IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00944

JESSICA MICHELLE MCLEOD MENARD **APPELLANT**

V.

ANTHONY SCOTT MCLEOD **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

JESSICA MICHELLE MCLEOD MENARD	**APPELLANT**
ANTHONY SCOTT MCLEOD	**APPELLEE**
MARK V. KNIGHTEN, ESQ.	**ATTORNEY FOR APPELLEE**
JELLIOT G. MESTAYER, ESQ.	**ATTORNEY FOR APPELLANT**
HONORABLE JAYE A. BRADLEY	**TRIAL COURT JUDGE**

MARK V. KNIGHTEN,
ATTORNEY OF RECORD FOR
APPELLEE ANTHONY SCOTT MCLEOD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGE:**

STATEMENT OF THE ISSUES

1. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN DETERMINING THERE WAS AMBIGUITY IN THE CHILD CUSTODY, CHILD SUPPORT AND PROPERTY SETTLEMENT AGREEMENT CONCERNING EDUCATIONAL EXPENSES.

2. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR BY APPLYING ERRONEOUS LEGAL STANDARD TO EDUCATIONAL EXPENSES PORTION OF THE CHILD CUSTODY, CHILD SUPPORT AND PROPERTY SETTLEMENT AGREEMENT.

3. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN NOT AWARDING TUTITION PAYMENT AS AN EXTRADIONARY EXPENSE UNDER SECTION 43-19-103 OF THE MISSISSIPPI CODE.

4. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN FAILING TO HOLD THE APPELLEE IN CONTEMPT OF COURT FOR NON-PAYMENT OF PAST DUE MEDICAL EXPENSES.

5. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR WHEN DENYING AN INCREASE IN CHILD SUPPORT DESPITE CLEAR DOCUMENTATION AND TESTIMONY CONCERNING THE APPELLEE'S INCOME.

6. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR BY NOT GRANTING THE RELIEF REQUEST BY THE APPELLANT TO HER AMENDED MOTION UNDER RULE 60(b).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Court Below:

On October 15, 2009, Appellant initiated Contempt and Modification proceedings against Appellee and subsequently filed an Amended Motion on November 12, 2009.

In the initial pleading, Appellant sought to modify child support and cite the Appellee in contempt for failure to make certain payments as required by the Judgment of Divorce entered July 8, 2005. Specifically, Appellant claimed that the Appellee had failed to pay certain medical expenses associated with the minor child of the parties, failed to pay private school tuition for the minor child, failed to provide tax returns, failed to provide a current address and had harrassed the minor child's medical providers.

The matters were tried on January 11, 2010 and April 23, 2010 and the trial Court issued a ruling on May 19, 2010. The Trial Court found, inter alai, that Appellee did owe the Appellant $25.00 for one medical bill, that the Appellee was not responsible for the minor child's private school tuition, Appellee had complied by producing tax returns, residence address and phone number and that there was no evidence to support Appellant's contention that the Appellee had harassed medical providers. The modification of child support was likewise denied by the Chancellor as the current support Order met the statutory guidelines.

The Appellant, feeling agrieved, lodged this appeal with this Court for a review of the Trial Court's ruling.

B. Statement of The Relevant Facts:

Jessica Menard and Anthony Mcleod were married on September 7, 2002 and were divorced in Jackson County, Mississippi on May 9, 2005. The Complaint, Property Settlement Agreement and Judgment of Divorce were all prepared by the Appellant, Jessica Menard. (R.E.

no. 1 at pg. 182). At the time of the divorce, the minor child of the parties, Anna Noelle McLeod was six (6) years of age and she attended school in Mobile, Alabama. (R.E. 1 at pg.132).

The Property Settlement Agreement provides in relevant parts:

"A. Weekly Support: Husband shall pay to the Wife as child support the sum of Three hundred fifty and no/100's ($350.00) per month, commencing July 1, 2005, and same shall be due on the 1st of each month thereafter until further order of the Court. Husband acknowledges that the above amount represents 14% of the adjusted gross income of Husband which he is required to pay pursuant to the statutory guidelines. Every year, Husband shall provide a copy of his federal and state tax returns to Wife no later than ten (10) days after filing same.

B. Medical and Dental Insurance: Husband shall provide medical and dental insurance, if available through his place of employment, for the minor child of the parties. Husband and Wife shall each be responsible for one-half (1/2) of all medical, dental, ocular and pharmaceutical expenses of the minor child of the parties not covered by insurance. All such uncovered bills received by the Wife shall be submitted to the Husband for payment within thirty (30) days, and Husband shall reimburse the Wife for any such bills within thirty (30) days after receipt of the bills. Husband shall maintain medical and dental insurance on the minor child, if his employer offers such benefits, until the child obtains the age of 21 years unless the child attends college or university. In the event the child attends college or university, the Husband shall maintain insurance on the child until she reaches the age of 24.

C. School and Extracurricular Expenses: Husband and Wife shall each be responsible for one-half (1/2) of all school and extracurricular expenses incurred by the minor child including but not limited to the cost of books, activity fees, lab fees, school uniforms, tuition, and sports equipment. Husband shall pay on August 1 and January 1 of each year, the sum of $150.00 towards the cost of new clothes for the minor child."

(R.E. no. 2 at para. III)

On October 15, 2009, Jessica Menard filed pleadings to modify child support and cite Anthony McLeod in contempt for failure to make certain payments she maintained was required by the Judgment of Divorce entered July 8, 2005, and specifically, the provisions of the Property Settlement Agreement noted above. On November 12, 2009, she filed an Amended Motion alleging fraud by McLeod in a prior hearing as it pertained to his submissions under Rule 8.05 and requested an increase in child support retroactively.

SUMMARY OF THE ARGUMENT

In summary, Anthony McLeod contends that the numerous contempt allegations alledged by the Appellant were meritless as found by the Chancellor. In all deference to the Trial Court, it was found that he owed the Appellant $25.00 for a medical bill although he maintained he never received the bill. (R.E. no. 3 at pg. 3). The Trial Court further found that a modification of child support was unwarranted in that the parties had agreed to the child support figure of $350.00 per month and the trial Court found no reason to deviate from the guidelines. (R.E. no. 3 at pg. 6).

ARGUMENT

I. INTRODUCTION

"[The appellate court] will not disturb a chancellor's judgment when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Chapel v. Chapel,* 876 So.2d 290, 292 (Miss. 2004). "Under this standard of review, our purpose is to determine whether the chancellor's ruling was supported by credible evidence, not whether we agree with that ruling. *Lee v. Lee,* 798 So.2d 1284, 1290(Miss.2001). However, a property settlement agreemen is a contractual obligation. *East v. East,* 493 So.2d 927, 931-32 (Miss.1986). Contract interpretation, as a question of law, is reviewed de novo. *Warwick v. Gautier Utility Dist.,* 738 So.2d 212, 215 (Miss.1999)."

Based upon the standard of review noted above, the Appellee will focus on the evidence supporting the Chancellor's decision as it pertains to the issues raised by the Appellant as error and the applicable law pertaining to same.

II. NO ERROR WAS COMMITTED BY THE CHANCELLOR IN FINDING AN AMBIGUITY IN THE CHILD CUSTODY, CHILD SUPPORT AND PROPERTY SETTLEMENT AGREEMENT CONCERNING EDUCATIONAL EXPENSES

As previously noted, the Complaint, Property Settlement Agreement and Judgment of Divorce were all personally prepared by the Appellant, Jessica Menard who in fact was a legal secretary for her attorney. (R.E. no. 1 at pg. 182). At the time of the divorce, the minor child of the parties, Anna Noelle McLeod, was six (6) years of age and she attended public

school in Mobile, Alabama. At that time, the child had not attended a private school and did not so attend a private school until the year 2009, some 5 years later. (R.E. no. 1 at pg. 132:15-133:1). Further, it is undisputed that Menard removed the child from public school without contacting or consulting McLeod and expected him to pay one-half of the expenses associated with same. (R.E. no. 1 at pg. 55:16-26 and 61). As previously noted and as it pertains to the educational aspects of the minor child of the parties, the Property Settlement Agreement provides:

> C. School and Extracurricular Expenses: Husband and Wife shall each be responsible for one-half (1/2) of all school and extracurricular expenses incurred by the minor child including but not limited to the cost of books, activity fees, lab fees, school uniforms, tuition, and sports equipment. Husband shall pay on August 1 and January 1 of each year, the sum of $150.00 towards the cost of new clothes for the minor child.

(R.E. no. 2 at III. sub.para. C)

The question before this Court is whether the term "tuition" as found in the aforementioned includes private school tuition. Upon being asked his understanding of what that term meant, Mr. McLeod stated that it was his understanding that it referred to college related expenses (R.E. no. 1 at pg. 133:6-15). When asked about the negotiations leading up to the signing of this document, Mr. McLeod relayed that there was never a discussion or any indication that Menard was going to place the child in a private school and that had he known it was related to private school, he would have never signed the document. (R.E. no. 1 at pg. 135:6-9). The term "tuition" was not defined in the Property Settlement Agreement and Mr. McLeod clearly felt it referred to college related expenses and consequently refused to pay the private school tuition bills that Menard gave to him to pay. The Chancellor likewise found ambiguity in the term in that the court stated upon objection that "....it doesn't say one way or the other, it just says tuition" . (R.E. no. 1 at pg. 133:16-27).

In the case of *Harris v. Harris*, 988 So.2d 376, 378 (Miss. 2008), this court noted:

" [w]here terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner. We held that it is a question of law for the court to determine whether a contract is ambiguous. In the event of an ambiguity, the subsequent interpretation presents a question of fact for the trier of fact which we review under a substantial evidence/manifest error standard." *Tupelo Redevelopment Agency v. Abernathy*, 913 So.2d 278, 283 (Miss.2005).

In the case sub-judice, the learned Chancellor did just that when she noted during objections on the subject matter "....So I think he can testify as to what he thought that meant, or what his intent was at the time he signed the document. And it will be up to the court to decide whether that is a reasonable explanation or not..." (R.E. no. 1 at pg. 133:28-134:4). The Chancellor noted in her ruling that the cost of secondary school tuition is included in the statutory guidelines for child support and is "not an extraordinary expense". (R.E. no. 3 at pg. 5). In support of her position, she correctly cited *Moses v. Moses*, 879 So.2d 1043 (Miss. Ct. App. 2004) and *Southerland v. Southerland*, 816 So.2d 1004 (Miss. 2002) and exonerated Mr. McLeod of the contempt citation. Indeed, the court noted in *Southerland* at 1006 that:

"...this Court has stated that school tuition, at least in the context of college, is part of child support. *See Mizell v. Mizell*, 708 So.2d 55, 60 (Miss. 1998). Any pre-college school requiring tuition in addition to what a public school education would cost should also be treated in this manner."

Although the Chancellor did not use the term "ambiguous" in her ruling she did find that the term was intended by the parties to mean college tuition as there was no evidence before the court to suggest the parties ever contemplated sending the child to private school. Indeed, Mr. McLeod offered the only evidence presented on the issue and he said it was not contemplated nor was it even discussed sending the minor child to private school, certainly, there was no agreement. At the time of the execution of the Agreement in 2005, the minor child was in the public school system in Mobile, Alabama and did not enter private schooling until 2009. On the

contrary, Menard unilaterally decided to place the child in private school without even discussing it with McLeod and expected Mr. McLeod to pay for it.

In light of the fact that the relevant paragraph mentions additional items such as cost of books and lab fees, the chancellor fulfilled her duty of "reasonableness" in the interpretation of the term "tuition" as espoused in *Harris* and *Abernathy*. Our courts have held in contract construction that " when the terms of a contract are vague or ambiguous, they are always construed more strongly against the party preparing it." Harris, at 379, *citing Banks v. Banks*, 648 So.2d 1116, 1121 (Miss.1994). It is undisputed in the case sub judice that the drafter of the Property Settlement Agreement was Jessica Menard (R.E. no. 1 at pg. 182:9-19) and this ambiguity should rightfully be construed against Ms. Menard.

In short, the Court exonerated Mr. McLeod of the contempt allegations of the Appellant. Contrary to the assertion by the Appellant that the Chancellor modified the Agreement, the Chancellor merely provided a reasonable interpretation of what the parties intended by the term "tuition".

This assignment of error is without merit.

III. THERE WAS NO ERRONEOUS LEGAL PRINCIPAL APPLIED BY THE CHANCELLOR

The Chancellor made her ruling and cited authority to make the ruling she made. The decision of the trial Court is well founded in Mississippi law and is supported by substantial evidence. Under this assignment of error, the Appellant attempts to twist the contract construction law of this state to suit her own purposes. To the extent that the Appellant believes that the intent of the parties has no place in the contract construction laws of this state, she is simply misguided and has no understanding of the law.

As of this writing, the most authoritative law concerning contract construction out of Mississippi that undersigned counsel can find is that of *In re Dissolution of Marriage of Wood*, 35 So.3rd 507 (Miss. 2010). In *Wood* at 513 this Court noted as follows:

"This Court uses a three-tiered approach to contract interpretation. Put simply, step one is to look to the four corners of the agreement to attempt to translate a clear understanding of the parties' **intent**; only if that intent remains illusive may a court apply the canons of contract construction or turn to parol evidence. *Harris v. Harris,* **988** So.2d 376, 378-79 (Miss.2008) (citing *Tupelo Redev. Agency v. Abernathy,* 913 So.2d 278, 283 (Miss.2005)). " [I]t is a question of law for the court to determine whether a contract is ambiguous. In the event of an ambiguity, the subsequent interpretation presents a question of fact for the trier of fact which we review under a substantial evidence/manifest error standard." *Harris,* 988 So.2d at 378. " Where terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner." (emphasis added)

The Chancellor in the case sub judice did precisely that. While the Appellant contends the ambiguity was "created" by undersigned counsel, it is quite apparent from the record that the Chancellor herself was unsure of the meaning and intent of the parties as to the term "tuition" as evidenced by the Chancellors comments when she stated upon objection that "....it doesn't say one way or the other, it just says tuition" . (R.E. no. 1 at pg. 133:16-27). Thereafter, the Chancellor allowed parol evidence when she allowed Mr. McLeod to testify concerning his understanding of the term as evidenced by the Chancellor when she noted again on objection "....So I think he can testify as to what he thought that meant, or what his intent was at the time he signed the document. And it will be up to the court to decide whether that is a reasonable explanation or not..." (R.E. no. 1 at pg. 133:28-134:4). Mr. McLeod stated that he understood it to mean "college expenses" (R.E. no. 1 at pg. 133) and **no one** disputed his testimony. The Chancellor applied a reasonable interpretation of the term "tuition" which she found to be "college expenses" which is in accordance with the testimony of Mr. McLeod and the only interpretation in evidence.

Appellant complains that the lower court modified the Agreement of the parties and that Appellee failed to file pleadings requesting an "interpretation" of the ambiguous term. What Appellant apparently fails to understand is that this was an action she filed for contempt. In order for the court to determine if Mr. McLeod was in contempt, she had to ascertain the meaning of the word "tuition". The Court applied a reasonable meaning based upon the evidence before the court and quite simply found Mr. McLeod to not be in contempt on this issue.

Appellant further complains that Mr. McLeod failed to file any answer or responsive pleadings to request any relief from the Court. What Appellant fails to understand is that Mr. McLeod is not required to file anything. See M.R.Civ.P. Rule 81(d)(4) (No answer or responsive pleadings are required).

Under this assignment of error, the Appellant contends that the Court modified the Agreement of the parties which is simply not the case. As noted in her ruling,

"The Court refuses to find Anthony in contempt of court for his failure to pay one-half (1/2) of the minor child's private school tuition and Jessica's Motion for Citation of Contempt on this issue is denied." (R.E. no. 3 at pg. 5).

The Chancellor merely provided a reasonable interpretation of the term "tuition" based upon the evidence that was before the Court. There was no modification of the prior orders of the lower court.

This assignment of error is without merit.

IV. THE CHANCELLOR COMMITTED NO ERROR IN THE ASSESSMENT OF CHILD SUPPORT

This assignment of error by Appellant deals with her attempt to explain away the unilateral move of the child out of the public school system and into the private school system as justification for the court to find the expenses associated with same as "child support" within the meaning of the appropriate guidelines. **It is important to note for this**

assignment of error that the child was removed from the public school system in September of 2009. (R.E. no. 4 Trial Ex. 5, letter of September 8, 2009).

In support of this contention, and in an apparent attempt to create "extraordinary expenses" justifying departure from the child support guidelines, Appellant relies on the testimony of she and her mother as the basis for the unilateral move of the minor child for the alledged bullying of the child in the public school system and poor grade performance. **While the Appellant contends that she contacted numerous school officials and even the school board attorney, not one witness was ever called by the Appellant to support this contention.**

Mr. McLeod did call the school principal (Catteria Payton) to testify concerning the reasons the Appellant gave the school for the child's removal. According to Ms. Payton, she was present in her office the very day that the Appellant appeared to withdraw the minor from Central Elementary School. According to Ms. Payton, Menard appeared at school and informed Ms. Payton's secretary that she was withdrawing the child and she was going to place her in the private school system. When asked how she was going to afford the private school costs, Menard responded that her "boss" was going to pay for it. When questioned as to why she was being removed, Menard stated that " ....the minor was failing math and couldn't even ask Mrs. Hudson a single question." When told that Mrs. Hudson doesn't teach math, Ms Byrd does, Menard responded "I am not going to waste my time, it's done. My boss is going to pay for it." (R.E. no. 1 at pg. 74:17-75:14). Further, by the time Menard had withdrawn the minor from Central Elementary, the child had not even received the first progress report for her 5th grade year. Indeed, at the time of withdrawal of the minor child, her grades at Central was a "B" in math, an "A" in everything else and a "C" in science which was related a "lack of effort" and not a "lack of ability" (R.E. no. 1 at pg. 75:27-76:4). During the minor's 5th grade school year and up to the

minor's withdrawal, there had been no complaints by Menard of harassment or bullying. (R.E. no. 1. at 74:9-13).

When questioned concerning prior complaints of bullying of the minor child, Ms. Payton recalled two incidents in the prior school year (January 2009 and the minor's 4th grade year) wherein she met with Menard about the subject. There were no further complaints by Menard, academic or otherwise, until she withdrew the child in September of 2009. (R.E. no. 1 at 84:10-20). The minor's grades for her 4th grade year were excellent. (R.E. no. 1 at 83:15-19).

Further, although the Appellant maintains that the child was being seen by Singing River Services and Dr. Stoudenmire (a clinical psychologist) for alledged emotional trama as a result of the "harassment and bullying", the medical records of the minor child fail to mention anything about this prior to the minor being withdrawn from Central. (R.E. no. 1 at 117:22-119:14 and 155-161).

This assignment of error is without merit.

V. THE CHANCELLOR COMMITTED NO ERROR IN HER RULING ON PAST DUE MEDICAL EXPENSES

In accordance with the Judgment of Divorce and accompanying Property Settlement Agreement, the parties were to equally split all medical expenses ***"not covered by insurance."*** (R.E. no. 2 at III. Sub para B)(emphasis added). The issue before the lower Court was whether Mr. McLeod was in contempt of court for failing to pay these expenses.

At trial and as found by the lower court Judge, there were four medical bills Menard claimed were not paid:

a. $32.50 to Dr. Stoudenmire

b. $146.92 to Singing River Hospital

c. $20.00 to the Medicine Shope

d. $25.00 to the Bienville Orthopedics

As to "a." above, the court relieved Mr. McLeod of the obligation of paying this bill after May 5, 2009, because Menard continued to bring the child to medical providers that were not covered under his insurance plan. In accordance with Section 93-5-23 of the Mississippi Code of 1972, as amended, the Chancellor has all the latitude and discretion to make decisions affecting the health and well being of the children and can make changes that as the Chancellor deems appropriate under the circumstances. In the instant case, the Chancellor relieved Mr. McLeod of his obligation to pay this bill because Menard was taking the child to a psychologist who was outside his medical network plan and, consequently, not covered by his insurance. Mr. Mcleod requested that she take the minor to a medical provider that was covered by his insurance and even provided a list of providers who were covered. (R.E no. 1 at 88:26-89). The Chancellor thereafter relieved Mr. McLeod from the obligation to pay for this specific provider but noted in her ruling that should Menard take the minor to a therapist covered under his plan, he would again be obligated to pay one-half (½) of the expenses not covered by insurance. (R.E. no.3 at pg. 2-3). There was no error committed.

As to "b." above, Menard submitted a $146.92 bill to Mr. McLeod for payment from Singing River Hospital. This bill was submitted by Menard on January 8, 2010 (3 days before the trial started in this matter) and insurance was still pending. As noted above, Mr. McLeod owes a duty to equally split all medical expenses ***"not covered by insurance."*** The Appellant admitted this under cross examination (R.E. no. 1 at pg. 52:7-29). Further, under the decree, Mr. McLeod only has to pay his one-half (1/2) within 30 days from receipt of the bills. Neither of these events occurred and, consequently, the lower Court correctly found Mr. McLeod not to be in contempt on this issue. (R.E. no. 3 at pg. 2-3).

As to "c." above, a bill existed for $20.00 to the Medicine Shoppe which the Court found Mr. McLeod had paid the bill with check no. 1126 and correctly found Mr. McLeod not to be in contempt on this issue. (R.E. no. 3 at pg. 3).

As to "d." above, Mr. McLeod claimed he never received any bill for $25.00 but the lower Court found that he owed Menard for same. (R.E. no. 3 at pg. 3). If the bill was incurred by the minor and insurance did not pay the bill Appellee concedes he owes it nonetheless. However, Mr. McLeod maintained he didn't receive it or he would have paid same.

In short, there simply was no evidence produced to find Mr. McLeod in contempt for the alledged failure to pay medical expenses of the minor. Although the Trial Judge found he failed to pay a $25.00 medical bill as noted in "d." above, the lower Court found he owed the money but was not in wilfull and contumacious contempt. As a whole, Mr. McLeod has fulfilled his financial obligations to the minor child and has complied with the Orders of this Court.

This assignment of error is without merit.

VI. WHETHER TO AWARD OR NOT AWARD AN INCREASE IN CHILD SUPPORT IS WITHIN THE SOUND DISCRETION OF THE CHANCELLOR

The Appellant next contends that the lower court should have increased child support based on Veterans Administration (VA) benefits he was receiving for injuries he sustained in Iraq. In a recent case styled ***Barnes v. Mississippi Department of Human Services***, 2009-CA-00438-SCT (MSSC), *decided* June 3, 2010, the Mississisippi Supreme Court decided the issue of the use by a Chancellor of Social Security Supplemental Security Income ("SSI") benefits in the calculation of child support. While finding no error in using SSI benefits for purposes of calculating child support, our court held the following:

"Therefore, we affirm the chancellor as to the award of child support. However, we also wish to make it clear that chancellors are not required to consider SSI benefits in determining whether and in what amount to award child support. Stated another way, we do not hold that chancellors may never – or must always – consider SSI benefits to calculate child support. Rather, we hold

that chancellors must utilize discretion based on the facts of a particular case." ***Barnes*** at para. 27.

By way of analogy and comparison, in the case sub judice, the Chancellor has the discretion to either use the benefits or not use the benefits for purposes of calculating child support. The lower Court noted that there was no reason presented to justify deviation from the guidelines and rightfully denied the request. (R.E. no. 3 at pg. 6). **This assignment of error is without merit.**

VII. NO MANIFEST ERROR BY THE LOWER COURT OCCURRED

The Appellant's final assignment of error is that the lower Court Chancellor commited manifest error when she failed to grant the Appellant's Rule 60(b) Motion for an alledged fraudulent 8.05 Financial Declarations Statement submitted in a prior hearing in February 2009.

Mr. McLeod adequately explained the discrepancies between the competing 8.05s by noting that he had just gone to work after having come off of back surgery and had only been working a week to a week and one-half . (R.E. no. 1 at pgs. 142-146). While there may have been inaccuracies in the 8.05 submitted in January, 2009, it doesn't mean that it was fraudulent. Mr. McLeod adequately explained the discrepancies to the satisfaction of the Court and the Rule 60(b) Motion was correctly denied. **This assignment of error is without merit.**

CONCLUSION

As noted above,

" [The appellate court] will not disturb a chancellor's judgment when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Chapel v. Chapel,* 876 So.2d 290, 292 (Miss. 2004). Under this standard of review, our purpose is to determine whether the chancellor's ruling was supported by credible evidence, not whether we agree with that ruling. *Lee v. Lee,* 798 So.2d 1284, 1290(Miss.2001)."

Simply put, it is the duty of this Honorable Court to ascertain whether there is sufficient credible evidence to support the Chancellor's decision. Appellee would contend, as he has from the beginning, that there was sufficient evidence to support the decision of the Chancellor in the Court below.

RESPECTFULLY SUBMITTED this the 23rd day of November, 2010.

Mark V. Knighten
Attorney for Appellee, Anthony Scott McLeod

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2010-CA-00944

CERTIFICATE OF SERVICE

I, Mark V. Knighten, do hereby certify that I have this day caused to be mailed via United States mail, first class postage prepaid, a true and correct copy of the foregoing Brief of the Appellee to the interested parties to the foregoing action at the following addresses:

Elliot G. Mestayer, Esq.
2128 Ingalls Avenue
Pascagoula, MS 39567

Counsel for Appellant Jessica Michelle Mcleod Menard

Honorable Jaye A. Bradley,Chancellor, 16th District
Jackson County, Mississippi
3104 Magnolia Street
Pascagoula, MS 39567

Trial Court Judge

Ms. Kathy Gillis
Clerk of the Supreme Court of Mississippi
Post Office Box 249
Jackson, Mississippi 39205-0249
(601) 359-3694

SO CERTIFIED, this the 23rd day of November, 2010.

Mark V. Knighten,
Counsel for Appellee Anthony Scott McLeod