

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-CA-00522

KRISTY (STRAIT) LORENZ

APPELLANT

V.

TRAVIS STRAIT

APPELLEE

BRIEF OF APPELLEE, TRAVIS STRAIT

APPEAL FROM THE CHANCERY COURT
OF LOWNDES COUNTY, MISSISSIPPI
Cause No. 2005-0641

HONORABLE KENNETH BURNS

NO ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
STATEMENT OF THE FACTS.....	5
SUMMARY OF THE ARGUMENT.....	7
STANDARD OF REVIEW.....	8-9
ARGUMENT.....	9-10
CONCLUSION.....	11
CERTIFICATE OF SERVICE.....	12

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
1. <u>Sturgis v Sturgis</u> , 792 So. 2d 1020, 1023 (Miss Ct. App. 2001)	8
2. <u>Robertson v Robertson</u> , 814 So. 2d 183, 184 (Miss. Ct. App. 2002)	8
3. <u>Riley v Doerner</u> , 677 So. 2 nd 740 (Miss. 1996)	8
4. <u>Pace v. Owens</u> , 511 So.2d 489, 490 (Miss.1987)	8
5. <u>Riley v. Doerner</u> , 677 So.2d 740, 743 (Miss.1996) (quoting and citing <u>Tucker v. Tucker</u> , 453 So.2d 1294, 1297 (Miss.1984))	8
6. <u>Kavanaugh v. Carraway</u> , 435 So.2d 697, 700 (Miss.1983)	8
7. <u>Duran v. Weaver</u> , 495 So.2d 1355, 1357 (Miss.1986)	9
8. <u>Bowden v. Fayard</u> , 355 So.2d 662, 664 (Miss.1978)	9
9. <u>Rodgers v. Taylor</u> 755 So.2d 33, 36 -37 (Miss. App.,1999)	9
10. <u>Floyd v Floyd</u> , 949 So. 2 nd 27 (Miss. 2007)	9

R.E. = Record Excerpts of Appellee

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STATEMENT OF THE ISSUES

- I. The Chancery Court was not manifestly in error in its findings of fact supporting its ruling that no material change in circumstances had occurred.
- II. The Chancery Court did not err in awarding temporary custody to the paternal grandmother rather than the Mother in the event that the no-contact order issued by the U.S. Navy prohibiting the Father from having contact with the minor had not been lifted.

STATEMENT OF THE FACTS

Travis and Kristy Strait filed for and received a divorce on the grounds of irreconcilable differences. The original Joint Complaint was filed October 5, 2005 (R. E. No.1). A Child Custody and Property Settlement agreement was attached, which had been signed the day before. The Child Custody and Property Settlement agreement was amended by the parties on December 19, 2005 (R. E. No. 2) to add a provision that Kristy Strait would have to pay child support to Travis Strait for her child. The Court divorced the parties on December 21, 2005.

Travis had been deployed on a naval military cruise. After he returned in the summer of 2005, a separation occurred. Beginning in September of 2005, he kept the child with him at Norfolk Naval Base in Norfolk, VA., (R. E. No. 3) until he brought the child home for the Christmas Holidays to see his mother, the child's grandmother, and for the child to see her Mother, Kristy. Travis had previously been on two naval deployment cruises and now was assigned to shore duty with a guarantee of shore duty for at least four years.

Travis went to work at 7:30 AM and dropped his daughter off at the daycare for military personnel where she was fed breakfast and lunch. He got off from work Monday through Thursday at 3:30 PM. On Friday's he got off from work at noon. He picked up his daughter, played with her, fed her, got her ready for bed and thoroughly enjoyed being with her. She was a happy child. He took her to her pediatrician on base when she needed to go. The testimony was that when he was deployed, the child stayed with his mother and grandmother or Kristy's mother most of the time.

Kristy married Aaron Lorentz on January 27, 2006. Mr. Lorenz is an Air Force Sergeant and a part-time auxiliary policeman.

On January 31, 2006, Kristy filed a Petition to Modify Final Decree (R.E. No. 4). After a hearing, the Judge (Lancaster) entered a Judgement denying the modification on April 11, 2006 (R.E. No. 5).

Eleven days later, on April 22, 2006, Kristy picked up the child from Travis for a visit in Virginia. That day she and her new husband took the child to a hospital to be examined and a complaint was lodged with the Virginia Child Protective Services, alleging Travis had abused his daughter (R.E. No. 6).

In late July the Virginia Court dismissed the custody Suit filed in Virginia.

On August 8, 2006, a Petition to Modify was filed in Mississippi. On August 10, 2006, Judge Lancaster recused himself because Kristy's lawyer had announced that she was running for Judge Lancaster's Chancery Judges position. Judge Burns was assigned the case.

On August 22, 2006, a Motion for a Temporary Order was filed and on that same date an Emergency Temporary Order was granted by Judge Burns without notice to Travis or his attorney.

From August 2006, until the Court granted Travis custody of the child, he was not allowed to see the child, because of the allegation of abuse.

This action was heard before the Court on January 25, 2007.

On January 17, 2007, the City of Norfolk Department of Human Services sent Travis a letter which stated that the allegation of sexual abuse (fondling) of his child by him was disposed of as follows: "A review of the facts did not show a preponderance of evidence that abuse or neglect had occurred. Therefore, we have determined the complaint to be **unfounded.**" (R.E. No. 7)

At trial, a social worker from Columbus, MS, testified that she was a therapist for the

child. The Mother took the child to her in June of 2006. The therapist claimed she had never told the Mother anything about the conversations she had with the child. (R.E. No. 8). She said she had contacted the City of Norfolk Department of Human Services and had given them some statements that the child allegedly told the therapist. (R.E. No. 8) Whatever the therapist told the DHS in Norfolk was not considered enough to show by a preponderance of the evidence that abuse had occurred. The Mother said the child only told her that her daddy rubbed her tee tee with his hand. (R.E. No. 9) On cross, she admitted that the child told the first person who interviewed her that he put medicine on her tee tee, (R.E. No. 9). The Guardian *Ad Litem* interviewed the child and she told her that "He put medicine on my tee tee." The child made a face while talking about it to the Guardian *Ad Litem* and said it only happened once. (R.E. No. 10).

Travis readily admitted putting medicine on his daughter's tee tee, because she had diaper rash. He would assist her in the bathroom and give her baths. (R.E. No. 11). He denied ever doing anything improper with his child. (R.E. No. 11).

SUMMARY OF THE ARGUMENT

The Court heard the evidence in this case. The Court determined that the therapist who examined the child some two months after the allegation of abuse, was incorrect in her conclusions. The Judge listened to the Mother and the Father and believed the Father. The circumstances around this allegation of abuse just do not add up. The Mother gave custody of her daughter to the Father, then immediately followed a course of action to remove the child from the Father's custody. She was relentless in her quest. The Court determined the credibility of all of the witnesses who testified and decided the child had not been molested by the father. This Court should affirm his decision.

STANDARD OF REVIEW

The standard of review in child custody cases is well-established. These matters fall within the sound discretion of the chancellor. Sturgis v Sturgis, 792 So. 2d 1020, 1023 (Miss. Ct. App. 2001). Therefore, when the appellate court reviews an award of child custody, the decision of the chancellor will be affirmed unless the decision is manifestly wrong, clearly erroneous, or the chancellor applied an erroneous legal standard. Robertson v Robertson, 814 So. 2d 183, 184 (Miss. Ct. App. 2002). The chancellor's decision must be supported by substantial evidence in the record. *Id.*

The Law:

In cases where modification is requested, the Court must make specific findings of fact with regard to the appropriate modification test. Riley v Doerner, 677 So. 2nd 740 (Miss. 1996).

There are in our law two prerequisites to a modification of child custody. First, the moving party must prove by a preponderance of the evidence that, since entry of the judgment or decree sought to be modified, there has been a material change in circumstances which *adversely* affects the welfare of the child. Second, *if* such an adverse change has been shown, the moving party must show by like evidence that the best interest of the child requires the change of custody. Pace v. Owens, 511 So.2d 489, 490 (Miss.1987).

Recently, the Mississippi Supreme Court reaffirmed the rule in *Pace* and provided further guidance: "The change in circumstances 'is one in the overall living conditions in which the child is found. The 'totality of the circumstances' must be considered.'" Riley v. Doerner, 677 So.2d 740, 743 (Miss.1996) (quoting and citing Tucker v. Tucker, 453 So.2d 1294, 1297 (Miss.1984); Kavanaugh v. Carraway, 435 So.2d 697, 700 (Miss.1983). "A

change of circumstances in the non-custodial parent is not in and of itself sufficient to warrant a modification of custody." *Id.* (citing Duran v. Weaver, 495 So.2d 1355, 1357 (Miss.1986); Bowden v. Fayard, 355 So.2d 662, 664 (Miss.1978))." Rodgers v. Taylor 755 So.2d 33, 36 -37 (Miss. App.,1999).

The trial Court is required to include a summary review of the recommendation of the Guardian *Ad Litem* in its opinion when a GAL is required as in this case. The Court is not bound by the Guardian *Ad Litem*'s recommendation but is required to tell why the Court does not adopt the Guardian *Ad Litem*'s recommendation Floyd v Floyd, 949 So. 2nd 27 (Miss. 2007).

ARGUMENT

Kristy Strait gave up the custody of her daughter to Travis Strait when Alyssa was three and a half years old. After the divorce, she was determined to find a way to get the child back. Initially, she made a claim that her circumstances had changed since the original decree was entered because she had gotten a job and gotten married in a little over a month after the agreed decree was entered. Judge Lancaster rejected that claim in his April decision. Eleven days after the Court's decision, Kristy went to Virginia with her new husband, picked up the child, took her to a hospital that day, and charged that Travis had sexually abused his three year old daughter. The child was taken from Travis and placed with Kristy. Kristy took the child to a therapist (over two months later) who never told Kristy, Travis, or the Guardian *Ad Litem* anything the child allegedly told her (until the day of the trial). The therapist, a mandated reporter, said she gave a report to the Norfolk DHS, which was never produced at trial, but that agency apparently did not find that any abuse or neglect had occurred, either because they never got the report, or because they felt the information provided did not warrant further investigation. The lower court took all of this into consideration and did not

CONCLUSION

The Court was correct in allowing the custody to remain with the Father and not granting custody to the Mother.

Respectfully submitted,

TRAVIS STRAIT

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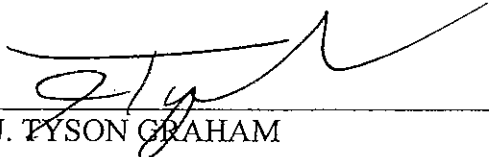
CERTIFICATE OF SERVICE

I, J. Tyson Graham, attorney for defendant, do hereby certify that I mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

Hon. J. Douglas Ford
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Honorable Kenneth M. Burns
Chancery Court Judge
Post Office Drawer 110
Okolona, MS 38860

SO CERTIFIED, this the 22nd day of February, 2008.



J. TYSON GRAHAM