IN THE SUPREME COURT STATE OF MISSISSIPPI

NO. 2008-TS-01368

ERIC R. BEAMER, PLAINTIFF- APPELLANT

VS.

FANNIE M. BEAMER, DEFENDANT- APPELLEE

REPLY BRIEF OF APPELLANT

APPEAL FROM:

THE CHANCERY COURT OF ADAMS COUNTY, MISSISSIPPI

OF COUNSEL:

Holmes Sturgeon
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ATTORNEY FOR APPELLANT,
ERIC R. BEAMER

TABLE OF CONTENTS

PAGE NO.

CERTIFICATE OF INTERESTED PARTIES

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. Appellants: Eric R. Beamer

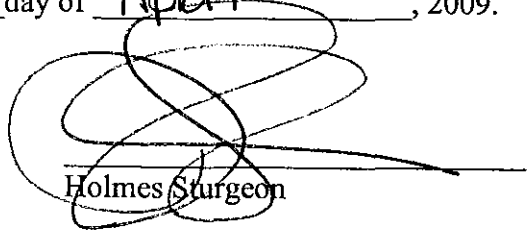
2. Appellee: Fannie M. Beamer

3. Counsel of Appellants: Holmes Sturgeon

4. Counsel of Appellee: M. T. Shareff
Mississippi Center for Legal Services

5. Presiding Chancellor: K. E. Middleton

Witness my signature this 28th day of April, 2009.



Holmes Sturgeon

CERTIFICATE OF SERVICE

I, HOLMES STURGEON, certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the foregoing instrument to:

M. T. Shareef, Esq.
Attorney for Plaintiff / Appelle
MS Center for Legal Services
P. O. Box 575
McComb, Mississippi 39649

Honorable Kennie E. Middleton
Chancery Court Judge
P.O. Box 1144
Natchez, Miss. 39121

So certified this 28th day of April, 2009.

Holmes Sturgeon

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?

F. Did the chancellor err in not allowing additional time for discovery?

ARGUMENT

Issue F

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

To first approach the issue of discovery, it should be borne in mind that this case was filed on August 28, 2006 and the final trial was held February 27, 2007. This case ran its course rather quickly for a contested divorce case involving a complex issue. There was no unreasonable delay and one more month for discovery would not have been unreasonable.

Counsel opposite fails to specifically point out that from November 7, 2006 onward, there were always unresolved motions pending before the court, which had to be resolved before this writer felt comfortable proceeding with discovery.

On November 7, 2006, even after we had been clearly discussing a possible amicable end to the case, counsel opposite filed a Notice of Hearing. Around November 16, 2006, we filed an Answer and Counter-Claim. Setting this case for a hearing clearly postured the case in a more adversarial way, and we felt we had no choice but to file an Answer and Counter-Claim at that point. Had we resolved all disputed issues, we may never have filed an answer at all. This is standard practice in this part of Mississippi.

In response to this, however, in December, counsel opposite filed a Motion to Strike our Answer, which thus became a pending Motion. December did indeed end with no discovery having been filed, but it also ended with a Notice of Hearing and a Counter-claim and an unheard Motion to Strike Answer,

all still pending. This writer felt it prudent to first have the court sort out these issues and make a ruling before going forward with anything else at all.

On January 30, 2007, counsel opposite filed another motion. A hearing was finally had on these issues on February 8, 2007. This attorney was clearly under the impression that there were important unresolved motions, and that the best practice would be to resolve these motions first, if possible, and then move on with discovery. Obviously, the outcome of these motions would greatly impact our case and our very ability to pursue discovery at all. Suppose, for example, that the Court had ruled in favor of Plaintiff's Motion to Strike our Answer, this attorney would have been very re-miss to have billed my client time drafting discovery and not knowing at all if it would ever even be used.

This writer feels that the prudent course for any attorney to take would be first to determine if there will even be a possibility of discovery and then move forward with it. With so many little harassing motions filed, it made this call uncertain, at best.

It would have caused no one any harm to have allowed some additional time to go forward with written discovery, especially with a complex issue like setting aside an adoption at stake. Depositions, while perhaps somewhat helpful, in our opinion would have produced just a barrage of lies, and then, since we had no written discovery, we would not have anything with which to compare them in order to determine their veracity. It was this attorney's opinion that, strategically, a deposition would simply have been a way for the opposing witnesses to practice their testimony and prepare for my own line of questioning, and, without interrogatories, would have been almost meaningless. We wanted to see the papers regarding the adoption. We wanted to see the papers that came from

Human Services.

We were entitled to discovery under the rules of Mississippi Civil Procedure. No one should reasonably expect us to embark upon discovery, however, with a number of sensitive motions still pending, all which could cause our case to immediately take another course. Discovery should have come later. It is always unwise to try a divorce case without any discovery, and we should have been afforded that opportunity which we requested over and over.

Issues A, B, and C

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?**

In this final statement, nothing explains better the inequity in this case than a simple reflection of the description of the current state of affairs produced by this ruling. Because of this adoption, a copy of which Eric is yet to see, Eric pays child support on a child he hardly knows, his ex-wife's own grandchild, while the child's natural born father (the ex-wife's own son) continues in this child's life, and continues to reap all the benefits of being a "daddy", with none of the financial obligations.

It came out in trial (and could certainly have been developed better had

we had a greater opportunity for discovery) that the subject child's father, Troy, Fannie's own son, had fallen behind in his child support and was being taken back into Court. (TR, p.93 Ls 6-12, also TR, p. 49 Ls 1-14 and p. 77 Ls 6-12, also TR. P. 49 Ls 1-14 and p.77 Ls 21-26 *et seq.*). Had we been allowed to develop our case through discovery, these very Court documents and possibly even personnel with the Department of Human Services, familiar with the case, could have been brought forth as witnesses. Nonetheless, the testimony from the trial makes this clear. Obviously, the natural mother was receiving food stamps and this placed the matter before the DHS.

The purpose of this adoption was not so that Eric and Fannie, as a loving couple, could take into their home a child with no family, in need of their love, nurture and care. The purpose of this adoption was to free Troy from being pursued by the Department of Human Services for food stamp abuse! Fannie knew from the start that this would put all child support obligations back on Eric and relieve her own son from these woes. Her separation from Eric occurred within only a few short months after this alleged adoption.

General principles of equity, long recognized in our state dictate that something must be done to correct this situation. Equity will not suffer a wrong without a remedy, and here in this case there is no viable remedy. Counsel opposite in his brief seemed to indicate that the remedy was available all along to Eric, simply to not participate in this adoption. But Eric never believed this adoption was going through. He never had to appear in court, and wasn't even certain that he signed anything at all. A high school degree and some college courses are simply not enough to believe that he should have fully understood what he signed. Many persons with professional degrees would not have

understood it any better.

Fannie's efforts to secure this adoption are clearly fraudulent. (TR p. 45 Ls 1-18). She did it to help her son, not because she really wanted to adopt her grandson. (TR p. 47 Ls 1-12). An adoption should be had only if it will be in the best interest of the child. This adoption was in no way in the best interest of this child. How could it have been in the best interest of the child when one party to the adoption was not even a willing participant?

Is an adoption proper which takes place not with the best interest of the child in mind, but only considering the interests of the birth father trying to avoid child support and other duties? This adoption is not about Q, this young child caught in the middle; it clearly is about Troy. The whole adoption is totally all about Troy. This is not at all in keeping with the purposes envisioned by the drafters of our state's adoption law.

How can we make our adoption law less subject to abuse? And how can we assure that adoptions that take place are truly for the benefit of the child, and not just to by-pass Human Services, or to trick some Federal entitlement program?

The child in this case is not bastardized if this adoption is set aside. In fact, he'll then spend more time with his real father and his real father will have the opportunity to finally be just that, a father, with all the amenities and responsibilities that come with it.

Q is Troy's son; Q knows it and calls him "Daddy"; Q does not know Eric. Q spends time with his own father. Eric never sees this child, doesn't know him, but sends the money, so Troy can use his money for other things.

There is here undoubtedly an inequity that our Court of Equity does not

have a remedy to correct. The High Court in this case can address the abuses of our adoption law and hopefully set us on a course to a more honest and forthright future in its administration. Let the people of this state adopt, but for the right reasons, and let the children of this state, subject of adoptions, cease being pawns in their parents' efforts to manipulate government projects to their own pecuniary ends. Let's see that the interests of the children truly are placed first.

This case should be remanded and discovery allowed to progress. And this Chancellor should have before him a case on which he can confidently rely if he feels that equity can only be accomplished by setting aside an adoption decree, where it never existed but in name alone.

RESPECTFULLY SUBMITTED, this the 28th day of April, 2009.

ERIC R. BEAMER

BY: _____
HOLMES STURGEON
OF COUNSEL
ATTORNEY FOR APPELLANT