

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS

VONDELL O. SUMRALL, JR.

APPELLANT

VERSUS

NO. 2006-CA-01156

HEATHER MARIE SUMRALL

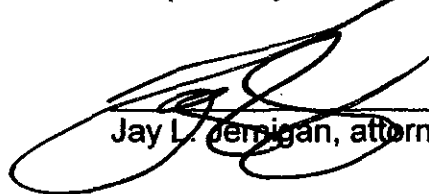
APPELLEE

CERTIFICATE 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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Vondell O. Sumrall, Jr.-appellant
2. Heather Marie Sumrall-appellee
3. Jay L. Jernigan-attorney for appellant
4. Samuel S. Creel- former attorney in the Chancery Court for Appellee
5. Michael Mitchell-attorney for Appellee in the Court of Appeals
5. Judge Franklin C. McKenzie, Jr.-Chancery Court Judge

Respectfully submitted,



Jay L. Jernigan, attorney for appellant

Brief of Appellant

TABLE OF CONTENTS

	Page
Certificate of Interested Persons.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
I. Statement of Issues.....	1
II. Statement of the Case.....	2
A. Statement of the Facts Relevant to the Issues Presented for Review.....	3
III. Summary of the Argument.....	5
IV. Argument.....	6
A. Contention of Appellant in Regard to Missapplied Albright Factors.....	6
V. Conclusion.....	9
VI. Certificate of Service.....	10

TABLE OF AUTHORITIES

Cases:	Page
<i>Albright v. Albright</i> , 427 So.2d 1003, Miss., 1983.....	7
<i>Bass v. Bass</i> , 879So.2d 1122, Miss. App. 2004.....	7
<i>Hollon v. Hollon</i> , 784 So.2d 943, Miss., 2001.....	8
<i>J.P.M v. T.D.M.</i> , 932 So.2d 760, Miss., 2006.....	8
<i>Mercier v. Mercier</i> , 717 So.2d 304, Miss., 1998.....	8

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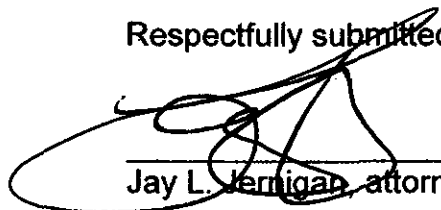
STATEMENT OF ISSUES FROM THE APPELLANT

COMES NOW the Appellant and files this his Statement of Issues to be reviewed by the Mississippi Court of Appeals and would the following issues:

1. That the lower court failed to properly apply the Albright factors in the lower courts decision in that the lower Court stated that since the separation of the parties that the Appellee had a child out of wedlock and while still married to the Appellant and that this Court should not separate children in that brothers and sisters should always be together. In other words if you are in a court over child custody; one should go out and find someone (i.e. commit adultery) and bare a child and then the Court can rule that the child from the marriage and the child from the adulterous relationship should never be separated thus awarding custody of the minor child of the parties to the adulterous party. A novel approach if adopted by this Court and one that mandates attorneys to tell their respective clients to do also to aid in being granted custody.

2. That the lower court failed in applying the other Albright factors such as stability of home, employment, moral fitness and construed all of the factors in favor of the Appellee when evidence showed something other.

Respectfully submitted,



Jay L. Jernigan, attorney for appellant

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STATEMENT OF THE CASE

COMES NOW the Appellant and files this his Statement of Case to be reviewed by the Mississippi Court of Appeals and would show the following statement and relevant facts:

This case began with a Complaint for Divorce filed by the Appellant to which was answered and Counterclaimed by the Appellee. Previous the parties had filed a separate action where both parties were granted joint custody of the minor child by the lower court and each saw the child on alternating two week periods. Then in July of 2005 the Appellee began living with a second individual out of wedlock and this was the second known person that Appellee had lived with since the separation. The first individual the Appellee lived with sired a child with her.

A trial was held solely on the issue of child custody where the Court applying the Albright factors gave custody of the minor child of the marriage to Appellee. All other factors relating to the divorce had been agreed upon including the grounds of Irreconcilable Differences and the division of property in that the parties had already divided all of the assets.

STATEMENT OF THE FACTS RELEVANT TO THE
ISSUES PRESENTED FOR REVIEW

Appellee stated she was living in Hamlin, TX and had lived at the present address for two and a half months. (TT page 4 lines 15-28) Prior to her living at the Hamlin address she lived in Gatesville, TX. (TT page 5 lines 10-19) Prior to her living at that address she lived in Gatesville, TX with her mother. (TT page 5 lines 20-23) Prior to that time she lived in an apartment with her boyfriend, Lotfin, who sired a minor child out of wedlock. (TT page 6 lines 10-27) That child is now four years of age. (TT page 7 line 13-14) Appellee worked at Wal-Mart from November 2001 till present. (TT page 8 lines 13-17) Appellee is currently living with a boyfriend named Walker. (TT page 9 lines 16-21) Appellee testifies that Appellant is a good father for the most part. (TT page 15 lines 11-13)

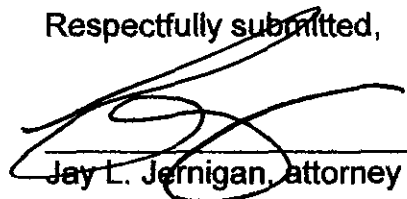
Appellant testifies he has lived at the same address for eight years. (TT page 16 lines 15-16) Appellant testifies that his parents live next door to him. (TT page 16 lines 21-24) Appellant testifies that he wants custody because of the instability of the Appellee and the fact that Appellee has been living with different guys. (TT page 17 lines 3-9) Appellant testifies that the minor child stays with him when he is not working and that his mom and dad take care of the minor child when he is working. (TT page 18 lines 1-4) Appellant testifies of the closeness of his family and that he takes care of his mom and dad. (TT page 18 lines 12-29) Appellant testifies that the minor child goes to his home church Oakland Baptist Church most every Sunday. (TT page 19 lines 3-11)

The child attends school and enjoys school. (TT page 20 lines 13-18) Appellant testifies he lives alone and has not stayed with a member of the opposite sex. (TT page

21 lines 7-11) Appellant testifies that he does not agree with lifestyle of Appellee and has more time to care for the minor child (TT page 22 lines 4-11) Appellant testified that Appellee is not a fit and proper person to have custody. (TT page 30 lines 11-18) Appellant tells the Court that there is nothing he couldn't do in caring for his child. (TT page 38 lines 21-25)

Appellants dad pays him \$1000.00 a month to help around the house. (TT page 51 lines 13-18) Appellant's dad states the minor child's teacher says he is the best student in the class and is in church. (TT page 52 lines 12-29) Appellants dad states the whole family helps in caring for the minor child of Appellants. (TT page 54 lines 27-29) Appellants dad tells why the divorce was filed because of the fact Appellee was living with a drug addict and former boyfriend called to tell them. (TT page 61 lines 10-21)

Respectfully submitted,



Jay L. Jernigan, attorney for appellant

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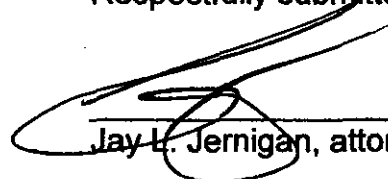
APPELLEE

SUMMARY OF THE ARGUMENT

COMES NOW the Appellant and files this his Summary of the Argument would shows the following succinct, accurate and clear Argument:

1. That the lower court failed in properly applying the Albright factors and further applied a new standard not previously known where if you are still married and have another child from a paramour then it is in the best interest in applying the Albright factors that the minor child from the marriage and the minor child from the adulterous affair not be separated thus encouraging parties to commit adultery in order to retain custody of a child properly born of a marriage.

Respectfully submitted,



Jay L. Jernigan, attorney for appellant

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THE ARGUMENT

COMES NOW the Appellant and files this his Argument shows the contentions of the Appellant with respect to the issues presented and the reason for Appellants contentions:

**CONTENTION OF APPELLANT IN REGARD TO
MISSAPPLIED ALBRIGHT FACTORS**

That the lower court failed in applying all of the Albright Factors in its decision and weighing them correctly and failed to articulate the Albright factors and merely failed in applying the factors. The misapplied factors listed by the Court are:

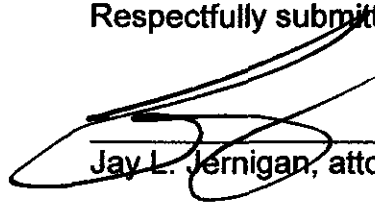
1. Continuity of Care was favored to the mother because the Appellants parents care for the minor child when the child is with Appellant and Appellant is working.
2. Age of child is a neutral factor.
3. The minor child has health problems related to bathroom skills. No one was favored.
4. Parenting skills were favored to Appellee because Appellants family help him daily with the care of the minor child and Appellee does everything on her own.
5. Willingness to provide primary child care was favored to the Appellee because grandparents care for the minor child while Appellant is working for his parents in the sawmill business and truck farming.

6. Neither parent has health issues. Neutral to both
7. Moral fitness was ignored by the Court and the Court only stated that Appellant impregnated the Appellee when she was 16 and that was wrong; totally ignoring the fact that Appellee had a child while married to the Appellant and lived with two different men.
8. School was neutral in that the child was doing well in both places.
9. The child from the marriage and the child from the adulterous affair should not be separated which flies in the face of family law in the State of Mississippi. In other words this Court has encouraged adultery bearing a child to weigh in on custody factors.
10. Stability of the Appellee even though she has moved four different times with two different men and has continually worked at Wal-Mart.

These are the only factors that were addressed in Court thus when looked upon from neutrality clearly show that this Court construed the factors in a light to favor the Appellee regardless of her situation and ignored factors like the family ties of the Appellant and even suggested that the closeness of the family hurts the Appellant in the Albright factors. In other words since the Appellant works for his parents and during this time that he works for his parents; his parents care for the minor child that this demonstrates the Appellant can not care for his minor child as proper as the the Appellee. Note Appellee testifies that a baby sitter cares for her children that is not related while she works. The case that is most frequently cited is **Albright v. Albright**, 437 So.2d 1003. Miss., 1983. This Court again must re-exam this case as it has in the past with other cases previous and determine whether or not the lower court properly applied the Albright factors. **Bass v. Bass** 879 So.2d 1122, Miss. App. 2004;

Hollon v. Hollon, 784 So.2d 943, Miss., 2001.; **J.P.M. v. T.D.M.**, 932 So.2d 760 Miss., 2006.; **Mercier v. Mercier** 717 So.2d 304, Miss., 1998. All of these above cases deal with this Court re-examining the lower courts decision as to the proper application of the Albright factors in the Chancellors decision. Very limited criteria was applied by the lower court or was applied wrongfully with a strong deference to Appellee for no apparent reason.

Respectfully submitted,



Jay L. Jernigan, attorney for appellant

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CONCLUSION

The Appellant would ask that this Court reverse and render this case as to the custody of the minor child to be placed with the Appellant in that the lower court misapplied the Albright factors and evidence before him.

Respectfully submitted,



Jay L. Jernigan,
Attorney for Appellant

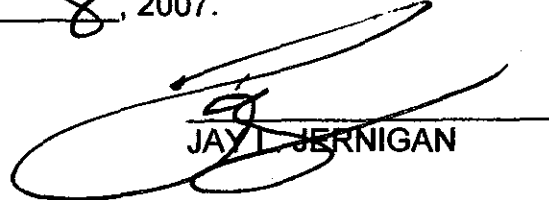
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above instrument was mailed, postage prepaid, to the following:

Samuel S. Creel, Jr.
Post Office Drawer 366
Laurel, MS 39441

Judge Franklin Mckenzie, Jr.
Post Office Box 1961
Laurel, MS 39441

SO CERTIFIED, on this the 14 day of June, 2007.


JAY L. JERNIGAN

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