

**IN THE COURT OF APPEALS 02/11/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00142 COA**

**IN THE MATTER OF THE ADOPTION OF E.A.V.H.: G.M.V.H. AND W.A.V.H.**

**APPELLANTS**

**v.**

**S.B.N. AND J.J.N., JR.**

**APPELLEES**

**THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND**

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

**TRIAL JUDGE: HON. SEBE DALE, JR.**

**COURT FROM WHICH APPEALED: CHANCERY COURT OF PEARL RIVER COUNTY**

**ATTORNEY FOR APPELLANTS:**

**EDWARD H. STEVENS, III**

**ATTORNEY FOR APPELLEES:**

**MAURA D. MCLAUGHLIN**

**NATURE OF THE CASE: DOMESTIC RELATIONS - ADOPTION**

**TRIAL COURT DISPOSITION: ADOPTION GRANTED**

**BEFORE BRIDGES, C.J., MCMILLIN, P.J., COLEMAN, AND KING, JJ.**

**COLEMAN, J., FOR THE COURT:**

This is an appeal from a final judgment of adoption entered in the Chancery Court of Pearl River County. The chancellor granted the adoption of the minor, E.A.V.H. (Child), by S.B.N. (Adopting Mother) and J.J.N. (Adopting Father) (together Adopting Parents) over the objection of Child's natural mother, G.M.V.H. (Natural Mother). Natural Mother has raised five issues to challenge the chancellor's application of the statutes which provide for a child's adoption over the natural parents' objection. While the Child's natural father, W.A.V.H. (Natural Father), is designated as an appellant, he did not appear at trial; and Natural Mother's counsel offers neither issue nor argument on his behalf. This Court affirms the final judgment of adoption.

### **I. Facts**

The Child and her twin sister, E.S.V.H., were born to Natural Mother and Natural Father on July 2, 1990, in Picayune, Mississippi. Child's natural parents had married in December, 1976, but they were separated when their twin daughters were born. Later on October 19, 1990, Natural Father obtained a divorce from Natural Mother in the State of Louisiana on the ground of adultery. Five children, including their twin daughters, were born to the marriage of Child's natural parents. One of their five children, M.A.V., a daughter, was killed in a motor vehicle accident in 1979 when she was two years old. This accident occurred when an eighteen-wheeler collided with the rear of the car which Natural Mother was driving and in which M.A.V. was riding.

Natural Mother had been married three times. Her oldest daughter, M.S., who was twenty two years old and married when this case was tried, was born during Natural Mother's first marriage. Until M.S. was about five years old, she lived with Natural Mother. In her fifth year, M.S. moved into her paternal grandparents' home. In 1984, when M.S. was twelve years old, she tried to explain to Natural Mother that Natural Father, who was her stepfather, was sexually molesting her. Natural Mother dismissed M.S.'s accusation and continued to live with Natural Father until 1989, when, according to Natural Mother's testimony, Natural Father forced her off their property in Louisiana at gunpoint. When she left Natural Father in 1989, she was pregnant with Child and Child's twin sister. Natural Mother came to Mississippi, but she left her two sons, W.H., Jr. and D.V.H., with Natural Father in Louisiana.

After Natural Mother separated from Natural Father in 1989, she initially lived in her car. In early 1990, Natural Mother filed for separation from Natural Father in Louisiana. Then she moved into the May Williams Housing Project in Picayune shortly before her twin daughters were born on July 2, 1990. At birth, doctors discovered that Child suffered from the breathing disorder, apnea, which caused Child to stop breathing. Child's apnea required that an apnea monitor be placed on her. The apnea monitor would detect a low heart rate, which would alert Child's parent or custodian that she had stopped breathing and thus required medical attention.

After Linda Patterson, a representative of the apnea monitor company, had instructed Natural Mother in the use of the apnea monitor when Natural Mother was still in the hospital, Patterson went to visit Natural Mother at her apartment in the May Williams Housing Project to check on the monitor and Child. Natural Mother's next-door neighbor, Dionne Campbell, was also Patterson's client, so Patterson visited Campbell, who told her that Natural Mother had returned to Slidell, Louisiana, where she had moved into the Lifegate Gospel Rescue Mission (Mission) with her twin daughters. Campbell told Patterson that Natural Mother would leave her twin daughters with other friends in the

housing project when she would go out. Patterson testified, "An apnea monitor is no good if the mother is not there when it goes off."

Natural Mother and Natural Father had received a settlement of approximately \$114,000 for their two-year-old daughter's wrongful death in 1979. They used a portion of their settlement to buy a parcel of land which contained about five-and-one-half acres and which was located across the road from the Mission in Slidell. Natural Mother and Natural Father moved into a house located on this parcel of land, and it became their marital residence in Slidell. Thus, the marital residence in which Natural Mother and Natural Father lived before they separated in 1989 was located "about a block from the Mission;" and Natural Mother was already familiar with the Mission before she separated from Natural Father in 1989.

It was in early August of 1990 that Natural Mother moved her month-old twins from the May Williams Housing Project in Picayune to the Lifegate Gospel Rescue Mission in Slidell. A minister of the gospel, George Dansby, operated the Lifegate Mission. Natural Mother remained at the rescue mission for several months. After a few months at the Mission, Natural Mother began to spend the day in the marital residence located across the street and about one block from the mission. Her spending the day lengthened into spending both the night and the day in her residence on this land, and thus she began to gravitate away from living full-time in the Mission.

While Natural Father no longer resided on the land, his brother, whom we shall call "Steve," lived in a mobile home which was also located on the land across the road from the Mission. The progression of Natural Mother's and Steve's cohabitation on this property is vague, but Steve and Natural Mother began to live together in the house and mobile home located on this land. In the meantime, Child and her twin sister remained at the Mission under Dansby's care. When Natural Father obtained a divorce from Natural Mother in October, 1990, she, Natural Mother, was pregnant with Steve's baby. Soon after her divorce, Natural Mother suffered a miscarriage, which was the result of an accident involving a grocery cart at a grocery store. Natural Mother later received approximately \$11,000 to settle her claim for damages against the grocery store.

In the meantime, Child and her twin sister remained in Dansby's care at the Mission. In January of 1991, Natural Mother gave Dansby a "power of attorney" over her twin daughters. When Dansby was unavailable to care for Child and her twin sister, other employees of the Mission and volunteers would care for them. Occasionally, the twin sisters would spend the day at a thrift store which the Mission operated in Picayune.

In June of 1991, Donna Boutwell, sister-in-law of Adopting Mother and sister of Adopting Father, was shopping in the thrift store when she saw Child crawling on the floor. The store's attendant was ignoring Child. Boutwell picked up Child, noticed she had a messy diaper, and asked the store's attendant if she could change her. The store attendant permitted Boutwell to change Child's diaper. The attendant next explained that the Mission's director, George Dansby, must provide other arrangements for caring for Child because she, the store attendant, was tired of caring for her. Pursuant to her further queries of the store's attendant, Boutwell learned that Child and her twin sister, who was not in the thrift store, lived at the Mission in Slidell. The attendant then gave Boutwell Dansby's name and the Mission's telephone number. When Boutwell returned home, she called Adopting Mother and Adopting Father to tell them about Child because she knew that they

hoped to adopt a child.

On June 4, 1991, Adopting Mother called Dansby at the Mission, and they arranged for Adopting Parents to meet Dansby at the Mission in Slidell. At this meeting, Adopting Parents learned that Child's twin sister was to be placed with a family in Biloxi. Thus, only Child was available for adoption. At the trial, Adopting Mother testified that at this meeting, Child appeared sickly, had almost no hair, no teeth, and looked generally under-developed in comparison to her twin sister. Dansby told the adopting parents that he would contact them in about a week. When Dansby later called, Adopting Mother arranged with him to pick up Child at the thrift store in Picayune on Friday, June 23, 1991. Child remained with Adopting Parents until the following Sunday, when they returned Child to the Mission in Slidell.

Adopting Parents next saw Child on July 11, 1991, after which they kept her every weekend during the rest of that month. Beginning on or about August 1, 1991, Adopting Parents began to keep the baby on an almost full-time basis. Adopting Parents did not use the apnea monitor on Child because it was not required after she became one year old. During the month of August and into the early part of September, Adopting Mother, a certified respiratory therapist employed by the Northshore Regional Medical Center in Slidell, Louisiana, would bring Child to the Mission during the three days a week that she worked at the hospital. Adopting Mother's trips to the Mission stopped about the middle of September because her sister began to care for Child when Adopting Mother worked.

In the meantime, Steve had again impregnated Natural Mother, who gave birth to a baby boy, D.H.V., in October, 1991. The Louisiana Department of Human Services removed D.H.V., who also suffered from apnea, from his parents' custody when he was no older than nine days because of their medical neglect of D.H.V. Natural Mother and Steve were later married on November 11, 1992, in Louisiana. D.H.V. was still in a foster home when this case was tried on August 1 and 2, 1994.

## **II. Litigation**

On December 12, 1991, the adopting parents filed a Petition for Adoption in the Chancery Court of Pearl River County in which they alleged, *inter alia*, that both Natural Mother and Natural Father had neglected, abandoned, and deserted Child "since July 1991," and, further, that the natural parents were "morally unfit, unsuitable and have had no contact or inquiry with [Child] since approximately July, 1991." The adopting parents also filed that same day a motion for appointment of guardian ad litem and for temporary custody, pursuant to which the chancellor entered an ex parte temporary order on December 12, 1991, in which he granted the adopting parents temporary custody of Child and appointed a Picayune lawyer, G. Gerald Cruthird, guardian ad litem for Child. The chancellor ordered the guardian ad litem to file a written report with the chancery court.

Natural Mother was served with process on December 13, 1991. On January 18, 1992, the Chancellor ordered that Natural Mother would have until February 10, 1992, to answer the petition for adoption. On February 21, 1992, the chancellor entered a second "agreed order" in which he granted Natural Mother an additional thirty days "to file her responsive pleadings." However, it was not until October 19, 1992, that Natural Mother filed her answer of general denial. Natural Father could not be reached for the personal service of process; but on December 23, 1993, more than two years after the adopting parents had filed their petition for adoption, he signed an acknowledgment of his receipt of the certified mail by which a summons was sent to him. Natural Father filed a *pro se*

motion for time to plead, which the chancellor denied. Natural Father made no further appearance at any of the subsequent adoption proceedings. His only connection with this appeal is the listing of his name as an appellant in its style.

After she had been served with process, Natural Mother telephoned Adopting Parents' residence on December 26, 1991, and left a message on their answering machine to the effect that she did not appreciate their taking her baby, that she had not given them permission to do so, and that she would see them in court. Adopting Parents testified that the Natural Mother's call on December 26, 1991, was the last time either of them heard from her until the trial, which began on August 1, 1994, and lasted two days. After the chancellor heard all of the testimony from both parties and their witnesses and read the guardian ad litem's report and recommendation, he granted Child's adoption by Adopting Parents by final judgment of adoption rendered on November 19, 1994. Natural Mother then appealed from this final judgment of adoption.

### III. Issues

Natural Mother presents five issues in her brief, which we quote verbatim, for this Court's review, analysis and resolution:

- (1) There is error in the Chancery Court's finding of abandonment and desertion as required by Miss. Code Ann. § 93-15-103 and § 93-17-7 (Supp. 1993).
- (2) The Chancery Court incorrectly applied Miss. Code Ann. § 93-17-5 (1972).
- (3) The Chancery Court was in error in the consideration given to the best interest of the child.
- (4) The evidence does not support the Chancellor's finding that [the natural mother] abandoned the child without means of identification and made no contact with the child in excess of six months.
- (5) The evidence does not support the Chancellor's finding that there has been a substantial erosion of the relationship between [the natural mother] and the child which was caused in part by the mother's serious neglect, unreasonable absence, and unreasonable failure to visit or communicate with the child.

Adopting Parents as appellees filed no cross appeal; thus, we are not required to consider and to resolve their issues which they included in their statement of issues in their brief. *See Beck Enterprises v. Hester*, 512 So.2d 672, 678-79 (Miss. 1987) (The Mississippi Supreme Court will not consider issues not raised on . . . cross-appeal by an appellee.) However, we recite Appellees' two issues as verbatim quotes from their brief:

1. There was substantial, clear and convincing credible evidence to support the lower Court's termination of the parental rights of Appellants.

2. The lower Court correctly determined that the best interests of the minor would be served by approving her adoption by Appellees.

This Court will consider Natural Mother's five issues in the order that it finds appropriate to its development of whether the chancellor erred so as to warrant the reversal of the final judgment of adoption of Child. Our resolution of Natural Mother's five issues will also resolve the adopting parents' two issues.

#### **IV. Analysis and the law**

We must first establish the standard of review this Court uses in reviewing the final judgment of adoption which the chancery court rendered. This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard. *Bower's Window & Door Co. v. Dearman*, 549 So. 2d. 1309, 1312-13 (Miss. 1989). "We are mindful, of course, that we do not reverse a chancellor unless his findings are manifestly wrong because they are not supported by the evidence." *Martin v. Putnam*, 427 So. 2d 1373, 1377 (Miss. 1983).

With regard to the termination of parental rights and matters of adoption, the Mississippi Supreme Court in *G.M.R., Sr. v. H.E.S.*, 489 So. 2d 498, 500 (Miss. 1986) established the following standard of proof:

Following Mississippi Code Annotated § 93-15-109 (1972), this Court has held that the standard of proof in any action for termination of parental rights set forth in Chapter 15, Termination of Rights of Unfit Parents, the chancellor must be satisfied by all the evidence that the proof is clear and convincing that the grounds for termination are present. This likewise applies to any action for the termination of parental rights and adoption by other persons.

It is with this standard in mind that we examine this case and reach our conclusion.

#### **A. Appellant's second issue:**

2. The Chancery Court incorrectly applied Section 93-17-5 of the Mississippi Code of 1972.

Mississippi Code Section 93-17-5 identifies the persons who must be made parties to an adoption proceeding, but it further provides that such parties may file a consent to the adoption as proposed in the petition for adoption. In the case *sub judice*, both Natural Mother and Natural Father were made defendants to Adopting Parents' petition, and both were served with appropriate process to subject them to the jurisdiction of the chancery court in which the petition for adoption was filed. While Natural Father did not participate in the trial of this case, we noted that he initially filed a motion for extension of time to answer petition for adoption, which the chancellor subsequently denied.

It is true that in his memorandum opinion the chancellor cited Section 93-17-5 among the provisions of the law which he considered in the course of his determination that Adopting Parents could adopt Child over the objection of Natural Mother. However, he made no further reference to Section 93-17-5 in his opinion. Natural Mother argues that the chancellor erred in citing Section 93-17-5

because "that section deals with consent by:

(3) The Guardian Ad Litem of an abandoned child upon petition showing the names of the parents of such child are unknown after diligent search and inquiry by the petitioners . . . .

She offers no other argument nor authority to support her position on this issue. In the absence of further argument or authority from Natural Mother, this Court finds that the chancellor cited Section 93-17-5 to establish that the chancery court had jurisdiction of all the parties necessary to the petition for adoption, *i. e.*, the natural parents, the adopting parents, Child, and Child's guardian ad litem. Thus, this Court resolves this second issue against the Appellants.

**B. Appellant's first and fourth issues:**

(1) There is error in the Chancery Court's finding of abandonment and desertion as required by Miss. Code Ann. § 93-15-103 and § 93-17-7 (Supp. 1993).

(4) The evidence does not support the Chancellor's finding that [the natural mother] abandoned the child without means of identification and made no contact with the child in excess of six months.

Because the statutory concept of "abandonment" is common to both of these issues, we consider them simultaneously. Our resolution of these two issues rests upon Sections 93-15-103 and 93-17-7 of the Mississippi Code of 1972. The chancellor determined in his judgment that the natural mother had, "for all practical purposes, abandoned and deserted [Child]." Because Child was under three years of age, Section 93-15-103(3)(a) requires a six month period of desertion "without means of identification or abandonment" and with "no contact with a child" by a natural parent to establish abandonment or desertion. The chancellor found that the natural mother:

[L]ast saw [Child] when she was a little over one year of age, . . . [and has] made no effort toward recovery of the child or continuation of a parent-child relationship with [Child] from her telephone call in December 1991 until she filed her answer in this action in October 1992, during all of which period of time, and indeed from August 1991, she knew who the persons were who had [Child] and generally where they could be located.

The evidence in this case establishes that Natural Mother had some contact with Child in the six month period immediately prior to Adopting Parents' filing their petition for adoption. In his finding that Natural Mother had abandoned Child, the chancellor included the period of time which elapsed after Adopting Parents filed their petition for adoption on December 12, 1991, in his calculation of the six months of abandonment which Section 93-15-103 requires to establish abandonment.

In *Bryant v. Cameron*, 473 So. 2d 174, 179 (Miss. 1985) the Mississippi Supreme Court affirmed a chancellor's denial of an adoption on the basis that the natural mother had not abandoned her child because she had visited with the child within the six-month period which was required to establish abandonment. The supreme court wrote:

We have considered the claim that Cameron has deserted the child in the context of the statutory proviso, Miss. Code Ann. § 93-15-103(3) (Supp.1984) authorizing termination of parental rights where

(a) a parent has deserted without means of identification or abandoned and made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year; . . . .

Again, the evidence falls short. [The] suit was brought within 211 days -- six months, 27 days -- of birth. Even under the testimony of Mrs. Hart/Bryant, Cameron's visitation of the child had continued into the six month period immediately pre-suit. [H]aving in mind the six month statutory period of Section 93-15-103(3)(a), Cameron did not forsake her duties to the child or break off association with or obligations to the child.

*Id.* The foregoing quotation establishes that the six-month time span used to measure the period of abandonment in cases of the adoption of children under three years of age must have expired before the petition for adoption is filed.

In the case *sub judice* Adopting Parents filed their petition for adoption on December 12, 1991. Abandonment or desertion of a child could be used as a factor for the termination of parental rights in this case only if Natural Mother had no contact with the child since before June 12, 1991. Adopting Mother testified that Natural Mother requested to see and did see Child on July 21, 1991, at the Mission in Slidell. Natural Mother's visit fell within the six month period which immediately preceded Adopting Parents' filing their petition for adoption. Therefore, with regard to Natural Mother, the six-month period for abandonment which Section 93-15-103(3)(A) requires to terminate parental rights on the ground of abandonment had not been satisfied.

While it appears that the chancellor may have erred when he based Adopting Parents' adoption of Child on Natural Mother's abandonment of Child, this possibility of error should be considered in relationship to the Natural Mother's fifth issue, which we next consider. As Natural Mother's fifth issue acknowledges, the chancellor also found that "[t]here has been a substantial erosion of the relationship between [Natural Parents] and Child, which was caused at least in part by the parents' serious neglect, unreasonable absence, and unreasonable failure to visit or communicate with the child."

### **C. Appellant's fifth issue:**

(5) The evidence does not support the Chancellor's finding that there has been a substantial erosion of the relationship between [the natural mother] and the child which was caused in part by the mother's serious neglect, unreasonable absence, and unreasonable failure to visit or communicate with the child.

Section 93-15-103 of the Mississippi Code (Rev. 1994) states:

(3) Grounds for termination of parental rights shall be based on *one or more* of the following factors:

. . . .(e) When there is an extreme and deep-seated antipathy by the child toward the parent *or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or*

prolonged imprisonment;

Miss. Code Ann. Sec. 93-15-103 (Rev. 1994) (emphasis added).

Among the "findings and conclusions" contained in the chancellor's memorandum opinion is the following finding:

There has been a substantial erosion of the relationship between [Natural Parents], and [Child], which was caused at least in part by the parents, serious neglect, unreasonable absence, and unreasonable failure to visit or communicate with the child.

In *Natural Mother v. Paternal Aunt*, 583 So. 2d 614 (Miss. 1991), the supreme court affirmed an adoption over the objection of the natural mother on the basis of the erosion of the relationship between the parent and child. The court wrote:

[The adoptive parent] testified that she had never received any assistance from natural mother and only paltry amounts from [the natural father]. In addition to not helping financially, [the natural mother] admitted that she did not try to send birthday cards or Christmas gifts to the girls; she also ignored other events in the children's lives. On cross-examination, she acknowledged that she basically had been out of their lives for the preceding three-and-one-half (3 and ½ ) years. Furthermore, both children thought of and referred to paternal aunt as their mother. Moreover, though the older child knew who [the natural mother] was when she saw her, the younger child did not know [the natural mother] at all; [the natural mother] had left when the younger child was six (6) months old. The evidence amply supports the conclusion that there had been a substantial erosion of the parent child relationship due to prolonged absence and lack of communication.

*Id.* at 619.

With our path illuminated by the foregoing quotation from the *Natural Mother* opinion, we review the evidence in the case *sub judice* to determine whether the standard of review which we recited at the beginning of our analysis of these five issues permits us to affirm the chancellor's finding that "[t] here has been a substantial erosion of the relationship between [Natural Parents] and [Child]." Because Child has never met her natural father, it cannot be maintained that any relationship ever existed between the two of them. Because there can be no erosion of a relationship that never existed, this Court is not concerned with the relationship of Natural Father and Child, which it finds to be non-existent. However, because Natural Mother contested Adopting Parents' petition to adopt Child, we review in some detail her relationship with Child to determine if the evidence supported the chancellor's finding that there had been a substantial erosion of the relationship between Child and Natural Mother. We will consider three of the grounds which Section 93-15-103(e) includes for determining whether there has been a "substantial erosion" in the relationship between a natural parent and the child to be adopted.

### **1. Natural Mother's serious neglect**

Child was provided with an apnea monitor when she was born. Linda Patterson, a certified

respiratory therapist whom adopting parents called as their witness, testified that an apnea monitor "detect[ed] low or slow heart rates and high heart rates" for children "who stopped breathing." Patterson then related to the chancellor her unsuccessful attempt to locate Natural Mother by visiting her apartment several times in the May Williams Housing Project in Picayune to check on the operation of the apnea monitor. Finally, Natural Mother's next-door neighbor, whom Patterson knew because she too had a child who required an apnea monitor supervised by Patterson, told Patterson that Natural Mother was no longer a resident of the May Williams Housing Project.

Patterson later located Child, who by then was then living in the Mission. However, she was never able to check the apnea monitor after she located Child, and she never again saw Natural Mother after her visit with her in the hospital after Child's and her twin sister's birth. Patterson explained the importance of attending Child while she was attached to the apnea monitor as follows: "An apnea monitor is no good if the mother is not there if it goes off." Adopting Mother testified that George Dansby, the director of the Mission, had removed the apnea monitor from Child when she and Adopting Father went to the Mission to visit her for the first time. Natural Mother testified that she took the apnea monitor with her and left it at the Mission when she returned to Louisiana after she left the May Williams Housing Project. Natural Mother also described an apnea episode with her youngest son when he was nine days old. She told the chancellor:

[T]his is what I was told about an apnea child, you have got one minute to react or you have got brain damage or death. CPR won't do any good because their lungs start filling up with fluid. There is no noise. I saw what had happened. I caught what had happened.

Natural Mother counters the foregoing evidence by emphasizing her testimony that she accompanied Child to some medical appointments while Child resided in the Mission; but the Appellees rebut her emphasis on her taking Child and her twin sister for medical appointments by asserting that it was George Dansby who made the appointments -- and not Natural Mother. Adopting Mother described Child's appearance the first time she saw her as follows:

She was very -- she had a very sick look about her. She was very small, very tiny. She had no hair. To be almost a year old, she had no teeth. She didn't -- she wasn't as active as [her twin sister] was -- to be the same age; and it was kind of like she was just really below average for her age.

Finally, there was the evidence of Natural Mother's gravitation from living full-time in the Mission with her twin daughters to living full-time in her and Natural Father's home, one consequence of which was her impregnation by Steve, Natural Father's brother, with her youngest son. From this evidence it would be entirely reasonable to infer that Natural Mother became so enamored with Steve, whom she later married, that she simply ignored and neglected her children. This Court concludes that the record in this case is replete with evidence that Natural Mother's neglect of Child was "serious" and that her serious neglect of Child had substantially eroded her relationship with Child.

## **2. Natural Mother's prolonged and unreasonable absence**

In his memorandum opinion the chancellor described Natural Mother's visits with Child as follows: "At the very best, [Natural Mother's] visits to the Mission to see the twins were spasmodic, few in

number, and not shown to have been of substantial time in duration." Natural Mother testified that she, Child, and Child's twin sister moved into the Mission when her twin daughters were about one month old. Natural Mother gravitated from living full-time in the Mission toward living separately in her home located on her and Natural Father's lot, which was just across the road and about a block-and-a-half away from the Mission. During and after her transition to living in her own home, Natural Mother would visit with her twin daughters during the day either in the Mission or in her home or in the mobile home also located on her lot. Steve lived in the mobile home for a while before he moved into Natural Mother's home. Natural Mother explained that she never moved Child and Child's twin sister into her home across the road from the Mission because she was afraid of what Natural Father might do to them and/or to her.

Adopting Parents both testified that Natural Mother never visited with Child after Child moved in with them on August 1, 1991. Not surprisingly, Natural Mother testified that she did see Child after August 1, 1991, although she was unable to provide any specific dates for those visits. About her visits with Child after August 1, she testified:

My testimony is that I saw her in the time that she spent with me. I can't fully vouch for what conversation took place between them and George [Dansby] and when they were bringing her to George and how George was letting me see her and what he was telling me. I can't tell you all of that. All I can do is tell you that I did see [Child]. They were dropping her off, he was letting me see them and I didn't know what was going on until I got hit with service [of process on the petition to adopt in December, 1991].

In our review of the issues on abandonment, we noted that Adopting Mother established that Natural Mother had visited with Child on July 21, 1991, when George Dansby called them to say that Natural Mother wanted to see Child. Adopting Mother further testified that on that same date, her husband and she traveled to the Mission with Child and that Dansby took Child to visit Natural Mother in her home. Dansby returned with Child and gave her to Adopting Parents, who then returned home with her. Adopting Mother testified that this was the last time that Natural Mother ever saw Child.

The evidence was clear and convincing to establish Natural Mother's absence from Child was prolonged and unreasonable. Thus her absence became a ground for the chancellor's concluding that "substantial erosion" in the relationship between Natural Mother and Child had occurred. It may appear inconsistent for this Court to have opined first that Natural Mother's one visit on July 21, 1991, was sufficient to avoid abandonment as a ground for adoption but later that the evidence was sufficient to establish Natural Mother's prolonged and unreasonable absence from Child. However, our opinion about abandonment rested on the Mississippi Supreme Court's opinion in *Bryant v. Cameron*. Section 93-15-103(3)(a) specifies that the period of abandonment of a child under three years of age must be for six months; but Section 93-15-103(3)(e) does not specify the length of time which makes a parent's absence "prolonged and unreasonable." Neither does Section 93-15-103(3)(e) expressly require that the parent's absence be uninterrupted. Thus, this Court finds that there was substantial evidence to support the chancellor's finding that Natural Mother's absence from Child was prolonged and unreasonable.

### **3. Unreasonable failure to visit or communicate**

The chancellor made the following finding of fact in his memorandum opinion:

[Natural Mother] has contributed nothing to the support of [Child] since placement in the Dansby Mission, nor has she sent the child any cards or gifts.

Adopting Mother's testimony supported this finding of the chancellor. Natural Mother's testimony, which we earlier quoted, refuted this finding in only a vague and general way. After her message which she recorded on the adopting parents' answering machine on December 26, 1991, Natural Mother took no action to move for visitation privileges with Child after the chancellor entered the temporary order by which he awarded temporary custody of Child to Adopting Parents.

Natural Mother also testified that she went to the Picayune Police Department to seek help in seeing Child, but an officer there advised her that she should talk to a lawyer about what to do. Adopting Mother also testified that they received a telephone call from the Mission on December 30, 1991, and that the person calling asked their permission for Natural Mother to see Child. Adopting Mother testified that she and Adopting Father denied Natural Mother permission to see Child on the advice of their lawyer who then represented them in the adoption. In any event, the record contains no evidence of Natural Mother visitation with Child after July 21, 1991. It was the chancellor's prerogative to weigh and to evaluate the evidence concerning Natural Mother's failure to visit or to communicate with Child. We conclude that he was not manifestly wrong when he found by implication that Natural Mother had failed to visit or to communicate with Child and that her failure to do so was unreasonable.

#### **4. Summary of Natural Mother's third issue**

This issue is the foundation on which this Court affirms the chancery court's final judgment of adoption. Regardless of the issue of whether Natural Mother had abandoned Child for six months prior to the date the adopting parents filed their petition for adoption, the evidence was clear and convincing that there had been a "substantial erosion of the relationship between [Natural Mother] and [Child] which was caused at least in part by the [Natural Mother's] serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate." We have reviewed the evidence on this finding in some detail to demonstrate that there was substantial clear and convincing evidence from which the chancellor might conclude that Natural Mother had seriously neglected Child, especially her medical need as an infant, that her absence from Child had been prolonged and unreasonable, and that her failure to visit or communicate with Child was also unreasonable.

In his opinion the chancellor recited that he found "substantial and convincing credible evidence" to support his findings; thus he substantially complied with the standard of proof of which the supreme court wrote in its *G.M.R., Sr. v. H.E.S.* opinion. We adopt the following quotation from *Vance v. Lincoln County Dept. of Public Welfare*, 582 So. 2d 414, 418 (Miss. 1991), to conclude this summary of Natural Mother's fifth issue:

We have in the case *sub judice* the erosion of a bad relationship to one that is practically non-existent. Based on a review of the entire record, we cannot say that the lower court's finding of a substantial erosion was manifestly wrong in this case. Indeed, under the circumstances it appears that no viable alternative to termination was available.

Thus, we resolve Natural Mother's fifth issue against her and affirm the chancellor's finding that "[t] here has been a substantial erosion of the relationship between [the natural parents], and [Child], which was caused at least in part by the parent's serious neglect, unreasonable absence, and unreasonable failure to visit or communicate with the child."

**D. Appellant's third issue:**

(3) The Chancery Court was in error in the consideration given to the best interest of the child.

Natural Mother initiates her argument on this issue with this sentence: "One basis upon which the Chancellor relied was the best interest of the child, and while this would have been proper as between natural parents, it is not an appropriate consideration when the contest is between a natural parent and third persons." This statement contains factual error because the chancellor did not base his grant of adoption of Child to Adopting Parents solely because he found adoption to be in the best interest of Child. Instead, the chancellor first found that Natural Mother and Natural Father had abandoned Child, and then he found that a substantial erosion had occurred in the relationship between Natural Mother and Child. After he had found abandonment and substantial erosion in Natural Mother's relationship with Child, he then proceeded to find that it was in the best interest, or welfare, of Child for Adopting Mother and Adopting Father to adopt Child.

In *Ainsworth v. Natural Father*, 414 So.2d 417, 420-21 (Miss. 1982), the Mississippi Supreme Court held that Section 93-17-7 of the Mississippi Code of 1972 required "a definite adjudication that the welfare of the child will be promoted or enhanced by the proposed adoption . . . ." It then remanded the case because the chancellor failed to find that the welfare of the child would be promoted or enhanced by the proposed adoption. *Id.* Thus, *Ainsworth* required the chancellor in the case *sub judice* to determine whether Child's adoption by Adopting Parents was in the best interest, or "welfare," -- to use the word found in Section 93-17-7 -- of Child.

However, we accept Natural Mother's argument, which she bases in part on *Ainsworth*, that "[s]ince abandonment could be found from the facts of [*Ainsworth*], the Chancellor should then consider the welfare for the child before allowing the adopting to proceed to conclusion." She later continues: "The Petitioners/Appellees have failed to prove that a statutory ground[] for terminating [Natural Mother's] parental rights exist, therefore, the Court must not entertain the question as to the child's interest." Again, we agree with that quoted sentence in so far as it is an abstract statement of the law, but we disagree with its relevancy to the facts which the evidence has established in this case. We reject Natural Mother's contention that the adopting parents have failed "to prove that a statutory ground[] for terminating [Natural Mother's] parental rights exist" because we have already found to the contrary.

The Mississippi Supreme Court identified the factors to be considered in determining the child's best interest in *Natural Mother v. Paternal Aunt*, 583 So. 2d 614, 619 (Miss. 1991). These factors include stability of environment, ties between prospective adopting parents and children, moral fitness of parents, home, school, and community record of the child. *Id.*

In the case *sub judice*, the chancellor made the following findings in his memorandum opinion:

[Adopting Parents] are persons of substance, of good moral character, have performed

and are capable of continuing to perform all the duties and responsibilities of parents to [Child], and have established a warm and caring and loving relationship with [Child], and have provided [Child] with a wholesome environment and are capable of continuing to do so.

The best interest and welfare of [Child] will be promoted and served by her living and being reared in the custody of the Petitioners and as their child.

The record in the case *sub judice* indicates that Adopting Parents are medically unable to have children. We previously noted Adopting Mother's description of Child when she became a part of Adopting Parents' household about August 1, 1991. Child was underdeveloped, sickly, and very withdrawn. She also suffered from chronic ear infections and a sore throat. According to the testimony of the adopting parents, Child was scared and terrified of men when she first came to them. The record reflects that since she entered Adopting Parents' home, Child has flourished in their care to become a healthy and happy child in a stable environment. Her ear infections have improved since tubes were placed in her ears. Adopting Parents attend Goodyear Baptist Church in Picayune. Both parents are regularly and gainfully employed. A review of their federal income tax returns for the three-year period immediately preceding 1994 reveals that together they earn more than an adequate income to support Child.

Our weighing and application of the factors that are to be considered when determining the best interest of the child, *i. e.*, stability of environment, ties between prospective adopting parents and children, moral fitness of parents, home, school, and community record of the child, to the clear and convincing evidence in this case establishes that it remains in the best interest of Child to become the adopted child of Adopting Mother and Adopting Father. The evidence is clear and convincing that Adopting Parents were providing a stable environment for Child, that the ties between them and Child were strong, and that they were morally fit to assume the responsibilities, duties, challenges, and even the occasional frustrations of Child's parents.

The following quotation from *G.M.R. v. In Re: Petition of H.E.S.*, 489 So. 2d 498, 501 (Miss. 1986), in which the Mississippi Supreme Court affirmed an adoption, is an appropriate conclusion for our resolution of Natural Mother's third issue:

In his finding of fact as to the best interest of the child for termination of the parental rights of his natural parents and for the adoption, the chancellor said:

There is no question in the evidence of the suitability of the home of the foster parents, the petitioners for adoption. There is no question in the evidence of their devotion to [the child] or of the fact that they have no other children. The record overflows with instances of how [the child] has improved in the two and one-half years he has been there. He has lost most of his cowering fears, his language has been laundered, he has recovered from other symptoms of his psychic trauma, and the Court finds as a fact that in every respect it is to the best interests of the child, G. R., Jr., that he be adopted by the petitioners Mr. and Mrs. S.

We are of the opinion that the chancellor was not manifestly wrong in . . . holding that it was for the best interest of the child that the parental rights of his natural parents be

terminated and that the adoption be granted.

*Id.*

The chancellor's finding that "[t]he best interest and welfare of [Child] will be promoted and served by her living and being reared in the custody of the [adopting parents] and as their child" is supported by substantial evidence, and this Court therefore affirms his finding and resolves this issue adversely to Natural Mother.

## V. Summary

Natural Mother seeks to reverse the chancery court's final judgment of adoption on the grounds that the trial court erred when it found that she had abandoned Child within the meaning of Section 93-15-3(3)(a), that there had been a substantial erosion of the relationship between her and Child, and that Adopting Parents' adoption of Child was in the best interest of Child. Pursuant to our understanding of *Bryant v. Cameron*, we hold that Natural Mother's visit with Child on July 21, 1991, less than six months before the adopting parents filed their petition for adoption on December 12, 1991, defeated Adopting Parents' claim that Natural Mother had abandoned Child. However, abandonment for six-months is but one of several statutory factors which the chancery court can invoke to terminate parental rights and/or to grant an adoption of a child.

The evidence in the case *sub judice* was sufficiently clear and convincing to demonstrate that a substantial erosion of the relationship between Natural Mother and Child had occurred. The chancellor relied both on abandonment and on this ground to grant Adopting Parents' prayer for the adoption of Child. The substantial erosion of the relationship between Natural Mother and Child alone suffices to terminate Natural Father's and Natural Mother's parental rights to Child and to grant child's adoption over Natural Mother's objection. While he is named as an appellant in this case, Natural Father's sole participation in this litigation was to file a motion for extension of time to answer the petition for adoption; and the chancellor denied that motion. The evidence is uncontroverted that Natural Father had not seen Child since her birth, so his abandonment of Child is conclusively established by the evidence in this record.

Section 93-17-7 of the Mississippi Code of 1972 required that after the chancellor had determined there were statutory grounds for Adopting Parents' adoption of Child, he must then determine whether their adoption of Child was for her welfare. Our application of the "manifestly wrong" standard of review to the chancellor's determination that it was in Child's best interest for Adopting Mother and Adopting Father to adopt her confirms our affirming the chancellor's finding that Child's adoption was in her best interest.

Our resolution of all five of her issues adversely to Natural Mother has accordingly resolved favorably to Adopting Parents the two issues which they included in their brief. We have found that there was substantial, clear, and convincing evidence to support the chancellor's termination of the parental rights of Natural Mother and Natural Father in accordance with one of the grounds for doing so contained in Section 93-15-103(e). We have further established that it was necessary for the chancellor to determine whether it was in the best interest of Child for Adopting Parents to adopt Child and that he did not err when he found that it was in the best interest of Child that Adopting Parents adopt her. Therefore, this Court affirms the final judgment of adoption of the Pearl River

County Chancery Court.

**THE FINAL JUDGMENT OF ADOPTION OF THE CHANCERY COURT OF PEARL RIVER COUNTY IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., BARBER, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HERRING, J., NOT PARTICIPATING.**