

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00440 COA

JOHNNY RANDALL MOSLEY APPELLANT

v.

FLORENCE RUBY MOSLEY APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. SARAH P. SPRINGER

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT: ROBERT WENDELL JAMES

ATTORNEY FOR APPELLEES: M. KATHERINE BLACKWELL

NATURE OF THE CASE: TERMINATION OF PARENTAL RIGHTS

TRIAL COURT DISPOSITION: TERMINATION OF THE APPELLANT'S PARENTAL RIGHTS
TO TWO CHILDREN

MANDATE ISSUED: 9/30/97

BEFORE BRIDGES, C.J., HINKEBEIN, AND KING, JJ.

BRIDGES, C.J., FOR THE COURT:

Suit was filed in Lauderdale County Chancery Court to terminate the parental rights of Johnny Randall Mosley (Mosley). The chancellor found that Mosley had abandoned his two children under Section 93-15-103 (3)(a) of the Mississippi Code Annotated. On appeal, Mosley presents the following issues for consideration:

I. WHETHER THE TRIAL COURT ERRED IN TERMINATING MOSLEY'S PARENTAL RIGHTS ON THE GROUND THAT HE HAD ABANDONED THE CHILDREN.

II. WHETHER THE TRIAL COURT ERRED IN TERMINATING MOSLEY'S PARENTAL RIGHTS ON THE GROUND THAT HE HAD BEEN CONVICTED OF CARNAL KNOWLEDGE OF HIS STEPCHILD.

Finding no error, we affirm.

FACTS

Mosley married Florence Ruby Mosley (Susie), who at the time of their marriage had an eight-year-old daughter, Sarah. Mosley began fondling Sarah when she was eight or nine years old and subsequently had sexual relations with her throughout her teenage years. In 1986, at the age of sixteen, Sarah gave birth to a boy (John), of whom Mosley was the father. A few years later, Sarah gave birth to a girl (Kelli), of whom Mosley was also the father. In August 1993, Mosley was convicted of two counts of carnal knowledge of a stepchild and remanded to the custody of the Mississippi Department of Corrections. It is undisputed that Mosley has had no contact whatsoever with either child since 1991.

Susie filed suit in August 1994 to terminate Mosley's parental rights to John and Kelli, with Sarah and her ex-husband, Michael Monk, later joining Susie in the suit. The complaint alleged that Mosley had abandoned his children under Mississippi Code Section 93-15-103, which states in pertinent part:

(3) Grounds for termination of parental rights shall be based on one or more of the following factors:

(a) A parent has deserted without means of identification or abandoned and made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year.

M.C.A. § 93-15-103 (3)(a) (Rev. 1994). The chancellor made the following finding of fact:

[T]he court finds by clear and convincing evidence that the Defendant, Johnny Randall Mosley, has abandoned and made no contact with John Thomas Simoneau and Kelli Elizabeth Monk since sometime in 1991. The two Complaints to Terminate Parental Rights were filed with the Court August 23, 1994; therefore the requisite one year period of abandonment has matured, and the Defendant's parental rights should be terminated accordingly.

I. WHETHER THE TRIAL COURT ERRED IN TERMINATING MOSLEY'S PARENTAL RIGHTS ON THE GROUND THAT HE HAD ABANDONED THE CHILDREN.

Our standard of review on appeal is as familiar as it is limited. "The chancellor's findings of fact are viewed under the manifest error/substantial credible evidence test." *Vance v. Lincoln Co. Dept. of Public Welfare*, 582 So. 2d 414, 417 (Miss. 1991). In termination of parental rights cases, the burden of proof is also especially stringent. The proof must be clear and convincing, and an appellate court will not hesitate to reverse if the requisite burden is not met. *Id.* In the case *sub judice*, the chancellor held that the burden was met, and Mosley's abandonment was proven by clear and convincing evidence.

The statute requires abandonment for one year of a child three years or older, and abandonment of six months for a child under the age of three. M.C.A. § 93-15-103 (3)(a) (Rev. 1994). Abandonment is defined as :

any course of conduct on the part of a parent evincing a settled purpose to forgo all duties and relinquish all parental claims to the child. It may result from a single decision by a parent at a particular point in time. It may arise from a course of circumstances. The test is an objective one: whether under the totality of the circumstances, be they single or multiple, the natural parent has manifested his severance of all ties with the child.

Ethredge v. Yawn, 605 So. 2d 761, 764 (Miss. 1992). Mosley argues that the chancellor erred in finding he had abandoned his children. However, the record is clear that Mosley was incarcerated in August 1993 and not released until January of 1996. The complaint contends that the required statutory period of abandonment began August of 1993 until August of 1994. Mosley was incarcerated during this time and admits having no contact at all with the children. Not only did he not see them, he did not call them; he did not write them; he did not send them birthday or Christmas cards; nor did he send them anything in the way of financial support. This despite his admission that he could have corresponded with the children from prison. Moreover, while the statute only requires a one-year period of abandonment, Mosley admitted that he had not seen Kelli since 1990, and had not seen John since 1991. Additionally, Mosley had not sent any cards, gifts, or letters, nor made any phone calls since 1990. The summer of 1990 was the last time Mosley kept medical insurance on his children or bought them any clothes. Mosley still does not fully admit that Kelli is his child, and admits that he has not done one single thing since 1993 to show his love for his son.

In *Natural Mother v. Paternal Aunt*, 583 So. 2d 614, 619 (Miss. 1991), the natural mother admitted

being out of her children's lives for three and one-half years. Additionally, she admitted that she never sent any birthday or Christmas cards or any financial support. *Id.* The court affirmed the termination of her parental rights. *Id.* We also find that the evidence was ample that Mosley abandoned his children for the requisite one year statutory period. We affirm the findings of the lower court.

II. WHETHER THE TRIAL COURT ERRED IN TERMINATING MOSLEY'S PARENTAL RIGHTS ON THE GROUND THAT HE HAD BEEN CONVICTED OF CARNAL KNOWLEDGE OF HIS STEPCCHILD.

Parental rights may also be terminated under the statute when a parent has been convicted of carnal knowledge of a stepchild. Miss. Code Ann. § 93-15-103(3)(f) (Rev. 1994). The guardian ad litem expressed her concern about Mosley's nonchalant attitude toward the sexual relationship he carried on with his stepdaughter, and asked the chancellor to consider Mosley's conviction. The chancellor found that Mosley had been convicted of carnal knowledge of a stepchild and thus his parental rights were terminated for this reason, too. Although unnecessary in light of clear and convincing evidence of Mosley's abandonment, we do not find error with the chancellor's finding. The record is replete with testimony about Mosley's sexual relationship with his stepdaughter, which resulted in the birth of his two children. Mosley himself testified about his incarceration for that crime. We do not fault the chancellor for making the finding, and furthermore the issue is moot in light of the overwhelming evidence of Mosley's abandonment of his children.

**THE JUDGMENT OF THE LAUDERDALE COUNTY CHANCERY COURT
TERMINATING THE PARENTAL RIGHTS OF JOHNNY RANDALL MOSLEY IS
AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**