IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RONNIE DANIELLE DAVIS HARDIN — APPELLANT

VS. — NO. 2010-CA-00947

JONATHAN KYLE HARDIN — 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/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1) Jay Westfaul, attorney for Appellant
2) Adam A. Pittman, attorney for Appellee
3) Honorable Vicki B. Cobb, Chancery Court Judge
4) Ronnie Danielle Davis Hardin, Appellant
5) Jonathan Kyle Hardin, Appellee

RESPECTFULLY CERTIFIED, this the 16th day of December, 2010.

ADAM A. PITTMAN, BAR N[redacted]
COUNSEL FOR APPELLANT

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SUMMARY OF ARGUMENT

1. The Chancery Court applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for allowing the minor child to reside with her parents

2. The Chancery Court applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for failing to maintain health, medical, dental and optical insurance for the benefit of the parties' minor child.

3. The Chancery Court applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for her failure to satisfy that indebtedness owed on the 2004 GMC Envoy and for her further failure to hold harmless and otherwise indemnify Mr. Hardin for the payment of said debt.

4. The Chancery Court did not abuse her discretion in the application of the Alrbright factors.

ARGUMENT

STANDARD OF REVIEW

For the sake of brevity it is recognized that throughout this brief the scope of appellate review is limited by the substantial evidence/manifest error rule. Samples v. Davis, 904 So.2d 1061, 1063-65 (¶ 9)(Miss. 2004). The Appellate Court will not disturb the chancellor's opinion when supported by substantial evidence unless the chancellor abused her discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. Holloman v. Holloman, 691 So.2d 897, 898 (Miss 1996). Furthermore, in matters of contempt, the chancellor has substantial discretion. Hunt v. Asanov, 975 So.2d 899, 902(¶ 9) (Miss.Ct.App.2008).

1. **The Chancery Court applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for allowing the minor child to reside with her parents.**

Ronnie's first argument revolves around the Trial Court's finding her in contempt for allowing the parties' minor child to live with Ronnie's parents in violation of the terms of the Divorce Decree. The Decree of Divorce states, in pertinent part, that the parties "agree that it is the best interest of the minor child to not reside in the home of either or both of the maternal grandparents." (Clerk's papers – 18) It is uncontested by Ronnie that during her various moves she and the minor child moved in with her parents on two occasions for at least one week on each occasion.

Ronnie's argument is that the Chancellor applied an erroneous legal standard in finding her in contempt, however Ronnie fails to identify what the correct legal standard would be.

Instead Ronnie quotes the definition of "reside" as found in Merriam-Webster and equates her staying at her parents with a vacation to Florida.

In determining the question of a person's residence we can look to several cases and find a common theme. One of the initial factors in determining whether someone is residing somewhere or just "temporarily visiting" is whether or not the person owns or otherwise maintains a home in another location. [See **Hampton v. Hampton** 977 So.2d 1181 (Miss.App.,2007) and **Dunn v. Dunn** 577 So.2d 378, 380 (Miss. 1991)] And the Chancellor not only recognizes this as the correct legal standard but she accurately applies it when she states that Ronnie (and the child) "lived with" her parents because she "didn't have a separate home" that she maintained as her home. (TR 182) As such the Chancellor recognized and applied the correct legal standard when finding Ronnie in willful contempt of Court for letting the minor child reside with Ronnie's parents

2. The Chancery Court applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for failing to maintain health, medical, dental and optical insurance for the benefit of the parties' minor child.

Ronnie's next argument is unfortunately rife with factual errors that must be corrected. First Ronnie states, throughout her Brief, that she "insured" the minor child through the Mississippi Children's Health Program, or CHIPS, however a thorough reading of the trial transcript reflects that she, instead, qualified the child to receive Mississippi Medicaid. Second Ronnie states in her Brief that she provided insurance for the child through her employer until she lost her job in August, 2008. (Appellant's Brief 3 & 6) This statement is patently false. Ronnie testified that she enrolled the child with Medicaid in August 2008

because she qualified for the program "according to my income at the time." (TR 25) Ronnie did not lose her employment until March 3, 2009. (TR 35)

Ronnie argues that the Chancellor applied an erroneous legal standard when finding her in contempt of Court for failing to maintain insurance on the minor child. The Decree of Divorce states, in pertinent part, that Ronnie "maintain health, medical, dental, and optical insurance of the parties' minor child." (Clerk's papers 18)

As was the case above, Ronnie's argument is that the Chancellor applied an erroneous legal standard in finding her in contempt, however Ronnie fails to identify what the correct legal standard would be. As such, and because the Chancellor has such broad discretion over matters of contempt, Ronnie's argument on this point must fail.

3. The Chancellor applied the correct legal standard when finding Ms. Hardin in Willful Contempt of Court for her failure to satisfy that indebtedness owed on the 2004 GMC Envoy and for her further failure to hold harmless and otherwise indemnify Mr. Hardin for the payment of said debt.

The Decree of Divorce requires Ronnie to satisfy the indebtedness owed on the 2004 GMC Envoy and to hold harmless and otherwise indemnify Jonathan from the payment of said debt. (Clerk's papers 18-19) The vehicle was involved in an accident in January 2009, and although insurance paid off a major portion of the underlying indebtedness there remained a balance owed to the lender, Regions, after the payment of the insurance proceeds. (TR 32) There is some dispute over what transpired between Ronnie and Jonathan following the loss of the vehicle. Ronnie claims that she could not pay the remaining balance (TR 23) and that Jonathan paid the balance "without so much as consulting Ronnie" (Appellant's Brief – citing TR 23 & L 27) Jonathan, by contrast, explains

that Ronny contacted him and stated that she could not pay the balance owed, that she was not going to pay it and that Jonathan should do whatever he had to do, knowing that Jonathan would have to pay off the balance owed or risk losing his job. (TR 94) It should be pointed out that, although Ronnie claims she lacked the ability to pay off the balance owed on the vehicle, within a month of the accident she had purchased another vehicle. (TR. 34-35)

The Chancellor, when faced with conflicting testimony, is granted broad discretion in deciding whom to believe, and according to her ruling she believed Jonathan. (TR 180) As such her decision should not be disturbed.

It should be noted that Ronnie states a modification of the agreement would have been more appropriate than "the extreme sanction of contempt" (Appellant's Brief 7) yet a modification in her payment obligation is exactly the result of the Chancellor's ruling. There was testimony that $310 was the monthly obligation owed for the vehicle, and yet now she only has to pay $100 (TR 183) to Jonathan in repayment of those amounts given in final satisfaction of the care note. The practical effect of Ronnie's contempt has been a reduction of her monthly obligation.

4. The Chancery Court did not abuse her discretion in the application of the Albright factors.

Ronnie's final argument is an attack upon the Chancellor's analysis of the well-known factors listed in Albright v. Albright, 437 So.2d 1003, 1005 (Miss.1983). Her first issue deals with the Court's determination that the "continuity of care" favored neither party. Ronnie appears to focus upon who takes care of the child **while the child is in the care of each parent** and not who, as between Ronnie and Jonathan, provided more care for the

child. The record is clear that both parties provided care for the child and that both parents received assistance from friends, family and daycares. As such the Chancellor was correct in determining that neither party was clearly any more of a primary caregiver than the other.

Ronnie next takes issue with the Chancellor's analysis of "capacity to provide childcare and best parenting skills", and appears be concerned by the Court's reflection that Ronnie placed the child upon the state's welfare role instead of maintaining insurance as required by the Court Order. It should first be pointed out that the Chancellor found this factor to favor **neither** party. (TR 166-168) Although the Chancellor was impressed with how Jonathan provided health insurance coverage for the child as soon as he was able and without being made to, this did not impress the Chancellor enough to push this factor in Jonathan's favor. And although Ronnie feels that Jonathan's inclusion of his live-in fiancé in the child's life demonstrates a lack of parenting skills, it is the Chancellor's opinion that matters and she obviously did not feel as such.

Ronnie then turns to the factor of "moral fitness." Again the Chancellor finds this factor to favor neither party, and yet Ronnie apparently argues that the act of her illegally using her position at work to invade Jonathan's personal bank records is somehow less immoral than Jonathan's live-in fiancé. Ronnie, however, can find no indication in the record that Jonathan's cohabitation has had any negative impact upon the child. Furthermore Ronnie fails to mention that the Chancellor also recognized the evidence that Jonathan attends church with the child as well as the complete lack of evidence that Ronnie attends church at all. (TR 170) As such the Chancellor did not abuse her discretion in determining that the factor of "moral fitness" favored neither party.

Ronnie next incorrectly attacks the Chancellor's analysis of the child's "home, school and community record" with the belief that on this issue "Jonathan prevailed" (Appellant's Brief) This of course is a misunderstanding of the Chancellor's ruling, in that she finds both parties to be "pretty much, equal" (TR 170) although "if it favors anyone, it would favor the dad, slightly." (TR 171) The Chancellor recognizes that, because of the age of the child, there is not much "record" to speak of (such as grades at school), however because of the sporadic nature of the mother's home record when compared to the consistency of the father's, the child would have more of an opportunity to have a home/community record in Jonathan's home. (TR 171) The evidence again, supports the Chancellor's findings and therefore should not be disturbed just because Ronnie disagrees with the subsequent conclusions reached from those findings

Lastly Ronnie attacks the Chancellor's determination that Jonathan has a more stable home and employment than Ronnie. A quick recollection of the facts should suffice in supporting the Chancellor's analysis. In the nineteen months that elapsed between the parties' divorce and the Court's ruling, Ronnie has lived with the child in six homes (TR 36-38) had three different jobs (TR 38, 40) during which she had extended periods of unemployment and is now in school. During that same period Jonathan has lived in the same home and maintained the same job. Ronnie attempts to erode Jonathan's stability by stating that Richardson v. Richardson, 790 So.2d 239 (Miss.Ct.App.2001) stands for the position that "If a parent is cohabiting, that home is not stable for a young child and should factor into this analysis." Fortunately a reading of Richardson reveals no such position. Richardson involved the appeal of a custody modification in which the custodial parent, who moved around, had a live in boyfriend of three years who was abusive of her. The

facts of the Richardson decision are in no way analogous to this case and do not support the proposition that cohabitation, by itself, somehow creates instability in an otherwise stable home.

It is for these reasons that the Chancellor analysis of the analysis of the factors listed in Albright are supported by the evidence, and she did not abuse her discretion in finding that the best interest of the parties' minor child was served by awarding her custody to Jonathan.

CONCLUSION

For the reasons stated above the Court should affirm the Chancellor's decision.

RESPECTFULLY SUBMITTED this the 16th day of December, 2010.

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CERTIFICATE OF SERVICE AND MAILING

I, ADAM A. PITTMAN, attorney for Appellee, do hereby certify that I have this day placed this Appellee's brief in the United States Mail with Postage prepaid to the Mississippi Supreme Court Clerk for filing, and do further certify that I have this day mailed a copy of same to the following persons:

Honorable Vicki B. Cobb, Chancellor
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Honorable Jay Westfaul
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So Certified this the 16th day of December, 2010.

Adam A. Pittman, MS Bar No.[redacted]