IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SHELIA BARNETT GROVE	APPELLANT
VS.	NO. 2008-CA-01190
CHARLEY GUY AGNEW	APPELLEE

ON APPEAL FROM THE CHANCERY COURT
OF LEE COUNTY MISSISSIPPI

APPEAL BRIEF OF APPELLANT SHELIA BARNETT GROVE

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VS.	**NO. 2008-CA-01190**
CHARLEY GUY AGNEW	**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 may evaluate possible disqualifications or recusal.

Shelia Barnett Grove	-	Plaintiff/Appellant
Charley Guy Agnew	-	Defendant/Appellee
Carter Dobbs, Jr.	-	Attorney for Plaintiff/Appellant
Kenneth E. Floyd, II	-	Attorney for Defendant
Honorable John A. Hatcher	-	Trial Judge

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I. APPELLANT'S STATEMENT OF THE ISSUES

ISSUE 1: WHETHER THE CHANCELLOR ERRED IN HIS METHOD OF CHILD SUPPORT CALCULATION PURSUANT TO THE CHILD SUPPORT GUIDELINES SET OUT IN § 43-19-101, MISSISSIPPI CODE OF 1972, AS AMENDED.

II. APPELLANT'S STATEMENT OF THE CASE

(A) NATURE OF THE CASE.

This appeal involves one single issue, and that issue is whether the trial Court erred in its method of child support calculation pursuant to the child support guidelines set out in § 43-19-101, Mississippi Code of 1972, as amended.

(B) COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

Plaintiff/Appellant in this case will be referred to as "Grove." Defendant/Appellee will be referred to as "Agnew." Grove is the mother and Agnew is the father of a minor child. On April 19, 2000 an Agreed Order was entered between Grove and Agnew, whereby Agnew was ordered to pay $75.00 per week child support to Grove.

On November 30, 2007 Grove filed a Complaint For Modification Of Order requesting the lower Court to increase the amount of child support payable by Agnew. The case was heard by the Chancellor on February 20, 2008, and an Order was entered increasing the child support payable by Agnew to $98.90 per week, plus $11.54 for extraordinary expenses for transportation in connection with the medical care of the minor child (R. 3; R. E. 2.) This Order continued the case to April 18, 2008 for a further review of the amount of child support payable by Agnew (R. 5; R. E. 4.)

On April 18, 2008 the case was heard again by the Chancellor, at which time an Order was entered increasing the child support payable by Agnew to Grove to the sum of $210.00 every bi-weekly pay period, plus $24.92 every bi-weekly pay period for extraordinary expenses for transportation in connection with the medical care of the minor child (R. 8; R. E. 7.) This Order was entered on May 15, 2008.

On May 27, 2008 Grove filed a Motion To Alter Or Amend Judgment, Or, In the Alternative, For New Trial, Or, In The Alternative, For Correction Under Rule 60(b) (R. 11; R. E. 10), asking the Chancellor to review his method of calculation of the child support pursuant to the child support guidelines set out in § 43-19-101, Mississippi Code of 1972, as amended.

On June 5, 2008 the Chancellor entered an Order Denying Plaintiff's Motion To Alter Or Amend Judgment, Or, In the Alternative, For New Trial, Or, In The Alternative, For Correction Under Rule 60(b) (R. 15; R. E. 14.)

On June 27, 2008 Appellant Grove filed her Notice Of Appeal. It is from the Order Denying Plaintiff's Motion To Alter Or Amend Judgment, Or, In the Alternative, For New Trial, Or, In The Alternative, For Correction Under Rule 60(b) that Appellant Grove has filed this appeal

(C) STATEMENT OF FACTS RELEVANT TO THE ISSUE PRESENTED FOR REVIEW.

(1) Grove and Agnew are the parents of a minor child. On April 19, 2000 an Agreed Order was entered by the lower Court requiring Agnew to pay child support to Grove in the amount of $75.00 per week.

(2) On November 30, 2007 Grove filed a Complaint For Modification of the previous Court Order, requesting the Court to order Agnew to increase the amount of child support.

(3) The case was tried before the Chancellor on February 20, 2008 and the Chancellor, determined a material change in circumstances to have occurred, and ordered Agnew to increase his child support payments to Grove to the sum of $98.90 per week, plus $11.54 per week for transportation in connection with the medical care of the minor child. The Chancellor continued the case for further hearing on April 18, 2008 for further review of the amount of child support to be paid by Agnew R. 3; R. E. 2.)

(4) The case was heard again on April 18, 2008, at which time the Chancellor ordered Agnew to increase the amount of his child support payments to Grove to the amount of $210.22 bi-weekly, plus $24.92 bi-weekly for transportation expenses in connection with the medical care of the minor child (R. 8; R. E. 7.)

(5) At the time of the hearing on April 18, 2008 the Chancellor stated in his Opinion from the Bench that the child support was calculated by taking Agnew's adjusted gross bi-weekly income and multiplying that by 20%. The Chancellor based his 20% calculation on combining the child living Agnew and the child of Grove and Agnew, for a total of two children. He then divided this amount by two, 10% for each child (T. 3, 5; R. E. 18, 20.)

(6) Grove filed a Motion to alter or amend this Judgment, or for alternative relief, (R. 11; R. E. 10), asking the Chancellor to review the method of child support calculation pursuant to the guidelines set out in § 43-19-101, Mississippi Code of 1972, as amended. The Chancellor then entered an Order denying Plaintiff's Motion to alter or amend the Judgment, or for alternative relief, finding that the method of calculation of child support was a matter of discretion with regard to adjustment for the needs of the minor child of Agnew living in his home, citing § 43-19-103, Mississippi Code of 1972, as amended, as well as § 43-19-101 (R. 15; R. E. 14.)

III. SUMMARY OF APPELLANT'S ARGUMENT

WHETHER THE CHANCELLOR ERRED IN HIS METHOD OF CHILD SUPPORT CALCULATION PURSUANT TO THE CHILD SUPPORT GUIDELINES SET OUT IN § 43-19-101, MISSISSIPPI CODE OF 1972, AS AMENDED.

The standard of review in a case such as the case at bar is that the findings of fact made by a Chancellor will not be disturbed if these findings are supported by substantial evidence, or unless the Chancellor's findings were manifestly wrong, clearly erroneous or an erroneous legal standard was applied. In this case, the Chancellor's findings were manifestly wrong, clearly erroneous and he applied an erroneous legal standard in applying § 43-19-101, Mississippi Code of 1972, as amended.

The "child support award guidelines" statute, § 43-19-101, Mississippi Code of 1972, as amended, provides that there is a rebuttable presumption that one child shall be awarded 14% of the obligor's adjusted gross income, unless the Court makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate. The chancellor made no such finding in this case. Also, the Chancellor made no finding that the percentage award contained in the guidelines statute had been rebutted.

The statute then provides that legally mandated deductions shall be subtracted from the obligor's gross income and also, if the absent parent (Agnew) 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. The Chancellor did not do this in the case at bar. He did not subtract "an amount he deemed appropriate" to account for the child living with Agnew. Rather, he took Agnew's adjusted gross income, computed 20% of this adjusted gross income and

then divided this net sum by two, 10% for the child of Grove and Agnew and 10% for the child living in Agnew's home. This is simply not the method of calculation mandated by the statute. To comply with the statute the Chancellor should have deducted an amount that he deemed appropriate to account for the needs of the child living with Agnew and then have awarded 14% of the net remaining sum for the support of the child of Grove and Agnew.

In his Order Denying Plaintiff's Motion To Alter Or Amend Judgment, Or, In the Alternative, For New Trial, Or, In The Alternative, For Correction Under Rule 60(b), dated June 3, 2008, the Chancellor stated that he considered not only § 43-19-101, Mississippi Code of 1972, as amended, but also § 43-19-103. Any consideration by the Chancellor of § 43-19-103 was erroneous, because this statute addresses the criteria for overcoming the presumption that the guidelines are appropriate. The Chancellor in his Bench opinion determined that the guidelines "were reasonable" in this case.

IV. APPELLANT'S ARGUMENT

ISSUE 1: WHETHER THE CHANCELLOR ERRED IN HIS METHOD OF CHILD SUPPORT CALCULATION PURSUANT TO THE CHILD SUPPORT GUIDELINES SET OUT IN § 43-19-101, MISSISSIPPI CODE OF 1972, AS AMENDED.

The standard of review in a case such as the case *sub judice* is that the findings of fact made by a Chancellor will not be disturbed if these findings are supported by substantial evidence, or unless the Chancellor's findings were manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Turpin v. Turpin,* 699 So.2d 560, 564 (Miss. 1997); *Bustin v. Bustin,* 806 So.2d 1136; 1138 (Miss. App. 2001.) In this case, in applying the "child

support award guidelines" statute, § 43-19-101, Mississippi Code of 1972, as amended, the Chancellor's findings were manifestly wrong, clearly erroneous and an erroneous legal standard was applied. The Chancellor did not correctly apply the sequential steps set out in this statute.

The "child support award guidelines" statute, § 43-19-101, Mississippi Code of 1972, as amended, provides that there is a rebuttable presumption that one child shall be awarded 14% of the obligor's adjusted income unless the Court "makes a written finding or a specific finding on the record that the application of the guidelines would be unjust or inappropriate." The Chancellor made no such finding in this case. The Chancellor in his Bench Opinion, when the question was raised as to the application of the guidelines, made a determination that "the guidelines are reasonable" (T. 5; R. E. 20.) Further, the Chancellor made no finding that the presumption contained in § 43-19-101 had been rebutted.

§ 43-19-101 provides that legally mandated deductions shall be subtracted from the obligor's gross income and also, if the absent parent (Agnew) is also a 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. This is the sequential point at which the Court may exercise its discretion. This is not what the Chancellor did in this case. He did not subtract "an amount he deemed appropriate" to account for the child living with Agnew. Instead, he took Agnew's adjusted gross income, computed 20% of this adjusted gross income and then divided this net sum by two; 10% for the child of Grove and Agnew and 10% for the child living in Agnew's home (T. 3, 5; R. E. 18, 20.) This is simply not the method of calculation mandated by the statute. The Court may not at this sequential point exercise its discretion.

In the case of *Lee v. Stewart ex rel. Summerville*, 724 So.2d 1093; 1096 (Miss. App. 1998), the Supreme Court held that the Chancery Court's Order that the obligor pay $214.00 per month in child support was not supported by sufficient evidence of his monthly earnings. The Court ruled that the Chancellor erred by not strictly following § 43-19-101 in calculating the obligor's child support obligation. In the case of *Bustin v. Bustin,* 806 So.2d 1136; 1139 (Miss. App. 2001), the Supreme Court quoted verbatim § 43-19-101(3) in emphasizing that this statute is to be strictly interpreted and applied by the trial Court in calculating a child support obligation.

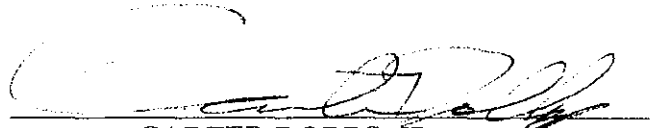
In order to comply with the statute, the Chancellor should have deducted an amount that he deemed appropriate to account for the child living with Agnew and then awarded 14% of the net sum remaining for the support of the child of Grove and Agnew. Although not legally required by statute, the method most frequently applied by Chancellors, in the experience of the undersigned attorney, is that 14% of the adjusted gross income is deducted from the obligor's adjusted gross income for one child living in the obligor's home, and the remaining net sum is then multiplied by 14% for the support of the child in question. In the case at bar the Chancellor did not deduct "an appropriate amount," but rather divided 20% of the adjusted gross income by two, 10% for each child (T. 3, 5; R. E. 18, 20.) This is not the method mandated by the statute.

Finally, in his Order Denying Plaintiff's Motion To Alter Or Amend Judgment, Or, In the Alternative, For New Trial, Or, In The Alternative, For Correction Under Rule 60(b), dated June 3, 2008, the Chancellor stated that he considered not only § 43-19-101, Mississippi Code of 1972, as amended, but also § 43-19-103. Any consideration by the Chancellor given to § 43-19-103 was clearly erroneous. As set out above, the Chancellor in his Bench Opinion determined that the guidelines were appropriate (T. 5; R. E. 20.)

V. CONCLUSION

For the reasons set out above, this Court should render a decision reversing the decision of the Chancellor as to the amount of child support payable by Agnew to Grove, and remanding the case to the lower Court for a determination as to the proper amount of child support in this case.

Respectfully submitted,



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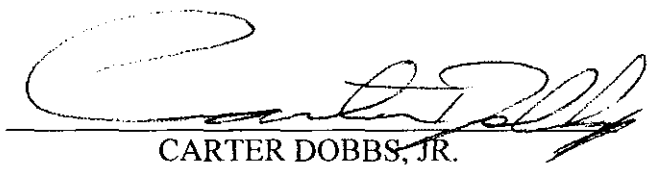
CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellant, do hereby certify that I have, on this the 26 day of November, 2008, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellant's Brief to Honorable John A. Hatcher, Jr., Chancellor, at his usual mailing address of Post Office Box 118, Booneville, Mississippi 38829 and to the Appellee, Charley Guy Agnew, at his mailing address of Post Office Box 452, Booneville, Mississippi 38829.



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