

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-01051 COA**

WANDA SCOTT MAYHUE

APPELLANT

v.

RICHARD PAUL SCOTT

APPELLEE

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

DATE OF JUDGMENT:	05/01/96
TRIAL JUDGE:	HON. ROBERT L. LANCASTER
COURT FROM WHICH APPEALED:	LOWNDES COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	DENNIS HARMON
ATTORNEY FOR APPELLEE:	THOMAS L. KESLER
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	CUSTODY OF MINOR CHILDREN TRANSFERRED TO APPELLEE
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/24/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Wanda Scott Mayhue and Richard Paul Scott were granted a divorce by the Lowndes County Chancery Court on the grounds of irreconcilable differences in June 1991. A custody and property settlement agreement was incorporated into the divorce decree. In the decree, primary physical custody of the parties' two minor girls was granted to Mayhue. On August 22, 1995, Scott petitioned for a modification of child custody. Following an appearance by both parties and their attorneys, a temporary agreed order giving custody to Scott was entered on September 1, 1995. In April of 1996, a hearing on the merits was held, and the court granted permanent physical custody of the minor children to the father, Paul Scott. Feeling aggrieved, Mayhue appeals to this Court asserting that the chancery court erred in finding a material change in circumstances such that a change in custody was warranted. Finding no reversible error, we affirm the judgment below.

FACTS

On June 20, 1991, Mayhue and Scott were granted a divorce with Mayhue getting primary physical custody of the two minor children. Following the divorce, the couple engaged in regular emotionally charged arguments regarding the children which resulted in Scott's petition for modification of custody. At a hearing on the petition, Scott produced evidence of Mayhue's emotional instability which included taped phone conversations between Scott and Mayhue. The conversations consisted of Mayhue's use of profanity and statements that she no longer wanted the children. The testimony indicated that Mayhue often made such statements in front of the children. At trial, Mayhue admitted that her problems with the children and Scott caused her to frequently consume beer. Scott testified that Mayhue had become very volatile and that he instigated the custody change following an incident in which Mayhue slapped one of his daughters. Scott also testified that following his modification petition there was an altercation at his home at a time when the girls were visiting him where Mayhue appeared at Scott's door and demanded to see the children. Scott indicated that Mayhue was obviously intoxicated and that when he refused to let her in, she proceeded to kick and beat on the door screaming that she would not let him take her children. At trial, Mayhue admitted that she did not deal well with her children when she was under a lot of stress and that she reacted by telling the children to go away and never come back.

Mayhue testified that she had not been drinking as often since Scott had been given custody of the children. Mayhue indicated that she had not dealt well with life in general following the divorce but that she believed that she has since gained control of the problems she was having. Mayhue testified that many of the problems arose because Scott was brainwashing the children and turning them against her. Mayhue indicated that whenever the children came back from visiting their father they were unruly and disrespectful. Both parties have since remarried. Scott lives in Columbus with his wife, two daughters, and a step-daughter. Mayhue lives in Birmingham, Alabama, with her new husband.

After hearing all of the testimony, the chancellor concluded that a material change in circumstances had occurred since the couple's divorce in 1991. In his order, the chancellor stated that "[t]he Defendant has not and is not emotionally able to properly meet the duties of raising these two children. . . . The absence of stability in the lives of the children is directly related to the problems peculiar to the Defendant."

ANALYSIS

I. WHETHER THE CHANCELLOR ERRED IN FINDING A MATERIAL CHANGE IN CIRCUMSTANCES HAD OCCURRED SINCE THE DIVORCE WHICH WAS ADVERSE TO THE BEST INTERESTS OF THE CHILDREN SUCH THAT A CHANGE OF CUSTODY WAS WARRANTED.

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). 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. *Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994). We are required to respect a chancellor's findings of fact that are supported by credible evidence, particularly in the areas of divorce and child support. *Id.* "In all child custody cases, the polestar consideration is the best interest of the child." *Touchstone v. Touchstone*, 682 So. 2d 374, 377 (Miss. 1996). 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.*

We have reviewed the record and are satisfied that the chancellor's findings of fact were supported by substantial, credible evidence. The court made a finding of fact, based on all the facts, evidence, and testimony presented, that a material change in circumstances existed. This material change justified a transfer in physical and legal custody from Mayhue to Scott. The court believed the change was necessary for the well-being of the children in light of Mayhue's emotional instability. We will not disturb the trial court's finding of fact. The chancellor's decision was not in error and was not based on an erroneous legal standard.

We find Mayhue's argument to be without merit and therefore affirm the judgment of the chancery court.

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

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