

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOEL D. HOLLOWAY

APPELLANT

VERSUS

NO. 2008-CA-00676

TWYLA M. HOLLOWAY

APPELLEE

APPEAL FROM THE CHANCERY COURT OF
JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT
CAUSE NO. 2006-0591

THE HONORABLE FRANK MCKENZIE, CHANCELLOR, PRESIDING

BRIEF OF APPELLEE

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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Appellee

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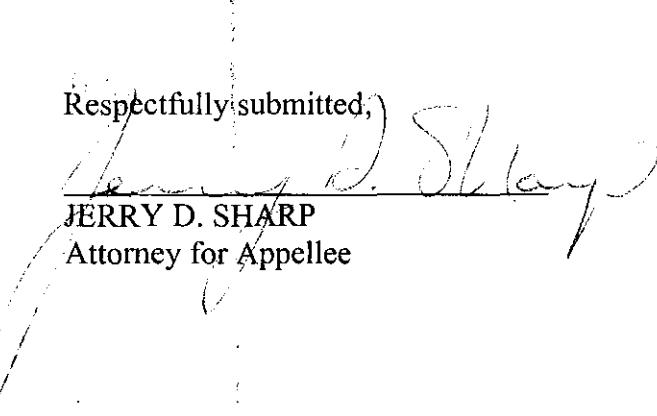
John D. Smallwood

Honorable Franklin C. McKenzie, Jr.

Chancellor

This the 15 day of January, 2009.

Respectfully submitted,


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I.

STATEMENT OF ISSUES ON APPEAL

- 1. THE CHANCELLOR COULD NOT RELY ON JOEL'S CREDIBILITY.**
- 2. THE EVIDENCE CLEARLY SUPPORTS THE ORDERED AMOUNT OF CHILD SUPPORT.**
- 3. THE CHANCELLOR WAS CORRECT IN AWARDING ATTORNEY FEES TO TWYLA.**

II.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings and Disposition Below

On July 11, 2006, the Appellant (hereinafter Joel) filed his Complaint for Divorce and Motion for Temporary Relief. (CP 8, 14) On July 25, 2006, the Appellee (hereinafter Twyla) filed her Notice of Service of Discovery. (CP 14) On August 15, 2006, Twyla filed her Answer to Complaint for Divorce and Motion for Temporary Relief with Counter-Claim for Divorce. (CP 16) On August 24, 2006, the trial court entered a Temporary Order granting primary physical custody to Twyla with Joel having visitation, and ordering Joel to pay unto Twyla \$893 per month in child support. (CP 26, 27) A trial on the merits of the case was conducted on June 12, 2007, and on August 7, 2007.

On August 14, 2007, the trial court entered a Judgment of Divorce. (CP 92) On October 17, 2008, Joel filed a Motion to Enter Proposed Judgment in Accordance With Rule 15 of the Mississippi Rules of Appellant Procedure. (CP 94) On October 18, 2008, Joel filed a Motion to Enter Proposed Judgment in Accordance With Rule 15 of the Mississippi Rules of Appellant Procedure. (CP 98) On February 7, 2008, the trial court entered its Findings of Fact and Conclusions of Law. (CP 103)

On March 11, 2008, the trial court entered its Final Judgment of Divorce. (CP 116) On March 18, 2008, Joel filed his Motion to Reconsider, Alter and Amend Judgment and Request for Specific Findings of Facts and Conclusions of Law. (CP 119) On March 25, 2008, Twyla filed her Response to Joel's Motion to Reconsider, Alter, and Amend Judgment and Request for Specific Findings of Facts and Conclusions of Law. (CP 123) On April 14, 2008, the trial

¹ Reference to "(T. ____)" are references to pages within the transcribed testimony prepared by the court reporter; reference to "(Ex. ____)" are references to Exhibits within the record; and reference to "(C.P. ____)" are references to the Clerk's Papers.

entered an Order denying Joel's Motion to Reconsider, Alter and Amend Judgment and Request for Specific Findings of Facts and Conclusions of Law. (CP 128) On April 16, 2008, Joel filed his Notice of Appeal. (CP 129)

B. Statement of Facts

Twyla and Joel Holloway were married on August 26, 1988. (CP 8) The parties separated on June 19, 2006. (CP 8) The parties have three children, namely, Joelle, whose date of birth is March 26, 1989, Zachary, whose date of birth is November 18, 1990, and Shannon whose date of birth is November 25, 1992. (CP 19) Joel has had several different jobs during the marriage. (CP 109)

Joel worked for Georgia Pacific for approximately 15 years, was self employed in the lawn care business for two years, worked for M&M Plumbing for one year, B.A. Sauls Oilfield Services for less than year, Magnolia Farm Supply for one year, Adams Trucking and Equipment for approximately 2 ½ years and currently works for Rowen. (CP 109) Through the marriage Joel was financially irresponsible by spending his money on alcohol. (CP 109) He was involved in two alcohol-related wrecks. (CP 110) Joel was admitted to East Mississippi as a result of his drinking problem. (CP 110)

Twyla has a degree in nursing which she earned during the marriage. (CP 109) Twyla had to borrow student loans to pay for her nursing degree and she also borrowed money from her mother, Betty Temple. (CP 109) Twyla was primarily responsible for managing the finances of the parties during the marriage. (CP 109) She paid the bills, balanced the checkbook, made sure the children's expenses were paid for. (CP 109) Twyla was the primary caretaker for the children and performed almost all of the household duties and homemaker services in addition to holding down a full-time job as a nurse. (CP 110) Twyla made efforts to keep her family together but Joel's irresponsible behavior and adulterous conduct made it impossible. (CP 110)

On the other hand, Joel wasted assets due to his drinking. (CP 109) Joel wasted his money on his girlfriend Tracy Pryor. (CP 110) He even pawned some of the parties' property during the marriage. (CP 110) Joel was admitted to East Mississippi as a result of his drinking problem. (CP 110)

Joelle the parties' oldest child is a special needs child. (CP 108) (T. 104) Joelle has ADD and requires special attention with her school work. (CP 108) (T. 61, 62) (T. 104) Joelle attended West Jones for a short time but had problems performing the work. (CP 108) (T. 61) Twyla and Joel made a joint decision to enroll the children at Heidelberg Academy so that Joelle could have special attention in a small classroom setting. (CP 108) (T. 156) Since the change in schools Joelle has performed well at Heidelberg and it is in the best interest of the children to remain there. (CP 108) (T. 63) All three children have been involved and are currently involved in the extra-curricular activities at Heidelberg Academy. (CP 108) (T. 64, 65) (T. 157) These special needs were being met by the family before the separation. (CP 108) (T. 64) The children have attended Heidelberg Academy for over two years. (T. 63)

C. Summary of the Argument

The Chancery Court could not rely on Joel's testimony because of his inability to tell the truth.

The amount of child support ordered falls within the statutory guidelines, but even if it did not the Chancellor made specific findings which overcame the rebuttable presumption that the statutory amount was the appropriate amount of child support.

The learned Chancellor was correct in awarding Twyla attorney fees and finding that Joel's behavior caused the amount of Twyla's attorney fees to increase. The Chancellor's findings in this matter were supported by the evidence presented at the trial of this case and by the laws of this state.

D. Legal Argument

“This Court's scope of review in domestic relations matters is limited.” *Perkins v. Perkins*, 787 So.2d 1256, 1260-1261 (Miss. 2001); quoting *Montgomery v. Montgomery*, 759 So.2d 1238, 1240 (Miss. 2000). In a domestic relations case, this Court applies the familiar substantial evidence/manifest error rule. *Mosley v. Mosley*, 784 So.2d 901, 904 (Miss. 2001); citing *Stevison v. Woods*, 560 So.2d 176, 180 (Miss. 1990). “This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied.” *Mosley*, 784 So.2d at 904; quoting *Bell v. Parker*, 563 So.2d 594, 596-97 (Miss. 1990). See also *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994); *Faries v. Faries*, 607 So.2d 1204, 1208 (Miss. 1992). The word “manifest,” as defined in this context, means “unmistakable, clear, plain, or indisputable.” *Id.*; citing *Black's Law Dictionary* 963 (6th ed.1990); *Turpin v. Turpin*, 699 So.2d 560, 564 (Miss. 1997) (quoting *Magee v. Magee*, 661 So.2d 1117, 1122 (Miss. 1995)).

1. The Chancellor could not Rely on Joel's Credibility

When the chancellor sits as fact-finder in cases such as this, he is charged with assessing the credibility of the witnesses and deciding what weight to give to the testimony and evidence. *Ewing v. Ewing*, 749 So.2d 223, 224 (Miss. Ct. App. 1999); citing *Ellis v. Ellis*, 248 Miss. 483, 489, 160 So.2d 904, 907-8 (1964). The chancellor, by his presence in the courtroom, is best equipped to listen to the witnesses, observe their demeanor, and determine the credibility of the witnesses and what weight ought to be ascribed to the evidence given by those witnesses. *Carter v. Carter*, 735 So.2d 1109, 1114 (Miss. Ct. App. 1999); citing *Murphy v. Murphy*, 631 So.2d 812, 815 (Miss.1994). Therefore “when considering the decisions of a chancellor on appeal, this Court has a limited standard of review.” *Estate of Volmer v. Volmer*, 832 So.2d 615, 622 (Miss. Ct. App. 2002); citing *McNeil v. Hester*, 753 So.2d 1057 (¶ 21) (Miss. 2000). When conflicting

testimony on the same issue is presented, the chancellor sitting as trier of fact must determine which version he finds more credible. *Carter*, 735 So.2d at 1114; citing *Murphy v. Murphy*, 631 So.2d 812, 815 (Miss. 1994). “The chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the credibility of witnesses and the weight of their testimony.” *Estate of Volmer*, 832 So.2d at 622; quoting *Fisher v. Fisher*, 771 So.2d 364 (Miss. 2000). Where the record contains substantial credible evidence to support the chancellor's findings, we will defer to them. *Carter*, 735 So.2d at 1114.

In this case, the Chancellor in the case at hand was faced with the unenviable task of trying to ascertain truth from Joel Holloway’s testimony. Joel’s deception in this case began early and continued through the trial of this matter. Joel filed a Complaint for Divorce and Motion for Temporary Relief to begin the litigation of this matter. (CP 8). Twyla then filed her Answer to Complaint for Divorce and Motion for Temporary Relief with Counter-Claim for Divorce in which she alleged that Joel was guilty of uncondoned adultery. (CP 20). Twyla served Request for Admissions on Joel. (T. 9) In Joel’s response to Twyla’s Request for Admissions he denied that he had sexual relations with anyone other than Twyla during the marriage. (T. 9)

In Twyla’ First Set of Interrogatories in Interrogatory No. 16 she asked Joel if he had sex with anyone other than her during the marriage. Joel replied to that Interrogatory by stating he had not. (T. 7) While on the witness stand Joel denied that Twyla even claimed that he had committed adultery. (T. 7) Joel was asked on the stand if he had sex with Tracy Pryor during his marriage to Twyla, and his response was “There’s no proof of it.” (T. 10) Then when asked if had sex with anyone other than Twyla during their marriage he adamantly stated no. (T. 10)

While on the witness stand he was asked if he had sex with Tracy Pryor, and he lied and said he had not. (T. 6) When Joel was asked what kind of relationship he had with Tracy Pryor

he stated they were just friends. (T. 18) However, it was proven that his relationship with Tracy Pryor was more than that of just friends. He admitted to Twyla that he had sex with Tracy Pryor. (T. 30) (CP 104) The testimony of Tracy Pryor and her husband Brian Pryor substantiated Twyla's claim that Joel had committed adultery with Tracy. (T. 35, 37, 41, 44, 45) Joel's denials of adultery were proven to be blatant lies by the testimony of Tracy Pryor.

Tracy Pryor while on the witness stand admitted that she had sex with Joel during his marriage to Twyla. (T. 35, 37, 41,) Ms. Pryor admitted that she and Joel had sex "maybe two or three times." (T. 35) Brian Pryor testified that Joel admitted to him that he had sex with his wife. (T. 44) Mr. Pryor testified Joel told him the reason he was having sex with Brian Pryor's wife was because Brian's "wife's (Tracy) p_____ was better than his wife's (Twyla) p_____." (T. 44, 45) Joel even admitted to being alone with Tracy Pryor in a tanning salon with the salon doors locked. (T. 19, 20)

Furthermore Joel went to the home of the Pryor's and assaulted Tracy's husband Brian because Brian accused him of having sex with his wife. Joel then pled guilty to assaulting Brian. (T. 14) Joel's deceptions did not stop with the issue of adultery. Joel also denied that he had a problem with alcohol on the witness stand. (T. 10)

Joel was asked if he was an alcoholic. He replied by saying "No, not that I know of." (T. 10) However he was admitted to East Mississippi for alcohol dependence. (T. 10) His alcoholism was further proven by his own admission on the witness stand that he had been attending alcoholic's anonymous meetings. (T. 12) When asked how often do you get drunk during the week, he replied by saying "maybe one good one during the week." (T. 11) When asked how many beers do you have to drink to get drunk, he replied "probably a good case." (T. 11) He admitted to having a car wreck because of his drinking. (T. 13) He admitted on cross

examination that he was arrested for DUI the week prior to the trial. (T. 14) Joel's inability to tell the truth also extended into his testimony related to how much money he earns each month.

Joel presented a financial statement alleging that his gross monthly income was \$5,396. 39 with an adjusted gross income of \$4,057.41. (Ex. 20) (CP 107) However his own wage statement does not match those figures. (Ex. 11) (CP 107) His wage statement shows that he actually had an adjusted gross income of \$1,477.71 for the week of May 30, 2007 through June 6, 2007. (Ex. 11) (CP 107) Simple math shows that when you project that figure over fifty two (52) weeks and then divide that amount by twelve (12) he has a monthly adjusted gross income of \$6,403.41. (Ex. 11) In addition to the inaccuracy of his financial statement he also admitted that he was earning additional income from another job that was not listed on his financial statement. In other words, he intentionally deceived the Court by not disclosing all of his income. When asked about that income he stated "...that's for my benefit and my benefit only." He stated "that's money I made for myself to benefit me." (T. 143) When asked if he was going to report that additional income on his tax returns he stated "I doubt it." (T. 143)

During the trial of this matter Joel told numerous untruths and it was proven during the trial that he was not being honest with the trial court. He argues in this appeal that the amount of child support he has been ordered to pay is too much and that the amount should be reduced. He also claims that the trial court is trying to punish him by the amount of child support that was ordered. However, the remainder of this brief will show that the trial court's findings are supported by the evidence presented at trial and by the laws of the State of Mississippi.

2. The Evidence Clearly Supports the Ordered Amount of Child Support

This Court has noted that this statutory guideline does "not control per se the amount" of a child support award. *Clausel*, 714 So.2d at 267. Rather, the specific award amount must be set by the chancellor, "who has special knowledge of the actual circumstances" in each case.

McEachern v. McEachern, 605 So.2d 809, 814 (Miss. 1992). However, for this Court to affirm an award which deviates from the guideline of Section 43-19-101(1), the chancellor must overcome the rebuttable presumption that the statutory award is the appropriate measure of child support by making an on-the-record finding that it would be unjust or inappropriate to apply the guidelines in the instant case. *Id. Chesney v. Chesney*, 910 So.2d 1057, 1061 (Miss. 2005).

The child support statute grants “a rebuttable presumption in all judicial and administrative proceedings regarding awarding or modifying of child support awards in this state.” The child support guidelines for three children are 22% of the non-custodial parent’s adjusted gross income. The amount “adjusted gross income” as that term is applicable in Miss. Code Ann. §43-19-101(3) is calculated as gross income less the following legally mandated deductions:

(i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

(ii) Social security contributions;

(iii) Retirement and disability contributions except any voluntary retirement and disability contributions;

If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support;

If the absent parent is also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children;

Compute the total annual amount of adjusted gross income based on paragraphs (a) through (d), then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of paragraphs (a) through (e), multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsection (1) to arrive at the amount of the monthly child support award.

Miss. Code Ann. §43-19-101(4) provides as follows:

“(4) in cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars (\$50,000.00) or less than Five Thousand Dollars (\$5,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.”

Gross income is determined from all potential sources, including wages and salary income, income from self-employment, income from investments and income from alimony.

Miss. Code Ann. §43-19-103 sets forth the criteria by which the presumption may be rebutted. The aforesaid section does specify the following criteria:

- (a) Extraordinary medical, psychological, educational or dental expenses.
- (b) Independent income of the child.
- (c) The payment of both child support and spousal support.
- (d) Seasonal variations in one or both parents' incomes or expenses.
- (e) The age of the child, taking into account the greater needs of older children.
- (f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.
- (g) The particular shared parental arrangement, such as where the non-custodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal by the non-custodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.
- (h) Total available assets of the obligee, obligor and the child.
- (i) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt."

The child support award guidelines may be considered as an aid to the trial court, but the guidelines do not solely determine the specific amount of child support. The responsibility for the child support determination is placed upon the trial court. *Thurman v. Thurman*, 559 So.2d 1024 (Miss. 1990); *Clark v. Myrick*, 523 So.2d 79 (Miss. 1988). The statutory guidelines are used in conjunction with the nine *Brabham* factors to establish the appropriate award of child support. *Draper v. Draper*, 658 So.2d 866 (Miss. 1995).

Additionally the trial court can award private school tuition as part of or in addition to a support award as long as the chancellor makes findings to support a deviation from the statutory guidelines. See *Hensarling v. Hensarling*, 824 So.2d 583, 588-589 (Miss. 2002); *Seymour v.*

Seymour, 960 So.2d 513, 517 (Miss. Ct. App. 2006); *Chesney v. Chesney*, 910 So.2d 1057, 1061-1063 (Miss. 2005).

Judge McKenzie's findings with regards to child support were supported by the facts of this case. Joel was ordered to pay \$1400 per month in child support. (CP 108) This figure was supported by Joel's wage statement and the statutory guidelines. (CP 107, 108) (Ex. 11) Joel and Twyla have three children and Twyla was awarded the primary physical custody of the three minor children. (CP 104) The statute is clear in that child support for three children is twenty-two percent of the non custodial parent's adjusted gross income. The evidence presented at trial clearly shows that twenty-two percent of Joel's reported adjusted gross income is \$1, 408.75. (emphasis added) (CP 107) (Ex. 11) Because of Joel's unreported income his child support amount should be more than \$1, 400. The statute states that if the non custodial parent's adjusted gross income exceeds \$50, 000, the Chancellor should make findings that the statutory guidelines are reasonable.

The Chancellor's findings indicate that the amount of support is reasonable, and his findings were clearly supported by the evidence. The Chancellor made findings that Joelle was a special needs child. (CP 108) (T. 104) That Joelle suffers from ADD and required special attention with her school work. (CP 108) (T. 61, 62) (T. 104) Joel even stated in his brief that "Joelle has ADD..." (Appellant brief pg. 13) The trial court also found that Joelle attended West Jones for a short time but had problems performing the work. (CP 108) (T. 61) He found that Twyla and Joel made a joint decision to enroll the children at Heidelberg Academy so that Joelle could have special attention in a small classroom setting. (CP 108) (T. 156) The trial court further found that Joelle has performed well at Heidelberg and that it is in her best interest to remain there. (CP 108) (T. 63) Additionally all three children have been enrolled at Heidelberg Academy for two years and are currently involved in extra-curricular activities at

Heidelberg Academy. (CP 108) (T. 64, 65) (T. 157) Additionally he found that the need for private school was being met by the family before the separation. (CP 108) (T. 64)

Twyla called Sherman Livingston as a witness concerning Joelle's' school record. Mr. Livingston was one of the teachers for Joelle and testified that she was performing well in the small setting at Heidelberg Academy. (T. 102, 104) Twyla testified that the tuition at Heidelberg Academy for all three children is now \$535. (T. 157) This figure was undisputed. She also testified about the extra-curricular expenses. (T. 157)

Joel called Adonna McGill to support his contention that the expense of Heidelberg Academy was unnecessary. (T. 116) However on cross examination it became very obvious that Ms. McGill was not familiar with the facts of this case and could not attest to which school would be best for the children. (T. 120, 121) The evidence presented at trial, the laws of the State of Mississippi, and the lack of Joel's credibility all point to the fact that the amount of child support set by the trial court is correct and should be affirmed.

Joel wrongfully accused the Chancellor of punishing him. However Twyla would show that the trial court, unlike Joel, considered what was in the best interest of his children when it set the amount of child support. The evidence clearly indicates that the amount of support ordered meets the statutory guidelines. Even if this Court finds that the amount of child support ordered is a deviation from the statutory guidelines the evidence produced at trial supports a deviation from those guidelines. Therefore Twyla respectfully requests this Court to affirm the trial court in its award of \$1, 400.00 per month in child support.

3. The Chancellor Was Correct in Awarding Attorney Fees to Twyla

"[T]he matter of determining attorney's fees in a divorce action is largely entrusted to the discretion of the chancellor." *O'Neill v. O'Neill*, 501 So.2d 1117, 1119 (Miss. 1987). We are "reluctant to disturb a chancellor's discretionary determination [of] whether or not to award

attorney fees and of the amount of the award." *Geiger v. Geiger*, 530 So.2d 185, 187 (Miss. 1988). An award of attorney's fees will not be disturbed unless the chancellor abused his discretion or committed manifest error. *Chesney v. Chesney*, 849 So.2d 860, 862 (Miss. 2002). Attorney's fees may be properly awarded where one party's actions have caused the opposing party to incur additional legal fees. *Chesney*, 849 So.2d at 863. "[I]t is the function of the chancellor to weigh all of the facts and assess the circumstances and to award attorney's fees accordingly." *O'Neill*, 501 So.2d at 1119. Twyla should not be required to liquidate her meager savings to pay the cost of defending this divorce action, particularly when Joel caused the demise of the marriage and family. *Magee v. Magee*, 754 So.2d 1275 (Miss. Ct. App. 1999); See *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994) for the proposition that the wife should not be required to invade her savings in order to pay attorney's fees.

Joel in his brief argues that there was no evidence whatsoever at trial that Appellee (Twyla) could not pay her attorney fees. (Appellant brief pg. 16) However that position is without merit and is not supported by the evidence presented at the trial of this matter. Twyla testified that she was unable to pay her attorney fees. (T. 82, 83) Twyla had to borrow money from her mother to help pay for part of her attorney fees. (CP 114) Twyla incurred additional attorney fees because initially Joel requested custody of the children. (T. 83) Twyla also incurred additional attorney fees because of Joel's denials of his adulterous relationship with Tracy Pryor. (CP 114) Joel did not object to the attorney fees or the amount of the fees that were admitted into evidence. (T. 76) (CP 114) Twyla's financial statement clearly indicates that her net monthly pay is only \$3,719.59 (which includes child support payments), and her monthly expenses total \$4713. (Ex. 21) Even if this Court was to consider her net monthly pay with the new amount of child support ordered her expenses still exceed her net monthly income by almost \$500. (Ex. 21) (CP 108)

Joel argues in his brief that because Twyla was awarded her 401(k) account with her employer she should pay her attorney fees. (Appellant brief pg. 16) Joel's argument goes against Mississippi case law which supports the position that Twyla should not be required to liquidate her meager savings to pay the cost of defending this divorce action, particularly when Joel caused the demise of the marriage and family. Joel forgets that if she withdraws any money from her 401(k) she will have to pay taxes and penalties. Additionally Joel conveniently forgets that a substantial portion of Twyla's attorney fees were generated because of his continued deception throughout the litigation. (CP 114) Lastly Joel made a point of referencing selected portions of the trial court's Findings of Fact and Conclusions of Law in an effort to show that the trial court was trying to punish Joel. (Appellant brief 14) However the selections that he addressed clearly support why Joel should have to pay Twyla's attorney fees.

The trial court stated that "Being untruthful to the Court has its penalties." (CP 114) Twyla would like to address this statement and the veracity of its meaning. Joel was a married man who decided to commit adultery, and then sue his wife for divorce alleging he was entitled to a divorce on the grounds of habitual cruel and inhuman treatment. (T. 4) (CP 8, 103) The trial transcript of this matter clearly shows that Joel had no basis to seek a divorce on the ground of habitual cruel and inhuman treatment. (T. 4-6) His claim was dismissed on Rule 41(b) Motion to Dismiss after he rested his case. (T. 34) His testimony related to his allegations of habitual cruel and inhuman treatment consisted of the following: (1) "Well I would come home from work – or you know was at work and I come home – she wouldn't never show me no attention;" (2) "She never spends no time with me. Never did want to go out and eat. She always waits for me to go to bed before she goes to bed;" and (3) He alleged that Twyla did not have sex with him for a year prior to the separation, but Twyla testified that was not true, they had sex in June the same month that Joel left. (T. 4-5, 27) Despite Joel's claim being outlandish and without

any merit Twyla was still forced to hire an attorney to defend the claim and allegations. (T. 83, 84) Twyla was then forced to incur additional attorney fees because Joel continued to lie about his adulterous relationship with Tracy Pryor. Twyla was forced to prove he was lying. (T. 6, 7, 9, 10, 18, 19, 20, 35, 37, 41, 44, and 45) (CP 104) Therefore Joel is responsible for lying to the court and yes there are penalties for such behavior. The trial court's statement that there are penalties for being untruthful as a matter of equity is correct, but more so it is supported by the law of this state. See *Chesney*. Joel entered a "Court of Equity" and intentionally deceived his wife and the Court.

Twyla therefore respectfully requests this court to affirm the trial court's order and make Joel pay Twyla's attorney fees. Joel's argument that his having to pay Twyla's fees is not supported by the evidence is simply not true. The trial transcript is full of testimony that supports Twyla's inability to pay, and Joel's responsibility to pay her attorney fees.

E. CONCLUSION

Joel was deceptive throughout this matter as proven in this brief. Joel's arguments that the ordered child support is too high and he should not have to pay Twyla's attorney fees are meritless. The amount of child support that was ordered complies with the statutory guidelines, however even if this Court believes it does not the trial court made findings that supports a deviation from the guidelines. Twyla proved an inability to pay her attorney fees and that Joel caused her attorney fees to be substantially higher. Therefore Twyla would show that the trial court's ruling was and is supported by the laws of the State of Mississippi and the fact of this case. Therefore Twyla respectfully requests this Court to affirm the trial court's child support award, and its ruling that Joel has to pay Twyla's attorney fees.

Respectfully Submitted,

TWYLA M. HOLLOWAY

BY:

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CERTIFICATE

I, Terry L. Caves, Attorney for Twyla M. Holloway, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing document, to Honorable Thomas T. Buchanan, Attorney at Law, P.O. Box 4326, Laurel, Mississippi, 39441; and Honorable Frank McKenzie, Chancellor, P.O. Box 1468, Laurel, Mississippi 39441, their usual post office address.

This the 15 day of January, 2009.

JERRY D. SHARP