IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-00253 COA

JUDY WHITE BROCK **APPELLANT**

v.

CHARLES R. BROCK **APPELLEE**

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

DATE OF JUDGMENT:	02/11/94
TRIAL JUDGE:	HON. PATRICIA D. WISE
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	CHRISTOPHER A. TABB
ATTORNEYS FOR APPELLEE:	PATRICK D. MCMURTRAY
	DAVID M. LOPER
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	JUDGMENT FOR DEFENDANT
DISPOSITION:	REVERSED AND REMANDED - 2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

EN BANC.

MCMILLIN, P.J., FOR THE COURT:

This appeal raises the issue of the proper interpretation of a provision contained in a written agreement between Judy Brock and Charles R. Brock signed a few days prior to their 1978 divorce in the Chancery Court of Hinds County obtained by Mrs. Brock on the grounds of habitual cruel and inhuman treatment. The decree of divorce incorporated the agreement, styled "Articles of Separation, " into the decree and "ordered [the parties] to perform each and every obligation set forth therein . . . ."

The agreement contained a provision that Mr. Brock would "provide the minor child, Amanda Brock, with a college education." A dispute as to the actual meaning of this phrase arose when Amanda Brock reached the age of twenty-one, and Mr. Brock refused to contribute further to her

college expenses. The dispute led to the litigation that is now before us for decision. Mr. Brock contended (with success) before the chancellor that the phrase "minor child" was purposely inserted to limit his responsibilities to the period of Amanda Brock's minority, and that any obligation in regard to college expenses ceased when the child reached the age of twenty-one years, whether or not she had completed her undergraduate degree. Mrs. Brock, on the other hand, contends on appeal to this Court that the chancellor was manifestly in error in so ruling, and that Mr. Brock's responsibilities to his daughter survive into her majority under contract law.

The authority of the chancery court to compel a divorced parent to contribute to the support of a child, including college educational expenses, normally ends when that child reaches the age of twenty-one years. ***Stokes v. Maris*, 596 So. 2d 879, 882 (Miss. 1992).** However, the supreme court has recognized that a parent may, by contract, assume financial responsibility for the education of his or her child that exceeds the otherwise-existing statutory authority of the chancellor. In ***Crow v. Crow,* 622 So. 2d 1226, 1230 (Miss. 1993),** the supreme court said that "[t]his Court holds that where [the father] contracted to pay post-emancipation support in the form of college and other expenses, he is bound by his contract." ***Id.* at 1230; *Nichols v. Tedder,* 547 So. 2d 766, 770 (Miss. 1989).** These additional obligations, once contracted for, may be enforced by the chancery court in the same manner as judicially-originated obligations. ***Crowe v. Crowe,* 622 So. 2d at 1230*; Nichols,* 547 So. 2d at 770.**

Our jurisprudence has for some time recognized that married parties may contract on matters touching child custody and support in contemplation of separation or divorce and that the contract may be incorporated into the divorce decree, even though the ground for the divorce itself may be one that cannot be confessed under section 93-5-7 of the Mississippi Code of 1972. ***In re Estate of Kennington,* 204 So. 2d 444, 448-49 (Miss. 1967).** It is with just such a contract that we deal in this case.

The chancellor found "from the testimony of Mr. Brock [that] it is clear that his intent was not to provide college expenses beyond the child being a minor. It is undisputed that she was 21 in November of 1993 . . . ." The chancellor noted that, in ruling in favor of Mr. Brock, she was bound by the provisions of *Stokes v. Maris* that prohibited her from extending Mr. Brock's obligation past the daughter's twenty-first birthday in the absence of a contractually-created duty.

This Court has concluded that the chancellor was manifestly in error when she ruled that Mr. Brock's obligations for his daughter's education ceased when the child reached the age of twenty-one years. The chancellor employed an incorrect legal standard when she decided the issue based on her conclusions about Mr. Brock's subjective intent without making the necessary preliminary finding that an ambiguity existed in the contract. The measure of a party's duty under a written contract is not the party's subjective understanding of the agreement or his unexpressed intentions, rather the proper measure of the obligation is an objective one determined from the language of the contract itself. ***Ellis v. Powe,* 645 So. 2d 947, 952 (Miss. 1994).** It is only when ambiguity arises that extraneous evidence concerning the understanding of the parties may be considered. ***Id.*** The chancellor did not preface her findings about Mr. Brock's intentions with a determination that the contract itself was ambiguous on the point. We have reviewed the agreement and find, as a matter of law, that no such ambiguity existed.

When this agreement was entered into in 1978, Amanda Brock was five years of age. The phrase "minor child," when coupled with the name of the child in the manner done in this part of the agreement, is, by any reasonable construction, a term of description only. Had the agreement provided that Mr. Brock would provide "the five-year-old child of the parties, Amanda Brock, with health insurance," it is inconceivable that Mr. Brock would have been permitted to let insurance lapse when Amanda reached the age of six, no matter how convincing his protestation that this was his intent when he signed the agreement. Only an unnaturally forced reading of this fictional agreement would permit the discovery of an ambiguity, and that is not the business of the courts in interpreting matters of contract. ***See Citizens' Bank v. Frazier,* 157 Miss. 298, 302, 127 So. 716, 717 (1930)** ("It is the duty of courts to give to a contract that construction or interpretation, if possible, which will square its terms with fairness and reasonableness . . . ."). Neither do we think the actual agreement is susceptible of the reading urged by Mr. Brock without resort to the most strained reasoning. The Separation Agreement refers to the daughter on six occasions as the "child," on three occasions as the "minor child," and twice she is referred to simply by name. These varying methods of referring to the child appear to have occurred in a purely random manner. We can find no principled basis to attach particular significance to the choice of one of these designations over another in any individual instance.

Having validly contracted to provide his daughter with a college education, Mr. Brock must now live up to the terms of that agreement without consideration of the fact that his daughter reached the age of twenty-one years before completing her undergraduate studies. This case is, therefore, remanded for further proceedings to determine, with more particularity, the extent of that obligation.

THE JUDGMENT OF THE CHANCERY COURT OF HINDS COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.

THOMAS, P.J., DIAZ, HERRING, HINKEBEIN, AND SOUTHWICK, JJ., CONCUR. PAYNE, J., CONCURS WITH SEPARATE WRITTEN OPINION. BRIDGES, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION. COLEMAN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, J.

PAYNE, J., SPECIALLY CONCURRING:

Since I believe that the supreme court in ***Stokes v. Maris*, 596 So. 2d 879, 881 (Miss. 1992),** incorrectly relied on ***Nichols v. Tedder,* 547 So. 2d 766, 768 (Miss. 1989)** for authority in regard to college expenses when no college expenses were involved in *Nichols v. Tedder*, I cannot agree with either opinion in the case *sub judice* that the law in Mississippi anticipates that a father's duty for his offspring's college education automatically stops at the offspring's twenty-first birthday. I do agree with the majority here that the court can always enforce a contract for total college expenses and that the contract in this case was unambiguous and enforceable.

BRIDGES, C.J., DISSENTING:

I respectfully dissent from the majority's conclusion that Mr. Brock *validly* contracted to provide his daughter with a college education and must continue to do so irrespective that she has now reached post-minority status. I believe that the chancellor was correct in extinguishing the father's obligation to pay his daughter's college expenses, but not for the reasons stated. Unlike the majority, I believe that this provision does not meet the requirements of a contract and thus, because of the variable and vague meaning of an essential term, "college education", it is too indefinite to be enforced. This Court cannot require specific performance when riddled with indefinite and unresolved terms.

Although courts do not usually cite dissents to other cases, I agree with Justice Sullivan's dissent in ***Rogers v. Rogers*, 662 So. 2d 1111, 1117 (Miss. 1995):**

> [I]f this is in fact a suit to enforce a contract, the more proper vehicle is not a citation for contempt, but a suit for specific performance. In that action the chancellor is limited to specifically enforcing the contract, if one exists, between the parties. In such an action there would be no temptation, as occurred here, to rewrite the contract for the parties.

Before a court can order specific performance, the court must be able to look at the instrument and determine what performance is required. ***Duke v. Whatley*, 580 So. 2d 1267, 1274 (Miss. 1991)** (citations omitted). Without knowledge of the parties intent of an essential term, courts are unable to determine what performance should be required. ***Id.*** The elementary general rule, as frequently enunciated in reference to the enforcement of specific performance of contracts, is that the contract must be specific and distinct in its terms, plain and definite in its meaning, and must show with certainty that the minds of the parties had met and mutually agreed as to all details upon the offer made upon one hand and accepted upon the other. **17 Am. Jur. 2d *Contracts* § 75 (1964)**. Section 32 of the Restatement reads as follows:

> (1) Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain.
>
> (2) The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.
>
> (3) The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.

***See* Restatement (Second) of *Contracts* § 32; *Etheridge v. Ramzy*, 276 So. 2d 451, 455 (Miss. 1973).** However, there is authority that, if possible, words of a contract should be given a reasonable construction in order to determine the intention of the parties. In ***Jones v. McGahey*, 187 So. 2d 579 (Miss. 1966),** the Mississippi Supreme Court held:

> Determination that an agreement is sufficiently definite is favored in the courts, so as to carry out the reasonable intention of the parties if it can be ascertained. A contract is sufficiently definite if it contains matter which will enable the court under proper rules of construction to ascertain its terms, including consideration of the general circumstances of the parties and if necessary relevant extrinsic evidence. Having found a contract to have been made, an agreement should not be frustrated where it is possible to reach a reasonable and fair result.

***Etheridge*, 276 So. 2d at 455**(citations omitted). This is inapplicable to the instant case as there are essential elements of the agreement which cannot be cured by extrinsic evidence. Therefore, the provision in the judgment of divorce is too indefinite upon essential terms to be enforced.

I do believe that there are instances where a separation agreement which is incorporated into a final divorce decree and requires the obligor to pay post-emancipation support for college and other expenses would be enforceable. The problem here is the incompleteness and indefiniteness surrounding Mr. Brock's agreement for support for his daughter's college education. This agreement contained no specific terms as to what a "college education" consisted of (i.e., two years at a junior college, four years and completion of a Bachelor's degree, completion of a trade or technical school, post-graduate or professional studies, etc.), no duration clause, no minimal level of academic performance, and no details as to whether it included only tuition and books or boarding, clothing, and extracurricular activities as well. Additionally, time is of the essence in such a situation. How long will this father be compelled to pay for his daughter's education? Two more years? Five more years? Ten? When will he have met his obligation? As written, this provision is too open-ended and potentially financially oppressive. Such details are for the parties to decide, not for this Court or any court to create. For future reference, I recommend that attorneys drafting such agreements for collegiate child support ensure that such a provision contains a definite and specific meaning, and is complete within itself containing no extraneous references, and leaving open no matter or description or designation out of which contention may arise as to the meaning.

COLEMAN, J., DISSENTS:

Unlike the majority, I view the issue as primarily an issue of fact and only secondarily as an issue of law; therefore, while I do not generally disagree with the principles of law on which the majority relies to reverse and remand the judgment of the chancery court, with deference to my colleagues, I dissent. As I shall endeavor to explain throughout this dissent, I opine that the chancellor's task was to interpret sentences in the litigants' agreements which were ambiguous. Whether instruments, such as the agreements in the case *sub judice*, are ambiguous is an issue of law for the judge to resolve, but once the judge has adjudicated that the instrument is ambiguous, then the resolution of that ambiguity is deemed to be an issue of fact for the fact finder to decide. With these general observations in mind, I proceed with my endeavor to justify my dissent.

I. Additional Facts

I think it appropriate to amplify the facts which I have found from my perusal of the record. Judy and Charles Brock married in 1969 but were divorced on June 1, 1978, by a final decree of the Chancery Court of the First Judicial District of Hinds County. Although it recited that the chancery court granted the divorce to Judy Brock from Charles R. Brock on the ground of habitual cruel and inhuman treatment, the final decree approved the Articles of Separation which the Brocks had executed on the 30th day of May, 1978. The Articles of Separation contained the following provision: "Husband shall provide the minor child, Amanda Brock, with a college education."

More than fourteen years later, on November 17, 1992, the chancery court entered a judgment of modification in which it ordered that "effective 1 February 1992, the Defendant [Charles R. Brock] shall pay all college expenses on the minor child, including but not limited to tuition, room and board,

books, laboratory fees, and student fees as listed in the college handbook."

II. Trial

On August 17, 1993, nearly three months prior to Amanda's twenty-first birthday on November 3, 1993, Charles R. Brock filed a motion for modification in Hinds County Chancery Court in which he alleged the following:

> The minor child of the parties [Amanda], is, upon information and belief, currently attending the University of Georgia and will reach her [t]wenty-[f]irst birthday on November 3, 1993. Because Amanda Brock . . . will no longer be a minor and will be emancipated, all obligations of [Charles R. Brock], including, but not limited to, child support, college expenses and medical coverage, will cease.

Brock then requested "an [o]rder of this Court confirming that all child support, health care and college obligations cease as of November 3, 1993 without further [o]rder of this Court." Judy Brock filed an answer to her former husband's motion for modification in which she affirmatively charged that Charles R. Brock had known of the college obligations since 1978.

On February 3, 1994, the chancellor heard the father's motion for modification. Both Charles R. Brock and Judy Brock testified. The evidence established that as of the date of the hearing, Amanda had successfully completed seven quarters at the University of Georgia, where she was majoring in journalism, but needed five more quarters to obtain her bachelors degree. Judy Brock testified that her daughter Amanda had temporarily left school to live in Aspen, Colorado, where she was working in a retail clothing store for a wage of ten dollars per hour. Judy Brock insisted that Amanda intended to resume her education at and graduate from the University of Georgia. Amanda's mother had lived in Georgia for some time.

Amanda's father testified that he never intended to provide Amanda with a college education after she reached the age of twenty-one years. The record contains the following cross-examination of Charles R. Brock about his interpretation of the terms of both the original articles of separation and the order of modification rendered on November 17, 1992:

> Q. And you knew when you signed this Judgment of Divorce that you were responsible for paying for a college education for Amanda; is that correct?
>
> A. For a minor child, yes, sir.
>
> Q. The minor child--what was her name?
>
> A. The minor child, Amanda Cristen Brock.
>
> Q. Okay. Were you responsible for paying for a college education for Amanda? Is that what it says?
>
> A. It says as a minor child, Amanda Cristen Brock. Yes, Sir. It sure does.
>
> Q. Is there anything in there that says the college education has to be completed at the age of twenty one?

A. No, Sir.

Q. Okay, it didn't say it quit at twenty one, did it?

A. No, Sir.

. . . .

Q. Okay, and you knew that you had an obligation to pay for a college education for your daughter; didn't you?

A. As a minor child to the age of twenty one. Yes, Sir, I did.

Q. There wasn't anything in this paper that said until the age of twenty one; was there?

A. Yes, Sir, the way I read it, it does. Yes, Sir.

Q. Okay. Do you see anything in here that says twenty one?

A. A minor child constitutes twenty one based on what Larry Latham, the attorney at that time, informed me.

Contrary to her former husband's interpretation of the judgment of modification, Judy Brock maintained that her former husband knew he was responsible for paying for Amanda's college education all the way through her earning a bachelor's degree. Judy Brock testified as follows:

Q. How old was Amanda at the time that you entered this decree?

A. Five years old.

Q. Okay, so at that time she was a minor?

A. Yes.

Q. Was there any discussion ever done that this would quit at the age of twenty one?

A. No, the discussion was when she got a college -- a bachelors degree.

Q. Got a bachelors degree?

A. Yes.

Q. And if that goes past twenty one, he was responsible for paying past twenty one?

A. Yes, that is correct. Amanda's birthday is a late birthday. She was within two months of seven years old when she started the first grade.

Q. So, we knew at the time we did this that a college education for her was definitely going to require past the age of twenty one?

A. Absolutely.

In the order entered on Valentine's Day, 1994, the chancellor "extinguished" Brock's support obligation for his daughter, including the payment of college related expenses, as of November 3, 1993, the date Amanda Brook reached the age of twenty-one years.

III. A Different Analysis of the Issue

A. The matter of ambiguity

My initial parting of company with the majority opinion occurs with the statement that "[o]nly an unnaturally forced reading of this fictional agreement would permit the discovery of an ambiguity . . . ." Citing ***Citizens' Bank v. Frazier*, 157 Miss. 298, 302, 127 So. 716, 717 (1930)** (opining that "[i]t is the duty of courts to give to a contract that construction or interpretation, if possible, which will square its terms with fairness and reasonableness . . . .") (maj. op., p. 4). I agree that if the agreement is not ambiguous, then its interpretation is a matter of law for the trial judge. As the Mississippi Supreme Court explained in ***Dennis v. Searle*, 457 So. 2d 941, 945 (Miss. 1984):** "Where a contract is clear and unambiguous, its meaning and effect are matters of law which may be determined by the court."

Whether my interpretation of the statements in controversy is "an unnaturally forced reading of this fictional agreement," I find the statements which are the subject of this controversy to be quite ambiguous. I reiterate that Mr. and Mrs. Brock had twice provided for the father's obligation to provide his daughter with a college education. The first time occurred in the couple's Articles of Separation, when they included the sentence, "Husband shall provide the minor child, Amanda Brock, with a college education." The second time occurred more than fourteen years later when the chancery court entered a judgment of modification in which it ordered that "effective 1 February 1992, the Defendant [Charles R. Brock] shall pay all college expenses on the minor child, including but not limited to tuition, room and board, books, laboratory fees, and student fees as listed in the college handbook." In both instances, the Brocks elected to employ the phrase, "minor child."

Section 1-3-27 of the Mississippi Code of 1972 provides that "[t]he term 'minor,' when used in any statute, shall include any person, male or female, under twenty-one years of age." Indeed, the preceding **Section 1-3-1 of the Mississippi Code of 1972** provides that "[t]his chapter is applicable to every statute unless its general object, or the context of language construed, or other provisions of law indicate that a different meaning or application was intended from that required by this chapter." Black's Law Dictionary defines the word "minor" as "[a]n infant who is under the age of legal competence." Black's Law Dictionary 997 (6th ed. 1990). While there is no definition of the word "child" included within Chapter 3 of the Mississippi Code of 1972, which is entitled "Construction of Statutes," Black's Law Dictionary defines the word "child" as "Progeny; offspring of parentage." Black's Law Dictionary 997 (6th ed. 1990).

I conclude from this review of the legal definitions of the words "minor" and "child" that the Brock's juxtaposition of the two terms, with "minor" being used as an adjective to describe "child," indicated their intent to restrict Mr. Brock's obligation to provide a college education for his daughter to the period of time during which she was a minor child, or a child under "twenty-one years of age." In fact, I find the use of the phrase "minor child" not at all ambiguous. Were the interpretation of this phrase, "minor child," the only aspect of ambiguity in the controversial agreements between the

Brocks, I would simply opine that the agreements were not ambiguous and that as a matter of law, the chancellor correctly interpreted the agreements to mean that the father's obligation to provide "the minor child, Amanda Brock, with a college education," which obligation was re-affirmed by the judgment of modification entered fourteen years later, ended when his child ceased to be a minor. Thus, as a matter of law, I would affirm the chancellor's order which extinguished the father's obligation to pay his daughter's college expenses as of November 3, 1993, Amanda Brock's twenty-first birthday.

However, I find ambiguity in these agreements in the Brock's use of the word "college education" in the provision contained in their Articles of Separation executed on the 30th day of May, 1978, and in the use of the word "college" in the inclusion of the phrase "all college expenses on the minor child, including but not limited to tuition, room, and board, books, laboratory fees, and student fees as listed in the college handbook" in the judgment of modification which the chancery court entered on November 17, 1992. The terms "college education" and "pay all college expenses . . . ." could readily be interpreted to mean an obligation of Mr. Brock to provide his daughter Amanda with a college education until she had earned a college degree. Mrs. Brock contended that this was exactly what the agreements meant. Thus, according to Mrs. Brock, because her daughter had completed seven quarters at the University of Georgia, Mr. Brock remained obligated to provide for her college education and to pay all college expenses for the remaining five quarters which Amanda required to graduate with a bachelors degree. Mrs. Brock persisted in her contentions even though, at the time of the hearing on Mr. Brock's motion for modification, the Brock's daughter had temporarily left school to live in Aspen, Colorado, where she was then working in a retail clothing store for a wage of ten dollars per hour. As we have already noted, Mr. Brock interpreted the terms, "provide a college education" and "pay all college expenses," by the juxtaposition of the words "minor" and "child" to limit his obligation to provide his daughter with a college education only while she remained a "minor child."

Therefore, I opine that the phrases in controversy were ambiguous because collectively each could be interpreted to mean more than one thing. Black's Dictionary defines "ambiguity" as "Doubtfulness; doubleness of meaning. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written expression." Black's Law Dictionary 79 (6th ed. 1990). To demonstrate its definition of "ambiguity," Black's Law Dictionary cites ***Atlas Ready-Mix of Minot, Inc. v. White Properties, Inc.*, 306 N.W. 2d 212, 220 (N.D. 1981)** for the proposition that "[a]mbiguity exists . . . when good arguments can be made for either of two contrary positions as to a meaning of a term in a document." Black's Law Dictionary 79-80 (6th ed. 1990). I realize that my argument that these agreements are ambiguous fails to persuade the majority of their ambiguity; nevertheless, I remain of the opinion that my argument is "good."

Earlier, I cited *Dennis v. Searle* as authority for the proposition that if a contract is "clear and unambiguous," the trial court as a matter of law may determine its meaning and effect. In that same opinion, the supreme court explained that "where the contract is ambiguous and its meaning uncertain, *questions of fact are presented which are to be resolved by the trier of the facts after plenary trial on the merits*." ***Dennis*, 457 So. 2d at 947** (emphasis added). The foregoing quotation establishes the second point at which my departure from the majority widens further. While the majority analyzed the issue to be resolved as a matter of law, I analyze the issue to be resolved as an issue of fact because of the ambiguity that I find in these agreements.

B. Standard of Review

The standard of review is of critical importance to my analysis and resolution of this issue. In ***Redell v. Redell*, 696 So. 2d 287, 288 (Miss. 1997)**, the Mississippi Supreme Court reiterated the following standard of review: "The Court employs a limited standard of review on appeals from chancery court. If substantial credible evidence supports the chancellor's decision, it will be affirmed. The Court will not interfere with the findings of the chancellor unless the chancellor was manifestly wrong, clearly erroneous or a wrong legal standard was applied." (citations omitted). One aspect of this standard of review is the proposition that the chancellor "is best able to determine the veracity of [the witnesses'] testimony, and this Court will not undermine the chancellor's authority by replacing h[er] judgment with its own." ***Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993).**

C. Extrinsic Evidence and Ambiguity

In ***Baylot v. Habeeb*, 245 Miss. 439, 147 So. 2d 490, 494 (1962)**, the Mississippi Supreme Court explained:

> Whenever the terms of a contract are susceptible of more than one interpretation, or an ambiguity arises, or the intent and object of the contract cannot be ascertained from the language employed, parol evidence may be introduced to show what was in the minds of the parties at the time of making the contract.

(citation omitted). I opine that the ambiguity which I find in the agreements required parol, or extrinsic, evidence, "to show what was in the minds of the parties at the time" they executed their articles of separation and later when the chancery court entered a judgment of modification. Otherwise, there was little to be gained by the hearing which the chancellor conducted on Mr. Brock's motion for modification.

I have previously quoted the portions of both Mr. and Mrs. Brock's testimony in which each of them explained to the chancellor the basis for their respective interpretations of their articles of separation and the judgment of modification. The substance of Mr. Brock's testimony on cross-examination was that his lawyer who represented him when the articles of separation were executed advised him that the term "minor child" meant a child less than twenty-one years old and that he had an obligation to provide a college education for his daughter only for so long as she remained under twenty-one years of age. On the other hand, Mrs. Brock testified that she and her former husband, Amanda's father, had discussed the meaning of "college education" and that he understood that the term "college education" encompassed the completion of her college education by earning "a bachelors degree," even if it meant that their daughter "goes past twenty-one" when she earned it.

The conflict in the testimony of Mr. and Mrs. Brock which arose from what I perceive to have been an ambiguity in their agreements seems as irreconcilable as the differences on which the law permits a married couple to obtain a divorce. The chancellor was confronted with believing either Mr. Brock or Mrs. Brock, but she could not reconcile their disparate interpretations of their agreements. The chancellor's order which extinguished Mr. Brock's support obligation, "including the payment of college related expenses . . . as of November 3, 1993," could only be the consequence of the chancellor's finding Mr. Brock to have been the more credible witness under the facts with which the

evidence confronted her.

I agree with the majority opinion that "[t]he chancellor did not preface her findings about Mr. Brock's intentions with a determination that the contract itself was ambiguous on the point." However, the Mississippi Supreme Court has often excused a chancellor's failure to make specific findings of fact by holding that "[g]enerally, when there are no specific findings of fact, this Court often assumes that the chancellor resolved fact issues in favor of the appellee." ***Newsome v. Newsome*, 557 So. 2d 511, 514 (Miss. 1990).** The Mississippi Supreme Court has further opined that it would "proceed on the assumption that the chancellor made determinations of fact sufficient to support its [sic] judgment." ***Pace v. Owens*, 511 So. 2d 489, 492 (Miss. 1987).** Based on *Newsome*and *Pace*, I would assume that the chancellor determined that the agreements were ambiguous and that extrinsic evidence was necessary to resolve the Brocks' intent when they executed them. I cannot conclude that the chancellor was manifestly wrong or clearly erroneous finding as a matter of fact that Mr. Brock's obligation to support his daughter Amanda and provide her a college education was extinguished when she became twenty-one years old.

D. Error as a matter of law

The third element of the standard of review is that the chancellor will be reversed if a wrong legal standard was applied. The majority states that "the chancellor was manifestly in error when she ruled that Mr. Brock's obligations for his daughter's education ceased when the child reached the age of twenty-one years." (maj. op. p.3). Their reasoning is that "[t]he chancellor employed an incorrect legal standard when she decided the issue based on her conclusions about Mr. Brock's subjective intent without making the necessary preliminary finding that an ambiguity existed in the contract." *Id.* As I have already opined, I am content to assume that the chancellor made determinations of fact sufficient to support her judgment and that among her findings of fact, albeit unstated in her judgment, was the finding that the agreements were ambiguous.

This dissent is not prompted by the majority's discussion of the general principles of law which define a divorced parent's obligation to provide support for the college education of an adult child. In fact, I agree with the majority that as a matter of contract law, a parent may agree to provide educational support for an adult child who attends college. The source of my discontent with the majority opinion rests with the manner in which it invokes the principle that the chancellor "employed an incorrect legal standard" when she ruled in favor of Mr. Brock. To the contrary, I submit that when the chancellor invoked the provisions of *Stokes v. Maris* to extinguish Mr. Brock's obligation to provide his daughter with further college education after her twenty-first birthday, she invoked the correct legal standard.

In ***Stokes v. Maris*, 596 So. 2d 879, 881 (Miss. 1992)**, there was no written agreement that obligated the father to pay college tuition for his son who had become twenty-one years old. The chancellor ordered the father to pay the mother the sum of $17,514.63, which he found to be the amount of their son's college expenses which he incurred "post-majority and prior to his graduation from Southern Methodist University." ***Id.*** On appeal, the Mississippi Supreme Court reversed and rendered that judgment. ***Id.* at 882.** The supreme court held:

> [O]ur courts have no authority under [Miss. Code Ann.] §§93-5-23 and/or 93-11-65 to require parents to provide for the care and maintenance of their child after the child becomes

> emancipated, by reaching the age of twenty-one (21), or otherwise, whichever comes first. Of course, nothing we have said should be interpreted as foreclosing the enforcement of agreements by the parties providing for the post-emancipation care and maintenance of their children, whether their agreements are separate contracts, or have been incorporated into the divorce decree.

***Id.* at 881-82.** (quoting *Nichols v. Tedder*, 547 So. 2d 766, 768 (Miss. 1989)).

Once the chancellor resolved the ambiguities in the Brocks' articles of separation and judgment of modification as matters of fact by finding Mr. Brock's explanation of his interpretation of the provisions more credible than Mrs. Brock's explanation, which I would affirm, then per force there was no agreement, or contract, between the Brocks which obligated Mr. Brock to provide for his daughter's college education or pay for her college expense. Because there was no such agreement between them, the chancellor correctly applied *Stokes* to extinguish Mr. Brock's obligation to provide for his daughter's college education. I conclude that the chancellor applied the correct legal standard.

IV. Summary

I respectfully differ with the majority on the following aspects of the issue which this Court has resolved favorably to Mrs. Brock, the appellee. First, I find that the provisions of the articles of separation and the judgment of modification were ambiguous for the reasons that I have given. Because I think that the provisions were ambiguous, the chancellor was entitled to consider parol, or extrinsic, evidence about what the parties intended by these provisions. The resolution of the ambiguity became a finding of fact for the chancellor, as the trier of fact, to resolve based on the extrinsic evidence which the Brocks adduced for her consideration. As a matter of evidentiary finding, I cannot say that the chancellor was manifestly wrong or clearly erroneous in her resolution of the ambiguity. Neither do I think it necessary that the chancellor have made a specific finding that the provisions were ambiguous for the reasons I have related. I further opine that in view of the chancellor's determination that Mr. Brock's obligation to supply his daughter with a college education and to pay her college expenses ended with her attaining her majority, the chancellor applied the correct legal standard when she refused to extend the father's obligation beyond his daughter's no longer being a "minor child." For these reasons, I would "not undermine the chancellor's authority by replacing h[er] judgment with [my] own." ***See Madden*, 626 So. 2d at 616**. Instead, I would affirm the judgment of the Hinds County Chancery Court.

KING, J., JOINS THIS OPINION.