IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-00905-COA

KACEY CRONEY **APPELLANT**

v.

TASHFEEN SOLANGI **APPELLEE**

DATE OF JUDGMENT:	08/06/2018
TRIAL JUDGE:	HON. SUSAN RHEA SHELDON
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	NANCY E. STEEN
ATTORNEYS FOR APPELLEE:	JEFFREY BIRL RIMES RENEE M. PORTER SARAH-LINDSEY HAMMONS
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED - 07/20/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., LAWRENCE AND SMITH, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. Kacey Croney and Tashfeen (Tash) Solangi never married but had a romantic relationship, and C.S.[1] was born in October 2004. This ongoing custody battle between Kacey and Tash began in 2009, when C.S. was four years old. In 2010, Kacey was awarded physical custody of C.S. This Court affirmed the chancery court's custody order in *Solangi v. Croney*, 118 So. 3d 173 (Miss. Ct. App. 2013).[2] On July 31, 2015, Tash filed a complaint

[1] Initials are used to protect the identity of the minor child.

[2] The Court reversed and rendered the award of costs and attorney's fees to Kacey. *Solangi*, 118 So. 3d at 180 (¶33).

for custody modification. At that point, C.S. was ten years of age. Following a trial, the chancery court denied Tash's request for custody. On March 8, 2018, Tash filed an amended complaint for custody modification, which is the subject of this appeal. At the time of that custody trial, C.S. was thirteen years old. At the completion of trial, the chancellor, relying on *Riley v. Doerner*, 677 So. 2d 740 (Miss. 1996), granted Tash's request for custody modification. Kacey appeals and argues that the chancery court applied an erroneous legal standard and therefore committed manifest error in awarding Tash custody of C.S. Finding no error, we affirm the chancery court's judgment.

FACTS AND PROCEDURAL HISTORY

¶2. Kacey and Tash worked together at the Stennis Space Center and became romantically involved but never married. C.S. was born in October 2004. At that time, Kacey lived in Picayune, Mississippi, and Tash lived in Long Beach, Mississippi. C.S. lived with Kacey in Picayune, but Tash visited "extensively." *Solangi*, 118 So. 3d at 175 (¶2). Tash also helped financially support C.S.

¶3. In 2009, Tash filed a suit against Kacey to legally establish paternity and secure custody of C.S. The court held a trial in 2010 and ultimately entered an order of paternity and found it was in C.S.'s best interest to remain in Kacey's physical custody. The court further ordered that both parties share legal custody of C.S., and the court awarded Tash liberal visitation. On appeal, this Court affirmed the chancery court's custody ruling. *Solangi*, 118 So. 3d at 180 (¶33).

¶4. After Kacey was awarded custody of C.S., her relationship with Tash continued to

deteriorate. On July 31, 2015, Tash filed a complaint for custody modification. Judge Johnny Williams presided over the trial, which was held on November 1, 2016. On November 10, 2016, the court entered an order denying Tash's request to modify custody. The court did award Tash an extra week of visitation in the summer so that C.S. could attend a boy scout summer camp. Finally, the court ordered Tash, Kacey, and C.S. to attend family counseling in hopes that they all could improve their relationships with one another. On April 3, 2017, the court appointed Amanda Heitmuller to counsel C.S. The court also ordered Heitmuller to report her findings to the court within sixty days.

¶5. On July 24, 2017, Tash filed another motion to modify custody, citing the court-appointed counselor's report and custody recommendation as a material change in circumstances.[3] Tash noted that in her report, Heitmuller stated that C.S. suffered from anxiety and that C.S. wanted to live with his father. Tash also cited Heitmuller's recommendation that Tash be awarded physical custody and that Kacey be granted liberal visitation. On August 17, 2017, the court appointed a guardian ad litem (GAL) "to represent the best interest of [C.S.], to investigate and ascertain the facts, and make a recommendation to [the court] as to what is in the best interest of the minor child." In addition, the court entered an order on September 1, 2017, requiring C.S. to continue his counseling sessions with Heitmuller. After his investigation, the GAL found that C.S.'s increased anxiety and depression was a material change in circumstances that adversely affected C.S. The GAL also noted C.S.'s strong desire to live with Tash and opined that it would be in C.S.'s best

[3] Heitmuller's first report to the court is not in the record on appeal.

interest to live with Tash.

¶6. On March 8, 2018, Tash filed an amended complaint for custody modification citing the GAL's report as additional support for a change in custody. Tash also claimed that Kacey continued to interfere with his relationship with C.S. and alienate him from C.S. He referred to a previous order entered by the court in January 2018 involving a dispute about Tash's access to C.S. during school hours. The order specifically held that Tash "should be allowed to have lunch with the minor child and to attend and/or participate in any event that would be available to other parents." Tash claimed that despite the court order, Kacey continued to interfere with Tash's ability to see C.S. at school.

¶7. On March 19, 2018, Counselor Heitmuller sent a letter to Judge Williams regarding her sessions with C.S. She stated that C.S. "has consistently pleaded to speak with the Judge in his chambers" and that his "strong desire to be heard has not diminished." Further, she stated that "[i]f any assessment has been noted and observed, it is that the child has become more clinically depressed, with an increased loss of hope due to this case continuing on and [C.S.] feeling like no one cares what his best interests are."

¶8. On April 5, 2018, Judge Williams recused from the case, and the case was reassigned to Judge Rhea Sheldon.[4] A trial was held on June 12, 2018, and June 29, 2018. Before the trial, Judge Sheldon met with C.S. in camera at C.S.'s request. C.S. was thirteen years old at the time of trial. C.S. testified that he wanted to live with his father but that he still wanted to see his mother. He explained that in his current situation he felt "shut out" from his father,

[4] The record does not contain a copy of a motion for recusal. Further, the recusal order does not indicate if a party filed the motion for recusal or if it was granted sua sponte.

and he did not want to be kept from his mother if she lost custody. C.S. stated that his father was helping him with extracurricular activities, like basketball and boy scouts, and that they took many trips together. When Judge Sheldon asked C.S. about Counselor Heitmuller, he said he liked her and that she had been helping him with his anxiety. C.S. testified that he was "frustrated" with the "court situation" because "it's just been going on for so long [and] nothing has happened." He also stated that he thought about the court case "a lot" and that it caused him stress. Judge Sheldon asked him how the court could help, and he replied, "[the counselor] helps me because I talk to her about it. And she makes me feel less stressed."

¶9. Several other witnesses testified at trial, including Kacey, Tash, Counselor Heitmuller, and the GAL. At the time of trial, Kacey still worked at the Stennis Center, and she and Tash worked on the same floor. She testified that she and C.S. had a "very good relationship." On the contrary, she stated that Tash and C.S. had an "unhealthy" relationship partly because Tash tried to control C.S. Kacey testified that C.S. was doing well overall except for his anxiety and "situational depression" around "court events." She also testified that she had no concerns about C.S.'s current situation. When asked about C.S.'s preference to live with Tash, Kacey claimed that Tash "strongly pressured" C.S. to state that preference. Kacey also testified about her abilities as a parent. She stated that her work schedule allowed her to cook breakfast for C.S. in the mornings, take him to school, and be home with him in the evenings. Kacey also stated that she loved both her children[5] and was a responsible mother. She

[5] Kacey has an older daughter, Kaitlin, from a previous relationship. At the time of trial, Kaitlin was twenty years old and no longer living with Kacey.

testified that she and C.S. liked to "walk" and "play" together. Kacey admitted that Tash provided a suitable home for C.S., but she had concerns about Tash and his parenting. In addition, she denied ever attempting to limit Tash's time with C.S.

¶10. Tash testified that he was employed as the chief engineer for Naval Oceanography Operations Command at the Stennis Space Center. He stated that if he were awarded custody, he could adjust his work schedule because he worked a flex schedule and made his own hours. In regard to his relationship with C.S., he stated they were a "team" and that they made decisions together. Tash also stated that he and C.S. had a good father/son relationship. Tash discussed some of the activities C.S. participated in under his supervision, such as taekwondo, basketball, boy scouts, and Pokémon[6] tournaments. Tash stated that, as a scout master, he was able to directly participate in boy scouts with C.S. As for the Pokémon tournaments, Tash took C.S. to the tournaments on the weekends he had visitation. Contrary to Kacey's testimony, Tash testified that Kacey did try to limit his access to C.S. and that she refused to modify the visitation schedule or allow him any extra time with C.S. For example, Tash claimed that Kacey only let him call C.S. on Tuesdays and Thursdays for fifteen minutes in accordance with a previous court order even though he wanted to talk to C.S. more often. Tash also referred to his claim in his 2018 amended complaint that Kacey interfered with his access to C.S. at school. Nevertheless, Tash testified that he thought Kacey was a loving and caring woman and that he wanted C.S. to have a strong relationship with her.

[6] Pokémon is a competitive trading card game.

¶11. Tash also expressed his concern about C.S.'s anxiety. He testified that since November 2016, C.S. had gotten "both physically and mentally worse." Tash stated that C.S. had been suffering panic attacks and even had to go to the emergency room once after he had a panic attack on the way to school. He claimed C.S. had the panic attack because he was anxious about going back to Kacey's house for the week.

¶12. Counselor Heitmuller testified that she had met with C.S. over forty times in the past year. She described him as "highly intelligent," "above average," "kindhearted," and "warm spirited." Heitmuller stated that C.S. enjoyed spending time with both his parents and felt loved and nurtured in both homes. She testified that in November 2017, she performed a test on C.S. used to diagnose anxiety and depression. Heitmuller testified that the test "showed several indicators, but the two most predominant were depressed mood and affect and [] anxiety." Heitmuller also noted that C.S.'s anxiety and depression had increased due to the stresses of trial and his ignored request to live with his father. Her letter to Judge Williams from March 19, 2018, noting C.S.'s increased depression, was admitted into evidence. Heitmuller stated that C.S.'s request to live with Tash had been consistent "for the most part." She explained that C.S. was under a great deal of stress and wanted to please both of his parents. Heitmuller testified that C.S.'s anxiety continued to grow to a point where he exhibited panic-attack like symptoms. Like Tash, she recounted the story of when C.S. suffered a panic attack and had to go to the emergency room. Heitmuller was especially concerned because C.S. had grown "more and more hopeless" and "ambivalent about the future." She testified that his anxiety and depression levels were reaching a "dangerously

high level" and that she was concerned it may lead to an "emotional breakdown." While Heitmuller stated that living with his father would not completely alleviate his anxiety and depression, she believed that it would help if the court listened to C.S.'s request and allow him to live with his father.

¶13. The GAL testified that C.S. was a "bright" and "articulate" child and that he was more mature than most children his age. He also testified that C.S. had "two very good parents." The GAL explained that in both homes C.S. had "surroundings for a good life" and that neither home caused him concern for C.S.'s safety or well-being. However, the GAL believed that C.S.'s increasing anxiety and depression was a material change in circumstances adverse to C.S. He partly based his opinion on Heitmuller's trial testimony and her records regarding C.S. In particular, he was concerned with Heitmuller's statements that C.S. was a "sad child," that his depression was getting worse, and that his depression "could lead to suicidal ideation."[7] Additionally, the GAL referred to Heitmuller's trial testimony that C.S. was growing "more and more hopeless." The GAL also testified to his personal observations of C.S.'s depression and anxiety. For example, when he went to visit C.S. at Kacey's home, C.S. was "very fidgety" and "hesitant to speak up." The GAL testified that C.S. called him the next day and explained that he was hesitant to speak at Kacey's because he was afraid someone (presumably Kacey) was listening. On that phone call, C.S. was "much firmer in his convictions [to live with Tash]." The GAL testified that based upon Heitmuller's testimony, C.S.'s mental state, and his desire to live with his father, it would be

[7] At trial, Heitmuller's testimony did not specifically refer to suicide.

in C.S.'s best interest to award Tash physical custody.

¶14. At the conclusion of trial, the chancellor issued a bench ruling, stating that she found Heitmuller's testimony "extremely compelling." The chancellor also stated she was "very concerned about the mental and emotional well being of [C.S.]" and found by a preponderance of the evidence that his mental and emotional health was deteriorating. Further, the chancellor stated the following:

> [In] applying the regular modification standard of a material change in circumstances in the custodial parent[']s home that is adverse to the minor child, [C.S.'s deteriorating mental and emotional health] produces a result that is clearly contrary to the best interest of the minor child. And, therefore, this [c]ourt is applying the *Riley v. Doerner* case . . . that [says] when taking the totality of the circumstances—even though this [c]ourt does not find a material change in circumstances within the custodial parent[']s home—under [*Riley*], this [c]ourt may modify custody when that two-prong test produces a result that is clearly contrary to the best interest of the minor child . . . based on the continued and exacerbating anxiety and depression exhibited by [C.S.], the testimony of [Counselor] Heitmuller, and the recommendation of the [GAL], that it would not be in [C.S.'s] best interest for custody to remain the same.

The chancellor then considered the *Albright* factors.[8] She found that most of the *Albright* factors were neutral: the age, health, and sex of the child; the parties' parenting skills; the parties' willingness and capacity to provide primary child care; the parties' employment responsibilities; emotional ties; and the home, school, and community records of the child.

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[8] The *Albright* factors are as follows: (1) the age, health, and sex of the child; (2) which parent has had "continuity of care"; (3) the parties' "parenting skills"; (4) the parties' "willingness and capacity to provide primary child care"; (5) the parties' employment responsibilities; (6) the parties' "physical and mental health and age"; (7) the "emotional ties of parent and child"; (8) the parties' "moral fitness"; (9) "the home, school and community records of the child"; (10) the child's preference, if the child is at least twelve years old; (11) the stability of the home environment and employment of each party; and (12) any "other factors relevant to the parent-child relationship" or the child's best interest. *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983).

The continuity-of-care factor favored Kacey. The parties' physical and mental health and age, the child's preference, and the stability of the parties' home environment and employment favored Tash. After considering all factors, the chancellor found that it would be in C.S.'s best interest for Tash to have custody. She awarded Kacey liberal visitation and ordered her to provide a Uniform Chancery Court Rule 8.05 financial statement to the court within ten days so that child support could be determined. On August 6, 2018, the chancery court entered an order in accordance with the bench ruling. The court also ordered that C.S. continue counseling with Heitmuller.

¶15. Kacey filed a motion for reconsideration asking the court to reconsider its ruling based on *Riley v. Doerner*. More specifically, Kacey argued that the court incorrectly relied on *Riley* to change custody because Tash did not prove there was anything in her home that was adversely affecting C.S. As part of her motion, Kacey also asked the court to reopen the record. The court granted Kacey's request to reopen the record and held a hearing on February 27, 2019. The hearing was continued until April 4, 2019, because the GAL was not in attendance. At this point, C.S. had been living with Tash for almost eight months. Heitmuller testified at the hearing. She stated that while C.S. was in shock at the court ruling, his anxiety and depression had improved, and he had adjusted very well to living with his father. However, she also testified that he missed his mother very much and was "torn" about whether or not he wanted to go back to living with her. Further, Heitmuller testified that C.S. told her that Kacey would have to sell the house because the court changed custody and she was no longer receiving child support. Heitmuller also testified that "as long as this

case is going on," C.S. will continue to have anxiety and depression. On April 18, 2019, the chancery court denied Kacey's motion for reconsideration based on its "grave concerns for [C.S.'s] mental health and well being." Kacey timely appealed.

STANDARD OF REVIEW

¶16. The standard of review for a child-custody case is a narrow one. In order to reverse the chancellor's findings, the chancellor must be manifestly wrong or clearly erroneous, or have applied an erroneous legal standard. *Smith v. Smith*, 97 So. 3d 43, 46 (¶7) (Miss. 2012). This Court reviews de novo whether the chancellor applied the proper legal standard in deciding a custody-modification case. *Morgan v. West*, 812 So. 2d 987, 990 (¶8) (Miss. 2002).

ANALYSIS

¶17. The sole issue on appeal is whether the chancellor incorrectly applied *Riley v. Doerner* in modifying custody and awarding Tash custody of C.S. "The test for a modification of child custody is: (1) whether there has been a material change in circumstances [since the previous custody award] which adversely affects the welfare of the child and (2) whether the best interest of the child requires a change of custody." *Floyd v. Floyd*, 949 So. 2d 26, 29 (¶10) (Miss. 2007) (citing *Weigand v. Houghton*, 730 So. 2d 581, 585 (¶15) (Miss. 1999)). The chancellor must consider the totality of the circumstances when determining whether a material change in circumstances has occurred. *Creel v. Cornacchione*, 831 So. 2d 1179, 1183 (¶15) (Miss. Ct. App. 2002) (citing *Ash v. Ash*, 622 So. 2d 1264, 1266 (Miss. 1993)). Further, the party seeking the modification of custody bears the burden of proving by a

preponderance of the evidence that a material change in circumstances has occurred in the custodial home. *Mabus v. Mabus*, 847 So. 2d 815, 818 (¶8) (Miss. 2003) (citing *Riley*, 677 So. 2d at 743)).

¶18. In *Riley*, the Mississippi Supreme Court fashioned an alternative to that two-pronged test in order to safeguard the best interest of the child when there has been no material change in circumstances:

> [W]hen the environment provided by the custodial parent is found to be adverse to the child's best interest, and that the circumstances of the **non-custodial parent have changed such that he or she is able to provide an environment more suitable than that of the custodial parent**, the chancellor may modify custody accordingly. This must be so, for **"in all child custody cases, the polestar consideration is the best interest of the child."**

Riley, 677 So. 2d at 744 (emphasis added) (quoting *Sellers v. Sellers*, 638 So. 2d 481, 485 (Miss. 1984)). The court explained that "[t]he [traditional] test we have devised for custody modification need not be applied so rigidly, nor in such a formalistic manner so as to preclude the chancellor from rendering a decision appropriate to the facts of an individual case." *Id*. at 745. The court continued that "[i]n particular, [the traditional test] should not thwart the chancellor from transferring custody of a child from one parent to another when, in the chancellor's judgment, **the child's welfare would be best served by such transfer.**" *Id*. (emphasis added). Finally, the supreme court clarified that it was not rejecting or altering the traditional standard. *Id*. Rather, it simply determined that "there will occasionally be cases . . . in which a strict application of the test produces a result clearly contrary to the child's best interest." *Id*.

¶19. The *Riley* case involved a child who lived with her mother in an unhealthy

environment, which included "frequent moves, a succession of live-in boyfriends, [and] use of drugs." *Id*. at 742. As a result, the father filed a petition to modify custody. *Id*. Notably, the father's situation had improved "such that he was able to provide a good home for [the child]." *Id*. at 744. Although the chancellor "strongly believed that it would be in [the child's] best interest to live with her father, owing to the bad 'totality of circumstances' surrounding [the mother,] there had been no material change in circumstances, since 'every one of them had been going on at the time' of the original judgment . . . ." *Id*. at 742. Nor had there been an adverse effect on the child. *Id*. Based on the traditional custody-modification test, the chancellor did not transfer custody at that time. *Id*. On appeal, the supreme court addressed the chancellor's conflict, namely that because the traditional test was not met, the child was forced to stay with her mother when it was not in her best interest. *Id*. at 744. As a result, the supreme court carved out an exception to that standard in those "rare" types of cases (the *Riley* standard). *Id*. at 745.

¶20. Both the Mississippi Supreme Court and this Court have analyzed and interpreted the extent of the *Riley* standard since its inception. For example, in *Lackey v. Fuller*, 755 So. 2d 1083 (Miss. 2000), the supreme court applied the *Riley* standard to support a chancellor's decision to grant the father primary physical custody of his two children when the mother moved from Mississippi to New York. Initially, both parties shared joint legal and physical custody of the children. *Id*. at 1085 (¶5). The mother sought primary physical custody after she remarried and her husband was transferred to New York. *Id*. at (¶7). Ultimately, the chancellor determined that the mother's move was a material change in circumstances and

awarded the father full physical and legal custody. *Id*. at 1088 (¶29). On appeal, the court recognized that the chancellor "technically erred" in applying the traditional test for custody modification since the mother's relocation was not in and of itself a material change in circumstances. *Id*. at (¶26). Further, the chancellor did not find that the move had an adverse effect on the children. Even so, the court applied *Riley* and held that **"it would be impractical to leave custody as it stood at the time of the hearing"** because it was not in the children's best interest to be "shuttled back and forth between New York and Mississippi every two weeks." *Id*. at (¶29) (emphasis added).

¶21. In *Hoggatt v. Hoggatt*, 796 So. 2d 273, 274 (¶3) (Miss. Ct. App. 2001), this Court considered whether a chancellor erred in relying on the *Riley* standard to change custody to a father based on the "apparent persistent disregard by the mother for the child's personal hygiene, a lack of supervision that caused the child to repeatedly place himself in [potentially harmful] situations . . . , and a blatant lack of concern over the child's medical well being . . . ." Although it was unclear whether the chancellor fully relied on *Riley* or whether he also found a material change in circumstances, this Court concluded that this case was "one of those situations that *Riley v. Doerner* was intended to address." *Id*. at 275 (¶6). In affirming the chancellor's finding that the **"child's existing situation was detrimental to his emotional and physical health,"** this Court interpreted the *Riley* standard to apply in the following situation:

> [W]here the existing custodial arrangement has shown itself to be actually detrimental to the child's well-being and the non-custodial parent can, by virtue of subsequent improvement in that parent's overall situation, demonstrate that he or she offers an alternative custodial arrangement

> beneficial to the child that did not exist at the time the original custody determination was made.

Id. at (¶9) (emphasis added). Finally, this Court stated that a "narrow" reading of the *Riley* standard "afford[s] a reasonable measure of flexibility to the chancellors in making custody determinations that has the potential to advance the best interest of the child or children involved . . . ." *Id*. at 276 (¶11).

¶22. In *Beasley v. Beasley*, 913 So. 2d 358, 359 (¶4) (Miss. Ct. App. 2005), this Court dealt with a situation where the chancellor found a material change in circumstances had occurred after a mother relocated her children to a different school district. The chancellor ultimately changed custody to the father, basing her decision on the fact that one of the children was not doing well in school, and both of the children had behavioral issues. *Id*. at 360 (¶5). Additionally, the chancellor cited *Riley* "for the proposition that 'the totality of the circumstances can be considered in rare instances where the two prong test does not serve the child's best interest.'" *Id*. at 363 (¶13). On appeal, this Court found the chancellor's reliance on *Riley* "misplaced" and concluded that "the instant case [does not represent] one of the rare situations *Riley* was intended to address." *Id*. at 363-64 (¶¶13-14). In doing so, this Court reasoned that "[t]he trial court did not find the existing custodial arrangement to be detrimental to the well being of [the children]." *Id*. at 364 (¶14).

¶23. Here, Kacey argues that since she did not personally "engage[] in any misconduct or adverse behavior that resulted in an adverse environment to [C.S.]," the chancery court improperly relied on *Riley* in changing custody. This Court is not persuaded by Kacey's argument. In considering the *Riley* standard and its applicability, this Court must consider

whether "the environment provided by the custodial parent is found to be adverse to the child's best interest" and whether "the circumstances of the non-custodial parent have changed such that he or she is able to provide an environment more suitable than that of the custodial parent." *Riley*, 677 So. 2d at 744. Notably, unlike the chancellor in *Beasley*, the chancellor in this case inherently found that the existing custodial arrangement was detrimental to C.S.'s well-being. The chancellor's finding is supported by the record. C.S. testified that he wanted to live with his father and that he felt "frustrated" with the court proceedings because it had been "going on for so long [and] nothing has happened." He also testified that he confided in Counselor Heitmuller and that she helped him with his stress. Tash testified that C.S. had grown "both physically and mentally worse" since the November 2016 trial, when the chancellor denied Tash's request for custody.

¶24. Additionally, both Tash and Heitmuller testified that C.S. suffered from panic attacks. Heitmuller also testified that C.S.'s anxiety and depression had increased because of the trial and his ignored request to live with his father. She also expressed concern about C.S.'s hopelessness and ambivalence about the future. Further, Heitmuller testified that C.S.'s anxiety levels were reaching a "dangerously high level" that may lead to an "emotional breakdown." Heitmuller opined that C.S.'s anxiety and depression would decrease if he were allowed to live with his father. During the post-trial hearing, Heitmuller testified that C.S. had adjusted very well to living with his father. The GAL was equally concerned with C.S.'s anxiety and depression and noted C.S.'s increased anxiety at Kacey's home. He too recommended that Tash be awarded physical custody in order to relieve some of C.S.'s

anxiety and depression.

¶25. Finally, and most importantly, "our polestar consideration," like the chancellor's, "must be the best interest of the child." *Montgomery v. Montgomery*, 20 So. 3d 39, 42 (¶9) (Miss. Ct. App. 2009) (quoting *Hensarling v. Hensarling*, 824 So. 2d 583, 587 (¶8) (Miss. 2002)). The record supports the chancellor's finding that it was not in C.S.'s best interest to remain in Kacey's custody. The chancery court used three tools in an effort to discern what was in the child's best interest. One was the appointment of a certified counselor who met with the child over forty times and testified twice about C.S.'s "dangerous level" of anxiety and depression and that it would be better if C.S. were allowed to live with his father. Another was the appointment of a GAL to represent the child's best interest. The GAL conducted an investigation and testified to C.S.'s increased anxiety in Kacey's home and that custody should be modified. Finally, the chancery court did what all courts do—listen to witnesses, observe their demeanor, and give weight to their credibility and testimony. "[T]he chancellor, by [her] presence in the courtroom, is best equipped to listen to witnesses, observe their demeanor, and determine the credibility of the witnesses and what weight ought to be ascribed to the evidence given by those witnesses." *Mabus v. Mabus*, 890 So. 2d 806, 819 (¶56) (Miss. 2003) (quoting *Rogers v. Morin*, 791 So. 2d 815, 826 (¶39) (Miss. 2001)). In so doing, the court applied the *Riley* standard and determined that it was in the child's best interest to live with his father. After review, we find the chancellor did not err in applying the *Riley* standard and awarding custody to Tash.

¶26. C.S. has been the center of a custody battle for the majority of his life and has clearly

suffered from anxiety and depression as a result. The record supports the fact that while in Kacey's home, C.S.'s mental and emotional health continued to deteriorate. This case presents a unique set of circumstances where the court-appointed counselor and the GAL indicated that although C.S. has two loving and capable parents, C.S.'s anxiety and depression would likely improve if Tash was awarded custody. Both Counselor Heitmuller and the GAL based their opinions on their own interactions with C.S. and observations of C.S. We follow the supreme court's pronouncement in *Riley* that "[i]n such rare cases, no rigid test or magic words should stand in the way of the chancellor as he or she acts to improve the child's welfare through a modification of custody." *Riley*, 677 So. 2d at 745. Further, in *Hoggatt*, this Court affirmed a change in custody when a chancellor found a "child's existing situation was detrimental to his emotional and physical health." *Hoggatt*, 796 So. 2d at 275 (¶7). After review, we find that the chancellor properly applied *Riley* in this case. Further, the chancellor's decision is supported by substantial evidence in the record, especially Heitmuller's testimony that this child's anxiety and depression continued to rise, was at a "dangerously high level," and would actually lessen with a custody change to his father; and the GAL's testimony that a change in custody was in C.S.'s best interest. Accordingly, we affirm the chancery court's judgment.

¶27. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, McDONALD, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. WESTBROOKS, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION, JOINED BY CARLTON, P.J., McDONALD, McCARTY AND SMITH, JJ.

WESTBROOKS, J., SPECIALLY CONCURRING:

¶28. I fully agree with the majority that a modification of custody was warranted in this instance. However, I believe an additional factor could have been considered by the chancellor when she denied Kacey's motion for reconsideration.

¶29. In 2010, the chancellor found that it was in C.S.'s best interest for Kacey to have physical custody and for Tash to share legal custody and have liberal visitation. In 2018, because Kacey was keeping Tash from attending C.S.'s school events, another order was entered pertaining to visitation during school hours and finding that Tash "should be allowed to have lunch with the minor child and to attend and/or participate in any event that would be available to other parents." Despite the order, Kacey continued to interfere with Tash's ability to see C.S. at school in defiance of the chancellor's determination that such visitation was in C.S.'s best interest.

¶30. Kacey argues that the chancellor incorrectly relied on *Riley v. Doerner*, 677 So. 2d 740 (Miss. 1996), to modify custody because Tash did not prove there was anything in her home that was adversely affecting C.S. It appears that Kacey does not fully appreciate the Supreme Court's holding in *Riley*. The Court reiterated that "[a]bove all, in 'modification cases, as in original awards of custody, we never depart from our polestar consideration: the best interest and welfare of the child.'" *Id*. at 744 (quoting *Ash v. Ash*, 622 So. 2d 1264, 1266 (Miss. 1993)). The Court went on to say that in some circumstances, "no rigid test or magic words should stand in the way of the chancellor as he or she acts to improve the child's welfare through a modification of custody." *Id.* at 745. In this instance, Kacey's actions, rather than anything physically occurring in her home, adversely affected C.S.

¶31. Kacey argues that she did not personally "engage[] in any misconduct or adverse behavior that resulted in an adverse environment to [C.S.]" Defying a court order and keeping Tash from exercising all of his visitation rights is the very definition of "misconduct" and "adverse behavior." I recognize that, generally speaking, one parent's interference with the other's visitation does not, by itself, give cause for modification of custody. *Strait v. Lorenz*, 155 So. 3d 197, 203 (¶21) (Miss. Ct. App. 2015). But, testimony showed that C.S. felt "shut out" from Tash. C.S. was diagnosed with anxiety and depression and said he felt like no one cared about his best interest. Additionally, Kacey apparently interfered with the court-appointed GAL's work. At the hearing on this matter, the GAL testified that he visited C.S. at Kacey's home, and C.S. seemed "fidgety"and "a little hesitant to speak up." The GAL further testified that the next day C.S. called and told him that during their visit at his mother's, he was "afraid somebody was listening to him, even though [they] were alone." Citing grave concern for an emotional breakdown, C.S.'s counselor recommended allowing him to live with his father. This testimony and the chancellor's meeting with C.S. were so compelling that (as stated in the order on the motion to reconsider) she found by a preponderance of the evidence that his mental and emotional health was deteriorating. Also speaking to the issue of C.S.'s fragile emotional state is the fact that the chancellor ordered that C.S.'s counseling sessions continue even after the change in custody. There was apparent concern regarding the potential for Kacey's actions to have long-term, serious effects on C.S.

¶32. On numerous occasions prior to the modification of custody, the chancellor held that

it was in C.S.'s best interest for Tash to be in his life. The Supreme Court has recognized "that children of divorced parents should be encouraged to have a close, affectionate and, under the circumstances, as normal as possible a parent-child relationship." *Cox v. Moulds*, 490 So. 2d 866, 870 (Miss. 1986). I cannot, in good conscience, say that Kacey's interference in Tash and C.S.'s visitation was in keeping with this holding—particularly in light of the detrimental effects her actions had on C.S.'s emotional health and well-being.

CARLTON, P.J., McDONALD, McCARTY AND SMITH, JJ., JOIN THIS OPINION.