

**IN THE COURT OF APPEALS 4/22/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00949 COA**

**IN THE MATTER OF THE DISSOLUTION OF THE MARRIAGE OF: KERRY K.  
DOUGLAS**

**APPELLANT**

**v.**

**MARCUS E. DOUGLAS, III**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

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

**TRIAL JUDGE: HON. DONALD B. PATTERSON**

**COURT FROM WHICH APPEALED: LINCOLN COUNTY CHANCERY COURT**

**ATTORNEY FOR APPELLANT:**

**PAT EMERSON**

**ATTORNEY FOR APPELLEE:**

**RALPH L. PEEPLES**

**NATURE OF THE CASE: DOMESTIC RELATIONS**

**TRIAL COURT DISPOSITION: DIVORCE DENIED AS DATE OF VISITATION NOT  
DEFINED AND PARTIES COULD NOT REMOVE CHILD FROM THE STATE W/O PRIOR  
WRITTEN APPROVAL.**

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

PER CURIAM:

Kerry Douglas filed a petition for divorce on the ground of habitual cruel and inhuman treatment and, in the alternative, on the ground of irreconcilable differences. On May 19, 1995, a joint petition was filed by Kerry and Marcus Douglas which withdrew the contested pleadings in order to allow a divorce on the ground of irreconcilable differences. The matter was subsequently submitted to the Chancery Court of Lincoln County and the chancellor denied the divorce based on the fact that the date of visitation each month by Marcus was not designated in their written agreement. The chancellor also denied the divorce because the agreement indicated that neither party could remove the minor child from the State of Mississippi without obtaining written permission from the other party. The chancellor held that such a stipulation violated public policy. On September 15, 1995, Marcus mailed Kerry a modified child custody, support and property settlement agreement which he claims would have satisfied the chancellor and would have resulted in a divorce if Kerry had chosen to present it to the chancellor. Instead, Kerry continued with this appeal which was perfected on September 13, 1995. Kerry, in this appeal, alleges that the chancellor erred in denying the divorce on the grounds cited above.

The Mississippi Supreme Court has held that a chancellor's findings will not be disturbed 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). Section 93-5-2 of the Mississippi Code addresses the requirements for obtaining a divorce based on irreconcilable differences. Specifically, subsection 2 provides:

If the parties provide by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties *and the court finds that such provisions are adequate and sufficient*, the agreement may be incorporated in the judgment, and such judgment may be modified as other judgments for divorce.

Miss. Code Ann. § 93-5-2(2) (Rev. 1994) (emphasis added). The Mississippi Supreme Court has also addressed this issue, holding that "a prior agreement entered into by the parties is not enforceable if it is not approved by the Court." *Grier v. Grier*, 616 So. 2d 337, 339 (Miss. 1993); *Traub v. Johnson*, 536 So. 2d 25, 26 (Miss. 1988) (citing *Sullivan v. Pouncey*, 469 So. 2d 1233 (Miss. 1985)).

In the present case, the chancellor believed the child custody, support, and property settlement agreement to be incomplete in that the parties failed to set out a date certain for monthly visitation by the father, Marcus Douglas. We find that the chancellor was acting well within his discretion in requiring the agreement to contain a date certain for monthly visitation. We find further that the chancellor did not err in denying the petition for divorce because requiring permission to be obtained from the other parent before leaving the state with the minor child violates public policy. Our supreme court has clearly condemned this type of agreement. In *Bell v. Bell*, 572 So. 2d 841, 845 (Miss. 1990), the Mississippi Supreme Court stated:

We say nothing inconsistent when, as an interpretation and elaboration upon the positive law of this state, decreeing as it does that our Chancery Courts regard the best interests of children incident to the separation and divorce of the parents, we hold that our courts may not require that children be reared in a single community come what may. If courts may not order this, it follows that divorcing parents may not make such agreements which courts are obligated to enforce.

We find that the chancellor did not err in construing the agreement to be against public policy. The chancellor was acting well within his discretion in denying the divorce on the grounds he cited. We find no manifest error on the part of the chancellor and therefore affirm the judgment of the chancery court.

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

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING,  
PAYNE, AND SOUTHWICK, JJ., CONCUR. HINKEBEIN, J., NOT PARTICIPATING.**