

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY WILLIAMS PATTERSON

APPELLANT

VS.

NO.: 2008-CP-01692

TARA PATTERSON

APPELLEE

BRIEF OF THE APPELLEE

**Nancy M. Maddox, [REDACTED]
9356 Goodman Rd., Ste. 109
P.O. Box 1249
Olive Branch, MS 38654
662-890-6400
Attorney for Appellee**

Oral Argument Not Requested

CERTIFICATE OF INTERESTED PERSONS

No. 2008-CP-01692

Gregory Williams Patterson v. Tara Patterson

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.

Gregory Williams Patterson (Appellant)
Tara Patterson (Appellee)

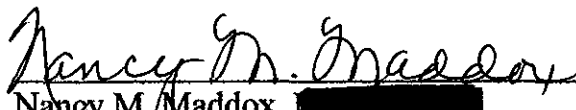

Nancy M. Maddox, [REDACTED]
Attorney of Record for Appellee

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STATEMENT OF THE CASE

This case arises from a Petition for Contempt filed against Appellant Gregory Williams Patterson by his former wife, Appellee Tara Patterson, because Mr. Patterson failed to comply with the terms of the Final Decree of Divorce between the parties.

The parties have one child, Matthew. At the time of their divorce, the parties lived in the State of New Hampshire. They were divorced in that state on November 18, 2004. The primary custody of the minor child was awarded to Ms. Patterson in the Final Decree of Divorce. CR at 11.¹

Subsequent to the divorce, Ms. Patterson moved to Desoto County, Mississippi, with the parties' minor child and remarried. On July 11, 2006, Ms. Patterson filed a Petition to Enroll Foreign Decree and for Full Faith and Credit with the Desoto County Chancery Court. CR at 3. Mr. Patterson was personally served with a Rule 81D Summons, and noticed to appear before the Desoto County Chancery Court on August 22, 2006. CR at 28-30. On August 22, 2006, Mr. Patterson did not appear before the Desoto County Chancery Court. An Agreed Order was entered that day enrolling the New Hampshire divorce decree and giving that decree full faith and credit. CR at 31-32.

On June 16, 2008, almost two years since the New Hampshire divorce decree was

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As stated in Appellee's Motion to Dismiss in this case, counsel for Appellee was never served with Appellant's mandatory Record Excerpts. Therefore, citations in this Brief will be to the record on appeal. Citations to the Desoto County Chancery Clerk's Record will be designated "CR" with the appropriate numbered page. Citations to the hearing transcript in the Chancery Court will be designated "TR" with the appropriate numbered page.

enrolled in Mississippi, Ms. Patterson filed a Petition for Contempt, alleging that Mr. Patterson had obstinately and wilfully failed to abide by certain terms of the divorce decree. CR at 33-36. Mr. Patterson was again personally served with a Rule 81D Summons, and noticed to appear before the Chancery Court of Desoto County on June 30, 2008. CR at 37-38.

On June 24, 2008, Mr. Patterson filed an Answer to the Petition for Contempt. CR at 39-42. In addition, Mr. Patterson filed a "Motion for Continuance and Discovery" and a Motion for Dismissal and Summary Judgment. CR at 43-82. The Chancery Court granted Mr. Patterson's Motion for Continuance, and the matter was continued until August 18, 2008. CR at 83.

On August 18, 2008, the case was called before the Desoto County Chancery Court. Mr. Patterson appeared, and the Court heard Mr. Patterson's various motions. *See TR passim*. The Court denied Mr. Patterson's Motion for Dismissal and Summary Judgment and held that the Chancery Court has jurisdiction of this case. TR at 23-26; CR at 84. The Court granted Mr. Patterson's second motion for a continuance, and ruled that the matter would be heard in its entirety on September 29, 2008. TR at 25-26; CR at 84. The Court further explained to Mr. Patterson that a motion for discovery was unnecessary, and explained the procedure for filing discovery to him. TR at 26-28.

Mr. Patterson filed no discovery requests.

On September 29, 2008, the case was called before the Desoto County Chancery Court. TR at 29. Mr. Patterson did not appear. TR at 29. The Court proceeded with an

ex parte hearing on the issues presented in the Petition for Contempt. TR at 29. On September 30, 2008, a Final Order on Petition for Contempt was entered by the Court, holding Mr. Patterson in contempt on certain issues and ordering him to pay certain amounts pursuant to the Final Decree of Divorce. CR at 85-86..

Mr. Patterson appeals that Final Order.

SUMMARY OF THE ARGUMENT

The Honorable Chancellor, Vickie B. Cobb, in the Chancery Court of Desoto County, Mississippi, was correct in holding that the Chancery Court of Desoto County had both personal jurisdiction and subject matter jurisdiction in this case, and in holding Mr. Patterson in contempt of the parties' divorce decree.

Mr. Patterson argues that the Chancery Court could not modify the divorce decree in this case because the Chancery Court lacked subject matter jurisdiction. *See* Brief of Appellant at p. 8. Mr. Patterson does not argue that the Chancery Court lacked personal jurisdiction over the parties. Mr. Patterson appeared personally appeared before the Court, and the Court entertained various motions filed by Mr. Patterson.

The Chancery Court had subject matter jurisdiction over this case by virtue of the Chancery Court's enrollment of the foreign decree of divorce in August 2006. CR at 31-32. Mr. Patterson did not contest the enrollment, although he was personally served with process when the decree was enrolled. CR at 28-30. The Order enrolling the New Hampshire divorce decree in Mississippi specifically states that the decree shall be given full faith and credit by the Mississippi courts. CR at 31-32.

Only after being personally served with a Petition for Contempt almost two years later did Mr. Patterson raise any jurisdictional issue. The Desoto County Chancery Court properly found that the Court had jurisdiction in this matter due to the previous enrollment of the divorce decree in 2006.

Having found that the Chancery Court indeed had jurisdiction in this matter, the

Court properly found that Mr. Patterson was in contempt of the divorce decree due to his failure to pay certain amounts owed to Ms. Patterson under the decree. CR at 85-86. Nowhere does Mr. Patterson argue that he did in fact make the payments, nor could Mr. Patterson make such an untrue argument. Instead, Mr. Patterson now argues that because he believes Ms. Patterson to have “unclean hands” that the Chancery Court could not hold him in contempt for his wilful failure to pay Ms. Patterson the ordered amounts.

However, Mr. Patterson chose not to appear for the scheduled hearing on the contempt, in spite of the Chancery Court’s clear order that the matter would be heard in its entirety on September 29, 2008. CR at 83; TR at 29. After having been personally served with a proper Rule 81D Summons in this contempt action to appear before the Court on June 30, 2008, Mr. Patterson requested and was granted a continuance until August 18, 2008. CR at 81-82; 83. On August 18, 2008, Mr. Patterson appeared before the Chancery Court of Desoto County, argued several motions, and again requested a continuance. *See TR passim*. Again, his request for a continuance was granted. An Order was entered continuing the hearing until September 29, 2008, some six weeks later. CR at 84.

On September 29, 2008, Mr. Patterson failed to appear before the Chancery Court. TR at 29. A hearing was held *ex parte* in his absence. TR at 29. The record below reflects no motion for continuance or any effort on Mr. Patterson’s part to explain his absence from the hearing. Mr. Patterson cannot now complain that a ruling was entered against him when he failed to appear and defend himself before the Court.

Mr. Patterson's argument that the Court lacked any evidence supporting a finding of contempt must fail since Mr. Patterson failed to put on any evidence to the contrary.

The Chancellor's rulings must be affirmed in all respects.

ARGUMENT

I. THE CHANCELLOR PROPERLY HELD THAT THE CHANCERY COURT HAS JURISDICTION IN THIS CASE

This Court reviews jurisdictional issues *de novo*. *McDaniel v. Ritter*, 556 So.2d 303, 308 (Miss. 1989) (*quoting MISS CAL 204, Ltd. v. Upchurch*, 465 So.2d 326, 330 (Miss. 1985)).

Clearly, the Honorable Chancellor was correct in holding that the Chancery Court of Desoto County, Mississippi, had jurisdiction in this contempt action.

After the parties' divorce in the State of New Hampshire in 2004, Appellee Ms. Patterson subsequently moved to Desoto County, Mississippi, and remarried. Ms. Patterson had been awarded primary custody of the parties' one child under the terms of the New Hampshire divorce decree. CR at 11.

On July 11, 2006, Ms. Patterson filed a Petition to Enroll Foreign Decree and for Full Faith and Credit with the Desoto County Chancery Court. CR at 3-37. Appellant Mr. Patterson was personally served with a Rule 81D Summons, and noticed to appear before the Desoto County Chancery Court on August 22, 2006. CR at 28-30. On August 22, 2006, Mr. Patterson did not appear as noticed before the Desoto County Chancery Court. An Order was entered that day enrolling the New Hampshire divorce decree and giving that decree full faith and credit by the Mississippi court. CR at 31-32.

On June 16, 2008, almost two years since the New Hampshire divorce decree was enrolled in Mississippi, Ms. Patterson filed a Petition for Contempt, alleging that Mr.

Patterson had obstinately and wilfully failed to abide by certain terms of the divorce decree. CR at 33-36. Mr. Patterson was again personally served with a Rule 81D Summons, and noticed to appear before the Chancery Court of Desoto County on June 30, 2008. CR at 37-38.

On June 24, 2008, Mr. Patterson filed an Answer to the Petition for Contempt. CR at 39-42. In addition, Mr. Patterson filed a “Motion for Continuance and Discovery” and a Motion for Dismissal and Summary Judgment. CR at 43-82. The Chancery Court granted Mr. Patterson’s Motion for Continuance, and the matter was continued until August 18, 2008. CR at 83.

On August 18, 2008, the case was called before the Desoto County Chancery Court. Mr. Patterson appeared, and the Court heard Mr. Patterson’s various motions. *See TR passim.*

Although Mr. Patterson persists, throughout the Brief of Appellant, in calling this short hearing a “trial,” a simple reading of the transcript clearly shows that this was a twenty-minute hearing on motions, not a “trial.” TR at 15. No witnesses were called, and the Chancellor heard only the arguments of counsel. Ms. Patterson did not testify. Mr. Patterson repeatedly refers to Ms. Maddox’s testimony” in his brief. Ms. Maddox is counsel for Ms. Patterson, and of course did not testify to anything.

The Court denied Mr. Patterson’s Motion for Dismissal and Summary Judgment and held that the Chancery Court has jurisdiction of this case. TR. at 23-26; CR at 84. The Court granted Mr. Patterson’s second motion for a continuance, and ruled that the

matter would be heard in its entirety on September 29, 2008. TR at 25-26; CR at 84. The Court further explained to Mr. Patterson that a motion for discovery was unnecessary, and explained the procedure for filing discovery to him. TR at 26-28.

On September 29, 2008, the case was called for hearing as ordered before the Desoto County Chancery Court. TR at 29. Mr. Patterson did not appear. TR at 29. The Court proceeded with an ex parte hearing on the issues presented in the Petition for Contempt. TR at 29. On September 30, 2008, a Final Order on Petition for Contempt was entered by the Court, holding Mr. Patterson in contempt on certain issues and ordering him to pay certain amounts pursuant to the Final Decree of Divorce. CR at 85-86.

There is no question, and indeed Mr. Patterson does not argue, that the New Hampshire divorce decree was not properly enrolled in Mississippi. Pursuant to the United States Constitution, Mississippi must give full faith and credit to all final judgments of other states and federal courts unless the judgment was obtained as a result of some false representation or the rendering court did not have jurisdiction. *Schwartz v. Hynum*, 933 So.2d 1039, 1042 (Miss. 2006). A challenge on either of these grounds must be timely made. *Id.*

Mr. Patterson does not challenge the New Hampshire divorce decree on either of these grounds, nor could he at this juncture. Instead, he argued in the hearing before the Chancery Court that the Desoto County Chancery Court has no subject matter jurisdiction to hear a contempt action because there was an adequate remedy at law, as in a contract

action. TR at 7-8. This argument ignores Mississippi law that contempt actions based on a violation of the terms of a divorce decree are heard by the Chancery Courts.

Miss.R.Civ.P. 81; TR at 23-26. He further argued that New Hampshire was the proper venue for this contempt matter. TR at 14.

Mr. Patterson never argued in 2006 that the New Hampshire divorce decree was improperly enrolled, or should not be enrolled in Mississippi. As in the instant case, he was personally served with the enrollment and aware that the New Hampshire decree was being enrolled in Mississippi. He offered no objection to its enrollment.

For the *first* time in his brief, Mr. Patterson argues that the the Uniform Interstate Family Support Act (“UIFSA”) precludes jurisdiction of the Chancery Court. *See* Brief of Appellant at 12-16. This issue was never raised in the Chancery Court, and cannot be raised for the first time on appeal. *Albert v. Allied Glove Corp.*, 944 So.2d 1, 7 (¶ 21) (Miss. 2006) (citing *Purvis v. Barnes*, 791 So 2d 199, 202 (¶ 7) (Miss. 2001)). This issue has no merit and should be discounted by the Court.

Even had the issue of UIFSA been raised, it is of no import in this case. Ms. Patterson did not seek to modify **a child support order** under UIFSA. (Emphasis added). *See* Brief of Appellant at 12-13. Ms. Patterson’s Petition for Contempt was filed solely because of Mr. Patterson’s failure to pay to her certain sums owed under the divorce decree. CR at 33-36. The UIFSA does not apply in this case.

As this Court held in *Nelson v. Halley*, 827 So.2d 42, 48 (¶ 22) (Miss. Ct. App. 2002), “once both parents and the child have left the original state, the continuing,

exclusive jurisdiction of that state's tribunal may have terminated, but its order remains in effect and enforceable until it is modified by another tribunal with authority to do so."

McLean v. Kohnle, 940 So.2d 975 (¶ 17) (Miss. 2006). It is uncontradicted that neither of the parties now has any contact with the State of New Hampshire. Ms Patterson and the minor child both live in Desoto County, Mississippi, and Mr. Patterson now lives in California. To insist, as Mr. Patterson does, that New Hampshire retains jurisdiction now is without merit.

The Mississippi Chancery Court had both personal and subject matter jurisdiction over this contempt matter, and the Chancery Court properly held so. To hold otherwise would be to negate the full faith and credit extended to foreign judgments as conferred by the U.S. Constitution.

II. MR. PATTERSON FAILED TO APPEAR AT THE CONTEMPT HEARING; THE CHANCELLOR PROPERLY FOUND THAT MR. PATTERSON IS IN CONTEMPT OF THE DIVORCE DECREE

This Court's standard of review in domestic relations matters is limited. *Luse v. Luse*, 2007-CA-00171 (¶ 5) (Miss. Ct. App. 2008). This Court will not disturb a chancellor's ruling unless that ruling is manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard. *Id.* (citing *Jundooshing v. Jundooshing*, 826 So. 2d 85, 88 (¶ 10) (Miss. 2002)).

On June 16, 2008, Ms. Patterson filed a Petition for Contempt, alleging that Mr. Patterson had obstinately and wilfully failed to abide by certain terms of the divorce decree. CR at 33-36. Specifically, Ms. Patterson alleged that Mr. Patterson had wilfully

and obstinately failed to pay her a \$1000.00 per month "rent stipend"² as ordered in the Final Decree of Divorce, and that Mr. Patterson had wilfully and obstinately failed to provide medical insurance for their minor child, as ordered in the Final Decree of Divorce, and had failed to pay one-half of the minor child's medical bills. CR at 33-36. Mr. Patterson was personally served with a Rule 81D Summons, and noticed to appear before the Chancery Court of Desoto County on June 30, 2008. CR at 37-38.

On June 24, 2008, Mr. Patterson filed an Answer to the Petition for Contempt. CR at 39-42. In addition, Mr. Patterson filed a "Motion for Continuance and Discovery" and a Motion for Dismissal and Summary Judgment. CR at 43-82. The Chancery Court granted Mr. Patterson's Motion for Continuance, and the matter was continued until August 18, 2008. CR at 83.

On August 18, 2008, the case was called before the Desoto County Chancery Court. Mr. Patterson appeared, and the Court heard Mr. Patterson's various motions. *See* TR *passim*. The Court denied Mr. Patterson's Motion for Dismissal and Summary Judgment and held that the Chancery Court has jurisdiction of this case. TR at 23-26; CR at 84. The Court granted Mr. Patterson's second motion for a continuance, and ruled that the matter would be heard in its entirety on September 29, 2008. TR at 25-26; CR at 84. The Court further explained to Mr. Patterson that a motion for discovery was

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It is informative to note that the divorce decree specifically holds that Mr. Patterson is to pay Ms. Patterson the \$1000.00 per month rent stipend for a period of three years because Ms. Patterson received no interest in the proceeds from the sale of the marital homestead, and because Ms. Patterson believed that Mr. Patterson deliberately set fire to the marital residence. Mr. Patterson agreed to this provision. CR at 20.

unnecessary, and explained the procedure for filing discovery to him. TR at 26-28. Mr. Patterson did not argue that he had, in fact, paid the amounts owed under the divorce decree, nor does he now contend that the amounts were paid as ordered.

Mr. Patterson filed no discovery requests.

On September 29, 2008, the case was called before the Desoto County Chancery Court. TR at 29. Mr. Patterson did not appear. TR at 29. The Court proceeded with an ex parte hearing on the issues presented in the Petition for Contempt. TR at 29. On September 30, 2008, a Final Order on Petition for Contempt was entered by the Court, holding Mr. Patterson in contempt on certain issues and ordering him to pay certain amounts pursuant to the Final Decree of Divorce. CR at 85-86.

The Final Order found Mr. Patterson in contempt for his wilful failure to pay the monthly “rent stipend” to Ms. Patterson in the amount of \$18,000.00. CR at 85-86.

The Order did **not** find Mr. Patterson in contempt for his failure to provide medical insurance for the parties’ minor child or for his failure to pay one-half of all medical bills incurred on behalf of the minor child. Rather, the Court modified the divorce decree to provide that Ms. Patterson would henceforward provide medical insurance for the benefit of the minor child.³ In addition, the Court modified the divorce decree to reflect that Mr.

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Because Mr. Patterson lives in California, and the minor child lives in Mississippi, it would be problematic to have insurance issued in California, since Ms. Patterson would then necessarily have to use “out-of-network” medical providers for the child. Therefore, Ms. Patterson asked that Mr. Patterson be relieved of the obligation to provide insurance. The Court granted this request and modified the divorce decree to reflect that Mr. Patterson would henceforward be responsible for all out-of-pocket medical expenses incurred on behalf of the minor child. CR at 85-86.

Patterson would henceforward be responsible for all medical expenses incurred on behalf of the minor child which are not covered by insurance. CR at 85-86. The Court further heard proof that there was \$3800.00 total medical bills incurred on behalf of the minor child which were not covered by medical insurance. Pursuant to the divorce decree, the court ordered that Mr. Patterson pay one-half of these medical bills in the amount of \$1900.³ CR at 22; 85-86.

Finally, the Court awarded Ms. Patterson \$2600.00 as her reasonable attorney's fees and expenses in bringing the contempt action. CR at 85-86.

Mr. Patterson argues in his brief that The Chancery Court erred in finding him in contempt of the divorce decree because Ms. Patterson had "unclean hands," because his own conduct did not give rise to a finding of contempt, and because Ms. Patterson breached the terms of the divorce decree. *See* Brief of Appellant at 25.

All of these arguments cannot and should not be considered by this Court because **Mr. Patterson failed to appear for the scheduled hearing.** He offered no defense to the contempt action filed against him.

It is well-settled in Mississippi law that equity will not relieve one who is perfectly acquainted with his rights, yet fails to defend those rights. *Last Will & Testament of Winding v. Estate of Winding*, 783 So.2d 707, 711 (¶ 15) (Miss. 2001) (*quoting In re Estate of Davis*, 510 So. 2d 798, 800 (Miss. 1987)). In this case, Mr. Patterson was an active participant in the case until his failure to attend the final hearing. He was

personally served with a Rule 81D Summons. CR at 81-82. He immediately filed an Answer and several motions. CR at 39-81. He asked for and received a continuance from the Chancery Court. CR at 43; 83. He appeared and argued his motions. *See* TR *passim*. However, he failed to appear at the final scheduled hearing of this matter, when he was aware that the matter would be heard “in its entirety.” CR at 83; TR at 28.

Mr. Patterson, appearing *pro se*⁴, has the same obligations and duties as if he appeared with counsel and must bear the risk if he chooses not to attend hearings. *Vincent v. Griffin*, 852 So.2d 620, 624 (¶ 11) (Miss. Ct. App. 2003) (*citing Dethlefs v. Beau Maison Dev. Corp.*, 511 So.2d 112, 118 (Miss. 1987)). Mr. Patterson was not a “disinterested spectator.” As in the *Vincent* case, Mr. Patterson was an active participant in the proceedings. *Vincent*, 852 So. 2d at 624. Mr. Patterson now attempts to raise issues in his appeal that were not presented to the Chancery Court because he failed to appear for the final hearing on this contempt matter. TR at 29.

The Mississippi Court of Appeals has held that a litigant who fails to defend a suit in the chancery court cannot do so on appeal. *Luse v. Luse*, 2007-CA-00171 (¶ 18) (Miss. Ct. App. 2008). Mr. Patterson is trying to do precisely that. Because Mr. Patterson did not raise *any* of the issues contained in his brief at the final hearing on this matter – Ms. Patterson’s alleged “unclean hands,” that his conduct did not give rise to a finding of contempt, and that Ms. Patterson allegedly breached the terms of the divorce decree –

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It should be noted that Mr. Patterson is not the usual *pro se* litigant. He is licensed to practice law in the State of California, and has an active bar number in the State of California (# 261960).

these issues are necessarily precluded on appeal.

By failing to appear for the hearing on this matter when Mr. Patterson was well aware that all of the issues would be heard in their entirety pursuant to the Chancery Court Order (CR at 84), Mr. Patterson failed to present any issues in his defense of the contempt action. Mr. Patterson is bound by the same rules as a lawyer would be who did not raise these issues in the trial court. *Bullard v. Morris*, 547 So.2d 789, 790 (Miss. 1989).

The scheduled hearing proceeded without Mr. Patterson, evidence was presented in his absence, and the Chancellor correctly held him in contempt. That ruling should not be disturbed.

III. THE CHANCERY COURT'S FINDING OF CONTEMPT WAS PROPER

“A reviewing court will defer to a chancellor’s final judgment.” *Price v. Price*, 2007-CA-00981 (¶ 7) (Miss. Ct. App. 2009) (citing *Sanderson v. Sanderson*, 824 So.2d 623, 626 (¶ 12) (Miss. 2002)). This Court will not disturb a chancellor’s ruling unless that ruling is manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard. *Luse v. Luse*, 2007-CA-00171 (¶ 5) (Miss. Ct. App. 2008).

The chancellor has “substantial discretion” in deciding contempt matters. *Hunt v. Asanov*, 975 So.2d 899, 902 (¶ 9) (Miss. Ct. App. 2008). “Contempt matters are committed to the substantial discretion of the Chancellor.” *Lahmann v. Hallmon*, 722 So.2d 614, 620 (¶ 19) (Miss. 1998). The purpose of civil contempt is to enforce or coerce obedience to the orders of the court. *Lahmann*, 722 So.2d at 620 (¶ 19).

In this case, the Chancellor heard the testimony of Ms. Patterson at the hearing on September 29, 2008, at which Mr. Patterson failed to appear. That testimony was uncontradicted. “In a contempt action, when the party entitled to receive support introduces evidence that the party required to pay the support has failed to do so, a prima facie case of contempt has been made. *Lahmann*, 722 So.2d 620 (¶ 19). The burden then shifts to the other party to show any defenses to that prima facie case. *Id.*

Mr. Patterson seeks to complain of a ruling at a hearing when he elected not to come forward with any defenses, since he did not appear and defend himself against the contempt petition.

The Chancellor correctly found that Mr. Patterson had failed to pay the monthly “rent stipend” under the terms of the divorce decree, and that he was in contempt for his wilful failure to pay. CR at 85-86 As discussed previously in this brief, the Chancellor further modified the divorce decree to reflect that Ms. Patterson would henceforward maintain health insurance on the parties’ minor child, and that Mr. Patterson would be responsible for all out-of-pocket medical expenses for the child. CR at 85-86.

This ruling is not “manifestly wrong” or “clearly erroneous.” The correct legal standard was applied. Mr. Patterson complains of a ruling handed down at a scheduled hearing at which he did not appear.

The ruling of the Chancery Court should be affirmed.

IV. THE AWARD OF ATTORNEY'S FEES TO MS. PATTERSON WAS PROPER

An award of attorney's fees in a contempt case is largely entrusted to the discretion of the chancellor. *Price v. Price*, 2009-MS-0318.138 (¶ 19) (Miss. Ct. App. March 17, 2009). The trial court has discretion to award attorney's fees to make the petitioner whole and to reinforce compliance with the court's orders. *Hinds County Bd. of Supervisors v. Common Cause of Mississippi*, 551 So.2d 107,125 (Miss. 1989).

The Chancellor found that Mr. Patterson was in "wilful and obstinate" contempt of the divorce decree for his failure to pay amounts owed to Ms. Patterson pursuant to the divorce decree. CR at 85-86. It is well-settled that a chancellor is justified in awarding attorney's fees that are incurred in pursuing a contempt action. *Vincent v. Griffin*, 852 So. 2d 620, 625 (¶ 17) (Miss. Ct. App. 2003) (*citing Elliott v. Rogers*, 775 So.2d 1285, 1290 (¶ 25) (Miss. Ct. App. 2000)). It is also well recognized that should one party incur attorney's fees due to the other party's intentional misconduct, an award of attorney's fees is appropriate. *Chasez v. Chasez*, 916 So.2d 572, 577 (¶ 18) (Miss. Ct App. 2005) (*citing Mabus v. Mabus*, 910 So.2d 486, 489 (¶ 8) (Miss. 2005)).

In this case, the Chancellor awarded Ms. Patterson \$2600.00 in attorney's fees. CR at 85-86. This fee was fair and reasonable in light of the facts that it encompassed three court appearances, as well as preparation of the Petition for Contempt, filing fee, service of process, and the fee for service of process, among other items.

Mr. Patterson asserts in his brief that "no evidence" was offered insofar as Ms.

Patterson's attorney's fees. *See* Brief of Appellant at 45-46. Since Mr. Patterson did not attend the scheduled hearing at which attorney's fees were awarded, this assertion is unfounded and speculative.

The award of attorney's fees was proper and should be affirmed by the Court.

V. MR. PATTERSON SHOULD BE SANCTIONED BY THIS COURT AND PORTIONS OF HIS BRIEF SHOULD BE STRICKEN

Pursuant to Miss. Code Ann. § 11-55-5 and Miss.R.App.P. 38, Mr. Patterson should be sanctioned for filing a frivolous appeal. As discussed at length in this brief, Mr. Patterson did not appear for the scheduled contempt hearing in the court below. He now complains of the ruling against without any basis in law or in fact to justify this appeal.

Ms. Patterson has incurred attorney's fees and costs associated with responding to this appeal, and asks that Mr. Patterson be required to pay these in addition to the sums already awarded by the Desoto County Chancery Court. Ms. Patterson asks that she be allowed to submit these fees and costs to this Court should the Court deem a sanction warranted.

It is significant in this case that although Mr. Patterson is proceeding *pro se*, Mr. Patterson is an attorney licensed to practice in the State of California.⁵ In his brief, Mr. Patterson repeatedly refers to matters outside the record in this case, and these references should be stricken and disregarded by this Court.

⁵ Mr. Patterson has an active bar number in the State of California (# 261960).

For example, Mr. Patterson refers at length to alleged settlement negotiations, which of course are not part of the record in this case. *See* Brief of Appellant at 6. In addition, he refers to a supposed “Motion for Entry of Settlement Agreement and Other Relief,” which again is not part of the record and was never filed by the Desoto County Chancery Clerk. *See* Appellant’s Brief at 6. He cites to self-serving testimony contained in affidavits from himself and his girlfriend filed in support of his Motion for Summary Judgment. *See* Brief of Appellant at 19, 23-24, 30-31. *None* of this testimony was presented at trial and subject to cross-examination because Mr. Patterson did not appear for the final hearing on this matter on September 29, 2008. TR at 29.

Finally, pursuant to Miss.R.App.28 (k), the disrespectful and contemptuous language in Mr. Patterson’s brief attributing quotations which never occurred to the Honorable Chancellor in this case should be stricken and sanctioned. Mr. Patterson’s brief states:

Indeed, the \$1900.00 award is entirely based on the following transaction: ‘Your Honor, we would like \$1500.00,’ to which the Court responded “Okay, here’s \$1900.00.’ It’s a small wonder Ms. Maddox didn’t just ask for \$5000.00. Or \$10,0000.

— Brief of Appellant at 44.

This disgraceful “quotation” attributing dishonest actions and motives to both the Chancellor and to counsel opposite should be stricken and sanctioned. Of course, this so-called “quotation” is not cited to the record in this case, because it is not contained in the record. Since Mr. Patterson was not present, anything he may offer as to what occurred at

the final hearing is pure speculation. He is, however, correct that counsel for Ms. Patterson "could" have said \$5000.00, or \$10,000.00, but did not. Rather, the Chancellor heard correct proof of the medical bills he did not pay as ordered under the divorce decree, and made the appropriate ruling.

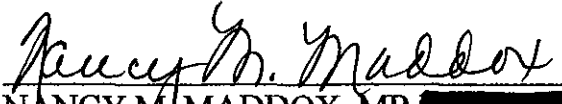

The entirety of this appeal is frivolous since Mr. Patterson did not appear at the hearing to defend himself wherein he was held in contempt by the Chancery Court, and this Court should impose sanctions for this appeal. If the Court should do so, Ms. Patterson asks that she may be allowed to submit her reasonable attorney's fees and costs for consideration by the Court.

VI. CONCLUSION

The Honorable Chancellor did not err in holding that the Chancery Court had jurisdiction of this matter, nor did the Chancellor err in holding Mr. Patterson in contempt of the divorce decree. Ms. Patterson respectfully submits that this Court should affirm the Honorable Chancellor's ruling in all respects for the reasons set forth above in her brief.

Respectfully, submitted, this the 10th day of April, 2009.

NANCY M. MADDOX
9356 Goodman Rd., Ste. 109
P. O. Box 1249
Olive Branch, MS 38654
(662) 890-6400


NANCY M. MADDOX, MB 
ATTORNEY FOR APPELLEE

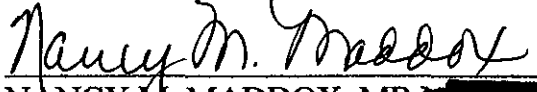
CERTIFICATE OF SERVICE

I, Nancy M. Maddox, Attorney for the Appellee, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing Brief of the Appellee, U.S. Mail, postage prepaid to the following:

Honorable Vickie B. Cobb, Chancellor
P. O. Box 1104
Batesville, MS 38606

Mr. Gregory Patterson
417 South Hill
701
Los Angeles, CA 90013

This the 10th day of April, 2009.


NANCY M. MADDOX, MB 