IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BEVERLY GRIGGS EASLEY	APPELLANT
VS.	CASE NO. 2011-CA-00035
MATTHEW JASON EASLEY	APPELLEE

APPEAL FROM THE CHANCERY COURT OF

CALHOUN COUNTY, MISSISSIPPI

CAUSE NO. 2010-065-R

BRIEF OF APPELLEE

(ORAL ARGUMENT NOT REQUESTED)

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BEVERLY GRIGGS EASLEY — APPELLANT

VS. — CASE NO. 2011-CA-00035

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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 Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Beverly Griggs Easley, Appellant
2. Honorable Ed Roberts, Chancellor
3. Matthew Jason Easley, Appellee
4. Elizabeth Fox Ausbern, Attorney for Appellant
5. Paul M. Moore, Jr., Attorney for Appellee

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STATEMENT OF THE ISSUE

Did the Chancellor commit error in this case by awarding primary custody of the children to Matthew Jason Easley. Appellee denies that there was uncontroverted testimony that demonstrated Beverly Griggs Easley should have been awarded the primary custody.

STATEMENT OF THE CASE

Appellee adopts the statement of the case until the last paragraph of Appellant's statement.

The evidence does not demonstrate the Beverly Griggs Easley should have been granted the primary care of the minor children.

SUMMARY OF THE ARGUMENT

The argument of Appellant states that the Chancellor's opinion contradicts the facts and the evidence.

In the case of *J.P.M. v. T.D.M, 932 So. 2d 760 (Miss. 2006)*, the Supreme Court ruled as follows:

> "The Supreme Court conducts a limited review in child custody cases, and a chancellor must be manifestly wrong, clearly erroneous, or apply an erroneous legal standard in order for the Court to reverse".

Appellant's argument that the Court did not make specific findings of fact is in error. Appellee directs this Court's attention to the ruling of the Lower Court in its opinion by the Chancery on November 8, 2010 (R. 167-169).

The Chancellor, in his opinion, stated the law of child custody and the factors the Chancellor is required to consider as contained in the case of *Albright v. Albright, 437 So. 2d 1003 (Miss. 1983)*. The factors are contained in the Chancellor's opinion on November 8, 2010 (R. 164).

The Chancellor addressed each and every factor in his opinion. He took the testimony and detailed under each factor why that factor favored the Appellant or the Appellee. He then based his opinion upon the evidence, as he interpreted the evidence, and ruled as he ruled and should be sustained.

RESPONSE TO ARGUMENT

Appellee maintains that the Lower Court did not commit error in its ruling.

The Chancellor in the Lower Court detailed all of factors the Supreme Court has outlined in the case of *Albright v. Albright, 437 So. 2d 1013 (Miss. 1983).* Appellee would stat that all of the Albright factors were considered by the Chancellor.

A. Age and sex of the child

The Lower Court found this factor to favor the father. The Lower Court's opinion clearly articulates the Chancellor's reason for this determination.

Appellee would point out that he also signed the boys up for sports (R. 114). Appellee was also the person who took both boys to hunting camp. Appellee would also point out that the children are not in the tender age category. The Supreme Court has ruled as follows concerning the tender age factor in the case of *McCullough v. McCullough, 52 So. 3d 373, 374 (Miss. App. 2009)*:

> "A child is no longer of 'tender years,' for purposes of awarding custody in action for divorce, when she can be equally cared for by someone other than her mother".

Appellee would show that the ages of the children would dictate that they are no longer of "tender ages".

The Appellee would further point to instances of conflict between Appellant and the children. Appellee would direct this Court to an incident concerning discipline of the oldest child, Jacob, by the Appellant. On page 173 of the record, the Appellant testified

to an incident where the Appellant had to call the local police because the child, Jacob, was attempting to run away from her. Appellant further testified, on page 190, concerning the incident. This testimony of the Appellant clearly demonstrates that the Court properly interpreted this factor in favoring the father/appellee (R. 173, 190).

Appellee also points out to this Court that Appellant's witness, Michelle Jones, testified that the child, Jacob, responds better to men than women (R. 202).

B. Health of the children

Appellee acknowledges that the Court found that this factor favored neither party. Appellee agrees that Jacob has been hospitalized. However, the Appellee would point out that the testimony of the Appellant confirms that the Appellee had taken care of the child's needs (R. 183).

The Supreme Court should not reevaluate the evidence. The Chancellor heard the evidence and he is in a better position to ascertain the truth and veracity of the witnesses.

C. Continuity of care

Appellee acknowledges that the Court found that the continuity of care favored the mother. However, the Chancellor considered **all** the *Albright* factors and found that primary custody should be vested in the Appellee.

D. Parenting skills

The Chancellor found that this factor favored neither parent. However, the Lower Court found that Appellee was better able to handle Jacob. Appellee would direct this

Honorable Court to the stipulation that Jacob would testify that the mother, Appellant, would leave the children until 2:00 or 3:00 in the morning (Temp. R. 7). Also, the Appellee points out the Appellant's testimony that the Appellee has taken care of the children while he had custody (R. 183).

E. Willingness and capacity to care for the children

The Lower Court found that both parties were willing and capable of caring for the children. The Lower Court fully explained the decision. The Appellant would question the Lower Court's decision. However, the Court has ruled in the case of *Collins v. Collins, 20 So. 3d 683, 684 (Miss. App. 2008)*:

> "The presence of extended family is a legitimate factor to support awarding custody to a parent".

The Appellant admitted in her testimony that the children were close to Appellee's mother, who had helped with the children in the past (R. 183). Appellant admits that Appellee has been there for the children (R. 184).

Therefore, Appellee would again state that this is but one factor in the numerous *Albright* factors.

Appellee would direct the Supreme Court to the report of Samuel E. Fleming, III, Ph.D. dated August 12, 2010. In Dr. Fleming's report, he concludes as follows:

> "Mr. Easley appears capable of providing for his children, both materially and emotionally". (See Exhibit 4 of the Record, Page 5)

Appellee would also point out the testimony of Appellant wherein she admitted that Appellee has taken care of the children when he had temporary custody (R. 183).

F. Employment

The Appellee would admit that the Lower Court found that this factor favored neither party. The Lower Court pointed out that both parties have flexible schedules which allows both parties to perform whatever needs to be done for the children. Appellee would point out to the Supreme Court the fact that his mother lives close to his house, and she is available to provide help if he works late.

Appellee would assert if any error was made, this factor should have favored the father/appellee.

G. *Health of the parents*

Appellee admits that the Lower Court found that this factor favored neither party. Appellant questions the Appellee's mental health. Appellant relies on the report of Dr. Samuel Fleming, Ph.D. However, Appellant fails to mention that Dr. Fleming found Appellee capable of providing for his children. (See Exhibit 4, page 5 as previously alluded to).

Appellee would point to the Supreme Court the psychological report submitted by Appellant as Exhibit "8". This examination has a summary on page 3 as follows:

> "This cannot be considered to be an endorsement of her parenting skills but does suggest that she is free of any major psychiatric difficulties".

Appellee contend that his evaluation considered the issues pointed out by the Appellant, and the Appellee's report by Dr. Samuel Fleming, Ph.D., still endorsed Matt Easley, Appellee, as being capable of providing for his children.

H. Emotional ties to the children

The Chancellor noted that this factor favored neither parent. Appellant's witness, Michelle Jones, states that Jacob responded better to men (R. 202). Appellee would again ask the Supreme Court to review the incident where the Appellant had to contact the local police to help control Jacob (R. 173, 191).

Appellee never had to resort to such tactics to control the children. Appellee is also the parent who has provided the hunting opportunities for both children.

I. Moral fitness

The Lower Court found that this factor favored neither parent. Appellee would point out to the Supreme Court the stipulation concerning Appellant's leaving the children at home and not returning until 2:00 or 3:00 a.m. (R. 7-8).

Appellee would contend that if any error was made, the error would be that this factor favored Appellee.

J. Preference of children

This factor is not applicable because of the age of the children.

K. Home, school or community record

The lower court found this factor to favor the father. Appellee contends the Chancellor's findings should not be disturbed. The Chancellor clearly articulates his reasons for the ruling in his Opinion (R. 169). Appellee's mother has been a very substantial part of the children's life. Appellee points out the testimony of Appellant's witness, Mary Bray. Mrs. Bray is the mother of Appellant. She testified that Mrs.

Easley, Appellee's mother and the children's grandmother, has been a foundation for the children (R. 210).

Appellee also retained the marital home. This home is located in the community where the children have always resided.

Appellee would ask the Supreme Court to review the testimony of Appellant concerning school calls (R.184). Appellant admits that Appellee can have someone attend to the children's needs as school just as easily as she can.

L. *Stability of the home environment*

Appellee would point out that he received the marital home. This is where the children were living at the time of the separation. The marital home is located within the community where the children have always resided, and therefore, should always favor the father/appellee.

M. Other factors relevant to parent/child relationship

Appellant's summation of the witness reaction to questions are totally wrong. The Chancellor heard the testimony, and he would be the proper person to weigh the testimony of the witnesses.

CONCLUSION

A Chancellor has considerable discretion in considering the evidence to determine the best interest of a child in child custody matters. The Supreme Court should not override the evidence, retest the credibility of witnesses, nor otherwise act as second fact finder.

Appellee cites the case of Curry V. McDaniel, *37 So. 3d 1225 (Miss. App. 2010)*:

> "The matter of child custody is a matter within the sound discretion of the chancellor
>
> "In reviewing the award of child custody, appellate court will affirm the decision of the chancellor unless that decision is manifestly wrong, clearly erroneous, or the chancellor applied an erroneous legal standard.
>
> "In reviewing the award of child custody, findings of fact made by a chancellor may not be set aside or disturbed upon appeal if they are supported by substantial, credible evidence".

Appellee would also cite the case of Reed v. Fair, *56 So. 3d 577, 578 (Miss. App. 2010)*:

> "*Albright* custody factors are not meant to be weighed equally in every case; in some cases, one or two factors may weigh more heavily and control the custody determination".

Appellee would assert assert that the Lower Court applied the *Albright* factors and made a finding as to the best interests of the children.

The Appellee would also direct the Supreme Court's attention to Appellant's Motion to Reconsider Order (R. 178). The Appellant's Motion to Reconsider Order details almost all of the allegations contained in her brief to the Supreme Court. The Lower Court denied the Motion to Reconsider Order on the 5th day of January, 2011 (R. 194).

Appellee would contend that the Lower Court did review its judgment, and the Lower Court still did not amend or change its Order. Therefore, the Chancellor's decision should be affirmed.

RESPECTFULLY SUBMITTED, this the 17 day of October, 2011.

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CERTIFICATE OF SERVICE

I, Paul M. Moore, Jr., attorney of record for the Appellee, Matthew Jason Easley, do hereby certify that I have this day mailed, by United States Mail, proper postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Elizabeth Fox Ausbern
Attorney for Appellant
P. O. Box 167
Houston, MS 38851

and

Honorable Ed Roberts
Chancellor
P. O. Box 49
Oxford, MS 38655-0049

THIS the 17 day of October, 2011.

Paul M. Moore, Jr.