

**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CASE NO. 2010 CA-00496-COA**

**LANCE ERICSON DUPRE**

**E**

**APPELLANT**

**VERSUS**

**PAMELA DENISE DUPRE**

**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel 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.

1. William Kulick, Esquire, Attorney of Record for Appellee

KULICK LAW FIRM

1201 Washington Avenue

Ocean Springs, MS 39564

(228) 872-5026

MS Bar No.: [REDACTED]

2. Pamela Denise Dupre, Appellee

Gautier, MS 39553

3. Michael J. Vallette, Esq.

Trial Counsel for Appellant

900 Washington Avenue

Ocean Springs, MS 39564

4. Calvin Taylor, Esq., Attorney of Record for Appellant

PO Box 6

Pascagoula, MS 39568

5. Lance Ericson Dupre

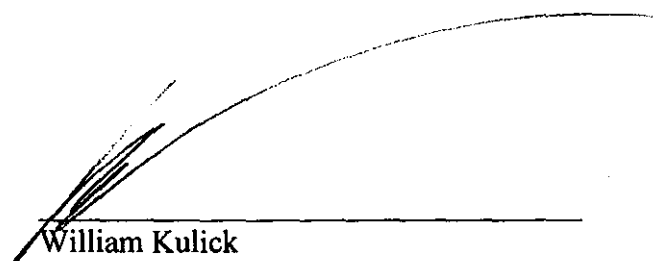
244 Danya Crest Drive

Nashville, TN 37214

6. Hon. G. Charles Bordis, IV

Post Office Box 998

Pascagoula, MS 39568

  
William Kulick

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**PAMELA DENISE DUPRE**

**APPELLEE**

AN APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

CAUSE NO.: 2004-0909

**APPELLEE'S BRIEF**

**STATEMENT OF THE ISSUES**

Appellant sets forth the following issues for decision by the Court:

1. Did the Court err in applying an insurance settlement check towards an Ordered payment on Pam's vehicle?
2. Did the Court err in reducing and terminating Lance's alimony obligation?
3. Did the Court err in reducing Lance's child support arrearage?

It is Appellee's position that the Court did not err in its liberal reductions for the ex-husband who came to Court with unclean hands owing over \$60,000.00 in Court Ordered payments. Further, that any of the calculations made were in the discretion of the Chancellor, supported by the evidence, and not manifestly wrong.

**STATEMENT OF THE CASE**

This case is before the Court upon appeal from the Chancery Court of Jackson County, Mississippi, Honorable G. Charles Bordis, presiding. Petitioner Pamela Dupre had filed a Motion for Contempt against her ex-husband who had not followed the provisions included in the Final Judgment of Divorce. A hearing was held, and a Findings of Fact, Conclusions of Law, Ruling

and Judgment of the Court, (CP- 42) was issued. It is from this Ruling by the Chancellor Lance Dupre appeals.

## FACTS

In the Final Judgment of Divorce entered on July 9, 2004, the Parties were Ordered as follows:

1. Pam received full legal and physical custody of minor child Jordan.
2. Lance was to pay \$1000.00 per month child support
3. CHIP covered kid but when Lance could obtain health insurance for kid, he would be responsible for all health care costs.
4. Pam got the tax deduction
5. Lance should prove Pam with ½ of his tax return for 2003
6. Lance was to make the payments on Pam's 2003 Malibu until paid in full
7. Lance got the marital home on Parsley Drive, Pascagoula and was to pay all indebtedness and hold Pam harmless.
8. Pam could live in the home for 6 months and split equity when sold
9. Lance to pay Pam \$200.00 a month periodic alimony
10. Lance to provide Pam with a copy of his tax returns each year to the end that support could be adjusted accordingly.
11. Lance to abide by 8.06 and advise of his whereabouts.

Pam filed her Petition for Contempt on September 27, 2006. [CP- 1] At the time of filing, Pam alleged that Lance was in arrears 26 ½ months of child support totaling \$26,500.00, and \$5,400 in periodic alimony. She alleged Lance had not paid monthly payments on the Malibu, or provided his tax returns. She alleged that he had never attempted to provide private health insurance.

In his Affirmative Defenses, Answer and Counter Complaint filed on January 23, 2007, Lance alleged a material change of his circumstances had occurred when his job prospect at the time of the divorce fell through. He alleged he was no longer able to pay the Order child support or alimony. He prayed that the child support conform to the 14% guideline amount based on his income, and that alimony should be either lowered or terminated.

After a full hearing on the merits, Chancellor Boris issued his Ruling finding:

1. At time of filing Contempt Lance was \$26,000 behind in support and \$5,400 in alimony.
2. At the time of the hearing Lance's arrearage was \$62,000 in support and \$12,400.00 in alimony.
3. Lance lost his anticipated job after the parties divorced—which was foreseeable, Lance then filed bankruptcy which improved his financial situation.
4. Lance asserted he paid some support of \$900.00; paid \$18,142.30 for mortgage payments while Pam and/or Pam and Jordan lived in the house—6 months of which were by agreement; that he had paid \$2,570.49 in utility bills, \$1,799.25 for electricity which benefited Jordan; and that he had given, \$1000.00 directly to Pam by bank check.
5. \$6,720.75 from Lance's personal injury lawsuit settlement was rightfully applied to the debt on the Malibu.
6. \$8,000.00 was received by Lance and given to Pam in a Katrina contents insurance claim. Pam had been awarded the furniture and all contents of the marital home in the divorce.

LANCE was given credit by the Chancellor for

- a. Mortgage payments - \$18,142.30
- b. Utility bills - \$2,570.49;
- c. Electric bills - \$1,799.25;
- d. Money paid to Pam - \$900.00
- e. Hurricane insurance claim for house - \$2,200.00
- f. Bank check paid to Pam - \$1,000.00
- g. Money given to Jordan - \$500.00
- h. Jordan's mattress - \$319.00
- i. Jordan's fines and bail money - \$467.00
- j. Jordan support for 1 year given to Jordan directly - \$2,400.00
- k. Jordan's stove and refrigerator - \$1,000.00

TOTAL CREDITS : \$31,298.04

7. Despite credits, delinquent child support arrearage of \$30,701.96 remained and was vested and could not be forgiven;
8. Lance did not show an inability to pay warranting forgiveness;
9. Lance was Ordered incarcerated on each weekend for 90 days with purge amount of \$10,000.00<sup>1</sup>
10. Lance paid the Zurich insurance check of \$6,720 on the Malibu indebtedness and the remaining balance owed on the car was wiped out with no harm to Lance.

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<sup>1</sup> While posting no bond for his appeal, or requesting a stay, Lance has not spent one day in jail as Ordered. Lance continues to enjoy his freedom with a Nashville address.

11. Lance was not in contempt for not providing Pam with his tax returns since he did not file them.
12. Lance was in court with unclean hands.
13. Attorney fees were awarded of \$2,000.00
14. Alimony would cease as of date of filing of his counterclaim January 23, 2007- since Pam was in cohabitation with another man and so Lance was given credit against the back due total alimony.
15. Lance received credit for the \$8,000 contents insurance and \$2,200 direct support to Jordan

### SUMMARY OF APPELLEE'S ARGUMENT

It is Appellee's position that the Chancellor did not err in his calculations of the over \$30,000.00 in credits given to Appellant, and that however the numbers were determined, the Chancellor's decision was based on credible evidence and should not be disturbed:

1. CREDIT WAS APPLIED FOR THE ZURICH INSURANCE: Appellant asserts he was not given proper credit by the Chancellor for the Zurich insurance settlement of Lance's personal injury. In fact, as discussed by the Chancellor in his Findings of Fact, Conclusions of Law, Ruling and Judgment of the Court, (CP- 42) the Zurich check *was* credited against Lance's obligation on Pam's Malibu automobile, and he was relieved of the remainder due.

2. CREDIT FOR ALIMONY WAS GIVEN: Appellant asserts he should be given more credit than given by the Chancellor for an unclear time frame for which Pam was romantically involved and being partially supported by a boyfriend with whom she was living. The Chancellor gave Lance credit beginning at the time Lance filed his Answer and Counter Claim. Based on the testimony Lance was given appropriate credit.

3. CHILD SUPPORT CREDIT WAS GIVEN: Appellant asserts he should receive additional credit for child support since the Chancellor erred by not finding that Jordan was emancipated. Testimony at the hearing revealed that the Chancellor's decision to ignore a

suggestion that Jordan was emancipated was appropriate. Further, if Lance was going to rely on emancipation as the reason for lowering his child support he should have plead that as a material change. Instead Lance had only plead that lowered income was the reason his support should be lowered.

### APPELLEE'S ARGUMENT

**CREDIT FOR ZURICH INSURANCE:** Appellant asserts he was not given proper credit by the Chancellor for the Zurich insurance settlement of Lance's personal injury. In fact, as discussed by the Chancellor in his Findings of Fact, Conclusions of Law, Ruling and Judgment of the Court, (CP- 42) the Zurich check *was* credited against Lance's obligation on Pam's Malibu automobile, and he was relieved of the remainder due.

Appellant cites to Court Papers page 53 which is the post judgment Rule 59 Motion filed by Lance. This citation must be to promote the assertion that according to Lance, the Judge "misapprehended the facts and testimony adduced during trial and that the Decision of the Court is not supported by the facts or the applicable law..." The Record Excerpt cited (RE-35) transports the reader to the single page of the Findings which tallies some but not all of the credits given to Lance. Appellant will simply ask the Court to look at page 42 and 47 of the Court papers filed to see that the trial Judge did credit the Zurich insurance settlement check to Lance's obligations:

[CP- 42] "Lance further contends that he provided a check in the amount of \$6,720.75 to Pamela representing proceeds from a settlement of a lawsuit in Orleans Parish, Louisiana. Pamela acknowledges receipt of the \$6,720.75; however, she states that she used these funds to satisfy the indebtedness owing on the 2003 Chevrolet Malibu."



[CP-47] “Vehicle: The Final Judgment of Divorce required Lance to satisfy the indebtedness owing on the 2003 Chevrolet Malibu which was awarded to Pamela...Settlement proceeds received in a claim against Zurich Insurance Company in the amount of \$6,720.25 were paid to Pamela by Lance and these funds were used to satisfy the indebtedness owing on the car.”

The argument that Lance did not receive credit for the Zurich check is specious and this assignment of error is due to fail.

**ALIMONY CREDIT**: Appellant asserts he should be given more credit than given by the Chancellor for an unclear time frame for which Pam was romantically involved and being partially supported by a boyfriend with whom she was living. The Chancellor gave Lance credit beginning at the time Lance filed his Answer and Counter Claim.

In his Findings the Court stated: [CP-29] “After Hurricane Katrina, Pamela and Jordan moved out of the home and into the home of Steve Pemberton. Mr. Pemberton was the owner of a business which employed Pamela. Pamela asserted that she had no romantic relationship with Mr. Pemberton until more than a year after Hurricane Katrina; however, testimony from other witnesses revealed that she was romantically involved with Mr. Pemberton at the time she relocated to his home.”

Despite finding that Lance had unclean hands, which could have warranted no reduction of alimony, Lance was given the benefit of his alimony arrearage obligation being reduced to zero and terminated due to Pam’s cohabitation. The Court cited *Dill v. Dill*, 908 So.2d 198 (Miss Ct. App. 2003) to justify this finding. The Court was correct in finding a reduction was warranted and ultimately so was a termination of Lance’s obligation base on *Dill*. The

Appellant's complaint is that the judge did not give him enough alimony credit, since the judge began the credit after Lance filed his Answer and Counter Claim.

Pam testified that she did not become romantically involved with the man with whom she had moved in until more than a year after Hurricane Katrina. The trial transcript, page 45 [T-44,45] supports the Finding: KULICK Q.: "So when did the relationship evolve into something more than just sharing space?" PAM A: "Well, I had said that there was occasional times, but probably, I would say, really serious about, maybe, a year afterwards." KULICK Q.: "So '06, August '06, is that fair?" PAM A.: "That's fair, yes."

As stated by the Court in *Dill v. Dill*, 908 So.2d 198 (Miss Ct. App. 2003) "¶8. In domestic relations matters, the scope of our review is limited by the substantial evidence/manifest error rule. *Jundoosing v. Jundoosing*, 826 So. 2d 85, 88 (¶10) (Miss. 2002). Accordingly, we must refrain from disturbing a chancellor's findings unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.*"

In *Kelley v. Day*, No. 2005-CA-01029-COA (Miss.App. 09/18/2007) the Court stated: "¶3. Our standard of review in domestic relations cases is limited by the substantial evidence/manifest error rule. This Court may reverse a chancellor's findings of fact only when there is no substantial credible evidence in the record to justify his findings. Our scope of review in domestic relations matters is limited in that this Court will not disturb a chancellor's findings unless they are manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard. *Tynes v. Tynes*, 860 So. 2d 325, 327 (¶5) (MisS.Ct. App. 2003) (citing *Jundoosing v. Jundoosing*, 826 So. 2d 85, 88 (¶10) (Miss. 2002)).

Pam testified she became romantically involved with her boyfriend sometime after August, 2006. She filed her Petition for Contempt September 27, 2006 [CP-1]. Lance filed his

Answer and Counter Claim January 23, 2007. [CP-8] It can hardly be said that the Judge erred when he established the time Lance's credit should begin as of the date he plead that alimony should be terminated. Clearly the judge was well within his judicial discretion to establish the date alimony should be terminated, based upon cohabitation or otherwise, as of the date of Lance's filing of his Answer and Counter Claim. No manifest error was committed by the trial judge and this assignment of error is due to fail.

**CHILD SUPPORT CREDIT:** Appellant asserts he should receive additional credit for child support since the Chancellor erred by not finding that Jordan was emancipated. Lance's credit for child support is within the discretion of the trial judge unless manifestly wrong. Further, emancipation had not been plead by Lance in his Answer or Counter Claim for relief.

In the case at bar the Chancellor heard testimony and discussed in his Ruling the "unusual" living arrangements of Jordan post Hurricane Katrina, and found, effectively, that Jordan had not been emancipated. During *my* high school days I lived in Ocean Springs, but I commuted every day to a private school in Pass Christian. During basketball and tennis season my school day would end in Bay St. Louis because that is where the school borrowed courts for after school practices. During this period, and since I was there all the time, my family purchased an old plantation style home to restore in Bay St. Louis. While still under renovations, on many nights I would camp at the Bay St. Louis house, fixing my own meals and getting myself to bed and to school in the morning. I too was 15 years old. I had a part time job—working on the house. This was not emancipation, but an arrangement of convenience only. My mother had not given up supporting me in all senses of the word. I was no more emancipated than was Jordan. While I enjoyed a great deal of independence, my bills—especially my gasoline bill—were paid for by my parent. My food expense was provided by my parent. My utilities were provided by

my parent. My mother did not drive over and check on me every morning, nor did she bring me hot meals at night, as was the case with Jordan.

The finding by the Chancellor that Jordan was not emancipated was supported by credible evidence through the testimony of Jordan, Jordan's mother, and father.

[R- 50] Pam testified she went to the house each morning to check on Jordan and to make sure he got to school. She also did his laundry. She brought him dinner every night. [R-61,62] Jordan did not feel like he had been abandoned by his mother who, "was just down the street."

[R-56, 57] Even though Jordan is now living in an apartment with a roommate, his mother supplements his \$600 a month part-time income. Pam pays Jordan's cable bill, helps with his rent, toilet paper, deodorant, hygiene products, cleaning products, and grocery money. Further, Jordan recognizes that his mother is helping to support him. He also testified that his dad gives him \$200 a month for which his dad received child support credit. His dad sometimes helps him with date money and takes him to dinner.

Credible evidence supported everything about the Chancellor's decision. Merely because the Chancellor did not make a specific finding that Jordan was *not* emancipated does not create the presumption that he did not consider the facts in his ruling and that this Court should disturb the Chancellor's Ruling. As stated in *Ray Wilson Shearer v. Patsy Sue Shearer*, 540 So. 2d 9 (Miss.02/22/1989): "The findings made by a Chancery Court sitting as a finder of fact are reviewed under the substantial evidence/manifest error standard. *Clements v. Young*, 481 So. 2d 263, 269 (Miss. 1985); *Cotton v. McConnell*, 435 So. 2d 683, 685 (Miss. 1983); *Culbreath v. Johnson*, 427 So. 2d 705, 707-08 (Miss. 1983). Where the court has not made specific findings of fact, this Court proceeds on the assumption that the trial judge resolved all issues in favor of the prevailing party. *Allgood v. Bradford*, 473 So. 2d 402, 411 (Miss. 1985). This standard is

applicable to the review of an amount fixed by a chancery court regarding arrearages in child support and alimony. *Clements*, 481 So. 2d at 269-71; *Mullen v. Mullen*, 246 So. 2d 923, 925 (Miss. 1971). [Emphasis added]

Appellant's assignment of error concerning the reduction of child support based on Jordan's "emancipation", which was not plead by Lance, nevertheless is without merit. If Lance had thought his child was emancipated, it stands to reason that he would have stated as much in his plea for lowering of his child support obligation. [CP 11,12] The Chancellor did not think Jordan was emancipated, and this issue was resolved in favor of Pam. This assignment of error is due to fail.

## CONCLUSION

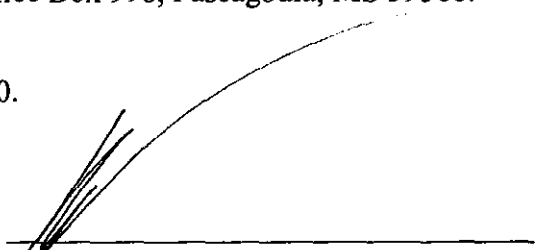
All assignments of error asserted by Appellant are without merit: either because the alleged error of omission was clearly addressed by the Chancellor, as in the case with the application of the Zurich insurance check to the Malibu; or because the matters decided were well within the discretion of Chancellor, as with the calculation of alimony credit; or because the Chancellor's decision to *not* find an emancipation occurred, which was not plead, was supported by the credible evidence, and therefore presumed to have favored the prevailing party.

As such, all assignments of error by Appellant are without merit and the decision of the Chancellor in his Findings of Fact, Conclusions of Law, Ruling and Judgment of the Court should be affirmed.

## **CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to Calvin d. Taylor, Esquire, Attorney for Appellant to Post Office Box 6, Pascagoula, Mississippi 39568; and to the Hon. G. Charles Bordis, Trial Chancellor, at Post Office Box 998, Pascagoula, MS 39568.

This the 21<sup>st</sup> day of December, 2010.

  
\_\_\_\_\_  
William Kulick

William Kulick, Esquire  
KULICK LAW FIRM  
1201 Washington Avenue  
Ocean Springs, MS 39564  
(228) 872-5026  
MS Bar No. [REDACTED]  
[bill@kulicklawfirm.com](mailto:bill@kulicklawfirm.com)