

IN THE COURT OF APPEALS 10/29/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00406 COA

LEODIS JOHNSON

APPELLANT

v.

DEPARTMENT OF HUMAN SERVICES

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM H. MYERS

COURT FROM WHICH APPEALED: GREENE COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

WILLIAMS S. MURPHY

ATTORNEY FOR APPELLEE:

SUSAN E. LUSHER

NATURE OF THE CASE: DOMESTIC-PATERNITY

TRIAL COURT DISPOSITION: JUDGMENTS OF PATERNITY AND JUDGMENT FOR
SUPPORT

BEFORE FRAISER, C.J., BARBER, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

A Greene County jury found that Leodis Johnson was the father of Justin Moody. Johnson appeals, contending the verdict was contrary to the overwhelming weight of the evidence. In fact the finding was supported by overwhelming evidence. We affirm.

FACTS

The Department of Human Services initiated an action on behalf of Latoshia A. Moody to determine paternity in the Chancery Court of Greene County against Leodis Johnson. The court ordered DNA testing of Moody, the child, and Johnson. Blood samples were taken from Moody and the child on one day, but a sample was not taken from Johnson until almost two months later. During the trial, Moody testified that she and Johnson had sexual relations on a regular basis for almost two years prior to her becoming pregnant, and that during that time, they used no form of birth control. She testified that she had no sexual partners other than Johnson during the latter part of March, and she was positive that Johnson was the child's father. She stated that Johnson admitted to her that he was the father, and had acted like the child's father since the child's birth. She testified that Johnson visited the child on the day she brought the child home from the hospital and on numerous other days, that Johnson bought clothing for the child, gave Moody money to help support the child, and claimed the child as a dependent on his income tax return. Two witnesses, one of whom testified during Johnson's case, corroborated Moody's testimony that Johnson acted as if the child was his.

Two DNA test results showed the probability that Johnson was the father as 99.99% and 99.99996%, respectively. The doctor who conducted the tests was an expert witness for the Plaintiff. He opined, based on the DNA results, that Johnson was the father of the child. The doctor stated that protocol established by the laboratory was followed in obtaining the samples and conducting the tests, and that taking blood samples two months apart in no way affected the results. He explained that, often, samples were taken on different days to avoid conflict between the parties.

The doctor also provided a reason for the difference in the results. In the first test, he used four genetic markers. After learning that the case was going to trial, he ran a second test to make sure his results were accurate. He used eleven genetic markers in the second test which resulted in a more accurate percentage and an even higher probability of paternity.

Johnson testified that while he had sexual relations with Moody during the third week of March 1991, nine months prior to the child's birth, he was not the child's father. He contradicted Moody's testimony, stating that the couple only saw each other on the weekends and not every weekend. He testified that Moody told him she was taking birth control pills and that he used a condom each time they had intercourse. He admitted to claiming the child as a dependent on his income tax return, but denied supporting the child or treating it as his own.

DISCUSSION

The Mississippi Supreme Court stated the applicable standard of review of jury verdicts in *Fitzner Pontiac-Buick-Cadillac Inc. v. Smith*, 523 So. 2d 324, 326 (Miss. 1988):

Our scope of review in such contexts is as limited as it is familiar. We consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts so

considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render. On the other hand, if there is substantial evidence in support of the verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required. *See, e.g.; Rester v. Morrow*, 491 So. 2d 204, 211-12 (Miss. 1986); *Paymaster Oil Mill Company v. Mitchell*, 319 So. 2d 652, 657 (Miss. 1975).

Id. at 326.

Johnson argues that the jury disregarded the evidence in his favor and placed undue emphasis on the DNA results which he tried to show were unreliable and inaccurate. Both assignments of error relate to the weight given to the evidence by the jury in reaching its verdict. This Court cannot reverse on this ground unless the evidence was so overwhelmingly in Johnson's favor that reasonable jurors could not have arrived at a contrary verdict.

I.

Facts Disregarded By The Jury

Johnson's first assignment of error contends that the jury disregarded physical facts that were in his favor. This argument focuses on Moody's testimony that the couple had sexual relations "just about every day and on the weekends" for almost two years prior to her pregnancy and used no form of birth control. Johnson contends that, based on the frequency of sexual relations, the lack of contraception, and Moody's not getting pregnant, it is a reasonable conclusion that he was sterile. Johnson neither offered proof of his sterility at trial, nor did he raise the argument during the trial. He argues that based on his alleged sterility, and the exhibits and photos which show a child whose skin is much lighter than his own and whose head is shaped differently from his own and from Moody's, it is probable that someone else is the father.

Johnson also argues that the jury disregarded the testimony of a witness who testified that when she asked Moody who the child's father was, Moody replied that she used to get drunk all the time and do things she didn't remember.

We find the jury had ample opportunity to weigh Johnson's evidence. The evidence was far from being overwhelming in Johnson's favor. The jury's findings will not be disturbed. II.

Undue Emphasis Placed On Blood Tests

Johnson argues that DNA tests are not reliable evidence of paternity. While genetic test results are not conclusive as to the issue of paternity, the results indicate a probability of paternity which the jury may consider. *See Department of Human Servs. v. Moore*, 632 So. 2d 929, 932 (Miss. 1994). Johnson also argues that these DNA results were not reliable because almost two months passed from the time blood samples were taken of Moody and the child and when samples were taken from him. It is further argued that the difference in the two results calls the accuracy of them into question. The discrepancy, of course, was 99.99% compared to 99.99996%. Both of these arguments were

raised in cross-examination of the doctor who conducted the tests, and explained by him. We find that it was for the jury to decide the weight to be given, if any, to the argument and to the doctor's testimony.

It is the role of the jury to determine the weight to give evidence and the credibility of witnesses' testimony as well as to resolve evidentiary conflicts. *Jackson v. Griffin*, 390 So. 2d 287, 289 (Miss. 1980). The jury had substantial evidence on which to rely in its finding of paternity. In addition to DNA results and expert testimony, the jury heard testimony from Moody regarding the relations between her and Johnson during the period of time she became pregnant.

We affirm.

**THE JUDGMENT OF THE CHANCERY COURT OF GREENE COUNTY IS AFFIRMED.
ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT, LEODIS JOHNSON.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.J.J., BARBER, COLEMAN, DIAZ, KING,
McMILLIN, AND PAYNE, JJ., CONCUR.**