

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**

**BRIEF OF THE APPELLANT
(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 disqualification or recusal.

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Statutory Authority

Mississippi Code of 1972, as Amended
Section 43-19-1

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STATEMENT OF THE ISSUES

- I. WHETHER THE APPELLANT JACKIE KEITH IS ENTITLED TO OFFSET THE ONGOING MONTHLY DERIVATIVE DISABILITY PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION TO JDP.**

- 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.**

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VERSUS

DEANNA PURVIS

APPELLEE

STATEMENT OF THE CASE

Jackie Keith (hereafter referred to as "Keith") and Deanna Purvis (hereafter referred to as "Purvis") are the natural parents of JDP, a minor child, and share joint legal custody of JDP, with Purvis having paramount custody. *See* Judgment of December 15, 2000 (R. 2). The Chancery Court of Forrest County, Mississippi, determined JDP's paternity and established a child custody and child support regime in its judgment of December 15, 2000, wherein Keith was to provide, among other things, child support in the amount of \$350.00 per month. *Id.* Keith became totally disabled on April 30, 2004, and in September 2006, JDP received as a lump sum benefit based on Keith's disability in the amount \$20,164.00, covering twenty-two (22) months, and from December 2005 was entitled to receive \$900.40 per month in Social Security benefits. *See* Judgment of March 2, 2007 (R. 3). Meanwhile, Keith has faithfully met each of his obligations under the judgment of December 15, 2000. *Id.* On November 6, 2006, Keith filed a Petition to Amend the Judgment of the Court, seeking credit for the overpayment of \$7836.50 in child support benefits and to substitute the award of Social Security disability benefits to JDP in the amount of \$900.40 for his mandated \$350.00 per month. *See* Petition (R. 4).

NATURE OF THE CASE AND COURSE OF PROCEEDINGS BELOW

Keith filed his Petition to Amend the Judgment of the Court on November 6, 2006. (R. 4). Purvis filed her response and counterclaim for contempt on January 11, 2007, and Keith

responded to Purvis's counterclaim on January 22, 2007. (R. 5,6). The Chancery Court of Forrest County entered its judgment on March 2, 2007, denying Keith's petition and refusing to grant him credit for the lump-sum overpayment of the Social Security benefit, and refusing to substitute the monthly Social Security payment for Keith's existing monthly child support obligation. (R. 3)

STATEMENT OF THE FACTS

Jackie Keith is the natural father of JDP. (R. 2). Deanna Purvis is JDP's natural mother and has primary physical custody of JDP, although Keith and Purvis have joint legal custody of JDP. (R. 2). Keith was adjudged JDP's father by judgment of the Chancery Court of Forrest County on December 15, 2000, and required to pay child support in the amount of \$350.00. (R. 2).

Keith faithfully complied with the Court's order, even though he became disabled in 2001. (R. 3). Keith paid his child support obligations in a timely fashion, and, in September 2006, a disability award through Social Security was made to JDP. (R. 3). This award covered twenty-two (22) months preceding the date of the award to the date of SSA finding Keith to be disabled. (R. 3). The award came in a lump sum of \$20,164.00. (R. 3). Additionally, JDP was given a Social Security disability benefit on account of Keith's disability in the amount of \$900.40 per month, which she receives to this day. (R. 3).

Keith filed a petition with the Court to modify his child support obligations, asking the Court to fix the amount of child support for JDP at \$900.40, the amount of the SSA award, and substitute the SSA award for the \$350.00 he pays monthly. (R. 3). Additionally, Keith sought credit for overpayment based on the fact that he had paid \$350.00 for the twenty-two (22) months for which the lump sum was awarded. (R. 4). The Court found that he had met his

obligations, but refused to modify the support order, and refused to grant Keith a credit for overpayment based on the SSA award. (R. 3).

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 JDP due to his disability. He has met all of his obligations for child support, and the derivative disability payments that JDP is entitled to should be assessed as part of Keith's child support obligation, because the payments are designed to substitute for Keith's loss of income. Because the derivative disability awards amount to a substantial and material change in circumstances, the Chancery Court of Forrest County erred as a matter of law in refusing to modify Keith's child support obligations, and by refusing to offset his obligations by those benefits and refusing to award him a credit for overpayment.

ARGUMENT

Keith is entitled to a credit for overpayment of his child support obligation and an offset for the SSA payments made to JDP due to his disability. He has met all of his obligations for child support, and the derivative disability payments that JDP is entitled to should be assessed as part of Keith's child support obligation, because the payments are designed to substitute for Keith's loss of income. Thus, they form part of Keith's income for the purpose of establishing the level of his child support payments.

The Chancery Court of Forrest County erred as a matter of law when it failed to assess the SSA payments made for JDP's benefit and modify Keith's child support obligations. The Chancery Court should have compared the value of the SSA benefits paid for JDP's benefit to the amount Keith was required to pay in child support; upon that comparison, given that Keith was obligated to pay \$350.00, and JDP was receiving from SSA \$900.40, the Court should have

terminated Keith's monthly child support obligation, which the SSA payments exceeded.

In addition, Keith is entitled to receive credit for overpayment of child support by reason of the lump sum award in December 2005. That sum was \$20,164.00, covering a twenty-two (22) month period from the time Keith applied for disability to the time he was adjudged disabled. Keith should have received a credit in the amount of \$7836.50.

Standard Of Review

The findings of fact made by a chancellor are subject to review on the basis of clear error or abuse of discretion. Sanderson v. Sanderson, 824 So.2d 623, 625-26 (¶8) (Miss. 2002). The conclusions of law of a chancellor are subject to *de novo* review. Isom v. Jernigan, 840 So. 2d 104, 106 (¶6) (Miss. 2003). The Chancery Court's refusal to allow Keith a credit for the SSA disability benefits paid to JDP on account of Keith's disability is an error of law, and should be reviewed *de novo*. Spalding v. Spalding, 691 So. 2d 435, 439 (Miss. 1997) (citing Mooneyham v. Mooneyham, 420 So. 2d 1072 (Miss. 1978)).

Issues

Social Security derivative benefits have been regarded as substitutes for child support in Mississippi since 1978 and as substitutes for alimony since 1997. The majority of jurisdictions in the United States treat SSA derivative benefits this way, because the payments are designed to substitute for the disabled parent's loss of income. In situations where derivative benefits are available on account of the obligated parent's disability, equity requires that the derivative benefits be credited towards his support obligations. **NO CITE**

Child support can be modified if there has been a substantial and material change in circumstances for the custodial parent, the non-custodial parent, or the child. Dix v. Dix, 941 So. 2d 918 (¶25) (Miss. Ct. App. 2006). In this case, the material and substantial change in

circumstances is two-fold; first, the ongoing \$900.40 monthly SSA benefits JDP receives on account her father's disability; and second, the lump-sum award of \$20,164.00 in back SSA derivative payments to JDP.

I. WHETHER THE APPELLANT JACKIE KEITH IS ENTITLED TO OFFSET THE ONGOING MONTHLY DERIVATIVE DISABILITY PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION TO JDP.

Mississippi has regarded derivative disability payments as supplements or substitutes for existing child support obligations since 1978. ✓ Mooneyham v. Mooneyham, 420 So. 2d 1072 (1978). A derivative disability benefit is one that a dependent is entitled to because of their supporter's disability. In this case, JDP receives \$900.40 per month in SSA derivative benefits because Keith, her father, suffered a disabling stroke, and has been deemed disabled by the Social Security Administration. SSA benefits based on retirement have been found to off-set child support obligations, even when those benefits are exceeded by other SSA benefits the child is entitled to receive. See Bradley v. Holmes, 561 So. 2d 1034, 1036 (Miss. 1990).

Since Mooneyham, Mississippi courts have extended the application of this basic principle on derivative benefits of any kind to include modifications of alimony. See Spalding v. Spalding, 691 So. 2d 435 (Miss. 1997), Johnson v. Pogue, 716 So. 2d 1123 (Miss. Ct. App. 1998), Franklin v. Franklin, 864 So. 2d 970 (Miss. Ct. App. 2003). This chain of decisions emphasizes the equities of the situation; if a derivative benefit inures of the same character as the existing obligations, whether alimony or child-support, then equity demands that the obligor be given credit in the form of an offset. Franklin, 864 So. 2d at 978 (¶¶33-36).

Keith's child support obligation requires him to pay \$350.00 per month until that obligation terminates. Since SSA found Keith to be disabled, JDP has been receiving payments

in almost three times the amount from derivative disability benefits alone. Because Keith is disabled, and because JDP is receiving nearly three times the amount of Keith's obligation in support through derivative disability benefits, the Chancery Court erred as a matter of law when it did not order that Keith's child support obligation has been met by the derivative disability payments, and that his \$350.00 obligation is ended.

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.

Keith is entitled to an offset for overpayment of his child support obligations on account of the lump-sum SSA disability payment made to JDP in September, 2006. The Chancery Court found that Keith had faithfully fulfilled all of his obligations under the existing support order, and had in fact made all of his monthly payments for child support for JDP's benefit to Purvis. Keith made payments for the twenty-two (22) month period between the effective date of his disability, April 30, 2004, and September, 2006, when the lump-sum was awarded to JDP. These payments, including interest, amounted to \$7,836.50 over that time.

The lump sum awarded to JDP as a derivative disability benefit equaled \$20,164.00. This lump-sum constitutes 22 months of the ongoing monthly SSA benefits to JDP, at the rate of \$900.40, plus interest. Because Keith is entitled to offset the ongoing monthly derivative benefit against his existing child support obligation, equity demands that he be entitled to credit for overpayment of his obligation during the twenty-two (22) month period for which the lump-sum payment was made.

It would be a gross injustice for this Court to offset Keith's child support obligation based

on the SSA derivative monthly benefits, but to refuse to grant him credit for the lump sum. Keith made every single payment of child support which he was required to do during the twenty-two (22) month period covered by the award, even though his disability prevented him from working. Keith was even able to meet his obligation to fund JDP's IMPACT account, despite his disability, causing him significant economic hardship.

Keith is no shirker; he has faithfully met his duty to his child head-on. Now that JDP is provided for in substantially greater degree by Keith's disability than by Keith's child support obligations, Keith has merely asked the courts of Mississippi to return to him what is his. Because the Chancery Court found that Keith had met all of his obligations under the original child support order, and because Keith and JDP have both undergone a substantial and material change in circumstances due to Keith's disability, the Chancery Court of Forrest County erred as a matter of law when it refused to grant him a credit for overpayment of child support due to the SSA derivative benefits lump-sum.

CONCLUSION

The Chancery Court of Forrest County erred as a matter of law when it denied Keith's petition for modification of child support due to the SSA benefits his minor child JDP began receiving as a result of 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. However, the Chancery Court did not make any findings of fact beyond this, and refused to consider whether a material and substantial change in circumstances had occurred.

Manifestly, a sudden trebling of child support benefits based upon Keith's disability must constitute a material and substantial change in circumstances for both JDP and Keith. These

payments result from Keith having become disabled under the law; that is, the Social Security Administration found that he was unable to be gainfully employed. JDP's benefits tripled in one fell swoop. At the time of the original order, Keith was making \$52,000.00 per year working for Miller Transport. By 2001, Keith had suffered a stroke and was no longer working. The SSA found Keith had become disabled as of April 30, 2004.

During that time, Keith met all of his obligations. Keith could have petitioned the Court to find that he had suffered a substantial and material change in circumstances due to the loss of his employment on account of his stroke; he did not. Keith waited until after JDP began receiving her derivative benefits to ask the chancellor to relieve him of his obligation, which the SSA payments exceeded threefold.

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 be offset by the SSA derivative benefits paid to JDP, and for a credit for overpayment of child support based upon the lump-sum payment of SSA derivative benefits to JDP in September 2006, and for any other relief in equity or law that he may be entitled to.

RESPECTFULLY SUBMITTED, this the 7 day of June, 2007.

JACKIE KEITH

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 Brief of Appellant to the following listed persons on this the 6 day of June, A.D., 2007.

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