

**IN THE COURT OF APPEALS 09/19/95**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 94-CA-01121 COA**

**CHARLES GLYNNIS WHITE**

**APPELLANT**

**v.**

**KATHERINE MILEY**

**APPELLEE**

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

TRIAL JUDGE: HON. HOWARD L. PATTERSON, JR.

COURT FROM WHICH APPEALED: MARION COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

JAMES C. RHODEN

ATTORNEY FOR APPELLEE:

SCOTT PHILLIPS

NATURE OF THE CASE: CIVIL - DOMESTIC

TRIAL COURT DISPOSITION: CHILD SUPPORT AWARDED

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

BRIDGES, P.J., FOR THE COURT:

Charles Glynnis White appeals the order of the chancellor of Marion County, Mississippi. Because of

White's repeated failure to pay child support, his ex-wife garnished his bank deposits to satisfy the judgment for past due child support. The chancellor found that the garnished funds should be awarded to Katherine Miley, the ex-wife, to the exclusion of their emancipated son. Aggrieved, White appeals, claiming that the garnished funds should be awarded to his son, Glynn Daniel White.

## STATEMENT OF FACTS

On July 22, 1971, Katherine Miley (Miley) and Charles Glynnis White (White) were divorced by decree of the Chancery Court of Marion County, Mississippi. The court ordered White to pay \$150.00 per month in child support for the benefit of Glynn Daniel White, (Danny). Danny, the couple's only child was three years old at the time of the divorce.

Through the years, White continually failed to pay child support. Miley maintained and supported Danny with little or no help from White. Miley filed actions for contempt on a number of occasions. In fact, on October 24, 1972, Miley filed an action for contempt in the Chancery Court of Marion County. The chancellor dismissed the petition. White continued in his failure to pay child support and Miley filed another petition for contempt. This time, the chancellor granted the petition. The chancellor found White to be in arrears in his child support payments in the amount of \$9,600.00. Accordingly, the chancellor ordered White to pay \$230.00 per month beginning December 1, 1976. From December 8, 1976 to May 1, 1979, Mr. White managed to pay a total of \$4,780.00 in child support. After May 1, 1979, White once again discontinued the support payments.

On October 9, 1989, Danny turned twenty-one years old, and as a result, White's obligation to pay support ceased. On October 1, 1993, almost three years after Danny's emancipation, Miley filed a petition alleging that White owed her, \$32,850.00 in child support for the time period between the divorce and Danny's emancipation. White failed to defend in the proceeding, and the chancellor, after crediting White with the \$4,780.00 already paid, ordered White to pay \$28,677.00 plus legal interest accrued after the date of each delinquent payment of child support. White failed to pay the judgment. Subsequently, Miley was forced to secure three writs of garnishment against local banks in which White had deposited funds. As a result of the garnishment proceedings, the banks deposited a total of \$15,969.29 into the account of the Chancery Clerk of Marion County. On May 4, 1994, White filed a motion to set aside the judgment, claiming that he failed to defend because of illness. The chancellor denied the motion and ordered that the only issue under consideration was the issue to whom the money collected under the garnishment proceedings should be paid. On October 4, 1994, the chancellor ordered the funds to be paid to Miley, clear and free of the claim of White or any other party.

## DISCUSSION

WHETHER THE CHANCELLOR ERRED IN AWARDING THE GARNISHED FUNDS TO THE CUSTODIAL PARENT AS OPPOSED TO THE CHILD.

The Mississippi Supreme Court has held that vested but unpaid child support cannot be excused

because of the child's emancipation. *Tanner v. Roland*, 598 So. 2d 783, 786 (Miss. 1992). (citing *Varner v. Varner*, 588 So. 2d 428, 432 (Miss. 1991)). Further, the court has held that either the child or the parent may bring an action for past due support against the defaulting parent. If the custodial parent receives the recovery, then the parent is obligated to hold the funds in a fiduciary capacity for the child. *Alexander v. Alexander*, 494 So. 2d 365, 368 (Miss. 1986) (citations omitted). However, the custodial parent may be awarded child support for her own benefit where the custodial parent has been required to expend funds beyond which she would have otherwise been required to do. *Varner v. Varner*, 588 So. 2d 428, 432 (Miss. 1991). Specifically, in *Varner v. Varner*, the court stated:

If by reason of the supporting parent's default, the custodial parent is forced to dip into her own resources beyond what would be otherwise expected of her, she may recover and retain amounts so proved, *Sides v. Pittman*, 167 Miss. 751, 757, 150 So. 211, 212 (1933), subject to equitable adjustment should the child's prior needs so suggest.

*Varner*, 588 So. 2d at 432.

In the past, the Mississippi Supreme Court has found that payment of past due support to the ex-wife after the child is emancipated, results in unjust enrichment on behalf of the ex-wife. For example, in *Alexander v. Alexander*, the court found that the ex-wife would be unjustly enriched if the past due support was paid after the child was emancipated. *Alexander v. Alexander*, 494 So. 2d 365, 367 (Miss. 1986) The *Alexander* case can be easily distinguished from the case sub judice. In *Alexander*, the husband had custody of the child for the entire period of time for which the ex-wife wife claimed support. The husband provided food and shelter for the child, and paid the child the \$200.00 a month child support called for by the divorce decree. *Id.* Conversely, the facts in the case before us show that White never had custody of the child. Except for the payment of the \$4,780.00, to Miley, no other support payment was made to his ex-wife, Miley or to his son, Danny. Miley was the primary source of Danny's support. Since Miley was Danny's continuous sole provider and custodian, we cannot find that there is unjust enrichment in favor of Miley.

Based on the above case law, Miley would be entitled to the funds obtained for past due child support, if she could show that she in fact provided for the support and maintenance of the couple's son. In the case at hand, the chancellor found that Miley had almost unilaterally supported the couple's son, Danny, during the time he remained unemancipated. The chancellor also found that White had already paid \$4,780.00 in child support and the chancellor properly credited the judgment against him. The final order reads in pertinent part as follows:

From December 1976 to May of 1979, Charles Glynnis White paid child support through the Chancery Clerk of Marion County, Mississippi, in the amount of \$4,780.00. Katherine Clark White Miley supplied food, clothing and other necessities for the minor child of the parties without any assistance or support from Charles Glynnis White until the minor child reached majority. At all times the minor child resided with Katherine Clark White Miley.

The chancellor went on to find that Miley would not be unjustly enriched if she were reimbursed for

expenditures by her that should have been paid by Charles Glynnis White. Specifically, the order stated:

In the instant action Katherine Clark White Miley provided *all* the support for the child since the last payment of child support on May 1, 1979. Charles Glynnis White has paid only \$4,780.00 since the granting of the divorce by this court on July 22, 1971. There is no unjust inherent enrichment as contemplated by *Alexander v. Alexander*, So. 2d 365 (1986) by ordering the support payments paid to Katherine Miley [sic] as there has been no payment by Charles Glynnis White either to the child of the parties or to Katherine Clark White Miley for which he has not received credit. The child, on the other hand, would be unjustly enriched by payment directly to him as he had all his needs met by Katherine Clark White Miley, including that portion of his necessities in the amount of \$150.00 per month apportioned to Charles Glynnis White by this Court and ordered paid as child support. Katherine Clark White Miley is entitled to be reimbursed for expenditures by her that should have been paid by Charles Glynnis White.

We will not reverse a chancellor's finding of fact where the findings are supported by substantial credible evidence in the record. *Clark v. Myrick*, 523 So. 2d 79, 80 (Miss. 1988). Furthermore, in cases involving child support, the chancellor has considerable discretion and his findings will not be reversed unless he abused his discretion. *Lawrence v. Lawrence*, 574 So. 2d 1376, 1382 (Miss. 1991). The chancellor had before him, credible and substantial evidence, including affidavits from Miley's other grown children, stating that Miley was the sole provider for Danny.

Since the chancellor found that Miley was the primary sole provider for the couple's son, we find that she is entitled to the money for back due child support obtained through the garnishment proceedings. In addition, we award Miley damages at the rate of fifteen percent (15%), together with interest on all money judgments awarded in the trial court pursuant to section 11-3-23 of the Mississippi Code of 1972, as supplemented and amended.

**THE JUDGMENT OF THE MARION COUNTY CHANCERY COURT AWARDING THE GARNISHED FUNDS TO KATHERINE MILEY IS AFFIRMED AND MILEY IS AWARDED DAMAGES AT THE RATE OF 15% TOGETHER WITH INTEREST ON ALL MONEY JUDGMENTS AWARDED IN THE TRIAL COURT. ALL COSTS ARE TAXED TO THE APPELLANT.**

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