

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-CA-00157-COA

COLE VICKERS

APPELLANT

v.

MAGGIE VICKERS

APPELLEE

DATE OF JUDGMENT:	01/16/2025
TRIAL JUDGE:	HON. JOHN ANDREW HATCHER
COURT FROM WHICH APPEALED:	DESOTO COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	ELIZABETH PAIGE WILLIAMS
ATTORNEYS FOR APPELLEE:	SCOTT BURNHAM HOLLIS ANDREA BING WOMACK
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED IN PART; REVERSED AND REMANDED IN PART - 10/13/2026
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., McCARTY AND LASSITTER ST. PÉ, JJ.

BARNES, C.J., FOR THE COURT:

¶1. Cole and Maggie Vickers were married in 2017. In early June 2024, the couple separated after Cole admitted to having an adulterous affair. The couple had a two-year-old son, D.V. (born in January 2022), and Maggie was pregnant with their daughter, P.V., who was later born in October 2024.

¶2. Cole filed a complaint for divorce on June 5, 2024, on the ground of irreconcilable differences in the DeSoto County Chancery Court. Maggie counterclaimed, asserting she was entitled to a divorce on the ground of habitual cruel and inhuman treatment. She also requested sole physical and legal custody of the minor children. Because Cole and his paramour were both practicing attorneys in the Third Chancery Court District, all local

chancellors recused from the matter. A special chancellor from Booneville, Mississippi, Chancellor John Hatcher, was appointed.

¶3. A hearing for temporary relief was held on August 5, 2024. The parties stipulated to (1) Maggie’s having sole physical custody of D.V., (2) the parties’ having joint legal custody of D.V., (3) Cole’s paying \$1,250 in temporary monthly child support, and (4) Maggie’s having temporary exclusive use of the marital home. Cole also stipulated to having committed adultery. However, the parties could not agree on temporary visitation. During Maggie’s testimony, the chancellor noted the *Albright* factors,¹ specifically “morality,” and questioned Maggie about Cole’s adultery, asking, “What do you think about exposing a child to ongoing criminal activity? Is that a good idea?” The chancellor then showed Maggie a copy of a Mississippi statute concerning unlawful cohabitation, noting that it imposed a criminal penalty.²

¹ In *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983), the Mississippi Supreme Court outlined factors for a chancery court to consider in determining the best interest of the child in custody matters. Those factors are: (1) age, health, and sex of the child; (2) continuity of care prior to the separation; (3) parenting skills and the willingness and capacity to provide primary child care; (4) the employment of the parent and responsibilities of that employment; (5) the physical and mental health and age of the parents; (6) the emotional ties of parent and child; (7) the moral fitness of the parents; (8) the home, school, and community record of the child; (9) the preference of the child at the age sufficient to express a preference by law; (10) the stability of the home environment and employment of each parent; and (11) other factors relevant to the parent-child relationship. *Id.*

² Mississippi Code Annotated section 97-29-1 provides:

If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together

¶4. Chancellor Hatcher entered a temporary order on August 13, 2024, nunc pro tunc to August 5, 2024, ordering Cole to pay \$1,250 in temporary monthly child support and granting Cole visitation with D.V. on alternating weekends and on Thursdays of non-visitation weekends for two hours. The chancellor further ordered that neither D.V. nor the expected newborn child were to be in the presence of either party's romantic partner.

¶5. Days after the temporary hearing in this matter, Chancellor Hatcher informed both parties that Hal Wright, an acquaintance of Maggie's father, mentioned the case to the chancellor over coffee that morning in Booneville. The chancellor told Wright he could not discuss the case. On August 20, 2024, Cole's attorney filed a motion for recusal of Chancellor Hatcher in accordance with Canon 3E(1)(a) of the Mississippi Code of Judicial Conduct. Although Cole acknowledged in the motion that he "believe[d] that the Special Chancellor conducted himself in an impartial manner in the Temporary Hearing," he requested "out of an abundance of caution" that another special chancellor be appointed.

¶6. In response, Maggie requested that the chancery court deny the recusal motion and award her attorney's fees and expenses related to the matter. Maggie attached affidavits to her response. One was from Wright, who averred that he did not know Maggie personally and had only learned about the proceedings from his sister-in-law. Another affidavit was by Morgan, Maggie's father, who stated that he had never been introduced to Chancellor Hatcher and had not discussed the proceedings with the chancellor.

publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

Miss. Code Ann. § 97-29-1 (Rev. 2020).

¶7. A hearing to address the motion for recusal was held on September 24, 2024. The chancellor explained that he regularly had coffee with Wright five times per week. He assured the parties that when Wright casually mentioned a hearing about a pregnant lady whose father was Gary Morgan, a former resident of Booneville, Chancellor Hatcher stopped Wright and would not discuss the case. The chancellor also said that until the motion for recusal, he was not aware Maggie’s father was a friend of Wright. The chancellor then recited his findings and rendered an opinion, in which he denied Cole’s motion for recusal.

¶8. On October 28, 2024, Cole filed a motion to modify visitation claiming “that there have been multiple intrusions and restrictions upon his *up to two hours of visitation every other week* with his newly born child.” A settlement conference was scheduled for November 8, 2024, to address those issues. On December 16, 2024, the parties entered into a partial settlement, agreeing to an irreconcilable-differences divorce and to Maggie’s having sole physical custody of the children. The couple split the bank accounts, with Cole to receive \$92,836 from the couple’s joint account. The issues of visitation, child support, and sanctions/attorney’s fees remained for the chancery court to decide.

¶9. The chancery court entered a supplemental final judgment for divorce on January 16, 2025. Regarding the issue of visitation, the court addressed the *Albright* factors. The court found that overnight weekend visitation with D.V. should begin immediately but that there should be no overnight visitation with P.V. until she is no longer breastfed by Maggie, which was projected to be July 2025. The court did not grant Cole summer visitation with either child until 2026, at which time he was entitled to four non-consecutive weeks each summer

in two-week increments. Cole was only granted visitation from noon until 6:00 p.m. on Christmas Day until the children begin preschool, after which Cole is entitled to visitation in odd-numbered years from 6:00 p.m. after the last day of school until Christmas Day at noon. In even-numbered years, Cole would have visitation from Christmas Day afternoon until the end of the Christmas break.

¶10. Specifically with regard to the *Albright* factor of the moral fitness of the parents, the chancellor put great emphasis on Cole’s “adulterous cohabitation relationship with a female attorney” and concluded that “overnight visitation with either or both of the children present is adverse to the well-being and not in the best interest of said children.” The chancellor therefore “prohibit[ed] such overnight cohabitation in the presence of the children.”

¶11. As to child support, the chancellor ordered Cole to pay \$1,856.83 monthly, taking into account bonuses Cole received in 2023 in the calculation of Cole’s adjusted gross income (AGI). For daycare costs, the chancellor found that the cost should be paid based on the parties’ respective percentage of income: 41% by Cole and 59% by Maggie.³ The chancellor concluded that since childcare is “approximately \$2,400.00 per month, . . . [Cole] should pay \$984.00 per month for child daycare, commencing the first day of the month that P.V. starts same, but at this time he shall pay 41% of his adjusted gross monthly income for D.V. or \$456.00 commencing as of February 1, 2025 to be paid as to the first day of the month.” Maggie was ordered to continue to provide and pay for the children’s health insurance. Finally, the chancellor ordered Cole to pay Maggie \$5,535.51 in “reasonable attorneys fees

³ Maggie is a pediatric gastroenterologist who, at the time of trial, was working at Le Bonheur Children’s Hospital in Memphis, Tennessee.

and expenses in defending the frivolous Motion for Recusal.”

¶12. Cole appeals the judgment, asserting several assignments of error. On the issue of the chancellor’s ruling banning overnight visitation in the presence of either party’s significant other, we reverse and remand for the chancellor to make additional findings in accordance with this opinion. We also reverse and remand the chancellor’s determination of child support, finding the chancellor miscalculated Cole’s AGI. We affirm the judgment on all other issues.

Standard of Review

¶13. This Court will not disturb a chancellor’s findings in a domestic relations matter “unless the chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Williams v. Williams*, 428 So. 3d 463, 476 (¶48) (Miss. Ct. App. 2026). “Substantial, credible, and reasonable evidence is required to support a chancery court’s factual findings.” *Id.*

Discussion

I. Whether the special chancellor erred in denying Cole’s motion for recusal.

¶14. As discussed, Chancellor Hatcher informed the parties that, over coffee two days *after* the temporary hearing, a friend of Maggie’s father mentioned the case to Chancellor Hatcher, along with the fact that Maggie’s father previously lived in Booneville. The chancellor told the friend (Wright) he could not speak about the case, and while the chancellor now remembered Maggie’s father, he had not spoken to or seen him for forty years. Cole filed a motion for recusal, arguing that Chancellor Hatcher should recuse himself because the

communication with Wright created the appearance of impropriety.⁴ Noting the standard for recusal as stated in Rule 1.11 of the Uniform Chancery Court Rules (i.e., impartiality questioned “by a reasonable person knowing all the circumstances”), the chancellor denied the motion because the complained-of conduct occurred after the temporary hearing. He also adopted the memorandum filed by Maggie along with the affidavits and his own response as the court’s findings of fact. Cole alleges that the chancellor erred in his denial of the motion.

¶15. Canon 3E(1)(a) of the Code of Judicial Conduct states that a judge should disqualify himself if his “impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct . . . where: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]” Uniform Chancery Court Rule 1.11(A) provides: “Any party may move for the recusal of a chancellor if it appears that the chancellor’s impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise provided by law.”

¶16. Our Court “presumes that a trial judge is qualified and unbiased, and this presumption may only be overcome by evidence which produces a reasonable doubt about the validity of the presumption.” *Slade v. City of Lumberton*, 395 So. 3d 1277, 1285 (¶18) (Miss. Ct. App.

⁴ The motion incorrectly stated that the conversation occurred *prior* to the temporary hearing. The chancellor noted in the subsequent order denying the motion that counsel’s failure to recognize this distinction warranted a finding that the motion was frivolous.

2024). “Reasonable doubt is present ‘when there is a question of whether a reasonable person, knowing all of the circumstances, would harbor doubts about the judge’s impartiality.’” *Lockhart v. Lockhart*, 324 So. 3d 777, 795 (¶63) (Miss. 2021). However, “[m]ere speculation’ is not enough to overcome the presumption” that the trial judge “is qualified and unbiased.” *Watson v. Watson*, 306 So. 3d 800, 806 (¶24) (Miss. Ct. App. 2020) (quoting *Jackson v. State*, 1 So. 3d 921, 927-28 (¶18) (Miss. Ct. App. 2008)).

¶17. Regarding the chancellor’s conversation with Wright *after* the temporary hearing, although Cole conceded in his motion that he believed the chancellor “conducted himself in an impartial manner in the Temporary Hearing,” Cole contends that the chancellor “did not make any finding regarding, or even indicate that he had considered, the appropriate standard — whether a reasonable person, knowing all the circumstances, would doubt his impartiality — in making his decision.”

¶18. “A trial judge’s recusal decision is left to his ‘sound discretion’ provided that ‘he applies the correct legal standards and is consistent in the application.’” *Id.* (quoting *Latham v. Latham*, 261 So. 3d 1110, 1112 (¶7) (Miss. 2019)). Our review of the record reveals nothing to suggest that the chancellor should have recused himself in this case. Once Wright mentioned the hearing, Chancellor Hatcher stopped any further discussion and immediately notified the parties of the incident in accordance with the Code of Judicial Conduct. Maggie produced an affidavit from her father stating that he did not know the chancellor. Based on the testimony and the evidence, we disagree with Cole’s claim that a reasonable person, “knowing all the circumstances, would doubt Chancellor Hatcher’s impartiality.”

¶19. Accordingly, we find no manifest error in the chancellor’s decision to deny the recusal motion.⁵

II. Whether the chancery court erred in assessing attorney’s fees against Cole related to the motion for recusal.

¶20. While Cole acknowledges that a chancery court may impose attorney’s fees as sanctions under Rule 11(b) of the Mississippi Rules of Civil Procedure, he contends that the court’s findings on this matter were insufficient because he did not address the factors outlined in *McKee v. McKee*, 418 So. 2d 764, 767 (Miss. 1982), which are used in evaluating whether to award attorney’s fees in a domestic case. Cole contends that this failure constituted manifest error.⁶ He is mistaken.

¶21. “[I]n the case of an award for the purpose of sanctions, the recipient party need not show the *McKee* factors . . . since the nature of such an award is punitive in nature against the payor.” *Martin v. Martin*, 803 So. 2d 511, 513 (¶16) (Miss. Ct. App. 2002); *see also Smith v. Hickman, Goza & Spragins PLLC*, 265 So. 3d 139, 146 (¶17) (Miss. 2019) (recognizing our holding in *Martin*); *Balius v. Gaines*, 908 So. 2d 791, 805 (¶43) (Miss. Ct. App. 2005) (holding that a “chancellor was not required to make findings on the *McKee* factors regarding . . . ability to pay,” as he “awarded attorney’s fees as sanctions”). We find

⁵ Cole also asserts in his brief that the chancellor’s questioning of Maggie during the temporary hearing about the adultery statute exhibited a personal bias against Cole, but he did not raise this matter as a basis for recusal in his motion. Therefore, we cannot hold the chancellor in error in this regard, as it was not presented to him for a decision. *See Bardwell v. White*, 762 So. 2d 778, 783 (¶32) (Miss. Ct. App. 2000) (finding appellant’s argument was procedurally barred because it was not brought before the chancery court).

⁶ Cole makes no substantive argument regarding the chancery court’s finding that his motion was frivolous.

no merit to this issue.

III. Whether the chancery court erred in its calculation of child support.

¶22. Mississippi Code Annotated section 43-19-101 (Rev. 2023) sets forth the guidelines for the award of child support. Under subsection 43-19-101(1), there is a “rebuttable presumption” that the amount of child support for two children is twenty percent of the non-custodial parent’s monthly adjusted gross income. That percentage should be applied unless the chancellor “makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.” Miss. Code Ann. § 43-19-101(2). Thus, prior to applying the statutory guidelines for child support, “the chancellor must first determine the monthly adjusted gross income of the non-custodial parent.” *Chapman v. Chapman*, 395 So. 3d 447, 450 (¶4) (Miss. Ct. App. 2024).

¶23. Subsection 43-19-101(3) sets forth the method for calculating AGI and instructs that gross income is determined “from *all potential sources that may reasonably be expected to be available to the absent parent.*” (Emphasis added). “Generally, this is done by looking at present circumstances and/or historical earnings.” *Id.* at 453 (¶19). The Mississippi Supreme Court has also held that chancellors may consider annual bonuses as part of gross income when awarding child support. *Alderson v. Morgan ex rel. Champion*, 739 So. 2d 465, 467-68 (¶14) (Miss. Ct. App. 1999).

¶24. In the supplemental final judgment, the chancery court ordered Cole to pay monthly child support in the sum of \$1,856.83 (to commence on January 1, 2025), evaluating Cole’s

child support obligation as follows:

Cole's reported gross monthly income	\$9,233.33
1/12th of Cole's 2023 bonus (\$16,462)	\$1,371.83
Monthly Deductions (taxes & Social Security)	- \$1,321.00
Cole's AGI	\$9,284.16
20% of statutory guidelines	\$1,856.83

The chancery court found that “[d]eviation is appropriate in this case based on the bonuses the Plaintiff Father receives.”⁷

¶25. The court also ordered Cole to pay additional monthly support of \$456 for D.V.’s child daycare, which is to increase to \$984 when P.V. starts attending daycare. The chancery court held that “application of deviation from the guidelines for 20% of adjusted income would be appropriate under the criteria specified in Section 43-19-103 (a, f, h and i).”⁸ Those criteria are as follows:

(a) Extraordinary medical, psychological, educational or dental expenses.

....

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

....

⁷ The court, however, determined that “[a]t this time the Court is not prepared to permanently deviate based on the Plaintiff’s Father’s parental assistance to which he testified was temporary.” Cole had testified that his parents had bought him a home.

⁸ The court noted that this amount/support is “to automatically be annually modified as said percentage for childcare/daycare for each of the children changes.”

(h) Total available assets of the obligee, obligor and the child.

(i) Payment by the obligee of child care expenses in order that the obligee may seek or retain employment, or because of the disability of the obligee.

Miss. Code Ann. § 43-19-103 (Rev. 2023). The final judgment also contained a provision for a change in financial circumstances in the determination of Cole’s current and future financial obligations of child support and day care, ordering Cole to provide Maggie with his yearly tax return (along with any W-2 and 1099 tax forms) “for the sole purpose of establishing [Cole’s] correct and current income.”

A. Cole’s Bonuses

¶26. Cole argues that the chancery court erred in its calculation of child support because Cole’s bonuses “were not customary or guaranteed and had fluctuated drastically in the past.” Cole testified at trial that his annual bonus varies from year to year, but he acknowledged that his bonus typically equals one month’s salary. The record showed that he received a total of \$16,462 in bonuses in 2023. A pay stub from May 2024 showed that Cole had received a \$1,500 bonus in that pay period.

¶27. Cole’s reported gross monthly income from his Rule 8.05 statement was \$9,233.33, which encompasses a monthly salary of \$6,833.33 from his employment at the Hayes Law Firm and \$2,400.00 from the City of Olive Branch for his duties as a public defender. *See* UCCR 8.05. However, although the gross income line item stated that it was to include “commission, bonuses and overtime,” it is evident that it did not. Therefore, Maggie requested in her proposed findings of fact that the chancery court include Cole’s bonuses that he “received in 2023 totaling \$16,462.00 from the law firm as reflected in Exhibit 3, his pay

stubs.”⁹ As noted, the court did so and divided that bonus amount by 12 and added it to Cole’s monthly gross income to arrive at Cole’s AGI.

¶28. However, the court erred by failing to deduct the taxes and Social Security for that bonus income in accordance with section 43-19-101(3)(b).¹⁰ Instead, the chancery court used the amount of monthly deductions as stated in Cole’s Rule 8.05 statement, which is from his September 2024 pay stub and only reflected that month’s deductions.

¶29. “If the chancellor errs in his calculation of the non-custodial parent’s adjusted gross income or monthly adjusted gross income, we are required to reverse and remand the issue to the chancery court for the chancellor to recalculate before applying the statutory percentage.” *Chapman*, 395 So. 3d at 450 (¶4). We therefore reverse and remand for the chancery court to recalculate Cole’s AGI, which may include bonuses, but must also include the corresponding deductions for said bonuses in accordance with the statute.

¶30. Cole argues that the chancery court erred in its calculation of child support because there was testimony that his bonuses “were not customary or guaranteed and had fluctuated drastically in the past.” On remand, the court may account for subsequent fluctuations in Cole’s bonus income. In *Vandenbrook v. Vandenbrook*, 292 So. 3d 991 (Miss. Ct. App. 2019), we found no error in a chancellor’s averaging *of three years* of the husband’s AGI to determine child support, as the husband’s income fluctuated from year to year. *Id.* at 1000

⁹ This includes a \$15,000 bonus in the December 2023 pay period, before deductions. His net pay was \$10,989.75 after federal and state taxes.

¹⁰ This subsection instructs the court to deduct federal, state, and local taxes; Social Security contributions; and mandatory retirement and disability contributions. Miss. Code Ann. § 43-19-101(3)(b).

(¶30).¹¹ While a three-year average is not required, should Cole provide evidence of his bonus income from other years for consideration by the court, the court may average that bonus income to obtain a more accurate determination of Cole’s AGI.

B. Childcare Expenses

¶31. Cole also challenges the upward deviation of \$984, which encompasses his paying for a percentage of childcare. As the court references in its order, one criterion the court may consider in finding that the application of the guidelines would be unjust or inappropriate is “[p]ayment by the obligee of child care expenses in order that the obligee may seek or retain employment. . . .” Miss. Code Ann. § 43-19-103(i). The court noted that both of the parties are employed full time; so the court properly found that “childcare/daycare is a necessity.” We find no error in the chancery court’s including daycare expenses for the minor children in the child support determination.

IV. Whether the chancery court erred in its determination of visitation,

¹¹ Cole also argues that the chancellor “failed to make any written or specific finding on the record that the statutory guidelines would be unjust after consideration of the necessary §43-19-103 factors.” The statute provides, “In cases in which the adjusted gross income as defined in this section is more than One Hundred Thousand Dollars (\$100,000.00) or less than Ten Thousand Dollars (\$10,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.” Miss. Code Ann. § 43-19-101(4). *See Vandebrook*, 292 So. 3d at 1000 (¶32) (Because the father’s income exceeded \$100,000, we reversed and remanded for the chancellor “to make written findings as to whether the application of the guidelines was reasonable” in accordance with subsection 43-19-101(4)).

As acknowledged by Cole, the chancellor expressly found that “application of deviation from the guidelines for 20% of adjusted income *would be appropriate* under the criteria specified in Section 43-19-103(a, f, h and i) of the Mississippi Code of 1972 as Amended, and *inappropriate if not granted*.” (Emphasis added). This is sufficient to meet this requirement. However, upon remand, we would further instruct that the court address whether the application of the guidelines is reasonable.

specifically with regard to summer and holiday visitation and the restriction about cohabitation.

¶32. In his supplemental final judgment, the chancellor restricted visitation by prohibiting overnight cohabitation in the presence of the children, reasoning that Cole “continues to be in an adulterous cohabitation relationship with a female attorney, which the Court finds is immoral and indecent, and in an overnight situation with . . . the children present is adverse to the well-being and not in the best interest of the children.” While the chancellor recognized that restrictions on standard overnight visitation should be allowed only to prevent harm or adverse conditions to the health or well-being of the children, citing section 97-29-1 (the unlawful cohabitation statute), he nevertheless prohibited overnight visitation in the presence of either party’s paramour, holding that

to expose either one or both of the children by either party Plaintiff or Defendant, while they remain unmarried, to overnight visitation with the children while with a person, male or female, they are in a sexual relationship with, which the Plaintiff Father is at this time, would be exposing the children to behavior which is ongoing illegal (not criminal)[,] immoral[,], and indecent activity that is harmful and adverse to the well-being and best interests of such children whether it is illegal or legal, as it would teach the children that such activity is good, wholesome, moral and to be accepted, if not commended.

Cole appeals this restriction on visitation, as well as the chancellor’s ruling regarding summer and holiday visitation.

A. Summer and Holiday Visitation

¶33. We will first address the latter argument, since much of Cole’s complaints on this issue have been rendered moot by the passage of time. *See May v. Arthurs*, 195 So. 3d 886, 889 (¶11) (Miss. Ct. App. 2016) (“Cases in which an actual controversy existed at trial but

the controversy has expired at the time of review, become moot.”). Cole is now entitled to four weeks of summer visitation with both children. Our Court has held:

“Except in unusual circumstances, a noncustodial parent is entitled to unrestricted standard or liberal visitation.” Deborah H. Bell, *Bell on Mississippi Family Law* § 5.08[2] (1st ed. 2005) (citing *Cox v. Moulds*, 490 So. 2d 866, 870 (Miss. 1986)). Standard visitation includes “two weekends a month until Sunday afternoon and at least five weeks of summer visitation[,] plus some holiday visitation.” *Id.* (citing *Messer v. Messer*, 850 So. 2d 161, 167 (¶22) (Miss. Ct. App. 2003)). . . . “Awarding less is an abuse of discretion unless there is concrete proof of actual harm to a child.” *Id.*

Michael v. Smith, 237 So. 3d 183, 189-90 (¶26) (Miss. Ct. App. 2018). “However, we have also held that our case law does not mandate a five-week summer visitation, and a chancellor has discretion to fashion a visitation order to suit the child’s best interest.” *Fortner v. Bratcher*, 394 So. 3d 452, 459 (¶32) (Miss. Ct. App. 2024) (internal quotation marks omitted) (quoting *Smith v. Smith*, 379 So. 3d 954, 964 (¶31) (Miss. Ct. App. 2024)).

¶34. In this instance, the chancery court did not increase Cole’s summer visitation to four weeks until 2026 due to the very young ages of the minor children. While the holiday visitation is limited, it will increase when the children reach pre-school age.¹² We find no error in the chancellor’s decision to fashion a more limited visitation on the basis of the children’s age.

B. Cohabitation Visitation Restriction

¶35. As for the restriction on cohabitation during visitation, this Court affords a chancellor

¹² Cole argues that Maggie’s recent move to Birmingham makes visitation more difficult, but that was not an issue before the chancery court; so we cannot address that change, which would be more appropriate for Cole to raise in a separate complaint for modification should he choose to do so.

“broad discretion when determining the appropriate visitation for the non-custodial parent and the limitations thereon.” *Fulk v. Fulk*, 827 So. 2d 736, 742 (¶19) (Miss. Ct. App. 2002). “During deliberation, the best interest of the child is viewed as well as the rights of the non-custodial parent, recognizing the need to maintain a healthy, loving relationship between the parent without paramount custody and the child.” *Id.*

¶36. However, the Mississippi Supreme Court has stated “that in order for a chancellor to restrict visitation he would have to find ‘something approaching actual danger or other substantial detriment to the children.’” *Dunn v. Dunn*, 609 So. 2d 1277, 1286 (Miss. 1992) (quoting *Cox v. Moulds*, 490 So. 2d 866, 868 (Miss. 1986)). In *Dunn*, the supreme court determined that the chancellor’s restriction on visitation was an abuse of discretion and warranted reversal, as “[t]here was no evidence presented that visitation in the mere presence” of the father’s “lover would be detrimental to the children or dangerous in any way.” *Id.*

¶37. Subsequently, in *Harrington v. Harrington*, 648 So. 2d 543 (Miss. 1994), the supreme court addressed a chancellor’s order ruling that the father not be allowed overnight visitation with his children, *that the father’s girlfriend not be allowed in the presence of the children*, and that the father not speak of his relationship with his girlfriend to the children, even though the couple was cohabitating. *Id.* at 544. The basis for the chancellor’s decision was that the father was not married to the girlfriend, that the father’s daughter did not approve of the relationship, and that the girlfriend had spoken harshly to the children on two separate occasions. *Id.* at 544, 546. The supreme court noted in *Harrington*:

In response to a question from the chancellor, Mark said that if his visitation were continued as it was, that perhaps he should not allow Stephanie to be at his home while the children were enjoying visitation.

This goes further than the law requires. While it is difficult for a mere human to live up to the tenets of Christianity, it is rare that the courts of this State punish such a failure. There are numerous Mississippi cases that would allow Mark to have visitation with his children without any restriction on his relationship with Stephanie. The better course of action would be that Stephanie did not stay overnight in the home with the children during that visitation. *Morrow v. Morrow*, 591 So. 2d 829 (Miss. 1991); *Kavanaugh v. Carraway*, 435 So. 2d 697 (Miss. 1983); *Ballard v. Ballard*, 434 So. 2d 1357 (Miss. 1983); and *Cheek v. Ricker*, 431 So. 2d 1139 (Miss. 1983).

Id. at 547. Three justices dissented from this holding, however, concluding that the chancery court did not abuse its discretion in finding that the father’s “living arrangements violated the laws of this state and that this violation of the law was detrimental to the [daughters].”

¶38. In *Carr v. Carr*, 724 So. 2d 937 (Miss. Ct. App. 1998), the chancellor restricted a father’s visitation with his children to “times and places when the paramour . . . is not present” based on the dissent’s reasoning in *Harrington* that the non-custodial father and his cohabiting partner “were violating Mississippi statutory law by committing adultery.” *Id.* at 941 (¶23). This Court found that while the relationship was indeed adulterous, “the restriction does not conform to the adjustments the supreme court has made to reflect the reality of a large number of modern relationships.” *Id.* at (¶20). Because the evidence was “insufficient to restrict Mr. Carr’s visitation in this manner,” we reversed and remanded for the chancellor to “consider a restriction consistent with the majority opinion in *Harrington*.” *Id.* at 942 (¶24).

¶39. Years later, in *Howell v. Turnage*, 56 So. 3d 593, 594-97 (¶¶1, 15-16) (Miss. Ct. App.

2011), this Court found that a chancellor's modification of visitation prohibiting overnight visits with father when "non-related third parties of the opposite sex were also spending the night" was an abuse of discretion, as "[t]here was absolutely no evidence in the record that overnight visits in the presence of Michael's girlfriend adversely affected [his teenage daughter]."

¶40. The supreme court recognized in *Harrington* "that there must be evidence presented that a particular restriction on visitation is necessary to avoid harm to the child before a chancellor may properly impose the restriction." *Harrington*, 648 So. 2d at 545 (citing *Dunn*, 609 So. 2d at 1286). "Otherwise, the chancellor's imposition of a restriction on a non-custodial parent's visitation is manifest error and an abuse of discretion." *Id.*

¶41. Here, the chancellor's basis for this restriction was his personal disdain for the "immoral" and illegal nature of Cole's adultery. *See* Miss. Code Ann. § 97-29-1. The chancellor reasoned that to expose the minor children to cohabitating adults would be harmful to the children, "as it would teach the children that such activity is good, wholesome, moral, and to be accepted." The chancellor cited *Carter v. Escovedo*, 175 So. 3d 583 (Miss. Ct. App. 2015), for the proposition that chancellors may impose restrictions on overnight guests during visits when justified and that restrictions are necessary when circumstances present an "appreciable danger of hazard." *Id.* at 589 (¶33).

¶42. We find that *Carter* is factually distinguishable from the present case, as there was testimony in *Carter* that the non-custodial mother had allowed men to sleep in the bed with her *and the child* and that the child was afraid of her mother's boyfriend because he and her

mother had fought in front of her. *Id.* at (¶¶34-35). Here, no evidence was presented of an “appreciable danger of hazard” justifying the restriction. When Cole was asked at the August 5, 2024 hearing whether he thought it was appropriate to maintain a relationship with his paramour, he replied:

I think that it’s completely separate from the fact she’s not around him and my -- essentially my life that is relationship, not relationship -- I mean, I hate that I had an affair. . . . And I’m sorry that it occurred. **But as far as is she a danger to the child, absolutely not. She’s not done anything -- she hasn’t even been around him.** So I don’t know really that it’s a problem for him at all. I’m not trying to introduce him to a second mother.

(Emphasis added). Although Cole agreed that it would not be appropriate at that time for his girlfriend to spend the night while D.V. was visiting, Cole clarified that once the divorce was finalized, he did not think it would be inappropriate, noting “she’s not a dangerous person She doesn’t do drugs or anything like that.”

¶43. Accordingly, we find the chancery court’s ruling prohibiting overnight cohabitation during visitation should be reversed and remanded for additional findings as to whether the restriction “is necessary to avoid harm to the child[ren]” in accordance with the majority’s decision in *Harrington*.

Conclusion

¶44. We affirm the chancery court’s denial of Cole’s motion for recusal and award of attorney’s fees as sanctions. On the issues of child support and visitation, we reverse and remand for the chancery court (1) to re-calculate Cole’s gross income and deductions to determine his AGI and the amount of child support in accordance with section 43-19-101, and (2) to make additional findings whether the restriction on “overnight cohabitation” is

necessary to avoid harm to the children.

¶45. **AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

CARLTON, P.J., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. WILSON, P.J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE OPINION.