

IN THE SUPREME COURT OF MISSISSIPPI

CARMEN D. HASTINGS

APPELLANT

VS.

CASE NO. 2007-CA-00267

JOEL SCOTT SPIERS

APPELLEE

FILED

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SUPREME COURT
COURT OF APPEALS

Appeal from the Circuit Court of Adams County, Mississippi

BRIEF OF THE APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

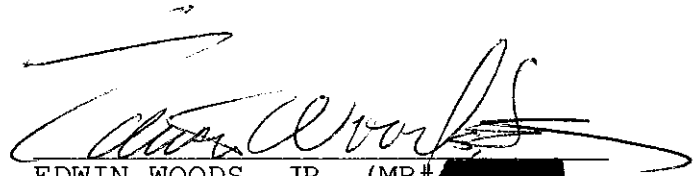
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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TABLE OF AUTHORITIES

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<i>Langham v. Herrington</i> , 449 So.2d 228 (Miss. 1984)	12

STATEMENT OF ISSUES

Whether the trial judge erred in denying the original and amended petitions of the appellant, Carmen D. Hastings, to prevent interment of her deceased daughter in Mississippi and later for disinterment of her deceased daughter's remains for transport back to the child and appellant's family cemetery.

STATEMENT OF THE CASE

Nature of Case and Procedural History

This case involves a dispute between the appellant, Carmen D. Hastings (hereinafter "Hastings"), and the appellee, Joel Scott Spiers (hereinafter "Spiers"), who are the natural parents of a deceased child. Hastings and Spiers disagree on where the child's remains should be permanently interred. Hastings appeals from the final order entered in this cause on March 6, 2006 denying her amended petition to have the child's remains re-interred in the child's hometown and from the order denying her motion to reconsider the same dated January 10, 2007.

Statement of Facts

Victoria Renee "Tori" Spiers (hereinafter "Tori") died in an aviation accident on July 30, 2005. (Tr.7).¹ Tori was ten (10) years of age on the date of her death and was the natural daughter of Hastings and Spiers; however, Hastings and Spiers were never married to each other. (Tr.7,8). Hastings was the custodial parent of Tori on the date of Tori's death and had the exclusive right to establish the legal residence of the child. (Tr.14). Hastings was critically injured in and the only survivor of the aviation accident which claimed the lives of Tori and two other people. (Tr. 33).

¹ "Tr." refers to Volume 2 of 2 of the record in this cause being Pages 1-59 of the trial transcript in this cause.

Tori was born at Shepherd Airforce Base in Wichita Falls, Texas on January 4, 1995. For all of her brief life, Tori resided in Wichita Falls with her mother, and no one else. (Tr.7,18). Tori never resided in the State of Mississippi. (Tr.8). Hastings had moved to Wichita Falls in 1995 where she "got a job and . . . made a way for Tori and I." (Tr.9).

Tori attended Bonham Elementary School in Wichita Falls, Texas. She would have entered the fifth grade at Bonham Elementary in the fall of 2005. Bonham Elementary was the only school Tori attended. (Tr.18). She had many friends. She loved school and was a straight "A" student since kindergarten. She was in a gifted and talented program. She was very strict about having a perfect attendance record. She enjoyed participating in fund raisers for children who were less fortunate than she. Tori was very active in her school. (Tr.19-20). She enjoyed playing on the volley ball team. (Tr.22). She had very close friendships with her friends in Wichita Falls. (Tr.23-4). Tori enjoyed reading and water sports. (Tr. 26).

Hastings and Tori were extremely close to each other. Hastings was a student teacher and a member on the PTA Board. This put Hastings at school each day with Tori. (Tr.20). They went to and from school together each day. Hastings was frequently able to each lunch with Tori. (R.21). Hastings was a room mother and help organize room parties for Tori and her classmates. (R.19).

Spiers is a resident of the State of Mississippi. Hastings left Mississippi when she was three months pregnant with Tori. Spiers knew that Hastings was pregnant when she left Mississippi, but he did not contact her concerning it. (Tr.8-9). Hastings concluded from his lack of contact that Spiers "didn't want to be a part of [Tori's] life or that didn't fit in with him, so that's why I hadn't heard from him --". (Tr.8). So, Hastings simply went on with her life. (Tr.9). Spiers knew about Tori's birth but was not present when Tori was born. (Tr. 8-9).

There was no contact between Spiers and Tori during the first five and one-half months of Tori's life. (Tr.9). Then, Hastings received a call from Spiers wherein Spiers informed Hastings that he was "ready to be a father." (Tr.9). Hastings then told him everything and agreed to meet him in a neutral location because Hastings "didn't want to keep her from him . . .". (Tr.9). But then, there was no contact again until September 1995. (Tr.9).

In September 1995, Hastings was again contacted and advised that Spiers' parents, Vickie and Jimmy, wanted to meet with Hastings. (Tr.9). Hastings agreed because she did not want to keep Tori from meeting Tori's paternal grandparents. Hastings asked for money to travel to Mississippi from Wichita Falls and Spiers' parents sent round trip tickets. Prior to her departure from Wichita Falls, Hastings consulted with legal counsel concerning her rights because she did not want to come to Mississippi with Tori

and then have "something happen." (Tr.10). Feeling assured in her rights, Hastings traveled back to Mississippi and allowed Tori to meet with Spiers' parents. These meetings would occur at the Edgewood Mall in McComb, Mississippi where Hastings could allow Tori to visit the paternal grandparents but still keep a close eye on her. These meetings lasted six weeks.(Tr.10).

Hastings and Tori were staying with Hastings' brother in McComb, Mississippi during this time. During this time, Spiers would ask to see Tori on specific dates and times and Hastings was agreeable to these visitations. However, there were times when Spiers failed to show up for agreed visits with Tori or was late for them. Hastings felt that Spiers "wasn't the way he needed to be when he came to visit his daughter." (Tr.11). During this time, "[Tori] probably saw her grandparents more than she saw [Spiers]." (Tr.11). It was also during this time that Hastings was served with process in a suit seeking custody of Tori. (Tr.11). At the end of October 1995, Hastings and Tori returned to Wichita Falls. (Tr.12).

Between October 1995 and May 1997, Spiers had no contact with Tori. (Tr.12). On May 23, 1997, a final judgment was rendered custody proceedings in Wichita Falls. Among other things the court recognized Hastings as the party with the exclusive right to establish the legal residence of the child. The final judgment also awarded visitation rights to Spiers.(Tr.14,15). For the first few months after the final judgment in Wichita Falls, Spiers and his

parents exercised visitation with Tori and then it "tapered off."
(Tr.15).

After tapering off and up until the time of the accident on July 30, 2005, Spiers "didn't have much contact [with Tori], unless his parents were bringing [Tori] back [to Mississippi] which would have been spring break . . . and Christmas." (Tr.15). Most of the visitations were with the paternal grandparents. The parties would meet at points between Wichita Falls and Mississippi for visits. (Tr.16). Tori did make three trips to the mountains in Tennessee primarily with Spiers' parents, although Spiers would also be on the trip. On a couple of occasions, Spiers would stay behind for a couple of extra days while Tori came back from the trip with Spiers' parents. Tori did go on one trip to Florida with Spiers. (Tr.17).

On the date of the accident, July 30, 2005, Tori was scheduled to fly by private aircraft back home to Texas after visiting with Spiers' parents and family in Mississippi. On that date, Spiers' parents brought Tori to the airport in Natchez, Mississippi. Hastings spoke briefly with Spiers' parents at the airport. She then boarded to aircraft with Tori, Tori's friend and the pilot of the aircraft. The plane then departed and, shortly after takeoff, crashed. All on board were killed, except for Hastings. Hastings was taken from the scene of the crash to the hospital. (Tr. 30-3).

On Monday, August 1, 2005, Mr. James Lee, the duly elected

Coroner of Adams County, Mississippi applied to the Circuit Court of Adams County, Mississippi concerning the question of to whom Tori's remains should be released. The Court entered an interlocutory Order noting that "an unfortunate dispute" had arisen between Spiers' and Hastings' spouse concerning burial arrangements for Tori. (R.1-2).² The Court found, apparently without any hearing, that Hastings was so severely injured that she could not make any decisions regarding Tori's burial. The Court ordered that Tori's remains were to be released to Spiers for burial but reserved Hastings' right to come before the Court at a later date "to seek further legal determination of the child's final resting place." (R.2).

Two days later, on August 3, 2005 and just four days after the accident, Hastings filed, through counsel, a Petition in the Circuit Court of Adams County, Mississippi seeking to have Tori's remains transferred from Brown Funeral Home in Liberty, Mississippi to an appropriate facility in Wichita Falls, Texas for burial in that city. (R.3-6). Attached to that Petition was a written request from Hastings and signed by her expressing her wish that Tori be buried in Wichita Falls where she resided. She further noted in the written request that **"[d]espite my physical condition, I am able to make appropriate decisions and would like Victoria buried in**

²"R." refers to Volume 1 of 2 containing Pages 1-70 of the papers and things filed with the trial judge or in the office of the clerk of the trial court.

Texas." (R.6) (Emphasis added). Hastings also recited in the Petition that the funeral service and burial for Tori was set for the same date as her Petition and that she did not desire to interrupt the service at Brown Funeral Home in Liberty, Mississippi; rather, she did not wish for Tori to be buried in Mississippi. (R.4). The Court, by teleconference on August 3, 2005, heard from Mr. Edwin Woods, Jr., Esq. for and Hastings' behalf and Mr. Jamie Priest, Esq. for and on behalf of Spiers. The Court orally denied, without prejudice, Hastings' request to have the remains transferred to Wichita Falls, Texas on that date. The Court left intact Hastings' right to petition the court for a final determination of Tori's resting place at a future time when Hastings was more fully recovered from her injuries. Consequently, Tori was buried in Bethel Baptist Church cemetery in Amite County, Mississippi pursuant to the wishes of Spiers. (R.39).

By December 23, 2005, Hastings had been released from the hospital and had returned to Wichita Falls. On or about that date, she filed an Amended Petition in the Circuit Court of Adams County, Mississippi seeking a final determination of Tori's resting place and praying that the Court order that Tori's remains be moved from Mississippi to Wichita Falls where the remains would be finally interred. (R.7-11). On February 10, 2006, Spiers filed a response in opposition to Hastings' Amended Petition. (R.22-9). On March 6, 2006, the Court held a hearing on Hastings' Amended Petition.

Hastings appeared in person accompanied by several relatives from Texas and Mississippi. Spiers did not personally appear at the hearing and was represented there by counsel only. No witness appeared on behalf of Spiers at the hearing. The Court heard testimony from Hastings only and received exhibits into evidence. No testimony or other evidence on Spiers behalf was received by the Court.

Immediately following the hearing on March 6, 2006, the Court ruled orally from the bench and denied the relief sought by Hastings in her Amended Petition. (Tr.53-7). The trial judge also entered a final written order denying the relief Hastings sought in her petition. (R.38-41). On March 16, 2006, Hastings filed a Motion for Reconsideration and/or Rehearing in this cause. (R.42-7). Spiers filed a response in opposition to Hastings' motion for reconsideration. (R.13-21). On January 10, 2007, the Court denied to reconsider or rehear the matter. (R.54-5). On February 9, 2007, Hastings filed her Notice of Appeal to this Court. (R.56).

SUMMARY OF THE ARGUMENT

The trial judge misapplied the controlling law of *Hood v. Spratt*, 357 So.2d 135 (Miss. 1978) to the facts of the case at bar. The trial judge's denial of Hastings' original petition to direct the disposition of her daughter's remains was error because Hastings had the right and the ability to direct the disposition of the remains even in spite of Spiers' objection thereto. The trial judge again erred in denying the relief Hastings sought in her amended petition which was heard on March 6, 2006 in that he disregarded the uncontested and undisputed testimony of Hastings regarding her rights and feelings concerning the disinterment of her deceased daughter and, while finding that Hastings never gave her consent to all her daughter to be buried in Mississippi, disregarded this evidence in applying the law to the facts of the case.

ARGUMENT

There exists very little case law in Mississippi concerning the removal of a body from one grave for the purpose of being placed in another. However, in *Hood v. Spratt*, 357 So.2d 135 (Miss. 1978), the Supreme Court did address this issue. In that opinion, the Court stated that "[w]e are of the opinion . . . that removal and reinterment of a body is allowable where there are compelling reasons." *Id* at 137.

The facts in *Hood* extend easily, by analogy, to the facts of the present case. In *Hood*, the surviving spouse of a decedent sought to have the decedent's remains disinterred from one burial plot for the purpose of being placed in another plot. The decedent, Mr. Spratt, had died suddenly in 1957 at the age of thirty-six (36) years. His sister, Ms. Hood, owned a plot and all agreed, including the surviving spouse, Ms. Spratt, that Mr. Spratt should be buried in that plot and he, in fact, was buried there. Twelve (12) years after Mr. Spratt was buried in Ms. Hood's plot, the surviving spouse, Ms. Spratt, learned that Ms. Hood would not allow Ms. Spratt or her son to be buried in the same plot where Mr. Spratt was buried. Consequently, Ms. Spratt acquired three other spaces in another plot. In 1975, her son died and he was buried in one of the new spaces. She then petitioned the chancery court for permission to disinter Mr. Spratt's remains from Ms. Hood's plot and have the remains re-interred in one of the new spaces in her plot so that

she, her son, and her husband would all be interred in the same burial plot. *Id* at 136.

Ms. Hood was the only relative who actively resisted Ms. Spratt's petition. The Chancellor granted Ms. Spratt's petition and Ms. Hood appealed to the Mississippi Supreme Court. The Supreme Court affirmed the Chancellor's decision and recognized that the desire of the surviving spouse to be buried beside her deceased spouse and child is a normal desire and compelling reason to permit disinterment. The Court stated, "[w]e think that the desire of a surviving spouse to be buried beside her deceased spouse and to have their child beside them both is a normal desire and a compelling reason where there is cause to believe the widow thought this would be possible at the time of the original interment." *Id* at 137 (Emphasis added).

In reaching its decision in *Hood*, the Supreme Court considered five (5) factors in its legal analysis of the facts. These factors are: (1) public interest; (2) the wishes of the decedent; (3) the rights and feelings of those entitled to be heard by reason of relationship; (4) the rights and principles of religious bodies or other organizations which granted interment in the first burial site; and (5) whether consent was given to interment in the first burial site by the one claiming the right of removal. *Id.* The Supreme Court further recognized that "[t]here is no rigid rule for either permitting or refusing removal of a body once interred and

each case must be determined on its own merits with due regard to public welfare, the wishes of the decedent and the rights and feelings of those entitled to be heard by reason of relationship or association." *Id.*

The *Hood* decision appears to have been cited by only one case since it was decided. That case is *Langham v. Herrington*, 449 So.2d 228 (Miss. 1984). The *Langham* opinion is very brief and involved a denial of the right to disinter which denial was affirmed by the Mississippi Supreme Court. There are no facts recited in the opinion other than the fact that all the parties in that case had agreed to the original burial. That fact makes the *Langham* decision materially different from the case at bar as Hastings never consented to Tori's burial in Mississippi. (R.6), (Tr.34).

In the case at bar, it is the parent-child relationship and not the husband-wife relationship, that forms the basis of Hastings' desire to have Tori's remains moved back to Wichita Falls. Inasmuch as the *Hood* decision recognizes the validity and compelling nature of a surviving spouse to ultimately be buried beside a deceased spouse and child, a parent's desire to be buried next to a child or to have a child's grave near her should be recognized as a no less compelling reason than that of a husband and wife. Put another way, the *Hood* decision recognizes the very substantial nature of the husband/wife relationship in cases involving burial of a spouse and Hastings respectfully urges this

Court to apply the same rationale to another of life's very substantial relationships, *i.e.*, that of parent and child.

Applying the *Hood* factors to the case at bar, there is no evidence on the public interest factor as this dispute is purely private in nature with no public interest ramifications. Further, there is no evidence of what Tori's wishes for burial were and this is understandable based on Tori's tender age. Likewise, there are no religious bodies or organizations with any interest in the matter.

The *Hood* factors which are applicable to the case at bar are the rights and feelings of those with a right to be heard and whether or not consent was given to the burial of Tori in Mississippi by Hastings or someone on Hastings' behalf. As referenced above, Hastings never consented to Tori's burial in Mississippi. (R.6), (Tr.34). The trial judge made this finding. (Tr.56). The undisputed evidence is that she actively and timely opposed Tori's burial in Mississippi from her hospital bed by authorizing a petition to object to and hopefully prevent Tori's burial before it happened in the first place. The undisputed evidence is that she knew what she was doing at that time in spite of her injuries. (Tr.35-6). However, Hastings' original petition, dated August 3, 2005 (the same day as Tori's funeral) was denied after a telephonic hearing. (Tr.4-5).

It is undisputed that Hastings was Tori's custodial parent as

of the date of Tori's death. (Tr.14). The trial judge so found. (R.40). Hastings respectfully suggests to this Court that this would have given her the legal right to direct the disposition of Tori's remains. The *Hood* decision, citing and relying upon a Pennsylvania case, recognized the "paramount right" of a spouse's decedent to designate the burial site. *Hood* at 137. By analogy, Hastings respectfully suggests to this Court that the same reasoning should and does control in the case at bar. The trial judge found in his written order dated March 6, 2006 that "had [Hastings] not been severely injured in the airplane crash herself and fighting for her own life at the time of the arrangements for her daughter's burial, she would have surely had her daughter buried in Wichita Falls, Texas." (R.40) (Emphasis added). However, the evidence is undisputed that Hastings did know what she was doing at the time she originally and timely opposed Tori's burial in Mississippi. (Tr.35-6). Based upon the evidence produced to the trial court prior to and at the March 6, 2006 hearing, the *Hood* factor concerning whether consent to the Tori's burial in Mississippi was given by Hastings, this factor clearly, without dispute, weighs solely in Hastings' favor. Consequently, it was error for the trial judge to deny the relief sought by Hastings in her original and amended petitions.

The other *Hood* factor applicable to the case at bar is the rights and feelings of the persons having a right to be heard. At

the hearing, Hastings was the only witness who testified. She testified extensively about her life with Tori and the substantial basis for her feelings about Tori and why she sought permission to have Tori's remains taken home to Texas. She testified that a memorial service for Tori had taken place on November 5, 2005 and that the date of a graveside service was left open for when Tori's remains would hopefully be brought back to Texas for burial. Hastings testified that tentative arrangements for Tori's burial had been made with Crestview Memorial Park Guardian of Angels and that Tori would be buried in family plots there. (Tr.37). The trial judge characterized all of Hastings' testimony as incredibly moving. (Tr.53). He found in his written opinion that "Mrs. Hastings love for Tori clearly stands above all others . . ." (R.40) (Emphasis added).

By contrast, Spiers did not even bother to personally appear at the hearing conducted on March 6, 2006 and no justification or excuse for his failure to appear at the hearing can be found in the record. Nor did any other witness appear on his behalf and in opposition to the amended petition. Spiers appeared only through and by his counsel. Consequently, there was no proof of what feelings, if any, Spiers had in the matter. Hastings' undisputed testimony on both direct and cross-examination was that Spiers did not show any interest in Tori prior to or at the time of Tori's birth. While he did show some interest in Tori after Tori was

almost six (6) months old, Hastings summed it all up on cross-examination when she stated that, "[Tori] didn't have that much of a relationship" with Spiers. (Tr.41). There is no credible evidence to dispute the truth of this statement. Based upon the evidence produced at the March 6, 2006 hearing, the *Hood* factor concerning the rights and feelings of Hastings and Spiers in this matter certainly weighs in Hastings' favor. Consequently, it was error for the trial judge to deny the relief sought by Hastings in her amended petition.

CONCLUSION

The trial judge misapplied the factors enunciated in *Hood v. Spratt*, 357 So.2d 135 (Miss. 1978) to the facts of the case at bar, as is discussed above. In light of this, Hastings prays that this Court will reverse the ruling of the trial judge in this cause and render judgment in her favor on her Amended Petition filed in this cause. Alternatively, Hastings prays that this Court will reverse the ruling of the trial judge and remand this cause for any further proceedings in the matter that may be just and proper in the premises. Finally, Hastings prays for general relief.

Respectfully submitted,

By: 

EDWIN WOODS, JR.

OF COUNSEL:

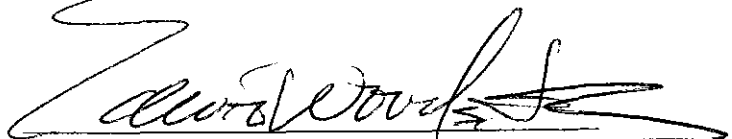
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ATTORNEY FOR THE APPELLANT

CERTIFICATE OF SERVICE

I, Edwin Woods, Jr., do hereby certify that I have this day mailed, by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellant upon Mr. Jamie Priest, Esq., Gill, Ladner, & Priest, PLLC, 403 South State Street, Jackson, Mississippi 39201-5020 who is the attorney of record for Joel Scott Spiers.

This the 17th day of December, 2007.


EDWIN WOODS, JR.

IN THE SUPREME COURT OF MISSISSIPPI

CARMEN D. HASTINGS

APPELLANT

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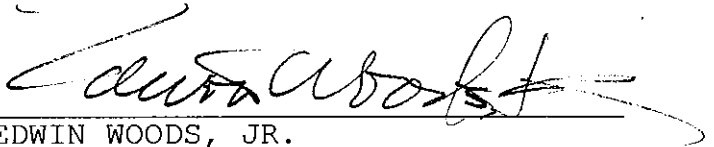
AMENDED CERTIFICATE OF SERVICE

I, Edwin Woods, Jr., attorney for the appellant, certify that I have this day mailed, by U.S. Mail, postage prepaid, a true and correct copy of the Brief of the Appellant and Record Excerpts to:

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The Honorable Forrest A. Johnson
Circuit Judge, Sixth Circuit Court District
P. O. Box 1372
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This the 19th day of December, 2007.


EDWIN WOODS, JR.