

IN THE SUPREME COURT OF MISSISSIPPI

LARRY BRIAN SCURLOCK

APPELLANT

VS.

NO: 2007-TS-00792

KATHY B. PURSER (SCURLOCK)

APPELLEE

APPEAL FROM THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

BRIEF FOR APPELLEE
KATHY B. PURSER (SCURLOCK)

MELISSA A. MALOUF, ESQ.
MSB NO. [REDACTED]
MALOUF & MALOUF
501 E. Capitol Street
Jackson, MS 39201
(601) 948-4320

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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:

1. Kathy B. Purser (Scurlock) - (Appellee herein)
448 Huntington Drive
Byram, Mississippi 39272
2. Larry Brian Scurlock - (Appellant herein)
3. Melissa A. Malouf - (Counsel for Appellee)
501 East Capitol St.
Jackson, Mississippi 39201
4. William P. Featherston, Jr., Esq.
P. O. Box 1105
Ridgeland, Mississippi 39158-1105

RESPECTFULLY SUBMITTED

BY: 
Melissa A. Malouf, Attorney for Appellee

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STATEMENT OF THE CASE

On May 31, 2005, a Judgment of Divorce - Irreconcilable Differences was entered in the First Judicial District of Hinds County, Mississippi between Larry Brian Scurlock (hereinafter "Brian") and Kathy B. Purser (Scurlock) (hereinafter "Kathy"), with the parties having joint legal and physical custody of the minor children, Natalie Tristen Scurlock, October 24, 1997, and Elijah Evan Scurlock, May 17, 2000. (R. 1) Although the decree stated that the parties were to alternate custody every three (3) weeks, the parties, on their own, alternated custody one (1) week at a time. (T. 9, 16) For the past nineteen years, the parties have resided in the Byram area, with the minor children attending school and participating in activities in said area. (R. 19, T. 15) However, in the summer of 2006, Brian moved to Madison, Mississippi and unilaterally decided to enroll the children in Madison County Public Schools. (T. 15, 16) Due to Brian's actions, Kathy filed her Petition for Emergency Relief and Modification on July 14, 2006, requesting sole physical custody of the minor children and child support, along with attorney fees. (R. 19) In the alternative, she pled that the children remain in the Byram Public School District. *Id.* On July 17, 2006, Brian filed his Counterclaim for Modification and Emergency Relief asking that he be granted sole custody of the minor children. This matter was tried on February 23, 2007, with the parties stipulating that Kathy would have custody of the minor children. The parties requested that the Chancellor decide issues concerning child support and attorney fees. During the trial,

Kathy submitted her bill for attorney fees in the amount of \$6,480, and Brian submitted his bill in the amount of \$8,400. (Exhibits 2 and 3) The Chancellor heard testimony from the parties and entered an order with regards to child support, and awarded Kathy attorney fees in the amount of \$4,800.

SUMMARY OF THE ARGUMENT

Both parties submitted statements of their respective attorney fees for the Chancellor to determine who should be responsible for same. Brian incurred fees in the amount of \$8,400, and Kathy incurred fees in the amount of \$6,480. Both attorney fee bills were admitted into evidence without objection. Counsel for both parties, as well as the Chancellor, were well aware of the time and effort placed into the handling of this case. Counsel for both parties elected not to have opposing counsel take the stand with regard to the *McKee* factors. Due to Brian's actions and Kathy's inability to pay, the Chancellor properly awarded attorney fees to Kathy in the amount of \$4,800.

ARGUMENT

I. The Chancellor did not err in ordering Larry Brian Scurlock to pay the sum of \$4,800 towards attorney fees of Kathy B. Purser (Scurlock).

A. Standard of Review

An award of attorney fees will not be disturbed unless the chancellor abused his discretion or committed manifest error. *Chesney vs. Chesney*, 849 So.2d 860, 862 (Miss. 2002) Generally, attorney fees are awarded where the moving party has demonstrated an inability to pay. *Watson vs. Watson*, 724 So.2d 350, 357 (Miss. 1998). However, attorney fees may also be properly awarded where one party's actions have caused the opposing party to incur additional legal fees. *Chesney at 863*.

The chancellor has broad discretion in awarding attorney fees. *Faris vs. Jernigan*, 939 So.2d 835 (Miss. App. 2006), *Walters vs. Walters*, 383 So.2d 827, 828 (Miss. 1980) The standard of review is abuse of discretion. *Faris vs. Jernigan*, 939 So.2d 835 (Miss. App. 2006), *Regency Nissan, Inc. vs. Jenkins* 678 So.2d 95, 103 (Miss. 1995). Unless the chancellor's ruling was manifestly wrong, the decision regarding attorney fees will not be disturbed on appeal. *Faris vs. Jernigan*, 939 So.2d 835 (Miss. App. 2006), *Ward vs. Ward*, 825 So.2d 713, 720 (Miss App. 2002).

The chancellor is in the best position to determine the reasonableness of the fees, and this Court does not arbitrarily substitute its judgment for the chancellor's. *Mabus vs.*

Mabus, 910 So.2d 486, 488 (Miss. 2005)(quoting *Tucker vs. Tucker*, 453 So.2d 1294, 1296 (Miss. 1984).

In this case, the chancellor determined that due to Kathy's inability to pay, the award of attorney's fees was proper. (T. 48-49)

B. The Decision of the Chancellor to Award Attorney's Fees Should Be Affirmed.

The Chancellor heard requests from both parties asking for attorney fees. Kathy's legal fees were submitted into evidence without an objection from Brian. (T. 13, Exhibit 2) Kathy's legal fees from June 21, 2006 through January 31, 2007 (not through the date of court) were in the amount of \$6,480. *Id.* Kathy testified that she had to hire an attorney to gain custody of her children, and to try to settle the parties' differences. (T. 13) She further testified that in order to cut down on her legal expenses, she had authorized her counsel to have settlement conferences with the judge(s) in this matter. (T. 13) As shown in both parties' exhibits for attorney fees, the parties' attorneys had conferences with Judge Patricia Wise on July 17, 2006 and November 28, 2006, and Judge Denise Owens on November 6, 2006, since Judge Patricia Wise was not available, trying to resolve said case. (Exhibit 2, 3)

Kathy further testified that she cannot financially afford her legal fees. (T. 22) She submitted her 8.05 financial declaration which not only showed that her monthly

expenses far exceeded her income, it also showed that she had borrowed \$4,000 from her parents to pay money towards her attorney fees. (R. 25) Kathy also testified that she could not presently afford daycare for her children, and that her parents were having to keep them. (T. 21-22)

Brian chose to introduce part of Exhibit "A" of his 8.05 and not the entire 8.05 financial declaration. With regard to Brian's income, he admitted that it did not reflect any overtime. (T. 32) He further admitted that he has and can receive overtime pay at the rate of either time and a half or double. (T. 32-33)

Brian's bill for attorney fees in the amount of \$8,600 was also admitted into evidence without any objection. (T. 31, Exhibit 3) Brian is not able to argue that the award of attorney fees is unreasonable since his bill exceeded Kathy's bill. Further, counsel for Brian never objected to Kathy's bill, never tried to question counsel for Kathy regarding her bill, and only asked Kathy one question concerning the bill, "...you're telling this Court that you cannot afford to pay attorney fees" to which Kathy responded, "that's correct." (T. 22) Most importantly, the Chancellor found that Kathy was not financially able to pay her attorney fees (T. 48-49)

C. Request for Interest, Costs, and Attorney Fees

Kathy respectfully requests that this Court affirm the award of attorney fees and award her post-judgment interest at the rate of eight percent (8%) pursuant to M.R.A.P.

37 and Miss. Code Ann. § 75-17-1, and assess all costs to Brian pursuant to M.R.A.P. 36.

Kathy further respectfully requests that she be awarded attorney fees incurred in this appeal in the amount of one-half of the amount of the attorney fees previously awarded to her pursuant to *Makamson vs. Makamson*, 928 So.2d 218 (Miss. 2006).

CONCLUSION

For the above and foregoing reasons, Kathy respectfully requests that this Court affirm the Chancellor's award of attorney fees and award her post-judgment interest, assess all costs to Brian, and award her attorney fees in the amount of \$2,400 for fees incurred in this appeal.

KATHY B. PURSER (SCURLOCK), Appellee

BY: Melissa A. Malouf
Attorney for Appellee

MELISSA A. MALOUF, ESQ.
MSB NO. [REDACTED]
MALOUF & MALOUF
501 E. Capitol Street
Jackson, MS 39201
(601) 948-4320

CERTIFICATE OF SERVICE

I, Melissa A. Malouf, Attorney for Appellee, do hereby certify that I have this day mailed, via US Postal Service, first class postage prepaid, a true and correct copy of the above and foregoing BRIEF FOR APPELLEE, to the following:

William P. Featherston, Jr., Esq. (Counsel for Appellee)
P. O. Box 1105
Ridgeland, Mississippi 39158-1105

Honorable Patricia Wise
Hinds County Chancery Court Judge
P.O. Box 686
Jackson, Mississippi 39205-0686

DATED this the 20th day of December, 2007.



Melissa A. Malouf