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FAMILY LAW

CONTINUING LEGAL EDUCATION

SEMINAR LEADER

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2026
BELL FAMILY LAW CLE

SUMMARY OF CONTENTS

Part I: Family Law Developments	5
Part II: Joint Custody Presumption	45
Part III: Child Support Refresher	67
Part IV: Ethics Hour	87
Part V: Alimony Chart Update	97

FAMILY LAW DEVELOPMENTS

TABLE OF CONTENTS

I.	SEPARATE MAINTENANCE	5
II.	DIVORCE	5
A.	Irreconcilable differences divorce	5
B.	Habitual, cruel, and inhuman treatment	5
C.	Desertion	6
III.	PROPERTY DIVISION	7
A.	Findings of fact	7
B.	Classification.....	8
1.	Burden of proof	8
2.	Conversion of separate property to marital	9
3.	Division of military and disability benefits	10
C.	Valuation	10
D.	Division.....	11
1.	Tax consequences	11
2.	Contribution of homemaker	11
3.	Unequal division.....	11
E.	Insurance to secure property division	12
IV.	PRENUPTIAL AND POSTNUPTIAL AGREEMENTS	12
V.	ALIMONY	14
A.	Relationship to property division	14
B.	Arrearages	14
C.	Rehabilitative alimony awards	15
D.	Permanent alimony awards	15
E.	Modification.....	16
VI.	CUSTODY.....	16
A.	Findings of fact.....	16
B.	Sole custody	16
C.	Joint custody	18
1.	Presumption in favor of joint custody and equal parenting time.....	18
2.	Joint custody awarded.....	19
D.	Visitation	19
E.	Third-party visitation	20

1. Grandparent visitation	20
2. Other third parties	20
F. Modification.....	21
1. Adverse impact.....	21
2. Child’s choice.....	22
3. Modification of visitation.....	23
G. Guardians ad litem	24
H. Durable legal custody	24
VII. PATERNITY	25
A. Inheritance.....	25
B. Wrongful death suits.....	26
C. Name change.....	27
VIII. CHILD SUPPORT	28
A. Adjusted gross income.....	28
B. Offsets to support.....	28
C. Escalation clauses.....	29
D. Reimbursement for expenses	29
E. Support for college.....	29
F. Support when parents share equal parenting time.....	30
G. Termination of support.....	30
IX. ENFORCEMENT	31
A. Criminal contempt.....	31
B. Rate of interest on judgment.....	31
C. Payment of medical expenses.....	32
D. Judgment for damages	32
E. Willfulness	32
F. Acting on advice of counsel	33
X. TERMINATION OF PARENTAL RIGHTS	34
A. Advice regarding parents’ rights	34
B. Termination based on drug use.....	34
C. Abandonment and failure to provide	34
D. Reunification efforts.....	35
E. Reunification efforts with incarcerated parents.....	36
XI. ADOPTION	36

XII. NAME CHANGE	37
XIII. CONSERVATORSHIP.....	38
XIV. JURISDICTION AND PROCEDURE	38
A. Chancery court jurisdiction over abuse and neglect	38
B. Jurisdiction over adoption	38
C. Service of process	39
D. Rule 81(d) process	40
E. Continuances	41
F. Failure to prosecute	41
G. Motion to set aside for fraud.....	42
H. Appeals.....	43
1. Interlocutory orders.....	43
2. Timeliness	43
3. Relitigation on appeal.....	44
XV. ATTORNEYS' FEES	44

**FAMILY LAW DEVELOPMENTS
2025**

I. SEPARATE MAINTENANCE

Colbert v. Colbert, 403 So. 3d 729 (Miss. Ct. App. 2025). A husband's argument that a prenuptial agreement prohibited separate maintenance was procedurally barred. The agreement stated that, in the event of divorce, annulment, or separate maintenance proceedings, the wife would not be entitled to any greater rights than provided for in the agreement. In the divorce proceedings, the chancellor granted the husband's motion for a ruling that the prenuptial agreement was valid and enforceable. At trial, he argued that his wife was not entitled to separate maintenance because she was partly at fault in their separation. He did not argue that the prenuptial agreement barred her claim. The chancellor ordered him to pay \$7,000 a month in combined separate maintenance and child support. The court of appeals affirmed. His failure to argue at trial that the agreement prohibited separate maintenance precluded him from arguing it on appeal.

However, the court of appeals agreed with both spouses that the chancellor erred in awarding child support and separate maintenance as a combined award without applying the child support guidelines. The court remanded the case for a determination of child support separate from maintenance. The court also held that the chancellor erred in sealing the entire record without balancing the need for privacy against the public interest in open records, as required in *Estate of Cole*, 163 So. 3d 921 (Miss. 2012). The fact that a few documents are confidential or privileged does not warrant sealing the entire case.

II. DIVORCE

A. Irreconcilable differences divorce

Hodge v. Hodge, 2025 WL 2837224 (Miss. Ct. App. Oct 7, 2025). A wife's failure to withdraw her fault-based complaint for divorce did not bar divorce based on irreconcilable differences. The statute requires that any "contest or denial" be withdrawn before a court may grant an irreconcilable differences divorce. The couple's subsequent joint complaint for irreconcilable differences divorce was a withdrawal of any contest or denial. Furthermore, there was no contest in this case — the husband never responded to her earlier fault-based petition.

B. Habitual, cruel, and inhuman treatment

Brodie v. Brodie, 427 So. 3d 853 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's grant of divorce to a seventy-eight-year-old man based on spousal domestic abuse. As his dementia progressed, his wife of one year moved him into a rental house. The house had almost no furniture, no

phone, and he sometimes had little food. She misappropriated almost a million dollars of his property, sometimes without his knowledge and sometimes by threatening him. The staff of the nursing home where he was later moved barred her from visiting him after she was heard urging him to transfer foreign assets to her.

The chancellor found that she appropriated \$990,183 “by threats, intimidation, emotional or verbal abuse, and forced isolation,” quoting the words of the spousal domestic abuse ground for divorce. The court of appeals held that the chancellor properly granted divorce based on spousal domestic abuse. The court acknowledged the divide between it and the supreme court on the standard of review of habitual, cruel, and inhuman treatment divorce. The supreme court reviews challenges as a matter of law. The court of appeals looks to whether the court abused its discretion.

Brownlee v. Brownlee, 419 So.3d 453 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor’s grant of divorce to a wife based on habitual, cruel, and inhuman treatment, including domestic spousal abuse. She testified that her husband was explosive and violent throughout their marriage. On one occasion he hit her and broke her tooth. On another, he threatened her, tried to break her car window, and slammed the trunk on her arm. In addition, he fathered three nonmarital children during their marriage. Her testimony was corroborated by her mother. The court of appeals noted that that spousal domestic abuse does not require corroborating evidence and that the ground is included in a petition for divorce based on habitual cruelty even if it is not specifically pled.

C. Desertion

Thornhill v. Thornhill, 421 So. 3d 626 (Miss. Ct. App. 2025). A chancellor properly granted divorce based on a wife’s desertion. She left her husband a note, took her personal property, and left their home. Two weeks later, she filed a petition for divorce based on adultery or, in the alternative, irreconcilable differences. The case was delayed for four years because of his bankruptcy. During that time, he paid her temporary alimony of \$250 a month. The trial court dismissed her adultery claim at the conclusion of her case. After the ruling, the couple initially agreed to proceed on irreconcilable differences but the wife refused to sign the proposed agreement. Her attorney withdrew from the case as a result. She had not secured new counsel at the hearing three months later and her request for a continuance was denied. On cross-examination she acknowledged that she left their home, did not make efforts to contact her husband, did not want to go back to him, and would have refused if he had asked her. The court of appeals affirmed the chancellor’s grant of divorce based on desertion — her testimony established that she left the marriage and would not have considered reconciling.

III. PROPERTY DIVISION

A. Findings of fact

Sistrunk v. Sistrunk, 407 So. 3d 207 (Miss. 2025). The supreme court reversed a chancellor's roughly equal division of marital assets for failure to make *Ferguson* findings of fact. The couple separated after thirty-seven years of marriage. The wife was the primary caregiver for an adult disabled child with multiple medical problems. She retired early from teaching to care for her. The wife's net monthly income was \$2,287 a month and her monthly expenses were \$3,605. The husband's income was \$6,678. His monthly expenses were \$5,932 a month, which included \$2,655 a month in automobile payments. He transferred two vehicles to his wife in partial satisfaction of her judgment against his paramour based on alienation of affection. The chancellor divided their assets equally, denied the wife's request for alimony, and stated that she was not authorized to order child support for their adult disabled child. The chancellor stated that she considered the *Ferguson* factors but did not make specific findings under the factors or explain the reasons for her decision.

The supreme court reversed for specific findings regarding the parties' financial and in-kind contributions to the accumulation of assets, marital fault, their income disparity, and any dissipation of assets. The court also held that the chancellor should have considered the mother's care for their adult disabled child under *Ferguson* factors 7 (needs of the parties) and 8 (any other factor that should be considered in equity). In addition, the chancellor should have considered the reasonableness of the husband's substantial expenditures on automobiles.

Begnaud v. Begnaud, 409 So. 3d 604 (Miss. Ct. App. 2025). The court of appeals reversed a chancellor's division of marital assets for failure to value a gun safe and its contents and failure to consider the tax consequences of an award of retirement benefits. The wife valued the gun safe at \$31,000; the husband valued it at \$2,400. The chancellor found it questionable that the guns, scopes and ammunition were worth only \$2,400. He stated that he was unable to locate an expert and so would average their values; however, no average was provided.

Thornton v. Thornton, 2025 WL 3638400 (Miss. Ct. App. Dec. 16, 2025). The court of appeals rejected a husband's argument that a court erred in failing to value or address three guns in his wife's possession that he requested. The court awarded each party the personal property in their possession without listing or valuing it. Although he did testify about the guns, the husband did not list or value them on his financial statement. Nor did he file a post-trial motion requesting that the court address the issue.

A. Classification

1. Burden of proof

Matter of Dissolution of Tauzin, 428 So. 3d 407 (Miss. Ct. App. 2025). A chancellor erred in classifying a husband's defined benefit retirement plan as all marital even though he presented no evidence to identify the separate portion value. He began contributing to the plan eighteen years prior to his fifteen-year marriage. The court of appeals agreed that, ordinarily, parties must produce evidence to classify assets. However, the supreme court reversed a chancellor's marital classification of a husband's retirement benefit even though the parties presented "no evidence at trial as to what portion of the [retirement account] was accumulated prior to the marriage." *Arthur v. Arthur*, 691 So. 3d 997, 1003-04 (Miss. 1997). The court of appeals reasoned that the supreme court "apparently concluded that a spouse should not forfeit his separately earned retirement despite a failure to present evidence on the point at trial." The court remanded for the chancellor to require proof of the separate portion, which should be classified as separate. The supreme court denied certiorari.

Elmore v. Elmore, 426 So. 3d 1091 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's classification of a husband's assets. He worked before and during the marriage in his father's business, Eutaw Construction. In 2005, prior to their 2010 marriage, his father sold him 17% of the business for \$1,067,664. In 2012, Eutaw Construction and its employees entered an Employee Stock Ownership Plan (ESOP) in which the employees swapped stock for promissory notes. The husband transferred his shares to the company in return for two promissory notes. He used the quarterly payments on the notes to pay the remaining debt on his 2005 purchase from his father. While the divorce was pending, the husband sold the two promissory notes to his father for \$4.2 million. He argued that the promissory notes were separate because no marital funds were used to acquire them. His stock was acquired prior to the marriage; the only payments were made either through stock dividends (separate income) or with the quarterly payments on the promissory notes, which were acquired by trading the separate property premarital stock.

The court of appeals affirmed the chancellor's finding that the promissory notes were marital. The notes for which the stock was traded were significantly more valuable than the \$1,067,664 he paid for the stocks. The chancellor reasoned that the appreciated value was marital because it was created through his efforts during the marriage. The dissent emphasized that the wife had the burden of proving that his stock appreciated during marriage because of marital efforts – there was no evidence that his efforts caused the appreciation.

The husband also challenged the marital classification of RTE Properties, a business he formed prior to the marriage. The chancellor found that he paid debt on the property with marital funds, including stock payments, converting the business to marital. The court of appeals affirmed, holding that he failed to provide evidence that the RTE debts were paid with separate funds.

The husband also challenged the award of two retirement accounts valued at \$58,610 to the wife, arguing that he contributed to the accounts prior to the marriage. The court affirmed, based on the husband's failure to present evidence of the value of the account at the time of the marriage. The court also affirmed the chancellor's finding that an engagement ring the husband purchased during the marriage was her separate property. Gifts of jewelry are personal and the separate property of the donee, even if purchased with marital funds. The supreme court granted certiorari, which was subsequently dismissed by agreement of the parties.

Baird v. Baird, 2025 WL 2962388 (Miss. Ct. App. Oct. 21, 2025). A chancellor correctly found that real estate owned by the husband was his separate property. He testified that his mother bought the property with money from his father's estate and gifted the property to him. The fact that he and some of their children occasionally visited the undeveloped property did not convert it to marital by family use. He met his burden of proving that property acquired during the marriage was separate.

2. Conversion of separate property to marital

Woods v. Woods, 423 So. 3d 720 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's marital property classification of a lake house bought during a couple's premarital cohabitation. The couple began living together in 2012, married in 2021, and separated in 2023. In 2019, they purchased a lake house for \$920,000 in their joint names. The man made a \$198,204 down payment and paid most of the installments on the house. The woman contributed \$16,800 from her 401k. She was responsible for renting the house, including cleaning, advertising, purchasing, and managing rentals.

The court of appeals rejected the husband's argument that the house was not marital because it was acquired before their marriage. They purchased the house in their joint names. Both contributed to the purchase. They lived there during their marriage and his wife was actively involved in running the rental business. The court also rejected his argument that it was error to award his wife almost half of the equity when he made most of the payments that created the equity. Separate funds invested in a marital home become commingled. In addition, separate property may become marital through family use.

The court reversed and remanded the chancellor's decision awarding each spouse their own retirement account but giving the wife a \$10,000 equalizing payment. The information on which the chancellor relied was not included in the record. In a footnote, the court reminded the chancellor that a court must determine the separate estate of each party in addition to the marital estate, and that a separate property owner is entitled to the separate estate, including the appreciation on the separate estate, "provided neither party has actively contributed to the appreciation during the course of the marriage."

Brodie v. Brodie, 427 So.3d 853 (Miss. Ct. App. 2025). The court of appeals rejected a wife's argument that the marital home was her separate prop-

erty because her husband bought it and put it in her name as a gift before they married. They lived in the house together for a year. She continued to live there after insisting he move to a rental house. She used thousands of dollars of his funds to maintain and renovate the house. The house was marital under the family use doctrine and based on commingling.

3. Division of military and disability benefits

McFall v. Osborne, 424 So. 3d 286 (Miss. Ct. App. 2025). A husband could not collaterally attack a chancery court judgment awarding his wife “a sum equal to one-half of [the husband’s future military benefit].” Ten years after their divorce, she petitioned to modify the order. Her husband refused to make payments under the provision because he was receiving military disability benefits — which cannot be awarded to an ex-spouse — in lieu of retirement pay. He did not raise the issue at the modification hearing, arguing instead that there had been no material change in circumstances and that he was not receiving retirement benefits. The chancellor raised the issue sua sponte but held that the divorce order did not actually divide disability or retirement benefits. It ordered the husband to pay her an amount *equal* to one-half of his retirement benefits. He did not appeal the chancellor’s order that he pay \$800 a month. Seven months later, the wife filed a petition for contempt for nonpayment. He responded with a Rule 60(b) motion arguing that the court lacked jurisdiction to enter the modification order based on federal law prohibiting division of military disability benefits. The chancellor denied the motion and ordered him to pay \$18,500 in arrearages and \$2,000 in attorneys’ fees. The court of appeals held that the husband should have appealed the judgment. He could not collaterally attack the outcome of a case over which the court had subject matter jurisdiction. The Mississippi Supreme Court and the United States Supreme Court denied certiorari on the case.

C. Valuation

Roberts v. Roberts, 412 So. 3d 1256 (Miss. Ct. App. 2025). A husband’s appraisal business should have been valued using the net asset method, rather than the income method, which produced a value of \$149,00. The only asset the business owned was a desktop computer. A divorce valuation in Mississippi may not include goodwill, which limits valuation to the net asset method. The court of appeals also discussed that using income to determine the value of a single-owner business and as a basis for awarding alimony results in a double award. An owner’s earnings cannot be counted both as an asset to be divided and as income on which alimony is based.

D. Division**1. Tax consequences**

Begnaud v. Begnaud, 409 So. 3d 604 (Miss. Ct. App. 2025). A chancellor should have considered the tax consequences of its marital property award to a wife. The wife, with monthly adjusted income of \$2,689, was awarded 47% of the \$627,884 marital estate. All but \$20,000 of her share consisted of a Vanguard retirement account. The chancellor should have considered that she would have to deplete the retirement account to meet expenses. The resulting 10% penalty and taxes made her award significantly less valuable. The court also held that the chancellor erred in failing to value a gun safe valued by the wife at \$31,000 and the husband at \$2,400.

2. Contribution of homemaker

Matter of Dissolution of Tauzin, 428 So. 3d 407 (Miss. Ct. App. 2025). The court of appeals remanded a case on several points, including the need for specific findings on the *Ferguson* factor of contribution to the accumulation of marital assets. The chancellor divided marital property 50/50, stating that there was a reasonable basis for equal division. However, the couple's testimony was sharply at odds regarding the homemaker wife's contributions to the accumulation of assets. The husband testified that she had a five-day-a-week housekeeper, spent extravagantly, refused to work, and disrupted the harmony of the marriage. She testified that she supported his work, entertained for him, and quit her job at his request. A homemaker's contribution is presumed to be equal to that of a wage-earner. But the presumption "must rest on evidence of the homemaker's contribution to the family's needs or to the stability and harmony of the marriage." When the homemaker's contributions are in dispute, a chancellor must make findings regarding contribution.

3. Unequal division

Whitlock v. Whitlock, 421 So. 3d 638 (Miss. Ct. App. 2025). The court of appeals reversed a substantially unequal division of marital assets. The wife was awarded assets valued at slightly over \$90,000, including 75% of her husband's Thrift Savings Plan and all the equity in the marital home. She also received a portion of the husband's retirement and \$1,200 a month in permanent alimony. The husband was awarded \$19,000 from the Thrift Savings Plan and a portion of his FERS retirement. He was awarded the marital home with \$90,000 in debt and ordered to pay his wife the equity in the home within three years. The chancellor found that both parties contributed to the accumulation of assets, that the husband's conduct was the primary cause of the marriage deterioration, and that the wife had a greater financial need. His adjusted gross income was \$6,439 a month. Hers was \$2,009.

The court of appeals held that it was inequitable to give her most of the marital assets and burden him with the marital debt. The award was based in

part on the chancellor's finding that the wife would have received an additional \$57,000 if he had been paying monthly support of \$1,200 during the four years of litigation. However, she did not request alimony until two years into the litigation. The chancellor erred in relying on the absence of support for a period for which no support was sought. "The chancellor's entire equitable distribution stemmed from that mistaken spousal support determination, . . . preventing an equitable distribution." The court remanded the alimony award to be reconsidered with the adjusted property division.

Thornton v. Thornton, 2025 WL 3638400 (Miss. Ct. App. Dec. 16, 2025). A chancellor did not err in awarding a wife \$256,476 in marital assets and \$77,750 in marital debt and the husband \$263,021 in marital assets and \$3,382,244 in marital debt. Two-thirds of the debt was owed by the husband's profitable three-restaurant business. And almost all the debt was associated with assets awarded to him. Under the circumstances, the uneven division was fair. The business had a negative value because the debt was included in the net asset valuation. However, it had a net income of \$113,009 in the year before the divorce. The wife earned \$1,368 a month. The chancellor did not award alimony, in part because of the uneven distribution of debt.

The court rejected his argument that the chancellor should have given more consideration to his wife's adultery. The chancellor did consider her conduct and found that it affected marital stability. However, it occurred toward the end of the marriage and did not cause the marital breakup. Both parties acted in ways that undermined the stability of the marriage.

E. Insurance to secure property division

J.T.S. V. M.L.S., 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025). The court of appeals reversed a chancellor's modification of a husband's obligation to maintain a \$1 million life insurance policy. The divorce agreement required him to maintain the policy "due to the real estate interests and minor children." The chancellor reduced the amount to \$400,000 because all but one of his five children were emancipated and his wife's \$193,000 property division judgment could be protected by a smaller amount. The court of appeals agreed that a policy securing child support may be reduced as children are emancipated — insurance securing child support is part of child support and modifiable. However, the policy also protected the wife's property division award, an interest that continued after the children were emancipated. Property division awards may not be modified. Because of the dual nature of the provision, the chancellor erred in modifying the obligation to maintain life insurance.

IV. PRENUPTIAL AND POSTNUPTIAL AGREEMENTS

Matter of Dissolution of Tauzin, 428 So. 3d 407 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's interpretation of a couple's antenuptial agreement. The husband argued that his wife waived any interest in his defined benefit retirement through a provision that "each party agrees . . . to

waive the qualified joint and survivor annuity form of benefit and the qualified pre-retirement survivor benefit of any form of deferred compensation.” The court rejected his argument — that provision waived a right to insist upon a specific aspect of a retirement benefit. It did not waive the right to claim any share of the marital portion of retirement.

The court also affirmed the chancellor’s finding that the agreement did not provide for separate classification of deferred compensation accounts, commissions, and life insurance policies acquired during marriage. The agreement’s exhibit list of separate property included specific accounts, commissions and policies that existed at the time of the marriage. The list included one deferred compensation account with a balance of \$28,733. The court rejected the husband’s argument that three accounts acquired during the marriage were “income, increase, profits, dividends, or gains” from the listed account. They were new accounts created through income acquired during the marriage. Similarly, the specific commissions and renewals listed as separate assets had been paid out and spent during the marriage. The agreement did not list future renewals and commissions as separate property. And listing the face value of insurance policies held at the time of the marriage did not include insurance policies acquired in the future with marital income.

J.T.S. V. M.L.S., 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025). A former husband was entitled to summary judgment on his ex-wife’s petition for contempt. The couple entered into a postnuptial agreement giving her an interest in two of his businesses. He agreed not to encumber the businesses. Their divorce settlement agreement stated that the post-nuptial contract was incorporated into the judgment to the extent it was not modified by the divorce agreement. The divorce agreement provided that the husband would purchase the wife’s interest in the businesses and gave her a judgment for \$193,455 to be paid over time. Provision 11 of the agreement stated that as each of their five children were emancipated, his \$2,000 a month child support payment would be reduced. However, he would continue to pay \$2,000 a month with the excess over child support applied to the judgment. When all children were emancipated, he would pay \$2,000 a month until the judgment was satisfied. It also stated, “Upon cessation of his child support obligation altogether the parties agree” that the entire balance would be due if he defaulted on payments for twelve months. Seven years after the divorce, she filed a contempt petition alleging that he had been in default for over a year on child support and asking to collect the entire judgment pursuant to provision 11. The chancellor ordered him to pay her the full amount at 4% interest. The chancellor declined to find him in contempt for encumbering the businesses, holding that the postnuptial agreement was not enforceable by contempt because it was not a part of the divorce decree.

The court of appeals agreed that the postnuptial agreement was enforceable as part of the judgment to the extent it was not altered by the latter. However, the property settlement agreement did modify the postnuptial agreement provisions regarding the businesses. The postnuptial agreement gave the wife an interest in the businesses. Under the property settlement agreement, he purchased her interest. The agreement not to encumber the businesses was no lon-

ger effective.

The court affirmed the chancellor's grant of partial summary judgment denying her request to enforce the full amount of the judgment. The court of appeals held that the one-year default provision applied only to payments made after child support ended.

V. ALIMONY

A. Relationship to property division

Roberts v. Roberts, 412 So. 3d 1256 (Miss. Ct. App. 2025). The court of appeals reversed and remanded an alimony award because it reversed property division. The two are linked; when property division is reversed, alimony should be reversed as well. The court emphasized that alimony can be awarded when one spouse is left with a deficit after property division. However, that does not mean that a spouse who receives an equal share of marital assets is barred from alimony — support may be awarded if one spouse is at a deficit in their ability to meet their needs.

B. Arrearages

In re Estate of Brent, 417 So. 3d 114 (Miss. 2025). A former wife's estate had standing to sue her husband's estate for alimony that was in arrears at his death. However, the chancellor should have credited his estate for partial payments the husband made before his death. Under the couple's 1983 divorce settlement agreement, he was to pay permanent alimony of \$5,600 a month until she died or remarried. He also agreed to provide a life insurance policy, with the funds to be put in trust at his death, to ensure payments during her remaining life. In 2002, he began reducing his alimony payment. She did not take action to enforce the agreement and predeceased her husband in 2015. In 2019, he canceled his life insurance policy and paid the cash value of \$75,143 to her estate. He died in January 2021.

Her estate filed suit to recover the full amount of arrearages from 2002 to the date of her death — over \$600,000 — plus interest at the legal rate. The chancellor held that the seven-year statute of limitations barred recovery on all payments but those due from July 2014 to November 2015. Applying an 8% interest rate, the chancellor ordered his estate to pay \$139,104. He rejected the estate's request that the amount be reduced by the husband's partial payments during that period and by the cash value of the insurance policy — he reasoned that the significant unrecoverable arrearages made it equitable to deny any credits.

The supreme court agreed that the wife's estate had standing. Permanent alimony ceases upon a recipient's death; however, the recipient's estate is entitled to recover alimony that was due and unpaid prior to her death. She was not required to file a contempt action during her lifetime to preserve that right to the estate. However, the chancellor should have given credit for the reduced payments made by the husband and the transfer of the life insurance proceeds.

Together, those payments satisfied the arrearages. The court rejected the payor's estate's argument that interest should not have been awarded because the property settlement agreement did not provide for interest. Alimony payments are vested as they become due. Each payment bears interest at the legal rate from its due date.

C. Rehabilitative alimony awards

Baird v. Baird, 2025 WL 2962388 (Miss. Ct. App. Oct. 21, 2025). The court of appeals rejected a homemaker wife's argument that alimony of \$1,000 a month for six months was inadequate after a twenty-year marriage. Her husband, with net monthly income of \$8,562, had custody of their five children and was responsible for most of their expenses, including private school tuition. She was ordered to pay \$275 a month in child support. She had a college degree and a lapsed teacher's certificate. During the litigation she took no steps to renew her certificate or to obtain employment other than part-time work in a hotel. She stated that her health and stress level prevented her working full-time. She received cash assets of almost \$300,000 and \$52,000 in temporary support.

Thornhill v. Thornhill, 421 So. 3d 626 (Miss. Ct. App. 2025). The court of appeals rejected a wife's argument that she should have received permanent alimony. The record supported the chancellor's award of three years of rehabilitative alimony of \$250 a month. There was little marital property — most was burdened with debt. The wife had separate property valued at \$362,000, including a debt-free home and automobile and a separate IRA. She was sixty, working, and had debt-free property while her husband was responsible for all the marital debt and received \$8,000 in equity.

D. Permanent alimony awards

Howard v. Howard, 428 So. 3d 371 (Miss. Ct. App. 2025). A chancellor did not err in dividing a small marital estate equally and awarding a wife \$2,000 a month in permanent alimony despite her infidelity. The two primary assets were the husband's retirement account and equity of \$99,990 in the marital home. Both parties contributed to the accumulation of assets over the twenty-plus-year marriage. Her monthly income was \$2,500. She had custody of their twenty-year-old son who had autism. The husband's income was \$7,500 a month. He was ordered to pay child support of \$1,050 until the boy was twenty-one and agreed to maintain health insurance for him until he was twenty-six.

The court of appeals rejected his argument that her marital fault supported an unequal division in his favor and denial of alimony. Her adultery weighed against her but the chancellor found that award was proper because of the difference in their incomes and the fact that child support would end soon.

E. Modification

Bradshaw v. Bradshaw, 425 So. 3d 560 (Miss. Ct. App. 2025). A chancellor properly modified a former husband's \$800 a month alimony obligation to \$600 rather than terminating it as he requested. At divorce, his disabled wife's adjusted monthly income was \$1,191. His was \$2,800. Her Social Security income had increased by \$400 at the time of the hearing. However, because of his ongoing default in payment of alimony, she supplemented her income by sitting with an elderly woman two nights a week. She also took out a title loan to pay for her expenses. The husband's current gross income had increased to \$4,023. He testified that his expenses had increased because of his wife's illness and that he was required to purchase a new vehicle. The chancellor granted a \$200 modification in light of his ex-wife's increased Social Security but held that she should not be penalized working to pay expenses when he stopped paying alimony. The court also affirmed the chancellor's finding that he failed to prove inability to pay. A payor in arrears must live frugally and use any extra income to pay alimony. The husband replaced his 2007 vehicle with a two-year-old Nissan and his insurance increased because of that purchase, his accident record, and his bad credit record.

VI. CUSTODY**A. Findings of fact**

Shipley v. Shipley, 2026 WL 1492208 (Miss. May 28, 2026). The supreme court reversed a custody award to a mother because the chancellor's *Albright* analysis did not mention the children's new stepfather or the suitability of their home in Oregon. The parties had originally shared joint custody. The mother petitioned for modification to sole custody based on their alleged inability to work cooperatively. Before the hearing, she married and moved with the children to Oregon. The supreme court reversed for findings regarding the children's stepfather and their home in Oregon. Although the parties did not introduce evidence on these issues, it was the chancellor's responsibility to obtain information about the children's home and the persons living there.

B. Sole custody

Baird v. Baird, 2025 WL 2962388 (Miss. Ct. App. Oct. 21, 2025). The court of appeals affirmed a chancellor's award of custody of five boys to their father. The mother sought custody of the two younger boys, arguing that it was not in their best interest to be with their older brothers. The GAL recommended custody to the father — he stated that the mother's rigid style of discipline negatively impacted her relationship with the older boys. She was involved in a physical altercation with one of the older boys during her temporary visitation. Shortly before a trial hearing, she alleged that one of the older boys had sexually abused one of the two younger boys eighteen months earlier. The chancellor found the accusation unsubstantiated.

The court of appeals rejected her argument that the chancellor placed too much emphasis on keeping the siblings together. The chancellor found no unusual circumstance that required separating the siblings. The court found for the father on the *Albright* factors of children's health and sex, parenting skills, employment responsibilities, emotional ties, moral fitness, and parents' mental health. The court also affirmed the chancellor's order that she pay her husband's attorneys' fees of \$10,000 and 70% of the guardian ad litem's fees connected with her unsubstantiated allegations that one of the older boys had sexually abused one of the younger boys.

Edwards v. Edwards, 421 So. 3d 1248 (Miss. Ct. App. 2025). A chancellor properly awarded a father sole physical custody of two children, finding that the factor of mental health slightly favored him as well as the factor of moral fitness. The mother had a history of clinical depression and attempted suicide twice, most recently in 2019. The court rejected her argument that the chancellor was required to make a finding that her depression and conduct affected the children adversely. Nor did the chancellor err in finding against her on the factor of moral fitness. She had multiple post-separation affairs and the children spent time with one of her affair partners. The judge noted that the presence of new men in her life could be confusing to the children. The judge was not required to recuse himself because of comments made during the hearing. Stating that "this lady needs some help," noting that her attitude toward her affairs was "cavalier," and questioning her regarding her allegation of marital rape did not meet the high burden required to overcome the presumption that a chancellor is unbiased.

Ingram v. Ingram, 419 So. 3d 991 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's award of custody of two young children to their mother based on continuity of care, parenting skills, and capacity to provide childcare. Her work schedule aligned with the children's school hours. It was she who took the children to and from school, dressed them, prepared lunches, bathed and got them ready for bed, and transported them to extracurricular activities. The court also held that the chancellor did not err in awarding the father every other weekend of visitation rather than the first, second, and fourth weekends that he was given in the temporary order. Chancellors have substantial discretion in determining the appropriate amount of visitation.

Alexander v. Scarbrough, 421 So. 3d 316 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's award of custody of an eight-year-old boy to his mother. She had been a stay-at-home mother for the first two years of his life and had temporary custody during the couple's eighteen-month separation. She took him to school in the mornings, cooked his meals, arranged for activities and medical care, and attended his school meetings. Two days after the mother moved out, the father took the boy 100 miles away and kept him from her until the chancellor awarded her temporary custody. He made unsupported accusations of drug use against the mother and the maternal grandmother. The

court of appeals rejected the father's argument that the factor of the boy's sex and age should favor him because the activities the boy enjoyed traditionally involved the father. The boy and his mother were close, and she involved him in sports activities. Nor did the chancellor err in finding against the father on parenting skills based on his ongoing confrontations with school and medical personnel, including accusations of dishonesty. His confrontational behavior was damaging to the best interests of the child, which was to work cooperatively to improve his school experience and address medical issues. The chancellor also found it significant that the mother remained in the area where the boy had lived and attended school.

Adams v. Adams, 400 So. 3d 517 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's grant of sole physical custody of two children to their mother. She had been their primary caregiver in Hattiesburg for the last three years of the marriage while the father lived in Jackson during the week for work. The children were active and engaged in school, church, and extra-curricular activities in Hattiesburg. The mother was favored on the emotional bond between parent and child. The factor of mental health favored the father — the mother had struggled with mental health issues in the early years of the marriage. However, she sought help, was currently seeing a counselor, and had not needed psychiatric treatment in eleven years. There was no evidence that her mental health issues affected her children negatively. The court rejected the father's argument that his strained relationship with his daughter was caused by the mother. It was likely that the current strain was based on his engagement during the couple's divorce process. In addition, he did not follow through with court-recommended counseling with his daughter. The chancellor found that joint custody was not an option because the parents lived in different cities and that it was in their best interest to live with their mother in Hattiesburg where they were doing well.

C. Joint custody

1. Presumption in favor of joint custody and equal parenting time

The Mississippi legislature amended MISS. CODE ANN. § 93-5-24(2) to provide for a presumption in favor of joint custody and equal parenting time. A court's order for equally shared parenting time shall "maximize the time each parent has with the child" and ensure the child's best interest is met. If a court does not award custody with equal parenting time it must document the reasons for deviation. If both parents petition for sole physical or legal custody in one parent, the court is not required to document the reasons for deviation.

The presumption may be rebutted by a preponderance of evidence based on the parties' agreement on all issues related to custody; if the court finds by a preponderance of the evidence that a parent's absence, mental illness, substance abuse, or other circumstances are against the best interest of the child;

if the court finds that one parent has a history of family violence as defined in subsection (7); if one parent is a registered sex offender or in the custody of the Mississippi Department of Corrections; or based on any other relevant factor that the court deems material.

The amendment applies only to temporary and initial final orders entered after July 1, 2026. The amendment does not apply to modifications of custody orders.

2. Joint custody awarded

Thornton v. Thornton, 2025 WL 3638400 (Miss. Ct. App. Dec. 16, 2025). The court of appeals affirmed a chancellor's award of joint legal and physical custody, with alternating weeks, even though the parents did not work together cooperatively. The chancellor found that it was in the children's best interest to maintain a strong relationship with both parents. They had shared custody during litigation without evidence of adverse effects on the children. Both were involved parents, with good parenting skills, home environments, and ability to provide childcare. The court rejected the father's argument that joint custody was inappropriate because of their inability to work together. The polestar consideration is the children's best interest. The chancellor awarded the father final decision-making authority over education and medical care in case of disagreement. Two dissenters argued that joint custody was error given the level of conflict, which included profane disputes in front of the children, calls to the police, interference with visits, and inability to agree on education.

D. Visitation

Briggs v. Jackson, 426 So. 3d 1106 (Miss. Ct. App. 2025). The court of appeals affirmed an award of custody to a mother based on continuity of care and the children's home, school, and community record. The two children lived with her for two years prior to the order and were doing well in school and the community. She was also favored on parenting skills — she provided most of their daily care. The court rejected the father's argument that the chancellor erred by addressing visitation only until the girls reached mandatory school age. When parents live in different towns, a child's reaching school age may be a material change in circumstances permitting modification. The father could seek modification at that point if he and the mother could not reach agreement. However, since the order was remanded and one of the girls had reached school age, the court ordered that the chancellor address visitation on remand. Awarding the father less than five weeks of summer visitation was not error — the chancellor has substantial discretion in determining the proper amount of visitation.

E. Third-party visitation**1. Grandparent visitation**

McDonald v. Pruwitt, 426 So. 3d 1167 (Miss. Ct. App. 2025). The court of appeals reversed a chancellor's grant of visitation to a seven-year-old boy's maternal grandmother for findings of fact. The boy and his mother lived with or next door to the grandmother until he was four. The grandmother moved to North Carolina in 2019 but continued to visit her grandson. In 2021, CPS removed the boy from his mother and stepfather's home based on allegations of physical and sexual abuse and awarded the father temporary sole custody. The grandmother petitioned for visitation. She testified at the final hearing that the father had refused her requests to visit with her grandson for eighteen months. The chancellor awarded the father permanent custody and the grandmother one long holiday weekend a month, one week at Christmas, and two weeks in the summer. The mother and stepfather were denied any visitation.

The court of appeals rejected the father's argument that the grandmother's viable relationship with the boy ended when she moved to North Carolina and that he did not unreasonably deny visitation. Although the testimony conflicted, there was sufficient evidence for the chancellor to find that the statutory requirements were met. However, all awards of grandparent visitation must include an analysis of factors set out in *Martin v. Coop*, 693 So. 2d 912 (Miss. 1997) to determine whether the award is in the child's best interest.

2. Other third parties

Edwards v. Johnson, 2025 WL 2837431 (Miss. Ct. App. Oct. 7, 2025), *cert. granted*, (Miss. June 18, 2026). A divided court of appeals reversed a chancellor's decision that a nonparent must overcome the natural parent presumption as a prerequisite to visitation. The biological mother's partner, who acted in loco parentis to her child for two years, sought visitation after they separated. The partner lived with the child's mother, was present at the boy's birth, supported the mother and child, cared for the boy when he was ill, and shared childcare with the mother. After they separated, the mother contacted the child's biological father, who became involved in his life and supported the child. The first chancellor to hear the matter granted the petitioner temporary visitation, which she exercised for several years. The second chancellor suspended visitation pending a GAL report. The GAL recommended visitation, emphasizing the genuine bond between the petitioner and child. The GAL also stated that the petitioner needed to accept her role as secondary to the biological parents. The chancellor denied the petition, reading *Brownlee v. Powell*, 368 So. 3d 1268 (Miss. 2023) to say that a nonparent must overcome the natural parent presumption to be awarded visitation.

The court of appeals reversed, interpreting *Brownlee* to create different standards for a nonparent seeking custody and one seeking visitation. Under the court's reading of the case, a nonparent who seeks custody must overcome the natural parent presumption. One way to overcome the presumption to gain cus-

tody is by showing that the petitioner acted in loco parentis, cared for the child in their home, formed a parent-child bond, and that the biological father is not in the picture. However, a nonparent may be granted visitation based on proof that they acted in loco parentis, that “special, unique, limited” circumstances exist, and that “justice requires and the child’s well-being demands” an ongoing relationship with that person. The court remanded the case for the chancellor to determine whether the petitioner acted in loco parentis and whether the necessary special circumstances existed. Three dissenters agreed with the chancellor that *Brownlee* requires a nonparent seeking visitation to overcome the natural parent presumption.

The court also denied the mother’s argument that the petitioner had unclean hands because she actively participated in concealing the child’s birth from his biological father. The unclean hands doctrine cannot prevent a chancellor from acting in a child’s best interest. The dissenters believed that the doctrine was applicable because the petitioner gained in loco parentis status in part by concealing the birth from the father.

F. Modification

1. Adverse impact

Hopkins v. Perry, 420 So. 3d 354 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor’s decision modifying visitation but reversed the court’s modification of custody from sole legal custody in the mother to joint legal custody. The father sought modification based on the mother’s alleged interference with his visitation. She interfered with his custodial time by calling repeatedly, blocking his attendance at events, calling security when he visited the child in the hospital, failing to allow him phone visitation, and withholding visitation for seven months prior to the modification hearing. She admitted that that she was not concerned for her son’s safety and that the boy loved his father. The chancellor found that her conduct created an adverse material change in circumstances, noting the hardship the father experienced as a result. The court of appeals reversed because the chancellor did not identify a material change that adversely affected the child. In addition, the chancellor did not address the *Albright* factors to determine whether the change was in the child’s best interest. The court remanded for the chancellor to articulate how the material changes adversely affected the child and to conduct an *Albright* analysis.

Day v. Day, 424 So. 3d 1229 (Miss. Ct. App. 2025). A chancellor did not err in modifying joint physical custody of a seventeen-year-old boy and six-year-old girl to sole custody in their mother. The court rejected the father’s argument that there had been no material change in circumstances. The boy began cutting himself at his father’s home; he testified that his father made him feel “dumb” and “unwanted.” He stopped cutting himself, his grades improved, and he became more involved in church and activities when he moved to his mother’s house. The chancellor also found that the father’s cohabitation with a woman and her two children was a material change in circumstances. Nor did

the chancellor err in modifying custody of his younger sister even though there was no showing that she was adversely impacted. *Riley v. Doerner*, 677 So. 2d 640 (Miss. 1996) held that when a child lives in an adverse environment, custody may be modified without showing that the child has been impacted. The girl had observed the conflict in their father's home and missed her older brother. It was in her best interest not to be separated from him.

Martin v. Martin, 416 So. 3d 988 (Miss. Ct. App. 2025), *cert. filed*, U.S., May 26, 2026. A chancellor properly denied a father's petition to modify custody from the mother to him based on parental alienation. The court initially awarded custody to the mother, finding it a "close call" based on concerns about the parents' ongoing hostile interactions. Prior to the final judgment, the court found the mother in contempt three times for interfering with the father's visitation. Within a year of judgment, the father petitioned again for contempt and for modification of custody. The mother filed a contempt petition alleging that the father failed to abide by FaceTime provisions. The court found both parents in contempt but denied the petition for modification. He found that the mother's conduct — which he labeled parental alienation — was a material change in circumstances. However, based in part on expert testimony, he did not find that the four-year-old boy was adversely affected. The court of appeals rejected the father's argument that a finding of parental alienation should warrant a finding that a child is adversely affected. Custody may not be modified based on a material change alone — there must be proof of an adverse impact as well.

2. Child's choice

Spivey v. Spivey, 404 So. 3d 180 (Miss. Ct. App. 2025). The court of appeals reversed a chancellor's modification of custody from joint physical custody to sole custody in the father. The father petitioned for modification and attached his thirteen-year-old daughter's affidavit stating that she wanted to live with him. He testified that the mother did not attend the girl's school events, had failed to provide medical treatment on at least one occasion, and had never taken her on a vacation. He also testified that she verbally degraded him and their daughter. The chancellor's order modifying custody to the father stated only that the thirteen-year-old had asked to live with her father. The court of appeals held that the chancellor erred in modifying custody without specifying what material change had occurred, that the change adversely affected the child, and examining the *Albright* factors to determine whether modification was in the child's best interest.

Leonard v. Pate, 410 So. 3d 1078 (Miss. Ct. App. 2025). A chancellor properly modified custody from joint physical and legal custody to sole physical custody in a father following four years of litigation. The parties agreed to joint custody in 2018. One year later, the mother filed a petition for emergency custody alleging abuse and drug use by the father. Two years later the court set aside the emergency order and allowed the parties to resume alternating weeks of custody. In August of 2021, the court awarded the Mississippi father tem-

porary custody for the boy to attend school in Mississippi, with the Alabama mother having visitation in Mississippi. Two years later, the chancellor awarded the father physical custody. The father had continuity of care for the last two years prior to the order. And although he did not share custody for two years prior to that, his lack of involvement was based on questionable accusations by the mother. The father was also favored on the factor of the child's health. Their son suffered from respiratory problems and the mother had smoked in his presence since his birth. After the father took him to a physician who prescribed medication for ADHD, the mother took him to a physician who discontinued the medication. His employment was more conducive to childcare. He worked daytime hours while the mother worked a night shift an hour from her home. The child's home, school, and community record slightly favored the father. The boy was involved in school and church and had close relationships with his father's extended family. His school performance improved during his time with his father.

3. Modification of visitation

Hopkins v. Perry, 420 So. 3d 354 (Miss. Ct. App. 2025). A chancellor modified visitation to every other weekend and two months in the summer, interrupted by one week of visitation by the mother in July. The mother's interference with visitation was a material change that adversely affected the child. Modification was in the boy's best interest. The court of appeals rejected the mother's argument that the chancellor failed to articulate the proper test to modify visitation – that the order was not working and a change was in the child's best interest. In applying the material change in circumstances test, the chancellor articulated circumstances that made the order unworkable — custodial parent interference with visitation and the parents' inability to work together. The chancellor specifically found that the new schedule would be in the boy's best interest to get visitation "back on track."

Luke v. Kirkland, 426 So. 3d 831 (Miss. Ct. App. 2025). A chancellor properly denied a mother's petition to restrict a father's visitation and granted his petition to award additional visitation. The couple agreed at divorce that the mother would have custody of their son and the father would have visitation every other weekend as well as "liberal visitation" on which the parties agreed. The mother acknowledged that they originally contemplated more than twice a month visitation and that for the first two years, the father had the boy most weekends. She requested that the court limit his visitation to supervised because she believed that he kept the sixth grader up too late and drove with the boy after drinking. The father agreed that he once kept the boy up until 1:00 a.m. for a family birthday party across the road from his house, but stated that he was usually in bed by 10:30 on the weekends. He also acknowledged that on occasion when there was a nearby family gathering, he might drink four or five beers in a night and then drive back to his house. He denied ever driving his son while intoxicated. The chancellor ordered both parties to refrain from drinking in the child's presence or driving with him after consuming alcohol. She also

instructed both parents to have him in bed by 10:30 each night. The court of appeals affirmed, emphasizing that a noncustodial parent should have unrestricted visitation unless there is proof of actual harm to a child. The court affirmed the chancellor's grant of additional visitation. The parties had intended that the father would have visitation more often than every other weekend.

G. Guardians ad litem

Shipley v. Shipley, 2026 WL 1492208 (Miss. May 28, 2026). The supreme court reversed a 2025 decision of the court of appeals affirming a chancellor's modification of custody from joint physical and legal to sole custody in the mother. One year after their divorce, the mother petitioned for modification, arguing that the parents were unable to work together. At the father's request, the court awarded the mother temporary custody for three months to allow him to address mental health issues from service-related PTSD. Before the modification hearing, the mother married a man from Oregon and moved there with their three boys. She filed a report of sexual abuse with Oregon DHS after the father visited the boys. It was reported as "undetermined." The mother did not introduce evidence of the charge at the modification hearing. However, the father's attorney questioned her about the report, prompting her to repeat the allegations.

The chancellor held that the mother's move made joint physical custody unworkable. In its *Albright* analysis, the court found that the parents were equal on all factors except for mental health, which favored the mother, and awarded custody to her. The court did not address the allegations of sexual abuse or appoint a GAL. The father was granted weekend visitation in Oregon and holiday and summer visitation in Mississippi.

The court of appeals affirmed, rejecting the father's argument that the court should have appointed a guardian ad litem. The father did not raise the issue at trial or in a post-trial petition and therefore waived the issue. The supreme court disagreed with the court of appeals. When appointment of a GAL is mandatory, a party's failure to raise the issue does not waive the error. The chancellor has a duty to appoint a GAL to protect the child. However, in this case, the chancellor acted within his discretion to decide whether the allegations were a charge of abuse that triggered a mandatory appointment. They were not — the mother did not make or raise the allegations in the case and the father addressed them only to argue that she showed poor parenting by making baseless allegations.

H. Durable legal custody

Interest of A.B., 419 So. 3d 976 (Miss. Ct. App. 2025). A youth court judge properly modified custody of a child from durable legal custody with his maternal grandparents to his mother. After she was released from four years of incarceration, the mother completed supervised probation, secured employment, and had a suitable home. She provided primary care for her son for two years after her release when she lived with her parents. Her parents argued that

she had mental health and anger issues. She testified that her father's animosity toward her was because she was lesbian. She also stated that she was willing for her parents to continue to see her son. No witnesses other than her parents expressed concern about her ability to care for her son. The chancellor found that there had been a material change in circumstances — her release, employment, and housing — and that it was in her son's best interest to live with her.

The court of appeals rejected the grandparents' argument that the court should have ordered continued monitoring by CPS. They were granted durable legal custody, which ends CPS oversight of a child. Durable legal custody may be modified by proof of a material change in circumstances and that modification is in the child's best interest. There is no statutory requirement for ongoing monitoring.

VII. PATERNITY

A. Inheritance

Matter of Estate of Lewis, 422 So. 3d 484 (Miss. Ct. App. 2025). A non-marital grandchild seeking to inherit from her grandmother was barred from establishing paternity years after her presumed father's death. The deceased grandmother acknowledged her as a grandchild, made her the beneficiary of an insurance policy, and listed her as a family member in the presumed father's obituary seventeen years earlier. The petitioner helped the deceased with her financial affairs, visited her, and took time off work to be with her when she was hospitalized.

The deceased's nieces argued that the granddaughter's claim was barred because she did not file an action to establish paternity within a year of her father's death. MISS. CODE ANN. § 91-1-15 provides, "An illegitimate shall inherit from and through the illegitimate's natural father and his kindred" if there has been an adjudication of paternity. "However, no such claim of inheritance shall be recognized unless the action . . . is filed within one (1) year after the death of the intestate." The statute further states that the one-year period is self-executing and "may not be tolled for any reason."

The chancellor found that held that the petitioner was the deceased's sole heir. The nieces' argument was waived because they did not plead the one-year statute as an affirmative defense. The court of appeals reversed, holding that the one-year period is not a statute of limitations, which must be affirmatively pled. Instead, it is a self-executing "nonclaim" statute, which absolutely bars a claim after the prescribed period has run. The statutory period may not be waived for any reason.

Four judges joined in a concurring opinion urging the legislature to update statutory language to remove the derogatory and out-of-date term "illegitimate" to refer to children whose parents are not married. The concurring judges also emphasized the potential unfairness when a child who is acknowledged by family is denied the right to inherit. They urged the legislature to consider creating a different rule for acknowledged nonmarital children.

Estate of Dorsey, 2025 WL 3524732 (Miss. Ct. App. Dec. 9, 2025). The court of appeals affirmed a chancellor's finding that a 1974 adoption action established a child's paternity for purposes of inheritance. In 1974, the mother agreed for her parents to adopt her ten-year-old child. The deceased was named as his father and summoned through publication. The adoption decree stated that the father was properly before the court and terminated his parental rights. It is not clear whether he was actually present. When the boy was older, he became friends with one of his half-brothers through the father's marriage. The father's obituary listed the petitioner and another nonmarital child as the deceased's sons. Three years after his death, the half-brother filed a petition for letters of administration and determination of heirs, acknowledging the appellant as a "known adult child" of the decedent. However, as the administrator, he argued that the petitioner was not an heir because there was no determination of paternity within one year of the father's death. The chancellor found that the adoption proceedings adjudicated paternity and legitimacy — the petition identified the deceased as the child's father; he was properly notified; the decree stated that he was properly before the court; and the judgment terminated his parental rights. The chancellor acknowledged that the process was less than ideal as an adjudication of paternity — nonetheless, it was a judicial proceeding in which the man was recognized as the boy's biological father.

The court of appeals agreed. The court also affirmed the chancellor's finding that equity barred the administrator from asserting the one-year statute of limitations. He delayed challenging the appellant's legitimacy for three years after the family listed him in the obituary as a child of the decedent. His conduct may have deterred the petitioner from acting within the statute of limitations by leading him to believe a petition was unnecessary. An administrator is charged with acting on behalf of all heirs and may not act in a self-serving manner to exclude other heirs. A concurring judge noted her ongoing objection to the use of the term "illegitimate" in Mississippi heirship statutes and urged the legislature to update its language.

B. Wrongful death suits

Matter of Estate of Tate, 409 So. 3d 1179 (Miss. Ct. App 2025). A man who failed to support his nonmarital daughter or to publicly acknowledge her as his child did not qualify as a wrongful death beneficiary. He filed a wrongful death suit after the five-year-old girl and her mother died from a gas leak in their apartment. The maternal grandmother petitioned for a determination of heirship, arguing that he failed to meet the statutory requirements for inheritance or wrongful death beneficiary status.

MISS. CODE ANN. § 91-1-15(3)(d)(1) provides, "The natural father of an illegitimate and his kindred shall not inherit: (i) From or through the child unless the father has openly treated the child as his and has not refused or neglected to support the child." Under MISS. CODE ANN. § 11-7-15 this test also applies to wrongful death suits. The father did not provide pre-birth support for the mother or attend prenatal visits with her. He did not visit the hospital until two days after the child was born and did not sign her birth certificate. When

DHS filed a petition to establish paternity and support a year after her birth, he insisted on a paternity test. During her life, he made only four child support payments. He did not come to the hospital or emergency room during her childhood illnesses. He did not offer to reimburse the mother's family for part of the funeral expenses, did not attend visitation, and was thirty minutes late for her funeral service. Evidence conflicted regarding the amount of time that he spent with his daughter and the support he provided for her. According to him, they regularly spent time together, including holidays and time with his extended family. His family testified that he brought the girl to visit them several times a month and purchased clothing and food for her. According to the mother's family, he spent very little time with her. The chancery judge found that the father refused or neglected to support the child and did not hold her out to the public as his child. The court of appeals affirmed, emphasizing that the question was one of fact, to be reversed only if it was not supported by substantial evidence. The chancellor found that the testimony of the mother's family was more credible regarding his support for the child, his time with her, and his failure to openly acknowledge their relationship.

C. Name change

In re Jones by and through Taylor, 411 So. 3d 1169 (Miss. Ct. App. 2025). The court of appeals reversed a chancellor's decision denying a guardian's request to change the surname of his adult ward. The thirty-year-old ward, who was diagnosed with autism, schizophrenia, and Graves' disease, was placed in her uncle's guardianship when her mother died. Until she was nineteen, her mother's husband was presumed to be her biological father. The couple divorced when she was sixteen. When he was sued for nonpayment of support, the presumed father requested a paternity test, which was negative. A chancellor terminated his child support and visitation. Her uncle/guardian sought to change his ward's name to her mother's maiden name and to remove the former husband's name from her birth certificate. He argued that he planned to establish a special needs trust for her and that having the defendant's name could affect that process. He also testified that the mother would have changed her daughter's name if she had the resources, that the daughter knew that the defendant was not her father, and that it was confusing to her to have his name. The former husband appeared and objected. The ward did not testify. The chancellor denied the petition, finding that there was no evidence the ward would make this choice, that the change could be confusing to her, and that there was no real benefit to making the change.

The court of appeals reversed. A guardian for an adult is a fiduciary charged with making decisions that the ward would have been likely to make or, in the absence of that evidence, making decisions in the ward's best interest. The court distinguished previous cases in which name changes were denied — those involved men who had not abandoned their children and who attempted to maintain a relationship with them. The presumed father in this case sought to terminate his support for and relationship with his daughter. The court found it reasonable that the ward would choose to change her name if she were able and

that the change was in her best interest.

Two judges dissented. They pointed out that the ward assumed this man to be her father until she was nineteen years old; that after the divorce she had lived with his mother for a period; that he may have stopped paying support because she was living with him for a time; and that he may have requested a paternity test after the mother cut off his visitation. He testified that he tried to continue seeing the girl, but the mother prohibited it.

VIII. CHILD SUPPORT

A. Adjusted gross income

Briggs v. Jackson, 426 So.3d 1106 (Miss. Ct. App. 2025). The court of appeals remanded a child support order that did not address health insurance as required by MISS. CODE ANN. § 43-19-101(7). The court also reversed because the chancellor included the father's rental income without deducting the expenses of producing that income. In addition, the chancellor should consider on remand whether the father's income should be reduced to reflect expenses for a child who lived with him part time under a joint custody order.

Bird v. Ladner, 2025 WL 2450057 (Miss. Ct. App. Aug. 26, 2025), *cert. granted*, 2026 WL 1557530 (Miss. May 21, 2026), *cert. dismissed*, (Miss. June 18, 2026). The court of appeals agreed with a mother that a chancellor miscalculated the father's adjusted income by deducting the costs of health insurance and by deducting federal tax payments that exceeded the amount he owed. He received a federal tax refund of \$8,074. The child support guidelines provide that contributions to taxes over the payor's tax liability are not a mandatory deduction. Nor are payments for health insurance premiums an allowed mandatory deduction. The court reversed and remanded for the court to recalculate the father's adjusted gross income.

B. Offsets to support

Begnaud v. Begnaud, 409 So. 3d 604 (Miss. Ct. App. 2025). A chancellor erred in reducing a husband's \$931-a-month child support based on custodial mother's receipt of a \$700 a month state adoption subsidy for their child. The chancellor reduced the husband's support by one half of that amount. Child support should be reduced dollar-for-dollar when a child receives funds tied to the payor's Social Security. However, child support is not reduced when a child receives Social Security disability based on his or her own disability. Adoption assistance funds, provided by the state based on a child's special needs, are not based on a parent's eligibility but on the child's. Other states to consider the issue have reached the same conclusion.

Howard v. Howard, 428 So.3d 371 (Miss. Ct. App. 2025). The court of appeals rejected a father's argument that the court should have reduced child

support to reflect that his son received \$250 a month in Supplemental Security Income benefits based on the child's disability. Child support is reduced when a child receives benefits based on a parent's disability. But benefits related to a child's disability are for the benefit of the child and not credited against child support.

C. Escalation clauses

Cole v. Fish, 427 So. 3d 893 (Miss. Ct. App. 2025). A couple's 2017 property settlement agreement provided that the father would pay \$3,500 a month in support for two children. It also stated that "child support will be increased if appropriate based upon statutory guidelines." In 2024, the mother filed a contempt petition, alleging that he had failed to abide by the escalation clause. The chancellor held that the clause was unambiguous and increased the father's support to 20% of his current adjusted gross income.

The court of appeals reversed, holding that the words "if appropriate under the guidelines" made the provision unclear. A self-executing escalation clause must clearly establish a formula for increasing support. The support guidelines state that when a payor's annual adjusted income exceeds \$100,000, a court may order support above or below the statutory percentages. In those cases, there is no presumptively correct amount of support. As a result, the agreement failed to clearly establish a percentage by which the support should be increased. Dissenting judges thought the provision was clear, meaning that if the father's income increased, the statutory percentages were to be used to determine the amount of support.

D. Reimbursement for expenses

J.T.S. V. M.L.S., 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025). The court of appeals affirmed a chancellor's order limiting a father's liability for medical expense reimbursement to those presented by the mother within one year, as their agreement provided. Cases cited by the wife involved agreements that attempted to limit the statute of limitations, which parties may not do by contract. Their agreement limited the amount that could be recovered within the statute of limitations. The court also held that the wife was not entitled to reimbursement for college housing expenses for months that she allowed her children to live rent-free in her Oxford condominium. The parties were obligated to divide the costs of college expenses, including dormitories or housing expenses. She did not incur expenses because of their occupancy. Nor was she entitled to reimbursement of one-half of the \$400 a month allowances she provided them, which was not listed as a college expense.

E. Support for college

Sharp v. Sharp, 422 So.3d 472 (Miss. Ct. App. 2025). A chancellor properly amended a final judgment of divorce to clarify payment of college support. A temporary order required the father of three to pay \$2,500 a month

in child support and the costs of their private school. A later temporary order provided that he would reimburse their mother for unpaid school expenses from a Section 529 education account in his name and that all remaining funds in the account would be used for their educational expenses. The final order of support maintained basic support at \$2,500 even though application of the guidelines produced basic support of slightly over \$8,000. The court found that the amount was appropriate because the father was paying college tuition for all three children. The order also stated that the court “has already awarded [the wife] control and ownership of the 529 accounts.” The father was ordered to pay college expenses of up to \$27,000 per child after 529 funds were depleted. The father sought clarification, arguing that there was no order transferring the 529 accounts to the mother. The chancellor clarified that the account was to be transferred into the mother’s name and that the father was responsible for \$27,000 a year in college expenses for each child.

On appeal, the father argued that the changes were substantive and not simply clarification. The court of appeals disagreed. Although there was no order transferring 529 funds to the mother, the court’s property division stated that they were awarded to her. The chancellor clarified that the \$27,000 in college expenses per child was intended to be a yearly amount. The child support analysis supported the court’s clarification. It stated that child support of \$2,500 was proper, rather than 22% of the father’s income — the difference was \$22,000 per child per year, in recognition that he was paying their college expenses. The court also rejected the father’s argument that the court should have examined factors applicable to orders of college support, including the children’s aptitude for college, their relationship with him, and his ability to pay. A court need not review the factors when a payor agrees to pay college support.

F. Support when parents share equal parenting time

The legislature amended MISS. CODE ANN. § 93-5-24(2) to address calculation of child support under the presumption in favor of equal parenting time. If a court orders joint custody and equally shared parenting time, support is calculated for each parent using the child support guidelines, as if the parent was the obligor. The lesser amount should be subtracted from the higher amount. The difference between the two awards should be ordered as support to the lower-income parent.

A court may deviate from the formula if it determines that a deviation is in the best interest of the child. The statute does not address calculation of child support if the court orders joint custody with unequal parenting time.

G. Termination of support

Bird v. Ladner, 2025 WL 2450057 (Miss. Ct. App. Aug. 26, 2025), *cert. granted*, 2026 WL 1557530 (Miss. May 21, 2026), *cert. dismissed*, (Miss. June 18, 2026). A chancellor erred in terminating child support for a daughter when she moved in with her father at eighteen and lived with him for ten months. Child support obligations continue until a child is twenty-one or otherwise

emancipated. The court remanded for the chancellor to reestablish child support.

IX. ENFORCEMENT

A. Criminal contempt

Matter of Conservatorship of Bennett, 418 So. 3d 1256 (Miss. Ct. App. 2025). The court of appeals affirmed a chancellor's finding that a defendant was in criminal contempt for visiting his mother and distributing mass mailings in violation of a court order. His mother, who was suffering from Alzheimer's, was in an assisted living facility. The defendant encouraged her to defy staff, destroy property, and coached her to say she wanted to live with him. After the court prohibited him from visiting, he circulated a mass mailing and video of his mother alleging that she was being held by a secret fraudulent court order. The court instructed him not to speak regarding her care. After the order was entered, he went to the facility with her friend and talked with his mother when the friend brought her outside. He issued a second mass mailing about her treatment. Her conservator filed a motion for criminal contempt. Because the defendant had attacked the judge in the mailing, the case was transferred to another judge. The first judge issued a transfer order listing the conduct on which the contempt matter was based and referring by docket number to the two contempt petitions. The defendant was served with a Rule 81(d) summons that included a copy of the transfer order but not the contempt petitions. The second chancellor found that the defendant was in contempt and ordered him incarcerated for thirty days. His attorney objected that the petitions for contempt were not attached to the Rule 81(d) summons.

The court of appeals affirmed. Service was adequate because the attached transfer order detailed the allegations on which the contempt matter was based and referenced the two contempt petitions by docket number. Due process requires that defendants in criminal contempt matters be given notice, a hearing, an impartial judge, and specification of the charges. The defendant was afforded each of these. The order prohibiting mass mailing did not violate his right to free speech. The order properly addressed a state interest of the highest order — protection of vulnerable adults — and no less restrictive option was available. The videos and mass mailings broadcast his mother's personal affairs and caused her mental anguish from which she could not protect herself.

B. Rate of interest on judgment

J.T.S. V. M.L.S., 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025). A chancellor was not required to use the 8% legal rate of interest for contracts on judgments for arrearages in family law matters. A chancellor properly awarded 4% simple interest on judgments against a husband for arrearages in child support, insurance payments, and property division payments. The judgment was not one for breach of an ordinary contract action but a contempt judgment for violation of a contract incorporated into a family law judgment. The chancellor

had discretion under MISS. CODE ANN. § 75-17-7 to set the appropriate rate of interest for a judgment.

C. Payment of medical expenses

Powell v. Powell, 411 So. 3d 1129 (Miss. Ct. App. 2025). A noncustodial mother was in contempt for failure to pay her share of her children's out-of-pocket medical expenses. The father submitted a spreadsheet listing unpaid expenses and attached copies of the statements. She submitted a document with handwritten notes regarding payments but failed to produce documentation to support her claim. She requested and was given five continuances and ample opportunity to provide the information. The court of appeals rejected her argument that contempt was not proper because the divorce judgment provided for submission of bills by mail or hand-delivery. The father submitted some bills by email or text. However, she did not claim that she failed to receive a specific bill.

D. Judgment for damages

Martin v. Martin, 426 So. 3d 1135 (Miss. Ct. App. June 24, 2025), *cert. filed*, U.S., May 26, 2026. An ex-wife was in contempt for failure to make payments required in the couple's judgment of divorce. Her former husband sued her in county court for damages to his property and the marital home. The action was consolidated with their divorce, in which the chancellor ordered her to pay him \$21,014 for the damage. He filed a petition for contempt when she failed to make the payments. The chancellor found, and the court of appeals agreed, that her inability to pay was based on her choice not to work after their divorce. The chancellor did not err in finding her in contempt or in ordering her incarcerated for six months and suspending the sentence on condition that she make timely payments.

The court of appeals rejected her argument that the judgment was not subject to contempt. Ordinarily, a civil judgment cannot be collected through a contempt proceeding. However, the award of damages was part of the court's judgment of divorce, which is enforceable by contempt. In addition, the chancellor gave her a year to satisfy her obligation, something that would not be available in an ordinary civil suit.

E. Willfulness

Gombako-Amos v. Amos, 2026 WL 1598080 (Miss. June 4, 2026). The supreme court reversed an opinion of the court of appeals that affirmed a chancellor's contempt finding. A couple's divorce agreement provided that the wife would pay a \$100,000 judgment in favor of Trustmark Bank and would hold her husband harmless from liability for the debt. Over the next two years, Trustmark garnished \$51,480 from her salary. When the husband decided to sell property and learned it was subject to a Trustmark lien, he paid the remaining \$50,518 owed on the debt. He then filed suit against her for contempt for failure

to satisfy the debt. He did not notify her that he had paid the balance or request reimbursement before filing. She admitted at trial that Trustmark notified her that the judgment was released but stated she thought the release was related to her ongoing attempts to negotiate a reduction in the amount due. The court of appeals rejected her argument that she had no obligation to hold her former husband harmless from a voluntary payment. The voluntary payment doctrine applies to payments by one who is a stranger to the debt. Even though she was assigned responsibility for the debt in the divorce, he remained liable to Trustmark. The court ordered her to pay him \$50,518.32, plus five percent interest within ninety days and \$4,000 in attorneys' fees to be paid within sixty days.

The court of appeals majority affirmed the contempt finding, holding that she was required to hold him harmless and had the ability to do so. The court noted that she made a \$110,000 down payment on waterfront property after he filed suit. Rather than reimbursing him, she continued to assert she had no obligation to do so.

The Mississippi Supreme Court reversed. There was no evidence that she willfully violated the court's order. She had no idea prior to the suit that he had paid the judgment. Nothing in their agreement prevented her from paying the obligation on a monthly basis, as she had done until he satisfied the remaining amount. After suit was filed, she made a colorable argument that she was not obligated to make the payment and defended against the contempt proceeding.

F. Acting on advice of counsel

Bird v. Ladner, 2025 WL 2450057 (Miss. Ct. App. Aug. 26, 2025). A divided court of appeals affirmed a chancellor's finding that a father was not in contempt. Twelve years after divorce, the mother sought arrearages, alleging that he had failed to provide health insurance for two years, owed \$4,000 in out-of-pocket medical costs, unilaterally reduced child support when the oldest child turned twenty-one, and discontinued support when the youngest chose to live with him. The five-judge majority affirmed the chancellor's finding that he was not in contempt. He husband thought that the mother agreed out of court to provide insurance and pay medical expenses if he would add \$300 a month to his child support payment, which he did. The mother stated that the \$300 was to cover insurance alone, not out-of-pocket expenses.

The majority also held that the father was acting on the advice of counsel when he unilaterally reduced support upon his son's majority and when he stopped paying support upon his daughter's decision to live with him. At her mother's insistence, the girl did not actually move in with him for another seven months until she was eighteen. The chancellor held that he was responsible for support for the seven-month period before she moved in but that he was not in contempt for nonpayment. The court of appeals affirmed. Reliance on an attorney's advice may show that a party's violation was not willful. Four dissenters argued that the evidence did not support a finding that he relied on his attorney's advice and that, regardless of legal advice, a party may not ignore a court order.

X. TERMINATION OF PARENTAL RIGHTS**A. Advice regarding parents' rights**

Interest of K.B., 424 So. 3d 908 (Miss. Ct. App. 2025). A youth court's failure to advise a mother of her rights at the beginning of a hearing to terminate her parental rights did not require reversal. MISS. CODE ANN. § 93-15-113(2)(a) provides that a court shall, at the beginning of a TPR hearing, inform a parent of their right to counsel, to remain silent, to call and confront witnesses, and to appeal. The mother was represented by counsel at the hearing and exercised each of these rights. Under those circumstances, failure to advise her of the rights caused no harm.

B. Termination based on drug use

E.H. v. Lee County Dep't of Child Prot. Servs., 420 So.3d 341 (Miss. Ct. App. 2025). The court of appeals affirmed a youth court judge's termination of parents' rights based on ongoing drug use. Their children, ages five and three, were removed from their home after the youngest child tested positive for cocaine at birth. CPS developed a service plan and, over the next 3 ½ years, worked with the parents toward reunification. During that period, CPS placed the children back with their parents four times. Each placement failed when the parents and sometimes the children tested positive for drugs. However, the parents maintained a relationship with their children, completed parenting classes, were employed for most of the period, and had suitable housing. After the last failed placement, CPS recommended termination. The youth court judge found that CPS made reasonable efforts over a reasonable period of time to reunite the family. The court terminated their rights based on ongoing drug addiction that prevented them from caring for their children and abandonment based on their drug use. The court of appeals rejected the parents' argument that CPS did not make reasonable efforts because it did not help the mother secure a recovery sponsor. Evidence supported the judge's conclusion that CPS had made reasonable efforts. There was clear and convincing evidence to terminate the parents' rights based on drug use and abandonment.

C. Abandonment and failure to provide

J.J.B. v. Monroe County Dep't of Child Prot. Servs., 400 So. 3d 403 (Miss. 2025). The supreme court affirmed a chancellor's termination of a mother's parental rights. Her three daughters, aged five, three, and twenty-two months, were removed from her care after she left them with her wheelchair-bound mother and other relatives in a one-bedroom apartment. They were sometimes unsupervised and in unsafe conditions there. The mother was addicted to drugs and unhoused. She complied with CPS's service plan requirements that she complete a drug program and parenting classes and remain sober. However, she failed to secure employment, a suitable home, and transportation, and to visit

regularly with her daughters during the three years of CPS oversight. She saw them only twice in the seven months before the termination hearing.

The chancellor found that termination was proper based on her abandonment of the girls with her mother, her unwillingness to provide for them, failure to exercise visitation, and substantial erosion of the parent-child relationship. The mother argued that because CPS had not removed her son, she was not an unfit parent. She also argued that the reasons she was unable to comply with the service plan were based on poverty, not on unfitness. The supreme court noted that her treatment of her daughters and her son were very different. He was born after she was sober. She did not abandon him or fail to provide for him. The chancellor properly found that grounds for termination existed.

D. Reunification efforts

X.G.C. v. Jackson County Dep't of Child Prot. Servs., 400 So. 3d 451 (Miss. 2025). The supreme court affirmed a youth court judge's termination of parental rights based on three serious injuries to a child under the age of one. She was removed after she was taken to the hospital for the second time with unexplained injuries, including serious bruising and a subdural hematoma. The court ordered that CPS work toward reunification of the family. As part of the service plan, the ten-month-old child was returned to her father and paternal grandmother for a ninety-day trial. Two months later, she was taken to the emergency room for a transverse fracture to her right arm, which the father could not explain. CPS recommended, and the court agreed, that the plan should be changed to termination. An expert in child abuse testified that the fracture was usually caused by a person bracing to catch themselves in a fall or a direct blow to the arm. He thought it highly unlikely that the child, who was just pulling up, had injured her arm by bracing to stop a fall.

The father argued that the CPS had failed to meet the reunification requirements of MISS. CODE ANN. § 93-15-115, including proving that he had failed to substantially comply with the service plan. CPS argued that findings under section 115 are not required when the court finds that a parent is unfit under MISS. CODE ANN. § 93-15-119. They argued that if section 119 grounds are used, section 115 does not apply. The youth court judge agreed. The supreme court did not. Section 115 is a prerequisite in any case in which reunification efforts are required. However, the youth court found in a permanency hearing that CPS developed a service plan, that the father failed to substantially comply with the plan, and that termination was appropriate.

K.S. v. M.D., 416 So. 3d 72 (Miss. 2025). The supreme court held that a chancery court properly terminated a mother's parental rights. Her one-year-old child was removed from her care based on drug use and failure to care for the child. The child was briefly returned to her after she completed a drug rehabilitation program but was removed eight months later when she relapsed. The court affirmed the chancellor's termination of the mother's rights — she had a lengthy history of drug use, including for six months after she lost custody. She lacked a bond with the girl, screamed profanities at her as an infant, and had

no contact with her for two years prior to trial. She failed to maintain sobriety in spite of multiple treatment programs. The girl was emotionally flat and developmentally delayed under her mother's care but was thriving, healthy, and engaged after removal.

E. Reunification efforts with incarcerated parents

Interest of J.S., 422 So. 3d 1055 (Miss. Ct. App. 2025). The court of appeals reversed a county court judge's finding that CPS had made reasonable efforts to reunify an incarcerated father with his two children. The court determined that reunification with the mother should be bypassed but that CPS should make efforts to reunify the father and children. CPS later recommended that the plan change to adoption. The caseworker testified that CPS held one video meeting with the father. She acknowledged that he had completed some programs while incarcerated. However, she also stated that he had not made progress toward complying with the service plan and had not seen his children. She was not sure whether he received the service plan but said that the previous caseworker had mailed it. She also stated that a service plan for an incarcerated person was the same as in other cases and that his incarceration was not a reason to extend the service plan period.

The court of appeals reversed. CPS policy requires that a service plan be tailored to a family's needs. No service agreement was introduced and it was not clear that the father received one. He had clearly made progress by completing programs available to him while in prison. CPS policy requires staff to work with an incarcerated parent's social worker to identify programs and to make efforts to arrange visitation. The policy also allows them to extend the time for completing a service plan. The court held that CPS failed to follow its own policy regarding incarcerated parents.

XI. ADOPTION

Adoption of Hines v. Caldwell, 421 So. 3d 1240 (Miss. 2025). The supreme court affirmed a chancellor's decision that adoption by foster parents, rather than relatives, was in a child's best interest. She had lived with them for three years, since she was two months old. The guardian ad litem testified that she was doing well in their care and that removal would be traumatic to her.

While she was living with the foster parents, CPS attempted relative placement for sixteen months without success. At that point, an aunt contacted CPS about custody. CPS changed its plan to adoption with a concurrent plan of relative placement. The parents' rights were terminated two months later. Four months later, the foster parents filed an adoption petition in chancery court and requested that the youth court transfer the case. CPS sought to dismiss or stay the chancery proceeding to allow CPS to pursue relative placement. The aunt also filed an adoption petition in chancery court. The chancellor found that it was in the child's best interest to remain with the foster parents, with whom she had lived almost her entire life.

The supreme court rejected the aunt's argument that the foster parents were contractually barred from seeking adoption while CPS was attempting to place the child with relatives. CPS is instructed to give relatives priority for foster care placement when it is in the child's best interest. MISS. CODE ANN. § 43-15-13(12)(h). In addition, the foster parents' contract stated that they agreed to cooperate with CPS's plan for placement. However, the statutes also provide that a court may place custody in "any person" if it finds that relative placement is not in the child's best interest. The foster parents were not barred by their contract from seeking adoption after the parents' rights were terminated, even though CPS chose to pursue placement with relatives. The paramount concern is the child's best interest. The court, not CPS, is charged with making that determination. The court also noted that relatives are not entitled to preferential treatment in adoptions.

XII. NAME CHANGE

Matter of the Petition of S.M.-B., 407 So. 3d 1050 (Miss. 2025). The supreme court affirmed a chancellor's dismissal without prejudice of a sixteen-year-old's petition for a name change. The minor, who was born female but identified as male, petitioned for the name change with the support of both parents. After an unrecorded bench conference, the chancellor entered an order dismissing the petition and stating that the petitioner should mature before the name change would be considered. The petitioner appealed, arguing that chancellors have no discretion to deny an uncontested petition for name change. MISS. CODE ANN. § 93-17-1(1) provides that chancellors have jurisdiction "upon the petition of any person to alter the names of such person." Language formerly requiring "good cause shown" for a name change was removed years ago.

The supreme court held that a chancellor may deny a minor's uncontested request for name change based on the child's best interest. The court acknowledged that ordinarily, a person is entitled to change their name if they do not have a fraudulent motive. However, in *Marshall v. Marshall*, 93 So. 2d 822 (Miss. 1957), the Mississippi Supreme Court distinguished name change cases involving minors, affirming a chancellor's decision that it was not in a boy's best interest to take his stepfather's name over his biological father's objections. Parents' right to make decisions regarding their children may be limited if their decision is not in the child's best interest and will jeopardize the child's health or safety. The court also noted that Mississippi law expresses a clear policy against children under eighteen receiving gender-transition medical treatment. Given that policy, the chancellor did not err in requiring that the minor mature before making this decision. One justice dissented, arguing that the record was too incomplete to determine the basis for the chancellor's decision. He argued that the case should be remanded for findings of fact, particularly since there was no consensus on what was said in the bench hearing.

XIII. CONSERVATORSHIP

In re Conservatorship of Mayberry, 425 So. 3d 514 (Miss. Ct. App. 2025). A wife of fifty years was appointed as her husband's conservator over the objections of their daughter and the man's siblings. The couple lived briefly with their daughter in California. While there, they both executed powers of attorney in favor of their daughter. The couple moved back to Mississippi when the relationship between the mother and daughter became contentious. However, the daughter continued to manage her father's financial and medical affairs from California. His wife filed a petition to revoke the power of attorney and appoint her as conservator. The daughter and her husband's siblings objected. The chancellor found that it was in his best interest to remain at home in his wife's care and appointed her conservator. His siblings agreed that he would want to remain at home. The GAL reported that he was well-cared for and the home was inviting and clean.

The daughter appealed, arguing that the court failed to consider that her father had given her power of attorney. She also argued that it was error to appoint a family member as conservator when there was family conflict. Instead, the court should have appointed the chancery clerk. The court of appeals affirmed. The chancellor did consider the power of attorney but found it was in the husband's best interest to revoke it. Nor is there a rule that a family member in conflict with others should not be appointed conservator.

XIV. JURISDICTION AND PROCEDURE

A. Chancery court jurisdiction over abuse and neglect

Taylor v. Fair, 431 So. 3d 785 (Miss. Ct. App. 2025). A chancery court lacked jurisdiction to hear a mother's emergency custody petition or her petition to modify a youth court's durable legal custody. After unsuccessful attempts to reunify the parents and child, the youth court awarded durable legal custody to the child's paternal grandmother. The chancellor properly held that the youth court had exclusive jurisdiction to modify the durable legal custody order. She declined to hear the mother's emergency petition alleging neglect by the custodial grandmother. The youth court has the same authority to hear emergency petitions as the chancery court. The court of appeals affirmed — a chancellor may hear allegations of abuse that first arise in chancery court but is not required to. The mother's chancery court divorce action had been inactive for over five years before she filed the emergency petition.

B. Jurisdiction over adoption

Matter of L.L.T., 426 So. 3d 257 (Miss. 2025). A divided supreme court hearing an interlocutory appeal affirmed a youth court's determination that it lacked jurisdiction over an aunt's petition to adopt four children. Mississippi DCPS removed the children from their parents in 2015 and placed them with their aunt, who moved with them to Florida. The parents' rights were termi-

nated in 2019. DCPS issued adoption packets, continued to provide financial support for the children, and maintained legal custody. The Mississippi GAL met with the children twice a month.

The aunt petitioned for adoption in the Warren County Chancery Court, which declined jurisdiction because the children lived in Florida. Florida DCPS counsel told the aunt that Florida lacked jurisdiction because Mississippi retained continuing jurisdiction. The aunt filed in Hinds County, which transferred the adoption back to Warren County. The Warren County Chancery Court again refused to hear the petition. At the aunt's request, the Warren County Youth Court entered a judgment declining to hear the matter because it lacked jurisdiction over adoptions. The supreme court agreed to hear the aunt's interlocutory appeal from youth court. Both the aunt and DCPS asserted that jurisdiction was proper in Warren County Chancery Court.

The majority affirmed — youth courts do not have authority to hear petitions for adoptions. Jurisdiction over adoption lies exclusively in chancery court. However, the court declined to find that jurisdiction was proper in Warren County Chancery Court and to remand the matter to that court. The sole issue before the court was whether the youth court had jurisdiction over adoption.

Four justices dissented, arguing that Mississippi Constitution Article 6, Section 147 allows the supreme court to remand a case to the proper court. They argued that the aunt's petition sufficiently raised the issue and noted that subject matter jurisdiction is an issue that may be raised by the court at any time.

K.S. v. M.D., 416 So. 3d 72 (Miss. 2025). The supreme court rejected a mother's argument that a chancery court lacked jurisdiction to terminate her parental rights. Her one-year-old child was removed from her care based on her drug use and failure to care for the child. The child was briefly returned to her after she completed a drug rehabilitation program but was removed eight months later when she relapsed. When the child was almost four years old, the mother's cousin and the cousin's husband, with whom the girl was living, petitioned in chancery court to adopt the child. The youth court transferred jurisdiction at the plaintiffs' request. The chancellor terminated the mother's parental rights based on abandonment, desertion, unfitness, and failure to provide. She argued on appeal that youth courts have exclusive jurisdiction over termination of parental rights after they have acquired jurisdiction over a neglected or abused child. The supreme court held that the statutes do not prevent a youth court from transferring jurisdiction. The court declined to create a rule apparently followed in some states that adoption proceedings should be stayed when a parent appeals termination of parental rights.

C. Service of process

Roach v. Roach, 419 So. 3d 446 (Miss. Ct. App. 2025). The court of appeals rejected a wife's argument that she was not properly served. Her husband, who was blind, filed suit for divorce based on habitual, cruel, and inhuman treatment after she left him and moved to Texas. She was served by certified mail at her daughter's home in Texas. When she objected that no complaint was

attached to the summons, the husband's attorney reissued summons and personally attached the complaint, even though he believed that the first summons included the complaint. She did not appear in the action, in which the court granted her husband a divorce. She did not appeal but subsequently filed a Rule 60(b) motion to set aside the judgment as void based on lack of service of process. She alleged that the second summons did not include a complaint, which the chancellor did not find credible. She also argued that service was improper because she was a Mississippi resident living temporarily in Texas. The chancellor found, however, that she had stated to her husband that she was moving to Texas, she took all her personal property and cleaned out the couple's bank accounts, and she remained in Texas over a year later.

The court of appeals affirmed, noting that nothing in the rules prohibits serving a Mississippi citizen who is physically out of the state by certified mail. The court also rejected her argument that the court should set aside the judgment because her prior attorney failed to answer the petition and, as a result, she was not notified of the hearing. Negligence on the part of one's attorney is not an excuse for failure to appear in an action when one has been properly served.

D. Rule 81(d) process

The Mississippi Supreme Court on July 8, 2026 entered an order granting the motion of the Supreme Court Advisory Committee on Rules to approve changes to Rules 4 and 81 of the Mississippi Rules of Civil Procedure. Under the new rules, matters formerly addressed under Rule 81(d) would be moved to a new subsection, Rule 4(i), "Procedures in Certain Matters and Actions." The new rule would continue the current procedure of designating certain matters as 30-day or 7-day matters for service with a special summons "returnable to a time and place certain" and "commanding the defendant or respondent to appear and defend at a specified date, time and place."

Petitions for determination of wrongful death beneficiaries are added to the 30-day matters. Paternity matters are moved from 30-day to 7-day matters. Section 3 of the proposed rule provides that a failure to answer will not be taken as confessed or subject to default. Parties may file counterclaims and crossclaims under M.R.C.P. 13, with service under Rule 5. No further process is required.

Section 5 changes the current procedure for continuing a hearing. A court may authorize its clerk or court administrator to set original hearings and to designate dates to continue the hearing to a later date. If a defendant appears at the initial setting, notice of later hearings are made under Rule 5. If a defendant who was properly served does not appear at the initial date set for hearing, no further notice is required. If a matter is not heard on the day set for hearing, it may be continued by order to a later day for hearing without additional summons.

Section 6 provides that Rule 5 notice is sufficient for temporary matters if the defendant was summoned to answer the complaint and for any motion for further proceedings including contempt of temporary orders and "other proceedings arising in connection with or out of the original action."

In Re: the Rules of Civil Procedure, 89-R-99001-SCT (Miss. June 8, 2026) (effective July 1, 2026).

May v. May, 410 So. 3d 1087 (Miss. Ct. App. 2025). The court of appeals reversed a contempt order in a pending divorce. The father, who was \$35,000 in arrears in child support, did not receive a Rule 81(d) summons for the contempt matter. The record on appeal was not complete. However, it appeared from the docket that he filed a petition for contempt in 2020 and his wife countered with a petition for contempt. After several continuances, an April 2023 order set the trial date for June 2023. The list of issues for the hearing included child support arrearages. His attorney objected that the father had not received a Rule 81(d) summons regarding contempt. The chancellor nonetheless found him in contempt and ordered him incarcerated until he paid \$10,000 toward the arrearage.

The court of appeals reversed the finding of contempt because the husband never received a Rule 81(d) summons, even though it was listed as an issue for trial. Actual notice cannot cure defective process. The issue was not waived — his attorney objected to hearing the matter based on lack of jurisdiction.

E. Continuances

Eaglin v. Burse, 425 So. 3d 1007 (Miss. Ct. App. 2025). The court of appeals reversed and remanded a chancellor's denial of a joint request for continuance. The father was granted temporary emergency custody of his nonmarital child. The mother's attorney sent discovery to the father's attorney, which was filed with MEC. The opposing attorney did not receive notice because of a typographical error in her email. When he did not receive a response prior to trial and in spite of a motion to compel, the mother's attorney filed a motion in limine to exclude testimony on matters related to the discovery. The father's attorney discovered the motions and discovery documents five days prior to trial. The attorneys agreed that neither had acted in bad faith and requested a continuance to allow discovery. The chancellor denied the motion for continuance. However, the chancellor denied the mother's request for a motion in limine and allowed the father to call undisclosed witnesses. The court awarded custody to the father, visitation to the mother, and ordered her to pay child support. The court of appeals reversed. Both attorneys agreed that there was no lack of good faith and that neither was able to present their case effectively without discovery. The mother's attorney was blindsided by witnesses of which he had no knowledge.

F. Failure to prosecute

Wilson v. Barnes-Wilson, 399 So. 3d 954 (Miss. Ct. App. 2025). An ex-wife's action against her former husband's current wife for alienation of affection and intentional infliction of emotional distress was dismissed for failure to prosecute. She took no action for over two years except to respond to the defendant's interrogatories. The defendant filed a motion for summary judgment.

ment, attaching the ex-husband's statement that his affections were alienated by the plaintiff's cruel and violent behavior. The plaintiff did not respond to the motion for summary judgment or the motion to dismiss for lack of prosecution. The court of appeals affirmed the trial court's dismissal. The plaintiff did nothing to move the action forward. Her conduct was purely reactive to steps taken by the defendant. She did not respond to the motion to dismiss until after it was granted.

G. Motion to set aside for fraud

Hodge v. Hodge, 2025 WL 2837224 (Miss. Ct. App. Oct 7, 2025). The court of appeals reversed a chancellor's order setting aside an irreconcilable differences divorce judgment based on fraud and claim splitting. The wife's attorney filed her initial petition for divorce based on fault grounds. The husband did not answer. One month later, the wife signed a joint complaint for irreconcilable differences divorce and a property settlement agreement prepared and filed by her husband's attorney. Her attorney was not involved in the process. The husband's attorney testified that he contacted her attorney who stated that he had no problem with her proceeding on her own. Her attorney testified that he was not contacted. One year after entry of the divorce decree (and after the husband's remarriage) the chancellor granted the wife's request to set aside the divorce. He found that it was fraud to obtain her signature and present the document in court without her attorney's knowledge and without informing the court of the prior filing. He noted that the rules of professional conduct prohibit a lawyer from contacting a represented person without their attorney's agreement.

The court of appeals reversed. The fact that the wife was represented and decided to sign a joint complaint and agreement on her own does not in itself prove duress or fraud, which require clear and convincing evidence. The notary testified that she did not appear to be under any duress on the two occasions when she signed documents. The court of appeals did, however, reject the husband's argument that the wife's Rule 60(b) motion to set aside for voidness was untimely. A judgment that is void may be set aside at any time.

Brister v. Martin, 413 So. 3d 636 (Miss. Ct. App. 2025). A chancellor properly set aside a child support judgment and ordered a new trial based on the mother's allegations that the father misrepresented his income. In a DHS proceeding in which neither parent was represented, the court found that the father's income was \$2,000 a month and set support at \$175. One month later, the mother requested modification based on the father's alleged fraud. The court granted her petition and set support at \$950 a month. The father filed a post-trial motion arguing the mother's motion was in essence a motion for new trial because there was no material change supporting modification. The court set aside both orders, stating that a new trial was required in the interest of equity. The court found that the father's income was \$2,500 a month and ordered support of \$350 a month. The father appealed, arguing that the court lacked authority to set the orders aside and that no material change in circumstances had occurred since the first order.

The court of appeals disagreed. Rule 60(b) provides that a court may relieve a party from a judgment if it is no longer equitable that the judgment apply prospectively or for any other reason justifying relief. The court had the authority to order a new trial based in part on his finding that the father had committed fraud by misrepresenting his income.

H. Appeals

1. Interlocutory orders

Crocker v. Daves, 409 So. 3d 1188 (Miss. Ct. App. 2025). A mother's appeal of an order awarding the father custody of three nonmarital children was not an appealable final order. The chancellor awarded custody but held the issue of child support in abeyance because the parties had not provided sufficient financial information. The order was interlocutory and not appealable because the judgment did not resolve all issues before the court. Nor was the order certified by the trial judge as an appealable order under Rule 54(b) of the Mississippi Rules of Civil Procedure.

Shandy v. Davis, 423 So. 3d 717 (Miss. Ct. App. 2025). The court of appeals dismissed an appeal from a chancellor's order denying a wife's motion to declare a prenuptial agreement void and unenforceable. The order certified the judgment as appealable under Rule 54(b), which allows a court to direct a final judgment "as to one or more but fewer than all of the claims" upon a finding that there is not just reason for delay. The Rule 54(b) certification was ineffective to make the judgment final. The chancellor merely decided whether the prenuptial agreement would be enforceable — it resolved an issue between the parties but did not resolve any claims in the matter.

Williams v. Williams, 415 So. 3d 1011 (Miss. Ct. App. 2025). The court of appeals dismissed a husband's appeal from an order granting his wife divorce based on habitual, cruel, and inhuman treatment. The chancellor bifurcated the trial, setting trial on issues related to equitable distribution several months after the divorce hearing. The husband appealed the grant of divorce prior to the second hearing. Entry of the judgment of divorce was not final and appealable because it did not settle all claims between the parties. There was no certification under Rule 54(b) to permit appeal based on entry of final judgment as to the issue of divorce.

2. Timeliness

Black v. Black, 403 So. 3d 131 (Miss. Ct. App. 2025). A mother failed to timely appeal a child support modification order. She refused to accept service twice and did not appear at the hearing on the father's motion to modify support. Prior to the hearing, she filed a pro se motion to dismiss by special appearance, arguing that the court lacked jurisdiction because service of process was not properly made. She did not appear at the hearing. The court denied her

motion to dismiss and granted the motion to modify support. Thirty days after the judgment, she filed a Rule 60(b) motion arguing that that service was not proper. One month after the chancellor denied her motion, she appealed the modification and the order denying her Rule 60(b) motion. Her appeal of the judgment was untimely — filing a Rule 60(b) motion more than 10 days after judgment does not toll the running of the appeal period. Her appeal was filed 98 days after the modification judgment. The court also held that the chancellor properly denied her Rule 60(b) motion, which relitigated matters raised at trial.

3. Relitigation on appeal

Roley v. Roley, 2025 WL 3011083 (Miss. Ct. App. Oct. 28, 2025). The court of appeals rejected a former husband's arguments on his third pro se appeal related to his divorce. He appealed from his second attempt to set aside the divorce in a Rule 60(b) motion. The husband appealed the denial of the first motion and made the same arguments included in the instant case. The court declined to address arguments finally disposed of in earlier appeals.

XV. ATTORNEYS' FEES

Sistrunk v. Sistrunk, 407 So. 3d 207 (Miss. 2025). The supreme court rejected a husband's argument that his wife was not entitled to attorneys' fees because she did not request them in the pleadings. An award of attorneys' fees is within the broad equitable powers of a chancellor hearing a divorce matter. The court stated that a general prayer for relief is sufficient notice of a request for fees in certain cases.

Cole v. Fish, 427 So. 3d 893 (Miss. Ct. App. 2025). The court of appeals reversed a chancellor's award of attorneys' fees in connection with an order of contempt. The total amount of the wife's attorneys' fee was \$9,213. The award of fees in the contempt matter did not separate fees associated with contempt and fees associated with a hearing on a child support escalation clause.

J.T.S. V. M.L.S., 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025). The court of appeals reversed an award of \$10,000 of attorneys' fees. The wife requested \$147,121 in fees for a contempt action that was litigated for two years. She was awarded a judgment of contempt for nonpayment of child support, insurance payments, medical costs, and property division payments. The chancellor found that her attorney was experienced, the fee reasonable, and some of the issues difficult. But he questioned the hours the attorney spent organizing records and receipts that the mother could have organized. The court of appeals pointed out that the format required by the court made it necessary for the attorney to organize the information. In addition, the chancellor did not indicate what a reasonable time would be for those tasks or which hours were permitted. The court held that it was error to reduce the fees so drastically without more explicit findings.

THE NEW CUSTODY?

JOINT CUSTODY AND EQUAL PARENTING TIME PRESUMPTION

THE NEW CUSTODY? JOINT CUSTODY AND EQUAL PARENTING TIME PRESUMPTION

I. THE STATUTE

The Mississippi legislature amended MISS. CODE ANN. § 93-5-24(2) to provide for a presumption in favor of joint custody. Under the amended statute (attached as Appendix A)

- There is a presumption that “joint custody and equally shared parenting time is in the best interest of the child.”
- A court’s order for equally shared parenting time shall “maximize the time each parent has with the child” and ensure the child’s best interest is met.
- A court that does not award joint custody with equal parenting time must document the reasons for deviation. If both parents petition for sole physical or legal custody in one parent, the court is not required to document the reasons for deviation.
- The presumption may be rebutted by a preponderance of the evidence.
- The presumption may be rebutted
 - Based on the parties’ agreement on *all issues* related to custody
 - If the court finds by a preponderance of the evidence that a parent’s absence, mental illness, substance abuse, or other circumstances are against the best interest of the child
 - If the court finds that one parent has a history of family violence as defined in subsection (7)
 - If one parent is a registered sex offender or in the custody of the Mississippi Department of Corrections, or *[based on] any other relevant factor* that the court deems material.
- The amendment applies to temporary and initial final orders entered after July 1, 2026.
- The amendment does not apply to modifications of custody orders (“shall not be applied to modifications of any custody orders entered before or after July 1, 2026”).

II. CHILD SUPPORT FORMULA: JOINT CUSTODY WITH EQUAL PARENTING TIME

The amended statute addresses calculation of child support if the court orders joint custody and equally shared parenting time. The court is to

- Calculate support for each parent under the child support guidelines as if the parent was the obligor
- Subtract the lesser amount from the larger award, and
- Order the higher-income parent to pay the difference between the two awards to the lower-income parent.
- The court may deviate from the formula if it determines that a deviation is in the best interest of the child.

The statute does not address calculation of child support if the court orders joint custody with unequal parenting time. It does not state whether the deviation factors set out in MISS. CODE ANN. § 43-19-103 apply to deviations from the formula.

III. OTHER STATES

A number of states recognize a presumption in favor of joint physical custody. Five have recently adopted a presumption in favor of joint custody with equal parenting time: Arkansas (2021), ARK. STAT. ANN. § 9-13-101; Florida (2023), FLA. STAT. ANN. § 61.13; Kentucky (2018), KY REV. STAT. ANN. § 403.270; Missouri (2023), MO. ANN. STAT. § 452.375, and West Virginia (2022), W. VA. CODE ANN. § 48-9-209.

Like the Mississippi statute, these statutes list rebuttal factors that reflect parental conduct or conditions associated with unfitness for custody (for example, domestic violence, abandonment, abuse or neglect, sexual abuse, mental illness, substance abuse, incarceration, commission of certain felonies). In addition, parental agreement to an arrangement other than joint custody rebuts the presumption. Some of the statutes, in contrast to the Mississippi statute, provide that the presumption applies at modification.

The situation in which the statute is likely to create a significant difference is where both parents are fit and bonded with their children. The Mississippi statute lists “other relevant factor[s]” in addition to those that indicate parental unfitness. A critical issue is what factors courts will consider as rebutting the presumption between fit parents. The Florida, Kentucky, Missouri, and West Virginia statutes list specific considerations other than unfitness (some similar to *Albright* factors) that a court may consider. West Virginia also lists factors relevant to equal parenting time. Arkansas, like Mississippi, only lists specific factors related to unfitness with an additional factor, “the best interests of the child.”

The list below highlights some of the factors listed for consideration in other states. It may be persuasive in a particular case to point out that other states adopting the presumption consider a factor “relevant.” Factors include

- Parents’ ability and willingness to work cooperatively (Florida)
- Child’s preference or wishes (Florida, Kentucky, Missouri)
- Parents’ wishes (Kentucky, Missouri)
- The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent (Kentucky, Missouri)
- The extent to which parental responsibilities will be delegated to third parties (Florida)
- Parents’ capacity to act in the child’s best interest rather than their own (Florida)
- Whether one parent has interfered with the other’s rights (West Virginia)
- Whether one parent has made false reports of domestic violence or child abuse (Florida, West Virginia)
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity (Florida)
- The geographic viability of shared custody (Florida)
- Moral fitness of the parents. (Florida)
- Mental and physical health of the parents (Florida, Kentucky, Missouri)
- The child’s home, school, and community record (Florida, Kentucky, Missouri)
- Parents’ motivation in seeking custody (Kentucky)
- The intention of either parent to relocate (Missouri)

JOINT CUSTODY and EQUAL PARENTING TIME PRESUMPTION

- The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests; (Missouri)
- The child's need for a frequent meaningful relationship with both parents and the ability of parents to actively perform their functions (Missouri)
- Parents' ability to provide routine, meet child's developmental needs, be involved in the child's life, and maintain an environment free of substance abuse (Florida)

In addition, the West Virginia statute includes a list of factors that may be considered in rebutting the presumption of equal parenting time. Some are similar to the Florida, Kentucky, and Missouri factors for rebutting joint custody:

- Whether a parent is willfully noncompliant with child support, unwilling to provide necessary medical treatment, has not been significantly involved in the child's life, or repeatedly leaves the child with others when he or she is available
- Whether a parent has a chronic illness that makes them unable to provide proper care
- Whether a parent lacks stable housing
- Whether the child has special needs that make sole custody more appropriate
- Whether the child is nursing and under six months or under the age of one and receives substantial nutrition through nursing
- Whether the child would be separated from siblings or prevented from bonding with them
- Whether equal time is impractical because of distance, the cost of transportation, the parent and child's schedules or would disrupt the child's education
- Whether equal time is contrary to the reasonable wishes of a child over the age of fourteen
- Whether the parents can work together
- Whether a parent will encourage a positive relationship with the other parent

Other features:

Arkansas. If one parent shows a pattern of willfully disrupting a joint-custody arrangement and the court cannot address the disruption through an order, the disruption may be considered a material change in circumstances and modify custody to primary custody in the nondisruptive parent.

Arkansas, Kentucky, and West Virginia: If the court finds the presumption is rebutted, the court should enter an order that maximizes the amount of time that each parent has with the child and is consistent with the child's best interest.

The presumption applies in modification of custody.

IV. MISSISSIPPI JOINT CUSTODY CASES

This section includes cases involving joint custody awards under the *Albright* factors. They reflect that the Mississippi appellate courts consider parental fitness a prerequisite for joint custody and that ability to cooperate and proximity are relevant factors in whether joint custody should be awarded.

A. Parental fitness

An award of joint custody is necessarily based on a finding that both parents are fit to be custodians of a child. A chancellor erred in awarding joint custody without conducting an *Albright* analysis, particularly because he failed to find that both parents were fit to have custody. *Robles v. Gonzalez*, 246 So. 3d 945, 952-53 (Miss. Ct. App. 2018) (both parents exhibited questionable behavior); *see also Weber v. Weber*, 229 So. 3d 746, 749 (Miss. Ct. App. 2017) (in denying joint custody, court noted that father failed to support his son during litigation and that his girlfriend shared a room with him and the child for a year); *cf. Rayner v. Sims*, 228 So. 3d 353, 357 (Miss. Ct. App. 2017) (father's six-year-old conviction for arson and a three-year-old positive test for marijuana did not disqualify him from joint custody).

In 2019, five court of appeals judges joined in a concurring opinion supporting a presumption that courts should award joint custody in cases in which the *Albright* factors are neutral, both parents are fit, and both request custody. *See Avants v. Hamilton*, 281 So. 3d 1035, 1043 (Miss. Ct. App. 2019) (Tindell, J., concurring).

B. Ability to cooperate

Probably the most-discussed joint custody factor under *Albright* was whether parents could work together. Some early cases emphasized that joint custody should not be awarded between parents who cannot work together cooperatively. In 2000, the Mississippi Supreme Court stated: “[T]he cardinal criterion for an award of joint custody is the agreement of the parties and their mutual ability to cooperate in reaching shared decisions in matters affecting the child’s welfare.” *Waller v. Waller*, 754 So. 2d 1181, 1184, n.1 (Miss. 2000) (quoting Vitauts M. Gulbis, Annot., *Propriety of Awarding Joint Custody of Children*, 17 A.L.R.4th 1013, 1016 (1982)); *see Lewis v. Lewis*, 974 So. 2d 265, 266 (Miss. Ct. App. 2008) (affirming chancellor’s denial of joint custody because parents could not communicate).

1. Joint custody to parents in conflict

In more recent cases, courts have been willing to grant joint custody in some cases, and appellate courts to affirm, in spite of animosity between parents. In some cases, the chancellor found that a child of high-conflict parents needed time with both parents. In others, the parents’ conflicts were not extreme or they showed an ability to share custody during their separation without adverse effects on their children.

The court of appeals affirmed a chancellor’s award of joint legal and physical custody to parents whose acrimonious divorce included allegations of manipulative and damaging behavior on both sides. The boy needed to rebuild his relationship with his mother and to maintain a strong relationship with his father. *Watts v. Watts*, 99 So. 3d 751, 761 (Miss. Ct. App. 2012); *see also Thornton v. Thornton*, 2025 WL 3638400, at *8 (Miss. Ct. App. Dec. 16, 2025) (court did not err in awarding joint custody to parents in acrimonious divorce; it was in children’s best interest to have extended time with both parents; parents had shared joint custody during the proceedings) (but awarding father decision-making authority in education and health matters). And a court did not err in awarding joint custody to parents who requested joint custody and agreed to attend parenting classes, even though they had some difficulty communicating. *Jackson v. Jackson*, 82 So. 3d 644, 647 (Miss. Ct. App. 2011) (twelve minutes between parents’ homes); *see also Keyes v. Keyes*, 134

So. 3d 388, 392-93 (Miss. Ct. App. 2014) (rejecting mother's argument that joint custody was not appropriate because parents disagreed over health insurance and baby's formula).

2. Joint custody denied based on conflict

Other recent cases refused to award joint custody between parents in conflict. See *Morland v. Morland*, 396 So. 3d 501, 508 (Miss. Ct. App. 2024) (properly declining to award joint physical custody to father who blocked mother's cellphone and was unwilling to cooperate at the level needed for joint custody); *Smith v. Smith*, 379 So. 3d 954, 963 (Miss. Ct. App. 2024) (permanent joint custody properly denied; couple was unable to cooperate during two years of temporary joint custody); *Cuccia v. Cuccia*, 90 So. 3d 1228, 1235-36 (Miss. 2012) (joint custody is not usually in a child's best interests when substantial animosity exists between the parents). The court of appeals affirmed a chancellor's modification of joint physical custody based on the parents' inability to co-parent, verbal altercations in the children's presence, and failure to work together on medical treatment and education. *Schmidt v. Schmidt*, 339 So. 3d 163, 175 (Miss. Ct. App. 2022) (finding that the children were negatively impacted by the conflict).

C. Geographic distance

Geographic distance is also an important factor, particularly for school-aged children. However, in some cases courts have ordered joint custody or allowed it to continue in spite of a move, by splitting custody between the school year and summer.

1. Joint custody for pre-school age children approved

Mississippi courts have approved joint physical custody of a child until school age, followed by sole custody in one parent. See *Daniel v. Daniel*, 770 So. 2d 562, 567 (Miss. Ct. App. 2000); *Johnson v. Smith*, 328 So. 3d 145, 159 (Miss. Ct. App. 2021) (affirming award of joint legal and physical custody for eleven months until child started school; father was to have physical custody after eleven months) (alternating every two weeks). The court of appeals affirmed a chancellor's award of alternating weeks of joint physical custody of children, aged three years and eleven months, to parents living in adjacent counties. *Keyes v. Keyes*, 134 So. 3d 388, 393-944 (Miss. Ct. App. 2014) (rejecting mother's argument that the award would cause litigation when the children were of school age).

2. Joint custody for pre-school age children denied

The court of appeals reversed a chancellor's award of joint custody of a child for alternating months until she was five, finding that the distance between Mississippi and San Antonio, Texas, made joint custody impractical. *Thames v. Thames*, 170 So. 3d 1264, 1267-68 (Miss. Ct. App. 2015). The court of appeals affirmed a chancellor's modification from joint physical custody to sole custody in the father when the mother moved eighty miles away. The move required weekly transfers of the four-year-old girl. *Pearson v. Pearson*, 11 So. 3d 178, 182 (Miss. Ct. App. 2009) (also stating that the arrangement would become unworkable when she started school). See *Jones v. Curtis*, 394 So. 3d 511, 517 (Miss. Ct. App. 2024) (child's reaching school age may in itself be a material change in circumstances allowing modification of joint custody).

3. Joint custody for school-aged children denied

In the majority of cases, courts decline to award joint custody of school-aged children between parent who do not live near each other. And when parents have joint custody and one moves, courts modify custody to sole custody in one parent. For example, a mother's post-divorce move that made continued joint physical custody impractical warranted modifying joint physical custody to sole custody in the father. *Pogue v. Pogue*, 126 So. 3d 967, 972 (Miss. Ct. App. 2013) (also finding a material change in actual custody; children were living with their father and visiting their mother on weekends). As the court of appeals noted, a "shared custody agreement between parents of a child of school age, living in two different states, would be quite difficult to maintain." *Elliott v. Elliott*, 877 So. 2d 450, 455 (Miss. Ct. App. 2003) (mother moved to Arizona without consulting father); *see also Franklin v. Winter*, 936 So. 2d 429, 431 (Miss. Ct. App. 2006) (500-mile move by joint custodial father was material change in circumstances). A joint custodian father's move from north Mississippi to Memphis was a material change requiring modification. The court awarded him sole custody because he was better able to provide childcare and had greater job stability. *Rinehart v. Barnes*, 819 So. 2d 564, 565-66 (Miss. Ct. App. 2002). And an agreement requiring weekly shared custody was modified when parents moved to different locations. *See Massey v. Huggins*, 799 So. 2d 902, 906 (Miss. Ct. App. 2001) (joint custody requiring four weekly exchanges impractical). Similarly, a mother's planned move from Jackson to Memphis was a material change in circumstances warranting transfer of custody to the father, who remained in Jackson. *Porter v. Porter*, 23 So. 3d 438, 447 (Miss. 2009). The court of appeals affirmed a chancellor's modification from joint physical custody to sole custody in the father when the mother moved eighty miles away. fact that she would soon begin school would make the arrangement unworkable. *Pearson v. Pearson*, 11 So. 3d 178, 182 (Miss. Ct. App. 2009).

4. Joint custody for school-aged children allowed

In some cases, however, courts have awarded or refused to modify joint custody of older children in spite of the parents' distance, by establishing an alternative schedule for parenting times. A chancellor's joint custody award between parents who lived four hours apart was affirmed; the child spent the school week with one parent and weekends and summers with the other. *Delozier v. Delozier*, 724 So. 2d 984, 986 (Miss. Ct. App. 1998) (custody to father during week and mother on weekends); *Collins v. Collins*, 20 So. 3d 683, 692-93 (Miss. Ct. App. 2008) (awarding joint physical custody between parents living in different towns in North Mississippi; mother to have custody during the school year and father during the summer). A chancellor properly modified a military couple's joint custody schedule when the father was assigned to eight years in Colorado. The chancellor found that the children would have greater stability by living with the father during the school year and the mother in the summers and on holidays. The court of appeals affirmed, noting that a custody schedule is similar to a visitation schedule, which may be modified when it is not working. *Scott v. Boudreaux*, 375 So. 3d 688, 693-94 (Miss. Ct. App. 2023) (also discussing material change/best interests test); *see also Domke v. Domke*, 305 So. 3d 1233, 1239-41 (Miss. Ct. App. 2020) (modifying custodial schedule based on mother's move but maintaining joint custody).

D. De facto change in custody as material change in circumstances

A mother's post-divorce move warranted modifying joint physical custody to sole custody in the father. The chancellor found a material change in circumstances based upon the parents' failure to follow the joint custody schedule — the children lived with their father during the weekend and visited their mother on weekends. *Pogue v. Pogue*, 126 So. 3d 967, 972 (Miss. Ct. App. 2013) (also finding a material change in actual custody; children were living with their father and visiting their mother on weekends).

E. Modification

The test for modifying joint custody to sole custody is the traditional material change in circumstances test. *Johnson v. Johnson*, 913 So. 2d 368, 370 (Miss. Ct. App. 2005); *see also Todd v. Todd*, 216 So. 3d 1178, 1181-82 (Miss. Ct. App. 2017) (chancellor erred in finding that the parents' agreement to joint custody could be modified without finding a material change in circumstances). The test for modifying a joint custody schedule is the same as visitation — that the schedule is not working and changing it is in the child's best interest. *See Gaddis v. Wilkerson*, 235 So. 3d 1446, 1449 (Miss. Ct. App. 2018).

Mississippi cases conflict with regard to whether a drastic reduction in a custodial parent's time is a *de facto* modification to sole custody that requires proof of a material change in circumstances. *Compare Domke v. Domke*, 305 So. 3d 1233, 1239-41 (Miss. Ct. App. 2020) (modifying custodial schedule based on mother's move but maintaining joint custody) (rejecting mother's argument that modifying her custodial time from every other week to summers, spring and Thanksgiving breaks, and half of Christmas break amounted to *de facto* sole physical custody in the father; she received significant periods of physical custody) *with Briggs v. Weary*, 396 So. 3d 1246, 1256-57 (Miss. Ct. App. 2024) (chancellor erred in reducing a joint custodial father's time from fifteen days a month to eight without finding a material change in circumstances adverse to the child; the order was the equivalent of changing from joint custody to sole physical custody in the mother).

V. EQUAL PARENTING SCHEDULES

Family law attorneys from Kentucky and Arkansas report that there are several models used for standard visitation. The sample parenting agreement from Arkansas (Appendix B) includes examples of commonly used schedules. Attorneys indicated that schedules with more frequent transfers tend to be used for younger children, less frequent but more often than weekly for school-aged children, and week on/week off for high school children. Of course, parties are free to design their own schedules for approval by the court.

VI. QUESTIONS ABOUT THE CUSTODY PRESUMPTIONS

THE BIG QUESTION: WHAT FACTORS WILL BE RELEVANT TO REBUT THE PRESUMPTION OF JOINT CUSTODY AND EQUAL PARENTING? A sub-question is whether the statute creates one presumption in favor of joint custody with equal parenting or two — a presumption in favor of joint custody and

JOINT CUSTODY and EQUAL PARENTING TIME PRESUMPTION

a presumption in favor of equal parenting? If so, will it take less to rebut the presumption of equal parenting than to rebut the presumption of joint custody? Another is what role *Albright* will play under the presumption. And, what range might you expect to see in judge's application of the presumption?

IMPACT ON PRACTICE: How will this alter the advice you give clients? How will you prepare your case? Will you be more likely to mediate or try to reach a negotiated settlement? Will it increase the use of GALs?

TEMPORARY CUSTODY: The presumption applies to temporary orders of custody. Will courts regularly award joint custody in temporary hearings (except in obvious cases or parental unfitness or parental choice) because the presumption has not been rebutted? How will the temporary custody order affect the final order?

MODIFICATION: The presumption does not apply to modification actions. But what if it's a modification of an order entered after the joint custody presumption? If parents shift away from equal time sharing, is that a basis for modifying custody to sole custody? Or just modifying the schedule?

OTHER POTENTIAL EFFECTS: Will we see parents seeking joint custody to reduce child support obligations? Will this shift what is considered "standard" visitation for sole custody cases to more time for the noncustodial parent? What default or standard schedules will courts use for equal parenting time in the absence of parental agreement? Will courts be more likely to assign one parent as a tiebreaker on certain issues? Is the likely immediate change an increase in joint physical custody with unequal parenting time? If so, what impact does that have on relocation? decision-making?

APPENDIX A

MISS. CODE ANN § 93–5–24.

(1) Custody shall be awarded as follows according to the best interests of the child:

(a) Physical and legal custody to both parents jointly pursuant to subsections (2) through (7).

(b) Physical custody to both parents jointly pursuant to subsections (2) through (7) and legal custody to either parent.

(c) Legal custody to both parents jointly pursuant to subsections (2) through (7) and physical custody to either parent.

(d) Physical and legal custody to either parent pursuant to subsections (2) through (7).

(e) Upon a finding by the court that both of the parents of the child have abandoned or deserted such child or that both such parents are mentally, morally or otherwise unfit to rear and train the child the court may award physical and legal custody to:

(i) The person in whose home the child has been living in a wholesome and stable environment; or

(ii) Physical and legal custody to any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

In making an order for custody to either parent or to both parents jointly, the court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2)(a)(i) There shall be a rebuttable presumption that joint custody and equally shared parenting time is in the best interest of the child. If the court grants joint custody and equally shared parenting time, the court shall construct a parenting time schedule which maximizes the time each parent has with the child and ensures the best interest of the child is met.

(ii) The presumption created in subparagraph (i) of this paragraph shall be rebuttable by a preponderance of the evidence. A court that does not award joint custody with equally shared parenting time shall document the reasons for deviating from the presumption.

(b) The presumption that joint custody is in the best interest of the child may be rebutted:

(i) If the parties have reached an agreement on all issues related to custody of the child or children;

(ii) If the court finds by a preponderance of the evidence that the other parent's absence, mental illness, substance abuse or such other circumstances are against the best interest of the child or children;

(iii) If the rebuttable presumption described in subsection 7(a) of this section is established by the evidence;

(iv) If one (1) parent is a registered sex offender or in the custody of the Mississippi Department of Corrections; or

(v) Any other relevant factor that the court deems material.

(c) To calculate child support for joint custody with equally shared parenting time, unless the court determines a deviation from this paragraph is in the best interest of the child, the court shall:

(i) Calculate a child-support award under the guidelines of Section 43–19–101 for each parent as if each parent was the obligor;

(ii) Calculate the difference in the two (2) awards by subtracting the lesser award from the larger award; and

JOINT CUSTODY and EQUAL PARENTING TIME PRESUMPTION

(iii) Order the difference in the two (2) awards to be paid by the parent who has the higher adjusted gross income to the parent with the lower adjusted gross income

(d) Upon petition of both parents, the court may grant legal and/or physical custody to one (1) parent without documenting a reason for deviation.

(e) The rebuttable presumption of joint custody authorized by this subsection (2) shall only apply to initial temporary custody orders and initial final custody orders entered by this court after July 1, 2026. The presumption authorized by this subsection shall not be applied to modifications of any custody orders entered before or after July 1, 2026.

(3) (a) For the purposes of this section, “joint custody” means joint physical and legal custody.

(b) For the purposes of this section, “physical custody” means those periods of time in which a child resides with or is under the care and supervision of one (1) of the parents.

(c) For the purposes of this section, “joint physical custody” means that each of the parents shall have significant periods of physical custody with parenting time to be awarded as set forth in subsection (2).

(d) For the purposes of this section, “legal custody” means the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child.

(e) For the purposes of this section, “joint legal custody” means that the parents or parties share the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child. An award of joint legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and to confer with one another in the exercise of decision-making rights, responsibilities and authority.

An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

(4) Any order for joint custody may be modified or terminated upon the petition of both parents or upon the petition of one (1) parent showing that a material change in circumstances has occurred.

(5) There shall be no presumption that it is in the best interest of a child that a mother be awarded either legal or physical custody.

(6) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, shall not be denied to a parent because the parent is not the child’s custodial parent.

[Omitting section 7 dealing with the presumption against custody to a parent with a history of family violence]

APPENDIX B

ARKANSAS SAMPLE PARENTING TIME SCHEDULE

JOINT CUSTODY AGREEMENT

State of Arkansas — Circuit Court, Domestic Relations Division

Case No.: [_____]

In the Circuit Court of [_____] County, Arkansas

I. PARTIES AND CHILDREN

A. Parents

Parent A: [_____]

Address: [_____]

Phone: [_____]

Email: [_____]

Parent B: [_____]

Address: [_____]

Phone: [_____]

Email: [_____]

B. Minor Children

Child's Full Legal Name	Date of Birth	Age	Social Security (last 4)
[_____ _____]	[_]/[_]/[_]	[__]	XXX-XX-[__]
[_____ _____]	[_]/[_]/[_]	[__]	XXX-XX-[__]
[_____ _____]	[_]/[_]/[_]	[__]	XXX-XX-[__]

C. Effective Date

This Joint Custody Agreement ("Agreement") shall take effect on [_]/[_]/[_] and shall be filed with the Circuit Court of [_____] County, Arkansas, Domestic Relations Division, for incorporation into the ☐ Decree of Divorce ☐ Paternity Order ☐ Custody Order.

II. ACT 604 JOINT CUSTODY PRESUMPTION — STATUTORY FRAMEWORK

A. Legislative Policy

The Arkansas General Assembly enacted Act 604 of 2021, codified at Ark. Code Ann. § 9-13-101(a)(2)(B), establishing a rebuttable presumption that **joint custody is in the best interest of the child** in all original custody determinations arising from divorce or paternity proceedings. Arkansas defines “joint custody” as “the approximate and reasonable equal division of time with the child by both parents.” Ark. Code Ann. § 9-13-101(a)(2)(A).

B. Equal Time as the Goal

The Arkansas Supreme Court confirmed in *Heileman v. Cahoon* (2024) that “an equal division of time is the goal” under Act 604. This Agreement is drafted to achieve that legislative objective.

C. Best Interest Standard

Consistent with Ark. Code Ann. § 9-13-101(a)(1)(A), custody shall be awarded “solely in accordance with the welfare and best interest of the child” and “without regard to the sex of a parent.” Both parents affirm that this joint custody arrangement serves the children’s best interests.

III. JOINT LEGAL CUSTODY

A. Shared Decision-Making Authority

Both parents shall share joint legal custody and shall have equal authority and responsibility to make **major decisions** regarding the children, including:

1. **Education** — school enrollment, choice of public/private/charter/home school, special education services, IEPs, 504 plans, tutoring, gifted programs, grade retention or advancement
2. **Healthcare** — selection of physicians, dentists, and specialists; non-emergency medical procedures; ongoing medications; elective procedures (orthodontics, surgery); vaccinations
3. **Mental Health** — therapy, counseling, psychiatric treatment, psychological evaluations
4. **Religious Upbringing** — church/faith community affiliation, religious education, sacraments and ceremonies
5. **Extracurricular Activities** — sports teams, music lessons, clubs, camps, and other organized activities requiring significant time or financial commitment

B. Consultation Requirement

Before making any major decision, the initiating parent shall:

1. Provide written notice to the other parent describing the proposed decision

-
2. Allow at least seven (7) calendar days for the other parent to respond (except in emergencies)
 3. Engage in good-faith discussion aimed at reaching mutual agreement
 4. Document the agreed-upon decision in writing (email or co-parenting application is sufficient)

C. Emergency Decisions

The parent with physical custody at the time of an emergency may authorize emergency medical treatment or take any action necessary to protect the child's immediate health and safety. That parent shall notify the other parent as soon as practicable, and in no event later than twenty-four (24) hours after the emergency.

D. Routine Day-to-Day Decisions

Each parent shall make routine, day-to-day decisions during that parent's scheduled parenting time, including meals, bedtime, homework supervision, hygiene, discipline, social activities, and minor healthcare matters (over-the-counter medications, treatment of minor illness).

E. Deadlock Resolution

If the parents cannot reach agreement on a major decision after good-faith consultation:

1. They shall submit the matter to mediation per Section IX
2. If mediation fails, either parent may petition the Circuit Court for resolution
3. The Court may appoint an attorney ad litem under Ark. Code Ann. § 9-13-106 to investigate and recommend a resolution in the child's best interest

IV. JOINT PHYSICAL CUSTODY — PARENTING SCHEDULE

A. Approximately Equal Time

Consistent with Act 604 and the *Heileman v. Cahoon* directive, the following schedule provides the approximate and reasonable equal division of time with the children by both parents.

B. Regular Parenting Schedule (Select One)

☐ **Schedule A — Week-on/Week-off (7/7)**

Parent A: Sunday at [_____] ☐ AM ☐ PM through the following Sunday at [_____] ☐ AM ☐ PM

Parent B: The alternating week on the same schedule

Exchanges occur on Sunday at [_____] (location)

☐ **Schedule B — 2-2-3 Rotation**

- Monday and Tuesday: Parent A

- Wednesday and Thursday: Parent B

-
- Friday through Sunday: Alternating (Parent A in Week 1; Parent B in Week 2)
 - Exchanges at [] at [] ☐ AM ☐ PM

☐ **Schedule C — 5-2-2-5 Rotation**

- Monday and Tuesday: Parent A (every week)
- Wednesday and Thursday: Parent B (every week)
- Friday through Monday: Alternating (Parent A in Week 1; Parent B in Week 2)
- Exchanges at [] at [] ☐ AM ☐ PM

☐ **Schedule D — 3-4-4-3 Rotation**

- Week 1: Parent A has Monday through Wednesday; Parent B has Thursday through Sunday
- Week 2: Parent A has Thursday through Sunday; Parent B has Monday through Wednesday
- Exchanges at [] at [] ☐ AM ☐ PM

☐ **Schedule E — Custom Equal-Time Schedule**

[]
[]
[]

C. School-Day Exchanges

On school days, exchanges shall occur at the children's school:

- The parent ending parenting time drops the children at school in the morning
- The parent beginning parenting time picks the children up from school or after-school care at [] PM

On non-school days, exchanges occur at [] at the time specified above.

D. Summer Schedule

- ☐ The regular schedule continues through the summer
- ☐ Modified summer schedule: []

Each parent shall have [] weeks of uninterrupted vacation time during the summer with the children, with written notice to the other parent by May 1. Parent [] selects first in even-numbered years.

V. HOLIDAY AND SPECIAL OCCASION SCHEDULE

Holidays and special occasions supersede the regular parenting schedule.

A. Major Holidays — Alternating Annually

Holiday	Parent A (Even Years)	Parent B (Even Years)	Times
New Year's Eve/Day	☐	☐	Dec 31, 6:00 PM — Jan 1, 6:00 PM
Martin Luther King Jr. Day Weekend	☐	☐	Friday 6:00 PM — Monday 6:00 PM
Presidents' Day Weekend	☐	☐	Friday 6:00 PM — Monday 6:00 PM
Spring Break (per school calendar)	☐	☐	Last school day 3:30 PM — day before school resumes 6:00 PM
Easter Weekend	☐	☐	Friday 6:00 PM — Sunday 7:00 PM
Memorial Day Weekend	☐	☐	Friday 6:00 PM — Monday 6:00 PM
Independence Day	☐	☐	July 3, 6:00 PM — July 5, 9:00 AM
Labor Day Weekend	☐	☐	Friday 6:00 PM — Monday 6:00 PM
Thanksgiving Break	☐	☐	Wednesday 6:00 PM — Sunday 6:00 PM
Christmas Eve	☐	☐	Dec 23, 6:00 PM — Dec 24, 9:00 PM
Christmas Day	☐	☐	Dec 25, 9:00 AM — Dec 26, 9:00 AM
Winter Break (remaining days)	☐ Split	☐ Split	Per school calendar

In odd-numbered years, the allocation reverses.

B. Non-Alternating Days

- **Mother's Day:** Children with Mother every year, Saturday 9:00 AM — Sunday 7:00 PM
- **Father's Day:** Children with Father every year, Saturday 9:00 AM — Sunday 7:00 PM
- **Each Parent's Birthday:** Children with that parent from 5:00 PM — 8:00 PM
- **Each Child's Birthday:** ☐ Shared celebration ☐ Alternating years ☐ Non-scheduled parent gets 2 hours (5:00 PM — 7:00 PM)

C. Arkansas-Specific Observances

- **Arkansas statewide school breaks** (e.g., fall break, teacher in-service days): ☐ Follow regular schedule ☐ Alternating ☐ Split
-

VI. EXCHANGES AND TRANSPORTATION

A. Exchange Location

Primary exchange location: [_____]

Alternate exchange location: [_____]

(Recommended neutral locations in Arkansas include school campuses, public library branches, police department lobbies, or other agreed-upon public places.)

B. Transportation

- ☐ The receiving parent picks up the children
- ☐ The delivering parent drops off the children
- ☐ Parents share transportation equally
- ☐ Other: [_____]

C. Exchange Conduct

- Both parents shall be punctual. A parent running more than fifteen (15) minutes late shall notify the other parent immediately.
- Exchanges shall be brief, respectful, and child-focused. Extended discussions between parents should occur at another time.
- Neither parent shall bring a third party to exchanges who is the subject of conflict unless mutually agreed.

D. Missed Parenting Time

If a parent fails to exercise scheduled parenting time without notice, the other parent is not obligated to hold the time open beyond thirty (30) minutes. Chronic failure to exercise parenting time (three or more instances in sixty days) may constitute grounds for modification under Ark. Code Ann. § 9-13-101(a)(5).

VII. COMMUNICATION

A. Between Parents

Parents shall communicate about the children through: ☐ email ☐ text message ☐ co-parenting application (OurFamilyWizard, Talking Parents, or similar) ☐ other: [_____]

All communication shall be respectful, business-like, and child-focused.

Response time: Each parent shall respond to non-emergency communications within twenty-four (24) hours.

B. Parent-Child Communication

The parent not currently exercising parenting time may communicate with the children by phone or video call:

- Time: [_____] (e.g., 7:00 PM nightly)
- Duration: Up to [_____] minutes
- The custodial parent shall ensure the children are available, provide privacy, and not monitor the call
- Children may initiate calls to either parent at any reasonable time

C. Information Sharing

Both parents shall have full and equal access to:

- School records, online portals, report cards, teacher communications
- Medical, dental, and mental health records and providers
- Extracurricular activity schedules and communications
- Emergency contact lists (both parents shall be listed)

Each parent shall promptly provide the other with copies of report cards, medical records, school notices, and similar documents within five (5) days of receipt.

VIII. RELOCATION

A. Notice Requirement

A parent intending to relocate shall provide written notice to the other parent at least sixty (60) days before the proposed move. The notice shall include:

1. The new address and telephone number
2. Date of the proposed move
3. Reason for the relocation

CHILD SUPPORT GUIDELINES, DEVIATIONS, AND ADD-ONS: A REFRESHER COURSE

CHILD SUPPORT GUIDELINES, DEVIATIONS, AND ADD-ONS: A REFRESHER COURSE

I. PERSONS LIABLE FOR CHILD SUPPORT

A. Parents

Biological, legal, or adoptive noncustodial parents may be ordered to pay child support. The fact that a noncustodial father adopted his wife's natural child only three months before their separation did not diminish his ongoing duty of support. *Adams v. Adams*, 467 So. 2d 211, 214 (Miss. 1981); see *Hackler v. Hackler*, 296 So. 3d 773, 780 (Miss. Ct. App. 2020) (chancellor erred in failing to order adoptive father to pay child support for his wife's biological child). Unmarried parents have the same duty of support as married parents. MISS. CODE ANN. § 93-9-7. And the Mississippi Supreme Court held that it is unconstitutional to treat men and women differently for purposes of child support, *Bailey v. Bailey*, 724 So. 2d 335, 338 (Miss. 1998); see *Chroniger v. Chroniger*, 914 So. 2d 311, 316 (Miss. Ct. App. 2005) (reversing order relieving noncustodial mother of support pursuant to agreement).

B. Nonparents

Persons who act in loco parentis to a child — caring for and supporting the child in their home — do not have a continuing duty after the period of support has ended. *Dennis v. Dennis*, 234 So. 3d 371, 378 (Miss. 2017) (step-great-grandfather who acted in loco parentis during his marriage to the child's great-grandmother was not legally obligated for child support at divorce, absent agreement). However, recent cases suggest that a person who seeks custody of or visitation with a child based on in loco parentis may be ordered to pay support. See *Brownlee v. Powell*, 368 So. 3d 1268, 1273-74 (Miss. 2023).

A person who would not otherwise be liable for support may obligate themselves by agreement. A divorcing step-great-grandfather who voluntarily agreed to pay support as a contractual obligation was not entitled to set the agreement aside absent fraud or overreaching. *Dennis v. Dennis*, 234 So. 3d 371, 378 (Miss. 2017) (that he mistakenly believed he had an obligation to pay support did not establish fraud or overreaching; nor did the fact that the parents had an ongoing support obligation alter his contractual obligation).

C. Stepparents

In some states, stepparents have been required to pay child support at divorce based on their agreement or based on estoppel — usually because the biological parent married them based on a promise to support their children. The Mississippi Supreme Court mentioned in dicta in 1998 that stepparents may be liable for support based on agreement or if support has been provided under circumstances that caused the natural parent to rely detrimentally on the support. *Logan v. Logan*, 730 So. 2d 1124, 1126 (Miss. 1998).

CHILD SUPPORT GUIDELINES

D. Nonparent custodians

Parents may be ordered to pay support to nonparent custodians of their child. Parents who were found to be unfit were ordered to pay support to the child's paternal grandmother, who had custody during the school year, and maternal great-grandparents, who had custody during the summer. *Darby v. Combs*, 229 So. 3d 136, 147-48 (Miss. Ct. App. 2016).

II. THE CHILD SUPPORT GUIDELINES

The Mississippi child support guidelines create a rebuttable presumption that child support should be set at a percentage of a payor's adjusted gross income (14% for 1 child, 20% for 2, 22% for 3, 24% for 4, and 26% for 5 or more). MISS. CODE ANN. § 43-19-101(1).

A. Calculation of gross income

Gross income includes "all potential sources that may reasonably be expected to be available to the absent parent." Gross income includes

- state and federal benefits received by the parent
- retirement or investment income
- alimony
- consistent (not one-time) overtime, bonuses, and income from second jobs
- employment or military benefits, such as a car, or housing allowance.

MISS. CODE ANN. § 43-19-101(3)(a).

1. Spouse's income. Gross income does not include child support paid to the obligor or a second spouse's income. MISS. CODE ANN. § 43-19-101(3)(a). However, a second spouse's payments that reduce the payor's expenses may be considered. *Hornsby v. Hornsby*, 353 So. 3d 507, 512 (Miss. Ct. App. Dec. 2022).

2. Family gifts. In two cases, a payor's support obligation was based in part on regular, established payments from the payor's family. *Huseth v. Huseth*, 135 So. 3d 846, 854-57 (Miss. 2014) (parents provided noncustodial mother with \$3,000 a month for twenty years); *Houston v. Houston*, 121 So. 3d 283, 297 (Miss. Ct. App. 2013) (father's parents provided him with regular support, including a rent-free home, a car, insurance, a phone, cable, and a debit card). *But cf. Smith v. Smith*, 318 So. 3d 484, 494-95 (Miss. Ct. App. 2021) (chancellor did not err in refusing to order support based on parents' regular and substantial gifts; distinguishing the two previous cases as involving more regular stipends.)

3. SSI. Some states exclude Supplemental Security Income payments from gross income for purposes of child support. In a 2010 case, the Mississippi Supreme Court held that, while SSI benefits may not be subject to an income-withholding order, a chancellor has discretion to consider or disregard SSI benefits for purposes of child support. *Barnes v. Dep't of Human Servs.*, 42 So. 3d 10, 17 (Miss. 2010).

4. Anticipated income. Gross income should be based on current income, not speculation about future income. A court properly based a father's support on his current income as head coach and not on his estimate of future income when he stepped down as head coach in five months.

Harden v. Scarborough, 240 So. 3d 1246, 1256 (Miss. Ct. App. 2018). *See also Thomas v. Thomas*, 281 So. 3d 1191, 1207 (Miss. Ct. App. 2019) (rejecting mother’s argument that the father’s income should have included an additional \$1,100 for two mobile homes that he had recently purchased and would be able to rent).

At one time, this rule created a catch-22 for payors who were later denied modification because the change in income was “foreseeable.” *Dill v. Dill*, 908 So. 2d 198, 202-03 (Miss. Ct. App. 2005) (modification based on income reduction denied because both parties were aware at time of divorce that defendant planned to leave Marine Corps). That issue was resolved in *Alford v. Alford*, 298 So. 3d 983, 989-90 (Miss. 2020), in which the supreme court held that the issue is not whether an event is foreseeable but whether the impact of the event on the parties was foreseeable.

B. Imputing income

1. Findings of fact

Courts may impute income to a payor who is not working or who is working below what the court believes to be their capacity. A court’s imputation of income must be based on findings of fact. *Ellzey v. White*, 922 So. 2d 40, 42 (Miss. Ct. App. 2006). Imputed income must be adjusted by the deductions set out in the statute. *Osborn v. Osborn*, 724 So. 2d 1121, 1125 (Miss. Ct. App. 1998).

In 2022, the legislature amended the support guidelines to prohibit imputing income at a standard level (such as minimum wage). The court may rely on evidence of past earnings and employment. If those are not available, the court may look to such factors as “assets, residence, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the obligated parent, prevailing earnings level in the local community, and other relevant factors in the case.” MISS. CODE ANN. § 43-19-101(5).

2. Voluntariness

A payor’s loss of job or income does not prevent imputation if the job loss was voluntary. *Tolliver v. Tolliver*, 334 So. 3d 1228, 1231-32 (Miss. Ct. App. 2022) (proper to impute income to father who was fired for working other jobs while on health leave for Covid). *Pullis v. Linzey*, 753 So. 2d 480, 484 (Miss. Ct. App. 1999).

3. Incarceration

A 2023 Mississippi statute provides that incarceration may not be considered “as intentional or voluntary unemployment or underemployment when establishing or modifying a child-support order.” MISS. CODE ANN. § 43-19-105.

4. Lifestyle inconsistent with income

Courts may also impute income based on a finding that the payor’s income is inconsistent with his or her lifestyle and spending. *Gussio v. Gussio*, 371 So. 3d 734, 746-47 (Miss. Ct. App.

2023) (not error to award support based on net income of \$9,091 even though father's stated income was \$4,347; his income was inconsistent with his spending); *Ballard v. Ballard*, 843 So. 2d 76, 79 (Miss. Ct. App. 2003) (father bought new horses and trailer on alleged income of \$6,000 a year).

C. Adjustments to income

Gross income is adjusted by deducting

- the *correct* amount of federal, state, and local taxes
- Social Security and Medicare contributions
- mandatory retirement and disability contributions
- existing child support awards
- in the court's discretion, support for children living with the payor.

MISS. CODE ANN. § 43-19-101(3)(b)-(d).

1. Non-mandatory deductions. Gross income is not reduced based on non-mandatory retirement, health insurance, or other voluntary reductions in income. MISS. CODE ANN. § 43-19-101(3)(b).

2. Later-born children living in payor's home. The Mississippi discretionary adjustment provision does not distinguish between earlier- and later-born children. However, the supreme court denied a noncustodial mother a deduction for a newborn, stating that parents may not reduce support obligations to prior children. *Bailey v. Bailey*, 724 So. 2d 335, 336 (Miss. 1998); *see also Turner v. Turner*, 744 So. 2d 332, 338 (Miss. Ct. App. 1999) ("addition to a noncustodial parent's family cannot be said to reasonably affect the ability of the parties to abide by the terms of the original divorce decree"). However, several cases suggest in dicta that the provision may be applied to later-born children. *See Bustin v. Bustin*, 806 So. 2d 1136, 1138 (Miss. Ct. App. 2001) (stated that chancellors have discretion while affirming chancellor's refusal to reduce support for later-born children); *Shepard v. Shepard*, 769 So. 2d 242, 246 n.3 (Miss. Ct. App. 2000) (stating, in cases involving later-born children, that statute gives a chancellor discretion to reduce gross income for children living in the payor's home).

D. Income below \$10,000 a year or above \$100,000 a year

If a payor's adjusted gross income is below \$10,000 a year or above \$100,000 a year, the court "shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable." MISS. CODE ANN. § 43-19-101(4).

1. Below \$10,000. The section also states that the court "shall take into account the basic subsistence needs of the obligated parent who has a limited ability to pay." *Id.* The section does not state that "limited ability to pay" means payors with AGI below \$10,000. However, the requirement is included in the subsection that discusses income below and above the guideline amounts.

2. Above \$100,000. The appellate courts have affirmed support orders applying the guidelines to adjusted income above \$100,000, emphasizing that courts may consider the family's

standard of living in setting child support. See *Lageman v. Lageman*, 313 So. 3d 1075, 1082-83 (Miss. Ct. App. 2021) (\$21,000 monthly AGI); *Crittenden v. Crittenden*, 129 So. 3d 947, 958-59 (Miss. Ct. App. 2013) (physician father ordered to pay \$4,300 in support for his five sons); *Black v. Black*, 240 So. 3d 1226, 1237-38 (Miss. Ct. App. 2017) (child support based on adjusted monthly income of \$46,353); *Lacoste v. Lacoste*, 197 So. 3d 897, 901 (Miss. Ct. App. 2016) (\$4,280 in base support).

In other cases, the court has affirmed support orders below the guidelines. *Moulds v. Bradley*, 791 So. 2d 220, 226 (Miss. 2001) (award for one child from payor with \$1 million annual income need not be 14%); *Descher v. Descher*, 304 So. 3d 620, 626-27, 635 (Miss. Ct. App. 2020) (father with \$71,000 adjusted monthly income ordered to pay \$7,500 in monthly child support, greater than children's listed expenses); *In re C.T.*, 228 So. 3d 311, 316-17 (Miss. Ct. App. 2017) (father with net annual income of \$232,641 ordered to pay child support of \$1,500, rather than \$2,700 under the guidelines); *Williams v. Williams*, 56 So. 3d 1277, 1280-81 (Miss. Ct. App. 2011) (support set at one half of the statutory percentages for a payor with adjusted monthly income of \$10,531).

III. DEVIATIONS FROM THE GUIDELINES

A court may deviate from the presumptively correct amount of support based on statutory factors. The deviation must be supported by written findings of fact explaining why the presumptively correct amount is inappropriate. MISS. CODE ANN. § 43-19-103; *Thompson v. Thompson*, 894 So. 2d 603 (Miss. Ct. App. 2004). The deviation criteria include

- a child's extraordinary medical, psychological, dental, or educational expenses
- other special needs of the child
- shared parenting arrangements
- the age of the child
- independent income of the child
- spousal support to the custodial parent
- total available assets of the parents
- seasonal variations in income or expenses of one or both spouses
- payment by the obligee of childcare expenses necessary for their employment or • because of their disability and
- any other adjustment needed to achieve an equitable result.

MISS. CODE ANN. § 43-19-103.

A. Child's extraordinary medical, educational, or other needs

Very few cases discuss a child's medical needs as a deviation, possibly because medical expenses and health insurance are usually treated as add-ons to basic support and not a deviation. In at least one case, however, a noncustodial parent's payment of health insurance was part of the reason for allowing deviation below the guidelines. *Hults v. Hults*, 11 So. 3d 1273, 1278-79 (Miss. Ct. App. 2009). And in another, the supreme court affirmed a chancellor's award slightly above the guidelines based on a finding that two children with asthma had unusual medical expenses. *Grant v. Grant*, 765 So. 2d 1263, 1266 (Miss. 2000).

B. Child's extraordinary educational expenses

1. Court-ordered tuition. Educational expenses for private school are one of the factors most often cited to support deviation. If private school tuition combined with the basic award exceeds the statutory percentages, the award is treated as a deviation that must be supported with findings of fact. *Chesney v. Chesney*, 828 So. 2d 219, 221 (Miss. Ct. App. 2002), *aff'd in part and rev'd in part*, 849 So. 2d 860 (Miss. 2002); *Hensarling v. Hensarling*, 824 So. 2d 583, 588 (Miss. 2002) (even though parents had agreed prior to divorce that their daughter should attend school).

Ordinarily, a parent who did not agree to send a child to private school should not be ordered to pay for private school tuition or expenses. However, a payor may be ordered to pay over their objection if their child has special needs that can be addressed by private schooling. *Myles v. Lewis*, 388 So. 3d 598, 611-12 (Miss. Ct. App. 2024). An award of tuition has been affirmed if the chancellor makes findings justifying the deviation. Cases in which awards were affirmed often emphasize that the payor's income is higher than the custodial parent's and the child's best interest is to attend the school in question. *Hensarling v. Hensarling*, 824 So. 2d 583, 588 (Miss. 2002); *Bruton v. Bruton*, 271 So. 3d 528, 535-36 (Miss. Ct. App. 2018) (chancellor supported award of private school tuition with findings that enrollment in private school was in children's best interests and that the father had significantly higher income and enjoyed more discretionary expenditures); *Seymour v. Seymour*, 960 So. 2d 513, 517 (Miss. Ct. App. 2006) (father had additional, unreported income; the children had always attended the school; requiring them to attend public school where his girlfriend taught would be stressful). In contrast, an award of tuition was properly denied when no special circumstances justified the request. *See Roberts v. Roberts*, 924 So. 2d 550, 553-54 (Miss. Ct. App. 2005).

2. Tuition based on agreement. A parent's agreement that a child should attend private school is not sufficient to support a deviation. The court must also find that the award is reasonable considering the payor's financial circumstances. *Chapman v. Chapman*, 395 So. 3d 447, 454-55 (Miss. Ct. App. 2024). A parent may agree to private school support beyond what a court may order. A father's agreement to pay the costs of any future private schools that his children might attend obligated him to pay the higher tuition of a school chosen by the mother. *Smith v. Smith*, 318 So. 3d 484, 491-92 (Miss. Ct. App. 2021) (mother provided evidence that the more expensive school offered benefits for child with special educational needs).

C. Daycare expenses

In 2012, the Mississippi legislature amended the statutory guidelines to provide that a court may deviate from the child support guidelines based on a custodial parent's childcare expenses needed to seek or retain employment, or because of their disability. MISS. CODE ANN. § 43-19-101(4). The court of appeals rejected a father's argument that the court erred in modifying his child support to \$420 a month rather than \$337, which was 20% of his adjusted gross income. The upward deviation was necessitated by the children's daycare and after-school expenses. *Hickey v. Hickey*, 166 So. 3d 43, 50-51 (Miss. Ct. App. 2014). And a chancellor properly ordered a noncustodial father to pay 25% of his adjusted income for one child based on the custodial mother's daycare costs. *Marin v. Stewart*, 122 So. 3d 153, 157 (Miss. Ct. App. 2013); *see also Gunter v. Gunter*, 281 So. 3d 283, 287 (Miss. Ct. App. 2019) (noncustodial parent required to pay one-half of daycare costs).

D. Shared parenting

The Mississippi child support statute lists shared parenting arrangements as a deviation factor without providing more specific guidance. Chancellors have considerable discretion to determine whether to deviate based on parenting schedules and if so, how to determine the amount of support owed. As a result, outcomes range from slight variations in the support under the guidelines to formula-based approaches to no deviation.

1. Deviation based on limited visitation

A noncustodial parent who exercises little or no visitation may be ordered to pay support exceeding the guidelines. A chancellor properly deviated above the guidelines in ordering support from a payor who did not exercise visitation regularly. *Gray v. Gray*, 909 So. 2d 108, 114 (Miss. Ct. App. 2005) (\$80 a month over guidelines); *see also Plummer v. Plummer*, 235 So. 3d 195, 199 (Miss. Ct. App. 2017) (court awarded deviation of \$100 a month above the guideline amount of \$700 if the father did not exercise visitation).

2. Deviation based on extensive visitation

A chancellor properly deviated below the guidelines when the custodial mother moved — the father was solely responsible for visitation costs and would have the children for the entire summer. *Garcia v. Garcia*, 97 So. 3d 109, 112 (Miss. Ct. App. 2012); *see also Thomas v. Thomas*, 281 So. 3d 1191, 1206-07 (Miss. Ct. App. 2019) (support reduced because father had visitation three weekends a month). In one case the court of appeals held that a chancellor erred by failing to deviate downward in a support order for a father who had visitation forty-two percent of the time. *Doe v. Doe*, 341 So. 3d 953, 977-79 (Miss. Ct. App. 2021).

3. No deviation based on extensive visitation

On the other hand, the court of appeals has affirmed a chancellor's award of support based on the statutory guidelines even though a noncustodial mother had visitation 42% of the time. *Henley v. Jones*, 880 So. 2d 382, 383-84 (Miss. Ct. App. 2004); *see also Wooten v. Wooten*, 333 So. 3d 610, 618-19 (Miss. Ct. App. 2022) (chancellor did not err in applying guidelines even though father had approximately 40% of the time in visitation); *Stuckey v. Stuckey*, 341 So. 3d 1030, 1040-41 (Miss. Ct. App. 2022) (appellate court will not find an abuse of discretion when the amount awarded is presumptively correct under the guidelines).

4. Joint custody/equal parenting formula

The new joint custody presumption provision, MISS. CODE ANN. § 93-5-24(2), establishes a formula to be used when a court awards joint custody and equal parenting time. The court is to

- calculate support for each parent under the child support guidelines as if the parent were the obligor
- subtract the lesser amount from the larger award, and
- order the higher-income parent to pay the difference between the two awards to the lower-income parent.

The court may deviate from the formula if it determines that a deviation is in the best interest of the child. The statute does not address calculation of child support if the court orders joint custody with unequal parenting time.

In the past, some courts have taken a formula-based approach to support in joint custody cases. In a frequently cited case, the court of appeals affirmed an award basing support on a formula requiring each to pay 14% of his or her adjusted gross income to the other, in proportion to the custodial time allocated to each (four days a week for the mother and three for the father). *Rayner v. Sims*, 228 So. 3d 353, 358-59 (Miss. Ct. App. 2017). In a subsequent case, the court rejected a father's argument that chancellors are required to use this formula, emphasizing the discretion allowed to chancellors, *Franks v. Franks*, 394 So. 3d 467, 483 (Miss. Ct. App. 2024). And when one of four children began living with a father, the chancellor ordered the mother to pay 14% of her adjusted gross income to the father, ordered the father to pay 22% to her, and reduced his obligation by the amount owed by the mother. *Reid v. Reid*, 998 So. 2d 1032, 1035 (Miss. Ct. App. 2008). See also *Dunn v. Dunn*, 911 So. 2d 591, 600-01 (Miss. Ct. App. 2005) (father who shared split custody of two children ordered to pay \$400 a month in support; had each parent been ordered to pay 14%, mother would have received \$301 award; upward deviation proper in light of income disparity). When custody was split between a high-income father and low-income mother, the court did not err in ordering support at the statutory level from the father and no support from the mother. See *Magruder v. Magruder*, 881 So. 2d 365 (Miss. Ct. App. 2004).

E. Other deviations

Deviations below the guidelines have also been ordered

- for an older child whose food and shelter needs were provided through college support, *Fancher v. Pell*, 831 So. 2d 1137, 1140 (Miss. 2002); *Traxler v. Traxler*, 730 So. 2d 1098, 1103 (Miss. 1998)
- in light of a father's business expense obligations, *Thomas v. Crews*, 203 So. 3d 701, 706 (Miss. Ct. App. 2016)
- when a noncustodial parent was awarded tax exemptions for the children, *Hensarling v. Hensarling*, 824 So. 2d 583, 588-89 (Miss. 2002)
- based in part on the availability of \$34,000 in mutual funds for the children. *Hults v. Hults*, 11 So. 3d 1273, 1279 (Miss. Ct. App. 2009)

IV. ADD-ONS TO CHILD SUPPORT

Some orders for child-related payments are in addition to the basic support award and are not ordinarily considered a deviation if the amount, added to the basic award, exceeds the guidelines.

A. Life insurance to secure support

A court may order that a parent maintain life insurance with the children or the custodial parent as beneficiary to secure child support until the child's majority. *Daniels v. Bains*, 967 So. 2d 77, 83 (Miss. Ct. App. 2007). A court-ordered duty to maintain life insurance must be reasonable considering the payor's obligations. *Gaskin v. Gaskin*, 304 So. 3d 641, 647-48 (Miss. Ct. App. 2020) (\$900,000 life insurance policy was not excessive for support obligations calculated at \$357,115); see also *Descher v. Descher*, 304 So. 3d 620, 630 (Miss. Ct. App. 2020) (\$1 million policy was reasonable to secure an award contemplating \$765,000 in child support plus college support, health insurance, and medical expenses).

A parent's agreement to provide life insurance for children beyond majority is enforceable. *Talley v. Talley*, 366 So. 3d 901, 905-06 (Miss. Ct. App. 2023) (enforcing a father's obligation to provide life insurance until his children were twenty-five).

Drafters should take care to indicate the purpose of insurance, which may be used to secure child support, alimony, or property division provisions. In a 2025 case, the court of appeals held that a chancellor erred in reducing the amount of a policy upon the children's emancipation — the policy secured property division as well and was therefore nonmodifiable. Their agreement did not assign specific portions of the policy to secure child support and property division. *J.T.S. v. M.L.S.*, 2025 WL 12206928 (Miss. Ct. App. Dec. 16, 2025).

B. Payments related to medical care

Payment of health insurance and out-of-pocket medical expenses by a noncustodial parent is added to the basic award without treating the cost as an upward deviation. See *Turnage v. Brooks*, 213 So. 3d 103, 107 (Miss. Ct. App. 2016) (support such as housing, transportation, medical care, and college support may be ordered in addition to basic support); *Wallace v. Wallace*, 965 So. 2d 737, 744 (Miss. Ct. App. 2007) (court may order health insurance, out-of-pocket medical costs, transportation expenses, and support for college); *Forrest v. McCoy*, 941 So. 2d 889, 891 (Miss. Ct. App. 2006) (court may order out-of-pocket medical costs, life insurance, and the costs of college; other expenses such as automobile payments have been ordered).

The statute provides that if the custodial parent is ordered to provide insurance, that cost should be considered in setting the amount of child support. MISS. CODE ANN. § 43-19-101(6); see also *Kilgore v. Fuller*, 741 So. 2d 351, 356 (Miss. Ct. App. 1999) (while “health, transportation, and college expenses are not included in determining the amount of support . . . such extra obligations could well be considered for a downward departure from the guidelines.”)

A court entering a support order must address a child's health insurance needs. If health insurance is not available at a reasonable cost, the court must make specific findings to that effect and must provide for payment of uncovered medical expenses. MISS. CODE ANN. § 43-19-101(6). An order of support that does not address health insurance will be reversed. *Savell v. Manning*, 325 So. 3d 1208, 1224 (Miss. Ct. App. 2021) (noting that if the child was covered by Medicaid or CHIP, the chancellor could order the parties to maintain coverage for so long as the child was eligible); *Holdeman v. Holdeman*, 34 So. 3d 650, 652 (Miss. Ct. App. 2010).

C. Expenses of college

A court may order parents to provide support for a child to attend college at the time of divorce or custody order or in a modification proceeding. Support has been ordered at divorce for a child as young as eight, *Striebeck v. Striebeck*, 911 So. 2d 628, 637-38 (Miss. Ct. App. 2005), and in a paternity action for a three-year old child, *Daniels v. Bains*, 967 So. 2d 77, 84 (Miss. Ct. App. 2007). The court of appeals has suggested that an award for a very young child might constitute error. *Harmon v. Yarbrough*, 767 So. 2d 1069, 1071 (Miss. Ct. App. 2000). The order need not include a specific dollar amount. *Descher v. Descher*, 304 So. 3d 620, 628-29 (Miss. Ct. App. 2020).

1. Test for award; findings of fact. The court must make findings of fact that the children have the aptitude for college, that they show the payor the proper respect and affection, and that the payor can afford the expense. The court of appeals reversed and remanded an order

that a father of three pay one half of his children's college expenses without making findings of fact that the children showed him the proper respect and that he could afford the expense. *Capocaccia v. Capocaccia*, 372 So. 3d 1106, 1118 (Miss. Ct. App. 2023); *cf. Sharp v. Sharp*, 422 So.3d 472 (Miss. Ct. App. 2025) (findings under these factors are not required when a parent agreed to pay college support).

2. Scope of court-ordered support. Court-ordered support for a college education may include tuition, books, room and board, necessary living expenses, and necessary educational expenses. *Wray v. Langston*, 380 So. 2d 1262, 1264 (Miss. 1980) .

3. Support based on agreement. Parents may limit college support to the basics by agreement. A daughter's flying lessons, required for her commercial aviation degree, were not covered by the parents' agreement that "all costs are to be based on the average costs of meals, tuition, books, and room." The supreme court held that the agreement was clear, limiting costs to the enumerated items. *Zweber v. Zweber*, 102 So. 3d 1098, 1099, 1101-02 (Miss. 2012) (en banc). *See also Cossitt v. Cossitt*, 975 So. 2d 274, 280-81 (Miss. Ct. App. 2008) (agreement to pay "any costs as may be necessary" for the children's college education did not include football tickets, parking tickets, lockout charges, clothing, personal and hair expenses, and sorority dues); *Neelly v. Neelly*, 213 So. 3d 539, 543-44 (Miss. Ct. App. 2016) (father who agreed to pay college expenses was not responsible for full cost of off-campus apartment to which he did not agree).

4. Performance requirements. Parents may include a provision that college support is conditioned on a child maintaining a certain number of hours per semester and remaining in good standing. A father's duty of college support was properly terminated when his daughter's grades fell below a 2.0 in her first semester. The parents' agreement required that she maintain a 2.0 grade point. *Cossitt v. Cossitt*, 975 So. 2d 274, 280 (Miss. Ct. App. 2008). *But cf. Wilson v. Stewart*, 171 So. 3d 522 (Miss. Ct. App. 2014) (son's poor performance did not justify terminating support under agreement that was not dependent on academic performance).

5. High-income payors. A parent's obligation for college support may be linked to the family's standard of living. A wealthy father was properly ordered to pay one-half of his daughter's sorority dues, out-of-state tuition, and automobile expenses. The court held that a child of wealthy parents was entitled to an education "commensurate with her parents' station in life." *Saliba v. Saliba*, 753 So. 2d 1095, 1103 (Miss. 2000); *see also A.M.L. v. J.W.L.*, 98 So. 3d 1001, 1021 (Miss. 2012); *Weeks v. Weeks*, 29 So. 3d 80, 83 (Miss. Ct. App. 2009). Similarly, the court of appeals affirmed a chancellor's order that a high-income father pay "tuition, room and board, meals, laboratory fees, books, sorority or fraternity dues and expenses, automobile expenses, and any other cost generally associated with attendance at a four-year public or private college or university either in-state or out-of-state." *Descher v. Descher*, 304 So. 3d 620, 627-29 (Miss. Ct. App. 2020).

6. Duration of court-ordered support. A court may not order support for college beyond a child's twenty-first birthday. *Stokes v. Maris*, 596 So. 2d 879, 882 (Miss. 1992); *see also Capocaccia v. Capocaccia*, 372 So. 3d 1106, 1119 (Miss. Ct. App. 2023) (chancellor erred in ordering father to pay support for children "attending and completing" college without limiting support to the age of majority); *Daniels v. Bains*, 967 So. 2d 77, 80 (Miss. Ct. App. 2007) (reversing order requiring physician father to pay graduate school support for nonmarital child).

7. Parental agreements for post-majority support. Parents may agree to extend support beyond majority. In several cases, agreements to provide college support that did not include an ending date have been interpreted to provide for post-majority support. A father’s agreement to “provide for the funding of the full costs of all college education expenses of the minor children” obligated him to provide post-majority college support for his children. The chancellor did not err in ordering him to pay support until his children graduated or reached the age of twenty-three. *Wilson v. Stewart*, 171 So. 3d 522 (Miss. Ct. App. 2014); *see also Vincent v. Rickman*, 239 So. 3d 501, 506-07 (Miss. Ct. App. 2017). In those cases, the duty is to provide college support for a “reasonable” period. *Rogers v. Rogers*, 662 So. 2d 1111, 1115 (Miss. 1995). Unless the parties agree otherwise, post-majority college support includes only tuition, room and board, fees, and educational essentials such as a computer. It does not include other living expenses such as clothing and transportation. *Meek v. Meek*, 726 So. 2d 1292, 1294 (Miss. Ct. App. 1998).

8. Education accounts. The use of accounts established for the purpose of college education should be addressed in divorce proceedings. A court properly ordered a father to establish an education account equal in amount to the account held by the mother and ordered that the parties share college expenses equally after depletion of both accounts. *Keys v. Keys*, 930 So. 2d 438, 442-43 (Miss. Ct. App. 2005) (mother entitled to reimbursement from accounts for out-of-pocket college expenditures). An investment account in the husband’s name, established by the parents for their children’s college education, should have been classified as marital property with the stipulation that the funds be used only for the children’s college expenses. *Barnett v. Barnett*, 908 So. 2d 833, 839-40 (Miss. Ct. App. 2005) (noting that parents could petition for release of account if children did not attend college).

9. Reduction of basic support during college. Courts have discretion to reduce or suspend basic support while a child’s living expenses — food and shelter — are provided in the form of college support. Courts have

- suspended basic support during the academic year, *Fancher v. Pell*, 831 So. 2d 1137, 1140 (Miss. 2002)
- reduced basic support by 50%, *Traxler v. Traxler*, 730 So. 2d 1098, 1103 (Miss. 1998)
- suspended support altogether while a child was in college, *Lazarus v. Lazarus*, 841 So. 2d 181, 183, 185 (Miss. Ct. App. 2003)
- ordered basic support plus college expenses and medical costs, *Wallace v. Wallace*, 965 So. 2d 737, 741 (Miss. Ct. App. 2007)

D. Extracurricular activities

Courts may order parents to pay for a child’s extracurricular activities. *Barnett v. Barnett*, 908 So. 2d 833, 846 (Miss. Ct. App. 2005) (noncustodial parent ordered to pay one-half of the cost of one activity per child). The appellate courts have not directly addressed, and it is not clear from the cases, whether an order for payment of extracurricular activities is an add-on or creates a deviation.

An order or agreement that commits parents to pay for “extracurricular” activities is limited to activities associated with the child’s school. A couple’s agreement to pay for extracurricular activities required the father to pay for school volleyball expenses but not for a traveling competitive volleyball team. *Thomas v. Crews*, 203 So. 3d 701, 706 (Miss. Ct. App. 2016) (the court looked to

the definition of “extracurricular” as “those sponsored by and usually held at school but that are not part of the standard academic curriculum”).

An order or agreement for payment of extracurricular activities may be modified. *Smith v. Smith*, 318 So. 3d 484, 496-97 (Miss. Ct. App. 2021) (a chancellor properly modified a father’s agreement to pay 100% of the activities “mutually agreed upon by the parties in advance” to a maximum of \$6,000 a year per child; the provision was unworkable because the parties could not agree on activities”).

E. Automobile expenses

Courts have ordered parents to pay for a child’s automobile expenses, including car payments, insurance, maintenance, repairs, tag, and fuel, *Chesney v. Chesney*, 910 So. 2d 1057, 1060 (Miss. 2005) (an automobile of comparable quality to her contemporaries, automobile repairs and insurance); *Wallace v. Wallace*, 965 So. 2d 737, 741 (Miss. Ct. App. 2007); (automobile, insurance, tag, and gas). Automobile expenses are not a part of basic support. *Wallace v. Wallace*, 965 So. 2d 737, 744 (Miss. Ct. App. 2007) (court may order, in addition to basic award, health insurance, out-of-pocket medical costs, transportation expenses, and support for college).

F. Reasonableness of expense

In the absence of an agreement that they will jointly decide on expenses, a custodial parent is not required to obtain the noncustodial parent’s consent to reasonable expenses within the scope of the agreement. The court of appeals rejected a father’s argument that he was not responsible for medical and automobile expenses because the mother did not consult him as a joint legal custodian. *Neelly v. Neelly*, 213 So. 3d 539, 543 (Miss. Ct. App. 2016). However, the custodial parent’s decision to incur an expense must be reasonable. The supreme court stated: “Except as otherwise agreed by the parties in writing, the custodial parent may determine the child’s upbringing, including his education and health and dental care This authority, however, is not unlimited. The custodial parent’s actions, particularly in the context of matters the expense for which is to be assessed against the noncustodial parent, are always subject to challenge on grounds of unreasonableness.” *Clements v. Young*, 481 So.2d 263, 267 (Miss. 1985); *see also Russell v. Russell*, 724 So. 2d 1061, 1063 (Miss. 1998); *Smith v. Smith*, 318 So. 3d 484, 491-92 (Miss. Ct. App. 2021) (rejecting father’s argument that mother’s choice of expensive private school was unreasonable; their agreement did not limit the costs of private education and the mother presented evidence that the school provided advantages over the girl’s current school).

If parents are awarded or agree to joint physical custody, neither parent is the preferred tie-breaker unless the agreement or order provides for one. *Thornton v. Thornton*, 2025 WL 3638400, at *8 (Miss. Ct. App. Dec. 16, 2025) (court did not err in awarding joint custody to parents in acrimonious divorce) (awarding father decision-making authority in education and health matters).

V. OFFSETS TO CHILD SUPPORT

Child support is offset by the amount of disability benefits received by a child because of the payor’s disability. *Hammet v. Woods*, 602 So. 2d 825, 828-29 (Miss. 1992); *Mooneyham v. Mooneyham*, 420 So. 2d 1072, 1073 (Miss. 1982). It is not offset by the amount of benefits received by the child based on his or her own disability or by the amount of adoption assistance payments, which

are intended to benefit the child. *Hammett v. Woods*, 602 So. 2d 825, 830 (Miss. 1992) (disability benefits); *Howard v. Howard*, 2025 WL 1741634, at *6 (Miss. Ct. App. June 24, 2025) (disability benefits); *Begnaud v. Begnaud*, 409 So. 3d 604, 615 (Miss. Ct. App. 2025) (adoption assistance payments).

CHILD SUPPORT AWARDS IN PERCENTAGE-OF-INCOME STATES: JOINT CUSTODY

Five states – Mississippi, Alaska, Nevada, Texas, and Wisconsin – use a percentage of income approach to calculating child support. These formulas are simpler than the income shares method used in most states. The percentages range from 20% in Mississippi to 27% in Alaska. Nevada has a tiered system of percentages, with lower percentages for income above a certain threshold. Nevada and Wisconsin use gross income but allow more offsets to income.

Four states (all but Texas) use a formula to address joint custody and shared parenting. This analysis compares results under the formulas for the hypothetical couple in a modification action, using these figures: Parent A \$10,000 AGI, Parent B, \$5,000 AGI. In the two states that apply percentages to gross income, Parent A is assumed to have \$12,500 in gross income and Parent B \$6,000. The comparison looks at three scenarios: (1) The couple has equal parenting time; (2) Parent A has custody 60% of the time; (3) Parent A has custody 40% of the time.

PLEASE NOTE this is for comparison of the basic result under the formula and is not necessarily a final and accurate number. The comparison does not include adjustments for health or life insurance, daycare or other variables that differ from state to state. This is simply a comparison of the results of applying the percentages using the formula for shared parenting.

Mississippi

Percentage: 20% for two children, applied to adjusted gross income

When applicable: When parents share equal parenting time

Formula:

Calculate support for each parent at 20% of AGI.

Calculate the difference.

Higher-income parent pays the difference as child support.

MISS. CODE ANN. § 93-5-24(5).

Equal parenting example

Parent A: $\$10,000 \times .20 = \$2,000$

Parent B: $\$5,000 \times .20 = \$1,000$

Parent A pays \$1,000 to Parent B in a 50/50 custodial arrangement, unless the court deviates.

Alaska

Percentage: 27% for two children, applied to adjusted gross income.

When applicable: When both parents have custody at least 30% of the time.

Formula:

Calculate support for each parent at 27% for two children.

Multiply that by a fraction representing the percentage of time the other parent has custody.

Calculate the difference and multiply it by 1.5 (in recognition of the higher expenses associated with joint custody).

ALASKA RULE OF CIVIL PROCEDURE 90.3(B).

Equal parenting example:

Parent A: $\$10,000 \times .27 = \$2,700$

Parent B: $\$5,000 \times .27 = \$1,350$
 Parent A: $\$2,700 \times 50\% = \$1,350$
 Parent B: $\$1,350 \times 50\% = \675
 Calculate difference: $\$1,350 - \$675 = \$675$
 Multiplier: $\$675 \times 1.5 = \$1,012.50$ (Parent A pays)

For unequal shared parenting, use the same formula, substituting the correct percentages of custodial time.

Wisconsin

Percentage: 25% for two children, applied to gross income
When applicable: When each parent has at least 25% custodial time
Formula:
 Calculate each parent's support under the guidelines.
 Multiply by 150% to reflect increased costs of joint custody.
 Multiply by the other parent's percentage of custodial time.
 Calculate the difference.
 WIS. CODE ANN. § 150.035.

Equal parenting example:

Parent A: $\$12,500 \times .25 = \$3,125 \times 1.50 = \$4,687.50$
 Parent B: $\$6,000 \times .25 = \$1,500 \times 1.50 = \$2,250$
 Parent A: $\$4,687.50 \times 50\% = \$2,343.75$
 Parent B: $\$2,250 \times 50\% = \$1,125$
 Calculate difference: $\$2,343.75 - \$1,125 = \$1,218.75$ (Parent A pays)

For unequal shared parenting, use the same formula, substituting the correct percentages of custodial time.

Nevada

Percentage: First \$6,000: 22%; \$6,000 - \$10,000: 11%; Over \$10,000: 6%
When applied: When each parent has at least 40% custodial time
Formula:
 Calculate each parent's support under the guidelines.
 Calculate the difference.
 NEVADA ADMIN CODE §§ 425.115, 425.140.

Equal parenting example:

Parent A: $\$6,000 \times .22 = \$1,320$; $\$4,000 \times .11 = \440 ; $\$2,500 \times .06 = \150 Total: \$1,910
 Parent B: $\$6,000 \times .22 = \$1,320$
 Calculate difference: $\$1,910 - \$1,320 = \$590$ (Parent A pays)

The statute does not address unequal shared parenting time. However, in *Rivero v. Rivero*, 216 P. 3d 213 (Nev. 2009), the Nevada Supreme Court held that the statutory formula for equal joint custody should also be used (without alteration) in the case of unequal joint custody.

CHILD SUPPORT AWARDS

Observations:

For equal custodial time, the Mississippi formula produces a result close to other states, even when they have higher percentages and use a 150% multiplier. The Mississippi formula does not reduce the percentage award to reflect the other parent's custodial time. (Does not multiply by 50%).

However, the results are less consistent in case of unequal parenting. The Mississippi statute does not address child support in case of joint custody with unequal parenting time. If courts apply the child support guidelines to the parent with less parenting time, a lower-income parent who has a child 40% of joint custodial time would pay significant support. In other states, the higher income parent would still pay a small amount because of the income difference. And in cases where the parent with 40% of time has higher income, they would pay more support than in other states.

Shared Parenting Formula: Percentage of Income States

PARENT A: \$10,000 AGI; PARENT B: \$5,000

State	Income Used	Shared Parenting Threshold	% for Two Children	Formula	50/50 Result	A 60%/B 40%	A 40%/B 60%
Mississippi	Adjusted gross income	Equal parenting; Deviation factors for unequal	20%	For equal parenting time: Calculate CS for A & B. Higher-income parent pays the difference	A pays B \$1,000	CS guidelines; B pays \$1,000	CS guidelines; A pays \$2,000
Texas	Net resources	Deviation factors	25%	None	Court discretion	CS guideline: B pays \$1,250	CS guideline: A pays \$2,500
Nevada	Gross income (\$12,500) (\$6,000)	40% or more	Up to \$6,000, 22% \$6,000 to \$10,000, 11%; over \$10,000 6%	Calculate CS for A & B. Higher income parent pays the difference.	A pays B \$590	A pays B \$590	A pays B \$590
Wisconsin	Gross income (\$12,500) (\$6,000)	40% or more	25%	Calculate CS for A & B, multiply by 150%; multiply by other parents percentage of time; calculate the difference.	A pays B \$1,218.75	A pays B \$525	A pays B \$1,912.50
Alaska	Adjusted gross income	30% or more	27%	Calculate 27% for A & B; Multiple by other parent's percentage of time; Calculate difference and multiply by 1.5;	A pays B \$1,012.50	A pays B \$405	A pays B \$1,620

ETHICS HOUR:

CANDOR TO THE COURT

GUEST SPEAKERS

ADAM KILGORE

JACK WILLIAMS

CONFLICTING AUTHORITY

An alleged granddaughter of the deceased was barred from inheritance because she did not petition for determination of heirs within one year of her father's death.

The one-year limitation is a "nonclaim" statute that cannot be waived "for any reason." *Matter of Estate of Lewis*, 422 So. 3d 484 (Miss. Ct. App. 2025).

An alleged son of the deceased was not barred from inheritance even though he did not timely petition.

The administrator, who acknowledged him publicly but delayed opening the estate for three years, was estopped from asserting the one-year period.

Estate of Dorsey, 2025 WL 3524732 (Miss. Ct. App. Dec. 9, 2025).

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ZEALOUS ADVOCACY

"As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

Miss. R. Prof. Conduct, Preamble

"A lawyer shall act with reasonable diligence and promptness in representing a client."

Miss. R. Prof. Conduct 1.3

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THE DUTY TO DISCLOSE

A lawyer shall not knowingly fail to disclose to the tribunal legal authority

- in the controlling jurisdiction
- known to the lawyer
- to be directly adverse to the position of the client and
- not disclosed by opposing counsel.

- *Miss. R. Prof. Conduct. 3.3(a)(2)*

4

CONFLICTING (BUT NOT DISPOSITIVE) AUTHORITY

“We would not confine the Opinion to ‘controlling authorities’--i.e., those decisive of the pending case--but, . . . would apply it to a decision directly adverse to any proposition of law on which the lawyer expressly relies, which would reasonably be considered important by the judge.”

ABA Comm. on Prof’l Ethics & Grievances, Formal Op. 280 (1949)

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THE ABA TEST

Is the decision one which the court should clearly consider in deciding the case?

Would a reasonable judge properly feel that a lawyer who advanced as the law a proposition adverse to the undisclosed decision was lacking in candor and fairness to him?

Might the judge consider himself misled by an implied representation that the lawyer knew of no adverse authority?

ABA Comm. on Prof’l Ethics & Grievances, Formal Op. 280 (1949)

6

IF YOU DO CITE FROM OTHER STATES-
BE ACCURATE

When you cite authority from other states

- You may have a duty to cite directly adverse authority in that jurisdiction.
- Be careful how you characterize the weight of authority.

A lawyer violated the duty of candor to the court when he inaccurately stated: “Other jurisdictions, . . . have consistently held successor corporations not to be liable [in this circumstance]”

Krull v. Celotex Corp., 611 F. Supp. 1985 (N.D. Ill. 1985)

7

CANDOR REQUIRES DISCLOSURE, NOT SURRENDER

1. Integrate the authority into a larger synthesis
2. Emphasize hierarchy
3. Present adverse authority in a dependent clause
4. Concede, distinguish, and redirect
5. Reframe the holding narrowly
6. Rely on policy to undermine the authority
7. Invoke subsequent criticism
8. Emphasize timing
9. If credible, describe the case as dicta

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■ Mississippi courts consistently characterize § 91-1-15(3)(c) as a mandatory, self-executing limitation on inheritance claims. The *Estate of Lewis* Court, applying longstanding precedent, held that the statute is a nonclaim statute incapable of waiver: *Est. of Lewis v. Thomas*, 422 So. 3d 484, 493 (**Miss. Ct. App. 2025**) (citing *Smith ex rel. Young v. Est. of King*, 579 So. 2d 1250, 1254 (**Miss. 1991**)); but see *Est. of Dorsey v. Matory*, No. 2024-CA-00925-COA, 2025 WL 3524732, at *7 (Miss. Ct. App. Dec. 9, 2025) (applying equitable principles where administrator publicly identified claimant as decedent's child, delayed opening estate for three years, and invoked delay as bar).

INTEGRATE THE AUTHORITY INTO A LARGER SYNTHESIS

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■ Both *Lewis* and *Dorsey* are Court of Appeals decisions. To the extent they appear in tension, this Court should follow the Mississippi Supreme Court's repeated characterization of § 91-1-15(3)(c) as a self-executing limitation. E.g., *Smith ex rel. Young v. Est. of King*, 579 So. 2d 1250, 1254 (Miss. 1991). *Lewis* is more consistent with those supreme court authorities.

EMPHASIZE HIERARCHY

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ETHICS HOUR: CANDOR TO THE COURT

- Although the *Dorsey* Court declined to apply the one-year limitation under unusual equitable circumstances, in *Lewis* the court reaffirmed that § 91-1-15(3)(c) is a self-executing nonclaim statute that ordinarily bars untimely heirship claims.

PRESENT ADVERSE AUTHORITY IN A DEPENDENT CLAUSE

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- The Estate acknowledges that *Dorsey* supports the proposition that equity may affect the application of § 91-1-15(3)(c) in extraordinary circumstances. But *Dorsey* involved an administrator who publicly recognized the claimant as an heir, delayed administration for nearly three years, and then invoked the resulting delay against him. Those circumstances are absent here, and *Lewis* remains the better guide.

CONCEDE, DISTINGUISH, AND REDIRECT

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- In *Dorsey*, the court recognized a narrow exception to the general rule. There, the court addressed a highly unusual situation in which the administrator's own conduct allegedly induced reliance by publicly recognizing the claimant as an heir while waiting years to commence administration.

REFRAME THE HOLDING NARROWLY

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- Extending *Dorsey* beyond its unique facts would undermine the certainty that nonclaim statutes are designed to provide. Estates require finality; allowing equitable exceptions whenever family members acknowledge a relationship would substantially weaken the Legislature's chosen limitation period.

RELY ON POLICY TO UNDERMINE THE AUTHORITY

14

CANDOR REQUIRES DISCLOSURE, NOT SURRENDER

- Integrate the authority into a larger synthesis
- Emphasize hierarchy
- Present adverse authority in a dependent clause
- Concede, distinguish, and criticize
- Reframe the holding narrowly
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- Emphasize timing
- If credible, describe the case as dicta

15

Lane-Lott v. White

Court of Appeals for Mississippi • December 3, 2013 • 126 So.3d 1016 • 82 UCC Rep.Serv.2d 205 • (Approx. 7 pages)

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lost, or destroyed."

¶ 16. "A contract *may* be reformed" if there is a mutual mistake. *Townsend v. Townsend*, 859 So.2d 370, 376 (¶ 21) (Miss.2003) (emphasis added) (quoting *Oilling v. Dilling*, 734 So.2d 327, 335 (¶ 27) (Miss.Ct.App.1999)). But "[t]he mistake that will justify a reformation must be in the drafting of the instrument," such as a scrivener's error, "not in the making of the contract." *Id.* In this case, Laura was not seeking contract reformation—she was seeking contract enforcement. She did not allege or attempt to prove there was an error in the drafting of the sales contract or title to the horse she received. In fact, her whole claim was that the contract and title were right—it was the horse that was wrong.

¶ 17. In other words, Laura was not seeking to change the documents related to the trade to say "Miss Savannah" instead of "Kees" because the pregnant mare she selected to trade with

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[illegible]

18

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 - not disclosed by opposing counsel.
- *Miss. R. Prof. Conduct. 3.3(a)(2)*

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COMPETENCE

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Miss. R. Prof. Conduct 1.1

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RULE 8.4

"It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice."

- *Miss. R. Prof. Conduct 8.4*

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ETHICS HOUR GUEST SPEAKERS

Adam Kilgore is an attorney based in Mississippi, renowned for his extensive service with The Mississippi Bar. He began his tenure with the Bar in 2002 as Assistant General Counsel and was elevated to General Counsel in 2004. In this capacity for over twenty years, he oversaw attorney discipline, ethics, and professionalism, managing investigations, prosecuting disciplinary cases, and representing the Bar in appeals before the Mississippi Supreme Court. Additionally, he served as a liaison to key committees, including the Board of Bar Commissioners, the Committee on Professional Responsibility, and the Ethics Committee.

Kilgore's academic credentials include a Bachelor of Science in Business Administration with a concentration in Communications from Mississippi College (1992) and a Juris Doctor from Mississippi College School of Law (2000), where he was a member of the Moot Court Board. Post-graduation, he clerked for Chief Justice Edwin Lloyd Pittman at the Supreme Court of Mississippi.

Throughout his career, Kilgore has been deeply involved in legal education and ethics. He has delivered numerous Continuing Legal Education (CLE) lectures and seminars for various legal associations. Kilgore retired from The Mississippi Bar in December of 2024. He now has a private practice focused primarily on ethics expert work and Bar Admissions. Kilgore serves as an Adjunct Professor for Mississippi Christian School of Law teaching Alternative Dispute Resolution (ADR). Kilgore is also the expert host for Mississippi Public Broadcasting's In Legal Terms since April of 2024, an award-winning show that finished 2nd place for Talk Show of the year at the 2026 Mississippi Association of Broadcasters.

Professor Jack Williams is a Professor of Practice at the University of Mississippi School of Law, where he has taught legal writing since 2001 and has developed courses in legal writing, interviewing and counseling, federal criminal sentencing, and capital punishment. In addition to his academic work, he has maintained an active public-service litigation practice focused on criminal, post-conviction, and capital cases, representing clients in state and federal courts and twice serving as a court-appointed special master in federal litigation arising under the Foreign Sovereign Immunities Act. Previously, he founded and directed the Mississippi Office of Capital Post-Conviction Counsel and spent more than a decade in private practice handling complex commercial litigation. A Fellow of the American Bar Foundation, he earned his J.D., with honors, from the University of Mississippi School of Law, where he served as Editor-in-Chief of the Mississippi Law Journal.

APPENDIX A - Supplement to Alimony Chart, 2020 - 2025 cases

CASENAME	LENGTH OF MARRIAGE	AGE & CHILDREN	FAULT	INCOME	PROPERTY DIVISION	ALIMONY	CHILD SUPPORT	APPEAL	COMMENTS
I. Marriages over 20 years									
A. Permanent alimony awarded									
Williamson v. Williamson, 296 So. 3d 206 (Miss. Ct. App. 2020)	21	2 minor children (wife)	Irreconcilable differences	Husband: \$8,617/mo; Wife: \$1,384/mo	Wife: Approx \$230,000	\$1200/mo 22% of disparity	\$1,720	Husband, aff'd	Wife unable to meet expenses; marriage ended with his affair. Husband had \$180,000 in separate property
Phung v. Phung, 350 So. 3d 1154 (Miss. Ct. App. 2022)	34	Adult children; Wife 62	Irreconcilable differences	Husband: \$7,997/mo; Wife: \$0/month	Both: \$606,000	\$2,700/mo (34% of disparity)	NA	Husband, aff'd	Long marriage; great disparity in incomes
Lewis v. Lewis, 360 So. 3d 298 (Miss. Ct. App. 2023)	20	2 Adult children; Wife 51 Husband 52	H: Adultery	Husband: \$125,000/yr; Wife: \$3,470/mo		\$2,000/mo (29% of disparity)	NA	Husband, aff'd	Husband's ongoing affair; disparity; marriage length supported award.
Howard v. Howard, 2025 WL 1741634 (Miss. Ct. App. June 24, 2025)	20	Wife: custody of 20-year-old disabled son	W: Adultery	Husband: \$7,500/mo; Wife: \$2,500/mo	Small estate	\$2,000/mo (40% of disparity)	H: \$1,050/ 10 mos	Husband, aff'd	Wife had custody and support of 20-year-old disabled son; child support would soon end; disparity in incomes
B. Rehabilitative alimony awarded									
Baird v. Baird, 2025 WL 2962388 (Miss. Ct. App. Oct. 21, 2025)	20	5 children (husband)	Irreconcilable differences	Husband: \$8,562/mo Wife: \$1,000/mo	Wife: Approx \$300,000 plus \$52,000 temp alimony	\$1,000/mo for 6 mos/ (13% of disparity)	W: \$275/mo	Wife, aff'd	Husband had custody 5 children; she chose not to work at full capacity
D. All alimony denied									
Coleman v. Coleman, 324 So. 3d 1204 (Miss. Ct. App. 2021)	20	Husband: disabled; No children	Irreconcilable differences	Husband: \$1,500 Soc. Sec./mo; Wife: \$2,781/mo	Equal	Denied	NA	Husband, aff'd	Property division provided adequately for both
Neely v. Neely, 305 So. 3d 164 (Miss. Ct. App. 2020)	42	Children emancipated	Irreconcilable differences	Unclear; incomes equal	Unclear	Denied	NA	Husband, aff'd	Equal incomes; neither had debt; parties kept finances separate during marriage
II. Marriages 10 - 19 years									
A. Permanent alimony awarded									
Oates v. Oates, 291 So. 3d 803 (Miss. Ct. App. 2020)	16	Wife: disabled; No children	H: Adultery	Husband: \$33,000/yr; Wife: disabled	Unclear	\$504/mo (18% of disparity)	NA	Husband, aff'd	Wife unable to work; could not meet expenses
Gaskin v. Gaskin, 304 So. 3d 641 (Miss. Ct. App. 2020)	18	Wife: disabled; 2 minor children (wife)	H: Adultery	Husband: \$12,085; Wife: \$500/mo	Equal;	\$1,000/mo (11% of disparity)	\$2,417	Husband, aff'd	Wife disabled; substantial disparity
Ewing v. Ewing, 301 So. 3d 709 (Miss. Ct. App. 2020)	15	4 children (wife)	Irreconcilable differences	Husband: \$4,752; Wife: \$3,115/mo	Wife received \$786,521 Wife: \$44,000	\$500/mo (71% of disparity)	\$938/mo	Husband, aff'd	Wife unable to meet expenses; custody of four children
Descher v. Descher, 304 So. 3d 620 (Miss. Ct. App. 2020)	17	2 children (wife)	Irreconcilable differences	Husband: \$71,377/mo; Wife: \$2,000/mo earning capacity	Equal: \$1.5 million	\$7,500/mo (12% of disparity)	\$7,500/mo	Husband, aff'd	Extreme income disparity; standard of living of marriage
Wildman v. Wildman, 301 So. 3d 787 (Miss. Ct. App. 2020)	15	H: 39; Wife: 38; 2 children (wife)	Irreconcilable differences	Husband: \$10,049; Wife: \$1,726/mo higher earning capacity	Equal: \$198,277	\$3,000/mo (46% of disparity)	\$1,800/mo	Husband, rev'd	Affirming permanent alimony but reversing amount as excessive; wife could increase earnings by working full-time
Anderson v. Grabmiller, 394 So. 3d 493 (Miss. Ct. App. 2024)	14	H: 41; W: 39; 2 children (wife)	Irreconcilable differences	Husband: \$2,995; Wife: \$12,969 mo	Equal: \$140,000	\$1,000/mo (11% of disparity)	H: \$600/mo	Wife; aff'd	Physician wife had significantly higher income; marriage was long; husband cared for children and home during marriage
B. Rehabilitative alimony awarded									
Warren v. Rhea, 318 So. 3d 1187 (Miss. Ct. App. 2021)	15	1 child (husband)	W: Habitual cruelty	Husband: \$4,795; Wife: \$2,115	Unclear	\$750/mo for 4 yrs (28% of disparity)	None	Husband; rev'd on other grounds	Disparity in incomes
Cue v. Cue, 339 So. 3d 796 (Miss. Ct. App. 2022)	14	H: 40; Wife: 40; 2 children (husband)	H: Adultery	Unclear	Unclear	\$2,500/mo for 4 yrs	NA	Wife; aff'd	Rehabilitative alimony appropriate for wife in 40s returning to school; husband had custody and wife's support for children was suspended for four years
McKenzie v. McKenzie, 397 So. 3d 510 (Miss. Ct. App. 2024)	13	Wife: 36; 3 children (wife)	Irreconcilable differences	Husband: \$13,654/mo; Wife: homemaker	Equal: \$1,700,000	\$5,000/mo for 3 yrs	H: \$3,000/mo	Wife; aff'd	Wife was young and had worked previously; she received substantial property, including \$1 million in cash assets
Denham v. Denham, 2022 WL 290890 (Miss. Ct. App. Feb. 1, 2022); reversed in part, 354 So. 3d 954 (Miss. 2022)	15	3 children (wife)	H: Adultery	Unclear	Wife: 60%; Husband: 40%	\$350/mo for 2 yrs	\$1,736/mo	Husband, aff'd	Husband's income was greater; wife had greater share of debt; reversed on other grounds
Thornhill v. Thornhill, 421 So. 3d 626 (Miss. Ct. App. 2025)	15	H & W: 60; 1 child (husband)	W: Desertion	Unclear	No equity; debt divided equally	\$250/mo for 3 yrs	W: \$160/mo	Wife, aff'd	Wife had \$362,000 while husband had primarily debt; she received four years of temporary alimony.
D. All alimony denied									
Pace v. Pace, 324 So. 3d 369 (Miss. Ct. App. 2021)	14	Wife: 43; 1 child (wife)	H: Adultery	Both currently unemployed; both with earning capacity	Wife: \$720,000	Denied	\$1,200	Wife; aff'd	Wife was young with earning capacity as Dietician; physician husband relinquished license after treatment for addiction
III. Marriages under 10 years									
B. Rehabilitative alimony awarded									
Gamer v. Gamer, 343 So. 3d 1097 (Miss. Ct. App. 2022)	8	2 children (wife)	Irreconcilable differences	H: \$42,000; W: \$600,000	H: 48%; W: 52%	\$508/mo for 2 yrs (1% disparity)	H: \$508/mo	Husband, aff'd	Husband could earn more; Wife had care of children; Husband's abuse ended the marriage
Gussio v. Gussio, 371 So. 3d 734 (Miss. Ct. App. 2023)	9	4 children (wife); Wife 35	Husband: HCI	H: \$9,000/mo imputed; W: homemaker	Prenuptial - most to husband	\$250,000 lump sum \$1,500 rehabilitative for 30 mo	H: \$2,000/mo	Husband, aff'd	Husband had higher income and \$4 million in separate property; divorce based on his abuse

