IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WAYNE R. REID — APPELLANT

VS. — CIVIL ACTION NO. 2007-CA-00220

SUSIE B. REID — APPELLEE

APPELLEE'S BRIEF

ORAL ARGUMENT NOT REQUESTED

ON APPEAL FROM THE CHANCERY COURT
OF PIKE COUNTY, MISSISSIPPI

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VS. **CIVIL ACTION NO. 2007-CA-00220**

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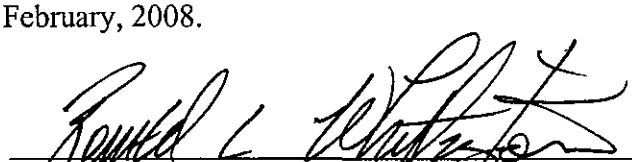
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee, Susie B. Reid, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order so the Justices of this Court may evaluate possible disqualifications or recusal.

1. Honorable Debbra K. Halford, Chancellor, Post Office Box 575, Meadville, Mississippi 39649;
2. Honorable Thomas T. Buchanan, TUCKER BUCHANAN, P.A., Attorney at Law, Post Office Box 4326, Laurel, Mississippi 39441;
3. Jessica D. Carr, Attorney at Law, Post Office Box 1213, Laurel, Mississippi 39441;
4. Ms. Susie B. Reid, 2181 River Ridge Road, Summit, Mississippi 39666.
5. Mr. Wayne R. Reid, 1052 Joe McCullough Road, Jayess, Mississippi 39641.

SO CERTIFIED, this the 15th day of February, 2008.



RONALD L. WHITTINGTON
ATTORNEY OF RECORD FOR SUSIE B. REID

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WAYNE R. REID **APPELLANT**

VS. **CIVIL ACTION NO. 2007-CA-00220**

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BRIEF OF APPELLEE

STATEMENT OF ISSUES

1. There was compliance with Mississippi Chancery Court Rule 8.05 and the Trial Court applied the correct legal standard to the issue of child support and alimony.

2. The Trial Court made appropriate findings pursuant to Mississippi Code § 43-19-101(4) and the decision of the Trial Court fixing child support payable by each party to the other was supported by substantial evidence and was not manifestly wrong.

3. The Trial Court made appropriate findings of fact and conclusions of law relative to the fixing of appropriate child support payable by each party.

4. The Trial Court properly found that there was no material change in circumstances warranting a reduction in permanent periodic alimony and the Trial Court was not bound to address the *Armstrong* factors in so ruling.

STATEMENT OF THE CASE

This is an appeal from the Chancery Court of Pike County, Mississippi, concerning the cross-complaint of Wayne Reid for modification of permanent periodic alimony payable by Mr. Reid to Ms. Reid. Ms. Reid in her complaint sought an increase in child support and other relief (R.E. 8-12.) , but her requested increase in support was denied. (R.E. 25.) She did not appeal or cross-appeal this ruling.

Contrary to Mr. Reid's claim in his STATEMENT OF THE CASE, he did not seek

in his counter complaint for modification and complaint for citation of contempt or amended counter complaint for modification and complaint for citation of contempt any reduction in child support. (R.E. 13-21.) The Trial Court's Bench Opinion of December 20, 2006 stated "that Ms. Reid has failed to prove any reason for the Court to increase the prior support awarded by this Court." (R.E. 25.)

Mr. Reid's claim that the Bench Opinion "held that there was a material change of circumstances concerning the appellee's (Ms. Reid's) request for a change of the prior child support ordered by the Court (R.E. 5.)" is totally wrong, inaccurate and not to be found in the record.

Contrary to the Appellant's "STATEMENT OF THE CASE" there is nothing in the opinion and judgment of the Trial Court that suggests that, "The Court further considered the Appellant's request for a decrease in child support previously ordered by the Court for the minor children, and determined that, despite the showing that of a material change in the Appellee's financial circumstances, the Appellant was not entitled to a decrease in child support for the three minor children who remained with the Appellee (R.E. 5.)." Ms. Reid and her counsel have no understanding of where such claims originate after review of the pleadings, record and ruling of the Trial Court.

Notwithstanding, pursuant to Mississippi Rules of Appellate Procedure, Rule 28(b), the Appellee, Ms. Reid, concurs with the Appellant's (Mr. Reid's), history of this proceeding as outlined in Mr. Reid's brief on pages 7 - 9 thereof, with one significant exception noted below. Issues addressed by the Trial Court, but not the subject of this appeal included respective claims of contempt, visitation, possession of certain personal property, and an allocation of dependent children for tax purposes. These matters need not be revisited.

Mr. Reid relates parenthetically in his procedural history that "both parties sought a modification of child support." Completely contrary to that parenthetical statement, Mr. Reid sought no such relief." Mr. Reid requested the following relief in his amended complaint for modification:

a. A reduction in alimony.

b. A modification of the prior order allowing him to have visitation with his minor children on 12 to 24 hour notice, depending on his schedule.

c. An Order directing the Counter-Defendant to send adequate and necessary clothing to the Counter-Plaintiff's house during his custodial time.

d. An Order prohibiting the Counter-Defendant from ease dropping on the Counter-Plaintiff and his minor children during their telephonic conversations.

e. Granting the primary physical custody of the minor child, Colton, to the Counter-Plaintiff.

f. Granting the Counter-Plaintiff a credit for child support for Colton, since October 2005.

(R.E. 18-19.)

This proceeding is the third time the Chancery Court of Pike County has been called upon to decide Ms. Reid's entitlement to alimony, its reduction or termination. (A.R.E. 1-20.). On each occasion Mr. Reid resisted and on each occasion his position was found not to be supported by substantial, credible evidence. Mr. Reid has earned and continued to earn at the time of this trial an average of $100,000.00 annually. This was verified by his 8.05 Financial Declarations filed in 2001, 2003 and 2006. (R.E. 75-99.) The Trial Court properly denied his request for reduction in alimony as he failed to prove material changes in facts and circumstances. (R.E. 21.)

Ms. Reid and Mr. Reid agreed in their testimony that there had been a material change in circumstances regarding custody of their oldest child, Colton, who was, at the time of trial, residing with his father. The Lower Court agreed and determined that guideline support was payable by each parent to the other. (R.E. 5.)

In her bench opinion, the Trial Court wrote:

The evidence is clear that Mr. Reid's income both at the

time of the divorce and the attempted modification, as well as today, has remained more or less constant, and has at all times been subject to Miss. Code Ann. § 43-19-101(4), in that his income has, during this entire time, exceeded $50,000.00, which requires this court to make a written finding on the record as to whether or not the application of the guidelines . . . would be reasonable.

. . . . The court specifically finds that the application of the statutory guidelines to the adjusted gross income of each of the parties is reasonable in this case. (R.E. 24-25.)

SUMMARY OF THE ARGUMENT

Ms. Reid filed a proper Financial Declaration in compliance with Uniform Chancery Court Rule 8.05, provided a copy of same to counsel opposite and a copy to the Trial Court when the declaration was introduced as an exhibit at the hearing. The 8.05 Financial Declaration was entered with no objection from Mr. Reid's counsel. Rule 8.05 by its own terms affords a discovery tool. "The rule shall not preclude any litigant from exercising the right of discovery, but duplicate effort shall be avoided." Rule 8.05 does not create a legal standard for determining child support or reduction in alimony. The Trial Court's judgment was supported by substantial evidence and was not manifestly wrong.

The Trial Court made an appropriate and correct finding in its bench opinion that the application of the statutory guidelines was reasonable for fixing the amount of child support payable by Ms. Reid and Mr. Reid. The Court correctly noted that the previous chancellor found that the child support needed by Ms. Reid was that which would be provided by the guidelines. *Caldwell* has no control in the instant case because the Trial Court ruled that Ms. Reid had not shown a material change warranting an increase in child support. The material change found by the Court was the fact that Colton now lived with his father. The father, Mr. Reid, was awarded correctly the presumptively payable guideline support.

The Trial Court computed Ms. Reid's income based upon her properly filed Financial Declaration and the supporting documents introduced into evidence without objection from Mr. Reid. The Court's use of payroll check stubs to calculate Ms. Reid's income, if anything,

resulted in a higher average adjusted gross monthly income, which inured to Mr. Reid's benefit. Tax returns that did not exist could not aid the Trial Court in determining income for child support or alimony.

Mr. Reid failed to provide any evidence of a material change in the circumstances of one or more of the parties warranting reduction of permanent, periodic alimony. He failed to offer any evidence that any alleged change was one that could not have been reasonably anticipated at the time of the original judgment. Mr. Reid antagonistically argues that Ms. Reid should have improved her lot by obtaining employment and should therefore receive reduced alimony. He claims she squandered rehabilitative alimony that expired before this trial. He next argues that because she has worked some part-time jobs since the divorce she had demonstrated the ability to earn income and therefore she should receive reduced alimony. These contrary positions demonstrate that Mr. Reid reasonably anticipated some income to be earned by Ms. Reid. That she did is not a material change. That she did not earn enough income in his view is not a material change.

Further, the Trial Court had the benefit of reviewing the financial records and demonstrated earnings of both parties. This evidence showed that Ms. Reid's need for and dependency on the $1,000.00 monthly periodic alimony was unchanged. Mr. Reid acknowledged that the monthly expenses that she itemized for her household and their three children residing therein were reasonable. The record shows by substantial, uncontradicted evidence that, at the time of divorce, Ms. Reid could not maintain herself without Mr. Reid's financial support. *Armstrong* instructs the bench and bar what factors are to be considered in making findings and entering judgment for alimony. The original decree of divorce entered the judgment for alimony. *Armstrong* has no application to modification of alimony.

ARGUMENT

1. Ms. Reid complied with Mississippi Chancery Court Rule 8.05 and the Trial Court applied the correct legal standard to the issues of child support and alimony.

Rule 8.05 of the Uniform Chancery Court Rules admittedly requires the filing of an appropriate financial declaration with supporting documents. This was done and the exhibit (R.E. 45-58.) was admitted without objection by Mr. Reid's counsel. (R. 21.)

Mr. Reid cites no authority to support his assignment of error claiming that the declaration did not afford the Court an adequate basis to address issues of the children's needs or to address the issue of Ms. Reid's need for alimony and/or justification to find a change in circumstances warranting reduction in alimony.

Mr. Reid's argument fails on the face of the provisions of Rule 8.05. The Trial Court can excuse the filing of such a declaration. Obviously, the rule recognizes that while compliance is expected and is intended to be helpful, it is not a necessity.

In *Meeks v. Meeks*, 757 So. 2d 364 (Miss. App. 2000) this Court wrote:

> **One problem with the evidence is that Mr. Meeks did not submit a financial statement in accordance with Chancery Rule 8.05. Whether such a written statement would have been any clearer than the testimony might be doubted, though the filing is supposed to include recent tax returns and other documents. As we point out below, the only relevant tax return had not yet been prepared. The rule itself states that filing can be excused for good cause. Unif. Ch. Ct. R. 8.05; *see Bland v. Bland*, 629 So.2d 582, 587 (Miss. 1993).**

Meeks v. Meeks, 98-CA-01183-COA (¶ 13).

At the trial of *Meeks*, counsel objected to testimony about income because of noncompliance with Rule 8.05. The objection was overruled.

This Court concluded that there is no case law that holds that failure to file the statement *per se* stops a party from making a financial presentation at trial. Ms. Reid complied with the rule, gave testimony about her finances and the Trial Court was neither impaired by her statement, nor without substantial evidence to support its ruling on child support and alimony.

The import of Rule 8.05 statements and how these may be addressed is discussed in *Pipkin v. Dolan*, 788 So.2d 834 (Miss. App. 2001). In *Pipkin*, the former wife, Melanie,

claimed that her ex-husband, Anthony, misrepresented his income in his 8.05 statement. She sought an upward modification of child support from the original judgment of divorce. This case was tried by agreement on financial records and affidavits submitted to that Trial Court by agreement of the parties and counsel. She argued on appeal after failing to receive the requested increase that Anthony's income was more than that stated in his 8.05 financial statement. In rejecting Melanie's argument this Court wrote:

> **The fallacy in Melanie's argument is two fold. First, the evidence is that Anthony's Rule 8.05 financial statement shows his monthly income, at the time of the chancellor's decision, to be $2,628, for a total annual income of $31,536, not $41,991 as claimed. If Melanie believed the financial statement to be incorrect, nothing would have prevented her from examining Anthony under oath concerning the matter.**

Pipkin v. Dolan, 99-CA-01416-COA (¶ 13).

Mr. Reid, through counsel, questioned Ms. Reid regarding her statement. This is appropriate, but all to which he is entitled. Neither the rule, nor case law grants more. Ms. Reid's statement afforded the Court good evidence and Mr. Reid did not discredit that evidence.

The Appellant's claim of error on this issue is without merit.

2. The Trial Court made appropriate findings pursuant to Mississippi Code § 43-19-101(4) and the decision of the Trial Court fixing child support payable by each party to the other was supported by substantial evidence and not manifestly wrong.

The record before this court shows that the final judgment of divorce affirmatively acknowledged that Mr. Reid's adjusted gross annual income exceeded then, as it does now, Fifty Thousand Dollars ($50,000). (R.E.76, 91, 99, 100.) The original Trial Court made detailed findings regarding the relative financial positions of Mr. and Ms. Reid, the earning capacity of Mr. Reid, the lack of earning capacity of Ms. Reid, the necessity that Ms. Reid attend the needs of the minor children (three children now versus four then), that Mr. Reid had substantial income and Ms. Reid none, and that Ms. Reid had substantial needs of the family. (A.R.E 1-11.).

Mr. Reid's amended counterclaim did not request modification of child support. That Mr. Reid was granted custody of Colton warranted a payment of child support from Ms. Reid equal to 14% of her adjusted gross monthly income. The chancellor did this. This change warranted a payment of child support from Mr. Reid to Ms. Reid equal to 22% of his adjusted gross income. Mr. Reid, not having sought a reduction in child support, cannot complain that the Trial Court erroneously used the guidelines, as did the previous Court when support was first set.

The Trial Court's Bench Opinion "specifically finds that the application of statutory guidelines to the Adjusted Gross Income of each of the parties is reasonable in this case." (R.E. 25.)

Assuming, arguendo, that Mr. Reid's pleadings can somehow be construed to seek reduction of his child support, the original judgment of 2001 and the record in this case clearly show that the 22% guideline support is needed to maintain these children. In its January 26, 2001 opinion, the original Trial Court found "that the reasonable needs of Ms. Reid and four children are in the amount of approximately $3,100." (A.R.E 8.).

The record made in the instant proceedings shows by substantial evidence that her present need is equal to, and in fact greater than, that amount. Mr. Reid admitted at trial that her every living expense item was reasonable. (T. 117-125.) (A.R.E.21-29.) Mr. Reid did not dispute that her reasonable monthly living expenses for four people were $3,672.55. (J. 124.) (R.E. 4, 7, 48.) He asserted that for himself alone on the same expenses he incurred costs totaling $4,279.20. (T. 124.) (R.E. 92, 93.)

In *Vaughn v. Vaughn*, 798 So.2d 431 (Miss. 2001), the Mississippi Supreme Court upheld the chancellor's application of the suggested guideline support for one child, 14%, of a party's $96,000 adjusted gross income. The Trial Court's findings, after detailing the income and its likelihood to continue stated:

> **The fourteen percent child support guideline yields $1,100 in child support per month. The Court finds that $1,100 is a necessary and reasonable amount of support to**

> **maintain a standard of living for Olivia, reasonably approaching that existing before the divorce.**

Vaughn v. Vaughn, 99-CA-00357-SCT (¶ 12).

On the argument that this finding was insufficient, *Vaughn* held:

> **Although this Court would have benefitted from more detailed information regarding the reasonableness of this child support award, these findings of the chancellor are sufficient to comply with the requirements of § 43-19-101(4), especially since he itemized and discussed with much specificity the nature and value of the parties' assets in the equitable distribution portion of his opinion and judgment. This award is also consistent with previous holdings of this Court that a "[c]hancellor should consider the reasonable needs of the child as well as the financial resources and reasonable needs of each parent." *Cupit v. Cupit*, 559 So.2d 1035, 1037 (Miss. 1990). Because the chancellor sought to maintain Olivia's standard of living at the pre-divorce level, he properly considered the disparity in incomes between Kay and Bruce in awarding an amount based on the statutory guidelines even though Bruce's income was considerably above $50,000 per year. This Court will not disturb a chancellor's determination of child support "unless the chancellor was manifestly in error in his finding of fact and manifestly abused his discretion." *Brocato v. Brocato*, 731 So.2d 1138, 1144 (Miss. 19999) (citing *McEachern v. McEachern*, 605 So.2d 809, 814 (Miss. 1992)) (citation omitted), Bruce's argument that the chancellor abused his discretion and committed manifest error is without merit.**

Vaughn v. Vaughn, 99-CA-00357-SCT (¶ 13).

The findings of the original Trial Court and the Trial Court in this case are basically identical to the adequate findings in *Vaughn*.

3. The Trial Court made appropriate findings of fact and conclusions of law relative to the fixing of appropriate child support payable by each party.

The Trial Court determined that Ms. Reid's request for an increase in child support was not justified because she failed to prove a material change in circumstances warranting an increase. Mr. Reid neither claimed , nor proved, a change in circumstances that would entitle him to a decrease in child support other than a guideline adjustment. This adjustment was made by the Court.

Mr. Reid would place the Trial Court in error because it made no findings specifically addressing the *Caldwell* factors. In *Caldwell v. Caldwell*, 579 So.2d 543 (Miss. 1991) that court, citing *Adams v. Adams*, 467 So. 2d 211, 215 (Miss. 1985), restated ten factors which may be considered if determining whether a material change has occurred that impacts child support. Appellant's brief accurately quotes those factors. But *Adams*, *Caldwell* and their prodigy never have held that findings of fact must be specifically enumerated if there is no material change. *See also McNair v. Clark*, 961 So.2d 73 (Miss. 2007).

Further, as noted throughout Ms. Reid's brief, Mr. Reid did not seek a reduction in his child support and the Bench Opinion (R.E. 22-29.) never identified this as an issue for the Lower Court's adjudication.

Counsel for Mr. Reid states in his argument on this issue that "despite finding that the parties stipulated to a material change, and finding that the children's need decreased, the Court still failed to find a material change sufficient to support a reduction in child support. (R.E. 5.)"

As in *McNair v. Clark*, 961 So.2d 73 (Miss. App. 2007), there was no stipulation of a material change. The record contains no "specific statement setting forth the agreed upon facts." *McNair*, 05-CA-01318-COA (¶ 22). Ms. Reid testified that she did not dispute that Colton's custody should be transferred to Mr. Reid (T. 17). Ms. Reid testified that he wanted custody of Colton and understood that his wife did not dispute this. (T. 15-16).

The Trial Court did not claim that the parties stipulated to a material change, but ruled that they agreed (in their testimony) that there had been a material change sufficient to support a reduction in child support. Mr. Reid's argument on appeal for a reduction in child support is not in the record at the trial level and is not found in the Bench Opinion.

Mr. Reid testified as an adverse witness during Mr. Reid's case in chief. He was not questioned at that time by his counsel. (T. 3-16). He was called as a witness in his case by his counsel and in his direct testimony not one question was asked nor one answer given

about a reduction of Ms. Reid's child support. (T. 106-111). He was asked:

> Q. All right. And are you asking the Court to award you child support for Colton?
>
> A. Well, I mean, I think I deserve it as much as she does.
>
> Q. And you've asked for a reduction in alimony, it that true?
>
> A. Yes, sir.

(T. 111.)

Mr. Reid was cross examined by this counsel and not one question was asked nor one answer given about a reduction in child support. (T. 111-127.) On redirect (T. 127-131) reduction in child support was not mentioned. The Court questioned Mr. Reid (T. 131-137), but nothing was said about reduction in child support. Mr. Reid's counsel conducted redirect examination (T. 137-138) and the record is silent about reduction of child support. Mr. Reid cannot be heard to play fast and loose with the facts, evidence and issues that were before the Trial Court and thereby get two bites at the apple to maneuver, one way or the other, a reduction of his financial obligation to his children or former wife. This Court does not address the facts and issues of a case in this manner and neither can Mr. Reid.

Mr. Reid's third assignment of error cannot be found in the record and it is without merit.

4. The Trial Court properly found that there was no material change in circumstances that would warrant a reduction in permanent periodic alimony and was not bound to address the *Armstrong* factors in so ruling.

The Trial Court's decision that the evidence adduced by Mr. Reid did not show a material change in circumstances justifying a reduction in alimony was supported by substantial evidence and was not manifestly wrong. There was no need for specific findings in this regard, and Mr. Reid's reliance on *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993) is misplaced.

Armstrong advised Trial Courts of twelve factors to be considered in making alimony awards. An award of alimony was made in the instant case in 2001. Mr. Reid's position and argument assert, in effect, that he should be allowed to re-litigate whether he should pay alimony to his former wife. This is not the office of a complaint to modify periodic alimony.

Ms. Reid's periodic alimony can be modified where there has been a substantial change in circumstances. This change must have occurred as a result of after-arising circumstances not reasonably anticipated by the parties at the time of the original divorce. *Ivison v. Ivison*, 762 So.2d 329 (Miss. 2000); *McDonald v. McDonald*, 683 So.2d 929 (Miss. 1996); and, *Varner v. Varner*, 662 So. 2d 493 (Miss. 1995).

Based on substantial evidence the Lower Court correctly determined the respective incomes of the parties. (R.E. 25-26.) There was credible, uncontradicted evidence regarding the parties' respective monthly living expenses. (R.E. 47-48, 92-93.) Mr. Reid admitted in his testimony that Ms. Reid's monthly living expenses were reasonable. (A.R.E 21-29.) (T. 117-125.).

Although the Trial Court determined that Mr. Reid earned $6,592.64 per month after taxes, the testimony showed that immediately prior to the trial of this case he changed employers. In April and May 2006, on his new job he admitted that he grossed $27,450. (T. 10.) Ms. Reid testified to her employment, that it was part-time and without any guaranteed work schedule. (T. 22.) Ms. Reid identified three 8.05 financial declarations for years 2001, 2003 and 2006. All three showed expenses greater than her income and child support. (R.E. 30-58.)

Mr. Reid bore the burden of proving the change and reduction in alimony he sought *(Ivison*, supra @ 334.). Mr. Reid cites no testimony from the record that supports his argument that the Trial Court erred in its finding on this issue. There is not even sharply contradictory evidence in this case.

The Chancellor was the finder of fact. *Morrow v. Morrow*, 591 So.2d 829 (Miss. 1991). She heard testimony and was best able to assess credibility and assign weight to that

testimony as she deemed appropriate. *Culbreath v. Johnson*, 427 So.2d 705 (Miss. 1983).

In *Ferguson v. Ferguson*, 782 So.2d 181 (Miss. App. 2001), this Court explained the reviewing authority of this Court:

> **This Court, sitting as a reviewing authority, is obligated to give substantial deference to those findings (the Chancellor's) since they are based on first-hand observations that cannot be assessed from a review of the printed record. We are not permitted to substitute our own opinion as to where the weight of the credible evidence might lie; rather, we are limited to a search for an abuse of discretion.**

Ferguson v. Ferguson, 99-CA-01733-COA (¶ 10).

The Chancellor's refusal to modify Ms. Reid's periodic alimony was amply supported by evidence which she deemed credible and this finding should not be reversed.

CONCLUSION

This lawyer asked Mr. Reid:

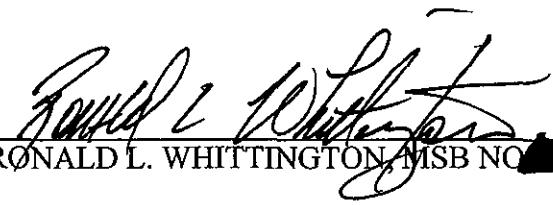
> Q. You want Ms. Reid to find full-time, good employment so that you don't have to pay alimony?
>
> A. I don't see why she can't work. No, Sir, I don't.
>
> Q. So that you don't have to pay alimony, right?
>
> A. Well, I don't agree with alimony. No, Sir, I don't.

(T. 126.).

The evidence shows Mr. Reid is indifferent about the law, like so many others. He and they think they are immune from or above the law. On the other hand, Ms. Reid needs the protection of the law, and more importantly, is entitled to the protection of the law for her sake and the sake of her children. In this case the rulings of the Trial Court were consistent with the statutory and case law of Mississippi. The Trial Court's judgment must be affirmed. The grounds for this appeal are baseless and this Court should award attorney fees, in a reasonable amount, to Ms. Reid for defending same.

Respectfully submitted,

APPELLEE SUSIE B. REID

BY: 
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CERTIFICATE OF SERVICE

I, Ronald L. Whittington, attorney for the Appellee, Susie B. Reid, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellee* to:

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THIS the 15th day of February, 2008.

RONALD L. WHITTINGTON