IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CA-00915

DANIEL C. VAUGHN — APPELLANT

VERSUS

TERI M. VAUGHN — APPELLEE

APPEAL FROM

THE CHANCERY COURT OF CLAY COUNTY

STATE OF MISSISSIPPI

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

CARRIE A. JOURDAN
113 5TH ST N
P.O. BOX 1108
COLUMBUS, MS 39703-1108
(662) 241-5191
MSB [redacted]

ATTORNEY FOR APPELLEE

IN THE SUPREME COURT OF MISSISSIPPI

DANIEL C. VAUGHN	**APPELLANT**
VERSUS	**CASE NO. 2009-CA-00915**
TERI M. VAUGHN	**APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

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.

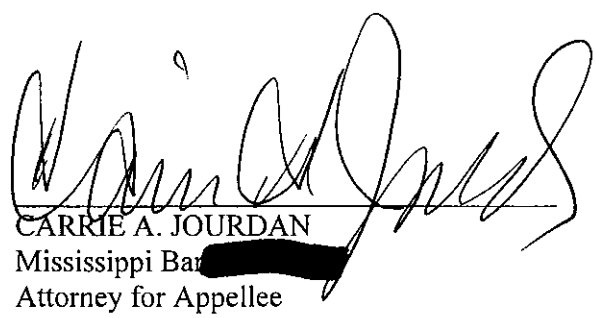
Teri W. Vaughn, Appellee

Carrie A. Jourdan, Attorney for Appellee

Honorable Kenneth Burns, Chancery Court Judge

Daniel C. Vaughn, Appellant

Elizabeith Fox Ashburn, Attorney for Appellant



CARRIE A. JOURDAN
Mississippi Bar [redacted]
Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES

I. WHETHER DANIEL C. ("CRAIG") VAUGHN (HUSBAND) WAS DEPRIVED OF HIS CONSTITUTIONALLY PROTECTED RIGHT TO MAKE DECISIONS CONCERNING THE CARE CUSTODY AND CONTROL OF HIS MINOR CHILD IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN THE CHANCELLOR DENIED HIS MOTION TO COMPEL DISCOVERY?

II. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR WHEN HE BASED HIS DIVISION OF THE EQUITY IN THE MARITAL HOME ON (A) AN OVERSTATEMENT OF THE CONTRIBUTION MADE BY TERI VAUGHN'S GRANDMOTHER; (B) AN UNDERSTATEMENT OF THE CONTRIBUTION MADE BY CRAIG'S PARENTS AND WITHOUT CONSIDERING (C) THE SEPARATE GIFT MADE TO TERI BY HER GRANDMOTHER?

STATEMENT OF THE CASE

Teri W. Vaughn, hereinafter referred to as "Wife", married Daniel C. Vaughn, hereinafter referred to as "Husband", in Clay County, Mississippi on April 3, 2004. Husband and Wife remained in Clay County, Mississippi, until they separated in the year 2009. One child of the marriage, Harley McCoy Vaughn was born March 1, 2006.

The Wife filed a fault-based divorce on September 9, 2008, in the Chancery Court of Clay County, Mississippi.

Trial was held March 23, 2009.

A Final Judgment of Divorce was entered April 17, 2009, as amended by the Court's May 6, 2009 order. The Husband appealed the Final Judgment to this Court.

STATEMENT OF THE FACTS

For the purposes of this appeal, and the issues presented solely by the Husband, the Appellee-Wife is satisfied with the Statement of the Facts by the Appellant-Husband except as to the conclusions concerning the marital property division, and the disputes are detailed in the argument below.

SUMMARY OF THE ARGUMENT

I. The Husband/Appellant alleges his Fourteenth Amendment rights to due process were unfairly deprived because of the Chancellor's ruling against him as to certain discovery requests made by his Counsel to Counsel to the Plaintiff. As stated by the Chancellor in his opinion, the Husband did not properly procedurally seek relief from the alleged failure to comply with discovery requests by the Wife. Husband never stated at trial, post-trial motion, or in its principal brief how he was prejudiced. Further, assuming procedural correctness, the relief sought by the Husband should be denied as against public policy. The Chancellor's opinion and judgment as to this issue should be affirmed.

II. The Chancellor made detailed *Ferguson* findings as to the marital property, and specifically, as to the marital home. The Chancellor divided the property equitably, and had solid evidentiary basis for his findings. As such, relief as to the ground should be denied, and the Chancellor's opinion and judgment affirmed.

ARGUMENT

I. WHETHER DANIEL C. ("CRAIG") VAUGHN (HUSBAND) WAS DEPRIVED OF HIS CONSTITUTIONALLY PROTECTED RIGHT TO MAKE DECISIONS HIS MINOR CHILD IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN THE CHANCELLOR DENIED HIS MOTION TO COMPEL DISCOVERY?

The Chancellor, before commencement of trial, ruled as follows (T. 2, R.E. 23):

Mrs. Ausburn: Yes, Your Honor. I bring my motion to compel discovery.

The Court: Okay. Let me just say this, okay? We'll note your motion and everything. It's going to be overruled for three reasons. It's out of time and there's no certificate of service – I mean, a certificate of good faith with it, that I recall. And these people need some relief. The other thing is, if it develops in the trial that you're prejudiced by the lack of discovery, then we'll leave the case open for you to develop it, okay? I want everybody to have a fair shot today.

Nowhere in the trial transcript, nor in the Husband's brief, is there any allegation of evidence presented by the Wife that he did not have access before trial, nor any allegation or even speculation as to any fact, testimony or document that the Husband might have needed that was deprived of. As the Chancellor stated, if any prejudice had been determined, he would have remedied the matter further. The Wife does not concede in anyway,that she did not, in fact, fully comply with the discovery requests of the Husband. However, for the purposes of this appeal, assuming she had not fully complied with discovery requests, the Husband has still only made, at page 11 of his brief, the bare allegation that "the Court deprived Craig (Husband) of the evidence needed to prepare his case, and therefore, defend his constitutional right to make decisions, concerning the care, custody and control of his children."

The Wife is not arguing that the Husband has to have some mystical power to view evidence the Wife has concealed or hidden, if any. The Wife is arguing, considering a trial on the merits take place, that the Husband make a specific allegation, or at least a specific speculation, as to the nature and type of evidence he was unprepared for and/or was denied before this Court can find that a Fourteenth Amendment Due Process deprivation has occurred.

The Wife wants to be clear that the Husband was entitled to know the names, addresses, and substance of the testimony of witnesses she intended to call as well as all documentary evidence she intended to offer. The Husband, in his interrogatories, requested that the Wife make a characterization of how this evidence should be weighed by the Court in an *Albright v. Albright,* 437 So. 2d 1003, 1005 (Miss. 1983) analysis. This was the basis for the objection. *Albright* factors are a guide for the Court to determine the best interest of the child as to custody matters. As stated *Buchanan v. Buchanan,* 587 So.2d 892, 897 (Miss.1991), the Supreme Court held:

> The law affords no mathematical formula for deciding such cases, and, even when the trial judge sensitively assesses the factors noted in [*Albright*] and its progeny, the best the judiciary can offer is a good guess. We doubt it would be contrary to these children's best interests if [their parents] were to sit down and talk as the intelligent and mature adults they profess to be and resolve these matters without further civil warfare.
> On the other hand, for one reason or another, we know and accept that there are times when people cannot agree, and the reason we have courts is to decide these cases.

Albright is emphatically not a mathematical calculation. It is a guide for a judge to use after he or she has heard all the evidence. The Judge then has to weigh each of the pieces against the other, to determine what insight the cross-examination of one witness gives as to another document. It would be inappropriate for counsel to try to restrict and/or anticipate how a trial court should use all the evidence in making its *Albright* weighing and balancing. In many ways, the *Albright* factors are a way for the Court to argue and

rationalize (or order the evidence) with itself when making its good guess about the best interests as stated in *Buchanan.* The parties, of course, will make their own arguments and attempt to persuade the Court that it should view the evidence in their respective interest.

To require in a child custody case that a party has to respond to the Interrogatories of the nature and kind suggested by the Appellant-Husband in this case should be against public policy. *Albright* analysis belongs to the Court, not to the parties. The Chancellor should be free to consider and characterize all evidence submitted as she or he sees fit to aid in making the difficult decision. A party should not be protected from discovery of witnesses, potential testimony, and documentary evidence. A party should be protected from having to make legal conclusions about how the Court should use evidence.

II. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR WHEN HE BASED HIS DIVISION OF THE EQUITY IN THE MARITAL HOME ON (A) AN OVERSTATEMENT OF THE CONTRIBUTION MADE BY TERI VAUGHN'S GRANDMOTHER; (B) AN UNDERSTATEMENT OF THE CONTRIBUTION MADE BY CRAIG'S PARENTS AND WITHOUT CONSIDERING (C) THE SEPARATE GIFT MADE TO TERI BY HER GRANDMOTHER?

As the Mississippi Court of Appeals reiterated in *Sullivan v. Sullivan*, 990 So.2d 783, 785(¶ 12) (Miss. 2008), when equitably distributing marital property, a chancellor should consider the well-known factors set forth in *Ferguson v. Ferguson,* 639 So.2d 921, 928 (Miss. 1994). Those factors are the following:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:

   a. Direct or indirect economic contribution to the acquisition of the property;

b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and

c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

3. The market value and the emotional value of the assets subject to distribution.

4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;

5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,

8. Any other factor which in equity should be considered.

The Chancellor in this case conducted an extensive hearing as to the property. The Husband appears to be disputing the division of the marital residence. In his opinion at paragraphs 37-39 (R.E. 18-19), the Chancellor makes extensive specific findings as to the marital home. The Chancellor determined the equity in the property by subtracting the balance owed on the marital home from an appraised value obtained from a licensed appraiser one week before commencement of trial (R.E. 39). Paragraph 38 of the Chancellor's opinion specifically shows

how equity was determined (R.E. 19). Contributions by the parties and parties' relatives would only be relevant if the value of the property had been determined by taking the purchase price plus improvements. The Husband's arguments concerning familial contribution is without merit.

Further, as stated in *Sullivan*, at 787, "[I]t is well established that an equitable distribution of property does not have to be an equal distribution of property. *Hensarling v. Hensarling,* 824 So.2d 583, 590(¶ 20) (Miss.2002). "[T]here is no automatic right to an equal division of jointly-accumulated property, but rather, the division is left to the discretion of the court. . . ." *Parsons v. Parsons,* 741 So.2d 302, 306(¶ 23) (Miss.Ct.App.1999). In this case, the Chancellor made a virtually equal distribution of the assets based on net economic value. The Husband has been equitably treated, the *Ferguson* factors followed, and he, therefore, deserves no relief from this Court as to the marital home.

CONCLUSION

The Appellee, Teri W. Vaughn, submits to this Court that the Chancery Court of Clay County did not commit error in certain discovery-related issues nor its order dividing the marital property. Therefore, this Court should affirm the opinion and findings of the Chancellor in this case.

Dated: May 17th, 2010.

Respectfully Submitted,
Teri W. Vaughn

Carrie A. Jourdan
Attorney at Law
113 5th St N
P.O. Box 1108
Columbus, MS 39703-1108
(662) 241-5191
MSB #[redacted]

CERTIFICATE OF SERVICE

I, Carrie A. Jourdan, attorney for the Appellee, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Appellant's Brief to the following:

Elizabeth Fox Ashburn
Counsel for Appellant
P.O. Box 167
Houston, MS 38851

Hon. Kenneth Burns
Chancery Court Judge
P.O. Drawer 110
Okolona, MS 38860

This the 17th day of May, 2010.

CARRIE A. JOURDAN

CERTIFICATE OF MAILING

I, Carrie A. Jourdan, attorney for the Appellee, do hereby certify in accordance with M.R.A.P. 25 (a), that I am this day depositing in the United States Mail, first class, postage-prepaid, one original and three copies of the Brief in the matter of *Daniel C. Vaughn (Appellant) v. Teri W. Vaughn (Appellee)*, case number 2009-CA-00915, for filing with the Clerk of the Supreme Court/Court of Appeals.

This the 19th day of May, 2010

CARRIE A. JOURDAN