

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-01214-SCT

***CHRISTINE BARTON a/k/a CHRISTINE
JORGENSEN***

v.

CARY TIMOTHY BARTON

DATE OF JUDGMENT: 07/15/2019
TRIAL JUDGE: HON. CARTER O. BISE
TRIAL COURT ATTORNEYS: ROBERT H. KOON
CHRISTOPHER BRICE WIGGINS
DAMIAN L. HOLCOMB
COURT FROM WHICH APPEALED: HARRISON COUNTY CHANCERY COURT,
FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT: CHRISTOPHER BRICE WIGGINS
ATTORNEY FOR APPELLEE: ROBERT H. KOON
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS
DISPOSITION: AFFIRMED - 12/03/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE RANDOLPH, C.J., ISHEE AND GRIFFIS, JJ.

RANDOLPH, CHIEF JUSTICE, FOR THE COURT:

¶1. Christine Barton (Jorgensen) appeals a ruling from the Chancery Court of the First Judicial District of Harrison County. She argues that the chancery court abused its discretion by failing to enter a final domestic-violence protection order and by failing to appoint a guardian ad litem. The pleadings reveal that Jorgensen not only failed to seek an extension of the temporary domestic-abuse protection order previously issued by a justice court judge but she also failed to request a final domestic-violence protection order. By statute, the

justice court order expires thirty days after entry, as here, when the party seeking protection and the respondent have minor children in common. Miss. Code Ann. § 93-21-15(1)(a) (Rev. 2018). The statute Jorgensen relies on to argue that the chancery court abused its discretion by not appointing a guardian ad litem does not apply here. We find that the chancellor did not abuse his discretion by ruling on the issues as joined in the trial court.¹

FACTS & PROCEDURAL HISTORY

¶2. On June 25, 2019, Harrison County Justice Court Judge Brandon Ladner issued a temporary domestic-abuse protection order for Jorgensen under Mississippi Code Section 93-21-15(1)(a). That order was not appealed nor did Jorgensen seek to extend it beyond its thirty-day term.² By the statute’s provisions and the order’s language, the order was set to expire on July 25, 2019. That order identified Jorgensen as a person to be protected. Her ex-husband, Cary Barton (Barton), was the respondent. If either party was aggrieved by the grant or refusal to grant a temporary domestic abuse protection order, they could have appealed to a chancery court. Miss. Code Ann. § 93-21-15(1)(c) (Rev. 2018). Neither party appealed the justice court’s protection order to the Harrison County Chancery Court.

¶3. Two days after obtaining the protection order, Jorgensen filed a pleading styled “Ex Parte Complaint For Immediate Suspension Of Visitation, And Request For Temporary Order Appointing Guardian Ad Litem” in the Chancery Court of the First Judicial District

¹ We note that the chancellor erred by vacating the justice court order because it was not appealed by either party. That error is now moot; the order expired on its own terms on July 25, 2019.

² As noted above, Barton and Jorgensen had a minor child in common, barring the order from lasting longer than thirty days. *See* Miss. Code § 93-21-15(1)(b) (Rev. 2018).

of Harrison County under cause number 24CH:13-ccv-0223(CB).³ Barton was residing in the state of Georgia. Jorgensen sought an immediate temporary order suspending Barton's visitation rights, appointing a guardian ad litem, and barring Barton from contacting her. The justice court domestic-violence protection order did not provide her relief in any of these specific areas. Jorgensen attached the justice court order as an exhibit. The chancery court was informed that the justice court order was premised on a threat Barton allegedly had made to Jorgensen. It was separately alleged that Barton inappropriately touched their minor child during his last visitation.

¶4. Based on these representations, the chancery court entered a temporary restraining order in cause number 24CH:13-ccv-0223(CCB) on Friday, June 28, 2019. The matter was set for a hearing on the merits early the following week. The court held an expedited hearing on Tuesday, July 2, 2019. After reviewing the pleadings, receiving testimony, and listening to argument, the chancellor ruled against Jorgensen. In addition to ruling on the issues joined, the chancellor also set aside the temporary restraining order and prematurely dissolved the justice court order.⁴ Jorgensen filed an interlocutory appeal with leave from the trial court. Her petition argued that she had proved the existence of abuse and that she was entitled to an injunction as a matter of law. It also argued that a guardian ad litem should have been appointed as a matter of law. A panel of this Court reviewed the petition and found Mississippi Code Section 93-21-15.1(6) (Supp. 2019) applicable. Order, *Barton v. Barton*,

³ Jorgensen and Barton's divorce and custody of their minor child was adjudicated in 2014 by the chancery court under the same cause number, 24CH:13-ccv-0223(CB).

⁴ See footnote 1.

No. 2019-M-01214-SCT (Miss. Sept. 4, 2019).⁵ The panel determined that the interlocutory appeal should be treated as a notice of appeal and converted the proceedings.

STANDARD OF REVIEW

¶5. The findings of fact of a chancellor will not be overturned provided they are supported by the record. *Alexis v. Black*, 283 So. 3d 1105, 1107–08 (Miss. 2019) (quoting *Kilpatrick v. Kilpatrick*, 732 So. 2d 876, 880 (Miss. 1999)) We review the decisions of chancellors for abuse of discretion. *Id.* at 1107 (quoting *McNeil v. Hester*, 753 So. 2d 1057, 1063 (Miss. 2000)). A court abuses its discretion when its determination is either wholly unsupported by the factual record or is reliant upon incorrect statements of the law. *Will Realty, LLC v. Isaacs*, 296 So. 3d 80, 81 (Miss. 2020) (citing *Ashmore v. Miss. Auth. on Educ. Television*, 148 So. 3d 977, 981 (Miss. 2014)). We find neither in the case sub judice.

ANALYSIS

¶6. Jorgensen raised four issues in this appeal, three of which were not presented to the trial court. Jorgensen argued before the chancellor that a guardian ad litem ought to have been appointed under Mississippi Code Section 93-5-23. Now, for the first time on appeal, Jorgensen raises that as a matter of law, she was entitled to a final domestic-violence protection order under Mississippi Code Section 93-21-3 (Rev. 2018). Additionally, she argues that the chancellor’s failure to grant a domestic-violence protection order under Mississippi Code Section 93-5-23 (Rev. 2018) was against the best interests of the parties’

⁵ Section 93-21-15.1(6) provides that “[a]ny party aggrieved by the issuance or denial of a final order of protection by a chancery court shall be entitled to appeal the decision.” Miss. Code Ann. § 93-21-15.1(6) (Supp. 2019).

minor child. Finally, Jorgensen argues that the chancellor's failure to grant a domestic-violence protection order, or any type of injunction, was contrary to the evidence admitted at the hearing. A final domestic-violence protection order was not sought in chancery court, and Mississippi Code Section 93-5-23 is not applicable to this action. We will not find a chancellor in error for failing to address issues that were not presented to the trial court for adjudication. Accordingly, these issues are dealt with summarily below.

¶7. The complaint filed by Jorgensen in cause number 24CH:13-ccv-0223(CCB) asked the chancery court to execute a *temporary* order (not a final domestic-violence protection order) in five specific areas. First, Jorgensen sought to temporarily immediately suspend Barton's visitation, a goal in direct contradiction of the justice court's order's provisions for visitation. Second, Jorgensen sought to temporarily appoint a guardian ad litem to investigate allegations of abuse against Barton, an issue that was not before the justice court. Third, Jorgensen sought to temporarily amend an existing visitation order to only allow for supervised visitation, an issue not addressed in the justice court order. Fourth, Jorgensen sought to temporarily bar Barton from all contact with her, a limitation exceeding the justice court order. Fifth, Jorgensen sought temporary "accommodations" for post-traumatic stress disorder "in her relative to co-parenting," an issue not addressed in the justice court order.

¶8. Jorgensen seeks relief in this Court, despite that her complaint in the chancery court never sought a final domestic-abuse protection order under Mississippi Code Section 93-21-15(2)(a) (Rev. 2018). In the chancery court Jorgensen testified as follows:

[Jorgensen's counsel]: You also understand that in this petition we haven't asked for anything, or for modification, or anything, just that a guardian ad

litem be appointed and that visitation be suspended so long as it be [sic] investigated. Is that right?

[Jorgensen]: Yes.

[Jorgensen's counsel]: And you're fine with that?

[Jorgensen]: Yes.

[Jorgensen's counsel]: And we have talked about that.

[Jorgensen]: Yes.

Jorgensen's complaint and testimony confirm that Jorgensen was seeking the appointment of a guardian ad litem and for temporary suspension of visitation, not a final domestic-abuse protection order.

¶9. A trial court “cannot be put in error on a matter which was not presented to [it] for decision.” *Gordon v. Wall (In re Will of Waller)*, 273 So. 3d 717, 721 (Miss. 2019) (internal quotation mark omitted) (quoting *Brown v. Miss. Transp. Comm'n*, 749 So. 2d 948, 954 (Miss. 1999)). Because Jorgensen never sought a final domestic violence protection order and swore that she was seeking only the appointment of a guardian ad litem and temporary suspension of visitation, we discern no error.

¶10. Jorgensen separately argues that the chancellor was obligated to appoint a guardian ad litem under Mississippi Code Section 93-5-23. Mississippi Code Section 93-5-23 directs the appointment of guardians ad litem in *custody* proceedings. Miss. Code Ann. § 93-5-23 (Rev. 2018). Custody was not at issue in this case. By Jorgensen's own words, this proceeding sought a temporary suspension of visitation and a temporary no-contact order. Custody had already been determined in proceedings in 2014. Thus, the statute was

inapplicable. Jorgensen's arguments that the chancery court was statutorily obligated to appoint a guardian ad litem under Section 93-5-23 are misplaced.⁶ We again find no error.

¶11. What was before the chancery court was a de novo proceeding seeking a temporary suspension of visitation and the appointment of a guardian ad litem in a proceeding not involving custody. Our review is limited to whether the findings of the chancellor have support in the record. On the record before us, we cannot say the chancery court erred by not suspending visitation or by not appointing a guardian ad litem.

CONCLUSION

¶12. We affirm the judgment of the chancery court.

AFFIRMED.

KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. BEAM, J., CONCURS WITH SEPARATE WRITTEN OPINION.

BEAM, JUSTICE, CONCURRING:

¶13. I agree with Chief Justice Randolph and the majority that the chancellor did not abuse his discretion in this case and that Mississippi Code Section 93-5-23 (Rev. 2018) only applies to custody actions. But requiring appointment of a guardian ad litem to protect a child only when an allegation of abuse arises in a custody action but *not* in a visitation dispute defies common sense. A child can be harmed in a forty-eight-hour visitation just as easily as when the child is with the custodial parent.

¶14. I agree that the plain reading of the statute only requires appointments in custody

⁶ We note separately that Jorgensen's own expert testified that the alleged incident Jorgensen claimed necessitated the appointment of a guardian ad litem was not sexual abuse.

actions. Perhaps this issue needs to be brought to the attention of the Legislature to include visitation if that was the intended meaning. A clarification that all allegations must be investigated when it comes to protecting the most vulnerable among us is needed.

¶15. When the law says, “the Court shall appoint,” it is error not to appoint. Furthermore, appointing a guardian ad litem prevents the child from becoming the target of a battle between two parents who are taking the child to multiple counselors to have them testify for their position. A guardian ad litem can stand in the gap and seek the child’s best interest unbiased.

¶16. Here, the facts of the case make it appear that the abuse allegations had been investigated by two different states both in April 2019, after which the mother agreed to a protective order in June 2019 that allowed visitation with the father. The Court may have been satisfied that an adequate investigation had already been made and no action was necessary. But it is imperative that we do everything in our power to keep our children safe at all junctures of domestic disputes.