

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**STEVEN W. COLLINS**

**APPELLANT**

**V.**

**NO. 2007-CA-00717**

**MELANNIE BLAYLOCK COLLINS**

**APPELLEE**

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**CERTIFICATE OF INTERESTED PERSONS**

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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 judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Steven W. Collins, Appellant
2. Melannie Blaylock Collins, Appellee
3. Steven Wayne Collins, Jr., minor child of the parties
4. Malenda H. Meacham, Attorney for Appellant
5. L. Anne Jackson, Attorney for Appellant
6. James P. Vance, Attorney for Appellee
7. Honorable Mitchell Lundy, Chancellor of DeSoto County Chancery Court



Malenda H. Meacham  
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## STATEMENT OF THE ISSUES

1. Whether the Chancellor improperly considered and applied the Albright factors?
2. Whether the Chancellor's decision in regard to periods of custody satisfied the requirements for an award of joint physical custody?
3. Whether the Chancellor erred in failing to review the guardian ad litem's testimony and state his reasons for rejecting her concerns in his findings of fact?

## STATEMENT OF THE CASE

Steve Collins sued his wife Melannie for divorce on fault and for temporary and permanent custody of their son S.C. on March 14, 2005 after his wife Melannie left the marital residence around the first of March 2005. R. 7-14<sup>1</sup> Melannie filed an answer and counter-complaint for divorce and custody of S.C. on June 6, 2005. R. 17-26. After exchange of financial information and the completion of discovery, trial was set for August 17, 2006 by agreement. R. 33. As a result of Melannie questioning S.C. at 5 a.m. at his school in the presence of school officials about an incident in which Steve spanked his son, DHS opened an abuse investigation and a guardian ad litem was appointed and only the issue of temporary custody was heard on August 17, 2006. R. 36 and Exhibit 6. After commencement of the hearing and considerable testimony, the parties reached agreement on the temporary matters and an agreed temporary order was entered on August 17, 2006. R. 34-35. After the completion of the guardian ad litem's investigation, the case came to trial on January 11, 2007. R. 52 and T. 1. After hearing the evidence, the Chancellor took the matter under advisement. While the

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<sup>1</sup>R. refers to the record of clerk's papers. T. refers to the main transcript of the January 11, 2007 hearing. Supp. T. refers to the supplemental transcript containing the Chancellor's oral opinion from the bench on March 1, 2007. The transcript of the August 17, 2006 hearing was introduced into evidence as Exhibit 6 and will be referred to as such in this brief. R.E. refers to Appellant's Record Excerpts.

Chancellor had the matter under advisement and before he issued his opinion, the parties withdrew their fault pleadings and agreed to proceed on the grounds of irreconcilable differences. R. 71-72 The Chancellor then issued his oral opinion analyzing the Albright factors and setting forth the reasoning for his decision on custody on March 1, 2007. Supp T. 1; R.E. 13 That oral opinion was subsequently incorporated into a final decree of divorce which decided the contested child custody and support issues filed on April 12, 2007. R. 77-84; R.E. 13-27 Steve Collins then timely filed his notice of appeal on April 27, 2007. R. 85

### **STATEMENT OF FACTS**

S.C. was born to Steve and Melannie Collins in Greenwood in September of 1997, almost a year before they married in August of 1998. Melannie also had an older special needs daughter from a prior marriage. At the time of S.C.'s birth, Melannie was a nurse working for a dialysis center. After S.C.'s birth, the couple moved to Grenada and Melannie returned to nursing, but began working less popular shifts, starting with working weekend shifts three weekends a month. She also worked part-time at an ambulance service in Greenwood. Steve was a fireman, ambulance driver and later a paramedic. At times, he and Melannie would work together on part time assignments such as long distance patient transfers by ambulance. T. 230-233. In July of 2003, even though neither had family in Hernando, the couple moved to Hernando because it had a good school system and was closer to Steve's job in Southaven and Melannie's job in Memphis. T. 232

By this time, both Steve and Melannie had completed the training and certification to be paramedics. Because both Steve and Melannie had similar jobs with 24 hour shifts and neither had nearby family, they alternated their work schedules on both their full-time and part-time jobs so that one could care for the children while the other worked. While one may have worked

more than the other in one particular month, over the months they averaged about equal amounts of work time. Each cared for the children while the other was at work. T. 243-244; R.E. 91-92

In December of 2004 and January of 2005, although she was working both her full time job and part time jobs, Melannie found the time to engage in an affair which she acknowledged to the court in her testimony. T. 34-35, 237; R.E. 39-40, 90 When Steve found out about the affair, they had a big blowup. After a month of trying to make the marriage work, Melannie decided to leave in March of 2005. T. 37-38; R.E. 41-42

When Melannie left, she initially took S.C. and her daughter and most of the contents of the house with her. With her aunt's assistance, while Steve was at work, she brought a trailer to the 3300 square foot house and took most of the furniture and nearly all the kitchenware except for a couple of plates and glasses. She and her aunt even cleaned out all the food in the pantry. She admitted she took everything but 1 bed, a chair, the refrigerator, a washer and dryer and 2 television sets. Approximately a week later, she returned both S.C. and her daughter to the almost empty house where Steve was living and left them there for Steve to care for. She did not return the children's furniture or any dishes for them to eat from or return or replace any of the food she had taken from the pantry so they would have something to eat. T 39-42, 78-79; R.E. 43-46, 61-62.

Two weeks to a month later, she returned to the house again. This time, on the advice of her lawyer, she took her daughter with her to a house her mother had rented for her in Pope. She testified she did this because her lawyer told her it would look bad for her to leave her special needs daughter by a prior marriage with Steve. Although she took her daughter with her, she left S.C. behind for his father to care for him. T. 42; R.E. 46; Exhibit 6 at p. 25; R.E. 116

Melannie put other matters ahead of her children when she returned them both to the

empty house for Steve to care for. Even after she came back for her daughter because her lawyer told her it would look bad if she didn't, for at least the next several months, she put other matters, such as straightening out her finances ahead of S.C.'s needs and caring for S.C.. T 41-45; R.E.

45-49

A calendar covering the time S.C. spent with Melannie in the first eighteen months of the separation was introduced at both the August 2006 and January 2007 hearings. The calendar was based on contemporaneous journals documenting the time Melannie spent with S.C. from the beginning of the separation in March of 2005 until July of 2006, just prior to the August 2006 hearing. This evidence showed Melannie only spent time with S.C. an average of 7.8 days a month between March of 2005 and November of 2005 when she testified she was working a ton of hours to get her personal finances in order and get back on her feet. In September of 2005, S.C. spent 1 night with her and on three other days she saw him for a short period according to the calendar. She said she cut back on all her extra part time jobs in December of 2005 and began working a lot less hours. However, the calendar shows in the months between December of 2005 and July of 2006, she spent even less time with S.C., averaging only 6.75 days a month. In December 2005, S.C. only stayed with her 8 nights. He spent only 4 nights with her in January of 2006. And in January, the calendar showed she only saw him one other time for a few minutes. In February 2006 S.C. stayed with her 4 nights and she saw him 4 other times. In March he stayed with her 2 nights and Melannie went to one soccer game. After November of 2005, when she was working fewer hours and seeing S.C. less than before, she was spending time with her boyfriend<sup>2</sup> several time times a week. Even in the summer months when S.C. was

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<sup>2</sup>Melannie claimed he was not her boyfriend yet and would not be her boyfriend until the divorce and custody issues were settled, but she admitted she had had sex with him and that she spent a lot of

out of school and she was only working 8 to 10 days a month, she only saw S.C. about 8 days a month. T 50-54; R.E. 51-55; Exhibits 3, 4 and Exhibit 6 at 8-12, 20, 60; R.E. 101-105, 113, 131

Melannie did not dispute the evidence summarized in the calendar even when the Chancellor pointed out to her how it would have to be considered in deciding what was in S.C.'s best interest in the following exchange:

THE COURT: You state to the Court ... that you wanted the child with you in Pope. Ma'am, the over night and the days on this calendar don't support that.

THE WITNESS: Yes, sir, I understand that.

THE COURT: Do you understand what this Court is struggling with?

THE WITNESS: Yes, sir, I do.

THE COURT: I understand he's the father of the child, and you're the mother of the child, I have to go on past history on what's been done.

THE WITNESS: Yes, sir.

THE COURT: As a kind of picture of what's going to be done in the future.

Exhibit 6 at p. 52-53; R.E. 129-130; T. 50-54; R.E. 51-55

Although Melannie claimed she wanted S.C. to be with her, her testimony, like her actions, painted a picture of much stronger emotional ties between S.C. and his father than between S.C. and his mother. Melannie testified often when she had S.C., he would talk to his father on the phone and then tell her "mama, I want to go home." When he asked to go home to his father, she would take him home. She said she was not going to resist his wishes when he wanted to be with his father more than he wanted to be with her. She also said that often S.C. would go to say goodbye to his father and then come back and tell her he wanted to stay with his father, so she let him Exhibit 6 at p. 42-43.; R.E. 123-124; T 55-56; R.E. 56-57

During this same time period from March of 2005 through July of 2006, S.C. and his father spent a great deal of time together doing a variety of things. They played baseball and

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time with him. [cite]



soccer, rode dirt bikes and went hunting. Steve enrolled S.C. in a number of extracurricular activities which he enjoyed and paid the expenses. Steve took S.C. to practices and made sure he got there on time even if Steve was working. Steve usually accompanied S.C. to all his practices and games at least 4 times a week over at least the two previous seasons. Steve was often present at practice and games even when he was on call and working. Exhibit 6 at pp 9-10. 12-14, 20; R.E. 102-103, 105-107, 113; T 82-84; R.E. 63-65

The coaches testified that Melannie, on the other hand, made little effort, even when she wasn't working, to be present at S.C.'s games. She rarely showed up games even though in most cases both of a player's parents attended most games. Other testimony indicated that she might have attended a few games, but she made no effort to go to his practices even when she was not working. Exhibit 6 at p. 38, 47; R.E. 121, 125; Exhibit 3; T 14-15, 24, 166-167, 171-172; R.E. 32-33, 36, 83-86 There was also evidence that Melannie did not attend any of S.C.'s parent teacher conferences and that her participation in S.C.'s school activities was so minimal that when she showed up to pick up S.C. one day, the school wanted approval from Steve to allow Melannie to take S.C. with her. Exhibit 6 at 21, 38, 69; R.E. 114, 121, 136; T 84; R.E. 65

Even when he was working and S.C. was being cared for by the sitter, Steve would call to talk to S.C. every night he was with the sitter. Steve's mother testified that any time S.C.'s father was around, Steve wanted to be with him. T. 16, 156; R.E. 34, 76

Melannie also did not dispute the evidence that she failed to support S.C. in all the months she left him primarily in Steve's care. She testified even when she was working several jobs and making money from working a ton of hours and her rent was \$300 a month while the mortgage payments on the house where she left Steve and S.C. were \$1700 a month, she made no contribution to day care costs, school costs, back to school clothes or any other expenses of

S.C.'s care in Hernando. She only bought S.C. a few clothes to keep at her house in Pope. Instead of supporting S.C., she testified her priorities were paying off her credit cards and paying off her rental property, putting her personal financial goals ahead of providing support for S.C.. She testified that even when she got a large raise, she didn't contribute any support for S.C. while he was in his father's care. T 45-46, 88; R.E. 49-50, 69; Exhibit 6 at 14, 36, 49-50; R.E. 106, 120, 126-127

Although she was aware that on days when Steve was working his 24 hour shifts and S.C. was not in school, Steve was paying for a sitter to care for S.C., she did not offer to care for S.C. on her own days off to reduce those costs. The evidence also showed that in the nine months that S.C.'s baseball coach and his wife were caring for S.C. while Steve worked his 24 hour shifts, Melannie knew who was caring for S.C. and where he was because she called and spoke with him on the phone. Yet in all those months, even though she testified that she knew she could come see or even come get S.C. any time she wanted, she only asked the sitter about picking him up one time. During the entire separation period, the evidence shows that she only saw her child 24.2% of the time despite the fact that she could see him any time she wanted to. Exhibit 6 at p. 36; R.E. 120; T. 12-15, 27, 31, 79; R.E. 30-33, 37, 38, 62

In addition to failing to voluntarily support S.C. during the separation period, Melannie admitted in the January 2007 hearing that even after the court ordered her to pay half of S.C.'s expenses, she had not contributed her half of those costs. She testified that even after the court ordered her to contribute to S.C.'s support, she put paying off her credit cards and maintaining her lifestyle ahead of paying her share of S.C.'s support. T 70-72; R.E. 58-60

In regard to Melannie and Steve's jobs, the evidence showed that they both worked 24 hour shifts in their primary full time jobs. Steve's job as a fireman and paramedic for the fire

department is close to home with a very predictable and is set at least a year ahead of time. He works cycles of 24 hours on, 24 off, 24 on, 24 off, 24 on, 24 off, 24 on, and 96 hours (4 days) off on the C shift. This cycle averages ten 24 hour shifts a month. As long as he stays on that shift, his schedule will be predictable for years into the foreseeable future. In many respects, there is flexibility in his work that allows him to spend a great deal of time with S.C. even when he is working, as long as S.C. is in Hernando. For example, when S.C. has ball practice or a game during Steve's shift, Steve is allowed to go to the game in the ambulance and remain there on call while S.C. plays. T. 249; R.E. 94; Exhibit 6 at 29, 34; R.E. 117, 118

At the time of the August hearing, Steve also had a part time job from 8-5 two days a week. When Steve is working a day time part time job, S.C. goes to day care for a couple of hours after school and Steve picks him up when he gets off between 4 and 5 p.m. In the summer of 2006 when his part time employer wanted him to work hours when S.C. was out of school and needed care, Steve put S.C.'s needs ahead of the part time job and quit it to spend more time with S.C.. Exhibit 6 at 15, 19, 29, 34, 36; R.E. 108, 112, 117, 118, 120; T 88; R.E. 69. Although he testified that he plans to find another part time job, he testified that it will have to be limited to day shifts while S.C. is in school, because S.C.'s needs come first. T. 143; R.E. 71.

When Steve is working a 24 hour shift, S.C. spends his out of school hours with either his baseball coach's wife and family or with his paternal grandmother who comes up from Grenada to Hernando to stay with S.C.. The baseball coach's wife is now a homemaker with five children of her own, but she has a master's degree in education and helps S.C. with his homework on the nights he stays with them. S.C.'s paternal grandmother is very active in S.C.'s extracurricular activities. The evidence showed that she was present at many more games and practices than S.C.'s mother Melannie was. Exhibit 6 at 15, 18; R.E. 108, 111; T. 10-12, 15, 21,

150, 155-162; R.E. 28-30, 33, 35, 72, 75-82

Melannie's job is much further from where she lives and her work schedule is far less predictable. Although there were references in the testimony to her job requiring only eight 24 hour shifts a month, her more detailed testimony about her work schedule shows that her full time job demands at least as much, if not more, hours than Steve's full time job and lacks the opportunity for spending time with S.C. which can be available in Steve's job if S.C. is in Hernando. She is a flight nurse. Once she gets to work after her long commute, she spends much of her time in the air. She testified her regular schedule is set about a month to six weeks ahead of time. Although the schedule is not set more than a month to six weeks ahead, she has to ask for her vacation days at the beginning of each year. As to which shifts she gets, she testified that there is "no rime [sic] or reason." She might work three 24 hour shifts in one week and then have ten days off. Because there are only 15 flight nurses in the unit, she can be called on at any time to cover for another one of the nurses. This results in a total schedule that she described as "usually the most we get is five days, five shifts in a two week period" - Exhibit 6 at p. 41, 48; R.E. 122, 126; T. 248-249; R.E. 93-94

At one point during the testimony, the Chancellor questioned Melannie about how her hours compared to Steve's asking:

Y'all both work about the same amount of time, right? One, eight, some ten. It can work more than that?

Melannie responded that her schedule could involve more hours, saying:

I can. I'm not allowed to work back to back ... But I can work more shifts, for instance , because there's only 15 of us. ... So if there's a sickness, yes, one of us has to cover, that was one of the stipulations of going there to work.

T 250; R.E. 95

Prior to the August hearing, none of Melannie's relatives had much involvement in S.C.'s life. They rarely visited the family in Hernando. None of Melannie's relatives offered to help care for S.C. during the separation even on days when both Melannie and Steve were working 24 hour shifts. T. 151, 152; R.E. 73-74

Although Melannie has close family in Pope, she does not rely upon them to care for her children while she is working during the week. Like Steve, she employs a friend to care for her daughter during her weekday 24 hour shifts and intends to use the same arrangements for S.C.. Exhibit 6 at p. 61-62; R.E. 132-133; T 151; R.E. 73

Melannie does rely on her mother and to a lesser extent her brother and sister-in-law to provide care for her children when she works 24 hour shifts on weekends and holidays, even though her mother has back problems that require her to take some sort of shots in her back for treatment. Her mother lives in a rural area outside Grenada, and travels 33 miles daily to Pope where she is school principal. She works as principal from 6:45 am to 3:30 or 4:00 Monday through Friday. Although she would see S.C. daily at school, she would not be involved in his care on those days. Exhibit 6 at p.63; R.E. 134; T 207; R.E. 89

Because she lives on a family farm with her husband, Melannie's mother does not regularly use the principal's house located next to the Pope school. She testified that her commute is 33 miles and that she asked the board if she could use the house when she worked late and they agreed. When Melannie left Steve, her mother contacted the board about the principal's house even though board policy is not to rent the house out asking if she could rent the house for her daughter. She said the board agreed to allow Melannie to stay in the house because she was the principal's daughter on condition that the principal would also continue to use the house when she worked late. However, the lease was required to be in Melannie's

mother's name. Each month Melannie writes her mother a check and then her mother writes a check to pay the rent "because it's supposed to be my house." T 194-195; R.E. 87-88. It is clear that Melannie's ability to stay in this house is contingent upon her mother's continued employment as principal of the Pope school, her mother's continued use of the house herself when she works late, and the Board's continued approval of an exception to its policies on renting the house. If any peg shifts, she could well loose her current home as the lease is not even in her name.

In the January hearing, Melannie testified that she works out of two different bases. Most of the time she works out of Memphis which is a one hour commute both ways, turning her 24 hour shift into at least a 26 hour child care shift. The other base is about a two hour commute from Pope turning her 24 hour shift into a 28 hour child care shift. She testified to her plans for handling child care during her Memphis shifts, but did not explain how she would handle the times when she would have to work out of the more distant base. T 264-265; R.E. 96-97

When she works from Memphis during the week, she depends on a friend who works at the school cafeteria in Pope. Sherry arrives at the principal's house when Melannie leaves at 6 am for her trip to Memphis. Sherry picks up Melannie's daughter (and would pick up S.C.) and takes the child with her to work at the cafeteria where the child eats breakfast and helps Sherry out with preparations for the school breakfast. After school, Sherry comes to the principal's office, picks Melannie's daughter up and takes her back to the house rented in the principal's name. Melannie's nephew, who lives about five minutes away, often comes over in the afternoon to play. Sherry gives them a snack, cooks them supper, helps them with their homework, makes sure Melannie's daughter gets a bath and to bed. Sherry stays overnight and the next morning , she wakes Melannie's daughter up and gets her ready for school. Melannie's

daughter is at school by the time Melannie gets home. Sherry is in her early thirties and has a 3 year old child of her own. Sometimes she brings her child with her when caring for Melannie's daughter, but at other times Sherry's child is cared for by her husband at home while she is caring for Melannie's daughter. When she works from Memphis on the weekends or holidays, Melannie's daughter stays with her mother or her brother and sister-in-law. T 264-265; R.E. 96-97

Her plan for S.C. is to have him cared for along with her daughter by Sherry during the week or her mother or brother and sister-in-law on weekends or holidays when she works out of Memphis. T. 264-265; R.E. 96-97. While Melannie provided no explanation for how she will handle child care when she has to work out of the more distant base, one would assume at a minimum that the person taking care of her children, whether it would be Sherry or a family member, would have to arrive at the principal's house no later than 5 a.m. because of the extra hour of Melannie's commute.

S.C. has done well in the Hernando school system since he moved to Hernando with his parents in 2003. He has always attended school in the Hernando district from the first through the fourth grades. He has many friends there. His grades have been strong, even with his participation in numerous extracurricular activities. He made the All Star baseball team in 2005 and 2006. His father volunteers at the Hernando School as an assistant coach of the baseball team and attends most parent events. Exhibit 6 at pages 12-17, 21, 64; R.E. 105-110, 114, 135; T 85; R.E. 66

When the Chancellor entered a temporary order resulting in shuffling S.C. back and forth during the week between his father in Hernando and his mother in Pope, with S.C. continuing to attend school in Hernando, his grades dropped. They improved somewhat when the schedule

was reworked so that S.C. spent most school nights with his father and non school nights with his mother, but they did not return to previous levels while he was shuffling back and forth between houses during the school year. When Melannie was responsible for getting S.C. to school, he was also tardy on several occasions which had not happened before. T 85-87, 100; R.E. 66-68, 70

Melannie complained about Steve's discipline of S.C., particularly with regard to an incident in which Steve spanked S.C. one or two licks with a belt for refusing to take a bath. When S.C. complained to her, Melannie decided to question him at the school at 5 a.m. As a result of her asking school officials to be present when she questioned S.C. about the incident, DHS opened an abuse investigation file. Exhibit 6 at p. 16-17, 24, 35, 73-74; 109-110, 115, 119, 138-139. This necessitated the appointment of a guardian ad litem.

The guardian ad litem investigated and found no basis for the allegations of abuse and found no evidence to support them. Melannie also testified that she did not believe that Steve had abused S.C.. T. 73-74 When the guardian ad litem testified, she expressed several concerns about granting Melannie physical custody of S.C.. Her biggest concern was the manner in which Melannie left S.C. when she separated from Steve. The guardian ad litem testified Melannie's statement to her that she was going to work as hard as she could to improve her finances while leaving S.C. to Steve to care for totally contradicted Melannie's claim that she always put her children first. The guardian was also concerned about the extent to which Melannie appeared to want custody of S.C. so she could groom him to be her daughter's future caretaker. T284, line 16 to p. 285, line 13, T 288, line 3-13; R.E. 98-100

### **SUMMARY OF ARGUMENT**

The Chancellor in this case improperly considered and applied the Albright factors, improperly penalizing the father for not having extended family in Hernando and focusing almost



entirely on his personal preference for the small town atmosphere and the school in the town where the mother now lives in a house which her mother persuaded the school board to allow her to occupy against board policy and which she is not even permitted to rent in her own name. Along the way, the Chancellor made findings unsupported by the evidence, made contradictory findings and completely discounted and destroyed every positive facets of a young boy's life in the community where he has always gone to school, has done well in both his extra-curricular activities and his grades, and eliminated the unique opportunities his father had for balancing the demands of his job as a paramedic with spending substantial amount of time with his son during his extra-curricular activities. The Chancellor also ignored considerable evidence on several factors which weighed against granting the mother custody in order to impose his personal preference for one community and school over another community which also had indisputably excellent schools, going so far as to force a change of school systems three quarters of the way through the school year when none of the parties requested it or would done such a traumatic thing to this child.

In addition to improperly considering the Albright factors, the Court awarded joint legal and physical custody without giving the father sufficient periods of substantial custody to satisfy the statutory requirements for joint custody. He also failed to consider the guardian ad litem's concerns or state his reasons for not following her testimony in his opinion.

## **ARGUMENT**

### **I. Standard of Review**

An appellate court will not disturb the factual findings of the chancellor unless those factual findings are manifestly wrong or clearly erroneous. But if the chancellor improperly considers and applies the Albright factors, an appellate court is obligated to find the chancellor in

error. *Brekeen v. Brekeen*, 880 So. 2d 280, ¶ 4 (Miss 2004) citing *Hollon v. Hollon*, 784 So. 2d 943, 946 (Miss. 2001) and *Jerome v. Stroud*, 689 So. 2d 755, 757 (Miss. 1997)

In determining whether the chancellor improperly considered and applied the Albright factors, the appellate court reviews the evidence and testimony presented at trial under each factor to make sure the chancellor's ruling is supported by record. The appellate court also reviews the evidence to make sure the chancellor's decision is not based on differences in religion, personal values, and lifestyles. *Watts v. Watts*, 854 So. 2d 11, ¶5.( Miss App 2002) citing *Hollon*, 784 So. 2d at ¶13.

## **II. The Chancellor Applied the Albright Factors Improperly in Denying Mr. Collins' Request for Physical Custody At Least During the School Year and Withdrawing S.C. from a School and Community Where He Was Doing Well Three Quarters of the Way Through the School Year**

In *Hollon*, the court reversed the Chancellor because majority of the *Albright* factors weighed in mother's favor, and the trial court committed reversible error by placing too much weight on allegations of mother's homosexual affair in awarding custody to the father. In *Brekeen*, the Chancellor's award of custody was reversed for not weighing the factors properly. The trial court's findings as to the mother were inconsistent, in that the trial court found that she exhibited good parenting skills and had the capacity to provide for the child, but the court expressed doubt about her ability to be the child's primary custodian because of her extramarital affair. The trial court also failed to mention in the weighing of the factors, many salient points in the evidence.

The trial court's custody determination was similarly reversed in *Divers v. Divers*, 856 So. 2d 370 (Miss 2003) because the chancellor incorrectly weighed the *Albright* factors finding several factors favored the mother when the evidence showed otherwise. The Chancellor should

not have disregarded the assistance of the father's parents in caring for the child, or evidence that the father would have been able to provide daycare for the child at his place of employment. The Chancellor also erred in finding the mother could provide a stable environment for the child.

In a case with many parallels to the present case, the appellate court in *Watts v. Watts*, 854 So. 2d 11 (Miss App. 2002) found the lower court erred in awarding primary custody of the children to the father where his hectic work schedule prevented him from participating in the children's extracurricular activities. The court also found the trial court incorrectly penalized the mother for not having a large extended family in the area whom she could draw on for assistance in caring for the child.

When the evidence in this case is compared to the Chancellor's findings and to the decisions in *Hollon*, *Brekeen*, *Divers*, and *Watts*, it demonstrates that the Chancellor's award of custody in this case was manifestly erroneous and not supported by the evidence.

#### ***A. Health and Sex of the Child***

The Chancellor correctly weighed this factor. As he stated, S.C. is a healthy nine year old male child. He does need a strong father and male role model to be a major influence on his life. Because removing S.C. from Hernando will prevent his father from being able to take advantage of many of the possibilities to share time with his son even while working, much of that influence will be lost if S.C. does not reside with his father in Hernando at least during the school year. Thus, this factor favors the father.

#### ***B. Continuity of Care***

The Chancellor also correctly weighed this factor finding that also favored the father. As the Chancellor pointed out, prior to the separation, S.C. and Melannie Collins both worked full time jobs with 24 hour shifts staggered so that when one was at work the other could care for the

children. However, Melannie's participation in S.C.'s care dropped off sharply when the couple separated and Melannie moved to Pope leaving S.C. behind. Although Melannie admitted that she could have seen S. C. or picked him up and taken him home to stay with her any time she wanted to, she put her focus on work, making money, paying off debts, and spending time with friends, including a new boyfriend, especially in the first six month of the separation. S.C. rarely visited her.

### ***C. Best Parenting Skills***

In reaching the conclusion that Melannie had better parenting skills than Steve, the Chancellor stated that there was testimony from Steve's witnesses that Steve may have a temper when he gets wound up. The testimony about getting wound up, however, was actually in reference to S.C. getting wound up, not his father. One of Steve's fellow coaches testified:

Q. What kind of a kid is little Steve?

A. He's pretty good, he's energetic.

Q. Does he have manners; is he polite?

A. Sometimes, he gets wound up, most of the time, he's alright?

Q. What does big Steve do in regards to correcting him?

A. He'll get after when he needs it; when don't, there's no need in it. ...

Q. Knowing Steve as long as you have, .. [w]hat kind of a temper does he have, does he have a hot temper?

A. No. I never seen him get that mad about nothing.

Q. Have you ever seen him yell at anybody?

A. Not really, not loud, loud, raised voice, yeah, but not stomped around mad. No.

T. 178, line 28 to 179, line 20 The other coach Steve worked with in coaching children testified he did not have a temper, was patient with the children, and if anything Steve was a little too easy on S.C., at least in regard to what S.C. needed to do to make the All Star team. T 168

The Chancellor stated in his findings on parenting skills that he recalled evidence of some problems with S.C. in regard to his discipline of S.C.. The discipline issue concerned a single incident when Steve gave S.C. a spanking for refusing to take a bath. As a result of Melannie

taking S.C. to the principal's office and questioning him about the incident at 5 a.m., DHS opened an abuse investigation and a guardian ad litem was appointed. Neither DHS nor the guardian ad litem ever found any evidence of abuse. Moreover, during the August 2006 hearing which was part of the evidence in the January 2007 hearing, the Chancellor told counsel "I'm not worried about the spanking, y'all can move on to something else." Exhibit 6 at p. 38; R.E.

121 The Chancellor's finding in the weighing of the Albright factors concerning problems with Steve's discipline of S.C. conflicts with what he said during the presentation of evidence.

The Chancellor also relied heavily, in the parenting skills factor, on the testimony of Melannie's friend from Arkansas, stating he was impressed with her comments about Melannie. But Stephanie Thompson's testimony actually said very little about Melannie or her parenting skills which Stephanie had little opportunity to observe. Most of Stephanie's testimony was attempts to get in hearsay evidence about Steve and things he allegedly said. T210-215, 218-219.

In regard to Melannie, Stephanie Thompson testified she had known Melannie for 3 years since July 2003. But she hasn't seen much of Melannie in the last 2 years because they no longer work together. Most of her opportunities to personally observe Melannie in the last two years have been in the context of having breakfast with Melannie without the kids. T 209, 215, 219. She did see Melannie on a few occasions with the kids, but her testimony in regard to Melannie and her children was very limited. She said she had observed Melannie with the children a few times, the children were respectful and Melannie was a good parent. T210 Prior to the separation when neither she nor Melannie was working 24 hour shifts, Stephanie said she would sometimes come in early for the night shift, so Melannie could leave early from the day shift to take her kids to various activities. T 216 When she was questioned concerning her knowledge of Melannie's decision to leave the marital home and her actions in regard to the children in

connection with the separation and divorce, Stephanie made it clear she knew little about those issues. She also regularly used limiting phrases about her knowledge. She said “[t]o my knowledge, Melannie has always put her kids first” rather than stating unequivocally that she could state from personal knowledge that Melannie always put her kids first. T 227 In regard to whether Melannie tried to see S.C. regularly after the separation, she answered “Melannie has not ever not tried to see him *from what I know of.*” T 222 She also said “Melannie did what she was instructed to do by her lawyers.” T 224 There is little in this testimony to support the Chancellor’s finding that he was very impressed with Stephanie’s comments in regard to Melannie’s parenting skills.

On the issue of parenting skills, the Chancellor completely ignored Melannie’s actions in connection with leaving Steve, such as the fact that she cleaned the house out of furniture, kitchen utensils, beds and even food and then brought the children back without returning their beds or any food expecting Steve to take care of both S.C. and her daughter. He also ignored Melannie’s testimony that she put maintaining her lifestyle and paying off her credit cards and even her rental property ahead of seeing S.C. or even providing support for him. The Chancellor even ignored her testimony that she did not pay for half S.C.’s expenses after the Court ordered her to do so. And after telling Melannie on the stand that he would have to consider the calendar evidence as contradicting her testimony that she wanted to have S.C. with her in Pope and to be a good mother to him, the Chancellor ignored that evidence in his findings of fact. He even ignored the guardian ad litem’s testimony that she had serious concerns about Melannie’s parenting ability based on Melannie’s actions in regard to cleaning out the marital home and then returning the children to it to be cared for by Steve and her actions and statements about putting her financial goals ahead of caring for S.C.. The Chancellor even ignored Melannie’s testimony

that the reason she eventually went back and took her daughter with her was because her lawyer told her it would look bad if she left her daughter with Steve. These actions are not the actions of a person with good parenting skills. . T 39-46, 49-50, 78-79; 88; R.E. 43-51, 61-62; 69; Exhibits 3 & 4 and Exhibit 6 at pages 8-12, 14, 25; R.E. 101-105, 107, 116

***D. Willingness and Capacity to Provide Primary Child Care***

In finding that this factor favored the mother, the Chancellor's finding that Melannie's work was more flexible than Steve's was clearly erroneous and unsupported by the evidence. There is no evidence in the record to support the Chancellor's finding that Steve worked two days a week more than Melannie. There was some testimony that she worked eight 24 hour shifts a month and Steve worked about ten. But that testimony was explained or contradicted both by a more detailed explanation of their shift schedules, the testimony of Steve and Melannie that their work schedules averaged out to be the same, and the Chancellor's own questions during the testimony to confirm his understanding that Steve and Melannie worked an equal amount of 24 hour shifts. Although their on the job time was roughly the same, Melannie's job requires a much longer commute and she is subject to being called upon to fill in for another nurse as a condition of her employment. Steve's commuting time is much shorter and there was no evidence that he was subject to being required to work extra hours on short notice. T. 248-250; R.E. 93-95; Exhibit 6 at 15, 19, 29, 34, 36, 41, 48; R.E. 108, 112, 117, 118, 120, 122, 126

The testimony did not show that Melannie's work schedule was more flexible than Steve's. It showed that her schedule was less predictable. While Steve's schedule is known a year or more in advance allowing time for child care planning, Melannie's schedule is only set a month to six weeks ahead of time. She has to request her vacation at the beginning of each year before she knows what the schedule will be. Steve's job is not subject to either of these

uncertainties. Furthermore, when Melannie is at work, she is often in the air working as a flight nurse. When Steve is at work, as long as S.C. lives in Hernando and participates in activities in that area, Steve has the flexibility to spend time with S.C. at his practices and games because he is permitted to drive the ambulance to the locations where S.C. is at and to participate in S.C.'s activities while he remains on call.

It appears the Chancellor also incorrectly penalized Steve for having, or intending to get, a part time job even though the evidence was clear and strong that Steve would only accept and work a part time job that coincided with S.C.'s time in school. He had quit a part time job previously when the employer did not want to respect the scheduling limitations he put on part time work so that he would be available to spend his time with S.C. when he was out of school. Exhibit 6 at p. 15, 19, 29, 34, 36; R.E. 108, 112, 117, 118, 120; T 88, 143; R.E. 69, 71

The Chancellor also incorrectly penalized Steve on this factor because he did not have extended family support in Hernando which is contrary to *Watts v. Watts*, 854 So. 2d 11 (Miss App. 2002). Steve clearly has the support of friends in Hernando and family from Grenada who are willing to come to Hernando to be a part of S.C.'s life. Furthermore, while Melannie has a brother and sister-in-law in Pope and her mother works in Pope, she does not call on them to provide child care during the week. Like Steve, she employs a friend as a sitter when she is working during the week. Exhibit 6 at p. 61-62; R.E. 132-133; T 151, 264-265; R.E. 73, 96-97

Additionally, in the case of *Lee v. Lee*, 798 So. 2d 1284, ¶22, (Miss. 2001), the Supreme Court found that this factor favored a father whose employment was closer to the home as compared to the mother's employment that was fifty (50) miles away from the home. Likewise, this factor should favor Steve in this case as he is much closer to home than Melannie.



***E. Employment of the Parents and Responsibilities of That Employment.***

In finding that the employment and employment responsibilities of Steve and Melannie were equal, the Chancellor contradicted his finding on the previous factor that Melannie's employment was more flexible than Steve's employment. He also failed to consider the predictability aspects of their schedules, Melannie's longer commute keeping her away from S.C. for at least an extra hour each shift, the requirement of Melannie's job that she be available to cover for other nurses, Melannie's inaccessibility while she is in the air, and the aspects of Steve's job that allow him to attend S.C.'s practices and games during his shifts as long as he brings the ambulance to the field and remains on call. Exhibit 6 at p. 39-40; T 249-250; R.E. 94-95. All of these points demonstrate that this factor should favor leaving S.C. in Hernando with his father.

***F. Physical and Mental Health and Age of the Parents.***

The Chancellor correctly found that this factor favors neither party as they are both in equally good health, both physically and mentally.

***G. Emotional Ties of the Parent and the Child.***

In finding that the parties were equal on this factor, the Chancellor ignored substantial evidence indicating that the emotional bond between S.C. and his father is much stronger than the bond between his mother and S.C.. Even after he told Melannie on the record that he would have to consider the calendar which she did not dispute as strong evidence contradicting her claim that her emotional bond to S.C. was strong and she always wanted S.C. to be with her in Pope, the Chancellor did not even comment in his findings on this factor on this evidence showing how little time Melannie spent with S.C. during the separation even after she reduced her work hours and found the time to spend with her boyfriend. Exhibit 6 at p. 52-53; R.E. 129-

130; T 50-54; R.E. 51-55

The Chancellor also ignored Melannie's admissions that she provided no support for S.C. while in his father's custody prior to being ordered to do so by the court and also her testimony that she failed to contribute her half of S.C.'s expenses even after being ordered to do so by the Court. She testified that even though she had received a substantial raise, she chose to spend that income on maintaining a lifestyle for herself and her daughter instead of obeying the court order to contribute to the support of her son. This testimony stands in stark contrast to her testimony that she should have primary custody because she would raise S.C. in a more religious, family oriented less materialistic environment than Steve would provide. T 45-46, 70-72, 88, 272; R.E. 49-50, 58-60, 69

The Chancellor also apparently did not consider the fact that Melannie felt emotionally able to take more time away from being with her family to have an affair when she was already working several jobs that cut into her time with her children. Likewise, he failed to consider both her own statements that she put her financial goals ahead of spending time with and caring for S.C. during the first nine months of the separation and the guardian ad litem's concerns about her priorities. He also failed to consider the fact that Melannie felt comfortable returning S.C. and her daughter to Steve's care in a house which she had stripped of furnishings and even food without even returning the children's bed to sleep on. As with Melannie's financial priorities, he failed to consider the guardian ad litem's concerns over the effect of Melannie's actions in leaving the marital home on the children. T 14-15, 34-35; R.E. 32-33, 39-40; Exhibits 3, 4 and Exhibit 6 at pages 8-12, 36; R.E. 101-105, 120

But most telling of all on this factor, the Chancellor made no mention of Melannie's testimony S.C. would go to say goodbye to his father and then come back and tell her he wanted

to stay with his father, so she let him stay; her testimony that when S.C. was with her, he would talk to his Dad on the phone and then tell her "mama, I want to go home;" her testimony that when he asked to go home to his Dad, she would take him home; her testimony that she was not going to fight S.C.'s wish to spend more time with his father than with her; Exhibit 6 at p. 42-43; 55-56; R.E. 123-124

In contrast to this testimony about Melannie's emotional bond with S.C., there was no testimony at all of weaknesses in the emotional bond between S.C. and his father. All the testimony indicated that Steve is very involved in S.C.'s life, spending time with S.C. on everything from homework and school functions to baseball, soccer, and hunting. Both Melannie and S.C.'s grandmother testified that when Steve is around, S.C. always wants to be with Steve. The emotional ties between S.C. and his son are so strong that Steve quit a part time job when his employer no longer wanted to respect the limits Steve put on his hours so as not to interfere with his availability to S.C. whenever he was not in school. Steve has even found ways to spend time with his son during his 24 hour shifts at his full time job. Exhibit 6 at pp 12-14; R.E. 105-107; T 9-10, 16, 20, 82-84, 156; R.E. 28, 34, 63-65

#### ***H. Moral Fitness of the Parents.***

The Chancellor correctly found that this factor favored Steve as Melannie had admitted to two affairs during the marriage. T 34-35; R.E. 39-40 The finding that this factor favors Steve is further supported by other evidence not mentioned by the Chancellor, including Melannie's admission that she put maintaining her lifestyle ahead of paying for half S.C.'s support even after she was ordered to provide that support by the Court.

#### ***I. The Home, School and Community Record of the Child.***

The Chancellor correctly found that this factor favored awarding physical custody to

Steve at least during the school year pointing out that S.C. has always attended school in the Hernando district, that he participates in numerous extracurricular activities there, and he has built and maintained a record as a good student in the Hernando school system. Exhibit 6 at pages 12-17, 64; R.E. 105-110; 135; T 85; R.E. 66. The problem is that the Chancellor's final decision in regard to custody not only goes against this factor, but totally destroyed this positive aspect of S.C.'s life by not only granting Melannie custody, but forcing an abrupt change in schools three quarters of the way through the school year when even Melannie did not believe that would be in S.C.'s best interest. In her testimony, Melannie address her beliefs about forcing a child to change school systems mid-year saying:

"That's just – to me, that's just cruel and I couldn't imagine doing that. ... After he started Hernando School, the same thing as the year before, I'm not going to pull him out in the middle of the year." Exhibit 6 at p. 59-60

Yet that is precisely what the Chancellor ordered in this case, completely contradicting his finding that the existing school situation favored a finding that staying in Hernando would be in S.C.'s best interest.

Additionally, Melannie chose to move away, while Steve felt it important to remain where the child's school and friends are found. See *Sobieske v. Presler*, 755 So. 2d 410 (Miss. 2000). This factor should favor Steve.

***J. The Preference of the Child at an Age Sufficient to Express a Preference by Law***

The Chancellor correctly determined that this factor is not applicable as S.C. is not old enough to express the preference by law.

***K. Stability of Home Environment and Employment of Each Parent.***

In finding that this factor favored Melannie, the Chancellor again incorrectly penalized Steve for not having more extended family in Hernando which is contrary to *Watts*. The

Chancellor correctly found that both Steve and Melannie must rely on others to care for S.C. when they are working their 24 hour shifts and correctly noted that both employ sitters for this purpose. But when making findings on the home environment, the Chancellor put all his emphasis on the availability to Melannie of her extended family in Pope and the house that is currently available to her only because of her mother's job and request for special treatment. Despite testimony that Melannie could not even rent the house where she is living in her own name, that it is against the general policy of the board to rent the house to anyone, and the Melannie is allowed to live in the house only on condition that the lease be in her mothers name and that her mother continue to use the house herself when she works late in Pope, the court placed a great deal of emphasis on Melannie living in this particular house in finding that her home environment was more stable than Steve's home environment. T 194-195; R.E. 87-88

The Chancellor also expressed his personal preference for a small town atmosphere during the school year despite testimony that the Hernando schools were also excellent. In reaching his final conclusions on custody, the Chancellor relied almost exclusively on this factor. Thus, it appears that contrary to *Watts* at ¶ 5 and *Hollon*, at ¶13, the Chancellor impermissibly based his decision here on "differences in religion, personal values, and lifestyles."

#### ***L. Other Factors***

The Chancellor found this factor favored Melannie because the Court did not believe that S.C. should be separated from his older half sister with special needs. Even though there was no testimony that the 18 month separation of these two during the marital separation had any adverse impact on S.C., the Chancellor stated, without any basis or articulated reasoning that the kind of separation that would occur if Steve was granted custody and Melannie only had visitation would cause substantial unidentified harm to S.C.. Exhibit 6 at p. 29; R.E. 107 On

this issue, the Chancellor ignored the evidence that Melannie did not appear to be concerned about splitting up the siblings when she left S.C. in Steve's care for 18 months. Exhibit 6 at p. 38-39; R.E. 121

In the case of *C.W.L. v. R.A.*, 919 So. 2d 267 (Miss. App. 2005), this Court stated in regard to separating half-siblings that "[t]here is no general rule in this state that the best interests of siblings is served by keeping them together." *Id.* at 273. See also *Copeland v. Copeland*, 904 So. 2d 1066 (Miss. 2004).

***M. Stated Basis for The Chancellor's Custody Decision***

After finding that four factors favored Steve, four factors favored Melannie, and the rest of the factors were either equal or not applicable, the Chancellor focused his final decision on only one factor – Melannie's current living arrangements and the Chancellor's own personal preference for the small town environment of Pope. Based on that factor alone, and citing *Crider v. Crider*, 904 So. 2d 142 (Miss. 2005), he awarded joint legal and physical custody even though neither Steve nor Melannie had requested joint legal and physical custody.

The Chancellor then proceeded to lay out a physical custody schedule which is very close to the standard Farese schedule for one parent having physical custody and the other parent having liberal visitation. And even though S.C. was three quarters of the way through the school year, and over objection from the parties, he ordered the change to take place immediately and for S.C. to be transferred from the Hernando to Pope school systems in March instead of waiting for school to end in May.

As noted above, this finding was not only unsupported by the evidence, but it puts too much emphasis on Melannie's extended family and the Chancellor's personal preferences as to lifestyle, improperly penalizing Steve for his lack of extended family in Hernando. See *Watts*

Moreover, the abrupt change in school systems is contrary to this court's recent statement in *Giannaris v. Giannaris*, 960 So. 2d 462, ¶ 9 (Miss. 2007) and its earlier statement in *Ballard v. Ballard*, 434 So. 2d 1357, 1360 (Miss. 1983) that a change in custody is a jolting, traumatic experience for a child. That trauma could have been avoided by simply waiting two months to implement the physical custody change.

### **III. The Chancellor's Award Did Not Satisfy the Requirements of Joint Physical Custody**

In *Rush v. Rush*, 932 So. 2d 794 (Miss. 2006), the Chancellor stated that he was awarding joint legal and joint physical custody to both parents. However, the mother's periods of custody were to be overnight each week on Tuesday nights, every other weekend, extended periods of time during the summer, alternating Christmas and other holidays. The *Rush* court held that the amount of time awarded to the mother was insufficient to constitute joint physical custody. According to the court, for all practical purposes, the father was granted physical custody with the mother being granted liberal visitation.

In the present case, the Chancellor's order, like that in *Rush*, provided for S.C. spending the lion's share of his time with Melannie. Steve's period's of custody were limited to every other weekend, alternating holidays, and an extended period during the summer. Although he gets Spring Break after 2007, he does not even get the one night a week during the school year which the mother received in *Rush*. Although Steve gets an extended period in the summer, it is broken up by Melannie having custody every other weekend during Steve's summer period. Thus, it is clear that Steve has no more custody time than the mother in *Rush* and the time he has been granted is insufficient to constitute joint physical custody. For all practical purposes Melannie was granted physical custody with Steve having standard visitation.

Thus, as in *Rush*, the language of the Chancellor's order is contradictory and does not meet

the requirements of Miss. Code § 93-5-24 for joint physical custody.

#### **IV. The Chancellor Committed Reversible Error in Not Considering and Addressing the Guardian Ad Litem's Concerns in His Opinion**

In this case, the appointment of a guardian ad litem was required by law because DHS had opened an investigation for abuse based on Melannie's questioning of S.C. at school in the presence of school officials about his father spanking him and because Melannie expressed other concerns about Steve's care of S.C.. T. 290 When a guardian ad litem is required by law, the chancellor is required at a minimum, to include a summary review of the guardian's opinions in his findings of fact. If the Chancellor rejects the guardian's concerns, he is required to provide an explanation of his reasons for doing so. Failure to include these minimum references to the guardian ad litem's opinions is reversible error. *Floyd v. Floyd*, 949 So. 2d 26, ¶8 (Miss. 2007)

In this case, the guardian ad litem testified that she had several concerns about placing S.C. in Melannie's primary physical custody. She was particularly concerned about the manner in which Melannie left the marital home taking both children and nearly all the furnishing and food and then returned both children shortly after that without returning the furnishings or food and expected Steve to care for both children while she focused on getting her finances in order. The guardian ad litem was very concerned that this behavior clearly demonstrated that S.C.'s care would not be Melannie's top priority and that she would give a higher priority to her own personal and financial goals and convenience than to the needs of S.C.. She was also concerned that one of the major reasons Melannie wanted physical custody of S.C. was that his presence gave her considerable more flexibility in what she could allow her daughter to do and how much she had to personally be with her special needs daughter. She testified that Melannie told her :

[my daughter] is 13, on the level of a four-year-old, and her speech is even less. S.C. opens doors for her, S.C. watches out for her. And it's better when S.C. is



here because she gets to do things that she wouldn't get to do – when he's here, she gets to do thing because he's there, that I can't drop her off at a party or someone else's house. But if S.C. is here, I can drop them off.

T284, line 16 to p. 285, line 13, T 288, line 3-13; R.E. 98-100

The only mention of Guardian at Litem anywhere in the Chancellor's opinion is a statement that there was no proof of abuse, and that therefore, Melannie was ordered to pay the Guardian ad Litem fee of \$1,500.00. This does not satisfy the requirements of *Floyd* and constitutes reversible error under that case.

### CONCLUSION

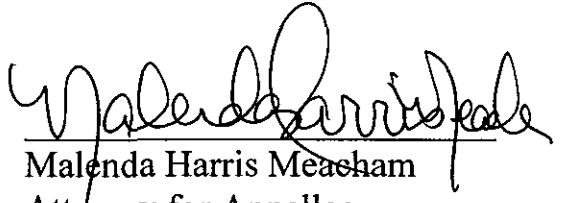
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When a Chancellor makes a custody decision which he claims is joint physical custody, he must grant both parents substantial periods of custody in excess of what is ordinarily allowed as standard or liberal visitation.

Because the evidence in this case demonstrates that the overwhelming majority of the Albright factors favored the father and the remaining factors were either inapplicable or equal, Appellant requests this court to reverse the Chancellor's decision and award custody of S.C. to his

father Steve and to grant S.C.'s mother standard liberal visitation according to the Farese schedule.

Respectfully submitted,



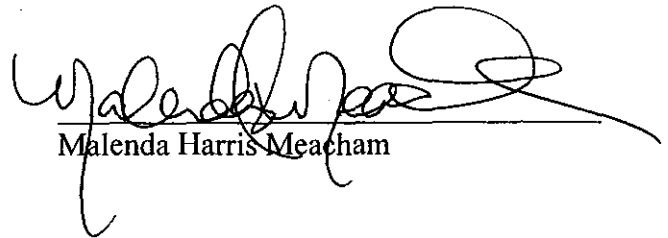
Malenda Harris Measham  
Attorney for Appellee

## CERTIFICATE OF SERVICE

I, Malenda Harris Meacham, attorney for Appellee, Steven W. Collins, hereby certify that I have this day caused to be delivered by United States Mail, postage pre-paid, a true and correct copy of the above and foregoing Brief of Appellee, Steven W. Collins to:

Honorable James P. Vance  
Post Office Box 159  
Grenada, MS 38902

CERTIFIED, this the 14<sup>th</sup> day of November 2007.



Malenda Harris Meacham

here because she gets to do things that she wouldn't get to do -- when he's here, she gets to do thing because he's there, that I can't drop her off at a party or someone else's house. But if S.C. is here, I can drop them off.

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Although a Chancellor has considerable discretion in weighing the evidence and making his findings on the best interests of a child in custody matters, his analysis must still be supported by substantial evidence and must properly consider the Albright factors. He cannot go through each factor and then come to the end and make a decision based on a single factor ignoring all the others. Nor can he penalize one parent for not having the extended family that the other possesses. And when a guardian ad litem is required by law, the Chancellor cannot dispose of her participation in the case with a single line as to who is to pay her expenses. He must consider her testimony and explain his reasons for not following it if he rejects it.

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father Steve and to grant S.C.'s mother standard liberal visitation according to the Farese schedule.

Respectfully submitted,



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Malenda Harris Meacham  
Attorney for Appellant

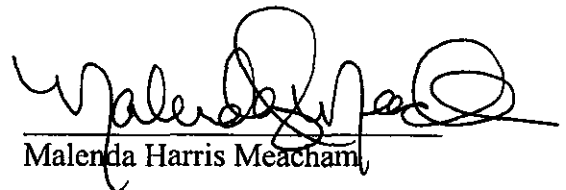
### AMENDED CERTIFICATE OF SERVICE

I, Malenda Harris Meacham, attorney for Appellant, Steven W. Collins, hereby certify that I have this day caused to be delivered by United States Mail, postage pre-paid, a true and correct copy of the above and foregoing Brief of Appellant, Steven W. Collins to:

Honorable James P. Vance  
Post Office Box 159  
Grenada, MS 38902

Honorable Mitchell Lundy  
P.O. Box 471  
Grenada, Mississippi 38902

CERTIFIED, this the 16<sup>th</sup> day of November, 2007.



Malenda Harris Meacham