

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

GREGORY LEE, SR.

APPELLANT

V.

CASE NO. 2007-CA-02088-COA

SONIA ALICIA LEE

APPELLEE

APPEAL FROM THE CHANCERY COURT OF LOWNDES COUNTY

**REPLY BRIEF OF APPELLANT
FOR GREGORY LEE, SR**

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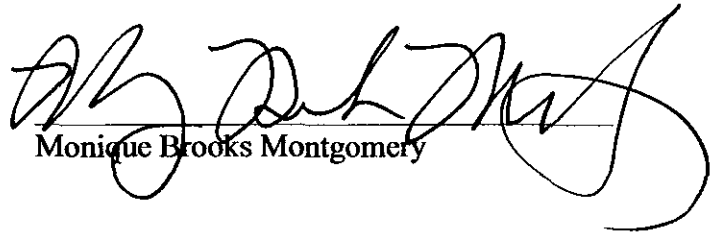
ATTORNEY FOR APPELLANT
GREGORY LEE, SR.

ORAL ARGUMENT NOT REQUESTED

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following 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 disqualifications or recusal.

1. Gregory Lee, Sr., Appellant;
2. Sonia Alicia Lee, Appellee
3. Monique Brooks Montgomery, attorney for Appellant;
4. Stephanie Mallette, attorney for Appellee



Monique Brooks Montgomery

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ARGUMENT

Appellant, Gregory Lee, Sr. (hereinafter Greg Lee) and Appellee, Sonia Lee (hereinafter Sonia Lee) agreed that M.T.L. was born "to the marriage" in their Joint Bill for Divorce and the Child Custody and Settlement Agreement and on June 22, 2005 they were divorced by a Final Decree of Divorce. Greg Lee was ordered to pay \$714.40 per month for 2 children in child support. Chancellor Burns entered an Order for Withholding which compelled Greg Lee's employer to withhold \$714.40 per month for child support and no amount was owed for arrearage¹. In Sonia Lee's brief, she called the 20% child support amount that Greg Lee was ordered to pay "a coincidence", but this amount was not a coincidence. In fact, it was the amount Greg Lee agreed to pay since 20% was the statutory amount for two children.

Greg Lee was under the belief that MTL was his child and he had continued to hope that she would be his child, thereby keeping with the strong presumption that a husband is the father of his wife's child that is conceived during the marriage. Greg Lee was never told by Sonia Lee that MTL was not his child. He never agreed to care for the child with knowledge that she was not his child. He only agreed to pay child support because he thought that MTL was his biological child.²

1

The Attorney for the Appellee incorrectly states that \$75.00 per month was ordered towards arrearage, due to Mr. Lee's failure to pay child support; however, NO SUCH NOTICE OF DELINQUENCY was served with this Order.

2

Sonia Lee alleges in her brief that "[t]he Final Decree For Divorce rendered the fact that she may have had an adulterous affair while married to Greg Lee, Sr.". No where in the Final Decree For Divorce does Sonia Lee admit to having an affair. As a matter of fact, she successfully convinced Greg Lee that she did not have an affair and SWORE under Oath that MTL was born to the marriage. This clearly constitutes fraud on its face, simply because Greg Lee relied on Sonia Lee's misrepresentation. If Sonia Lee had admitted to having an affair, and truthfully stated under oath that MTL was not Greg Lee's child, Greg Lee would not have agreed to pay child support for a child that was not his. But Sonia Lee swore under oath that the child was born to the marriage without

ARGUMENT

A material change in circumstances exist which would justify a Court modifying the Former Decree pursuant to Mississippi Rules of Civil Procedure Rule 60(b)(6). Once Greg Lee discovered that the Court could order a DNA test to prove beyond a reasonable doubt that he was not the biological father of MTL, he properly filed a Petition To Modify Former Decree. Then the Court ordered the appropriate test pursuant to M.C.A. §93-9-21 and the results of this test removed all doubt regarding Greg Lee being the father of MTL. On September 25, 2007 it was established that Greg Lee was not MTL's biological father; however, the Court failed to disestablish the child support payments.

Although Greg Lee had previously had a paternity test done with DNA Diagnostic Center, Sonia Lee swore that she had not had an adulterous affair thereby convincing him that the results of the DNA Diagnostic Center test results were incorrect. She also swore to affidavits that MTL was born to the marriage. Frankly, Greg Lee could only rely on information given to him by his wife, Sonia Lee. As the popular saying goes "Momma's baby, Poppa's maybe". Marriage is about trust, and regardless of how you feel, what people say or what you suspect a person of, you must believe that your spouse is an honest person at all times. Greg Lee wanted to believe his wife when she said that she did not have an affair. He also believed her when she said that the DNA Diagnostic Center results were not correct. He wanted to give his wife the benefit of the doubt.

Beyond a reasonable doubt is also the standard used by the Court to determine whether a husband is or is not the biological father of a child. Once Greg Lee learned that the Court could

telling him the truth. It's just plain and simple, Greg Lee would not have agreed to pay child support for a child that was not his.

order a test that would prove beyond a reasonable doubt if he was MTL's father, he petitioned the Court to modify his former decree.

"Only proof beyond a reasonable doubt will overcome this presumption of legitimacy". Dixon v. Curtis, 340 So. 2d 722 (Miss. 1976). There was doubt in Greg Lee's case when he signed the Joint Bill For Divorce and the Child Custody and Settlement Agreement. The most contributing factor of the doubt was Sonia's Lee's sworn statement that MTL was Greg Lee's child. Sonia Lee was believable and Greg Lee was steadfastly hoping that his wife had not had an adulterous affair.

Moreover, this presumption of legitimacy, as strong as it is, is a rebuttable one, and the husband denying the paternity of the child must prove beyond a reasonable doubt that he is not the father. Otherwise, the father of the child born out of lawful matrimony is still liable for parental support to the same extent as the legal father. Ingalls Shipbuilding Corp. V. Neuman, 322 F. Supp. 1229, affirmed, 448 F. 2d 773 (D. C. Miss 1970).

Sonia Lee convinced Greg Lee that MTL was his child, and now Sonia Lee is now trying to convince this Court to accept that Greg Lee knew that he was not MTL's father when only she would know whether he was the father or not. Greg Lee could not possible know whether Sonia Lee had sexual intercourse with someone else other than him. Sonia Lee told him that she had not had sexual intercourse with any one other than him, and he believed her.

Sonia Lee is also trying to convince this Court to accept the DNA test results of the DNA Diagnostic Center which is a laboratory that has not been selected from an approved list prepared by the Department of Human Services. Although Greg Lee had a previous DNA test with DNA Diagnostics Center, pursuant to M.C.A. § 93-9-21(5), the Courts will not accept the DNA test results of any laboratory that was not selected from the approved list as prepared and maintained by the Department of Human Services. Therefore, it would be unfair and unreasonable to expect Greg Lee

to accept the DNA test results of a laboratory (DNA Diagnostic Center) that has not been selected from the approved list as prepared and maintained by the Department of Human Services. Circumstantially, the only way Greg Lee could prove beyond a reasonable doubt (be 100% certain as the Court alleged) that he was not the biological father of MTL was to have the DNA test performed by RELIAGENE, which is a laboratory that was on the approved list of the Department of Human Services. It was not until the Reliagene test results were produced, that made Greg Lee become 100% sure that he was not the biological father of MTL (even though Sonia Lee had sworn to him under oath that he was MTL's biological father and convinced him that the previous test results were inaccurate). So our question today is why has the Chancellor determined that Greg Lee still be liable for parental support to the same extent as a legal father?

Greg Lee has another child by Sonia Lee and he had hoped that MTL would turn out to be his child also. Even though a previous DNA test done at DNA Diagnostics Center indicated that MTL was not his child, Sonia Lee continued to tell him that she had not had an affair and that the test results from the DNA Diagnostics Laboratory were "wrong". Sonia Lee then signed the Joint Bill for Divorce Affidavit and the Child Custody & Property Settlement Agreement thereby swearing under oath that MTL was Greg Lee's child. These erroneous and dishonest assertions made by Sonia Lee clearly constituted fraud if she knew that he wasn't the father of MTL. Greg Lee relied on Sonia Lee's erroneous and dishonest assertions causing him to sign the Joint Bill For Divorce and the Child Custody & Property Settlement Agreement.

Next, Sonia Lee addresses the validity and admissibility of the DNA Test performed by DNA Diagnostics Center in her brief. She states that these same test results should be admissible for the purpose of showing that Mr. Lee had knowledge that MTL was not his child. However, she states that these same test results should not be admissible to prove the truth of the matter asserted by Mr.

Lee that MTL is not his biological child. Seems like this issue is one in the same; but Sonia Lee would like to use the test results if it benefits her case and she would like the same test results excluded if it hinders her case.

Much like M.A.S. v. Mississippi Department of Human Services, 842 So. 2d 527 (Miss. 2003), Greg Lee signed a document regarding paternity based on an erroneous assertion made by the child's mother. However, the Court in this case made a different ruling even though it was shown that Sonia Lee erroneously and dishonestly stated that MTL was born to the marriage.

Further, it is unfair for Greg Lee to pay child support payments on a child that is not his? M.C.A. §93-11-71 (4) "states that the court shall disestablish paternity and may forgive any child support arrears of the obligor for the child or children determined by the court not to be the biological child or children of the obligor. The trial courts ruling to force Greg to continue paying child support, is in violation of the Mississippi statute presented herein and above. The legislature is interested in fairness. How can you force someone to be obligated to pay child support for a child who is not theirs, and the biological noncustodial parent be allowed to go scot free.

Just like our case at hand, Williams clear scientific evidence of nonpaternity rebutted the presumption of paternity and the Supreme Court found that the Chancellor's ruling was fundamentally unfair to require Williams to continue paying child support for someone who was not his child.

Finally, Rule 60(b)(6) was also appropriate in this case, because it extends to **any other reason justifying relief from the judgment.** Williams v. Williams, 843 So. 2d 720 (Miss. 2003), states that it is "manifest injustice for someone to continue making child support payments for a child which unquestionably is not his." Such injustice should allow Greg Lee to prevail and not be forced to pay child support for a child that has been scientifically proven not to be his. Further,

“public policy dictates that a determination of paternity is in a child’s best interest.” Id.

CONCLUSION

The Chancellor in this matter incorrectly failed to disestablish paternity after it was determined through a legal DNA test that Greg was not the biological father of MTL. Mississippi law states that the Court shall disestablish paternity when the paying obligor is found not to be the father of a child that he was previously ordered to pay child support for. Thus, based on this alone, the decision of the Chancellor should be overturned in the favor of the appellant, Greg Lee. Greg believed that MTL was his child up and until the RELIAGENE DNA test results were given.

For the above and foregoing reasons, Greg respectfully requests that this court reverse the Chancellors Opinion and Judgment and disestablish paternity and suspend child support payments for a child where legal DNA test has proven that he is not the biological father.

RESPECTFULLY SUBMITTED, this the 27th day of August, 2008.

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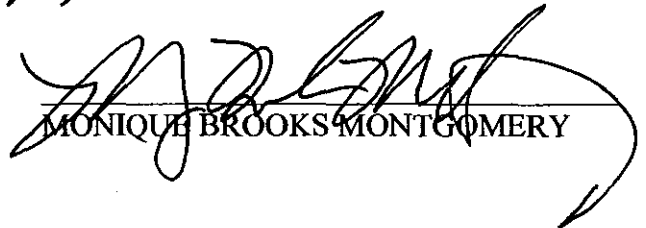
CERTIFICATE OF SERVICE

I Monique Brooks Montgomery, attorney for the Appellant in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of the Brief of Appellant to all counsel of record and the Trial Court Judge by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

Stephanie L. Mallette
Attorney at Law
P.O. Box 80170
Starkville, MS 39759

Honorable Kenneth M. Burns
District 14 Chancery Judge
Trial Court Judge
P.O. Box 110
Okolona, MS 38860

Dated this the 22nd day of August, 2008.


MONIQUE BROOKS MONTGOMERY

CERTIFICATE OF FILING

I, Monique Brooks Montgomery, attorney for the Appellant in the above-styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the **Reply Brief of Appellant** by mailing the original of said document and three (3) copies thereof to the following:

Ms. Betty W. Septon
Supreme Court Clerk
P.O. Box 22847
Jackson, MS 39225

This the 27th day of August, 2008.


MONIQUE BROOKS MONTGOMERY