

IN THE SUPREME COURT OF MISSISSIPPI

TERRY F. SWIDERSKI

APPELLANT

VERSUS

CASE NO. 2007-CA-01517

CYPRIANNA ELLEN (HORMANSKI) SWIDERSKI

APPELLEE

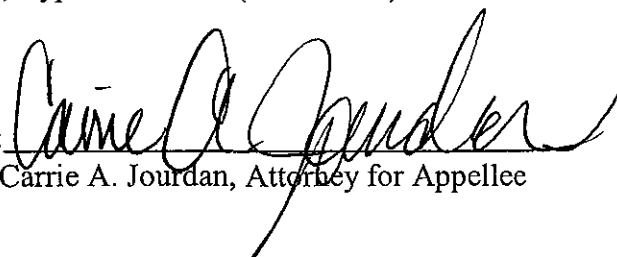
CERTIFICATE OF INTERESTED PERSONS

In accordance with rule 28(a) of the Mississippi Supreme Court Rules, 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 this court may evaluate possible disqualifications or recusal.

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2. Jackson M. Brown, Attorney for Appellant, Terry F. Swiderski
3. Cyprianna Ellen (Hormanski) Swiderski, Appellee
4. Carrie A. Jourdan, Attorney for Appellee, Cyprianna Ellen (Hormanski) Swiderski
5. Honorable Kenneth M. Burns

By:



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STATEMENT OF THE CASE

A. Statement of the proceedings:

On 22nd day of June, 2006, the Appellant, Dr. Terry F. Swiderski (hereinafter referred to as "Terry"), filed a Complaint for Divorce against the Appellee, Dr. Cypriana Ellen (Hormanski) Swiderski (hereinafter referred to as "Chipper"), alleging cruel and inhumane treatment and in the alternative irreconcilable differences. In that Complaint, he requested child custody, child support, alimony and an equitable division of the marital estate. On July 3, 2006, Chipper filed an Answer and Counter-Complaint, alleging the same grounds and requesting the child custody, child support alimony and an equitable division of the marital estate. (See Trial Court Docket contained in the Appellant's Record Excerpts at pages 1 and 2.) At the request of Chipper, the parties agreed to a temporary hearing and, as a result, a Temporary Order issued on August 25, 2006, awarding Chipper the temporary primary physical custody of the minor children, as well as addressing other temporary issues. In summary, the bulk of the parties' financial responsibilities, including health insurance, were temporarily assigned to Chipper with Terry only being required to pay \$264.00 as child support. (See Temporary Order contained in the Appellant's Record Excerpts at pages 3 through 5.)

Both parties then commenced comprehensive discovery in preparation for trial. Ultimately, Terry, who alleges in his Brief that his quest for divorce was brought on by Chipper, prepared and obtained from Chipper a Consent for divorce on the grounds of irreconcilable differences, on December 6, 2006. Only a few days after Christmas, his attorney presented and obtained a Judgment for divorce, on December 29, 2006. Terry made no effort to have the custody or the

division of the marital estate litigated until Chipper, through her attorney, obtained an agreed trial setting. Apparently, for Terry, being single was more important than obtaining the custody of his children of which he now vociferously complains. Ultimately, this matter was set for trial and was tried on April 24th and 25th of 2007. Despite nearly nine months that the parties had to conduct discovery, Terry orally requested a continuance on the morning of trial because he had been unable to depose Mary Anne Busenitz, a former friend of Chipper's, who had previously submitted a sworn Affidavit on Chipper's behalf for purposes of the temporary hearing, attesting to her excellent and parenting. In an unusual move, the Court ordered the trial to go forward but left the record open for Terry to obtain and submit the video deposition of Busenitz. It took Terry nearly another two months to submit said deposition and, on August 2, 2007, the Court issued a Judgment, containing findings of facts and conclusions of law. (See Trial Court Docket contained in the Appellant's Record Excerpts at pages 1 and 2.) That Judgment awarded the primary physical custody to Chipper as well as rulings on the other issues submitted at trial. (See final Judgment contained in the Appellant's Record Excerpts at pages 6 through 20.)

Subsequently, Terry filed an appeal in which he complains about the award of custody, child support and visitation, alimony and the division of the marital estate. In other words, everything. The Appellant's Brief is written and argued in an unusual manner and appears to attempt to make the case that the Chancellor's Judgment is insufficient and unsupported by the record. He tries to support his argument by what can only be characterized as "cherry picking" the record and almost completely ignoring the testimony heard at the two day trial on the merits. As will be demonstrated below, Terry ignores that testimony for good reason because it entirely supports the rulings of the Court. Accordingly, it is Chipper's position that, based on the entirety of the record, including the

very important testimony at trial, the Court was correct in it's findings and ultimate rulings with regards to the children and the marital estate.

B. Statement of the facts:

A close review of the record will demonstrate that Terry and Chipper's testimony with regards to their marriage and the course of events during same was essentially in agreement. In other words, there were very little factual disputes or allegations as to the other party. It is not until their move to Starkville, when they began having marital difficulties, that their testimony radically differs. (See Trial Transcript ¹, pages 9 - 111, 134 - 172, and 174 - 269.)

The undisputed testimony at trial was as follows: Chipper was forty-four (44) years of age and her husband, Terry, was forty-one (41). The parties married on August 15, 1992. As a result of their marriage, they had three children; namely, Katelyn May Swiderski, born July 27, 1996, Sarah Claire Swiderski, born May 21, 2000, and Matthew Ross Swiderski, born December 27, 2002.

Both Chipper and her husband are veterinarians. Chipper is currently an Assistant Professor of equine medicine at Mississippi State University, earning approximately \$84,000.00 annually. She has somewhat flexible work hours during the day and is occasionally on call. Every three weeks, Chipper is on call for two weeks, which means she responds to any emergencies at the University. She testified that emergencies were rare in the university setting. During this two week period, she also conducts daily rounds, in addition to her regular work. The rounds are generally over by 9:00 a.m. However, because she has an academic practice, there are always individuals available to cover her to allow her to be responsive to her children's needs or their activities and to respond to any

¹ Trial Transcript shall hereinafter be identified as "T.T." and Page shall hereinafter be identified in the singular as "p." and in the multiple as "p.p.".

personal emergency. (See T.T., p.p. 174 - 204.) At the time of trial, Chipper had had temporary sole custody of the minor children for one year. She is assisted by a nanny as a supplemental care provider, as well as her father, Matthew Hormanski, Sr. (See T.T., p.p. 209 - 214.)

Her husband was a free-lance veterinarian, who kept no set schedule but must be available on a moment's notice and travels extensively, including extended overnight trips, as a part of his job. (See T.T., p.p. 83 - 111, 202 - 208 and 215 - 216.)

They both further testified that Terry and Chipper met while he was a student and she was a resident specializing in equine internal medicine. When they began having children, they made a decision that **Chipper would be the primary caregiver of the children.** To that end, she breast-fed all of the children and, if not attending school, worked mainly part-time. This allowed her to spend a great deal of quality one-on-one time with the children. (See T.T., p.p. 174 - 269.) Significantly, this testimony was supported by Matthew Hormanski, Chipper's father, (See T.T., p.p. 283 - 294.) and, more importantly, un rebutted by Terry (See T.T., p.p. 83 - 111.) or his mother, Ellen Swiderski. (See T.T., p.p. 126 - 132.)

Based on the evidence at trial, it would be fair to say for most of their marriage, because Chipper chose to stay at home with the children as much as possible, her career was subjugated to Terry's career. In 1998, at Terry's prompting, Chipper took a position at the Arkansas Livestock and Poultry Diagnostic Laboratory. The main reason she took this position was because Terry wanted to move closer to his family and enter a practice with a fellow colleague. During this time, Chipper and Terry maintained two residences, one in Arkansas, where Chipper and Katelyn lived and another residence in Mississippi, where Terry maintained his practice. (See T.T., p.p. 174 - 198.)

Chipper and Terry testified that the plan was for Terry to follow after wrapping up his private practice. That failed to materialize. Since Chipper was under contract, for one year, she and Katelyn lived in Arkansas and he lived in Mississippi. As usual, it was Mr. Hormanski, her father, assisted her while she lived in Arkansas. She and Katelyn drove home every other weekend to see Terry. He only came to see them twice during that year.

She further stated that, since Terry left his private practice in 2001, he has had great difficulty maintaining steady employment, which Chipper believed, based on her experience, is very unusual for a veterinarian. She testified that she thought his employment difficulties were due to his inability to get along with others and take direction from others. As a result, in order to provide stability and financial security for the family, Chipper accepted the position at MSU in August of 2004. She further testified that, even with her current position, she had been the primary caregiver, assisted mainly by Terry's mother or occasionally her father, but never Terry.

In support of her position, Chipper indicated she had breast fed all three children. Terry never fed the children as babies, never once got up in the middle of the night, not even to check on Chipper and the babies or to see if she needed help. Out of three children, she categorically stated that, until the temporary hearing, he had changed less than 10 diapers and given less than 10 baths to all three children combined. She estimated that, from 1996 to 2001 and again in 2004, the children and Chipper ate 80% of their meals without him.

She went on to testify that she purchased every single birthday and Christmas present for the children, she had been solely responsible for decorating for the holidays, getting their Halloween costumes, buying clothes and school supplies. She has taken the children to church all of their lives and nearly every Sunday and that Terry rarely goes. She alone is responsible for raising the children

Roman Catholic. She testified that she could recite endless examples of her as the primary caregiver. She has been responsible for the children's participation in extracurricular activities. She has made sure that the children participated in sports and were always prepared for school. In fact, until the family's move to Starkville, Terry rarely participated in the day-to-day lives of the children.

Chipper added that, when they lived in Magnolia, Katelyn attended a pre-school that was 45 minutes away. Chipper performed more than 90% of the pickups and drop offs, while practicing part time and helping to maintain the business. Katelyn never spent the night away from Chipper. The other two children have also rarely been away from her overnight. She maintained that this was not true for Terry and the children. He has routinely been away from them overnight, days at a time. She added that she has been responsible for all extra curricular activities and that, until this past year, Terry rarely attended anything. He even missed Katelyn's First Communion and both her field days here at Starkville Academy.

Ultimately, Chipper asserted that she had to assume responsibility for all aspects of our family life, including financial, because Terry has proved to be completely unreliable, as a provider and a father. When Chipper needed help, it came from either his mother or her father. It is important to note that, while Terry's career initially took "front seat", this was still a dual career marriage. Unlike many couples, Terry and Chipper were fortunate in that they each had a parent, Ellen Swiderski and Matthew Hormanski, respectively, who routinely assisted the couple for long periods of time. When Chipper or a grandparent was unavailable, it was not unusual for the couple to utilize day care and/or a nanny. This practice, that Terry now complains of in his Brief, was routine throughout the parties' marriage. It is a practice that both parties continued during their separation and the pendency of the divorce. At the time of trial, Chipper used a nanny and her

father and Terry, who only had the children on weekends, continued to use his mother. (See T.T., p.p. 83 - 111, 126 - 132, 174 - 269, and 283 - 294.)

During trial, at the subsequent deposition of Mary Anne Busenitz, and in his appeal Brief, Terry attempts to make some allegations against Chipper, regarding her temper and discipline methods for the children, as well as her availability for the children. As noted above, this is based solely on "cherry picking" the record. This "cherry picking" includes: A letter that Chipper wrote she was in the middle of her marital difficulties to her best friend at the time, Mary Anne Busenitz, who had been diagnosed with cancer; a "log", kept by Terry, that was put into evidence as an exhibit to his testimony with the specific exception that those entries were not being admitted as true and were completely self-serving; a single email; and the fact that Chipper could not be reached as quickly as Terry on one occasion when Matthew was ill and that Chipper missed a couple of other children's events. Significantly, Terry makes his case for custody on these bald allegations against Chipper and nowhere cites the record in support of his own performance as a parent and that is because he cannot. Other than a very brief period after the Swiderski's move to Starkville, Terry has never been the other parent in this marriage. The other parent was a combination of Mr. Hormanski or Ms. Ellen Swiderski. Even now in his Brief, Terry is still making the case for a custody award to his mother rather than to himself. Obviously, neither Mr. Hormanski or Ms. Ellen Swiderski were parties to the divorce proceeding or sought custody of the minor children independently.

Terry's case in chief at trial, as well as the video of Busenitz, lacked credibility and was soundly rebutted by the testimony of numerous witnesses regarding Chipper's excellent judgment, discipline and character. At trial, Terry called no other witnesses beyond his mother with regards

to his character, his judgment and his parenting or to attack Chipper. In fact, the only witness at trial he could call was one Susan Smith, who has been Matthew's, the youngest child's, day care provider for the past two years. She verified one incident when she was able to reach Terry by telephone before Chipper when Matthew was sick. It is important to note that Terry did not come but rather sent Ellen. Upon cross-examination, Ms. Smith went on to testify that Matthew was in good health, developing normally, always appeared appropriately dressed and in good spirits. Please note that the bulk of Ms. Smith's observations would have occurred while Matthew had been in the primary physical custody of Chipper. (See T.T., p.p. 5 - 9.) It is also important that counsel for Terry at trial and in his Brief does not think the care of the child on a daily basis for almost two years was as significant as Ms. Smith's ability to reach Terry first on a single occasion.

On the other hand, Chipper, in addition to her father, called Carroll Lee Tyner and Sonya Colleen Myers, individuals who work closely with Chipper. Dr. Tyner, Chipper's boss, characterized her as having "impeccable" medical judgment and as truthful and reliable. (See T.T., p.p. 263 - 267.) Mrs. Myers confirmed Dr. Tyner's characterization of Chipper as truthful and reliable. In fact, Mrs. Myers, who had a more personal relationship with Chipper, described her as follows: "Oh, well, as far as personally, she's a really gentle, loving person. I mean, she's kind to – it's hard to describe the kindness that she has. You know, she would help anybody that she could, and she's helped me a lot as far as being there for me as a friend and – it's hard to describe somebody like that. But all I can say is she's a really, wonderful, warm human being." (See T.T., p. 278.) She went on to describe her as a "wonderful, wonderful mother." Further, in response to a question regarding Chipper's temper, she said, "I've never seen her have a temper, ever. I've seen her get as far as a little upset, you know. Like in a stressful situation, she may go raise her voice or,

you know, something like that, but that's about the extent of it." (See T.T., p. 279, 276 - 283.)

Finally, Mr. Hormanski, Chipper's father, a retired researcher and school principal, described his grandchildren as developing wonderfully and reiterated Chipper's description of her married life with Terry and her role as a mother. In describing her as a parent, he noted that "she meets the needs of every child's personality and expresses with love." (See T.T., p.p. 283 - 294.) He went on to describe her temper as normal and appeared baffled by questions regarding same.

The only "objective" witness who had anything negative to say about Chipper, beyond Terry and his mother, was Busenitz. Interestingly, Busenitz, in that same deposition, talked equally bad about Terry. This is another example of Terry's "cherry picking". He doesn't mention anywhere in his Brief that Busenitz thought he was unfit to have custody and that he had "anger issues". (See transcript of Busenitz deposition.) Busenitz was a patron of the university equine hospital who became good friends with Chipper. She lead Chipper to believe that she was diagnosed with a fatal brain tumor and had limited time remaining to live, when Chipper first met her. This expedited a very close relationship during a time Chipper was having difficulties setting up the equine program over which she had been placed and very serious problems in her marriage. As Chipper's divorce progressed, she came to have serious misgivings about Busenitz's credibility and advice. For example, Busenitz calls herself a doctor of psychiatry but yet does not appear in any of the registries of licensing agencies. While she intimated to Chipper and others that she was dying in 2006, she appeared to be alive and well at the deposition in 2007. Busenitz tried to characterize a couple of disciplinary incidences between Chipper and the children negatively but, later during cross-examination, admitted to signing a sworn Affidavit attesting to Chipper's excellent parenting and character for the temporary hearing. For purposes of convenience, that Affidavit stated the

following:

- (1) My name is Mary Anne Busenitz. I am fifty (50) years of age and an adult resident citizen of Tuscaloosa County, Alabama. I am a retired psychiatrist. I understand that this Affidavit is being submitted in reference to Chipper's request for temporary custody of her children and some temporary assistance from Terry.
- (2) I have been friends with Terry and Chipper (Cyprianna) Swiderski for a little over two years. I first met Chipper when I brought my horse in for treatment. As a result of our interaction, Chipper and I became friends and, frequently, socially interact with each other. Usually, we both bring our children.
- (3) From all I have heard and seen, Chipper appears to me to have always been the "primary" caregiver for her children. When the family moved to Starkville, Terry was unsuccessful in finding employment. He appeared to be unemployable which necessitated Chipper becoming the primary breadwinner. This created the need for Terry to step in and help with the family. Instead, Terry called his Mother in to help and the result was that she took on Terry's role and he did whatever he wanted to do. Chipper did not agree with some of things her mother-in-law did but Chipper always expressed her gratitude that, at least, her mother-in-law was there helping and being more constant with the children than Terry. Rarely has Chipper ever spanked the children and that was only if the "time out" system didn't work.
- (4) Chipper is a loving, attentive and responsible mother. She takes her children with her everywhere she can, unless it is work related. Chipper is the one that sees the children go to church every Sunday. If you find Chipper, you're going to find, at least, two of her children. These children are very fortunate. I can testify as to Chipper's relationship to her children because we have vacationed together for a week and we visit as often as her or my schedule allows.
- (5) I have always found Chipper to be an extremely moral person. Chipper is a good person and a very hard worker. She is very dedicated and one of the best veterinarians that I have ever known. She will save a horse when know one else can. She does not give up. I believe that her patience with Terry and other people is a testimony to her moral character.
- (6) Terry is a very manipulative person. Terry, to me, is severely emotionally abusive. He likes to play head games with Chipper. Terry called me just two days ago and wanted me to give an affidavit for him and I said, "No". Terry then proceeded to tell me that, if I took Chipper's side, he would, "... ruin her ... she would not have her children or her job". Terry told me about a professor at Mississippi State that was fired from his job on accusations alone and that he could "... do the same to Chipper."

(7) Terry is now telling people that Chipper being a lesbian, and how she molested her brother. I can say these rumors of her being lesbian or molesting her brother are completely unfounded. In fact, I think these allegations by Terry show how unstable and desperate he is.

(8) Terry only wants the children to control Chipper. I can assure the Court, if Terry is awarded custody of the children, Terry's mother, not Terry, will be the one to raise the children. Further, Terry has not provided for his family in a long time. If it were not for Chipper, they would have no place to live and no way to feed the children. I think, the bid for the children is to continue to receive support from Chipper.

(9) As a psychiatrist, I tend to believe that I am a good judge of people. From watching and talking to Terry, I can tell you he is not a hands on father. He is also not there physically or emotionally for his children and, at this point, he is manipulating them terribly. As a Husband, he has not been much better.

(10) I have been very nice to Terry, attempting to help with the situation for Chipper but, mainly, for the children's sake. Just a few days ago, when Chipper gave the children to Terry for a visit with him, he then proceeded to keep Katelyn. I was able to call Terry and talk to him and explain that the children did not need to be separated at this time because they draw strength from one another. Terry said the reason was because Chipper was being abusive to Katelyn. Terry then promptly told me, if I could get her to give him some of his dress clothes and silverware to eat with, he would gladly give Katelyn back. It was clear he did not believe that Chipper was abusive. This is just one of the examples of Terry's manipulation.

There is no doubt in my mind that the children should be with Chipper. I hope the court will award the temporary custody of her children to Chipper because same would be in their best interest.

(12) Terry's affidavit states that I have seen Chipper vent her anger on Katelyn when in fact this is not true. The evening that he is alluding to, on July 6, I specifically asked Katelyn to go into the house while Chipper had asked her to get into the car because I did not know how long Chipper and I would be talking. Katelyn stayed that evening but not because I felt that she was in any danger when she was with her mother. In addition, I know for a fact that my daughter Sarah-Katherine did not ever witness Chipper choking Katelyn in my house. Sarah-Katherine did hear Katelyn crying through the closed door but it involved Katelyn having a temper tantrum with no interaction from Chipper. I would also add that Katelyn came to stay at my house for a few days at my suggestion because I saw the unstable emotional state that she was in every time she returned from her father's care.

(13) I would like to set the record straight that I never said to Terry that he should have the children. I did however, tell him that the best interest of the children would be served if Terry and Chipper would stay together. His response was that he might consider taking her back if she apologized for 'everything'. I never once suggested that Chipper needed private counseling. I did suggest that Chipper attend therapy with Terry because he has a tendency to lie and that the therapy would be only successful for Terry if Chipper attended and forced him to face the truth. I was reticent in suggesting this because of the emotional upheaval that this would cause Chipper, but I knew that Chipper agree in an effort to help Terry because of her fourteen year commitment to him.

(14) For the record, Terry has told me that he lies on his income tax. Terry told me only a few weeks ago that he performed as many as 13 dental procedures on a single day. Based the charges for this procedure on my horse, this would exceed \$1900 for that single farm call making it very likely that his income exceeds \$2000 per month.

(15) Despite the fact that I am a cancer patient with many health issues, of which Terry is aware, he has repeatedly called me excessively (upwards of 10-15 times per day) even when I informed him that I was feeling poorly during chemotherapy and radiation. He would rant about Chipper and her faults. His calls have caused serious emotional upheaval in my home. These calls have been extremely draining for me both physically and emotionally. However, I continued to receive Terry's calls because I did not want to incite him, being concerned for Chipper and the children. Several times Terry told me that I was the cause of their divorce and that Chipper and I should discontinue our friendship. I learned from Chipper that this event was discussed during one of their joint counseling sessions with his psychiatrist Dr. Dunn and that she informed him that to say such as thing was cruel to myself and controlling of his wife. Finally, several weeks ago, Terry came to my house in Tuscaloosa for dinner. During his visit he continually pressured me to write an affidavit in support of his custody. His behavior was so upsetting to me that my husband, in concern for my health, told Terry that he was to stop trying to 'strong arm' his wife, that she would stand in the best interest in the children, knowing full well that that was with Chipper, and not Terry.

Subsequent to the Affidavit and prior to her deposition, Busenitz's behavior became increasingly erratic and she was barred from the university equine hospital. Ultimately, this caused a falling out between the friends and Chipper thought it best to sever all ties with Busenitz. In any event, the contradictions between Busenitz's sworn Affidavit and sworn deposition make any reliance on her testimony misplaced and the Court correctly placed little credence in her testimony.

In his Statement of Facts, Terry has cited numerous so called facts, the bulk of which come from him or Busenitz to support his claim for custody. Based on the foregoing, it is clear that Busenitz has little credibility and, quite frankly, Terry's is not substantially better. For example, in his Affidavit submitted in support of his request for temporary relief, he made numerous outlandish, even slanderous, allegations that he did not even attempt to put into evidence at trial (because he could not prove same). In addition, at trial, Chipper had subpoenaed his bank statements that showed gross deposits in excess of \$156,000.00 and that's after only two years in this area. Yet, Terry claimed to only make \$2,300.00 per month, despite having no office or employee expenses. As a traveling veterinarian, his only expenses are his truck payment and gas.

More importantly, he could personally relate no real incident to support his claim that Chipper was this wild-eyed, lesbian harridan that abused the children. All of the assertions that he submits as facts in his Brief were bald statements made by solely him and denied by Chipper or by Busenitz, who at this point appears to be discredited. It is only Chipper who presented objective witnesses that she was a truthful and credible person. The only incident over a 14 year marriage that Terry or his mother could relate was manufactured by Terry when Chipper came to pick the children up from visitation with Terry. Apparently, Katelyn was riding her bike and was slow to respond to Chipper's request that she dismount and Chipper grabbed Katelyn on the bike and forcibly removed her. Terry then called the police and attempted to accuse Chipper of domestic abuse. At trial, Terry initially testified to these events. Fortunately, during rebuttal, he played a tape of this so called event and same actually contradicted much of his testimony and supported Chipper's contention that this episode was manufactured. (See T.T., p.p. 298 - 305.) When asked, if this was the only event that he could come up with out of a 14 year marriage to support his claims of abusive behavior by

his wife, Terry was essentially speechless. It is important for the Court to be aware that, prior to the introduction of the tape, Terry attempted to get into evidence an alleged "transcript" of that telephone call that was completely inaccurate and filled with editorial comments (much like his so called "log"). Ultimately, many of Terry's so called "facts" are not contained in the Court's Judgment because it was clear that the Court rightly placed little stock in much of Terry's testimony. (See T.T., p.p. 83 - 111 and 301 - 305.)

Chipper testified that, during the pendency of the divorce, Terry attempted to manipulate the children, particularly, the oldest by telling them inappropriate details about their divorce and talking badly about her. She stated that she attempted to be reasonable with him by allowing him extra visitation and he repaid her by refusing to return Katelyn and routinely upsetting the children. She further testified that, when all of his behavior was viewed as a whole, he was, at best, immature and, at worst, unstable. (See T.T., p.p. 240 - 269.)

Finally, as to Terry's income, Chipper testified that she did not even know what Terry earns because he has contributed so little to the support of the children and their lifestyle in the past few years. However, based on her experience as a private veterinarian and her work with Terry, he should be earning as net income anywhere from \$150,000, low end, to approximately \$300,000, not the paltry sum he indicated on his financial affidavit of approximately \$24,000. Chipper noted that, based on his total bank deposits in excess of \$156,000.00 (reminder: Terry, as a self-employed independent contractor, operating out of his veterinarian truck, has minimal overhead) was simply not credible and asked the Court to award her child support accordingly in the amount of approximately \$1,500.00 per month. (See Financial Affidavits of the parties at pages 41 - 66 of the Appellant's Records Excerpts.)

As to the parties' marital estate, both parties agreed that nearly every asset they possessed was a marital asset and should be evenly divided with some marked exceptions. Specifically, Chipper and Terry both agreed that, in 2005, they purchased a "fixer-upper", literally, a house that was basically "guttled" and located on 9 acres. Their plan was to remodel it and move into it. Chipper solely financed the home because Terry could not qualify for a loan. Please note, at trial, Terry indicated that obtaining refinancing would be very difficult, if not impossible, based on his current "reported income". In addition, Chipper testified that she made the bulk of the payments from her income, both prior to and subsequent to the temporary hearing. Significantly, even though Terry had been living in the house during the pendency of the divorce proceeding, at the time of trial, the house was unsafe and unsuitable for habitation (especially, for children) Accordingly, based on the condition of the house at the time of trial, the property had little or no equity. Chipper noted that, if Terry's financial affidavit and testimony were to be believed, he did not nor does not possess the financial wherewithal to refinance the property or make the needed repairs to make the property livable. Alternatively, Chipper at trial demonstrated the ability and willingness to rehabilitate the property and , accordingly, she asked that she be awarded the sole ownership and title of the Starkville property for herself and the children. Please note that Chipper and the children have horses, which also necessitate that type of acreage and much of the equipment that Chipper requested that she be awarded. (See T.T., p.p. 9 - 112 and 174 - 269.)

SUMMARY OF THE ARGUMENT

The Appellant, Dr. Terry F. Swiderski, asserts that the Chancellor erred in the award of the custody of the minor children to the Appellee, Dr. Cyprianna Ellen (Hormanski) Swiderski, the award of child support, visitation, the division of the marital estate and the denial of alimony. He supports his argument by ignoring contradictory objective evidence, the bulk of the testimony at trial and relies solely on un-supported allegations made by himself and a discredited witness. Conversely, the Appellee contends that the Chancellor made the correct ruling and that there is ample support for his ruling when the whole record is viewed, not just items “cherry picked” by the Appellant. The Chancellor’s judgment when read in conjunction with the record is clearly sufficient to support those findings by the Chancellor and his application of the law.

In further support of his argument, the Appellant complains that the Chancellor’s written judgment is insufficient, however, again, that judgment is only insufficient if you disagree with the Chancellor’s conclusions and findings of fact. What the Appellant is really complaining of is that the Chancellor, who is in the best position to judge, found Dr. Terry Swiderski’s testimony, as well as that of his supporting witness’ testimony, to not be credible and, therefore, did not support the Appellant’s case.

ARGUMENT

In December of 2006, the parties executed a Consent to Entry of Divorce on Ground of Irreconcilable Differences, the terms and provisions of which notified the Court of that agreement and said Consent set forth the following issues to be submitted to the Court for decision:

1. Child custody, child support and visitation;
2. Division of the marital estate, including assets and liabilities, real and personal property;
3. Award of alimony, if any; and
4. Award of attorneys fees, if any.

Each of these respective issues, with the exception of attorneys fees, will be addressed in the broad categories into which they fall because these issues coincide with Terry's appeal issues.

I. **Whether the Court erred in its award of custody and whether same was supported by the facts and applicable law.**

The "best interest of the child" standard prevails in the determination of custody. However, the Mississippi Supreme Court has set forth a number of factors to be considered by chancellors when making custody determinations:

The age of the child is ... but one factor to be considered. Age should carry no greater weight than other factors to be considered, such as: health, and sex of the child; a determination of the parent that has had the continuity of care prior to the separation; which has the best parenting skills and which has the willingness and capacity to provide primary child care; the employment of the parent and responsibilities of that employment; physical and mental health and age of the parents; emotional ties of parent and child ; moral fitness of parents; the home, school and community record of the child; the preference of the child at the age sufficient to express a preference by law; stability of home environment an

employment of each parent; and other factors relevant to the parent-child relationship.

Hassett v. Hassett, 690 So.2d 1140, 1148 (Miss. 1997), **Albright v. Albright**, 437 So. 2d 1003, 1005 (Miss. 1983).

These factors are not a mathematical formula and no factor should be given greater weight than the others. **Jerome v. Stroud**, 689 So. 2d 755, 760 (Miss. 1997). An analysis of the facts of this case as they apply to the **Albright** factors set forth above shows the following:

1. Age and Sex of the Children;

The children in this matter are KATELYN MAYE SWIDERSKI, born July 27, 1996, SARAH CLAIRE SWIDERSKI, born April 12, 2000 and MATTHEW ROSS SWIDERSKI, born December 27, 2002. Historically, there has been a preference in this state to grant custody to the mother of children of “tender age.” **Johns v. Johns**, 57 Miss. 530 (1879). Although the doctrine has undergone a weakening process in the past few years, it has not been abandoned entirely. However, the children in the instant matter are pre-school or school age. Accordingly, the age of the children does not appear to favor either party.

2. Continuity of Care Prior to the Separation;

The children lived with both parents prior to their separation. However, it was undisputed, until the move to Starkville in late 2004, that Chipper, with the assistance of the two grandparents, was the primary caregiver. For a brief period in late 2004 and 2005, while Chipper was starting the MSU program, the primary care of the children was delegated to the children’s grandmother. It is important to note, even though Terry was available, he did not supplement Chipper as a parent, his

mother did. Since the parties' separation in late 2005, Chipper has been the primary caregiver with assistance from her nanny and her father. Accordingly, this factor appears to favor Chipper.

3. Parenting Skills;

Both parents demonstrated the ability and willingness to parent the children well. Accordingly, this factor does not favor either party.

4. Employment of the Parent and Responsibilities of That Employment;

Chipper has a regular day-time schedule with weekends and holidays off. She has occasional on call and emergency demands. Further, because her University program is off and running, she has great flexibility for emergencies or special occasions. Further, she has made adequate supplemental child care arrangements for those occasions. Alternatively, Terry has no set schedule but is routinely called out of town and stays overnight. He is dependent on his elderly mother who lives in another state for help. Accordingly, this factor clearly favors Chipper.

5. Physical and Emotional Fitness and Age of the Parents;

Despite some allegations made by Terry, it appears clear from the overwhelming weight of the evidence that both parties are physically and emotionally fit to care for the children. This factor favors neither party.

6. Emotional Ties of Parent and Children;

It was undisputed at trial that both parties love and are beloved by their children. This factor favors neither party.

7. Moral Fitness of Parents;

At trial, Terry attempted to intimate that there was something improper about some of Chipper's female friendships. There was absolutely no evidence to indicate any type of wrongdoing.

In fact, both parties appeared to be morally fit. However, it was undisputed that Chipper was responsible for the children's religious education and who saw to the children's regular church attendance. It appears that this factor slightly favors Chipper.

8. Home, School and Community Record of the Children;

It was undisputed at trial that, for the bulk of these children's lives and currently, Chipper was responsible primarily for their education, religious training, extra curricular activities and social interaction. She testified and it was unrebutted that, until 2005, Terry had rarely attended a school function, been to any of the children's activities or oversaw homework. Conversely, it was undisputed that, under Chipper's stewardship, the children were excellent students and doing well physically and emotionally. This factor markedly favors Chipper.

9. The Preference of the Children at an Age sufficient to Express a Preference by Law;

The minor children in this matter have not reached an age sufficient to express a preference of the parent with whom he prefers to reside. Miss. Code Ann. § 93-11-65 (Supp. 1997).

10. Stability of the Home Environment;

It should be noted that, while parents possess the ability to provide a stable home, Terry, who chose to live in the parties' uninhabitable fixer upper, has failed to date to demonstrate the ability to provide and maintain a proper, adequate home for young minor children. Alternatively, Chipper has been providing the family home and all its staples for the minor children since 2004. Again, this factor would appear to favor Chipper.

11. Other Factors Relevant to the Parent-Child Relationship.

At trial, it appeared that both of these parties are capable, loving parents. However, it was clear that, whenever the family was presented with a challenge or difficulty, it was incumbent upon

Chipper to resolve the problem and maintain the family good. In addition, Chipper has a stable and long term opportunity in Starkville where the children have flourished, despite the divorce, over the past three years. Accordingly, this factor appears to slightly favor Chipper.

An analysis of the **Albright** factors mandates that custody be awarded to Chipper.

II. Whether the Court erred in it's award of child support.

Under § 43-19-101, Mississippi law sets forth rebuttable statutory guidelines that provide that the non-custodial parent should pay 22% of his adjusted gross income for the support of three minor children. However, paragraph (4) of § 43-19-101 provides that, in cases in which the adjusted gross income exceeds \$50,000.00, the Court must make a written finding in the record as to whether or not the guidelines established in this section are reasonable.

Criteria for determining the justness or appropriateness of an award are set out in § 43-19-103, which are

- . extraordinary medical, psychological, educational or dental expenses
- . independent income of the child
- . the payment of both child support and spousal support to the obligee
- . seasonal variations in one or both parents' incomes or expenses
- . the age of the child, taking into account the greater needs of older children
- . special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines
- . the particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services
- . total available assets of the obligee, obligor and the child
- . any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt

In addition, there is a short line of recent cases which recognize the factors listed in

Brabham v. Brabham, 84 So. 2d 147, 153 (Miss. 1955) as applying to the determination of child

support. When those factors are used, they are employed as another method by which the court may place its findings on the record and go outside the statutory guidelines. Dufour v. Dufour, 631 So. 2d 192, 194 (Miss. 1994); Bredemeier v. Jackson, 689 So. 2d 770, 778 (Miss. 1997). The Brabham factors, though, are more commonly used to determine the amount of alimony, if any, to be paid and include:

- A. the health of the husband and his earning capacity;
- B. the health of the wife and her earning capacity;
- C. the entire sources of income of both parties;
- D. the reasonable needs of the wife;
- E. the reasonable needs of the child;
- F. the necessary living expenses of the husband;
- G. the estimated amount of income taxes the respective parties must pay on their incomes;
- H. the fact that the wife has the free use of the home, furnishings and automobile, and
- I. such other facts and circumstances bearing on the subject that might be shown by the evidence.

Upon a close reading of both sets of factors, it is clear that the Chancellor was essentially directed to look at the total income and assets of each of the parents, as well as the lifestyle the parties enjoyed together and will now have separately and any special needs of the children. This case is very unusual. Chipper, as a university professor, makes approximately \$84,000.00, per year, with health, retirement and life insurance benefits. However, Chipper was previously in private practice with her husband where she testified Terry was capable of making anywhere from \$150,000.00 to \$300,000.00 per year. At trial, Terry, who is self-employed, attempted to persuade the Court that he only made \$24,000.00 a year, despite gross receipts in excess of \$156,000.00 in only his second year of private practice. Even if the Court believed him, the Court could consider what Terry could or should be making. Importantly, the Court corrected observed that Terry had taxable interests of \$1,669.00, which made it likely that he had as much as \$20,000.00 in taxable

savings accounts. Accordingly, the Court awarded \$750.00, per month, for child support despite Chipper's request that she be awarded approximately \$1,500.00, per month, in child support. While at first blush her request may appear excessive, a review of Chipper's expenses for herself and the children would indicate expenses in excess of \$5,000.00. Please note that Chipper only clears approximately \$4,800.00. Based on all of the foregoing, \$750.00 would appear the least amount that Dr. Terry Swiderski should be paying and said award is amply supported by the record.

III. Whether the Court erred in its award of visitation.

Terry was awarded what is commonly referred to as the Farese schedule of visitation, which has been approved and routinely upheld by the Mississippi Supreme Court. The argument Appellant is making on this issue appears to be very unclear. The undersigned can't tell if he is saying the schedule is insufficient or that there should be no schedule. Terry has submitted no legal or factual argument as to why the Farese schedule should be changed or overturned. In fact, the Court has awarded an additional weeknight visitation not normally contemplated by Farese, which makes his complaint on this issue even less understandable.

IV. Whether the Court erred in its determination of marital assets and division of the marital estate.

UNDISPUTED PROPERTY DIVISION:

At trial, the parties agreed that all of their assets had been acquired during their substantial

marriage and, therefore, were subject to an equitable division. The parties further agreed to the division of the following specific items²:

1. The Magnolia property: The parties had purchased jointly land in Magnolia. They agreed that it was a marital asset and should be divided evenly. To that end, they further agreed that the property should be sold and the net proceeds evenly divided.
2. Certificates of Deposit: The parties had approximately \$178,000.00 in certificates of deposit. By the time of trial, the parties had evenly divided said proceeds so that each received approximately \$89,000.00. The parties testified that they were satisfied with that division.
3. The 2004 Chevrolet Suburban, valued at approximately \$20,175.00, should be awarded to Chipper.
4. The 1998 White Dodge 2500 Truck, used by Terry for his practice, valued at \$4,500.00, and the 2006 Dodge 2500 Truck, no equity. Both should be awarded to Terry.
5. See Exhibit "C" at page 20 of the Appellant's Record Excerpts, which are items that belong to the children and the parties agreed, at trial, said items should go the custodial parent.

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Terry in his Brief appeared to be confused when referencing certain agreements as to property by the parties. A review of the trial transcript will show that, in response to questions by counsels and the Court, both parties agreed to certain property dispositions. To say otherwise, flies in the face of the record.

6. The parties have several IRA and mutual fund accounts, titled individually and together. With the exception of the Fidelity Magellan Mutual Fund, title in Chipper's name, valued at trial at approximately \$16,607.97, the parties agreed that the funds should be divided evenly in kind. Chipper maintains that her Fidelity Magellan Mutual Fund was acquired prior to the marriage and was titled and remained solely in her name.
7. Family photographs. The parties agreed that the family photographs could be copied so that each party had a set with the costs of said reproduction being borne equally by the parties.

DISPUTED PROPERTY DIVISION:

The assets upon which the parties could not agree as to division were Chipper's retirement with MSU (she had no Arkansas retirement), Chipper's Fidelity Magellan Mutual Fund, the Starkville property, household goods and furnishings, horses, and various pieces of equipment. Assets acquired or accumulated during the course of a marriage are subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage. See Hemsley v. Hemsley, 639 So. 2d 909 (Miss. 1994) and Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994).

1. Which party made substantial contribution to the accumulation of the property.
Factors to be considered in determining contribution are as follows:
 - a. Direct or indirect economic contribution to the acquisition of the property.

- b. Contribution to the stability and harmony of the marital and family relationships as measured by quality , quantity of time spent on family duties and duration of the marriage; and
 - c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.
2. The degree to which each spouse has expended , withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.
 3. The market value and the emotional value of the assets subject to distribution.
 4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
 5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
 6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;
 7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,
 8. Any other factor which in equity should be considered.

An application of these factors would apply to the disputed properties in the following manner:

Magellan Fund: Chipper testified at trial that her Magellan funds, which were titled solely in her name and were never commingled, were acquired prior to the marriage. Terry failed to dispute same. Accordingly, said property should be considered separate property of Chipper and was properly solely awarded to her. This was approximately \$16,607.09 in funds.

Starkville Property: The testimony of both parties at trial revealed that the house and 9 acres in Starkville were purchased during the marriage as a fixer upper. Terry agreed that the property had been solely financed by Chipper and acknowledged that she had made the bulk of the payments, including the portion ordered by the Court during the temporary. (As of the date of trial, Terry failed to make his 25% portion of the house note as ordered by the Court under the Temporary Order, claiming he misunderstood the Court's instructions.) Further, the house was basically uninhabitable, despite some rudimentary repairs made by Terry. More importantly, Terry acknowledged at trial that, based on his current income, he could not refinance the property in his name, nor make the payments as required under the mortgage, or get the monies needed to make the repairs to give a real value to the property. Accordingly, the house should have been and was awarded to Chipper. Additionally, since the house remains unimproved and the parties have owned it only a short time, there is no equity in the said property and Terry should be awarded nothing. Please note, Terry was basically allowed to live rent free during the pendency of this divorce. (See T.T., p.p. 83 - 111 and 174 - 269.) Terry indicates in his Brief that he was awarded no credit for his payments. This is an example of Terry misleading the appeals court because the record will reflect Terry never made any payments to the Starkville property.

Equipment: It is undisputed that all equipment was acquired during the marriage. It is Chipper's position that the equipment should be divided evenly in kind. She proposed at trial that

she be awarded the tractor and riding mower to accompany the Starkville property for its repair and upkeep. Additionally, Chipper asked that she be awarded also the red 1997 Dodge 3500 truck and the gooseneck aluminum trailer (owned by the parties during the marriage) due to the activities of the parties' children. As an offset, she testified she believes Terry would be entitled to all of the veterinarian equipment and Porte-Vet Insert, which totals in excess of \$30,000.00. Terry complains that the Court chose Chipper's evaluation of his veterinarian equipment over his own. This suggests that, as in other matters, Terry's credibility became an issue for the Court. Since the Court is in the best position to judge the credibility of the parties and Chipper is as experienced in these matters as Terry, there is no error or abuse of discretion if the Chancellor has chosen to accept Chipper's figure of \$30,000.00, instead of Terry's figure of \$17,500.00.

Household goods and furnishings: Again, the parties acknowledged that all furnishings were acquired during the marriage and should be equitable divided. Exhibit "A" is a list, compiled by Chipper, which she believes reflects all of the significant furnishings and household goods owned by the parties. She divided those assets into List A and List B, which include the equipment described in the foregoing paragraph. She would request that she be awarded List A.

Horses: At trial, there was testimony regarding that certain horses were Chipper's and the children's. The horses should be awarded to their respective owners with the custodial parent, having the ownership for the minor children. The Court agreed and the value of the horses was approximately \$20,000.0 and awarded same to Chipper on behalf of the children. It is unclear if Terry is complaining that he should be given half the value of the children's horses.

Chipper's MSU Retirement: Chipper submitted a PERS Statement, which reflected a balance of \$15,620.78, as of April 24, 2007. Chipper's position was that said retirement has not

yet vested and will not for another two years. Accordingly, Chipper's retirement is a potential asset but not one at this time and there could be no division. While the Court agreed that Chipper's retirement should be awarded to her, clearly an un-vested retirement is not an asset.

In sum, the approximate \$61,000.00 deficiency that Terry complains of is primarily composed of the Magellan fund of \$16,607.09 (which was determined to be Chipper's property acquired before marriage), the difference in the valuation of the veterinarian equipment (Chipper assigned a value of \$30,000.00, a \$12,500.00 difference from Terry's valuation and the Court agreed), Chipper's PERS retirement of \$25,807.25 which had not yet vested and the value of the children's horses. Otherwise, there was an even division of all other assets. The Court's slightly higher award to Chipper is clearly supported by the record.

V. Whether the Court erred in denying an award of alimony.

The statutory authority to award alimony in divorce is found at § 93-5-23, which provides in pertinent part that the Court may "... make all orders ... touching the maintenance and alimony of the wife or the husband, or any allowance to be made to her or him....". By the very language of the statute, then, alimony is a remedy available for either spouse in divorce proceedings.

The award of alimony is largely within the discretion of the trial court. The court has at its disposal several ways in which to style alimony payments to best serve the parties' needs. The court may use one, several, or all forms of aid in combination to provide for material needs of spouses incident to divorce. **Hubbard v. Hubbard**, 656 So. 2d 124, 129 (Miss. 1995) (citing **Bowe v. Bowe**, 557 So. 2d 793, 794 (Miss. 1990)). The court may award periodic alimony, rehabilitative periodic alimony and/or lump sum alimony.

In determining alimony, the court should consider the following factors:

- . the health of the husband and his earning capacity
- . the health of the wife and her earning capacity
- . the entire sources of income of both parties
- . the reasonable needs of the wife
- . the reasonable needs of the child(ren)
- . the necessary living expenses of the husband
- . the estimated amount of income taxes the respective parties must pay on their incomes
- . the fact that the wife has the free use of the home, furnishings and automobile, and
- . such other facts and circumstances bearing on the subject that might be shown by the evidence.

Hemsley v. Hemsley, 639 So. 2d 909, 912-13 (Miss. 1994) (paraphrasing those factors enumerated in **Brabham**, cited supra).

In the case at hand, even though alimony was submitted at Terry's request as an issue, at trial, Terry produced no evidence in support of a request for alimony. Since both are doctors of veterinarian medicine and in good health, there appears to be no basis for Terry's request for alimony. In fact, a review of the transcript will show no testimony regarding Terry's request for alimony. His assertion that he followed Chipper to her "dream job" ignores her following his career for 12 years and that she took the job to rescue the family financially because he had been repeatedly forced to resign or let go from nearly all of his previous positions. His assertion that her imaginary "fault" caused the divorce flies in the face of his indecent haste to obtain same and begin dating. His divorce was final on December 29, 2006, and he began dating in January of 2007. Finally, Terry ignores that his gross income in 2006, in only his second year of private practice, was nearly double that of Chipper (his gross receipts totaled in excess of \$156,000.00 and Chipper's base salary is approximately \$84,000.00). His request also ignores that Chipper cares for three other individuals besides herself, their children. Accordingly, the Court's failure to award alimony is understandable and proper.

CONCLUSION

A Chancellor's decision cannot be disturbed 'unless the chancellor abused his **discretion**, was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied.' "**Blevins v. Bardwell**, 784 So.2d 166, 168 (Miss.2001) (quoting **Madden v. Rhodes**, 626 So.2d 608, 616 (Miss. 1993)). "The chancellor has the sole responsibility to determine the **credibility** of witnesses and evidence, and the **weight** to be given each." **Lee v. Lee**, 798 So.2d 1284, 1288 (Miss.2001) (citing **Chamblee v. Chamblee**, 637 So. 2d 850, 860 (Miss. 1994)). "[W]e will not arbitrarily substitute our judgment for that of a chancellor who is in the best position to evaluate all factors relating to the best interest of the child." **Ash v. Ash**, 622 So.2d 1264, 1266 (Miss. 1993) (quoting **Yates v. Yates**, relating to the best interest of the child." **Ash v. Ash**, 622 So.2d 1264, 1266 (Miss. 1993) (quoting **Yates v. Yates**, 284 So.2d 46, 47 (Miss.1973)).

In the instant case, Terry's primary complaint is that the Court erred in it's Judgment and that the written Judgment is insufficient to support it's rulings. It is abundantly clear that the record, in total, pleadings, testimony, evidence as well as the credibility of the witnesses support the Court's findings. The Judgment, prepared by the Court, is a summary of those facts and applicable law and analysis pertinent to the case. The Court is not required to regurgitate the entire court file and trial testimony in it's Judgment, only the facts it feels are true and pertinent. Accordingly, based on the foregoing, Chipper feels there is ample support for the Court's rulings on the foregoing matters and the Judgment properly reflects same. A close reading of the record in this case clearly demonstrates that the Court had serious misgivings about the credibility of Busenitz and the credibility of Terry on important issues, like custody and money. In many instances, it is obvious that the Court chose

to believe Chipper and her supporting witnesses, over the bald allegations of Terry. It is also important to note that Terry, much like at trial, failed to mention in his Brief Busenitz's contradictory Affidavit and numerous derogatory comments about him.

On a final note, Chipper and Terry had a 14 year marriage. They began having children in 1996, nearly 12 years ago. For purposes of determining custody and dividing a marital estate, a Court is required to look back to the beginning of the marriage and the rearing of children. Terry wanted the trial court and now this Court to "cherry pick" some minor incidents that he mischaracterized for his purposes. He wants this Court and Chancellor Burns to overlook the 14 years that Chipper devoted to him and his children. He wants this Court to discount that she alone breast fed and got up at night with those children, that she made every Halloween costume, that she took the children to church every Sunday, that she drove an hour each way to make sure Katelyn attended a good school. The man that changed a handful of diapers, rarely bathed the children or rarely attended family dinners until 2006, wants this Court to punish a woman forced to work a lot and utilize the help of grandparents and nannies in the last couple of years, because she has a husband who could not sustain employment where he had a boss. Finally, he wants to be rewarded for his own ineptitude at the expense of his children, even though at the time of trial he grossed more than Chipper in income.

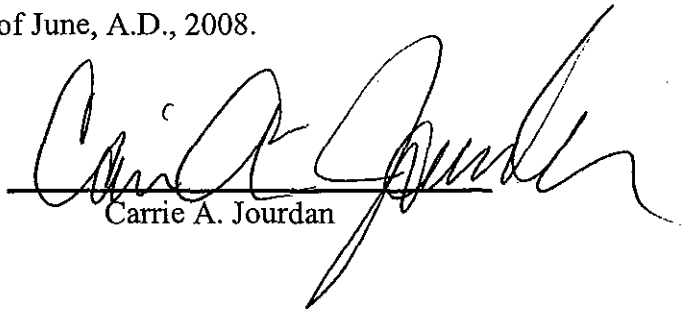
CERTIFICATE OF SERVICE

I, Carrie A. Jourdan, counsel for Appellee, Cyprianna Ellen (Hormanski) Swiderski, certify that I have this day served a copy of Amended Brief of Appellee, Cyprianna Ellen (Hormanski) Swiderski, via United States mail, postage prepaid, to:

Honorable Kenneth M. Burns
P. O. Drawer 110
Okolona, MS 38860

Jackson M. Brown, Esq.
P. O. Box 57
Starkville, MS 39760

SO CERTIFIED on this the 23rd day of June, A.D., 2008.


Carrie A. Jourdan