

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

KENNETH E. SMITH

APPELLANT

VS.

NO. 2008-CA-00683-COA

SANDRA K. SMITH (SPURLOCK)

APPELLEE

FILED
FEB 16 2009
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

.....
APPEAL FROM THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI
.....

BREIF OF APPELLEE

BREIF OF APPELLE
CERTIFICATE OF INTERESTED PARTIES

The undersigned 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 may evaluate the accuracy of the ruling.

1. Kenneth E. Smith, Plaintiff-Appellant
2. Sandra K. Smith (Spurlock), Appellate
3. E. Michael Marks and Julie Ann Epps, counsel for the Appellant on appeal
4. E. Michael Marks, counsel for Appellant at trial
5. Larry E. Yarbrough, counsel for Appellee at trial
6. Honorable John C. McLaurin, Jr., Family Master, Chancery Court of Rankin County
7. J. Dan Fairly, Chancellor

This, the 15 day of February, 2009



APPELLEE

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- I. THE TRIAL COURT DID NOT COMMIT ANY TYPE OF REVERSIBLE ERROR. THE COURT HAD ONLY A COMPUTER GENERATED DOCUMENT MADE UP BY KENNETH ON HIS PERSONAL COMPUTER, AND DOCUMENTATION FROM THE DEPARTMENT OF HUMAN SERVICES IN WHICH KENNETH TOLD THEM NOT TO PERSUE THIS, BECAUSE HIS MOTHER WAS TRYING TO GET FOOD STAMPS AND IF NICKI RESIDED WITH HER SHE WOULD RECEIVE MORE. EVERY ATTEMPT WAS MADE BY SANDRA TO OBTAIN COPIES OF EITHER CHECK COPIES FOR HER WEEKLY PAY OR CHECK COPIES WRITTEN TO KENNETH IN THE AMOUNT OF \$125.00 A MONTH. DUE TO THE LENGTH OF TIME WHICH HAS PASSED SINCE HER EMPLOYMENT AND CHANGES IN PERSONNEL THESE RECORDS HAVE BEEN LOST OR DESTROYED. THERE IS, HOWEVER DOCUMENTED TAX RETURNS AND APPLICATION FOR FINANCIAL AID FOR COLLEGE, AS PROOF THE CHILD LIVED WITH SANDRA.....

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BRIEF OF APPELLEE
STATEMENT OF ISSUES

1. THE TRIAL COURT DID NOT COMMIT ANY TYPE OF REVERSIBLE ERROR. THE COURT HAD ONLY A COMPUTER GENERATED DOCUMENT MADE UP BY KENNETH ON HIS PERSONAL COMPUTER, AND DOCUMENTATION FROM THE DEPARTMENT OF HUMAN SERVICES IN WHICH KENNETH TOLD THEM NOT TO PERSUE THIS, BECAUSE HIS MOTHER WAS TRYING TO GET FOOD STAMPS AND IF NICKI RESIDED WITH HER SHE WOULD RECEIVE MORE. EVERY ATTEMPT WAS MADE BY SANDRA TO OBTAIN COPIES OF EITHER CHECK COPIES FOR HER WEEKLY PAY OR CHECK COPIES WRITTEN TO KENNETH IN THE AMOUNT OF \$125.00 A MONTH. DUE TO THE LENGTH OF TIME WHICH HAS PASSED SINCE HER EMPLOYMENT AND CHANGES IN PERSONNEL THESE RECORDS HAVE BEEN LOST OR DESTROYED. THERE IS, HOWEVER DOCUMENTED TAX RETURNS AND APPLICATION FOR FINANCIAL AID FOR COLLEGE, AS WELL AS SCHOOL RECORDS FROM RICHLAND MIDDLE SCHOOL AND RICHLAND HIGH SCHOOL, AS PROOF THE CHILD LIVED WITH SANDRA FROM 2002 THROUGH 2004.

STATEMENT OF THE CASE

(I) Course of the Proceedings and Dispositions in the Court Below:

Kenneth E. Smith and Sandra K. Smith (Spurlock) were divorced in Rankin County on June 14, 1989. C.P.2. A copy of the decree can be found in the clerk's papers at 5-6. Kenneth received custody of the minor child, Nicki (born 2/17/1988). Sandra was ordered to pay Kenneth \$125.00 month as support and maintenance for Nicki, with the first payment to begin on July 1989. In addition she was also ordered to pay all of Nick's medical, dental and hospital expenses. C.P.6.

(II) Statement of the Facts:

In December of 2007, Kenneth moved to have Sandra cited or contempt for past due child support of \$24,000. ¹ C.P. 2-17; Tr.22. At trial, Sandra sought to set off against this amount claiming that she had paid child support of \$125.00 month from October 1989 until May 1994

and claiming that she should not have to pay child support from March 2002 through April 2004 when Nicki was living with her rather than her father.

At the trial, Sandra admitted she made no payments from July of 1989 through October of 1989. She testified, however that she made payments from October of 1989 through May 1994, by having her employer deduct \$35.00 weekly/\$125.00 month and pay it directly to Kenneth, from March of 1991 to May of 1994. In May of 1994 she married her current husband, and she testified she quit paying because Kenneth would not let Nicki visit Sandra, home with her new husband.

¹Kenneth's demand was for unpaid child support until Nicki was 18 in February of 2006. He did not ask for support after she turned 18 because Nicki did not live with him after she was 18. Tr. 21

Sandra claimed that from the time she moved to Arkansas and became employed in March of 1991 until November of 1994, she had \$35.00 week withheld from her job until May of 1994. This money was sent to Kenneth. Sandra, however, could not produce any documentation from her employer or any tax returns or other documentation she had paid Kenneth this \$125.00 month, and Kenneth denied receiving it. No order of withholding was entered in Chancery Court. Sandra claimed she was unable to obtain records showing these payments from her employer, and gave satisfactory reasons as to why, due to the length of time which has elapsed since her employment and the change in personnel at the company the records were lost or destroyed. Although Kenneth objected to her testimony that she made monthly payments from March of 1991 to May of 1994, the Master overruled Kenneth's objection and admitted the testimony.

Sandra also claimed credit for a time between 2002 and 2004 when she claimed Nicki lived with her. Both Kenneth and Nicki denied that Nicki resided with Sandra other than intermittently.

Based on Sandra's testimony of the \$125.00 monthly payments, the Master gave her credit for a total of 14,000. Those credits included the time from 2002 through 2004 when the child lived with her mother and for the payments she made while she was working in Arkansas that were withheld from her paycheck. Tr. 66-67. By judgment entered March 25, 2008, the Chancellor and Master entered a judgment against Sandra for \$10,000, plus \$750.00 in attorney's fees and \$135.00 in costs and fees, along with legal interest in the sum of 8% annum. The directed that she pay the judgment to Smith at the rate of \$200.00 a month beginning June 1, 2008.

SUMMARY OF THE ARGUMENT

The trial court ruling is accurate in giving Mrs. Spurlock credits for the payments deducted from her paycheck while she was in Arkansas, for two reasons. One the Court ruling was based the evidence produced by Mr. Smith on a computer generated spreadsheet of his on doing was not an official record so there was only his word and the information supplied by the Department of Human Services that he did not wish to pursue this issue. Secondly, the evidence was admitted after many attempts to obtain other documentation from Mrs. Spurlock's employer.

The trial court was accurate in giving Mrs. Spurlock the credits given for the time when Nicki lived with her. The evidence is sufficient to support the amount credited. Although not informed by her attorney Mrs. Spurlock does have tax returns, Federal Financial Aid Loan forms for College for Nicki to attend William Carey College in Hattiesburg in 2004, while she was

attending Camp Shelby, as well as documentation from Richland Middle School and Richland High School of the change in Nicki's address and where the report cards and other information should be mailed.

THE TRIAL COURT DID NOT COMMIT ANY TYPE OF REVERSIBLE ERROR. THE COURT HAD ONLY A COMPUTER GENERATED DOCUMENT MADE UP BY KENNETH ON HIS PERSONAL COMPUTER, AND DOCUMENTATION FROM THE DEPARTMENT OF HUMAN SERVICES IN WHICH KENNETH TOLD THEM NOT TO PERSUE THIS, BECAUSE HIS MOTHER WAS TRYING TO GET FOOD STAMPS AND IF NICKI RESIDED WITH HER SHE WOULD RECEIVE MORE. EVERY ATTEMPT WAS MADE BY SANDRA TO OBTAIN COPIES OF EITHER CHECK COPIES FOR HER WEEKLY PAY OR CHECK COPIES WRITTEN TO KENNETH IN THE AMOUNT OF \$125.00 A MONTH. DUE TO THE LENGTH OF TIME WHICH HAS PASSED SINCE HER EMPLOYMENT AND CHANGES IN PERSONNEL THESE RECORDS HAVE BEEN LOST OR DESTROYED. THERE IS, HOWEVER DOCUMENTED TAX RETURNS AND APPLICATION FOR FINANCIAL AID FOR COLLEGE, AS PROOF THE CHILD LIVED WITH SANDRA FROM 2002 THROUGH APRIL 2004.

A. Standard Review:

On appeal, the Supreme Court must consider the entire record before it and accept all those facts and reasonable inferences which support the Chancellor's ruling. The Chancellor's ruling will not be disturbed, be they on evidentiary facts or ultimate facts, in unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous, or unless he applied the wrong legal standard. A finding of fact is clearly correct, when, although there is evidence to support it, the reviewing court, on the entire evidence, is left with the definite and firm conviction that no mistake or error has been made.

Findings of fact are entitled to deference when reviewed on appeal but will be upheld when there are clearly no erroneous facts. Ruling of law are subject to de novo review.

B. The Merits²

Mississippi law allows the non-custodial parent to receive credit for child support payments owed where she pays the support directly to or for the benefit of the child, where to hold otherwise would unjustly enrich the other parent. However, any evidence that states these things did not occur must be clear and convincing.

The divorce decree granted custody to Kenneth and provided that Sandra was to pay \$125.00 per month as child support beginning July 1, 1989. In December of 2007, Kenneth Smith sought back unpaid child support payments from Sandra in the amount of \$24,000.00 of unpaid child support from July 1, 1989 through February 0f 2006 when Nicki turned 18 years of age. Kenneth did not claim payments after that date because Nicki no longer lived with him.

As an Exhibit to his complaint, Kenneth attached a summary of payments he claimed Sandra made. The summary was made up in a spreadsheet on his home computer with no other documentation to support it.

At trial, the evidence Sandra submitted in support of her claim was documented calls to the company where she requested copies of the checks mailed to Kenneth in the amount of \$125.00 a month. Sandra was unable to obtain those copies due to the length of time which had elapsed since her employment there. The personnel has changed and records have been lost or destroyed and was unable to be produced. Sandra did not ask for copies of Kenneth's bank account as that not all monies received by a person is put into the bank, she did not request tax returns as that Mr. Smith at the time of trial had not filed a tax return in approximately eight years to state or federal.

On the issue of obtaining documented proof that Mr. Smith received these payments through verification of Internal Revenue Service documents. Child Support does not have to be

recorded on a tax return of the custodial parent as the non-custodial parent has already paid the taxes on the income. Child support is deducted from a paycheck after taxes; it is deducted from the Net Income not the Gross Income. So subpoenaed duplicate would not be beneficial to her case.

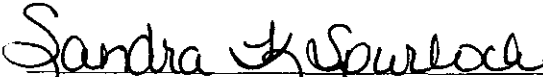
The Chancellor gave Sandra credit for the amount of time Nicki lived with her. This was backed up by the testimony of both Nicki and Kenneth in which they stated that Nicki lived exclusively with Kenneth and then the documentation from the Department of Human Services in the form of an application for food stamps, proved their testimony to be untrue. Based on that the Chancellor's finding was that Nicki did indeed reside with the mother until April 2004.

CONCLUSION

The Chancellor made a fair and correct ruling based on the conflicting testimony given by both Nicki and Kenneth. This Court, should therefore, uphold the ruling and judgment in the previous court of \$10,000.00 and attorney's fees and costs previously paid. No other attorney's fees or costs should be applied to this judgment.

This Court should uphold the judgment in the amount supported by the Chancellor and no more than these sums should be awarded.

RESPECTFULLY SUBMITTED
SANDRA K. SMITH SPURLOCK (APPELLEE)


BY: SANDRA K. SPURLOCK

CERTIFICATE

I, Sandra K. Spurlock, do hereby certify that I have this date mailed by United States Mail, first class postage prepaid, the original and three copies of the foregoing to the clerk of this Court at PO Box 249, Jackson, MS 39205 and one copy to Hon. J. Dan Fairly, PO Box 1437, Brandon, MS 39043.

This, the 16th day of February, 2009.


SANDRA K. SPURLOCK

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IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

KENNETH E. SMITH

PLAINTIFF

VS

NO. 29835

SANDRA K. SMITH

DEFENDANT

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4/25/08

Rankin County Chancery Court

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Summary for Case No. 29835

100 282

1

SMITH KENNETH E

Plaintiff E MICHAEL MARKS

601-969-6711

120 N CONGRESS ST

SUITE 730

JACKSON

MS 39201

vs.

SMITH SANDRA K

Defendant LARRY E YARBROUGH

601-948-3080

104 MENDENHALL AVE

P O BOX 22883

RICHLAND

MS 39218

105 N STATE ST

JACKSON

MS 39225 2883

Type	Filed	Reopened	Last/Order	Last/Motn	Last/trans	Disp	Balance	Exh
CONTEMPT	5/02/1989	12/20/2007	3/25/2008	1/04/2008	4/24/2008	A	.00	1

Note	Last/Acctg	Next/Acctg	Clearing
JUDGE FAIRLY REF TO FM			100.00

Date	Description	Bk/Pg	C/B	Charges	Payments
5/02/1989	COMPLAINT FOR DIVORCE 46.50 PD CK#4507 BY ATTY				
5/08/1989	SANDRA K SMITH SRVD PRNSLY ON 5/5/89				
6/14/1989	JUDGMENT OF DIVORCE	172	461		
6/19/1989	SUM RET ON BRENDA DYESS-NOT LOCATED IN TIME FOR--- ---COURT-ON 6/13/89				
12/04/1989	MOTION OF MODIFIC OF JUDGMENT OF DIV & TEMP RELIEF \$46.50 PD BY ATTY CHECK #001223 SUMMS RET TO ATTY FOR SERV ON KENNETH E SMITH NOTICE OF TEMPORARY RELIEF HEARING				
12/07/1989	ANSW TO MOTION FOR MODIF & CROSS-MOT FOR CONTEMPT				
12/14/1989	AGREED ORDER	180	22		
12/20/2007	MOTION FOR CITATION FOR CONTEMPT OF COURT 100.00 PD BY M MARKS SUM & N/H RET TO ATTY/NO DATE IN SUMMONS CSI FROM RECEIVED			100.00	100.00
1/04/2008	CORRESP FILED MOTION FOR CITATION FOR CONTEMPT OF COURT S&N/H ISS & RTD TO ATTY FOR SER ON SANDRA KAY.. ..STAFFORD SMITH SPURLOCK				
1/17/2008	SANDRA KAY SPURLOCK PERS SERV'D ON 1/15/08				
1/18/2008	ENTRY OF APPEARANCE OF COUNSEL SDT RET TO ATTY FOR SERV ON RANKIN CO DHS				
1/29/2008	ORD & NOTICE OF REFERENCE TO FAMILY MASTER CPY MLD 615 423				
3/13/2008	STIPULATION FOR FAMILY MASTER HEARING				
3/25/2008	JUDGMENT OF CONTEMPT - COPIES TO ATTY	621	304		
4/22/2008	NOTICE OF APPEAL \$100.00 PD DESIGNATION OF THE RECORD				
4/24/2008	CORRESP FILED BY E MICHAEL MARKS ,,MR MARKS OFC				

End Summary for Case No. 29835

STATE OF MISSISSIPPI
RANKIN COUNTY

I, LARRY SWALES, Chancery Clerk of the above
named County and State, do certify that the foregoing
instrument is a true and correct copy of the original
Witness my signature and seal of court this 20 day
of May 2008

LARRY SWALES, Chancery Clerk

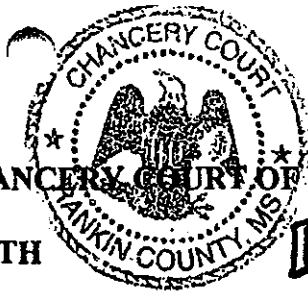
[Signature]

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[Signature]

DC

RE 2



BOOK 621 PAGE 304

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

KENNETH E. SMITH

FILED

MOVANT

VS.

MAR 25 2008

NO. 29,835

SANDRA K. SMITH

LARRY SWALES
Chancery Clerk, Rankin County
Rec. in Bk. _____ Pg. _____

RESPONDENT

JUDGMENT OF CONTEMPT

This day this cause came on to be heard upon Motion For Citation of Contempt of Court herein by Kenneth E. Smith, Movant, against Sandra K. Smith (Spurlock), Respondent, and the Court, finding that it has jurisdiction of the parties hereto and of the subject matter hereof, finds that both parties were present in open Court with their respective attorneys and announced ready for trial, and the Court after hearing all of the testimony and viewing all of the evidence did find that Sandra K. Smith (Spurlock) was in civil contempt of the Court by her failure to pay \$10,000.00 in child support payments to Kenneth E. Smith and that Kenneth E. Smith should be awarded judgment of and from Sandra K. Smith (Spurlock) in the sum of \$10,000.00 along with Court cost of \$100.00 plus cost of process in the sum of \$35.00 plus an attorney fee of \$750.00 for a grand total of \$10,885.00 which shall be paid by Sandra K. Smith (Spurlock) as set forth herein below:

IT IS THEREFORE ORDERED AND ADJUDGED that Sandra K. Smith (Spurlock) be, and she is hereby adjudicated to be in civil contempt of Court.

IT IS FURTHER ORDERED AND ADJUDGED that Kenneth E. Smith is hereby awarded judgment of and from Sandra K. Smith (Spurlock) in the sum of \$10,000.00 along with legal interest that shall be paid at \$200.00 per month commencing June 1, 2008 with a like sum due and payable on the first calendar day of each consecutive month

thereafter. The monthly payments shall be paid directly by Sandra K. Smith (Spurlock) to Kenneth E. Smith.


IT IS FURTHER ORDERED AND ADJUDGED that Sandra K. Smith (Spurlock) be, and she is ordered to pay the sum of \$750.00 as an attorney fee along with \$135.00 as Court costs and process fees for a sum total of \$885.00 that shall be payable directly to E. Michael Marks on or before sixty (60) days of the entry of this Judgment of Contempt.

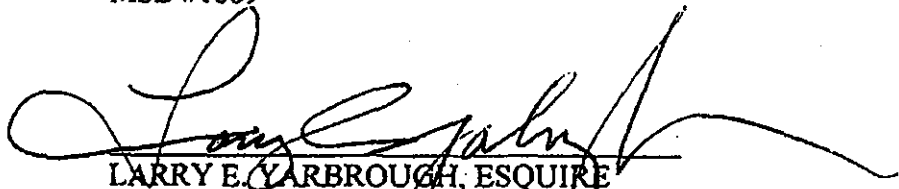
SO ORDERED AND ADJUDGED this the 25th day of March, 2008.


 CHANCELLOR

 FAMILY MASTER

Prepared by:


 E. MICHAEL MARKS, ATTORNEY FOR
 KENNETH E. SMITH
 120 NORTH CONGRESS STREET
 SUITE 730, THE PLAZA BUILDING
 JACKSON, MISSISSIPPI 39201
 601-969-6711
 MSB #1869


 LARRY E. YARBROUGH, ESQUIRE
 ATTORNEY AT LAW
 POST OFFICE BOX 22883
 JACKSON, MISSISSIPPI 39225-2883
 601-948-3080

1 deadbeat mothers on the witness stand,
2 and time and time again they said, I paid
3 it, but I don't have a receipt for it. I
4 have never heard in a Rankin court an
5 excuse of you're free from paying child
6 support. All you have to do is say you
7 lost the records. I've never been that
8 lucky in 44 years over here.

9 THE COURT: Well, I haven't said
10 that yet. I haven't said that at all.

11 All right. Who would you have next?

12 MR. MARKS: We rest, Your Honor.

13 THE COURT: All right.

14 Mr. Yarbrough, who would you have?

15 MR. YARBROUGH: No witnesses, Your
16 Honor. We've already called all our
17 witnesses.

18 THE COURT: So both sides completely
19 and finally rest.

20 MR. YARBROUGH: Yes, Your Honor.

21 THE COURT: All right. The Court
22 having heard and considered the evidence
23 and testimony in Cause Number 29835
24 reiterates its earlier position that it
25 does have full and complete jurisdiction
26 over both the parties and the subject
27 matter. The Court has heard and
28 considered the evidence and testimony as
29 used on this motion for contempt that was

RULING BY THE COURT

1 filed in this cause at the end of
2 December and being refiled the first of
3 January of 2008.

4 The Court finds that the testimony
5 from both sides has been very confusing,
6 very sporadic about payments that were
7 made and received, about payments that
8 were supposedly made -- supposedly
9 credited. The Court also finds that the
10 testimony has been very confusing about
11 where this child lived, who she lived
12 with, who was responsible for her support
13 during various periods of time. There
14 have been claims by both sides that the
15 child lived with the mother, the father,
16 the grandmother. Even the father
17 testified that there were periods of time
18 other than those undisputed periods of
19 time from 2002 through 2004 when the
20 child lived with her mother that she
21 lived with the mother. So I'm not really
22 sure -- and I'll say this, if the child
23 was living with the mother and the mother
24 was responsible for the support of the
25 child, then she should be forgiven or
26 excused for any support that would
27 otherwise have been due had she not been
28 living with her.

29 The mother -- the Court finds that

RULING BY THE COURT

1 the mother is entitled -- all right.
2 First of all, the Court finds that
3 Mr. Smith's affidavit alleges that the
4 mother is \$24,000 behind in child
5 support. The Court finds that the mother
6 is entitled to a credit of \$14,000
7 against that child support for the
8 payments that she made while she was
9 working in Arkansas that were withheld
10 from her paycheck for the periods of time
11 that the child lived with her and that
12 she was responsible for the child's
13 support and that -- so the mother would
14 at this point owe \$10,000 in back child
15 support for which I'm going to hold her
16 in contempt of court.

17 Now, the question is how are we
18 going to collect that \$10,000. How is
19 she going to pay that money at this time?
20 I believe, Mr. Marks, that you either --
21 that you stated -- I believe I heard
22 this, that you do not want her
23 incarcerated. Is that correct?

24 MR. MARKS: No, Your Honor.

25 THE COURT: You're not seeking
26 incarceration in this case.

27 MR. MARKS: No. (Inaudible.)

28 THE COURT: All right. By the
29 witness's testimony, she is making \$800

RULING BY THE COURT

1 per month on her job. I'm going to
2 require her to pay \$200 per month in back
3 child support unto -- let me say this,
4 first of all there will be no more child
5 support to accrue in this case. The
6 child is emancipated and there will be no
7 more current child support due. It's
8 \$10,000 back child support due. I'm
9 going to require her to pay \$200 a month
10 until that is paid in full, together with
11 legal interest at the rate of 8 percent
12 thereon. I'm going to assess her with a
13 \$750 attorney's fee which will be paid in
14 60 days from the date of today's hearing.
15 I'm going to also assess her with the
16 court costs in the amount of \$107, also
17 to be paid within 60 days of the date of
18 today's hearing, and process fees -- and
19 I don't know how much -- the process fee
20 was \$35, which I'll also -- so that will
21 be 750 plus 107 plus \$35 which she should
22 pay within 60 days of today's hearing.
23 And that will be the order of the Court,
24 then, in Cause Number 29835.

25 Mr. Marks, will you prepare an
26 Order, please, and submit it to
27 Mr. Yarbrough?

28 MR. MARKS: Very well, Your Honor.

29 MR. YARBROUGH: Your Honor, could I

1 A. Yes, sir, I did.

2 Q. Okay. Was there a decision or agreement
3 reached between you and your husband by the Court in
4 December of '89?

5 A. Yes, sir, there was.

6 Q. And did the Court grant you visitation?

7 A. Yes, sir. Every other weekend, four
8 weeks in the summer, and alternating holidays.

9 Q. And that was in December of 1989.

10 A. Yes, sir.

11 Q. And you moved to Arkansas you said, I
12 believe, in 1991?

13 A. Yes, sir.

14 Q. Okay. And you paid -- it's your
15 testimony that you made these payments, including
16 arrearage payments, for the months of July, August,
17 and September to your former husband.

18 A. Yes, sir.

19 Q. Okay. Now, when you moved to Arkansas in
20 1991, with whom -- with whom were you employed?

21 A. Ram-Fab, Incorporated.

22 Q. Okay. Had there been a court order for
23 withholding entered by the Court?

24 A. No, sir.

25 Q. Did you initiate with your then employer
26 to withhold and remit child support?

27 A. Yes, sir, I did.

28 Q. And your check each month, did it reflect
29 a withholding and a remit to Mr. Smith?

SPURLOCK - DIRECT

1 A. Yes, it did.

2 MR. MARKS: We object, Your Honor,
3 under the best evidence rule. He's
4 testifying to a document that was
5 executed against her paycheck at work. I
6 think the best evidence would be a copy
7 of the --

8 THE COURT: I don't see any order
9 for withholding in the court file that
10 was ever had and done. The last thing
11 I --

12 MR. YARBROUGH: There was never an
13 order, Your Honor.

14 THE COURT: The last thing I see
15 prior to the filing of the Motion for
16 Contempt was an agreed Temporary Order
17 that was entered in December of '89.
18 Nothing further was had and done in here
19 until --

20 MR. YARBROUGH: That is correct.
21 There was no Order of Withholding. This
22 was a voluntary action on Ms. Spurlock's
23 part.

24 BY MR. YARBROUGH:

25 Q. Mrs. Spurlock, since this contempt action
26 was commenced, have you attempted to contact your
27 old employer in Arkansas?

28 A. Three times, and they went through
29 everything they had. A few years ago they had a lot

SPURLOCK - DIRECT

1 of big change-over and some files were misplaced or
2 lost, and she looked through everything she had and
3 could not find them.

4 Q. Has the company been sold or changed
5 or --

6 A. No, sir.

7 Q. But they weren't able to obtain these
8 records --

9 A. No, sir.

10 Q. -- at your request.

11 A. They've had a lot of change-over as far
12 as office personnel.

13 Q. Now, you said that you made these
14 payments until 1994. Would you tell the Court what
15 occurred in 1994.

16 A. May the 3rd, 1994, I married my current
17 husband.

18 MR. MARKS: Object, Your Honor.
19 That's assuming facts not in evidence,
20 that she made the payments until 1994.
21 We object as leading and as -- object to
22 the form of the question. It refers to
23 facts not in evidence.

24 THE COURT: She can testify that she
25 made a payment if she made one. Now,
26 she's already testified she doesn't have
27 any receipts for any payments that she
28 supposedly made. She can testify of her
29 own volition if she made payments, so

SPURLOCK - DIRECT

overruled.

BY MR. YARBROUGH:

Q. Mrs. Spurlock, did you remarry in 1994?

A. Yes, sir. May the 3rd.

Q. And your husband that you're still married to. Is that correct?

A. Correct.

Q. And what is his name?

A. Richard Spurlock.

Q. Richard Spurlock. Had you been having visitation with your child up through May of 1994 after the order was entered by the Court in December of '89?

A. Yes, sir.

Q. Had there been any problems with visitation?

A. No, sir.

Q. Okay. Would you tell the Court what occurred after your marriage to Mr. Spurlock in 1994.

A. I married him May the 3rd, 1994. It was on a Tuesday. Supposed to have Nicki that weekend. When I called Mr. Smith, he told me, quote, unquote, his child was not going to be around an F'ing wetback.

Q. Okay. Would you explain to the Court what you mean.

A. My husband is part Hispanic.

Q. Okay. Now, did you attempt to reason