

NO. 2008-CA-00813

IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

JESSE QUALLS STIGLER III, APPELLANT

VS.

LISA ELAINE STIGLER, APPELLEE

ON APPEAL FROM
THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

JOHN ROBERT WHITE, PA
ATTORNEYS AT LAW
POST OFFICE BOX 824
RIDGELAND, MS 39158-0824
TELEPHONE: (601) 605-9811
FACSIMILE: (601) 605-9836
E-MAIL: jrw@jrwlaw.com
JOHN ROBERT WHITE, BAR NO. [REDACTED]
ATTORNEYS FOR APPELLANT

ORAL ARGUMENT NOT REQUESTED

IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

JESSE QUALLS STIGLER III, APPELLANT

VS.

LISA ELAINE STIGLER, APPELLEE

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
ARGUMENTS AND DISCUSSION OF THE LAW	1
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

CASES:	
<i>Yelverton v. Yelverton</i> , 961 So. 2d 19 (Miss. 2007)	3

ARGUMENTS AND DISCUSSION OF THE LAW

I. CONTEMPT

There was no evidence presented at trial to support a finding of willful and obstinate contempt against Jay. Jay has never missed a child support payment. He has paid thousands upon thousands of dollars in addition to his child support obligations to provide for his children. Much of the additional amounts paid by Jay were for items that Lisa should have paid out of the child support Jay paid to her for the benefit of the children. For instance, in addition to child support, Jay paid for the children's school supplies, teacher's gifts, yearbooks, clothes, shoes, Jesse's vehicle insurance and repairs, cell phones, computers, internet access, entertainment expenses, driver's education, summer school tuition and even attorney's fees for Jesse when he got into trouble. (Tr. 47-51, 119-138)(Ex. 45-56). Lisa also charged Jay to keep the children's dog, Cocoa, on weekends Jay was away. (Tr. 30, 121). If Bailey did not go to Jay's for weekend visitation for whatever reason, Lisa charged additional money to keep her own child. (Tr. 43-44, 47-48, 126-127)(Ex.45, 47, 49, 51, 53, 55).

Lisa has chosen to work as little as possible since the divorce and has lived off of the child support. Lisa states in her brief that she earns \$6.00 per hour as a "caregiver." (Brief of Appellee, p. 22). No evidence was introduced at trial to substantiate this statement, however, a minimum wage earner earns more money than that. When Jay married Lisa, she had a career with Hertz rental car company. She certainly has been capable of working to contribute to the welfare of the children, but instead, works part-time and has turned to Jay for all of the children's financial needs in addition to the child support he pays. Jay testified at trial that he loves his children and therefore has provided for them far in excess of his monthly child support obligations. (Tr. 37, 127). When the children needed something, Lisa would call or send Jay a letter asking for more money, which he would pay. (Ex. 45-56).

At trial, Jay introduced, without objection, meticulously detailed spreadsheets of the monies he has paid to Lisa and monies he has spent on the children in addition to child support over the five (5) years at issue. (Ex. 46, 48, 50, 52, 54, 56). These spreadsheets were assembled by Jay and his attorneys from Jay's bank records which cost Jay over \$700.00 to obtain (Tr. 173), and which were produced in discovery. All of the underlying bank records were also produced in discovery. Lisa did not object to the spreadsheets being admitted into evidence. Jay testified that he did not want credits for gifts he gave his children, but showed these items on the spreadsheets to demonstrate that he is not a "dead-beat" dad and should not be held in contempt. (T. 42). Lisa's Response Brief grossly mischaracterizes the evidence and testimony at trial in this regard.

II. YEAR-END RECONCILIATION

At the end of each year since the parties' divorce (fourteen years ago), Lisa would send Jay a letter stating the amount Jay owed her, after she gave Jay "credit" for some additional expenditures he made for the children during the year. Every year, Jay sent Lisa a check for the amount Lisa claimed was due. (Tr. 91-100)(Ex. 35-37). It is patently unfair to hold Jay in contempt for past due amounts when Lisa herself calculated what was due and Jay paid accordingly. The Chancellor's judgment award against Jay is a windfall to Lisa in excess of \$39,000, is against all equitable principles, and should be reversed.

III. AMBIGUITY OF THE DIVORCE DECREE

Lisa testified at trial that she does not know what the \$3,600 provision in the Property Settlement Agreement means. (Tr. 89). She also testified that Jay did not make commissions at the time the divorce decree was entered into, because he was not in sales at the time. Thus, he only received a bonus. (Tr. 89). Despite this, she argues to this Court that the provision should be enforced against Jay. Lisa also testified that in calculating year-end amounts, she did not go

by the terms of the Marital Dissolution Agreement, rather, she called Department of Human Services in Jackson, Mississippi and asked them how the amounts should be calculated (Tr. 77, 91-92, 103-104), then relayed her calculations to Jay, which Jay paid every year. (Tr. 91-100)(Ex. 35-37).

IV. AMOUNT OF JUDGMENT

Not only did the Court enter a judgment against Jay requiring him to pay more each month than he had been paying prior to the modification, the Court ordered Jay to continue to pay \$3,600 per year in addition to his monthly child support payments, without making specific findings of fact and conclusions of law as to why the guidelines do not apply. *Yelverton v. Yelverton*, 961 So. 2d 19, 28 (Miss. 2007). Lisa argues that Jay did not prove he could not pay the additional \$3,600.00 per year which is in direct contravention to Jay's testimony and the evidence in this case. Furthermore, the divorce decree requires that Jay have an income of \$63,000 per year before this additional provision applies. (Ex. 1). The chancellor was manifestly in error by ignoring this provision of the divorce decree and requiring Jay to pay this additional sum on a going-forward basis. The evidence at trial was that Jay's current income is less than \$63,000.00. (Tr. 176)(Ex. 40, 57). Thus, this portion of the judgment should be reversed.

V. ATTORNEY'S FEES

Lisa has requested this Court award \$5,000 in her attorney's fees for defending this appeal. Jay cannot possibly pay an additional \$5,000 in attorney's fees and would be hopelessly in contempt due to the additional burdens placed on him by the Chancellor, which Jay prays this Court will reverse. Jay testified at trial that he has incurred over \$29,000 in his own attorney's fees in this matter. (Tr. 163)(Ex. 63). Additionally, Jay has been paying Lisa's attorney's fees as

part of the arrearage per the Chancellor's judgment since the time the judgment was entered, and has done so by obtaining credit card advances in order to avoid going to jail for contempt.

Lisa should be charged with some responsibility in this debacle, after all, she led Jay down a primrose path to believe that all was well with his child support payments until he moved to Madison, Mississippi. Lisa testified to this at trial. (Tr. 111). It was only after Jay informed Lisa of his move and reduction in income that Lisa contacted an attorney to pursue Jay for contempt. Jay had told Lisa he would be seeking a downward reduction in his child support obligations due to his reduced income and depletion of his assets, which occurred as the result of Jay continuing to make child support payments well above and beyond his income after he was laid off in 2006. (Tr. 72).

An award of Lisa's attorney's fees on appeal would further reward Lisa for her retributive behavior toward Jay. For these reasons, Lisa's request for an award of attorney's fees to defend this appeal should be denied.


WHEREFORE, PREMISES CONSIDERED, Jesse Qualls Stigler III respectfully prays to this Court to reverse the chancellor's finding of contempt as manifest error, reverse the award of arrearages, reverse all interest computed thereon, and reverse the attorney's fees granted to Lisa Elaine Stigler. Jesse Qualls Stigler III also requests this Court deny Lisa Elaine Stigler's request for attorney's fees to defend this appeal. Jesse Qualls Stigler III further respectfully prays to this Court for his attorney's fees and court costs and any and all other relief as this Court may deem just and proper.

This the 20th day of January, 2009.

Respectfully submitted,

JESSE QUALLS STIGLER III

By: John Robert White
JOHN ROBERT WHITE

JOHN ROBERT WHITE, PA
Attorneys at Law
Post Office Box 824
Ridgeland, Mississippi 39158
Telephone: (601) 605-9811
Facsimile: (601) 605-9836
E-mail: jrw@jrwlaw.com
John Robert White

Attorneys for Jesse Qualls Stigler III

CERTIFICATE OF SERVICE

I, John Robert White, hereby certify that I have this day served by United States first-class mail, postage prepaid, a true and correct copy of the foregoing Reply Brief of Appellant to:

Honorable Mitchell M. Lundy, Jr.
Chancellor
Desoto County Chancery Court
2535 Highway 51 South
Hernando, Mississippi 38632

J. Wesley Hisaw, Esq.
3040 Goodman Road West, Suite A
Post Office Box 256
Horn Lake, Mississippi 38637-0256

So certified, this the 20th day of January, 2009.



JOHN ROBERT WHITE