

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00260 COA

TONY M. JOE

APPELLANT

v.

CHOI WAN CHIO-JOE

APPELLEE

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

TRIAL JUDGE: HON. JON M. BARNWELL

COURT FROM WHICH APPEALED: CHANCERY COURT OF COAHOMCOUNTY

ATTORNEYS FOR APPELLANT

D. RONALD MUSGROVE

STEVEN GRAY MCCORD

BEN BARRETT SMITH

ATTORNEY FOR APPELLEE:

M. LEE GRAVES

NATURE OF THE CASE: MODIFICATION OF ALIMONY AND CHILD SUPPORT

TRIAL COURT DISPOSITION: MODIFICATION DENIED

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

PAYNE, J., FOR THE COURT:

Tony M. Joe petitioned the Chancery Court of Coahoma County for a modification of the alimony and child support provisions of the original divorce decree. After a hearing on the Petition for Modification, the chancellor denied modification. Joe appeals the chancellor's ruling, arguing that his present circumstances have made it impossible to comply with the current alimony and child support requirements. Finding no error, we affirm.

STATEMENT OF THE FACTS

Tony M. Joe (Joe) and Choi Wan Chio-Joe (Chio-Joe) were granted an irreconcilable differences divorce in February 1993, by the Chancery Court of Coahoma County. Two children were born of the marriage, both of whom are still minors. The parties agreed to a property settlement and child support agreement which provided, among other things, that Joe was to pay monthly child support in the amount of \$775.00 and monthly alimony support in the amount of \$400.00.

At the time of the divorce, Joe received a percentage of profits from the family-owned store. Joe was named on the deed, and he guaranteed the loan. In addition to this income, Joe had income from other assets including stocks and rental property.

In December 1993, after the parties divorced, Joe left Clarksdale for Atlanta, Georgia. He then traveled to China, Hong Kong, Australia, New Zealand, and other areas in the Pacific-Asia region. Joe returned to the United States in April 1994. He made another month long trip again in the summer of 1994. Joe testified that he visited two girlfriends and saw a Chinese doctor during his trips. Joe also testified that he spent over twenty-thousand dollars.

Joe testified that since the divorce, he has had hemorrhoid surgery, and that he suffers from tennis elbow. Joe testified that as a result of his medical conditions he has been unable to obtain work beyond an hourly wage job at the family-owned grocery store. There is no medical testimony or medical evidence in the record. Joe also testified that he spent \$200-\$300 per month for entertainment at the casinos.

In June 1994, Joe sought modification of his child support and alimony obligations.

STANDARD OF REVIEW

The appellate scope of review is limited since this 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. *Hockaday v. Hockaday*, 644 So. 2d 446, 448 (Miss. 1994) (citations omitted); *Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994) (citation omitted). "This standard i[s] especially applicable to issues arising out of a divorce." *Hockaday*, 644 So. 2d at 448 (citations omitted).

ARGUMENT AND DISCUSSION OF THE LAW

I. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED MANIFEST ERROR IN REFUSING TO MODIFY THE CHILD SUPPORT PROVISIONS OF THE ORIGINAL DIVORCE DECREE.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED MANIFEST ERROR IN REFUSING TO MODIFY THE ALIMONY PROVISIONS OF

THE ORIGINAL DIVORCE DECREE.

Joe argues that he had been suffering numerous health problems in 1993, which have resulted in a dramatic drop in his earning capacity. As a result, according to Joe, he is unable to meet the current demands of the alimony and child support requirements. Joe claims he is unable to live a decent life with the current levels of alimony and child support. Joe argues that the chancellor was manifestly wrong when he did not reduce the amount of his monthly alimony and monthly child support.

Chio-Joe argues that the medical conditions of which Joe complains are a hemorrhoid operation and tennis elbow. Chio-Joe also argues that Joe dissipated his assets so that he would not have to pay child support and alimony. According to Chio-Joe, the change of circumstances claimed by Joe was, in fact, a voluntary change within the family in order to achieve modification of Joe's alimony and child support obligations.

"Support agreements for divorces granted on the ground of irreconcilable differences are subject to modification." *Varner v. Varner*, 666 So. 2d 493, 497 (Miss. 1995) (citation omitted). For modification of alimony or child support, the standard is the same: the moving party must show that a material change in circumstances has occurred subsequent to the original decree. *Varner*, 666 So. 2d at 497; *see also Hubbard v. Hubbard*, 656 So. 2d 124, 129 (Miss. 1995) (citations omitted); *McEachern v. McEachern*, 605 So. 2d 809, 813 (Miss. 1992) (citations omitted). Put very simply, Joe was unable to meet this burden, and the chancellor was correct in his denial of modification.

Joe voluntarily agreed to the child support and alimony in February 1993 while represented by counsel. There is some evidence to suggest that Joe took steps to dissipate his assets. His claims of medical problems are not supported by medical evidence. Joe's spending habits indicate that his lifestyle is not suffering as he alleges. The chancellor heard the testimony and observed the demeanor of the witnesses.

Finding that Joe failed to meet his burden of establishing that a material change in circumstances occurred, we hold that the chancellor correctly denied his requests for modification of both his child support and alimony obligations.

THE JUDGMENT OF THE CHANCERY COURT OF COAHOMA COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.

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