

**COPY**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

AMY NICOLE WILLIAMS

APPELLANT

VERSUS

**FILED** CAUSE NO. 2007-CA-00599-COA

MARCUS SHANE STOCKSTILL

NOV 05 2007

APPELLEE

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SUPREME COURT  
COURT OF APPEALS

ON APPEAL FROM  
THE CHANCERY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

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REPLY BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT:

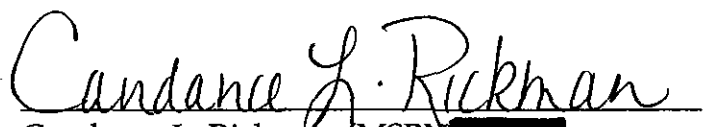
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ORAL ARGUMENT REQUESTED

## CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Hon. Sebe Dale Jr., Chancellor
2. Amy Nicole Williams, Defendant / Appellant
3. Marcus Shane Stockstill, Plaintiff/ Appellee
4. Richard C. Fitzpatrick, Attorney for Marcus Shane Stockstill
5. William E. Andrews, III, Attorney for Amy Nicole Williams
6. Candance L. Rickman, Attorney for Amy Nicole Williams

  
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## STATEMENT OF FACTS

Amy Nicole Williams and Shane Stockstill had an affair which produced a child. By his own admission, the affair caused a tremendous amount of chaos and problems in Shane's life. (Transcript p. 55) He separated from his wife and moved back in with his parents, later rented a place of his own, then went back to his parents home, and finally returned to his home with his wife. (Transcript p. 51). That makes four moves in approximately one years time. His wife gave him a black eye and keyed his truck. (Transcript p. 55). They continued to receive counseling twice a month two and a half years after their reconciliation and at the time of trial. (Transcript p. 55).

During this time, Amy was taking care of their child. Amy was feeding her and bathing her and putting a roof over her head. By Shane's own admission, Amy had done a good job raising a healthy, sweet child with no problems he could point to. (Transcript p. 54). Shane also testified that the first time he saw the child, "she [Amy] called me and asked me to go see her [the child]" and that he did not want his wife to know he was seeing the child. (Transcript p. 40, 53).

Amy does not deny her own shortcomings. She was arrested and charged with possession of a controlled substance and with commercial burglary. She denies that the drugs were hers (transcript p. 72) but admits that she entered a guilty plea and was sentenced to house arrest and probation (transcript p. 12). The commercial burglary charges were dismissed. She moved several times, but not all of those moves were after Madison's birth. Shane moved four times in one year. She changed employers several times, but was consistently employed as a

cashier. (Transcript p.8-10). Despite Amy's problems she was a good mother to Madison, and Shane agreed that she had done a credible job raising the child. (Transcript p. 54).

### **REBUTTAL ARGUMENT**

Amy Nicole Williams had de facto custody of this child from her birth until the day she was ordered to relinquish that custody to Shane in February of 2007 when the child was three and a half years old. It is Amy's position that this factor was not given any weight and she appeals to this Court to carefully consider this together with the other evidence and reverse the Chancellor's decision.

For the majority of thirty-five pages, Shane's brief attacks the accuracy of Amy's brief. He attempts to downplay his lack of involvement in the child's first two years of life. The testimony differs as to exactly how many times Shane visited with Madison prior to the Court ordered visitation. Shane himself testified that he saw the child when she was three or four weeks old for the first time at a rest stop on the interstate after Amy called him and ask him to see her. (Transcript p. 40, 53) Then he said he saw her when she was a month and a half or two months old at Shoney's for one hour. (Transcript p. 41). After those two times, Shane testified that he didn't recall the next time he saw the child, but that he "started seeing her after that sometime" and that he didn't remember the time period. (Transcript p. 41). His wife's testimony confirmed that whatever visitation Shane had with the child was minimal. She testified that before these proceedings were started, that "he didn't have any visitation. I think - he got to see her once or twice once we got back together and that ended. Then he wasn't able to see her." (Transcript p. 19). And she admitted that he had not exercised all his court ordered visitation.

(Transcript p. 28). Amy testified that they had an agreement "and he was getting her every Tuesday and Wednesday or Wednesday and Thursday. And like three weeks went by and he hadn't seen her." (Transcript p. 69). Amy didn't say how many Tuesdays and Wednesdays or Wednesdays and Thursdays Shane actually got the child. In fact, none of the witnesses testified that Shane had any type of regular visitation with the child prior to the Temporary Order entered in May of 2005. What is clear from reading the entire transcript and all witness accounts is that Shane saw the child only a few times. That is reiterated by Shane's testimony that after filing this action, and after he and his family got comfortable with Madison and Madison with them, he then decided to seek custody. (Transcript p. 43). It is completely unfair and inaccurate to say that Shane had as much "willingness and capacity to provide primary care" and that the "emotional ties of parent and child" favor Shane. (Appellant's Record Excerpts p. 13). It is for this very reason that custody of this child should remain with Amy and the Chancellor's decision is not based on the substantial weight of the evidence presented.

There is also a genuine dispute as to the amount of support Shane provided for the child prior to these proceedings. Shane testified to giving Amy \$1,100 and another check for some amount. (Transcript p. 42). His wife testified to two \$500 checks and claimed they had proof of this but no proof was offered. (Transcript p. 25). Amy testified to receiving approximately the same amount of support as he was ordered to pay on two or three occasions. (Transcript p. 12). The Court awarded Amy \$1,000 in back support at the May 2005 temporary hearing. So here again, a review of the evidence as a whole indicates that Shane support of the child for the first two years of her life was minimal. This is another reason that Amy's comparative

parenting skills and willingness and capacity to provide primary care for the child should have weighed in Amy's favor. The Chancellor erred in favoring Shane.

The Chancellor also erred in favoring Shane on other factors as well. The employment of the parents and responsibility of that employment should not have favored Shane. Both parties are high school graduates with some college. Shane owns his own business and is required to be at work much more than Amy. Shane and his wife testified that he works from 7 a.m. until 5 p.m. Monday through Friday and about 5 hours on Saturdays and Sundays. (Transcript p. 20, 39). Amy on the other hand works from 8 a.m. to 3 or 4 p.m. Monday through Friday. (Transcript p. 11). Amy would be more available to care for the child than Shane, and despite the consensus by everyone that she had done a good job so far, the Chancellor favored Shane on the employment and responsibilities factor.

Shane's wife was pregnant at the time of trial and Shane testified that with the upcoming baby, they would need to add onto their house or close in the garage. (Transcript p. 48). Amy testified that there was ample room at her home for she and the child. (Transcript p. 66). Shane testified that he had a weak relationship with his family and that his twins had no relationship with his family. (Transcript p. 44). His sister testified that it was her belief that no relationship existed between Shane and his family because of Shane's wife. (Transcript p. 63). However, she testified that she had a good relationship with Madison. (Transcript p. 63). Each of these factors weighed in Amy's favor, but the Chancellor failed to recognize this and awarded Shane custody despite the overwhelming evidence that the child's best interest would be served by continuing custody by Amy.



Shane alleges that the law does not support Amy's position. In Romans v. Fulgham, which post dates every other case cited in Shane's brief except Norman related to specialist opinions, the decision was five to three split decision with a separate written dissenting opinion which acknowledged that the case presented a difficult question. The majority stated:

"Finally, in neither Lisa's motion to reconsider the bench opinion, nor either party's brief to this Court, is the argument made that Ryan has waived his entitlement to an *Albright* analysis by virtue of his delay in bringing the custody proceeding. Thus, we find this case is not an appropriate vehicle to alter the law in this area."

939 So.2d 849, 853 (Miss. Ct. App. 2006).

Amy has contended from the beginning of this matter that Madison's best interest are served by continued custody as indicated by her position stated in the Pre-Trial Order. Amy also made this argument in her Motion to Reconsider after the Judgment was entered, which gives this Court the opportunity to re-evaluate this issue now, only one year after the *Romans* case was decided. When the father of an illegitimate child who has not demonstrated the same willingness to provide for that child as the mother has, is given equal footing as the mother it is simply unfair and could have inequitable results, which is exactly what happened in this case. The Chancellor's decision to apply the *Albright* analysis should be reversed and Shane should be held to a higher standard and this issue is ripe before this Court.

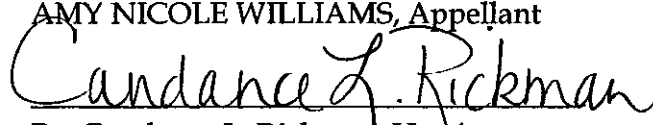
### CONCLUSION

This case demonstrates the need for a new standard in child custody cases. De facto custody is a reality and without a showing of equal dedication to the child, fathers who don't assert their right to custody for years after the child's birth, should not be placed on equal footing

with the mothers who have. This Court has recognized this issue previously, but until this case it has not been ripe for analysis. Amy Nicole Williams cared for and provided for she and Shane's illegitimate child with minimal assistance or involvement from Shane. Shane created chaos in his own life and when he got things settled he sought custody of his daughter who Amy had been providing for since day one. He should be held to a higher standard of proof in order to take custody from the mother after three and a half years.

Even if you apply the *Albright* factors, the Chancellors decision was manifestly wrong in light of the weight of the evidence. The polestar consideration in arriving at an award of custody is the best interest of the child, and the totality of the circumstances should be considered. *Tucker v. Tucker*, 453 So.2d 1294 (Miss. 1984). When this Court looks at the totality of the circumstances in this case, it will find that Madison's best interest were being served by Amy having custody and the Chancellor's decision should be reversed and custody should be granted to Amy with standard visitation to Shane.

Respectfully submitted this the 26<sup>th</sup> day of October, 2007.

AMY NICOLE WILLIAMS, Appellant  
  
By: Candance L. Rickman, Her Attorney

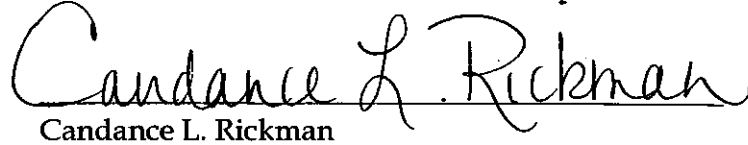
CERTIFICATE OF SERVICE

I, CANDANCE L. RICKMAN, do hereby certify that I cause to be transmitted via first class United States Mail, postage pre-paid, a true and correct copy of the foregoing pleading to the below-listed persons at their normal and usual business address, to-wit:

HON. SEBE DALE, JR., Chancellor, P. O. Box 1248, Columbia, MS 39429.

HON. RICHARD C. FITZPATRICK, Attorney at Law, P.O. Box 546, Poplarville, MS 39470

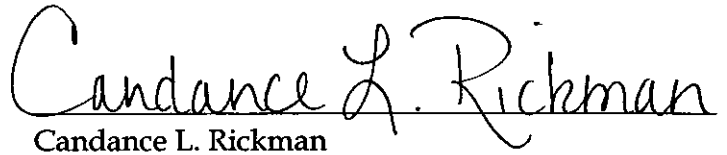
THIS, the 26<sup>th</sup> day of October, A.D. 2007.

  
Candance L. Rickman

**CERTIFICATE OF FILING**

I, Candance L. Rickman, do hereby certify that I have this date mailed via Federal Express Shipping the above and foregoing Reply Brief of Appellant, together with three copies and an electronic disk, to the Clerk of the Supreme Court of Mississippi, Betty W. Sephton at 450 High Street, Jackson, Mississippi 39201-1082, and hereby request that pursuant to Rule 25 of the Mississippi Rules of Appellate Procedure this pleading be filed as of this date.

This the 26<sup>th</sup> day of October, A.D. 2007.

  
Candance L. Rickman