

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00524 COA**

**RICHARD GOINS**

**APPELLANT**

**v.**

**ELEANOR COOK GOINS MURPHY**

**APPELLEE**

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

DATE OF JUDGMENT:	04/19/96
TRIAL JUDGE:	HON. VICKI R. BARNES
COURT FROM WHICH APPEALED:	WARREN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	KRISTIE SMITH-MILLER
ATTORNEY FOR APPELLEE:	TRAVIS T. VANCE, JR.
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	RICHARD GOINS WAS FOUND IN CONTEMPT FOR FAILING TO PAY CHILD SUPPORT, ORDERED TO PAY ATTORNEY FEES AND COSTS, ORDERED TO PAY ONE HALF OF MEDICAL EXPENSES, ELEANOR GOINS MURPHY WAS AWARDED REIMBURSEMENT OF MEDICAL EXPENDITURES AND THE COST OF INCURRING PREMIUMS FOR INSURANCE COVERAGE.
DISPOSITION:	AFFIRMED - 3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/8/98

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

PAYNE, J., FOR THE COURT:

## PROCEDURAL HISTORY

This appeal arises from an Amended Motion for Citation for Contempt and Motion to Modify Former Decree filed by Eleanor Goins Murphy. From this motion, Eleanor received payment of one-half of the medical expenses incurred by the parties' minor child, reimbursement for medical insurance premiums and with respect to the child, back child support payments, along with attorney's fees. Feeling aggrieved by the judgment, Richards Goins appeals. After a complete review of the record and law consistent with the issues presented, we affirm the ruling below.

## FACTS

On January 4, 1984, Eleanor Goins Murphy was awarded an absolute divorce from Richard Goins. She was also awarded care, custody, and complete control of the parties' minor child, Aron Benjamin Goins. Through various orders Richard was required to pay child support, as well as provide for medical, dental, and health insurance through his employer for and on behalf of the child. Since his divorce, Richard has moved and is now living in Texas.

On March 19, 1996, a hearing was set to discuss the "Amended Motion for Citation for Contempt and Motion to Modify Former Decree. Although represented by counsel, Richard Goins was not present. Richard's attorney presented a letter written by Richard, dated March 18, 1996, discussing his reason for being absent in the courtroom at the date of the hearing, part of which is reduced here.

Dear James [attorney]:

Thank you for your fax. I am authorizing our verbal communication regarding this case, effective today.

1) Please enter my March 15, 1996 letter, (which describes why it is impossible for me to attend March 19, into evidence in this case.) You may also enter this letter. I find it difficult to believe that the MS Chancery Court would ask a man to lose his job, (a good job), and or commit malfeasance with the financial assets of several American Citizens in order to please it's [sic] agenda. I can assure you that the responsibility I have is real, and that as a Series 7 Licensed Securities Registered Representative in Texas, New York, New Jersey, New Mexico, Washington, California, Florida, and Louisiana, I am regulated by the Securities and Exchange Commission and the Law of said States, and my fiscal word is good and extends well beyond the State of Mississippi.

4) My ex-wife is a perjurious [sic] liar and simply not destitute, nor deserving of her prayers in this matter. Therefore please be patient with me. By considering the prayers of my ex-wife, I respectfully remind the court that she has through perjury previously had me arrested on false charges, had court orders issued, had me detained, convened the Grand Jury, and even gotten the MS legislature to enact legislation, and even had publicly accused me of rape, in order to effect her vindictive agenda. This is only the 12th times she has sued me, and merely her 3rd

husband, and her 9th attorney, actually 10th, but Travis Represented (sic) her previously.

Richard's attorney, also in the course of the proceedings, informed the court that Richard had told him his wife had a precancerous condition. The chancellor allowed the matter to proceed, ultimately ordering Richard Goins to pay one-half of the child's medical expenses, as well as reimburse Eleanor for paying the child's medical expenditures and the cost of incurring premiums for insurance coverage for the benefit of the child in the amount of \$7,559. The chancellor also found Richard in contempt of court for failing to pay child support, ordering him to pay \$750, including interest. Finally, the chancellor ordered Richard to pay \$1,500 in attorney's fees, plus costs. However, the chancellor did not proceed on the issue of modification of the decree. Feeling aggrieved, Richard appeals.

## **DISCUSSION AND ANALYSIS OF THE LAW**

### **STANDARD OF REVIEW**

The standard of review on appeal in a domestic relations matter is limited to whether the chancellor's decision was "manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Bell v. Parker*, 563 So. 2d 594, 596-97 (Miss. 1990). Where there is substantial evidence supporting a chancellor's findings of fact, such findings will not be overturned. *Lenoir v. Lenoir*, 611 So. 2d 200, 203 (Miss. 1992) (citing *Tedford v. Dempsey*, 437 So. 2d 410, 417 (Miss. 1983)).

### **ISSUES PRESENTED**

**I. WHETHER THE LOWER COURT ERRED IN AWARDING A MONETARY JUDGMENT AGAINST APPELLANT, RICHARD GOINS, IN FAVOR OF APPELLEE, ELEANOR COOK GOINS MURPHY. WHETHER THE DECISION OF THE LOWER COURT ORDERING APPELLANT TO REIMBURSE APPELLEE FOR ONE-HALF OF MINOR CHILD'S MEDICAL EXPENSES WAS MANIFESTLY WRONG. WHETHER THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES TO THE APPELLEE.**

Richard Goins argues that the chancellor erred in ordering him to reimburse Eleanor in the amount of \$7,559, which represented the amount expended by her for medical insurance coverage of her child, Aron, also his son. He also argues that the chancellor erred in ordering him to reimburse Eleanor in the amount of \$291.50, which represents one-half of the child's medical expenses. Finally, he argues that the lower court erred in awarding Eleanor attorney's fees in the amount of \$1,500 because he was not present to dispute the fees. He does not argue that he owes \$750 in back child support.

The thrust of Richard's argument is that the matter affecting him proceeded without his presence in the courtroom. Because we do not believe the chancellor was manifestly wrong in awarding Eleanor redress for the money she expended to enforce both her rights and that of her child, and because Richard challenges the authority of the Chancery Court of Warren County, this Court concerns itself more with the due process issue and the issue of notice attendant with it, along with the issue for a request of continuance.

It is true that the Fifth and Fourteenth Amendments to the Constitution guarantee each individual due process of the law. U.S. Const. amend. V; U.S. Const. amend. XIV. It is also true that the Supreme Court of the United States has recognized that the Due Process Clause protects an individual's

constitutional right to be present during such process. *United States v. Gagnon et al.*, 470 U.S. 522, 526 (1985). The Appellant, Richard Goins, cites *Weeks v. Weeks*, 556 So. 2d 348, 349 (Miss. 1990) as his authority for the right to be present at trial, the right to call witnesses, and the right to introduce evidence. In *Weeks*, the chancellor prohibited the appellant from presenting his witnesses' testimony in support of his motion. The chancellor attempted to take judicial notice that the appellant's witnesses would have testified that the appellant had abided by the terms of the divorce decree. The chancellor then dispensed with the appellant's motion for a new trial by denying it without hearing the defendant's additional evidence. *Id.* Apparently, the appellant in *Weeks* had wanted to interject testimony concerning his payment of money to his ex-wife that she had claimed he had not paid, for which he was held in contempt. The chancellor precluded the appellant's proof, saying that he was satisfied with the appellant's contempt. Ultimately, the Mississippi Supreme Court held that the case must be reversed and remanded. As the court stated, "[a] litigant can not be deprived of his fundamental right under our legal jurisprudence of having a judicial hearing." *Id.*

While Richard has introduced *Weeks* in an effort to sway this Court into the belief that he was denied his due process rights, he has applied the facts of his case, which are inconsistent to those in *Weeks*, to those facts in *Weeks*. In *Weeks*, the appellant was present at the hearing of a motion for a new trial but was barred by the chancellor from presenting witnesses in support of his motion. *Id.* Whether or not the exclusion of a defendant from his own trial is a denial of due process "should be considered in light of the whole record," *Gagnon*, 470 U.S. at 527, and that is where we look first. It appears from our review of the record that the chancellor would have gladly welcomed any testimony from Richard. Richard, however, by his own decision, chose not to attend, sending word, instead, by his attorney who was present in the courtroom. Now he uses his own refusal to attend as a defense.

It is evident that the Appellee agrees with the Appellant that all parties should be afforded notice and the opportunity to be heard. In January 1996, the parties, each represented by an attorney, agreed that the hearing scheduled for January would be continued until March 19, 1996. However, on the eve of the March hearing, Richard failed to appear, yet instructed his attorney, via fax, to seek a continuance. The record is clear that Richard had notice and was afforded all opportunity to be heard.

THE COURT: How much time do you-all need on the Murphy-Goins case, Mr. McIntyre and Mr. Vance?

MR. VANCE: Judge, I think we have an announcement in that case. Mr. McIntyre has an announcement. We're ready to go forward. Mr. -- his client didn't show up.

THE COURT: You have an announcement to make?

MR. MCINTYRE: Yes, Your Honor, please the Court. I got a fax from Mr. Goins Friday, March 15th advising me that because of his employment and because of sickness in his family, he could not be in attendance here today. And I have received permission from Mr. Goins by another fax this morning to ask the Court to review this letter and ask that it would be marked for identification purposes in support of a motion for continuance. If I may approach the bench.

THE COURT: How long had this case been set?

MR. MCINTYRE: I think it was set one time before. Because the discovery had not been completed it was continued. And I think it was continued from January for discovery.

MR. VANCE: Judge, this matter has been ongoing now for two years.

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MR. VANCE: In January we got a continuance, Judge.

THE COURT: That's what I'm asking. So in January it was set for the March hearing?

MR. VANCE: Yes, Ma'am.

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Likewise, Richard was notified about his obligation to tender information concerning his finances, but he failed to do so.

THE COURT: Is he aware of that order, Mr. McIntyre?

MR. MCINTYRE: Yes. I mailed him a -- I think the discovery was due on the 14th day of February. That discovery, I have not received it form [sic] Mr. Goins as of yet to put into final form. I mailed I think three letters requesting that those -- that discovery be answered. To this date I have not received it in order to put it into final form.

On March 15, 1996, Richard wrote a letter to his attorney stating that he would not be in attendance for the March 19, 1996, hearing. In that letter, Richard noted he had been gathering venture capital for an IPO of Euromed. The company was to begin trading on the NASDAQ on March 19, 1996. When questioned again about his client's failure to comply with the discovery order mandating discovery, in February, Mr. McIntyre stated he did not know why Richard had not complied, but he did state that he had sent him six letters asking him to comply with the order of the court. Mr. McIntyre also noted for the record that he has not been derelict in his duties or responsibilities. In addition to the letters he had forwarded Richard concerning discovery, Mr. McIntyre stated that he had placed an additional ten telephone calls asking him to comply.

Ancillary to the focal issue in the present case of whether or not the Appellant had notice and whether he was given the opportunity to be heard, we address the issue of the requested continuance. We do, however, point out that the record reflects that the chancery court bent over backwards in attempting to consolidate Richard's abuse of the court and Eleanor's needs, as evidenced by the continuance granted because of his failure to respond to the court's earlier order in January.

The issue then is whether the Chancery Court of Warren County erred in refusing to grant another continuance. The Mississippi Supreme Court will not reverse the denial of a continuance unless it is satisfied that prejudice resulted. *Atterberry v. State*, 667 So. 2d 622, 631 (Miss. 1995). Likewise, the supreme court, in *Dew v. Langford*, 666 So. 2d 739 (Miss. 1995), stated that consideration for a request for a continuance is left to the sound discretion of the court. Especially in light of the fact that

the case was set by an agreed order, and that Richard was fully aware of the March hearing date, it does not appear to this Court that the chancellor abused her discretion in allowing the hearing to take place.

He also argues that his financial records are needed to explain his employment. Richard states in his brief, "[c]learly, only Appellant could furnish the information as to whether he was employed or not at the time," referring to the order of the court that he furnish insurance through his employer for Aron. Nowhere in the record is there evidence that he tendered this needed documentation. Again, this is another instance that he uses to disregard a mandated order of the court, but his attempts to insulate himself are in vain. "It is one of the oldest maxims of law that no man shall, in a court of justice, take advantage which has his own wrong as a foundation for that advantage." *Collins v. Collins*, 625 So. 2d 786, 789 (Miss. 1993).

The chancellor believed that Richard had been given every opportunity to demonstrate his side of the case, thus she felt that another continuance was unwarranted. We do also. Were we to reverse this decision, we would be approving contempt for the court.

The chancellor was justified in allowing the Appellee to go forward on the contempt charge, even though, as the court found, Eleanor was precluded from modifying the child support, since Richard's financial records and job status were constantly hidden by him. Richard, by all his deeds, is not the victim of prejudice, but the cause.

### **CONCLUSION**

Richard Goins was afforded all notice and opportunity in this matter. He was not denied his due process rights afforded to him by the United States Constitution, and he can claim no prejudice. In light of the arguments presented, we find that Richard Goins's arguments are without merit, unsupported by the law, and thus fail to warrant reversal on this appeal.

**THE JUDGMENT OF THE CHANCERY COURT OF WARREN COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. 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.**