

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

ESTATE OF JAKAYLA MCCOY

ERIKA JONES

APPELLANT

VS.

CASE NO. 2007-CA-00979

IRVIN L. MCCOY

APPELLEE

APPEAL FROM THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following 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. Erika Jones, Plaintiff/ Appellant;
2. W. Howard Gunn, Attorney for Plaintiff/ Appellant;
3. Irvin L. McCoy, Defendant/ Appellee;
4. Christopher J. Latimer, John F. "Jay" Perry, III,
Attorneys for Defendant/ Appellee;
5. Jaqualan Jones, potential beneficiary of Estate of
Jakayla McCoy;
6. Ashley Miller, potential beneficiary of Estate of
Jakayla McCoy.



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BRIEF OF APPELLEE

I.

STATEMENT OF THE ISSUE

Whether the lower court's ruling that Appellee, Irvin L. McCoy, is entitled to inherit from the estate of his deceased minor child, Jakayla McCoy, because he openly treated Jakayla as his own and did not refuse or neglect to support her was manifestly erroneous, an abuse of discretion, and unsupported by the substantial evidence in the record.

II.

STATEMENT OF THE CASE

A. Nature of Case and Procedural History

This case derives from a threatened wrongful death lawsuit involving the drowning of two-year-old Jakayla McCoy ("Jakayla") in a neighbor's swimming pool in Columbus, Mississippi. (R.V. I, p. 34). The neighbor's insurance company offered to pay its homeowner policy limits of \$100,000.00 to settle the threatened wrongful death suit. (*Id.*). Erika Jones ("Erika"), who is both Jakayla's mother and the administratrix of her estate, petitioned the Lowndes County Chancery Court to determine the heirs

entitled to share in the settlement proceeds. (R.V. I, pp. 12, 34). Jakayla's father, Irvin Lael McCoy ("Lael"), contested the Petition because Erika sought to exclude him as an heir. (R.V. I, pp. 17, 19, 34-38).

On May 7, 2007, the lower court held a trial to determine the heirs of Jakayla's estate. (R.V. I, p. 34). After receiving evidence from both parties, the lower court found it undisputed that Jakayla's mother, Erika, and Jakayla's half-brother, Jaqualan Jones, were both heirs and, therefore, entitled to share in the settlement proceeds. (*Id.*). Relevant to this appeal, the lower court also held that Lael was an heir and, therefore, entitled to share in the settlement proceeds. In so ruling, the lower court held that Lael had openly treated Jakayla as his daughter and had not refused or neglected to support her. (R.V. I, pp. 34-38). Dissatisfied with that ruling, Erika brought this appeal. (R.V. I, p. 39).¹

B. Statement of Facts

In May of 2003, Lael McCoy and Erika Jones fell in love. (R.V. II, pp. 13, 50, 74).² Four months later, they conceived a child and named her Jakayla. (R.V. II, pp. 50, 74).³

¹ It is uncontroverted that Lael has another daughter named Ashley Miller from a relationship with a woman other than Erika. (R.V. II, pp. 12, 48). The Chancellor expressly acknowledged Ashley's existence at the beginning of the trial as follows: "The sole issue before this Court today is whether or not the proof will support Lael and Ashley's claim to a portion of the wrongful death proceeds under the statute . . ." (R.V. II, p. 10).

The lower court's Order, however, does not mention Ashley. Despite the omission, it is clear by law that if Lael is entitled to share in the settlement proceeds, then Ashley, as his kindred, will also be entitled to share in them. Miss. Code Ann. § 91-1-15(3). The omission of Ashley in the Order appears to have been a clerical oversight and immaterial to this appeal since Lael's actions with respect to Jakayla determine whether Ashley will share in the settlement proceeds. The omission of Ashley in the Order has no effect on that determination.

² Record Volume II is the trial transcript forwarded separately in the record by the lower court.

It is undisputed that Lael is Jakayla's father. (R.V. I, p. 35; R.V. II, pp. 12-13, 48, 73). Jakayla was born on April 1, 2004, and Lael had to miss her birth because he had begun serving a prison sentence. (R.V. I, p. 35; R.V. II, pp. 13, 16-17, 50, 51, 73, 74).

Back in 2002, a year before his involvement with Erika, Lael was arrested on drug-related charges. (R.V. I, p. 35; R.V. II, pp. 12, 16, 50). Lael was out on bond and awaiting sentencing when he and Erika began their relationship. (R.V. II, pp. 16, 26). In October of 2003, Erika told Lael she was pregnant with Jakayla and Lael was happy and joyful with the news. (R.V. II, pp. 14, 50, 75). In fact, upon learning of the pregnancy, Lael and Erika decided to get their own apartment and move in together. (R.V. II, pp. 13-14, 23, 50, 75).⁴

Lael and Erika lived together for six months while she was pregnant with Jakayla until Lael was required to report to prison in March 2004. (R.V. II, pp. 14-15, 24, 50-51). During their time together, Lael acted as a loyal spouse and future father. In addition to cohabiting with Jakayla, he contributed cash to buy household items, food, and hygiene products. (R.V. II, pp. 15-16, 33, 44-45). He also watched Erika's son, Jaqualan, while Erika worked at Burger King. (R.V. II, pp. 51-52). Before reporting to prison, Lael asked his parents to contribute to Jakayla's care. (R.V. II, p. 21).⁵

³ During the trial, Lael sometimes referred to Jakayla by her middle name of "Ariel." (R.V. II, p. 22).

⁴ Lael and Erika had been living apart with their respective mothers. (R.V. II, pp. 13-14).

⁵ During Erika's pregnancy with Jakayla, the family did not incur any prenatal medical expenses because Medicaid paid them. (R.V. II, pp. 57-58).

After Lael went to prison, he put Erika on his prison visitation list. (R.V. II, pp. 19-20). On multiple occasions, Erika brought Jakayla to visit Lael in prison, and Lael always enjoyed these visits. (R.V. I, pp. 35, 37, R.V. II, pp. 19-20, 52).

While in prison, Lael asked his mother to buy Jakayla an outfit for her to wear to get a studio picture made. (R.V. II, p. 58). Erika sent pictures of Jakayla to Lael, and he eventually collected approximately 40 pictures of Jakayla in his cell. (R.V. I, pp. 35, 37; R.V. II, pp. 21-22). Based on those pictures, he was able to get a tattoo made of Jakayla's likeness on his upper right arm. (R.V. II, p. 22).

Lael also wrote letters from prison to Erika asking how Jakayla was doing. (R.V. II, pp. 20, 55-56). Erika responded to those letters by describing Jakayla's progress. (R.V. I, p. 35; R.V. II, p. 21). In one letter, she wrote that Jakayla was bow-legged and had a scratchy voice just like Lael. (R.V. I, p. 37; R.V. II, pp. 53-54, Record Excerpt 2 of Appellee, pp. 10, 16). In that same letter, Erika wrote to Lael that "(a)ll I know that I want is for one dream to come true, and that is for you to be out with your family." (R.V. II, p. 54, R.E. 2 of Appellee, p. 12). Erika signed that letter by stating "I will always love you until the end, love your wife and friend, Erika McCoy." (*Id.*, R.E. 2 of Appellee, p. 17). In the letter, Erika identified herself as Lael's wife and used his last name even though she was not officially married to him. She also signed all of the children's last names as "McCoy" because she believed that she, Lael, Jaqualan, and Jakayla were a family unit. (R.V. II, pp. 54-55, R.E. 2 of Appellee, p. 17).

In prison, Lael had no way of generating money and relied on the charity of his family for any commissary funds. His mother, father, or brother contributed small

amounts of cash to Lael's prison commissary or "canteen" account. (R.V. I, p. 36; R.V. II, p. 44). The money was converted to commissary vouchers, and Lael used these vouchers for items such as snack food, soft drinks, and hygiene products. (R.V. I, p. 35; R.V. II, p. 43). The vast majority of these deposits were for less than \$100.00 per month, and Lael consistently maintained a balance of less than \$100.00 in his account. (R.V. I, p. 36).⁶

On April 16, 2006, the prison chaplain informed Lael that Jakayla had drowned. (R.V. II, p. 17). Lael was hurt by the news and requested that he be able to attend Jakayla's funeral. (R.V. I, p. 37; R.V. II, pp. 17-18). The Mississippi Department of Corrections ("MDOC") would not allow Lael to attend the actual funeral, but would allow him to attend visitation if someone would pay his transportation costs. (*Id.*). At this time, Lael had a balance of \$3.63 in his commissary account. (R.V. II, p. 42). Lael called his parents and they deposited approximately \$300.00 into Lael's commissary account to cover his MDOC escort expenses. (R.V. I, p. 36; R.V. II, p. 43). Lael attended

⁶ It is undisputed that Lael never redistributed these funds to Jakayla or any other individual or entity outside of prison except the Mississippi Department of Corrections to allow him to attend Jakayla's funeral. (R.V. II, pp. 40-44).

Further, to clarify a fact, Leakesville Correctional Investigator Milton Martin was deposed as part of this case. His whole deposition was placed into evidence during the trial as Petitioner's Exhibit 1. Early in his deposition, he mistakenly states that Lael sent money from prison to his mother as a "payee" of his prison commissary account. Later in the deposition, Mr. Martin corrects himself to state that the individuals listed in the "payee" column of Lael's prison commissary account are the individuals who deposited money into the account, not individuals who received money from it. See Appellee's Record Excerpt 1, p. 5-9.

visitation at Jakayla's funeral and wept over her open casket. (R.V. II, pp. 18, 56). Jakayla's body rests in the McCoy family burial plot. (R.V. II, p. 56).⁷

III.

SUMMARY OF THE ARGUMENT

Lael's right to inherit from the estate of his illegitimate daughter, Jakayla, stems from Mississippi's wrongful death statute as conditioned by its illegitimate children statute. Mississippi's wrongful death statute provides in relevant part that "[t]he provisions of this section shall apply to . . . the natural father on account of the death of the illegitimate child . . . and (he) shall have all benefits, rights and remedies conferred by this section . . . if the survivor has or establishes the right to inherit from the deceased under Section 91-1-15." Miss. Code Ann. § 11-7-13. Mississippi's illegitimate children statute is phrased in the negative and states that "[t]he natural father of an illegitimate and his kindred shall not inherit: (i) [f]rom or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child." Miss. Code Ann. § 91-1-15(3)(d)(i) (sometimes "the Statute"). This Court should affirm the trial court's holding that Lael McCoy is entitled to inherit from Jakayla's estate because the evidence in record shows that Lael's actions meet the criteria established in the Statute.

First, with respect to this Court's standard of review, the lower court's holding, that Lael openly treated Jakayla as his child and did not refuse or neglect to support

⁷ Lael is currently housed in the Leake County Correctional Facility serving the third year of his nine year sentence. (R.V. II, p. 12). Since entering prison in March of 2004, he has never been let out other than to attend Jakayla's funeral visitation and testify at the trial of this case. (R.V. II, p. 51).

her, is a finding of fact. *Bullock v. Thomas*, 659 So.2d 574, 576 (Miss. 1995). It can only be reversed if manifestly erroneous, unsupported by substantial record evidence, and an abuse of discretion. *Id.*; *Estate of Patterson v. Patterson*, 798 So.2d 347, 349 (Miss. 2001). Moreover, where there is substantial evidence to support the chancellor's findings, "this Court is without authority to disturb his conclusions, although it might have found otherwise as an original matter." *Smith v. Bell*, 876 So.2d 1087, 1090 (Miss. App. 2004). Finally, where the chancellor has made no specific findings, this Court shall proceed on the assumption that he resolved all such fact issues in favor of the Appellee. *Id.*

Next, with respect to the first prong of the Statute, the record is replete with evidence showing the lower court did not manifestly err or abuse its discretion in holding that Lael openly treated Jakayla as his daughter. Lael was happy with the news of Erika's pregnancy with Jakayla and moved in with Erika shortly thereafter. (R.V. II, pp. 13-14, 23, 50, 75). He lived with Erika for six months while she was pregnant with Jakayla before reporting to prison. (R.V. II, pp. 14-15, 24, 50-51). Before going to prison, Lael asked his parents to help take care of Jakayla. (R.V. II, p. 21).

After Jakayla was born, Erika would bring her to visit Lael in prison, and these visits sustained Lael. (R.V. I, pp. 35, 37; R.V. II, pp. 19-20, 52). In prison, Lael asked his mother to buy Jakayla a picture outfit. (R.V. II, p. 58). Erika would send pictures of Jakayla to Lael, and he collected up to 40 pictures of Jakayla in his prison cell. (R.V. I, p. 35; R.V. II, pp. 21-22). Based on those pictures, he got a tattoo of Jakayla's likeness on his arm. (R.V. II, p. 22). Lael also wrote letters to Erika asking how Jakayla was progressing. (R.V. II, pp. 20, 55-56).

Further, when informed of Jakayla's death, Lael was crushed at the news, and requested the Mississippi Department of Corrections allow him to attend her funeral. (R.V. I, p. 37; R.V. II, pp. 17-18). He attended funeral visitation and wept over Jakayla's open casket. (R.V. II, pp. 18, 56). In sum, on those facts, the lower court correctly concluded that "(Lael) never wavered from his acknowledgement of the child as her father" (R.V. I, p. 37). "[A]s far as his acceptance of the child as his, there was no proof otherwise." (*Id.*).

Next, with respect to the second prong of the Statute, substantial evidence exists in the record showing the lower court did not manifestly err or abuse its discretion in holding that Lael did not refuse or neglect to support Jakayla. A key fact in this case is that Lael went to prison before Jakayla was born. (R.V. I, p. 35; R.V. II, pp. 13, 16-17, 50-51, 73-74). As a result, he could not provide monetary support to Jakayla from prison because he had no opportunity to earn income while in prison. (R.V. I, p. 38). Lael's parents and brother did contribute small sums to Lael's prison commissary or "canteen" account, but they had no legal duty to provide for Jakayla. (R.V. I, pp. 36, 38; R.V. II, p. 44). As the Chancellor reasoned "(Lael) cannot be expected to pay support when he was incarcerated, had no job, and no ability to fund such an account except through the generosity of others. The word 'prisoner' is not without strong connotation." (R.V. I, p. 38).

Further, "support" under the Statute does not have to be monetary support. *Williams v. Farmer*, 876 So.2d 300, 306 (Miss. 2004). Lael provided both monetary and non-monetary support to Jakayla by cohabitating with Erika during her pregnancy with

Jakayla, helping out with minor household expenses, babysitting Jaqualan, allowing Erika and Jakayla to visit him in prison, writing letters to Erika about Jakayla, and requesting that his parents help take care of Jakayla and buy her an outfit. (R.V. I, pp. 35, 37; R.V. II, pp. 13-16, 19-21, 23-24, 33, 44-45, 50-52, 55-56, 58, 75).⁸ The Mississippi Supreme Court has held that contributions that are even "spasmodic and appear to be more of a gratuity than the fulfillment of a legal obligation" qualify as support. *Bullock v. Thomas*, 659 So.2d 574, 575 (Miss. 1995). "The statute does not necessarily require more." *Id.*

Finally, even if it can be argued that Lael failed to provide certain support to Jakayla, the Mississippi Supreme Court has made a key distinction between a father who "refused or neglected" to provide support, as opposed to one who just merely failed to provide support. "[R]efusing or neglecting to support a child is qualitatively different from mere failure to support and this is no doubt the reason for the (specific) legislative language." *Bullock v. Thomas*, 659 So.2d 574, 578 (Miss. 1995). The lower court focused on that distinction in its holding by stating "the question before the Court

⁸ At trial, Lael's counsel stipulated that "in the proof, some evidence may come out that Lael's parents did provide certain items to Jakayla McCoy while Lael was in prison. It is not our express argument that just because they provided that support somehow Lael gets credit for that support. . . ." (R.V. II, p. 8). In other words, Lael did not ask the trial court, and is not asking this Court, to give him dollar for dollar or minute for minute "support" credit for any monies or time his parents spent on Jakayla. For example, Lael's mother kept Jakayla for the first two months of Jakayla's life while Erika worked at Burger King, and Lael is not claiming his mother's babysitting of Jakayla as "support" under the statute. (R.V. II, p. 58).

On the other hand, Lael did argue at trial, and continues to argue here, that his request to his parents to take care of Jakayla and buy her an outfit evidences his intent that Jakayla be supported when he could no longer provide monetary support due to his incarceration, and also evidences his intent to maintain a relationship with Jakayla, even while in prison.

is, not (whether Lael) didn't support, but (whether) he 'refused or neglected' to support which is a much different standard." (R.V. I, p. 38).

Indeed, for a father's actions to meet the statutory standard of refusing or neglecting to support a child, he must choose to knowingly and willingly walk away from the parental relationship. *Estate of Patterson v. Patterson*, 798 So.2d 347, 349 (Miss. 2001). In broad strokes, the father must "(choose) no relationship at all." *Id.* at 350.

By contrast, Lael always chose a relationship with Jakayla. As the Chancellor reasoned, "(Lael) was consistent as far as possible in maintaining some prior relationship with the mother and child with no knowledge of the impending tragedy." (R.V. I, p. 37). Lael never "knowingly and willingly forfeited any benefit or burden arising from openly treating (Jakayla) as his own and supporting her during his lifetime." *Estate of Patterson v. Patterson*, 798 So.2d 347, 351 (Miss. 2001). He never knowingly and willingly chose to withhold support from Jakayla or walk away from the parental relationship.

In sum, the Statute is meant to protect against fathers who refuse to acknowledge or support their children until they learn they might receive a sizeable inheritance. *Id.* It is meant to stop a father, who has had nothing to do with his child, from receiving a windfall after the child's death simply because he impregnated the child's mother. *Id.* The record facts of this case show that the lower court did not manifestly err or abuse its discretion in determining that Lael is not one of those fathers the Statute targets.

IV.

ARGUMENT

A. Standard of Review

A trial court judge's determination on the issue of whether a father has openly treated his illegitimate child as his own and has not refused or neglected to support the child "may only be treated as a finding of fact" *Bullock v. Thomas*, 659 So.2d 574, 576 (Miss. 1995). "This finding will only be reversed if manifestly erroneous or unsupported by substantial evidence in the record." *Id.* Additionally, a trial court judge's finding in this area must be sustained absent an abuse of discretion. *Estate of Patterson v. Patterson*, 798 So.2d 347, 349 (Miss. 2001) (quoting *Draper v. Draper*, 658 So.2d 866, 868-69 (Miss. 1995)).

Further, "where there is substantial evidence to support a chancellor's findings, this Court is without the authority to disturb his conclusions, although it might have found otherwise as an original matter." *Smith v. Bell*, 876 So.2d 1087, 1090 (Miss. App. 2004)(quoting *In re Estate of Harris*, 539 So.2d 1040, 1043 (Miss. 1989). "Additionally, where the chancellor has made no specific findings, we will proceed on the assumption that he resolved all such fact issues in favor of the Appellee." *Id.* (quoting *Newsom v. Newsom*, 557 So.2d 511, 514 (Miss. 1990). Accordingly, under these standards of review, this Court should affirm the lower court's ruling that Lael McCoy openly treated Jakayla as his child and did not refuse or neglect to support her because the decision was not manifestly erroneous, was not an abuse of discretion, and was not unsupported by substantial evidence in the record.

B. Mississippi's Illegitimate Children Statute

Mississippi's illegitimate children statute governs the issue in this appeal. It provides in pertinent part that "[t]he father of an illegitimate and his kindred shall not inherit: [f]rom or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child." Miss. Code Ann. 91-1-15(3)(d)(i). The Mississippi Supreme Court has pointed out that the Statute is stated in the negative and sets forth two distinct requirements. *Estate of Patterson v. Patterson*, 798 So.2d 347, 349 (Miss. 2001). The first is that the father must openly treat the child as his. *Id.* The second is that the father must not refuse or neglect to support the child. *Id.* In this case, the lower court did not manifestly err or abuse its discretion in ruling that Lael met both requirements, and there is substantial evidence in the record to support that finding.

C. Lael Openly Treated Jakayla As His Daughter

Erika apparently concedes that Lael has treated Jakayla as his daughter, and the record is replete with evidence showing that treatment. When Erika told Lael she was pregnant with Jakayla, he was happy and joyful. (R.V. II, pp. 14, 50, 75). In fact, he moved in with Erika shortly after learning of the pregnancy. (R.V. II, pp. 13-14, 23, 50, 75). Lael then lived with Erika for six months while she was pregnant with Jakayla and before he went to prison. (R.V. II, pp. 14-15, 24, 50-51).

Before going to prison, Lael asked his parents to take care of Jakayla. (R.V. II, p. 21). While in prison, Lael asked his mother to buy Jakayla an outfit for her to wear to get her picture made. (R.V. II, p. 58). Erika brought Jakayla to visit Lael in prison several times, and he enjoyed those visits. (R.V. I, p. 37; R.V. II, pp. 19-20, 52). Erika

also sent Lael pictures of Jakayla and he ultimately collected approximately 40 pictures of her in his prison cell. (R.V. I, p. 35; R.V. II, pp. 21-22). He also got a tattoo of Jakayla's likeness on his arm. (R.V. II, p. 22).

Additionally, Lael wrote letters from prison to Erika asking how Jakayla was doing. (R.V. II, pp. 20, 55-56). After learning of Jakayla's death, Lael requested permission to attend her funeral. (R.V. II, pp. 17-18). He was allowed to attend Jakayla's funeral visitation, and while there, wept over her open casket. (R.V. II, pp. 18, 56). As the lower court summarized with respect to this prong of the Statute, "(Lael) never wavered from his acknowledgment of the child as her father" (R.V. I, p. 37). "[A]s far as his acceptance of the child as his, there was no proof otherwise." (*Id.*) Accordingly, Lael's actions with respect to Jakayla met the first prong of the Statute, and the lower court did not manifestly err or abuse its discretion in holding that Lael openly treated Jakayla as his own child.

D. Lael Did Not Refuse or Neglect to Support Jakayla

This appeal centers on allegations that Lael failed to provide Jakayla with prenatal monetary support before he went to prison and/or postnatal monetary support after he went to prison. This alleged failure to provide prenatal and postnatal monetary support, even if true, does not demonstrate that Lael refused or neglected to support Jakayla.

First, the lower court did not manifestly err or abuse its discretion in determining that Lael did not refuse or neglect to provide monetary support to Jakayla after he went to prison. One of the practical aspects of prison is that prisoners have no opportunity to

make money while there. Lael had no opportunity to make money in prison to give to Jakayla. (R.V. I, p. 38). The only way his prison commissary account could be funded was through outside donations. With that said, Lael only received minimal commissary funds from his mother, father, and brother, all of whom had no legal duty to provide support to Jakayla. (R.V. I, p. 36; R.V. II, p. 44). On this point, the lower court's holding is especially well reasoned:

[H]ow could (Lael) have funded this account and paid support in the first place? It is not the legal responsibility of his parents, friends, and family to do so It is solely his responsibility to fund and pay the support in order to avoid this very question. He cannot be expected to pay support when he was incarcerated, had no job, and no ability to fund such an account except through the generosity of others. The word "prisoner" is not without strong connotation . . . It would be inequitable and contrary to the statute based on these circumstances to determine that the claimant's rights as an heir should be denied when he was effectively unable to meet the requirements of this statute. (R.V. I, p. 38).

Moreover, "support" under the Statute need not only be monetary support. *Williams v. Farmer*, 876 So.2d 300, 306 (Miss. 2004) (holding the father "did not contribute any support, financial **or otherwise** to (the mother) during her pregnancy or thereafter) (emphasis added). From a non-monetary standpoint, Lael supported Jakayla by providing companionship to Erika throughout the majority of her pregnancy with Jakayla, and by babysitting Jaqualan. (R.V. II, pp. 13-14, 23, 50, 51-52 75). Lael also provided non-monetary support to Erika and Jakayla from prison by allowing them to visit, writing letters to them, requesting that his parents take care of Jakayla, and that his mother buy her an outfit to wear to have her picture made. (R.V. II, pp. 19-20, 21, 37, 52-56, 58).

The Mississippi Supreme Court has held that contributions that were even "spasmodic and appear to be more of a gratuity than the fulfillment of a legal obligation" qualify as support. *Bullock v. Thomas*, 659 So.2d 574, 575 (Miss. 1995) "[T]he statute does not necessarily require more." *Id.* Here, Lael also contributed to the household expenses by providing cash to purchase food and hygiene products while Erika was pregnant with Jakayla. (R.V. II, pp. 15-16, 33, 44-45). There were no prenatal medical expenses because Medicaid paid them. (R.V. II, pp. 57-58). Simply put, Lael's actions qualify as prenatal support under the Statute.

Further, even if it can be argued that Lael failed to provide certain monetary support to Jakayla, the Mississippi Supreme Court has made a key distinction between a father who "refused or neglected" to provide support, as opposed to one who just merely failed to provide support. "This Court has said that refusing or neglecting to support a child is qualitatively different from mere failure to support and this is no doubt the reason for the legislative language." *Bullock v. Thomas*, 659 So.2d 574, 578 (Miss. 1995). The lower court focused on this distinction in its ruling by stating "the question before this Court is, not (whether Lael) didn't support, but (whether) he "refused or neglected" to support which is a much different standard." (R.V. I, p. 38).

For actions to rise to the statutory standard of "refusing or neglecting to support a child," there must be an affirmative choice made by the father to "knowingly and willingly" walk away from responsibility for his child. *Estate of Patterson v. Patterson*, 798 So.2d 347, 349 (Miss. 2001). The bottom line is that father must "(choose) no

relationship at all," *Id.* at 350, and demonstrate a "total lack of concern and indifference" towards the child. *Williams v. Farmer*, 876 So.2d 300, 304 (Miss. 2004).

The case of *Estate of Patterson v. Patterson* especially illustrates the distinction between the statutory wording of "refusal or neglect to support," as opposed to "mere failure to support." 798 So.2d 347 (Miss. 2001). In *Estate of Patterson*, two students at Alcorn State University had a four-month long affair in which they conceived a child. *Id.* at 348. When the mother told the father she was pregnant with his child, the father at first denied the child was his, and then said "when the blood tests come back," they would "talk then." *Id.*

Upon learning of the pregnancy, the father shut off all communication with the mother. *Id.* He did not know when his child was born, and for three years never met the child, nor provided it with any food, clothing, medical expenses, birthday cards, or Christmas presents. *Id.* Four days before the child was killed in an automobile accident, the father received confirmation from a blood test that he truly was the child's father. *Id.* at 349. Despite receiving that news, the father paid nothing towards the child's funeral bill. *Id.* at 348.

In denying the father inheritance through the deceased illegitimate child, the Mississippi Supreme Court reasoned that the father "knowingly and willingly forfeited any benefit or burden, arising from openly treating (the child) as his own **and supporting him during his lifetime.**" *Id.* at 349 (emphasis added).⁹ The bottom line

⁹ Erika's attempt to limit *Estate of Patterson* to the first prong of the statute (Appellant Brief, p. 12) fails because the Mississippi Supreme Court's decision in *Estate of Patterson* repeatedly references and applies the "support" prong of the Statute.

was that the father "chose no relationship at all." *Id.* at 350. The Mississippi Supreme Court concluded that "[t]his case is a classic example of conduct the statutes and case law seek to prevent. A father should not be allowed to receive a windfall simply because he impregnated the child's mother." *Id.* at 351. The father "refused to openly treat the son . . . as his own or to comply with his duty to provide essential **support**, until it appeared he might receive a sizeable inheritance." *Id.* (emphasis added).

By contrast, Lael always chose a relationship with Jakayla. As the Chancellor reasoned, "(Lael) was consistent as far as possible in maintaining some prior relationship with the mother and child with no knowledge of the impending tragedy." (R.V. I, p. 37). He attempted to maintain a relationship with Jakayla and Erika through letters, pictures, prison visits, a tattoo of Jakayla, and communication with his other family members about Jakayla. Lael gave all of the support he could - he just had no means in prison to provide financial support. He never knowingly and willingly chose to withhold support from Jakayla or walk away from his parental relationship. Therefore, the lower court did not manifestly err or abuse its discretion in holding that Lael did not refuse or neglect to support Jakayla.

E. *Williams v. Farmer*, 876 So.2d 300 (Miss. 2004), Does Not Prove That the Lower Court's Ruling Was Manifestly Erroneous, an Abuse of Discretion, and Unsupported by Substantial Evidence

Erika argues on appeal that *Williams* controls this case and bars Lael's right to inherit from Jakayla's estate. This argument also misses the mark because the holding of *Williams* is expressly limited and based specifically on the highly distinguishable facts of that case.

In *Williams*, the sole issue was “whether the requirements of Miss. Code Ann. § 91-1-15(3)(d)(i) apply in circumstances where the illegitimate child is a fetus.” *Id.* at 302. Ultimately, the Mississippi Supreme Court held that the requirements of the statute did apply, but the father still could not inherit through the fetus because he did not openly treat the fetus as his own and refused or neglected to support it. *Id.* at 306.

More particularly, the father in *Williams* knew the mother was pregnant with his child, but had no contact with her for two years from the date of his awareness of the pregnancy to his knowledge of the death of the fetus. *Id.* at 306. The father did not know of the death of the fetus for approximately two years because he made no effort to be a father to it. *Id.* Further, the father did not contribute any support, financial or otherwise, to the mother during her pregnancy or thereafter. *Id.* Finally, the biggest difference between the father in *Williams* and Lael is that the father in *Williams* was not in prison. He had every opportunity to be a part of the life of the mother while she was carrying the fetus and, despite that opportunity, chose not to have anything to do with mother or unborn child.

Mississippi’s illegitimate children statute is specifically tailored to prevent a deadbeat dad like the one in *Williams* from profiting from the untimely death of his child. Lael’s actions, by contrast, in no way resemble the actions of the father in *Williams*. *Williams* stands for the black letter rule that the Statute applies even with respect to a fetus. It does not, however, prove that the lower court in this case committed manifest error and abused its discretion based on the highly distinguishable facts on record.

V.


CONCLUSION

Mississippi's illegitimate children statute is meant to stop a father, who has had nothing to do with his child, from receiving a windfall after the child's death simply because he impregnated the child's mother. *Estate of Patterson v. Patterson*, 798 So.2d 347, 351 (Miss. 2001). It is meant to block that father who turns his back on the very existence of his child, only to resurface and claim his child when it appears the father might receive a sizeable inheritance from the child's death. *Id.*

Lael was simply not that type of father to Jakayla. As the lower court accurately determined, "(Lael) was consistent as far as possible in maintaining some prior relationship with the mother and child with no knowledge of the impending tragedy." (R.V. I, p. 37). He always acknowledged Jakayla and took steps to maintain a relationship with her both before and after he went to prison. At no time did Lael ever "knowingly and willingly" turn his back on Jakayla and affirmatively withhold support from her. *Estate of Patterson*, 798 So.2d at 349-350. At all times, he chose a relationship with Jakayla as opposed to "(choosing) no relationship at all." *Id.* at 350.

In sum, the evidence on record in this case supports the lower court's finding and proves the lower court did not commit manifest error or abuse its discretion. For the reasons stated in this Brief, and any other reasons this Court deems appropriate, it should affirm the lower court's ruling.

Respectfully submitted,



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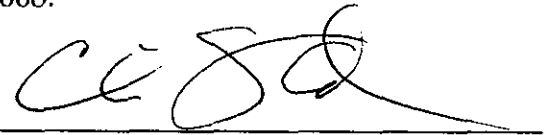
CERTIFICATE OF SERVICE

I, Christopher J. Latimer, attorney for Appellee, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF APPELLEE** to:

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Honorable H. J. Davidson, Jr.
Chancery Court Judge
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So certified on this the 8th day of January, 2008.

A handwritten signature in black ink, appearing to read 'CJ Latimer', written over a horizontal line.

CHRISTOPHER J. LATIMER
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