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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CORDELL K. KNIGHTEN, SR.

APPELLANT

VS.

NO. 2010-CA-00377

SHIMBERELY HOOPER

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 this Court may evaluate possible disqualification or recusal.

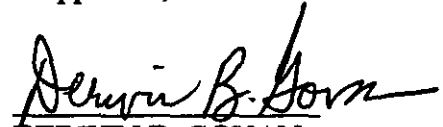
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NO. 2010-CA-00377

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APPELLEE

STATEMENT OF ISSUES

I

The Chancellor abused her discretion and erred as a matter of law in her calculation of child support awarded in this cause.

II.

The Chancellor abused her discretion and erred as a matter of law by not considering and making and on-the-record finding of fact and conclusion of law as to whether Cordell K. Knighten, Sr. is entitled to claim CJ as a dependent for tax purposes.

STATEMENT OF THE CASE

Cordell K. Knighten, Sr. (hereinafter "Cordell") is an adult resident citizen of Greenville, Washington County, Mississippi. Shimberely Hooper (hereinafter "Shimberely") is an adult resident citizen of Martinez, Georgia. To the union of the parties, one (1) child, Cordell Knighted, Jr. (hereinafter "CJ") was born November 29, 1999. The parties have never been married. On or about July 15, 2008, Cordell filed a Petition for Child Custody Determination and for Other Relief.(Record 31) Subsequently, on or about September 26, 2008, Shimberely filed an Answer and Cross-Petition for Custody. (Record 50) On or about October 24, 2008, Cordell filed an Answer to the Cross-Petition for Custody. (Record 60)

A hearing in this matter was held on or about December 8, 2009 before the Honorable Vicki Barnes, Chancellor for the Chancery Court of Washington County, Mississippi. On January 12, 2010, the Chancellor issued a Memorandum Opinion and Final Judgment awarding Shimberely custody of CJ, granting Cordell visitation, and ordering Cordell to pay child support in the amount of \$400.00 per month.(Record 24) Aggrieved by the Memorandum Opinion and Final Judgment of the Chancellor, Cordell filed, on January 22, 2010, Petitioner's Rule 59 Motion for Reconsideration, Alteration, Amendment of Memorandum Opinion and Final Judgment and for Other Relief. (Record 243) In response, on or about January 26, 2010, the Chancellor issued a Final Judgment denying the relief requested in the Petitioner's Rule 59 Motion.(Record 30) Still aggrieved by the Memorandum Opinion and Final Judgment, Cordell

perfected his appeal to this Honorable Court.

SUMMARY OF THE ARGUMENT

Cordell K. Knighten, Sr. respectfully argues that the Chancellor abused her discretion and erred as a matter of law in the calculation of the child support award amount. The child support award guidelines are codified at sections 43-19-101 and 43-19-103 of the Mississippi Code of 1972, Annotated. Miss. Code Ann. § 43-19-101; Miss. Code Ann. § 43-19-103. These statutes establish a rebuttable presumption, and the Chancellor is allowed to deviate from the statutory calculation of fourteen (14%) of adjusted gross monthly income as the amount of child support to be awarded for one (1) child if she finds that such a downward deviation is appropriate. In this case, based on the totality of circumstances as supported by the evidence and testimony in the record, the Chancellor was correct and within her discretion in making a downward deviation from the statutory guideline amount. However, at the point when the Chancellor calculated the actual amount to be awarded, she abused her discretion because she failed to make a specific finding of fact as to how she came up the amount of child support. The appellant, Cordell K. Knighten, Sr. respectfully argues that if the Chancellor had taken into account the amount of monetary support that he was paying for the benefit of his other three (3) children, the downward deviation would have lowered the child support amount to less than four hundred dollars (\$400.00) that was awarded to Shimberely in the Chancellor's Memorandum Opinion and Final Judgment.

At the close of the trial on this matter, in lieu of closing argument, the Chancellor requested that the parties submit written proposed findings of fact and conclusions of law in regard to all issues that they wanted her to consider. (Trial Transcript pp. 175-176) (Record Excerpt 53-54) As a result, Cordell submitted his *First Amended Petitioner's Proposed Findings*

of Fact and Conclusions of Law (Record 182), and his *Petitioner's Memorandum Brief and Argument in Support of Proposed Findings of Fact and Conclusions of Law* (Record 208). In his *First Amended Petitioner's Proposed Findings of Fact and Conclusions of Law*, Cordell requested that the court allow him to carry CJ as a dependent for income tax purposes (Record 206) (Record Excerpt 55) Further, he made this same request in the companion memorandum brief. (Record 238) (Record Excerpt 56)

However, a review of the Chancellor's Memorandum Opinion and Final Judgment makes no reference to any findings of fact, conclusions of law, or even any consideration of Cordell's request that he be allowed to claim a dependent tax exemption for CJ. (Record 4) The Chancellor's failure to make a ruling on this issue of whether Cordell should be allowed to claim a dependent tax exemption for CJ is an abuse of discretion, and this case should be reversed and remanded to the Chancellor for a consideration of that and other issues.

PROPOSITION I

THE CHANCELLOR ABUSED HER DISCRETION AND ERRED AS A MATTER OF LAW IN HER CALCULATION OF CHILD SUPPORT AWARDED IN THIS CAUSE.

Cordell is not adverse to paying child support for the benefit of CJ. However, Cordell requested that the lower Court take into account his financial obligation to his other children when calculating any amount of child support so that a fair and equitable result can be reached for the benefit of all his children. Because of the Chancellor's failure to base her downward deviation in the calculation of the child support on the substantial evidence in the record of Cordell's financial support of his other three (3) children, she abused her discretion and erred as a matter of law.

Mississippi has adopted child support award guidelines as codified in section 43-19-101

of the Mississippi Code of 1972, Annotated. Miss. Code Ann. § 43-19-101. These guidelines “provide a rebuttable presumption regarding the award or modification of child support.” Dunn v. Dunn, 911 So. 2d 59, 600 (¶27) (Miss. Ct. App. 2005). These guidelines presumptively apply if a non-custodial parent makes an adjusted gross income between \$5,000 and \$50,000. Under these presumptive guidelines, the monthly child support amount payable for one (1) child, is calculated by multiplying the adjusted gross monthly income by fourteen (14) percent. Miss. Code Ann. § 43-19-101. In the case at bar, evidence in the record, Cordell’s 8.05 Financial Statement, indicate that his adjusted gross income is less than \$50,000 but more than \$5,000. (Defendant’s Exhibit 1, Trial Transcript) (Record Excerpt 32) Therefore, presumptively, the statutory guidelines applied to him.

This Court has consistently reiterated that the child support guidelines are not to be strictly per se applied to every case, particularly if the potential obligor can demonstrate why a deviation from their application is appropriate. Chesney v. Chesney, 910 So. 2d 1057, 1061(¶7) (Miss. 2005); Magruder v. Magruder, 881 So. 2d 365, 367 (¶7)(Miss. Ct. App.2004) Fancher v. Pell, 831 So.2d 1137, 1141(¶¶ 21-22)((Miss. 2002) (discussing several cases which support this proposition). If the obligor/ non-custodial parent presents evidence that rebuts the presumption that the child support guidelines should be applied in his case, the Chancellor , in making her calculation, can deviate from the child support guidelines. Id. However, if the Chancellor deviates from the guidelines, she must make a clear, on the record finding of fact as to how she reached her calculation. See McClee v. Simmons, 834 So.2d 61, 63-64 (¶8) (Miss. Ct. App. 2002).

Also, the Court can make a downward deviation from the guideline percentage amount if it determines that “the application of the guidelines would be unjust or inappropriate in a

particular case . . .” Miss. Code Ann. § 43-19-101(2). The case at bar is such a case. Further, if the Court deviates from the guidelines, it must make a written finding on- the-record determination of why it is deviating from the guidelines, and its findings must also indicate that it considered criteria under the companion statute section 43-19-103. Id.; Miss. Code Ann. § 43-19-103 (I). Magruder v. Magruder, 881 So. 2d 365, 367 (¶7)(Miss. Ct .App. 2004).

As a result, in the lower Court and on appeal, in the interest of equity and fair play, Cordell argues that the Court should deviate from the guidelines and give him a monetary deduction, credit, and equitable consideration for his support of his other children by presenting evidence rebutting the presumption of the stringent application of the child support guidelines. Mississippi Code Ann. § 43-19-103(i). (Trial Transcript p.36, line 27 - p.38 line 4) (Record 204) (Record Excerpt 52) At trial, Cordell rebutted the presumption that the child support guidelines applied in this particular case, by presenting evidence that he has three (3) other children for which he provides financial support. In addition to CJ, Cordell is the father of three (3) other children. He is the father of Joshua Ruff, a five (5) year old male who lives in Southaven, DeSoto County, Mississippi. He is also the father of two (2) year old twin girls, Kiomi Knighten and Marissa Knighten who live in Washington County, Mississippi. (Trial Transcript p.13, lines 5-11) (Record Excerpt 40) Cordell supports each one of these children financially and emotionally.

Mrs. Ortega (Guzman), the twins’ mother, only does sporadic part-time work (Trial Transcript p.15, lines 5-6) (Record Excerpt 4), and thus Cordell is the primary financial support for the twins, Kiomi and Marissa. He also indicates that he purchases items for the twins of his own volition and also when their mother requests it.(Trial Transcript pp.35-37) (Record Excerpt 44-46) Moreover, Cordell indicates that both he

and the twins' mother do their banking at Regions Bank so he often puts money in Mrs. Ortega's account to take care of the twins. (Trial Transcript p.14, lines 23-27) (Record Excerpt 41)

Cordell states that he pays the daycare fees for the twins when they attend daycare. He indicates that he pays \$24.00 a day for both twins when they attend daycare. The twins' daycare fees average between \$60.00 to \$120.00 a week.(Trial Transcript p. 15, lines 1-9) (Record Excerpt 42) Also, he testifies that seasonally, he spend at least \$300.00 on clothes for the twins. (Trial Transcript p.15, line26 - p.16, line 8) (Record Excerpt 42-43) Since there are four (4) seasons in a year, it can be inferred that he spends at least \$1200.00 a year on the twins' clothing.

Likewise, Cordell testified that he provides for his son Joshua also. He indicated that he pays daycare fees weekly for Joshua. He also testified that he buys items for Joshua. Moreover, Cordell indicates that both he and Joshua's mother do their banking at Regions Bank so he often puts money in Ms. Ruff's account to take care of Joshua.(Trial Transcript pp. 13-14) (Record Excerpt 40-41)

GeNina Ruff , the mother of Joshua, also testified at the hearing of this cause. GeNina indicates that Cordell does take care of her son, Joshua, by paying half of his weekly daycare expenses. She states that Cordell's half of the weekly daycare expenses is \$70.00 per week. (Trial Transcript p. 89, lines 3- 4) (Record Excerpt 49) Ruff also indicated that Cordell purchases items for their son. She stated that Cordell had recently purchased winter clothing for her son in the amount of \$116.00.(Trial Transcript p. 90, lines 2-6) (Record Excerpt 50)

In the Memorandum Opinion and Final Judgment, the Chancellor found that

Cordell's 8.05 Financial Statement indicated that he had an monthly adjusted gross income of \$3,758.00. (Record 23) (Record Excerpt 23) She found that under the presumptive statutory child support guidelines fourteen (14) percent of that monthly adjusted gross income was \$526.12. Further, the Chancellor states that she "considers all other factors and finds that it is reasonable" for Cordell to pay child support in the amount of \$400.00 which is a downward departure from \$526.12. (Record 24) (Record Excerpt 24) Yet, in this same Memorandum Opinion and Final Judgment, the Chancellor states that Cordell is not entitled to three (3) separate deductions from his adjusted gross income for the financial support that he provided for his other three (3) children. (Record 23) (Record Excerpt 23.) What "factors" the Chancellor considered in the calculation of the child support awarded are not clearly indicated on the record which is manifest error as a matter of law. Chesney v. Chesney, 910 So. 2d 1057, 1061 (¶7) (Miss. 2005).

The Chancellor was correct and within her discretion in making a downward deviation from the statutory guideline amount. However, at the point when the Chancellor calculated the actual amount to be awarded, she abused her discretion because she failed to make a specific finding of fact as to how she came up with the amount of child support, and she failed to give a Cordell monetary deduction, credit, or equitable consideration for his support of his other children.

On appeal, as in the lower court, Cordell argues that there are two alternatives that the Chancellor should have considered in making her calculation of child support when she correctly, equitably, and appropriately deviated from the child support guidelines. First, since Cordell has four (4) children, including CJ, to which he wishes to make an equal financial contribution, the Court could have multiplied the monthly adjusted gross income

by twenty-four (24) percent, the statutory guideline percentage for (4) children. Miss. Code Ann. § 43-19-101. Then, the Court could have ordered Cordell to pay one-fourth (¼) of that amount as the child support award for CJ. (Record 234) (Record Excerpt 52) However, in her Memorandum Opinion and Final Judgment, the Chancellor failed to adopt this premises for the calculation of child support. (Record 23) (Record Excerpt 23)

As a second alternative, the Court could have allowed Cordell deductions from his adjusted gross income for the amounts that he pays for the support of the other three (3) children Joshua Ruff, Komi Knighten, and Marissa Knighten. After those deductions were made, the lower Court could have calculated the amount of child support to be awarded for CJ.

Since Cordell pays \$70.00 a week toward Joshua's daycare, over the course of a year, he pays \$3640.00 toward Joshua's daycare.(See Trial Transcript p.89, lines 3-5) (Record Excerpt 49) Likewise, Cordell states that he pays \$60.00 to \$120.00 a week for the twins' daycare. (See Trial Transcript p.15, lines 1-9) (Record Excerpt 42) Taking the smaller sum, in the course of a year, Cordell pays at least \$3100.00 for the twins' daycare. Equity would suggest that both these amount be deducted from Cordell's *yearly* adjusted gross income prior to any determination of a child support amount to be paid for C.J. The Court should also consider giving Cordell a deduction from his adjusted gross income for the amounts that he spends on clothes for Joshua and the twins. In her Memorandum Opinion and Final Judgment, the Chancellor states that Cordell is not entitled to three (3) separate deductions from his adjusted gross income for the financial support that he provided for his children.(Record 23) (Record Excerpt 23)

In *Grace v. Mississippi Department of Human Services*, this Honorable Court was

faced with making a determination in regard to calculating the amount of monetary credit that a child support obligor should be given for the financial support of preexisting and subsequently born children. Grace dealt with the an initial establishment of a child support award. In that respect, Grace is similar to the case at bar.

In Grace, the county court judge ordered Willie Grace, Jr. to pay child support for a child born outside of his marriage. At the time of the hearing, Grace had two (2) other children, one born prior to the child in issue, and one born after the child at issue. Grace v. Mississippi Department of Human Services, 697 So. 2d 1232, 1233 (Miss.1997). The County Court Judge declined to give Grace a credit to his adjusted gross income for the subsequently-born child. However, the Judge gave him a *credit* for the child born prior to the birth of the child at issue, and then it deducted the statutory fourteen (14) percent from Grace's adjusted gross monthly income. Id.

Grace argued that the lower court ruling was in error. He argued that in computing his child support obligation, the county judge should have multiplied his adjusted gross monthly income by twenty-two (22) percent, the statutory percent for three (3) children, and divided that amount by one third ($\frac{1}{3}$) to calculate his child support amount. Grace, at 1234 . Alternatively, Grace argued that he should have been given monetary credit for two (2) children as opposed to one (1) child. Id.

This Honorable Court found that it was inappropriate for Grace's child support amount to be determined by multiplying his adjusted gross monthly income by the statutory guideline percentage of twenty-two (22) percent and dividing that amount by three (3). Grace, at 1235. The Court intimated that this was an inequitable formula because the other two (2) children lived in the home with Grace, and thus they were already getting some of

the benefit of his income. However, the Court did indicate that Grace was entitled to have his child support award calculation reconsidered based on consideration of the two (2) children residing in the home with him. Id.

In Bailey v. Bailey, this Court was faced with a similar situation. The lower court ordered Sandra Bailey to pay child support. Subsequently, Bailey had another child, and she quit her job. Bailey petitioned to modify her child support based on these facts. The lower court allowed her a reduction in child support. Bailey v. Bailey, 724 So. 2d 335, 336-37 (¶¶2-4) (Miss. 1998). Feeling aggrieved, her former husband, Steven Bailey appealed to this Court. Bailey v. Bailey, 724 So. 2d 335, 336-37 (¶¶2-4) (Miss. 1998). The Mississippi Supreme Court ruled that Sandra was not entitled to receive a modification by way of reduction in her child support obligation merely because she had another child in her home. The Court stated that such an approach is inequitable because it would allow a child support obligor “to sire himself out of his child support obligation.” Bailey v. Bailey, 724 So. 2d 335, 339 (¶11) (Miss. 1998). Moreover, in Bailey, the Court overruled its prior decision in Grace to the extent that it could be read as allowing a Court to consider subsequently born children in making a modification of a child support award. Id. This decision implies that the fact that a person has additional children subsequent to being ordered to pay child support is not the sole controlling factor that a Chancellor must consider in deviating from the child support guidelines. Magruder v. Magruder, 881 So. 2d 365, 368 (¶12) (Miss. Ct. App. 2004) quoting Bailey v. Bailey, 724 So. 2d 335, 338 (¶11) (Miss. 1998). see Bustin v. Bustin, 806 So. 2d 1136, 1138 (¶6) (Miss. Ct. App. 2001)(“the chancellor’s use of after born children as the basis for a reduction in child support is strictly in her discretion”); Turner v. Turner, 744 So.2d 332, 337-38 (¶20) (Miss. Ct. App. 1999)

(case involving modification of an existing child support order).

Both Grace and Bailey are distinguished from the case bar. In spite, of the ruling in Bailey, Grace still stands for the proposition that in the *initial* establishment and calculation of a child support award, a Chancellor must consider the financial obligation that the non-custodial parent has to the other children that live with him. Grace v. Mississippi Department of Human Services, 697 So. 2d 1232, 1235 (Miss. 1997) modified by Bailey v. Bailey, 724 So. 2d 335 339 (¶11) (Miss. 1998). Unlike Bailey, this is not a case where Cordell, the parent, is attempting to reduce or modify a *prior court-ordered* child support obligation to an older child by asking the Court to consider his financial obligation to his other younger children. There was no *prior court-ordered obligation* for CJ, or any of the other three (3) children. (Trial Transcript p.37, lines 15-17) (Record Excerpt 46) See Bailey v. Bailey, 724 So. 2d 335, 336 (¶2) (Miss. 1998).

In this case, based on the totality of circumstances as supported by the evidence and testimony in the record, the Chancellor was correct and within her discretion in making a downward deviation from the statutory guideline amount. Based on the child support guidelines and case law, the Chancellor was required to consider the financial obligations and support that CORDELL pays for his other three (3) children when she made her calculation of the child support amount that she ordered him to pay. While the Chancellor states in her Memorandum Opinion and Final Judgment, that “the [c]ourt does consider that Mr. Knighten has three (3) other minor children that he has to provide for when they visit him” (Record 24) (Record Excerpt 24), she fails to make an specific finding as to how her consideration gave Cordell a monetary deduction for his financial support, when she made her calculation of child support. The Chancellor’s failure is an abuse of discretion

and error as a matter of law. Therefore, the decision of the Chancellor of Washington County, Mississippi, in this matter in regard to the child support award should be reversed or remanded.

PROPOSITION II

THE CHANCELLOR ABUSED HER DISCRETION AND ERRED 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 CJ AS A DEPENDENT FOR INCOME TAX PURPOSES.

At the close of the trial on this matter, in lieu of closing argument, the Chancellor requested that the parties submit written proposed findings of fact and conclusions of law in regard to all issues that they wanted her to consider. (Trial Transcript pp. 175-176) (Record Excerpt 53-54) As a result, Cordell submitted his *First Amended Petitioner's Proposed Findings of Fact and Conclusions of Law* (Record 182), and his *Petitioner's Memorandum Brief and Argument in Support of Proposed Findings of Fact and Conclusions of Law* (Record 208). In his *First Amended Petitioner's Proposed Findings of Fact and Conclusions of Law*, Cordell requested that the court allow him to carry CJ as a dependent for income tax purposes (Record 206) (Record Excerpt 55) Further, he made this same request in the companion memorandum brief. (Record 238) (Record Excerpt 56)

In Louk v. Louk, this Court asserted that it is in the Chancellor's discretion to determine whether a parent shall be allowed to claim a child as a dependent for tax exemption purposes when the matter is at issue. Louk v. Louk, 761 So. 2d 878 (Miss.

2000). In Louk, the Court adopted five (5) factors that a court should consider in making that determination:

- (1) value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child born by each party;
- (5) the financial burden assumed by each parent under the property settlement.

Louk, at 883-84 (¶¶17-18).

As reiterated in a more recent case, the Chancellor has the discretion to award the child dependency exemption to a non-custodial parent after consideration of the circumstances. Fitzgerald v. Fitzgerald, 914 So. 2d 193, 199 (¶31) (Miss. Ct. App. 2005); see also Laird v. Blackburn, 788 So. 2d 844, 852 (¶17) (Miss. Ct. App. 2001).

However, a review of the Chancellor's Memorandum Opinion and Final Judgment makes no reference to any findings of fact, conclusions of law, or consideration of any of the Louk factors, or even any consideration of Cordell's request that he be allowed to claim a dependent tax exemption for CJ. (Record 4) The Chancellor's failure to make a ruling on this issue of whether Cordell should be allowed to claim a dependent tax exemption for CJ is an abuse of discretion, and this case should be reversed and remanded to the Chancellor for a consideration of that and other issues.

CONCLUSION

Based on the argument and authorities contained herein, Appellant prays that the Honorable Court reverse the Final Judgment of the lower court in regard to the issues presented or alternatively remand the case to the lower Court for a reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Derwin B. Govan", written over a horizontal line.

DERWIN B. GOVAN

Attorney for Appellant

237 Garrett Street

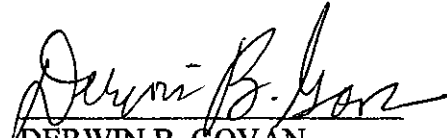
Greenville, MS 38703

MSB No. [REDACTED]

CERTIFICATE OF SERVICE

I, **DERWIN B. GOVAN**, attorney of record for Cordell K. Knighten, Sr., Appellant, do hereby certify that I have this day caused to be hand-delivered and/or mailed , postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant to the Honorable Vicki Barnes, Chancellor, P. O. Box 351, Vicksburg, MS 39181; Honorable Philip Mansour, Attorney at Law, P. O. Box 1406, Greenville, MS 38702.

THIS, the 18th day of October, 2010.


DERWIN B. GOVAN