IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JERRY CHRISTOPHER COLLADO **APPELLANT**

VS. **NO. 2017-CA-01644-COA**

JENNIFER JORDAN COLLADO **APPELLEE**

ON APPEAL FROM THE CHANCERY COURT
OF RANKIN COUNTY, MISSISSIPPI

BRIEF OF APPELLANT
(ORAL ARGUMENT NOT REQUESTED)

Heather M. Aby, Esq. (MSB #100749)
Lalor Bailey & Aby, PLLC
2506 Lakeland Drive, Suite 203
Jackson, Mississippi 39232
haby@lalorbaileyaby.com
Telephone: (601) 714-1151
Facsimile: (601) 326-9747
COUNSEL FOR APPELLANT

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JERRY CHRISTOPHER COLLADO **APPELLANT**

VS. **NO. 2017-CA-01644-COA**

JENNIFER JORDAN COLLADO (TYNDALL) **APPELLEE**

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal:

Jerry Christopher Collado, Appellant

Heather M. Aby, Counsel for Appellant

Jennifer Jordan Collado (Tyndall), Appellee

Gary Lee Williams, Counsel for Appellee

Honorable John C. McLaurin, Jr., Chancellor

Honorable Haydn Roberts, Chancellor

/s/ Heather M. Aby

Heather M. Aby, Esq. (MSB #100749)
Lalor Bailey & Aby, PLLC
2506 Lakeland Drive, Suite 203
Jackson, Mississippi 39232
haby@lalorbaileyaby.com
Telephone: (601) 714-1151
Facsimile: (601) 326-9747
COUNSEL FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ORAL ARGUMENT

ORAL ARGUMENT NOT REQUESTED

STATEMENT OF THE ISSUE ON APPEAL

Whether the lower court erred in assessing payment of private school tuition to Appellant when an agreement no longer existed for payment of said tuition, all in contravention to the *Child Custody and Property Settlement Agreement*.

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition.

On May 19, 2016, a *Judgment of Divorce on Irreconcilable Differences* ("Judgment of Divorce") was entered by the Rankin County Chancery Court in this matter. (RE. 2). Incorporated into the *Judgment of Divorce* was a *Child Custody and Property Settlement Agreement* which set forth the parties' complete agreement on all marital, child custody and financial matters. ("CCPSA"). (RE. 2).

On March 14, 2017, Jennifer Jordan Collado (Tyndall) ("Jennifer") filed a *Petition for Modification of Former Judgment of Divorce and Other Relief* with the Rankin County Chancery Court. (R. 41-45). Thereafter, on March 30, 2017, Jennifer filed a *Verified Petition for Emergency Relief* wherein she sought the lower court's intervention with regard to tuition at Park Place Christian Academy – a private school located in Rankin County, Mississippi. (R. 47-50). The request for emergent relief was denied on April 6, 2017. (R. 51). On July 24, 2017, Jerry Christopher Collado ("Chris") filed an *Answer to Petition for Modification of Former Judgment of Divorce and Other Relief and Counter Complaint for Modification, Contempt and Other Relief*. (R. 52-57).

On August 11, 2017, the Rankin County Chancery Court entered a *Judgment* in

this matter ordering Chris to continue payment of private school tuition for the minor children of the parties until graduation from high school. (R. 59-62). Post-trial motions were filed on behalf of Jennifer and Chris (R. 64-66 and *Supplement to Record Document #88* ("Rec. Supp."). The lower court denied Chris' request for reconsideration. Aggrieved, Chris appeals to this Court.

II. Statement of Relevant Facts.

On May 19, 2016 the parties were divorced of and from each other by the Rankin County Chancery Court. (RE. 2, [1]R. 19-40). The *Judgment of Divorce* and all provisions of the *CCPSA* were agreed to by and between the parties. *Id.* Of the marriage four (4) children were born, namely: D.S.C., a male born on January 20, 2001; K.N.C., a male born on August 24, 2003; R.A.C., a male born on May 17, 2005 and L.I.C., a female born on February 14, 2009. *Id.*

The *CCPSA* provided as follows with regard to payment of *private school education*:

> Husband agrees to pay for the minor children's private school education, *so long as the parties jointly agree for the children to be enrolled in private school*, including tuition and registration fees, continuing through each child obtained a high school diploma. Husband agrees to pay unto Wife $250.00 per child each year for the purchase of school clothes and uniforms. Said monies shall be paid in equal installments with one-half being due and payable on July 1st and the other half being due and payable on December 1st each and every year.

(RE. 2, R. 30). (Emphasis supplied).

The parties further agreed the *CCPSA* was a full and final settlement and

[1] Both Jennifer and Chris were represented by legal counsel at the time the contracts were validly executed.

embodied their entire agreement:

> The agreement constitutes the entire agreement between the parties and each party acknowledges that there are no further agreements or items of consideration not expressly included herein each party represents and acknowledges that he or she has fully read this agreement, consulted with each other, carefully considered it and executed this agreement after consultation freely and voluntarily with out force or coercion by either party or any third party and that each party sign this agreement with full knowledge of their individual rights, obligations and responsibilities. This agreement shall stop and preclude either party from making other or further demands and claims upon the other not included herein, except that such legal action may be taken by either party as is necessary to enforce the terms and provisions hereof.

(RE. 2, R. 38).

In the spring of 2017 Chris exercised his right pursuant to the CCPSA to *no longer* agree to payment of private school tuition for all of the minor children:

> Q: Well, what happened between May 19, 2016 and March 14, 2017 that would make you file a Petition to ask him to pay for the private school expenses of the minor children?
>
> A: In about February he told me that he was no longer going to pay for all four children to go to private school, even though he'd been paying that – paying for private school for them since Dante was in preschool, so 16 years; and he only wanted to pay for two children, and he felt like the younger two children would be fine to go to public school.
>
> **THE COURT:** Let me ask you this: Is the tuition that he's paying in addition to the child support that he's paying?
>
> **THE WITNESS:** Yes.

(TR. 97).[2]

None of the four (4) minor children suffer from any learning disabilities, nor do they receive any special education services. *Id.*

> Q: So all of your children have fully ability to learn?
>
> A: Yes. They've very smart.
>
> Q: And so they can attend a public school and learn in that setting as well. Correct?
>
> A: They would leave at public school, I'm sure, yes.
>
> Q: Okay. And although you like Park Place, there is no – there is no necessary educational need that is met by that school versus a public school.
>
> A: No. Just a preference.

(TR. 118: 9-20).[3]

Private school is a preference for the parties. A preference for their children *if they agreed* to it. As such, it was important to Chris that an option be available in the event he could not pay the private tuition:

> A: I had every good intention to do everything I could to provide as much tuition as I could. I mean, I wasn't sure whether or not it would work out, which is why we put in the divorce settlement that if we agreed to do so, because I relied on Jenn's income to help pay the cost for school and so I wasn't sure how things were going to pan out six months or a year from that point.

(TR. 172:16-24).[4] Chris elected to no longer agree to Park Place Christian Academy. (TR. 180:24-181:5).

[2] Direct examination of Jennifer Tyndall ("Jennifer").
[3] Cross examination of Jennifer Tyndall ("Jennifer").
[4] Cross examination of Christopher Collado ("Chris").

Following all testimony and evidence the lower court modified the *CCPSA* and ordered Chris responsible for payment of private school tuition at Park Place Christian Academy. (TR. 273:10-19, RE. 3,R. 59-62). The lower court specifically held:

> Payment of Private School. Park Place Christian Academy is where the minor children go to school and have been going to school. During their attendance, Chris has been paying their tuition. Chris contends that he is not financially able to afford the children's tuition. The figures don't agree with that contention. In the past year, Chris has bought a house, which will result in mortgage interest education and resulting in higher tax refund than he already gets. The Court finds that Chris is not burdened by the tuition and Chris shall continue to pay for all four (4) minor children to attend Park Place Christian Academy until graduation.

(R. 61). The lower court thereafter denied Chris' request for reconsideration of the issue of payment of private school tuition. The lower court's modification of a clear and unambiguous provision in a contract is ripe for appeal to this Court.

SUMMARY OF THE ARGUMENT

The lower court erred as a matter of law by modifying a clear and unambiguous provision of a child custody and property settlement agreement. Rather than stopping with the four-corners of the provision regarding payment of private school tuition the court wrongly considered extrinsic evidence. Accordingly, the Appellant requests the Court to reverse and render.

ARGUMENT

I. Standard of Review

The scope of review in domestic relations matters is limited, and the appellate court will not disturb the chancellor's findings *of fact* unless the findings were

"manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Crow v. Crow*, 622 So. 2d 1226, 1227 (Miss. 13). *Questions of law*, however, are reviewed *de novo*. When a lower court "misperceives the correct legal standard to be applied" the appellate courts do not give deference to the findings of the trial court because the error becomes one of law, not fact. *Brooks v. Brooks*, 652 So. 2d 1113, 1117 (Miss. 1995). If warranted, the lower court will be reversed upon review "because of an erroneous interpretation or application of law." *Id.* The standard of review in this case is *de novo*, because the issue presented is one of law and not of fact. The lower court erred in considering extrinsic evidence and modifying a clear and unambiguous provision of the *CCPSA*.

II. The lower court erred in modifying the Child Custody and Property Settlement Agreement in contravention to the agreement of the parties.

The lower court erred as a matter of law by modifying the *CCPSA* which was incorporated into the *Judgment of Divorce*. Mississippi jurisprudence is clear as to property settlement agreements – such agreements must be interpreted like any other contract.

"Property settlement agreements are contractual obligations." *In re Estate of Hodges*, 807 So. 2d 438, 442 (Miss. 2002). "The provisions of a property settlement agreement executed prior to the dissolution of marriage must be interpreted by courts as any other contract." *West v. West*, 891 So. 2d 203 (Miss. 2004) (citing *In re Estate of Hodges*, 807 So. 2d at 442). In *East v. East*, the Mississippi Supreme Court importantly held that "*[a] true and genuine property settlement agreement is no different from any other contract, and the mere fact that it is between a divorcing husband and wife, and*

incorporated in a divorce decree, does not change its character." 493 So. 2d 927, 931-32 (Miss. 1986). (Emphasis supplied).

The *West* Court reiterated Mississippi's three-tiered process when interpreting contracts – such as the *CCPSA* in the instant matter:

> *First*, we look to the "four corners" of the agreement and review the actual language the parties used in their agreement. *Pursue Entergy Corp. v. Perkins*, 558 So, 2d 349, 352 (Miss. 1990). *When the language of the contract is clear or unambiguous, we must effectuate the parties' intent. Id.* However, if the language of the contract is not so clear, we will, if possible, "harmonize the provisions in accord with the parties' apparent intent." *Id*.
>
> *Next*, if the parties' intent remains uncertain, we may discretionarily employ canons of contract construction. *Id.* at 352-53 (citing numerous cases delineating various canons of contract construction employed in Mississippi). *Finally*, we may also consider parol or extrinsic evidence if necessary. *Id.* at 353.

West, 891 So. 2d at 210-11. (Emphasis supplied).

In the instant matter, the lower court erred in modifying the *CCPSA* as a matter of law. The lower court did not stop its review at the four-corners of the contract itself. Instead, the court erred in considering extrinsic evidence, such as Chris' financial capabilities. There was no ambiguity or even the hint of fraud present before the court. No justification existed to warrant a modification of payment of *private school tuition* from *as agreed* to *until graduation*.

Chris' income was not relevant. Chris' 8.05 financial affidavit was not relevant. Jennifer's preference that the minor children attend a Christian school was not even relevant. What was relevant and of the upmost import was the *CCPSA* which was clear and concise as to payment of private school tuition: "Husband agrees to pay for the

minor children's private school education, so long as the parties jointly agree for the children to be enrolled in private school, including tuition and registration fees, continuing through each child obtained a high school diploma."

The Court in *Speed v. Speed* rightly held:

> In property and financial matters between the divorcing spouses themselves, there is no question, that absent fraud or overreaching, the parties should be allowed broad latitude. *When the parties have reached an agreement and the chancery court has approved it, we ought to enforce it and take a dim view of efforts to modify it, as we ordinarily do when persons seek relief from their improvident contract.*

757 So. 2d 221, 224-25 (Miss. 2000). (Emphasis supplied). Such a dim view of the lower court's modification of a valid contract provision should now be taken by this Court. Reversal of the lower court's *Judgment* is ripe for consideration by this Court.

CONCLUSION

On May 19, 2016 the parties were divorced of and from each other and executed a child custody and property settlement agreement that was clear, concise and unambiguous as to payment of private school tuition. Such tuition would be paid by Appellant, Christopher Collado, so long as their existed a *joint agreement* for the minor children to continue in private school. Once Christopher Collado objected, his obligation to pay private school tuition ceased as a *matter of contractual law*. The lower court erred in modifying the *CCPSA* and ordering Christopher Collado to pay private school tuition until such time as the minor children graduated from high school. Accordingly, Christopher Collado respectfully requests this Court reverse and render in this matter.

CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that this day a true and correct copy of the foregoing *Brief* has been delivered to all counsel of record via MEC as well as to Honorable John C. McLaurin, Jr. via email.

So dated, this the 10th day of September, 2018.

Heather M. Aby

Counsel for Appellant Jerry Christopher Collado