

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2007-TS-02237

PAMELA L. FERGUSON

APPELLANT

Vs.

JUANITA H. LEWIS

APPELLEE

On Appeal from the Chancery Court of Hinds County, Mississippi

BRIEF OF APPELLANT

PAMELA L. FERGUSON

Oral Argument Requested

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VS.

Case No.: 2007-TS-02237

JUANITA H. LEWIS

APPELLEE

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 this Court and/or the Judges of this Court may evaluate possible disqualifications or recusal.

1. Pamela L. Ferguson, Appellant
2. Juanita H. Lewis, Appellee
3. Hannah Grace Ferguson, Minor child at issue
4. Shelton Holiday, Relative of parties
5. Staci B. O'Neal, Attorney for Appellant
6. Jack Moss, Attorney for Appellee

Respectfully submitted,

STACI B. O'NEAL


ATTORNEY FOR APPELLANT

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

Juanita H. Lewis, Appellee herein, filed a Petition in the Chancery Court of Hinds County (Second Judicial District) seeking grandparent visitation rights pursuant to Miss. Code. Ann. § 93-16-3(2). A hearing was held on October 16, 2007 before the Honorable William Singletary in Jackson, Mississippi. At the hearing, testimony was given by the parties and several extended family members as well as the minor child at issue, Hannah Grace.

The chancery court issued an opinion on November 1, 2007 granting grandparent visitation including monthly visitation as well as two weeks overnight visitation in the summer. The final Order was entered in this case on November 29, 2008. Appellant filed a Notice of Appeal to the Supreme Court on December 11, 2007. Meanwhile Appellant filed a Motion to Reconsider with the lower court which was heard on January 28, 2008. The Supreme Court stayed the appeal until February 22, 2008. To date there has been no decision issued on the Motion to Reconsider in the lower court.

STATEMENT OF THE ISSUES

- I. WHETHER GRANDPARENT VISITATION IN THIS CASE WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?
- II. WHETHER THE CHANCELLOR ABUSED HIS DISCRETION BY GRANTING OVERNIGHT VISITATION?
- III. WHETHER THE GRANDMOTHER WAS UNREASONABLY DENIED VISITATION WITH THE GRANDCHILD?
- IV. WHETHER THE CHANCELLOR'S RULING AMOUNTED TO AN ABUSE OF DISCRETION AND MANIFESTLY IN ERROR AND APPLIED ERRONEOUS LEGAL STANDARDS?
- V. WHETHER THE CHANCELLOR ABUSED HIS DISCRETION BY DISREGARDING THE CHILD'S WISHES BASED ON THE PREMISE THAT HER RELIGIOUS CONVICTIONS WERE "DUBIOUS" AND "BRAIN WASHING?"

STATEMENT OF THE FACTS

Hannah Grace is the fourteen-year-old daughter of Appellant, Pamela L. Ferguson. Hannah Grace is home-schooled and enjoys participating in activities at her church. Her father died when she was three years old and Hannah Grace and the Appellant (Pamela) have lived on their own since his death. For a child of fourteen (14), Hannah Grace displays a mature sense of faith and spiritual devotion. She testified that she loves her grandmother very much and prays for her to stop hurting family members. (Tr. 61:17-20). Hannah Grace testified that her grandmother speaks lies about family members and says hurtful things to people intentionally. (Tr. 65:20-66:16). For these reasons Hannah Grace felt like her grandmother was "abusive in words" towards her and her mother and she did not want to have court ordered visitation with her grandmother. (Tr. 92:11: 63:24-26).

The Appellee, Juanita H. Lewis, is Hannah Grace's maternal grandmother. As a small child, Hannah Grace enjoyed visiting with Mr. and Mrs. Lewis. On March 9, 2005, Mr. Lewis (Hannah Grace's grandfather) passed away. As a gesture of Mr. Lewis's legacy, Juanita purchased a home for Pamela and Hannah Grace across the street from Juanita's home in the fall of 2006. (Tr. 52:8). However, soon after moving to Raymond, Pamela realized that her mother was being very manipulative and controlling towards her and Hannah Grace. (Tr. 52:7-9).

Juanita has a long history of conflict with many members of her family. (Tr. 54:22). Prior to moving to Raymond, Pamela's conflict with her mother had been minimum as most of the conflict was focused on Juanita's other daughter. Rebecca Vaught, Juanita's twenty-two-year-old granddaughter by this other daughter, testified that she and her mother have each had ongoing conflicts with Juanita. (Tr. 46:27-29). In fact, as Rebecca was growing up she testified that "usually [she] was caught in the middle" of the conflict between her mother and grandmother. (Tr. 47:26-27). The conflict became so intense at times that Rebecca was banned

from Juanita's house. When the conflict began intensifying between Pamela and Juanita, it appears that Rebecca and her mother gained favor in Juanita's eyes. As a result, Juanita drew Rebecca into the middle of her conflict with Pamela. For instance, when Rebecca would visit the Fergusons across the street, Juanita would call several times during the visit and ask Rebecca to come back to her house. (Tr. 25-49:1).

All throughout Hannah Grace's childhood she observed the conflicts between her grandmother and other members of the extended family. In the fall of 2006, after moving across the street, the family conflict began to extend to her own mother Pamela. After Mr. Lewis passed away, there was no one to keep family peace between Juanita and other family members. (Tr. 87:9-21). As Pamela resisted Juanita's attempts to control, it caused a greater conflict between the two women. As the relationship deteriorated, Hannah Grace was drawn into the middle of the conflict just as Rebecca had been in years past. Juanita would say things to Hannah Grace trying to convince her that her mother was mentally ill. (Tr. 70:12-14). Hannah Grace testified that her grandmother would "spy" on them all day and try to see what they were doing during the day. (Tr. 79:24).

Some time around Christmas, 2006, Hannah Grace went to the mailbox where her grandmother met up with her for the purpose of drawing Hannah Grace into the middle of the conflict between the two women. Juanita insisted to Hannah Grace that her mother was mentally ill. (Tr. 59:23). This episode at the mailbox was very upsetting to Hannah Grace and she returned to her house crying. (Tr. 60:10-11). Another traumatic episode for Hannah Grace happened some time later when Juanita "tried to break into the house." (Tr. 60:28). Hannah Grace testified that her grandmother was trying to force her way into the house when she had been asked to go away. (Tr. 61:1-4). On another occasion, in Hannah Grace's presence, Juanita

threatened to take the Ferguson's home away from them because of a disagreement. (Tr. 67:23-68:10).

During one of the conflicts Hannah Grace told her grandmother that she wanted "nothing to do with [her]." (Tr. 61:2-3). The situation was becoming more and more hostile as time passed. After many months of turmoil it was apparent to Pamela that the turmoil was taking a toll on Hannah Grace. (Tr. 53:9-17). Pamela decided to remove the conflict from their lives and move to Madison, Mississippi. The Fergusons sold their house on or about August 30, 2007 and moved to Madison. (Tr. 33:28). That same week, Juanita filed a petition in the Hinds County Chancery Court on August 29, 2007 for grandparent's visitation rights. (R. 1)

SUMMARY OF THE ARGUMENT

The chancellor below granted visitation to the grandmother, Juanita, against the overwhelming weight of the evidence. The chancellor discussed the ten Martin factors in his Opinion but he did not adequately address how those factors demonstrate why visitation was in the child's best interest. See Martin v. Coop, 693 So.2d 912, 916. More importantly, the chancellor ignored the overwhelming evidence that visitation was not in the child's best interest. The chancellor instead discussed facts that demonstrated why the grandmother deserved visitation with the child thereby applying the wrong legal standard. See Morgan v. West, 812 So.2d 987, 994 (Miss. 2002).

The chancellor abused his discretion by granting overnight visitation. Absent a finding that the mother is unfit, it is unconstitutional for the State to inject itself into the private realm of a parent's right concerning the rearing of that parent's child. It should be noted that there was no allegation of unfitness and no evidence of unfitness in the case below. As a result, it is respectfully submitted that the chancellor's ruling in this matter infringes upon the mother's

fundamental right as a fit parent to make decisions concerning the care, custody, and control of her child. See Stacy, 798 So.2d 1275 (Miss. 2001).

A strong presumption exists that “fit parents act in the best interests of their children.” In the instant case there was no allegation of the mother’s unfitness and no judicial finding that she was unfit. The Petitioner did not overcome the presumption that the mother, a fit parent, is acting in the best interest of her child by limiting or denying visitation with the grandmother. As a result, the chancellor abused his discretion in awarding overnight visitation. Id.

Visitation was **not** unreasonably denied. Pursuant to Miss. Code Ann. § 93-16-3, the grandmother, as the petitioner below, had the burden in this case. What is lacking is a showing that she was *unreasonably* denied visitation under the statute. The testimony presented to the chancellor did not show that the mother had unreasonably denied the grandmother visitation with Hannah Grace. To the contrary, the evidence shows that the mother was acting in the best interests of Hannah Grace by removing her from a hostile environment.

The chancellor abused his discretion by disregarding the child’s wishes based on the premise that her religious convictions were “dubious” and “brain washing.” A chancellor does not have the right to disregard religious beliefs as “dubious” or “brainwashing” and the mother respectfully submits that this difference of belief influenced the chancellor in a way that was unfairly prejudicial to her as the Appellant herein.

ARGUMENT

I. Grandparent Visitation In This Case Was Against The Overwhelming Weight Of The Evidence.

This Court has held that ten factors should be considered by a chancellor in making a determination as to grandparent visitation. See Martin v. Coop, 693 So.2d 912, 916. The ten factors are:

1. *The amount of disruption that extensive visitation will have on the child's life.* Id. Testimony at trial revealed that the visitation between Hannah Grace and Juanita was emotionally disturbing to Hannah Grace. The Chancellor focused on the logistics of traveling to and from visitation and the home-schooling schedule but ignored the emotional disruption endured by Hannah Grace as a result of visitation. The evidence was overwhelming that Hannah Grace suffered anxiety because of her grandmother's behavior. The Chancellor failed to address this anxiety or Juanita's repeated attempts to draw Hannah Grace into the middle of an adult conflict. When considering the emotional disruption in Hannah Grace's life, this first factor should have gone in favor of the Appellant.

2. *Suitability of the grandparent's home.* Id. Hannah Grace is a teenager where supervision is far different than required for a smaller child. The chancellor focused on toys that were at Juanita's house that seemingly were left over from the days when Hannah Grace would spend the night and attend vacation bible school as a small child. (R. 17). The Chancellor ignored the evidence of witnesses, including Juanita, that Hannah Grace was no longer comfortable spending the night at her grandmother's house and had not been comfortable staying overnight for several years. (Tr. 21:21; 88:3-10). The overwhelming weight of the evidence puts this factor in favor of the Appellant.

3. *Age of the child.* Id. It was well established by the witnesses that Hannah Grace was fourteen at the time of this proceeding. The chancellor considered Hannah Grace's age as a child independent enough to visit a grandparent without the need for "special attention." (R. 17). However, the Chancellor ignored the obvious considerations when dealing with a teenager. Many children stop spending the night with grandparents when they are teenagers. Hannah Grace testified that she not only felt uncomfortable spending the night with Juanita for several years but she considers Juanita verbally abusive. Hannah Grace, a child legally old enough to

express a preference in this matter, emphatically testified that she did not want visitation with her grandmother. The chancellor ignored Hannah Grace's age and the special considerations of forcing visitation upon a teenager who does not want that visitation. This factor was overwhelmingly in favor of the Appellant.

4. *Age, physical and mental health of the grandparent.* Id. Testimony at trial showed that Juanita was seventy-four years of age at the time of the hearing below. Juanita described herself as "healthy." (Tr. 5:12). Juanita's health was not an issue. However, Hannah Grace is not yet old enough to drive and there was no testimony regarding Juanita's ability to drive Hannah Grace.

5. *Emotional ties between grandparent and grandchild.* Id. Testimony revealed that there had been an emotional tie between Juanita and Hannah Grace when Hannah Grace was younger. However, Juanita's actions towards Pamela and Hannah Grace served to sever the emotional ties from Hannah Grace's perspective. It was more emotionally upsetting for Hannah Grace to visit with her grandmother than it was for her to go without visitation. The chancellor focused more on the emotional impact to Juanita rather than the emotional impact on the child. This factor when considering the evidence of Hannah Grace's feelings towards her grandmother should have gone in favor of the Appellant.

6. *Moral fitness of the grandparents.* Id. Other than Juanita's continuing hostility and verbal abuse towards members of her own family, her moral fitness was not called into question.

7. *Distance of grandparent's home from child's home.* Id. Travel distance is of no significant consequence in this matter.

8. *Any undermining of the parent's general discipline of the child.* Id. Juanita testified that she did not approve of Pamela's decision to home school Hannah Grace. (Tr. 23:24). Juanita also testified that she considered Pamela's general discipline decisions, like limiting television

programs, “weird.” (Tr. 25:21). Juanita’s comments to Hannah Grace that her mother was “mentally ill” was an attempt to undermine Pamela’s entire relationship with her daughter, not just general discipline. Juanita’s actions prove that she cannot be trusted to speak well of Pamela in Hannah Grace’s presence. This factor should have weighed in favor of the Appellant.

9. *Employment of the grandparent and associated responsibilities of that employment* Id. Juanita is not employed.

10. *Willingness of the grandparent to accept that the rearing of the child is the responsibility of the parents and that the grandparent will not interfere with the parents manner of child rearing.* Id. Testimony by Pamela and Hannah Grace showed that Juanita interfered in their lives to the point she became very angry when her interference was resisted. Juanita is described as abusive, mean, hurtful, manipulative and controlling. Although Juanita testified that she understood it was Pamela’s right to “rear Hannah” she showed a complete disconnect from realizing the impact of her actions on Hannah Grace.

After weighing the ten Martin factors, the chancellor should then determine if the grandparent has met her burden of proof that grandparent visitation is in the best interest of the child. Id. The chancellor in the instant case, in his statements from the bench, commented on Juanita’s age as a basis for granting interlocutory visitation. (Tr. 103:20). In the chancellor’s Opinion, he also found that Pamela “owes much to Juanita and Juanita’s dead husband” because of the financial assistance throughout the years. (R. 19). The chancellor also interpreted Pamela’s decision to move as “pulling up stakes and fleeing.” (R. 19). Finally, the chancellor found that Hannah Grace had aunts, uncles and cousins in Raymond and it was in her best interest to remain in contact with this extended family through Juanita. (R. 19). None of these reasons go to *Hannah Grace’s* best interest. All of them go to the best interest of Juanita.

Seemingly the chancellor is saying that Juanita deserves visitation because she deserves a

return on her financial investment. The truth however is that gifts with strings attached are no gifts at all. The standard is “best interest of the child” not “what does grandma deserve in return for her gifts.” Second, the chancellor acknowledges the conflict between Juanita and Pamela but ignores the evidence that Juanita is the common denominator in all of the family conflicts, not Pamela. The chancellor scolded Pamela for “fleeing” the situation rather than resolving the situation but gives no reprimand to Juanita for her share of the conflict. Again, this does not explain why visitation with Juanita is in the best interest of Hannah Grace.

Finally, the chancellor felt that Hannah Grace needed contact with Juanita’s extended family. In fact, the chancellor granted “grandparent visitation” to Shelton Holliday who is not even a grandparent, but Juanita’s brother. (R. 30). Hannah Grace testified that she never visited with other relatives in Raymond. (Tr. 71:17-26). Extended family members who live in constant conflict with Juanita, as testimony revealed, do not provide a basis for granting visitation to Juanita. If anything, it should have shown the chancellor that Juanita was the source of the conflict, not the innocent victim of Pamela’s “hyper-sensitive” reaction “to Juanita’s differing opinions and need for frequent contact.” (R. 19).

There was no proof below that visitation was in the best interest of Hannah Grace. While the chancellor’s sympathy for an elderly woman wanting visitation with a grandchild may have been the appropriate emotional response, it was not the correct legal basis for awarding visitation. In “determining whether grandparent visitation should be granted the best interests of the child and the Martin factors should be the determining elements, not what is in the best interest of the grandparent.” See Morgan, 812 So.2d at 994. As Juanita did not meet her burden of proof to show that visitation was in the best interest of Hannah Grace, the chancellor abused his discretion by awarding grandparent visitation to Juanita.

II. The Chancellor Abused His Discretion By Granting Overnight Visitation.

Absent a finding that Pamela is unfit, it is unconstitutional for the State to inject itself into the private realm of a parent's right concerning the rearing of that parent's child. It should be noted that there was no allegation of unfitness and no evidence of unfitness in the case below. As a result, it is respectfully submitted that the chancellor's ruling in this matter infringes upon Pamela's fundamental right as a fit parent to make decisions concerning the care, custody, and control of her child. This Court has commented upon the constitutionality of the Grandparent Visitation Statute and found that absent compelling circumstances and clear and convincing proof of unfit parents, unsupervised visitation cannot be ordered. In Stacy this Court ruled as follows:

We view our statute as requiring no less than the Fourteenth Amendment in this regard. The determination whether parents are unreasonable in denying visitation in whole or part to grandparents is not a contest between equals. Parents with custody have a paramount right to control the environment, physical, social, and emotional, to which their children are exposed. [internal citations omitted]. Interference with that right based upon anything less than compelling circumstances is not the intent of the visitation statute. Clearly, forced, extensive unsupervised visitation cannot be ordered absent compelling circumstances which suggest something near unfitness of the custodial parents.

Id at 1280.

In Stacy, this Court was relying on the United States Supreme Court ruling in Troxel v. Granville, 530 U.S. 57 (2000). Troxel states that "as long as a parent adequately cares for his or her child, (i.e., is fit) there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." Id at 67. "Whether it is beneficial to a child to have a relationship with a grandparent in any specific case, therefore, in the first instance is a

decision for the parent to make, and when it becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.” Id at 68.

A strong presumption exists that “fit parents act in the best interests of their children.” Troxel, 120 S.Ct. at 2061. In the instant case there was no allegation of the mother’s unfitness and no judicial finding that she was unfit. The Petitioner did not overcome the presumption that Pamela, a fit parent, is acting in the best interest of her child by limiting or denying visitation with Juanita. As a result, the chancellor abused his discretion in awarding overnight visitation which was against the mother’s parental decision to limit or deny visitation with Juanita.

Chancellors in both Stacey and the instant case “never made an express finding that . . . overnight and unsupervised visitation was in [the child’s] best interest.” In Stacey, as well as in the instant case, the grandparents were overbearing, nosy and constantly trying to get involved in their own children’s lives and in rearing their grandchildren. What is clear in the instant case is that neither the mother nor her child would like to visit with the grandmother and if the lower courts ruling stands they will be judicially forced into an unhealthy, negative family situation. Both Pamela and Hannah Grace experience extreme anxiety and stress when dealing with Juanita. Therefore, it is respectfully submitted that the chancellor abused his discretion by ordering visitation and especially overnight visitation for two weeks every summer.

III. Visitation Was Not Unreasonably Denied.

The Grandparent Visitation Statute states in part that:

(2) Any grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent, provided the court finds:

(a) That the grandparent of the child had established a viable relationship with the child and the parent or the custodian of the child unreasonably denied the grandparent visitation rights with the child; and

(b) that visitation rights of the grandparent with the child would be in the best interests of the child.

Miss. Code Ann. § 93-16-3.

Juanita, as the petitioner, had the burden in this case. What is lacking is a showing that Juanita was *unreasonably* denied visitation under the statute. The testimony presented to the chancellor did not show that Pamela had unreasonably denied Juanita visitation with Hannah Grace. To the contrary, the evidence shows that the natural parent was acting in the best interests of Hannah Grace by removing her from a hostile environment. However disappointed Juanita may have been to find out that Pamela and Hannah Grace were moving, the best interest of Hannah Grace must always be the polestar consideration.

In addition, Hannah Grace made the decision that she did not want to visit her grandmother. She made this clear to her grandmother during the episode where Juanita was trying to force her way into the house. Hannah Grace told Juanita that she wanted nothing more to do with her. Pamela acted in her daughter's best interest and her actions were not unreasonable. Therefore, she did not unreasonably deny visitation to Juanita and the chancellor erred in granting grandparent visitation.

IV. The Chancellor's Ruling Was An Abuse Of Discretion And Was Manifestly In Error And The Chancellor Applied Erroneous Legal Standards.

This Court has held that it will not disturb the findings of a chancellor unless the findings were not supported by credible evidence, manifest error was committed or erroneous legal standards were applied. Bredemeir v. Jackson, 689 So. 2d 770, 775 (Miss. 1997). That the chancellor in this case applied an erroneous legal standard is clearly evident in his Opinion issued October 22, 2007. The chancellor based his ruling on the fact that the natural parent of Hannah Grace had relied upon Juanita during hard times and owed her much. (R. 19). That Pamela's parents were willing to help over the years was laudable and a generous gesture on

their part. It is however not a basis for awarding visitation rights.

The chancellor also applied an erroneous standard by reversing the burden of proof in this case. There were no allegations and no evidence offered to prove Pamela was an unfit parent to Hannah Grace and the presumption is that fit parents act in their child's best interest. Troxel v. Granville, at ¶5. In this case the chancellor found that it was in "Hannah Grace's best interest that she maintain contact with this family and with Juanita." (R. 19). The chancellor did not point to *any* evidence, let alone clear and convincing or compelling evidence, to support his finding that it was in Hannah Grace's best interest to have visitation with Juanita.

As for contact with the extended family, the chancellor incorrectly broadened the grandparent visitation statute to include aunts, uncles and cousins as a basis for granting Juanita visitation. Other than this being an incorrect legal basis for granting visitation, there was no evidence that Juanita could provide the intended extended family contact. In fact, the evidence demonstrated that Juanita was usually in conflict with extended members of the family other than Shelton Holliday.

In addition to a lack of evidence on the extended family issue, the chancellor also failed to explain why it was in Hannah Grace's best interest to have unsupervised overnight visitation with Juanita. (R. 19). The evidence was overwhelming that Hannah Grace was not comfortable in Juanita's home overnight. Yet, the chancellor granted overnight visitation when such extensive visitation was not even requested. There is a rebuttable presumption that grandparent visitation is not in the best interest of the child if the natural parent decides that the visitation should not be granted Troxel, at ¶7. Juanita did not rebut this presumption.

The grandparent desiring visitation must prove by clear and convincing evidence that visitation is in the best interest of the child and that it will not adversely interfere with the relationship between the child and the natural parent. Troxel, at ¶7. The burden was upon Juanita

to prove by clear and convincing evidence that her visitation would not interfere with the relationship between child and parent. The only evidence offered below was evidence that Juanita constantly drew Hannah Grace in the middle of the conflict between her and Pamela. The chancellor in this case did not hold the petitioning grandmother to that standard, taking away the fundamental Constitutional rights of Pamela to raise her child in the manner she sees fit.

V. The Chancellor Abused His Discretion By Disregarding The Child's Wishes Based On The Premise That Her Religious Convictions Were "Dubious" And "Brain Washing."

The chancellor abused his discretion by disregarding the child's wishes as voiced in chambers. Hannah Grace testified that she did not want to be forced to visit with her grandmother at the present time. (Tr. 63:26). Her reasons for not wanting to visit with her grandmother are logical and valid reasons. Her grandmother's behavior causes her anxiety and she wishes to avoid that anxiety. Hannah Grace was also very articulate about the possibilities of her grandmother's behavior changing in the future. Hannah Grace expressed her religious convictions that she was praying for her grandmother and hoped that she would find salvation in a way that would change her behavior. (Tr. 61:21-63:15). The court was in error to dismiss these beliefs as "brainwashing." (R. 35); see also Miss. Code Ann. § 93-11-65 (a chancellor may consider the preferences of a child over the age of 12).

The Court discounted Hannah Grace's religious beliefs as "brainwashing" and took issue with her beliefs concerning her grandmother.¹ Whether Hannah Grace's beliefs represent ultimate truth in the heavenly realms or not is inconsequential to the fact that she indeed believes what she spoke about to the chancellor in chambers. The chancellor questioned Hannah Grace

¹ Hannah Grace feels strongly that her grandmother is not a Christian because her "actions speak louder than words." The chancellor engaged Hannah Grace in conversation that resembled a theological "debate" at times and cross examination at other times. When the transcript of Hannah Grace's testimony in chambers is read in its entirety, it is clear that the chancellor disagreed with Hannah Grace's beliefs and sought to shame her for her beliefs. See Tr. 83:5-84:7. It is respectfully submitted that this exchange between Hannah Grace and the chancellor greatly prejudiced the chancellor's decision.

extensively in chambers about her religious beliefs concerning her grandmother. Id. In the end, Hannah Grace remained resolute in her belief that her grandmother had acted to inflict emotional pain on her and at this time she did not wish to visit with her grandmother. The chancellor obviously disagreed with Hannah Grace's religious beliefs as he called them "dubious." (Tr. 36).

A chancellor does not have the right to disregard religious beliefs as "dubious" or "brainwashing" and the Appellant respectfully submits that this difference of belief influenced the chancellor in a way that was unfairly prejudicial to the Appellant. If the chancellor is correct in his intimation that Pamela instilled these beliefs in her daughter, then that should not be a basis for the Court's decision. Whether the chancellor regards the belief as dubious or not, Pamela, as the natural mother, has a fundamental right to instill religious beliefs in her daughter. See Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss. 2005).

Besides the fact that Pamela has the fundamental right to instill religious beliefs of her choosing, the religious belief that Hannah Grace espouses to is not so uncommon. Basically, Hannah Grace voiced her opinion that she was praying for her grandmother to have a genuine salvation experience. In Hannah Grace's child-like faith, she believes her grandmother would act differently if she were truly a Christian. (Tr. 62:11-14). The chancellor challenged Hannah Grace on this belief since Juanita had testified that she was a member of a local church. Hannah Grace responded to the chancellor that going to church "doesn't make you a Christian." (Tr. 61:21-29). Hannah Grace also told the chancellor that "actions speak louder than words." (Tr. 62:26).

If Hannah Grace's beliefs are dubious then she is in good company. Billy Graham, a world famous evangelist and friend to five decades of United States Presidents, holds the belief that fifty-percent (50%) of all church members are not actually Christians. St. Francis of Assisi

is credited with telling his Franciscan friars to “Let all the brothers, preach by their deeds [and] use words if necessary.” Hannah Grace’s beliefs are not a product of brainwashing but rather her short lifetime of observing the universal truth that actions do speak louder than words. However, Hannah Grace also pointed out to the chancellor that Juanita had “hurt [her] from what she said, and words hurt.” (Tr. 81:19-20).

The chancellor abused his discretion by inserting his own religious beliefs as more accurate to the witnesses’ beliefs. While Hannah Grace loves her grandmother, she clearly articulated that she did not wish to visit with her because it was too upsetting. The chancellor abused his discretion by discounting the way Hannah Grace felt. The findings of a chancellor should be disturbed on review if the chancellor abused his discretion, was manifestly wrong, or made a finding which was clearly erroneous. Bank of Miss. v. Hollingsworth, 609 So. 2d 422, 424 (Miss.1992). The chancellor specifically held that he was discounting Hannah Grace’s opinion in this matter because he deemed her religious beliefs “dubious” and a result of being influenced by her mother to the point of being “brainwashed.” While the undersigned counsel respects the chancellor in this matter and the chancellor’s right to hold his own religious convictions, it is respectfully submitted that these specific findings below demonstrate the loss of objectivity by the chancellor where the Appellant was concerned. The chancellor concluded that the mother was at fault for “brainwashing” her child and awarded Juanita grandparent visitation. This was an incorrect legal basis for awarding visitation and an abuse of discretion. Therefore, the chancellor’s ruling should be reversed.

CONCLUSION

For the reasons stated above, the Appellant submits that the chancellor abused his discretion by granting unsupervised and overnight visitation absent compelling evidence that such visitation was in the child’s best interest. The Appellant respectfully requests that the

Supreme Court reverse the ruling of the Chancery Court and render a decision in favor of the Appellant.

Respectfully submitted this the 23rd day of June, 2008.

PAMELA L. FERGUSON, Appellant

BY: Staci O'Neal
STACI B. O'NEAL, Her Attorney

CERTIFICATE OF SERVICE

I, Staci B. O'Neal, attorney for Pamela L. Ferguson, Defendant/Appellant herein, certify that a true and correct copy of the above and foregoing Brief of Appellant has been forwarded to the following by depositing the same in the United States Postal Service with postage pre-paid and addressed to:

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