IN THE SUPREME COURT OF MISSISSIPPI

2016-CA-00457

DAVID H. VINCENT — APPELLANT

V.

JOAN HANKINS RICKMAN — APPELLEE

APPEAL FROM CHANCERY COURT OF
DESOTO COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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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 the judges of the Court of Appeals may evaluate possible disqualification or recusal.

- David H. Vincent, Appellant
- Katherine V. Kemp, Trial Attorney for Appellant
- Byron R. Mobley, Appellate Attorney for Appellant
- Joan Hankins Rickman, Appellee
- A.E. "Rusty" Harlow Jr., Trial and Appellate Attorney for Appellee
- Honorable Vicki B. Daniels, Chancellor

So Certified this the 26th day of July, 2016.

/s/ Byron R. Mobley
Byron R. Mobley

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STATEMENT OF ASSIGNMENT

The undersigned hereby states that this case has not yet been assigned as contemplated by M.R.A.P. 16, that this case is not of a type that is required to be retained by the Supreme Court as outlined by Miss. Code Ann. § 9-4-3 (Supp. 1994) and M.R.A.P. 16(b), and this case is not of a type that the Supreme Court will or ordinarily does retain as contemplated by M.R.A.P. 16(d). As such there are no reasons the Supreme Court either must or should retain this case.

STATEMENT OF THE CASE

References

For the purpose of clarity (and in compliance with M.R.A.P 28(e)) the parties will be referred to as follows:

Appellant David M. Vincent will be referred to as "David".

Appellee Joan Vincent Rickman will be referred to as "Joan".

Mississippi Department of Human Services will be referred to as "DHS".

References to the Trial transcript will be (Tr. **)

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Statement of the Case

David and Joan were divorced from each other by Judgment of Divorce entered by the Chancery Court of DeSoto County, Mississippi on February 24, 1997. The parties' three minor children, Erika (born March 2, 1991), Kaitlyn (born May 16, 1993) and Casey (born March 22, 1996), were placed in Joan's custody with David being granted certain visitation and directed to pay Joan child support. Although some time passed between the entry of the Judgment of Divorce and the current trouble, any issues between the parties arising prior to April of 2012 are not relevant to this appeal and as such are not addressed with the exception that, at some time following the parties' divorce Joan's child support payments were re-directed to DHS.

On April 24, 2012, the DeSoto Chancery Court entered and Agreed Order which modified the Decree of Divorce to, *inter alia*, increase David's child support obligation to $500.00 per month and establish an obligation that the parties each be responsible for the payment of certain college expenses for their children. (R.E. 37)

On September 4, 2012, DeSoto County Chancellor Percy Lynchard cited David for contempt of court, awarded Joan a Judgment against David in the amount of attorney's fees

incurred by her in the prosecution of the contempt action, and directed that all future child support payments were to be paid through the entry of an income withholding order. (R.E. 41) Commensurate with the Chancellor's direction an Order for Income Withholding was entered by the court on the same day. (R.E. 43)

Following the entry of Chancellor Lynchard's Order on September 4, David gave a copy of the Court's withholding order to his employer and requested they implement it however the employer did not follow the order nor did they withhold David's child support from his income. (Tr. 22)

This matter was then called back before the Chancery Court, and on June 17, 2013, Chancellor Lynchard found that, although David's child support obligation was current as of the day trial, David was in civil contempt of the Court's previous Orders. In his Order Chancellor Lynchard directed David to pay his next month's child support obligation directly to Joan but re-iterated that David's future child support payments be paid through income withholding order, and further directed David to ensure that a correct income withholding order be in place and that Joan was receiving the support payments. (R.E. 45)

Although David's employer continued to fail to abide by the Court's withholding order David ensured Joan continued to receive her child support by paying it directly to DHS on Joan's behalf, with one exception. (R.E. 53)

David paid his July 2013 child support payment directly to Joan as had been mandated by Chancellor Lynchard, but Joan failed to advise DHS of this payment. (Tr. 54) As a result of Joan's failure to advise DHS of David's direct payment, DHS consider David to be in arrears in his child support obligation and seized his tax refund. (Tr. 81) Upon learning of this, and after consultation with DHS, David released the seized tax monies to DHS to be applied toward his child support obligation. (Tr. 82) Because David believed that his seized taxes, having been

released by him to DHS in December, would be credited to his child support account in January, 2014, David made no payment to DHS in January.

In early February, 2014, David learned from DHS that there had been some delay in their ability to credit David with the seized tax monies. (Tr. 82) In an effort to comply with Chancellor Lynchard's mandate that David ensure Joan received her child support, David made two child support payments to DHS on Joan's behalf, one on February 5, 2014 and one on February 7, 2014 (Tr. 82 & R.E. 61, 62) In spite of David's payments, on February 21, 2014, Joan filed her Petition with the Court to cite David in Contempt for non-payment.

During the pendency of Joan's petition David indicated to one of his daughters by email that he was no longer responsible for the payment of her college expenses due to her emancipation (through turning 21 years old). (Tr. 10) Although David was never presented any requests for payment of college expenses on behalf of his emancipated daughter (Tr. 10, 97) the issue of whether he was liable for their payment "post majority" was placed before the Chancellor along with the questions of David's child support payment and the imposition of the wage withholding order.

And so Joan's petition, as well as the post-petition issues such as the liability for post-emancipation college expenses, were called up for trial before Chancellor Vicki Daniels on October 2, 2015. Following a trial, during which only the parties gave testimony, Chancellor Daniels gave a bench ruling which was subsequently reduced to a written order that was entered October 26, 2015.

Chancellor Daniels' Order contained the following pertinent findings and mandates:

- Finds that David was in arrears in his child support obligation at the time Joan filed her petition, but that he was current in his child support obligation as of the date of trial. (R.E. 12 ¶ 2)

- Finds that David had been ordered on two (2) separate occasions to "implement" an Order for Withholding but that he failed to comply with the Court's Orders. (R.E. 14 ¶ 6)
- Cites David for willful civil contempt for his "refusal to pay those sums ordered in the time and manner ordered" and for his refusal to "implement" an Order for Income Withholding. (R.E. 13 ¶ 7)
- Declares that the parties were obligated to each pay one-half of their children's respective college expenses "until such time as the children complete an undergraduate program". (R.E. 143¶ 9)
- Finds that the matter was "necessitated" by David's "willful" contempt, and as a result directed David to pay Joan the sum of $5,759.56 as reimbursement of her attorney's fees. (R.E. 14 ¶ 10)

It is from Chancellor Daniels' Order that David now appeals.

SUMMARY OF THE ARGUMENT

1) The Chancellor's finding David to be in contempt for failure to pay his child support obligation is manifestly wrong and not supported by the evidence.

The Chancellor's finding of contempt was based upon her belief that David had failed to pay his child support obligation resulting in an arrearage at the time of the filing of Joan's Petition. The Chancellor's ruling fails to recognize the uncontested evidence that David released his tax refunds monies to DHS for the benefit of Joan and that he made two child support payments (thus eliminating any arrearage) prior to the filing of the Petition for Contempt.

2) The Chancellor was manifestly wrong to cite David in contempt for "refusal to implement an Order for Income Withholding, as previously ordered."

(a) The Chancellor's ruling was manifestly wrong in that she misunderstood the obligation previously imposed upon David and therefor found him to be in contempt for acts he was not required to complete.

Chancellor Daniel's ruling relies upon her belief that Chancellor Lynchard had previously mandated that David take certain actions. A review of the Orders issued by Chancellor Lynchard reveal that he never mandated the actions that make up Chancellor Daniels opinion.

(b) The Chancellor's determination of contempt was manifestly wrong in that David's obligation was too vague or ambiguous to properly determine his compliance therewith.

The prior orders issued by Chancellor Lynchard relating to the obligation imposed upon David regarding the Court's Withholding Order are too vague, and result in questions related to what actions, if any, David was mandated to take. Because so much was left to be determined relating David's obligation, the specific provisions are not enforceable.

(c) The Chancellor's determination of contempt was not supported by the evidence in that David did everything within his ability to comply with the obligation placed upon him.

Even if the Court determines that Chancellor Lynchard's mandates related to the withholding order are enforceable, Chancellor Daniels' citation of David for contempt of those mandates is flawed in that David's failure to abide those mandates was not willful.

3) The Chancellor erred in declaring the parties' prior agreement to each pay one-half of their children's college expenses continued after their children become emancipated.

The parties had previously outlined the terms of their respective obligations to provide payment of certain college expenses for their minor children and those terms did not include provisions for payment of "post-emancipation" support. Furthermore the parties, through their actions, have evidenced their intent to terminate the payment of their children's college expenses upon the emancipation of their children. As such, the Chancellor's declaration is contrary to the evidence.

4) The Chancellor's award of attorney's fees was error.

The Chancellor's award of attorney's fees was based upon her citing David for contempt, and as such, to the extent that the Court reverses the Chancellor's citation of contempt it should also reverse the award of attorney's fees.

Additionally the Chancellor's award of attorney's fees was improper in that David's failure to comply with the mandates of the Chancery Court were not willful.

ARGUMENT

1) The Chancellor's finding David to be in contempt for failure to pay his child support obligation is manifestly wrong and not supported by the evidence.

"It is well-settled law that contempt matters are committed to the substantial discretion of the chancellor." *Patterson v. Patterson*, 915 So.2d 496, 499 (¶ 5) (Miss.Ct.App. 2005). An appellate court "will not reverse a contempt citation where the Chancellor's findings are supported by substantial credible evidence." *Id.* Likewise, the Court will not "interfere with the Chancellor's findings of fact unless they were manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Caplinger v. Caplinger*, 108 So.3d 992, 995 (¶ 6) (Miss.Ct.App. 2013) (quoting *Tucker v. Prisock*, 791 So.2d 190, 192 (¶ 10) (Miss. 2001)).

Although David was not found to be in contempt for nonpayment of child support in the Chancellor's bench ruling, it appears that in her subsequent written Order the Chancellor does find him to be in contempt for such nonpayment (R.E. 13, ¶ 7). This finding is manifestly wrong in that the evidence presented at trial does not support it.

In her bench ruling the Chancellor states that "in looking at the child support reportings and the statements of accounting from DHS, there are two different statements of accounting, but with that documentation as well as (David's) testimony and (Joan's) testimony, it's obvious that at the time of filing that there was an arrearage in child support." (R.E. 16, Tr. 116) A review of the evidence referenced by the Chancellor shows the exact opposite to be true.

At some point following the parties' divorce from each other David's child support payments were redirected to be paid for Joan's benefit through DHS. We know that David was current on his child support obligation as of the party's previous court appearance in June 2013. (R.E. 45, ¶ 3) Although David normally paid his child support obligation through DHS, David

paid his July 2013 child support payment directly to Joan pursuant to the Chancellor's direction in paragraph 3 of the June 17, 2013 Order. (Tr. 52, 54, 79) Joan failed to advise DHS of the direct payment made by David in July, (Tr. 54, 81) resulting in DHS's belief that David was in arrears for nonpayment and which further resulted in DHS seizing David's tax refund. (Tr. 56, 81) David discovered the seizure of his taxes in November of 2013 and in December formally released the tax monies to DHS to be applied toward his child support obligation. (Tr. 82) Believing his seized tax refund would be applied to his January, 2014 child support obligation, David did not send any additional monies to DHS in January. (Tr. 82) After finding out there was a delay in the application of the seized tax payment, David then went back to DHS and gave them two child support payments, one on February 5 to be applied towards the January child support obligation and a second payment on February 7 to be applied against the February obligation. (Tr. 82 & R.E. 53, 55, 61 & 62) Joan then filed her Petition to find David in Contempt for nonpayment of child support on February 21, 2014 (R.E. 49).

There are simply no facts to support the Chancellor's finding that "it's obvious that at the time of filing that there was an arrearage in the child support." (R.E. 16, Tr. 116) To the contrary, from the evidence presented it would appear there could have been a surplus in child support at the time Joan filed her Petition. It's uncontested that the only payment David failed to pay was in January, 2014, and that he made up that payment in the first week of February, a full two weeks before Joan filed her Petition. As such, even before the application of David's seized tax funds he was current on his child support obligation at the time of Joan's filing, and depending upon when the tax funds were credited by DHS to Joan it could be argued that the application of the tax funds resulted in a surplus. But regardless of the application of David's tax refund there is simply no evidence to support the Chancellor's determination that David was in arrears at the time of Joan's filing, and therefore the Chancellor's subsequent citation of David

for contempt based upon that finding is manifestly wrong, clearly erroneous and must be reversed and rendered.

2) The Chancellor was manifestly wrong to cite David in contempt for "refusal to implement an Order for Income Withholding, as previously ordered."

The primary purpose of a civil-contempt order is to enforce compliance with a court order. *Evans v. Evans*, 75 So. 3d 1083, 1087 (¶14) (Miss. Ct. App. 2011) (citing *Dennis v. Dennis*, 824 So. 2d 604, 608 (¶8) (Miss. 2002)). Contempt is determined by the facts and left to the chancellor's discretion. *Milam v. Milam*, 509 So. 2d 864, 866 (Miss. 1987). "Failure to comply with a court order is prima facie evidence of contempt." *Evans*, 75 So. 3d at 1087 (¶14) (citing *McIntosh v. Dep't of Human Servs.*, 886 So. 2d 721, 724 (¶11) (Miss. 2004)). "To rebut a prima facie case of contempt, a defendant must show an 'inability to pay, that the default was not willful, that the provision [violated] was ambiguous, or that performance was impossible.'" *Id.* (citing Deborah H. Bell, Bell on Mississippi Family Law § 11.05(1)(a) (1st ed. 2005)). The standard of review for civil contempt on appeal is manifest error, meaning "the factual findings of the chancellor are affirmed unless manifest error is present and apparent." *Purvis v. Purvis*, 657 So. 2d 794, 797 (Miss. 1994)

(a) The Chancellor's ruling was manifestly wrong in that she misunderstood the obligation previously imposed upon David and therefor found him to be in contempt for acts he was not required to complete.

In the Order Regarding Contempt the Chancellor finds David to be in willful contempt of the Court's Orders for his "refusal to implement an Order for Income Withholding, as previously ordered." (R.E. 13 ¶ 7) More specifically the Chancellor finds that "on two (2) separate occasions, the Court ordered (David) to implement an Order for Income Withholding; however, (David) has fully failed to comply with the Court's Order(s) as to the same." (R.E. 13 ¶ 6) It

must be remembered that the Chancellor determining these issues, Hon Vicki Daniels, is not the same Chancellor who had entered the Orders used as a basis for the contempt. Because Chancellor Daniels is enforcing the terms of another Chancellor's Orders we must first determine if she correctly recognizes the obligation(s) imposed upon David by the prior Chancellor, and to do so we must look to the language of the prior Orders.

As the Court is well aware, "judgments in chancery must be in writing: oral judgments are not valid. (citing *Howard v. Jayne,* 86 So. 752 (Miss. 1921)) A court can speak only through its minutes and no oral authorization or approval or oral directions of the court have any effect, save during the timespan between the pronouncement and the actual signing of the written judgment." (citing *Toler v. Wells*, 130 So. 298 (Miss. 1930)) Warner's Griffith, Mississippi Chancery Practice, (Rev. Ed.), § 608. So in determining what David was previously directed to do we must look to the actual language of the Orders themselves. And because Chancellor Daniels finds David to be in contempt for his failure to "implement" a withholding order, we begin focus upon the court's prior orders dealing with a withholding order.

We first find a Withholding Order mentioned by Chancellor Percy Lynchard in his Order signed August 29th, 2012 and entered by the Clerk September 4th, 2012. (R.E. 41) In this Order Chancellor Lynchard finds David to be in contempt for his failure to pay "the sums ordered by this Court", awards Joan a judgment against David in the amount of the attorney's fees incurred by her in prosecuting the contempt action, and declaring that David's child support obligation "shall be paid through income withholding order to be entered immediately." (R.E. 42 ¶ 4) A separate Withholding Order was then executed by Chancellor Lynchard the same day and subsequently entered by the Chancery Court Clerk. (R.E. 43)

A thorough review of both the 2012 Order of contempt as well as the accompanying Withholding Order reveals no language in either Order that directs David to take any action regarding the Withholding Order.

The next Order to be reviewed was signed by Chancellor Lynchard and filed with the Court June 17, 2013. (R.E. 45) In this Order, although Chancellor Lynchard finds David to be current in his child support obligation at the time of the trial, he again finds David to be in contempt of court and awards Joan attorney's fees for the prosecution of her contempt action. Additionally Chancellor Lynchard reiterates that David's future child support payments are to be paid through withholding order, and places upon David the obligation to "ensure that a correct income withholding order is in place and that the Plaintiff is receiving the support payments as ordered." (R.E. 45 ¶ 3) The June 2013 Order imposes no other obligations upon David relating to the withholding Order.

A review of the clerk's docket reveals no other Orders or Judgments entered in this matter related to the "implementation" of a withholding order. Furthermore, in spite of Chancellor Daniels' finding that "on two (2) separate occasions, the Court ordered (David) to implement an Order for Income Withholding" there is simply no record of any such orders ever being entered in this cause. Because Chancellor Daniels' findings related to David's obligations are not supported by any of the Chancery Court's prior Orders, her findings, and the subsequent ruling based thereon, are manifestly wrong and must be reversed and rendered.

(b) The Chancellor's determination of contempt was manifestly wrong in that David's obligation was too vague or ambiguous to properly determine his compliance therewith.

If it should be found that David did owe some obligation to the Chancery Court as it related to the Withholding Order, any such obligation was too vague or ambiguous to be

enforceable. For guidance on this issue we need look no farther than *Moses v. Moses*, 879 So.2d 1036 (Miss 2004) in which the Court was faced with a Chancellor's finding of contempt against a defendant whom the Chancellor found had violated the "spirit" of a Divorce Decree. In overturning the Chancellor's contempt ruling the Supreme Court stated as follow:

> ¶ 15 In *Wing,* 549 So.2d (944) at 947, this Court held:
> It is axiomatic that before a person may be held in contempt of a court judgment, the judgment must "be complete within ***itself--containing no extraneous references, leaving open no matter or description or designation out of which contention may arise as to the meaning.*** Nor should a final decree leave open any judicial question to be determined by others, whether those others be the parties or be the officers charged with execution of the decree...." *Morgan v. U.S. Fidelity & Guaranty Co.,* 191 So.2d 851, 854 (Miss.1966), quoting *Griffith, supra,* § 625; *see also,* Miss.R.Civ.P. 65(d)(2); *Hall v. Wood,* 443 So.2d 834, 841-42 (Miss.1983); *Aldridge v. Parr,* 396 So.2d 1027 (Miss.1981); *Webb v. Webb,* 391 So.2d 981 (Miss.1980).(emphasis added).
> ¶ 16. Likewise, this Court has stated that "[a] person is entitled to be informed with a high degree of clarity as to exactly what [his] obligations are under a court order before [he] can be found in contempt for willingly disobeying that order." *Switzer v. Switzer,* 460 So.2d 843, 846 (Miss.1984).
>
> *Moses* at 1040

In reversing the Chancellor's determination of contempt, the Supreme Court found the trial court's amended final judgment of divorce to be uncertain in that it failed to give any specifics related to the ex-husband's court ordered obligation. Similarly here, even if the Court determines that David has an obligation related to a withholding order, the trial court failed to provide adequate specifics related to that obligation.

As illustrated above, the only Order related to withholding orders required David to "ensure that a correct income withholding order is in place and that the Plaintiff is receiving the support payments as ordered." (R.E. 44 ¶ 3) Yet there is no direction or instructions related to what David was required to do to ensure the withholding order was "in place" or even what it meant for the order to be "in place". At the time this obligation was imposed upon David a correct income withholding order had been filed with the Chancery Clerk. Is David not to

presume that the order is "in place" in that it has been filed with the Clerk? Much like the ex-husband in *Moses*, how was David to discern what Chancellor Lynchard intended from the limited language found in the Orders? Chancellor Daniels obviously believes that for David to satisfy Chancellor Lynchard's direction David would have to "implement" the withholding order and yet, as stated above, there is no indication of this from any of the orders entered by Chancellor Lynchard.

Like the outcome in *Moses,* because of the vagueness of the Chancery Court's prior Orders Chancellor Daniels abused her discretion in finding David to be in contempt, her ruling should be reversed and rendered.

(c) The Chancellor's determination of contempt was not supported by the evidence in that David did everything within his ability to comply with the obligation placed upon him.

Regardless of how vague the language in prior Order, we must also consider David's attempts to satisfy the Court's Order. A contempt citation is proper only when the contemnor has willfully and deliberately ignored the order of the court. *Cooper v. Keyes*, 510 So.2d 518, 519 (Miss. 1987) citing *Millis v. State*, 106 Miss. 131, 63 So. 344 (1913) As we see in *Cooper*, even non-compliance with a Court's Order can be excused from contempt so long as the contemnor's efforts reflect that fact that the non-compliance was not "willful and deliberate".

In *Cooper* Mr. Cooper had been ordered in his divorce decree to convey a vehicle to his ex-wife. Although he sent the appropriate paperwork to the lienholder to transfer the title of the vehicle and continued to pay the monthly loan and insurance payments owed on the car, the bank failed to transfer the title of the vehicle to the ex-wife. After the vehicle was destroyed, and the insurance payments were paid to the ex-wife, she prosecuted and won a contempt action against Mr. Cooper for the failure to transfer the title.

In overturning the Chancellor's contempt citation the Supreme Court recognized that Mr. Cooper's actions (sending the proper documents to the bank, continuing to pay the outstanding load and insurance payments) evidenced the fact that Mr. Cooper did not willfully and deliberately ignore the order of the court, and as such although his actions, while inadequate to fulfill the mandates of the divorce decree were also not contemptuous.

With *Cooper* as an example, we know that David delivered a copy of the Withholding Order to his employer and that David requested that they implement the Order (Tr. 29, 33, 90) To the same degree Mr. Cooper could not force his lender to transfer title to a vehicle after he had provided the paperwork to do so, David could not force his employer to implement a withholding order after he had delivered it to them. And for the same reason that the Court reversed the citation of contempt against Mr. Cooper, the Court should reverse and render the citation of contempt against David.

3) The Chancellor erred in declaring the parties' prior agreement to each pay one-half of their children's college expenses continued after their children become emancipated.

In her Order the Chancellor declares that the parties' prior agreement to each provide for the payment of one-half of their children's college expenses shall continue until each child completes an undergraduate program. (R.E. 13 ¶ 9) This declaration arose from a dispute between the parties as to whether their respective obligation continues after the emancipation of the child.

The obligation was agreed upon by the parties in the Agreed Order entered in this cause on April 24, 2012. (R.E. 37) In paragraph 9 of this Order the parties agreed, and the Court Ordered, that they shall each be responsible for payment of one-half of certain costs related to their minor children's college education, specifically stating:

> That both parties shall be responsible for one-half (1/2) of the costs of a college education for the minor children in an amount not to exceed that of the cost of a

> public in-state college or university plus campus room and board together with any other charges payable directly to the institution. (R.E. 37 ¶ 9)

David's belief is that this obligation is binding upon the parties until the child for whom they are paying becomes emancipated, at which time he can continue to contribute but should not be legally compelled to do so. Following testimony on this issue the Chancellor determined that the obligation continues after the children emancipate, ending instead upon the child's completion of their respective undergraduate degree.

The appellate courts have previously addressed cases such as this. The general rule has been that the court cannot order parents to support their children past the age of twenty-one. *Nichols v. Tedder,* 547 So.2d 766, 770 (Miss.1989). However, this holding was qualified by the following: "Of course, nothing we have said should be interpreted as foreclosing the enforceability of agreements by the parties providing for the post-emancipation care and maintenance of their children, whether those agreements are separate contracts, or have been incorporated into the divorce decree." Id.

Since *Nichols* the Courts have been called upon to review this issue and in their review have focused on whether the Chancellor properly divined the intent of the parties. In the case presently before the Court, however, the Chancellor fails to look at the intent of the parties and instead focuses only on what the language of the parties' agreement, specifically what parties failed to include in their agreement. In explaining her ruling the Chancellor states her belief that if "the parties agree to pay half of college tuition unless they specifically say until the children reach 21, it means one-half of college tuition." (R.E. 25, Tr. 125) It is her failure to recognize the intent of the parties that causes the Chancellor's error as to this issue.

The parties had, by their own actions, already expressed how their intent regarding the limits of this provision. In his uncontested testimony David explains that when their oldest child reached the age of 21 he discontinued payment for her on-campus housing and Joan raised no

objection to his actions. (Tr. 9 & 11) In their agreement the parties specifically defined the obligation as being owed on behalf of their "minor" children and through their actions indicate their intent this obligation apply only during the term of their children's minority.

In her interpretation of the parties' agreement related to the payment of their children's college expenses the Chancellor's failure to consider the parties' intentions is manifest error and should be reversed.

4) The Chancellor's award of attorney's fees was error

It is axiomatic in Mississippi that an award of attorney's fees is largely left to the sound discretion of our Chancellors. *Gray v. Gray*, 745 So.2d 234 (¶ 26) (Miss. 1999). However, where a divorced party is bound to comply with a previously issued valid court decree, "[t]he dignity and strength of the Court through the enforcement of its decrees require nothing less" than full and complete compliance. *Pearson v. Hatcher*, 279 So.2d 654, 656 (Miss. 1973). Furthermore, where the party responsible for compliance with the previous decree forces new litigation to be filed in order to gain the party's compliance, an award of attorney's fees is appropriate. *Johnson v. Pogue*, 716 So.2d 1123 (¶ 44) (Miss.Ct.App.1998) (denying an award of attorney's fees but outlining both the general rule regarding an award of attorney's fees and the law regarding an award of attorney's fees in contempt actions). However In order to award attorney's fees in a contempt matter, the trial court must first consider if there was a willful violation of the court's order. *See Purvis v. Purvis,* 657 So.2d 794, 796-97 (Miss.1994)

As stated above, the Chancellor's citation of David was error, and so it necessarily follows that any award of attorney's fees based upon such a citation is error and should be reversed. *Moses v. Moses*, 879 So.2d 1036, 1041 (¶21-22) But regardless of whether this

Court sets aside either or both of the Chancellor's contempt citations, David's actions were not willful violations of the Court's Orders and therefor the Chancellor's award of attorney fees was improper.

Similar to *Douglas v. Douglas*, 766 So.2d 68 (Miss.Ct.App. 2000), any failures by David to comply with the Chancery Court's orders are overshadowed by his attempts, though ineffectual, to comply with those orders. As to the non-payment of child support, although he did not pay the January, 2014 child support payment, he had already assigned over his "seized" tax refund monies to be applied towards the January payment. Furthermore, upon learning that the application of his tax refund would be delayed, David paid an additional payment so as to satisfy any child support arrearage before any contempt action could be initiated.

Should this Court determine that David was responsible to "implement" the Chancery Court's Wage Withholding Order, it is uncontested to he took affirmative steps to deliver a copy of the Order to his employer and requested his employer implement the Order.

David's actions, although arguably ineffectual, clearly indicate his intent to comply with the orders of the Chancery Court, and any perceived non-compliance with those orders was obviously not willful. For these reasons the Chancellor's award of attorney's fees to Joan was error and should be reversed and rendered.

CONCLUSION

The Chancellor's rulings were manifestly wrong as stated above and should be reversed and rendered as requested.

This the 26th day of July, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that I have, this day, served a true and correct copy of the foregoing Brief to the following:

- Chancellor Vicki B. Daniels via Hand Delivery
- A.E. (Rusty) Harlow, Jr. via MEC pursuant with Sec.3 (F) of the Appellate E-Filing Administrative Procedures.

So Certified this the 26th day of July, 2016.

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