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Supreme Court of Mississippi

Effie Darlene Adams (Sofikitis), Appellant

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

vs.

Mitchell Steven Johnson and Karen Elizabeth Johnson, Appellees

No. 2009-CA-00803

Appeal from the Chancery Court of Copiah County, State of Mississippi

Brief of the Appellant

James B. (Rus) Sykes III, MSB # [REDACTED] 5750 I-55 North, Jackson, Mississippi 39211
Telephone: (601) 957-5500, Facsimile: (601) 957-5599, Attorney for Appellant

Oral Argument is Not Requested

Supreme Court of Mississippi

Effie Darlene Adams (Sofikitis), Appellant

vs.

Mitchell Steven Johnson and Karen Elizabeth Johnson, Appellees

No. 2009-CA-00803

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 disqualifications or recusal.

1. James B. (Rus) Sykes III, attorney for Appellant.
2. John R. Elliot Jr., attorney for Appellees.
3. Honorable Edward E. Patten Jr., Copiah County Chancery Court Judge, trial court judge.
4. Effie Darlene Adams (Sofikitis), Appellant.
5. Mitchell Steven Johnson and Karen Elizabeth Johnson, Appellees.

So certified by the attorney of record for Effie Darlene Adams (Sofikitis), Appellant.

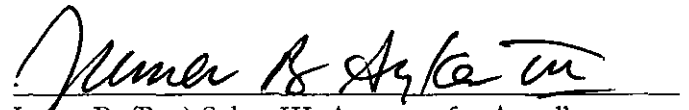

James B. (Rus) Sykes III, Attorney for Appellant

Table of Contents

Table of Authorities.....	iii.
Statement of the Issue.....	iv.
Statement of the Case.....	1-3
Summary of the Argument.....	4
Argument and Authorities.....	5-8

Table of Authorities

Barnett v. Oathout, 883 So.2d 563 (Miss. 2004)

Callahan v. Davis, 869 So.2d 434 (Miss. App. 2004)

Rodgers v. Rodgers, 274 So.2d 671 (Miss.1973)

Ethredge v. Yawn, 605 So.2d 761, 764 (Miss.1992)

Hibbette v. Baines, 78 Miss. 695, 704, 29 So. 80, 81 (1900) (quoting *Weir v. Marley*, 99 Mo. 484, 12 S.W. 798, 800 (1890))

Statement of the Issue

1. What is the correct legal standard to apply in a case involving a natural parent seeking custody of her minor children from third parties, and whether the Chancery Court of Copiah County, Mississippi, erred by applying an erroneous legal standard in the “Judgment Dismissing Motions and Reducing Child Support” entered on April 17, 2009, by denying the natural parent, the Appellant herein, custody of her minor children.

Statement of the Case

1. Nature of the Case:

Effie Darlene Adams Sofikitis, Appellant herein, is the natural mother of the minor children, namely: Autumn Nicole Johnson and Alexis Diane Johnson. Appellant (hereinafter referred to as "Effie") appeals from an adverse decision of the Copiah County Chancery Court denying her request for custody of her minor children.

2. Course and Proceedings and Disposition in the Court below:

On May 9, 2007, the Chancery Court of Copiah County Mississippi, heard the "Petition for Establishment of Guardianship and Other Relief" filed against Effie by third parties (the minor children's paternal grandparents, Mitchell Steven Johnson and Karen Elizabeth Johnson who are hereinafter referred to as "Appellees") and joined in by the children's natural father, Jeremy David Johnson. On May 29, 2007, the "Judgment Awarding Custody and Granting Guardianship" was entered against Effie awarding custody of the minor children to Appellees. The trial court found that at the time Effie was unfit.

On May 21, 2008, the Chancery Court of Copiah County Mississippi, heard the "Amended Motion for Modification and for Other Relief" filed against Appellees by Effie, and on June 3, 2008, the "Order Dismissing Motions and Awarding Child Support" was entered denying Effie custody of her minor children. Based on the standard set forth in *Barnett v. Oathout*, 883 So.2d 563 (Miss. 2004) the trial court below found that Effie failed to show a material change in circumstances with the third parties (Mitchell Steven Johnson and Karen Elizabeth Johnson) which adversely affected the minor children, such that it would be in the children's best interest that Effie have custody.

On March 11, 2009, the Chancery Court of Copiah County Mississippi, heard the "Second Amended Motion for Modification and for Other Relief" filed against Appellees by Effie, and on

April 17, 2009, the “Judgment Dismissing Motions and Reducing Child Support” was entered denying Effie custody of her minor children. Based on the standard set forth in *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004) the trial court found that Effie failed to show that it was in the best interest of the minor children for her to have custody of them.

Notice that the trial court below applied different legal standards in the contested matters, to wit: *Barnett v. Oathout*, 883 So.2d 563 (Miss. 2004) and *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004).

Effie then perfected her appeal of the “Judgment Dismissing Motions and Reducing Child Support” entered on April 17, 2009, to this Honorable Court, and respectfully submits that the trial court below should have applied the legal standard set forth in *Rodgers v. Rodgers*, 274 So.2d 671 (Miss.1973), *Ethredge v. Yawn*, 605 So.2d 761, 764 (Miss.1992).

3. Statement of Facts:

References to the clerk’s papers are cited as “C.P. Volume 1 [page].”

References to the trial transcript are cited as T. Volume 2 or 3 [page].”

References to the trial transcript exhibits are cited as T. EX Volume 1 [number].”

Effie is the natural mother of Autumn Nicole Johnson and Alexis Diane Johnson, and Mitchell Steven Johnson and Karen Elizabeth Johnson (Appelles) are the children’s paternal grandparents. On May 9, 2007, the Chancery Court of Copiah County Mississippi, heard the “Petition for Establishment of Guardianship and Other Relief” filed against Effie, the children’s natural parent and custodian, by the Appelles, and joined in by the children’s father, Jeremy David Johnson. On May 29, 2007, the “Judgment Awarding Custody and Granting Guardianship” was entered awarding custody of the minor children to Appelles. In the contested matter, the trial court found Effie was, “...morally or otherwise unfit to rear and train the children. (C.P. Volume 1, pages 1-8)

On May 21, 2008, the Chancery Court of Copiah County Mississippi, heard the “Amended Motion for Modification and for Other Relief” filed against Appellees by Effie, and on June 3, 2008,

the “Order Dismissing Motions and Awarding Child Support” was entered denying Effie custody of her minor children. It is important to note that from May 9, 2007 and May 21, 2008, the trial court below found, *inter alia*, Effie no longer used drugs, removed the “myspace.com” pictures, has a good job, is making acceptable progress in the Pretrial Intervention Program, regularly attends church, has rededicated her life to Christ and has been baptized, and has a nice clean home and no roommate. In other words, by May 21, 2008, except for the completion of the Pretrial Intervention Program Effie was rehabilitated. Further, at the hearing on May 21, 2008, Mitchell Steven Johnson and Karen Elizabeth Johnson failed to show that Effie remained morally or otherwise unfit to rear and train her children. (C.P. Volume 1, pages 9-14)

On March 11, 2009, Autumn N. Johnson filed her Minor’s Election. (C.P. Volume 1, page 43)

On March 11, 2009, the Chancery Court of Copiah County Mississippi, heard the “Second Amended Motion for Modification and for Other Relief” filed against Appelles by Effie, and on April 17, 2009, the “Judgment Dismissing Motions and Reducing Child Support” was entered denying Effie custody of her minor children. At this hearing evidence was admitted showing Effie had successfully completed the Pretrial Intervention Program, that her record was expunged, that she passed a controlled substance test, and that she was married. (T. EX Volume 1, numbers 1-4) A review of the transcript will reveal a conspicuous absence of Appellees showing that Effie remained morally or otherwise unfit to rear and train her children.

The Court stipulated that Effie had not voluntarily relinquished custody of the minor children. (T. Volume 2, page 135)

That by consent of the parties custody of both minor children was adjudicated. (C.P. Volume 1, page 45)

SUMMARY OF THE ARGUMENT

It is Effie's contention that the trial court below erred in its "Judgment Dismissing Motions and Reducing Child Support" by applying an erroneous legal standard set forth in *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004), which holds that in cases where a natural parent has voluntarily relinquished custody of her minor child to a third party may reclaim custody of the child only upon showing by clear and convincing evidence that the change in custody is in the best interest of the child. As stipulated by the trial court below, Effie did not voluntarily relinquish custody of her children to Appellees. (T. Volume 2, page 135) Instead, Effie was entitled to the natural parent presumption that the best interest of the children would be preserved by being in the custody of the natural parent. The Mississippi Supreme Court adopted the natural parent presumption as early as the year 1900: "[Children] must and ought to be subject to the custody and control of those who are immediately responsible for their being, for the reason that by nature there has been implanted in the human heart those seeds of parental and filial affection that will assure to the infant care and protection in the years of its helplessness that the primary object is the interest of the child, the presumption of the law is that its interest is to be in the custody of its parent." *Hibbette v. Baines*, 78 Miss. 695, 704, 29 So. 80, 81 (1900) (quoting *Weir v. Marley*, 99 Mo. 484, 12 S.W. 798, 800 (1890)). Effie would show that the proper standard to be applied in a custody proceeding between parent and grandparents (third parties) is the natural parent presumption stated in *Rodgers v. Rodgers*, 274 So.2d 671 (Miss.1973), viz, the parent is entitled to custody of the child unless he/she has abandoned the child or is unfit to have custody, keeping in mind the best interest of the child. Further, the grandparents (third parties) have no right to custody of the grandchildren as against the natural parent and that parent's bid for custody must prevail absent a showing of abandonment or unfitness. *Ethredge v. Yawn*, 605 So.2d 761, 764 (Miss.1992).

ARGUMENT AND AUTHORITIES

STANDARD OF REVIEW

The Mississippi Supreme Court and Court of Appeals reviews decisions of a Chancellor on questions of law under a *de novo* standard. *Zeman v. Stanford*, 789 So.2d 798 (Miss.2001); *Broome v. Broome*, 832 So.2d 1247 (Miss.Ct.App.2002). As this appeal is from the ruling of the Chancellor below denying Effie custody of her minor children based upon the Chancellor's interpretation of the case of *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004) as to whether Effie voluntarily relinquished custody of her minor children through a court of competent jurisdiction and thereby forfeited her presumption that the best interest of the minor children would be preserved by being with Effie presents an issue of law, the standard of review in this case is *de novo*.

ISSUE

WHETHER THE CHANCELLOR BELOW ERRED BY DENYING A NATURAL PARENT, THE APPELLANT, CUSTODY OF HER CHILDREN IN FAVOR OF THIRD PARTIES, THE APPELLEES.

This hotly contested custody battle is between a natural parent and third parties. In the “Judgment Awarding Custody and Granting Guardianship” entered on May 29, 2007, the trial court below found Effie was, “...morally or otherwise unfit to rear and train the children.” The Court made specific findings of fact in support of its ruling, and awarded custody of the minor children to the Appellees. (C.P. Volume 1, pages 1-8)

In the “Order Dismissing Motions and Awarding Child Support” entered on June 3, 2008, the trial court denied Effie’s prayer for custody. With regard to findings of fact the trial court below made (C.P. Volume 1, pages 1-8) in the “Order Dismissing Motions and Awarding Child Support” the trial court below found, *inter alia*, Effie no longer used drugs, removed the “myspace.com” pictures, has a good job, is making acceptable progress in the Pretrial Intervention Program, regularly attends church, has rededicated her life to Christ has been baptized, and has a nice clean home and no roommate. In other words by May 21, 2008, except for the completion of the Pretrial Intervention Program Effie had addressed and rehabilitated herself of the conduct on which the trial court based its decision to award custody of the minor children to Appellees. (C.P. Volume 1, pages 9-14) In denying Effie’s request for custody of her minor children, the trial court below used the standard set forth in *Barnett v. Oathout*, 883 So.2d 563 (Miss. 2004). The trial court below found that Effie failed to show a material change in circumstances with the Appellees which adversely affected the minor children, such that it would be in the children’s best interest that Effie have custody. (C.P. Volume 1, pages 9-14)

On March 11, 2009, the Chancery Court of Copiah County Mississippi, heard the “Second Amended Motion for Modification and for Other Relief” filed against Appelles by Effie, and on April 17, 2009, the “Judgment Dismissing Motions and Reducing Child Support” was entered once again denying Effie custody of her minor children. Based on the standard set forth in *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004) the trial court below found that Effie failed to show that it was in the best interest of the minor children to change custody from Appellees to Effie. Effie then perfected her appeal of this adverse decision entered on April 17, 2009, to this Honorable Court. It is Effie's contention that the trial court below erred by applying an erroneous legal standard set forth in *Callahan v. Davis*, 869 So.2d 434 (Miss. App. 2004), which holds that in cases where a natural parent has


voluntarily relinquished custody of her minor child to a third party may reclaim custody of the child only upon showing by clear and convincing evidence that the change in custody is in the best interest of the child. As stipulated by the trial court below, Effie did not voluntarily relinquish custody of her children to Appellees. (T. Volume 2, page 135) Effie would show that the proper standard to be applied in a custody proceeding between parent and grandparents (third parties) is the natural parent presumption stated in *Rodgers v. Rodgers*, 274 So.2d 671 (Miss.1973), viz, the parent is entitled to custody of the child unless he/she has abandoned the child or is unfit to have custody, keeping in mind the best interest of the child. Further, the grandparents (third parties) have no right to custody of the grandchildren as against the natural parent and that parent's bid for custody must prevail absent a showing of abandonment or unfitness. *Ethredge v. Yawn*, 605 So.2d 761, 764 (Miss.1992). In the adverse decision being appealed, the trial court below did not find abandonment or unfitness. In fact, at the hearing evidence was admitted that Effie successfully completed the Pretrial Intervention Program, that her record was expunged, that she passed a controlled substance test, and that she was married. (T. Volume 2, pages 4-8) Appellees did not even make an attempt to show that Effie remained morally or otherwise unfit to rear and train her children. Even though the Chancellor in the Court below stipulated that Effie had not voluntarily relinquished custody of the minor children, it applied an erroneous legal standard.

CONCLUSION

Effie submits that the trial court below erroneously applied the case of *Callahan v. Davis, supra*, to the facts of this case and requests that this Court reverse the decision of the Court below denying Effie custody of her children and render a decision awarding the permanent care, custody and control of the minor children to her natural mother, Effie.

Respectfully submitted on this the 27th day of October 2009.

EFFIE DARLENE ADAMS (SOFIKITIS),
APPELLANT

BY: 
JAMES B. (RUS) SYKES III, HER ATTORNEY

PROOF OF SERVICE

I, James B. (Rus) Sykes III, attorney for Appellant, Effie Darlene Adams (Sofikitis), certify that I have this day filed Appellant's Brief and Record Excerpts with the Clerk of this Court, and have served a copy of the Appellant's Brief and Record Excerpts by United States Mail, postage prepaid on the following persons at these addresses:

Honorable Edward Patten Jr.
Chancery Court Judge
Post Office Drawer 707
Hazelhurst, MS 39083

Hon. John R. Elliot Jr., Attorney for Appellees
Morrow & Elliot Law Firm
Post Office Box 148
Brandon, MS 39043-0148

This the 27th day of October 2009.



James B. (Rus) Sykes III