

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

ESTATE OF JAKAYLA McCOY

ERIKA JONES

APPELLANT

VERSUS

CASE NO. 2007-CA-00979

IRVIN L. McCOY

APPELLEE

APPEAL FROM THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

**REPLY BRIEF OF APPELLANT  
ESTATE OF JAKAYLA McCOY  
ERIKA JONES v. IRVIN L. McCOY**

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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 (Estate of Jakayla McCoy) Plaintiff/Appellant
2. W. Howard Gunn Attorney for Plaintiff/Appellant
3. Irvin L. McCoy, Defendant/Appellee
4. Chris J. Latimer, Attorney for Defendant/Appellee

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W. HOWARD GUNN  
ATTORNEY FOR APPELLANT

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REPLY BRIEF OF APPELLANT

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I.

STATEMENT OF THE ISSUE

The Trial Court Erred In Finding That The Appellee, Irvin L. McCoy, Father of Deceased Minor Child, Jakayla McCoy, Is Entitled to Inherit From Her Estate Where He Failed To Meet His Burden Of Proof That He Did Not Refuse, Or Neglect To Support The Child.

- A. The Appellee, Irvin L. McCoy, in his Brief has failed to show that he met his burden of proof in the Lower Court that he did not refuse or neglect to support Jakayla McCoy and that the Lower Court's ruling was not manifestly erroneous and abuse of discretion and/or unsupported by substantial evidence in the Record.

Irvin L. McCoy, in his Brief (pp.306), has shown facts in evidence that he meets the first prong of the test for inheritance of fathers of illegitimate children under Mississippi Code 91-1-15(d)(i) that he openly acknowledged and treated Jakayla as his child:

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)

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  
aright 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)

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)

Lael attended visitation at Jakayla's funeral  
and wept over her open casket. (R.V.II,  
pp.18,56)

Nevertheless, McCoy has failed to provide one scintilla of evidence in support of  
meeting the second prong of Mississippi Code 91-1-15(d)(i) that he did not refuse or  
"neglect" to support the child, Jakayla McCoy. In essence, McCoy in his Brief has failed to  
address the issue which was before the learned Chancery Judge, and now pending before this  
Court. Simply, did McCoy meet his burden of proof that he did not refuse, or "neglect" to  
support Jakayla McCoy.

As above outlined, the Record is replete with Irvin McCoy's acknowledgment of  
Jakayla as his child. However, the Record is devoid of any evidence of support of Jakayla  
by McCoy either prenatal or subsequent to her birth. McCoy has made various failed  
arguments to show support.

- (1) McCoy cites Bullock v. Thomas, 659 So.2d 575 (Miss.1995), and argues that  
he provided some support for Jakayla:

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 (sp), 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)

Thus, the case at bar is unlike Bullock where there was documentary proof that Bullock provided some support even though sporadic to his illegitimate child as found by the Court:

[5][6] The next question is whether the chancellor was wrong in determining that Bullock failed to establish the negative-that he did not refuse or neglect to support Mario. 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." Matter of Estate of Ford, 552 So.2d at 1068, citing Department of Welfare of City of New York v. Siebel, 6 N.Y.2d 536, 546, 190 N.Y. S.2d 683, 691, 161 N.E.2d 1, 7 (1959). Again, the chancellor's findings of fact should not be overruled unless manifestly erroneous or unsupported by the record. *Id.*

The chancellor found that Bullock failed to satisfy this portion of the statute even though "some support trickled down to Mario by virtue of Matthew's relationship with his mother." Although the chancellor stated that "the proof establishes that his contributions were spasmodic and

appeared to be more of a gratuity than the fulfillment of a legal obligation,” the chancellor concluded that Bullock did present evidence that he made financial contributions for the benefit of Mario. There is no question that Bullock could have done more for Mario, but the statute does not necessarily require more than Bullock showed.

It was uncontradicted that Bullock received only \$480.00 a month in the form of a disability check. Further, Bullock stated that he provided Linda money when she needed it for Mario, and that he averaged giving her \$100.00 a month. Jerry Dean, Linda’s sister, corroborated this testimony to some degree by stating that she was with Bullock and Linda when Bullock cashed his check and gave Linda some money. Bullock bought Mario his first pair of shoes and a kerosene heater for his use. This was enough to show that Bullock did not refuse or neglect to support Mario. This portion of the chancellor’s opinion was manifestly erroneous. (Emphasis supplied)

In the case at bar McCoy provided no such proof other than a generalized statement that he helped out with undocumented minor household expenses. Even though requested time and time again by the Court and given extension after extension after extension by the Trial Court to provide such proof, he failed to do the same. (R.E. VII,p.1) (R.V.I, p.26; R.V.II, pp.25-26) Certainly, it cannot be argued that 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 constituted support.

- (2) In realizing that he had failed to meet his burden of proof to show even sporadic monetary support to Jakayla, McCoy then argues that he supported Erika Jones during the prenatal birth of Jakayla because he babysat for the minor child on one (1) occasion for thirty (30) minutes, allowed Erika and Jakayla to visit him in prison, wrote letters to Erika about Jakayla, and requested that his parents help take care of Jakayla and buy her an outfit. In a further attempt to explain his non-support to Jakayla, McCoy makes an interesting, but failed argument, that support under the Statute need not only be monetary support citing Williams v. Farmer, 876 So.2d 300, (Miss.2004), for such proposition. Such is in error. In Williams, the Court held that Williams failed to contribute any support financially or otherwise during the pregnancy or thereafter for his minor child. McCoy has made a similar failure. McCoy did not provide “any evidence that he supported Jakayla financially”. Furthermore, he did not provide evidence that he “otherwise” provided support to Erika or Jakayla. The term “otherwise” would include such things as purchasing clothing, food, or other items for the subsistence of Jakayla. It would provide for the purchase of prenatal necessities for Erika McCoy during her pregnancy. The Record is absent of any such proof by McCoy. Realizing the absence of such evidence, McCoy then makes the novel argument that he provided support to Jakayla as follows:

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 (sp). (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)

- (3) Upon reviewing the facts of this case, and realizing that he could not provide proof that he did not refuse, or neglect to support Jakayla, McCoy argued again that he was exempt from the requirements of Mississippi Code 91-1-15(d)(i) because of his incarceration:

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)

Such argument is defective and fails based upon the facts of this case:

- (a) McCoy had an inmate account while in prison where the total deposits therein amounted to over \$2,000.00 prior to Jakayla's death. However, prior to her death and with knowledge that he could have tendered funds of support to Erika failed to tender any funds for the support of Jakayla. (R.V.II, p.33, 35-38; R.E. pp.19-22; R.E. pp. 4-8; R.V.II, p.38, 25-37,40) The Record reveals that he did not send her

one cent. There was not even contributions constituting spasmodic support made. See Bullock v. Thomas, 659 So.2d 575 (Miss.1995).

McCoy lived with Erika for over four (4) months prior to the birth of Jakayla and did not provide any prenatal support (purchase of clothing, pampers, or other prenatal supplies) for Jakayla. See Williams wherein the Court gave a strict interpretation of Mississippi Code 91-1-15(d)(i) requiring the father of an illegitimate child to show support even by prenatal support in order to inherit. Such requirement is even more applicable to Lael McCoy who lived with Erika for months prior to the birth of Jakayla and after her birth had access while incarcerated to monetary funds amount to in excess of \$2,000.00.

A review of the above facts and arguments of McCoy reveals that McCoy has met the first prong of 91-1-15(d)(i) of opening treating the child as his (acknowledgment). However, he has failed to meet the second prong by showing that he supported Jakayla during her lifetime. See Estate of Patterson v. Patterson, 798 So.2d 347, (Miss.2001), wherein the Mississippi Supreme Court disallowed the father's inheritance based upon the failure of the father to meet his burden that he openly treated the child as his own "and supported" him. Again, Patterson, cannot be interpreted as a substitution of the requirement of acknowledgment for support under the Statute. Both are required.

## II.

### CONCLUSION

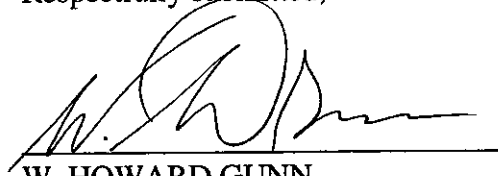
Lael McCoy urges this Court to allow him to inherit from the death of Jakayla McCoy, his illegitimate child. He meets his burden of proof of openly treating Jakayla as his child. Such has not been denied by Erika Jones. However, he fails to present any proof that he did not refuse or neglect to support Jakayla:

- (1) He failed to show monetary support by tendering money to Jakayla or support “otherwise” by the purchase of clothing or other necessities for Jakayla.
- (2) He requests the Court to allow his “compassion for Jakayla” to substitute for support. Furthermore, he urges the Court to substitute his acknowledgment of Jakayla as his child for support, and to disregard the second prong of the burden of proof that he did not refuse or neglect to support Jakayla.
- (3) Finally, he makes request of the Court to set a new precedent and grant him immunity or an exception, or exemption from the requirements of Mississippi Code 91-1-15(d)(i) due to incarceration. An exception heretofore not granted to more deserving fathers.
- (4) Mississippi Code 91-1-15(d)(i) was designed to prevent a deadbeat father from inheriting from an illegitimate child unless he openly treated the child as his own and had not refused or neglected to support the child. McCoy admitted and acknowledged Jakayla as his child. However, he refused (R.V.II, p.59, 77, 80) and certainly neglected to support Jakayla. To allow McCoy to inherit in this case would create a substitute of “compassion” or

acknowledgment for “support”. If Mississippi Code 91-1-15(d)(i) required only the proof of compassion or acknowledgment for inheritance and defined the same as support as suggested by McCoy, an illegitimate father could easily argue that he “loved his child, kept pictures of her, was compassionate towards her and her mother, told his parents to buy clothing for her, was distraught at her death, placed a tattoo of her on his arm, and inherit at her death in the absence of providing any proof of support of the child”. In essence he would not have to prove that he did not refuse or neglect to support his child as mandated by Section 91-1-15(d)(i).

- (5) McCoy in failing to meet his burden of proof that he did not refuse or neglect to support Jakayla again urges upon this Court the affirmance of the Lower Court in creating a precedent of exempting incarcerated fathers from the requirements of Mississippi Code 91-1-15(d)(i). Mississippi Code 91-1-15(d)(i) is particularly applicable in this case where McCoy had access to funds with which to provide at a minimum spasmodic support to Jakayla. Such was not the intent of the Legislature in promulgating Mississippi Code 91-1-15(d)(i). See Williams v. Farmer, 876 So.2d 300, (Miss.2004) . It is based upon the foregoing facts and authorities and such facts and authorities cited in the Brief of Appellant that the Order of the Lower Court should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Howard Gunn', is written over a horizontal line.

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III.


CERTIFICATE OF SERVICE

I, W. Howard Gunn, attorney for Claimant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF APPELLANT** to:

Honorable Chris J. Latimer  
Attorney at Law  
PO Box 80281  
Starkville MS 39759

Honorable H. J. Davidson, Jr.  
Chancery Court Judge  
PO Box 684  
Columbus MS 39703-0684

So certified on this the 22<sup>nd</sup> day of January, 2008.



W. HOWARD GUNN  
ATTORNEY FOR APPELLANT