

SUPREME COURT OF MISSISSIPPI

Drake L. Lewis v. Tonia D. (Lewis) Pagel

172 So. 3d 162 (Miss. 2015) · No. Nos. 2013-CA-01631-SCT and 2008-CT-01362-SCT · Decided August 13, 2015

SUMMARY

The Mississippi Supreme Court reviews post-remand issues arising from the divorce of Drake Lewis and Tonia Lewis Pagel, including equitable distribution, valuation of a closely held business, classification of real property, alimony, child support, contempt, and attorney's fees. The court affirms in part, reverses the denial of Drake's motion to modify child support, and remands that issue for reconsideration. It affirms the chancery court's rulings in all other respects.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Waller, C.J.; Dickinson, P.J.; Randolph, P.J.; Lamar, J.; Kitchens, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	August 13, 2015
DOCKET	Nos. 2013-CA-01631-SCT and 2008-CT-01362-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Drake Lewis appealed from Harrison County Chancery Court orders entered after remand concerning equitable distribution, alimony, child-support modification, contempt, and attorney's fees. The Supreme Court of Mississippi affirmed in part, reversed the denial of child-support modification, and remanded.
STANDARD OF REVIEW	Domestic-relations findings are reviewed for manifest error, clear error, or application of an erroneous legal standard; discretionary equitable remedies are reviewed deferentially when supported by substantial credible evidence. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Drake L. Lewis v. Tonia D. (Lewis) Pagel

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QUESTIONS PRESENTED

1. Whether the chancellor properly reconsidered equitable distribution on remand, including the valuation of Legacy, classification of property, treatment of the Richland Road proceeds, tax consequences, and the relative distribution of assets.
2. Whether the chancellor properly awarded Tonia \$100,000 in lump-sum alimony after the revised equitable distribution.
3. Whether Drake was entitled to a downward modification of child support after the Legacy-loan repayments ceased and reduced his income.
4. Whether the chancellor properly limited any child-support modification to prospective relief.
5. Whether the chancellor properly found Drake in contempt for willfully reducing child-support payments and awarded Tonia attorney's fees.

HOLDINGS

1. The chancellor did not err by incorporating prior Ferguson findings by reference and reconsidering the equitable distribution in light of the remand instructions. The chancellor properly found Legacy had no value apart from accounts receivable, classified Swamp Road and St. Martin as Drake's separate property, excluded Hickory Hills Lot 13, considered tax consequences, and determined the marital estate as of the divorce rather than based on later changes in asset values.
2. The chancellor did not err in finding that Legacy had no value apart from accounts receivable.
3. The chancellor properly awarded Tonia \$100,000 in lump-sum alimony after equitably distributing the marital estate.
4. The chancellor manifestly erred by denying Drake's motion to modify child support without addressing that his income no longer included repayments on the finite Legacy loan. The issue was reversed and remanded for reconsideration.
5. Any child-support modification granted on remand must operate prospectively; vested child-support payments cannot be forgiven or modified.
6. The chancellor properly found Drake in civil contempt for willfully reducing court-ordered child-support payments and properly awarded Tonia attorney's fees associated with enforcing the support order.

KEY QUOTATIONS

“If, after the equitable distribution of the marital estate, one spouse is left with a deficit, then the chancellor should consider alimony based on the value of nonmarital assets.” (¶17)

“Additionally, an order of equitable division is a nonmodifiable judgment.” (§27)

“Therefore, we reverse and remand for the chancellor to revisit the issue of modification due to Drake’s reduction in income due to the end of the loan repayment.” (§36)

“Therefore, any modification granted by the chancellor must be prospective only.” (§37)

FACTUAL BACKGROUND

Drake and Tonia Lewis were married in 1991 and had three children. During the marriage they operated Legacy Holdings, Inc., a closely held general-contracting corporation, and acquired or developed various real-estate interests, some of which derived from property placed in trust for Drake by his father. The original divorce judgment awarded the parties property, rehabilitative alimony, child support, and college expenses; after remand, the chancellor determined that Legacy had no value apart from accounts receivable, classified certain properties as Drake's separate property, awarded Tonia \$100,000 in lump-sum alimony, and found Drake in contempt for unilaterally reducing child-support payments. Drake's income had included repayments on a loan to Legacy, but those repayments ended when Legacy was closed.

PROCEDURAL HISTORY

The parties were divorced by the Harrison County Chancery Court in 2008. The Court of Appeals affirmed in part, reversed in part, and remanded the original property division; the Mississippi Supreme Court later modified that remand to exclude business goodwill from the marital estate. On remand, the chancellor revalued and reclassified property, terminated rehabilitative alimony, denied a downward child-support modification, found Drake in contempt for reducing support payments, and awarded attorney's fees. Drake appealed all issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The chancery court must reconsider Drake's request to modify child support by addressing the impact of the cessation of Legacy-loan repayments on Drake's income. Any imputation of income must be supported by findings of fact, and any modification must be prospective only.

CASES CITED

- Lewis v. Lewis, 54 So. 3d 233 (Miss. Ct. App. 2009)
- Lewis v. Lewis, 54 So. 3d 216 (Miss. 2011)
- Singley v. Singley, 846 So. 2d 1004 (Miss. 2002)
- Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994)
- Armstrong v. Armstrong, 618 So. 2d 1278 (Miss. 1993)
- Carney v. Carney, 112 So. 3d 435 (Miss. 2013)
- Gutierrez v. Gutierrez, 153 So. 3d 703 (Miss. 2014)

- Henderson v. Henderson, 757 So. 2d 285 (Miss. 2000)
- Fisher v. Fisher, 771 So. 2d 364 (Miss. 2000)
- Lauro v. Lauro, 847 So. 2d 843 (Miss. 2003)
- Moeller v. American Guarantee & Liability Insurance Co., 812 So. 2d 953 (Miss. 2002)
- Chamblee v. Chamblee, 637 So. 2d 850 (Miss. 1994)
- Lowery v. Lowery, 25 So. 3d 274 (Miss. 2009)
- East v. East, 493 So. 2d 927 (Miss. 1986)
- Rogillio v. Rogillio, 57 So. 3d 1246 (Miss. 2011)
- Davenport v. Davenport, 156 So. 3d 231 (Miss. 2014)
- Haney v. Haney, 907 So. 2d 948 (Miss. 2005)
- Cheatham v. Cheatham, 537 So. 2d 435 (Miss. 1988)
- Parsons v. Parsons, 678 So. 2d 701 (Miss. 1996)
- Lane v. Lane, 850 So. 2d 122 (Miss. 2002)
- Wallace v. Bond, 745 So. 2d 844 (Miss. 1999)
- Shipley v. Ferguson, 638 So. 2d 1295 (Miss. 1994)
- Gray v. Gray, 745 So. 2d 234 (Miss. 1999)
- McBride v. Jones, 803 So. 2d 1168 (Miss. 2002)
- Gaiennie v. McMillin, 138 So. 3d 131 (Miss. 2014)
- Mizell v. Mizell, 708 So. 2d 55 (Miss. 1998)
- McKee v. McKee, 418 So. 2d 764 (Miss. 1982)
- Mixon v. Mixon, 724 So. 2d 956 (Miss. Ct. App. 1998)

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