

IN THE COURT OF APPEALS 1/31/97

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00338 COA

PAMELA H. (GRAHAM) MCGEE

APPELLANT

v.

JOHNNIE RAY GRAHAM

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: WARREN COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

GARY STREET GOODWIN

ATTORNEY FOR APPELLEE:

EUGENE A. PERRIER

NATURE OF THE CASE: DIVORCE

TRIAL COURT DISPOSITION: DIVORCE GRANTED

MANDATE ISSUED: 6/10/97

BEFORE FRAISER, C.J., COLEMAN, AND McMILLIN, JJ.

FRAISER, C.J., FOR THE COURT:

The central issue on appeal is a dispute over the payment of the medical bills of the children of Johnnie Ray Graham and Pamela H. (Graham) McGee. Pamela alleges that the chancery court erred by only ordering Johnnie to pay her for one dental bill. Further, she contends the chancery court erred by not transferring jurisdiction for future disputes arising from its divorce decree. Because the chancery court erred in part, we reverse in part and remand for further proceedings.

FACTS

The marriage of Johnnie Ray Graham and Pamela H. Graham (now McGee) produced two children. They were divorced on November 16, 1994 by the Chancery Court of Warren County, Mississippi on the grounds of irreconcilable differences. In rendering the judgment of divorce, the court reviewed their settlement agreement regarding custody and maintenance of the two minor children and found that adequate and sufficient provision was made for the custody and maintenance of the children. The court, based upon the settlement agreement, placed primary custody of the children in Pamela with reasonable visitation rights in Johnnie. Johnnie's visitation with his youngest child was to be supervised during the first 12 month period after the divorce. The child support agreement required:

That Johnnie Ray Graham shall provide medical and dental insurance coverage for the minor children and annually furnish proof of said coverage to Pamela Graham in January of each year, or upon her written request and shall furnish her an insurance card or other proof of insurance and will promptly file all claims. That Johnnie Ray Graham and Pamela H. Graham shall equally divide and pay all medical and dental expenses not covered by said insurance.

On June 25, 1993, Johnnie filed a motion to find Pamela in contempt of the judgment of divorce for denying him visitation. Pamela propounded a counterclaim against Johnnie for failure to provide medical or dental insurance coverage for the children and requested reimbursement for \$8,283.37 in medical bills. Pamela also alleged that she was a resident of Lowndes County, Mississippi and requested that jurisdiction of all future actions be transferred to the Chancery Court of Lowndes County, Mississippi.

The chancery court awarded Pamela \$99.13 for a dental bill plus attorney's fees. The chancery court further clarified the child support agreement stating:

All future medical and dental bills incurred by defendant [Pamela] shall be submitted to the plaintiff [Johnnie] upon her receipt thereof. The plaintiff [Johnnie] shall promptly file insurance claims and upon determination of payment by the insurance company, shall then forward to the defendant [Pamela] prompt payment of his one-half of the remaining balance thereof.

The court refused to transfer the case to the Lowndes County Chancery Court for all future litigation.

DISCUSSION

I. PAYMENT OF MEDICAL EXPENSES

The parties are bound by the original divorce decree's provisions concerning the payment of medical

bills. *Stevison v. Woods*, 560 So. 2d 176, 181 (1990). In the case *sub judice*, the divorce decree provided that Johnnie would provide a health insurance policy to cover medical expenses of the Graham children with that portion of the expenses not covered by insurance to be divided equally between Pamela and Johnnie. The Mississippi Supreme Court has recognized that where a party is required to pay medical expenses of children and that party has insurance to pay for those expenses, the custodial parent who incurred the medical expenses must submit the medical bills to to the other parent in a timely manner. *Milam v. Milam*, 509 So. 2d 864, 866 (Miss. 1987); *Hambrick v. Prestwood*, 382 So. 2d 474, 477 (Miss. 1980). Failure of the custodial parent to timely submit the medical bills to the parent obligated to pay them may result in denial of reimbursement because "the period of time required by the policy may bar recovery by the party claiming them." *Id.* Of course, if the noncustodial parent has no insurance for the period during which the medical bills were incurred, it does not matter if the bills are belatedly submitted. That party is responsible for the payment of the medical expenses as required by the judgment of divorce.

From the record, it is clear the Chancellor found that Pamela did not present any of the bills, except dental bills, to Johnnie in a timely manner. As this finding is supported by substantial evidence, we are without authority to disturb it. However, by Johnnie's own admission, he did not have any insurance in April and May of 1993. Medical bills incurred during that time period must be paid regardless of whether they were submitted to Johnnie in a timely manner or not. There is at least one medical bill included in the record that accrued during the April/May break in insurance coverage. Johnnie is responsible for the payment of this or any other medical bill that occurred during this period of time. The record is not clear concerning which medical expenses were incurred during the April/May gap in coverage. We remand this case to the chancery court for a determination of what medical bills were incurred during April and May of 1993. Johnnie is responsible for whatever his insurance policy that was terminated at the end of March 1993 would have paid, plus ½ of the balance. Such a disposition is consistent with the judgment of divorce. We affirm the chancery court's award of dental expenses and denial of medical expenses which accrued outside of the April/May break in insurance coverage.

II. TRANSFER OF JURISDICTION

Pamela argues that the chancery court abused its discretion in failing to transfer the cause of action to the Lowndes County Chancery Court for all future litigation. The chancery court did not err.

Pamela cites no authority in support of her argument. Where an appellant cites no authority in support of an assertion of error, we are precluded from addressing this issue on appeal. *Bland v. Bland*, 629 So. 2d 582, 591 (Miss. 1993). Moreover, Pamela asks not for relief in the case below but for relief in future actions which may or may not occur. An action which has not yet accrued and there is no indication that it will occur is not ripe for disposition. *Ex rel Holmes v. Griffin*, 667 So. 2d 1319, 1325 (Miss. 1996). The Mississippi Supreme Court has held that Mississippi courts are not to render advisory opinions. *Board of Trustees of the Pascagoula Municipal Separate School*

District v. T. H., 681 So. 2d 110, 114 (Miss. 1996). Therefore, Pamela's second assertion of error is barred from consideration.

The judgment of the chancery court is affirmed in part and reversed in part.

THE JUDGMENT OF THE CHANCERY COURT OF WARREN COUNTY IS REVERSED AND REMANDED IN PART AND AFFIRMED IN PART. THE COSTS OF THIS APPEAL ARE TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.