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

BRIDGETTE MARIE PARRA **APPELLANT**

VS. **NO. 2010-CA-00339**

PAUL WILLIAM PARRA **APPELLEE**

I.

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 this Court may evaluate possible disqualifications or recusal.

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   Appellant

2. Paul William Parra
   Appellee

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II.

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IV.

STATEMENT OF THE ISSUES

1. The lower court erred in its Final Judgment awarding custody of the minor children by not applying or analyzing any of the factors set out in ***Albright v. Albright***, 437 so 2d 1003,1005.

2. The lower court erred in denying appellant's Motion to Reconsider where the facts showed that appellee, without justification and without permission of the court or appellant, removed the minor children to California while this matter was still pending, contrary to the factors enumerated in ***Albright***.

3. The lower court erred in granting custody of the minor children of the parties to the appellee, Paul Parra, contrary to the paramount best interests of the minor children.

V.

STATEMENT OF THE CASE

This is an appeal from the granting of custody to the father of the minor children of the parties by the Chancery Court of Warren County, Mississippi, and the denial of mother-appellant's Motion for Reconsideration of the custody judgment given the fact that appellee, while said Motion for Reconsideration was pending, removed the minor children of the parties to the state of California without just cause or excuse and in order to deprive appellant of any chance to again see the children. At trial, the appellee made certain specific assertions regarding the then paramount best interest of the children relative to the factors in ***Albright v. Albright***, 437 So 2d 1003, (Miss. 1983), which assertions were completely negated by his surprise moving of the young children to California. The lower court, in its Final Judgment awarding custody to the father, did not apply any factual analysis of ***Albright*** in determining the paramount best interest of the children. Even if the Chancellor had done so, same would not be valid since, while the matter was still pending, appellee changed the totality of circumstances affecting the paramount best interest of the children by removing them from their home, school and mother and surreptitiously moving them 2,500 miles away to California.

This cause must be reversed based on the facts now existing, or remanded and the custody matter heard as to the children's paramount best interest on the facts existing at the time of such hearing.

VI.

SUMMARY OF THE ARGUMENT

Had the factors in ***Albright*** been factually discerned and applied to determining the paramount best interest of the three minor children, their custody would have been awarded to their mother, appellant herein. Appellee's testimony at the final hearing has been totally negated by his secret, sudden and vindictive carrying away of the minor children to California, some 2,500 miles from their home, totally isolating them from personal contact with their mother solely for the purpose of retribution. Paul Parra's testimony at trial as to the stability of the Mississippi home, the children's school stability, his gainful employment in Vicksburg, needs of the children to have contact with their mother, the children's mental health, his bizarre behavior and all other factors cognizable under ***Albright*** was, and is, a pre-meditated fabrication that was not in the children's best interest, but in appellee's selfish interest. Justice for the children and for the appellant demands a reversal or remand of this cause.

VII.

STATEMENT OF FACTS

Paul William Parra filed his Complaint for Divorce from Bridgette Marie Parra on January 5, 2009 on the grounds of cruel and inhumane treatment, adultery and irreconcilable differences. (T-5) All fault grounds were withdrawn and the parties proceeded to a hearing to determine child custody, child support, visitation and marital debt responsibility.(T-22) In the Consent Order, Bridgette agreed to convey to Paul the marital domicile in Warren County in consideration of his assumption of the indebtedness thereon since he had been given temporary custody of their minor children ages 9, 7 and 4 and they would remain at home and in school. (T-12)

After a hearing of the matter, the lower court, on October 21, 2009, granted the divorce and, without any factual reason therefor, awarded Paul the permanent care, custody and control of the minor children of the parties and granted Bridgette reasonable and liberal rights of visitation in accordance with the Court's Standard Visitation Schedule attached to the judgment of divorce (T-10) which, basically, is every other weekend, various holidays and extended summer visits.

On October 27, 2009, Bridgette filed her Motion for Rehearing with regard to the custody of the children and other matters (T-47), alleging as follows:

"7.

> Based upon the evidence adduced at trial, the application of the ***Albright*** factors requires that primary physical custody of the minor children of the parties should have been granted to the Defendant (Bridgette) with the Plaintiff (Paul) being awarded reasonable rights of visitation. The Defendant learned , post trial, that the Plaintiff is planning to move the minor children to the State of California in his continuing efforts to destroy the

relationship between Defendant and her children. Therefore, it is in the best interest of the children that this Honorable Court reconsider this matter." (T-48,49)

In his response to the rehearing motion, Paul represented to the court below:

" 7. That the Plaintiff, Paul William Parra, denies Paragraph 7 of the Defendant's Motion for Rehearing." (T-52,53)

Shortly after denying, on November 2, 2009, that he was going to remove the children from the state and from the court's jurisdiction, on November 11, 2009, and prior to the Motion to Reconsider hearing, Paul quit his job, withdrew the children from elementary school and moved them from their home in Mississippi to the state of California, near Sacramento, 2,500 miles away. (T-250). At the hearing on the Motion for Rehearing, Bridgette testified:

Q. Okay. During the trial at which you were present, did Mr. Parra give testimony about how he proposed to raise these children?

A. Yes, sir, he explained you know, that he would take them -- make sure they went to school. And you know, the same thing that I explained, take care of their basic needs, make sure that they were taken care of.

Q. Did he give any indication that he was going to take these children to California?

A. No, sir, he did not.

Q. Where was he working at the time?

A. He was working at Wells & LaHatte.

Q. Did he quit that job and go to California?

A. Yes, sir, he did.

Q. When did he go?

A. He left on November 11th.

Q. Where in California?

A. He lives with his mother in Georgetown,

California.

Q. Where?

A. Georgetown, California.

Q. Do you know where that is, north, south?

A. It's in northern California. It's about

an hour away from Sacramento. It's in the mountains.

Q. Okay. After this Court ordered that you

be given visitation by Paul Parra, have you been able

to get that visit?

A. I got one visit and that was for my son's

birthday. That was the weekend of the 25th of

October. And then when it came time for my other

visitation, I don't believe I got that one.

Q. Okay. When did you first learn that he

was in fact going to California?

A. Well, I had heard some rumors from my

family members and I had called and asked him and he

denied it to me. But I actually learned it was true

on November 11th, when he called me en route to

California.

Q. Were the children in school at that time?

A. Yes, they were in school. Redwood Elementary

Q. Did he remove them from the school?

A. Yes, sir.

Q. Did you have knowledge that he was going to do that?

A. I had no knowledge of that at all.

Q. And you have not been able to see your children since?

A. No, sir.

Q. After your ex- husband moved to California, did you have any conversations with him about seeing the children?

A. I've had plenty of conversations. I've called my children on several occasions and they've called me. You know, I've really wanted to see my kids, of course. Well, he told me that if I wouldn't have made the mistakes that I've made, then I would still be able to see my children.

MR. BONNER: Your Honor, I'm going to object to hearsay at this point.

THE COURT: The Court overrules the objection. She said it was a statement that he made to her.

WITNESS: And he also made the statement. "We'll remain in California with the kids forever." And he really doesn't want me to see them ever again because of what I've done.

BY MR. WAY:

Q. Punishing you?

A. Yes. Yes, sir, for sure.

Q. How old is Mr. Parra?

A. Is he 38 years old.

Q. 38?

A. Yes, sir

Q. How old are you?

A. I'm 26.

Q. How old were you when you got married to Parra?

A. I was 16.

Q. He how old was he?

A. He was 28.

VIII.

IN THE SUPREME COURT OF MISSISSIPPI

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PAUL WILLIAM PARRA **APPELLEE**

ARGUMENT

Paul did not appear at the Motion Hearing. On January 26, 2010, the lower court entered its Final Judgment denying the Motion for Rehearing without written opinion. (T-63)

Bridgette and Paul entered their written consent for the lower court to decide the issues of custody and visitation. In the Chancellor's Final Judgment of October 21, 2009 (T-33) this Consent is quoted verbatim by the Court:

> " a. That the Court is to decide who is to maintain the primary care, custody and control of the minor children of the parties, namely, Taylor Nicole Parra, born November 23, 2000, and Paul William Parra, III, born April 19, 2002, and Landon Joseph Parra, born October 25, 2005.
>
> b. That the Court is to decide the visitation of the non-custodial parent with such minor children upon hearing the witnesses regarding custody of such minor children" (T-36,37)

After granting the divorce and awarding ownership of the marital domicile to Paul, who had requested same as being in the best interest of the children, the court awarded custody of the minor children to Paul and awarded Bridget liberal visitation with said children to include every other weekend, various holidays and summer visits. (T-38, 42-46) This Visitation schedule states:

" During periods of custody or visitation, neither the custodial parent or non-custodial parent shall do anything that may estrange the child from the other party or injure the child's opinion as to the mother or father or which may hamper the free and natural development of the child's love and respect for the other party, it being the intention of the parties to encourage and assist in developing a healthy relationship between the child and each parent." (T-45,46)

Notably absent from the Final Judgment of custody is the failure to find, as a fact, the reasons that it would be in the paramount best interest of these children to be in the custody of their father. The lower court failed to apply expressly and specifically applicable factors dictated by ***Albright v. Albright***, 437 So 2d 1003, (Miss. 1983), nor was ***Albright*** even mentioned in the judgment. The factors enumerated in ***Albright*** are:

1. Age, health, and sex of the child;
2. Continuity of care prior to the separation;
3. Parenting skills and willingness and capacity to provide primary child care;
4. Employment of the parent and responsibilities of that employment;
5. Physical and mental health and age of the parents;
6. Emotional ties of parent and child;
7. Moral fitness of parents;
8. Home, school and community record of the child;
9. Preference of the child at the age sufficient to express a preference by law;
10. Stability of home environment; and
11. Other factors relevant to the parent-child relationship.

Albright at 1005

Also see ***Sobieske v. Preslar***, 755 So. 2d 410 (Miss . 2000)

Paul's self-serving and spiteful move of the children 2,500 miles away from their mother

to satisfy his own selfish interest was against the best interest of the children who were pulled from elementary school and away from their mother, friends and large family in Warren County. Paul quit a perfectly good job in carrying out his scheme to, in essence, kidnap these children to punish Bridgette for her adultery which obviously harmed his manly pride. Although she was in all ways an excellent mother, Paul made sure that Bridgette was properly hurt when he telephoned her en route to California and told her, during trial, that she would never see the children again because of what she had done to his ego and, when he got to California, again telephoned her to restate his intent and his reasons therefore: " Well, he told me that if I wouldn't have made the mistake that I've made, then I would still be able to see my children." and " And he also made the statement 'We'll remain in California forever.' And he really doesn't want me to see them ever again because of what I've done." (T-252)

In ***Lackey v. Fuller***, 755 So. 2d 1083 (Miss. 2000), the lower court granted the parties a divorce and granted to them joint legal and physical custody of their two minor children. Lackey filed a motion for modification of the final judgment asking the court to grant her primary physical custody of the children since she had remarried and her husband was being transferred to New York. Fuller counterclaimed for primary physical custody. Evidence was admitted that Lackey had left her husband and children in the marital home and had committed adultery with her present husband prior to the divorce. The lower court did not perform an ***Albright*** analysis, and granted full custody to the father, Fuller, the chancellor commenting that the wife had made a bad decision in abandoning her family and committing adultery prior to the divorce. This Court held that admitting the pre-divorce conduct at the modification was error:

"If the pre-divorce conduct had not been admitted to evidence, the chancellor would have been forced to make a

> decision regarding child custody by applying the ***Albright*** analysis mandated in ***Albright v. Albright***, 437 So. 2d 1003, 1005 (Miss. 1983). The chancellor used the custody decision as a way to punish Lackey for her indiscretions. This court has long opined that this is not acceptable. In ***Phillips*** this Court stated that "a change in custody should never be made for the purpose of rewarding one parent or punishing another." ***Phillips***, 555 So.2d at 701 (*quoting* ***Tucker v. Tucker***, 453 So. 2d 1294, 1297 (Miss. 1984) (citations omitted)). In ***Rushing*** this Court stated that "the polestar consideration in custody matters is the best interest of the child, not marital fault." ***Rushing***, 724 So.2d at 916 (citing ***Moak v. Moak***, 631 So, 2d 196, 198 (Miss. 1994). The chancellor committed manifest error in admitting testimony of pre-divorce conduct into evidence. (at page 1087)

The ***Lackey*** court also found that the question of whether or not a move by one of the parties from this state to New York constituted a change in circumstances. That is likewise a matter for consideration in the application of the ***Albright*** factors. (pp. 1088-1089) In its CONCLUSION, the ***Lackey*** court stated:

> " The award of custody is reversed and this case remanded to the lower court. The Court should apply an ***Albright*** analysis to determine suitable custody."

The Court of Appeals in ***Fletcher v. Shaw***, 800 So. 2d 1212 (Miss. App. 2001) reiterated the requirement of the chancellor that, in cases involving an initial award of custody, as in the case of most divorces, the lower court is given considerable discretion " so long as the

chancellor follows the dictates of ***Albright v. Albright***, 437 So. 2d 1003, 1005 (Miss. 1983)" (at page 1214) (emphasis added):

" Marital fault should not be used as a sanction in custody awards. Relative financial situations is not controlling since the duty to support is independent of the right to custody. Differences in religion, personal values and lifestyles should not be the sole basis for custody decisions." (at page 1215)

In ***Elliot v. Elliot***, 877 So. 2d 450 (Miss. App. 2003), the divorcing mother and father of the minor children were awarded joint physical and legal custody. Cathy, the mother, unilaterally and without the consent of the court or the father, George, moved the children to Arizona. She then filed a petition to modify the custody and to grant her sole, physical custody. George countered with his petition to modify custody to grant him sole custody of the children, and for contempt. The lower court found that Cathy's move to Arizona kept " George from exercising visitation with the children and his joint custodial and joint legal rights." (at page 455)

The point here to be made in the matter before the Court is two fold:

1. The move by Paul in taking the children to California was for no other purpose than to keep Bridgette from exercising her rights to liberal visitation with them as ordered by the court, and a move of such magnitude in distance and time, given Bridgette's personal financial inabilities, that has enabled Paul to carry out his threat that Bridgette would never see her children again - and she hasn't. The method and manner of Paul's selfish move of the children for the sole purpose of hurting or, in his mind, punishing their mother by keeping them from her, has obviously harmed the children and is tantamount to abuse of the

children.

2. The lower court erred in not granting Bridgette's Motion to Reconsider and granting a rehearing so that the court could hear and determine custody of the children by a factual analysis of ***Albright*** factors based on the facts existing at the time of the rehearing.

Prior to their affirming a lower court's ruling on child custody, the Supreme Court stated:

> " We may not always agree with a chancellor's decision as to whether or not the best interests of a child have been met, especially when we must review that decision by reading volumes of documents rather than through personal interaction with the parties before us. However, in custody cases, we are bound by the limits of our review and may reverse only when the decision of the trial court was manifestly wrong or clearly erroneous, or an erroneous legal standard was employed. (Citing cases) Our standard of review in child custody cases in very narrow. Like the chancellor, our polestar consideration must be the best interest of the child. However, it is not our role to substitute our judgment for his."
>
> "We find that the chancellor properly applied the ***Albright*** factors and find no manifest error in his decision as to custody of the parties' children." ***Hensarling v, Hensarling***, 824 So. 2d 583 (Miss.2002)

On this point, the Court of Appeals considered ***Hensarling*** with regard to their standard

of review of a lower court's decision in child custody cases wherein the chancellor has to be manifestly wrong, clearly erroneous or an erroneous legal standard was applied in the matter of ***Parker v. South***, 913 So. 2d 339 (Miss.App. 2005)

> " It is the role of the chancellor to ascertain whether witnesses and evidence are credible and the weight to give each. (Citing case). As this quote demonstrates, our standard of review in this kind of case is very limited. Yet, as an overarching guideline in our review of child custody cases, the ***Robison*** court added, "Let us remember, it is the responsibility of this Court, like the chancellor, to make the best interest of the child our 'polestar' consideration." (at page 344) citing ***Robison v Lanford***, 841 So. 2d (1119, 1122).

It is respectfully submitted that, first as to the measure of Paul's credibility, he lied to the court and lied to the appellant about not moving to California. He stated to the lower court that he would attend to the stability of the home and school lives of the minor children and then, without just cause or excuse and, against their paramount best interest, ripped them from their home and school and put them in a strange place in California, it being Paul's intent that the children would forever be away from their mother, friends and large family here in Mississippi. It is unclear from the record why the lower court chose to grant custody to Paul, because such record is completely devoid of the reasons for the court to do so. Secondly, current case law demands that, in child custody cases, the lower court must make a factual analysis under ***Albright***, then, the appellate courts must determine whether or not the lower court was manifestly wrong, clearly erroneous or abused the chancellor's discretion in applying those ***Albright*** factors. The appeals courts must review the evidence and testimony presented at trial as well as the chancellor's findings under each factor in order to ensure his ruling was supported by evidence.

Hollon v. Hollon, 784 So. 2d 943, 947 (Miss. 2001)

In it respectfully submitted that this cause should be reversed with directions that the lower court award Bridgette Parra legal and physical custody of the minor children and to determine visitation by Paul taking into account his residence in California, if that be the case, and for a determination of child support.

If this cause is remanded to the lower court, appellant asks that the matter be heard on the complete facts existing at the time of the rehearing. Due to the abuse factor, it is respectfully requested that the lower court appoint a guardian ad litem.

IX.

CONCLUSION

This case is fraught with the self serving, lying and deception of Paul Parra. His actions were directly detrimental to the interest of the three young minor children who have been kept totally from their mother's arms for now over eight months. Bridgette was *pro se* at the temporary hearing where Paul gained custody of the children, which, as the legal community is aware, was a "leg up" at the final hearing. She was unable to afford an attorney. When asked by the court if she wanted to cross-examine Paul she simply responded, " I really don't know how to do it" (T-34); when asked if she wanted to testify she responded with five transcribed lines of how much she loved and missed her children and would support them the best she could; When asked if she had any witnesses to question, Bridgette responded " I don't know how to ask questions. I don't know what to do. I don't know what I am supposed to do." (T-44)

Bridgette's dilemma is similar to that of Mrs. Sanford in ***Sanford v. Sanford***, 749 So. 2d 353 (Miss 1999).

As stated above, the court below did not make a factual analysis of the ***Albright*** factors under the facts existing at the time, nor would such an exercise been valid given the fact that Paul had quit his job and made the spiteful move to California with the minor children. This move was made when the Final Judgment was pending on Bridgette's Motion for Rehearing. This move negated Paul's testimony at trial that he currently had a job, could afford to maintain his home and the children in same as well as in school and within their family environment. The method of the move certainly calls into question his parenting skills and raises questions regarding his mental fitness. Paul has destroyed the emotional ties of the children with their mother and laid to waste the " home, school and community records of the children". To state that the stability of the children's home environment was shattered is putting the matter lightly.

All of these considerations define the Albright factors and must now be observed in the light of Paul's apparent, obsessive " I'll get you back - you'll be sorry for what you did to me - you will never see your children again " attitude. The best interest of the children is certainly not in the equation insofar as Mr. Parra is concerned.

Appellant respectfully asks that the judgment of the lower court be reversed and custody of the children be granted to Bridgette, their mother or, alternatively, that said cause be remanded for hearing regarding the paramount best interest of said minor children.

Respectfully Submitted,

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BY: 
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CERTIFICATE OF SERVICE

I, Wren C. Way, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing Appellant's Brief to:

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SO CERTIFIED, THIS THE 29th DAY of JULY, 2010.

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