

SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 20080-TS-01454

DORIS A. ANDRES

APPELLANT

VERSUS

PATRICK T. ANDRES

APPELLEE

APPEAL FROM THE CHANCERY COURT  
FIRST JUDICIAL DISTRICT  
HARRISON COUNTY, MISSISSIPPI

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BRIEF IN REPLY TO BRIEF OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

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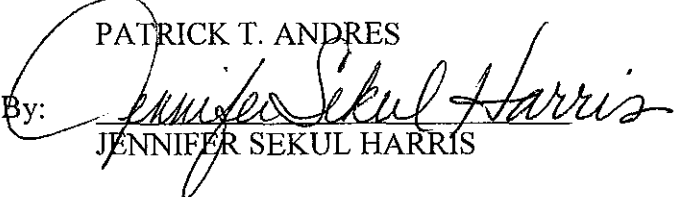
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that all listed persons have an interest in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Doris A. Andres	Appellant
William W. Dreher, Jr.	Attorney for Appellant
Patrick T. Andres	Appellee
Jennifer Sekul Harris	Attorney for Appellee
Honorable James Perons	Chancellor, Harrison County Chancery Court

RESPECTFULLY SUBMITTED this the 19<sup>th</sup> day of February, 2009.

PATRICK T. ANDRES  
By:   
JENNIFER SEKUL HARRIS

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## STATEMENT OF THE ISSUES

- I. THAT THE COURT DID NOT COMMIT MANIFEST ERROR IN RETROACTIVELY MODIFYING CHILD SUPPORT OWED BY PATRICK T. ANDRES
- II. THAT THE COURT DID NOT ABUSE ITS DISCRETION OR COMMIT MANIFEST ERROR IN GRANTING PATRICK CREDIT FOR CHILD SUPPORT PAYMENTS PAID TO HIS FORMER SISTER IN LAW WHILE THE CHILD WAS RESIDING IN GEORGIA
- III. THE COURT DID NOT ERR IN IGNORING THE DOCTRINE OF UNCLEAN HANDS

## STATEMENT OF THE CASE

DORIS A. ANDRES (Doris) and PATRICK T. ANDRES (Patrick) were married, and subsequently divorced by this Honorable Court on or about May 23, 1997 on the grounds of irreconcilable differences. Patrick adopted the oldest child of Doris during the marriage, A. J. Andres, and they subsequently had a daughter, Alise Andres. Doris was awarded paramount physical custody of the children, and Patrick was granted visitation. Patrick was further ordered to pay child support in the amount of Four Hundred Dollars (\$400.00) per month. The parties were before the Chancery Court in 2003 due to allegations of contempt filed by Doris, and a counterclaim filed by Patrick as Doris refused to abide by the terms of the Final Judgment of Divorce in making the house payments. The Court also increased Patrick's child support to Five Hundred Four Dollars and no cents (\$504.00) at the same time. The Court found that the equity from the former marital residence should go all to Patrick due to his having made all payments on the house to stop foreclosure. This has caused much discontent and discord between these parties.

In June, 2006, Patrick filed a Complaint for Determination of Emancipation of Minor Child, and for Reduction of Child Support Payments. Patrick was seeking to have A.J. declared emancipated as A.J. had joined the military in 2004, or in the alternative, due to him having turned twenty one (21) on June 23, 2005, and seeking to reduce his child support payments to fourteen percent (14%) of his adjusted gross wages. During Hurricane Katrina, the home of Doris and Alise was destroyed, and Patrick did not receive a change of address for Doris. Alise lived with Doris' sister in Georgia for the majority of the 2005-2006 school year. Patrick claimed that he attempted to locate Doris at the FEMA trailer parks but was never able to locate her, and

Doris refused to give Patrick an address. In June, 2006 Patrick he paid one half of the child support payments, and thereafter stopped paying child support, and in January, 2007, Doris filed her Complaint for Contempt and Modification against Patrick for non payment of child support, non payment of medical bills, an insurance policy which can be used in the State of Mississippi, and an increase in child support. On October 25, 2007, Patrick filed his Answer and his Counterclaim for reduction of child support and contempt against Doris.

The hearing date was continued from March 12, 2007 to June 11, 2007, then from June 11, 2007 to September 24, 2007, and then from September 24, 2007 to November 1, 2007. The November 1, 2007 hearing date was continued until January 28, 2008. During this period, Patrick attempted to have temporary hearing in order to temporarily reduce his child support, however, the matter was not heard until the final trial date on January 28, 2008.

On January 28, 2008, the Chancery Court of Harrison County, First Judicial District, conducted a hearing at the Biloxi Courthouse on this matter. Patrick, Doris and Alise Andres testified before the Honorable Chancellor James Persons. The Court rendered its judgment on that date, and an order was eventually entered on May 23, 2008 modifying the prior orders of the Court. A wage withholding order was entered on August 14, 2008.

In the Judgment, the Chancellor found that A.J. Andres was emancipated as of the date of his twenty first birthday, regardless of the fact that at the age of 19, A.J. Andres had joined the National Guard. A.J. entered the guard at that time, attended basic training, and was released due to a medical injury. The Chancellor based Patrick's child supports from June 2005 until June 2006 on fourteen percent (14%) of his adjusted gross income as evidenced in 2003 at the prior hearing. From June 2006 until July 2007, when no child support payments were made, the

Chancellor held Patrick accountable to the full five hundred four dollars and no cents (\$504.00) when calculating his arrearage. Further as of August, 2007, the Court also reduced Patrick's child support to fourteen percent (14%) of his current adjusted gross income and carried that forward from August, 2007 until January, 2008, giving Patrick credit for sums paid over that figure through the Department of Human Services. The Court in its judgment did not give Patrick credit for the gift to Alise.



### STATEMENT OF THE FACTS

Doris and Patrick were divorced by the First Judicial District of Harrison County, Chancery Court, on May 23, 1997. (R.E. 3) Doris was awarded paramount physical custody of the minor children of the marriage, A. J. and Alise Andres, with Patrick ordered to pay child support. (R.E. 3) The Order was modified June 11, 2003 (R.E. 4). A subsequent Judgment was entered November 25, 2003. (R.E. 5)

In 2004, A.J. Andres joined the National Guard on a part time basis, and on June 23, 2005, A.J. turned twenty one years of age. (Tr. 53, 78). Patrick's child support at that time was based upon twenty percent of his adjusted gross income for two children. (R.E. 4). On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast, and Doris and Alise went to Georgia to stay with Doris' sister. (Tr. 25, 26) Alise lived in Georgia for seven months after Hurricane Katrina without her mother. (Tr. 25) Doris returned to Mississippi by herself and was living in a FEMA trailer park. (Tr. 27) When Alise returned home, she and Doris moved in with A.J. at his home. (Tr. 28). While Alise was in Georgia without her mother, Patrick was sending his child support payments to Doris' sister. (Tr. 33, 53).

When Alise returned to Mississippi, Patrick made two and one half payments on his child support to Doris, and stopped making payments in June, 2006. (Tr. 34, Ex. 3) From July 2006 until September 2007, Patrick did not pay any child support (Tr. 58, 79, Ex. 3). From October 2007 through January, 2008, Patrick's wages were garnished through the Department of Human Services, and he paid all support with the exception of Fifteen Dollars (\$15.00). (R.E. 9)

In July 2007, Patrick sent Alise a check for \$400.00 while she was in Texas visiting another aunt. (Tr. 48) The Court did not give Patrick any credit for said payment in its Judgment.

(Tr. 86, 87, R.E. 9) After hearing all testimony, the Court retroactively reduced Patrick's child support payments for only a period of time – from June 2005 until July 2006, then from August 2007 until January, 2008. The period of time in which Patrick did not pay child support was not reduced, and as such, is the source of the child support arrearage. (Tr. 79, 80, R.E.9) Doris stipulated to the current child support amount of \$424.00, and Patrick has been paying that amount. (Tr. 87, R.E. 9)

### SUMMARY OF THE ARGUMENT

On January 28, 2008, the Chancery Court of Harrison County, Mississippi held a hearing in which Patrick T. Andres was found to have a child support arrearage. After hearing all testimony and reviewing the evidence presented, the Chancellor adjusted child support retroactively based upon the oldest child being emancipated in June, 2005. The Chancellor, however, did not reduce all months of child support, and held Patrick to the full amount of child support for the months that he did not pay the support. After the judgment was rendered for child support arrearage, the Chancellor reduced Patrick's current support as Patrick's hands were then "clean".

By his ruling, the Chancellor did not commit manifest error, nor did he abuse his discretion since Chancellors have much discretion in these matters. Patrick submits that the Chancellor's decision should be affirmed.

## ARGUMENT

### I. THAT THE COURT DID NOT COMMIT MANIFEST ERROR IN RETROACTIVELY MODIFYING CHILD SUPPORT OWED BY PATRICK T. ANDRES

#### Standard of Review

This Court has previously and frequently held without diversion that the “scope of review in domestic relations matters is limited under the familiar rule that this Court will not disturb a chancellor's findings unless manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard.” *Thrift v. Thrift*, 760 So.2d 732, 735 (Miss. 2000) citing *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss.1994) (citing *McEwen v. McEwen*, 631 So.2d 821, 823 (Miss.1994)).

Doris argues that the Chancellor committed manifest error and/or abused his discretion when he retroactively reduced Patrick’s child support payments from the date of A.J.’s emancipation until July 2006, and from August 2007 to January 2008 when calculating arrearages and credits. Further that the child support, once due and owing, cannot be modified by the Court. *Cunliffe v. Swartzfager*, 437 So.2d 43 (Miss. 1983). However, child support payments are only vested when they are due as a matter of law. When the Court determined that A.J. was emancipated as of June 23, 2005, those child support payments were not due as a matter of law at the higher amount. This Court has granted the Chancellor “discretion to grant an obligor parent a credit for child support payments which were made on behalf of a child subsequent to that child’s emancipation.” *Caldwell v. Caldwell*, 823 So.2d 1216, 1221, (quoting *Department of Human Servs, State of Mississippi v. Fillingane*, 761 So.2d 869, 872 (Miss. 2000)). No support was owed to Doris for A.J. after June 23, 2005, and the Chancellor did not abuse his discretion or commit manifest error by allowing the credit during the time of overpayment from June 2005

until July 2006, and August 2007 until January, 2008. For the periods of time that Patrick did not pay child support, the Chancellor did not give him any reduction in child support which resulted in the arrearage of \$4,154.67. In January, 2008, the Court ordered Patrick's child support to be reduced to fourteen percent of his adjusted gross income, and same was stipulated by Appellant's counsel to be the sum of \$424.00 per month. Doris cannot now say that she and her counsel stipulated to the reduce amount, but that Patrick is obligated to pay more support until a "proper order is entered".

Doris further argues that Patrick did nothing to assert his rights. However, she conveniently overlooks the Complaint for Determination of Emancipation and Modification filed in 2006 by Patrick, when Doris would not give him a physical address. Patrick attempted in 2006 to reduce his payments, but due to the upheaval after Hurricane Katrina, and the fact that Patrick lives in Ohio, he could not serve Doris without having a physical address. Further, the delay in getting before the Court after four hearing dates were reset in the space of ten months due to the Court docket should not be counted against Patrick. Patrick respectfully submits that the Chancellor did not abuse his discretion or commit manifest error.

II. THAT THE COURT DID NOT ABUSE ITS DISCRETION OR COMMIT MANIFEST ERROR IN GRANTING PATRICK CREDIT FOR CHILD SUPPORT PAYMENTS PAID TO HIS FORMER SISTER IN LAW WHILE THE CHILD WAS RESIDING IN GEORGIA

Doris argues that Patrick modified the orders of the Chancery Court by sending his child support payments to her sister in Georgia where his daughter was living, and therefore he should not be given credit for those payments. Doris conveniently overlooks the fact that the child was living in Georgia without Doris. Child support payments are for the benefit of the child, not the

custodial parent. *Strack v. Stricklin*, 959 So.2d 1, 6 (Miss.Ct.App. 2006) (citing *Brown v. Brown*, 822 So.2d 1119 (Miss.Ct.App. 2002)). Therefore, the Chancellor did not abuse his discretion or commit manifest error when he gave credit to Patrick for seven months of child support made to the temporary custodian of his child while Alise was living in the State of Georgia with family after Hurricane Katrina.

Further, pursuant to the transcript and the record, the Chancellor did not give any credit to Patrick for the \$400.00 check sent to Alise while she was in Texas in 2007, so Doris' argument that the Chancellor committed manifest error, or abused his discretion is without merit.

### III. THE COURT DID NOT ERR IN IGNORING THE DOCTRINE OF UNCLEAN HANDS

Doris argues that the Chancellor erred in ignoring the "clean hands" doctrine in awarding Patrick any relief whatsoever. However, Doris ignores the line of cases which allows the modification after a judgment for arrearages has been determined as the judgment cleanses one's hands.

In *Howard v. Howard*, 968 So.2d 961, 976 (Miss.Ct.App. 2007) the Court of Appeals held that the Court's adjudication of total arrearage effectively cleansed Martin Howard's hands and revived the issue of modification in line with *Lane v. Lane*, 850 So.2d 122 (Miss.Ct.App. 2002) and *Brennan v. Brennan*, 605 So.2d 749 (Miss. 1992). In the case in question, the Chancellor adjudicated the arrearage and credits for child support payments for Patrick at the hearing on January 28, 2008, and he correctly ignored the "clean hands" doctrine since the judgment of arrearage cleansed Patrick's hands and revived the issue of modification of child support based upon the emancipation of the eldest child of the parties.

Patrick respectfully submits that the Chancellor did not commit reversible error in granting the child support modification after determination of child support arrearages.

CONCLUSION

Patrick T. Andres respectfully submits to this Court that the Chancellor was within its discretion in granting the retroactive reduction in child support at the time the eldest child was emancipated, in giving credits to Patrick for payments made for the benefit of the minor child while the child lived in Georgia with her Aunt after Hurricane Katrina, and in reducing child support after the determination of arrearage. The Chancellor was within his sound discretion in his ruling, and Patrick submits that the Chancellor's ruling should be affirmed.

RESPECTFULLY SUBMITTED, this the 19<sup>th</sup> day of February, 2009.

PATRICK T. ANDRES

By:   
JENNIFER SEKUL HARRIS  
FOR APPELLEE

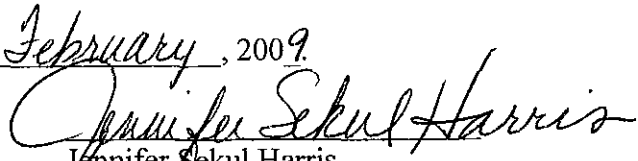
CERTIFICATE OF SERVICE

I, Jennifer Sekul Harris, do hereby certify that I have this date, mailed a true and correct copy, postage prepaid, first class mail, the above and foregoing document to the following:

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Honorable James Persons  
Chancellor, Harrison County, Mississippi  
Post Office Box 467  
Gulfport, MS 39502

So certified, this the 19 day of February, 2009.

  
Jennifer Sekul Harris  
Attorney for the Appellee