

IN THE COURT OF APPEALS 6/18/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00499 COA

J.D.W. APPELLANT

v.

D.S.W.

APPELLEE

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

TRIAL JUDGE: HON. EDWARD C. PRISOCK

COURT FROM WHICH APPEALED: WINSTON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

J. NILES MCNEEL

ATTORNEY FOR APPELLEE:

HELEN J. MCDADE

NATURE OF THE CASE: TERMINATION OF PARENTAL RIGHTS

TRIAL COURT DISPOSITION: JUDGMENT IN FAVOR OF DEFENDANT

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

THOMAS, P.J., FOR THE COURT:

This is an appeal from the chancery court's denial to terminate the parental rights of D.W, hereinafter the "father." J.W., hereinafter the "mother," alleged that the father had sexually abused their child, M.W. A hearing was held, wherein, doctors and social workers testified that from their examination and conversations with M.W. and the mother, it was their opinion that M.W. had been sexually abused by the father. Other doctors and social workers testified that either they were not sure if the

child was abused, or that M.W. was sexually abused but they could not tell by whom. After hearing all of the testimony the chancellor ruled that the circumstances surrounding the alleged sexual assault by the father and the testimony of the child were not credible, and subsequently denied the mother's petition to terminate the father's parental rights. From this ruling, the mother appeals to this Court assigning only one issue: Whether the chancellor's ruling was against the overwhelming weight of the evidence. Finding that there was sufficient evidence to support the chancellor's findings, we affirm.

FACTS

Upon the divorce of the parties on the ground of habitual, cruel and inhuman treatment, the custody of the couple's minor child was awarded to the mother. The father of the child was awarded certain visitation rights which were to be expanded when the child reached four years of age.

In 1994, the mother filed a motion to modify the divorce decree seeking to have the father's parental rights terminated on allegations that he sexually, physically, and emotionally abused the couple's then three-year-old child. A hearing was held upon the matter in the Winston County Chancery Court. The chancellor found that the evidence against the father was not credible, and subsequently denied the mother's petition to have the father's parental rights terminated.

In order to properly decide whether the chancellor abused his discretion in denying the mother's petition, a brief recitation of the evidence presented at the trial is necessary.

MOTHER'S CASE

The mother testified that her daughter had told her that on several occasions her father, as well as his wife, his stepson, and her father's brother-in-law, had committed sexual acts on her. The last time that the father, as well as the others, had allegedly molested M.W. was on M.W.'s third birthday on October 23, 1993. The mother testified that since that time, the child's father has not been allowed to see M.W. When telling the mother what the father had done to her, M.W. would use her father's first name, not dad, or daddy. The mother testified that she did not tell M.W. to call her father by his first name. She further testified that they tried to bring criminal charges against the father but could not get the case through grand the jury.

On October 26, 1993, Dr. James Glenn Peters began treating M.W. for a vaginal discharge and irritation around the vaginal area. He testified that this was unusual for a child of that age, so he turned the case over to the Welfare Department. Dr. Peters testified that he could not say for sure if M.W. had been sexually abused; however, he testified that when he did his examination of M.W. he found that the hymen was intact. He stated that it was possible that he could have missed a small tear in the hymen.

M.W. was then taken to Dr. Linda Chidester in November of 1993. Dr. Chidester examined M.W. on three separate instances. During these examinations M.W. told her that her father had touched her private parts with his private parts and . . . and that he "used [his wife's] stuff and that it hurt. She further testified that M.W. had told her that her father had a "penis."

Dr. Chidester testified that she attempted to do a genital exam on M.W., but could not because M.W. became hysterical. It was then decided that Dr. Chidester would use a general anesthesia so that a

genital examination could be done on M.W.

Upon an examination of M.W., Dr. Chidester found "that she had a septate hymen, which is unusual but not abnormal" and that she had a "tear of the hymen from five to seven o'clock with a flap at nine o'clock." Dr. Chidester further found that M.W. had an enlarged hymen which was 12mm vertically by 8mm horizontally. Normally, a child M.W.'s age would have an opening from 2 to 4mm. This indicated to her "that something had been into the vagina and has torn the hymen." However, Dr. Chidester testified that there was no way to tell if this was a one time event or multiple events, and furthermore, there was no way to tell when the hymen was torn, other than it was not torn within the last seventy-two hours.

Dr. Chidester also found that M.W.'s rectal area was dilated to about 20mm, which according to Dr. Chidester was very irregular. Without anesthesia a dilation of this degree is "diagnostic of chronic penetrating rectal abuse or rectal penetration." However, Dr. Chidester testified that she was informed by another doctor who believed that the dilation could have been caused by the anesthesia.

Carolyn McNeel, a social worker with the Department of Human Services, began an investigation into M.W.'s case. McNeel testified that M.W. told her during an interview that her father and his current wife had performed sexual acts on her. M.W. told McNeel that "[her father] does the front while [his wife] does the back." McNeel further testified that M.W. had told her that her father and his wife had also sexually abused her father's step daughter. M.W. told McNeel that on her third birthday party, her father put his hand over her mouth while two other men hurt her.

Believing that M.W. needed to see a therapist who was more trained in interviewing sexual abuse victims, McNeel referred the case to Yvette Runyan, a children's therapist with Community Counseling Services. Runyan, who mainly handles sexual abuse victims, interviewed M.W. on three separate instances. Runyan testified that during the first interview with M.W., the mother seemed to be pressuring the child to name a perpetrator. However, M.W. never told who had abused her. Runyan testified that in her expert opinion, M.W. had been sexually abused, but she was unable to give an opinion as to who the perpetrator was.

Jill Shannon, who specialized in child welfare and family therapy, interviewed M.W. thirty-three times. Shannon testified that prior to interviewing M.W., the mother had given her a history of sexual abuse symptoms, including: M.W. french kissing her mother; M.W. kissing her mother's breast through her nightgown; statements made by the mother that M.W.'s father had urinated on M.W.; and a statement made by M.W. to her grandmother describing her genital area with vulgar names.

Shannon testified that M.W. told her that her father had kissed her private parts and touched her with his private parts. M.W. further told Shannon that her father had urinated on her in her eyes and her private parts and that this had happened on her birthday. She also stated that his wife, her stepmother put lipstick on her, and her father would remove it by urinating on her. Shannon felt that M.W.'s statements were spontaneous and were not coached.

Shannon testified that, in her expert opinion, M.W. had been sexually abused by her father and his wife. As to whether she based this opinion on what the mother told her or from interviewing M.W., Shannon testified that her opinion was based upon information "outside of what her mother told me."

FATHER'S CASE

The father's stepdaughter-in-law testified that she has two daughters, ages two and four, and that she would not think twice about letting the father look after them. She testified that her children "love him and love being around him."

The father's two daughters from a previous marriage testified that their father was a good man. One daughter testified that she has observed the father's demeanor around M.W. and that he never did anything wrong that she saw. She further testified that on M.W.'s third birthday, the day she was allegedly sexually abused by four people, M.W. appeared happy and nothing appeared to be wrong.

The father's wife testified that on M.W.'s birthday they had a party at their house. She testified that they had approximately thirty-five people at the party. Immediately after the party they had to take M.W. home. She testified that on many occasions M.W. did not want to leave their home and became upset when she had to go back to her mother's house.

She stated that after the father was denied any contact with M.W., she was contacted by DHS. At that time the wife learned that M.W. had told investigators that the father, as well as herself, had molested M.W. along with her own daughter, his stepdaughter. The wife had her daughter examined by two gynecologists who stated that they saw no evidence of sexual abuse. This fact was stipulated to by M.W.'s mother's attorney. The wife denied that she or her husband had ever molested M.W.

Jean Bradford, a neighbor, testified that during the time that the father and the mother were married, the mother had told her that she knew how to keep the father away from M.W. and that she had done it once before and could do it again. The mother allegedly told Bradford that she had been a legal secretary and had kept her previous child away from his father by charging him with molestation and that she would do it to M.W.'s father too. Bradford stated that she has let M.W.'s father take care of her own daughter, and in fact he is the godfather of her daughter.

Deputy Sheriff Toby Wilson testified that he took M.W.'s father to Jackson, Mississippi, to take a lie detector test.

The father's ex-stepson testified that M.W.'s father was a good man and that he has observed him around M.W. and that he always treated her well. He further testified that he has two little girls who both love him and want to spend time with him.

The father's son-in-law, who is a pastor and social worker, testified that M.W.'s father is a good man and that he "would trust him with anything." He further testified that he has seen the father and M.W. together and he did not observe anything which would lead him to believe that the father would ever molest M.W.

The father's sister testified that M.W.'s father would never molest M.W. She further testified that M.W. had always called her father, daddy, and never by his first name. She stated that she was shocked when she learned that her husband and her son were also accused of molesting M.W. She was further told that her stepdaughter was present during these incidents of sexual abuse. She stated that she wanted an independent doctor to examine M.W., but that was not allowed. She stated that she did not believe any of the allegations.

The father's brother-in-law, who was also accused of molesting M.W., testified that he did not do anything to M.W. The father's sister-in-law testified that she had seen the father with M.W., and thought that he was a very attentive father.

The father testified that he hired an attorney to petition the court to have his visitations extended because he wanted to spend more time with his daughter. He said that after he did this allegations were made that he had sexually abused M.W.

He testified that the last time that he saw M.W. was on her third birthday, and at no time after that day has he had any contact whatsoever with M.W. He stated that the last time he saw M.W. she could barely talk and did not know the word "penis" and that if she used that word she learned it from someone else. He further testified that M.W. called her "daddy." He denied that either he or his wife had sexually abused M.W.

DISCUSSION

The mother appeals the chancellor's denial to terminate the parental rights of the father raising only one issue on appeal. That issue being: Whether the chancellor's ruling was against the overwhelming weight of the evidence.

Under our standard of review this Court will not reverse a finding made by a chancellor when such finding is supported by credible evidence and is not manifestly wrong. *Doe v. Doe*, 644 So. 2d 1199, 1207 (Miss. 1994). "The weight and worth of witness' testimony [are] solely for the chancellor to determine." *Id.* (citing *Mullins v. Ratcliff*, 515 So. 2d 1183, 1189 (Miss. 1987)). In cases such as this, the determination of whether M.W. suffered from sexual abuse is a question of fact to be decided by the chancellor. *Id.*

In the case *sub judice* the chancellor made the following findings of fact:

Carolyn McNeel, a social service worker investigated the report and testified that [M.W.] told her that she was sexually assaulted by her father with the active involvement of her stepmother while in the presence of her stepsister [J.] and [C.E.], a brother of [N.E.], and according to [M.W.] some "bad men". This alleged assault occurred in the mobile home of [the father] on [M.W.'s] birthday. [M.W.] testified that her mouth was taped by one of the assailants. She testified that she was then assaulted by [her father] in the presence of the above named individuals. This assault occurred, according to [M.W.], around the time of an all-day family birthday party for [M.W.] celebrating her third birthday, which was held at the mobile home. From the testimony of [the father], 20 or 30 people were present for the party and family gathering. After the party ended, [M.W.] was taken home to her mother, apparently this was about 4:00 P. M. During the Court's interview with [M.W.], no unusual behavior was observed other than the normal apprehension of a child of this age being subjected to strange surroundings. While testifying to the Court in Chambers, [M.W.] testified that [her father] conveyed to her that he was going to "cut [J.] in half".

The chancellor then made the following ruling:

This Court, after hearing the testimony of the medical doctors, the therapists and the alleged

perpetrator(s) is of the opinion that the allegations of sexual abuse are untrue. The Court is of the opinion that the story is not credible, on its face, because of:

- a. the location of the alleged event
- b. the number of adults and children who were either present or participants
- c. the simultaneous occurrence of the birthday party and the assault, and
- d. the age of the child who was less than three years of age at the time of the alleged assault and the lack of the Court's ability to gain credible testimony from the child.

Simply put, there is lack of credibility concerning the facts and circumstances from this child's version on the event, and lack of any other evidence to link [the father] to the sexual assault of his daughter.

The chancellor apparently found that while M.W. may have been sexually abused there was not enough credible evidence to show that the father was the culprit. As stated earlier, the determination of whether M.W. was sexually abused by the father is a question of fact to be decided by the chancellor. The chancellor had the opportunity to interview the child and had the opportunity to view the witnesses' demeanor to determine whether the charges were true or fabricated. In these types of cases in which one side alleges misconduct while the other denies any wrongdoing, the determination of the worth and credibility of the witnesses are solely for the chancellor. While this Court may have found differently if we were sitting as the trier of fact, we will not reverse such a finding if there was substantial evidence supporting the chancellor.

After a careful review of the record and the briefs of the parties, this Court finds that there was substantial evidence to support the chancellor's denial to terminate the parental rights of the father.

**THE JUDGMENT OF THE CHANCERY COURT OF WINSTON COUNTY IS AFFIRMED.
COSTS ARE TAXED TO THE APPELLANT.**

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

PAYNE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BARBER, J.

**IN THE COURT OF APPEALS 06/18/96
OF THE
STATE OF MISSISSIPPI**

NO. 95-CA-00499 COA

J.D.W.

APPELLANT

v.

D.S.W.

APPELLEE

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

PAYNE, J., DISSENTING:

I respectfully dissent. I believe that the chancellor was manifestly wrong and clearly erroneous in his findings of fact. Substantial evidence does not exist to support his findings. I would reverse the chancellor's opinion and order and terminate J.W.'s visitation rights with his daughter M.W.

STANDARD OF REVIEW

The Mississippi Supreme Court has held that, on appellate review, a chancellor's findings of fact will not be disturbed if substantial evidence supports those factual findings. *Brooks v. Brooks*, 652 So. 2d 1113, 1124 (Miss. 1995) (citations omitted). In a domestic relations context, an appellate court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong or clearly erroneous, or if an erroneous legal standard was applied. *Setser v. Piazza*, 644 So. 2d 1211, 1215 (Miss. 1994) (citations omitted); *see also Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994) (citation omitted) (appellate review is limited since court will not disturb chancellor's findings unless manifestly wrong or clearly erroneous, or if erroneous legal standard was applied); *Crow v. Crow*, 622 So. 2d 1226, 1228 (Miss. 1993) (citations omitted) (an appellate court is required to respect findings of fact made by chancellor that are supported by credible evidence and not manifestly wrong, particularly regarding divorce and child support matters). This Court is therefore required to respect a chancellor's findings of fact that are supported by credible evidence, particularly in the areas of divorce and child support. *Steen*, 641 So. 2d at 1169 (citations omitted). Although a trial court enjoys considerable discretion if it follows proper legal standards and does not abuse that discretion, it must also avoid findings of fact that are clearly erroneous or manifestly wrong.

ANALYSIS

A case that is clearly on point factually and substantively with the present case is *Doe v. Doe*, 644 So. 2d 1199 (Miss. 1994). In *Doe*, the chancery court terminated the father's visitation rights due to alleged sexual abuse of his three-year-old daughter. *Doe*, 644 So. 2d at 1204. The *Doe* court

reversed the chancery court based on the insufficiency of the proof of identification of the abuser. *Id.* at 1207. One medical doctor found that the child had been abused; one found signs of physical trauma, and one found no signs of abuse. *Id.* at 1207-08. One expert determined that, after months of therapy, the child had been abused by her father. *Id.* at 1208. Another expert, after six sessions, determined that the father had not abused the child. *Id.* Still another expert found that the child had not been sexually abused at all. *Id.* Tests performed on the father to determine his inclination toward sexual abuse showed nothing of the kind. *Id.* The *Doe* court ultimately determined that, while the chancellor did not err in finding that the child had been sexually abused, the chancellor did not have substantial credible evidence indicating that the father was the abuser. *Id.*

The present case exuberates with credible evidence that D.W. was the perpetrator of M.W.'s sexual abuse. M.W.'s mother, J.W., testified that M.W. had told her that her father had hurt her and abused her sexually, and that she was afraid of her father and stepmother. Dr. Linda Chidester testified that M.W. had told her that her father had sexually abused her. Dr. Chidester determined from a medical examination of M.W. performed under anesthesia that she had been sexually abused. Dr. James Glen Peters testified that M.W. had possibly been sexually abused and referred the case to the state Welfare Department. Carolyn McNeel, a social worker, testified at length of M.W.'s linking her sexual abuse to her father and stepmother. Yvette Runyan, a children's therapist who saw M.W. three times, determined that M.W. had definitely been sexually abused and not coached into what to say or how to act in the presence of therapists. However, she did not form or give her opinion as to the abuser's identity because she said she was still trying to establish a rapport with M.W. when she began seeing another therapist. Runyan testified that she subsequently suggested to J.W. that M.W. see someone who was more experienced and who had more practice in sexual abuse cases.

M.W.'s therapy was then transferred to Jill Shannon. Shannon, a licensed clinical social worker, testified that she had seen M.W. thirty-three times prior to trial and that M.W. had told her repeatedly that her father and stepmother had abused her. She stated that M.W. had told her that she was afraid of her father, that he had hurt her, and that she wanted to put him in jail. She said that M.W. had drawn pictures of her family members and that she had drawn her father black. She also stated that M.W. had told her that she was afraid for Sally, her stepsister and the daughter of her stepmother. Shannon stated that in her expert opinion M.W.'s father and stepmother were responsible for M.W.'s sexual abuse. She also had strong doubts of M.W.'s ability to talk to strangers about her experiences, particularly with a judge and two lawyers who might wish to elicit information for trial. She said that it took some time for M.W. to become comfortable with talking to her about it, and she believed a strange judge talking to her about it for the first time may not be productive.

Four of five experts testified on J.D.W.'s behalf that M.W. had definitely been sexually abused, not including J.D.W. who also testified to that result. Three of those experts testified that, in their opinions, M.W.'s father was the perpetrator. None of the five experts said that M.W. had not been abused. All expert medical and psychological testing evidence in this case clearly points to the fact that M.W. had been abused. More importantly, three of the expert witnesses provided direct connections to M.W.'s father as the abuser. Of the other two expert witnesses, one testified that abuse had occurred but provided no link to any specific individual as the abuser because she had not established a rapport with M.W. prior to her seeing another therapist. The other expert affirmatively stated that there was a potential for sexual abuse in this case and that he had reported it to the Welfare Department. Finally, D.S.W. presented not one scintilla of expert medical or psychological

testimony on his own behalf to refute that which *was* presented against him. D.S.W. presented only character and familial witnesses in his defense.

In *Doe*, the experts clearly contradicted each other--one medical doctor found signs of abuse, one found signs of physical trauma, and one found no signs of abuse. Likewise in *Doe*, one psychological expert found that the child had been abused by her father; one found that the father had not abused the child, and one found no sexual abuse whatsoever. The present case, in stark contrast to *Doe*, provides a wealth of substantial credible evidence from which to conclude that M.W.'s father was the perpetrator. Here, no expert conclusions existed to contradict the fact that M.W. had been sexually abused, and no expert testimony existed to indicate that someone else possibly had been the abuser. Three experts testified that M.W. had clearly and directly told them that her father was the perpetrator. No expert conclusions existed to show that he was *not* the abuser. The credible evidence in this case more than substantially points to the father as M.W.'s abuser.

The majority's statement that "[o]ther doctors and social workers testified that either they were not sure if the child was abused, or that M.W. was sexually abused but they could not tell by whom" does not tell the whole story. First, only one medical doctor, Dr. Peters, testified that he was not sure if M.W. had been abused. The record shows that he stated on direct examination:

A. Whenever we examine a child that has potentially been abused for any reason, we are required to report this to the Welfare Department. Uh, and I discussed this with the mother at the time of the examination.

Q. Even though you did not see the tears, specifically, of the hymen, you still thought that it was something that should be reported?

A. Yes, I did.

Q. Is that because of the vaginal discharge?

A. Yes, because the vaginal discharge itself is enough reason to be suspicious for a problem with a child in this age group.

...

Q. Do you recall whether you talked with Ms. McNeel from the Welfare Department subsequent to the examination? Did you follow-up with that?

A. I did follow it with Ms. McNeel and told her what we had found; and, uh, Ms. McNeel assured me that they would be looking into the case.

Q. And it is my understanding that that is the only time that you saw her in connection with any . . . with a vaginal discharge of any possible abuse situation?

A. That is the only time that I examined the child for this. On subsequent visits, even though I didn't mention it in my charts, I did discuss with the mother what progress was going on. I advised the mother that we needed to have someone who dealt with children to examine the child later on. Uh, I suggested some of the, uh, pediatric personnel at

University Hospital, as I was not familiar with anybody else that I could get this exam done with; and the mother and the Welfare Department proceeded to get the further examination done.

Q. Yes, sir, but you felt like there needed to be some more medical examinations of her?

A. I also felt as though that the child needed to be interviewed and, uh, talked with about what was going on.

Dr. Peters, on cross-examination, further stated:

Q. (McNeel) Now from your testimony, Doctor, is it your testimony that this child has been sexually abused?

A. I can't state that the child was sexually abused. I can state that there was a potential for sexual abuse in the situation.

Q. I didn't understand you. You said that you couldn't . . .

A. I could not say definitely that there was sexual abuse. I could say that there is a potential for sexual abuse in this situation.

Dr. Peters firmly believed that sexual abuse was possible. He was required to report M.W.'s case to the Welfare Department. He clearly testified that he felt as though M.W. needed to be further interviewed and talked to concerning what had happened. Although he could not say that M.W. was definitely sexually abused, he stated affirmatively that a potential for sexual abuse existed in her case. Finally, he suggested to J.W. that M.W. see someone who dealt with children for further examination.

Second, only one therapist, Yvette Runyan, testified that she could not identify the abuser. She reached this result because she testified that she had only seen M.W. three times, had not established a rapport with her, and had suggested to J.W. that M.W. see another therapist with more experience and practice in sexual abuse cases. The obvious point here is that the majority opinion incorrectly characterizes these two experts as contradictory to the other three experts, when in fact absolutely no contradiction exists.

I find fault with the majority's irrelevant reference to D.W.'s wife's testimony regarding her daughter, who is also M.W.'s stepsister. The majority states that D.W.'s wife had her daughter examined [pursuant to M.W.'s information that she, too, had been abused] by two gynecologists who said that they saw no evidence of sexual abuse. The trial stipulation referred to an opinion of an obstetrician/gynecologist, Dr. Pearson, that M.W.'s stepsister had not been sexually abused. First, these doctors were not medical sexual abuse experts any more than was Dr. Peters, who on his cursory examination found no physical evidence of hymenal damage. Second, these doctors never testified at trial. Third, any sexual abuse to M.W.'s stepsister is irrelevant to M.W.'s abuse,

regardless of whether or not this fact was stipulated to by J.W.'s counsel.

Additionally, I find that the majority's reference to the chancellor's opportunity to interview M.W. to determine whether or not the charges were true is inapposite. The chancellor's *first and only* interview with the child was meaningless, particularly in view of the doubts cast upon such a procedure's value by Jill Shannon. M.W.'s inability to discuss such a sensitive subject with a stranger, particularly on the first visit, was clearly proved by the other experts' testimony as well. Moreover, it is true that the chancellor had the duty to determine each witnesses' credibility. However, I vehemently disagree with the majority that substantial evidence existed to support the chancellor's findings that the evidence against D.W. was not credible, that the allegations of sexual abuse were untrue, or that there existed a lack of evidence to link D.W. to the sexual assault of his three-year-old daughter.

I believe the chancellor was manifestly in error when he found that "there is lack of credibility concerning the facts and circumstances from this child's version on [sic] the event, and lack of any other evidence to link [D.W.] to the sexual assault of his daughter." He stated, after hearing the testimony of the medical doctors, the therapists, and the Defendant, that the court was of the opinion that the allegations of sexual abuse were untrue and that the story was not credible. He based his decision on, among other things, the court's inability to gain credible testimony from the child herself, and therefore determined that her testimony was unreliable, and that she should be considered unavailable as a witness. Since she was unavailable, so the court reasoned, her statements could have been admitted only if corroborative evidence of *the act* existed. The chancellor stated that the only corroboration was Dr. Chidester's testimony that M.W. had been sexually abused, but no videotapes or detailed testimony of her sessions or other witnesses' sessions were taken that would have likely benefitted the court. Finally he stated that, therefore, no corroboration of the hearsay statements (of the experts) existed indicating that the father was the abuser. The court held that there existed no basis in fact regarding the allegations of sexual abuse by the father and reinstated the father's visitation schedule according to the original divorce decree.

The court was manifestly wrong to say no abuse existed. Assuming that it meant no abuse *by the father* existed or was proved, it was also manifestly wrong and clearly in error on that proposition. Three of five experts testified that M.W. had related to them details of abuse by her father, and that M.W. was frightened by her father. The other two experts simply did not give an opinion as to who they thought was the actual perpetrator; one said that M.W. had clearly been abused but that she had not spent enough time with M.W. to determine who the abuser might have been, and the other said that sexual abuse was possible based on M.W.'s medical condition.

Unlike the situation in *Doe*, the present case exhibits absolutely no contradiction among the medical and psychological experts regarding either the fact that abuse had occurred, or that M.W.'s father was the perpetrator. Moreover, M.W.'s current social worker, Jill Shannon, who had seen M.W. thirty-three times prior to trial, specifically told the chancellor about her doubts of M.W.'s ability to discuss her abuse experiences with a stranger. Shannon testified that M.W. might talk only if she were completely comfortable with the stranger because it took her a long time for M.W. to feel easy about even talking to her. The judge's statement that M.W. told him in his interview in chambers that she thought her father would cut her stepsister in half is not out of the ordinary considering her out-of-the-blue statements of abuse and her unusual behavior to which three expert witnesses testified.

M.W.'s mother stated, and the experts confirmed, that M.W. had: (1) unexpectedly said and acted out many shocking and disturbing things on numerous occasions; (2) passionately kissed her; and (3) made sounds in sexually explicit ways in which three-year-olds just do not normally behave. The judge's determination that M.W.'s statement of her stepsister being cut in half as unreasonable would normally be considered highly irregular. Rather, considering M.W.'s unexpected behavior and unusual statements to her own mother and to medical and psychological experts who were trying to help her, that statement to the chancellor was not unreasonable in the least. The chancellor, in essence, was a stranger to the case and one that M.W. had only met just prior to the interview. The result conforms exactly with Jill Shannon's prediction and doubts about M.W.'s willingness to talk or make any sense to a strange third party about her experiences.

Even though the chancellor stated that he could not communicate properly with M.W. and that he could not obtain credible testimony from her, ample credible testimony existed from expert witnesses that M.W. had been sexually abused and that the abuse was directly linked to her father. The chancellor was manifestly wrong to find, because he could not elicit helpful testimony from M.W. on his *first and only* interview in chambers, that the allegations of sexual abuse were untrue and that the testimony presented by her mother and five different experts was not credible. The fact that the chancellor failed to obtain information from a three-year-old girl regarding sexual abuse and the pinpoint identity of the abuser does not mean that M.W. was not abused, or that her father was not the abuser.

It is beyond my understanding how the chancellor could have found that the testimonial evidence in this case against D.W. was not credible, or that enough credible evidence did not exist. For the reasons cited and outlined above, I find that any decision other than a reversal in this case is simply abhorrent, clearly wrong, and contrary to all legal and logical conclusions.

BARBER, J., JOINS THIS DISSENT.