IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

AMANDA J. (GRESSEL) BERMUDEZ SCHMIDT : APPELLANT

VS. CAUSE NO.: 2006-CA-00765

BRIAN S. BERMUDEZ APPELLEE

REPLY BRIEF FOR APPELLANT

Joe Morgan Wilson
Attorney for Appellee
210 West Main Street
Senatobia, Mississippi 38668
(662) 562-4477
MSB #[redacted]

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CERTIFICATES OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Honorable Glenn Alderson
Chancellor
P. O. Box 70
Oxford, MS 38655

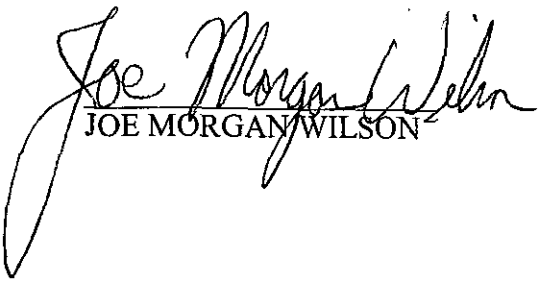
Hon. Sarah J. Liddy
Attorney At Law
P. O. Box 40
Olive Branch, MS 38654-0040

Brian S. Bermudez
Appellee

Hon. Justin S. Cluck
Smith Whaley, P.L.L.C
Attorney For Appellee
P.O. Drawer 849
Holly Springs, MS 38635

Hon. Joe Morgan Wilson
Attorney at Law
210 West Main Street
Senatobia, MS 38668

Amanda J. (Gressel) Bermudez Schmidt
Appellant



JOE MORGAN WILSON

TABLE OF CONTENTS

TABLE OF CASES AND OTHER AUTHORITIES

RESPONSE TO ARGUMENT AND AUTHORITIES

A. Statement of the Facts Relevant to the Issues Presented For Review

The Appellee, at the bottom of page nine of his brief asserts that:

> By November 1, 2004, Amanda Schmidt and her new husband, Dr. Jeffrey Schmidt, absconded with Colson to Denver, Colorado, and set up permanent residence.

The Appellant would show by way of reply that this section of Appellee's brief is styled "Statement of the Facts." The true facts as can be seen throughout the transcript as well as in Appellant's brief is that Appellant and her husband moved to Denver, Colorado for his employment as a physician. The word absconded has many implications. To abscond is found in Webster's New Encyclopedia Dictionary of the English Language at page 4 showing: "abscond: to withdraw or absent one's self in a private manner; run away in order to avoid a legal process," Appellant cannot say that Appellee wanted to deceive this Court by using such language, but can only believe that it is meant to imply a very sinister purpose. He stated further:

> These actions violated the Temporary Order of the Marshall County Chancery Court, issued on September 2, 2004, which prohibited Colson from being taken to Colorado.

First of all there is no evidence that Colson went to Colorado on November, 2004. Again the Appellee is urging facts not in evidence. Further, the Chancellor admitted that if he put this in the order that he did not have the authority to do so and said so publicly. Said restriction was lifted in the Temporary Order of December 6, 2004:

> (5) The restriction in the Court's order of September 2, 2004 concerning removal of the child to Colorado is hereby removed. (RE 162)

To either imply or actually state otherwise can only be meant to deceive this court to influence its decision.

B. The Chancery Court of Marshall County Assumed Proper Jurisdiction Over the Proceedings

Under the general umbrella, the Appellee alleged that the Chancery Court of Marshall County Assumed Proper Jurisdiction Over the Proceedings.

Although the Appellee correctly states:

> The decision of whether to exercise or decline continuing jurisdiction is left to the chancellor. Ortega v. Lovell, 725 So.2d 199, 202 (Miss.1998)(citing Johnson v. Ellis, 621 So.2d 661 (Miss.1993)).

it does not exclude the possibility that the discretion can still be abused. It appears that the Judge was considering releasing jurisdiction when he said:

> But I am going to look at this thing, I know what the law is, I am well familiar with the law. And if it was just modification I would have already transferred it but there is more issues to it than that. (Tr 18-19)

> THE COURT: I'm just concerned - - I'm just concerned as to whether or not the people have been playing with this court.
> MR. ZUMACH: I can - - I can absolutely say that I won't ever let a client play with this court.
> THE COURT: Well, I know a doctor that lied to this court, in my opinion, and I'm going to look at it
> MR. ZUMACH: Yes, your honor.
> THE COURT: And that has really got me disturbed.
>
> (Tr 22)

> THE COURT: . . . I'm going to make my ruling, when I make my ruling, if I retain the jurisdiction, I will address it at that time. If she has wrongfully withheld him she might have visitation.
>
> (Tr 24)

The Court implied that he might not release jurisdiction to Tennessee because he thought people had lied to the Court or that if Appellant had wrongfully withheld visitation he might retain

jurisdiction. Although he indicated that he was well familiar with the law he seemed to be making his decision based upon the emotional consideration of not allowing someone to get away from his court that he felt should be punished for wrong doing, whether it was 1. the crime of perjury or 2. wrongfully withholding visitation of a child.

The Appellant would submit that such a consideration was not envisioned under the Uniform Child Custody Judgment and Enforcement Act. That since he did not make his decision based upon applicable law either Mississippi case law or the UCCJEA that he abused his discretion. That in spite of the voluminous material provided by Appellee why he should have kept jurisdiction in Mississippi, by his own words the Chancellor made clear that he wanted to keep the case so he could control with it.

Under the Appellee's allegation that the Chancellor did not show extreme bias toward Amanda Schmidt his C (1):

C. (1) The Chancellor did not treat Amanda Schmidt in a Manner Contrary to Judicial Custom

The Appellee has used as his primary citation Moore v. Moore, 558 So.2d 834, 839 (Miss. 1990), to reflect that if no contemporaneous objection is made, such is waived. A closer look at Moore can easily show otherwise. This was a contempt action in which the Defendant took the stand and incriminated himself. His counsel made no objection to his client testifying, nor did he request the court to inform him of his Fifth Amendment rights against self incrimination. The Court stated:

> We assume that practicing attorneys are fully aware of the duty imposed upon a party to make contemporaneous objection to testimony he wants to prevent from becoming a part of the record. at 838
>
> If Aubrey's lawyer knew or even believed that the Chancellor committed error, he should have alerted him to the mistake. at 838

This was an issue in which defense counsel claimed the Judge should have informed the Defendant of his right of against self incrimination. Such would have been to correct an alleged legal error or mistake made on the part of the Chancellor and not as in this case, which revealed a course of conduct by the Chancellor throughout the entire length of the trial.

In Moore there was also an allegation of bias against the Defendant. The Court stated in part:

> I don't know that I need anymore proof. He is headed to the County Jail just as fast as he can get there. I will hear any proof that you have or anything he has in justification. This witness sat here on the witness stand and admitted that he is total and complete disregard of this court order. I would like to hear any justification for it whatsoever. Have a seat. I want to hear from whoever else you have and I won't tolerate that from anybody. at 839

This attorney has heard such comments dozens of times from numerous Chancellors, not a word of which is objectionable or showed bias in any way. This attorney would submit that Mr. Moore was grasping at straws to show a bias that clearly on its face did not exist.

Further the Appellee indicated that the Chancellor in quoting Griffith, Mississippi Chancery Section 94:

> The Chancellor does not have to express his feelings in a manner pleasing and delightful to the parties' ears.

Surely Appellee does not compare such mild and comparatively innocent comments by the Judge in Moore with such as:

> THE COURT: . . . You committed perjury in this court and your now husband committed perjury in this court. Now, if you commit perjury during in this trial you are going to leave this courtroom in handcuffs, do you understand me?
> . . . you have lied to this Court for the last time. I'm giving you fair warning. Now, go forward.
>
> (Tr 36-37)

Q And you are saying that his post-traumatic stress disorder is because of Mr. Bermudez?
A Yes.
Q Has nothing to do with you moving him hundreds of miles away to Colorado ripping him away from his father and extended family?

(Tr 112)

THE COURT: You wanted out of a marriage to marry your sweetie and get out of dodge, and that's what it boiled down to.

(Tr 112)

THE COURT: Lady, Lady, you get diarrhea of the mouth when I ask you a simple question.

(Tr 113)

THE COURT: I think you are sick right now, the way you are doing.

(Tr 131)

THE COURT: Lady, it appears that you poisoning - - that you are taking poison and pouring it on your child - -

(Tr 147)

THE COURT: Have you - - Well, what type of medication are you on again?
THE WITNESS: Anti-anxiety and antidepressants.
THE COURT: You are playing the role very well.

(Tr 169-170)

The Appellee further cites Dorrough v. Wilkes, 817 So.2d 567, 577 (Miss.2002) which again indicated when the Chancellor makes comments which allegedly show bias. Actually Dorrough asserts that:

> Attorneys for the Wilkes made improper comments during trial which prejudiced the jury, at 576.
>
> The trial Judge is in the best position to determine if an alleged objectionable remark has a prejudicial effect. At 576
>
> Finally, the contemporaneous objection rule is in place to enable a trial court to correct an error with proper instruction to the jury whenever possible. at 577

The Appellant would submit that in Dorrough the trial judge functioned as an umpire between the Plaintiff and the Defense, and when one side makes an error the trial Judge is called upon to correct it to see that no improper evidence is introduced before a jury. If so, such evidence would be disallowed if proper objection was made.

There was no jury here in the present case, and the Judge was the finder of fact and the decider of the law.

Does the Appellee ask the Appellant to object to the Court, not about something that the Appellee had done, but about something that was not a legal issue but an entire course of behavior by the Judge? Was he to object until the Judge locked him up for contempt or should he only object on rare occasions? In this case if such should have been done it would have increased the trial another day or stopped it all together when the Appellant's attorney was taken to the Marshall County Jail.

Finally, the Appellee cites Hill v. State, 432 So.2d 427, 439 (Miss. 1983) He again states: "If no contemporaneous objections are made then "the error, if any, is waived." This was a criminal case before a jury and should have no application whatsoever here.

> The prosecutor making this sort of argument is asking for a mistrial . . .
>
> In this case, however, there was no objection made to this argument. We have consistently held that a contemporaneous objection must be made to a proper argument by the state, unless objection is made, any claim there for such an improper argument will not be considered on appeal, Hill at 439

Surely, such a comment by this Court was intended so that the trial Judge would have the opportunity to rule on the objection and possibly cure the problem if there was found to be any.

In this case the problem was not improper questions nor was it objectionable conduct by the opposing attorney, but was the Judge's behavior. One would not reasonably request a mistrial of the one who was the cause for the need of a mistrial.

C (2). Appellee Alleged That Amanda Schmidt Failed to Move for Recusal.

It was impossible to move for recusal, since recusal is a very limited remedy, none of which applied in this case. Canon 3 (E) (1) of the Code of Judicial Conduct reflects:

> Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including, but not limited to, instances where:
>
> (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge or disputed evidentiary facts, concerning the proceeding.
>
> (b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning;
>
> (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
>
> (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) is a party to the proceeding, or an officer, director, or trustee of a party;
>
> (ii) is acting as a lawyer in the proceeding;
>
> (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

> (iv) is to the judge's knowledge likely to be material witness in the proceeding;

The Canon discusses personal bias or prejudice concerning a party, which was difficult to allege and impossible to prove prior to the case's conclusion. The Court had no financial interest in the issue nor did any of his family. Not one of the provisions under Canon 3(E) bring this case within the bounds of recusal.

Finally under the Uniform Chancery Rules, Rule 1.11 it clearly states in part:

> Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which would not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted.

As evidenced by a reading of the entire trial transcript of this case, the issue of bias could not have been properly raised until after this case was tried in its entirety. Any such motions would have been improper and would have been quickly overruled, based upon the hereinabove cited Cannons of the Code of Judicial Conduct. Therefore, this writer believes that the trial transcript shows conclusively and obviously for anyone to see that the Judge was biased, but such bias could not have been shown, nor could Appellant have known without playing this trial out to the bitter end. That a motion for recusal was not made because such could not and would not have been sustained by this Court under the law.

As a parting shot the Appellee alleged that the appropriate forum for making such allegations against the Chancellor would be the Mississippi Commission On Judicial Performance. Yet he cited no authority for such an allegation. All of said statutes are found in § 9-19-1 through § 9-19-31 of the 1972 Mississippi Code Annotated, as Amended. In reviewing the statutes on the Mississippi Commission On Judicial Performance the case law seems to speak most directly to Judges that use their office in an improper, unethical and illegal way. Some of them are chastised by this Court,

some are removed from office and some actually prosecuted for criminal conduct. It was not the purpose of the Appellant to harm the career of the Chancellor in this case nor to bring him before a higher tribunal for discipline. It was to show this Court that because he had a bias of which he was unaware, and therefore could not control, his decision should not stand in this case.

Article 6, section 117A of the Mississippi Constitution provides in part:

> On recommendation of the commission on judicial performance, the supreme court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state for: (a) actual conviction of a felony in a court other than a court of the State of Mississippi; (b) willful misconduct in office; (c) willful and persistent failure to perform his duties; (d) habitual intemperance in the use of alcohol of other drugs; (e) conduct prejudicial to the administration of justice which brings the judicial office into disrepute . . .

Certainly this Court would not require this attorney to bring such serious accusations as are hereinabove enumerated in Article 6, section 117A of the Mississippi Constitution against the Chancellor in this case.

D. The Appellee Indicated That the Chancellor Did Not Err When Refusing to Qualify Schmidt's Witness as an Expert

The Appellant would show that the Appellee spent his entire argument discussing whether it was error for the Chancellor to refuse to qualify Appellant's witness as an expert. However he totally ignored the fact that the bias and prejudice earlier alleged in both the original brief and this reply brief indicated extreme hostility and prejudice by the Court toward Dr. Michelle Kelly. The Appellee has not denied the fact that the Chancellor treated her in violation of Canon 3 (B) (4) of the Code Of Judicial Conduct. He was not patient, dignified or courteous toward her especially in threatening to put her in jail:

> THE COURT: Get me a deputy. Get me a deputy, I'm not going to put up with this. Get me a deputy.
> (Tr 310, 311)

He treated her as if she were in deliberate contempt of the Court when it is very obvious from her testimony that she was only reminding everyone that she had a plane to catch shortly and that she had previously been assured that she would be able to leave on time. By Appellee ignoring said behavior of the Judge one would think that the Appellee had no defense of the Judge in how he behaved toward Appellant's witness in a similar matter as he had behaved toward the Appellant.

E. The Appellee Alleged That The Court Appointed Expert Did Not Have a Conflict of Interest.

The Appellee alleged that the Court appointed expert did not have a conflict of interest. He indicated that neither counsel objected to Dr. Nichol's qualifications as an expert witness and that this error by the Court was harmless as there was no indication that the outcome of the case would change if the instructions had been filed with the Clerk pursuant to Mississippi Rule of Evidence 706. It is very possible that if the Court had followed Rule 706 that all parties could have determined that Dr. Wyatt Nichols had a conflict of interest in that he had already seen the Appellee through his private practice, prior to being appointed as Court Expert. That it is very possible that Dr. Nichols did not know to reveal at that time what a conflict of interest was and it could have been pointed out to him if the Court had followed said Rule. The Appellant would ask was it his duty or the Court's duty to follow the requirements of the Rules of Evidence?

Secondly, although the Appellee asserted the expert had no conflict of interest he did not respond whatsoever to the allegation that he had a conflict other than that neither party objected. The Appellant had the expert admit on cross-examination that he had seen the Appellee professionally before he had been appointed an expert by the Chancellor. He did not reveal this until shortly before the trial and actually admitted it in his sworn testimony in cross examination but basically brushed it aside. Such a conflict would not have been allowed if attorneys had done the same thing.

Does a psychologist have ethical principles and conflict of interest? In researching such point the Appellant found the Ethical Principles of Psychologists And Code Of Conduct, 2002 under

which Dr. Nichols is bound. Their Introduction And Applicability stated in part:

. . . The Ethical Standards set forth enforceable rules for conduct as psychologists. . . .

Under 3.05 of said Code, entitled Multiple Relationships:

> (a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person. (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.
>
> **A psychologist refrains from entering into a multiple relationship if multiple relationship could reasonably be expected to impair the psychologist's objectivity,** competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risk exploitation or harm to the person with whom the professional relationship exists. Multiple relationship that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.
>
> (b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.
>
> (c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur.

Further, under 3.06 Conflict of Interest:

> **Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity**, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

It should be obvious from a reading of 3.06 that they are to refrain from:

taking on a professional role when personal, scientific, professional, legal, financial,

> or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists . . .

Dr. Nichols, in accepting a court appointed position which was required to be totally objective from the outset, did not reveal to the Court that he had a previous relationship with the Appellee which would likely have prevented him from objectively and properly functioning as a court appointed psychologist. He did not reveal this until shortly before the trial, after he had completed his work and admitted it under oath on cross-examination by Appellant's attorney. He compromised his objectivity, had a conflict of interest and did not reveal it to the Court. Whether the doctor's failure to reveal the relationship at the beginning to the Chancellor was his fault, or that of the Court is for this Court to decide.

F. The Appellee Alleged That The Guardian Ad Litem's Investigation was Thorough and Complete

The Appellee spends one and one half pages indicating what the guardian ad litem did but never explained why he failed to interview Dr. Jeffery Schmidt, the primary male in the life of Colson Bermudez. He simply dodged the issue by stating what Mr. Bailey did do but did not comment on the significance of what he failed to do.

It is significant that the Appellee's attorney quoted M.J.S.H.S. v. Yalobusha County Department of Human Services ex rel, 782 So.2d 737, 740 (Miss. 2001) and quoted in part:

> To do this the guardian may need to interview the minor child and their current custodians as well as refer to medical and psychological records along with academic and other records pertaining to the child. MJSHS At 740.

It is ironic that he would quote such a citation in defense of his position when in that case it indicates "the guardian may need to interview the minor child and their current custodians ." Certainly Dr. Jeffery Schmidt, the child's stepfather and one of the "current custodians" who had

been the major male in this child's life for nearly two years was a crucial person to be interviewed, and neither the court appointed psychologist nor the guardian ad litem ever interviewed him. No one would fail to acknowledge the hard work that Stephen Bailey did in the guardian Ad Litem's report, but it is very obvious the glaring omission left a huge hole in determining the facts by not even asking for an interview with the step father.

G. The Appellee Claims That the Chancellor Did Not Err in Requiring Amanda Schmidt to Pay Reasonable Attorney's Fees and Reimbursing the Appellee for Expenses Due to Her Contempt.

The Appellee stated:

> If an order of the court was ignored or violated, then the finding of contempt is proper. Ellis v. Ellis, 840 So.2d 806, 811 (Miss. App. 2003)

and that:

> A citation for contempt is proper when the contemnor has willfully and deliberately ignored the order of the court. Strain v. Strain, 847 So.2d 276, 278 (Miss. App. 2003)

However, the Appellee completely ignores the fact, as alleged by Appellant in her brief that the Court never found her to be in contempt. In fact she was not even in court, being ill, but that any time there was a problem with visitation it was always worked out without a hearing and no testimony, and the Appellant would again submit that no person can be found in contempt of court without a hearing on the merits and testimony given as to the issues of contempt.

H. The Appellee Stated That the Chancellor Based His Findings on Facts in Evidence.

The Appellee cited that:

> It is vitally important for our trial courts to create a thorough and complete record and to base their decisions on that record and the evidence contained therein. Rodgers v. Taylor, 755 So.2d 33, 38 (Miss. App. 1999)

In using Rodgers the Appellee asserted that:

> it is not error to question whether valuable information could have been gleaned from individuals, not brought to testify before him. Appellee Brief Page 30

However, as originally cited in Appellant's Brief the Court in Rodgers found otherwise.

> The Chancellor's repeated reference to the fact that Ken did not testify and what he would or would not have offered is mere speculation and conjecture and not part of the record on which the chancellor could base his decision. Further, we find reckless the chancellor's following assertion: "The real concern the Court has, though, is Ken. The Court is not convinced that he is not the culprit in the sexual allegations made by the child and, again, without his testimony, has to draw such conclusions from the evidence it has before it." We find no substantial basis in the record even remotely suggesting that Ken may have perpetrated the alleged sexual abuse in this case, with the exception of the testimony of Karen that Rodney, Jr. is modest around Ken. It is evident that the chancellor wanted to hear from Ken. But, it is not the chancellor's job to present Karen's case. For whatever reason, she chose not to call Ken as a witness. However, the chancellor's suggestion that because Ken did not testify that he then may have perpetrated the alleged sexual abuse is a quantum leap which had no factual basis in the record, and which we find reveals that chancellor's **bias** resulting in his abuse of discretion.
>
> Rodgers v. Taylor, 755 So.2d 33 at 38 (Miss. 1999)

How could Appellee assert from Rodgers that it was not error to question what value could have been gleaned from a witness who did not testify when this Court in Rodgers found:

> what he would or would not have offered is mere speculation and conjecture . . . we find reckless the chancellor's following assertion . . . we find reveals that chancellor's **bias** resulting in his abuse of discretion. Rodgers at page 38

Further, Appellee asserts that inconsistent testimony undermined the Appellant's credibility when such testimony was no more than confusion over a year, either March of 2004 or March of 2005. It is clear that the Judge had already decided that she was a perjurer before the trial started from his statements in the first moments of the trial:

You committed perjury in this Court . . . You have lied to this Court for the last time.
(Tr 36-37)

The Appellee insists that the Chancellor found ample evidence in the record to develop and support his decision; therefore this Court should not find reason to disturb his findings.

The Court made findings as evidence that were never testified by anyone, when he indicated that he believed that she had developed a relationship with Dr. Schmidt that caused her to break up her marriage. The divorce was granted on the grounds of irreconcilable differences, which should place no inference for or against the fault of either party. It did appear that the Judge was determined to establish a fault grounds for the divorce which had been granted two and one half years earlier in order to justify his decision concerning modification of custody.

I. The Appellee Alleged That the Chancellor Properly Determined That a Visitation Hearing Was the Proper Approach to Determining Amanda Schmidt's Visitation Rights.

The Appellee rightfully cited Cox v. Moulds, 490 So.2d 866, 870 (Miss. 1986) stating that:

> A chancellor must find something approaching actual danger or other substantial detriment to the children in order to restrict a parent's visitation rights.
> Cox at 868

Cox also held:

> The visitation rights of the non custodial parent shall be tantamount to custody with respect to the place and manner of exercise of same, except in the most unusual circumstances. Cox at 868

Further in Newson v. Newson, 557 So. 2d511, 517 (Miss. 1990) Held:

> An appreciable danger of hazard cognizable in our law was sufficient to restrict visitation rights of a parent. Newson at 517

Then:

> While also requiring evidence that standard visitation was likely to cause actual harm to the child for a chancellor to impose limitations on visitation.
> Harrington v. Harrington, 648 So.2d 543, 545 (Miss. 1994)

In this case the Court found no danger as envisioned in Cox and Newson, and he did not just restrict visitation: he cut it off all together when the Appellant had been the primary care giver for the child for his entire life.

Further, the Appellee indicated that part of the reason for the Judge's decision was her continued co-habitation with her paramour. When this trial began the Appellant had been married to Dr. Jeffrey Schmidt for almost two years and only co-habited with him for a short time. Such a comment not only makes no sense but is an absolute falsehood, and although the Appellee indicates the Chancellor therefore had ample evidence to prohibit future visitation until Amanda Schmidt petitioned the Court, the Appellant asks, where is it?

Assuming that one of the Chancellor's chief concerns was the Appellant's failure to provide psychiatric, medical records and education reports to the Appellee such certainly does not constitute a danger to the child. He cited that subjecting Colson to psychiatric hospitalization and medication when several experts have determined him to be a normal healthy four year old. That issue was hotly disputed by the medical experts in this case and again did not show a clear danger to the child. Making false allegations of physical and sexual abuse; again whether making allegations, true or false, still did not constitute a danger to the child. He also listed removing Colson from his extended family and friends. That certainly is a difficulty because of the distance between the two families but again that is no danger to the child. And finally her "complete failure to abide by previous court decrees." In each and every instance when there was a dispute about visitation it was always resolved without the necessity of a hearing. And she was never found in willful contempt by any of the decrees. It is obvious that the reasoning unravels in light of the standards put forth in the previously cited cases.

CONCLUSION

Regardless of the defenses put forth by the Appellee, the Court having determined that the Appellant and her husband were perjurers at the trials beginning showed that he would not believe one word that they said. He showed extreme bias against her as well as her expert, Dr. Michelle Kelly. The Appellee has failed to overcome that and in many instances did not even respond to it.

There has been no showing that Dr. Wyatt Nichols did not have a conflict of interest which would prevent him from objectively being the court appointed psychologist, and the Appellant has provided enumeration of the Rules under which he is bound. He failed to abide by those rules. It was incumbent upon the Court and not the attorneys to determine that he did not have a conflict of interest.

Although the guardian ad litem did extensive work in his position and even if he was outstanding in many respects, he utterly failed to interview the primary male in the life of the child Colson Bermudez which prevented the Court both at trial and now on appeal from gaining that invaluable information such an interview could have provided.

Due to the bias of the Court he erred in finding facts not in evidence. This Court can scour the transcript and will not find the testimony on which to base his beliefs. He stated the Appellant was in contempt of court although he never found her in contempt of court since there was never even one hearing and no testimony to find her in contempt. He found a material change of circumstances but vacillated on what that change was.

Although he pondered about the testimony of Dr. Schmidt (whom he called a perjurer) he speculated on how valuable that testimony might have been. The Appellee has failed to show other than just stating basic case law in generalities that this case should not be reversed. It should be

reversed and rendered and the child returned to the Appellant, or at the very least reversed and remanded for a new trial with another chancellor.

Respectfully submitted this the 19th day of July, 2007.

JOE MORGAN WILSON
Attorney for Appellant
210 W. Main Street
Senatobia, MS 38668
(662) 562-4477
MSB # 7300

CERTIFICATE OF MAILING

I, Joe Morgan Wilson, Attorney for Appellant Amanda J. (Gressel) Bermudez Schmidt, certify that I have this day mailed by United States Mail, postage pre paid, the original and three copies of the forgoing attached brief for Appellant to the following:

Hon. Betty Sephton
Supreme Court Clerk
P. O. Box 117
Jackson, MS 39205

This the 19th day of July, 2007.

JOE MORGAN WILSON
Attorney At Law
210 W. Main Street
Senatobia, MS 38668
MS Bar [redacted]
662-562-4477

CERTIFICATE OF SERVICE

I, Joe Morgan Wilson, attorney for Appellant, Amanda J. (Gressel) Bermudez Schmidt , certify that I have this day mailed by first class mail, postage prepaid, a true and correct copy of the foregoing and attached Brief For Appellant.

Honorable Glenn Alderson
Chancellor
P. O. Box 70
Oxford, MS 38655

Hon. Sarah J. Liddy
Attorney For Appellee
P. O. Box 40
Olive Branch, MS 38654-0040

Hon. Justin S. Cluck
Smith Whaley, P.L.L.C,
Attorney For Appellee
P.O. Drawer 849
Holly Springs, MS 38635

This the 19th day of July, 2007.

JOE MORGAN WILSON
Attorney for Appellant
210 W. Main Street
Senatobia, MS 38668
(662) 562-4477
MSB #[redacted]