

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

AMY NICOLE WILLIAMS

APPELLANT

VERSUS

CAUSE NO. 2007-CA-00599

MARCUS SHANE STOCKSTILL

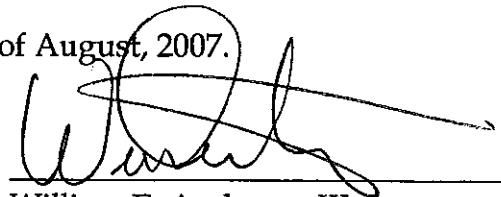
APPELLEE

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

APPELLANT'S
STATEMENT OF ISSUES

1. The Chancellor used the wrong legal standard. Stockstill waived his right to an *Albright* analysis because of his delay in bringing this proceeding. Stockstill should have been required to prove a material change in circumstances adversely affecting the child, and then, if such change existed, that it was in the child's best interest for custody to be taken from Williams and placed with him.
2. The polestar consideration in custody cases is the best interest of the child. Regardless of which evidentiary standard applies, the Chancellor's decision in this case is manifestly wrong and clearly erroneous as it is not supported by substantial evidence. The evidence shows a change of custody would not be in this child's best interest.

Respectfully submitted this the 31st day of August, 2007.

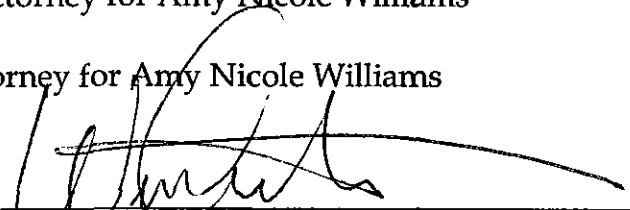


William E. Andrews, III
Attorney for Appellant

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 THE CASE

1. Proceedings Below

On February 15, 2007, the Chancery Court of Pearl River County transferred custody of Madison Jean Stockstill (hereafter referred to as "Madison") from her mother, Amy Nicole Williams (hereafter referred to as "Nicole"), to her father, Marcus Shane Stockstill (hereafter referred to as "Shane"). Aggrieved by the lower court's ruling, Nicole perfected this appeal.

2. Statement of the Facts

Marcus Shane Stockstill is the natural father of Madison Jean Stockstill who was born out of wedlock on July 3, 2003, as a result of his extra-marital affair with Amy Nicole Williams. Madison was conceived approximately one month after the birth of Shane and his wife, Tonya's twins. Shane and his wife, Tonya, separated in December of 2002, after Shane admitted to his wife that he had been having an affair with Nicole. A divorce action was filed, but the couple later reconciled after volatile separation and professional counseling. (Transcript p. 55). Shane was not present for Madison's birth nor did he contribute to any of the medical expenses of the minor child. At Nicole's request, Shane finally saw the child for the first time when she was three or four weeks old. (Transcript p. 40) Nicole met Shane at the welcome center off the interstate (transcript p. 41) so that his wife would not know that he was visiting Madison. (Transcript p. 53)

During the first two years of Madison's life, Shane was committed to saving his marriage with Tonya, and as a result only saw Madison a few times and only contributed about \$800 in total child support over the two years. (Transcript p. 52) During that same two years, Nicole,

was a single mother of two daughters, Baily (5) and Madison (2). Nicole was Madison's primary care giver and provided for her physically, emotionally and financially with little or no assistance from Shane. Nicole's mother and father assisted her in raising both of her daughters.

In April of 2005, when Madison was approaching her second birthday, Shane filed this action seeking to be adjudicated Madison's biological father and seeking visitation rights. By Order dated May 17, 2005, Nicole was awarded physical custody and Shane was awarded standard visitation with Madison and was ordered to pay \$150.00 per month in child support, as well as \$1,000.00 in back support. In June of 2005, Nicole was indicted on criminal charges and subsequently entered a plea bargain whereby she pleaded guilty to possession of a controlled substance and received three years house arrest and five years probation. In September following her indictment, Shane was granted leave of Court to amend his pleadings and on October 17, 2005, Shane filed his Supplemental and Amended Petition. In said Amended Petition, Shane plead and acknowledged that he had know for two years that Madison was his child because DNA testing was performed on September 10, 2003. Shane's Amended Petition further plead and acknowledged that since the child's birth on July 3, 2003, the child had lived and resided with Nicole. Nicole obtained counsel just before the trial was scheduled to take place and the matter was continued and the trial ultimately held on September 14, 2006, when the child was then three years old. Judgment was rendered February 1, 2007, transferring custody of Madison to Shane. Nicole feeling aggrieved, perfected this appeal.

SUMMARY OF THE ARGUMENT

The Chancellor should have applied the "material change in circumstances which

adversely affects the child and subsequent best interest test", because at the time of trial, *de facto* custody had been vested in the mother for three years with only minimal involvement by the father, most of which occurred after the May 17, 2005, Order was entered whereby Nicole was given custody and Shane visitation and support obligations. The child was already two years old at that time. Therefore, Shane had waived his right to an *Albright* analysis because of his two year delay in bringing the custody proceeding, and upon doing so, he should have been held to a higher evidentiary standard.

In the alternative, even if the Chancellor's application of the *Albright* factors is correct (which Nicole contends was not), the decision is manifestly wrong based on the best interest of the child.

ARGUMENT

Rather than apply the law as it relates to modification of custody based upon a material change in circumstances which adversely affects the child, the Court applied the *Albright* factors keeping score. The Court found, based on its analysis of the facts that Shane out scored Nicole and therefore should have custody of the minor child, Madison, with whom he had just begun establishing a comfortable relationship.

De facto and Court Ordered custody of Madison was with her mother, Nicole, for two years before Shane even sought visitation rights, and by Order dated May 17, 2005 the Court granted custody of Madison to Nicole. Shane cheated on his wife and fathered a child with Nicole. Because of the problems this created with his wife after she learned of the affair (transcript p. 54-55), Shane saw the child only two or three times during the first few years of

her life and contributed only minimal support.

The Court then took three-year-old Madison away from the only home she had ever known, and the mother who had cared for and provided for her since birth with almost no assistance or involvement from Shane, and sent her to live with a dad she hardly knew and a stepmother who has an undeniable animosity toward the child's mother. (Transcript p. 21). Shane testified that Madison was a sweet child with no special discipline or other problems that he had to confront because of the credible job Nicole had done raising her. (Transcript p. 54). Shane's sister's testimony also demonstrated that Nicole had done a good job raising Madison and that Shane's wife, Tonya, harbored animosity toward Shane's family, Nicole and the child. (Transcript p. 64).

Shane's wife, Tonya, was shown to have a violent temper. She gave Shane a black eye when she learned of his affair with Nicole. (Transcript p. 55). She keyed his truck during their separation. (Transcript p. 55) Both Shane and his sister testified that she did not allow Shane or their twins to see his family. (Transcript pp. 56, 63). When Shane was granted visitation pursuant to the initial Court Order, Tonya dictated Shane's exercise of visitation and his communication with Nicole. (Transcript p. 70). She caused disturbances at doctor's offices regarding who was responsible for Madison's expenses. (Transcript p. 58-59). The evidence was clear that Shane's wife, Tonya, was still uncomfortable with his illegitimate child and that she harbored deep animosity toward Nicole.

When a father acknowledges an illegitimate child as his own, Mississippi law places him on equal footing with the mother with regard to parental and custodial rights. Smith v. Watson,

425 So.2d 1030, 1033 (Miss. 1983) citing *N. Hand, Jr., Mississippi Divorce, Alimony and Child Custody* 271 (1981). The evidence in this case proves that although Shane knew Madison was his child weeks after her birth, he did not recognize her as his own until she was two years old. Compare how he recognized his twins, Seth and Sarah, to how he recognized Madison. He was at the hospital for Seth and Sarah's birth, but not for Madison's. (Transcript p. 51). He paid the birth expenses for Seth and Sarah, but not for Madison. (Transcript p. 51). He assisted with the daily care of Seth and Sarah during their first years, but not for Madison. (Transcript p. 20). He established an early bond with Seth and Sarah, but not with Madison. By his own admission he and his wife and their children were not comfortable enough with Madison to seek custody of her originally in April 2005. (Transcript p. 43) He didn't even invite Madison to his twins birthday party. (Transcript p. 70). Nicole however, did all these things for Madison that a parent is supposed to do for their child. She also tried to encourage a relationship between Shane and his daughter by asking him to come see her and meeting him in secret so his wife wouldn't find out that he was seeing the child. (Transcript p. 53). Nicole recognized Madison as her child, and demonstrated her dedication to raising her. Testimony from all the witnesses showed that Nicole had been a good mother to Madison when Shane couldn't be bothered.

It was not until Nicole got into trouble with the law that Shane decided to seek custody of Madison. He suddenly had an edge, something to point to which took the focus off of his unwillingness to accept Madison as he had his other children. It was finally convenient for him to pursue his relationship with Madison and even more convenient for him that Nicole now had legal difficulties which he could use against her. The Court should not allow Shane to lie-in-wait

for Nicole to make a mistake, and then assert his rights to the child after three years in which Nicole was the only parent the child knew. That is unfair and inequitable to mothers of illegitimate children. At what point will reluctant fathers like Shane be held to the higher standard of material change adversely affecting the child. Shane knew from the day Madison was born that she was his child, and he still elected to wait two years to acknowledge Madison. If these fathers are allowed to wait until the child is two years old, what will be the cut-off? Three, four, five years? What message is that sending? It sends the message that a father can sit around for the first few years of their child's life and do little or nothing for the child, but when he gets his life in order or decides he's "comfortable" being the child's father, or when mom makes a mistake that the Courts will frown upon, then he can strike while the timing is right to seek custody; nevermind that mom didn't get that option. She was forced into her obligation the day the child was born, and fathers should be held to the same expectations.

In *Smith v. Watson*, 425 So.2d 1030, 1035 (Miss. 1983) citing *Bunkley & Morse's Amis on Divorce and Separation in Mississippi* §8.04, the Court recognized:

"[t]hat where a parent, without just cause or excuse, forsakes or deserts his infant child for such a length of time, and under such circumstances, as to show an intent to shirk or evade the duty, trouble or expense of rearing it, or a callous indifference to its wants, or a reckless disregard for its welfare, he or she is guilty of such abandonment of it as to bar his or her right thereafter to reclaim its custody from any person who may have ministered to and protected it during such period of desertion."

Shane shirked the duty of rearing Madison for two years. Nicole, despite her difficult circumstances, embraced her duty to Madison and was doing a good job raising her daughter. The law should require that Shane to prove by a preponderance of the evidence he had

acknowledged this child as his own for the first two years of her life, and earned the right to be on equal footing with Nicole regarding custody. He knew when he originally filed this action that he was not entitled to custody, and he testified that he didn't feel comfortable enough to seek custody. (Transcript p. 43). For two years, Nicole did her best within her means, and raised a healthy, happy child without his involvement. The Court erred by placing Shane on the same footing with Nicole this late in the child's life.

All things being equal, all jurisdictions recognize that the mother of an illegitimate child, if the mother is a suitable person, has the primary right to custody. *H. Clark, Jr., Law of Domestic Relations* 176 (1968); *Annot.*, 98 A.L.R.2d 417 (1972). At the time of the trial in this matter, Nicole had been sentenced on her criminal charges to three year house arrest and five years probation. She was residing with her parents in a home large enough for she and her two daughters to be comfortable. (Transcript p. 66). She had been working a steady job, Monday through Friday, for her employer selling merchandise on Ebay. (Transcript p. 67). And despite what the Chancellor perceived as her "poor judgment", her criminal charges had in no way effected either of her two children, and she was still at home and able to provide for their needs. Madison's best interest would be served by remaining in the home she had always known with her mother and her sister and her grandparents, and gradually building the relationship with her father and his family who were still adjusting to and learning to accept her.

The totality of circumstances should be considered *Tucker v. Tucker*, 453 So. 2d 1294 (Miss. 1984). In the case at bar, the Court found "the polestar consideration in arriving at the award of custody of a minor child, is the *best interest and welfare of the child.*" (Memorandum

Opinion p. 2). Just because someone gets in trouble with the law, does not mean that they cannot accept responsibility, go forward and lead a productive life, and continue caring for their children appropriately. Nicole asserts that the Chancellor failed to acknowledge Shane's failures and shortcomings, and placed unwarranted emphasis on the fact that he is married and more financially stable. The Chancellor found Shane to be the parent with the most emotional ties with the child, when clearly the evidence shows that Nicole was the parent who raised the child all her life, and Shane himself testified that he had to get comfortable with Madison before he even considered requesting custody. (Transcript p. 43). The Chancellor's findings in this regard are clearly erroneous.

In McCracking v. McCracking, 776 So.2d 691, 694 (Miss. Ct. App. 2000), the Court held that the non-custodial parent must do more than convince the Chancellor that they could do a better job with the child when the prior custody arrangement had previously been agreed upon by the parents. For two years following Madison's birth, Nicole had full custody with no objections, interference or assistance from Shane. Therefore, he should have been required to prove circumstances that were detrimental to Madison's best interest in order for custody to be taken away from Nicole.

The Court did not mention Nicole's other child, Baily, age five (5). Madison has grown up and been cared for in Nicole's home her entire life. The Court's ruling in this case splits the custody of Madison away from the big sister to whom she has a very strong attachment. How can it be in the best interest of Madison to disenthral her from the home she has known her entire life, from her mother who has been her primary care giver, and from her sister? The

Court's lack of factual finding in this regard is clearly an abuse of its discretion. Absent unusual and compelling circumstances dictating otherwise it is not in the best interest of children to be separated. *Sparkman v. Sparkman*, 441 So. 2d 1361 (Miss. 1983).

There is no basis for any present finding that Nicole can not and will not provide Madison with the proper parenting required to retain her custody. The Court characterizes Nicole's environment as unstable and recognizes Shane's family life and employment as an advantage for him. Again this is an unfair advantage to a father who had previously not shown a great interest in being in his child's life. Shane was allowed to ignore his responsibilities to Madison for the first two years of her life, while he repaired his marriage after his affair and continued to build his business. He works long hours and usually seven days a week according to his wife. (Transcript p. 20). Had he initiated the custody suit at the time Madison was born, he would not have appeared as moral and stable as the Chancellor seemed to perceive at the time of trial. Following his extramarital affair, he changed his residence five times; he had physical and verbal altercations with his wife. Who knows what else was going on at that time. He was not required to deal with this custody issue then. He was allowed to get his life together before submitting himself to the Court. Nicole didn't have that luxury.

To use this as a basis to change custody is totally inappropriate. Nicole's overall circumstances at the time of trial had improved in that she was employed at regular eight to five job; she and her parents were settled in their new home following Katrina; she is at home regularly and available to personally care for both her daughters; and she was cooperating with and encouraging Shane to develop a relationship with his daughter.

The Chancellor ignored the turmoil in Shane's own family. His wife was resentful and vindictive because of the affair. Shane and Tonya did not treat Madison the same as they treated their own two children. Shane's own family had been cut out of their lives and were not allowed to see Seth and Sarah. (Transcript p. 63). This speaks volumes about the true stability of Shane's family life. Shane's sister testified that Nicole had been the one to involve she and Shane's parents in Madison's life. (Transcript p. 63-64). His sister also testified that she had witnessed Madison having to sit in the back of Shane's store alone while he worked (transcript p. 64), and that Shane told her it was because Tonya didn't feel well. Why then would he not have all three children? Seth and Sarah were with Tonya, but she didn't feel like caring for Madison. (Transcript p. 64). Shane himself admitted that the only time Seth and Sarah came to the store with him was if he had Madison. (Transcript p. 46). The Chancellor's decision to take custody from Nicole is manifestly wrong and contrary to the evidence regarding this child's best interest.

CONCLUSION

For many years the law gave mother's an unfair advantage in custody matters by applying the tender years doctrine. This case sets the stage to turn the tables and give fathers of illegitimate children an unfair advantage. The two legal standards in child custody cases , being the *Albright* factors and the *adverse material change* test, do not promote the best interest of the children in these type cases. Without a prior adjudication of custody, Chancellors are compelled to apply the *Albright* factors. As in this case, that application gives the fathers of illegitimate children the unfair advantage of shopping or waiting for a better time or more

favorable circumstances to bring a custody action. Just as our system works to prevent forum shopping or Judge shopping, this Court should be compelled to prevent this manipulation of the system.

The purpose of our custody standards is to promote the best interest of our state's children by requiring parents to put aside their own interests and bear the responsibility that bringing a child into the world carries with it. By allowing fathers of illegitimate children to shirk those responsibilities for two years leaving the mother to bear the full burden, and then to come forward during the mother's hard times and seek an evaluation of current circumstances does not promote responsible parenting. This Court cannot validate fathers who delay years after the child's birth before taking on the responsibility by placing them on equal footing with the mothers who have been raising them since day one.

Fathers like Shane, who are aware that they have an illegitimate child, should be held to a higher standard. They should have to prove 1) that they have acknowledged the child as their own and demonstrated some level of responsibility toward parenthood; 2) that recent material changes in the circumstances of the custodial mother are adversely affecting the child; and 3) that it is in the child's best interest that *de facto* custody be modified and the child now placed in their custody. This Court previously recognized the need for a different standard. In Romans v. Fulgum, 939 So.2d 849, 853 (Miss. Ct. App. 2006), denied a father, who was seeking to take custody from the grandparents, the right to do so because of his delay in bringing the proceeding. The Court found him to have waived his entitlement to an *Albright* analysis. Shane should likewise be barred from an *Albright* analysis and further be required to demonstrate some

responsibility toward Madison's rearing before he is placed on equal footing with Nicole.

Nicole has not always made the most prudent decisions. But neither has Shane. The evidence clearly shows that Nicole accepted and embraced her responsibility of raising Madison alone and all the evidence before this Court indicates that she was doing a good job. She provided shelter, food, clothing, medical care, and the love and nurture an infant child requires. It was not until two years after Madison's birth did Shane decide he was ready to take on the responsibility of his illegitimate daughter. If the Court affirms the Chancellors decision to grant custody of Madison to Shane, it will encourage other father's similarly situated to simply ignore the responsibilities of parenthood because there are no consequences. Good mothers like Nicole and innocent children like Madison should not be punished by a loop hole in our custody system that allows procrastinating fathers to step up whenever they choose and take a child from their already established family. We are not arguing that Shane should not be granted visitation rights. Nicole wants Madison to know her father and develop a good relationship with he and his family, but ripping her away from her mother and placing her with a father and step-mother who are working out their own issues and just getting to know the child.

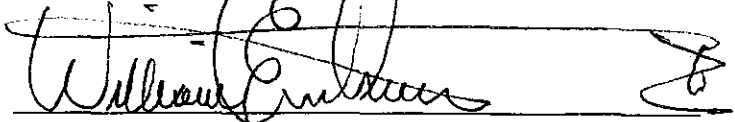
There is no evidence in this case to indicate that Nicole was anything less than a good mother. This child was healthy and happy and comfortable in a home with a family who loves her very much and have done everything for her since birth. The Chancellor has now taken her from that loving mother and extended family and placed her with a father who she was just beginning to know and a step-mother who harbors a great animosity towards her mother to say the least. This decision is simply incorrect and Nicole prays that this Court will evaluate the law

and the applicable facts and reverse and render a decision restoring custody of Madison to her and granting visitation unto Shane.

RESPECTFULLY SUBMITTED on this, the 30 day of August, A.D. 2007.

AMY NICOLE WILLIAMS, Defendant/ Appellant

By:



William E. Andrews III (MSBN 1605)

Her Attorney

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CERTIFICATE OF SERVICE

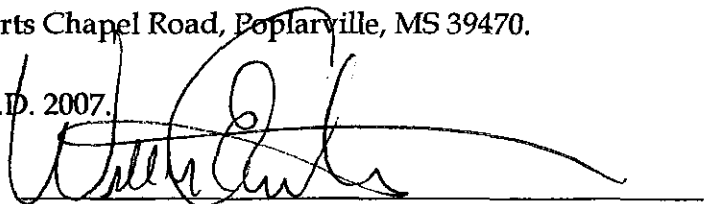
I, WILLIAM E. ANDREWS III, do hereby certify that I cause to be transmitted via first class United States Mail, postage pre-paid, a true and correct copy of the foregoing pleading to the below-listed persons at their normal and usual business address, to-wit:

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.

Ms. Amy Nicole Williams, 886 Dupont Harts Chapel Road, Poplarville, MS 39470.

THIS, the 30th day of August, A.D. 2007.



William E. Andrews III

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CERTIFICATE OF SERVICE

I, WILLIAM E. ANDREWS III, do hereby certify that I caused to be transmitted via first

class United States Mail, postage pre-paid, a true and correct copy of the foregoing Appellant's

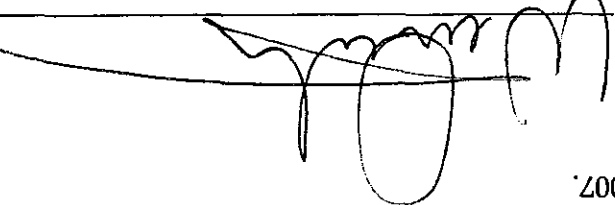
Statement of Issues to the below-listed persons at their usual business address, to-wit:

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

Ms. Amy Nicole Williams, 886 Dupont Harts Chapel Road, Poplarville, MS 39470

THIS, the 31st day of August, A.D. 2007.


William E. Andrews III