

SUPREME COURT OF MISSISSIPPI

Kenneth E. Smith v. Sandra K. Smith

Smith v. Smith · No. No. 2008-CA-00683-SCT · Decided March 25, 2008

SUMMARY

The Mississippi Supreme Court reversed and remanded a judgment reducing a child-support arrearage based on alleged wage withholding and periods when the child purportedly lived with the noncustodial parent. The Court held that the noncustodial parent did not provide satisfactory evidence to support either credit, emphasizing the need for proof of actual payments or support provided for the child’s benefit.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Pierce, Justice; Waller, C.J.; Carlson, P.J.; Dickinson, J.; Randolph, J.; Lamar, J.; Kitchens, J.; Graves, P.J.; Chandler, J.
JURISDICTION	Mississippi
DECIDED	March 25, 2008
DOCKET	No. 2008-CA-00683-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kenneth appealed from a Rankin County Chancery Court judgment finding Sandra in civil contempt for child-support arrearages but allowing her a \$14,000 credit, resulting in a \$10,000 arrearage judgment.
STANDARD OF REVIEW	Domestic-relations matters are reviewed under the limited substantial-evidence/manifest-error rule. A chancellor's findings will not be disturbed unless manifestly wrong, clearly erroneous, or based on an erroneous legal standard.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Kenneth E. Smith v. Sandra K. Smith

TOPICS

- child support
- family law procedure
- appellate procedure
- standard of review
- evidence

PRACTICE AREAS

family law

child support

appellate procedure

evidence

remedies

QUESTIONS PRESENTED

1. Whether Sandra presented sufficient evidence to receive a credit against the child-support arrearage for alleged voluntary wage withholdings.
2. Whether Sandra presented sufficient evidence to receive a credit against the child-support arrearage for the period when the child allegedly lived with her.
3. Whether the trial court's \$14,000 credit and resulting \$10,000 arrearage judgment were supported by satisfactory evidence.

HOLDINGS

1. A noncustodial parent seeking a credit against a child-support arrearage must present more than uncorroborated verbal testimony to prove that support was paid or withheld for the child's benefit. Sandra's testimony alone was insufficient, so the trial court manifestly erred in granting credit for the alleged wage withholding.
2. A noncustodial parent is not entitled to credit against a child-support arrearage merely by proving that the child lived with the parent; the parent must also provide satisfactory proof, by a preponderance of the evidence, that support was actually paid directly to or for the child's benefit as contemplated by the support order. Sandra failed to meet that burden.
3. Because the \$10,000 arrearage judgment was calculated using unsupported credits totaling \$14,000, the judgment must be reversed and the matter remanded for the chancellor to reassess Sandra's arrearage obligation consistently with the opinion.

KEY QUOTATIONS

"The law remains firm that court-ordered child-support payments vest in the child as they accrue and may not thereafter be modified or forgiven, only paid." (5)

"Simply put, the noncustodial parent must present more than uncorroborated verbal testimony to receive credit against an alleged child-support arrearage." (8)

"The rule is that a [non-custodial parent] 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 [custodial parent]." (9-10)

FACTUAL BACKGROUND

The parties were divorced in 1989, with custody of their child granted to Kenneth and Sandra ordered to pay \$125 per month in child support. Kenneth later sought contempt for approximately \$24,000 in unpaid support. Sandra conceded contempt but sought credits for alleged voluntary wage withholdings from 1991 to 1994 and for the period from 2002 to 2004 when she claimed the child lived with her. The evidence supporting both

credits was largely testimonial and uncorroborated, and the trial court awarded a \$14,000 credit without explaining its calculation.

PROCEDURAL HISTORY

Kenneth and Sandra were divorced in 1989, and Sandra was ordered to pay \$125 per month in child support. In 2007, Kenneth filed a contempt petition alleging \$24,000 in arrearages. A family master recommended, and the chancellor approved, a \$14,000 credit to Sandra for alleged wage withholdings and a period when the child allegedly lived with Sandra. The Supreme Court of Mississippi reversed and remanded for recalculation of the arrearage.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The chancellor must reassess Sandra's child-support arrearage obligation without the unsupported credits, consistent with the Supreme Court's decision.

CASES CITED

- Evans v. Evans, 994 So. 2d 765, 768, 773 (Miss. 2008)
- Giannaris v. Giannaris, 960 So. 2d 462, 467 (Miss. 2007)
- Miss. Department of Transportation v. Johnson, 873 So. 2d 108, 111 (Miss. 2004)
- Lahmann v. Hallmon, 722 So. 2d 614, 620 (Miss. 1998)
- Smith v. Smith, 545 So. 2d 725, 727 (Miss. 1989)
- Varner v. Varner, 588 So. 2d 428, 432, 434-435 (Miss. 1991)
- Lawrence v. Lawrence, 574 So. 2d 1376, 1381 (Miss. 1991)
- Guthrie v. Guthrie, 537 So. 2d 886, 888 (Miss. 1989)
- Duncan v. Duncan, 417 So. 2d 908, 909-910 (Miss. 1982)
- Crow v. Crow, 622 So. 2d 1226, 1230-1231 (Miss. 1993)
- Alexander v. Alexander, 494 So. 2d 365, 368 (Miss. 1986)
- Nichols v. Tedder, 547 So. 2d 766, 769-770 (Miss. 1989)