164.00 covering the twenty-two(22) months between December of 2005 and September of 2006, an award which gave rise to the

present controversy and this appeal.

On November 26, 2006, Jackie Keith filed a PETITION TO MODIFY JUDGMENT, asking in pertinent part for:

- “an order ordering Deanna Purvis to reimburse the Plaintiff for the sum of \$7,836.50 overpaid to the Defendant; and,
- “ an order ordering that child support for the minor child shall be the sum of \$900.40 per month paid directly to the minor by the Social Security Benefits as support from her father

Jackie Keith, in lieu of the \$350.00 ordered by this court on the 14<sup>th</sup> day of December, 2000.

On March 2, 2007, a JUDGMENT was entered(RE3, CP 180-182) by this judgment, the lower Court refused to give Jackie Keith retroactive credit for sums tendered to the minor child by the Social Security Administration and refused to order reimbursement to Jackie Keith of \$7,836.50 for what he alleged was an overpayment. The Court also refused to grant him credit for sums that will accrue over and above the ordered support of \$350.00 per month.

The JUDGMENT did not include any ruling on substituting the Social Security Payments for child support, which appellee admits and confesses should have been done, and which the appellee’s attorney recalls was discussed and confessed at the trial level and approved by the Chancellor, and which omission from the JUDGMENT appellees’ attorney believes was a mutual mistake of the attorney’s for the parties, and a mistake that has been corrected by the forwarding of an agreed *nunc pro tunc* order granting this relief.

As has been pointed out elsewhere, the parties have lived with the situation as if this order had been entered and no request for an additional \$350.00 per month as Court ordered child support has been made nor expected by the appellee.

## **SUMMARY OF THE ARGUMENT**

The sole issue remaining for determination by this Court is whether or not Deanna Purvis should be required to pay back child support received by her pursuant to Court order because of an award of Social Security Disability payments awarded retroactively covering the same period of time Jackie Keith paid his child support pursuant to Court order.

Appellant has cited no authority for this proposition and under this Courts rules, this assignment cannot be considered.

Further appellee argues that Jackie Keith was ordered to pay child support, which he did, and because of a third party payment under a separate set of laws, he cannot now be heard to complain that he has overpaid, because he hasn't, he paid exactly what the Court ordered him to pay

## **ARGUMENT**

Appellant argues two points: "I. WHETHER THE APPELLANT JACKIE KEITH IS ENTITLED TO OFFSET THE ONGOING MONTHLY DERIVATIVE DISABILITY PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION TO JADE DANIELLE PURVIS; and, II. WHETHER THE APPELLANT JACKIE KEITH IS ENTITLED TO CREDIT FOR THE OVERPAYMENT OF CHILD SUPPORT OVER THE TWENTY- TWO (22) MONTH PERIOD COVERED BY JADE DANIELLE PURVIS' LUMP SUM AWARD FROM THE SOCIAL SECURITY ADMINISTRATION.

The first assignment of error has been confessed and corrected. Clearly, Jackie Keith is entitled to substitute social security payments in excess of his Court ordered support for his court ordered support as long as the Social Security Payments continue, a fact that was known to

appellee's counsel and the Court at the time of the lower Court hearing.

The second assignment of error falls in a different category: There is NO authority for this proposition and appellant has cited no authority because none exists.

"This Court has held that it will not consider an assertion of error for which there is no authority cited...."Spalding v. Spalding, 691 So. 2d 435 (Miss, 1997).

Further, there exists no authority for forgiveness of child support payments once these payments have become due and owing. Past due child support payments cannot be forgiven by Chancellors. Dept. of Human Services v. Rains 626 So.2d 136.

Child support payment once due becomes fixed and vested. The Court is without authority to reduce amounts of accrued child support. Hailey v. Hailey, 457a So. 2d 947(Miss, 1984).

Accrued while support payments cannot extinguished by a Court. A Court cannot relieve the civil liability for support payments that have already accrued. Houck v. Houck, 812 So.2d 1139, 1143 (12) (Miss. Ct. App. 2002).

Jackie Keith, had he been unable to make the monthly payments of \$350 which apparently he was not because he did make the payments, was under an affirmative duty to file for a modification of support. He could have done the same had he been assured that he would eventually be awarded Social Security Benefits, which he was not. When a party is unable to pay court ordered support, the proper action to take is to promptly file for a modification of support. The necessity of prompt action is actualized by the Supreme Court's holding that support obligation to the child vest in the child as they accrue, and no Court may thereafter modify or forgive them if they be not paid Barfield v. State, 749 So.2d 331.

This law is analogous and applicable to the present situation, where Jackie wants to be reimbursed for money he paid pursuant to Court order. He wants his money back and wants this Court to allow Social Security Disability benefits for a minor to be substituted for payments he was required to make. He wants the child to be deprived of the support he was ordered to pay.

In McBride v. Jones, 803 So.2d 1168(¶ 5) (Miss.2002), the Mississippi Supreme Court held that a man who had paid child support for 15 years in the mistaken belief he was the father of the recipient was not entitled to recover payments from the mother who accepted them; again, an analogous situation and one much more egregious than the current situation.

In Mizell v. Mizell, 708 So.2d 55, 61 (Miss.1998) the Mississippi Supreme court held :” It is unthinkable to allow the father credit for child support from the funds of the paternal grandfather of the child.” It is just as unthinkable to allow a father credit for payments he has already made and order reimbursement for funds received a Social Security Disability Payments from the United States Government.

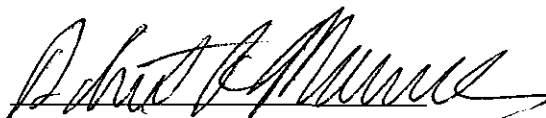
### CONCLUSION

There is neither reason nor justification to order a reimbursement of the twenty-two (22) months of child support payments, nor, for that matter any legal authority for the Court to order the sum of \$7,836.50 reimbursed to Jackie Keith. To do so would deprive his daughter of that sum for no reason and the Court should not allow that result.

Respectfully submitted this the 27th day of August, 2007.

DEANNA PURVIS

BY:



Robert R. Marshall, her attorney

**CERTIFICATE OF SERVICE AND FILING**

I, Robert R. Marshall, Attorney for the Appellee, certify that I have this date mailed by United States Mail, postage prepaid, a true and correct copy of the Brief of Appellee to the following persons at their usual mailing addresses:

Deborah J. Gambrell, Esq.  
Attorney for the Appellant  
713 Ronie Street  
Hattiesburg, Mississippi 39401

Mr. Jackie Keith  
371 Max White Road  
Purvis, Mississippi 39475  
Appellant

Robert R. Marshall  
Attorney for Appellee  
525 Corinne Street  
Hattiesburg, Mississippi 39401


Ms. Deanna Purvis  
102 Hickory Drive  
Petal, Mississippi 39465  
Appellee

Judge Sebe Dale, Jr.  
Forrest County Chancery Court Judge  
Post Office Box 1248  
Columbia, Mississippi 39429

I, Robert R. Marshall, Attorney for the Appellee, hereby certify that I have actually mailed this date the Original and three (3) copies of the Brief of the Appellee to the Mississippi Supreme Court.

Dated, this the 28<sup>th</sup> day of August, 2007.

  
ROBERT R. MARSHALL

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