

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PERRIN H. LOWREY

APPELLANT

-VERSUS-

NO. 2007-CA-01988

CYNTHIA NELSON LOWREY

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed parties 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.

Perrin Lowrey, Appellant

Tucker Buchanan, Counsel for Appellant

Erik Lowrey, P.A, former Counsel for Appellant

Honorable James H.C. Thomas, Jr., Chancellor

Honorable Johnny Lee Williams, Chancellor

Cynthia Lowrey, Appellee/Cross-Appellant

Mark A. Chinn, Counsel for Appellee

Matthew Thompson, Counsel for Appellee

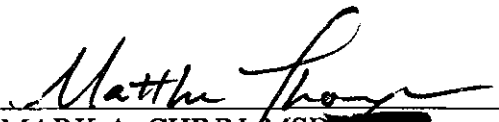

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STATEMENT OF ORAL ARGUMENT: NOT REQUESTED

Appellee submits to this Court that these parties have previously been before this Court on Appeal, the matter was remanded with clear instructions, and those were carried out. While each party has their own grievances with the ruling it is not due to intricate, confusing or conflicting rules of law, or instances of first impression.

STATEMENT OF THE ISSUES ON CROSS-APPEAL

- I. The Chancery Court erred in finding dissipation of assets (marital waste) when the evidence proved none.**
- II. The Alimony award should be reviewed in light of the erroneous finding of marital waste.**
- III. Primary Physical custody to Perrin was error leading to error in Child Support.**

RESTATEMENT OF THE ISSUES ON DIRECT APPEAL

- IV. Joint legal custody was proper in these circumstances.**
- V. The Chancery Court supplied specific Findings of Facts and Conclusions of Law.**

STATEMENT OF THE CASE

I. COURSE OF PROCEEDINGS AND DISPOSITION

This matter began in July 2001, with the filing of a *Joint Complaint for Divorce* and the signing of a *Child Custody, Child Support and Property Settlement Agreement* ("Agreement") filed July 11, 2002. These pleadings led to the eventual divorce of Perrin Lowrey (hereinafter "Perrin") and Cindy Lowrey (hereinafter "Cindy"). This divorce was entered on September 3, 2002. However, the "Agreement" was challenged, due to overreaching- other misconduct per MRCP 60(b), in a *Motion for New Trial* which was denied. This lead to a perfected appeal which resulted in a

reversal and remand by this Court in *Lowrey v. Lowrey*, 919 So.2d 1112 (Miss. App. 2005)(hereinafter "*Lowrey I*") (R.E. 61-71).¹

On August 2, 2005, the Mississippi Court of Appeals, reversed the chancellor's decision in the above referenced matter and rendered judgment by granting Cynthia Nelson Lowrey's Motion for relief from the *Final Judgment of Divorce*. Since there was overreaching in the parties' property settlement agreement ("agreement") and the agreement was deemed insufficient to meet the standards of adequacy and sufficiency, the Court of Appeals further found the agreement to be unenforceable. *Id.*

The Court determined that Cindy was the victim of misconduct, unequal bargaining power, that "[t]here is no doubt the agreement is one-sided and unfair." *Id.* at 1121.(Emphasis added). This Court directed the Chancery Court to right this wrong. This matter was remanded to determine the unresolved matters of child custody, child visitation, child support, property division, and alimony and any other necessary matters not inconsistent with the Opinion. *Id.* at 1122.

II. STATEMENT OF RELEVANT FACTS

Cynthia Nelson Lowrey and Perrin H. Lowrey were married on August 19, 1983. They lived together as husband and wife for 19 years, separating on or about June 20, 2002. They had three daughters together: Brittney Lowrey; born June 10, 1987, now 20, Erin Lowrey; born May 26, 1991, and Emelie Lowrey; also born May 26, 1991, now 16.

Throughout their marriage Cindy was a "stay-at-home-mom" for the couple's three

¹

Citations to the Record are designated as (R.__), the Record Excerpts as(R.E.__), and the Transcript of testimony as (Tr.__).

daughters. Upon the children reaching school age, Cindy worked outside of the home at a florist. Perrin worked full time jobs and advanced his career in education while Cindy tended to the children's needs and worked at the florist. Perrin and Cindy began

On or about June 23 or 24, 2002, Cindy went to Perrin and confessed. Perrin was furious. Despite being furious, the couple sought counseling conducted by the church. *Lowrey I.* at 1114. In this conference they talked of reconciliation. Cindy thought everything was going to be worked out, as did the preacher, who had to go out of town shortly after the session.

Later, Perrin came to Cindy and told her he had filed for divorce. He declared he would be represented by Erik Lowrey, his brother, that he would get the children and Cindy would receive nothing. Cindy was overwhelmed and caught completely by surprise. "Papers" were handed to her the very next day. Cindy got sick. Feeling totally helpless, she signed the papers.

On July 3, 2002, Cindy went to Perrin's brother's law office, Erik M. Lowrey, P.A., where she signed more papers. She was told where to sign by a lady in Erik's office.

Perrin told Cindy, "you get you an attorney and we will see you in court. We will destroy you. You will never live in this town again and you will never ever see your children again." *Lowrey I.* at 1121. Cindy, fearing she would be run out of town never to see her children again, signed the papers (the Agreement) without looking at them.

Upon remand Cindy's plight has not improved. At the time of trial Cindy was working full-time at a grocery store earning \$9.70 per hour. Her phone had been disconnected and she moved out of a friend's home in June 2007. She lived in her car and motel rooms, when she could afford it during the summer of 2007. Cindy has no savings, no checking account, no stocks, no IRA, no home nor equity from the home she lived in, no appreciable assets to speak of.

Since the notice of appeal was filed by Perrin, Cindy has lost her job due to her health, including a debilitating diagnosis of rheumatoid arthritis. She is pursuing disability. Cindy has received no support from Perrin since this time. (R. 0600). Fortunately, due to some good Samaritans, Cindy is living in a small apartment in Hattiesburg and has a pre-paid cell phone. She has not received one payment of alimony from Perrin since he filed his notice of appeal. (R. 0600-601).

SUMMARY OF THE ARGUMENT

The finding of marital waste was improper because the total amount of actual deposits outstripped actual withdrawals to all casinos, revealing no actual gambling waste. This “waste” was subtracted from the amounts Cindy would have received and impacted, negatively her equitable distribution in excess of \$122,000.00, and possibly in calculations of alimony.

The Physical Child Custody award to Perrin was not in the best interest of the children. The children continued to have emotional problems even though Cindy had been completely removed from their lives for over four years. The children need their mother just as Cindy needs a relationship with her daughters. Since there was error in the physical custody, not being joint custody at a minimum, there is likewise error in an award of child support. There would be no support in a true joint custody arrangement.

However, in the event the physical custody award is upheld then the support award would be proper and consistent with the proof presented and warranted in light of the circumstanced specific to this case. The child support award was commensurate with Cindy’s actual income, including her income potential, and accounted for the relationship status she had at the time with each child. No testimony heard warranted stripping a mother of her rights to legal custody.

The Chancery Court supplied a specific findings of fact and conclusions of law, and just as Cindy has appealed the actual findings so has Perrin, however Perrin alleging additional error because the Findings of Facts and Conclusions of Law were not satisfactory due to the style or format used therein by the Chancellor is not reversible error.

ARGUMENT ON CROSS-APPEAL

THERE WAS NO WASTE

- I. **The Chancery Court erred in its determination of Equitable Distribution based upon a finding dissipation of assets or marital waste when the Evidence proved no waste.**

The factors applied by this Court in the equitable division of marital property are set forth in *Ferguson v. Ferguson*, 639 So.2d 921, 926 (Miss. 1994) as follows:

1. **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.**

There was a prior distribution of assets, set aside by the Court of Appeals. This matter was remanded for a determination of the marital estate which could include marital waste. *Lowrey I*. However, despite arguments otherwise Perrin did not satisfy his burden of proving waste.

Perrin's Gambling Account Ledger was in the Black

At trial Perrin introduced Trial Exhibit 4, a summary of Cindy's personal checking account during the marriage. (R.E. 29-60). This exhibit listed payments for household goods and the children, credit cards payments, as well as ALL checks written to casinos. This ledger also included total deposits to the same account. This Trial Exhibit demonstrated that \$122,440.00 in checks were written to casinos out of Cindy's personal checking account between February 2000 and June 2002.

This same amount \$122,000 was charged to her by the Chancellor as dissipated assets. (*Findings of Facts and Conclusions of Law*, September 6, 2008, Pg. 8). However the total deposits to this account for the same period were \$146,563.36!

Testimony elicited at trial revealed that not all of the money was spent at the casinos, despite the checks having been made out to them. The total deposits added up to \$146,563.36. This account had **\$24,123.36** more than all of the amounts of the checks written to the casinos combined. Instead of proving waste, Perrin proved Cindy deposited more money than she withdrew. This is in no way an attempt to dismiss her gambling, but in order to demonstrate waste there must be a loss. *Craft v. Craft*, 825 So.2d 601. In *Craft*, a net loss was established of approximately \$67,000 over three or four years. *Id.* at 610. A net gain of over \$24,000 is not a loss. It cannot be waste.

Perrin took her gambling

Perrin admitted he took Cindy to the coast to gamble nearly every year of the marriage after the casinos opened. Further, Perrin admitted that he knew Cindy had a gambling problem as early as 1995. Cindy admitted she had a gambling problem and incurred some debt. Perrin and Cindy agreed to work to pay this debt off. Yet, every year of the marriage, after Perrin knew of Cindy's problem, Perrin took Cindy to the Casino to gamble. It was undisputed that Perrin took Cindy to the coast, where both gambled in 1996, 1997, 1998, 1999, 2000, and 2001. Perrin cannot complain at Cindy gambling, when he took her.

Perrin told her to write checks to the Casinos

The testimony at trial also revealed that as early as 1995 Perrin told Cindy to write checks to the casinos. The testimony revealed that Perrin told Cindy that if she wrote checks to the casinos and had any winnings, the checks written could be shown as losses to offset the taxes on winnings,

if any. Perrin cannot complain about Cindy writing checks to casinos when Perrin instructed Cindy to write checks to the casinos!

The Credit card account was in the Black.

The testimony revealed additional credit card debt from four accounts which Perrin testified he was not aware of, but listed as his liabilities on his 8.05 financial declaration. (Trial Exhibit 1). This debt was further evidenced by Perrin's Trial Exhibit 8, however Perrin's testimony revealed that Perrin never paid this debt. The debts totaling over \$17,000.00 were forgiven and Perrin received a substantial settlement of over \$14,000.00. That is a turnaround of \$31,000.00 and a windfall to Perrin of over \$14,000.00.

Allegations made by others, including Claude Thrash, were not in the findings because his veracity was questioned to say the least. Claude testified of the huge amounts of monies Cindy allegedly stole by misusing his business' checks. (Tr. 467-471). But he did not ever call the police, nor was one single check that was stolen or misappropriated from his business ever produced. (Tr. 473-474). Thrash was not a credible witness.

Also, testimony concerning Cindy's later visits to a casino were admitted to by her and the eye witness to the gambling did NOT see her pulling the handle on the slot machine, actively gambling. (Tr. 466-467).

In summary, Perrin has failed to prove waste. The accounts demonstrate some large withdrawals to casinos, however the total deposits exceed these withdrawals. Perrin did not have to pay the credit card debt he claimed he was liable for and actually received a windfall from those debts being forgiven, plus compensation in the form of payments. This Court must find that marital waste was not proved and that Cindy is entitled to an equitable portion of the windfall Perrin received.

2. Which party made substantial contribution to the accumulation of the property.

Factors considered in determining said contribution include:

- a. *the existence of direct or indirect economic contribution to the acquisition of the property*, Both parties worked in the early years of the marriage, but Perrin's earning power quickly outstripped Cindy's and she went from full time employment to staying home with the children upon the eldest child's birth in 1987. Perrin brought certain items of commingled personal property into the marriage, including some items that were gifts from his family members. All separate properties were commingled. *Singley vs. Singley*, 846 So.2d 1004 (Miss. 2002)
- b. *any 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*. Both Cindy and Perrin contributed to the stability and harmony of the marriage until 1995, when problems began. The parties agreed to work through these difficulties and resumed living as husband and wife until 2002.
- c. *and any contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets*. Cindy worked and took care of the home as Perrin worked and advanced his education early in the marriage.

3. The market value and the emotional value of the assets subject to distribution.

There was little testimony as to the market value of assets other than what was listed on the parties' multiple 8.05's (Trial Exhibit 1, 12, 13, 14, 16, 18). Trial Exhibit 2 and Perrin's testimony indicate all items of furniture that belonged to his family were commingled and used throughout the course of the 19 year marriage.

Likewise the parties owned a marital home. At the previous distribution, set aside on appeal, Cindy took no value out of the marital home. The value of the home for 2003 was said to be \$95,000.00 and testimony was offered that it had further increased in value at the time of the trial in 2007. The 2007 date for valuation of the parties assets is the proper date *McKay v. McKay*, 312 So.2d 12 (Miss.1975). “To hold otherwise would not be equitable.” *Rainer v. Rainer*, 393 So.2d 475, 477 (Miss. 1981). Likewise the “parties must share proportionately in any losses or gains caused by the ebb and flow of the [housing] market.” *Rogers v. Rogers*, 919 So.2d 184, 188 (Miss. App. 2005). The Court must consider the value of the parties estates “as to the **present situation** of the parties in determining and fixing the amount that [Perrin] should contribute to the support of his wife in the future.” *McKay*, 312 So.2d at 14 (Miss.1975). Cindy is entitled to an equitable share of all of the marital assets as of the date of judgment 2007.

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 the individual spouse.**

Neither party has any non-marital assets. Cindy has substantial separate debt. (Trial Exhibit 18).

5. **Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution.**

There was no testimony regarding tax or other economic consequences of any 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.**

This Court should hold that it would be in the parties’ best interests to use property division as much

as possible to eliminate future friction between them, however, equity demands that Cindy be made whole.

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity.

Perrin's earning capacity is much higher than Cindy's. Cindy has a real need and it is incumbent on this Court not to leave a party destitute. *Retzer vs. Retzer*, 578 So.2d 580 (Miss. 1990).

8. Any other factor which in equity should be considered.

This matter was reversed and remanded on appeal due to misconduct on the part of Perrin and used against Cindy. *Lowrey I*, 919 So.2d 1112 (Miss. App. 2005). This Court cannot ignore this misconduct which was allowed to permeate for nearly five years. The principles of basic fairness, equity and clean hands demand that this be also taken into account in the division of marital assets and further awards.

The Mississippi Supreme Court has held that in making an equitable division of marital property chancellors are not required to divide the property equally. The goal of equitably distributing marital property is "not only a fair division based upon the facts of the case, but also an attempt to finalize the division of assets and conclude the parties' legal relationship, leaving them each in a self sufficient state, where the facts and circumstances permit total dissolution." *Bullock v. Bullock*, 699 So.2d 1205, 1211 (Miss. 1997).

As the Mississippi Supreme Court stated in *Helmsley v. Helmsley*, 639 So.2d 915 (Miss. 1994), "We assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise, are of equal value." There was no credible evidence here to suggest otherwise in this nineteen (19) year marriage.

II. The Alimony award should be reviewed in light of the erroneous finding of marital waste.

Cindy requested that she be awarded alimony. The Chancellor awarded her \$900 in periodic alimony. (*Judgment of Custody, Visitation, Support, and Equitable Division of Marital Property*, September 6, 2007, Pg. 1). This discussion is not an assignment of error, but an inquiry as to if the error on the marital waste issue, which may be considered as marital fault for alimony purposes, negatively impacted the alimony issue.

An award of periodic alimony should be based on the following factors:

- (1) The income and expenses of the parties;
- (2) The health and earning capacities of the parties;
- (3) The needs of each party;
- (4) The obligations and assets of each party;
- (5) The length of the marriage;
- (2) The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care;
- (7) The age of the parties;
- (3) The standard of living of the parties, both during the marriage and at the time of the support determination;
- (9) The tax consequences of the spousal support order;
- (10) Fault or misconduct;
- (11) Wasteful dissipation of assets by either party; or
- (12) Any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

Armstrong v. Armstrong, 618 So.2d 1278, 1280 (Miss. 1992); *Henderson v. Henderson*, 757 So.2d 285, 293-94 (Miss. 2000). The Supreme Court has reaffirmed that the "chancellor should consider the reasonable needs of the wife and the right of the husband to lead as normal a life as possible with a decent standard of living." *Gray v. Gray*, 562 So.2d 79, 83 (Miss. 1990), cited in *Graham v. Graham*, 767 So.2d 277, 280 (Miss. 2000).

Perrin is healthy and has a good earning capacity. He was 54 at the time of trial. Perrin will have the deduction for the three children for tax purposes each year. Cindy was 51 years old and not

in good health physically or emotionally. She is suffering from depression, rheumatoid arthritis and anxiety as a result of the breakup of her marriage and her lack of any real relationship with her daughters. Cindy had reached her earning capacity working full-time in the produce section at the Save-Rite in Hattiesburg, and her health was starting to impact that meager amount. Cindy is responsible for significant debt related to her medical care, in addition to ongoing expenses associated with same.

For all intents and purposes Cindy has been destitute since the divorce. She received no support between the date of the separation in June 2002 and January 2007, when the Chancery Court entered a Temporary Order. Cindy was not awarded back alimony, nor was any credit for this articulated in the Chancellor's findings. Back support based on the temporary should have been \$40,500 which is calculated by multiplying the support she should have received (\$750.00, pursuant to the Temporary Order) by the number of months from the divorce to the Temporary Hearing (54).

An award of alimony in this matter is not a debate between punishment and reward. The fact of the matter is the law does not allow one party to be destitute. *Retzer*, 578 So.2d 580 (Miss. 1990). Regardless of overreaching-misconduct or gambling-misconduct.

ISSUES ON DIRECT APPEAL

For issues of briefing Cindy's third argument on appeal is being combined with the fourth issue on direct appeal.

III. Primary Physical custody to Perrin was error leading to error in Child Support.

IV. Joint legal custody was proper in these circumstances.

Cindy was a good mother and wife for many years. Cindy was the undisputed primary caregiver for her three daughters from their birth to them becoming school age. This was

uncontradicted. Perrin admitted he was working full-time when the children were very young and Cindy stayed home with the children. Cindy cared for the children all day and the parties shared duties in the evenings when both parties were home. This arrangement continued at least until the youngest children were school age in approximately 1995-1996, and Cindy again went to work, working part-time. Even after this period Cindy continued to take the children to school, doctor's appointments and the like. This was further supported by witnesses at trial:

Dr. Dick Allison was a pastor at the church the parties attended. Dr. Allison had seen Cindy at church with her daughters and described her efforts and activities at church with her daughters consistent with that of a primary caregiver. Further, Dr. Allison indicated that he considered both Perrin and Cindy friends, and that he had specific knowledge regarding the issues between the couple and attempted to help them work through those issues. (Tr. 425-462).

Daniel Blythe, was the Good Samaritan that took Cindy in, most recently. He provided a home for Cindy, in which Cindy compensated he and his family in the form of money orders and in kind purchases to pay portions of the utilities as well as provided many groceries each month totaling approximately \$400.00 per month. Mr. Blythe was also the music teacher for the Lowrey's children and stated he saw the girls and Cindy interact at school and that what he observed was consistent with Cindy being a good mother and primary caregiver. (Tr. 383-390).

Perrin Lowrey testified that Cindy was a full time stay at home mom in their daughter's formative years. He worked outside of the home during the day and Cindy took care of the children and the home.

It was evident to the Court that both parents love their daughters and neither should be denied access to information regarding the children. Each parent deserves the right to have equal access to information regarding the minor children's health and education information.

With regard to physical custody, both parties testified regarding physical custody and the court considered the applicable Albright factors being:

1. *Age, Health and Sex of the children*

Brittney is 20 and the Emilie and Erin, the twins, are 16. All of the children are female. Brittney is in college and in good health. Emelie is in good health. Erin is in good physical health but has some emotional issues. Testimony at trial revealed that she is in counseling and will continue said counseling until at such time same is not needed. The Court noted that although Cindy has not been in her daughter's lives that they continue to have issues, especially Erin. This fact alone supports Cindy being involved in her daughter's lives.

2. *Continuing Care*

Perrin has had continuing care of the girls since the separation and divorce, to the exclusion in large parts of Cindy. In fact Cindy has had little real, meaningful contact with her daughters in several years and it is telling for this court that Erin's emotional issues have continued and worsened since being apart from her mother.

3. *Which Parent has the best Parenting Skills.*

Both parents, when actively parenting have good parenting skills.

4. *Which Parent has the Willingness and capacity to provide primary care.*

Both parents have the willingness to provide primary care. In the event of a true equitable distribution both parent's should have the capacity as well.

5. *Employment responsibilities of the parties*

Perrin is retired from one job and owns' a consulting business and teaches on a limited basis at USM. Cindy was working full-time at Save-Rite at the time of trial. Both parties employment require both parties to be responsible and neither significantly impact their ability to parent.

6. *Physical and Mental Health and Age of Each Parent*

Perrin is in good physical health save routine issues that 54 year old males have. His mental health appears fine. Cindy's health is not good. She has a thyroid disorder as well as fibromyalgia and rheumatoid arthritis. Cindy had an addiction but has sought counseling for same. Cindy is suffering from depression and from post traumatic stress disorder, due in large part to what she has been through in this ongoing litigation since 2002. This Court should not punish Cindy, for she has suffered for 6 years.

7. *Emotional Ties of the Parents.*

It is apparent to this court that both Parent's have strong emotional ties to the children and would benefit from a relationship with each child.

8. *Moral Fitness of the Parents*

The Chancery Court was fully aware of the extent of Cindy's gambling and the moral impact of that. The Court was aware that Cindy admitted her problems, been to gamblers anonymous and other addiction programs. Cindy also sought counseling and was in counseling, weekly, at the time of trial. Cindy has admitted and owned her addiction.

This Court is likewise aware of the goings on of Perrin, through this record and the prior Opinion of the Court of Appeals including the findings of misconduct in the form of overreaching. This Court cannot ignore its own previous ruling as this matter was specifically remanded due to Perrin's conduct. Perrin has not accepted responsibility for these actions. In as much as the conduct of the parties relates to their moral fitness of parenting the Court is aware of same and determines that neither is more morally fit than the other. Moreover this Court should be appalled that Perrin took Cindy gambling, knowing she had an addiction and now attempts to use it against her.

9. *The Home, School, and Community Record of the Child*

The children are doing well in school.

10. Preference of the Child at an Age Sufficient by Law to Express such preference.

Brittney is 20 and the Emilie and Erin are 16. They are all of sufficient age to express a preference. Brittney is enrolled in college, living away from home. Erin and Emelie have executed a preference to live with their father. Testimony revealed that Erin would be attending a school in which she lives away from home except for every other weekend. Only Emelie was to reside at home.

11. Stability of the Home Environment and the Employment of the Parents

The children's home environment should not be considered by this Court truly stable. The children need and deserve a relationship with both parents, as do both parents need and deserve a relationship with all the children. In as much as possible this Court should order and encourage that efforts be made for the children to have a viable relationship with their mother and father, and vice-versa.

In assessing *Albright* the Chancery Court found joint legal custody of their minor children to be proper. This ruling was supported by the evidence and is in the best interests of the children.

Custodial periods between Cindy and her daughters should be strongly encouraged, and this Court should take note that lack of meaningful visitation or custodial periods have eroded the relationship between mother and daughters. The Court heard the testimony of the GAL, John Smallwood², and should order that joint counseling between Cindy and Emelie is to begin immediately. Further, in roads are to be made to reestablish a relationship between Brittney and Erin as appropriate.

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The Guardian Ad Litem in this matter is now associated with Mr. Buchanan, counsel for Perrin. In the event of further involvement of a GAL, a new GAL must be appointed.

In Mississippi, the determination of a proper amount of child support to be paid by the non-custodial parent has been standardized by the adoption of statutory guidelines for support amounts. The statutory child support guidelines in Mississippi provide that the proper amount of child support for three minor children is equal to 22% of the non-custodial parent's adjusted gross income. If the Court finds application of the guidelines is not reasonable, deviation from the statutory amount is allowed. *Miss. Code Ann.* Section 43-19-101.

In the case at bar, assuming no change in physical custody by this Court, the Chancery Court's deviation was warranted. The Court calculated 14% of Cindy's base income at the time of \$1,500. The Court's logic makes sense because the oldest child testified she did not desire a relationship with her mother. One of the twins was also living away from home. The Court's deviation of the statutory amount was warranted.

V. The Chancery Court supplied specific Findings of Facts and Conclusions of Law.

The Chancery Court ruled on Perrin's motion for specific Findings of Facts and in fact supplied a written nine page specific findings of facts and conclusions of law and corresponding judgment. (R.E. 16-26). The Chancery Court further specifically addressed this issue in an Order Denying Motion to Reconsider, Alter or Amend entered October 29, 2007. The court stated, "[w]hile Defendant may have organized or worded the findings of fact and conclusions of law rendered by the Court differently, that rendered is what was intended and reflects the findings of the Court on the issues requested on reconsideration." (R.E. 27-28)(Emphasis added).³

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The "Proffer" at issue in *Lowrey I*, and at the heart of Perrin's final issue on appeal has been addressed by the Chancery Court, this Court previously and was also the subject of a Petition for Writ of Certiorari, meaning it was ruled upon by the Supreme Court. All Courts found the Proffer to comply with the applicable rules concerning same. Any and all contests as to the "Proffer" are *Res Judicata*.


CONCLUSION

This is a case where a good mother was punished for suffering from an addiction that was created and perpetuated during the marriage. The stress and anxiety that necessarily ensues from such an addiction and the resultant drawn out Court proceedings understandably took an emotional toll on Cindy. However, Cindy should not be punished by having no relationship with her own daughters. These children have been deprived of the Mother that raised them, gave life to them; and the Mother who had always cared for them; the Mother who did everything for them; the Mother who arranged her work and activities around the activities of her children; made her children her priority.

Cindy is asking this Court to for equity. The litigation turmoil she has been through is the kind no person should have to endure. This case started off on the wrong foot and proceeded to get worse. Now that a semblance of equity was achieved, she is embroiled again in litigation; a second appeal. Cindy requests that this Court reverse and render on the issue of custody, and order the matter be remanded for a determination of Roger's visitation and support obligation. In the alternative, Kim requests remand with instructions to award physical custody to Kim which is more appropriate than the limited visitation that was awarded. Cindy requests that an independent, competent Guardian Ad Litem be appointed to evaluate the best interest of the minor children and file a timely and proper report with the Court in the event more information is needed to address the issue of custody or visitation. Cindy seeks this court to reverse the assessment of waste as same was not proven. Finally, Cindy requests attorneys fees and such other relief which is appropriate in the premises.

Respectfully Submitted,

Cynthia Nelson Lowrey

By: 
Matthew Thompson

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CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that this day a true and correct copy of the foregoing instrument has been delivered to the following persons:

Hon. Chancellor James. H.C. Thomas, Jr.,
P.O. Box 1664
Hattiesburg, Mississippi 39403-1664

Hon. Tucker Buchanan
P.O. Box 4326
Laurel, Mississippi 39441

This the 24th day of November, 2008.

By: 
Matthew Thompson