

IN THE MISSISSIPPI COURT OF APPEALS

ELLIS TURNAGE

APPELLANT

VS.

CAUSE NO.: 2014-CA-00966

ELLIS CHRISTOPHER BROOKS, a minor,
and ALEX JARRET BROOKS, a minor, by
MARY BROOKS, mother and adult next friend of
ELLIS CHRISTOPHER BROOKS and
ALEX JARRET BROOKS

APPELLEES

APPEAL FROM THE CHANCERY COURT OF THE SECOND JUDICIAL
DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

TAMEKIA R. GOLIDAY, MSB# 99431
GOLIDAY LAW FIRM
Post Office Box 13632
Jackson, Mississippi 39236
Tel: (601) 368.1800
Fax: (769) 233.8095
Email: trgoliday@yahoo.com
Counsel for Appellant

TABLE OF CONTENTS

	PAGES
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
ARGUMENT	1
CONCLUSION	10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

CASES	PAGES
<i>Alexander v. Alexander</i> , 494 So.2d 365 (Miss.1986).	5
<i>Gilbert v. Ireland</i> , 949 So.2d 784 (Miss. App. Ct. 2006).	2
<i>Illinois Cent. Gulf R. Co. v. McLain</i> , 174 So.3d 1279 (Miss. 2015).	4,5
<i>In State, Dept. of Revenue v. Kiedaisch</i> , 670 So. 2d 1058 (Fla. Dist. Ct. App. 2d Dist. 1996)..	5
<i>Johnston v. Parham</i> , 758 So.2d 443 (Miss. Ct. App. 2000)..	5, 6
<i>Jones v. Jones</i> , 995 So.2d 706 (Miss. 2008)..	1, 2
<i>Penney v. Penney</i> , 785 So.2d 376 (Ala. Civ. App. 2000).	7
<i>Phillips v. Dow Chemical Co.</i> , 151 So.2d 199 (1963)..	3
<i>Pierce v. Heritage Properties, Inc.</i> , 688 So.2d 1385 (Miss.1997).	2
<i>Scoggins v. Ellezy Beverages, Inc.</i> , 743 So.2d 990 (Miss. 1999)..	4
<i>Sims v. ANR Freight System, Inc.</i> , 77 F.3d 846 (5th Cir.1996)..	4

ARGUMENT

I. THE SPECIAL CHANCELLOR COMMITTED REVERSIBLE ERROR WHEN HE FAILED TO IMPOSE SANCTIONS AGAINST THE APPELLEES WHO COMMITTED PERJURY AND MADE FALSE STATEMENTS DURING THE LITIGATION PROCESS.

In their brief, the appellees allege that the special chancellor did not commit reversible error when it failed to impose sanctions against them after they committed perjury and made false statements during discovery and at trial. The Mississippi Supreme Court in *Jones v. Jones*, 995 So.2d 706 (Miss. 2008), made it abundantly clear that when faced with the egregious misconduct which results from perjury and false statement made during litigation, courts are obligated to impose sanctions that are severe enough to deter others from pursuing similar courses of actions. *Id.* at 712. In sum, *Jones* makes it clear that a chancellor is duty bound to impose sanctions where a party willfully engages in perjury and misconduct.

In *Jones*, husband and wife agreed to divorce on the grounds of irreconcilable differences and submitted the issues regarding the property distribution to the chancery court. During the litigation process, wife lied under oath about her adulterous activities during the marriage. Despite the clear evidence of perjury, the chancellor failed to impose sanctions against the wife for her misconduct and perjury.

The Mississippi Supreme Court, after examining the record and having reviewed the applicable case law, determined that “*Nevada’s misconduct must not go unpunished.*” *Id.* Specifically, the court reasoned, as follows:

As we previously have stated, such attempts to subvert the judicial process will not be tolerated. *Pierce*, 688 So.2d at 1392. When faced with such egregious misconduct, courts are obligated to consider sanctions that are severe enough to deter others from pursuing similar courses of action. The chancellor in this case did not satisfy that obligation and abused his discretion by not addressing Nevada's misconduct. Accordingly, the chancellor, on remand, must consider imposition of sanctions and/or a referral to the district attorney to consider criminal prosecution for perjury and destruction of evidence.

In *Pierce v. Heritage Properties, Inc.*, 688 So.2d 1385 (Miss.1997), the Mississippi Supreme Court held that the circuit court did not abuse its discretion when it dismissed the plaintiff's lawsuit with prejudice as a result of plaintiff filing untrue discovery responses and providing false deposition testimony. *Id.* at 1390 -1392. The court was clear and adamant that “*such action by any party should not and will not be tolerated.*” *Id.* at 1392.

This Honorable Court found that the circuit court abused its discretion by not imposing sanctions against a plaintiff who committed perjury at trial and made false statements to her expert witness about her psychological condition. *Gilbert v. Ireland*, 949 So.2d 784, 790 (Miss. App. Ct. 2006). Furthermore, this Court concluded that the only appropriate sanction for the plaintiff's misconduct was dismissal of her suit. *Id.* at 792.

Reading *Jones*, *Pierce* and *Gilbert* together, it is abundantly clear that where there exists clear evidence of perjury and misconduct, a chancellor is duty bound to impose sanctions against a party who commits perjury and makes false statements during litigation and the sanctions must be severe enough to deter others from pursuing the same course of action. A chancellor fails to satisfy his obligation and abuses his discretion when it fails to address perjury and misconduct. *Jones*, 995 So. 2d at 712. In sum, Mississippi law requires that sanctions are imposed where there exists clear evidence of perjury and misconduct.

In the case *sub judice*, the special chancellor abused his discretion and committed reversible error when he failed to impose sanctions upon the appellees who committed perjury and made false statements during litigation. Consistent with *Jones, Pierce and Gilbert*, there exists clear evidence of perjury and misconduct which required the special chancellor to impose sanctions as substantiated by the pleadings tendered by and testimony of appellees. Specifically, appellees, in the sworn *Complaint for Child Support and Other Relief*, admit “*defendant has voluntarily acknowledged paternity by his prior child support payments,*” but testified during deposition that Ellis Turnage failed to provide support for the children for nearly twenty years. *See Phillips v. Dow Chemical Co.*, 151 So.2d 199 (1963)(general rule is that a statement of fact by a party in his or her pleading is an admission the fact exists as stated *so long as* the party in question verified and sanctioned the pleading). This contradiction provides clear evidence of perjury and the intent of the appellees to defraud the chancery court.

Appellee, Mary Brooks, repeatedly denied receiving any monetary support from Turnage for the children. When asked about the support payments made by Turnage, Mary stated, as follows:

00:54:28	19	Q. Did Mr. Ellis Turnage ever deposit any money in
00:54:32	20	any bank account owned or controlled by you?
00:54:34	21	A. Not to my knowledge.
00:54:38	22	Q. Did Mr. Ellis Turnage ever give you any cash
00:54:42	23	money?
00:54:42	24	A. No.

(Defendant's Exhibit 1, p. 39, ln. 19 - 24). She further testified:

01:10:52	1	A. He's a deadbeat dad because for three years or
01:10:58	2	longer, 18 or 20 years, he hadn't gave them not one
01:11:02	3	penny or dime. And that's a deadbeat dad.
01:11:06	4	Q. Was it for three years or was it for 18 or was it
01:11:08	5	20 he didn't give them a dime?
01:11:10	6	A. It was 20 something years that he didn't pay
01:11:12	7	child support.

(Defendant's Exhibit 1, p. 99, ln. 1 - 7). Furthermore, it is clear that the appellees wilfully committed perjury and engaged in misconduct when they alleged that Turnage failed to provide support for the children for "20 something years" when the uncontradicted documentary evidence clearly indicates that Turnage has tendered thousands of dollars to appellees in child support. This egregious conduct demands that this action, like *Pierce* and *Gilbert*, is dismissed with prejudice. See *Illinois Cent. Gulf R. Co. v. McLain*, 174 So.3d 1279, 1286 (Miss. 2015) ("Lying cannot be condoned in any formal proceeding")

"A trial is a proceeding designed to be a search for the truth." *Sims v. ANR Freight System, Inc.*, 77 F.3d 846, 849 (5th Cir.1996). *When a party attempts to thwart such a search, the courts are obligated to ensure that such efforts are not only cut short, but that the penalty will be sufficiently severe to dissuade others from following suit.* *Scoggins v. Ellezy Beverages, Inc.*, 743 So.2d 990 (Miss. 1999). As such, this Honorable Court should find that dismissal with prejudice is the only penalty that will accomplish that purpose based on

the facts presented. This Court should reverse the findings of the special chancellor, who is now deceased, and dismiss this action with prejudice. *Illinois Cent. Gulf R. Co. v. McLain*, 174 So.3d 1279, 1286 (Miss. 2015)(where the record evidence clearly establishes perjury, remand is not necessary since the appellate courts have the authority to impose dismissal as a sanction). In the alternative, this Court should reverse the findings of the special chancellor and remand the matter back to the chancery court to determine whether a dismissal with prejudice is the appropriate sanction for appellees' perjury and misconduct.

II. APPELLEES ARE INCORRECT IN THEIR ASSERTION THAT MISSISSIPPI LAW PROHIBITS ELLIS TURNAGE FROM TAKING AN OFFSET AGAINST CHILD SUPPORT ARREARS FOR EXPENDITURES MADE ON BEHALF OF THE CHILDREN.

Mississippi law permits a non-custodial parent to “*receive credit for having paid child support where, in fact, he paid the support directly to or for the benefit of the child, where to hold otherwise would unjustly enrich the mother.*” *Alexander v. Alexander*, 494 So.2d 365, 368 (Miss.1986)); *Johnston v. Parham*, 758 So.2d 443, 445 (Miss. Ct. App. 2000). In short, a court of equity may give credit to the non-custodial parent if the facts and circumstances warrant it. *Alexander*, 494 So.2d at 367. *See In State, Dept. of Revenue v. Kiedaisch*, 670 So. 2d 1058 (Fla. Dist. Ct. App. 2d Dist. 1996)(setoffs may be allowed against child support arrears for items held to be in substantial compliance with the child support order, such as rent, food, clothes, utilities, and health insurance).

This court in *Johnston v. Parham*, 758 So. 2d 443 (Miss. Ct. App. 2000), upheld a chancellor's decision to allow a noncustodial father credit against child support arrears for

unspecified goods provided directly to the parties' child by the disabled father and by the paternal grandparents where the father had documented proof of the expenditures.

Like *Johnston*, Turnage presented credible documented proof at trial of the expenditures made on behalf of the children. Specifically, he produced uncontradicted documentary evidence that from December 1, 2008 til the date of the trial, he made the following expenditures of behalf of the children:

EXPENDITURE	PERSON RECEIVING PAYMENT	AMOUNT OF EXPENDITURE
Child Support Payments	Mary Brooks	\$13,245.00
Child Support Payments	Ellis Brooks	\$2,775.00
Rental Costs for the Property located at 119 Highland Cove, Ridgeland, Mississippi	Mary Brooks Ellis Brooks Alex Brooks	\$85,800.00 <i>(This amount represents the rental value of the property from December 1, 2008 to present. The appellees are still residing on the property.)</i>
Car Payments/Vehicle Maintenance	Ellis Brooks	\$16,634.47
Rental Costs for Trace Apartment Complex	Ellis Brooks	\$3,210.00
Computer and Accessories	Alex Brooks	\$1,123.46
Eyeglasses	Alex Brooks	\$328.98
TOTAL OF EXPENDITURES		\$123,116.91

Consistent with *Johnston*, which allows a noncustodial father to take a setoff against child support arrears for unspecified goods and monetary support tendered for the benefit of the children, Turnage, in the year prior to the filing of the *Complaint for Child Support and Other Relief* up to the present, tendered \$123,116.91 for the benefit of the children. As such, the special chancellor erred when he failed to give Turnage credit for the \$123,116.91 in expenditures made on behalf of the children and ultimately, ordered Turnage to pay back child support in the amount of \$19,200.00. Applying the appropriate credit, Turnage owes no back child support and is entitled to a credit of \$103,916.91 against current child support payments accruing pursuant to the entry of the June 4, 2014, *Final Decree*.

At the time the *Complaint* was filed, Ellis Brooks, born January 19, 1989, was twenty years old and had approximately three months before he reached the age of majority. Considering the award of \$800 in child support on behalf of Ellis Brooks, he is owed \$2,400.00 in current support from Turnage. Alex Brooks, born May 16, 1994, was fifteen years old at the time the *Complaint* was filed and had approximately six years before he reached the age of majority¹. Considering the award of \$800 in child support on behalf of Alex Brooks, he is owed \$53,600.00 in current support from Turnage.

Applying the \$103,916.91 in credits, it is clear that Turnage has satisfied his current child support obligations to the children which totals \$56,000.00. Therefore, this Honorable

¹Both Ellis Brooks and Alex Brooks are now over the age of 21. They are no longer minors.

Court should reverse the special chancellor's award of back child support and hold that Turnage has satisfied his current support obligations.

III. THE AWARD OF COLLEGE EXPENSES SHOULD BE REVERSED SINCE THE SPECIAL CHANCELLOR FAILED TO PLACE ANY REASONABLE LIMITATIONS ON ELLIS TURNAGE'S RESPONSIBILITY FOR COLLEGE EXPENSES.

In *Penney v. Penney*, 785 So.2d 376, 379 (Ala.Civ.App.2000), the appellate court held that the trial court must set reasonable limitations on the parent's responsibility for college expenses, because a failure to do so may impose an undue hardship on the paying parent. *"These limitations include (1) limiting the support to a reasonable period, (2) requiring the child to maintain at least a 'C' average, and (3) requiring that the child be enrolled as a full-time student."* The court further reasoned that *"when the judgment of the trial court has the potential to allow the child to prolong undergraduate studies well beyond four years, by not requiring the child to take a minimum number of courses each session and by not limiting the number of courses that the child can withdraw from each semester, it will not be upheld. This court has also held that a reasonable limitation would include limiting the expenses to be paid by a parent to a particular college or institution."* *Id.*

This Honorable Court should adopt the reasoning of the *Penney* court, reverse the award of college expenses since the award failed to place reasonable limitations on the college expenses to be paid by Turnage and remand the matter to the chancery court with specific instructions to place appropriate and reasonable limitations on the award of college expenses. The award should be limited to a reasonable period, require the child the maintain

at least a 'C' average, require the child be enrolled as a full-time student and consistent with existing Mississippi law, require the child maintain a viable relationship with the parent.

Additionally, Turnage should be given credit for any Pell Grants and scholarships received by the children since equity requires that any college expenses paid by him should be offset by any grants and scholarships received by the children. The application of grants and scholarships reduces the college expenses of the children and as such, payments made by Turnage should be limited to the actual expenses incurred by the children after application of the grants and scholarships.

Furthermore, he should also be given credit for the \$5,300.00 paid toward the college expenses of Ellis Brooks and \$11,272.50 paid toward the college expenses of Alex Brooks. This Honorable Court should reverse the award of college expenses since the special chancellor failed to give Turnage credit for tuition payments he made and for any grants and scholarships received by the children and remand this matter back to the Bolivar County Chancery Court with instructions to apply the appropriate credits to any award of college expenses and set reasonable limitations on the college expenses to be paid by Turnage.

CONCLUSION

Considering the aforementioned arguments, this Honorable Court should reverse the June 2, 2014, *Final Decree* and render judgment in favor of Ellis Turnage since the appellees intentionally committed perjury and engaged in misconduct which is grounds for dismissal with prejudice. In alternative, this Court should vacate and reverse the June 2, 2014, *Final Decree* and remand for further proceedings consistent with this Court's opinion and decision.

SO REPLIED, the 10th day of February, 2016.

Respectfully submitted,
ELLIS TURNAGE, APPELLANT

By: /s/ Tamekia R. Goliday
TAMEKIA R. GOLIDAY
Attorney for Appellant

OF COUNSEL:
TAMEKIA R. GOLIDAY, MSB# 99431
GOLIDAY LAW FIRM
Post Office Box 13632
Jackson, Mississippi 39236
Tel: (601) 368.1800
Fax: (769) 233.8095

CERTIFICATE OF SERVICE

I, TAMEKIA R. GOLIDAY, attorney for the appellant, ELLIS TURNAGE, do hereby certify that I have forwarded *via MEC* a true and correct copy of the **REPLY**

BRIEF OF APPELLANT to:

Honorable Terence L. High
THE HIGH LAW FIRM
Post Office Box 12054
Jackson, Mississippi 39236

This, the 10th day of February, 2016.

/s/ Tamekia R. Goliday
TAMEKIA R. GOLIDAY