IN THE SUPREME COURT
STATE OF MISSISSIPPI

ERIC R. BEAMER,	)	
	)	
Appellant,	)	**CAUSE NO. 2008-TS-01368**
	)	
	)	
vs.	)	
	)	
	)	
FANNIE M. BEAMER,	)	
	)	
Appellee,	)	

APPEAL

BREIF OF THE APPELLEE
FANNIE M. BEAMER

M. T SHAREEF, ESQUIRE
Mississippi Bar No. [redacted]
MS CENTER FOR LEGAL SERVICES
Post Office Box 575
McComb, Mississippi 39649
Telephone No. 601/684-0578
Facsimile No. 601/684-0575
Email: mshareef@mslegalservices.org

ORAL ARGUMENT NOT REQUESTED

CERTIFICATE OF INTERESTED PARTIES

CAUSE NO. 2008-TS-01368

ERIC R. BEAMER VS. FANNIE M. BEAMER

The undersigned counsel of record hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this court may evaluate possible disqualification or recusal:

1.	Appellant:	Eric R. Beamer
2.	Appellee:	Fannie M. Beamer
3.	Counsel of Appellant:	Holmes Sturgeon
4.	Counsel of appellee:	M. T Shareef Mississippi Center for Legal Services
5.	Presiding Chancellor:	K.E. Middleton

M. T SHAREEF, ESQUIRE
ATTORNEY OF RECORD FOR
FANNIE M. BEAMER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES

A. In the course of a divorce proceeding, does the Chancellor have the authority to examine the validity of an adoption proceeding involving one of the divorcing parties' children.

B. Does the Chancellor in such a case have the authority to set aside an adoption (assuming he has the jurisdiction) if he finds that fraud or undue influence was involved.

C. If an adoption is carried out for the purpose of circumventing other legal requirements or perpetrating a fraud, can that adoption be set aside?

D. Did the Chancellor rule against the overwhelming weight of the evidence?

E. Did the Chancellor err in not allowing additional time for discovery?

STATEMENT OF THE CASE

FANNIE M. BEAMER, the appellee herein, and hereinafter referred to only as the Plaintiff, married **ERIC R. BEAMER**, the appellant, hereinafter referred to as the Defendant on January 13, 1996. The parties had no natural children together, although Fannie had several by a previous relationship.

Sometime during the life of the Plaintiff's infant grandson the parties began discussing adoption. The child had been with them since early infancy. The Plaintiff and Defendant went forward with an adoption suit, in which he intended to adopt her own son's young child who was born in 2002. The natural father, Troy was the son of the Plaintiff, and the natural mother of the child, **JULIA BANKS**, consented to the adoption.

The Defendant, a high school graduate with six months of college, was a willing participant in the adoption. He did all he believed necessary to accomplish same. The adoption decree was signed by the Court on March 4, 2005.

The Plaintiff separated from the Defendant following his unceremonious removal of her and the children from the marital residence in November 2005, eight months after the adoption went through. She then filed for divorce on August 23, 2006, demanding, among other things, child support for the adopted child. The parties had little property and some bills. The Defendant filed his Answer and Counterclaim November 29, 2006, for a divorce and for the Trial Court to set aside the adoption or award him custody. On February 27, 2007, the parties consented to a divorce on grounds of Irreconcilable Differences, leaving for the Court to decide custody and child support, property matters and the issue of the validity of the adoption.

The Plaintiff argued against the adoption issue being entertained in the context of

the divorce proceedings. The Chancellor being aware of the polices and law and counsel's argument allowed the issue to be presented.

The Chancellor's ruling from the bench on February 27, 2007, was for a divorce on the ground of Irreconcilable Differences, following the withdrawal of contested pleadings. He also awarded custody to the Plaintiff with commensurate visitation and child support, proportional liability for the marital debts, equitable distribution of the marital property and denied the Defendant's request to set aside the adoption.

The Defendant failed to pay any of the financial obligations following the bench opinion and the Plaintiff sought a contempt order. The Defendant provided misleading information regarding his employer, so that a withholding order could not be enforced. After a hearing, the final Judgment denied the contempt request, but awarded a child support arrears dating back to the February 27, 2007, bench ruling. Said Judgment is the Judgment of divorce.

From the inception of these proceedings, the Defendant had expressed a desire to conduct discovery, but failed to follow through. He also had filed a Motion to see the Adoption on or about February 20, 2007.

The Defendant never brought his motion before the Court for resolution. At the February 8, 2007, hearing on the Plaintiff's Motion to set aside the Defendant's Answer and Counterclaim, the Plaintiff argued that the Defendant had more than ample time prior to the Plaintiff seeking a trial setting to have completed discovery. The Court ruled at the hearing on February 8, 2007, that no discovery was necessary, and that the Court felt the issues were clear enough to go forward with no discovery at all. Included therein was an invitation

to the Defendant to pursue depositions, which the Defendant did not avail himself of. The Chancellor made the appropriate decision.

It is from this set of circumstances the Defendant appeal.

SUMMARY OF ARGUMENT

The Chancellor has broad authority to examine matters before him. This being a divorce case, issues pertinent to the dissolution should be decided. Those being issues of paternity, custody, visitation, support and property division. Other matters and parties should not be allowed to come in between husband and wife. When fraud is committed upon an unsuspecting party, that party has a right to the proper redress. A willing participant should not be allowed to feign ignorance of the act and seek relief from the courts when things subsequently are not to his liking. There are consequences for one's act. The Chancellor meted out the consequences herein after weighing the evidence before him.

The limiting of discovery herein, following the actual involvement of opposing parties early on was within the Chancellor's discretion. However, the Defendant failed to avail himself of his opportunity through his own dilatory acts.

ARGUMENT
ISSUES A B C AND D

The Defendant is aggrieved because the Chancellor denied his request to set aside an adoption, granted some two years earlier, in the ensuing divorce proceedings. Mississippi Code Annotated §93-17-25 (1972) as amended, provides that adoption proceedings are confidential and are to be held in closed court. Further, that the pleadings reports, files and records are confidential. It is the Plaintiff's contention that for the Chancellor to entertain issues stemming from an adopting in open proceedings, as these were, is a violation of the statute. This should be done in the adoption proceedings (TR page 41 L18-page 43 L13). Whereas, divorce proceedings are held in open Court Mississippi Code Annotated § 93-17-25 (1972) as amended, does provide that the adoption records are available for use in any Court. The Defendant failed to request that the adoption records be utilized during these proceeding on February 28, 2007, and neither were they produced. (TR page 14 L23-page 18).

The Chancellor did so entertain the Defendant's arguments for setting aside the adoption. At the end of the day he ruled against the Defendant. The reasoning for doing so is clearly stated. (TR page 151 L26-page 153 L29). The Defendant knowingly participated in the adoption proceedings. He signed the necessary documents to accomplish this. (TR page 45 Ls 19-16)(TR page 118 L29-page 119 L8)(TR page 129-L10). Having done so it is doubtful that he did not expect the adoption to go through, or even believed that it would not.

The Plaintiff stands by the ruling of the Chancellor. It is the Plaintiff's contention that the adoption stand in light of the statutory provisions restricting the attack upon the adoption. Mississippi Code Annotated § 93-17-15 (1972) as amended, limits attacks to six

months, while Rule 60 of the Mississippi Rules Civil Procedure, does so likewise. There is an exception that already exist without this Court's intervention inclusive within said rule. That exception is "any other reason justifying relief from the judgment." Rule 60 (b)(6) Mississippi Rules Civil Procedure. The Chancellor found no such reason.

The Defendant contends fraud, duress or just plain ignorance as those other reasons to set aside the adoption. Mississippi Code Annotated § 93-17-17 (1972) as amended, further limits attacks on adoption judgment to reasons of jurisdiction defect; failure to file and prosecute, none of which is available to the Defendant. See, In Re: Adoption J.E.B., a minor: F.D.P., SR. vs. J.S.B. and C.B., 822 So. 2d 949 (Miss. 2002) 999-CA-01817-SCT; See, Humphrey vs. Pannell, 710 So. 2d 392 (Miss. 1998) 95-CA-00229.SCT.

Clearly the Chancellor found correctly here. The Defendant stated his knowledge of the intention to adopt. He further stated his disinterest in doing so. (TR pages 112-L5 - page 113 L 25)(TR page 126 L6). But ultimately he agreed to do so (TR page 46 Ls-2-9). He did so, if only as he said, to get her off his back. (TR page 127 L 18-22) (TR page 112 Ls 23-page 113 Ls 1-5). There was no fraud, if any, that the Defendant was not aware of. He was a full participant in the act whether he partook of every action or not. (TR page 117 Ls 24-27). There is no duress or undue influence on the Defendant. Cf, Phillips vs. Chase, 89 N.E. 1049 (Mass. 1909).

There is no wiggle room for the Defendant here. The six months limitation on attacks should stand. The public policy of this state should stand. The Defendant should be denied relief, even if he acted within the six month limitation. See, In Re: Adoption J.E.B., a minor: F.D.P., SR. vs. J.S.B and C.B., 822 So. 2d 949 (Miss. 2002); 1999-CA-

01817-SCT; See, Humphrey vs. Pannell, 710 So. 2d 392 (Miss. 1998) 95-CA-00229.SCT.

If there is a need for this High Court to correct the authority of the Chancellor in situations as this. This case is not the one. Modification of the court's authority has been fact specific as found in M.A.S. vs. Mississippi Department Human Services, 842 So. 2d 55 (Miss. 2003). Further, the degree of fraud, if any, as implied by the Defendant does not reach the level of that in In Re Estate of Reid 825 So. 2d 1 (Miss. 2002), 2000-CA-00663-SCT. Although, the Defendant alleges the adoption took place in part to help the Plaintiff's son, he never stated what that help would be, or how the Plaintiff's son would be helped. (TR page 117 Ls 24-27). However, the minor child had been in the parties' household practically all of his short life. (TR page 129 Ls 25-27) (TR page 20 Ls 17-27). Further, the Defendant provided health care for the minor child, (TR page 132 Ls 1-19) and was the main provider.

The Defendant cites several cases from other jurisdiction for consideration. But, what is lacking in support thereof is whether, these jurisdictions have provisions within their laws to set aside adoptions for jurisdictional defects. Without this, these cases are not compelling. See, Neveda vs. Ahumada, 381 So. 2d 147 (Miss. 1980).

The Defendant's Motion for access to the adoption file was filed five days before the divorce hearing on the merits. Additional motions filed were seeking to the setting aside the adoption and for a continuance. The Plaintiff will submit that the Defendant waived his arguments hereon by not bringing same on for hearing prior to or during the trial on the merit. (TR page 14 L 23-page 18). See, Turner vs. State, 945 So. 2D 992, 997 (Miss. 2007). However, the Defendant's earlier motion for continuance heard on February 8,

2007, was denied by Order dated February 27, 2007. As for his access to the adoption file the Defendant states in his brief, that the Chancellor "claims to have looked at the adoption file." (App Brief page 15). But, what he fails to state is when this comment was made and whether at that time he requested access to said file. It is doubtful that the Chancellor would have denied access to the adoption file during the course of the divorce hearing on the merit, but again the Defendant never asked during the hearing.

The Plaintiff further contends that the overwhelming weight of the evidence was not ignored, nor slighted by the Chancellor. Viewed in its entirely no other decision would be warranted. To undo the adoption herein would amount to the minor child being fatherless (bastardized) in the eyes of the law. Where individuals consent to give up their offsprings in adoption, that consent cannot be withdrawn or revoked. The Court is not in the business of bastardizing children. This case concerns the interest of a minor child. As it has been so often stated the best interest of the child is paramount. See, A.D.R. vs. J.L.H., 994 So. 2d 177 (Miss. 2007) 2007-CA-00702-SCT; citing Graf vs. Olds, 556 So. 2d 690 (Miss. 1990) and L.T. vs. J.H., 787 So. 2d 1268 (Miss. 2001). Does this court want to bastardize the minor child herein?

ISSUE E

The Defendant is further aggrieved because the Chancellor did not set time limits on discovery to his satisfaction. It is the Plaintiff's contention that the decision of the Chancellor should stand. The purpose of discovery is to prevent trial by ambush. See, Jones vs. Hatchet, 504 So. 2d 198 (Miss. 1987); See also Henry L. Harris vs. General Host Corp., 503 So. 2d 795 (Miss. 1986). That purpose was accomplished herein. The Defendant does not allege that he was abushed nor blindsided on appeal. However, he

did state a preference for knowledge of the Plaintiff's witnesses (TR page 12 Ls 12-14) and a desire not to blindsided (TR page 13 Ls 5-6). There were no surprise witnesses and the Defendant was not blindsided. The Defendant never expressed a desire to see the adoption file at the February 8, 2007, hearing. Likewise, he never requested the file's production during the hearing on the merits. During the February 8, 2007 hearing the Chancellor conceded to the Defendant an opportunity to conduct depositions (TR page 12 L 29 - page 13 Ls 1-4 and 17-19) limited as it was. There were twenty days left until the trial on the merits in which the Defendant could have had a meaningful deposition, but he chose not to.

The Court record and documents show that this matter was filed August 28, 2006, and the Defendant was served on or about September 22, 2006, which required his Answer to be filed on or about October 22, 2006. On October 11, 2006, the Plaintiff got communications from counsel opposite indicating that he would be representing the Defendant and expected to have an answer filed soon and maybe we can resolve this matter as a no fault. Counsel immediately contacted the Plaintiff and got her consent to talk to the Defendant about resolving it as a no fault. Counsel called counsel opposite on the telephone and told him that no fault was agreeable and which issues were to be resolved in a no fault, some minor bills, visitation and custody of the child. Counsel opposite suggested that the Plaintiff put that in writing to him so he could discuss it with the Defendant. Counsel immediately done so that same day, and sent the Defendant a letter. From October 11, 2006, on the Plaintiff heard nothing back from the Defendant until November 16, 2006, by way of Answer and Counterclaim, following the filing of the Plaintiff's notice of hearing, dated November 7, 2006.

Communication is a two way street, one say something to you, you say something back. It's not always imperative that one have to say something back to you again before you make a response to someone. The Plaintiff was waiting on a response to the Plaintiff's letter about the no fault as well as the Answer and Counterclaim.

October finishes and it is over into November and the Plaintiff still has not heard anything. So sometime in early November the Plaintiff decided the ball was in their court. It is on the Plaintiff to do as we see fit to do at this point. The Plaintiff noticed the case for hearing on December 14, 2006 and on November 20, 2006, we got the Answer and Counterclaim, with the Plaintiff's letter saying we can meet that day and resolve this as a no fault. Therein also was the first mention of discovery. True enough the Plaintiff agreed to the Answer perhaps being filed, but at the time the parties talked about the Answer being filed in October the Defendant had almost two weeks left to get an Answer in. The Plaintiff really didn't expect to have to wait beyond that two weeks or three weeks or a month for that matter before we got an Answer in.

The Plaintiff thought fine, so the hearing date was December 14, 2006, and the Defendant said we could meet. The Plaintiff was really expecting to get the Defendant's discovery in before we got into December, but it never came.

Now comes time for the hearing in December. The Plaintiff got another letter, questioning going forward on December 14, 2006, and stating some discovery may be necessary. The Plaintiff received another communication on December 11, 2006, mentioning a continuance of the December 14, 2006, hearing and again reiterating the need for discovery. The Plaintiff appeared in Court on December 14, 2006, and the Chancellor advised that the case had been continued per counsel opposite. Counsel's

obligation is to seek a resolution to his client's problem. The Plaintiff was in Court on December 14, 2006, for the divorce. She had to go back home without a divorce and she wanted to know when she was going to be divorced. All counsel can do is try to move the case and get her divorce. There was some conversation with the Chancellor regarding the Plaintiff's concern at that time. That concern being that October was our initial contact, and two months later, in December the Plaintiff hadn't received any discovery. The Plaintiff accepted the Court's decision about putting the case off for whatever reason. Still no discovery had been propounded. The Plaintiff's decision at the time in late December was to file a Motion to Strike the Answer because it was filed late and to seek a hearing date. Subsequently, on December 13, 2006, the Plaintiff received the Defendant's fax referencing having not finished with discovery and the granting of the continuance.

Having still not received any discovery well into the New Year, the Plaintiff filed her Motion on or about January 30, 2007. On February 7, 2007, the Plaintiff received the Defendant's final fax referencing discovery. How long were we to wait on the Defendant's discovery? At the February 8, 2007, hearing four months down the road the Defendant was still talking about discovery instead of pursuing same. We waited four months for the Defendant to send some discovery and to that date we had not gotten any discovery, nor a response to our settlement offer from back in October 2006. The Chancellor subsequently, found that the Defendant's Answer was valid and the issues joined.

However, discovery was not timely undertaken due to the Defendant's own dilatory acts. See, Wilson vs. Wilson 975 So. 2d 261, 265 (Miss. 2007) 2005-CA-02096-COA. The Defendant never stated a reason for not pursuing discovery after having expressed his desire to do so on more than four occasions. Neither can he rebut having

done so. (TR page 13 Ls 7-16). The Defendant claims his knowledge of the adoption arose upon being served with the complaint for divorce, but we beg to differ. (App Brief page 5). There is no testimony attesting to such. Thus, it is not likely that any discovery would have supported the Defendant's position. The Defendant's lack of discovery is totally due in a great part to his own dilatory acts and should in no way reflect upon the Chancellor's decision.

CONCLUSION

Upon reflecting back it is obvious that the Chancellor made the right decision herein. Initially the Plaintiff had opposition to the validity of the adoption being addressed in the divorce proceedings. It was done primarily on the basis of the confidential nature of those proceedings, and the statutory and rules of procedure's limitations on attacking adoption judgments. It was aptly pointed out by the Chancellor, these divorce proceedings were practically closed, but for the parties, counsel, court personnel and one other acquaintance of the parties. Further, that the adoption in question was of a normal familiar arrangement, which is not so uncommon. Under the opposite circumstances, the Plaintiff would steadfastly contend, that adoptions should not be discussed in open proceedings. It is easy to see how an issue such as this should be decided on a case by case basis, if at all.

To undo an adoption, the Defendant must have done so within six months of the Decree. And then only for reason of jurisdictional defect, failure to file and prosecute. The Defendant acknowledged having signed papers for an adoption and it is apparent pleadings were filed and the case prosecuted to the logical conclusion. Had the Defendant wanted no part of this adoption his option surely was not to sign adoption papers to get the Plaintiff to stop nagging or off his back. Some form of custody was just as viable an option as adoption. After all both agree the minor child was a part of their household. This being the case, was not the child support that was allegedly being avoided, but not proved, being sought by the wrong party?

So where was the fraud in terms of the adoption herein? If there was fraud may be it was on the Defendant's part. After all he never disputed the Plaintiff's testimony regarding his agreeing so long as she stayed around. Neither did he rebut her testimony

that she and the children left after him telling them to get out. Now the picture is clear. She left the Defendant upon his insistence and now he wants to take back what he gave her, his consent to the adoption. It no longer suited his purpose. There is no need to set aside the adoption herein.

The weighing of the evidence and observing the witnesses is within the purview and discretion of the Chancellor. The Plaintiff does not believe that this High Court will find there was not substantial evidence, or that the Chancellor was manifestly wrong or he applied an erroneous legal standard herein. The decision should not be overturned.

The Defendant's lack of discovery should only be viewed as a product of his own creation. Trial strategy or not, the defendant waited and waited, time wise he gambled and lost. He had more than ample time to begin and complete discovery before trial, but chose not to. The decision of the court was not manifestly unjust when viewed against the back drop of the Defendant's numerous assertions to the Plaintiff to avail himself of discovery, his failure to initiate discovery and the timing of the hearing on the merits. Having agreed to the hearing date, the Defendant sought to continue the proceedings and extend discovery in an untimely manner. Further, as for the Defendant's lack of an opportunity to review the adoption file, we reiterate, he never asked for a ruling on his final motion for both actions. His failure to act can not be attributed to the Chancellor. The Chancellor was not unjust in his decision herein.

Respectfully submitted, this the 6th day of March, 2009.

Fannie M. Beamer,

M. T Shareef, Esquire
Attorney for Appellee

CERTIFICATE OF SERVICES

I, M. T Shareef, Esquire, do hereby certify that I have this date mailed a true and correct copy of the Brief of Appellee to the following persons:

Honorable K.E. Middleton
P.O. Box 1144
Natchez, MS 39121

Honorable Holmes Sturgeon
P.O. Box 1175
Woodville, MS 39669

So certified this 6th day of March, 2009.

M. T SHAREEF, ESQUIRE MBN [redacted]
ATTORNEY FOR DEFENDANT
MS CENTER FOR LEGAL SERVICES
POST OFFICE BOX 575
MCCOMB, MS 39649
Tel: 601/7684-0578
Fax: 601/684-0575
Email: mshareef@mslegalservices.org