Docket NO.2008-CP-01692

IN THE

SUPREME COURT OF MISSISSIPPI

February Term 2009

GREGORY WILLIAMS PATTERSON,

Appellant,

v.

TARA PATTERSON,

Appellee.

OPENING BRIEF FOR THE APPELLANT

Oral Argument Not Requested

Greg Patterson
Pro Se

Certificate of Interested Persons

Case NO.2008-CP-01692--Gregory 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 Patterson

Matthew Patterson (as nonparty beneficiary)

Tara Patterson

Greg Patterson
Pro Se

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2. Whether the Chancery Court's modification of the Support Order was an abuse of discretion.
3. Whether the Chancery Court's finding of contempt of court was an abuse of discretion.
4. Whether the Chancery Court's award of $22,500.00 to Mrs. Patterson was an abuse of discretion.

Statement of the Case

This appeal arises from a domestic relations case where the Chancery Court of Desoto County found Appellant (Mr. Patterson) in willful contempt of court, awarded a $22,500.00 judgment in favor of Appellee (Mrs. Patterson), and modified the terms of an out-of-state support order.[1] Mr. Patterson seeks review of each of these findings.

Factual Background

Mr. Patterson and Mrs. Patterson have an eight-year-old child named Matthew David Patterson (Matthew).[2] Matthew was born on June 17, 2000 in Colorado Spring, Colorado, while Mr. Patterson was in attendance at the United States Air Force Academy. Mr. Patterson and Mrs. Patterson became married on June 5, 2002. On November 18, 2004, Mr. Patterson and Mrs. Patterson were granted a no fault divorce in the State of New Hampshire.[3] The Permanent Stipulation (Divorce Decree) was entered by the Hillsborough Superior Court of the Southern District of New Hampshire.[4] Shortly after the divorce, Mrs. Patterson moved to Mississippi where she remarried and had two additional children.[5] Mrs. Patterson then attended nursing school and became a full time registered nurse.[6] Mr. Patterson received an honorable discharge from the United States Air Force to attend law school at the University of Texas.[7] Mr. Patterson has since graduated and resides in Los Angeles, California.[8]

The Divorce Decree awarded Mrs. Patterson primary physical custody of Matthew and

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[1] Clerk's Record, 85-86; Final Order on Petitioner for Contempt (September 30, 2008).
[2] Clerk's Record, 48; Respondent's Motion for Dismissal and Summary Judgment, I.
[3] Id.
[4] The Divorce Decree appears in the Clerk's Record in two separate places, pages 9-25 and 64-80.
[5] Clerk's Record, 48; Respondent's Motion for Dismissal and Summary Judgment, I.
[6] Id.
[7] Id.
[8] Trial Transcript, 5:19-20.

both parties share joint legal custody of Matthew.[9] The Divorce Decree provides that Mr. Patterson is responsible for $969.00 in monthly child support.[10] There is no dispute that Mr. Patterson has fully paid this amount every month since the entering of the Divorce Decree.[11]

The Divorce Decree provides that Mr. Patterson is responsible for Matthew's health insurance premiums so long as it is available to him at "reasonable cost."[12] In accordance with the Divorce Decree, Mr. Patterson paid Matthew's health insurance premiums from November 2004 until May 2006.[13] There is no dispute that since that time, Matthew has been covered under Mrs. Patterson's husband's (Dennis Garner's) plan at no additional cost to any party.[14] There is also no dispute that Mr. Patterson repeatedly offered to have Matthew covered under his University of Texas health plan, but Mrs. Patterson declined such offers because Matthew's insurance is free under Mr. Garner's plan.[15]

The Divorce Decree provides that both parties equally share Matthew's uninsured health expenses, but requires the custodial parent to provide a copy of any paid receipts for such expenses along with written requests for reimbursement to the noncustodial parent.[16] To date, Mrs. Patterson has never provided Mr. Patterson with a paid receipt or written request for reimbursement of any uninsured medical expense.[17] In fact, Mr. Patterson is unaware that any uninsured expenses have been incurred for Matthew's benefit whatsoever.

The Divorce Decree required Mr. Patterson to pay Mrs. Patterson $36,000.00 over three

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[9] Clerk's Record, 9; Divorce Decree, 2A.
[10] Clerk's Record, 24; Divorce Decree, Uniform Support Order.
[11] Clerk's Record, 48; Respondent's Motion for Dismissal and Summary Judgment, I
[12] Clerk's Record, 22; Divorce Decree, 22(D)(ii).
[13] Clerk's Record, 50; Petitioner's Motion for Dismissal and Summary Judgment, IB.
[14] Trial Transcript, 17:28-18:3.
[15] Clerk's Record, 50; Petitioner's Motion for Dismissal and Summary Judgment, IB.
[16] Clerk's Record, 22; Divorce Decree, 22(D)(ii).
[17] Clerk's Record, 49-50, Petitioner's Motion for Dismissal and Summary Judgment, IB; Trial Transcript, 18:5-11.

years in the form of a "rent stipend."[18] Importantly, the payment of this rent stipend was expressly conditioned on Mrs. Patterson's full cooperation in making Matthew available for telephonic, videophonic, and custodial access.[19] Mr. Patterson paid $18,000.00 of the rent stipend over the first 18 months, but ceased payment in 2006 as a result of Mrs. Patterson's continued frustration of Mr. Patterson's telephonic and videophonic access to Matthew.[20] Mrs. Patterson routinely failed to answer Mr. Patterson's telephone calls to Matthew – answering less than one half of such calls over the period following the divorce.[21] Moreover, Mrs. Patterson completely failed to make Matthew available for videoconferencing.[22] In the spring of 2005, Mr. Patterson provided Matthew a full suite of computer equipment to facilitate videoconferencing.[23] Mrs. Patterson sold this equipment and kept the proceeds for herself.[24] Overall, Mrs. Patterson completely failed to meet her obligations under the terms of the Divorce Decree.

Although Mrs. Patterson's alleged claims became ripe in 2006, Mr. Patterson was not served with process until June 19, 2008, while visiting Matthew for his birthday four weeks prior to taking the California Bar Examination.[25] On the following business day, Mr. Patterson filed via express mail an Original Answer, a Motion for Dismissal and Summary Judgment, and a Motion for Continuance and Discovery.[26] Mrs. Patterson failed to respond to either of these Motions.[27] The Chancery Court granted the continuance and trial was set for August 18, 2008.[28]

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[18] Clerk's Record, 20; Divorce Decree, 16(B).
[19] Id.
[20] Trial Transcript, 19:5-20:17.
[21] Id.
[22] Id.
[23] Id.
[24] Id.
[25] Clerk's Record, 38; Summons.
[26] Clerk's Record, 39, 43, and 47.
[27] Clerk's Record.
[28] Clerk's Record, 83; Order of Continuance.

In the interim, Mr. Patterson requested from Mrs. Patterson's counsel, Ms. Maddox, copies of all uninsured medical expenses, as well as requests for reimbursement.[29] This request was ignored.[30]

At trial, Mrs. Patterson's requests for relief were somewhat different than those asserted in her Petition for Contempt. Ms. Maddox quickly conceded that Mrs. Patterson had breached material terms of the divorce decree and consequently withdrew her Petition for Contempt with respect to the alleged uninsured medical expenses.[31] But Ms. Maddox asserted a new claim, seeking equitable modification of the out-of-state Divorce Decree so as to require Mr. Patterson to pay all of Matthew's uninsured medical expenses.[32] Overall, Ms. Maddox offered little if any evidence on any of Mrs. Patterson's claims other than mere attorney testimony asking for relief.[33] And as the following briefing shows, much of Ms. Maddox's testimony was unfavorable to Mrs. Patterson.

Mr. Patterson fully responded to all of Mrs. Patterson's claims at trial, reiterating the defenses he raised in his Motion for Dismissal and Summary Judgment, as well as raising several new issues. Mr. Patterson requested a ruling on all of these issues, including his oral motions made at trial as well as his Motion for Dismissal and Summary Judgment.[34] Because Ms. Maddox had previously disregarded Mr. Patterson's request for copies of Matthew's uninsured medical expenses, the Chancery Court granted Mr. Patterson a continuance to conduct additional discovery.[35] The Court set a post-trial hearing on September 29, 2008 for the limited purpose of

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[29] Trial Transcript, 15:5-7.
[30] Trial Transcript, 27-29.
[31] Trial Transcript, 5:10-12, 12:1-8.
[32] Trial Transcript, 5:19-24.
[33] Trial Transcript.
[34] Trial Transcript, 6:17-20.
[35] Trial Transcript, 27:27-29.

giving Mr. Patterson an opportunity to disprove Mrs. Patterson's claims for unpaid uninsured medical expenses:

> I am going to allow him a continuance to be able to take care of this, to be able to do some discovery. [36]

The Chancery Court contemplated the possibility of the parties settling out of court, and indeed this is what happened. In the interim, the Chancery Court denied all of Mr. Patterson's previous claims for relief in its Order dated August 22, 2008.[37]

The following facts, which appear in Mr. Patterson's Motion for Entry of Settlement Agreement and Other Relief, were not included in the Clerk's Record and are offered only as background to this *Statement of the Case*:

> (1) Following trial, Mr. Patterson and Mrs. Patterson reached an amicable settlement agreement on the courthouse steps;
> (2) Shortly before the September 29th post-trial hearing, Ms. Maddox delivered a copy of a proposed Final Order to Mr. Patterson that did not comply with the settlement agreement reached by the parties;
> (3) Mrs. Patterson refused to honor the settlement agreement that was actually reached;
> (4) Mr. Patterson refused to agree with the new terms demanded by Mrs. Patterson.
> (4) Mr. Patterson was unable to appear at the September 29th post-trial hearing because it took place very shortly after he accepted a job at a law firm;
> (5) On the morning of the September 29th post-trial hearing, Mr. Patterson filed a Motion for Stipulated Judgment and Other Relief with supporting affidavit; and
> (6) That Motion was not included in the Clerk's Record, and it was not ruled upon.

At this time, Mr. Patterson believes that it is premature to file a 10(e) Motion to Supplement the Clerk's Record with Mr. Patterson's Motion for Stipulated Judgment and Other Relief. None of the above facts are material to this appeal. As the following briefing indicates, Mr. Patterson's nonappearance did not waive his appeal. Mr. Patterson's appearance at trial was sufficient to preserve the arguments made in this appeal because the Chancery Court was clear at

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[36] Id.
[37] Clerk's Record, 84; Order, ¶1.

trial that the September 29th post-trial hearing was for the limited purpose of giving Mr. Patterson an opportunity to conduct discovery into Matthew's alleged uninsured medical expenses.[38] Moreover, the Record is clear that the arguments raised in this appeal were denied by the Chancery Court's Order dated August 22, 2008, which was prior to the post-trial hearing.

In its Final Order, the Chancery Court found Mr. Patterson in contempt of court. The Court ordered that Mr. Patterson pay $18,000.00 for the outstanding rent stipend, $1900.00 for past uninsured medical expenses, and $2,600.00 in attorney fees.[39] Mr. Patterson appeals.

[38] Clerk's Record, 27:27-29.
[39] Clerk's Record, 85-86; Final Order.

Summary of the Argument

I. The Chancery Court's modification of the Support Order was error. The Court lacked requisite subject matter jurisdiction to modify the New Hampshire order under the UIFSA and Mississippi Family Code because Mr. Patterson does not reside in Mississippi, Mrs. Patterson resides in Mississippi, and Mr. Patterson did not file consents in New Hampshire. In the alternative, Mrs. Patterson had unclean hands by breaching paragraph 22(D)(ii) of the divorce decree and could not properly petition for equitable modification. Ms. Maddox conceded that Mrs. Patterson repeatedly violated her obligations under paragraph 22(D)(ii) of the Support Order which required her to provide Mr. Patterson with copies of uninsured medical expenses and requests for reimbursements, and her violations are materially connected to her petition for equitable modification. In the alternative, the Chancery Court lacked cause to modify the Support Order and such modification was an abuse of discretion. To obtain a modification of child support, the party seeking the change must prove there is a substantial and material change in the circumstances of one of the interested parties arising subsequent to the original decree. Here, Mrs. Patterson failed to make any such showing.

II. The Chancery Court's finding of contempt of court for nonpayment of the rent stipend was error. First, Mrs. Patterson had unclean hands and could not properly petition for contempt of court. Mrs. Patterson substantially frustrated Mr. Patterson's access to Matthew, which the Divorce Decree expressly connected to payment of the rent stipend. Further, Mr. Patterson has a natural right to visitation with his son Matthew, which Mrs. Patterson also frustrated. Second, Mr. Patterson's conduct does not give rise to a finding of contempt of court. Mr. Patterson acted in good faith at all times according to his rights under the Divorce Decree. Further, the Divorce

Decree leaves ambiguous questions open for interpretation by the parties and thus a finding of contempt was inappropriate. Third, Mrs. Patterson's breach of the Divorce Decree discharged Mr. Patterson's obligation to pay the rent stipend by operation of paragraph 16(B) of the Divorce Decree. The record is clear that Mrs. Patterson frustrated more than one half of Mr. Patterson's telephonic access to Matthew, and frustrated all videophonic access to Matthew by converting the videophonic equipment for personal gain.

III. The Chancery Court's award of $22,500.00 to Mrs. Patterson was error. The award of $1,900.00 for past uninsured medical expenses should be reduced to $1,500.00 in accordance with Ms. Maddox's trial testimony. In the alternative, the award of $1,900.00 for past uninsured medical expenses should be vacated in its entirety because Mrs. Patterson failed to meet her burden of proof. Mrs. Patterson failed to offer any evidence to support her claim, and the Record's only evidence on the subject strongly suggests the expenses never existed. The award of $18,000.00 should be vacated because it was discharged by operation of paragraph 16(B) of the Divorce Decree. In the alternative, the award should be remanded to the Chancery Court to properly account for the monetary value of Mrs. Patterson's preclusion of access to Matthew. Finally, the award of $2,600.00 to Mrs. Patterson for attorney fees should be vacated because Mrs. Patterson failed to meet her burden of proof and because Mrs. Patterson's petition for contempt must fail.

Argument

I. The Chancery Court's Modification of the Support Order Should Be Vacated.

Under the terms of the original Support Order entered in the State of New Hampshire, Mrs. Patterson and Mr. Patterson were equally responsible for Matthew's uninsured health expenses. Paragraph 22(D)(ii) of the Divorce Decree provides:

> Greg shall maintain health insurance coverage for Matthew's benefit so long as it is available to him through the Air Force or at a reasonable cost. Greg shall pay the premium of the health insurance coverage and shall keep Tara updated with new insurance cards for Matthew as they are issued. All uninsured medical, dental, orthodontic, optical and other health related expenses (co-payments and prescriptions) shall be paid equally by the parties. The party incurring the expense shall request reimbursement in writing along with a copy of the paid receipt for said expense within thirty (30) days of incurring the expense. The reimbursing party shall make reimbursement of the expense within thirty days of the date of the request.[40]

In its Final Order, the Chancery Court modified the terms of the Support Order[41] to make Mr. Patterson responsible for all uninsured medical expenses. Paragraph 4 of the Chancery Court's Final Order states:

> The Court hereby modifies the Final Decree of Divorce to reflect that Petitioner Tara Patterson shall henceforward pay the health insurance premiums for the benefit of the parties' minor child. Respondent Gregory Patterson shall be responsible for any medical, dental, orthodontic, optical and other health related expenses incurred for the minor child which are not covered by health insurance. Petitioner shall submit these bills to Respondent for payment within thirty (30) days of the bill being incurred, and Respondent shall pay these bills within thirty (30) days of the date of the request for reimbursement.[42]

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[40] Clerk's Record, 22; Divorce Decree, ¶22(D)(ii)

[41] Mississippi's codification of the UIFSA defines a "support order" as a "judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest, income withholding, attorney's fees and other relief [emphasis added]." Miss. Code Ann. § 93-25-3(w) (West 2008); McLean v. Kohnle, 2005-CA-00033-COA (¶ 18) (Miss. App. 2006).

[42] Clerk's Record, 86.

Notably, this modification contradicts the final sentence of paragraph 3 of the Chancery Court's Final Order, which states "Respondent shall continue to be responsible for one half (1/2) of all medical bills incurred on behalf of the parties' minor child which are not covered by insurance."[43] Mr. Patterson nevertheless concedes that, as read in its entirety, the Final Order modified the Support Order to hold Mr. Patterson responsible for all of Matthew's uninsured medical expenses. This was the clear intent of the Chancery Court, and this interpretation is consistent with Ms. Maddox's oral request at trial and the parties' subsequent expectations and conduct following the entering of the Final Order. To the extent that this Court agrees that the Chancery Court's Final Order modifies the Support Order, Mr. Patterson hereby appeals this Court to vacate that modification because: (1) the Chancery Court lacked requisite subject matter jurisdiction to order such modification; and (2) in the alternative, Mrs. Patterson had unclean hands and could not properly petition for equitable modification; and (3) in the alternative, the Chancery Court's modification was an abuse of discretion.

A. The Chancery Court's Modification of the Support Order Should Be Vacated For Lack of Subject Matter Jurisdiction.

1. Standard of Review

Whether a chancery court may properly exercise jurisdiction to modify the terms of a support order is a question of subject matter jurisdiction.[44] The standard of review concerning questions of subject matter jurisdiction is de novo. Patriot Commer. Leasing Co. v. Jerry Enis

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[43] Clerk's Record, 85-86.

[44] Case law is clear that because this issue centers on whether a state may exercise authority to modify a foreign support order, the jurisdictional question is one of subject matter jurisdiction. See, e.g., McLean v. Kohnle, No. 2005-CA-00033-COA (¶11) (Miss. App. 2006) ("McLean argues that the Lauderdale Chancery Court does not have subject matter jurisdiction to hear this case. McLean contends that Virginia assumed continuing, exclusive jurisdiction when it modified his obligations to provide child support and continues to exercise continuing, exclusive jurisdiction."). Numerous other venues have held the same under the UIFSA.

Motors, Inc., No. 2005-CA-01119-SCT (Miss. 2006). "Subject matter jurisdiction deals with the power and authority of a court to consider a case." Matter of Adoption of R.M.P.C., 512 So.2d 702, 706 (Miss. 1987). Thus, subject matter jurisdiction may not be waived and may be asserted at any stage of the proceeding or even collaterally. Id.; Penrod Drilling Co. v. Bounds, 433 So.2d 916, 924 (Miss. 1983).

2. Argument

"As this domestic relations matter originated in the [State of New Hampshire], the Uniform Interstate Family Support Act (UIFSA), codified in sections 93-25-1 through 93-25-117 of the Mississippi Code, controls." Richardson v. Stogner, No. 2006-CA-00777-COA (¶7) (Miss.App. 2007). Mississippi Code § 93-25-17(3) provides that "[i]f a tribunal of another state has issued a child support order pursuant to this chapter or to a law substantially similar to this chapter which modifies a child support order of a tribunal of the state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state." (West 2007). Thus, "[u]nder the UIFSA, as adopted and codified in the Mississippi Code Annotated, a Mississippi court may modify and/or enforce a child support order under limited circumstances. In order for a Mississippi court to have the authority to modify a child support order, Mississippi must have continuing, exclusive jurisdiction." McLean v. Kohnle, No. 2005-CA-00033-COA (¶14) (Miss. App. 2006). This holding is bolstered by the following legislative comments pertaining to this section of the UIFSA:

> UIFSA is based on recognizing the truism that when a foreign support order is registered for enforcement, the rights of the parties affected have been previously litigated. Because the obligor already has had a day before an appropriate tribunal, an enforcement remedy may be summarily invoked. On the other hand, modification of an existing order presupposes a change in the rights of the parties.... The requirements for modification of a child support order are much more explicit and restrictive under

> UIFSA.... The purpose of this section is to create certainty as to the single state that can modify.
> 9 ULA "Uniform Interstate Family Support Act" § 611 cmts. (1999).

§ 93-25-9 of the Mississippi Code makes clear that a chancery court's personal jurisdiction over an obligee is not sufficient to grant that chancery court subject matter jurisdiction to modify a support order: "Unless Section 93-25-101 or 93-25-107 applies, the bases of personal jurisdiction set forth in this section may not be used to acquire jurisdiction for a tribunal of this state to modify a child support order issued by a tribunal of another state." (West 2007). Thus, a Chancery Court in the State of Mississippi may only modify the terms of an out-of-state support order if (1) the requirements of Mississippi Code Annotated Section 93-25-101 or 93-25-107 have been met, and (2) the parties registered that order in Mississippi utilizing the procedure outlined in Mississippi Code Annotated Sections 93-25-81 through 93-25-87. McLean v. Kohnle, No. 2005-CA-00033-COA (¶19) (Miss. App. 2006). Here, neither the requirements of § 93-25-101 nor § 93-25-107 of the Mississippi Code Annotated have been met.

§ 93-25-101 of the Mississippi Code states the following:

> If Section 93-25-107 does not apply, except as otherwise provided in Section 93-25-108, upon petition, a tribunal of this state may modify a child support order issued in another state which is registered in this state, if, after notice and hearing, it finds that:
> (a) The following requirements are met:
> (i) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;
> (ii) A petitioner who is a nonresident of this state seeks modification; and
> (iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or
> (b) This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.
> (West 2008).

§ 93-25-101 provides two mechanisms whereby a Chancery Court gains requisite subject matter jurisdiction to modify a child support order issued in another state. The first mechanism is established by § 93-25-101(a) and requires that the party seeking modification be a nonresident of the State of Mississippi. The second mechanism is established by § 93-25-101(b) and requires that the parties have filed consents in the issuing tribunal. § 93-25-101 and § 93-25-9 make additional reference to §§ 93-25-107 and 93-25-108 of the Mississippi Code, but neither of these statutes is applicable here.[45] § 93-25-107 is inapplicable because Mr. Patterson does not reside in Mississippi, a fact that Mrs. Patterson conceded at trial[46] and in paragraph 1 of her Petition for Contempt.[47] § 93-25-108 is not applicable because the State of New Hampshire is not a foreign country or political subdivision.

Mrs. Patterson cannot rely on either subsection of § 93-25-101 to confer upon the Chancery Court requisite jurisdiction to modify the terms of the support order.

With respect to § 93-25-101(a), although the Divorce Decree and its incorporated Support Order were registered in the State of Mississippi after being originally entered in the State of New Hampshire, it was Mrs. Patterson, a Mississippi resident, that petitioned for a modification of the Divorce Decree (this was done at trial only; she did not request modification

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[45] § 93-25-107 provides "if all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order." § 93-25-108 provides "[i]f a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a support order otherwise required of the individual pursuant to Section 93-25-101 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision."

[46] Trial Transcript, 5:19.

[47] Clerk's Record, 33; Petitioner for Contempt (¶1).

in her Petition for Contempt).[48] Mrs. Patterson acknowledges in paragraph 1 of her Petition for Contempt that she is a resident of the State of Mississippi.[49] Thus, she cannot satisfy part (ii) of § 93-25-101(a) and the Chancery Court could not properly modify the terms of the support order pursuant to this statute. As the Court of Appeals of Mississippi held in Nelson v. Halley, No. 2001-CA-00712-COA (¶16) (Miss. App. 2002), "[i]t is the second requirement that is surprising: Mississippi cannot be the residence of the person seeking the modification of support. That is the alleged defect here."

With respect to § 93-25-101(b), this subsection creates a mechanism whereby the parties may consent to jurisdiction. "§ 93-25-101 creates a procedure for the parties to consent to try the issue in Mississippi despite that it is neither the state in which the custody was issued nor the one in which the obligor lives. It is this provision that alters traditional subject matter jurisdiction rules. Even though a Mississippi court in following the procedures that recognize the multistate nature of child support issues would not have the right to enter a modification, once knowing consent under this provision is given, the parties may proceed in this state." Id. at ¶24. In Nelson, the Court of Appeals held that Appellant had consented to the jurisdiction of the Chancery Court by written instrument.

Here, there was no such consent. Paragraph 22D)(i) of the Divorce Decree expressly retains jurisdiction in New Hampshire:

> The State of New Hampshire shall retain jurisdiction of this matter.[50]

Notably, this paragraph immediately precedes paragraph 22(D)(ii) of the Divorce Decree, which

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[48] Trial Transcript, 5:20-23.
[49] Clerk's Record, 33; Petitioner for Contempt (¶1).
[50] Clerk's Record, 22; Divorce Decree, ¶22(D)(i) (Notably, this provision immediately precedes paragraph 22(D)(ii), which is the provision addressing Matthew's medical bills that was modified by the Chancery Court.).

settles Matthew's medical expenses. The record contains no evidence that Mr. Patterson has taken any consent action, express or implied, to validate the Chancery Court's exercise of jurisdiction to modify the support order. Mr. Patterson has not "filed consents in the issuing tribunal," as required by the statute. Nor has Mr. Patterson sought to modify the support order in the State of Mississippi to his benefit. Instead, Mr. Patterson challenged the Chancery Court's exercise of subject matter jurisdiction at trial:

> Moreover, this Court does not, with respect, have jurisdiction to hear this case at all.[51]

Mr. Patterson further challenged the Chancery Court's exercise of subject matter jurisdiction in his Motion for Dismissal and Summary Judgment:

> Dismissal under Rule 12(b)(1) is appropriate because this Court lacks subject matter jurisdiction to hear Petitioner's claims.[52]

Clearly, Mr. Patterson has not filed consents in the State of New Hampshire or otherwise given consent in any form contemplated by Nelson or the UIFSA. Thus, the Chancery Court could not properly exercise jurisdiction to modify the support order pursuant to § 93-25-101(b). Because there is no other applicable mechanism under Mississippi law whereby a chancery court may exercise jurisdiction to modify the terms of this out-of-state Support Order, the Chancery Court's modification of the divorce decree should be vacated for lack of subject matter jurisdiction.

B. Mrs. Patterson Had Unclean Hands and Could Not Properly Petition For Equitable Modification of the Support Order.

In the alternative, even if this Court finds that the Chancery Court possessed the requisite subject matter jurisdiction to modify the support order, the Court's modification should be vacated because Mrs. Patterson had unclean hands and could not properly petition for

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[51] Trial Transcript, 9:12-14.

[52] Clerk's Record, 47; Respondent's Motion for Dismissal and Summary Judgment, Introduction.

modification. At trial, Ms. Maddox conceded that Mrs. Patterson repeatedly violated her obligations under paragraph 22(D)(ii) of the Support Order which required her to provide Mr. Patterson with copies of uninsured medical expenses and requests for reimbursements, and her violations are materially connected to her petition for equitable modification.

1. Standard of Review

On these issues, this Court's review of the Chancery Court's decision is limited. Townsend v. Townsend, No. 2002-CA-02087-SCT (¶7) (Miss. 2003). "This Court should affirm the decision of the chancellor when supported by substantial evidence, unless the chancellor abused her discretion, was manifestly wrong or clearly erroneous, or applied an erroneous legal standard." Chapel v. Chapel, No. 2002-CA-00794-SCT (¶ 8) (Miss. 2004).

The "[c]lean hands doctrine prevents a complainant from petitioning the court to modify an original decree absent proof that said complainant has fully performed under the terms of the original decree or, in the alternative, that full performance there under has been wholly impossible." Dill v. Dill, No. 2004-CA-01149-COA (¶11) (Miss. App. 2005). The doctrine "prevents the modification of a support order when the person seeking the modification is guilty of willful contempt of the order mandating the support." Clower v. Clower, No. 2007-CA-01481-COA (¶10) (Miss.App. 2008); see also Brennan v. Brennan, 605 So.2d 749 (Miss. 1992) (Evidence supported application of maxim of unclean hands to former wife's claim for contempt against former husband for his failure to perform terms of divorce decree; wife violated decree by failing to notify husband of receipt of gifts from family.). The misconduct "must be in regard to or connected with matter in litigation so that it in some measure affects equitable relations subsisting between parties and arising out of the transaction." Taliaferro v. Ferguson, 38 So.2d 471, 473 (Miss. 1949).

2. The Issue Was Preserved.

Mr. Patterson properly preserved this issue for appellate review. In his Original Answer, Mr. Patterson pleaded as a Special Exception that "[p]etitioner lacks standing to bring such equitable claims because she has unclean hands."[53] Mr. Patterson advanced this argument in his Motion for Dismissal and Summary Judgment, asserting that "Petitioner has unclean hands because she breached paragraphs 3(F) and 22(D)(ii) of the Final Decree"[54] and asking the Chancery Court "to dismiss Petitioner's Petitioner for Contempt because Petitioner has unclean hands...."[55] Mr. Patterson asserted all supporting facts at trial[56] and received an adverse ruling on the issue in the Chancery Court's Order dated August 22, 2008[57], reconfirmed by Final Order.[58] Further, "[i]t is the duty of the Court to apply it of its own motion when it becomes evident that the facts are such that they call for the application of the maxim." Thigpen v. Kennedy, 238 So.2d 744 (Miss. 1970); see also Mississippi Chancery Practice, section 42 (2d ed. 1950) ("It is not necessary that [unclean hands] be pleaded by the defendant, although it will require a plainer case if it is not so pleaded, for if at any time during the progress of the case it becomes evident that the facts exist which call the maxim into use, it is the duty of the court to apply it, on the basis of a sound public policy.").

3. Argument

The record is clear that Mrs. Patterson failed to comply with her obligations under the Divorce Decree with respect to Matthew's medical expenses. The terms of the support order require that Mrs. Patterson (1) provide Mr. Patterson with a copy of all medical expenses and (2)

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[53] Clerk's Record, 39; Respondent's Original Answer, II.
[54] Clerk's Record, 58; Respondent's Motion for Dismissal and Summary Judgment, III(D).
[55] Clerk's Record, 59; Motion for Dismissal and Summary Judgment, V.
[56] Trial Transcript, 18:5-11.
[57] Clerk's Record, 84; Order, ¶1 (August 22, 2008).
[58] Clerk's Record, 85-86; Final Order, ¶4 (September 30, 2008).

request reimbursement from Mr. Patterson for uninsured medical expenses within thirty days. Paragraph 22(D)(ii) of the Divorce Decree states that:

> **The party incurring the expense shall request reimbursement in writing along with a copy of the paid receipt for said expense within thirty (30) days of incurring the expense. The reimbursing party shall make reimbursement of the expense within thirty days of the date of the request.**[59]

At trial, Mr. Patterson offered uncontradicted testimony that Mrs. Patterson failed to comply with this provision. Mr. Patterson testified:

> [S]he has failed to provide notice of these medical bills, any medical bills. I have yet to ever see a single medical bill or request for a medical bill. I have been unable to conduct any discovery in this case. I have not seen a medical bill. I have not seen a bill for insurance. I have not seen a request for either.[60]

Later at trial, Mr. Patterson similarly testified:

> I have never received a request for reimbursement for a medical bill as required by the divorce decree. I have never seen a medical bill for Matthew David Patterson. Not a single one, and I requested [them] by e-mail six weeks ago from Attorney Maddox.[61]

This testimony is consistent with Mr. Patterson's sworn affidavit testimony in his Motion for Dismissal and Summary Judgment:

> Petitioner has never alleged, sought compensation for, or provided a receipt pertaining to any of Matthew's uninsured health care costs, and Respondent has no knowledge that any such outstanding bills even exist.[62]

It is also consistent with the sworn testimony of Affiant Andrea Gordon:

> That while I resided with Gregory Patterson I had personal knowledge of any and all mail received at our residence; that to my knowledge there was never any mail sent regarding health insurance bills or requests for

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[59] Clerk's Record, 22; Divorce Decree, ¶22(D)(ii).
[60] Trial Transcript, 8:3-11.
[61] Trial Transcript, 18:5-11.
[62] Clerk's Record, 57; Respondent's Motion for Dismissal and Summary Judgment, ¶3(B)(ii).

compensation for health insurance for Matthew Patterson.[63]

At trial, Ms. Maddox admitted that Mrs. Patterson did not comply with paragraph 22(D)(ii) of the Divorce Decree. Ms. Maddox testified:

> [S]ome of those bills she will concede that he has not received.[64]

Ms. Maddox further testified:

> We are saying on the medical bills there a few that she can prove that she did send to him. He may not be in contempt on those medical bills, but he still owes them, whether he is in contempt or not.[65]

First, the mere fact that Ms. Maddox acknowledges that Mr. Patterson is not in contempt of court on this matter only evidences Mrs. Patterson's noncompliance with the Divorce Decree. Second, Ms. Maddox's above concession is at odds with paragraph 2 of Mrs. Patterson's Original Petition, where she asks the Court to "[h]old Respondent in willful contempt of court for failing to provide medical insurance for the benefit of the minor child and failure to pay ½ of the costs of medical bills incurred on."[66] But additionally, Mrs. Patterson offered no other evidence, testimonial or otherwise, to contradict Mr. Patterson's clear testimony that he never received a single bill. Mrs. Patterson failed to even allege at trial that she requested reimbursement of the purported uninsured medical expenses. Presumably, such requests could easily be offered into the record because the Divorce Decree expressly requires them to be made in writing. Regardless, Mrs. Patterson failed to offer any such medical bills or requests into evidence. Mrs. Patterson failed to respond to Mr. Patterson's Motion for Dismissal and Summary Judgment. Mrs. Patterson failed to respond to Mr. Patterson's pretrial requests for the

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[63] Clerk's Record, 62; Affidavit of Andrea M. Gordon, ¶2.
[64] Trial Transcript, 5:10-12.
[65] Trial Transcript, 11:29-12:5.
[66] Clerk's Record, 35 (It is very interesting that the paragraph stops there. Perhaps Ms. Maddox intended to later finish the paragraph with precise dates, but because none existed she simply forgot to remove the "on.").

medical bills:

> I have never seen a medical bill for Matthew David Patterson. Not a single one, and I requested by e-mail six weeks ago from Attorney Maddox.[67]

And what little Ms. Maddox offered on the matter simply confirmed Mr. Patterson's testimony. Overall, the record is clear that, since the entry of the Divorce Decree, Mrs. Patterson failed to act in accordance with paragraph 22(D)(ii) so as to meet the "full performance" standard set forth in Dill. No. 2004-CA-01149-COA (¶11).

Accordingly, this Court should find that the Chancery Court erred in permitting Mrs. Patterson to seek modification of the very same paragraph she acknowledges breaching. Indeed, if Mrs. Patterson's noncompliance with paragraph 22(D)(ii) precludes her from seeking a finding of contempt for nonpayment of medical bills, as Mrs. Maddox conceded in trial testimony, then how can Mrs. Patterson seek an equitable modification of the Divorce Decree's provisions respecting Matthew's medical bills? Paragraph 22(D)(ii) dealt specifically with the payment of medical expenses and its obligations were germane to the payment of such expenses. As a condition precedent for reimbursement for one-half of the expenses, Mrs. Patterson was obligated to provide a request and receipt of those expenses. Had Mrs. Patterson complied with 22(D)(ii), Mr. Patterson would have provided reimbursement[68] and Mrs. Patterson would have little cause to even raise Matthew's uninsured expenses as an issue at trial. Certainly, Mrs. Patterson's breaches were sufficiently "connected to the matter in litigation" to satisfy the requirements of Taliaferro. 38 So.2d at 473. In effect, the Chancery Court's modification of the Support Order rewarded Mrs. Patterson's unclean hands by not only finding Mr. Patterson liable

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[67] Trial Transcript, 28:8-11.

[68] Here, it should again be noted that Mr. Patterson has paid $969.00 in child support every month since the entry of the 2004 divorce decree.

for one-half of the alleged past medical expense, but by finding Mr. Patterson liable for the full amount of all future uninsured medical expenses until Matthew reaches adulthood. It simply cannot be the policy of Mississippi to reward Mrs. Patterson's violation of paragraph 22(D)(ii). Thus, the Chancery Court's modification of the Divorce Decree should be vacated on grounds that Mrs. Patterson lacked the requisite clean hands to seek such modification.

C. The Chancery Court's Modification of the Support Order Was an Abuse of Discretion.

To obtain a modification of child support, the party seeking the change must prove there is a "substantial and material change in the circumstances of one of the interested parties arising subsequent to" the original decree. McEwen v. McEwen, 631 So.2d 821, 823 (Miss. 1994). The Mississippi Supreme Court has articulated several factors which may be examined to determine whether a material change in circumstance has occurred, including "(1) increased needs of children due to advanced age and maturity, (2) increase in expenses, (3) inflation, (4) relative financial condition and earning capacity of the parties...." McEachern v. McEachern, 605 So.2d 809, 813 (Miss. 1992).

Here, the Divorce Decree's original provision addressing Matthew's health insurance stated the following:

> Greg shall maintain health insurance coverage for Matthew's benefit so long as it is available to him through the Air Force or at reasonable cost. Greg shall pay the premium of the health insurance coverage and shall keep Tara updated with new insurance cards for Matthew as they are issued.[69]

At trial, the only argument offered by Ms. Maddox as to why the support order should be modified is the following testimony:

> The medical bills total about $3,000.00, your Honor, but what my client is

[69] Clerk's Record, 22; Divorce Decree, ¶22(D)(ii).

> asking for the Court to do today is to allow Matthew to stay on her insurance because he is covered here and they live in Mississippi. Mr. Patterson lives in California currently, and to modify that to include him paying all of the uncovered medical expenses since she is going to have him covered under her insurance, which she has done.[70]

First, this testimony and request came as a complete surprise to Mr. Patterson, because Mrs. Patterson failed to request this relief in her Petitioner for Contempt. But additionally, Ms. Maddox offered no subsequent argument or evidence on the matter whatsoever. Thus, the sole justification cited by Ms. Maddox for holding Mr. Patterson liable for all of Matthew's uninsured health costs is that "she is going to have him covered under her insurance." But Ms. Maddox left out crucial facts that Mr. Patterson testified to at trial:

> As far as the insurance goes I provided his insurance for two years at which point I found out I hadn't been just paying his insurance, I had been paying Mrs. Patterson's insurance as well, because she didn't tell me that. Once I found that out I insisted on paying one-half of that amount. She said no thanks, I'll cancel. She cancelled. One month later I offered to get Matthew Patterson on my University of Texas School of Law insurance program. She declined and said it was free under her husband's insurance policy. That has been the case for two years. For two years I haven't heard a single thing about Matthew David's insurance whatsoever, because it's been free to this point.[71]

This is supplemented by Mr. Patterson's sworn affidavit testimony in his Motion for Dismissal and Summary Judgment:

> Respondent fully reimbursed Petitioner for Matthew's health premiums from November 2004 until May 2006. In June 2006, Respondent learned that he had unknowingly been reimbursing Petitioner not only for Matthew's health insurance premiums, but Petitioner's as well. Upon learning this, Respondent insisted that his payments be cut in half, taking into account the fact that only one half of the total procured benefits were for Matthew. Petitioner refused to continue the insurance under such circumstances, and stated that Matthew would go uninsured. Shortly thereafter, Petitioner announced that Matthew could receive free health insurance coverage under her husband's employee health insurance plan.

[70] Trial Transcript, 5:13-24.
[71] Trial Transcript, 17:14-18:4.

> On multiple occasions from the summer of 2006 until now, Respondent has verified Matthew's continuing free care by offering to reimburse Petitioner for any expenses associated with Matthew's health insurance. Petitioner has uniformly declined such offers because no such costs exist because Matthew's health insurance is free. In the past two years, Petitioner has never made any request, orally or in writing, to Respondent for reimbursement for Matthew's health insurance. In fact, Petitioner's Petitioner for Contempt was the first notice Respondent had that Petitioner had any complaint whatsoever about Matthew's insured or uninsured health expenses.[72]

Mrs. Patterson failed to answer Mr. Patterson's Motion. But more importantly, Mrs. Patterson also failed to answer Mr. Patterson's trial testimony, which went entirely uncontradicted. Thus, the Chancery Court should have taken it as true. Miller Transporters, Inc. v. Currie, 248 So.2d 451 (Miss. 1971).

Under these facts, the Chancery Court's modification of the support order is simply unconscionable. There is no dispute that Mr. Patterson paid the premiums of Matthew's insurance for the two years following the divorce, and almost immediately thereafter Matthew was placed on Mr. Garner's insurance at no cost to anyone.[73] Nothing in the Final Decree requires Mr. Patterson to actually procure Matthew's insurance. Nor does it even entitle Mr. Patterson to demand that Matthew be covered under Mr. Patterson's policy. It simply requires that Mr. Patterson "pay the premium," which he did for the two years following the divorce. But now, there is no premium. Essentially, the Chancery Court allowed Mrs. Patterson to cleanse herself of all uninsured expenses by simply declining Mr. Patterson's offers to have Matthew covered on his law school plan and listing Matthew on her husband's plan at no additional cost to her or her husband. Certainly, Mrs. Patterson failed to offer argument or evidence even approaching the McEwen standard to justify such a drastic modification as to hold Mr. Patterson

[72] Clerk's Record, 49-50; Respondent's Motion for Dismissal and Summary Judgment, ¶1(B).
[73] The unproven but likely truth here is that Matthew was always covered for free and Mrs. Patterson was simply cashing Mr. Patterson's checks.

responsible for all uninsured expenses until Matthew reaches adulthood. 631 So.2d at 823. And it simply cannot be the policy of Mississippi to permit such modifications with so little cause – or to encourage the resulting "race to the insurance card." As Mr. Patterson stated in his Motion, "Respondent cannot be required to provide health insurance in lieu of such free care at a cost because such a cost could never be reasonable as required by the Final Decree."[74] Clearly, the Chancery Court's modification of the Support Order was an abuse of discretion and should be vacated.

II. The Chancery Court Erred in Finding Mr. Patterson in Contempt of Court.

In paragraph 2 of her Final Order, the Chancery Court found Mr. Patterson in contempt for failure to pay $18,000.00 of a rent stipend:

> The Court finds that Respondent Gregory Patterson is in willful and obstinate contempt of the Final Decree of Divorce filed in this cause. Respondent has willfully refused to pay the amounts owing to Petitioner pursuant to ¶ 16B of the Final Decree of Divorce, and Respondent is currently in arrears in the amount of Eighteen Thousand Dollars and no/100 cents ($18,000.00) under this provision of the Final Decree. The Court orders Respondent Gregory Patterson to immediately tender the sum of $18,000.00 to Petitioner Tara Patterson.[75]

Notably, the only ground for which Mr. Patterson was found in contempt was his failure to pay $18,000.00 of a rent stipend. This Court should vacate the Chancery Court's finding of contempt because: (1) Mrs. Patterson had unclean hands and could not properly petition for contempt of court; (2) Mr. Patterson's conduct does not give rise to a finding of contempt of court; and (3) Mrs. Patterson's breach of the Divorce Decree discharged Mr. Patterson's obligation to pay the rent stipend.

A. Mrs. Patterson Failed to Satisfy Material Conditions of the Divorce Decree and Thus Could Not Seek Equitable Relief.

[74] Clerk's Record, 57; Respondent's Motion for Dismissal and Summary Judgment, 3(B)(ii).
[75] Clerk's Record, 85; Final Order, ¶2 (September 30, 2008).

The record is clear that Mrs. Patterson substantially frustrated Mr. Patterson's telephonic and videophonic visitation with Matthew over a several year period. The express terms of the Divorce Decree render Mr. Patterson's payment of the rent stipend contingent upon Mrs. Patterson giving full access to Matthew. Additionally, Mr. Patterson has a natural right to visitation with Matthew that Mrs. Patterson substantially thwarted. Because of this natural right, and the fact that the Divorce Decree expressly connects Mr. Patterson's full access to Matthew with payment of the rent stipend, Mrs. Patterson's frustration of access gave her unclean hands and forbid her from seeking an equitable remedy to enforce the rent stipend.

1. Standard of Review

On this issue, this Court's review of the Chancery Court's decision is limited. Townsend v. Townsend, No. 2002-CA-02087-SCT (¶7) (Miss. 2003). "This Court should affirm the decision of the chancellor when supported by substantial evidence, unless the chancellor abused her discretion, was manifestly wrong or clearly erroneous, or applied an erroneous legal standard." Chapel v. Chapel, No. 2002-CA-00794-SCT (¶8) (Miss. 2004). Nevertheless, a finding of contempt must be supported by clear and convincing evidence. Cumberland v. Cumberland, 564 So.2d 839 (Miss. 1990).

The "clean hands doctrine" is a defense to a civil contempt charge for violating a provision of a marital dissolution agreement. Riddick v. Riddick, No. 2003-CA-00323-COA (Miss. App. 2004). "[T]he principles of equity and righteous dealing [are] the purpose of the very jurisdiction of the [chancery] court to sustain." Shelton v. Shelton, 477 So.2d 1357, 1358-59 (Miss. 1985). It is one of the oldest and most well known maxims that one seeking relief in equity must come with clean hands or face refusal by the court to aid in securing any right or

granting any remedy. R.K. v. J.K., No. 2005-CA-01267-SCT (Miss. 2007). The misconduct "must be in regard to or connected with matter in litigation so that it in some measure affects equitable relations subsisting between parties and arising out of the transaction." Taliaferro v. Ferguson, 38 So.2d 471, 473 (Miss. 1949).

2. The Issue Was Preserved.

Mr. Patterson properly preserved this issue for appellate review. In his Original Answer, Mr. Patterson pleaded as a Special Exception that "[p]etitioner lacks standing to bring such equitable claims because she has unclean hands."[76] Mr. Patterson advanced this argument in his Motion for Dismissal and Summary Judgment, asking the Chancery Court "to dismiss Petitioner's Petitioner for Contempt because Petitioner has unclean hands...."[77] Mr. Patterson further argued in his Motion:

> **D. Petitioner has unclean hands and thus cannot maintain an action for contempt.**
> Petitioner seeks an equitable remedy. In Williams v. Williams, the Mississippi Supreme Court held that a party may not receive equitable relief if that party has unclean hands. 48 So. 358 (Miss. 1933). Here, Petitioner has unclean hands because she has breached paragraphs 3(F) and 22(D)(ii) of the Final Decree.[78]

Mr. Patterson asserted all supporting facts at trial[79] and received an adverse ruling on the issue in the Chancery Court's Order dated August 22, 2008[80], reconfirmed by Final Order.[81] Further, "[i]t is the duty of the Court to apply it of its own motion when it becomes evident that the facts are such that they call for the application of the maxim." Thigpen v. Kennedy, 238 So.2d 744 (Miss. 1970); see also Mississippi Chancery Practice, section 42 (2d ed. 1950) ("It is not

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[76] Clerk's Record, 39; Respondent's Original Answer, II.
[77] Clerk's Record, 59; Motion for Dismissal and Summary Judgment, V.
[78] Clerk's Record, 58; Respondent's Motion for Dismissal and Summary Judgment, III(D).
[79] Trial Transcript, 19:5-20:17.
[80] Clerk's Record, 84; Order, ¶1 (August 22, 2008).
[81] Clerk's Record, 85-86; Final Order, ¶2 (September 30, 2008).

necessary that [unclean hands] be pleaded by the defendant, although it will require a plainer case if it is not so pleaded, for if at any time during the progress of the case it becomes evident that the facts exist which call the maxim into use, it is the duty of the court to apply it, on the basis of a sound public policy.").

3. Argument

Mr. Patterson has a natural right to visitation with Matthew. In all respects, it is in Matthew's best interests to be afforded the ability to associate fully with his father. Matthew and his father have strived to enjoy a close and personal relationship. Matthew is proud of "his dad" and seeks to emulate him often. Although Mrs. Patterson was granted physical custody of Matthew, both parents enjoy legal custody over Matthew. Such custody includes full participation in the decision making regarding Matthew's upbringing, including his education. Mr. Patterson has assumed an important role in Matthew's education, reading to him at night and teaching him his multiplication tables. Overall, Mr. Patterson's visitation right with Matthew is crucial to Matthew's well being.

Supplementing this natural right, the Divorce Decree formally establishes Mr. Patterson and Mrs. Patterson's rights and responsibilities with respect to visitation with Matthew. In addition to providing Mr. Patterson significant custodial access to Matthew, the Divorce Decree provides Mr. Patterson frequent telephonic and videophonic access. Paragraph 3(F) provides:

> **Both parties shall have access to Matthew via either telephone or videophone 5 times per week when Matthew is in the custody of the other party** [emphasis added].[82]

The Divorce Decree further provides that each party possesses a duty to deliver Matthew to the other for visitation. Paragraph 3(B)10 requires that "[e]ach party shall be flexible in his/her

[82] Clerk's Record, 14; Divorce Decree, ¶3(F).

approach to making needed adjustments to the custodial schedule, taking into account changes in the parties' employment or other circumstances, but especially the needs of the child to maintain a relationship with each parent."[83] Paragraph 3(E) insists that "[n]either party shall inhibit access to the other party. Both parties understand that it is grounds for modification of custody to alienate the rights of the other party."[84] Paragraph 2(A) further "requires each party to put their interests aside, and their differences towards each other aside for the best interests of the parties' minor child.... Each party shall encourage and try to enhance the child's relationship with the other party."[85]

Importantly, Paragraph 16(B) of the Divorce Decree conditions the rent stipend upon Mr. Patterson's full access to Matthew:

> In consideration for Tara waiving her interest in the marital home, Gregory has agreed to give Tara a $1000.00 monthly stipend for rent for a period of three years commencing December 1, 2004. **To the extent that Tara precludes access to Matthew, then Gregory's obligation to pay Tara's rent shall cease.**[86]

At both the pre-trial and trial phases of this case, Mr. Patterson gave clear and uncontradicted testimony as to how Mrs. Patterson frustrated access to Matthew. At trial, Mr. Patterson testified:

> Mrs. Patterson has answered my telephone calls to Matthew, which provided for five days a week, no more than half the time in the last four years.... Moreover, the decree provides [video conferencing]. In the spring of [2005], I provided a full suite of electronic equipment so that Matthew and I could do video conferencing. Mrs. Patterson, I have reason to believe, sold it and kept the money. That equipment went missing and as a result I have been unable, with a reasonable degree of quality,

[83] Clerk's Record, 14; Divorce Decree, ¶3(B)10.
[84] Clerk's Record, 14; Divorce Decree, ¶3(E).
[85] Clerk's Record, 10; Divorce Decree, ¶2(A).
[86] Clerk's Record, 20.

communicate with Matthew over video conferencing.[87]

Mr. Patterson further testified:

> In fact, immediately following the divorce I asked Mrs. Patterson what time she would like to do the phone calls. She said 8:00. And that's been the time since then. Yes, I do believe that when I call at home and she does not answer and I try the cell phone and she does not answer that is preclusion of access. And I also believe that in the divorce decree when it provides access, it implies a reasonable quality of access. So when Matthew is at a movie, when Matthew is at IHOP eating pancakes, or when he is at Sonic in the drive-thru with the family, that does not constitute quality telephone [or videophone] time. I have never insisted on an hour. I have only insisted on an opportunity to get ahold of him. And given that I have lived in a different state than Matthew those telephone calls are the bulk of my access to Matthew. That is how I communicate with my son predominately. That is how we continue a relationship, and when Mrs. Patterson simply fails to answer the phone that substantially impairs my access to Matthew. It substantially impairs my relationship with Matthew.[88]

Mr. Patterson's trial testimony is augmented by Mr. Patterson's affidavit testimony attached to his Motion for Dismissal and Summary Judgment:

> Despite Petitioner's clear obligation to provide Respondent with access to his son via either telephone or videophone 5 times per week, she has completely failed to consistently do so. Respondent has given Petitioner nearly complete discretion in selecting the most convenient times for receiving telephone calls (she chose between 8:00-8:30 PM), but Petitioner has only answered approximately one-half of such calls since the entering of the Final Decree of Divorce. In the months leading up to Respondent's cessation of rent payments, Petitioner provided Respondent little if any telephonic access to his son. Additionally, in the spring of 2005, Respondent shipped to his son an ultra-quiet and compact Shuttle computer with an impact resistant monitor and video camera to facilitate nightly video-conferencing. It is the Respondent's reasonable belief that Petitioner sold such equipment and kept the proceeds to herself. Petitioner refused to answer Respondent's requests for information on the equipments whereabouts, and the equipment has since been missing. Regardless of the fate of such equipment, Petitioner failed to provide it for Matthew Patterson's use and subsequent video conferencing was severely limited. Respondent timely notified Petitioner that the reason for the

[87] Trial Transcript, 19:21-25 and 19:28-20:11.
[88] Trial Transcript, 21:12-22:11.

> cessation of rent stipend payments was her willful preclusion of access to Matthew.[89]

Mr. Patterson's testimony was further supported the affidavit testimony of Andrea M. Gordon:

> That from October 2006 to May 2008, I resided with Gregory Patterson and had personal knowledge of his efforts to make phone calls to his son Matthew Patterson; that Gregory made these calls regularly at 8:00pm; that these calls were answered no more than half the time.[90]

Mrs. Patterson failed to contradict any of this testimony at trial. Not once in the record does Mrs. Patterson offer the simple testimony: "I have consistently answered Mr. Patterson's calls to his son Matthew," or "I have enabled Matthew to talk to his father over video phone," or "I did not sell Matthew's videophonic equipment and keep the proceeds for myself," or even "I respect Mr. Patterson's efforts to communicate with Matthew over telephone and videophone." Instead of giving false testimony, Mrs. Patterson said nothing on the issue[91] and Ms. Maddox simply sidestepped the issue, narrowing the meaning of "access" and changing the subject from telephonic and videophonic access to custodial access:

> Mr. Patterson has had full access to Matthew. The way he got served in this case is because he was here to visit Matthew. He has his visitation when he wants.... He has had the visitation every time he has asked for visitation. He had it this weekend. He had it when he was served originally in this case.... He has no problem with visitation. He never has had, and he doesn't allege any problems with visitation [emphasis added].[92]

Obviously, Ms. Maddox's understanding of Mr. Patterson's "visitation" is considerably narrower than the Divorce Decree's, because Mr. Patterson has certainly "alleged problems with visitation." In fact, it is undisputed that Mr. Patterson has alleged problems with telephonic and

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[89] Clerk's Record, 51; Respondent's Motion for Dismissal and Summary Judgment, I(C).
[90] Clerk's Record, 62; Affidavit of Andrea M. Gordon, ¶1.
[91] Mrs. Patterson herself failed to utter a single word of testimony throughout trial.
[92] Trial Transcript, 20:18-23.

videophonic access to Matthew for years. Thus, Ms. Maddox was clearly not addressing those forms of access in the above testimony.

With respect to custodial visitation, it is true that Mr. Patterson has never alleged frustration of access. Mrs. Patterson has done a good job opening the door when Mr. Patterson has arrived to pick up Matthew. But given that Mr. Patterson has resided in a separate state from his son Matthew, this responsibility has been considerably easier, and perhaps even less important, than the crucial task of availing Matthew with consistent telephonic and videophonic visitation with his father:

> And given that I have lived in a different state than Matthew those telephone calls are the bulk of my access to Matthew. That is how I communicate with my son predominately. That is how we continue a relationship, and when Mrs. Patterson simply fails to answer the phone that substantially impairs my access to Matthew. It substantially impairs my relationship with Matthew.[93]

To this responsibility, Ms. Maddox offered no evidence whatsoever, testimonial or otherwise, to contradict the clear testimony of Mr. Patterson and Affiant Andrea Gordon.

Instead, Ms. Maddox essentially mocked Mr. Patterson's telephonic and videophonic access in open court. On page 20 of the Trial Transcript, Ms. Maddox complains:

> He wants to control when this child answers the phone. He's an eight-year-old-child. He wants an hour a night with an eight year-old-child at his beck and call. Not in a car, not at so and so. He wants to specify where he is when he calls every night for an hour, and that's what he is saying he has been denied access.[94]

This complaint is extended on page 22-23, where Ms. Maddox decides:

> [Mr. Patterson] is completely unreasonable on wanting to talk to a small child five nights a week for an hour at his instance whenever he likes.[95]

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[93] Trial Transcript, 22:1-11.
[94] Trial Transcript, 20:24-21:3.
[95] Trial Transcript, 22:29-23:3.

In truth, Mr. Patterson never asked for anything more than a consistent time where he and Matthew could carry on a normal conversation:

> I have never insisted on an hour. I have only insisted on an opportunity to get ahold of him.[96]

But notwithstanding Mrs. Patterson's and Ms. Maddox's casual dismissal of Mr. Patterson's right of visitation five nights a week, their opinions are completely irrelevant for any purpose other than evidencing Mrs. Patterson's appalling state of mind on the matter. In fact, it is the Divorce Decree that requires Mrs. Patterson to provide Mr. Patterson telephonic and videophonic access to Matthew five nights a week. The Divorce Decree does not provide any mechanism or justification for frustrating this right, regardless of how inconvenient that may be for Mrs. Patterson. Reading Ms. Maddox's testimony, one wonders how videophonic access could be established from Mrs. Patterson's car. Or, for that matter, why Matthew's age or size is relevant to the inquiry at all – unless to allege that he is incapable of telephonic or videophonic communication (an absurd proposition to which there is no truth or supporting evidence).

Ms. Maddox further admitted at trial that the telephonic and videophonic access had been a problem for some time:

> [W]e've got a stack of these e-mails from Mr. Patterson about how she is going to have him, when she is going to do it, and long she is going to do it, and they better not be at the movies, and they better not be in the car and they better be where he wants them to be.[97]

First, it should be noted that the mere existence of this stack of e-mails confirms that Mr. Patterson has struggled to secure telephonic and videophonic access to Matthew for years. But second, how could Matthew be expected to talk to his father on the telephone while at the movies? And would Ms. Maddox have even mentioned it if Mrs. Patterson had not been in the

[96] Trial Transcript, 21:29-22:1.
[97] Trial Transcript, 22:19-26.

habit of taking Matthew to the movies on school nights? As Mr. Patterson testified, he has never asked for anything more than a consistent time where he and Matthew could carry on a normal conversation. This was not possible from a movie theatre.

Mississippi law is clear that when testimony of witness is not contradicted, either by direct evidence or by circumstances, it must be taken as true. Hearin-Miller Transporters, Inc. v. Currie, 248 So.2d 451 (Miss. 1971). "[E]vidence which is not contradicted by positive testimony or circumstances, and is not inherently improbable, incredible, or unreasonable, cannot be arbitrarily or capriciously, discredited, disregarded, or rejected, even though the witness is a party or interested; and unless shown to be untrustworthy, is to be taken as conclusive, and binding on the triers of fact." A & F Properties, LLC v. Lake Caroline, Inc., 775 No. 1998-CA-01755-COA (¶ 17) (Miss. App. 2000) (citing Lucedale Veneer Co. v. Rogers, 53 So.2d 69, 75 (1951)).

Here, the Chancery Court should have taken as true Mr. Patterson's and Affiant Andrea Gordon's uncontradicted testimony that Mrs. Patterson has substantially frustrated his telephonic and videophonic access to Matthew. Moreover, the record as a whole clearly establishes that Mrs. Patterson failed to satisfy her obligations under the Divorce Decree. Mrs. Patterson was obviously not "flexible" in making needed adjustments in accordance with paragraph 3(B)(10) of the Divorce Decree, as the basic suggestion that Matthew be somewhere appropriate for telephonic or videophonic communication was simply too much for Ms. Maddox to accept. Nor did Mrs. Patterson put her own interests aside for the benefit of Matthew's relationship with his father, as required by paragraph 2(A) of the divorce decree. Instead, Mrs. Patterson actively thwarted that relationship by failing to answer more than one half of Mr. Patterson's phone calls to Matthew, in addition to selling or otherwise disposing of the long-missing videophonic

equipment.

As a result of this conduct, the Chancery Court should have barred Mrs. Patterson from seeking a finding of contempt. Under the legal standard established by Taliaferro, the "clean hands" doctrine forbids an equitable remedy where the misconduct is "in regard to or connected with the matter in litigation so that it in some measure affects equitable relations subsisting between parties and arising out of the transaction." 38 So.2d at 473. Here, the divorce decree expressly connects Mrs. Patterson's frustration of access to payment of the rent stipend. Paragraph 16(B) of the Divorce Decree conditions the rent stipend upon Mr. Patterson's full access to Matthew:

> In consideration for Tara waiving her interest in the marital home, Gregory has agreed to give Tara a $1000.00 monthly stipend for rent for a period of three years commencing December 1, 2004. **To the extent that Tara precludes access to Matthew, then Gregory's obligation to pay Tara's rent shall cease.**[98]

Given this provision, Mrs. Patterson's frustration of access is certainly connected to the rent stipend under considerations of equity. This point is made even clearer when paragraph 16(B) is read concurrently with paragraphs 3(F), 3(B)10, 3(E), and 2(A), all of which firmly establish Mrs. Patterson's absolute obligation to provide full access to Matthew.

Even in the absence of similar provisions, this Court has denied equitable relief to parents who have frustrated parental access before. For example, in Williams v. Williams, this Court held that an ex-wife was not permitted to complain of her husband's failure to pay alimony as provided by a divorce decree because she herself had not sufficiently complied with the decree's requirements of affording access of the child to the noncustodial parent. 148 So. 358 (Miss. 1933); see also Cole v. Hood, 371 So.2d 861 (Miss. 1979) (Former wife, seeking to hold former

[98] Clerk's Record, 20.

husband in contempt for failure to pay child support allegedly in arrears and seeking judgment for sum allegedly past due, did not come into equity with "clean hands" where she willfully hid the children for a period of years and kept secret her address.). But unlike these cases, here it is not simply a question of natural right. Rather, the Divorce Decree clearly articulates the broad and crucial responsibilities Mrs. Patterson took on when she accepted the privilege of having primary physical custody of Matthew. Moreover, in the above cases, the finding of contempt was for nonpayment of support. Here, Mrs. Patterson's only alleged ground for contempt was for nonpayment of the rent stipend, and this was the sole ground of the Chancery Court's contempt finding.

Although this Court continues to permit former spouses to use Rule 81 summons for abbreviated enforcement of property settlement provisions contained in divorce decrees, even where they have an adequate remedy at law, it has never discarded the equitable maxim that to receive equity one must do equity. In that regard, this case is an opportunity for this Court to firmly establish as law the principle that parents who violate divorce decree provisions conditioning property settlement payments to child access may not use a Rule 81 summons to petition for contempt to enforce that very same property settlement in chancery courts that provide [somewhat] limited due process. To find otherwise would be to grant a former spouse all of the benefits of equity without putting upon her all of the responsibilities of equity. Here, Mrs. Patterson would not be left without an adequate remedy – she could still bring a breach of contract or conversion action in a court of law. In conclusion, Mrs. Patterson should be denied equitable relief for unclean hands with respect to the property settlement and the Chancery Court's contempt finding should be vacated.

B. Mr. Patterson's Conduct Does Not Give Rise to the Chancery Court's Finding of Contempt of Court.

Under Mississippi law, a person cannot be found in contempt for violating a divorce decree if that decree (1) leaves a judicial question open for determination by the parties, (2) the decree giving rise to the contempt action is overly vague or nonspecific, or (3) the person was not guilty of willful or deliberate violations of a prior judgment or decree. Here, Mr. Patterson did not willfully violate the Divorce Decree because (1) he acted in good faith reliance upon specific provisions of the Divorce Decree that discharged his duty to pay the rent stipend; and (2) these provisions were sufficiently vague and nonspecific to render a finding of contempt improper.

1. Standard of Review

The standard of review for a citation for contempt is determined upon the facts of each case and is a matter for the trier of fact Milam v. Milam, 509 So.2d 864, 866 (Miss. 1987). It is well-settled law that contempt matters are committed to the substantial discretion of the chancellor. Showers v. Norwood, No. 2004-CA-01390-COA (Miss. App. 2005). Nevertheless, a finding of contempt must be supported by clear and convincing evidence. Cumberland v. Cumberland, 564 So.2d 839 (Miss. 1990).

2. The Issue Was Preserved.

Mr. Patterson properly preserved this issue for appellate review. In his Motion for Dismissal and Summary Judgment, Mr. Patterson alleged that "even if this Court finds that Respondent breached the Final Decree of Divorce, such a breach is insufficient to give rise to a finding of contempt of court as a matter of law."[99] Mr. Patterson further alleged in his Motion:

> Here, the Final Decree of Divorce leaves judicial questions open for

[99] Clerk's Record, 47.

> determination by the parties: to what extent does Petitioner's nonperformance of her duty to provide Respondent with access to Matthew excuse Respondent's duty to pay the rent stipend to Petitioner and is Respondent responsible for providing health insurance to Matthew even where Matthew has a source of free care and Petitioner has declined Respondent's assistance? Even if this Court finds that Respondent's interpretation of the relevant contraction provisions is incorrect or contrary to Mississippi law, the provision would thus be made sufficiently nonspecific as to render a finding of contempt improper. Finally, Respondent's good faith belief in his rights under these provisions preclude a finding of contempt because at no time did he willfully violate the decree.[100]

Mr. Patterson asserted all supporting facts at trial[101] and received an adverse ruling on the issue in the Chancery Court's Order dated August 22, 2008[102], reconfirmed by the Chancery Court's Final Order.[103]

3. Argument

(i) Mr. Patterson Did Not Willfully Violate the Divorce Decree.

"A contempt citation is proper only when the contemnor has willfully and deliberately ignored the order of the court." Cooper v. Keyes, 510 So.2d 518, 519 (Miss. 1987). "It is a defense to a contempt proceeding that the person was not guilty of willful or deliberate violations of a prior judgment or decree." R.K. v. J.K., Nos. 2005-CA-01267-SCT (¶41) (Miss. 2007).

Here, the case Riddick v. Riddick, No. 2003-CA-00323-COA (Miss. App. 2004) is instructive. In Riddick, an ex-wife sought to hold her ex-husband in contempt of court for his alleged failure to pay for their children's educational expenses. Id. There, Mississippi Court of Appeals held:

> We are unable to find any willful refusals of Roger to comply with his agreement to pay college expenses. He did not pay Heather's tuition bill

[100] Clerk's Record, 58; Respondent's Motion for Summary Judgment and Dismissal, III(D).
[101] Trial Transcript, 7:26-8:2, 19:5-14, 22:13-15.
[102] Clerk's Record, 84; Order, ¶1 (August 22, 2008).
[103] Clerk's Record, 85; Final Order, ¶2 (September 30, 2008).

> because he had a good faith belief that he could delay paying the bill until he understood his obligations in light of Patricia's breach of the agreement in refusing to cooperate with Roger and refusing to let him have any input on Heather's educational decisions. The evidence is devoid of any other reason Roger may have had for not paying Heather's tuition. The proof presented at trial shows that Roger always pays his child support. Id., at ¶42.

Similarly, here Mr. Patterson did not pay the final portion of the rent stipend because he had a good faith belief that it was discharged by terms of the Divorce Decree as a result of Mrs. Patterson's preclusion of access to Matthew. The record is clear that the controversy over telephonic and videophonic access to Matthew was real. For support, we need only look to Ms. Maddox's trial testimony:

> [W]e've got a stack of these e-mails from Mr. Patterson about how she is going to have him, when she is going to do it, and long she is going to do it, and they better not be at the movies, and they better not be in the car and they better be where he wants them to be.[104]

And similar to Riddick, Mr. Patterson has at all times paid child support and thus "the evidence is devoid of any other reason [Mr. Patterson] may have had for not paying the [rent stipend]." No. 2003-CA-00323-COA at ¶42. This argument is further buttressed by the undisputed fact that Mr. Patterson paid $18,000.00 of the rent stipend and that the payment only ceased because of Mrs. Patterson's preclusion of access. Because he has acted in good faith according to his rights under the Divorce Decree, Mr. Patterson cannot properly be considered to be in contempt. Thus, the Chancery Court's finding of contempt should be vacated.

(ii) Paragraph 16(B) of the Divorce Decree is Too Ambiguous to Support a Finding of Contempt.

"Before a person may be held in contempt of a court judgment, the judgment must be complete within itself-containing no extraneous references, leaving open no matter or description

[104] Trial Transcript, 22:19-26.

or designation out of which contention may arise as to the meaning." Wing v. Wing, 549 So.2d 944, 947 (Miss. 1989). Further, a judgment should not leave a judicial question open for determination by the parties or those "charged with execution" of a judgment, order or decree. Wing, 549 So.2d at 947. Thus, a party may not be held in contempt of a judgment if that judgment contains a description or designation that could create contention over its meaning. Patterson v. Patterson, No. 2004-CA-01610-COA6 (¶12) (Miss. App. 2005).

Here, the Divorce Decree's contentious provision is the last sentence of paragraph 16(B):

> To the extent that Tara precludes access to Matthew, then Gregory's obligation to pay Tara's rent shall cease.[105]

This provision leaves several contentious judicial questions open for determination by the parties. First, how is a reduction of the rent stipend to be calculated under paragraph 16(B)? The provision could be interpreted to call for a percentage reduction of the rent stipend based upon the percentage of precluded access over the 36 month period for which the rent stipend was payable. This interpretation focuses on the term "to the extent that" and essentially treats the issue as a pro-rata calculation. In the alternative, the provision could possibly be interpreted to void all remaining rent stipend payments once Mrs. Patterson substantially precludes access to Matthew. This interpretation focuses on the term "shall cease" and is somewhat harsher. Because the record is clear that Mrs. Patterson precluded substantial telephonic and videophonic access to Matthew, the question as to which of the above interpretations is correct potentially controls whether any monies are actually owed under the Divorce Decree and whether Mr. Patterson is in contempt.[106]

The second question raised by paragraph 16(B) is what monetary weight is to be ascribed

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[105] Clerk's Record, 20.

[106] Nevertheless, it is Mr. Patterson's firm position that no monies are owed under the facts.

to each type of access? Clearly, each type of access, whether it be custodial, telephonic or videophonic, would have some value as contemplated by the provision. But Ms. Maddox seemed to imply otherwise at trial, where she essentially disregarded Mr. Patterson's telephonic and videophonic access to Matthew and focused entirely on custodial visitation. Of course, neither of these questions need to be resolved here. But they are instructive that the Divorce Decree was by no means "complete within itself-containing no extraneous references, leaving open no matter or description or designation out of which contention may arise as to the meaning," which is required before a finding of contempt is appropriate. Wing, 549 So.2d at 947.

C. Mrs. Patterson's Breach of the Divorce Decree Discharged Mr. Patterson's Obligation to Pay the Rent Stipend.

There is no dispute that Mr. Patterson paid $18,000.00 of the $36,000 rent stipend. Because the record is clear that Mrs. Patterson frustrated more than one half of Mr. Patterson's telephonic access to Matthew, and frustrated all videophonic access to Matthew by converting the videophonic equipment for personal gain, the outstanding $18,000.00 was discharged by operation of paragraph 16(B). Thus, no monies are owed under the Divorce Decree and the Chancery Court's finding of contempt should be vacated.

III. The Chancery Court's Award of $22,500.00 to Mrs. Patterson Should Be Reduced or Vacated.

In her Final Order, the Chancery Court awarded Mrs. Patterson $22,500.00:

> It is therefore ordered and adjudged that a judgment in the total amount of $22,500 is hereby entered against Respondent Gregory Patterson, together with all future costs in collecting said judgment.[107]

The Court awarded $1,900.00 in past uninsured medical expenses, $18,000.00 for unpaid rent stipend, and $2,600.00 in attorney fees.

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[107] Clerk's Record, 86; Final Order, ¶6.

would sign whatever amount she placed in front of her.[110] Indeed, the discrepancy between the Final Order and Mrs. Patterson's testimony only evidences the reality that there were no uninsured medical expenses and thus there was no precise number to give. Regardless, the award of $1,900.00 should, at minimum, be reduced to $1,500.00 to correspond with Ms. Maddox's trial testimony.

In the alternative, the award of past medical bills should be vacated entirely. Simply put, the record is clear that Mrs. Patterson failed to meet her burden of proof. "Where the chancellor adopts, verbatim, findings of fact and conclusions of law prepared by a party, the Court of Appeals analyzes such findings with greater care, and the evidence is subject to heightened scrutiny." Department of Human Services v. Ray, No. 2007-CA-00362-COA (¶19) (Miss. App. 2008). In all cases, the party seeking relief must offer evidence to show that she is entitled to the relief requested. Wade v. Wade, 419 So.2d 584 (Miss. 1982) ("Burden is upon complainant to prove case by competent evidence."). "Merely alleging a fact, without adducing any evidence to support it, can in no case throw upon the other party the burden of disproving it." Kyle v. Calmes, 1 Howard 121 (Miss. 1834). Further, the litigant who has control of the proof must produce it. Miller v. Lykes Bros.-Ripley S. S. Co., 98 F.2d 185 (C.A.5.La. 1938).

Here, the extent of Ms. Patterson's "evidence" offered on the matter is the following:

> The medical bills total about $3,000.00, your Honor...But he needs to pay the medical bills that he has not paid, which total about $3,000.00. His half would be $1,500.00.[111]

Ms. Maddox failed to offer any testimony or evidence to support the $1,900.00 award other than to ask for $1,500.00. Mrs. Patterson failed to offer a single medical bill into evidence. Mrs. Patterson failed to offer a single request for reimbursement into evidence. Mrs. Patterson failed

[110] With sincerity and respect, Appellant openly questions the impartiality of the lower court proceeding.
[111] Trial Transcript, 5:13-14 and 18:22-25.

to give any indication as to how these uninsured medical expenses were incurred, when they were incurred, or, for that matter, how a conglomeration of uninsured medical expenses precisely totaled $1,900.00 or $1,500.00, depending upon which number we choose. This is especially poignant given that, in theory, Mrs. Patterson possessed all of this evidence but yet failed to produce any of it at trial. And this is a fact that Ms. Maddox rather cynically took advantage of at trial:

> The divorce decree is real clear about what he owes. He obviously has not paid it. He doesn't have any proof that he has. We are saying on the medical bills there are a few that she can prove that she did send to him. He may not be in contempt on those medical bills, but he still owes them, whether he is in contempt or not. [emphasis added][112]

Mr. Patterson freely concedes that he cannot prove that he has paid uninsured medical expenses that he has no knowledge even exist. But under well established principles of law, he does not have to. Nor is Mr. Patterson obligated to conduct discovery so as to procure Mrs. Patterson's evidence and offer it for her. Nevertheless, Mr. Patterson made an effort that was ignored:

> I have never seen a medical bill for Matthew David Patterson. Not a single one, and I requested [them] by e-mail six weeks ago from Attorney Maddox.[113]

Indeed, the $1,900.00 award is entirely based on the following transaction: "Your Honor, we would like $1,500.00," to which the Court responded "Okay, here's $1,900.00." It's a small wonder Ms. Maddox didn't just ask for $5,000.00. Or $10,000.00. In fact, the bulk of the evidence on the subject was offered by Mr. Patterson, who testified that he had never been provided a copy of a single medical bill or request for reimbursement and that Ms. Maddox refused his requests for copies of the medical bills in discovery. Overall, there is simply insufficient evidence to support this award under basic standards of proof. Thus, the $1,900.00

[112] Trial Transcript, 11:26-12:5.
[113] Trial Transcript, 28:8-11.

award should be vacated in its entirety.

B. The Chancery Court Failed to Properly Account For Mrs. Patterson's Preclusion of Access to Matthew.

Because Mrs. Patterson precluded more than one half of Mr. Patterson's telephonic access to Matthew, and precluded all of Mr. Patterson's videophonic access to Matthew by converting the videophonic equipment for personal gain, the outstanding $18,000.00 was discharged by operation of paragraph 16(B). Thus, no monies are owed under the Divorce Decree and the Chancery Court's award of $18,000.00 should be vacated.

In the alternative, the Chancery Court abused her discretion in disregarding paragraph 16(B) entirely and assigning no value to Mrs. Patterson's preclusion of access. Thus, this Court should remand the issue to the Chancery Court to assess a monetary value to Mrs. Patterson's preclusion in accordance with paragraph 16(B) and issue a new judgment not inconsistent with that value.

C. The Chancery Court Erred in Awarding Mrs. Patterson $2,600.00 in Attorney Fees.

In her Final Order, the Chancery Court awarded Mrs. Patterson $2,600.00 in Attorney Fees:

> Respondent shall immediately pay the sum of Two Thousand Six Hundred Dollars and no/100 cents ($2,600.00) directly to Hon. Nancy M. Maddox, attorney for Petitioner, in attorney's fees and costs necessitated by the filing of this contempt action.[114]

The extent of the "evidence" offered at trial by Mrs. Patterson on this matter is the following testimony from Ms. Maddox:

> And of course, Tara is asking for her attorney's fees in bringing this action.[115]

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[114] Clerk's Record, 86; Final Order, ¶5 (September 30, 208).
[115] Trial Transcript, 5:26-28.

Ms. Maddox failed to give any testimony on the value of these services or how they were calculated. The number $2,600.00 was never testified to and was simply put in the Final Order for the Chancery Court to sign. Again, Mr. Patterson looks to Wade v. Wade, 419 So.2d 584 (Miss. 1982) for the proposition that the "[b]urden is upon complainant to prove case by competent evidence." Because there is no evidence whatsoever to support the Chancery Court's award of attorney fees, it should be vacated.

In the alternative, the Chancery Court's award of attorney fees should be vacated because the only basis for such award was the Chancery Court's finding of contempt, which was an abuse of discretion.

Conclusion

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court will:

1) Vacate the Chancery Court's modification of the Support Order;
2) Vacate the Chancery Court's finding of contempt of court;
3) Vacate or Reduce the Chancery Court's award of $1900.00 for uninsured medical expenses.
4) Vacate or Remand the Chancery Court's award of $18,000.00 in outstanding rent stipend payments;
5) Vacate the Chancery Court's award of $2,600.00 for attorney fees.

Respectfully Submitted,

Greg Patterson

Date Filed: February 5, 2009

Greg Patterson
Pro Se

CERTIFICATE OF SERVICE

A true and correct copy of the above Opening Brief for the Appellant has been properly delivered by overnight express mail on February 5, 2009 to all known counsel of record: Nancy M. Maddox, Attorney for Appellee, P.O. Box 1249, Olive Branch, MS 38654.

A true and correct copy of the above Opening Brief for the Appellant has been properly delivered by overnight express mail on February 5, 2009 to the Chancery Court of Desoto County: Chancellor Vicki Cobb, 2535 Highway 51 South, Room 104, Hernando, MS 38632.

Respectfully Submitted,

Greg Patterson

Date Filed: February 5, 2009

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