

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TARA WILSON)	
APPELLANT)	
)	
)	
VS.)	CAUSE NO.: 2009-CA-01910
)	
)	
)	
KELLY DON WILSON)	
APPELLEE)	

Certificate of Interested Persons

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

Tara S. Wilson	Appellant
Kelly Don Wilson	Appellee
David L. Walker	Attorney for the Appellant
E. Paige Williams	Attorney for the Appellee
Debra Pace Branam	Guardian Ad Litem
Hon. Mitchell Lundy, Jr.	Chancellor

Respectfully submitted,



Paige Williams
Attorney for the Appellee

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V. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Kelly Don Wilson, Appellee, filed his complaint for divorce against Tara Wilson, Appellant in the Chancery Court of Desoto County, Mississippi on September 18, 2007. (R. 8-10). The parties entered a consent to divorce on Irreconcilable Differences on the trial date. (R. 15). After a hearing on the merits, the trial court entered its ruling. (R. 16-21). The Appellant, Tara Wilson then filed her Motion to Reconsider which the trial court granted in part and denied in part. (R. 30-31). The notice of appeal was filed on November 23, 2009.

B. TESTIMONY

ASHLEY SCHACTRELE:

Ashley Schactrele was called as an expert witness in the field of psychology and licensed social work. (TR. 6). After submitting her education and experience she was so tendered as no objection was made. (Id.) Ashley testified that she has been Tyler Wilson (the minor child at issue) since August of 2008. (TR. 7) She further testified that she has never meet either of the parents involved and that her opinions were based solely on the interaction and with the child. (TR 7.) She indicated that in her sessions with Tyler that he told her that his mother encouraged him to act bad and told him secrets. (TR. 8). She further indicated that these secrets the mother told him caused him a great deal of conflict. (TR. 9). Tyler also disclosed to Ms. Schactrele that he had been hit in the face by the boyfriend of Tara, Mike Trayhan and the he did not want to be around him. (TR. 10). He further indicated that his mother did not do anything when he was hit by Mike

Trayhan. (Id.) Tyler further indicated to Ms. Schactrele that he did not want to live with his mother and if the judge made him, he would run away. (TR. 12). Ms. Schactrele further stated that Tyler's behavior had improved with the month of more that his mother had not visited with him. (TR. 11). Tyler also disclosed that his mother was mean to him and that she screams and yells at him. (TR. 16).

TARA WILSON:

Tara Wilson, the mother of the child, testified that she lives in an apartment in Walls, MS with her son Joseph. (TR. 22). Joseph was born during this marriage and is the son of Mike Trayhan. (TR. 26). Kelly Wilson is not the father. (Id.) Tara Wilson indicated that she is no longer involved with Mike Trayhan, but still sees him to exchange their child. (TR. 23).

Tara testified that she is not working, but is attending Remington College. (TR. 27). She testified that she did not have a job right now because she was over qualified. (TR. 28). She is going to college on student loans that will be payable six months after her graduation. (Id.) Her son, Joseph is staying with a friend while she is at school. She does not pay anything for this service. (TR. 29). Her financial statement indicated that she receives \$342.00 per month in food stamps and \$170 per month TANF. (Temporary Aid to Needy Families). (R 29). She further states that her rent is \$577.00 and that she gets loans and donations. (TR. 29). She testified that her church has paid her eclectic bill. (TR. 29). Tara admitted to taking the refrigerator, vents, couch, washer and dryer, and dinette set from the marital home when she was there temporarily when having her baby. (TR. 26). She was ordered not to remove anything from the property when she was given temporary use. Ms. Wilson further admitted that she did not pay the

house payment, or any other bills while at the house during the 90 days she was there. (TR. 35).

Ms. Wilson further admits that she signed the Property Settlement Agreement in this cause. (TR 37). She says she did it because she wanted to know where her child was. (TR. 40). However, she admits that it was signed in the hearing room at the Desoto County Courthouse in the presence of her attorney at the time and with Judge Lundy sitting on the bench available for a temporary hearing if so requested. (TR 39).

Tara testified that Tyler is a six year old male child and that his relationship with his father is generally good and that he enjoys his time with his Dad. (TR 57).

Tara testified that when the parties split that she left the marital home and lived in her office for a few nights, lived with Kathy Zellers, lived with her mother, Dorchester apartments, the marital home and now an apartment in Walls. She does not clarify where she was living when she became pregnant by Mike Trayhan. (TR. 59-60).

Ms. Wilson testified that she has paid the guardian ad litem \$250.00 which was a donation from the House of Grace. (TR. 61). She testified that she does not feel she owes the bill because most of the line items on the bill were not caused by her. (TR. 63).

Tara testified that she lives in a two bedroom apartment. (TR. 59). She stated that she was the primary care giver and has better parenting skills. Tara indicated that her physical health is fine but that she does seek counseling for her mental health. (TR. 141). Tara testified that her job history includes the Hollywood casino, Grand casino, Subway, Don Angel Brokerage Firm, House of Grace Thrift Store and now she is unemployed. (TR. 62).

DEBORAH SPYCHALLA:

Deborah Spychalla is the mother of Kelly Wilson and the step mother of Tara Wilson. (TR. 64). She is married to Tara's father, whom she met at the wedding of Kelly and Tara. (Id.) She has had temporary custody of Tyler since August, 2008. (Id.) She testified that when she was awarded temporary custody she made a visitation schedule to allow Kelly and Tara the same amount of time for visitation. (TR. 64). She testified that she has not denied visitation to Tara, but that Tara just chose not to come to her visitation periods after she was asked to leave one time when she balled her fist up and put it in Deborah's face. (TR. 66).

Deborah testified that Kelly is a very good parent. (TR. 68). She further states that Kelly helped coach his basketball. Kelly attended all practices and is now doing the same with Tyler's baseball. (TR. 68). She testified that Tara was given Tyler's basketball schedule and did not attend one game but did come to one practice. (TR. 69).

Deborah testified that she observed a direct correlation to Tyler's behavior and the visits with his mother. (TR. 69). Since Tara had not seen Tyler in approximately 5 weeks he has been well behaved and not been in any trouble at school. (TR. 69). She indicated that after Tara would visit Tyler he would become angry and agitated. (TR. 69). Deborah testified that she feels like the child should be in the custody of his father and live in his home where he has been since birth except while he was with her. (TR. 71). Deborah testified that she does not believe Tara loves Tyler very much because she has not been to see him in 5 weeks and tells him things that hurt him intentionally. (TR. 73).

DALE SPYCHALLA:

Dale Spychalla is the father of Tara Wilson and the stepfather of Kelly Wilson. (TR. 74). He lives in the home with Deborah Spychalla where the child has resided for the past 9 months. (Id.). He testified that he has no knowledge of Tara ever being told that she could not come see Tyler. (TR. 75). He testified that he could not say that Tara was a good mother but would not say she was a bad one. (TR. 75). He testified that Kelly was a good father. (TR. 75). He testified that in his opinion, Tyler should be in the custody of his father, Kelly Wilson. (TR. 76). He testified on cross that his opinion is based on the fact that Tara flies off the handle and thinks that Kelly is the better parent. (TR. 77).

KELLY WILSON:

Kelly Wilson is the father of Tyler Wilson. He lives at 7118 Durango Drive, Horn Lake, MS. (TR. 81). He has lived there since the family bought the house with the exception of when the Court awarded the house to Tara for her to have the child she indicated to the Court was his. (TR. 81). Kelly testified that Tyler has his own room there and that all his playground equipment is there as well. (TR. 82). He also has a trampoline at his house. (TR.82) Kelly testified that he and Tyler have a great relationship and that he participates with all of Tyler's sports. (TR. 83). He further testified that he takes Tyler fishing. (TR. 83). Kelly admits that in the beginning of the marriage that Tara was the primary caretaker because he was working 2 jobs but that at the time they split up, that they both were the primary caretakers. (TR. 84). However, he also testified that Tara left the marital home and relationship and left the minor child with the Father. Kelly states that he has the better parenting skills because he has more

patience than Tara and does not jump up and grab the child and scream at him like Tara does. (TR. 84).

Kelly further testified that he is concerned about Mike Trayhan being around Tyler and does not want him around the child. He is concerned he will assault him again. (TR. 85).

Kelly testified that he is employed by Al Williams Bail Bonds. (TR. 86). He testified to his hours on cross and explained that he had made arrangement with his Mother and Aunt Carol to sleep at his house on the nights he has to work so Tyler would not have to leave his home. (TR. 113). Kelly did testify that he is in a relationship with Tracy Lile, whom he met post separation. (TR. 86). He testified that she will not spend the night at his home while Tyler is there until they are married if that happens. (Id.)

Kelly testified that his physical health is fine and that he does drink a beer occasionally, but is certainly not a drunk. (TR. 88) He further stated that he does not have any mental issues and that his relationship with Tyler is great. (TR. 88). When he walks in the door, Tyler runs to him screaming and jumps in her arms. (TR. 88) He testified that Tyler is doing better at school and has recently had only gold and green cards. (TR. 89).

Kelly testified that the marital home has no equity. (TR. 90). It was purchased for \$85,500 and approximately \$79,000 is owed. (TR. 89-90). However, the worth of the house has drastically gone down with the decline of the housing market. (TR. 90). Kelly testified that the property settlement was signed in the presence of his attorney and Tara's attorney and that the Judge was on the bench available for a hearing if they so

wished. (TR. 90). He further states that they both signed it willingly. He states that Tara contracted away her interest in the marital home. (TR. 90).

Further, Kelly states that when he returned to the marital home after Tara was awarded it for 90 days, the sofa, refrigerator, washer, dryer, kitchen table, loveseat, twin size bed, shower head, pictures, and doorknobs were missing. (TR. 93). They had been removed by Tara or her representative. (TR. 95). Additionally, when he returned to the house he had to pay \$3100.00 to catch up the mortgage and \$609 for the electricity as Tara did not pay any of the expenses while she was there. (TR. 95-96). Kelly has paid the guardian ad litem what has been billed to him. (TR. 97).

Kelly testified that the property settlement should be enforced as to the property settlement but not as to custody as there has been a change in circumstances. (TR. 107).

Kelly stated that at the time of the separation, he worked for Resorts Tunica until Tara and Brian Barrows got him fired. After that he went to work for Al Williams Bail Bonds where he is still employed. (TR. 107).

JENNIFER WOOD:

Jennifer Wood testified for the Defense. She was a crisis counselor for the House of Grace, however she no longer works there. (TR. 121). She was not tendered as an expert as she has a Liberal Arts degree. (TR. 118). She never spoke with Kelly Wilson. (TR. 119). She had not seen Tyler in over a year. (TR. 122). She met Tara Wilson in December, 2007 when the parties split in August, 2007. (TR. 122).

SANDRA VALENTO:

Sandra Valento is the former step mother of Tara Wilson. (TR. 160). She has raised Tara since Tara was 4 or 5. She lives in Minnesota. (TR. 160). She testified that

Tara's parenting skills are great because she would write the numbers and letters with chalk with Tyler. (TR. 161). She testified that she has met Mike Trayhan. (TR. 163).

DEBBIE BRANAN, GUARDIAN AD LITEM:

Debbie Branan testified that she was appointed the guardian in this case . She is licensed in the State of Mississippi and has been practicing for 31 years. (TR. 142). She testified that she has meet with both Kelly and Tara on multiple occasions and also spoken with all other relevant parties to this action. (Id.). Debbie stated that based on her investigation, she believes that Tyler was struck by Mike Trayhan and that Tara did not react appropriately. (TR. 167). She testified that she does have concerns about Mike Trayhan but that she is more concerned Tara's judgment concerning him. (TR. 169). The guardian testified that she has found inconsistencies in Tara's stories over and over again. (TR. 168). She feels like Tara perceives the truth to be what ever she needs it to be at the particular time. (TR. 170). The guardian was also very concerned that the Mother had not visited the child in about two months. (TR. 170). She also testified that based on her investigation, Tara was not denied visitation, she just did not like the circumstances surrounding the visitation. (TR. 172).

The guardian ad litem testified that her bill contained 13 entries for Kelly Wilson and his side and that there were 21 entries for Tara and her side. (TR. 173).

In the guardian's opinion, both parties have issues, but the issues on the side of the father can be corrected and that it is in the best interest of the child to be in the custody of his father. (TR. 174). The guardian feels that Tara has a mean streak and that she does not tell the truth. (TR. 177). She further finds that the mother has caused harm

to the child by telling him secrets and trying to inflict damage on the grandparents. (TR.
174).

SUMMARY OF THE ARGUMENT

The Chancellor was not manifestly wrong, did not abuse his discretion, nor apply a incorrect standard of law when he granted custody of the minor child to the Father. Additionally the trial Court was correct in enforcing the property portion of the signed Property Settlement Agreement. The Court did not err in introducing into evidence the Property Settlement Agreement that had been executed between the parties.

ARGUMENT

The standard of review in domestic cases is well settled and abundantly clear. A Chancellor's finding will not be disturbed unless he was manifestly wrong, abused his discretion, or applied an erroneous legal standard. Sandlin v. Sandlin, 699 So.2d 1198 (Miss. 1997), Bower v. Bower, 758 So.2d 405 (Miss. 2000). The Court is bound by the Chancellor's findings unless it can be said with a reasonable certainty that those findings were manifestly wrong and against the overwhelming weight of the evidence. Carr v. Carr, 480 So.2d 1120 (Miss. 1985).

Suits for custody are tried in Chancery Court governed by the best interest of the child, and the Albright factors. Albright v. Albright, 437 So. 2d 1003 (Miss. 1983). The factors set out in that case are:

1. Age, health, and sex of the child.
2. Continuing care of the child prior to separation.
3. Capacity to provide primary care and employment responsibilities
4. Physical and Mental health and age of the parents
5. Emotional ties of the parent and child
6. Moral fitness
7. Home, school and community record of the child
8. Preference of the child age twelve or older
9. Stability of home environment
10. Stability of employment
11. Other relevant factors.

A guardian ad litem must be appointed when there are allegations of abuse or neglect.

Miss Code Ann. § 97-4-42 (2000). A Chancellor is not bound by the recommendations of the

guardian, but must make findings why the guardian's findings are rejected. S.N.C. v. J.R.D., 755 So. 2d 1077 (Miss. 2000).

The Chancellor in the case at bar was not manifestly wrong, did not abuse his discretion, nor apply an erroneous legal standard. After all the testimony the Chancellor applied the correct legal standard, going through each Albright factor and addressing them. When weighing the Albright factors, the Court found that six factors weighed in favor of the Father and that five factors were neutral. None of the factors favored the Mother. Additionally, the Chancellor carefully took into consideration the testimony of the Guardian Ad Litem. The ruling of the Chancellor is supported by substantial evidence and therefore the Chancellor did not abuse his discretion.

With respect to property division, a voluntary agreement regarding property division is binding on the parties absence of a defense of fraud, duress, or unconscionability. The law in this state provides that a property settlement agreement is no different than any other contract. In re Estate of Hodges, 807 So. 2d 438 (Miss. 2002). Additionally the Court has held that an agreement executed in connection with ending a void marriage was binding. Pittman v. Pittman, 909 So.2d 148 (Miss. Ct. App. 2005). Obviously the property settlement agreement was not signed under duress. Tara Wilson testified that the agreement was signed in the presence of her attorney and in a room next to the Courtroom when Chancellor Lundy was on the bench available for a hearing if she had so requested. Additionally, she testified that they started a hearing and then decided to enter into the agreement. After entering the property settlement agreement, she also signed and executed a Quitclaim Deed for the property. Her argument of duress is wholly without merit. Further, the trial Court did not err when overruling the objection to the introduction of the Property Settlement Agreement.

CONCLUSION

The Chancellor, after hearing all the evidence, did not abuse his discretion, was not manifestly wrong, and applied a correct legal standard. Additionally, the findings of the Chancellor were supported by credible evidence and not against the overwhelming weight of the evidence. Thus, the ruling of the Chancellor in the case at bar should be affirmed.

Williams & Williams
217 W. Center St.
P.O. Box 38
Hernando, MS 38632
(662) 449-4305 Tel.
(662) 449-4307 Fax