IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00391 COA

RAY ALLEN TUCKER

APPELLANT

v.

DEBRA EDGE TUCKER

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. TIMOTHY E. ERVIN

COURT FROM WHICH APPEALED: ALCORN COUNTY CHANCERY COURT

ATTORNEY(S) FOR APPELLANT:

REBECCA COLEMAN PHIPPS

ATTORNEY(S) FOR APPELLEE:

W. JETT WILSON

NATURE OF THE CASE: DOMESTIC RELATIONS - MODIFICATION OF CHILD SUPPORT

TRIAL COURT DISPOSITION: FORMER WIFE TO PAY FORMER HUSBAND FIXED MONTHLY AMOUNT FOR SUPPORT OF ONE (OF THREE) CHILDREN NOW LIVING WITH HUSBAND; AMOUNT TO BE BASED ON FORMER WIFE'S NEW INCOME; FORMER HUSBAND TO CONTINUE PAYING $1,200.00 FOR TWO (RATHER THAN THREE) CHILDREN.

BEFORE FRAISER, P.J., MCMILLIN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This case involves a former husband's request for child support modification. The chancery court modified the child support amount to be paid by the former husband. We find that the chancellor's reduction of monthly child support payments was not an abuse of discretion and not unjust. We therefore affirm the court's order.

FACTS

Ray and Debra Tucker were divorced in June 1990. The court awarded Debra custody of their three children and ordered Ray to pay $1,200.00 per month in child support. In April 1991, Ray filed a petition to modify which sought custody of their oldest child and requested a reduction in child support. The court denied his request on both issues. Subsequently, Ray and Debra agreed that their oldest child should indeed live with Ray, while the two younger children would remain with Debra. Their agreement, which eventually was filed as a court order, granted Ray custody of their oldest child and required Ray to continue to pay $1,200.00 for the support of the two children living with Debra. At the time of the agreement, Debra was a full-time college student and had little, if any, income. The agreement and order also allowed either party, upon Debra's becoming employed full-time, to petition the court for a modification of child support based on the financial condition of the parties at that time.

Debra graduated and began a full-time job in August 1993. In November 1993, Ray requested a modification of child support composed of: (1) a reduction in child support he paid to Debra for the two younger children and (2) payment by Debra to him to support the oldest child who now lived with him. The chancery court determined, based on Debra's new income, that she should pay child support for the oldest child. The court did not reduce the $1,200.00 amount that Ray had previously been required to pay to support the two younger children.

Ray now appeals the chancery court decision not to reduce the $1,200.00 amount.

ANALYSIS

> I. DID THE TRIAL COURT ERR BY FAILING TO REQUIRE DEBRA TO PAY SUFFICIENT CHILD SUPPORT, BASED ON HER NEW INCOME, FOR THE PARTIES' OLDEST CHILD NOW LIVING WITH RAY AND BY FAILING TO REDUCE THE AMOUNT OF CHILD SUPPORT THAT RAY PAYS FOR THE PARTIES' TWO YOUNGER CHILDREN?

Ray argues that the court failed to reduce the $1,200.00 amount of child support he pays for two, rather than three, children. He also contends that Debra, who now has gainful employment and income, should be required to financially support the oldest child who now lives with him. In the present case the court did, in fact, require Debra, by statutory calculation, to pay child support for the oldest child. Therefore, Ray's argument is essentially that the court failed to reduce the amount he is required to pay for the two children still living with Debra.

The Mississippi Supreme Court has stated that "in cases concerning support of children, the best

interest of the child is the ‘touchstone’ which this Court must keep in mind." *Love v. Barnett*, 611 So. 2d 205, 208 (Miss. 1992) (citation omitted). "Child support is awarded to the custodial parent for the benefit and protection of the child." *Id.* (citations omitted). Mississippi statutory law provides for child support guidelines regarding an award or modification of child support. Miss. Code Ann. § 43-19-101(1) (1972). The statute specifies percentages of a non-custodial parent’s adjusted gross income to be awarded for supporting his or her children. *Id.* These percentages depend upon the number of children that are to be supported. *Id.* Moreover, the statutory guidelines "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." Miss. Code Ann. § 43-19-101(2) (1972); *see also Grogan v. Grogan*, 641 So. 2d 734, 740 (Miss. 1994).

If a chancellor departs from the statutory guidelines and states his or her reasoning on the record, an appellate court must consider whether the chancellor erred in the amount itself. *Grogan*, 641 So. 2d at 740-41. The child support award is within the sound discretion of the chancellor. *Id.* at 741. This Court will not disturb a chancellor’s determination of child support unless the chancellor was manifestly in error in a finding of fact or abused his or her discretion. *Id.* (citations omitted); *see also Love*, 611 So. 2d at 208 (chancellor has substantial discretion and must consider all relevant facts and equities in modifying child support so that best interests of the child prevail). An appellate court has a limited scope of review and will not arbitrarily substitute its judgment for that of the chancellor who is better situated to evaluate the factors related to the best interests of the child. *Ash v. Ash*, 622 So. 2d 1264, 1266 (Miss. 1993) (citation omitted); *Barber v. Barber*, 105 So. 2d 630, 632 (Miss. 1958) (court will not substitute its judgment for that of chancellor unless it clearly appears that chancellor abused his discretion or failed to exercise equity). Moreover, if a chancellor is not manifestly wrong and reaches the right result, even though utilizing the wrong reason, this Court will not reverse on that basis. *Bonderer v. Robinson*, 502 So. 2d 314, 317 (Miss. 1986) (citations omitted); *Tedford v. Dempsey*, 437 So. 2d 410, 418 (Miss. 1983) (citation omitted) (court will affirm if chancellor reaches correct result under law and facts even if for wrong reason).

In the present case, the chancery court properly found that a material change of circumstances existed to justify modification of child support--that change being Debra’s graduation from college and full-time employment. The court order required Debra to pay child support of $223.54 per month for their oldest child to Ray, who had custody of that child. The court did not change the $1,200.00 amount, but properly utilized the statutory guidelines to determine that Debra should pay Ray fourteen percent of her adjusted gross income for support of their oldest child. We fail to understand the chancellor’s calculations, specifically (1) his use of the difference between twenty-three percent and fourteen percent of Debra’s take-home pay, and (2) the reduction of her take-home pay by $1,895.03. However, the court effectively reduced Ray’s required payment of $1,200.00 per month for support of their two younger children to Debra, who had custody of those children, to a net amount of $976.46 per month. Although the calculations are not completely clear, the result is not unjust. We do not find that the chancellor abused his discretion in fashioning a modification. The chancellor had the authority to leave the $1,200.00 monthly payment undisturbed while requiring Debra to pay support for their oldest child.

The chancellor’s net reduction of Ray’s $1,200.00 monthly payment was based on Debra’s new

income. We believe that the chancellor was in error with his egregious statement that, because Ray had failed to put on proof of costs to support the oldest child, he would not require Debra to pay child support to Ray. Under the statutory protection of section 43-19-101, a chancellor cannot completely deprive a child of financial support. We do not believe that the chancellor here was attempting to deprive the parties' oldest child of support. We merely wish to reiterate the fact that the failure to put on proof of the costs of raising a child does not allow or require a chancellor to deny a payee parent at least the minimum support payment for a child under that statute. Proof of the costs of raising a child may, however, come into play within the chancellor's discretion under section 43-19-103 in deviating from the statutory minimum. Despite the chancellor's erroneous statement, we find that the court in fact properly attempted to determine the amount of Debra's obligation. Therefore, the net result of the reduction of Ray's obligation was not in error. The balance of the record indicates that the chancellor properly exercised his discretion in attempting to calculate an accurate net modification amount. We do not find this to be an abuse of discretion or an unjust result and, accordingly, will not substitute our judgment for that of the chancellor. We find that, although the chancellor possibly assigned a wrong reason, he ultimately reached the right result.

Although we have no record of Ray's income when the original divorce decree was filed, we must assume that the parties mutually agreed not to be bound by the statutory guidelines of section 43-19-101 regarding the $1,200.00 per month child support payments. The parties again subsequently mutually agreed to Ray's monthly payment of $1,200.00 for two rather than three children when they changed custody of the oldest child from Debra to Ray. This agreement included the stipulation that the issue of adjustment of child support could be later revisited at either parties' request when Debra graduated from college and became employed full-time. We believe that section 43-19-101 guidelines are irrelevant here because the basis of both previous agreements was an obvious deviation from those statutory guidelines. Therefore, the chancery court was not bound by the statutory guidelines of section 43-19-101 regarding the $1,200.00 child support payment, because two previous agreements themselves deviated from this basis. As a final note, we suggest that any finding or calculation under sections 43-19-101 or 43-19-103 should be clearly explained on the record. Likewise, any reason for deviation from section 43-19-101 should be clearly stated on the record.

CONCLUSION

We find that the result reached by the chancellor was not an abuse of discretion and not unjust. This Court will therefore not substitute its judgment for that of the chancellor. We believe that the chancellor reached the right result and affirm the order of the chancery court.

THE JUDGMENT OF THE CHANCERY COURT OF ALCORN COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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