

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-00815-COA

RANDALL LEVERETT

APPELLANT

v.

SUN WOOTERS LEVERETT

APPELLEE

DATE OF JUDGMENT: 03/06/2019
TRIAL JUDGE: HON. JACQUELINE ESTES MASK
COURT FROM WHICH APPEALED: MONROE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT: BRIAN LEE STARLING
ATTORNEY FOR APPELLEE: MICHAEL LEE DULANEY
NATURE OF THE CASE: CIVIL - WILLS, TRUSTS, AND ESTATES
DISPOSITION: AFFIRMED - 12/08/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE BARNES, C.J., GREENLEE AND WESTBROOKS, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. Randall Leverett appeals from the final judgment of the Monroe County Chancery Court holding him in contempt and awarding his ex-wife, Sun Leverett, a monetary judgment of \$54,667.03. On appeal, Randall argues that the chancellor erroneously (1) ordered him to reimburse Sun for half the costs associated with an automobile purchased for the parties' son and (2) offset the amount of his unpaid obligations and expenses with the payments Sun owed him for his shares in the parties' jointly owned business. Finding no error, we affirm the chancellor's judgment.

FACTS

¶2. In 2012, the chancellor entered a final judgment that granted the parties an

irreconcilable-differences divorce and incorporated their agreement as to the issues of child custody, child support, and property settlement. Relevant to this appeal, the divorce agreement awarded Sun sole physical custody of the parties' minor son, awarded the parties joint legal custody, and ordered Randall to pay \$200 per month in child support until his son's emancipation. The agreement also provided that five certificates of deposit (CDs), each worth \$5,000, would be used exclusively for the son's college expenses. The agreement further stated that each party would be responsible for half of the son's high-school, college, and extracurricular expenses. Upon their son turning sixteen and obtaining a driver's license, each party agreed to pay half of his automobile expenses. Finally, with regard to the parties' jointly owned business, Best Bargain Factory Direct Furniture (Best Bargain), the agreement provided for Sun to make monthly payments to Randall to purchase his shares of the business.

¶3. On June 26, 2018, Sun filed a complaint for contempt against Randall and alleged that since their divorce, he had "willfully and contumaciously refused to pay his percentage of medical bills, school expenses, extracurricular expenses, automobile cost[s,] and insurance premiums associated with" their son. Sun also asserted that Randall had cashed out the CDs worth \$25,000 that were to be held exclusively for their son's college expenses. Sun requested that the chancellor hold Randall in contempt and award her the attorney's fees and related costs she incurred in raising the contempt matter.

¶4. Randall answered Sun's motion for contempt and filed a counter-complaint for contempt and for modification of the divorce judgment. Randall admitted that he had

improperly withdrawn the CDs, but he asserted that Sun had also failed to comply with certain portions of the parties' divorce agreement. Relevant to this appeal, Randall alleged that Sun had purchased a new automobile for the parties' son without first consulting him. In addition to arguing that Sun should be held in contempt, Randall requested a modification of the divorce judgment. Randall asserted that a material change in circumstances had occurred because the parties' son had enrolled in college and now lived on campus. Due to this alleged material change, Randall argued that he should receive joint physical custody of the parties' son and that his child-support obligation should be terminated.

¶5. The chancellor held a January 23, 2019 hearing on the parties' motions. Following the hearing, the chancellor entered her final judgment on February 15, 2019. The chancellor first discussed the contempt issues Sun had asserted against Randall. At the hearing, Randall acknowledged that he had violated the chancellor's prior order by withdrawing the \$25,000 in CDs that were intended solely for his son's college expenses. Based on Randall's admission, the chancellor held Randall in contempt for the misappropriation of the funds. The chancellor awarded Sun a judgment of \$30,592.45 for the principal and interest of the CDs, with interest to accrue on the judgment at a rate of eight percent per year.

¶6. With regard to the son's medical, high-school/college, and extracurricular expenses for which Sun sought reimbursement, the chancellor found that Sun had not submitted the expenses to Randall since 2014. As a result, the chancellor held that Randall was not in contempt for his failure to pay these expenses. Nevertheless, the chancellor found that Randall now owed Sun reimbursement for these expenses incurred on behalf of the parties'

son. The chancellor therefore ordered Randall to reimburse Sun for the following amounts: \$1,237.24 for medical expenses; \$5,333.99 for high-school/college expenses; and \$967.73 for extracurricular expenses.

¶7. Sun also sought reimbursement for repairs to a 2007 Jeep Patriot and for the purchase of a 2017 Honda Accord. At the hearing, Sun testified that the Jeep Patriot belonged to her and her second husband and was registered in her name. Sun testified, however, that her son was allowed to drive the vehicle while he was in high school. Sun stated that she began to worry about her son's safety and the Jeep Patriot's reliability as the vehicle neared 150,000 miles and increasingly required repairs. Based on her concerns, Sun purchased the Honda Accord in 2018 for her son to drive when he went to college. Sun testified that the Honda Accord was the only vehicle she had ever purchased for her son. Sun submitted to the chancellor the expenses she incurred for the Honda Accord's purchase and registration. Although she had registered the Honda Accord in her name for insurance purposes, Sun stated that she had no issue with placing the vehicle's title in her son's name.

¶8. Pursuant to their divorce agreement, the parties had agreed to evenly split their son's automobile expenses once he turned sixteen and obtained his driver's license. As with many of the other expenses raised in her contempt motion, Sun acknowledged at the hearing that the parties had not exchanged any information regarding their son's automobile expenses since 2014. Even though Randall denied receiving any prior notice about the purchase of the Honda Accord, he acknowledged at trial that he had thereafter learned about the purchase. In addition to Randall's admission that he knew an automobile had been purchased for his

son's use, the chancellor found that "Randall was aware the child had attained age 16 and that expenses were being incurred for the child's automobile." The chancellor therefore determined that "Randall's noncompliance regarding the purchase of the [Honda Accord] automobile in 2018 [wa]s willful, but his failure to reimburse the repairs to the Jeep [Patriot] and the registration [for the Honda Accord were] not willful." Without explicitly finding that Randall was in contempt of the divorce agreement, the chancellor ordered Randall to reimburse Sun \$11,860.62, which encompassed the expenses for the repairs to the Jeep Patriot and the purchase and registration of the Honda Accord.

¶9. Sun also submitted proof that Randall had failed to pay his \$200 monthly child-support obligation from September 2018 through January 2019. Indeed, Randall admitted at the hearing that he had not paid child support since September 2018. Randall asserted that he had stopped paying child support because the parties' son had stopped visiting him. Randall admitted, however, that his son's lapse in visitation coincided with the revelation that Randall had improperly withdrawn the CDs intended for his son's college expenses. After finding that Randall had willfully failed to pay child support, the chancellor awarded Sun a judgment for \$1,000 in past-due child support. The chancellor also awarded Sun \$3,675 for reasonable attorney's fees and expenses incurred in filing the contempt action.

¶10. In total, the chancellor awarded Sun a monetary judgment of \$54,667.03 against Randall for all the unpaid expenses and obligations he owed her, with the interest rate on the judgment to accrue at eight percent per year until satisfied. In a subsequent order amending the final judgment, the chancellor imposed a judicial lien on "any sums due Randall in this

cause for the purpose of satisfying the aforesaid judgment.” At the hearing, Randall testified that he did not have the current financial means to repay the principal of the CDs, much less any additional monetary award rendered against him. In response to questions from both Sun’s attorney and the chancellor, Randall agreed that he was willing for the amount he owed Sun to be offset by her payments owed to him for his shares in Best Bargain. As a result, the chancellor’s final judgment provided for the total sum that Sun owed Randall for his shares in Best Bargain to be set off against the monetary judgment Randall owed Sun. The chancellor gave Sun fourteen days to file an itemization of the “application of the funds owed by her to Randall regarding Best Bargain which are set off against the sum owed to her by Randall.” The chancellor stated that the remaining balance Randall owed Sun would then “be fulfilled by Sun’s withholding monthly stock payments until the net balance is satisfied.” The chancellor ordered Sun to file a supplemental itemization within fourteen days after the remaining balance Randall owed her had been satisfied.

¶11. To address the issue of the parties’ son’s ongoing college expenses, the chancellor ordered Sun to satisfy those expenses and to provide Randall with an accounting of college expenses at the end of each semester until she had expended \$30,592.45 (the principal and interest for the misappropriated CDs). The chancellor ordered that after attaining that amount, the parties would each pay one-half of their son’s college expenses going forward until the obligation terminated as set forth in their divorce judgment.

¶12. The chancellor next considered Randall’s contempt motion against Sun and his request to modify child custody and to terminate his child-support obligation. After finding

that Randall had presented insufficient proof to establish that Sun was in willful contempt of the divorce agreement, the chancellor denied each of Randall's requests. The chancellor further concluded that no material change in circumstances had occurred to warrant the modification of child custody or the termination of Randall's child-support obligation.

¶13. Randall's subsequently filed motion for reconsideration sought the correction of an alleged error in the chancellor's judgment and a stay in the judgment's enforcement. On April 1, 2019, the chancellor entered an order to dismiss Randall's motion. The chancellor noted in her order that neither the parties nor their attorneys had appeared for the scheduled hearing on Randall's motion and that Randall had filed no proof of notice to Sun about the hearing. Aggrieved, Randall appeals from the chancellor's final judgment, the order amending the final judgment, and the dismissal of his motion for reconsideration.

STANDARD OF REVIEW

¶14. "This Court will not disturb a chancellor's judgment when it is supported by substantial credible evidence unless the chancellor abused [her] discretion, was manifestly wrong or clearly erroneous, or applied an erroneous legal standard." *Gilmer v. Gilmer*, 297 So. 3d 324, 331 (¶13) (Miss. Ct. App. 2020) (quoting *Branch v. Branch*, 174 So. 3d 932, 937 (¶9) (Miss. Ct. App. 2015)). We review questions of law de novo. *Id.*

DISCUSSION

I. Automobile Expenses

¶15. Randall argues the divorce agreement only directed the parties to evenly split the costs of one vehicle for their son and did not order the division of costs for any subsequent

vehicles. In addition, Randall asserts that Sun purchased the Honda Accord for their son without ever consulting him and without requesting any reimbursement. As a result, Randall claims the chancellor erred by ordering him to reimburse Sun for half the costs associated with the purchase of the Honda Accord.

¶16. Despite Randall's claims, a plain reading of the parties' divorce agreement fails to support his assertions about the costs related to a subsequently purchased automobile. In relevant part, the parties' divorce agreement stated the following:

Each party shall be responsible for one-half (1/2) of the costs of an automobile for the minor child upon the age of sixteen (16) years and [provided the minor child has] . . . obtained a valid driver's license, and each party shall be responsible for one-half (1/2) of the costs of any and all maintenance, repairs, tags, insurance, inspection stickers, etc. provided that the minor child maintains his driver's license and a clean driver's record with no more than one moving violation within a 12-month period.

Thus, while the divorce agreement provided for the division of costs for *an* automobile, the plain language of the agreement never dictated that the son had to drive the same vehicle for the duration of the obligation.

¶17. Furthermore, Sun presented evidence at the hearing that her son's safety necessitated the purchase of the Honda Accord. Sun testified that while her son attended high school, she allowed him to drive a vehicle (the Jeep Patriot) registered in her name and belonging to her and her second husband. As the Jeep Patriot started to require an increasing number of repairs and the time neared for her son to leave for college, Sun began to contemplate purchasing a more reliable vehicle for him to drive. As a result, Sun purchased the Honda Accord, which she testified was the only vehicle ever purchased on behalf of her son.

¶18. Sun admitted that she did not communicate with Randall prior to the purchase of the Honda Accord, but she stated that she thought the parties' son had done so. For his part, Randall testified that he was unaware of the automobile purchase until his son showed up with the new vehicle. Regardless of the lack of communication prior to the automobile's purchase, however, the chancellor found that following the purchase, Randall was well aware his son was sixteen years or older, possessed a valid driver's license, and had acquired a new automobile. Thus, the chancellor determined that Randall had an obligation to reimburse Sun for half the cost of the Honda Accord once he became aware that the vehicle had been purchased for the use of the parties' son. Because substantial credible evidence supports the chancellor's finding that under the terms of the divorce agreement Randall owed Sun reimbursement for the Honda Accord purchased on behalf of their son, we find this assignment of error lacks merit.

II. Judgment Offset

¶19. Randall next challenges the chancellor's decision to offset the unpaid obligations and expenses he owed Sun with the payments she owed him for his shares in Best Bargain. Randall contends that Best Bargain is a separate legal entity never made a party to the current litigation, and he therefore argues the chancellor erred by offsetting his personal obligations to Sun with the sums owed to him by Best Bargain. Randall failed to raise this issue before the chancellor, and as this Court has previously explained:

It is well-settled that issues presented for the first time on appeal are procedurally barred from consideration. One of the most fundamental and long established rules of law in Mississippi is that an appellate court will not review matters on appeal that were not raised at the trial court level.

Hoffman v. Hoffman, 270 So. 3d 1121, 1128 (¶32) (Miss. Ct. App. 2018) (citations and internal quotation marks omitted).

¶20. In addition to the procedural bar, we note that during the hearing Randall acknowledged his willingness to allow his obligations to Sun to be offset by the monthly payments she made to him under the divorce agreement. Randall raised no objection to the proposed solution, and in response to questions both from Sun’s attorney and the chancellor, he clarified that he was indeed willing for the chancellor to offset his obligations with the sums payable to him for his shares in Best Bargain. In addition, Randall explained to the chancellor that he had a poor credit rating, was in “dire straits” financially, and could not repay the amount of the CDs he had improperly withdrawn, much less any additional judgment rendered against him.

¶21. Based on Randall’s own admissions before the chancellor, as well as his failure to raise this issue prior to appeal, we decline to reverse the chancellor’s decision to offset the amount he owed to Sun with the payments she made to him for his shares in Best Bargain.

CONCLUSION

¶22. Because we conclude that substantial credible evidence supported the chancellor’s findings and that the chancellor neither abused her discretion nor manifestly erred, we affirm the chancellor’s judgment.

¶23. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, McDONALD, LAWRENCE AND McCARTY, JJ., CONCUR.