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

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

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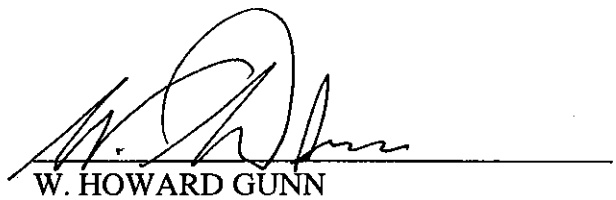
CERTIFICATE OF INTERESTED PERSONS

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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BRIEF OF APPELLANT

I.

STATEMENT OF ISSUES

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.

II.

STATEMENT OF THE CASE

In May, 2003, Appellant, Erika Jones (hereinafter referred to as "Jones"), and Appellee, Irvin L. McCoy (hereinafter referred to as "McCoy"), began dating. (R.V.II,pp.50,74)[1] McCoy had been arrested on a charge of sale of cocaine and was out on bond posted by his father. (R.V.II,p.29) Around August, 2003, they conceived the minor decedent child, Jakayla McCoy, subject of this cause. (R.V.II,pp.50, 75). Jones leased an apartment around October 8, 2003, and McCoy who was living with his parents at the time

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1 Reference to Record Volume numbers are to Volume Numbers 1 and 2 reflected on the Cover Page showing Supreme Court Case number. In Volume II, pages 71-81, the Court Reporter has erroneously referred to the Direct and Cross Examination of Erika Jones as that of Irvin McCoy, Sr.

moved in with her. (R.V.II,p.23) Jones was working at Burger King. (R.V.II,pp.29, 30, 73). McCoy was unemployed and received financial support from his parents. (R.V.II, pp.27-28) While they were living together, Jones paid the rent, utilities, bought the groceries, appliances, made furniture payments and other subsistence expenses. (R.V.II,pp.76-80) Having no income or job, McCoy paid no such expenses nor prenatal or post birth expenses for Jakayla McCoy even though requested to do so by Jones. (R.V.II,pp.59,77,80)

In March, 2004, McCoy, who had lived with Jones since October, 2003, was sentenced to prison for sale of cocaine charges, remains incarcerated, and was so incarcerated at the time of hearing of this cause. (R.V.II,p. 24) While incarcerated in the Leakesville MS Center from June 29, 2004 through December 12, 2005, McCoy was informed by copy of Inmate Handbook of the procedure whereby he could send funds from his Inmate Account to family members and the "outside world". (R.V.II,p.39, R.V.I,p.33, EX.p.1, R.E.pp.10-12) When confronted with such fact at the hearing of this cause and in an attempt to avoid the obvious (his access to funds and neglect of payment of any support to his minor child and his knowledge of the procedure for doing so), McCoy simply stated that he did no remember receiving such handbook. (R.V.II,pp.31-32) During such time period, McCoy received in his Inmate Account an amount in excess of $2,000.00. (R.V.II,p,38) Nevertheless, he did not send "one penny" to Jakayla McCoy, his daughter.

Tragically, on April 16, 2006, Jakayla McCoy died from drowning in a swimming pool accident. (R.V.I,pp.12-15, R.E.23-26) Following such death, Jones retained counsel herein for pursuing a claim against the pool owner. Following settlement of the claim, Jones opened the Estate of Jakayla McCoy, gave notice to McCoy as father of Jakayla McCoy and filed a Petition to Determine Heirship alleging in such Petition that McCoy was barred from

inheritance from Jakayla McCoy's Estate pursuant to Mississippi Code 91-1-15(d)(i). (R.V.I,pp.12-15,R.E.23-26) McCoy made appearance through counsel claiming he should inherit, irrespective of the fact that he neglected and provided no support for prenatal or post birth expenses of Jakayla McCoy, and had not even paid one cent on her funeral bill or expenses.

Following the hearing of this cause, on May 7, 2007, the learned Chancellor in accepting the above outlined facts found that McCoy met his burden of proof and was entitled to inherit from the Estate of the Minor Child, Jakayla McCoy. (R.V.I,pp.34-38, R.E.4-8) Being aggrieved of such Decision, Jones filed Notice of Appeal herein on June 7, 2007.

III.

SUMMARY OF THE ARGUMENT

Jones and McCoy began dating in May, 2003 (R.V.II,pp.50,74) They conceived a child around August, 2003. (R.V.II,p.50) At the time, Jones already had one (1) child and was living with her mother at 103 Mill Street, Columbus MS. Around October, 2003, Jones informed McCoy of her pregnancy. (R.V.II,pp.74-75) Due to the impending birth of her child conceived with McCoy, she moved into an apartment at 100 Mill Street, on October 8, 2003. (R.V.II,pp.75-76) McCoy, who was unemployed, moved in with her. McCoy was on bond for sale of cocaine and living with and financially dependent on his parents. (R.V.II,pp.23,27-29) At the time of moving into the apartment at 100 Mill Street, Jones was working at Burger King full time. (R.V.II,pp.29,73) Consequently, at the time Jones began dating McCoy, he had been arrested on charges of sale of cocaine, did not have funds to

make bond, and was bonded out by his father, Irvin McCoy, Sr. (R.V.II, p.29)

In testimony before the Court, Irvin McCoy, Sr. Stated that McCoy at the time of moving in with Jones had no visible means of support or transportation. (RV.II,pp.66-68)

Jones continued to work while allowing McCoy to live with her. She paid the apartment deposit (R.V.II,p.76), the rent, utilities, brought groceries, paid appliance and furniture payments, gas for her car to go to work, prenatal care, post birth expenses, travel expenses and other subsistence expenses. (R.V.II,pp.76-80) McCoy admitted that he had no job or income even though he had promised Jones that he was going to get a job prior to moving in with her. (R.V.II,p.77) When pressed on cross examination for proof of his payment of any of the above expenses, he stated he had none. (R.V.II,pp.25-37) Most interestingly, when asked about bills he paid while living with Jones prior to the birth of Jakayla McCoy, the child conceived with Jones and born on April 1, 2004, he stated that he "helped with the upkeep of the apartment". (R.V.II,p.15) He did not itemize a single bill paid by him. Furthermore, when asked specifically whether or not he assisted Jones with prenatal expenses, he could not list any such support, nor itemize the items, show purchase receipts, or testify about purchases of pampers, baby powder, clothing, or other items either pre or post birth of Jakayla. (RV.II,pp.25-37) Other than babysit with Ty, Jones's other child on one (1) occasion for thirty (30) minutes, he would sit at home all day doing nothing. (R.V.II, pp.52,78) Also, of significance, when asked if he had ever purchased Jakayla one (1) piece of clothing, his testimony was that he told his mother on one (1) occasion to purchase Jakayla an outfit in which to take pictures. (RV.II,pp.34-35) The parties stipulated at the hearing that McCoy gets no credit of support for any purchases, contributions, or

payment of expenses on Jakayla by his parents. (R.V.II, p.8) Jones testified that she would ask McCoy to help with prenatal expenses, primary expenses, and other needs and that he would promise to help, but never did. (R.V.II,pp.59,77,80)

McCoy was sentenced to prison in March, 2004.(R.V.II,p.24) He was initially incarcerated at the Lowndes County Detention Center and transferred to the Mississippi Department of Corrections (MDOC) Facility at Leakesville MS on June 29, 2004, and remained there until December 12, 2005 (R.V.I,p,33. Ex.P.1, R.E.p.13). Mr. Martin, Chief Investigator of the Leakesville Facility testified that his duties included "inmate accounts" (R.V.I,p.33, Ex.P.1, R.E.p.10). He further testified that under MDOC procedure, when an inmate arrives at an MDOC facility, he is given an inmate handbook which outlines the procedure whereby and authorizing an inmate to send funds to family members or "the outside world".

> Q. What happens to the funds sent to inmates, then?
>
> A. Well, they're sent to Jackson to a centralized address. They're deposited into an account there. No inmates are allowed to have cash money on the compound. It's all a cashless operation, and they can buy commissary from here, which includes TV, cigarettes, tobacco, personal hygiene items, food, soft drinks, along that line. They can also order outside the institution, magazine subscriptions, newspaper subscriptions, books and so forth. <u>They can also send money to their families and to any other person designated as long as it's approved by</u>

CID. (Emphasis supplied)

Q. Okay. How do they gain access to it? What's the process for that?

A. There's a form available to them in the building, in the housing units that they fill out. There's some inmate transaction request form, has to be signed off by the building unit supervisor and also either the warden or another witness, officer witness, and that is forwarded to the inmate accounts office here. Lisa Brown will take that, go through the inmate's account, make sure that he has enough funds available for this particular purchase, and when she gets everything ready, she'll call me. I go in her office, review them, and then sign off on the ones that I approve.

Q. Is that the same process for sending money to an outside person - -

A. Right.

Q. - - at an outside facility?

A. Now, for an outside person, they can only send up to $100 a month without any in-depth approval. On certain situations, such as we were talking a while ago, attorney fees, court costs, things along that line that are over $100. I will interview that inmate, ask him why he's wanting to send this money, and if it's like going to an attorney, then I will contact the attorney and say are you representing this inmate and does he owe you this amount of money. If he says yes, then I will approve it, and if it's over $300,

I will take it to the superintendent, and he'll approve it, and then we'll send it on.

Q. Okay. And, of course, are the records kept of this whole transaction?

A. Yes.

R.V.I, p.33, Ex.P.1, R.E.pp.10-12

Q. So the records you just gave me, that was from June 1st of '04 until pretty much the present date?

A. Yes, sir.

R.V.I,p.33, Ex.P.1, R.E.p.14

Q. I was looking at this, is there any - - on the account, is there any statements where it says that Jakayla McCoy or Erika Jones received money?

A. No.

Q. None?

A. (Shakes head negatively).

Q. To your knowledge, has Mr. McCoy made any requests to forward any funds to Jakayla McCoy or Erika Jones?

A. If it had been in her name or the child's name, it would have been reflected on that form right there.

Q. All right. And earlier you gave me a copy of a handbook where the inmate receives instructions on how to accomplish transfers of their accounts

and so forth?

A. Right.

Q. And that was the process at the time that Mr. McCoy was here?

A. Yes.

Q. And he received a copy of that? (Emphasis supplied)

A. Yes. (Emphasis supplied)

Q. And signed for it?

A. Yes. I'm sure he did. Like I said, all that is done at Central Mississippi - -

Q. That's the normal process - -

A. Right, normal process.

R.V.I,p.33, Ex.P.1, R.E.pp.14-15

McCoy admitted receiving in excess of $2,000.00 of funds in his inmate account.(R.V.II,p.38) He did not send one penny to Jakayla.(R.V.I.p.33, P.1., R.E.pp.19-22, R.V.II, p.40) McCoy, in an attempt to justify not sending money to Jakayla, could not testify that he did not receive the handbook, but that he did not remember receiving it and that, if so, he did not read it.(R.V.II,pp.31-32)

On April 16, 2006, Jakayla met with a tragic death by drowning. After her death, McCoy made no effort to pay anything towards the funeral expenses or other expenses relative to her death.(R.V.II,p.37) Nevertheless, after a settlement of a wrongful death claim by Jones with the owner of the premises where Jakayla drowned, McCoy without any

evidence of support of Jakayla, made a claim to share in the settlement proceeds.

A review of the above recited facts, accepted as findings of fact by the Chancellor in his Order allowing McCoy to inherit from the Estate of Jakayla McCoy (R.V.I,pp.35-38, R.E.,pp.4-8), reveals that McCoy failed to meet his burden of proof that he did not refuse or "neglect" (emphasis supplied) to support his minor child.

IV.

ARGUMENT

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.

Mississippi Code 91-1-15(d)(i) provides as follows:

> (d) The natural father of an illegitimate and his kindred shall not inherit:
>
> (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

The burden of proof is on the father to show by a preponderance of the evidence that he provided support for the child. See Woodall, et al. v. P. L. Johnson, et al., 522 So.2d 1065, (Miss.1989). The Court has interpreted Miss. Code 91-1-15(d)(i) consistent with the intent of the Legislature. See Williams v. Farmer, 876 So.2d 300, (Miss.2004), wherein the

Court dealt with an issue of first impression, "whether the father of an illegitimate fetus killed an a car wreck would be barred from sharing in the wrongful death proceeds due to non-support. In addressing the issue of the Legislative intent, the Court held:

> FN1. The legislature, in the 2004 regular session, passed House Bill 352 amending §11-7-13 to include death of an unborn quick child in the wrongful death statute.
>
> ¶12. Williams contends that it is virtually impossible to comply with the requirements of the statute where the decedent is a fetus. He contends that he was never "afforded the opportunity to take Asiah to the zoo or to the park as she never had the benefit of breathing her first breath." He further claims that he happily agreed that Asiah was his child, and even offered financial assistance during the maternity stage, but was refused. Willilams also states he was discouraged from visiting Farmer by threat from her family members. However, there is no evidence in the record that substantiates these allegations.

The Court in denying William's claim held:

> ¶19. This is a case of first impression. Well-settled principles of statutory interpretation require us to ascertain the legislative intent from the language of the act and to discern and give effect to that intent. City of Natchez, Miss. v. Sullivan, 612 So.2d 1087, 1089 (Miss. 1992).
>
> ¶20. It is clear from the language of the statute that fathers are entitled to

> inherit from their illegitimate children upon showing that the father openly treated the child as his own and has not refused or neglected to support the child. The statute clearly governs situations where the illegitimate child has actually been born and lived for a period of time. However, Williams argues that it is impossible to meet these requirements when the child is an unborn child.
>
> ¶26. In the case sub judice, it is uncontested that Williams if the father of Asiah. The trial court found that Williams knew that Farmer was pregnant with his child. Williams had no contact with Farmer from 1993 until 1995. Williams did not contribute any support, financial or otherwise to Farmer during her pregnancy or thereafter. (Emphasis supplied) Williams did not seek to be present for her birth. Williams did not know of the death of Asiah for approximately two years because he made no effort to be a father to her. The trial court concluded that "under the facts of this case, it cannot be said that Williams suffered any loss as the result of the demise of Asiah. Any part of the settlement for the death of Asiah received by Williams and his kindred could only be termed a windfall and unjust enrichment."

A review of the facts in Williams reveals the Court's interpretation of Mississippi Code 91-1-15(d)(i) as barring even the father of an illegitimate fetus from recovery where the father cannot show support. Certainly the father of an illegitimate fetus failing to show support or excuse therefor would have a stronger argument than McCoy, the father of a child

with knowledge of the birth of such child, having lived with the mother of the child prior to birth who failed to show any support of the child from the date of birth to the child's death at age 2 years old. McCoy would incur no greater rights by being incarcerated in prison than the father of the illegitimate fetus as in Williams who claimed that he had no opportunity to support his child and, hence, it was impossible to meet his support obligation. On the date of October, 2003, when he discovered that Jakayla was conceived, to the date he entered the prison system, March, 2004, he provided no support. From the date he entered the prison system to the date of the death of Jakayla on April 16, 2006, and thereafter, he provided no support even though having access to prison funds in his inmate account, nor did he contribute anything to the funeral expenses, (R.V.II,pp.25-38,40,59,77,78. R.V.I,p.33, Ex.P1., R.E.10-12,14-15).

The Court in Estate of Patterson v. Patterson, 798 So.2d 347, (Miss.2001), sets forth the two-prong requirement that must be met by father of an illegitimate child for inheritance. Patterson dealt primarily with the issue of whether the father of an illegitimate child was barred from inheriting due to failure to meet the first prong of 91-1-15(d)(i) of openly treating the child as his own (acknowledgment). The Court in Patterson held:

> ¶10. Miss.Code Ann. §91-1-15(3)(d)(i) (1994) is stated in the negative and sets forth two distinct requirements. The statute provides in pertinent part: "The natural father of an illegitimate and his kindred shall not inherit: (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child." *Id.* (emphasis added).

¶11. In arguing that this section does not apply, Stanton asks this Court to simultaneously (1) acknowledge Juan's freedom to "choose to wait and see", and (2) overlook the fact that by exercising this freedom Juan knowingly and willingly forfeited any benefit, or burden, arising from openly treating Jaquarius as his own and supporting him during his lifetime. Juan cannot have it both ways. Juan was free to choose to "wait and see", and he did just that. But he also made another choice. Upon receiving the test results proving that he was the father of Jaquarius, who was then almost three years old, Juan continued to refuse to acknowledge his paternity. He did *not* contact Quivoria to "talk then" about it.

¶12. We need not dissect the word "then", nor guess at Juan's intentions. We need not speculate as t how long it would have taken Juan to get around to acknowledging that he was Jaquairus's father and providing him support. No case or statute sets forth a definitive number of days, post-paternity testing results, within which a father must acknowledge an illegitimate child for purposes of taking as an heir. Case law, however, does address the meaning of "openly treating a child as one's own" and makes it crystal clear that this requirement *and* the requirement of support must both be met. (Emphasis supplied)

¶13. In the factually similar case of *Bullock v. Thomas*, 659 So.2d 574 (Miss. 1995), this Court affirmed a chancellor's decision that a father and his children were not statutory heirs of

> his illegitimate son. There, as in the instant case, the son, almost three years old at the time, and the child's mother were killed in an automobile accident. The chancellor correctly determined that Bullock had failed to meet the requirements of §91-1-15(3)(d)(i) in that he had not openly treated as his own and had failed to support his illegitimate child, Mario. This Court affirmed the portion of the chancellor's opinion that Bullock did not openly treat the child as his own. (Emphasis supplied)

Also, see Alexander v. Alexander, 456 So.2d 340 (Miss.1985). In Alexander, a father was denied recovery from a wrongful death settlement fund based solely on evidence that the father "had not supported his illegitimate child." *Id.* at 341. In an action to determine the heirs-at-law of an out-of-wedlock child, wherein the father had provided no support or contribution toward a funeral bill, the court denied a right to inherit because the father did not "comply with his duty to provide essential support, until it appeared he might receive a sizable inheritance." Patterson, 798 So. 2d at 351 (¶ 18).

In interpreting Miss. Code 91-1-15(d)(i), the Court in Alexander, Patterson, and Williams requires and considers only actual support—not whether there is an actual refusal or neglect to support. In effect, a failure to support a child is essentially treated as a "neglect" to provide support. Assuming *arguendo* that something more than a mere failure to provide support is required in order to deny recovery under § 91-1-15(d)(i), there was something more in the present case. McCoy in the case at bar had funds available in his prison account yet failed to use any portion thereof to support his child. See Avery v. Avery, 864 So.2d

1054 (Miss.Ct.App.2004), which held that incarcerated father has a duty to provide child support when the father has some assets. McCoy had access to funds in his prison account, he had the ability to contribute to the support of his child. Thus, even if "neglecting" to support means something more, in the case at bar because McCoy had an ability to contribute at least something even though meager to support his child, Bullock v. Thomas, 659 So.2d 575 (Miss.1995), his failure to contribute anything was a "neglect" to support his child, regardless of how his prison account was funded.

A more in-depth review of Bullock will suffice to show refusal and/or neglect of support by McCoy:

> [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)

It is uncontroverted that the case at bar is distinguishable from Bullock, as the above outlined facts illustrate, McCoy did not meet his burden of proof of even spasmodic support of Jakayla McCoy. A review of the findings of fact by the learned Chancellor will further suffice:

> Father is currently incarcerated in the Leake

> County Correctional Facility for selling cocaine. Father is thirty (30) years old and is expected to serve a nine (9) year sentence. He has been incarcerated since May 2004.
>
> On the question of child support, Father testified that he had never sent child support or any other form of financial support to Mother.
>
> Father's inmate account statement reveals that Father did in fact receive monies every month since he was first incarcerated. The Court notes that these funds were all from family members and the deposits ranged in amounts from $25.00 to $150.00.
>
> It goes without saying that it is hard to believe that the claimant did not know of his canteen account and how it wold work. The parties disputed whether or not he had been given this information, and the Court believes that he had and that the MDOC together with the prison underground would have made him aware of this procedure thoroughly. In fact, he well understood how it worked with purchases for hygiene products for himself.
>
> However, the Court is of the opinion that whether he knew this or not is not as material to the resolution of this case as the parties believe. The claimant could have used this account to pay support for the child and avoided this issue entirely. (R.V.I,pp.35-38, R.E.4-8)

It is respectfully submitted that a misreading and misapprehension of Bullock by the Chancellor has led to an erroneous interpretation of Mississippi Code 91-1-15(d)(i). In reading Bullock and in interpreting 91-1-15(d)(i), the Chancellor held:

> If the claimant had been a free man and failed

> to support the child under the statute thereby evidencing a refusal or neglect, the decision of this Court might be different. 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, R.E.8)

A review of Bullock and its progeny reveals that Mississippi Code 91-1-15(d)(i) has dual independent basis for the denial of a father's right to inherit:

(A) Where the father fails to show that he did not flatly refuse to pay support when requested.

(B) Where the father fails to show that he did not neglect to pay support, absence a refusal.

In either case, he cannot meet the statutory burden of proof imposed upon him. In the case at bar, McCoy failed to prove either.

Unlike Bullock, where the father could show that he gave an average of $100.00 per month for the minor child, bought the child's first pair of shoes, and a kerosene heater for his use, McCoy did not provide this Court with a scintilla of evidence of support of Jakayla McCoy. There is no question that McCoy failed to show that he did not refuse, or neglect to provide prenatal care to the minor child prior to his incarceration, see Williams. Moreover, the McCoy cannot refute and has not presented evidence that he did not refuse or neglect to support (even meager support as in Bullock) Jakayla while incarcerated and having at his disposal an excess of $2,000.00, knowing as the Chancellor found that he could have mailed the funds to Jones or others for Jakayla's support. The Trial Court held that "if the claimant had been a free man and failed to support the child under the statute thereby

evidencing a refusal or neglect, the Decision of this Court might be different". The Court further stated that it would be inequitable and contrary to the statute under the circumstances of the case at bar to deny McCoy's rights as an heir. (R.V.I,p.38, R.E.8) The Trial Court appears to inject into 91-1-15(d)(i) a novel element of suspension or "stay" of McCoy's statutory duty of support where he committed criminal acts leading to his incarceration. In essence, he benefits from being a convicted, incarcerated felon. The Trial Court also allowed equity into his consideration where the prisoner, McCoy, was concerned. A long-standing maxim of equity of Chancery Court practice of Mississippi is that he who desires or merits equity must have "clean hands". It cannot be said that McCoy had clean hands meriting equitable consideration in this matter due to his incarceration where he lived with Jones in excess of five (5) months prior to the birth Jakayla and refused and neglected to pay "one red cent" towards her prenatal care. Certainly, Williams' failed argument of inheritance was stronger and more meritorious than McCoy where Williams argued that he had no opportunity to support his deceased child (fetus). The Court imposed a strict interpretation of 91-1-15(d)(i) in denial of his inheritance. In the case at bar, Jakayla lived for almost two (2) years. McCoy had an opportunity to provide prenatal support. Rather, he choose to not actively seek employment and relied upon his parents for his support. Furthermore, when he was not incarcerated, he presumably received some funds from his sale of cocaine. After Jakayla's birth he had access to over $2,000.00 and sent her "nothing". Nevertheless, after Jakayla's death, he stepped forward to claim his lot. Such was not the intent of the Legislature when it required and placed the burden of proof upon the father to prove that he did not refuse or neglect to support his deceased child in order to inherit.

To allow McCoy to inherit under the facts of this case would set a far-reaching precedent contradicting and contravening the Legislative intent of 91-1-15(d)(i), *in toto*. Such precedent would:

(1) Allow and reward prisoner fathers to escape duty of support for inheritance under 91-1-15(d)(i) who prior to incarceration, had opportunity, but did not provide prenatal support and, hence, a reversal of Williams.

(2) Allow a prisoner father who provided no support to his child prior to incarceration, but following incarceration and the death of the child to claim an "equitable stay" of duty of support and right of inheritance. For example, assume John Doe fathers a child and neglects to pay support while a free man. Assume further that the child lives to age 3 (or any age of minority) at a time when John Doe subsequently becomes incarcerated. The child dies from the act of a tortfeasor after Doe has been incarcerated and at the time of incarceration. Doe under the new precedent doctrine of "prisoner equitable stay" could claim that due to his incarceration he has met his burden of proof under 91-1-15(d)(i) and should inherit.

(3) Place prisoner fathers in a "protected class" of persons insulated from 91-1-15(d)(i) requirement and child support. Under this "prisoner equitable stay doctrine", a prisoner could presumably argue that upon being sent to prison, his requirement of support of his child prior to incarceration then subsequent thereto, even though he had access to inmate funds in his account, equitably ceases. Conversely, the duty of payment of child support imposed upon other

classes of fathers would continue:

(a) Fathers who, by Court Order, were required to pay child support and were working and had become injured and have no income must continue to pay support or seek relief by modification of child support by Court Order.

(b) Fathers in harm's way in the military must make arrangements for continuing child support of their minors or suffer reprimand, and/or other adverse consequences. There is no equitable stay of child support afforded to them.

(c) Fathers who were employed but became unemployed and were required to pay child support by Court Order must continue child support or seek relief from the Court and failing to do so would suffer adverse consequences, including being held in contempt of Court and possible incarceration for failure to pay support. They are not afforded an equitable stay.

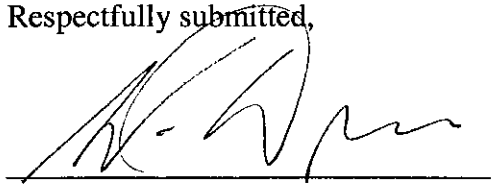
(4) The protected class of prisoner fathers would be a class to themselves of persons who could refuse, or neglect to support their children and suffer no adverse consequences, but on the contrary receive benefits (inheritance) from the estate of their child (children) irrespective thereof. Such was not the intent of the Legislature in passing 91-1-15(d)(i), nor consistent with the Court's interpretation thereof.

V.

CONCLUSION

A review of the above cited facts incorporated in the Trial Court's findings of fact reveals that under the circumstances of this case McCoy refused, or "neglected" to support his minor child, Jakayla McCoy. To allow his inheritance from the Estate of Jakayla McCoy would constitute a windfall for him and, more importantly, an inconsistent, contravening and erroneous interpretation of Mississippi Code 91-1-15(d)(i). In particular, the Legislature's intent was to require fathers of children born out of wedlock to provide support for their children. It placed the burden upon the father to show that he did not refuse or neglect to support his child in order to inherit from the child's estate. The Court has given a strict interpretation to the duty imposed upon a father pursuant to 91-1-15(d)(i), see Williams. The Court has required that the father prove that he did not refuse, nor neglect to support his child, meager as it may be. See Bullock. In the case at bar, the McCoy failed to prove that he did not refuse, nor "neglect" (emphasis supplied) to provide prenatal or post birth support of his minor child, Jakayla McCoy. McCoy at all times had access to opportunity for employment while not incarcerated, and while incarcerated an inmate account in excess of $2,000.00, and was not proscribed, but rather allowed to send money to Jakayla had he chose to do so. It is based upon the foregoing that the Decision of the Chancellor in the above styled and numbered cause should be reversed.

Respectfully submitted,



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VI..

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 **BRIEF OF APPELLALNT** to:

Honorable Chris J. Latimer
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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 13th day of December, 2007.

W. HOWARD GUNN
ATTORNEY FOR APPELLANT