IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00767 COA

GLENN G. ISHEE **APPELLANT**

v.

STATE OF MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **APPELLEE**

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

DATE OF JUDGMENT:	06/14/96
TRIAL JUDGE:	HON. JASON H. FLOYD JR.
COURT FROM WHICH APPEALED:	HARRISON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	WOODROW W. PRINGLE III
ATTORNEY FOR APPELLEE:	GLADYS HAMPTON LOFTON
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	ENTERED A JUDGMENT FINDING GLENN ISHEE IN ARREARS IN PAYMENT OF CHILD SUPPORT IN THE AMOUNT OF $7, 125.00
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	11/7/97
CERTIORARI FILED:	2/24/98
MANDATE ISSUED:	4/23/98

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

KING, J., FOR THE COURT:

Glenn G. Ishee appeals from a judgment of the Harrison County Chancery Court assessing child support arrearage in the amount of $7, 125. Ishee contends that he should receive credit against the arrearage for the purchase of his son's car, food, clothing, and the providing of shelter during a temporary stay at Ishee's home. We find that the chancellor did not abuse his discretion nor commit manifest error by failing to accord credit against the child support arrearage for Ishee's expenditures. We find no error and affirm.

FACTS

On October 11, 1982, the Harrison County Chancery Court ordered Glenn Ishee to pay child support on behalf of his minor children, Daniel and Christy Ishee; the court ordered payments in a *non-apportioned* amount of $200 per month. Initially, Daniel and Christy lived in Georgia with their mother, Shannon Peel, while Ishee resided in Pass Christian, Mississippi. In 1990, Daniel moved to Pass Christian to live with his father for nine months. During this time, Ishee gave Daniel a car, provided food, clothing, and shelter, and ultimately entered into an extra-judicial agreement with Peel to reduce the child support payment to $100 per month.[(1)] After the nine months, Daniel returned to Georgia and enlisted in the military in October of 1992.

On March 8, 1995, Peel instituted a petition for citation of contempt for past due child support payments. A contempt hearing was held, and the Harrison County Chancery Court entered judgment against Ishee for child support arrearage in the full amount of $7,125. Ishee appeals that judgment to this Court.

DISCUSSION

THE CHILD SUPPORT ARREARAGE DETERMINED BY THE CHANCELLOR IS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE AND CONTRARY TO MISSISSIPPI LAW.

Standard of Review

This Court will not disturb the findings of a chancellor when supported by substantial, credible evidence unless the chancellor has abused his discretion or committed manifest error. *Denson v. George*, 642 So.2d 909, 1122 (Miss.1994); *Varner v. Varner*, 588 So.2d 428, 435 (Miss. 1991); *McEachern v. McEachern*, 605 So. 2d 809, 814 (Miss. 1992).

The Extra-judicial Agreement

Ishee contends that he and Peel entered into an extra-judicial agreement to reduce the child support payment from $200 to $100 per month. However, the record reveals that a conflict regarding the extra-judicial agreement existed. Ishee and Peel did not agree upon the length of time the agreement should have been effective. Peel agreed that $100 should have been paid only during Daniel's stay with Ishee. Conversely, Ishee stated that he agreed to pay "her $100 per month from henceforth". Where evidence conflicts, we defer to the chancellor as fact-finder. *Crow v. Crow*, 622 So. 2d 1226, 1228 (Miss.1993). The chancellor in the instant case stated that "there are certain court orders, whereby the Court orders you to do things, Mr. Ishee, and the only way to get around obeying those orders is to come to the Court for relief." We agree. While our Supreme Court has recognized the validity of some extra-judicial agreements,[(2)] the prevailing rule is that a party making an extra-judicial modification does so at his own peril. *Crow*, 622 So.2d at 1231. The authority to modify child support orders is vested solely in the Chancery Court, and Ishee did not properly seek modification from the Chancery Court. We find that the chancellor did not abuse his discretion in this regard.

Credit for Food, Clothing, Shelter and Car

Ishee argues that the past due child support was paid because he spent approximately $9,000 for

food, clothing, shelter, and a car during the nine months Daniel resided with him. "[T]he rule is that a father may receive credit for having paid child support where, in fact, he paid the support directly to or for the benefit of the child, where to hold otherwise would unjustly enrich the mother." *Crow*, 622 So. 2d at 1231. "This principle applies, however, only where the father proves by a preponderance of the evidence that he has, in fact, paid the support to the child under circumstances where the support money was used for the child for the purposes contemplated by the support order, that is, to provide shelter, food, clothing, and other necessities for the child." *Id.*

Ishee's purchase of an automobile for Daniel does not qualify as a necessity. "'[R]egular child support' refers to the sums of money which a parent is ordered to pay for the child's basic, necessary living expenses, namely food, clothing, and shelter." *Crow*, 622 So. 2d at 1230. When a court order does not require that a parent must furnish a car, the purchase merely reflects a parent's sense of responsibility.

Ishee testified at the contempt hearing that he provided day to day needs of food, clothing and shelter during Daniel's stay. A chancellor's decision regarding modification of child support payments or credit for expenses is discretionary. He may consider Ishee's good faith actions as well as the money Ishee spent on food, clothing and shelter. However, the chancellor is also well within his discretion to disregard Ishee's expenses even in those instances where receipts are provided or good faith is intended. Ishee's credibility and the weight of his testimony were primarily for the chancellor to evaluate as the trier of fact. Thus, we defer to the chancellor's role as fact-finder in determining that Ishee should not receive credit for his expenses. The chancellor did not abuse his discretion or commit manifest error by failing to credit the child support arrearage for Ishee's purchases.

Emancipation

"[W]hen a parent is ordered to pay a specified amount periodically for the benefit of more than one child, the emancipation of one child does not automatically reduce the liability of the parent for the full amount." *Moore v. Moore*, 372 So. 2d 270, 271 (Miss. 1979). Ishee contends that upon Daniel's emancipation, the pro-rata share of the child support owed was $100, and he paid this amount. We disagree with this contention for three reasons.

First, the original child support order awarded a lump sum for both Daniel and Amy. By virtue of the fact that a lump sum was awarded, we infer that the chancellor must have contemplated that a base amount was needed regardless of the number of children.

Second, the original child support order may not accurately reflect the amount actually needed for the support of Daniel and Amy, but may only reflect the amount Ishee could afford to pay. *Moore*, 372 So. 2d at 271. Ishee testified that his gross salary was $175 per week. We again infer that the chancellor's intentions were to adequately distribute child support payments in relation to Ishee's total monthly gross of $700.

Third, when Ishee and Peel determined that the child support order was equally divisible among Daniel and Amy, they overlooked the possibility that the requirements of Daniel and Amy could vary widely. *Id.* We find that the chancellor did not abuse his discretion by failing to consider Daniel's emancipation when assessing the child support arrearage.

In conclusion, we find that Peel was not unjustly enriched by receiving the full child support arrearage. Finding no merit in Mr. Ishee's contentions, we affirm.

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

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

1. Mr. Ishee testified at the contempt hearing that he gave Daniel a car valued at $6,000 and provided food, clothing, shelter and other day-to-day needs totaling $3, 090. He contends that he should receive a $9,090 credit against the child support arrearage.

2. *See, e.g.*, *Alexander v. Alexander*, 494 So.2d 365, 367 (Miss.1986); *Crow v. Crow*, 622 So. 2d 1226, 1229 (Miss. 1993); *Varner v. Varner*, 588 So.2d 428, 433-434 (Miss.1991); *Nichols v. Tedder*, 547 So.2d 766 (Miss.1989). These cases involve extra-judicial agreements or unilateral action by one parent. They reveal good faith intentions on the part of the parent or the need for receipts or the actual, written agreement. However, these cases are merely exceptions, and the chancellor has the discretion to consider or disregard the aforementioned examples.