IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00312

RANDY T. STORY — **APPELLANT**

VERSUS

CINDY F. ALLEN — **APPELLEE**

APPEAL FROM

THE CHANCERY COURT OF OKTIBBEHA COUNTY

STATE OF MISSISSIPPI

BRIEF OF THE APPELLEE

ORAL ARGUMENT NOT REQUESTED

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RANDY T. STORY	**APPELLANT**
VERSUS	**CASE NO. 2007-CA-00312**
CINDY F. ALLEN	**APPELLEE**

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 disqualifications or recusal.

1. Cindy F. Allen, Appellee
2. Allen Austin Vollor, Attorney for Appellee
3. Randy T. Story, Appellant
4. Mark G. Williamson, Appellant
5. Honorable Kenneth M. Burns, Chancellor

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STATEMENT OF THE CASE

On April 12, 1999 Randy T. Story filed a Petition for Determination of Paternity and Other Relief against Cindy F. Allen. On January 12, 2000, am agreed order was entered wherein Story was found to be the father of Francesca Haze Allen (after referred to as "Francesca"). Allen was given sole legal and physical custody and Story was given standard visitation.

On March 23, 2000, an Order was entered finding Allen in contempt of the January 12, 2000 Agreed Order for denying Story visitation with Francesca. Story was awarded his attorney's fees against Allen.

On December 28, 2001, a Judgment was entered finding Allen in contempt for failing to take the action necessary to have Story added as Francesca's father to Francesca's birth certificate. Story was awarded his attorney's fees against Allen.

In August of 2002 Allen fled a report with the Hinds County Youth Court about possible sexual abuse of Francesca. On December 20, 2002 the Hinds County Youth Court ruled, in part, "the Court was unable to determine whether the child was sexually abused or emotionally abused, or by whom." The Hinds County Youth Court case was closed in October of 2003.

On December 16, 2002 Story filed a Petition for Citation for Contempt and for Modification of Custody. On January 31, 2003, Allen filed an Answer to Randy's Petition for Citation for Contempt and for Modification of Custody.

A Motion to Appoint a Guardian Ad Litem was filed June 10, 2003 by Story. On September 2, 2003, an Agreed Order appointing the Honorable Cecelia R. Cook as Guardian Ad Litem for Francesca.

On September 30, 2003, an Agreed Order was entered ordering the parties to start counseling and to file reports of the counseling with the Court.

On July 23, 2004, an Agreed Temporary Order for Visitation was entered.

249, 251-254). Given the past history, the Chancellor felt that Allen had failed to be sufficiently accommodating and reliable in arranging visitation. (R.E. 330).

The testimony from all witnesses was that Francesca was a happy and pleasant child. No evidence was presented that she had suffered any emotional or physical harm or been endangered. No evidence was presented that she that argument or derogatory talk had occurred in the child's presence. No counselor or mental health professional testified of any problem that Francesca might suffer or be showing signs of because of the conflict between Story and Allen. Evidence was shown that she had an emotional attachment to her father (R.E. 333). Allen had been married four times in her life, but only married one time during the entire life of Francesca (T.269).

Though there was evidence that Allen had moved several times from the birth of the child to the present, it was also shown that she had remained in Casper, Wyoming in the three years previous to the hearing in question (T. 237). Allen initially rented a home, and then purchased a home (T. 244). Francesca enrolled and spent two years in one school, then at the regular start of second grade, moved to a school closer to her home (T. 273). Allen has maintained steady employment her entire time she has lived in Casper, Wyoming. Francesca is succeeding in school (R.E. 265). She has friends. (T. 265) She engages in extracurricular activities and attends church (T. 240).

SUMMARY OF THE ARGUMENT

I. Appellant contends the Chancellor abused his discretion by failing to grant his motion to modify custody. He argues that the Chancellor incorrectly determined certain individual *Albright* factors. Further, since incorrectly determining the certain factors, it led to them being improperly weighted during the determination of what was in the best interest of the child. Appellee believes that the Chancellor had an evidentiary basis in the record for each of its *Albright* determinations and had a reasonable basis for denying the Appellant's Motion to Modify Custody. Therefore, this Court should affirm the Chancellor's opinion and judgment.

ARGUMENT

A. Standard of Review

The standard of review in domestic relations cases is limited by the Substantial evidence/manifest error rule. *Hensarling v. Hensarling*, 824 So.2d 583, 586 (Miss. 2002) (citing *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994)). The Court will not "disturb a chancellor's findings unless manifestly wrong, clearly erroneous, or if the chancellor applied an erroneous legal standard." *Hensarling*, 824 So.2d at 586 (citing *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994)).

Further, the standard of review regarding child custody cases is also limited. The Court will reverse a chancellor's decision regarding child custody determinations only when the "decision of the trial court was manifestly wrong or clearly erroneous, or an erroneous legal standard was employed." *Hensarling*, 824 So.2d at 587; *Wright v. Stanley,* 700 So.2d 274, 280 (Miss. 1997); *Williams v. Williams*, 656 So.2d 325, 330 (Miss. 1995). This Court will always treat the best interest of the child as the "polestar consideration." *Robinson v. Lanford*, 841 So.2d 1119, 1122 (Miss. 2003) (Citing *Hensarling*, 824 So.2d at 587).

"In proceedings to modify custody, 'the prerequisites [are] (1) proving a material change in circumstances which adversely affects the welfare of the child and (2) finding that the best interest of the child requires the change of custody.'" *Robinson*, 841 So.2d at 1124 (quoting *Brocato v. Brocato*, 731 So.2d 1138, 1141 (Miss. 1999)). The burden of proof rests with the parent requesting modification. *Id.* In order for child custody to be modified, a non-custodial party must prove (1) there has been a substantial change; (2) the change adversely affects the children's welfare; and (3) a change in custody is the best interest of the child. *Bredemeier v. Jackson*, 689 So.2d 770, 775 (Miss. 1997); *Thompson v. Thompson*, 799 So.2d 919, 922

(Miss.Ct.App. 2001). "However, ... A chancellor is *never* obliged to ignore a child's best interest in weighing a custody change; in fact, a chancellor is bound to consider the child's best interest above all else. 'Above all, in 'modification cases, as in original awards of custody,' we never depart from our polestar consideration the best interest and welfare of the child. ''' *Riley v. Doerner*, 677 So.2d 740, 744 (Miss. 1996)(quoting *Ash v. Ash*, 622 So.2d 1264, 1266 (Miss.1993))(citing *Marascalco v. Marascalco*, 445 So.2d 1380, 1382 (Miss. 1984)). *See also Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983). A modification of custody is warranted in the event that the moving parent successfully shows that an application of the *Albright* factors revels that there has been material change in those circumstances which has an adverse effect on the child and modification of custody would be in the child's best interest. *Sanford v. Arlinder*, 800 So.2d 1267, 1272 (Miss.Ct.App. 2001).

B. Review of Law

The noncustodial father in this case, whom the Chancellor denied his motion to change custody arrangement, cites several cases to support its contention that the trial court abused its discretion. A brief discussion of these cases follows.

In *Hill v. Hill*, 942 So.2d 207 (Miss.Ct.App. 2006), the trial court, on the counter-petition of the father who did not have primary physical custody, but joint legal custody, the Chancellor granted the Counter-Petition, changing legal and primary physical custody to the father. In affirming the Chancellor, the Court of Appeals noted their was sufficient evidence in the record to support the Chancellors finding of a (1) material change in circumstance, (2) the change adversely affect the child's welfare and (3) the change in custody mandated by the child's best interests. The Court did not find the result as a mandate from the facts, but only that the evidence supported the Chancellor's finding. The Chancellor had found severe instability in the

present home life of the child, including frequent moves and relationships of the mother with other men. Unlike the case before this Court, the Chancellor did not find that there had been danger because of the other relationships and moves, only that one marriage and some moves has occurred.

Story then attempts to rely on *Barnett v. Oathout*, 883 So.2d 563 (Miss. 2004) to support his position. At page 25 of its brief, the Appellant stated *Barnett* aided his position because, *Barnett* at 573, "... if the mother were awarded continued custody, there was nothing to suggest she would be any more cooperative and that allowing her to continue to attempt to diminish the relationship between the boys and their father "is certainly not in the boys' best interest." (quotation from Chancellor's opinion at 573)". *Oathout* was the natural father of the children in question. *Barnett* was not the natural mother, but the foster mother of the children. The children had been taken by Mississippi Department of Human Services from the custody of *Oathout* and the natural mother because of medical neglect pursuant to the Youth Court Act.

Oathout had rehabilitated himself by leaving the natural mother, married a nurse with her own children, and attended church regularly. *Oathout* filed a Motion seeking the return to custody of the natural children to him. The chancellor found that a sufficient change of circumstances had occurred to justify the return the child to the natural parent over the foster parent. The reviewing court found that substantial evidence in the record to support the Chancellor's finding that there existed that a material change to justify restoring to a natural parent custody, where custody had been deprived due to neglect under the Youth Court Act. The Court of Appeals did not say that the evidence mandated the change, just that sufficient evidence existed in the record to sustain a change.

Story next offers *Brown v. White*, 875 So.2d 1116 (Miss.Ct.App. 2004) to stand for the proposition that a Chancellor should change custody upon presentation of evidence of frequent

residence changes by a custodial parent. That is not what the *Brown v. White* Court said. In that case, a noncustodial parent was granted a change of custody to him by a Chancellor for several reasons, one of which was frequent location changes, *Brown*, at 1119. The Chancellor then went on to further explain that the changes had contributed to the child negative academic performance, including, but not limited to, failing the first grade. The *Brown* Chancellor also found that the child had been exposed to pornographic tapes and that the custodial mother's new employment was going to require the employment of at least two different babysitters. These facts taken together caused the Chancellor to believe that it was in the best interest of the child.

The Mississippi Court of Appeals simply found that there was a sufficient evidentiary basis in the record for the Chancellor to make his decision that a material change had occurred, the change was detrimental, and that modification was in the best interest of the child, *Brown*, at 1120. In its discussion, the Court of Appeals contrasted another case, *Brown v. Brown*, 764 So.2d 502 (Miss.Ct.App. 2000). In *Brown v. Brown*, the ruling Chancellor was presented with a noncustodial parent attempting to obtain custody based on the children's custodial parent having moved six times in six years, that parent failing to pay utility bills, lived with three different men in the same house with the children, and used profanity in the children's presence among other negative facts. The ruling Chancellor held that these allegations did not constitute a material change in circumstances. The Mississippi Court of Appeals also found that the *Brown v. Brown* Chancellor had sufficient evidence in the record to rule as he did and that he had not abused his discretion. The Appellee's point is that there is nothing determinative in the law about the number of times a custodial parent moves during a custodial period, only that it is one factor among many for the Chancellor to consider.

Next, in Appellant's brief page 26, Story states, including a purported partial quote from page 1271 of *Masino v. Masino*, 829 So.2d 1267 (Miss.Ct.App. 2002) that "Any parent who,

without just cause, by their conduct demonstrates a willingness to alienate a child from the child's other parent and interfere with the relationship between the child and the other parent, 'raises a serious question concerning his or her fitness to maintain custody.''' Though appellant cannot locate the exact quote in the opinion cited, appellant will address the substance of the argument. The *Masino* Court was reviewing an award of custody to a father over the mother by a Chancellor in an original divorce proceeding. The Court of Appeals noted that the trial court did pain-staking, fact-intensive *Albright* findings, *Masino*, at 1271. This was the first award of permanent custody, not a change in existing custody arrangements.

The Chancellor found eight of the Albright factors in the father's favor and the mother's deliberate and ongoing interference with the father's relationship, taken with the mother's refusal to attended parenting and co-parenting classes as to find award of custody to the father in the child's best interest. The key finding of the Court of Appeals, however, was that "the chancellor's findings were thorough, deliberate and supported by substantial evidence. We will not disturb them."

Another case cited by Story where a Chancellor's decision was undisturbed by the Court of Appeals was *Jernigan v. Jernigan*, 830 So.2d 651 (Miss.Ct.App. 2002). The Chancellor in *Jernigan* at 653, granted a noncustodial parent's motion for custody based on several factors, including the presentation of false sexual abuse when no medical evidence existed of such abuse, but primarily on the agreement of the guardian ad litem and counselor that the child would suffer "adverse impacts in the future were she to remain in her mother's custody." Again, the Mississippi Court of Appeals found, at 654, absent any showing of abuse of discretion (by the Chancellor) we are without power to reverse the Chancellor's decision. Having reviewed the record and briefs, we find no abuse (of discretion) ..." The Appellant in this case seems to imply that ultimately unfounded allegations of sexual abuse necessitate a change in custody. The

Mississippi Court of Appeals in *Jerrigan*, at 653, cites the Mississippi Supreme Court case of *Touchstone v. Touchstone*, 682 So.2d 374 (Miss. 1996).

The *Jernigan* Court, at 653, discussing *Touchstone* at 377 and 379 states:

> In *Touchstone*, the parents shared custody, and their visitation exchanges included "vicious, profanity-laden accusations and insults between the parties." *Touchstone* at 377. Additionally, the mother was shown to have coerced the child into telling social workers that his father had sexually abused him, though the claims were not substantiated with medical evidence or testimony. The mother also moved out of state with the child and failed to abide by the visitation guidelines set by the court. The Supreme Court reviewed the evidence and circumstances presented and affirmed the chancellor's finding that although the child had witnessed the disdain his parents held for one another, there was no evidence that such episodes were characteristic of the overall circumstances in which the child lived; thus the chancellor declined to modify custody, having found no adverse impact. *Touchstone*, at 379.

The lesson is clear. With evidence in the record to support his decision, a chancellor will not be reversed when he changes custody in the best interest of the child in part of the basis of false sexual abuse allegations or when she does not change custody.

At page 27 of his brief, Story states, based on *Mord v. Peters*, 571 So.2d 981, 983 (Miss. 1990) that "So important is the child's right and a non-custodial parent's right to develop this relationship, some Courts have permitted a change of custody where it is determined that the custodial parent has interfered with a non-custodial parent's visitation rights." This next sentence in the opinion, *Mord*, at 983, referred to cases such that "custodial parent's interference with custodial parents visitation rights is an act so inconsistent with the best interests of the children, as to, per se, raise a strong probability that the offending party is unfit to act as custodial parent." (Citations omitted) The Mississippi Supreme Court did not imply that mere interference with visitation requires a chancellor to consider a custody change, but that, if interference rose to such a level to *de facto* deny visitation, a custodial parent might be not acting in the best interest of the child and a change in custody might be warranted.

Another case cited in support by the Appellant was *Thornhill v. Van Dan*, 918 So.2d 725 (Miss.Ct.App. 2005). Here, the Chancellor found that a custody change was in the best interest of the child. The Mississippi Court of Appeals again said it found adequate evidence in the record to support the Chancellor's decision and so affirmed. In that case, the Chancellor had found no *Albright* factor in favor of the parent who lost custody, but most importantly, the child's education had been interrupted in order to thwart the non-custodial parent's participation in educational decisions and the child had been involved in arguments between the parties, *Thornhill*, at 733-4. Finally, the party who lost custody basically did not appeal on the basis of misapplication of the law as described and used in this case, but instead on a late claim of non-paternity. The *Thornhill* case does not illuminate this case before the Court.

C. Discussion of the *Albright* and other relevant factors

Francesca Allen in many ways is a lucky child. She has both a mother and father, with their extended families, vigorously pursuing the rights of parenthood as well as the responsibilities, a condition all too rare in our current age. Further, the contest between the mother and father seems to be from genuine affection and concern for Francesca, and not merely an extension of whatever personal issues exist between the appellant Randy T. Story and appellee Cindy F. Allen. It is further testament to their love for their daughter that, despite the obvious bitter enmity between the parties that barely make them able to speak to each other, that Francesca has not appeared to suffered ill-effects from that enmity.

The Chancellor, in paragraphs 18, 19 and 20 of his written order felt it was his duty to make specific findings of fact applying the *Albright* factors because (1) denial by Allen to Story certain contact with Francesca, (2) Cindy Allen's frequent moves, (3) avoidance of court-ordered counseling and (4) false accusation of sexual abuse. He held those four factors were a material change in circumstance that adversely affected Francesca. Allen denies that she avoided

counseling and that her previous attorney failed to furnish proof to the Court and that the accusation was not found to be false, merely insufficient evidence to proceed with further action. (R.E. 331-332). The specific *Albright* factors are reviewed next:

1. Age, Health and Sex of the Child

The Court found Francesca to be a healthy 8 year-old female. The factor is neutral. (R.E. 332).

Neither Story nor Allen disputes this.

2. Continuity of Care

The Court found that Francesca has been with her mother most of her life. Her separation from her father is due to Allen's contempt. However, this factor favors Allen. (R.E. 332)

The Appellant Story at pages 28-30 of his brief stated that the Chancellor committed manifest error in his finding. The error claimed is finding the factor in favor of Allen after having found the separation was caused by Allen's contempt.

This exact issue was ruled on by the Mississippi Court of Appeals in *Ellis v. Ellis*, 952 So.2d 982, 995 (Miss.Ct.App. 2006). In that case, the Chancellor found the custodial parent had been interfering with the visitation rights of the non-custodial parent and thus weighed the factor in favor of the non-custodial parent. The *Ellis* majority at 995 found that the record showed the custodial parent was more involved in the day-to day care on a continuous basis. Therefore, the Court found that the Chancellor committed error and reweighed to the custodial parent.

Allen has, except for visitation, has been responsible for the day-to-day care of Francesca. As such, the Chancellor correctly weighed the factor in her favor.

3. Willingness and Capacity to Provide Primary Child Care

The Chancellor found both have the willingness and capacity to care for Francesca. (R.E. 332). This factor favors neither party. Neither Story nor Allen contests this finding.

4. Employment of the Parents and Responsibilities of that Employment

Story has basically the same job since Francesca's birth. He moved from Illinois to Mississippi so he could be closer to Francesca. Allen is forester with the Department of Interior. She has worked for Weyerhaeuser, been a nursing student, and a stay-at-home mom. This factor favors Story. (R.E. 332)

Story does not contest this factor, but Allen would submit she had been continuously employed by the Department of Interior for the immediate 3 years before the hearing on this matter.

5. Physical and Mental Health and Age of the Parents

Stacy and Allen are both healthy, and their age and health are not factors in this custody decision. This factor is neutral. (R.E. 333) Neither Story nor Allen contests this finding.

6. Emotional Ties of Parent and Child

Francesca is close emotionally to her parents and the parents to her. Allen has failed Francesca by not cultivating Francesca's relationship with her father. This factor slightly favors Allen. (R.E. 333).

Story suggests the Chancellor committed manifest error by this finding since Allen had failed to cultivate the relationship with the father. Clearly the Chancellor was exhorting Allen the need to increase the emotional relationship between Francesca and Story, but that does not imply inherent illogic. The Chancellor found that both parents had close emotional ties and that Allen had not done all she could to foster the father's ties. That still does not obviate a finding that the bond was stronger between mother and young daughter than father and daughter in this case. No error was committed.

7. Moral Fitness of Parents

Story is a moral person and fit to have custody of Francesca. Allen's flagrant disregard of court orders reflects on her moral fitness to be a parent. On two occasions Allen has agreed to orders only to immediately violate the orders. This factor clearly favors Story. (R.E. 333).

Story does not contest this finding, but Allen maintains she is a fit parent, and the only factor only goes against her because of the findings of two prior orders.

8. The Home, School and Community Record of the Child

Francesca does well in school and has friends in Wyoming. However, most of her family live in Mississippi. Story loves in Olive Branch, Mississippi and his parents in Illinois. This factor slightly favors Allen. (R.E. 333).

Story claims that the Chancellor committed manifest error in this finding this factor in favor of Allen because of Allen's choice to live in Wyoming as opposed to near her family and Story in Mississippi. As the Court heard, Francesca was proceeding normally academically, not a discipline problem, that she has numerous friends, as well as undergoing moral and cultural development through church and extracurricular activities. The Chancellor made no error.

9. Preference of the Child

Francesca is not legally old enough to express a preference. (R.E. 333).

10. Stability of the Home Environment and Employment of Each Parent

Story has worked for the same employer for the last seven years. Story has lived at the same address for the last seven years. Allen has been unemployed, has attended nursing school and has word for different employers for the last seven years. Story has lived at nine different addresses, West Monroe, Louisiana; Starkville, Mississippi, Grand Isle, Louisiana, Hattiesburg, Mississippi; Purvis, Mississippi; Terry, Mississippi; and Casper Wyoming in the last seven years. Allen married Steve Melton in 2001 and they divorced in 2003. Allen has been marries four times. This factor favors Story. (R.E. 333).

Story does not contest this finding, and Allen agrees that while Story has been "more" stable, her house has not been "unstable". Though married four times, she only been married and divorced one time since Francesca has been alive, and that upon reaching school age, she has had a continuous residence in one city and employment at one job.

11. Other factors relevant to the parent-child relationship

All factors observed by the Court have been discussed. (R.E. 334) Neither Story nor Allen contests this finding.

After these findings, the Chancellor held at paragraph 22 of its order that "Despite Allen's conduct, the Court, with serious reservation, believes that Francesca's best interest is served by Allen having her physical custody. The Court assures Allen that her further interference with Story's relationship will have serious consequences." (R.E. 334).

D. Argument

Quoting the Mississippi Supreme Court in *Lee v. Lee*, 798 So.2d 1284(¶15), the Mississippi Court of Appeals in *Ellis v. Ellis*, 952 So.2d 982, 995 (Miss.Ct.App. 2006) reminded that, "While the *Albright* factors are extremely helpful in navigating what is usually a labyrinth of interests and emotions, they are certainly not the equivalent of a mathematical formula. Determining custody of a child is not an exact science."

Though ultimately affirming the Chancellor's change of custody award for reasons discussed below, notwithstanding the misapplication of two *Albright* factors, the *Ellis* court, at 990 (¶18),

> Notwithstanding the chancery court's findings, visitation, or interference thereof, should generally **not** (emphasis added by appellee) be considered by the lower court while hearing the plea of a non-custodial parent to modify custody as '[t]he better rule would be for a chancellor to enforce contempt orders through incarceration .. rather than resorting to a change of custody,' but in some extraordinary cases the interference with a non-custodial parent's visitation rises to the level where it constitutes a mater change in circumstances. *Ash v. Ash*, 622 So. 2d 1264, 1266 (Miss. 1993).

While the interference played a role, what cleared troubled the Chancellor and the Court of Appeals most in *Ellis* was the testimony of the medical professionals that most justified the change in custody, *Ellis* at 998. Two doctors testified that the child was suffering psychological damage caused by the custodial parent's interference, and diagnosed the child with parental alienation syndrome. The testimony in this case was that Francesca was happy, thriving, had a emotional attachment to her non-custodial father, going to church, engaging in enriching activities and was succeeding in school, thus clearly distinguishing this case from *Ellis*.

In fact, in virtually all of the cases cited where custody was changed, some material harm was being done to the child. In *Hill v. Hill*, 942 So.2d 207, 212 (Miss.Ct.App. 2006), not only had there been many subsequent new romantic partners subsequent to divorce, there had been annual school changes, pornographic letters found in the home, and a suspicious automotive accident involving the custodial parent and the non-custodial parent's new girlfriend. These circumstances show that just happenstance had protected the child in question from physical or emotional harm. These taken together resulted in the Chancellor finding a change necessary. These circumstances are far worse than anything found in Cindy Allen's home.

In *Brown v. White*, 875 So.2d 1116, 1119 (Miss.Ct.App. 2004), the Chancellor had found that the custodial parent had moved ten times in four years, the child had failed first grade and was continuing to do poorly academically, the child had been exposed to pornographic tapes and her new job caused problems for the child's routine care, and the child had self-esteem issues. Other than a similar number of moves, there is no comparison between *Brown* and Cindy Allen. Again, insufficient circumstances to warrant a change in custody.

Story also cites *Masino v. Masino*, 829 So.2d 1267 (Miss.Ct.App.2002). The parent who lost custody in *Masino* had eight *Albright* factors weigh against her, but most heavily, was her making derogatory comments about her husband in front of the child. No or slight evidence was

introduced of Cindy Allen making derogatory comments in front of Francesca. In *Jernigan v. Jernigan*, 830 So.2d 651 (Miss.Ct.App. 2002), again the court was concerned about frequent moves, out of wedlock relationships, the status of which were misrepresented to trial court, and frequent different allegations of sexual abuse, none of which were true. The guardian ad litem believed that the mother would sacrifice her child's mental health in order to punish the child's father, *Jernigan* at 653. Further, the psychiatric counselor testified that the child would suffer adverse impact if she remained with the mother. *Id.* No such guardian ad litem or medical testimony was given in this case to indicate that future harm would come to Francesca if she remained with Cindy Allen.

Finally, there is *Thornhill v. Van Dan*, 918 So.2d 725 (Miss.Ct.App. 2005). The chancellor found that the custodial parent had harmed the child's education in an attempt to thwart participation in educational decisions the noncustodial parent was entitled to participate. The mother also had involved the child in arguments between the parents. Finally, the guardian ad litem felt that the child was suffering emotionally because of the mother's attitude and approach. Though there was some question about access to all educational records, nothing like the behavior seen in *Thornhill* was present in this case.

Chancellor Burns found that Cindy Allen had interfered with Story's visitation rights, and had done so before (R.E. 330). Story, however, had still had substantial contact with Francesca. There had been some initial instability, but since Francesca has reached school age, Cindy Allen established a home in Wyoming and secured steady employment. Francesca, in the same system, attended one school for two complete years, and at the time of the hearing, starting her second year at a school closer to her home. Francesca had not been involved with disagreements by Story or Allen. Francesca is a happy, well-adjusted child. She is succeeding in school. She is not manifesting any psychological or emotional problems. She has friends. She goes to church.

Chancellor Burns, in his opinion, believes further interference could rise to the level necessary to revisit custody, but that at the time of hearing, the traumatic consequences of change of custody when the child has not been suffering other than a full relationship with her father was not warranted (R.E. 334). Evidence exists in the record to support his findings. Therefore, this Court should affirm his ruling.

CONCLUSION

The evidence in this case is sufficient to support the findings of the Chancellor. The Chancellor's findings should not be disturbed. All relief sought by the Appellant should be denied and all costs assessed against him.

Respectfully submitted, this the 30 day of March, 2008.

CINDY F. ALLEN

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CERTIFICATE OF SERVICE

I, Allen Austin Vollor, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of the Appellee to:

Honorable Kenneth M. Burns
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Post Office Drawer 110
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SO CERTIFIED, this the 3d day of March, 2008.

Allen Austin Vollor

CERTIFICATE OF MAILING

I, Austin Allen Vollor, attorney for the Appellee, do hereby certify in accordance with M.R.A.P. 25 (a), that I am this day depositing in the United States Mail, first class, postage-prepaid, one original and three copies of the Brief of the Appellee in the matter of *Randy T. Story (Appellant) versus Cindy F. Allen (Appellee)*, case number 2007-CA-00312, for filing with the Clerk of the Supreme Court.

This the 3rd day of March, 2008.

Allen Austin Vollor