

6/17/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00017 COA

CHRISTAL HALL ROPER

APPELLANT

v.

JOHN A. HALL

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT L. LANCASTER

COURT FROM WHICH APPEALED: LOWNDES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

CHARLES D. EASLEY JR.

ATTORNEY FOR APPELLEE:

DARRYL A. HURT

NATURE OF THE CASE: DOMESTIC RELATIONS

TRIAL COURT DISPOSITION: APPELLANT'S PETITION TO MODIFY CUSTODY DENIED

MOTION FOR REHEARING FILED:7/31/97

MANDATE ISSUED: 10/14/97

BEFORE McMILLIN, P.J., DIAZ, AND SOUTHWICK, JJ.

DIAZ, J., FOR THE COURT:

Christal Hall Roper (Roper) and John A. Hall (Hall) were granted a divorce by the Lowndes County

Chancery Court on the grounds of irreconcilable differences in November 1994. A custody and property settlement agreement along with an amended custody and property settlement agreement were approved and incorporated into the divorce decree. In the decree, primary physical custody was granted to Hall. In September 1995, Roper filed a petition for modification of custody. A hearing was held where this petition was denied. Aggrieved, Roper appeals to this Court asserting that the lower court erred by denying the petition to modify custody. Finding no reversible error, we affirm the judgment below.

### FACTS

The parties filed a joint bill of complaint for divorce and separate custody and property settlement agreement in September 1994. In October 1994, the parties filed an amended custody and property settlement agreement that effected a change of the primary custodial parent of their son Jonathan Cory (Cory) from Christal Hall Roper to John A. Hall. Roper was allowed reasonable visitation rights. This amendment was signed by both parties. The final divorce decree which incorporated both the original custody and property settlement as well as the amended agreement was signed and filed in November 1994.

From the time the final divorce decree was filed until February 1995, Roper actually lived with Hall and Cory in an apparent attempt at a reconciliation. Needless to say, Roper had substantial access to Cory during that time. Roper moved away from Hall around February 1995, married her current husband in May 1995, and moved to California with her new husband. Cory visited Roper in California from July 9, 1995 through August 9, 1995. In September 1995, Roper filed a petition to modify custody.

At the hearing, Roper attempted to show that it would be in the best interest of Cory to live with her and her husband in California. According to Roper, Hall is morally unfit as a parent, and Roper should have primary physical custody of Cory.

### DISCUSSION

In matters concerning child custody, we will not reverse a chancery court's factual findings where there is substantial evidence in the record supporting these facts. *Touchstone v. Touchstone*, 682 So. 2d 374, 377 (Miss. 1996). The chancellor's findings will not be disturbed when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong or clearly erroneous or applied an erroneous legal standard. *Id.* "In all child custody cases, the polestar consideration is the best interest of the child." *Id.* Our state supreme court has held that the prerequisites to modifying child custody agreements are: (1) proving a material change in circumstances which adversely affects the welfare of the child and (2) finding that the best interest of the child requires the change of custody. *Id.*

In her attempt to prove that Hall is an unfit parent, Roper testified that Hall worked at six different jobs over the period of a year, and has failed to provide Cory with health insurance as the divorce decree ordered. She further testified that Hall had been arrested once for theft of a boat trailer, and

sentenced to two years probation, and that Hall also subsequently pled guilty to petty larceny for stealing a tailgate from a car dealership. Hall apparently received a six month suspended sentence, a \$250.00 fine and a year of unsupervised probation for the second offense. Roper also testified that Hall failed to provide proper clothing for Cory, and that Cory was not provided with a healthy diet. Evidence was also presented where Roper found a bruise on Cory's left buttock.

Hall testified that his mother takes care of Cory during the day when Hall is at work. He contends that Cory is well fed and clothed. In explaining how Cory got the bruise on his left buttock, Hall testified that he brought Cory to work one afternoon at the Gazebo Garden Center because his mother was out of town, and he did not have money to send Cory to day care that day. Hall explained that Cory slipped and fell because someone had just watered the flowers and plants on a wooden deck, and the deck was slick. Hall admitted to his trouble with the law, but professed that it would not happen again. He stated that he had begun a training program for a management position, and that once the initial training period was over, he would be able to provide health insurance for Cory.

Presented with these arguments, the lower court was unpersuaded that it would be in Cory's best interest to change custody from Hall to Roper. The court did not find that there had been a material change in circumstances from the time of the divorce to the time the petition for modification was filed to justify a change in custody. Applying our standard of review, we find sufficient evidence in the record to support the chancellor's decision. Therefore, we find that the chancellor did not abuse his discretion in denying the petition to modify custody and other relief. The judgment below is affirmed.

**THE JUDGMENT OF THE LOWNDES COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, HERRING, HINKEBEIN,  
KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**