

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-CA-00792

LARRY BRIAN SCURLOCK

APPELLANT

VS.

KATHY B. PURSER (SCURLOCK)

APPELLEE

**APPEAL FROM THE CHANCERY COURT OF THE FIRST
JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT

SUBMITTED BY:

WILLIAM P. FEATHERSTON, JR. - MSB [REDACTED]
357 TOWNE CENTER BOULEVARD, SUITE 203
P.O. BOX 1105
RIDGELAND, MISSISSIPPI 39158-1105
TELEPHONE: (601) 206-5557
FACSIMILE: (601) 206-1612
ATTORNEY FOR APPELLANT

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-CA-00792

LARRY BRIAN SCURLOCK

APPELLANT

VS.

KATHY B. PURSER (SCURLOCK)

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant certifies that the persons having an interest in the outcome of this case are those listed below:

1. Larry Brian Scurlock, Appellant
2. Kathy B. Purser (Scurlock) Appellee
3. William P. Featherston, Jr., Attorney for Appellant
4. Melissa A. Malouf, Attorney for Appellee

This Certificate is made so that the Judges of the Court may evaluate possible disqualification or recusal.

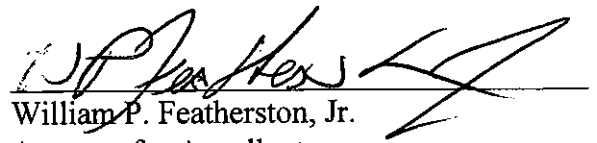

William P. Featherston, Jr.
Attorney for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	
1. Nature of the Case	2
2. Course of Proceedings and Disposition in the Court Below	2
3. Statement Facts	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT AND AUTHORITIES	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Dunn v. Dunn</i> , 609 So. 2d 1277, 1287 (Miss. 1992)	4, 5
<i>Kelley v. Kelley</i> , 953 So. 2d 1139 (Miss. COA 2007)	4
<i>Poole v. Poole</i> , 701 So. 2d 813, 819 (Miss. 1997)	4
<i>Armstrong v. Armstrong</i> , 618 So. 2d 1278, 1282 (Miss. 1993)	4
<i>Carpenter v. Carpenter</i> , 519 So. 2d 891 (Miss. 1988)	5
<i>Cameron v. Cameron</i> , 276 So. 2d 449 (Miss. 1973)	5
<i>Nichols v. Nichols</i> , 254 So. 2d 726 (Miss. 1971)	5

STATEMENT OF ISSUES

Whether the Court erred by ordering Appellant, Larry Brian Scurlock, to pay the attorney's fees of Appellee, Kathy B. Purser (Scurlock).

STATEMENT OF THE CASE

1. Nature of the Case

This is an appeal from an Order awarding attorney's fees to Appellee Kathy B. Pursuer (Scurlock).

2. Course of Proceedings and Disposition in the Court Below

Larry Brian Scurlock, Appellant (hereinafter "Brian"), and Kathy B. Purser (Scurlock), Appellee (hereinafter "Kathy") were married and during the course of the marriage two children were born. Irreconcilable differences arose between the parties during the marriage and they were divorced on May 31, 2005. Thereafter, Kathy filed a Petition for Emergency Relief and Modification to modify the Joint Custody Agreement previously entered by the Court and Brian filed a Counter-Claim for Modification and Emergency Relief also requesting modification as to custody of the children. The Court below granted Kathy's Petition in part and denied the Petition in part and granted Brian's Petition in part and denied his Petition in part. The Court ordered Brian to pay Kathy's attorney fees in the amount of \$4,800.00. Brian appeals to this Court the award of attorney's fees to Kathy.

3. Statement of Facts

References to the record are cited as "[Volume] R. [Page]."

A Judgment of Divorce-Irreconcilable Differences was entered in the Chancery Court of the First Judicial District of Hinds County, Mississippi, between Brian and Kathy on May 31, 2005, which provided, *inter alia*, that Brian and Kathy shall have joint legal and physical custody of the two minor children, Natalie Tristen Scurlock (born October 24, 1997) and Elijah Evan Scurlock (born May 17, 2000). The parties were to alternate physical custody every three weeks. (Trial record 1-18).

Kathy filed a Petition for Emergency Relief and Modification in the Court below on July 14, 2006, requesting a modification of the custody of the children and Brian filed a Counter-Claim for Modification and Emergency Relief on July 17, 2006, also requesting a modification of custody (Trial record 19-24).

Kathy introduced a Rule 8.05 Financial Statement which was filed in the record on February 26, 2007, showing that she was employed as an administrative assistant with Horne LLP, making a net monthly pay of \$2,783.40. (Trial Record 25-32).

Kathy's attorney submitted a statement for services rendered to Kathy in the total amount of \$6,480.00 which was filed on February 26, 2007. (1 R. 33-36).

The Court below entered its Order granting Kathy's Petition in part and denying in part and granting Brian's Counter-Claim in part and denying in part and ordered Brian to pay Kathy's attorney the sum of \$4,800.00 for attorney's fees she incurred in the matter below within thirty days of entry of the Order. (1 R. 44-50).

Brian perfected his appeal to this Court by filing Notice of Appeal, Designation of the Record, and Certificate of Compliance and also filed Motion for Stay Pending Appeal on May 10, 2007 (1 R. 51-59).

SUMMARY OF THE ARGUMENT

Brian contends that the Chancellor committed error and abused her discretion in awarding attorney's fees to Kathy contrary to the evidence that Kathy had the financial ability to pay her own attorney's fees.

ARGUMENT AND AUTHORITIES

Whether the Court erred by ordering Appellant, Larry Brian Scurlock, to pay the attorney's fees of Appellee, Kathy B. Purser (Scurlock).

A. Standard of Review

A Chancellor's decision regarding attorney's fees will not be disturbed on appeal unless it is shown that the decision is manifestly wrong. *Dunn v. Dunn*, 609 So. 2d 1277 (Miss. 1992)

B. The decision of the Chancellor to award attorney's fees was manifestly wrong

Brian and Kathy both filed requests with the Court below to modify the Final Judgment of Divorce seeking physical custody of their minor children. Each party's request was granted in part and denied in part and the parties agreed to several of the issues presented in their respective Petitions. A bill for services rendered by Kathy's attorney was admitted into evidence (1 R. 33) and Kathy testified that she could not financially afford to pay her attorney's fees (2 R. 13), however, Kathy testified that she was an administrative assistant for Horne, LLP, and that according to her financial statement, she grossed \$3,850.00 a month and netted \$2,783.00 a month. (2 R. 22).

Brian testified that he is employed for Systems Scale Corporation as a scale technician and according to his 8.05 Financial Statement, his gross monthly income was \$2,712.76 and his net monthly income was \$2,106.70. Brian testified that his net monthly income was \$600.00 a month less than Kathy's net monthly income. Brian also testified that he incurred attorney's fees as a result of the proceedings in the Court below. (2 R. 29, 30). The Court denied Brian's request.

Brian also testified that he could not afford to pay his attorney's fees and requested that the Court order Kathy to pay his attorney's fees. (2 R. 30).

In the case of *Kelley v. Kelley*, 953 So. 2d 1139, (Miss. COA 2007,) the Mississippi Court of Appeals stated as follows:

"An award of attorney's fees in domestic cases is largely a matter entrusted to the sound discretion of the trial court. *Poole v. Poole*, 701 So. 2d 813, 819 (Miss. 1997). Absent and abuse of discretion, the Chancellor's decision in such matters will generally be upheld. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1282 (Miss. 1993).

However, attorney's fees are not generally awarded unless the party requesting the fees has established an inability to pay. *Dunn v. Dunn*, 609 So. 2d 1277, 1287 (Miss. 1992)."

In the case of *Carpenter v. Carpenter*, 519 So. 2d 891 (Miss. 1988), the Mississippi Supreme Court reversed the award of attorney's fees to the wife citing *Cameron v. Cameron*, 276 So. 2d 449 (Miss. 1973) and *Nichols v. Nichols*, 254 So. 2d 726 (Miss. 1971); as support for the proposition that if a wife is financially able to pay her attorney, she is not entitled to an attorney's fee award. The Court in *Carpenter*, stated that "the relative financial conditions of these parties indicated that manifest error was committed in allowance of the amount of alimony, the Court applies the same reasoning regarding attorney's fees. The liability of Mr. Carpenter for his former wife's attorney's fee is reversed and rendered."

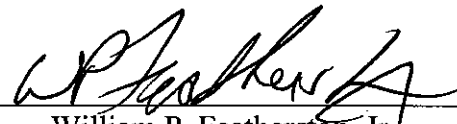
Kathy testified that her net income was \$2,783.00 a month which was \$600.00 a month more than what Brian netted. Kathy did not establish an inability to pay her attorney's fees and her relative financial condition was established to be better than Brian's and, therefore, the Chancellor abused her discretion in awarding Kathy attorney's fees.

CONCLUSION

For the reasons set forth above, Brian submits that this Court should reverse the Court below on the issue of payment of attorney's fees to Kathy.

RESPECTFULLY SUBMITTED, this the 19th day of September, 2007.

LARRY BRIAN SCURLOCK

By: 
William P. Featherston, Jr.
His Attorney

WILLIAM P. FEATHERSTON, JR. - MSB #5163
357 TOWNE CENTER BOULEVARD, SUITE 203
P.O. BOX 1105
RIDGELAND, MISSISSIPPI 39158-1105
TELEPHONE: (601) 206-5557
FACSIMILE: (601) 206-1612
Attorney for Appellant

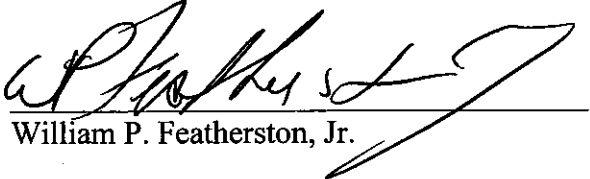
CERTIFICATE

I, William P. Featherston, Jr., of counsel for Appellant, do hereby certify that I have this day
mailed a true and correct copy of the above and foregoing Brief of Appellant to:

Honorable Patricia D. Wise
P. O. Box 686
Jackson, Mississippi 39205-0686

Melissa A. Malouf, Esq.
501 E. Capitol
Jackson, Mississippi 39201

THIS, the 19th day of September, 2007.


William P. Featherston, Jr.