

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NO. 2010-CA-00496-COA

T

LANCE ERICSON DUPRE

APPELLANT

VERSUS

PAMEL A DENISE DUPRE

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 the Supreme Court and the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

CHANCELLOR PRESIDING:

The Honorable G. Charles Bordis, IV
Post Office Box 998
Pascagoula, MS 39568-0998

FOR THE APPELLANT

Lance Ericson Dupre
244 Danya Crest Drive
Nashville, TN 37214

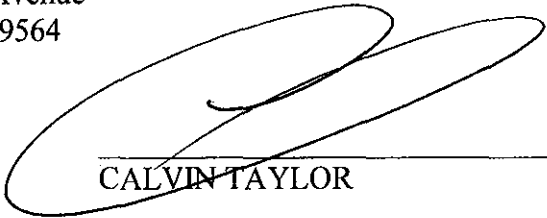
Michael J. Vallette, Esq.
Trial Counsel for Appellant
900 Washington Avenue
Ocean Springs, MS 39564

Calvin Taylor, Esq.
Appellate Counsel for Appellant
Post Office Box 6
Pascagoula, MS 39568-0006

FOR THE APPELLEE:

Pamela Denise Dupre
1706 Parsley Avenue
Pascagoula, MS 39567

William M. Kulick, Esq.
Trial and Appellate Counsel for Appellee
801-1/2 Washington Avenue
Ocean Springs, MS 39564



CALVIN TAYLOR

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STATEMENT OF THE ISSUE

Whether the purge amount of \$10,000.00 is excessive under the facts and circumstances of the credible evidence adduced at trial, and requires reduction.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW

The Jackson County Chancery Court, when stating that “A series of events ensued following the entry of the divorce which can only be described as bizarre.” (Opinion at Page 3, Paragraph 2; RE-29), gave a very succinct summary of the entirety of the post-divorce relationship of Lance and Pamela. The Final Judgement of Divorce of July 9, 2004, and the series of events that followed between the couple are a classic example of how not to comply with the judgements of a court. However, some credit must be given to both parties due to the ravages occasioned by the Katrina disaster, and their efforts to cope with same.

In the contempt/modification proceeding that is the subject of this appeal, the record of same is very short and direct. Pamela Dupre filed her Petition for Contempt (CP-1) on or about September 27, 2006, and Lance Dupre timely filed his Affirmative Defenses, Answer and Counterclaim (CP-8) on or about January 23, 2007. The issues were primarily underpayment of child support and alimony, car notes, health insurance for the minor child, Jordan Dupre, and other incidentals as set out in the Final Judgement above. After several continuances the cause came to trial on August 13, 2009, at which both parties presented an extensive amount of evidence to support their various claims.

At this point, it should be noted that the Chancellor herein, both during the hearing and in his preparation of the Judgement of the Court, showed great patience and exactitude in arriving at his findings of fact and conclusions. (CP-37; RE-27) However, it is Lance's feeling that he was not given the fullest credit for his various contributions to Pamala and Jordan over sixty plus months prior to this hearing. For this reason, he timely filed his Rule 59 Motion, (CP-53), requesting the Court's redetermination of its Judgement. The Court denied this request (CP-56), on or about February 12, 2010.

From these adverse rulings, Lance then perfected his appeal to this Court. (CP-57, 60, 62 and 64)

FACTUAL STATEMENT OF THE CASE

As the various facts, credits and the Chancery Court's determination of same were fully set forth in the Chancellor's Findings of Fact, Conclusions and Judgement, (CP-37), Lance will not resubmit same at this point. He will however, discuss those facts and the Court's interpretation of same in his argument below for remand.

SUMMARY OF THE ARGUMENT

After a twenty year marriage, and even longer relationship, the Dupres divorced in 2004, and went their separate ways. Then, perhaps due to the chaos that was left by Hurricane Katrina, they forget about the requirements of their highly detailed divorce judgement, and its equally exact alimony, child custody and child support provisions.

What developed after this mutual choice was at best, a “Keystone Cops” type of an arrangement between the couple, and their son Jordan, that resulted in Pamela Dupre’s contempt petition of September 6, 2006, and litigation that required the learned Chancellor to straighten out this mess. Though doing a largely commendable determination, resulting in a largely fair decision to all parties, Lance Dupre contends a few items were left unresolved.

Dupre submits these items to this Court in his argument following.

ARGUMENT AND CITATION OF AUTHORITIES

Whether the purge amount of \$10,000.00 is excessive under the facts and circumstances of the credible evidence adduced at trial, and requires reduction.

In total, the Chancellor's determinations in this proceeding were largely fair and correct as to both parties in this matter. However, the purge award that is the major part of the Chancellor's Judgement (CP-53) ignored certain credits to Lance that he contends lessened his total credits as to the purge amount. This is principally the absence of the \$6,720.25 Zurich Insurance settlement.

There is also the question of when Jordan was emancipated, not fully addressed, and Lance's continued payments to his benefit, and Pamela's continued relationship from September, 2005, with her employer and paramour, Steve Pemberton. Though being given some consideration on these issues by the Chancellor, the total impact of same in the Chancellor's Judgement is unclear, at best.

STANDARD OF REVIEW

It is well-settled that the appellate review of a Chancellor's decisions in a divorce, alimony and child support contempt/modification judgement is limited. *West v. West*, 891 So.2d 203 (Miss. 2004); Please see also *Craft v. Craft*, 32 So. 3d 1232 (Miss.Ct.App. 2010). Equally, on questions of divorce, alimony and child support, an appellate court is required to respect the findings of fact made by a Chancellor unless these were manifestly wrong or an abuse of discretion. *Sumrall v. Munguia*, 757 So.2d 279 (Miss. 2000); Please see also *Burt v. Burt*, 841 So.2d 108 (Miss. 2001).

LEGAL PRINCIPLES

To be sure, the majority of the Chancellor's findings were correct and just. However, Lance contends that certain errors did occur, and these enhanced the amount he was adjudicated in contempt.

The first, the non-credit of the Zurich Insurance payment of \$6,710.25 to Pamela was not credited to his total arrearage. This item is self-explanatory and require no further comment, Lance submits. (CP-53; RE-35)

The issue of Pamela's living arrangements, post-Katrina is another matter. As the Chancellor correctly found that a material change in circumstances occurred when Pamela moved into Templeton's home in September, 2005. What is unclear is the determination that Lance's alimony obligation ended on January 23, 2007, at the filing of his Counterclaim. This is a seventeen month period, which Lance asserts should be included in his credits. *Shearer v. Shearer*, 540 So.2d 9 (Miss. 1989); Accord *Dill v. Dill*, 908 So.2d 198 (Miss.Ct.App. 2005).

There is also the living arrangements of Jordan, post-January, 2006. Though this was discussed as to the unusual nature of such, and his relation to his parents, the effect on Lance's child support was not. Lance asserts his payments for Jordan's benefit should be credited to is arrearage, pre January, 2006, and not to his continued support through March 8, 2008, Jordan's date of majority.

All facts point to Jordan's emancipation in January, 2006, when, for his own reasons, and with the obvious agreement of his parents, he was on his own. This is a classic example of a situation, not contemplated by the statute governing emancipation,

that establishes emancipation for child support purposes. *Caldwell v. Caldwell*, 823 So. 2d 1216 (Miss. 2002); **Miss. Code 1972, Sec. 93-5-23 (Amend 2006)**. Even though both Lance and Pamela continued to assist Jordan in his new “home”, and certain necessities, it does not rebut the fact that Jordan came and went on his own, had a life-style separate from his parents, earned his own income and had a separate life. *Rennie v. Rennie*, 718 So.2d 1091 (Miss. 1998); **Code, Sec. 93-5-23**. Jordan’s case was very much an issue for the finder of fact to determine, but was left unresolved by the Chancellor in this case. *Department of Human Services, State of Miss. v. Fillingame*, 761 So.2d 869 (Miss. 2000)

As the statutory requirements for the emancipation of a minor are permissive and not mandatory, Lance requests this Court’s determination on this issue for purposes of the remand, and the Chancery Court’s determination of his full liability. *Burt v. Burt*, 841 So.2d 108 (Miss. 2001).

CONCLUSION


Though doing a commendable job in straightening out the Dupre litigation, Lance Dupre contends and few questions were left unresolved, and has presented his case in his appeal. Dupre respectfully submits that he has presented these unresolved questions, supported by appropriate facts, reasons and authorities to require a remand to the Chancery Court of Jackson County for determination. He requests this Court's decision in his favor.

Respectfully submitted,

LANCE ERICSON DUPRE,
Appellant

By: 

CALVIN TAYLOR
Attorney of Record for
the Appellant

HON. CALVIN TAYLOR
Attorney at Law
Post Office Box 0006
1113 Jackson Avenue
Pascagoula, MS 39568-0006
Telephone: 228-696-0111
Facsimile: 228-696-0118
Miss. State Bar No. 

CERTIFICATE OF SERVICE

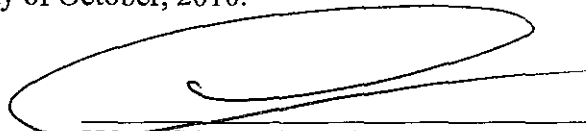
I, Calvin Taylor, Attorney of Record for the Appellant, Lance Ericson Dupre, do hereby certify that I have this day filed the original and four (4) true and correct copies of the above and foregoing Brief of Appellant with the Honorable Kathy Gillis, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.

I further certify that I have delivered a true and correct copy thereof to the following listed persons:

The Honorable G. Charles Bordis, IV
Chancellor
Post Office Box 998
Pascagoula, MS 39568-0998

William M Kulick, Esq.
Kullick-Busby Law Firm
1201 Washington Avenue
Ocean Springs, MS 39564

CERTIFIED this, the 21 day of October, 2010.


HON. CALVIN TAYLOR