

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00522

KRISTY (STRAIT) LORENZ

APPELLANT

V.

TRAVIS STRAIT

APPELLEE

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

REPLY BRIEF OF APPELLANT

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Legend:

R.E. = Record Excerpts of Appelle/Cross-Appellant

R. = Record (clerk's papers)

T.T. = Trial Transcript

ARGUMENT IN REPLY

The Father's argument is based on but one premise - that the Mother did not prove he sexually abused the child. *Appellee's Brief*, p. 10. The Father's argument fails to consider all the proof adduced at trial in favor of the Mother's motion to change custody. The proof submitted by the Mother, and which is not addressed by the Father on appeal, is the same proof that was disregarded by the trial court and is why the Chancellor's decision must be reversed and rendered in favor of the Mother.

As stated by the Father in his brief to this Court, "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), citing Tucker v. Tucker, 453 So.2d 1294, 1297 (Miss. 1984); Kavanaugh v. Carraway, 435 So.2d 697, 700 (Miss. 1983).

A cursory review of the record amply demonstrates that the allegation of sexual abuse of the child by the Father was not the only circumstance that should have been considered by the trial court.

The Guardian Ad Litem testified as follows: "So based on all my interviews, that's why I don't recommend this lightly, but in this case I think there has been a change. I would just recommend that the child be placed with her mother with supervised visitation in the home of the paternal grandmother." R.E.14. (emphasis added). The GAL interviewed some thirteen (13) people before making

her recommendation that custody should be vested in the Mother. Thus, she had the input of many other individuals in addition to the therapist, Ms. Hubbard. The trial court focused only upon one aspect of the testimony of the therapist, Ms. Hubbard, and failed to address the other points and concerns raised by the GAL. The GAL considered not only the allegations of sexual abuse, but also the Father's apparent drinking problems, the repeated bite marks suffered by the child while in the father's custody and the child's cold sore left unattended by the Father. *R.E. 11*.

In addition, the totality of the circumstances reveals the following: The Father's lack of cooperation in visitation by the Mother. *T.T. 9-11*. The Father's cohabitation with his girlfriend. *R.E. 21*. And although cohabitation may not, in and of itself, be grounds for modification, it can be if it adversely affects the child. Forsythe v. Akers, 768 So. 2d 943, 948 (Miss. Ct. App. 2000). Here, the father's cohabitation with a girlfriend has resulted in a very young female child's exposure to either the father and girlfriend taking showers together or to the child herself showering with other people.

Accordingly, the Court's judgment to maintain custody of the minor child in the father under the facts in the record should be not only reversed, but rendered in favor of the Mother being awarded custody.

CONCLUSION

The totality of the circumstances and proof adduced at trial mandates that the decision of the Chancellor be reversed and that judgment be rendered in favor of the Mother having custody of the minor child.

Respectfully submitted this the 25th day of February, 2008.

KRISTY (STRAIT) LORENZ

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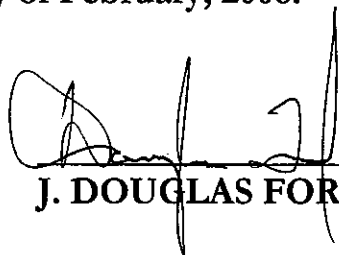
CERTIFICATE OF SERVICE

I, the undersigned, J. Douglas Ford, do hereby certify that I have this day mailed, postage prepaid, by United States mail, a true and correct copy of the above and foregoing instrument to the following:

Honorable Kenneth M. Burns
Chancery Judge
P. O. Drawer 110
Okolona, MS 38860

J. Tyson Graham, Esq.
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SO CERTIFIED this the 25th day of February, 2008.



J. DOUGLAS FORD