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STATEMENT REGARDING ORAL ARGUMENT

The legal issues in the case at hand are well settled in Mississippi case law. The material facts of the case are undisputed. Oral argument would not benefit this Court in deciding these issues.

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STATEMENT OF THE CASE

(1) Nature of the Case

This case involves a custody proceeding in which the Chancellor granted the Appellee, Mozelle Newsome, primary custody of the parties' minor child.

(2) Course of Proceedings

The parties were not married. A minor child, Alan Roy Robinson was born on May 19, 1999 to the couple. The parties lived together for approximately two years in DeSoto County, Mississippi. Both parties originally lived in California.

The parties were separated after Thanksgiving of 2009 in DeSoto County, Mississippi and the Appellee returned to California.

A Temporary Order was entered on March 8, 2010 granting the Appellee exclusive temporary physical custody of the parties' minor child Alan Roy Robinson, date of birth, May 19, 1999.

(3) Disposition in Court Below

After hearing testimony by witnesses, and hearing arguments of counsel, the Chancellor subsequently granted the Appellee custody of the minor child. (R.143)

(4) Statement of Facts

John Lewis, the neighbor of Albert Robinson and Mozelle Newsome stated that he observed Mozelle with her son and noticed the close bond between the Mother and Son. (R.84) John Lewis indicated that Mozelle

has good parenting skills and stated the child was comfortable with the Mother. (R.84)

John Lewis corroborated the testimony given by Mozelle that Alan, the minor son, was very tense and withdrawn around his Father, Albert Robinson. (R85)

Further Mr. Lewis witnessed the treatment of Alan by his Father, Albert Robinson, noting his yelling and impatience with the minor son. (R.85)

Mozelle Newsome testified that she was the primary care giver of Alan. Mozelle testified that she is the parent who takes Alan to the doctor, helps with his homework, the one he cries to, plans birthday parties and makes sure Alan has playmates. (R88)

Mozelle testified that Alan moved back to the same school district in California he attended before he lived in Mississippi with Mozelle and Albert Robinson, his Father. (R.96)

Mozelle testified that she believes she has the strongest emotional ties to the minor child. She testified that Alan confides in her telling her things he would not tell his Father since his Father yells at him so much. (R.98) Mozelle testified that she and Alan live with the parties' grown daughter and granddaughter in California and that much of Mr. Robinson's family resides close to her residence in California. (R.45)

Mozelle testified that she believed she has the best parenting skills since Alan's Father had an anger problem. (R.98)

Mozelle testified her health is fine. (R.91)

The Father, Albert Robinson admitted that he smoked marijuana illegally in California and smoked marijuana illegally in Mississippi. (R36, R70)

Karen, Spriggs, testified that Albert Robinson was ill, has trouble getting out of bed in the morning (R.81), and takes approximately twenty pills per

day for his medical conditions. (R.80, R.81). Mr. Robinson testified that he was hurt on the job, a back injury and declared disabled by the Social Security Administration in the year 2005. (R.54)

SUMMARY OF ARGUMENT

Appellant contends that the Chancellor's opinion was erroneous because the chancellor did not hear or did not consider the evidence that the Appellant believed would be in his favor.

The Chancellor, as the trier of facts, was best able to evaluate the credibility of the witnesses and the testimony regarding the best interest of the minor child as to the proper parent to be awarded physical custody of the minor child.

ARGUMENT

Issue I: Mozelle Newsome, the Appellee, met the legal burden of proving that she was the proper parent to be awarded primary custody of the parties' minor child, Alan Roy Robinson. The guidelines provided in Albright vs. Albright 437 So.2d 1003 (Miss. 1983) control custody cases.

Issue II: The Appellant, Albert Robinson, Jr., was correctly ordered to pay a portion of the Appellee's attorney fees on the trial court level due to Appellee's lack of financial means.

The standard of review in domestic cases is well settled and abundantly clear. A Chancellor's finding will not be disturbed unless the chancellor was manifestly wrong, abused his discretion, or applied an erroneous legal standard. Sandlin v. Sandlin, 699 So.2d 1198 (Miss. 1997), Bower v. Bower, 758 So.2d 405 (Miss. 2000). The Court is bound by the Chancellor's findings unless it can be said with a reasonable certainty that those findings were manifestly wrong and against the overwhelming weight of the evidence. Carr v. Carr, 480 So.2d 1120 (Miss. 1985).

The Supreme Court's scope of review in domestic relations is limited by its substantial evidence/manifest error rule.

Brennan v. Brennan, 638 So.2d 1320, 1323 (Miss. 1994).

As has been stated and restated by this Court, a Chancellor's finding will not be disturbed on appeal unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. Hockaday v. Hockaday, 644 So.2d 446, 448 (Miss. 1994)

In other words, "on appeal (we are) required to respect findings of fact made by a Chancellor supported by credible evidence and not manifestly wrong." Newsom v. Newsom, 557 So.2d 511, 514 (Miss. 1991).

The credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation, are primarily for the Chancellor as the trier of facts. The issue here was a factual one and the Chancellor's decision will not be disturbed since it was not manifestly wrong. Polk v. Polk, 559 So.2d 1048, 1049 (Miss. 1990).

The Chancellor in the case at bar was not manifestly wrong, did not abuse her discretion, nor did she apply an erroneous legal standard. The Chancellor applied the correct legal standard, going through each allegation individually and addressing them. The ruling of the Chancellor is supported by substantial evidence.

The Chancellor did not err in granting physical custody to the Mother, Mozelle Newsome according to the guidelines set forth in Albright vs. Albright 437 So.2d 1003 (Miss. 1983).

The Chancellor has the sole responsibility to determine whether witnesses and evidence are credible and to weigh the testimony and the evidence presented. Chamblee v. Chamblee, 637 So2d 850, 860 (Miss. 1994). In custody matters decisions of the Chancellor are not disturbed unless it is clear that the law and justice requires it.

The best interest of the child is the polestar consideration. Sellers v. Sellers, 638 So2d, 481, 485 (Miss 1984). The guidelines the courts considers in determining the best interest of the child are as follows: 1) age, health and sex

of the child; 2) a determination of the parent that has had the continuity of care prior to the separation; 3) which has the best parenting skills and which has the willingness and capacity to provide primary child care; 4) the employment of the parent and responsibilities of that employment; 5) physical and mental health and age of the parents; 6) emotional ties of parent and child; 7) moral fitness of the parents; 8) the home, school and community record of the child; 9) the preference of the child at the age sufficient to express a preference by law; 10) stability of home environment and employment of each parent and other factors relevant to the parent-child relationship. Albright v. Albright 437 So2d 1003, 1005 (Miss. 1983).

The child is an eleven year old male. This factor slightly favors the Father (R.130). However, the health of the child, slightly favors the Mother since she has more knowledge and experience with the child's asthma condition. (R.130, R.131, R.90, R.91)

Mozelle Newsome was correctly deemed to be the primary care giver of the child, taking care of him since birth, providing for the majority of his physical and emotional needs. (R.88) The Mother primarily dealt with the health care of the child which favored the mother. (R.131) Alan has asthma and his Mother made sure he was properly treated for asthma and is educated on how to deal with the condition. The Court recognized that the Mother probably had more of the child care responsibilities due to the health and medications of the father, favoring the mother. (R.131)

Mozelle has demonstrated her desire and ability to be a caring parent to this minor child. The Mother has put the child's needs above her own. The Mother strives to make sure this child is well adjusted in his surroundings

and has friends. The Mother made sure he had activities and time to play as well as work on his school work. The evidence presented to the Court by the Mother and the parties' neighbor and the minor child, indicated that the Father may have been too harsh with the child. The Court correctly ruled that the Mother displayed the best parenting skills based on the testimony. (R.131, R.132, R.133)

Neither parent worked outside the home. However, the Mother was to return to work in the near future. The Mother had a plan for child care. The parties were found to be equal regarding this factor by the Court. (R.134) The physical condition of the Father, which required him to be on Social Security Disability (R.80, R.81) slightly favored the Mother. (R.135).

While the minor child has affection for both parents, he expressed a level of comfort and confidence living with his mother. The minor child's testimony indicated to the Court that his emotional ties are much stronger with his Mother. (R.142) The Court ruled in favor of the Mother on this factor.

(R.142) The court observed the minor child was very shy and determined from the child's testimony that he feels most comfortable in his home, school and community in California. (R.139, R.140)

The Father admitted he smoked marijuana illegally both in Mississippi and also in California, where he could have possibly obtained it legally for health problems (R. 69) The illegal drug use of the Mother was many years in the past. The Court found in favor of the Mother as to moral fitness. (R.137)

The Court determined that custody of Alan should be with his mother due to the above factors. The Court added that this special child of extreme shyness should be with his mother and it would be too disruptive to the child to place custody with his dad. (R.143)

Albert Robinson offered no witnesses to testify as to Mr. Robinson's parenting skills, emotional bond with the minor child, continuity of care of the child prior to separation, moral fitness of the parent, home environment or stability of the home environment.

Mr. Robinson contended that Ms. Newsome should not be awarded custody due to her use of Methadone and occasional use of sleep aids. This contention was not accepted by the trial Court.

The Appellant is not in agreement that he should pay any of the Appellee's attorney fees at the trial court level. However, the Appellant admits in his brief that he knows that the Appellee did not have any money.

The Chancellor ruled that the Appellant would be required to pay a portion of the Mother's attorney fees in the amount of \$2,500.00 since it was a tremendous financial hardship on her and the Father had more financial ability. (R.147) The Chancellors have a broad discretion in awarding attorney fees. Smith v. Smith, 614 So. 2d 394, 398 (Miss. 1993); Tynes v. Tynes, 860 So.2d 325, 331 (Miss. Ct. App. 2003); Pacheco v. Pacheco, 770 So. 2d 1007, 1012 (Miss. Ct. App. 2000).

Unless the decision was a manifest error, the denial or award of attorney fees would not be reversed. Holloway v. Holloway, 865 So. 2d 382, 383 (Miss. Ct. App. 2003); Watson v. Watson, 724 So. 2d 350, 357 (Miss. 1998); Bates v. Bates, 755 So. 2d 478, 482 (Miss. Ct. App. 1999).

CONCLUSION

The Chancellor, after hearing all the evidence, did not abuse her discretion, was not manifestly wrong, and applied the correct legal standard. Additionally, the findings of the Chancellor were supported by credible evidence and not against the overwhelming weight of the evidence. Thus, the ruling of the Chancellor in the case at bar should be affirmed.

For each of the criteria set forth in Albright v. Albright 437 So2d 1003, 1005 (Miss. 1983), the Chancellor applied the facts that were presented in Court. The Chancellor's conclusion is supported by the facts set forth in the record. The Chancellor applied those facts to each of the criteria, and weighed them, and found in favor of the Mother.

The Chancellor has the best viewpoint as to the credibility of the evidence and the credibility of the witnesses. Most of the facts in this case were not in dispute. Therefore, the Chancellor simply had to apply the facts to the legal standard.

The Appellant has failed to demonstrate to this Court that the Chancellor was manifestly wrong or clearly erroneous. A review of the record indicates that the Chancellor made the correct decision based on the facts and the law. The Chancellor's decision should be affirmed.

CERTIFICATE OF SERVICE

I, NANCY M. LIDDELL, do hereby certify that I have mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

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Honorable Judge Vicki Cobb
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Chancellor


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Appellee

This the 5th day of July, 2011.


Nancy M. Liddell