

IN THE COURT OF APPEALS

7/15/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01044 COA

CARL L. ROLAND APPELLANT

v.

CONNIE DENISE ROLAND APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. JOHN C. ROSS, JR.

COURT FROM WHICH APPEALED: PONTOTOC COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT: P. SHAWN HARRIS

ROY NOBLE LEE, JR.

ATTORNEY FOR APPELLEE: DARRYL A. HURT

NATURE OF THE CASE: DOMESTIC RELATIONS

TRIAL COURT DISPOSITION: CUSTODY OF MINOR DAUGHTERS AWARDED TO APPELLEE

MANDATE ISSUED: 8/5/97

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

McMILLIN, P.J., FOR THE COURT:

Carl Lee Roland and Connie Denise Roland were divorced in August 1995 on the grounds of irreconcilable differences. The parties had two minor daughters, ages seven and three at the time of the divorce. The parties submitted the issues of child custody, support and visitation to the chancellor for resolution. The chancellor awarded custody to the children's mother with specified visitation in favor of the father.

Mr. Roland has appealed the judgment of the Pontotoc Chancery Court relating solely to the issue of custody. The initial record indicated that the chancellor, in ruling on custody, based his final decision on (a) evidence that Mr. Roland had an overnight female guest on one or more occasions when the children were staying in his home, and (b) on the fact that, by vesting custody in the mother, the children would be permitted to return to the same school system they had attended the previous year. No further findings of fact or conclusions of law appeared in the record in regard to the custody of the children when this case first came before this Court.

This Court, in an order dated May 1, 1997, temporarily remanded the matter to the Chancery Court of Pontotoc County for the limited purpose of permitting the chancellor to make on-the-record findings of fact concerning each of the factors affecting child custody as set out in *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983) and how those factors influenced and shaped the chancellor's custody award.

On June 4, 1997, pursuant to the order of this Court, the chancellor, guided by the factors set out in *Albright*, made on the record specific findings of fact and conclusions of law in support of his decision to vest custody of the children in their mother.

This Court has reviewed the supplemental record and determined that the trial court did not abuse its discretion in its custody determination. We, therefore, affirm the chancellor's decision.

I.

The Chancellor's Consideration of *Albright* Factors On Remand

This Court's review of the chancellor's findings on issues of child custody and other domestic matters

is limited. *Chamblee v. Chamblee*, 637 So. 2d 850, 860 (Miss. 1994). We may not disturb the findings of a chancellor unless those findings were manifestly wrong, clearly erroneous, or the result of the erroneous application of a legal standard. *Id.*

In custody disputes, the chancellor is provided with certain guidelines as laid out by the Mississippi Supreme Court that must be followed. *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983). These guidelines are intended to assist the chancellor in addressing the "polestar consideration in child custody cases [which] is the best interest and welfare of the child." *Chamblee*, 637 So. 2d at 860 (quoting *Albright*, 437 So. 2d at 1005).

On remand, the chancellor discussed each of the factors as set out in *Albright*, finding that for most of the named factors, both parents were on equal footing. However, because of the fact that the two children were young females, he ultimately determined that an award of custody to the mother was in the children's best interest.

The fact that the children were of tender years and female are factors which are properly to be considered under *Albright*, and we cannot say that the chancellor erred in finding that these factors tipped the scales in favor of the mother, all other factors being essentially equal. Mr. Roland presented evidence at trial that tended to show that custody should have been awarded to him; however, as is almost always the case, Mrs. Roland presented evidence that pointed toward an opposite resolution. The chancellor is given the difficult duty of resolving this conflicting evidence, and we conclude that "the weight of the evidence was not so great as to make an award of custody to [Mrs. Roland] erroneous." *Chamblee*, 637 So. 2d at 861; *see also Bredemeier v. Jackson*, 689 So. 2d 770, 777 (Miss. 1997).

It is evident from the thoughtful analysis of the evidence contained in the chancellor's findings on remand that he weighed the evidence carefully and performed the difficult task assigned to him in a careful and considered manner, giving due consideration to the *Albright* factors and to other matters placed in issue by the proof. As the chancellor observed in his findings, he also had the opportunity, which this Court does not have, to observe the demeanor of the parties and make the subjective assessments of their credibility and fitness for custody that are a necessary part of the decision process when the evidence itself presents no clear answer. This Court finds the chancellor's findings of fact and conclusions of law on remand to be exemplary. Based upon them, we are unable to discover any abuse of discretion or misapplication of the law that would suggest the necessity to interfere in this case by this Court. Accordingly, we affirm.

**THE JUDGMENT OF THE PONTOTOC COUNTY CHANCERY COURT IS AFFIRMED.
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT, CARL L. ROLAND.**

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