

IN THE SUPREME COURT OF THE STATE MISSISSIPPI

JACKIE KEITH

APPELLANT

VERSUS

CAUSE NO. 2007-CA-00495

DEANNA PURVIS

APPELLEE

**ON THE APPEAL FROM THE CHANCERY COURT OF
FORREST COUNTY, MISSISSIPPI**

**REPLY BRIEF
OF THE APPELLANT**

(ORAL ARGUMENT NOT REQUESTED)

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Cases

Bradley v. Holmes, 561 So. 2d 1034, 1036 (Miss. 1990)

Dept. of Human Services v. Rains, 626 So. 2d 136 (Miss. 1993)

Harrell v. Duncan, 593 So. 2d 1 (Miss. 1991).

Johnson v. Pogue, 716 So. 2d. 1123 (Miss. 1998)

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SUMMARY OF THE ARGUMENT

Keith is entitled to a credit for overpayment of his child support obligation and an offset for the SSA payments made to the minor child herein due to his disability. He has met all of his obligations for child support, and the derivative disability payments that the minor child herein is entitled to should be assessed as a credit towards Keith's future child support obligation so long as the minor child is eligible, because the payments are designed to substitute for Keith's loss of income. Because the derivative disability award amounts to a substantial and material change in circumstances, the Chancery Court of Forrest County erred as a matter of law in refusing to offset his obligations by those benefits and refusing to award him a future credit for overpayment.

**REPLY TO APPELLEES RESPONSES TO ERRORS OF
ASSIGNMENTS [1] AND [2]**

The Appellee argues in her brief that the Appellant's first assignment of error:

I. WHETHER THE APPELLANT JACKIE KEITH IS ENTITLED TO OFFSET THE ONGOING MONTHLY DERIVATIVE DISABILITY PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION TO JDP (hereinafter "the minor child"), is confessed and corrected and as for proof of the same has offered a copy of a Supplemental Judgment that was forwarded to the attorney for the Appellant acknowledging an omission concerning the offset of monthly disability payments from the Social Security Administration

from the original Judgment in this matter entered on March 2, 2007.

The Appellee asserts that the first error is confessed, however, the same was not corrected, as the Supplemental Judgment was neither executed by the Appellant's attorney of record nor submitted to the Chancellor for his signature within the ten (10) days required by local rules of the Chancery Court, nor has a filed copy of the same been produced. The Appellant argues that this assignment of error may be confessed, however, the issue of whether the Appellant is entitled to offset of the monthly derivative disability payments must still be addressed by this Court as the Judgment entered in this matter failed to do so.

The Appellee further asserts that the second error:

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 JDP'S LUMP-SUM AWARD FROM THE SOCIAL SECURITY ADMINISTRATION, fails due to the Appellant's failure to assert any legal authority for the same and goes on to assert that certain precedent has established that "forgiveness" of child support payments once the same becomes due and owing is prohibited as a matter of law. (Citing *Dept. of Human Services v. Rains*, 626 So. 2d 136 (Miss. 1993). This assertion is clearly distinguished in the present case for two reasons: 1) Mr. Keith had no child support due or owing, at the time the Court rendered its Judgment. All of his child support obligations to the minor child has been more than satisfied, not only through his redundant child support payments in the amount of \$350.00 per month for twenty-two (22) months, but also in the minor child's simultaneous receipt of a large lump sum payment of benefits this Court has consistently held to be eligible for offset. Therefore, unlike *Rains*, Mr. Keith has no arrearage but in fact has a *surplus* of funds eligible as child support paid promptly to the Appellee for that

purpose. To deny a request for off-set of future child support payments based on the precedence asserted by the Appellee; which prior to now has *only* been applied to child support arrearages operated to unduly enrich the Appellee and is unconscionable. 2) This Court has also considerably limited and declined to expand Rains to such an extent. In Johnson v. Pogue, 716 So. 2d. 1123 a similar situation trebling of benefits awarded by the lower court occurred when a wife was receiving alimony payments and simultaneously requesting certain Social Security retirement benefits as well. The Court advised that, like child support and Social Security disability payments, alimony too can be off-set by such retirement payments to the spouse. (Id at quoting Bradley v. Holmes, 561 So. 2d 1034, 1036 (Miss. 1990). However the Court went on to iterate that although the wife has a right to request certain funds that are substituted for income be allocated as alimony, she did not have a right to expect "her income to double" by demanding both alimony and said retirement payments when said payments became due. Id. This is the essence of what the Appellant has been ordered by the lower court to do-- to ignore his right to have said SSA derivative funds be offset by not allowing the same to be credited against future support. This results in the Appellant having paid child support *twice*. The Appellee received not only the lump sum SSA benefit on behalf of the minor child, but an increased obligation in the amount of \$900.40 that was paid by Appellant simultaneously along with his original obligation of \$350.00 per month for those twenty-two (22) months.

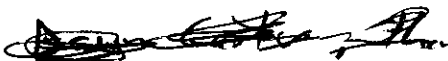
Chancellors have always had the discretion to award the Appellant the judgment requested and to thereby amend the same and the Appellant asserts that such off-sets are typically retro-active to the date of Judgment. There is no precedence, despite the Appellee's argument of the same, that allows only a credit to past arrearages. This would make such a request for future consideration of such an off-set inoperable in cases such as this one, where

there is no arrearage. The Chancellor has discretion to and an obligation to have a hearing to determine the amount of any overpayment and can enter a monetary judgment in that amount, or in the alternative, credit future child support payments until the minor is no longer eligible for the same (typically eighteen [18] years of age to twenty-one [21] years of age) . Harrell v. Duncan, 593 So. 2d 1 (Miss. 1991).

CONCLUSION

The Chancery Court of Forrest County erred as a matter of law when it denied Keith's petition to secure credit for the child support paid to said minor by the SSA due to Keith's disability. The Chancery Court found that Keith had met all of his obligations under the order, and further found that the SSA payments to JDP exceeded Keith's obligations, both from the lump-sum award and the monthly benefits. The Chancery Court, however, did not make any findings of fact beyond this and refused to consider whether the same is a credit for future child support that may be due and owing after Social Security benefits for the minor child cease at age eighteen.

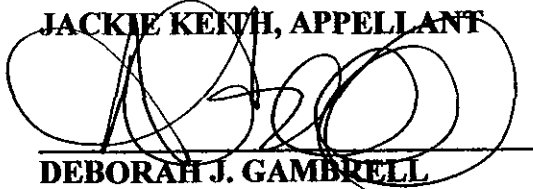
Keith now turns to this Court for relief from the Chancellor's error of law, and asks this Court to order his obligation for child support, after the minor child reaches eighteen [18] years of age be offset by the SSA derivative benefits paid to the minor child, and for any other relief in equity or law that Appellant may be entitled to receive herein.



A handwritten signature in black ink, appearing to be "Keith" or similar, with a stylized flourish at the end.

RESPECTFULLY SUBMITTED, this the 12 day of Sept., 2007.

JACKIE KEITH, APPELLANT

BY:


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CERTIFICATE OF SERVICE

I, Deborah J. Gambrell, Attorney for the Appellant, Jackie Keith, do hereby certify that I have this day caused to be mailed via U.S. Mail, postage pre-paid a true and correct copy of the foregoing Reply Brief of Appellant to the following listed persons on this the 12 day of September, A.D., 2007.

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