

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

**NO. 2007-CA-01166**

**WILLENA JENKINS**

**PLAINTIFF/APPELLANT**

**V.**

**DeMARCUS DEANTE JENKINS**

**DEFENDANT/APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Hon. Debbra Halford, Chancery Court Judge of the Fourth District Chancery Court
2. DeMarcus Deante Jenkins, Defendant/Appellee
3. Willena Jenkins, Plaintiff/Appellant
4. Jamie G. Houston, III, Esq., P. O. Box 650, Jackson, MS 39205, and T. Mack Brabham, Esq., P.O. Box 1168, McComb, MS 39649  
Attorneys of record for the Appellant/Plaintiff
5. Edwin L. Bean, Jr., Esq., P. O. Box 1322, McComb, MS 39649  
Attorney of record for the Defendant/Appellee
6. Glen Edward Jenkins, living brother of Janice Kaye Jenkins
7. Carlisle Henderson, Esq., 213 South Railroad Avenue, Brookhaven, MS 39601  
Attorney of Record for Glen Edward Jenkins
8. Edward Jenkins, Jr., living father of Janice Kay Jenkins

Linda Faye Jenkins Adams, living sister of Janice Kaye Jenkins  
Lisa Michelle Jenkins, living sister of Janice Kaye Jenkins  
John Ellis Jenkins, living brother of Janice Kaye Jenkins  
Shirley Rosetta Jenkins, living sister by adoption of Janice Kaye Jenkins

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EDWIN L. BEAN, JR.  
Attorney of record for Appellee

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**STATEMENT OF THE ISSUE**

The Appellee agrees with the Appellant's Statement of the Issue.

## **STATEMENT OF THE CASE**

The Appellee, as well, agrees with the Appellant's exploration of the nature of the case, course of proceedings below, and statement of facts.

## **SUMMARY OF THE ARGUMENT**

It is beyond question that DeMarcus is the decedent's living minor child by adoption and has a right by statute, Miss. Code Annotated § 93-17-13 (Rev. 2004) to adopt from his natural parents. It is also without question that pursuant to Miss. Code Annotated § 91-1-13 (Rev. 2004) that DeMarcus has a right to inherit his mother's share of his adopted sister's intestate estate as a representative to the decedent of an heir who predeceased the decedent.

The Chancellor found and ruled that DeMarcus was entitled to inherit two shares of the net estate of Janice Kaye Jenkins, as both the adoptive brother and representative of his deceased mother's estate. The Chancellor's ruling was based on sound judgment that to disinherit DeMarcus from either share is in derogation of the common law, and in the absence of legislative enactment she was bound to find that DeMarcus was entitled to inherit both as a sibling of the decedent and as a surviving child of a predeceased sibling.

The Chancellor's ruling was based on strict statutory construction of each of the relevant statutes.

The Appellant mistakenly argues the doctrine of *In Pari Materia*; however, there is no conflict in the two statutes governing the case *sub judice*. Irrespective of the Appellant's position that the result of applying a strict interpretation of the applicable statutes in this case would produce an illogical result, there is no conflict in the statutes, and the legislature has not seen fit to change the statutes and their obvious results.

## **ARGUMENT**

This court should uphold the lower court's ruling as the Chancellor ruled that she should enforce a strict statutory construction and give full effect to each statute. Irrespective of the outcome that compliance with the applicable statutes in this case creates, this court is duty bound to give each of the applicable statutes its strict statutory construction.

In *Green, et al., and City of Richland, Mississippi v. Cleary Water, Sewer and Fire District*, (2003-CT-01062-SCT) this court stated, "statutes on the same subject, although an apparent conflict should, if possible, be construed in harmony with each other to give effect to each." In the case *sub judice*, the two applicable statutes, Miss. Code Annotated § 91-1-3 (Rev. 2004) and Miss. Code Annotated § 93-17-13 (Rev. 2004) do not conflict with each other. Neither, are there any ambiguities that either statute, which in reference to the other need be made to resolve their ambiguity. In essence, the sum and substance of this case is whether or not when strictly interpreting and applying both statutes the result is what the legislature intended. This court is duty bound to recognize its duty to apply a strict standard of statutory construction, applying the plain meaning of unambiguous statutes. See *Walker v. Whitfield Nursing Ctr., Inc.*, 931 So.2d 583, 590 (Miss. 2006), and *Arceo v. Tolliver*, 949 So.2d 691, 694 (Miss. 2006)

In *Alack v. Phelps*, 237 So.2d 789, 793 (Miss. 1970) this court stated:

While the effect of a final decree of adoption is that the natural parent or parents will not inherit by or through the child, and all parental rights are terminated, Mississippi's



adoption law does not state in any shape, form or fashion that the right of the child to inherit from its natural parents is terminated. We think the intent of the legislature is clear; they intended for the child to continue to inherit from his or her natural parents...2 C.J.S. *Adoption of Children*, Section 63(c), Page 454 (1936) as follows: In the absence of a statute to the contrary, although the child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents. In view of the tendency of the courts to construe adoption statutes so as to benefit the child, as pointed out above in s 6 of this Title, and also, in view of the fact that the statute severing the relationship between parent and child it is in derogation of common law and should for that reason be strictly construed, it has been held that an adoption statute providing that the natural parents shall be divested of all legal rights and obligations with respect to such child should not be construed as to deprive the child of its right to inherit from or through its natural parents. Under such a statute it cannot be assumed that the adoptive child cannot inherit from its natural parent unless there is an expressed legislative declaration to that effect.

There is no expressed legislative declaration to that effect in Mississippi's adoption law. Therefore, DeMarcus can inherit through his natural parent. See also *In re: Estate of Yount*, 845 So.2d 724.

The Appellant argues that if the statutes in this case are complied with it will cause an "illogical" or "harsh" result to the other heirs. This court should not concern itself with the result, but it duty bound to follow the legislative enactment. In *Caves v. Yarborough*, 2007 MSSC 2006-CA-01857 (Miss. 2007) the court considered the application of the discovery rule in a medical malpractice claim under the Mississippi Tort Claims Act. In reading that the discovery rule "is not applicable to medical malpractice actions under the Mississippi Tort Claims Act" this court stated, "In keeping

with our constitutional prohibition from judicially amending statutes, we overrule *Barnes* and its progeny, insofar as they judicially amended the statutes of the MTCA by supplying a discovery rule tolling the MTCA's one-year statute of repose. Some may find this result harsh." Although the results in the case *sub judice* may appear to be "harsh" or as the Appellant argues "illogical", this court is constitutionally prohibited from judicially amending or altering the results of the applicable statutes in this cause. See *Caldwell v. North Mississippi Medical Center, Inc., et al.*, 2007 MSSC 2006-CA-00630 (Miss. 2007).


### CONCLUSION

This court should give the plain meaning of the statutes their full effects, and absent a legislative declaration to the contrary this court should hold that DeMarcus should receive two shares of his deceased aunt's estate although the result may be harsh on the other heirs of Janice Kaye Jenkins. The judgment on the lower court should be affirmed and the net estate of Janice Kaye Jenkins, deceased, should be divided into nine (9) shares with DeMarcus Jenkins to receive his statutory mandated (2/9) share.

Respectfully submitted,

DeMARCUS DEANTE JENKINS

BY: 

EDWIN L. BEAN, JR.  
Attorney At Law  
729 Delaware Avenue (39648)  
P. O. Box 1322  
McComb, MS 39649  
601/684-7780  
601/684-7778 (fax)  


**CERTIFICATE OF SERVICE**

I, Edwin L. Bean, Jr., do hereby certify that I have this day mailed postage prepaid by U.S. Mail, a true and correct copy of the above and foregoing document to the following:

**Hon. Jamie G. Houston III  
P. O. Box 650  
Jackson, MS 39205**

**Hon. T. Mack Brabham  
P.O. Box 1168  
McComb, MS 39649**

**Hon. Carlisle Henderson  
213 South Railroad Avenue  
Brookhaven, MS 39601**

**Chancellor Debbra K. Halford  
Pike County Chancery Court  
P. O. Box 575  
Meadville, MS 39653**

This, the 3<sup>rd</sup> day of December, 2007



EDWIN L. BEAN, JR.