IN THE COURT OF APPEALS11/12/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01228 COA

SONDRA DENISE BROWN, BY AND THROUGH HER MOTHER AND NEXT FRIEND, MARY MIERS BROWN

APPELLANT

v.

FRED LEE MCMATH

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MELVIN MCCLURE

COURT FROM WHICH APPEALED: GRENADA COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

LEON JOHNSON

ATTORNEYS FOR APPELLEE:

A. E. (GENE) HARLOW SR.

BENJAMIN MACK MITCHELL

NATURE OF THE CASE: DOMESTIC RELATIONS - CHILD SUPPORT

TRIAL COURT DISPOSITION: CHILD SUPPORT AND COLLEGE EXPENSES TERMINATED AT AGE 18

BEFORE BRIDGES, P.J., BARBER, AND MCMILLIN, JJ.

BRIDGES, P.J., FOR THE COURT:

This is a domestic relations case. The Chancery Court of Grenada County terminated child support and medical care of an eighteen-year-old minor. The Appellant argues the court was manifestly wrong, and the termination was against public policy because parents cannot contract away a minor's child support before age twenty-one. The Appellee argues that this was a court ordered disposition of a paternity claim, not a contract between the two parties to terminate child support before the minor child's twenty-first birthday, and therefore the court lawfully ended child support. We agree with the Appellant and reverse the chancery court's decision terminating child support because child support may not be extinguished before a child's twenty-first birthday pursuant to Mississippi Code, sections 93-5-23 and 93-11-65.

STATEMENT OF THE FACTS

Sondra Denise Brown was born to Mary Miers Brown on August 24, 1972. On December 15, 1986, a complaint to establish paternity was filed in the Chancery Court of Grenada County naming Appellee, Fred Lee McMath, as Sondra's natural father.

A decree of paternity and support was entered by the court on March 16, 1987. The decree adjudicated Fred McMath as the natural father of Sondra, and Mary Miers Brown to be the natural mother. The decree ordered both parents to carry Sondra on their insurance policies and any extra medical expenses to be covered equally. It provided that Mr. McMath pay the sum of $35 per week until Sondra "attains the age of eighteen years and finishes high school, ceases to be dependant upon her parents for support, or becomes emancipated." The decree further provided that should the requirements of *Pass v. Pass* be met, then Mr. McMath should be required to contribute to the college education of Sondra.

Sondra finished high school in May 1990. She turned eighteen on August 24, 1990, at which time Mr. McMath stopped making child support payments pursuant to the paternity order. Sondra began college in September 1990 on full academic scholarship.

Ms. Brown, the Appellant, filed a complaint for citation for contempt and for modification on October 8, 1992. The complaint was heard April 7, 1993, with a decision rendered on July 9, 1993. The court denied the Appellant relief stating that the filiation decree controlled, ending all child support, health insurance coverage, and medical bills at the age of eighteen. As to modification of the support, which asked the Appellee to contribute to the college education of Sondra, the court ruled that the Appellant had failed to prove her case.

SCOPE OF REVIEW

This Court has a limited scope of review concerning the chancellor's decision regarding matters of child support. We are without authority to disturb the chancellor's decision unless we determine that there has been a manifest abuse of discretion or an erroneous application of law. *Ethridge v. Ethridge*, 648 So. 2d 1143, 1145-46 (Miss. 1995). Findings of facts will be affirmed where there is substantial evidence in the record to support the chancellor's findings, and absent manifest error, this

Court will not reverse. *Gebetsberger v. East*, 627 So. 2d 823, 826 (Miss. 1993); *Bank of Mississippi v. Hollingsworth*, 609 So. 2d 422, 424 (Miss. 1992) (citations omitted).

ARGUMENTS AND DISCUSSION OF THE LAW

I. DID THE LOWER COURT ERR IN TERMINATING CHILD SUPPORT FOR THE BENEFIT OF THE MINOR CHILD AT AGE EIGHTEEN?

Twenty-one is the age of majority in Mississippi for purposes of child care and maintenance orders issued pursuant to the Mississippi Code, sections 93-5-23 and 93-11-65. Parents cannot contract away rights vested in minor children, such as child support, because such a contract is against public policy. Miss. Code Ann. § 93-5-2 (1972). The exception to this rule is the paternity *settlement* action. *Atwood v. Hicks ex rel. Hicks*, 538 So. 2d 404, 406 (Miss. 1989); *Lawrence v. Lawrence*, 574 So. 2d 1376, 1381 (Miss. 1991).

We find Appellee's reliance on *Atwood* to be misplaced. To understand our reasoning, it is necessary to discuss the difference between a *paternity settlement* and a *paternity adjudication.* The Mississippi Uniform Law On Paternity provides that "an agreement of settlement with the alleged father is binding only when approved by the court." Miss. Code Ann. § 93-9-49 (1972); *Atwood*, 538 So. 2d at 407. If the settlement is approved by the chancellor, no subsequent action may be brought upon the claims so compromised. In a paternity settlement action, the alleged parent is agreeing to provide some measure of support without admitting paternity. If the matter is tried, however, an adjudication of support can only arise upon proof that the defendant is the natural parent. A settlement in a case where the issue of paternity is doubtful may recommend itself due to the possibility that, if the matter proceeded to trial, and adverse decision on the paternity issue would deprive the child of any support. Thus, assuring the child of receiving some measure of support, though unquestionably something less than what the law otherwise requires, may be in the child's best interest.

On the other hand, paternity *adjudication* acts to establish a natural parent. Because the adjudicated parent is now seen as the natural parent, he or she is responsible for that child as any other natural parent would be until the child reaches twenty-one. Miss. Code Ann. §§ 93-5-23, 93-11-65 (1972). As we have observed, in this case, it is beyond the authority of the parents to contract away any part of the child's right to support. It is, likewise, beyond the authority of the chancellor to arbitrarily terminate support obligations before the child reaches majority or is otherwise emancipated. *Id.* § 93-9-7; *Jones v. Chandler*, 592 So. 2d 966, 975 (Miss. 1991).

In the case at hand, the court *adjudicated* that Fred McMath was the natural father, but the court allowed McMath's parental responsibility to end when Sondra reached eighteen. The court's decree dated February 27, 1987, stated:

McMath shall pay the sum of $35 per week, commencing with the date of the decree and continuing thereafter until Sondra Denise Brown shall attain the age of 18 years, and finishes high school, ceases to be dependant upon her parents for support, or becomes emancipated.

Since this is a court *adjudication* and not a *settlement*, the chancellor had no discretion to limit Sondra's child support in this manner. All rights of child support are vested in Sondra, and McMath, as the natural father, is responsible for his daughter's support until her twenty-first birthday. Because it is against public policy to limit child support before the child reaches twenty-one, we find that the chancellor was in error, and child support should continue until Sondra reaches the age of twenty-one.

II. DID THE LOWER COURT ERR BY NOT MODIFYING THE SUPPORT DECREE TO INCLUDE COLLEGE EXPENSES?

Though college expenses are not technically "child support," a parent may be ordered by the court to pay them. *Lawrence v. Lawrence*, 574 So. 2d 1376,1382 (Miss. 1991); *Wray v. Langston*, 380 So. 2d 1262, 1264 (Miss. 1980). In the case of *Pass v. Pass*, the court held that when the father's financial ability is ample to provide a college education, and the child shows an aptitude for such, the court may in its discretion, after conducting a hearing, require the father to provide such education. Yet, the parental duty to send a child to college is not absolute, however, but is dependent upon the proof and the circumstances of each case. *Boleware v. Boleware*, 450 So. 2d 92, 93 (Miss. 1984)*; see Pass v. Pass*, 118 So. 2d 769, 771 (Miss. 1960).

In order to prove that a parent is responsible for college expenses, the Appellant must prove the factors set out in *Pass v. Pass* and its later progeny, *Rankin v. Bobo*, and *Hambrick v. Prestwood*, which expound on the factors set fourth in *Pass*. *See Rankin v. Bobo*, 410 So. 2d 1326, 1328 (Miss. 1982), *Hambrick v. Prestwood*, 382 So. 2d 474, 477 (Miss. 1980). If the child has an aptitude for college, if the parent providing child support has the financial ability, and if the relationship between the child and parent is close enough to require the extra burden on the parent, then the parent may be ordered to pay for tuition. *Hambrick v. Prestwood*, 382 So. 2d 474, 477(Miss.1980). It is necessary to apply the factors to the case at hand. It was proved that Sondra has the aptitude for college since she enrolled at Alcorn State University on full academic scholarship. When the case was tried, Sondra's grade point average had dropped from over a 3.25 to a 2.98. In order to maintain her scholarship, Sondra had to keep her grade point average above a 3.25, and when it dropped, she became totally dependant on her parents for college tuition. Obviously, Sondra has the aptitude for college, as proved by her grades.

Second, the parent's ability to pay should be considered. The record reflects that McMath has been employed in the same factory for twenty years. His 1990 tax return, also included in the record, exhibits an income of $20,098. He lives with his new wife, who also works, which enables him to share living expenses. Overall, McMath seemingly has the ability to pay the $35.00 per week in child support.

Lastly, the relationship between the parent and child should be weighed to determine that they are close enough to require such an extra burden on the parent. McMath indicated that he was willing to contribute to Sondra's education. He agreed to pay one-half of her tuition during the 1992-93 school year, but did not pay. He did pay $150 toward Sondra's books and $125 towards her summer tuition. During Sondra's testimony, she explained that when she spoke to her father he agreed to provide assistance with college tuition.

CONCLUSION

In light of the foregoing reasons, we find that the chancellor was in error regarding the first issue, termination of child support before the age of twenty-one. McMath should continue to pay child support until Sondra is twenty-one pursuant to Mississippi Code, sections 93-5-23 and 93-11-65. Regarding the second issue, we find that the chancellor erred in determining that McMath's obligation to contribute toward college expenses was terminated by Sondra having attained the age of eighteen years. Because this erroneous ruling prevented the chancellor from reaching the true issue of what McMath's obligations were in this regard under *Pass v. Pass* and its progeny, and because there appears to be a legitimate, justiciable issue on the point, we conclude that it is necessary to reverse and remand this portion of the chancellor's order for further proceedings consistent with this opinion.

THE JUDGMENT OF THE GRENADA COUNTY CHANCERY COURT IS REVERSED AND RENDERED ON THE ISSUE OF TERMINATING CHILD SUPPORT BEFORE THE AGE OF TWENTY-ONE AND IS REVERSED AND REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION ON THE ISSUE OF PROVIDING COLLEGE EXPENSES. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE, FRED LEE MCMATH.

FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., NOT PARTICIPATING.