

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

STEVE RUTH

APPELLANT

VS.

NO. 2007-CA-02066

LONDON SUZETTE BURCHFIELD

APPELLEE

REPLY BRIEF OF APPELLANT, STEVE RUTH

APPEAL FROM THE CHANCERY COURT OF
LOWNDES COUNTY, MISSISSIPPI
CAUSE NO. 99,0632-D

TIMOTHY C. HUDSON, ESQ.
POST OFFICE BOX 648
COLUMBUS, MS 39773
TELEPHONE (662) 328-2711
FACSIMILE (662) 328-0745
E:MAIL:
thudson.simsandsims@yahoo.com
MS BAR NO. [REDACTED]

ATTORNEY FOR APPELLANT

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

STEVE RUTH

APPELLANT

VS.

NO. 2007-CA-02066

LONDON SUZETTE BURCHFIELD

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 representatives are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. Steve Ruth, Appellant
2. London Suzette Burchfield, Appellee
3. Timothy C. Hudson, Attorney for Appellant
4. Hal H. H. McClanahan, III, Attorney for Appellee

By: 

TIMOTHY C. HUDSON, ATTORNEY FOR
APPELLANT

TIMOTHY C. HUDSON, ESQ.
POST OFFICE BOX 648
COLUMBUS, MS 39703
TELEPHONE (662) 328-2711
FACSIMILE (662) 328-0745
EMAIL: thudson.simsandsims@yahoo.com
MS BAR NO. [REDACTED]

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.	iii
REPLY BRIEF	4
RESPONSE TO APPELLEE'S CROSS APPEAL	6
CONCLUSION.	7
CERTIFICATE OF SERVICE.	8

TABLE OF AUTHORITIES

	<u>PAGE:</u>
<u>Bates v. Bates</u> , 755 So. 2d 478 (Miss. Ct. App. 1999)	6
<u>Creekmore v. Creekmore</u> , 651 So. 2d 513, 520 (Miss. 1995)	6

REPLY BRIEF

In response to Appellee's Brief, the Appellant responds to certain conclusions and statements which Appellant contends are not supported by the record. First, Appellee's Brief states the Appellee "immediately took action" upon learning of her son's marijuana use (T.T. 94-95; R. E. 105-106)¹ and "disciplined" her son (T.T. 138; R.E. 109). A reading of the record cited by Appellee will show "took action" and "discipline" consists of talking to the Appellee's son.

Second, the Appellee's Brief states the Appellee admits to making a mistake in allowing the babysitter to sleep over when taking care of the children. Appellant alleges this is the minor female who Appellee's son was carrying on improper activities with in the presence of Appellant's child. In Appellant's record excerpts at page 134, lines 6 through 17, the Appellee goes into detail about her work schedule which shows she is home at night and it is not necessary for overnight child care.

Third, the Appellee characterizes Appellant's disagreement with his daughter being held back a grade when assistance with school could allow her to pass, as the Appellant "overruling" the Appellee and teachers. A more accurate description the Appellant made a suggestion and did not overrule anyone. (T.T. 273; L. 8-27; R.E. 133 of Appellee's Brief).

¹Except as otherwise provided herein, R. E. refers to the record excerpts of the Appellee.

Finally, Appellant points out the Appellant was not required to provide medical insurance as stated in Appellant's Brief but voluntarily did so. Further, the Appellee's Petition to the trial court did not seek modification to require insurance nor does the trial record reveal an oral request for the Court to order insurance. Appellant contends the Trial Court granted relief which was not requested, and as set forth in Appellant's Brief, Appellant asserts this voluntary providing of insurance should be considered in the calculation of child support.

RESPONSE TO APPELLEE'S CROSS APPEAL

The Appellee has cross-appealed the Chancellor's denial of Appellee's request for attorney's fees. The award of attorney fees in divorce cases is left to the discretion of the Chancellor, assuming he follows the appropriate standards. Creekmore v. Creekmore, 651 So. 2d 513, 520 (Miss. 1995). Appellee contends this standard would apply in modification cases. The real issue is did the Chancellor abuse his discretion and/or not consider the appropriate standards. In Bates v. Bates, 755 So. 2d 478 (Miss. Ct. App. 1999) the Court held the record must reflect the requesting spouse's inability to pay his or her own attorney's fees. The only testimony presented to the Chancellor as to inability to pay is found at T.T. 144, L. 5-7 (Attached as Exhibit "A" to this Brief). The Appellee cites no record excerpts to support her position and the only information presented to the Chancellor was "Do you have the money with which to retain an attorney" and the response "No, not really". Appellant contends this scant testimony cannot be sufficient for this Court to find the Chancellor clearly abused his discretion in denying Appellee's request for attorney fees.

CONCLUSION

For the reasons stated above, Appellant prays that Appellee's cross-appeal be dismissed.

CERTIFICATE OF SERVICE

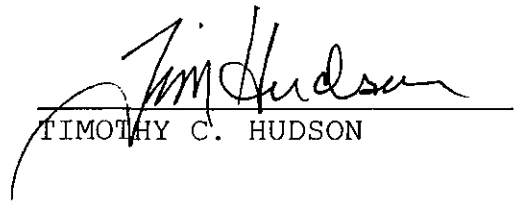
The undersigned, Timothy C. Hudson, Attorney for the Appellant, Steve Ruth, hereby certifies that he has this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of Appellant, Steve Ruth, to:

Honorable H. J. Davidson, Jr.
Chancery Court Judge
Post Office Box 684
Columbus, MS 39703

Honorable Hal H. H. McClanahan, III
Attorney for Appellee
Post Office Box 1091
Columbus, MS 39703

Betty W. Sephton, Clerk
Mississippi Supreme Court
Post Office Box 249
Jackson, MS 39205

SO CERTIFIED on this the 29th day of September, A.D., 2008.


TIMOTHY C. HUDSON

1 if somebody had taken me away from my mom and my sister, I
2 mean, I just -- I really don't know how to answer that
3 question, but --

4 Q. All right. Now, we went through this earlier this
5 morning with Mr. Burchfield. Do you have the money with
6 which to retain an attorney?

7 A. No, not really. No, sir.

8 Q. And did you hire me to represent you in this case?

9 A. Yes, sir.

10 Q. Can you identify this, please, ma'am?

11 A. Yes, sir.

12 Q. Is this your retainer contract with me?

13 A. Yes, sir.

14 Q. And it's \$225 an hour?

15 A. Yes, sir.

16 Q. And \$1500 retainer?

17 A. Yes, sir.

18 MR. McCLANAHAN: Move that whatever the next
19 number is to introduce it, P whatever.

20 THE COURT: Any objection?

21 MR. HUDSON: I guess based on relevance, this
22 is a strict modification, and I don't know of any
23 authority to allow -- award attorney fees under
24 this situation.

25 THE COURT: I'll allow it in understanding
26 your objection. That would be D4 I believe or P3.

27 (SAME RECEIVED AND MARKED AS EXHIBIT NUMBER
28 P3 SHALL BE RECEIVED INTO EVIDENCE AND MAY BE
29 FOUND SEPARATE AND APART FROM THIS RECORD)

Exhibit "A"