

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOSHUA ADAM STRANGE

APPELLANT

VERSUS

CAUSE NO. 2009-CA-00449

AMY MELINDA STRANGE

APPELLEE

APPEAL FROM THE CHANCERY COURT OF GEORGE COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

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ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of 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.

1. Joshua Adam Strange, Appellant
2. Mark H. Watts, Esquire
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Attorney for Appellant
3. Amy Melinda Strange, Appellee
4. Mark A. Maples, Esquire
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Attorney for Appellee
5. Hon. D. Neil Harris, Sr., Chancellor
George County Chancery Court
P.O. Box 998
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Respectfully submitted, on this the 4th day of Feb., 2010.


MARK A. MAPLES

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STATEMENT OF THE ISSUES

- I. WHETHER THE CHANCELLOR ERRED IN DENYING APPELLANT'S REQUEST FOR STANDARD VISITATION.
- II. WHETHER THE CHANCELLOR ERRED IN AWARDING AN INCREASE IN CHILD SUPPORT.
- III. WHETHER THE CHANCELLOR'S AWARD OF ATTORNEY FEES WAS IN ERROR.

STATEMENT OF THE CASE

Amy Melinda Strange (hereinafter referred to as Amy) and Joshua Adam Strange (hereinafter referred to as Adam) were divorced by Order of the George County Chancery Court on November 16, 2004. The parties were before the Court on different Motions, resulting in the Court issuing an Order dated January 30, 2009 being reconsidered and a final Order entered in this matter. Aggrieved, Adam appeals the decision, disagreeing with the Court's modification of visitation, with the increase in child support, and with the award of attorney fees for his contempt.

I.

STANDARD OF REVIEW

The Standard of Review in a domestic relations case is well settled under Mississippi law. The findings of a Chancellor in domestic relations matters will not be disturbed by the Appellate Court unless the Chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *O'Neill v. O'Neill*, 17 So. 3rd 572 (Miss. 2009); *Irby v. Estate of Irby*, 7 So. 3rd 223, 228 (Miss. 2009). The findings of the Chancellor as it relates to the three issues Adam complains of were well settled within the law, the decisions of the Chancellor were not manifestly wrong or erroneous, nor was the wrong legal standard applied. Therefore, the decision of the learned Chancellor on these issues should be upheld and the appeal dismissed.

The issues complained of by Adam are without merit, and the decision of the George County Chancery Court should be affirmed on all matters.

II.

Amy now responds to each issue raised by Adam.

ADAM'S ISSUE NO. I - VISITATION

I.

In his first assignment of error, Adam complains the Chancellor violated the law by failing to grant Adam the Thanksgiving visitation he requested. For a better understanding of Adam's visitation, we will review the visitation set forth in the Decree of Divorce. Adam was awarded the following visitation in the divorce:

- A. Every other or alternate weekend from 8:00 A.M. on Friday until 6:00 P.M. on Sunday. In the event the Husband no longer works a four (4) day work week, the alternate weekend visitation shall at such time ipso facto begin on alternate Fridays at 6:00 P.M. Further, when the minor child begins school, irrespective of the Husband's work schedule, the alternate weekend visitation shall then commence at 6:00 P.M. on alternate Fridays, ipso facto.
- B. During 2004 and all even numbered years thereafter, from 2:00 P.M. on Christmas Day until 6:00 P.M. on the day prior to school reconvening in the public school district where the minor resides; During 2005 and all odd numbered years thereafter, from 6:00 P.M. on the day school recesses for the Christmas holidays until 2:00 P.M. on Christmas Day.
- C. Four (4) consecutive weeks during each and every summer; however, during such four (4) week visitation period, the Wife shall be and is hereby granted the right to have one (1) weekend with the minor child from 6:00 P.M. on Friday until 6:00 P.M. on Sunday. The Wife shall provide the Husband with at least ten (10) days advance notice of the weekend chosen by her.
- D. During 2004 and all even numbered years thereafter, from 5:00 P.M. the day

prior to Thanksgiving until 6:00 P.M. on Sunday after Thanksgiving and Spring Break week during 2005 and all odd numbered years thereafter from 6:00 on Friday prior to Spring Break in the public school district where the minor resides, until 6:00 P.M. on Sunday prior to school reconvening. In the event Easter weekend is not contemporaneous with Spring Break in such school district, then the Husband shall also have Easter weekend on Friday from 6:00 P.M. until Sunday at 6:00 P.M. during 2005 and all odd numbered years when the Easter and Spring Break holidays are not contemporaneous.

- E. Father's Day weekend of every year from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (with the Wife reserving the right to have the minor child with her from Friday at 6:00 P.M. during Mother's Day weekend of every year).
- F. From 5:00 P.M. until 7:00 P.M. of Tuesday of each and every week, but not to be enforced during holiday periods and summer periods referenced herein; further, it shall not be enforced if it conflicts with a prior scheduled activity of the child (however, if it does conflict with a prior scheduled activity, it may be rescheduled to the next available weekday evening when the minor child does not have a previously scheduled activity).
- G. Any other times the parties mutually agree.

II.

Further, Adam's visitation per Paragraph 3 of the October 24, 2008 Order (from which Adam complains), which Order was filed on October 28, 2008, modifies the divorce decree visitation as follows:

Thanksgiving Holiday – The Defendant's Thanksgiving holiday visitation shall

remain the same as set out in the Court's previous Order.

Memorial Day Holiday – On Memorial Day weekends, Defendant, Joshua Strange, will have visitation with the minor child from Friday at 5:00 p.m. to Monday (Memorial Day) at 6:00 p.m. in even numbered years. Defendant shall pick up the minor child for his Memorial Day holiday visitation and return the minor child to her home at the conclusion of this visitation.

Labor Day Holiday – defendant, Joshua Strange, shall have visitation with the minor child for the Labor Day weekend from Saturday at 6:00 p.m. until Monday at 6:00 p.m. on even numbered years.

Summer – Defendant, Joshua Strange, will have visitation with the minor child for the first two weeks in June and the first two weeks in July in even numbered years. Defendant, Joshua Strange, will have visitation with the minor child for the last two weeks of June and the last two weeks of July in odd numbered years. It is expected that the person having the first two weeks of July will have the child for Fourth of July holidays. The parent who has the first two weeks of July for visitation will have that visitation to begin on July 3 and it will continue for fourteen (14) days and the child will be returned on July 17.

Minor's Birthday – Defendant, Joshua Strange, will have visitation with the minor Saturday afternoon after the minor child's birthday from 3:00 p.m. to 6:00 p.m. If the minor child's birthday falls on Saturday, Defendant, Joshua Strange, will have visitation with the minor child from 3:00 p.m. to 6:00 p.m. Sunday following the birthday.

Tuesday Afternoons – Defendant, Joshua Strange, will have visitation with the

minor child on Tuesday afternoons beginning at the end of the school day until 8:00 p.m. when he is to transport the minor child back to the Plaintiff, Amy Strange. Although Defendant, Joshua Strange, may pick up the minor child from school, he may not check her out of school.

III.

Adam gained five (5) additional days on alternate years, and two (2) partial days on alternate years in this modification. This additional award of visitation is reasonable. However, the argument Adam makes for additional Thanksgiving days is unreasonable and without merit. The decision of the Chancellor in denying the requested Thanksgiving visitation was perfectly within the sound discretion of the Judge, and the denial of the Thanksgiving visitation but the awarding of the other visitation to grant additional time was reasonable and well within the province of the Court.

IV.

Adam sought to modify the divorce decree to receive additional visitation at certain requested times. The Court did modify and grant Adam certain additional visitation, but refused to grant the requested Thanksgiving visitation, which issue is before the Court. Amy submits that in order to modify the decree, Adam must show a material and substantial change in circumstances having an adverse effect on the child, in order to request and receive a modification on this point. This he has failed to do. There was no testimony from Adam about any adverse effect on the child by failing to spend additional time in the days preceding Thanksgiving. *Tedford v. Dempsey*, 437 So. 2nd 410 (Miss. 1993); *Gambrelle v. Gambrelle*, 644 So. 2nd 435 (Miss. 1994).

Simply stated, this argument is without merit and should be denied.

ADAM'S ISSUE NO. II – CHILD SUPPORT

I.

The modification of child support to \$430.00 per month was proper and the trial Court's decision on this matter should be affirmed.

II.

In the divorce decree, Adam was ordered to pay \$360.00 per month as child support.

III.

In considering Amy's request for modification, the trial Court heard the testimony of the parties, the recognized and heard testimony about the advancing age of the child, the interests of the child and the child's involvement in extracurricular activities and her interests.

IV.

In addressing the issue of child support, the Court heard the testimony of the parties, the commitment of each party to providing for the well-rounded upbringing of the child, and the advancing age and wishes and desires of the child. The Court considered the 8.05s of the parties, as well as other financial documents, more especially the 2007 income tax return of Adam. Adam's 2007 income tax return showed a taxable gross income of \$41,762.00, and an adjusted gross income of \$38,162.00. Applying the statutory mathematical formula contained in Section 43-19-101, et seq., Mississippi Code 1972 *Annotated* to this adjusted gross income reveals the following:

$$\begin{array}{r} \$38,162.00 \\ \times 14\% \\ \hline \$ 5,342.68 \\ \div 12 \\ \hline \$ 445.22 \text{ per month child support} \end{array}$$

V.

Applying the law to the facts, the Court increased Adam's child support obligation to \$430.00 per month. The learned Chancellor could have set Adam's child support at \$445.00. However, the current support was adjusted upwardly from \$360.00 to \$430.00 per month, with an additional joint contribution from each parent toward the extracurricular activities of the child. The combined total of the extracurricular obligation as well as the increased child support is the proper amount to increase said child support.

ADAM'S ISSUE NO. III – ATTORNEY FEES FOR CONTEMPT

I.

Adam seeks a reversal of the attorney fees awarded to Amy for his violation of the Court Order. The then-controlling Court Order provided for visitation to occur at certain times per the existing Order. Amy complained Adam failed to return the child following a visitation. The Court heard the testimony of the parties and, in fact, found that Adam did violate the Order by failing to return the child at the end of his visitation, and awarded her attorney fees as a result of the contempt.

II.

It is well settled law that the granting of attorney fees to either party as a part of the expenses of litigation in a contempt action is within the sound discretion of the Court. *Stauffer v. Stauffer*, 379 So. 2nd 922 (Miss. 1980); *Carlock v. Carlock*, 743 So. 2nd 424 (Miss. App. 1999). Amy submits the Court properly granted the attorney fees in order to ensure that Adam understands the sacredness of the Court Order and to punish him for his violation of the Court Order.

III.

The granting of the attorney fees was a proper matter within the discretion of the Court and Adam's assignment of error No. III should be denied and the Chancellor affirmed.

CONCLUSION

I.

Adam appeals the decision of the George County Chancery Court. Adam's appeal is without merit, and his requested relief should be denied, and the decision of the George County Chancery Court should be affirmed.

II.

Amy submits the decision of the trial Court was a just and proper decision, and the assignments of error are without merit and should be affirmed.

RESPECTFULLY SUBMITTED,

AMY MELINDA STRANGE

BY:


MARK A. MAPLES

CERTIFICATE OF SERVICE

I, MARK A. MAPLES, do hereby certify that I have this date mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief to:

Hon. D. Neil Harris, Sr.
Chancery Court Judge
Post Office Box 998
Pascagoula, Mississippi 39568-0998

Hon. Mark H. Watts
Attorney at Law
P.O. Drawer 1499
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THIS the 4th day of Feb, 2010.



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