IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-CA-00453-COA

WILLIAM T. McLAIN **APPELLANT**

v.

TRISTAN DAVIS **APPELLEE**

DATE OF JUDGMENT:	03/28/2025
TRIAL JUDGE:	HON. ASHLEE E. COLE
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	JANE E. TUCKER
ATTORNEY FOR APPELLEE:	JEFFREY G. PIERCE
NATURE OF THE CASE:	CIVIL - CUSTODY
DISPOSITION:	AFFIRMED IN PART; REVERSED AND REMANDED IN PART - 11/10/2026
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., McDONALD AND EMFINGER, JJ.

EMFINGER, J., FOR THE COURT:

¶1. The Chancery Court of Jackson County, Mississippi, entered a final judgment ordering William McLain to pay Tristan Davis $600 per month in child support for their minor child, K.D.[1] The judgment provided that visitation between McLain and K.D. would be exercised at Davis' sole discretion. Aggrieved by the chancery court's ruling, McLain appeals.

FACTS AND PROCEDURAL HISTORY

¶2. Although McLain and Davis were never married, they are the natural parents of K.D., a minor child born in May 2023. In December 2023, the Mississippi Department of Human

[1] We use initials in this opinion to protect the identity of the minor child.

Services (DHS) filed a complaint to determine paternity and for other relief. Davis soon filed a "Petition for Custody, Supervised Visitation and Child Support." At McLain's request, the initial hearing on Davis' petition was continued to September 3, 2024, and on that day the chancellor entered a handwritten, temporary order granting Davis temporary physical and legal custody of K.D. The order acknowledged that McLain had taken a paternity test, and based on those results, McLain was found to be K.D.'s biological father. The temporary order also required McLain to pay Davis $350 per month in child support through DHS, beginning on September 15, 2024, and continuing until further order of the court. The temporary order also provided that K.D. should remain on Medicaid as long as he qualified. An order for withholding was entered on January 15, 2025. On March 5, 2025, the court conducted a final hearing on both Davis' petition for custody, visitation, and support and DHS' complaint for support and other relief. The extremely informal hearing on the petitions consisted of the parties and counsel having an open dialogue with the court, where the chancellor asked questions and the parties gave sworn answers and explanations to support their positions. No witnesses were called, and neither side was given the opportunity to cross-examine the other concerning the information presented to the chancellor. As it relates to this appeal, the final judgment increased McLain's child support obligation to $600 per month and allowed McLain visitation with his child at the sole discretion of Davis. Aggrieved by these specific portions of the Final Judgment, McLain filed his notice of appeal.

STANDARD OF REVIEW

¶3. On appeal, this Court reviews a chancellor's decision for an abuse of discretion, and we will not disturb a chancellor's findings "unless the chancellor was manifestly wrong, clearly erroneous or applied an incorrect legal standard." *Williams v. Williams*, 347 So. 3d 178, 181 (¶12) (Miss. 2022). However, we review questions of law de novo. *Id*.

ANALYSIS

¶4. McLain raises three issues on appeal. First, he claims that the award of child support in the amount of $600 was an abuse of discretion by the chancellor given the limited evidence presented regarding McLain's income. Second, McLain argues that it was error for the chancellor to "deny" him any visitation with K.D. Third, McLain argues that if this case is remanded for further review, the case should be assigned to a different chancellor.

I. Child Support

¶5. McLain contends that the chancellor awarded $600 in child support based on imputed income without identifying any factors to justify the amount. At the hearing, there were only two types of financial documents reviewed to assist the chancellor in determining the amount of the child support award: (1) selective bank account records from Trustmark and (2) McLain's Rule 8.05 financial declaration.

¶6. While there was substantial discussion at the hearing regarding certain bank account records obtained from Trustmark referencing a financial account McLain owned, the account records were not entered into evidence and are not contained in the appellate record. The testimony suggested that large deposits and withdrawals had been made in McLain's account, which at one time apparently had an $800,000 balance. There were multiple explanations

given regarding the origin of this money. McLain stated that the money was a "gift" from a friend and that he had lived solely off that money for several years. However, according to McLain, the account was currently depleted, mostly due to his gambling addiction. Davis stated that McLain gave her multiple stories about where the money came from. Davis testified that McLain told her that the money was "passed to him from his grandmother. Then, he said from friends. Then, he said from Bitcoin. Then, he said from stocks." Regardless, this Court has no way to verify or substantiate any information contained in McLain's bank records because they are not contained in the record on appeal.

¶7. The chancellor also considered McLain's Rule 8.05 financial declaration in determining the amount of child support to award. *See* UCCR 8.05. The record reflects that a recess was taken shortly after the hearing began in order for McLain to complete the financial declaration. The record shows that other than listing $31,000 in credit card debt, every other blank on the document listed "0" as the value. McLain testified that he had not had a job in nine years and had limited education. McLain claimed that because of the monetary "gift" from his friend, he did not have to work for years. However, now that the money was gone, he claimed that he was homeless and destitute. McLain testified that he had done some odd jobs, like cutting yards, over the years. But he had not been able to continue that type of work in the last several months due to a back injury.

¶8. In her ruling regarding child support, the chancellor stated:

> I'm going to, beginning with the month of April 2025, increase the child support obligation of Mr. McLain to $600.00 a month, based on the bank statements from Trustmark that show that there have been large amounts of money going into the account, that he has not, in my opinion been forthcoming

> about, and, also, that he does not have an inability to work and that he has, by his own admission, not had a job in nine years and he is not willing to work to support this child, but he certainly has the ability to have large amounts of cash at his discretion.

¶9. Mississippi Code Annotated section 43-19-101 (Rev. 2023) sets forth the guidelines for calculating child support in Mississippi. Pursuant to section 43-19-101(1), there is a rebuttable presumption that the award of child support for one child should be 14% of McLain's adjusted gross income.[2] Further, section 43-19-101(2) states:

> The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child-support award 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.

Finally, section 43-19-101(5) states:

> Imputation of income shall not be based upon a standard amount in lieu of fact-gathering. In the absence of specific sufficient evidence of past earnings and employment history to use as the measure of an obligated parent's ability to pay, the recommended child-support obligation amount should be based on available information about the specific circumstances of the obligated parent. This can include, but is not limited to, such factors as assets, residence, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the obligated parent, prevailing earnings level in the local community, and other relevant factors in the case.

¶10. In the case at hand, no information in the record supports an award of $600 a month in child support. McLain's Rule 8.05 financial declaration gave no income amount. McLain

[2] Pursuant to section 43-19-101(4), if McLain's adjusted gross income is less than $10,000 or more than $100,000, the chancellor was required to make written findings in the record as to whether the application of the guidelines is reasonable. The statute also requires the chancellor to take into account the "basic subsistence needs of the obligated parent who has a limited ability to pay."

testified that he did not have a job and had not had one in nine years. Further, there was testimony that McLain's bank account had been depleted. Mississippi Code Annotated section 43-19-101(2) requires that when a chancellor deviates from the statutory guidelines, the chancellor must make "a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate." Section 43-19-101(5) states that imputation of income requires "fact gathering." In this case, the chancellor awarded $600 per month in child support without any discussion or explanation as to how she arrived at that number. We recognize that McLain was representing himself at the hearing, and the chancellor obviously found McLain's limited input on this issue, to be kind, unhelpful.

¶11. In *Huseth v. Huseth*, 135 So. 3d 846, 867 (¶31) (Miss. 2014), the supreme court reversed a chancellor's child support award and remanded the issue for a more comprehensive consideration of **all** the facts and circumstances, including what the father could actually pay. As noted above, while we recognize the chancellor had less than adequate information with which to decide the issue of child support, the record does not meet the requirements of the statutes. The chancellor failed to establish a monthly adjusted gross income and failed to show how she calculated the amount of income she imputed to McLain. If the chancellor determined that McLain's ability to pay was based upon his assets or net worth, the evidence to support those findings should be set out in the record. Therefore, this issue must be remanded to the chancery court to determine a child support amount in accordance with the statutes set forth above.

II. Visitation

¶12. McLain argues that it was error for the chancellor to deny him "any visitation whatsoever." However, it is important to note that the chancellor did not deny McLain visitation. She ordered that McLain's visitation would be exercised at Davis' discretion. McLain did not file any pleading requesting visitation with the minor child. Further, during the hearing, McLain made no proposal concerning the exercise of visitation; the most he said was that he would like to see his son. Davis did set out a request for McLain's visitation in her petition. In paragraph VIII, Davis requested:

> Because of the age of the minor child, [Davis] requests that [McLain] be ordered to take parenting and anger management classes and that proof of same be required to be filed with the Court before he is granted supervised visitation, because [McLain] has a history of domestic violence and criminal behavior.

In her prayer for relief, Davis requested that McLain be granted supervised visitation, if any. It is evident from her own petition that, under certain conditions, Davis was open to helping facilitate visitation between K.D. and McLain.

¶13. In *Fulk v. Fulk*, 827 So. 2d 736, 742 (¶¶19-21) (Miss. Ct. App. 2002), this Court stated:

> The chancellor is given broad discretion when determining the appropriate visitation for the non-custodial parent and the limitations thereon. *Harrington v. Harrington*, 648 So. 2d 543, 545 (Miss. 1994). 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*.
>
> This Court will not reverse a chancellor's findings as long as they are supported by substantial evidence in the record. *Tedford v. Dempsey*, 437 So. 2d 410, 417 (Miss. 1983). However, we will reverse when the chancellor is "manifestly in error in his finding of fact or has abused his discretion." *Hammett v. Woods*, 602 So. 2d 825, 828 (Miss. 1992).

> The Mississippi Supreme Court dictated in *Dunn v. Dunn*, 609 So. 2d 1277, 1286 (Miss. 1992), 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. Otherwise, the chancellor's imposition of a restriction on a non-custodial parent's visitation is manifest error and an abuse of discretion." [*Harrington*, 648 So. 2d at 545].

¶14. The evidence presented to the chancellor for her to determine visitation was limited. However, the evidence that the court did have was uncontradicted in showing that McLain was homeless, had no source of income, a drained bank account, and no relationship with his child who was under the age of three. Additional evidence in the record showed that McLain lived in another part of the state; in fact, he missed two court appearances. In her bench ruling, the chancellor found that "Mr. McLain has failed to meaningfully participate in this action." In the written order, the chancellor made several findings that impacted her decision on visitation. First, the chancellor found that McLain had not "meaningfully" objected to the relief Davis sought. The court found that McLain "did not provide any testimony that he has any parenting skills whatsoever." The chancellor further found that McLain was a stranger to the child. The chancellor then stated:

> Due to the foregoing facts, [Davis] will determine, in her sole discretion, what visitation [McLain] may have with the minor.

¶15. This Court cannot say that the chancellor abused her discretion in placing restrictions on McLain's visitation to protect the best interest of the child. McLain offered the court no suggestion as to how, when, or if he could exercise visitation with his son. The chancellor's order gives McLain a chance to establish a relationship with his son. However, if Davis unreasonably denies McLain visitation with K.D., McLain can bring the matter back before

the chancery court to seek relief. Therefore, we find no error in the chancellor's visitation award.

III. Chancellor Reassignment

¶16. McLain argues that the chancellor showed obvious animosity toward him at the hearing and therefore should be removed from his case in the event that it is remanded for further review. McLain did not raise this argument before the chancery court in compliance with Uniform Chancery Court Rule 1.11(C); therefore, this issue is not properly before this Court on appeal.

CONCLUSION

¶17. After reviewing the record, we find that the chancellor erred in awarding child support in the amount of $600 per month. Therefore, we reverse the court's order on this issue and remand for the chancellor to make a more specific and detailed ruling on the record concerning how she determined the amount of child support. We find no error by the chancellor in allowing McLain's visitation with K.D. to be exercised at Davis' sole discretion. Finally, we find that the issue of the chancellor's recusal is beyond the scope of this Court's review. The issue of the recusal of the chancellor should be first addressed to the chancellor.

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

BARNES, C.J., CARLTON, P.J., McDONALD AND LASSITTER ST. PÉ, JJ., CONCUR. WESTBROOKS, LAWRENCE AND WEDDLE, JJ., CONCUR IN PART AND DISSENT IN PART WITHOUT SEPARATE WRITTEN OPINION. WILSON, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY WESTBROOKS, LAWRENCE, McCARTY AND WEDDLE, JJ.

WILSON, P.J., CONCURRING IN PART AND DISSENTING IN PART:

¶19. I concur in Parts I and III of the lead opinion. I respectfully dissent from Part II, which affirms the chancellor's denial of visitation to McLain.

¶20. "In granting or denying visitation, a chancellor's primary concern must be the best interest of the child, while still considering 'the rights of the non-custodial parent, recognizing the need to maintain a healthy, loving relationship between the non-custodial parent and his child.'" *Saint v. Quick*, 24 So. 3d 395, 403-04 (¶30) (Miss. Ct. App. 2009) (quoting *Harrington v. Harrington*, 648 So. 2d 543, 545 (Miss. 1994)). "Furthermore, '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.'" *Id.* at 404 (¶30) (quoting *Harrington*, 648 So. 2d at 545).

¶21. In *Saint*, the chancellor granted the father's petition to modify custody, granted him legal and physical custody, and granted the mother no visitation because she had willfully and persistently denied the father visitation while she had custody of the children. *Id.* at 399-401 (¶¶9-16). On appeal, this Court reversed and held "that the chancellor abused his discretion in refusing to award any visitation" because there was "no indication that there was any impending harm to the children sufficient to justify a complete denial of visitation." *Id.* at 404 (¶31). We held that because "visitation should be considered with the best interests of the children in mind, [the mother's] continual refusal to abide by court orders should be considered only to the extent that that refusal impacts the best interests of the children." *Id.* Therefore, we ruled that the chancellor "*must* grant visitation to [the mother] on whatever

conditions the court finds are necessary to protect the interests of the children." *Id.* (emphasis added). We suggested that the chancellor "could order that visitation take place in Mississippi, or that visitation be restricted and carefully supervised." *Id.*

¶22. Likewise, there is no evidence in this case that supervised visitation with McLain would cause "any impending harm to the child[] sufficient to justify a complete denial of visitation." *Id.* At the final hearing in the chancery court, McLain admitted that he is homeless, unemployed, and has a gambling problem. The record includes little other relevant evidence because the hearing was brief and essentially inquisitorial in nature, consisting of only limited questioning by the chancellor and arguments from Davis's counsel and McLain, who was pro se.[3] The following exchanges occurred near the end of the hearing:

> MR. McLAIN: Judge, can I say something for the record?
>
> THE COURT: No.
>
> . . . .
>
> MR. McLAIN: Right, but you know nothing about me or anything, and you haven't given me a chance to tell you enough about everything.
>
> THE COURT: You're excused, Mr. McLain. Thank you so much for participating.

¶23. The lead opinion states that "it is important to note that the chancellor did not deny McLain visitation. She ordered that McLain's visitation would be exercised at Davis's discretion." *Ante* at ¶12. Respectfully, this is a distinction without a difference, as the

[3] The lead opinion notes that Davis alleged that McLain "has a history of domestic violence and criminal behavior." *Ante* at ¶12. However, there is no evidence in the record to support this allegation.

chancellor did not grant McLain *any* visitation. To the contrary, the chancellor's order expressly authorizes Davis to "determine, *in her sole discretion*, what visitation [McLain] may have with [K.D.]." (Emphasis added). As the Georgia Supreme Court explained, an order that leaves "visitation completely at the unfettered discretion of [the custodial parent]" "has the effect of denying [the non-custodial parent] any right to visitation." *Chandler v. Chandler*, 409 S.E.2d 203, 203 (Ga. 1991) (holding that absent exceptional circumstances, it is an abuse of discretion not to award a non-custodial parent specific, minimum visitation).[4] Indeed, an order that grants the custodial parent "sole discretion" to determine visitation gives the non-custodial parent no legally enforceable visitation rights.

¶24. In addition, the lead opinion states that "it is evident from her own petition that, under certain conditions, Davis was open to helping facilitate visitation between K.D. and McLain." *Ante* at ¶12. Respectfully, the record indicates otherwise. Davis's petition stated that McLain should be "awarded supervised visitation, *if any*." (Emphasis added). Moreover, at the hearing in the chancery court, Davis's attorney stated:

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[4] Other state courts have reached the same conclusion. *See, e.g.*, *In re Lemons*, 47 S.W.3d 202, 206 (Tex. App. 2001) (holding that an order that gives the custodial parent "complete discretion to determine when, where, and if [the non-custodial parent] may have [visitation]" is essentially unenforceable and "effectively a denial of [the non-custodial parent's] right to visitation with her child"); *Rainey v. Rainey*, 869 S.E.2d 66, 78-81 (Va. Ct. App. 2022) (holding that the trial court abdicated its duty to determine visitation by granting the custodial parent "sole discretion" to determine visitation and that the non-custodial parent's right to petition to modify visitation did "not justify the initial, impermissible delegation of power"); *Lightsey v. Davis*, 267 So. 3d 12, 15 (Fla. Dist. Ct. App. 2019) (holding that the trial court improperly abdicated its responsibility to determine visitation by granting the custodial parent "sole discretion" to determine visitation); *Bryant v. Bryant*, 739 So. 2d 53, 56-57 (Ala. Civ. App. 1999) (holding that the trial court abused its discretion by placing "the husband's right to visit his children completely within the wife's discretion").

> My client would also like to continue the injunction. She's had no contact with him, wonderfully, since the Court entered an order prohibiting [him] from contacting her due to threats that she received. But if visitation is granted, then, supervised, you know, the graduated schedule.

The chancellor had previously entered an order that stated, "Both parties are enjoined from harassing[,] threatening, [and] abusing each other through any means or agency." The order did not explain the basis for the mutual injunction, and there is no transcript of the hearing, if any, that led to it. In any event, the record shows that Davis did *not* want to have contact with McLain or facilitate visitation. Thus, there is no basis for the lead opinion's belief that Davis will "help[] facilitate visitation between K.D. and McLain" (*ante* at ¶12)—especially now that the chancellor has granted Davis the "*sole discretion*" to "determine . . . what visitation [McLain] may have with [K.D.]." (Emphasis added).

¶25. The Mississippi Supreme Court has affirmed similar orders only in comparatively extreme circumstances. In *Griffin v. Griffin*, 237 So. 3d 743 (Miss. 2018), the Supreme Court affirmed an order granting the husband discretion to "determine if and when" the children should have in-person visitation with their mother—because, among other reasons, the mother, a former teacher, was serving a prison sentence for having sex with minor students, the prison was four hours away from the children's home, the prison's open visitation area would expose the children to violent offenders, and the chancellor found that visitation could be emotionally harmful to the children. Even so, the chancellor granted the mother specific phone visitation, "permitting her to call her daughters four evenings a week." *Id.* at 746 (¶9). And in *Williams v. Williams*, 264 So. 3d 722 (Miss. 2019), the Supreme Court affirmed an order that allowed the parties' seventeen-year-old son to determine what

visitation he would have with his mother while ordering the father not to interfere with any visitation. *Id.* at 725 (¶6). In *Williams*, the son, a talented baseball player, had moved to Florida to pursue a baseball career, and the chancellor found that the mother's actions, including removing the son's possessions from the marital home and interfering with his baseball opportunities, had alienated the son from the mother. *Id.* at 725-26 (¶¶6-7, 10).

¶26. No similar circumstances in the present record justify granting Davis "sole discretion" to determine if and when McLain may have visitation. As stated above, all the record shows is that McLain is homeless, unemployed, and has a gambling problem.[5] Yet, the chancellor's order grants McLain no enforceable visitation rights. Such an order should not be entered in the absence of evidence and findings that even supervised visitation would be harmful to the child.

¶27. The lead opinion optimistically predicts that "[t]he chancellor's order gives McLain a chance to establish a relationship with his son." *Ante* at ¶15. But the chancellor's order only grants Davis "*sole discretion*" to determine "what visitation [McLain] may have with" their son (emphasis added)—*and Davis does not want to have anything to do with McLain!* If McLain is able to see his son at all, it will only be because Davis, in her "sole discretion," allows him to—not because of anything in the chancellor's order. In the absence of some *evidence* that even supervised visitation with McLain would be harmful to the child, the

[5] The lead opinion states: "[T]he chancellor made several findings that impacted her decision. . . . The court found that McLain 'did not provide any testimony that he has any parenting skills whatsoever.'" *Ante* at ¶14. However, as set out above, the chancellor would not allow McLain to give testimony regarding anything other than his finances and unemployment.

chancellor's order improperly delegates the court's authority to one parent. Accordingly, I would reverse and remand with instructions to grant McLain specific visitation—or, alternatively, develop the record and make findings sufficient to justify granting him no visitation.[6] Therefore, I respectfully concur in part and dissent in part.

WESTBROOKS, LAWRENCE, McCARTY AND WEDDLE, JJ., JOIN THIS OPINION.

[6] To be clear, it is possible that there are sufficient reasons to deny McLain visitation and give Davis the "sole discretion" to determine if and when he may have visitation. However, there is *no evidence* in the present record to support such an order.