

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TAMMY INMAN MORRIS

**2006-CA-1488**  
APPELLANT

VERSUS

CASE NO. 2003-0505-GN-W

DAVID C. MORRIS

APPELLEE


ON APPEAL FROM  
THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

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BRIEF OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

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**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 conflicts, disqualifications or recusal:

- |    |  |                           |
|----|--|---------------------------|
| 1. | Tammy Inman Morris   | Appellant                 |
| 2. | David C. Morris  | Appellee                  |
| 3. | Renee McBride Porter<br>Porter Law Firm, P.A.<br>P.O. Box 982<br>915 Main Street<br>Columbia, Mississippi 39429                | Attorney for<br>Appellant |
| 4. | M. Craig Robertson<br>P. O. Box 2623<br>Ridgeland, Mississippi 39158-2623  | Attorney for<br>Appellee  |
| 5. | Honorable Judge Johnny L. Williams<br>Chancellor, 10 <sup>th</sup> District<br>P.O. Box 1664<br>Hattiesburg, Mississippi 39403 | Lower Court Judge         |

Respectfully submitted, on this the \_\_\_\_ day of July 2007.

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Renee McBride Porter



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**STATEMENT OF THE ISSUES**

**I.**

The lower Court committed manifest error in the divorce trial of Tammy Inman Morris and David C. Morris. David C. Morris appeals for the following reasons:

I. The Court erred in awarding custody of the minor children to Tammy Inman Morris, and, specifically, the Court did not properly apply the Albright factors and discriminated against David C. Morris for his military service.

II. The Court did not properly address the Ferguson factors and specifically did not give David credit for properties titled only in his name for which he was the main contributor to the acquisition.

III. The Court did not properly find David Morris in contempt of court.

IV. The Court set child support at the guideline amount and did not go through the proper analysis as per Mississippi Code Annotated Section 43-19-101 if adjusted gross income exceeds \$50,000.00..

## **STATEMENT OF CASE**

Tammy Inman Morris (hereinafter "Tammy") and David C. Morris (hereinafter "David") were married on December 17, 1988, in Hinds County, Mississippi. During their marriage, there were two children born, namely, Victoria Morris (hereinafter, "Victoria") born June 27, 1996; and Courtney (hereinafter "Courtney"), born November 28, 1997.

David has a criminal justice degree from the University of Southern Mississippi and is a major in the National Guard and lieutenant on the Hattiesburg police force. David resides at 213 Sunset Drive, Petal, Mississippi, in a three bedroom two bath house in a nice neighborhood. David has moved from the marital domicile to 213 Sunset Drive, Petal, Mississippi.

At the time of the trial Tammy was living with Sue Almon and had been living there for six weeks (Record page 95, at line 27). This was a housing arrangement that caused the children to sleep with Tammy. (Record page 100, line 4). Tammy had lived at three different locations including different school districts after the separation and prior to the divorce. At the time of separation Tammy and girls at first lived in a home in Hattiesburg, then lived in a duplex, then lived in Heritage Apartments, and then lived with Sue Almon. (Record page 110).

David had been in his present employment with the Army for over twenty-three years when this case was tried and since 1988 at the police department. Tammy had been in her present employment for two weeks at the time of trial. (Page 118, line 7).

The parties separated when Tammy left while David was at guard drill. (Record page 171, line 7), so while David was serving his country Tammy left him. The parties at first

had a joint custodial arrangement.

The parties owned four real properties at the time of divorce.

1. David owned a home at 213 Sunset Drive in Petal, Mississippi, which was non-marital as it was bought after the separation.

2. David and Tammy owned the property located at 54 Arnett Road, Hattiesburg, Mississippi.

3. David owned forty acres in Jasper County purchased from David's uncle. The Court erred in finding that this property was in the parties joint name as it was in the name of David alone.

4. David owned a home that was his mother's prior home located at 1646 Old Highway No. 49 in Hattiesburg, Mississippi.

The Jasper County property was purchased during the marriage but was purchased from David's uncle.

At the time of the separation David and Tammy received joint physical custody of the minor children. This changed when David was deployed in Iraq.

Tammy became involved in an adulterous affair with one Keith Rutland and engaged in said affair during the parties separation. Tammy exposed the children to Keith on numerous occasions.

The parties proceeded to trial and the following witnesses were called.

1. David Morris, the Appellant.

2. Sandra Inman. Sandra is Tammy's mother. Sandra testified that her daughter had good moral character, but had a boyfriend, namely, Keith Rutland, and spent the night with

him and the children. (See Record., page 84)

3. Sue Almon. Sue was Tammy's roommate. (Record page 95, line 28). Sue had every opportunity to view Tammy as a parent, and Sue described her roommate Tammy as an average parent. (Page 97, line 13.)

4. Alma Dee McDermitt. Alma was a church secretary where the parties attended church prior to their separation and on cross examination admitted that she had not seen her on a regular basis for over two and one-half years (Record page 107., line 15). Alma further admitted that it was not a good idea to be dating someone when you are married to someone else. (Record 108, line 18)

5. Tammy, the Appellee. Tammy testified that she had only been working in her job for two weeks and had been living with her roommate for six weeks. Tammy further admitted an adulterous affair. Tammy further admitted on her testimony that during the marriage there were times she did not work.

6. B. J. Morris. David's mother who described David's relationship with the children.

The Court awarded Tammy custody stating "However, because of the uncertainty over David's military status, the court finds that it is in the best interest of the minor children to award custody to Tammy." (Findings of Facts and Conclusions of Law, page 16). The Court awarded Tammy \$72,300.00., of the real property values and David \$32,000.00. The Court awarded Tammy cash assets of \$23,411.49, while David received his retirement and cash of \$2851.00. The Court found David in contempt of Court, but made no findings as to what Order he was in contempt of and made no findings of his wilfulness. The Court set child support above



guidelines, as per the statute, but made no findings as to why this amount was set. David thus appealed.

## **SUMMARY OF THE ARGUMENT**

David and Tammy were married for a long time. While David was serving his country Tammy left him and begun an affair with one Keith Rutland. Now after a trial David has been stripped of custody of his girls, has received far less property division than Tammy, has been found in contempt of court, and has had his child support set above guidelines.

The Court did not adequately analyze the Albright factors and specifically discriminated against David because of his employment in the military. The Court's custody decision awarded custody of the girls to a mother, who was having an affair in the presence of the girls, who had been in her job for two weeks, and who had been in her home (that she was living with a roommate ) for six weeks. This is contrary to David, who has purchased a home for the girls and has long time stable employment.

David and Tammy owned one piece of real estate jointly. David had acquired, in his name, two other pieces of real estate during the marriage and prior to the separation. One of these pieces of real estate, specifically the Jasper County property, was acquired from family members. One of the pieces of real estate, specifically the property referred to as BJ's house, was acquired from David's mother. Tammy admitted that BJ, David's mother, had paid some of the monies on the home. Tammy did not work at times during the marriage. Yet Tammy received over fifty percent of all of the properties. The Court did not give credit to David at all for the Jasper County property being solely in his name, being acquired from this uncle, being family property and for his making the most contribution to the same. The Court did not give credit to David at all for the property, known as BJ's house, being given to the parties by BJ. The Court did not give credit to the fact that BJ had made the notes on the same. In the division of real

property and cash assets Tammy received over two times the value that David received. Tammy received the bulk of the cash assets with David only receiving less than \$3,000.00. This is an inequitable division.

The Court did not properly find David in contempt as there was no clear finding that he knew what the Order of the Court was and intentionally disobeyed the same.

Further the Court did not properly set child support as the Court did not make on the record findings as to the child support since the adjusted gross income exceeded \$50,000.00.

## ARGUMENT

I. The Court erred in awarding custody of the minor children to Tammy Inman Morris and specifically the Court did not properly apply the Albright factors and discriminated against David C. Morris for his military service.

“The polestar consideration in a child custody case is the best interest and welfare of the child.” Sellers v. Sellers, 638 So.2d 481, 485 (Miss. 1994); Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983). “The Supreme Court has identified factors that are to be considered in custody decisions:

- (1) age, health, and sex of the child;
- (2) a determination of the parent that has had the continuity of care prior to the separation;
- (3) which has the best parenting skills and which has the willingness and capacity to provide primary child care;
- (4) the employment of the parent and responsibilities of that employment;
- (5) physical and mental health and age of the parents;
- (6) emotional ties of parent and child;
- (7) moral fitness of parents;
- (8) the home, school and community record of the child;
- (9) the preference of the child at the age sufficient to express a preference by law;
- (10) stability of home environment and employment of each parent, and other factors relevant to the parent-child relationship.

It is recognized that the Chancellor is vested with substantial discretion regarding the analysis of these factors. However, in the instant case just like the case of Divers v. Divers,

856 So. 2d 370 (2003, Mississippi) there is not substantial evidence to support the Chancellor's decision.

Hollon v. Hollon, 784 So.2d 943, 947 (Miss. 2001)) provides "Where a chancellor improperly considers and applies the Albright factors, an appellate court must find him in error." Parker v. South, 913 So.2d 339, 347 (Miss.Ct.App. 2005)(citing Watts v. Watts, 854 So.2d 11, 13 (Miss.Ct.App. 2003)).

In this case the Court did not properly analyze the Albright factors.

The Court found that the Age, Health and Sex of the Children favored the mother.

The Court found that continuity of care and parenting skills favored neither party.

The Court found that willingness and capacity to care for the children favored the mother. This is in error. David was vested with Temporary Custody when this matter first begun. David has always put his children first as is evidenced by the record and by his purchase of a home for the children after the separation and by his continued involvement in the children's lives. The Court found that because of David's military duty this factor was not in his favor. David testified that he, at the time of trial, worked in Camp Shelby in basically a day job. The Court was in error in holding David's military employment against him as he testified that the military would work with him and establish a parenting plan and he could care for his children. The Case of Divers v. Divers, 856 So. 2d 370 (2003, Mississippi) is on point in this case,. In the Divers case Court did not award custody of a child to a military person in part because of his military service and the award was reversed,. The Divers case stated "The military is well-known for providing appropriate facilities for servicemen. The chancellor also notes that Kevin does not know where he will be assigned in four years. It is important to point out that the

chancellor also did not know where Jennifer would be in four years.” Id at 375. Based upon the Divers case and other analysis this factor and finding is in error. David testified himself that the military would work with him and make sure he could care for his children. (Record page 258).

The Court found that Employment and Responsibilities of that Employment favored

Tammy. Tammy at the time of trial had only been in her job for two weeks. (Record, page 188, line 7). The record is full of Tammy’s employment not being stable. David testified that Tammy

normally never got vacation because she did not work in a job long enough to qualify for vacation. (Record page 226). On the other hand, David has worked in the same employment since 1988 and has been in the military for over twenty years. Tammy’s employment being for only two weeks certainly could not be said to be stable. This factor clearly could not favor Tammy.

The Court found that neither physical and mental health of the parties nor emotional ties between parent and child favored neither party.

The Court found that moral fitness did not favor either party. This is an error as this factor should favor David. Any indiscretion by David happened years ago and was forgiven as per Tammy’s testimony. Tammy, on the other hand, left David while he was at work and immediately begun an affair with Keith Rutland. The moral fitness factor must favor David.

The home, school and community record did not favor either party as the preference.

Stability of the home environment favored David as was proper as he does have a home and has had a home since the separation.

The Court again placed specific importance on David's employment in the military.

The Court stated "because of the uncertainty over David's military status, the Court finds that it is in the best interest of the children to award custody to Tammy" (Findings of Facts and Conclusions of Law page 16)

This was error. This is discriminating against David because of his military service.

As the Divers case points out no knows what will happen in four years.

In this case Tammy was awarded custody when she was having an ongoing adulterous relationship in the presence of the children; when she had moved not once but four times in the pendency of the divorce; and when at the time of trial Tammy had only been employed in her job for two weeks. At the time of trial she was living with a girlfriend and had been for six weeks. This is contrary to a person who has worked in the same job for basically the entire marriage and has moved not once after moving out of the marital home. A thorough analysis of the Albright factors demands custody be awarded to David.

Although our Court has not specifically addressed the fact that military service should not be held against a parent seeking custody other courts have addressed that specific issue. The court of our neighboring state Louisiana has provided that a father's military service should not be held against him in an award of child custody O'Brien v. O'Brien, 704 So. 2d 933 (La. Ct. App. 2d Cir. 1997). Hilderbrand v. Hilderbrand, 391 SO. 2d 577 (La. Ct. App. 4<sup>th</sup> Cir. 1980.)

David is requesting that this Court adopt a specific rule here that military service

will not be held against a parent and not be considered in the award of custody.

II. The Court did not properly address the Ferguson factors and specifically did not give David credit for properties titled only in his name that he was the main contributor to the acquisition.

The parties had one piece of real property in their joint names. David had two properties in his name. One of these properties is referred to as BJ's house, since it was his mother's home, and she paid some of the notes on it as Tammy has agreed. Tammy said that she "know his mom might have paid some on it" (Record page 123 line 14). The other property is the Jasper County property which was family property purchased from the uncle of David. The court found all three pieces of property to be marital property. The Court erred in finding BJ's property to be marital property and in the division of both BJ's property and the Jasper County property. The court did not specifically address the Ferguson factors. In fact the Court only mentioned contribution. The Court did not discuss the factors at all in the division. The case of Daniels v. Daniels, 950 So.2d 1044 (Miss.App. 2007) reversed a property division and the Court stated " In making an equitable division of the marital property, the chancellor first determined which assets were properly addressed as marital property. After stating that he had considered the factors found in Ferguson v. Ferguson, 639 So.2d 921, 928-29 (Miss. 1994), the chancellor proceeded to divide the marital assets. No discussion of the factors is found in the record, and no explanation of how the chancellor found as to any factor, or how those factors impacted the chancellor's award of marital property, is included in the court's ruling." The Court reversed the Chancellor's decree in Daniels because no discussion was made of the factors. The Court must



discussion of the contributions made by David's mother. The Court should have addressed the fact that Tammy admitted that BJ had paid some of the money on the property known as her home. This case did not properly discuss the Ferguson factors and for that it must be reversed.

Further, the Court found from the record that David was the primary wage earner, but yet gave David no credit for that contribution. The case of Owen v. Owen, 928 So.2d 156 (Miss. 2006), provides 'as a matter of fact that Kenneth . . . [had] been the primary financial contributor to the assets of the marriage and that he should receive a greater percentage of any distribution of the marital assets.'

The Court should have addressed the fact that David's contributions were greater than Tammy's.

Lastly the Court should have addressed the fact that Tammy left David while he was on military leave. Tammy left David for no reason and this should be considered in the division of property specifically in the other relevant factor.

In this case, if you view the division by the Court Tammy receives \$77,300.00., of marital real property while David receives \$32,000.00. Further, Tammy receives the bulk of the cash assets with Tammy receiving \$23,411.49 and David \$2851.00. David basically only receives out of this division one piece of real property (being his mother's home), his retirement, coins, and guns. So that after a long marriage and properties that were acquired partly solely from David and his mother's efforts and also from his greater earning capacity, Tammy receives more than fifty percent over David in the real property division and all of the cash assets.

This Court has determined that "This Court must determine if the distribution as a

whole is inequitable. Tillman v. Tillman, 716 So. 2d 1090, 1094 (¶ 19) (Miss. 1998).

On the hold when you view the division it is not equitable and must be reversed.

III. The Court did not properly find David Morris in contempt of court.

This Court found David Morris in contempt of Court but no evidence was presented as to his direct and deliberate disobedience of an order of this Court. Bounds v. Bounds, 935 So.2d 407 (Miss.App. 2006). "Although the chancellor has substantial discretion in a civil contempt matter, "the alleged contemn or's willful disobedience must be proven by a preponderance of the evidence." Hollaway v. Hollaway, 631 So.2d 127, 132 (Miss. 1993). David was found in contempt but it was not clear what Order he was found in contempt of and if he had knowledge of that Court Order as there was an Order entered the day of the trial. Therefore the finding of contempt is void and must be vacated and thus the award of attorney's fees.

IV. The Court set child support at the guideline amount and did not go through the proper analysis as per Mississippi Code Annotated Section 43-19-101.

Mississippi Code Annotated Section 43-19-101 provides " (4) In cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars (\$50,000.00) or less than Five Thousand Dollars (\$5,000.00), 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.

The Court find David's adjusted gross income to exceed \$50,000.00., and did not make a written finding in the record. This is obvious error.

## **CONCLUSION**

The lower Court committed error in the divorce trial of Tammy Inman Morris and David C. Morris. The Court erred in awarding custody of the minor children to Tammy Inman Morris as the Court did not properly apply the Albright factors and discriminated against David for his military service. The Court further erred in dividing the property of the parties and specifically found properties that were titled in David's name and acquired from David's family to be marital property. The Court did not address the Ferguson factors and should have done so evidencing why Tammy was awarded fifty percent of properties totally in the name of David, which were in part paid for by David's mother. The Court erred when they found David in contempt and there was no specific Order for the contempt finding. Finally, the Court erred when there were no on the record findings on child support when David's adjusted gross income exceeded \$50,000.00. David requests that this Court reverse and remand this case.

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**APPELLANT**

**VERSUS**

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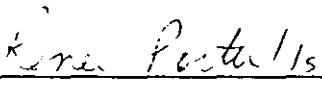
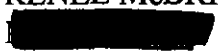
**APPELLEE**

**CERTIFICATE OF SERVICE**

This is to certify that I, Renee McBride Porter, on the 23rd day of July, 2007  
furnished a true and correct copy of the above and foregoing

**BRIEF OF APPELLANT**

to the Honorable Judge Johnny L. Williams, Chancellor, 10<sup>th</sup> District, by placing same in the  
United States Mail, postage prepaid, and mailing it to his usual office address of Post Office Box  
1664, Hattiesburg, Mississippi 39403 and to Honorable M. Craig Robertson., P. O. Box 2623,  
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