

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WAYNE R. REID

APPELLANT

VERSUS

CIVIL ACTION NO. 2007-CA-00220

SUSIE B. REID

APPELLEE

---

APPELLANT'S REPLY BRIEF

---

**\*\* ORAL ARGUMENT REQUESTED \*\***

ON APPEAL FROM THE CHANCERY COURT  
OF PIKE COUNTY, MISSISSIPPI

Thomas T. Buchanan, [REDACTED]  
John D. Smallwood, [REDACTED]  
TUCKER BUCHANAN, P.A.

Post Office Box 4326  
Laurel, Mississippi 39441

T: 601-649-8000

F: 601-649-8009

Jessica D. Carr, MSB [REDACTED]  
Post Office Box 1213  
Laurel, Mississippi 39441

T: 601-428-8600

F: 601-428-2235

**ATTORNEYS FOR APPELLANT**

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
RE-STATEMENT OF THE ISSUES .....	1
RE-STATEMENT OF PERTINENT FACTS .....	2
ARGUMENT .....	3
CONCLUSION .....	7
CERTIFICATE OF SERVICE .....	8

## TABLE OF AUTHORITIES

### CASES:

<i>Adams v. Adams</i> 467 So.2d 211 (Miss. 1985) .....	6
<i>Caldwell v. Caldwell</i> 579 So.2d 543 (Miss. 1991) .....	6
<i>Kalman v. Kalman</i> 905 So.2d 760 (COA 2004) .....	3

### OTHER AUTHORITY:

Miss. Code Ann. § 43-19-101. ....	5
Uniform Chancery Court Rule 8.05 .....	4, 5

## RE-STATEMENT OF THE ISSUES

Appellant submits the following issues for review:

1. The Trial Court failed to require compliance with Mississippi Chancery Court Rule 8.05 and therefore, applied the wrong legal standard to both the issue of child support and the reduction of alimony.
2. The Trial Court failed to make specific findings on the record required by Mississippi Code § 43-19-101(4) to enable the Court of Appeals to know the facts supporting and the lower Court's determination as to "whether or not applying the guidelines set forth in §43-19-101 were reasonable in this case".
  - A. Since the Appellee failed to comply with Mississippi Chancery Court Rule 8.05 in identifying the expenses of the children, the lower Court was unable to make a determination under Mississippi Code 43-19-101(4) as to reasonableness of the application of the guidelines.
  - B. The issue of Appellant's child support was not only governed by the fact that his income was above \$50,000.00, but in addition, the Court's Order gave to the Appellant, the primary care of one of the party's children.
  - C. The Appellee's income, as stated in her Mississippi Chancery Court Rule 8.05, would be governed by Mississippi Code §43-19-101(4) if the Trial Court or this Court could make a determination as to her income and whether that income was under \$5,000.00 or over \$5,000.00.
  - D. The Trial Court's award of child support from Appellant constituted a form of alimony, since the children's expenses were less than the child support awarded.
3. Since there was a material change in circumstances, the Trial Court erred in failing to make findings of fact and conclusions of law in accordance with the *Caldwell* factors.
4. The Trial Court erred in not finding a material change in circumstances, allowing a reduction in alimony and failed to make specific findings of fact and conclusions of law in accordance with the *Armstrong* factors.

## RE-STATEMENT OF THE CASE

Appellee uses this section in Appellee's Brief to dispute certain factual assertions made in this section of Appellant's Brief. This is nothing more than smoke and mirrors simply resolved.

On page 7 of Appellant's Brief, Appellant wrote "In its December 20, 2006 Bench Opinion, the Trial Court held that there was a material change of circumstances concerning the *Appellee's* request for a change of the prior child support ordered by the Court." Appellant committed a clerical error in this statement using the name "Appellee" when in fact it should have read "Appellant". At trial, the Appellee was asking for an increase in child support which was denied. The factual point to be made was that the trial Court did in fact find that as to child custody and child support the parties agreed and the Court found independently that there was a material change of circumstances warranting modification.

Appellee further claims that as to Appellant's request for a decrease in child support, that "Ms. Reid and her counsel have no understanding of where such claims originate.". As is clear from the record and recited in both Briefs, Appellant sought physical custody of Colton and a credit for child support for Colton. As Appellee's learned counsel is well aware, a change in custody of a child will change the child support obligations of the parents. Nonetheless, Appellee seems that argue that requesting a change of custody and "credit for

child support" is not a request for modification of child support. This court can certainly see through this smoke.

One final factual distinction need be made here. As shown in Appellant's Brief and not contradicted by the Appellee, the Court held that Appellee should be required to pay 14% of her adjusted income (14% of \$1,211.60 = \$169.62) to Appellant, and reduced Appellant's income percentage from 24% to 22% (22% of \$6,592.64 = \$1,450.38) resulting in a modification of child support to be paid by Appellant of \$1,280.00 per month in child support. (R.E. #5.). So this Court is clear, this calculation is error. The adjusted gross income of Appellee (\$1,211.60) is taken from her 8.05 [This includes \$1,000 per month in alimony]. The only evidence she attached to her 8.05 that her monthly gross income was \$211.60 was one pay check stub dated January 31, 2006. [R..E. #8]. Again, the trial was held on June 7, 2006 yet the trial court calculated child support based upon one 2006 pay check stub, although the trial Court had Appellee's 2005 W-2 [R.E. #8].

### REPLY ARGUMENT

- 1. The Trial Court failed to require compliance with Mississippi Chancery Court Rule 8.05 and therefore, applied the wrong legal standard to both the issue of child support and the reduction of alimony.**

The purpose of Uniform Chancery Rule 8.05 and compliance therewith is to give the trial court a complete financial picture of each party. *Kalman v. Kalman*, 905 So.2d 760, (COA 2004). In the realm of child support and alimony, this is of utmost importance. Appellee claims on the one hand that she

"complied with Rule 8.05" while at the same time arguing that a trial court can excuse compliance with Rule 8.05 and/or compliance "is expected and is intended to be helpful, [but] it is not a necessity." [Appellee's Brief p. 6].

Rule 8.05 begins, "[u]nless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division **shall** (*emphasis added*) provide the opposite party/counsel, if known, the following disclosures:". Appellee implies that the Trial Court in this matter somehow excused compliance with Rule 8.05, however, Appellee never requested to be excused from compliance, nor is there any such Order from the Chancery Court in this case. As discussed the "economic issues" of child support and alimony were before the trial Court. Accordingly, at the trial level, Appellee was required to produce,

- (A) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the form attached hereto as Exhibit "A" and "B".
- (B) Copies of the preceding year's Federal and State Income Tax returns, in full form as filed, or copies of W-2's of the return as not yet been filed.
- (C) A general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of the divorce, whichever is applicable.

Uniform Chancery Court Rule 8.05.

At trial, Appellee filed an 8.05 [R.E. - 8 & 9], which was deficient as follows:

- II. Income Statement - Listed Monthly Gross Income of \$211.60 when, based upon 2005 W-2, it should have been \$592.41.

- III. A. Monthly Living Expenses – Failed to divide “self” expenses from “children” expenses.
- Most recent tax return was 2002 [R.E. - #9](which, reflected a gross annual income of \$18,613).
- Only one 2006 check stub and no other 2006 proof of income (Trial was held on June 7, 2006).

As shown herein and in Appellant's Brief, the 8.05 submitted by Appellee at trial was deficient and was not excused by the trial Court. Based upon the trial Court finding that there had been a material change of circumstances as to custody and support, an accurate financial status of the parties to consider economic issues is a necessity, not “helpful” as argued by Appellee.

2. **The Trial Court failed to make specific findings on the record required by Mississippi Code § 43-19-101(4) to enable the Court of Appeals to know the facts supporting and the lower Court's determination as to “whether or not applying the guidelines set forth in §43-19-101 were reasonable in this case”.**

In order to make a decision as to the application of the child support guidelines pursuant to Miss. Code Ann. § 43-19-101(4), the trial court must have an accurate picture of the financial status of the parties. As shown hereinabove and in the Appellant's Brief, the trial Court did not have a clear picture of Appellee's financial status. Setting child support without the required evidence is reversible error.

3. **Since there was a material change in circumstances, the Trial Court erred in failing to make findings of fact and conclusions of law in accordance with the *Caldwell* factors.**



In this portion of her Brief, Appellee again plays both sides of the fence. She argues that Appellant "did not seek a reduction in his child support" [Appellee's Brief, p.10] but later states that the Trial Court "ruled that they agreed (in their testimony) that there had been a material change sufficient to support a reduction in child support." [Appellee's Brief, p. 10]. As shown in the Bench Opinion and admitted by Appellee, there was clearly a determination by the trial Court that as to custody and child support there was a material change in circumstances. As a result of said finding, the trial Court should have applied the *Caldwell* factors and by failing to do so committed error. See *Caldwell v. Caldwell*, 579 So.2d. 543, 547 (Miss.1991); *Adams v. Adams*, 467 So.2d 211, 215 (Miss.1985).

- 4. The Trial Court erred in not finding a material change in circumstances, allowing a reduction in alimony and failed to make specific findings of fact and conclusions of law in accordance with the *Armstrong* factors.**

As shown hereinabove and in the Appellant's Brief, the trial Court did not have a clear and complete picture of Appellee's financial status. Making a

determination as to modification of alimony without the required evidence is reversible error.

**CONCLUSION**

Until the Appellee is required to furnish the Court accurate proof of her exact earnings and child's expenses for purposes of child support, and her capacity to earn for alimony purposes, this case should be remanded for further findings.

Respectfully submitted,

WAYNE R. REID, Appellant

BY:

  
THOMAS T. BUCHANAN, 

THOMAS T. BUCHANAN  
Tucker Buchanan, P.A.  
P.O. BOX 4326  
LAUREL, MS 39441  
T: 601-649-8000  
F: 601-649-8009

CERTIFICATE OF SERVICE

I, Thomas T. Buchanan, counsel of record for the Appellant, do hereby certify that I have this day forwarded via United States Mail, postage prepaid, a true and correct copy of the foregoing document to the following:

Ronald L. Whittington, Esq.  
Attorney at Law  
Post Office Box 1910  
McComb, Mississippi 39649-1919

Honorable Debbra K. Halford  
Chancery Court Judge, Pike County  
Post Office Box 575  
Meadville, Mississippi 39653.

This the 2<sup>nd</sup> day of April, 2008.

  
\_\_\_\_\_  
Thomas T. Buchanan  
Attorney for the Appellant