

6/17/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-01015 COA

LAMAR TURNIPSEED APPELLANT

v.

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

TRIAL JUDGE: HON. EDWARD D. PRISOCK

COURT FROM WHICH APPEALED: CHANCERY COURT OF WINSTON COUNTY

ATTORNEY FOR APPELLANT: J. NILES MCNEEL

ATTORNEY FOR APPELLEE: DEBORAH KENNEDY

NATURE OF THE CASE: CHILD SUPPORT MODIFICATION

TRIAL COURT DISPOSITION: MODIFICATION ORDERED

MANDATE ISSUED: 7/8/97

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

PAYNE, J., FOR THE COURT:

This is an appeal from the Circuit Court of Winston County wherein the chancellor ordered Lamar Turnipseed to pay \$375 in monthly child support and to pay the medical and dental insurance for the child. Feeling aggrieved, Turnipseed appeals arguing that the child support award exceeds the statutory guidelines and that the chancellor failed to make the proper findings in deviating from the guidelines. Finding no error, we affirm.

STATEMENT OF THE FACTS

The Department of Human Services (DHS) filed a petition for modification alleging a material

change in circumstances in Turnipseed's net income. The parties stipulated to the following: (1) Turnipseed's adjusted gross income was approximately \$2,900 per month; (2) the cost of health insurance through his employer was \$164 per month and the cost of dental insurance was \$19 per month; and (3) the child support guidelines of fourteen percent for one child is \$406 per month (14% of \$2,900).

Testimony from the mother established that the child is anemic, she will require braces, and that she has a leg problem which will require corrective shoes.

The chancellor ordered that the monthly child support should be increased from \$175 to \$375. Turnipseed was also required to provide health and dental insurance for the child.

ANALYSIS

Turnipseed frames his issues on appeal as follows:

I. THE CHILD SUPPORT AWARD, INCLUDING PAYMENT OF HEALTH AND DENTAL INSURANCE, EXCEEDED CHILD SUPPORT GUIDELINES.

II. THE COURT DID NOT PLACE ON THE RECORD ITS FINDINGS FOR DEVIATING FROM THE CHILD SUPPORT GUIDELINES.

Turnipseed contends that the trial court erred in ordering him to pay \$375 per month plus medical and dental insurance. He calculates that the award totals \$558 per month which is \$152 per month higher than the statutory guidelines. He further argues that the chancellor failed to make a finding on the record for the deviation from the child support guidelines. He asserts that he does not benefit from the health and dental insurance he paid, in that he was covered through his present wife's employment. He further contends that his present wife was not able to add the child to her policy because the child is not her dependant. He argues that by requiring him to obtain the separate policy, he and his family would have unnecessary duplicate coverage. However, one thing Turnipseed has failed to point out is that in making the modification, the chancellor also allowed Turnipseed to claim the child as a dependant for both state and federal income tax purposes.

DHS argues that the child is in need of medical coverage and has some special needs. DHS argues that the award is proper and that the chancellor adequately explained his award.

The Mississippi Supreme Court has stated that "in cases concerning support of children, the best interest of the child is the 'touchstone' which this Court must keep in mind." *Love v. Barnett*, 611 So. 2d 205, 208 (Miss. 1992) (citation omitted). "Child support is awarded to the custodial parent for the benefit and protection of the child." *Id.* (citations omitted). Mississippi statutory law provides for child support guidelines regarding an award or modification of child support. Miss. Code Ann. 43-19-101(1) (1972). The statute specifies percentages of a non-custodial parent's adjusted gross income to be awarded for supporting his or her children. *Id.* These percentages depend upon the number of children that are to be supported. *Id.* Moreover, the statutory guidelines "apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103." Miss. Code Ann.

43-19-101(2) (1972); *see also Grogan v. Grogan*, 641 So. 2d 734, 740 (Miss. 1994).

If a chancellor departs from the statutory guidelines and states his or her reasoning on the record, an appellate court must consider whether the chancellor erred in the amount itself. *Grogan*, 641 So. 2d at 740-41. The child support award is within the sound discretion of the chancellor. *Id.* at 741. This Court will not disturb a chancellor's determination of child support unless the chancellor was manifestly in error in a finding of fact or abused his or her discretion. *Id.* (citations omitted); *see also Love*, 611 So. 2d at 208 (stating that the chancellor has substantial discretion and must consider all relevant facts and equities in modifying child support so that best interests of the child prevail). An appellate court has a limited scope of review and will not arbitrarily substitute its judgment for that of the chancellor who is better situated to evaluate the factors related to the best interests of the child. *Ash v. Ash*, 622 So. 2d 1264, 1266 (Miss. 1993) (citation omitted); *Barber v. Barber*, 105 So. 2d 630, 632 (Miss. 1958) (finding that this Court will not substitute its judgment for that of chancellor unless it clearly appears that chancellor abused his discretion or failed to exercise equity).

In the present case, the chancellor ordered Turnipseed to pay \$375 a month in child support and also to provide medical and dental insurance for the child. The record demonstrates that the chancellor twice acknowledged that deviation from the guidelines required justification in order to pass appellate review. The chancellor considered the additional monetary benefit of the second policy for Turnipseed and the rest of his family. Furthermore, the chancellor recognized that while some deviation was necessary, he would not require Turnipseed to pay the medical and dental insurance costs in addition to fourteen percent of his adjusted gross income in monthly child support payments. The chancellor went on to reduce the amount of monthly child support from \$406 to \$375 to adjust for the costs of the insurances. Additionally, the chancellor awarded Turnipseed the benefit of claiming the child as a dependant for both state and federal income tax purposes. Upon review of the record, we cannot say that the chancellor erred in ordering Turnipseed to pay \$375 in monthly child support and to provide for health and dental insurance for the child. Furthermore, we find that the chancellor adequately demonstrated his departure from the statutory guidelines. Accordingly, we find no merit in Turnipseed's assignments of error.

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

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

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BRIDGES, C.J., DISSENTING:

While I concur with the result achieved by the majority in this case, I would respectfully dissent to part of the substance of the majority's opinion. The chancellor in the case *sub judice* did not justify his deviation from the guidelines as required by Sections 43-19-101(2) and 43-19-103 of the Mississippi Code of 1972. The majority feels that the "chancellor adequately demonstrated his departure from the statutory guidelines." I disagree.

Section 43-19-101(2) of the Mississippi Code of 1972 requires 'a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.' It is my opinion that the chancellor did not follow the statute, and I would like for this Court to encourage strict adherence to this statute.

In a case cited by the majority, our supreme court encouraged adherence to and affirmed the importance of the requirements in Section 43-19-101(2). See *Grogan v. Grogan*, 641 So. 2d 734, 740 (Miss. 1994). As a court primarily concerned with error correction, we should receive the words of the supreme court in *Grogan* as a mandate to enforce specifically the requirements of these two statutes. We should never infer these findings from the record. If the record does not reflect specific written findings explaining any deviation, we should at the very least remand the case for findings to be made that satisfy both Section 43-19-101(2) and Section 43-19-103.

Another important reason for requiring these findings can be seen in subparagraph (5) of Section 43-19-101. This paragraph outlines how the Department of Human Services is to review the appropriateness of the child support guidelines every four years. Without the guidance of specific findings explaining why chancellors are deviating from the guidelines, the Department will not be able to make sufficient findings as required by subparagraph (5) or recommend specific amendments to the Legislature. For these reasons I feel that this Court should henceforth endeavor to require a thoughtful written explanation for any deviation from the child support guidelines. I would remand this case for findings consistent with Sections 43-19-101(2) and 43-19-103 of the Mississippi Code of 1972.

MCMILLIN, P.J., COLEMAN AND SOUTHWICK, JJ., JOIN THIS SEPARATE WRITTEN OPINION.