

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BRANDON L. BROOKS

APPELLANT

VS.

NO. 2010-CA-00416

DAWN JACKSON BROOKS

APPELLEE

REPLY BRIEF OF APPELLANT

APPEAL FROM THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF JONES COUNTY, MISSISSIPPI

ORAL ARGUMENT IS NOT REQUESTED

Matthew Thompson, MSB # [REDACTED]
THOMPSON LAW FIRM, PLLC
4316 Old Canton Road
Jackson, Mississippi 39236
Telephone: (601) 850-8000
Facsimile: (601) 366-4010
Matthew@wmtlawfirm.com

Attorneys for Appellant,
BRANDON L. BROOKS

TABLE OF CONTENTS

Table of Contents.....	i
Table of Cases, Statutes and Other Authorities.....	i
Argument	
I. Clarification of the Facts.....	1
II. Child Support is Governed by Statute.....	2
III. Chancery Courts do not Punish.....	3
IV. Limitation of Visitation was Improper.....	4
Conclusion.....	4
Certificate of Service.....	5

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

	Page No.
Mississippi Cases	
<i>Ferguson v. Ferguson</i> , 639 So.2d 921 (Miss. 1994).	3
<i>Pierce v. Pierce</i> , 42 So.3d 658 (Miss. App. 2010).	2,3
<i>Tilley v. Tilley</i> , 610 So.2d 348 (Miss. 1992.).....	3
Mississippi Statutes:	
<i>Mississippi Code Annotated</i> §43-19-101.....	2

I. CLARIFICATION OF THE FACTS

A. Dawn's Attempts to Mischaracterize Facts and Inflamm this Court are Improper.

There are several major inflammatory remarks in Dawn's brief that should be addressed. Foremost of these inflammatory remarks is Dawn's repeated allegations that Brandon's 2007 income was substantially more than shown on his tax returns. (*Appellee's Brief*, P.7). This statement is absolutely unsubstantiated and improper.

It is unsubstantiated because upon direct testimony Brandon testified he made \$71,000 in 2007. Brandon stated that amount was his reported income for 2007. (R.75-76, Tr. 170-173). Further Dawn's brief states "Brandon admitted that in that year his income was \$101,100. (Tr. 30)." (*Appellee's Brief*, Pg. 7). However, Brandon testified that "- - some these clients I share with my partner Shirley Baldwin. So, some of these fees were split." (Tr. 30). Additionally, Brandon testified that the total was a gross amount, "before expenses." (Tr. 31).

It is improper because it is 2007 income. The divorce was in 2010, and this appeal is in 2011. Brandon, through his trial counsel, entered his then current 8.05 financial statement into evidence and listed his monthly Adjusted Gross Income as \$3,320 and his gross monthly income as \$3,800.00. (Ex.2).

There is no legal, rational, or equitable basis to base his ongoing support obligations on 2007 income, regardless of the exact amount.

Dawn's additional inflammatory remarks could have only been included to attempt to sway this Court. Dawn states that Brandon gambled, implying marital waste, though there was NO such finding by the Chancellor. (*Appellee's Brief*, Pg. 19). She criticizes Brandon for driving with his children on a suspended license, but could demonstrate NO harm to the children and failed to include that Brandon was not aware of the suspension. (*Appellee's Brief*, Pg. 8) (Tr. 60). In fact, there was

NO harm to the children and Brandon had his license reinstated. (Tr. 60). Dawn quoted a text sent from Brandon to her during the pendency of the divorce. (Tr. 70). It included foul language and should not have been sent. However, it's specific inclusion in Dawn's brief supports no legal or factual argument and is merely an attempt further disparage Brandon before this Court. Lastly, Dawn cites testimony of her mother, Beverly Robinson, as proof that Brandon pulled a gun in a dispute. (*Appellee's Brief*, Pg. 10) (Tr. 162). A careful review of the transcript proves it was Ms. Robinson who had the gun in her possession. (Tr. 161). Brandon has previously addressed this in his Appellant's Brief, (Pg 16.). "[I]t was Dawn's mother that had pulled the gun and Brandon grabbed it from her so the situation did not escalate further. Brandon maintained possession of the gun until the Sheriff's Office arrived to diffuse the situation." Id. This is supported by Ms. Robinson's own testimony. (Tr. 161-62).

II. Child Support is Governed by Statute.

The Brief of Appellee takes issue with the Mississippi Child Support Guidelines and states that the amount awarded in the case at bar "shocks the conscience."(*Appellee's Brief*, Pg. 12). The Chancellor awarded \$958 dollars per month in child support. (R. 11). This sum is presumptively based upon the statutory guideline of 24% of adjusted gross income for 4 children. *MCA* §43-19-101. However, \$958 is 26% of a monthly adjusted gross income of \$3,686.84. This \$3,686.84 was imputed income to Brandon by the Chancellor. (R.75). The Court deviated higher than the guidelines, awarding 26%.

In addition the chancellor ordered that Brandon had to pay the home mortgage until the youngest child is 18. This award of a financial obligation tied to a child-age event thrusts this award

into the child support category. *Pierce v. Pierce*, 42 So.3d 658 (Miss. App. 2010). Instead of \$958 per month in child support, the obligation is actually \$958 (child support) + \$690 (mortgage) + \$250 (taxes and insurance) = totaling at least \$1898 per month. \$1898 per month is 51.5% of \$3,686.84. This child support obligation is 51 ½ % of Brandon's imputed income. (57% if Brandon's 8.05 income is accepted). This amount shocks the conscience.

Dawn's Argument that *Pierce* is inapplicable misses the point.

The Chancellor's treatment of mortgage payments to Dawn, but making them tied to a child related event thrusts this award into the child support category. *Pierce v. Pierce*, 42 So.3d 658 (Miss. App. 2010). Not only does it skyrocket passed the statutory guidelines, which should be applicable, it has long reaching tax consequences as well. This unnecessarily burdens Brandon with more than he can reasonably afford to pay and effectively prevents the tax benefits that paying either alimony or home mortgages can have.

III. Chancery Courts (and Ex-Wives) do NOT Get to Punish

In *Tilley v. Tilley*, 610 So.2d 348 (Miss. 1992.), the court stated that the wife and children "deserve to enjoy a nice standard of living with many amenities of life...but the blunt truth is that now two families will have to live on the same salary that once supported one family...there is no way the standard of living can remain as high as it once might have been." *Id.* at 354.

Dawn's Brief dismisses all of the debts of the parties because they were "old debts and have not been paid by Brandon prior to the divorce." (*Appellee's Brief*, Pg. 14). However, no dispute is made that these debts were not marital. They are marital debts and should have been accounted for in the Equitable Distribution. *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994).

The financial awards to Dawn are being used as punishment of Brandon for his adultery. However, "alimony is not a punishment and should not be so used." *Tilley v. Tilley*, 610 So.2d at 354.

IV. Limitations on Visitation was Improper

Dawn argues that Brandon “by his conduct, caused this divorce and he WILL MISS TIME WITH HIS CHILDREN.” (*Appellee’s Brief*, Pg. 22)(Emphasis Added). This sentiment is rank punishment and reflective of attitude about Brandon seeing his children. Dawn states that Halloween is not a recognized holiday. *Id.* Dawn’s argument that the Court had to issue a visitation schedule and that the final visitation schedule just so happens to be less than the temporary visitation schedule is just too bad for Brandon is not good enough. There is no basis for limiting his time and there is no chance of it voluntarily being expanded on the part of Dawn, based upon her comments. The Court is not required to define a winner and a loser, but to determine the best interests of the children. Furthermore, the trial Court has the discretion to devise and implement Parenting Plans and specific visitation based on the parties before the Court and not a “standard” catch-all form.

There was no justification to limit visitation or decrease it from the temporary visitation schedule. Fathers need to be in their children’s lives and children need their fathers as much as possible. There is no legal or equitable basis to support decreasing Brandon’s time with his children.

CONCLUSION

Brandon Brooks respectfully requests that this Court reverse, remand or render on this matter. Brandon is faced with financial obligations he cannot maintain. Over 80% of his income is obligated for monthly maintenance. Along with a limited visitation schedule in which to see his four minor children, this result is inequitable. Brandon seeks that his financial obligations be in-line with the statutory guidelines and what he can reasonably afford to pay and still maintain himself. Further, Brandon requests that the Temporary weekend visitation schedule be reinstated, as same was modified with no legal justification.

Respectfully Submitted,
Brandon L. Brooks

By: 
Matthew Thompson, MSB 

CERTIFICATE OF SERVICE

I, Matthew Thompson, Attorney for Appellant, Brandon L. Brooks, hereby certify that I have this day caused to be served by first class mail, postage prepaid a true and correct copy of the above foregoing instrument on the following persons:

Renee Porter, Esq.
Post Office Box 892
Columbia, Mississippi 39429

Judge Lawrence Primeaux
Lauderdale County Chancery Court
Post Office Box 689
Meridian, Mississippi 39302-0689

SO CERTIFIED, this the 26th day of April, 2011.


Matthew Thompson