

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 BRIEF

ORAL ARGUMENT REQUESTED

ON APPEAL FROM THE CHANCERY COURT
OF PIKE COUNTY, MISSISSIPPI

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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 Mississippi Supreme Court may evaluate possible disqualification or recusal:

1. Wayne R. Reid, Appellant
2. Susie B. Reid, Appellee
3. Ronald L. Whittington, Esquire, Attorney for the Appellee
4. Thomas T. Buchanan, Esquire and Jessica D. Carr, Esquire, Attorneys for
the Appellant
5. The Honorable Debbra K. Halford, Chancery Court Judge, Pike County,
Mississippi



Thomas T. Buchanan, Attorney of Record for Appellant

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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.	
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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.

STATEMENT OF THE CASE

This is an appeal from the Chancery Court of Pike County, Mississippi, concerning Cross-Complaints for Modification of both alimony and child support filed by the parties. The appeal seeks to reverse the Trial Court's ORDER ON COMPLAINT FOR MODIFICATION rendered on January 25, 2007. (R.E. 14.) 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. (R.E. 5.) 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.) A brief statement of the facts and procedural history is as follows:

Statement of the Facts and Related Procedural History

The Appellant and the Appellee were divorced by Judgment of the Court on January 30, 2001. (R.E. 1.) The parties had four (4) children born during the course of their marriage: Colton Reid, Sawyer Reid, Logan Reid and Lindsey Reid. Colton was born on May 12, 1989 and is eighteen (18) years old. Sawyer was born on July 24, 1991 and is sixteen (16) years old. Logan and Lindsey Reid, twins, were born on August 12, 1995 and are twelve (12) years old. (R.E. 5.)

Under the terms and provisions of the Judgment of Divorce, Susie Reid was awarded the primary care and custody of the minor children. (R.E. 1.) At the time of the divorce, both parties were required to file a Financial Statement with the Court, detailing their income, expenses, liabilities and assets. At the time, Susie Reid listed her total monthly

income as \$160.00 with Wayne Reid listing his gross monthly income as \$9,558.45. (R.E. 6.) At the time, Susie Reid was awarded periodic alimony and rehabilitative alimony. (R.E. 1.) She was also awarded child support for the support and needs of the four children of whom she had custody. (R.E. 1.) The children remained in her custody until October 2005, when the oldest child Colton Reid began living with his father. The other minor children remain in Susie Reid's custody. (R.E. 5.) Under the terms and provisions of the original judgment of divorce, Wayne Reid was allowed to claim the children as dependents for tax purposes. (R.E. 1.) In the Final Decree of Divorce, Wayne Reid was required to pay a monthly total of \$1,550.00 in alimony to Susie Reid, and a total of \$1,560.00 in child support for the minor children. (R.E. 1.)

On February 9, 2005, Susie Reid filed a Complaint for Modification of Child Support and Other Relief, wherein she asked for an increase in child support due to the fact that the "cost of maintaining, housing, and nurturing said children had increased and the needs of said children relevant to their personal activities as well as school activities are greatly increased since the judgment of January 30, 2001." Susie Reid has not filed a tax return since 2001, instead asking for extensions of time each year, and in her complaint, asked to be allowed to claim the minor children as her dependents effective for the year 2004. (R.E. 2.)

Wayne Reid responded by filing a Counter-Complaint for Modification and Complaint for Citation for Contempt on February 1, 2006. (R.E. 3.) Mr. Reid later amended his complaint to include a motion for custody of the oldest minor child, Colton, who had been living with the Appellant since October, 2005. He further asked for child support for Colton. (R.E. 4.)

In the Complaint, the Appellant prayed for the following relief, recited here for the convenience of the Court:

- a. A reduction in alimony,
- b. A modification of the prior order allowing him to have visitation with his minor children on a 12 to 24 hour notice, depending on his schedule.
- c. An Order directing the Appellee to send adequate and necessary clothing to the Appellant's house during his custodial time.
- d. An Order prohibiting the Appellee from eavesdropping on the Appellant and his minor children during the telephone conversations.
- e. Granting the primary physical custody of the minor child, Colton, to the Appellant.
- f. Granting the Counter-Plaintiff a credit for child support for Colton, since October, 2005.

(Both parties sought a modification of child support.)

Appellant also alleged that the Appellee was in open and willful contemptuous behavior of the Court's decrees in that she failed to reimburse one half of the medical expenses incurred on behalf of the minor child, she refuses the Appellee usage of the family's four-wheeler, she refuses to arrange visitation with the children in a manner that would coincide with the Appellant's job schedule, and she has withheld the minor children from the Appellant, including most of December, 2005. (R.E. 4)

On June 7, 2006, a hearing was held on the Complaint for Modification of Child Support and Other Relief filed by Susie B. Reid and the Amended Counter-Complaint for Modification and Complaint for Citation for Contempt filed by Wayne Reid. (R.E. 5.) At the hearing, Mr. Reid, Ms. Reid, Colton Reid, and a friend of Ms. Reid's (Ellie Busby) testified. (R.E. 5.)

On December 21, 2006, the Court rendered its Bench Opinion with Findings of Fact and Conclusions of Law and on January 24, 2007, the Court executed the ORDER ON COMPLAINT FOR MODIFICATION which was filed on January 25, 2007. (R.E. 5.)

(R.E. 14.) The Trial Judge found that “in addition to the parties agreeing that there has been a material change in circumstances, the Court affirmatively finds that since Wayne Reid now has the primary custody of Colton Reid, allowing the Court to modify its former ORDER.” Further, the Court found that Susie Reid’s financial statements “indicate that the expenses of the minor children have been reduced, not increased.” (R.E. 5.) In spite of this finding, the lower Court modified the prior orders actually increasing child support for Ms. Reid.

Additionally, the lower Court ordered Susie B. Reid would in the future have the right to claim the minor child Logan Reid as a dependant, beginning in the 2006 tax year. Even though the Court also found that “Ms. Reid placed before the Court, her Rule 8.05 financial declaration from the original divorce trial, the modification, and her current Rule 8.05 financial declaration, which indicated that the expense of the minor children have been reduced, not increased.” (R.E. 5.) The Court held that Ms. Reid should be required to pay 14% of her adjusted income (14% of \$1,211.60 = \$169.62) to Wayne Reid, and reduced Wayne Reid’s income percentage from 24% to 22% (22% of \$6,592.64 = \$1450.38). Thus, Mr. Reid was ordered to pay the difference between the two sums (\$1450.38 – \$169.62 = \$1280.76), or \$1280.00 per month in child support. (R.E. 5.)

Finally, the Court found Susie Reid was not in contempt for failure to pay medical expenses, but required both parties to submit a list of medical expenses to the Court; both parties were enjoined from monitoring or eavesdropping on telephone conversations between any of the minor children and the other parent; and modified the visitation parameters to accommodate Wayne Reid’s job. (R.E. 5)

On January 25, 2007, Wayne Reid filed his Notice of Appeal with this Court, seeking reversal of the lower Court’s original Final Decree regarding the denial of a decrease in child

support and denial of a reduction in alimony paid by the Appellant. The Trial Court also failed to grant child support credit for the time the oldest child lived with his father. All other matters in the original proceedings are not at issue.

STANDARD OF REVIEW

The Court's standard of review in domestic relations cases is required to follow their familiar substantial evidence/manifest error rule. Stevison v. Woods, 560 So.2d 176, 160 (Miss.1990).

On appeal, the Court is limited to respect the findings of fact made by a chancellor supported by credible evidence and not manifestly wrong. Newsom v. Newsom, 577 So.2d 511, 514 (Miss.1990). See also Dillon v. Dillon, 498 So.2d 328, 329 (Miss.1986). This is especially true in areas of divorce, alimony, and child support. Tilley v. Tilley, 610 So.2d 348, 351 (Miss.1992).

SUMMARY OF THE ARGUMENT

The Trial Court erred and thereafter, applied the wrong standard of law when the Court failed to require the Appellee's compliance with Uniform Chancery Court Rule 8.05, and allowed Ms. Reid to file incomplete financial statements with the Court. Ms. Reid failed to differentiate between those household expenses which were her children's expenses and those which were her personal expenses, and therefore the Court was unable to apply the correct legal standard in determining whether a reduction of alimony and child support was warranted.

In addition, the Trial Court failed to make specific written findings in its Bench Opinion as to whether or not the application of the statutory guidelines would be reasonable. Adequate written findings as to whether or not the guidelines apply require more than a mere acknowledgement that the guidelines apply; the Court must make its

specific determinations on the record. The Court failed to identify those expenses which should be considered "children's expenses" for the purposes of allocating child support, and failed to require Ms. Reid to comply with the statute in determining those expenses on her financial declaration. The Trial Court acknowledged that the expenses of the minor children had decreased, but failed to award a reduction of support despite that finding.

The Trial Court further erred in not correctly computing Ms. Reid's income, and instead based her yearly income on a pay stub from one month out of the entire year and gave no credence to the prior year's income or earning capacity. Without proper documentation such as tax returns, the Court cannot sufficiently determine her income for alimony and child support.

The Trial Court erred in not determining that a material change in circumstances had occurred allowing a modification of alimony, despite the overwhelming weight of the evidence. The Court's own Bench Opinion acknowledges a material change in circumstances for child support, although finding none concerning alimony. The presence of Colton Reid in his father's home, Ms. Reid's increased income, Ms. Reid's failure to meet her earning capacity, the children's decreased expenses and Mr. Reid's decreased income, did in fact constitute a material change in circumstances sufficient to warrant a change both in alimony and child support. These changes would at least require specific findings of fact and conclusions of law concerning the issue of child support in accordance with *Caldwell* and specific findings of fact and conclusions of law in accordance with the factors set forth in *Armstrong* as to alimony.

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.**

Rule 8.05 of the Uniform Chancery Court Rules requires, unless excused by Order of the Court for good cause shown, each party in every domestic case to provide the opposite party and the Court with disclosures regarding their finances, expenses, income, and tax returns. *Uniform Chancery Court Rule 8.05*. The failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties. This rule allows for each party to provide financial information in order for the Court to make the appropriate determinations of alimony, child support and other issues.

In order for the Court to make the proper determinations, the Court must have all required information. The Financial Statement includes information such as source of income, deductions, and monthly expense statements. Under the monthly expense statement, a party is required to provide information on budget expenses for the household including mortgage, food, utilities, school expenses and the like. The party is required to provide this information at a time required by the Court, so that the Court may compare any increases and decreases in expenses that occurred over time.

Further, each party is required to differentiate between expenses for the party and expenses for the children. Each Rule 8.05 Financial Statement allows for these expenses to be separate—one column for the “Self” expenses, and one for the “Children” expenses. This allows the Court to determine exactly which expenses should be considered in determining child support, and to ensure that the parties’ expenses are only considered in any alimony award. If a party fails to comply with this requirement, a Court would be unable to determine exactly which expenses are the children’s. This is especially important when

the expenses are the entire household's. For example, it is easy to determine that any school expenses should be considered a factor in child support; however, it is not as easy for the Court to determine how much of the electricity bill, if any, should be considered a child's expense and how much is the party's expense.

In the case at hand, the Appellee failed to comply with this requirement. In each of her Financial Statements, for the years 2000, 2003, and 2006, she failed to differentiate between her expenses and her children's expenses. (R.E. 6, 7, 8.) Therefore, the Court could not make a proper decision regarding the award of child support and the reduction of alimony, because the Court did not have the requisite information required to make such a decision.

Additionally, the Trial Court allowed the Appellee to violate Mississippi Chancery Court Rule 8.05, by not submitting her tax returns so that the Court could determine her actual income for alimony and child support purposes. Ms. Reid submitted to the Court W-2 forms from 2002-2004, but only a tax return from 2002. (R.E. 9.) Ms. Reid stated that she has not filed tax returns for the years since 2001, because she wanted to be able to claim her children as dependents; however, the Court erred by not directing her to file her returns. (R.E. 5.) Without her tax returns, the Court is unable to determine her exact income, including other forms of income, for purposes of child support and alimony, and therefore was unable to make an informed decision. The Court's determination of Ms. Reid's 2006 income was based on one check stub from January, 2006, with no mention of the prior years' (12 months) \$7,000.00 plus income or any reference to her earning capacity.

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".**

Miss. Code Ann. § 43-19-101(4) states that “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 are reasonable.**” *Miss. Code Ann. § 43-19-101(4)*. (Emphasis added) According to the statute, a Court shall make written findings regarding whether or not the statutory percentages if applied would be reasonable. The specific amount of the award should be determined by the Chancellor, who has special knowledge of each case at hand. *McEachern v. McEachern*, 605 So.2d. 809, 814 (Miss.1992).

This Court has required the Trial Judge to make adequate findings of law, in order that the record on appeal may be complete and understood. In *Daniels v. Daniels*, the Court of Appeals reversed and remanded the case for further proceedings, in part because of the Chancellor’s failure to make full written findings on the record regarding alimony. *Daniels v. Daniels*, 950 So.2d 1044 (Miss. 2007). The court found that the “chancellor simply said that he had ‘taken into consideration the dictates of the cases of *Brabham* and *Armstrong*...’” *Id.* at 1046. The Court agreed with the Appellant that the Chancellor failed to make adequate findings and urged the Chancellor to make more detailed findings regarding alimony on remand.

Similar to the *Daniels* case, the Chancellor in the case at hand failed to make any kind of written findings regarding alimony or reduction of child support. In this case, the court merely stated that it “specifically finds that the application of the statutory guidelines to the Adjusted Gross Income of each of the parties is reasonable in this case,” without making any other determinations on the record. (R.E. 5.) Merely stating that the guidelines apply, according to this Court’s standards, is not considered adequate. Without any more detailed

written findings, this Court would be forced to second-guess the findings of the Chancellor rather than simply reviewing the findings. Requiring a Chancellor to make such findings is necessary for the economy of this Court; otherwise, each case on appeal would need to be retried.

In the *Dufour* case, this Court remanded a case back to the Lincoln County Chancery Court with instructions for the Chancellor to make a written determination of his findings. *Dufour v. Dufour*, 631 So.2d 192, 195 (Miss.1994). In *Dufour*, supra, the Chancellor required the Appellant to pay child support in an amount more than fourteen (14%) of his income, without making any type of determination on the issue explaining why the Appellant should have to pay more than the required guidelines. This Court found that without some specific finding, it would be mere speculation to undermine the Chancellor's findings. The Court opined that "if a Chancellor would make more on the record findings as to why he decides an issue or fact a certain way, it would greatly decrease the chances of reversal of the decision by this Court." *Id.* at 195.

Therefore, the Appellant asks this Court to remand the case back to the trial level in order for the Chancellor to make specific findings regarding both child support and alimony. In particular, the Court should clarify what expenses of the Reid household would be considered a child's expense for the purposes of child support, what the Appellee's income is based upon, and whether or not the child support exceeds the children's needs.

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.

The entire purpose of Mississippi Chancery Court Rule 8.05 is for parties to give the Trial Court specific information about their income and expenses, and the expenses of their minor children. To accomplish this goal, the rule sets forth forms which will accurately give

this information. In determining a child support award, and the needs of a child, a Court must make a distinction between the different types of household expenses involved. The Trial Court failed to define a "child's expense" for the purposes of child support; therefore it is impossible to determine how much child support is necessary. Should the child support award exceed the needs of the children, the excess becomes spousal support. Some expenses of a family are strictly child-related expenses, while some expenses are the result of the entire family. In other words, there are certain household expenses that would remain constant, or relatively constant, regardless of the amount of the members of the household, while there are some household expenses which correlate directly to the amount of people, especially children, in the household.

In the case at hand, the Trial Court erred in not requiring the Appellee to comply with Rule 8.05 in supplying a detailed financial statement. Without her calculations of the children's expenses versus her expenses, the Trial Court is unable to make the proper determinations. In order for the Court to have the proper information on which to base its information, it is necessary to divide the household expenses into those of the children's and those of the Appellee's. Further, it is important to note that these expenses have been reduced by the absence of the oldest child, Colton, from the house.

For example, property taxes on a home would be the same regardless of how many children or people are living in a home. On the other hand, the amount spent on food each month will fluctuate depending on how many people are in the family. Therefore, the Court should consider property taxes and the like to be household expenses not related to child support, while it is reasonable to consider food to be an expense considered when determining child support.

In this case, the Trial Court failed to determine the actual percentage of Ms. Reid's household expenses that could be considered "for the needs of the children", and which were simply household expenses that would remain constant. Had the Court acknowledged the difference between the children's household expenses and the general household expenses, the Court would have noted the difference in the Appellee's household expenses. If Ms. Reid is receiving more in child support than she is expending for the children, then she is, in essence, receiving a non-decreed payment of alimony.

Some expenses, such as school and child's allowance, are entirely related to the child, and should be considered a child support expense. However, some general household expenses are shared by both the parent and the children, namely food, electricity, etc. The Trial Court should determine the approximate percentage of these expenses which relate to the children and which relate to the parent. Only the percentage that relates to the children should be considered "expenses" for the purpose of child support.

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.

The Trial Court failed to make written findings concerning the Appellant's income which is over \$50,000.00. According to *Miss. Code Ann.* § 43-19-101(4), the court shall make specific findings on the record in determining whether the guidelines would be reasonable when one parent makes over \$50,000.00. This is not within the Court's discretion, but the Court must make written findings. As noted above, the written findings must be adequate, and not merely perfunctory. To conform to (4) of §43-19-101, the Trial Court shall determine the expense of the children and compare to the guidelines to decide if reasonable.

In the case at hand, the Court merely made note that Mr. Reid's income was subject to the *Miss. Code Ann.* § 43-19-101(4), and therefore "requires this Court to make written

findings on the record as to whether or not the application of the guidelines established by the 'Child Support Award Guidelines' would be reasonable." (R.E. 5.) In its Bench Opinion, the Court opined that it "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. 5.) No further findings were made by the Court. Once again, this Court has determined that written findings require more than a simple acknowledgement of the guidelines.

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.

Miss. Code Ann. § 43-19-101(4) also controls when a parent's income is less than \$5,000.00 per year. Thus, once again, the Trial Court should make written determinations regarding the Appellee's income, and the application of the statutory guidelines. As noted above, the Court's written findings are comprised of only one sentence—"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. 5.)

However, the Trial Court didn't have the proper information required to make such written findings should it have decided to make the adequate written findings. The Appellee failed to comply with Rule 8.05 of the Uniform Chancery Court Rules by providing the essential financial documentation such as tax returns. (R.E. 9.) In fact, the Court's determination of the Appellee's 2006 income was based on a check stub from only one month in 2006, namely January 2006. (R.E. 8.) In its Bench Opinion, the Court found that "the monthly adjusted gross income of Ms. Reid is \$1,211.60", which includes her monthly alimony payment in addition to her monthly income from her part-time job. (R.E. 5.)

Attached to her financial statement, is Ms. Reid's January 2006 pay stub wherein she was paid \$230.65. (R.E. 8.) Her income for one month is not necessarily indicative of her yearly income. The Trial Court erred in not looking at her yearly income as a whole, rather than simply multiplying one month's income by twelve. For the Court to make a proper determination, it must determine her actual yearly salary. As a part-time substitute teacher, Ms. Reid's income could very well differ month to month. A look at her income for 12 months prior would be a better indicator of her income.

Because of non-compliance with Rule 8.05, the Court only has Ms. Reid's W-2 forms to determine income, and not her actual tax returns which would include income from other sources. (R.E. 9.) In 2004, Ms. Reid's income on her W-2 form was listed as \$8,058.85, and in 2005, this number had dropped to \$6,289.52. (R.E. 9.) Both of these numbers are above the statutory guidelines of Miss. Code Ann. § 43-19-101(4), and are better indicators of what her income for 2006 should be.

In addition, the statute states that income should include all "other payments made by any person". *Miss. Code Ann.* § 43-19-101. Rule 8.05 of the Uniform Chancery Court Rules provides a form created by the Mississippi Supreme Court where a party is required to provide information regarding income from "all other sources". Thus, it is appropriate for Ms. Reid's income to include the payments made for child support by Mr. Reid and alimony paid by Mr. Reid.

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.

The Trial Court erred in not determining that the Appellant's child support award is greater than the children's monthly expenses, and not recognizing that such an award amounts to alimony. As stated above, the Trial Court should have determined the children's

expenses for the purposes of child support. Had the Trial Court differentiated between the children's expenses and the Appellee's expenses, it would have reduced the amount of the child support award.

Not only did the children's expenses decrease from the time of the award in 2000 until the request for modification in 2006, but the oldest child is now living with the Appellant, thereby reducing the expenses even further. (R.E. 5.) In the *Caldwell* case, the Court listed the factors for determining a material change in circumstances. *Caldwell v. Caldwell*, 579 So.2d 543, 547 (Miss. 1991). The first factor is the increased needs caused by advanced age and maturity of the children. *Id.* Now that Colton Reid is living with his father, leaving the youngest three children with the Appellee, the Court should consider that the expenses have reduced since Ms. Reid submitted her financial statement.

Without an accurate 8.05 and specific findings by the Trial Court, this Court can only guess as to the amount of expenses for the three remaining minor children left in the Appellee's household. It is impossible to determine the exact amounts of their expenses for the purposes of the child support findings as required by statute. Therefore, it is necessary for this Court to remand the case in order for Ms. Reid to comply with Rule 8.05 and the Trial Court to determine the expenses of the children to ensure the child support award does not exceed the expenses.

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.**

The Trial Court erred by not making findings for the *Caldwell* factors other than an erroneous finding of income and expenses for the parties. Despite finding that the parties stipulated to a material change, and finding that the children's needs decreased, the Court

still failed to find a material change sufficient to support a reduction in child support.

(R.E.5.)

In *Caldwell*, this Court articulated the factors that a chancellor should apply in determining an award of child support. *Caldwell* at 547. Those factors include:

(1) increased needs caused by advanced age and maturity of the children (2) increase in expenses, and (3) inflation factors. Other factors include (4) the relative financial condition and earning capacity of the parties, (5) the health and special needs of the children, both physical and psychological, (6) the health and special medical needs of the parents, both physical and psychological, (7) the necessary living expenses of the father, (8) the estimated amount of income taxes the respective parties must pay on their incomes, (9) the free use of a residence, furnishings, and automobile, and (10) such other facts and circumstances that bear on the support subject shown by the evidence.

Caldwell v. Caldwell, 579 So.2d. 543, 547 (Miss.1991) (quoting *Adams v. Adams*, 467 So.2d 211, 215 (Miss.1985)).

In order for the Trial Court to make a proper determination of the child support issue, it must address each of the *Caldwell* factors, and make written determinations regarding those factors. However, it is impossible for the Trial Court to make such determinations without a proper 8.05 detailing the Appellee's income and expenses, as well as the children's expenses.

If the Court had a proper 8.05, it would then be required to go through each *Caldwell* factor, and apply to the case at hand. Most of these factors are inapplicable in the case at bar; only three apply, and all three favor the Appellant's prayer for a decrease in child support. The first factor, as noted above, involved the increased age and maturity of the children. Since the oldest, and thus, most expensive, child is now living with the Appellant, there has been a material change in that the three youngest children do not require as much as the four children in their entirety.

The only factor that the Trial Court did address was (2) the increase in expenses, and the Trial Court made erroneous findings on this factor. Despite Ms. Reid's insufficient compliance with Rule 8.05, the Court did find that based upon the declarations she did provide, the expenses of the children decreased. (R.E. 5.) The decrease, not increase, of the children's expenses is another material change, but the Trial Court failed to allow for a decrease of child support despite its findings that a material change had occurred. Additionally, the Court noted that Ms. Reid's financial declaration "indicate that the expenses of the minor children have been reduced, not increased." (R.E. 5.)

Finally, the fourth factors, the relative financial condition and earning capacity of the parties should be considered according to the *Caldwell* factors. While Mr. Reid's income and earning capacity has remained more or less constant, as noted by the Court, Ms. Reid's income is at issue. (R.E. 9.) In 2003, according to her 8.05, Ms. Reid's only income was from her alimony and child support payments; she had no income from salary or wages outside the home. In 2006, she listed her salary and wages outside the home as being \$211.60 per month. (R.E. 9.) Thus, Ms. Reid's income has incurred a substantial material change, in that she now makes substantially more money than she did in 2003. The Court erroneously failed to determine that there had been a material change substantial enough to warrant a decrease in child support. Further, Ms. Reid's choice to maintain a part-time, semi-regular job as a substitute teacher does not reflect her earning capacity.

Had the Court made findings of fact and conclusions of law in this case based on the *Caldwell* factors, the Court would have found a decrease in child support was warranted. Once the Court determined, based upon a properly completed Mississippi Chancery Court Rule 8.05 declaration, the children's actual expenses, the Trial Court should have then compared those expenses to the amount of child support which would have been paid under

the Miss. Code Ann. §43-19-101(4) child support guidelines and thereafter made written findings as to whether or not the application of the guidelines would be reasonable.

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.**

The Trial Court erred in not determining there was a material change that necessitated the reduction of alimony when the evidence showed there was a material change. This Court articulated the factors for determining alimony in the *Armstrong* case.

Armstrong v. Armstrong, 618 So.2d 1278, 1280 (Miss.1993). Those factors are:

(1) the income and expenses of the parties; (2) the health and earning capacity of the parties; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence and absence of minor children in the home, which may require one or both of the parties either pay, or personally provide child care; (7) the age of the parties; (8) the standard of living of the parties; (9) the tax consequences of the spousal support order; (10) any fault or misconduct; (11) wasteful dissipation of the assets by either party; (12) any other factor deemed by the court to be “just and equitable” in connection with the setting of spousal support.”

As noted above, the Trial Court found that there was a material change in the circumstances regarding child support, but erroneously found that the material change did not, however, warrant a decrease in child support. Inconsistently, the Trial Court ruled that there was not, in fact, a material change in circumstances, for the purposes of alimony.

The Trial Court erred in not determining which of these factors supported a reduction of alimony, only noting that “Mr. Reid has failed to show a material change in facts and circumstances with regard to his income that would warrant termination or reduction of Ms. Reid’s permanent alimony,” despite noting that there was a material change. (R.E. 5.) The Court focused on only one part of the first factor, and made its

determination in clear disregard of the other factors. Of the applicable factors, all show a material change sufficient to support a reduction of alimony.

The first factor, the income and expenses of the parties has sustained a material change. In 2003, her 8.05 declaration showed that she earned no wages or income outside of the home. (R.E. 9.) However, as noted above, in 2006, Ms. Reid's outside income had risen to \$211.60, as a result of her part-time job at the school, where in 2003, she reported no income. It is important to note that her 2006 income is not based on proper financial information and is based upon one January, 2006, paystub. At the same time, Mr. Reid's monthly income has decreased from \$9,558.45 at the time of the original award to \$8,466.67 in 2006, a difference of approximately \$1,091.78 or nearly 11%. (R.E. 13.) Mr. Reid's income has decreased in an amount higher than he pays in alimony each month. For the court to ignore this material change is clear error. In addition to the change in income of both parties, the Trial Court was unable to determine any material change in expenses of the parties due to the Appellee's non-compliance with Rule 8.05.

Secondly, as noted above, the earning capacity of the parties has changed substantially, namely Ms. Reid's earning capacity and her choice not to meet that earning capacity. Ms. Reid's alimony award was designed to give her a chance to re-enter the workforce while taking care of her children. Ms. Reid has done just that, in 2004, when her income was nearly \$3,000.00 more than she currently earns. (R.E. 9.) However, Ms. Reid then chose to rely solely on her alimony as a source of income, and now makes substantially less than her earning capacity. The Court should consider her ability to earn more money, and her decision simply not to.

Finally, the Court should consider the presence of Colton Reid in the Appellant's home as a change to support reduction of alimony. Ms. Reid's expenses have reduced due

to the custody of her oldest child now being with Mr. Reid. Mr. Reid now takes full responsibility for the parenting and expense of Colton Reid, rendering a material change.

The Trial Court erroneously determined that there was no material change in circumstances despite the overwhelming evidence to the contrary. Had the Court noted the material change, it should have made written findings on the 12 *Armstrong* factors, but instead, it did not make any written findings. Furthermore, what findings were determined were based on an incomplete 8.05 declaration.


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

BY:


THOMAS T. BUCHANAN

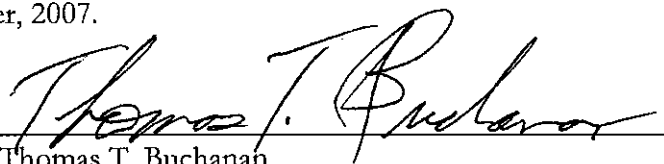
CERTIFICATE OF SERVICE

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:

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Honorable Debbra K. Halford
Chancery Court Judge, Pike County
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This the 14th day of November, 2007.



Thomas T. Buchanan
Attorney for the Appellant