

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

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00886 COA**

**LEON LAMBERT**

**APPELLANT**

**v.**

**NICOLE DAUTERMAN AND SASHA DAUTERMAN**

**APPELLEES**

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

TRIAL JUDGE: HON. WILLIAM H. MEYERS

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

DEMPSEY M. LEVI

ATTORNEY FOR APPELLEES:

ROBERT H. OSWALD

NATURE OF THE CASE: PALIMONY

TRIAL COURT DISPOSITION: IMPOSITION OF EQUITABLE LIEN ON APPELLANT'S  
PROPERTY IN FAVOR OF APPELLEES

EN BANC

McMILLIN, P.J., FOR THE COURT:

This case comes before the Court by appeal from the Chancery Court of Jackson County perfected by Leon Lambert, the defendant at trial. He appeals the chancellor's decision to grant the plaintiffs, Nicole Dauterman (hereafter "Dauterman") and her young daughter, Sasha Dauterman, an equitable lien against Lambert's interest in two tracts of real property. We find that the chancellor was manifestly in error in his decision and we reverse and render judgment in favor of Lambert.

## I.

### Facts

Lambert and Dauterman cohabited without benefit of matrimony for a period of approximately three years. During that period, Dauterman's daughter, Sasha, lived in the home along with Lambert's son by a former marriage. Lambert's daughter by that former marriage also lived in the home for a period of time. During this period of cohabitation, the parties lived in a mobile home purchased under a long-term financing arrangement in Dauterman's name. The home was located on a three-acre tract, record title to which was in the name of Lambert's parents. There was a separate financing arrangement for the purchase of the land which had been entered into several years before the pair began living together. The title was placed in Lambert's parents' name because his poor credit record made it difficult for him to get financing. However, he was making the monthly installments on the debt and it was understood that, once the land was fully paid for, his parents would convey the property to him.

For the bulk of the time that Lambert and Dauterman lived together, Lambert earned an annual salary in the mid \$20,000 range. Dauterman worked only briefly, then ceased employment and began to draw Social Security benefits, receiving around \$900 per month based upon her entitlement as the widow of her first husband. Her daughter, Sasha, also received monthly benefits in the same amount on her deceased father's account.

While the parties were living together, a fifty acre tract of land that Lambert and his family had been interested in for some time came on the market. Lambert and his parents worked out an arrangement whereby his parents purchased the entire property, but agreed to convey twenty-five acres of the land to Lambert upon payment by him of one-half the purchase price. His parents permitted him to pay for his one-half interest by making monthly payments of \$500 to them to be applied first to a nominal interest charge and the balance to reduction of his obligation.

Near the end of the couple's relationship, Lambert undertook a project to build a home for himself on his portion of the fifty acre tract. His parents agreed to go ahead and convey one acre to him and he began site preparation and construction of the home. His credit situation had apparently improved somewhat as he was able to obtain a mortgage loan of approximately \$59,500 for the home in his own name.

The parties represented themselves to the community as being married. Though there was some discussion of an actual marriage, the parties mutually agreed to delay the event several years to be sure the relationship was one that would endure. Also, the parties at trial were both quite open that one reason they did not get married was that it would have ended Dauterman's Social Security entitlement. The parties did, however, represent to Lambert's employer that they were married in order for Dauterman and Sasha to qualify for company health insurance.

The parties approached their relationship in something of a business-like fashion. Except for a brief period of time, they did not commingle their funds. Instead, the proof indicates that they had a formal arrangement for an equal division of their recurring living expenses. The record, in fact, shows several instances where Dauterman insisted that Lambert repay her for expenditures that exceeded her agreed-upon share of an expense.

Lambert claimed -- and Dauterman did not refute his testimony -- that the parties, each in control of his or her own finances, were free to do what they would with any surplus after their joint monthly expenses were met. He claims that he used his surplus funds to pay on his various land obligations while Dauterman used hers for other pursuits producing less tangible benefits.

One interesting example of the practical manner in which the parties approached their arrangement is shown by the fact that, near the end, when it appeared that there was a good possibility that the relationship would not endure, Dauterman took advantage of her health insurance coverage to have a tubal ligation, at a cost to the health insurance provider of approximately \$4,000, even though Lambert had previously had a vasectomy.

Lambert ultimately moved out of the trailer. He offered to let Dauterman and her daughter maintain the trailer on the property until the end of the school year, after which she would be expected to relocate the trailer. Instead, Dauterman elected to sell the home to Lambert's sister, the only consideration being that the sister assumed the balance due on the mobile home loan.

Dauterman commenced this litigation in her own name and in the name of her daughter, seeking, among other things, a money judgment by way of an equitable adjustment of the accumulation of assets occurring during the time the parties were together. The chancellor determined that the Dautermans were entitled to a seven-sixteenths interest in both the three acre tract and the twenty-five acre tract, and he ordered the land sold by special commissioner to permit the Dautermans to convert this equitable interest into money.

## II.

### Discussion

The plaintiffs, in their complaint, seem somewhat uncertain as to what theory of law would permit recovery in this case. Some of its language smacks of a breach of promise suit, claiming that (a) they parted with their funds and (b) that Dauterman acted as "wife, mother, housekeeper and cook" for Lambert and his children in reliance on Lambert's representations that he and Dauterman would be married after which they "would build and occupy a home . . . ." The chancellor, however, seems to have treated this as a "dissolution of an equitable partnership" within the meaning of *Pickens v. Pickens*, which held that

Notwithstanding [the lack of a legal marriage], upon permanent separation, our law authorizes and sanctions an equitable division of property accumulated by two persons as a result of their joint efforts. This would be the case were a common law business partnership breaking up. It is equally the case where a man and woman, who have accumulated property in the course of a non-marital cohabitation, permanently separate.

*Pickens v. Pickens*, 490 So. 2d 872, 875 (Miss. 1986).

The supreme court, despite this rather broad pronouncement, has appeared somewhat reluctant to invoke its authority to grant relief of this nature, historically doing so only when the inequity of not providing some form of relief is apparent. In *Chrismond v. Chrismond*, 211 Miss. 746, 52 So. 2d 624 (1951), the court dealt with a situation where the parties had undergone a ceremonial marriage and the woman had believed in good faith that they were married. The man had concealed the fact that he had a previous undissolved marriage. The woman had worked closely with the man in a successful sales business whose profits permitted the accumulation of valuable real estate holdings, all in the man's name. *Id.* at 626. On those facts, the chancellor ordered the woman to receive title to the home occupied by the parties and ordered the man to discharge all liens against the property. *Id.* at 627. In affirming that award, the supreme court was careful to restrict the applicability of the case.

We think that the equity powers of the court are sufficient to protect the rights of the putative wife, *where the supposed marriage which she entered into in good faith turns out to be void*, and that she is entitled to an equitable division of the property accumulated by their joint efforts during the time they lived together as man and wife.

*Id.* at 629 (emphasis supplied).

In *Taylor v. Taylor*, 317 So. 2d 422, 422 (Miss. 1975), the parties went through a ceremonial marriage and lived together for eighteen years. The woman, however, had been married to another person so that this second marriage was void. Nevertheless, on a finding that the woman "was sick and unable to work" at the time of the separation, the chancellor awarded her \$75 per month for thirty-six months. *Id.* at 422. The supreme court affirmed, being careful to say that the chancellor only "did what a decent regard for the sensibilities of humanity demanded" under "the particular circumstances" of the case. *Id.* at 423. This can hardly be seen as a rousing affirmation of the idea of judicial recognition of such living arrangements.

Against the backdrop of these decisions, the supreme court more recently dealt with a case where the chancellor declined to make an equitable distribution of assets when a non-married couple ended a thirteen-year relationship that produced a child. *Davis v. Davis*, 643 So. 2d 931 (Miss. 1994). The court framed the issue and answered it very succinctly.

At issue is whether an individual who has cohabited with another without the benefit of marriage is entitled to a share of the assets accumulated during the relationship. Because the endorsement of any form of "palimony" is a task for the legislature and not this court, we affirm the chancellor's decision.

*Id.* at 932.

In *Davis*, the man's net worth had grown, during the term of the relationship, from approximately \$850,000 to over \$7,000,000. *Id.* at 931. The court recognized, and even quoted, the broad language from the *Pickens* case that we quoted above, but refused to apply it, saying that "[t]he *Pickens* Court noted that it was faced with "an arguably unique factual setting." *Id.* at 935. The court also commented on the fact that, in *Davis*, there was never a ceremonial marriage, nor was the woman "an innocent partner to a void marriage." *Id.* at 936.

This Court concludes that the case now before us is controlled by the principles of the *Davis* case. The relationship between Dauterman and Lambert was a very calculated arrangement. Marriage was considered and rejected, at least for a number of years, in order to ensure a rather substantial monthly income to Dauterman for which she had to expend no effort. She was content to participate in a misrepresentation of the nature of the couple's relationship that allowed her to improperly enjoy valuable health insurance coverage for her and her daughter through Lambert's employer. The great weight of the evidence shows that Dauterman did not, in fact, make any significant contribution to the accumulation of either the three acre tract or the twenty-five acre property. Beyond a business-like sharing of day-to-day living expenses, the record indicates that the parties maintained their finances separately, and there is no competent proof that Dauterman contributed, from her separate funds, to the accumulation of these assets. Nothing announced in any of the cases we have discussed would support a finding, on the facts of this case, that the land was acquired by the joint efforts of the parties. The *Davis* case teaches us that something more is needed than simply showing that the accumulation of assets and the cohabitation coincided in time.

The evidence does indicate that Dauterman provided some housekeeping duties which were of benefit to Lambert and that she helped him to some degree with the care of his children. Nevertheless, it is also true that the living arrangement of the parties permitted Dauterman to quit her employment and spend all her time at home with her child, Sasha, with substantially decreased living costs and a good monthly income secured by a calculated decision not to marry. The services provided by Dauterman do not appear to be distinguishable from those provided by Ms. Davis in *Davis v. Davis*, and, under the rationale of that case, cannot form the basis of an equitable claim against assets accumulated by the separate effort of the other party to a cohabitation arrangement.

This Court cannot discover, in the facts of this case, any of the unusual features of past cases that have led the supreme court, on very limited facts, to deviate from the broad rule that public policy considerations dictate against equitable intervention in a living arrangement that is, in fact, criminal. *Davis*, 643 So. 2d at 935. Nor do we find any new equitable concerns that would prompt us to expand the circumstances in which relief ought to be given.

### III.

#### The Daughter as a Party

Though the issue was not raised, we nevertheless feel compelled to comment, *sua sponte*, on the addition of Dauterman's minor daughter as a named plaintiff in this case. The jurisprudence of this State admits of the possibility that equity will, in limited circumstances, intervene in the break-up of a man and woman who have cohabited for a number of years without marrying. Nothing in these cases

suggests that other persons have standing to pursue similar claims. The tendency is to strictly limit the circumstances in which relief will be granted, rather than to expand such claims to other parties. The precedent on which this case turns relates solely to the winding up a cohabitation arrangement, and we are aware of no other authority that would permit relief to others tangentially affected by the arrangement. We specifically decline to hold that some party other than the cohabiting partners has standing to assert a claim of this nature. Sasha Dauterman was not a proper plaintiff in this case.

IV.

#### Conclusion

We conclude that the chancellor was manifestly in error in granting equitable relief to Dauterman and her daughter. Dauterman has not demonstrated any special circumstance that would compel the intervention of a court of equity to prevent a manifest injustice. The award of attorney's fees is also reversed as being an abuse of discretion. Even had we concluded that Dauterman was entitled to relief on the merits under the rationale of the *Pickens* case, there is no authority that would permit an award of attorney's fees. The authority of a chancery court to award attorney's fees in certain domestic relations cases does not, in the opinion of this court, extend to actions of this nature. This case is reversed and judgment is rendered in favor of the appellant.

**THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS REVERSED AND RENDERED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEES.**

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