

**IN THE SUPREME COURT OF THE STATE OF MISSISSISSI**

**CORDELL K. KNIGHTEN, SR.**

**APPELLANT**

**VS.**

**DOCKET NO. 2010-CA-00377**

**SHIMBERELY HOOPER**

**APPELLEE**

---

**APPEAL FOR THE CHANCERY COURT  
OF  
WASHINGTON COUNTY, MISSISSIPPI**

---

**BRIEF OF APPELLEE**

---

Submitted by:

Philip Mansour, Jr. (MB# [REDACTED])  
MANSOUR & ADAMS  
143 N. Edison Street  
Greenville, MS 38702-1406  
(662) 378-2244  
(662) 378-2246 Facsimile  
phil@mansouradams.com

IN THE SUPREME COURT OF THE STATE OF MISSISSISSI

CORDELL K. KNIGHTEN, SR.

APPELLANT

VS.

DOCKET NO. 2010-CA-00377

SHIMBERELY HOOPER

APPELLEE

---

CERTIFICATE OF INTERESTED PERSONS

---

The undersigned attorney of record for the Appellee, Shimbereley Hooper, 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 judges of the Court of Appeals may evaluate possible disqualifications or recusal. The persons are:

1. Honorable Vicki Barnes, Chancellor, P.O. Box 351, Vicksburg, MS 39181-0351
2. Ms. Shimbereley Hooper, 4016 Keene Street, Martinez, GA 30907
3. Mr. Cordell Knighten, Sr., 550 Dogwood Cove, Greenville, MS 38701
4. Honorable Derwin B. Govan, Attorney for Appellant, 237 Garrett St., Greenville, MS 38703
5. Honorable Philip Mansour, Jr., Attorney for Appellee, P.O. Box 1406, Greenville, MS 38702-1406

This 18th day of January, 2011.

  
PHILIP MANSOUR, JR.

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS -----	i
TABLE OF CONTENTS -----	ii
TABLE OF AUTHORITIES -----	iii
STATEMENT OF CASE -----	1
ARGUMENT -----	2
PROPOSITION I -----	2
PROPOSITION II -----	4
CONCLUSION -----	5
CERTIFICATE OF SERVICE -----	6

## TABLE OF AUTHORITIES

<i>Bailey v. Bailey</i> 724 So. 2 <sup>nd</sup> , 335, Mississippi 1998 -----	3
<i>McLee v. Simmons</i> 834 So. 2 <sup>nd</sup> , 61 -----	3
§ 43-19-101 MS Code Ann. -----	3
<i>Denson v. George</i> , 642 So.2 <sup>nd</sup> 909, 913, (Miss. 1994) -----	2
<i>Nicholas v. Tedder</i> , 547 So.2 <sup>nd</sup> 766, 781, (Miss. 1989) -----	2
<i>Richardson v. Riley</i> , 355 So.2 <sup>nd</sup> , 667, 668-69, (Miss. 1978) -----	2
<i>McClee v. Simmons</i> , 834 So. 2 <sup>nd</sup> , 61, Mississippi 2002 -----	2
<i>Louk v. Louk</i> , 761 So.2d 878, (Miss. 2000) -----	4
<i>Glover v. Torrence</i> , 723 N.E.2d 924 -----	4
Rule 8, Mississippi Rules of Civil Procedures -----	4

## **STATEMENT OF THE CASE**

This appeal arises out of a ruling from the Chancery Court of Washington County, Mississippi, before the Honorable Vicki R. Barnes. The ruling was handed down by Memorandum Opinion (CP 5-29) and Final Judgment (CP 30) dated January 12, 2010 and January 26, 2010, respectively. This matter was before the Court on the Petition and Cross Petition of Cordell K. Knighten, Sr. and Shimberely Hooper, both seeking custody and child support of their minor son, Cordell Knighten, Jr. (A.K.A. "C.J."), born to them on November 29, 1999 (CP 31-38; (CP 50-55).

Mr. Knighten and Ms. Hooper were not at the time of the hearing nor have they ever been married (R 40).

Cordell Knighten, at the time of the hearing, had three other minor children. All of these children were born out of wedlock and none of them lived with Mr. Knighten at the time of the hearing in this matter (R 13, 14, 50, 51 and 52). Mr. Knighten was not at the time of the hearing nor has he ever been under any order from any court to pay child support for any of his other three minor children (R 48).

After hearing all the testimony and reviewing all the evidence of the case, the Court issued a Memorandum Opinion and Final Judgment, which in pertinent part granted custody of C.J. to his mother, Shimberely Hooper and ordered Mr. Knighten to pay the sum of \$400.00 per month as and for child support.

## STANDARD OF REVIEW

“Our scope of review in domestic matters is limited. This Court will not disturb the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Denson v. George*, 642 So.2<sup>nd</sup> 909, 913, (Miss. 1994). This is particularly true ‘in the areas of divorce and child support.’ *Nicholas v. Tedder*, 547 So.2<sup>nd</sup> 766, 781, (Miss. 1989). This Court is not called upon or permitted to substitute its collective judgment for that of the Chancellor. *Richardson v. Riley*, 355 So.2<sup>nd</sup>, 667, 668-69, (Miss. 1978). A conclusion that we might have decided the case differently, standing alone, is not a basis to disturb the result. *Id.*” *McClee v. Simmons*, 834 So. 2<sup>nd</sup>, 61, Mississippi 2002.

## Argument

### **Proposition 1**

The Chancellor was well within her discretion in her calculation and award of child support in this matter. Section 43-19-101 of the Mississippi Code Annotated provides in pertinent part as follows:

(1) the following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state.

Number of Children Due Support	Percentage of Adjusted Gross Income That Should be Awarded for Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

Section 43-19-101 also provides as follows: “(3)(c) If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court ordered support; (3)(d) If the absent parent is also a parent of another child or other children *residing with him* (emphasis added), then the court may subtract an amount that it deems appropriate to

account for the needs of said child or children.” With the exception of these two provisions in Section 49-19-101, there are no other provisions adopted by our legislature which would allow the Chancellor to deviate from the child support guidelines as set forth above.

The Appellant does not take issue with the Chancellor’s determination of adjusted gross income as defined by §43-19-101. The Appellant, however, contends that the Court erred in failing to give Mr. Knighten more credit as a result of support he provided for his three other children.

Since Appellant is under no order to pay child support from any other court nor were any of the other three children living with him at the time of this hearing he is not entitled to any credit for support paid to his other three children. The Chancellors in Mississippi may subtract any amount they deem appropriate to account for the needs of other children living in the home of the absent parent. Our courts, however, have held that this is left up to the discretion of the Chancellor and is not a mandatory provision of the statute. (*Bailey v. Bailey* 724 So. 2<sup>nd</sup>, 335, Mississippi 1998; *McLee v. Simmons* 834 So. 2<sup>nd</sup>, 61).

There are no provisions in the statutory child support guidelines or in our established jurisprudence in Mississippi which would authorize the Chancellor in this case to deviate from the child support guidelines.

In this particular matter the Chancellor did take into consideration Mr. Knighten’s other children and obviously his moral obligation to support same when she deviated from the guidelines and made an award of \$400.00 per month child support as opposed to \$528.00, which would have been the appropriate amount under the guidelines. Appellee is willing to accept the award of support as determined by the Chancellor herein.

## Proposition 2

It was within the Chancellor's sole discretion whether or not to award the non-custodial parent the exemption for federal and state income tax purposes *Louk v. Louk*, 761 So.2d 878, (Miss. 2000); Citing with approval *Glover v. Torrence*, 723 N.E.2d 924. Cordell Knighten complains that the Chancellor abused her discretion as a matter of law by not considering and making an on the record finding of fact and conclusion of law as to whether Cordell K. Knighten, Sr. is entitled to claim the minor child as a dependent for income tax purposes. A review of the pleadings and the proof elicited at trial will show that Mr. Knighten neither asked for such relief in his pleadings nor did he present any proof of same during the trial of this matter. Therefore, the matter of the deduction was not properly before the Court for consideration herein. (Rule 8, Mississippi Rules of Civil Procedures) The only request made by Mr. Knighten of the Court to award him the tax dependency deduction was presented in his proposed findings of fact and conclusions of law subsequent to the trial of this matter.

Had Mr. Knighten presented some proof of this claim at trial, it may very well have cured his failure to ask for this relief in his pleadings. However, such is not the case here since Mr. Knighten offered no proof at the hearing of the matter regarding the income tax deduction for the minor child.

Mr. Knighten should not now be allowed to complain of the Chancellor's failure to make specific findings of fact and conclusions of law regarding same.

Mr. Knighten is correct in his assessment of the various criteria a Chancellor should consider in making a determination as to which parent should be awarded the state and federal dependency deduction. Had this matter been properly before the Court, the Chancellor may very well have been compelled to issue a ruling on this issue. However, since the issue was not



properly pled nor was any attempt made during the trial to prove his entitlement to this deduction, the Chancellor did not commit error by failing to address same.

### **CONCLUSION**

Appellee respectfully submits that the Chancellor did not commit reversible error in either her calculation of child support or in her failure to make specific findings of fact with respect to Mr. Knighten's claim for federal and state dependent deduction for the minor child.

The applicable child support guidelines and controlling law in the state of Mississippi do not permit a Chancellor to consider support paid by the non-custodial parent for children not residing with that parent absent court ordered child support.

The Appellant is further not entitled to any relief on his claim that the Chancellor failed to make a specific finding of fact regarding his claim for the minor child dependant exemption for federal and state income tax purposes since he neither asked for that relief in his pleadings nor did he present any proof of same at the trial of this matter.

RESPECTFULLY SUBMITTED, this 10<sup>th</sup> day of January, 2011.



PHILIP MANSOUR, JR., Attorney for Appellee

CERTIFICATE OF SERVICE

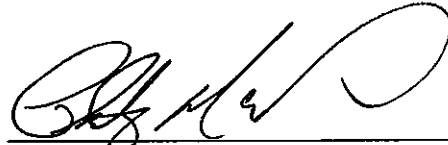
I, Philip Mansour, Jr., attorney of record for Appellee, Shimberely Hooper, do hereby certify that I have this day served via U.S. Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellee to:

Honorable Vicki Barnes, Chancellor  
P.O. Box 351  
Vicksburg, MS 39181-0351

Honorable Kathy Gillis  
Clerk, Mississippi Supreme Court  
P.O. Box 249  
Jackson, MS 39205-0249

Honorable Derwin B. Govan  
Attorney for Appellant  
237 Garrett Street  
Greenville, MS 38703

This the 10<sup>th</sup> day of January, 2011.



\_\_\_\_\_  
PHILIP MANSOUR, JR.