

**IN THE COURT OF APPEALS 11/14/95**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 95-CA-00024 COA**

**RICHARD KNUTSON**

**APPELLANT**

**v.**

**JANET KNUTSON**

**APPELLEE**

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

TRIAL JUDGE: HON. GERALD E. BRADDOCK

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

RABUN JONES

ATTORNEY FOR APPELLEE:

WILLARD L. MCILWAIN, JR.

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

TRIAL COURT DISPOSITION: NO CHANGE IN VISITATION RIGHTS OF FATHER  
AWARDED

BEFORE BRIDGES, P.J., McMILLIN, AND PAYNE, JJ.

McMILLIN, J., FOR THE COURT:

The marriage of Dr. Richard A. Knutson and Janet M. Knutson ended with a divorce decree entered

in the Washington County Chancery Court on April 1, 1993. The six children born of this marriage ranged from ages five to twelve at the time of the hearing. Primary legal custody was awarded to the mother, Janet Knutson, with the non-custodial parent, Richard Knutson, having the right to visitation on alternate weekends from Friday at 6:00 p.m. until Sunday, 6:00 p.m., alternating major holidays, and summer visitation, as well as visitation "at such times and places as the parties may agree."

Soon after the parties separated, Richard and Janet Knutson mutually agreed that Richard would be allowed week-night visitation with his children. However, in September of 1994, after approximately two and a half years, Janet ended this arrangement. She gave as her reason that the visitation on school nights interfered with the children's homework and studying. Shortly thereafter, Richard Knutson filed a motion seeking to modify the visitation schedule to expressly provide for the week-night visits with his children.

Richard and Janet Knutson were the sole witnesses at the hearing on the motion. The chancellor found that the specific visitation set out in the prior decree was working and stated further: "[I]t would not be in the best interest and welfare of the children for this court to modify that visitation and to allow the non-custodial parent specific visitation during the school week . . . unless there was a special situation where this did not interfere with their routine and school work." The final decree stated that "no material change in circumstances occurred to warrant a change in the visitation schedule in effect" and dismissed Dr. Knutson's motion.

Dr. Knutson filed this appeal, assigning as error (1) that the failure to modify visitation was an abuse of discretion, and (2) that the chancellor applied an erroneous standard in suggesting the necessity for proving a material change in circumstances to modify visitation. He further claims that the chancellor based his decision on the whims of the children.

#### DISCUSSION OF THE LAW

Dr. Knutson has correctly pointed out that he was not obligated to prove a material change in circumstance since, in matters of visitation, "our familiar change in circumstances rule has no application." *Clark v. Myrick*, 523 So. 2d 79, 83 (Miss. 1988). The chancellor may modify visitation upon a determination that the prior decree "isn't working and that it is in the best interest of the children" to modify. *Sistrunk v. McKenzie*, 455 So. 2d 768, 770 (Miss. 1984).

The Mississippi Supreme Court has observed the reverse to be true, also, and that, if the previous decree is working and is in the best interest of the child, then modification is inappropriate. *Clark v. Myrick*, 523 So. 2d at 83.

To that extent, the language of the chancellor's decree that "no material change in circumstance" had occurred is unfortunate. Nevertheless, the underlying rationale for the chancellor's decision, clearly apparent from the record, is that he agreed with Mrs. Knutson's assertion that such a modification would not be in the best interest of the children, in that it had the potential for interfering with their school performance. We cannot conclude that such a decision constituted an abuse of discretion. His decision appeared to encourage such extra visitation in circumstances where it would not, in fact, interfere with school work, but declined to formalize such visits. The chancellor seemed, instead, to be relying upon the parties to continue in good faith to abide by the provision of the previous decree that permitted additional visitation "at such times and places as the parties may agree." This court,

likewise, urges the parties to continue to treat that provision as something other than meaningless boilerplate and to work toward a flexible visitation schedule that would have the purpose of "fostering a positive and harmonious relationship between [the children] and their divorced parents . . ." *Cox v. Moulds*, 490 So. 2d 866, 869 (Miss. 1986).

The chancellor properly had the best interest of the children foremost in his ruling. *See Love v. Barnett*, 611 So. 2d 205, 207 (Miss. 1992) (where the Court held that where a chancellor reaches the correct result, his decision will be affirmed even though an incorrect reason is assigned for that ruling). Dr. Knutson failed to establish that the existing visitation schedule "wasn't working" within the meaning of *Sistrunk v. McKenzie*, or to convince the chancellor that the requested modification was in the best interest of the children. We conclude that the chancellor's language concerning the lack of "a material change in circumstance" in this case, though erroneous, was surplusage and that, in fact, the proper factors were considered and formed the basis for the chancellor's ruling. We, therefore, affirm.

**THE JUDGMENT OF THE WASHINGTON COUNTY CHANCERY COURT DENYING MODIFICATION OF VISITATION IS AFFIRMED. APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.**

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