

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2007-CA-00362

STATE OF MISSISSIPPI  
DEPARTMENT OF HUMAN SERVICES  
RUBY MURPHY

APPELLANTS

V.

HENRY RAY

APPELLEE

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APPEAL FROM THE CHANCERY COURT  
OF SUNFLOWER COUNTY, MISSISSIPPI

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**BRIEF OF APPELLEE**

**ORAL ARGUMENT NOT REQUESTED**

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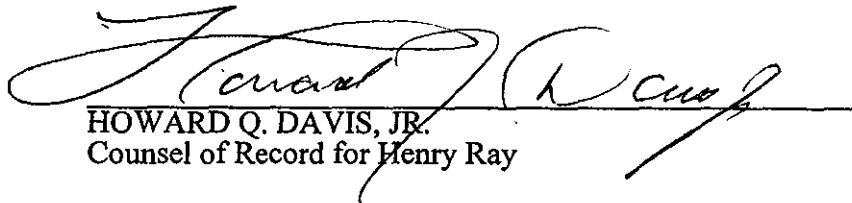
**CERTIFICATE OF INTERESTED PARTIES**

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The undersigned counsel of record certifies, pursuant to Mississippi Supreme Court Rule 28(a)(1), that the following persons have an interest in the outcome of the case. These representations are made in order that the Justices of the Supreme Court and/or the Justices of the Court of Appeals may evaluate possible disqualification or recusal.

1. Henry Ray, Appellee
2. Howard Q. Davis, Jr., Counsel For Henry Ray
3. Mississippi Department Of Human Services, Appellant
4. Peter Bagley, Counsel For Mississippi Department Of Human Services
5. Don Taylor, Executive Director, Mississippi Department Of Human Services
6. Walley R. Naylor, Director, Child Support Enforcement
7. Ruby Murphy, Appellant
8. Tamekia R. Goliday, Counsel For Ruby Murphy, Appellant
9. The Honorable Jane R. Weathersby, Chancery Court Judge

SO CERTIFIED, this the 14<sup>th</sup> day of March, 2008.

  
HOWARD Q. DAVIS, JR.  
Counsel of Record for Henry Ray

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## STATEMENT OF ISSUES

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The following issues are presented for review:

1. **THE CHANCELLOR MADE HER RULINGS AND ANNOUNCED HER FINDINGS FROM THE BENCH AND WAS CORRECT IN THOSE RULINGS AS WELL AS HER APPLICATION OF THE LAW**
2. **MANY OF THE ISSUES RAISED BY THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES ARE WITHOUT BASIS IN LAW OR FACT AND ARE FRIVOLOUS**
3. **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED AS A MATTER OF EQUITY**
4. **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON FRAUD**
5. **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON RULE 60 (b) MRCP**
6. **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON THE THEORY OF UNJUST ENRICHMENT**
7. **MANY ISSUES RAISED BY THE DEPARTMENT OF HUMAN SERVICES ARE PROCEDURALLY BARRED**

## STATEMENT OF CASE

This case is, basically, about reimbursing a man who paid \$23,183.10 to the mother of a child that was not his. The only person the mother says could be the father, if it were not Henry Ray, was one Johnny Lloyd who has been dead for some time. The Court ordered that amount be reimbursed to Henry Ray from both Ruby Murphy (mother of the child) and Department Of Human Services.

This case was commenced in 1986, when the Department Of Public Welfare (now Department Of Human Services) on behalf of Ruby Murphy , made claim against Henry Ray for child support of Linnerius A. Jackson born December 10, 1985. The claim that Henry Ray was the father was based solely on an affidavit of Ruby Jackson. [R. - 1197] Over the course of years, Henry Ray paid in child support the sum of \$23,183.10. From time to time, he was brought back into Court by the Department Of Human Services; his driver's license was suspended on several occasions, and he had to pay reinstatement fees; and his income tax refunds were seized.

In January, 2005, Henry Ray requested genetic testing, and the DNA test reflected that this was not his child. Mr. Ray, then, requested the Court enter an order terminating his child support and, subsequently, requested the Court enter an order compelling Ruby Murphy and the Department Of Human Services to reimburse him for the child support which he had paid. The mother testified that, if it were not Henry Ray's child, it had to be Johnny Lloyd's child and that Johnny Lloyd had been dead for a number of years. [R. - 38]

On June 2, 2005, there was a hearing concerning the termination of child support, and the Court entered an order terminating that support. At that time, the Court, in addressing Ms. Murphy, in part, "if you are going to practice sex with a lot of different

people, its your responsibility to know who the father of your child is or to find out the truth. I'm going to grant this relief, and I'll probably grant some more if they ask me for it." [R. - 12]

On April 12, 2006, there was argument concerning reimbursement of the \$23,183.10, and the Court entered an order stating, "and above all things, this is a Court of equity, and certainly what happened to Mr. Ray was not equitable. The mother perpetrated a fraud on Mr. Ray and was allowed to do so by the Department Of Human Services, and this Court is going to grant the motion ordering Ruby Murphy and the Department Of Human Services to reimburse Mr. Ray in the amount of \$23,183.10 and a judgment in that amount is granted." [R. - 22]

Both DHS and Ruby Murphy requested a re-hearing, and the Court directed there be a complete hearing in the matter which hearing was held November 30, 2006. At the conclusion, the Court made its findings of fact and ruling from the Bench, stating, in part,

This Court is a Court of equity and there is not anything equitable about a man paying over \$23,000 in child support for the benefit of child that is not his. The Court finds that Ruby Murphy either knew that her statement was false or should have known that her statement was false when she named Mr. Ray as the father. The Department of Human Services actively went along with that. The Court finds that Ruby Murphy with the assistance of the Department of Human Services perpetrated a fraud on Mr. Ray. The Department of Human Services and Ruby Murphy are liable for \$23,183.10, together with all costs. [R. - 123, 124]

## SUMMARY OF ARGUMENT

The Department Of Human Services and Ruby Murphy maintain that there is a heightened standard of care in this case because they claim that the Court asked for findings of fact and conclusions of law from the attorneys and then used the findings of fact or conclusions of law presented by Henry Ray's attorney. That simply is not the case. Nowhere in the record can they show where the Court asked for findings of fact or conclusions of law. The Court clearly made bench rulings and asked the attorney for the prevailing side to prepare an order in accordance with its ruling. [R. - 123, 124]

The Department Of Human Services maintains that it could not be a party to this action because Henry Ray did not serve the Attorney General for the State of Mississippi as required by Rule 4(d)(5) MRCP and Section 11-45-3 of the Mississippi Code of 1972, Annotated. However, Henry Ray did not file the complaint in this cause; the original complaint was filed by the Department Of Human Services, and they were represented throughout by attorneys and, at the time of this action, by Byron Hughes. Process was served on Mr. Hughes in accordance with Rule 5(b) MRCP.

Henry Ray would argue that the judgment of the Court below was absolutely correct for a number of reasons under a number of theories. First of all, it was correct as a matter of equity. The Court stated that first and foremost it was a Court of equity, and it would not be equitable for Henry Ray to have paid out \$23,183.10 in child support for a child that was not his, and, further, that if, in fact, Johnny Lloyd was the father, and Ruby Murphy has mentioned no other person as the potential father, that Johnny Lloyd has been dead for a

number of years [R. - 38] and that Ruby Murphy would be the only person that should have been supporting the child, and therefore, would be the person against whom Henry Ray should seek restitution.

The Court found that Henry Ray had paid support over the years because of a fraudulent action by Ruby Jackson Murphy in that she filed an affidavit stating that he, in fact, was the father of said child when, in fact, he was not the father, and Henry Ray believes that all of the elements for establishing fraud as heretofore set forth by this Court have been met. Said judgment would, likewise, have been correct based on Rule 60(b) MRCP and the theory of unjust enrichment.

There were a number of issues raised in the brief of the Department Of Human Services which were raised for the first time, and, therefore, should be determined to be procedurally barred in this appeal.

# ARGUMENT

## POINT 1

### **THE CHANCELLOR MADE HER RULINGS AND ANNOUNCED HER FINDINGS FROM THE BENCH AND WAS CORRECT IN THOSE RULINGS AS WELL AS HER APPLICATION OF THE LAW**

The one thing that the parties seem to agree on is that on appeal the Chancellor should not be reversed unless she, “was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Madison County v. Hopkins*, 857 So. 2d 43, 47 (Miss. 2003); *Jackson Public School District v. Smith*, 875 So.2d 1100 (Miss. Ct. App., 2004); *Havens v. Brooks*, 728 So.2d 580 (Miss. 1998) The Trial Court both heard the evidence and observed the demeanor of the witnesses making those necessary credibility determinations. *Omni Bank Of Mantee v. United Southern Bank*, 607 So.2d 76, 83 (Miss. 1992)

However, Appellant, Ruby Murphy, at page 8 of her Brief said, “The Trial Court, at the conclusion of the trial, requested each party submit findings of fact and conclusions of law.” This was also her basis for requesting oral argument at page *ii*. That is just not true.

The Court, following the testimony on April 12<sup>th</sup>, made a Ruling from the Bench, saying, “[A]bove all things, this is a Court of equity, and certainly what happened to Mr. Ray was not equitable. The mother perpetrated a fraud on Mr. Ray and was allowed to do so by the Department Of Human Services, and this Court is going to grant the motion ordering Ruby Murphy and the Department Of Human Services to reimburse Mr. Ray in the amount of \$23,183.10 and a judgment in that amount is granted.” R. 22 At that time, she did not ask for any findings of fact or conclusions of law from any of the attorneys.

On November 30, 2006, the Court, again, made a Bench Ruling, as found at pages 123 and 124 of the Record. Her Ruling at that time was, in part,

This Court does not think it is sufficient for the Department of Human Services to take a mother's affidavit, pursue a man for child support - - actively pursuing the man here - - Mr. Ray, and then when the DNA results prove it negative, the Department of Human Services claims no responsibility. This is a growing trend in this jurisdiction. If the Department of Human Services is going to actively pursue child support then they either need to investigate more fully and/or provide DNA tests. Just because something is the State procedure where they take the lady's affidavit, whoever the lady names does not make it sufficient for this court. In the case of M.A.S. v. Mississippi Department of Human Services and Mississippi Rule 60(b)(6) are applicable here. This Court is a Court of equity and there is not anything equitable about a man paying over \$23,000 in child support for the benefit of a child that is not his. The court finds that Ruby Murphy either knew that her statement was false or should have known that her statement was false when she named Mr. Ray as the father. The Department of Human Services actively went along with that. The Court finds that Ruby Murphy with the assistance of the Department of Human Services perpetrated a fraud on Mr. Ray. The Department of Human Services and Ruby Murphy are liable for \$23,183.10, together with all costs. Mr. Ray is entitled to a judgment in that amount.

Following that Ruling, the Court stated, "Mr. Davis, if you would prepare an order."

It is a standard practice for the Courts in this State to ask the attorney for the prevailing party to prepare the order setting forth what the Court had said. The Court, at no time, requested each party submit "findings of fact and conclusions of law."

It is true that, "The Trial Court's findings are identical to those presented by Ray." That is because Ray's attorney correctly cited the Court's Ruling in the order. Hence, Ms. Murphy's argument that this case requires "a heighten (sic) standard rather than substantial evidence standard" is absolutely incorrect.

## **POINT II**

### **MANY OF THE ISSUES RAISED BY THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES ARE WITHOUT BASIS IN LAW OR FACT AND ARE FRIVOLOUS**

The Department Of Human Services' brief is rambling, disjointed, and hard to follow, but, in order to fully respond to it, Henry Ray would state that POINT ONE of that brief alludes to the Trial Court's adopting finding of fact and conclusions of law "submitted by

a litigating party.” It does not reflect where in the record that is supposed to have happened, and, as pointed out above, it is not true.

The Department Of Human Services then says, “Motion after motion submitted by Appellant, State Of Mississippi, were denied by the Trial Court, without any legal basis whatsoever.” It is true that several motions were denied by the Court, but that is because the Department Of Human Services kept filing the same frivolous and misguided motions, which should have given rise to sanctions and damages under the Litigation Accountability Act. Those issues are raised by the Department Of Human Services in the same way in POINTS ONE, TWO, THREE and FOUR of its brief.

Briefly, as to the other issues raised in those points of the Department Of Human Services’s brief:

( a ) **PROCESS:** The Department Of Human Services argues in POINT II of its brief a point that it tried to make several times in the Court below arguing that process was not had on the Attorney General. This action was commenced by the Department Of Human Services on behalf of Ruby Murphy. The Department Of Human Services cites as its authority Rule 4(d)(5) MRCP and Section 11-45-3 of the Mississippi Code of 1972 Annotated, As Amended; however, the Department Of Human Services is misguided in that Mr. Ray did not bring this suit; the State of Mississippi brought this suit. Rule 5(b), MRCP makes it clear that, after an action is commenced, and any party is represented by an attorney, process should be on that attorney. Mr. Hughes, who did not complain when he announced ready and who was the attorney-of-record for the Department Of Human Services for many years during which Mr. Ray was dragged back into Court, having his driver’s license suspended, income tax taken and the like, now wants to complain that process had to be on the Attorney General himself. That is just not the law.

( b ) **RULE 4(h) MRCP:** Because service was had properly in accordance with

Rule 5(b) MRCP, this point is not applicable and is frivolous.

( c ) Actually, there was no "Judgment" in this case until November 30, 2006, because both of the appellants in this cause requested a re-hearing following the Court's Ruling in May, which request was granted.

### **POINT III**

#### **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED AS A MATTER OF EQUITY**

The Court was absolutely correct as a matter of equity in ordering Ruby Murphy and the Mississippi Department Of Human Services to reimburse Henry Ray \$23,183.10, together with all costs.

No one argues what the Court's initial premise ~ that it is first and foremost a Court of equity. No one has argued that it was not equitable for the Court to have awarded the judgment against Ruby Murphy and the Department Of Human Services for the amount of money that they took from Henry Ray to support a child that was not his over those 19 years. The Department Of Human Services is authorized to help collect child support only from "a parent or any other person legally liable for such support". Section 43-19-31 of the Mississippi Code of 1972, As Amended. We know that the child involved in this case was not Henry Ray's. Hence, he was not the parent. At the time the Department Of Human Services initiated this action, he was in nowise legally liable for such support. The Record in this case is clear that they based a decision that he was the parent solely upon a false affidavit filed by Ruby Murphy. [Record R- 119]

The Court found that Ruby Murphy knew or should have known at the time that she made that affidavit that he was not the father. [Record R-124] There is no doubt that Henry Ray was out that much money and much more because he was hassled by the Department of Human Services; that his driver's license was suspended several times; that his income

tax refund had been seized by them. Ruby Murphy says that since Henry Ray was not the father, it would have had to have been Johnny Lloyd, and Johnny Lloyd has been dead for some time. [Record R-38] It is obvious that Henry Ray cannot go after Johnny Lloyd, and, if Johnny Lloyd were the father and not living, then the sole person responsible for his support would have been Ruby Murphy. Therefore, the only equitable solution is to order Ruby Murphy to reimburse Henry Ray for what he paid.

Furthermore, because the Court found that she was assisted in this by the Department Of Human Services, it is only equitable that they not be able to hide behind the fact that they are a State flow-through agency when, in fact, they have aggressively pursued this man; and

Furthermore, as the Court noted, this is a growing problem in the NINTH CHANCERY COURT DISTRICT as it obviously is elsewhere in the State of Mississippi.

Unlike cases where the child was born during a marriage but not fathered by the husband, which would give rise to a presumption of legitimacy, this is a case where there was no husband and Henry Ray was not the father. The mother is the only one who knows with whom she was having sex with at the time of conception, and the Department Of Human Services is in a position to see that that person pays. Somebody has been unjustly enriched at Henry Ray's expense, but neither has attempted to see that that party pays or even to identify him. In some ways this is similar to the case of *R.E. v C.E.W.*, 752 So.2d 1019 (Miss. 1999), which recognized that the natural father was required to reimburse the putative father; the difference is that in that case the putative father and the natural mother were married and knew that he was not the father at the time of the divorce. *McBride v Jones*, 803 So.2d 1168 (Miss. 2002) also recognized that the husband, who was not the father, could sue the natural father for reimbursement of child support payments. The problem here, however, again, is that the only parties who know who the father is are not saying; or if

Johnny Lloyd was the father, he is dead.

The only logical remedy here is for the Court to grant equitable relief, which it did. The Court in *McBride*, said that, as to the natural father, the issue of whether fraud occurred was irrelevant. See Rule 60(b)(1)(4) and (6) MRCP; *Stringfellow v Stringfellow*, 451 So.2d 219 (Miss. 1984); *M.A.S. v Miss. Dept. Of Human Services*, 842 So.2d 527 (Miss. 2003).

#### POINT IV

#### **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON FRAUD**

The Court was correct in its determination that Ruby Murphy and the Mississippi Department Of Human Services should be required to reimburse Henry Ray because of fraud. *McBride v Jones*, 803 So.2d 1168 (Miss. 2002) also recognized that the mother could be required to pay in the event of fraud. The Court found in the instant case that Ruby Jackson Murphy had committed fraud against the Court and against Henry Ray. Was the Court justified in making that determination? Yes!

Was there a representation? Yes! Ruby Jackson Murphy and Mississippi Department Of Human Services both represented to Henry Ray that he was the father and was responsible for child support.

Was that representation false? Yes! The DNA testing proved that.

Was it material? Definitely.

Did Ruby Jackson Murphy know it was false? Yes, according to the Chancellor's finding of fact.

Was there intent by Ruby Jackson Murphy and/or Mississippi Department Of Human Services that Henry Ray would act on that representation? Yes! They wanted him to admit to paternity and obligate himself to pay child support.

Did Henry Ray know the statements were false? No. He had had sex with Ruby Jackson Murphy. He assumed that he was the only one who had and that he was, therefore, the father ~ which we now know was not true.

Did Henry Ray rely upon the false information? Yes. He signed both the paternity agreement and the child support agreement. He signed them under duress by the Mississippi Department Of Human Services.

Did he have a right to rely upon the information? Absolutely.

Was there a consequent and proximate injury resulting to Henry Ray? Yes! He paid at least \$23,183.10 in child support that he should not have paid. He had attorney's fees. He had his tax refunds seized and his wages garnished.

It is obvious that the requirements for establishing fraud as set forth in *Hamilton v McGill*, 352 So.2d 825 (Miss. 1977); *In Re Estate Of Law*, 852 So.2d 33 (Miss. Ct. Of Appeals, 2002); *Levens v Campbell*, 733 So.2d 753 (Miss. 1999) have been met.

## POINT V

### **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON RULE 60(b) MRCP**

The Court's Ruling was correct based on Rule 60 (b)(1) of the Mississippi Rules Of Civil Procedure. Rule 60 (b)(1) of the Mississippi Rules Of Civil Procedure authorized the Court to do what it did because of "fraud, misrepresentation or other misconduct." Whether the Court had said "fraud" or "misrepresentation" or specified other conduct, it had the right to grant equity in that the original order was entered into by mistakenly assuming Henry Ray to be the father; or 60(b)(5) that it was not equitable; or Rule 60(b)(6) "any other reason justifying relief from the judgment." *M.A.S. v Miss. Dept. Of Human Services*, 842 So.2d 527, 531 (Miss. 2003) was a somewhat similar case, in which the Court said this was "the archetype for the application of Rule 60(b)(6). It is also clear that the Court did not apply the wrong standard to the facts.

## **POINT VI**

### **THE COURT WAS CORRECT IN GRANTING THE RELIEF IT GRANTED BASED ON THE THEORY OF UNJUST ENRICHMENT**

Likewise, the Court's Ruling was correct under the theory of unjust enrichment. Clearly, the mother had an obligation to support her child. The only other person with such an obligation was the father, who we know was not Henry Ray . Because the mother chose to pursue child support from Henry Ray rather than the natural father by way of a false affidavit, she has received at least \$23,183.10 from Henry Ray to assist in her obligation to support the child; she was assisted in this by Mississippi Department Of Human Services. She has been unjustly enriched at Henry Ray's expense. See *Williams v Rembert*, 654 So.2d 26, 30 (Miss. 1995)

## **POINT VII**

### **MANY ISSUES RAISED BY THE DEPARTMENT OF HUMAN SERVICES ARE PROCEDURALLY BARRED**

There are a number of issues raised by the Department Of Human Services that were not presented to the Court below and are, therefore, procedurally barred. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996); *Scott v. State*, 829 So. 2d 688 (Miss. Ct. App. 2002); *Leonard v. State*, 2006-KA-02160 (Miss. Ct. App. 2007)

Those include an attempt to raise a defense of "Sovereign Immunity" at page 8; an attempt to claim a defense of the action being barred by the Statute Of Limitations at page 12; and an attempt to claim the defense of Laches at page 13. However, the strangest of such issues is found in POINT EIGHT on page 12, where the Department Of Human Services claims that Henry Ray "is in violation of the Litigation Accountability Act of 1988, §11-55-1, et seq., Miss. Code of 1972 (Revised). Appellee's (sic) Henry Ray, said contentions are groundless in fact and law and are without any merit whatsoever."

Then, there is the request for sanctions for such claims on page 13. Were they “without any merit whatsoever,” Ruby Murphy and the Department Of Human Services would not have anything from which to appeal! This is like the six, or so, motions that the Department Of Human Services filed in the Court below, all complaining about process, as discussed in POINT 2 above, and it is such that should subject the Department Of Human Services to those sanctions.

## CONCLUSION

It is clear that the Court below was absolutely correct in its Rulings based on any number of different theories. If anything, the judgment for Henry Ray should have been substantially more than the \$23,183.10 amount awarded.

SO BRIEFED, this the 14<sup>th</sup> day of March, 2008.

Respectfully Submitted,

HENRY RAY, APPELLEE

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## CERTIFICATE OF SERVICE

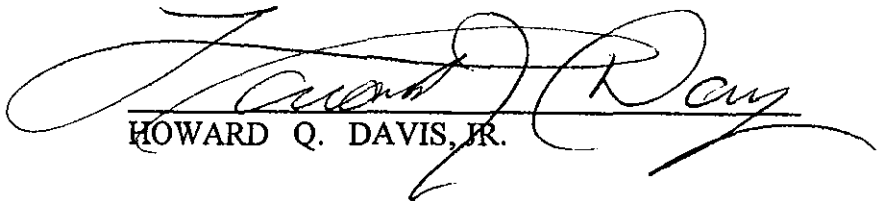
I, HOWARD Q. DAVIS, JR., Attorney For Appellee, HENRY RAY, do, hereby, certify that I have this day mailed, postage prepaid, a true and correct copy of BRIEF OF APPELLEE to:

Peter Bagley, Esq.  
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES  
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Jackson, MS 39236

The Honorable Chancellor Jane R. Weathersby  
P. O. Box 1380  
Indianola, MS 38751

THIS, the 14<sup>th</sup> day of June, 2008.

  
HOWARD Q. DAVIS, JR.