

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2007-CA-00312**

RANDY T. STORY

APPELLANT

VERSUS

CINDY F. ALLEN


APPELLEE

**APPEAL FROM THE CHANCERY COURT OF
OKTIBBEHA COUNTY, MISSISSIPPI**

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant certifies that the following people have an interest in the determination of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. RANDY T. STORY, Appellant
2. MARK G. WILLIAMSON, Attorney for Appellant
3. CINDY F. ALLEN, Appellee
4. AUSTIN VOLLOR, Attorney for Appellee
5. HONORABLE KENNETH M. BURNS, Chancellor

RESPECTFULLY SUBMITTED, this the 15th day of November, 2007.


MARK G. WILLIAMSON

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUE	1
I. THE CHANCELLOR COMMITTED MANIFEST ERROR IN FINDING THAT THE BEST INTEREST OF THE MINOR CHILD OF THE PARTIES WAS TO ALLOW HER TO REMAIN IN THE CUSTODY OF THE MOTHER	
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	19
ARGUMENT	20
CONCLUSION	31
CERTIFICATE OF SERVICE	32
CERTIFICATE OF MAILING	33

TABLE OF AUTHORITIES
TABLE OF CASES

<u>Albright v. Albright</u> , 437 So.2d 1003, 1005 (Miss. 1983)	24
<u>Barnett v. Oathout</u> , 883 So.2d 563 (Miss. 2004)	25
<u>Brown v. White</u> , 875 So.2d 1116 (Miss. Ct. App. 2004)	25
<u>Ellis v. Ellis</u> , 952 So.2d 982 (Miss. 2006)	27
<u>Harrington v. Harrington</u> , 648 So.2d 543, 545 (Miss. 1994)	26
<u>Hill v. Hill</u> , 942 So.2d 207 (Miss. Ct. App. 2006)	24
<u>Hulse v. Hulse</u> , 724 So.2d 918, 919 (Miss. App. 1998)	26
<u>Jernigan v. Jernigan</u> , 830 So.2d 651 (Miss. App. 2002)	26
<u>Johnson v. Gray</u> , 859 So.2d 1013 (Miss. 2003)	24
<u>Masino v. Masino</u> , 829 So.2d 1267 (Miss. Ct. App. 2002)	25,26,29,30
<u>Mord v. Peters</u> , 571 So.2d 981 (Miss. 1990)	27
<u>Thornhill v. Van Dan</u> , 918 So.2d 725 (Miss. Ct. App. 2005),	27

STATEMENT OF THE ISSUE

- I. THE CHANCELLOR COMMITTED MANIFEST ERROR IN FINDING THAT THE BEST INTEREST OF THE MINOR CHILD OF THE PARTIES WAS TO ALLOW HER TO REMAIN IN THE CUSTODY OF THE MOTHER**

STATEMENT OF THE CASE

- A. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW**

The Chancellor took judicial notice of the contents of the Chancery Court file.

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

On March 23, 2000 an Order was entered finding Cindy in contempt of the January 12, 2000 Agreed Order for denying Randy visitation with Francesca. The Order also stated that if at anytime in the future, Cindy acts in such a manner, the Court will look with disfavor upon her actions and will take appropriate action to punish her by incarceration. Randy was awarded his attorney's fees against Cindy.

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

In August of 2002 Cindy filed a report with the Hinds County Youth Court alleging that Randy sexually abused Francesca. Cindy was only seeking to have Randy's visitation stopped. 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 Youth Court pointed out that no criminal charges had been filed against Randy by DHS or Cindy. The Hinds County Youth Court case was closed in October of 2003.

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

While the Hinds County Youth Court matter was pending, Randy had very little contact with Francesca pursuant to a Court Order. Because of the allegations of sexual abuse, the Chancellor in the Oktibbeha County Chancery Court proceeding also supervised Randy's visitation with Francesca for Christmas of 2003 and the summer of 2004.

A Motion to Appoint Guardian Ad Litem was filed June 10, 2003 by Randy. On September 2, 2003 an Agreed Order was entered 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 that counseling with the Court. Randy complied with the Court Order, but Cindy did not.

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

On February 1, 2006 a Motion for Trial Setting was filed by Randy's attorney and an Order was entered setting this case for trial. After several continuance orders were entered, this case was set for trial on December 8 and 12, 2006.

On July 31, 2006 a Wyoming Court entered an Order Declining Jurisdiction and Granting Motion to Dismiss on a cause of action filed by Cindy a few months earlier which involved all of what was still pending before the Chancery Court of Oktibbeha County, Mississippi on Randy's Petition for Citation for Contempt and for Modification of Custody. On November 17, 2006 an Agreed Order was entered giving Randy leave to amend his Petition for Citation for Contempt and for Modification of Custody. On November 20, 2006 Randy filed an Amended Petition for Citation for Contempt and Modification of Custody. On November 29, 2006 an Answer to Randy's Amended Petition for Citation for Contempt and Modification of Custody was filed by Cindy.

This case was tried on December 8 and 12, 2006. On January 31, 2007, the Court below entered its Opinion and Judgment. On the issue of Cindy's contempt, the Chancellor found Cindy in willful and contumacious contempt of this Court for her failure to comply with Court ordered visitation. The following sanctions were imposed:

(1) Cindy shall strictly comply with all orders of this Court including this Order and shall foster a good father/daughter relationship with Randy and Francesca.

(2) Randy is awarded a judgment against Cindy for \$31,285.24 for attorney fees and expenses.

The Court ordered visitation that Cindy refused to allow Randy to exercise that are addressed in the Chancellor's Opinion and Judgment are as follows:

1.) The Chancellor found that Randy had been effectively denied telephone contact with Francesca for the last two years.

2.) Cindy denied Randy three weeks of his summer 2006 visitation.

3.) Cindy's most egregious conduct occurred at Christmas 2005. On Friday, December 9, 2005 Cindy told Randy, by text message, that he could pick up Francesca in Casper, Wyoming on

Christmas. Randy traveled to Wyoming only to learn that Cindy and Francesca were in Mississippi. Randy called Cindy's brother's home and learned that his daughter was in Mississippi. Cindy's brother sarcastically told Randy to "Have a Merry Christmas in Wyoming."

While not specifically addressing any other Court ordered visitation missed by Randy because of Cindy's contemptuous behavior, the Chancellor did find that Cindy falsely accused Randy of sexually abusing Francesca. The Chancellor also found that because of the allegations of sexual abuse that Randy had very little contact with Francesca while the Hinds County Youth Court matter was pending and that the Chancellor himself had ordered Randy to have supervised visitation with Francesca for Christmas of 2003 and the summer of 2004.

On the issue of modification of custody, the Chancellor found that Cindy's denial of Randy's contact with his daughter, her frequent moves, failure to have Court ordered counseling and false accusations of sexual abuse are material changes in circumstances that adversely affect Francesca. The Court then made the required Albright findings.

1. Age, Health and Sex of the Child. Francesca is a healthy 8 year old female. This factor is neutral.

2. Continuity of Care. Francesca has been with her mother most of her life. Her separation from her father is due to Cindy's conduct. However, this factor favors Cindy.

3. Willingness and Capacity to Provide Primary Child Care. Randy and Cindy both have the willingness and capacity to care for Francesca. This factor favors neither party.

4. Employment of the Parents and Responsibilities of that Employment. Randy has basically the same job since Francesca's birth. He moved from Illinois to Mississippi so he could be closer to Francesca. Cindy is a forester with the Department of Interior. She has worked for Weyerhaeuser, been a nursing student, and a stay-at-home mom. This factor favors Randy.

5. **Physical and Mental Health and Age of the Parents.** Randy and Cindy are both healthy, and their age and health are not factors in this custody decision. This factor is neutral.

6. **Emotional Ties of Parent and Child.** Francesca is close emotionally to her parents and the parents to her. Cindy has failed Francesca by not cultivating Francesca's relationship with her father. This factor slightly favors Cindy.

7. **Moral Fitness of Parents.** Randy is a moral person and fit to have custody of Francesca. Cindy's flagrant disregard of Court Orders reflects on her moral fitness to be a parent. On two occasions Cindy has agreed to orders only to immediately violate the orders. This factor clearly favors Randy.

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. Randy lives in Olive Branch, Mississippi and his parents in Illinois. This factor slightly favors Cindy.

9. **Preference of the Child.** Francesca is not legally old enough to express a preference.

10. **Stability of the Home Environment and Employment of Each Parent.** Randy has worked for the same employer for the last seven years. Randy has lived at the same address for the last seven years. Cindy has been unemployed, has attended nursing school, and has worked for different employers on and off for the last seven years. Cindy 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. Cindy married Steve Melton in 2001 and they divorced in 2003. Cindy has been married four times. This factor favors Randy.

11. **Other factors relevant to the parent-child relationship.** All factors observed by the

Court have been discussed.

Despite Cindy's conduct, the Court, with serious reservation, ruled that Francesca's best interest is served by Cindy having her physical custody. The Court assured Cindy that her further interference with Randy's relationship with his daughter will have serious consequences.

Aggrieved by the Court's custody decision Randy appeals. Randy filed his Notice of Appeal on February 21, 2007, Designation of the Record on February 23, 2007 and Certificate of Compliance on February 28, 2007.

B. FACTS

Counsel for Randy Story (hereinafter Randy) asked the Court to take judicial notice of the contents of the Chancery Court file and counsel for Cindy Allen (hereinafter Cindy) had no objection. (R78)

Randy and Cindy never married, but they had a child, Francesca Haze Allen, (hereinafter Francesca) who was born on May 31, 1998 and was 8 years old at the time this case went to trial.

Randy lives in Horn Lake, Mississippi. He has lived there for six years. He moved from Chicago, Illinois to Horn Lake, Mississippi because of the birth of his daughter, Francesca. She was living in Starkville, Mississippi when he moved to Horn Lake, Mississippi. (R80-81)

Randy is the branch technical manager for Konica Minolta Corporation in the Memphis, Tennessee office. He has worked for this corporation for 21 years. (R81-82)

Randy filed a Petition for Citation for Contempt and for Modification of Custody in December of 2002 because Cindy was constantly interfering with his visitation. Cindy would not allow him to visit Francesca. Cindy had been interfering with his visitation since the entry of the Paternity Order in January of 2000. (R83) Cindy was held in contempt for interfering with Randy's visitation in March of 2000, just three months after the Paternity Order was entered. (R83-84)

Another reason that prompted Randy to file the Petition for Citation for Contempt and for Modification of Custody was Cindy lodging abuse allegations against him with DHS. (R84) No criminal charges were ever filed against Randy. (R84) During the Youth Court proceedings, the only relief Cindy was asking from the Court was to stop Randy's visitation. Cindy had been trying to stop Randy's visitation for years prior to this allegation. (R84-85) This was not the first time Randy had been threatened with sexual molestation. When Francesca was an infant and she and Cindy were living in Grand Isle, Louisiana, Cindy's sister, Jacqueline Hand, threatened Randy with filing sexual molestation charges against him if he continued to try and see Francesca. (R85)

The Youth Court had a hearing in December of 2002 and entered an Order. (R88) The Order said in part...having read and considered the petition, the allegations of sexual abuse, and having heard the testimony of witnesses, finds that the said child is an abused child within the means of the Youth Court Act, but the Court is unable to determine whether the child is sexually abused or emotionally abused or by whom. (R89, Exh. P-4) The Youth Court file was closed in October of 2003. (R89-90) Randy had supervised visitation from 2002 to 2004. He went to every one. (R177)

Randy filed a motion to have a Guardian Ad Litem appointed in Chancery Court. Judge Gore was no longer on the bench and Judge Burns had been assigned this case. An Agreed Order was entered by the Court on September 30, 2003. The parties were ordered by the Court to start counseling and Randy had to have a home study conducted. Reports were to be filed with the court and opposing counsel. Randy complied with the Court Order, Cindy never did. (R90-93, Exh. P-5)

Randy was given telephone visitation with Francesca in the July 22, 2004 Court Order. He was allowed to call and talk with her twice a week. (R93) Randy was able to talk with Francesca for about six weeks after the entry of the Court Order. Francesca was living in Casper, Wyoming at this time. (R94) During this period when Cindy would answer the phone she would tell Randy to

go away, get a life, that he was pathetic, a loser and to just leave them alone. The telephone number Randy had been given to call was Cindy's cell phone number. (R95)

After the first six weeks, Randy was no longer able to talk with Francesca. When he called he got a Spanish recording and the call would then disconnect without giving him an opportunity to leave a message. This Spanish recording continued for awhile and then Randy started getting a message that said the cellular customer refuses to answer the phone at this time and then the phone call would be disconnected. (R96-97) The tape of the Spanish recording and one other recording was introduced into evidence and marked as Exhibit P-6. (R105-106, Exh. P-6)

Randy produced two years worth of his telephone records from November of 2004 through September of 2006. The telephone records were introduced into evidence and marked as Exhibit P-7. One number to Casper, Wyoming was highlighted throughout the entire two years of records. It was Cindy's number, (307) 258-6904. The telephone records showed one-minute calls and an occasional two minute call to her number. Anytime there was a connection, regardless of its duration up to one minute it was listed on the telephone records as a one-minute call. During this two year period of time, Randy testified he was allowed to talk to Francesca less than six times. He testified that he kept calling in hopes of Cindy allowing him to talk with Francesca. (R107-111, Exh. P-7)

In the summer of 2006, Cindy contacted Randy's employer by e-mail. The e-mail was from Cindy's e-mail address to his employer's e-mail address. The e-mail was introduced into evidence and marked as Exhibit P-8. The message said, "Please, if you see Francesca Allen with Randy Story, ask if she is okay. He will not let her have any contact with her custodial family, and she is only suppose to have supervised visitation with him." (R111-113, Exh. P-8)

Randy and Cindy were operating under the 2000 Court Order in so far as visitation during the summer of 2005. Randy was suppose to have five weeks of summer visitation pursuant to this

Order, but Cindy only allowed him 2 weeks. Randy notified Cindy well in advance of summer of his intentions to exercise his five weeks of summer visitation. Shortly thereafter, Cindy told Randy that she had signed Francesca up for summer school and that he could not have his five weeks. Cindy told him that Francesca would not advance to the second grade if she did not take this summer class. Randy contacted the school and requested Francesca's records and one of the documents he received stated "All indicators are good. Proceed to the second grade." The school records were introduced into evidence and marked as Exhibit P-9. Randy also looked into this summer school class and it was not affiliated with her school and it was just a program for the kids to get together and encourage reading and to stay fresh. Even after he confronted Cindy with all of this information, she still only allowed him two weeks of his summer visitation in 2005. (R113-117, Exh. P-9) On cross-examination Cindy admitted that Francesca's school records stated that she's placed in the second grade. She's ready for the second grade. Just read with her over the summer and she'll be fine. (R297)

Cindy denied Randy Christmas visitation for 2005. However, Randy was not aware that Cindy was going to keep Francesca from him that Christmas until he got to Casper, Wyoming to pick her up and discovered that Cindy and Francesca were not in Casper, but were in Mississippi.

A text message log regarding text messages between Randy and Cindy about Christmas visitation in 2005 was introduced into evidence and marked as Exhibit P-10. (R124) Randy received a text message from Cindy on December 9, 2005 that said, "If you insist, you may pick her up in Casper on Christmas." (R124) After receiving this December 9, 2005 text message from Cindy, Randy never heard from Cindy again until Christmas Day when he received a voice mail message from Cindy telling him that they were in Mississippi and to call her at her brother's house. (R125, 127, 129) Randy called her brother's number and he answered. As Randy was introducing himself

and telling him that he was in Wyoming, her brother interrupted Randy and said "Well, you have a Merry Christmas in Wyoming." He also said that Cindy and Francesca were not there and Randy asked if he could call back later to talk to Francesca and her brother said, "You can try if you want." Randy tried to call back several times and nobody answered. (R130-131) Ken Allen is Cindy's brother. He admitted telling Randy during that call to have a Merry Christmas in Wyoming. (R225) Cindy also admitted that her brother told her that Randy called and that she did nothing in response to being told this by her brother. (R319) From December 10, 2005 through December 24, 2005, Randy continuously text messaged Cindy trying to coordinate the exchange of Francesca in Casper, Wyoming, but he never heard back from Cindy. (R126-127)

Having heard nothing from Cindy since December 9, 2005 when she told Randy in a text message that he could pick Francesca up in Casper on Christmas, he sets out on his trip. He leaves Horn Lake, Mississippi and drives ten hours to Michigan to his parents home, where he and Francesca are going to spend Christmas. He then drove two hours to the airport in Chicago. He flies to Denver. He rents a car and drives four hours north to Casper, Wyoming. He then rents a hotel room and spends the night. The next morning, which is Christmas Day, he goes to pick up Francesca and she is not there. Randy learns later that day from a voice mail message he gets from Cindy that she and Francesca are in Mississippi. He drives four hours back to Denver. He flies back to Chicago. Drives from Chicago back to his parents' home in Michigan. Then drives back to Mississippi. (R127-132)

Randy's parents were celebrating their first Christmas in their new home. The house was just incredible. Randy's mother works hard every year for Christmas, but this year she put extra effort into it. Everything was set up for Francesca. (R131-132)

Randy incurred \$1,195.24 in expenses on this Christmas 2005 trip. The expenses were

introduced into evidence and were marked as Exhibit P-11. Randy is seeking reimbursement of those expenses. (R133, Exh. P-11)

Randy filed a Motion for a Trial Setting in February of 2006 and Cindy filed an action in Wyoming to transfer the case to Wyoming. The Wyoming Court declined jurisdiction. (R133-134)

Cindy has never provided Randy any of Francesca's school records, school pictures, school activities or medical records. (R136)

Randy lives in a three bedroom, two full baths, seven year old home. His neighborhood is packed with kids. He has two dogs and a gerbil. Francesca would be attending Horn Lake Elementary School. (R136-137)

Randy identified his lawyer's itemized bill for his services. The itemizations of time start when the modification was filed in December of 2002. The total number of hours devoted to both the modification and contempt action since December of 2002 was 338.5. At \$150.00 an hour, that amounted to \$50,775.00. The total number of hours devoted to only the contempt action since December of 2002 was 200.6. At \$150.00 an hour, that amounted to \$30,090.00. (R137-139) Randy's attorney's fees were introduced into evidence and marked as Exhibit P-12. (R143) Both sides waived the McKee factors in regards to attorney fees. (R200)

Since the filing of the paternity action Randy has incurred over \$100,000.00 in legal fees, expert fees, private investigator fees and other fees just to see his daughter and be a part of her life. (R139)

Randy is asking for custody of Francesca and for Cindy to have structured supervised visitation because of the possibility of her fleeing. He wants Cindy held in contempt and for her to pay his attorney fees that are related to the contempt portion of these proceedings, which is \$30,090.00. He also wants his travel expenses for going to Casper reimbursed. (R140)

Cindy admitted she did hide from Randy in 2000 for about 3 months. (R243)

Cindy has lived with Francesca in 6 different towns. Francesca was born in Monroe, Louisiana and they lived there 5 or 6 weeks. Cindy then moved with Francesca to Starkville, Mississippi. They lived in Starkville about 1 ½ years. Cindy then moved with Francesca to Grand Isle, Louisiana and lived there a few months. Cindy then moved with Francesca to Purvis, Mississippi and lived there 2 years. Cindy and Francesca then moved to Terry, Mississippi for about 2 years. Cindy then moved with Francesca to Casper, Wyoming and Casper is where they are currently residing. However, Cindy has moved with Francesca while in Casper to another home in Casper. (R270-272, 274, 276-277, 279-280) While they have resided in Casper, Cindy has had Francesca in 2 different school systems. Francesca attended kindergarten and first grade at Verda James Elementary and attended second and third grades at Park Elementary. (R272-273)

Cindy went to nursing school while she lived in Purvis, Mississippi, but she never finished. (R279-280)

Cindy's close family, the family she spends Christmas and Thanksgiving with, all live in Mississippi. (R284)

Cindy testified she left Randy a message on her voice mail that said "Hello Randy. I was just wondering have you thought about the possibilities of moving on with your life, not having to pay any more child support, not having to pay any more money for attorney's fees, not having to deal with the molestation issues? Just tell people it did not work out and maybe finding someone that wants to be in your life. This might be something for you to think about. We might could work something out. Thank you. Bye bye." She also testified that anybody calling her cell phone would have gotten that same message. (R292)

Regarding Randy's missed visitation of Christmas of 2005, Cindy said she texted Randy on

December 11, 2005 and told him she would be in Mississippi for Christmas. She also stated that she was going to bring Francesca to Horn Lake at noon on Christmas Day and that Randy knew about these arrangements because she texted him on December 11, 2005 and wrote him letters to that effect. However, Cindy admitted that she was in Philadelphia, Mississippi all day on Christmas Day and that she did not take Francesca to Horn Lake, Mississippi at noon. (R309-317, Exh. D-3) Cindy also testified that she had Francesca here in Mississippi over the holidays for about 13 days and that she never called or got up with Randy to let him see Francesca anytime during those 13 days. (R318, 320)

Cindy has been married and divorced 4 times. Steve Melton (hereinafter Steve) was Cindy's fourth (4th) husband. Steve and Cindy married on September 8, 2001 and divorced on December 11, 2003. Cindy was married and divorced only once during Francesca's lifetime and that marriage was to Steve. (R6, 269)

Steve was present at almost every exchange of Francesca between Cindy and Randy in 2001 and 2002. (R6, 14-15) Cindy was never happy about the exchanges. She dreaded them and quite often she became upset prior to the transfers. Cindy would become emotional and cry and would behave this way in front of Francesca. Francesca would see Cindy crying and getting upset and Francesca would quite often become upset as well. (R8) This behavior by Cindy occurred prior to the sexual molestation allegations as well as after. (R9)

Cindy would quite often tell Steve that she wished Randy was not involved in Francesca's life. Steve testified that Cindy was obsessed with trying to get Randy out of Francesca's life. (R7-8)

Steve remembered an occasion where Francesca was excited about a visit with Randy. Francesca was packed and repeatedly asking Cindy if she was ready to go. Cindy would not respond at first and then reacted harshly to Francesca. Steve testified that Francesca became confused. She

had been happy, but her mother was upset. Francesca started crying and got upset. She didn't know what to do. (R9)

Steve identified and testified that Cindy owned two (2) specific books. One was entitled "How to Create a New Identity," and the other was entitled "How to Hide Your Assets and Disappear." (R10, Exh. P-1) Cindy and Francesca had passports. Steve testified that during the first year of their marriage Cindy told him that she had considered taking Francesca somewhere where they would not be found. Steve also testified that Cindy made that statement before there were ever any sexual molestation allegations. (R10-11)

When Cindy and Francesca lived in Starkville, they lived next door to Doris McGehee (hereinafter Doris.) (R18-19) Doris met Randy for the first time after Cindy and Francesca moved when he showed up at her door with a missing person flier of Francesca. Randy was going around the neighborhood asking people if they knew anything about Francesca or where she might be. (R19)

Doris has seen Randy and Francesca 3 or 4 times since Cindy and Francesca moved from Starkville. The last visit was in the summer of 2005. Randy's parents were with Randy and Francesca during this summer of 2005 visit. Cecelia Cook came by during this visit. Doris observed Francesca with Randy on this visit and she saw Francesca crawling up in his lap and hugging him. Doris also observed this same loving interaction between Francesca and Randy on the other visits. (R20-22)

Angela McCaleb (hereinafter Angela) is married and has 3 children, Savannah-age 9, Nicholas-age 7 and Trace-age 2. (R26) When Randy moved to Mississippi, he moved into a house across the street from Angela and her family. They lived across the street from each other for 4 or 5 years until she and her family moved 5 or so miles away a couple of years ago. (R27-28)

Angela's daughter, Savannah, is the same age as Francesca. (R28-29) Angela testified that Savannah and Francesca were best friends. They played well together. They spent the night back and forth in each other's homes. Randy would take Savannah and Francesca on day trips. (R30) Randy, Francesca and Savannah took a 9 day trip to Florida during the summer of 2006. (R33)

Randy's neighborhood was described by Angela as being a fun environment, full of kids. The neighborhood had parties, grill-outs and a community swimming pool. All the neighbors became real close friends. (R29)

Angela testified that Randy and Francesca had a close relationship and they always seemed to have a great time together. Francesca also always enjoyed her time alone with her father. (R32) On the days Randy returned Francesca to Cindy, Francesca was sad and tried to delay the exchange as long as possible. (R32-33)

Angela testified that she met Cindy one time. Francesca and Savannah were about 5 years old. Randy was returning Francesca to Cindy and she and Savannah went with them to the Horn Lake Police Department for the exchange. Angela walked into the Horn Lake Police Department with Francesca and Savannah and Cindy was inside standing behind a tree. Francesca approached Cindy and Angela and Savannah were following right behind her. Angela tried to introduce herself to Cindy in hopes of getting Cindy's e-mail address so the girls could have some type of pen pal relationship. Angela wanted the girls to be able to carry on a relationship all year long because the girls are such good friends and love each other. Angela testified that before she could finish telling Cindy all of this, Cindy snatched Francesca and left without even speaking to her. The girls didn't even get to say goodbye to one another. (R36-40, 43-44) Angela also testified she called Cindy one time and left a message about wanting the girls to be able to carry on a relationship all year long and Cindy never returned her call. (R37-39)

Londa Jane Rose Harvey (hereinafter Londa) lives in Florida and is Randy's sister. (R47) Randy, Francesca and Savannah visited Londa at her home in Florida during the summer of 2006 for about ten days. She took vacation from work and spent the entire ten days with them. (R48) They went to the beaches, the pool and sea world and had a great time. (R49) Londa got to observe Randy and Francesca's relationship. Their relationship was extremely warm and affectionate. Francesca was extremely demonstrative in her emotions, hugging and kissing her father and seeking his approval and attention. (R49) Londa, Randy and Francesca have had several other extended family vacations over the past few years. On all of these occasions she witnessed a normal father/daughter relationship, very loving and kind with Francesca seeking his attention. (R51-52)

Londa also observed Francesca on the telephone with Cindy. Francesca's whole demeanor would change. Francesca was very reticent about telling Cindy about the fun she was having. However, as soon as she hung up with Cindy, she was back to her fun-loving self. (R50) Londa also testified that she nor Randy were allowed to have telephone contact with Francesca. (R60)

Wanda Story (hereinafter Wanda) lives in Michigan with her husband, Herb Story (hereinafter Herb). They are Randy's parents and have been married 46 years. (R61-62) Francesca spent two weeks with Wanda and Herb at their home in Michigan during August of 2006. It was two weeks of Randy's visitation. (R62-63) Francesca and Wanda shopped. Francesca constantly played with the neighbor's 9 year old granddaughter. Francesca and Herb would have treasure hunts. (R63-64, 68)

When Francesca talked with Cindy on the telephone, during the conversations Francesca would refer to Wanda as Wanda, Herb as Herb and Randy as Randy. All other times Francesca calls Wanda-Grandma, Herb-Grandpa and Randy-Daddy. (R64-65)

Wanda testified that she is never able to talk to Francesca. So she called Francesca's school

and got permission to send her class a package of candy for Valentine's Day. Shortly after Wanda sent the package Cindy called Wanda and told her that she could call or send packages to their home anytime she would like. After the conversation with Cindy, Wanda testified she called the home three days in a row and Cindy never answered. She also testified that a package she mailed to their home was returned. (R66-67)

Francesca and Randy were suppose to spend Christmas of 2005 with Wanda and Herb at their new home in Michigan. Wanda testified she wanted it to be a memorable Christmas for Francesca so she bought a 20 foot Christmas tree with lights and glitter surrounded by packages for Francesca to tear into. Randy left Michigan to go to Casper, Wyoming to pick up Francesca. However, Francesca was not in Casper for Randy to pick up. Randy, Herb and Wanda were devastated. Randy was highly upset and crying. Randy drove home without even celebrating Christmas. (R71-72)

The report of the Guardian Ad Litem, Cecelia R. Cook, was introduced into evidence and marked as Exhibit P-2.

The Guardian Ad Litem's first contact with this case was at a hearing in the summer of 2003 at the Courthouse in Macon, Mississippi. Cindy, the natural mother, was moving to Wyoming and a visitation schedule was agreed upon for the holiday season. At that time, the father asked to see his child before she and her mother moved to Wyoming and was told by the mother that the child was in Jackson and they were packed to leave as soon as she returned to Jackson, therefore there was no time for a visit. It was later brought to the Guardian Ad Litem's attention that the child was apparently in Macon the entire time and was kept from the father by Cindy and her family. (Exhibit P-2)

In her report, the Guardian Ad Litem noted that the Chancellor ordered these parents to have psychological evaluations. Randy had completed his psychological evaluation and the Guardian Ad

Litem was sent a copy of that report. As of the date of her report, the Guardian Ad Litem had not received a copy of any type of psychological evaluation from Cindy. (Exhibit P-2)

The following summer the Guardian Ad Litem was informed that Francesca was visiting with Randy at his home in Memphis. Over the two weeks that Francesca was in Memphis the Guardian Ad Litem made two unannounced visits. During the first visit, Francesca was slow to warm up to her, but after a short time, she talked to the Guardian Ad Litem about her visit with her father and the things that they were doing. She showed the Guardian Ad Litem her room and her toys. When they went back to the den they sat down to visit and Francesca wanted to watch TV. As soon as Randy was near her, Francesca climbed in his lap. She kissed and hugged her father. She did not display any hesitancy to be close to him or have him close to her. They went outside and she wanted to show the Guardian Ad Litem how she learned to ride her bicycle. Randy was attentive to her and her safety in a very normal and natural way. At Randy's suggestion the Guardian Ad Litem went across the street to talk with his neighbor. They talked at length about what kind of neighbor Randy was. They talked about her daughter who is the same age as Francesca and how they played together at one house or the other. She stated emphatically that she knew Randy and had no hesitancy allowing her child to spend time at his house whether Francesca was there or not. (Exhibit P-2)

The Guardian Ad Litem made her next unannounced visit a week later. She took Jennifer Barron, a DHS social worker, with her. Randy was at work and Francesca was at the neighbor's house. Randy's mother called him and he made a quick trip by the house. The visit was short but they were able to see Francesca with her father and to see how Francesca reacted when her father left. Randy attempted several times to leave, but Francesca held on to him and pleaded for him to stay or take her with him. (Exhibit P-2)

Since that time the Guardian Ad Litem has seen Francesca on at least two other trips that she

and her father have made through Starkville during her visits. She always seems to be happy and loving toward her father. The only time that she isn't happy is when she can't have her father's complete attention because he is talking with someone else. (Exhibit P-2)

The Guardian Ad Litem has observed Randy with his daughter at times when he was prepared to see her and at times when he had no time to prepare for her visit. What she has seen during all these visits is the same, a loving father with a daughter who adores him. Francesca's reactions with and to her father are completely normal. She has never shown any anxiety or hesitancy to hug, kiss and cling to her father. There have been opportunities for her to leave him and play with other children, but when he is around she wants to be right by his side or in his arms. (Exhibit P-2)

SUMMARY OF THE ARGUMENT

Randy's argument is over custody of Francesca and what is in her best interest. He feels that it is certainly not in Francesca's best interest to remain in Cindy's custody. Cindy was held in contempt. The Chancellor found that there were material changes in circumstances that adversely affected Francesca. The Chancellor even prefaced his best interest ruling by stating that he had serious reservations about leaving the minor child with Cindy and then ended his best interest ruling by warning Cindy about not continuing to do what she has been doing for this child's entire life. Yet the Chancellor left her with custody.

Randy feels that the above constitutes an abuse of discretion and was clear and manifest error. Award Randy custody.

ARGUMENT

How can it possibly be in the best interest of a minor child to remain in the custody of a parent with the following history?

1.) Francesca was born on **May 31, 1998**. A Paternity Order went into effect on **January 12, 2000** awarding Cindy custody and Randy visitation. On March 23, 2000 Cindy was found in contempt for interfering with Randy's visitation. This was the 3 months that Cindy admitted to hiding from Randy. (R243) This was also the time when Doris McGehee met Randy for the first time. Randy was going around Cindy's and Francesca's neighborhood in Starkville handing out missing person fliers of Francesca asking everyone if they knew anything about Francesca or where she might be. (R18-19)

2.) On **May 9, 2000** the parties were ordered to immediately add Randy to Francesca's birth certificate as the father. On December 28, 2001 Cindy was found in contempt for not adding Randy to Francesca's birth certificate as the father.

3.) In August of 2002 Cindy filed a report with the Hinds County Youth Court alleging that Randy sexually abused Francesca. This was not the first time Randy had been threatened with sexual molestation. When Francesca was an infant and she and Cindy were living in Grand Isle, Louisiana, Cindy's sister, Jacqueline Hand, threatened Randy with filing sexual molestation charges against him if he continued to try and see Francesca. (R85)

The only relief Cindy was asking from the Youth Court was to stop Randy's visitation. No criminal charges were ever filed against Randy. (R84)

The Hinds County Youth Court ruled in part, "...said child is an abused child within the means of the Youth Court Act, but the Court is unable to determine whether the child is sexually

abused or emotionally abused or by whom.” (R89, Exh. P-4) **In his opinion and Judgment the Chancellor, Judge Burns, found that the sexual abuse accusations were false.**

4.) In his Opinion and Judgment the Chancellor also found that while the Hinds County Youth Court matter was pending (**August of 2002 through October of 2003**) Randy had very little contact with Francesca. The Chancellor also supervised Randy’s visitation with Francesca for **Christmas of 2003** and the **Summer of 2004** because of the sexual abuse allegations. A very significant fact in the history of this case is that after his **Summer of 2004** visitation, Cindy no longer requested supervised and restricted visitation and the parties went back to following the visitation set forth in the original first set of Court Orders.

5.) The Guardian Ad Litem’s first contact with this case was at a hearing in the **Summer of 2003** at the Courthouse in Macon, Mississippi. Cindy and Francesca were moving to Wyoming and visitation was being worked out. Randy asked to see Francesca before they left for Wyoming and Cindy informed the Court that Francesca was in Jackson and that they were leaving as soon as she returned to Jackson, so there was no time for a visit. The Guardian Ad Litem later learned that the child had been in Macon the entire time of the hearing and was kept from the father by Cindy and her family. (Exhibit P-2)

6.) On **September 30, 2003**, the parties were ordered to start counseling and directed to report the results of the counseling to the Court. Randy reported, but Cindy did not. (Exhibit P-2)

7.) From Francesca’s birth, **May 31, 1998**, until their move to Casper, Wyoming in the **Summer of 2003**, Cindy and Francesca have lived in 6 different towns, in 3 different states. Cindy has enrolled Francesca in 2 different schools systems. (R270-274, 276-277, 279-280) Cindy has been married and divorced 4 times. Cindy was married and divorced only once during Francesca’s

lifetime and that marriage was to Steve Melton. They were married on September 8, 2001 and divorced on December 11, 2003. (R6, 269) During Francesca's lifetime Cindy has worked for Weyerhaeuser, been a nursing student, but dropped out, been unemployed, been a stay-at-home mom and is now a forester with the Department of the Interior.

8.) Steve Melton testified that Cindy was obsessed with trying to get Randy out of Francesca's life. (R7-8) That Cindy was never happy about the visitation exchanges. Cindy would cry and get upset in front of Francesca and this would upset Francesca and cause her to cry. (R8) Cindy would get angry with Francesca if she would get excited about going to see Randy and this confused Francesca. (R9) He also testified that Cindy had 2 books. One was entitled "How to Create a New Identity," and the other was entitled "How to Hide Your Assets and Disappear." (R10, Exh. P-1) Cindy told Steve that she had considered taking Francesca somewhere where they would not be found. (R10-11)

9.) Angela McCaleb was a next door neighbor to Randy and she has a daughter-Savannah, who is Francesca's age and the two girls are best friends. Angela testified that Cindy would not talk with her about letting the girls stay in touch throughout the year when Francesca was back with Cindy. Angela also testified that when she called Cindy, Cindy would not answer the phone or call her back. (R30, 36-40, 43-44)

10.) Cindy would never answer the telephone when Randy's mother and sister would call nor would she return their calls. Cindy even sent back a package Randy's mother sent Francesca. (R60, 66-67) Cindy also had Francesca refer to Randy as Randy instead of daddy, Randy's mother as Wanda instead of grandma and Randy's father as Herb instead of grandpa. (R64-65)

11.) On **July 22, 2004** a Court Order was entered giving Randy telephone visitation with Francesca. He was allowed to call and talk with her twice a week. (R93) Cindy violated this Court

Order by refusing to allow the visitation. The Chancellor found that Randy had been effectively denied telephone contact with his daughter for the last two years. This was one of the visitation violations for which the Chancellor held Cindy in willful and contumacious contempt.

12.) During this two year period when Cindy denied Randy telephone contact with Francesca, Cindy would occasionally pick up the telephone and tell Randy to go away, get a life, that he was pathetic, a loser and to just leave them alone. (R95)

13.) During this same two year period Cindy left Randy a message on her voice mail that said "Hello Randy. I was just wondering have you thought about the possibilities of moving on with your life, not having to pay any more child support, not having to pay any more money for attorney's fees, not having to deal with the molestation issues? Just tell people it did not work out and maybe finding someone that wants to be in your life. This might be something for you to think about. We might could work something out. Thank you. Bye bye." She also admitted that anyone calling her cell phone would have heard that same message. (R292)

14.) The Chancellor also found that Cindy had denied Randy 3 weeks of his **Summer of 2006** visitation. This was another one of the visitation violations for which the Chancellor held Cindy in willful and contumacious contempt.

15.) The Chancellor also found that Cindy had denied Randy his visitation for **Christmas of 2005**. This was the occasion where Cindy intentionally sent Randy to Casper, Wyoming on Christmas Day on a wild goose chase. Randy was in Casper to pick up Francesca, but Cindy had Francesca in Mississippi with her. Apparently Cindy and her family had a good laugh at what she put Randy and his family through that day. This was another one of the visitation violations for which the Chancellor held Cindy in willful and contumacious contempt.

16.) In the **Summer of 2006**, Cindy contacted Randy's employer by e-mail. The e-mail was

from Cindy's e-mail address to his employer's e-mail address. The e-mail was introduced into evidence and marked as Exhibit P-8. The message said, "Please, if you see Francesca Allen with Randy Story, ask if she is okay. He will not let her have any contact with her custodial family, and she is only suppose to have supervised visitation with him." (R111-113, Exh. P-8)

17.) Also during 2006, Cindy filed a cause of action in Wyoming trying to get this case moved to Wyoming. The Wyoming Court declined jurisdiction and dismissed her action.

18.) Randy has incurred over \$100,000.00 in legal fees and other fees and expenses over the past 8 years because of Cindy's contemptuous behavior. All he ever wanted to do was to spend a little time with his daughter.

Cindy's contemptuous behavior has been continuous and ongoing and shows no signs of slowing down. How in the world can it possibly be in the best interest of Francesca to remain in Cindy's custody? What else can Cindy do to interfere with Randy's and Francesca's relationship? Award Randy custody.

The law is well-settled that "a modification of custody is warranted if the moving parent successfully shows... a material change in circumstances which has an adverse effect on the child, and modification of custody would be in the child's best interest." Johnson v. Gray, 859 So.2d 1013 (Miss. 2003). Specifically, "a non-custodial party must prove that (1) there has been a substantial change in circumstances affecting the child, (2) the change adversely affects the child's welfare, and (3) a change in custody is in the best interest of the child. In determining the best interest of the child a chancellor should weigh and address the Albright factors. Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983).

In Hill v. Hill, 942 So.2d 207 (Miss. Ct. App. 2006) the Court of Appeals affirmed a Chancellor's modification of custody of a seven year old boy from the mother to the father. In three

years since the decree, the mother moved four times, was involved with and introduced the boy to at least four men, remarried and divorced a year later, and at the time of the hearing, was engaged to marry a man who was married when she began dating him. The boy had attended three different schools in three years. The totality of the circumstances did constitute a material change. The Court stated that a child should not have to bear the burden of being resilient under such circumstances, and needed a home with high morals, normal relationships, and stability.

In Barnett v. Oathout, 883 So.2d 563 (Miss. 2004) the Chancellor modified custody to the father. The Supreme Court affirmed the Chancellor's modification. The Chancellor found that the mother had taken various actions to interfere with the father's and children's relationships-placing a block on her phone, prohibiting visitation, allegations of abuse, (however, the Court noted that no abuse charges were ever pursued against the father), and she failed and refused to keep the father informed regarding the children and that her actions were having an adverse effect on the children and that it was in the children's best interest to be in his custody. The Chancellor also found that 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."

In Brown v. White, 875 So.2d 1116 (Miss. Ct. App. 2004) custody was properly modified from the mother to father. The mother and child lived in ten different locations in five states in a four year period. Also during that period, the mother lived with, married and divorced one man and was now dating another man. The Chancellor found that the mother's frequent moves and relationships were a material change in circumstances.

In the case of Masino v. Masino, 829 So.2d 1267 (Miss. Ct. App. 2002), the Court of Appeals affirmed the Chancellor's decision to award custody of a very young girl (4 years of age at the time

of trial) to her father due mostly to the mother's extreme interference with the girl's relationship with her father. As the chancellor stated in his opinion, "this conduct is unacceptable" and it should not be tolerated by any Court.

The mother's alienation conduct was clearly demonstrated to the Court in the audio and video tape recordings and was testified to by the father and other witnesses. The Court of Appeals has recognized a duty of good faith on the part of divorcing parents to foster the relationship of the other parent with the child. Hulse v. Hulse, 724 So.2d 918, 919 (Miss. App. 1998) For a parent to conduct themselves otherwise, simply is not in the best interest of the child. As the Court stated in Hulse, "it has been said,...that it is manifestly in the best interest of the child that it have as nearly normal a relationship as is possible with the non-custodial parent." Hulse v. Hulse at 919, citing, Harrington v. Harrington, 648 So.2d 543, 545 (Miss, 1994). In order to develop this normal relationship, each parent must work together to promote the relationship between the child and the other parent, and a parent who consistently alienates the child from the other parent or interferes with that relationship by his or her words and conduct, demonstrates to the Court an attitude that ignores their child's needs and best interests.

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 of the child." Masino v. Masino, 829 So.2d 1267 (Miss. Ct. App. 2002).

In Jernigan v. Jernigan, 830 So.2d 651 (Miss. App. 2002), the Chancellor properly modified custody from mother to father where the mother made numerous unsubstantiated claims of sexual abuse of the child, encouraged the child to dislike her father, misrepresented facts and provided incomplete information to agencies and social workers, moved five times in seven years, and

cohabited with her current husband before marriage.

In Mord v. Peters, 571 So.2d 981 (Miss. 1990), the Court stressed the value of visitation rights and defined the time that a child might spend with his or her non-custodial parent in visitation as “a right more precious than any property right.”

The Court noted that a custodial parent’s interference with the non-custodial parent’s visitation rights is an act so inconsistent with the best interests of the child as to, per se, raise a strong probability that the offending party is unfit to act as custodial parent. 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.

In Thornhill v. Van Dan, 918 So.2d 725 (Miss. Ct. App. 2005), the Court of Appeals found that custody of a nonmarital child was properly modified to the father. The Chancellor found a material change in circumstances through the mother’s denial of visitation, interruption of the child’s education, and involvement of the child in disputes with the father, causing the child emotional distress. The Chancellor found that the mother denied or prevented the father’s visitation on numerous occasions. The Chancellor found the mother’s actions to be open, intentional, and continuous. Based on this evidence, the Chancellor found that the mother prevented or denied a healthy relationship between the father and child.

In Ellis v. Ellis, 952 So.2d 982 (Miss. 2006), the Court of Appeals approved a Chancellor’s modification of custody based on a mother’s continuing interference with the father’s visitation and her attempts to alienate the fourteen year old girl from her father. The couple divorced in 1998. The parents shared joint legal custody and the mother was awarded primary physical custody. One year later, a Chancellor found that the mother had intentionally failed to provide visitation, failed to

transport the child to the required location, contacted the child excessively during visitation, scheduled activities that conflicted with visitation, and did not consult the father about home schooling. She was ordered to refrain from this conduct; however, the Court found that her actions were not a material change in circumstances warranting a change in custody.

In 2004, the mother refused to send her daughter on summer visitation, necessitating a petition for emergency relief. In addition, she did not respond to the father's phone calls for a period of time. The father filed a contempt petition and was awarded make-up visitation. Subsequently, the mother planned, and prepaid for, events that conflicted with the father's 2005 summer visitation. Also in 2005, the mother refused to allow the father and grandmother to speak with the girl when they drove to Oklahoma for her school recital.

The Chancellor granted the father's third petition to modify custody, and the court of appeals affirmed. As a general rule, custody should not be modified because of visitation interference, which should be addressed through contempt proceedings. However, modification may be warranted in extreme cases. Even after two court orders requiring her cooperation, the mother continued to interfere with visitation. Considering the combination of these factors, the Chancellor did not err in finding a material change in circumstances having an adverse effect on the child. The Court did not err in finding that, under the Albright factors, it was in the child's best interest to modify custody.

In considering the "Albright Factors" the Chancellor found that four factors favored neither party. He found that three factors favored Cindy and that three factors favored Randy. However, two of the three factors that the Chancellor found to favor Cindy, he only found them to slightly favor Cindy. The Chancellor found the "Moral Fitness of Parents" factor to clearly favor Randy and the other two factors he found to favor Randy.

However, the Chancellor was manifestly in error in finding that the "Continuity of Care"

factor favored Cindy. The Chancellor even stated in his analysis of this factor that “Her separation from her father is due to Cindy’s conduct.”

As the Court stated in Masino v. Masino, 829 So.2d 1267 (Miss. Ct. App. 2002), even though Dawn Masino did provide the continuity of care prior to the separation this factor did not favor Dawn. The Court reasoned, rightly so based on the evidence presented, that Dawn substantially interfered with Leonard’s and Melanie’s relationship during the marriage and after the separation. This interference contributed to the fact that Leonard could not participate in caring for Melanie during the marriage.

In this case Cindy has been interfering with Randy’s and Francesca’s relationship ever since she has been born. Cindy was held in contempt for interfering with Randy’s visitation with Francesca just 3 months after the Paternity Order was entered and he was granted visitation. Over the past 7 years, Cindy and Francesca have lived in at least 6 different towns in 3 different states and are currently living in Casper, Wyoming which severely limited Randy’s contact with Francesca over the years. Falsely accusing Randy of sexually abusing Francesca also severely limited Randy’s contact with Francesca for approximately 2 years. The Chancellor held Cindy in willful and contumacious contempt of Court for her repeatedly denying Randy telephone contact with his daughter. The Chancellor held that Cindy had effectively denied Randy telephone contact with his daughter for the last 2 years. The Chancellor held that Cindy denied Randy 3 weeks of his summer of 2006 visitation. The Chancellor also held that Cindy denied Randy his Christmas of 2005 visitation. This visitation being the one where Cindy intentionally caused Randy extreme emotional distress and cost him to waste an enormous amount of time and money by telling him to pick Francesca up for Christmas in Casper, Wyoming only to learn upon arriving in Casper that Cindy and Francesca were in Mississippi.

The Chancellor should have found that this factor favored Randy due to Cindy's substantial interference with Randy's and Francesca's relationship.

The Chancellor was manifestly in error in finding that the "Emotional Ties of Parent and Child" factor slightly favored Cindy. The Chancellor even stated in his analysis of this factor that, "Cindy has failed Francesca by not cultivating Francesca's relationship with her father."

In Masino v. Masino, 829 So.2d 1267, (Miss. Ct. App. 2002), the Chancellor recognized that both parents had strong emotional ties with the child. However, one of the primary responsibilities of the custodial parent should be to maintain the emotional ties of the child with the other parent. The Chancellor found that Leonard will best do this and that it was clearly demonstrated that not only did Dawn interfere with the relationship between Leonard and Melanie, she will do so in the future.

The record in this case clearly demonstrates that Cindy has substantially interfered in Randy's and Francesca's relationship and that she will continue to do so in the future. Cindy's interference has been going on for 7 years and there was nothing presented by Cindy to show she was going to change her ways.

The Chancellor should have found that this factor favored Randy due to Cindy's substantial interference with Randy's and Francesca's relationship and because the evidence showed she will continue to interfere with their relationship in the future.

The Chancellor was manifestly in error in finding that the "Home, School and Community Record of the Child" factor slightly favored Cindy. Most of Cindy's family lives in Mississippi. Randy lives in Mississippi. Cindy moved with Francesca to Wyoming.

It is very apparent that Francesca has a very close, loving relationship with all members of Randy's family. However, not only has Cindy interfered with Randy's and Francesca's relationship,

but she has interfered with Francesca's relationship with all of Randy's family. Cindy will not answer telephone calls from Randy's family and she sends back packages mailed to Francesca from Randy's family. Also, Cindy will not provide or give Randy access to Francesca's grades, school pictures or her medical records.

The Chancellor should have found that this factor favored Randy because Cindy has moved Francesca away from Cindy's family and from her father. Further, that not only has Cindy interfered with Randy's and Francesca's relationship, but she has interfered with Francesca's relationship with all of Randy's family.

CONCLUSION

The facts in this case clearly demonstrate that this Court should reverse the Chancellor's custody decision. It was clearly erroneous and is going to continue to allow the mother to destroy the minor child's relationship with her father if not reversed. Award the father custody.

Respectfully submitted, this the 15th day of November, 2007.

RANDY T. STORY

BY: Mark G. Williamson
MARK G. WILLIAMSON

CERTIFICATE OF SERVICE


I, Mark G. Williamson, attorney for the Appellant, hereby certify that I have this date forwarded via United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant to:

Honorable Kenneth M. Burns
Chancellor
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Okolona, MS 38860

Honorable Austin Vollar
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Starkville, MS 39759

SO CERTIFIED, this the 15th day of November, 2007.


MARK G. WILLIAMSON

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CERTIFICATE OF MAILING

I, the undersigned, Mark G. Williamson, do hereby certify that on this the ____ day of November, 2007, I personally deposited in the United States Mail, addressed to the Clerk of the Supreme Court of the State of Mississippi the following:

1. The original and three (3) copies of the Brief of Appellant, and
2. Four (4) copies of the Record Excerpts.

This the 15th day of November, 2007.


MARK G. WILLIAMSON

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