2007-CA-02157

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Reply

# Supreme Court of Mississippi
## Court of Appeals of the State of Mississippi
*Office of the Clerk*


Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

*(Street Address)*
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@mssc.state.ms.us


July 10, 2008

Patricia Smith
Attorney at Law
P O Box 589
Vicksburg, MS 39181

## NOTICE

Re: Edward E. Shelnut v. Mississippi Department of Human Services
Supreme Court # 2007-CA-02157

In response to your request, please be advised that the Court has **granted** the motion for extension of time to file the Reply Brief. This brief is presently due on 08/11/2008. No further extension will be granted, and any further requests for an extension of time may be subject to sanctions.

Betty W. Sephton
CLERK

cjb

c: all counsel

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IN THE SUPREME COURT OF MISSISSIPPI

EDWARD SHELNUT — APPELLANT

VS. — NO. 2007-CA-02157

DEPARTMENT OF HUMAN SERVICES — APPELLEE

## APPELLANT'S REPLY BRIEF

## RESPONSE TO STATEMENT OF THE ISSUES

This response addresses seven issues identified by the appellee. Ed would ask this Court simply to compare the Appellee Brief to the Appellant's brief point by point and apply the law and the further discoveries within the record during this appeal. At the root of the issues are the basic due process rights afforded to all American citizens. The Supreme Court of Mississippi is the Court of last resort. If the Court's decision is based on an incorrect fact, then the outcome may be terribly wrong. Since, there is no appeal, the loser has no further means of obtaining justice absent a miracle. Fairness to all is the bedrock of our justice system; it demands that all wrongs be righted.

Ed's current attorney discovered that the Department of Human Services had presented the first (custody) case's Petition to the trial court as the initial document of this case instead of the actual divorce complaint filed in May, 1990. The Department of Human Services also presented the affidavit from the first case and the custody order as if they were part of the divorce action when it is clear that they were not. This court in its ruling in 2000, didn't even mention the custody action, which Gaye Lynn and the Department of Human Services would have one believe was an "interim" case. It certainly was NOT a petition for divorce, yet the Department of Human Services and Gay Lynn have attempted to have all the various courts believe that because Ed answered and participated in the Complaint for custody at least through the December, 1989 hearing, Canada had personal jurisdiction over him in the divorce action when he was not served, did not answer and did

not participate. The custody case was a separate maintenance litigation, and even it was falsely filed as Gaye Lynn alleged that she was a deserted spouse! For 17 years, various courts and succeeding attorneys have made decisions and arguments based on those several misrepresentations (see attached exhibits).

In the previous appeal in this case ( *Department of Human Services v. Shelnut*, 722 So.2d 1041) (*Shelnut I*), the Court unfortunately mis-applied the facts of Ed's participation in one separate legal (custody) case filed in Canada in 1989 to the second, different legal (divorce) action filed in 1990. The facts of the first Canadian action are irrelevant to the second case, except that it is clear that there was no prayer for a divorce in the first case. The documents from the first (custody) case never should have been presented to the trial court as being part of the second (divorce) case. In the second (divorce) case, there was no evidence or testimony presented to the Court that Ed participated in any manner at all. There is no doubt that Canada had personal jurisdiction over Ed in the first (custody) case as he replied to the complaint by filing an answering affidavit and he was represented by counsel in a December 1989 hearing. Had that order been registered in Mississippi, it certainly would have been subject to an attempt to enforce. However, prior misinformation has led the court to believe that personal jurisdiction should be extended from the first (custody) case to the second (divorce) case, from which this appeal extends.

This response will primarily address the failure of previous rulings, including *Shelnut I*, to realize that there were two separate causes of action in Canada, a custody action and a separate divorce action. Further, the terms of the divorce action are the only matters at issue in this appeal.

## RESPONSE TO THE ARGUMENTS

For the sake of brevity, A and B of the first issue regarding jurisdiction and due process are addressed together.

1. ***Ed's due process rights were denied in the Canadian divorce action and the Supreme Court in Shelnut I erred in finding Canada had personal jurisdiction over Ed in the second (divorce) action and that there was only one case.***

This argument is at the heart of the entire appeal. Misstatement of facts and misrepresentation of crucial documents, whether intentional or unintentional, resulted in a decision by this Honorable Court in *Shelnut I* which is contrary to the law and the actual facts. Ed does not know how or why this Honorable Court thought in *Shelnut I* that he had filed an affidavit and pleading in the Canadian *divorce* proceeding, but he did not. The only affidavit and contest of personal jurisdiction were filed by Ed in the *custody* case in which a final judgment was entered nearly six months before the divorce complaint was filed (See cause No. on the affidavit). That first (custody) case is an entirely different case and cause number than the one appealed before this court.

The Appellee's brief states that Ed's due process rights were, "not denied to such an extent ... that those denials would provide a defense against a registration and attempt to enforce a foreign judgment." *Any* denial of due process forms the basis for a defense against any order or judgment enrolled against a citizen of the United States as a foreign judgment. Ironically, the Appellee admits that there was at least "some" denial of due process rights.

The appellee's brief states that "...Ed was aware of the divorce proceeding..." Gaye Lynn presented no evidence that Ed was served or answered in the second action. In fact, she testified that to her knowledge, Ed didn't answer the complaint for divorce (T at 66). At the time of the September, 2007, hearing, the general impression of the current attorneys and the current trial court was that the complaint filed in October, 1989, was a divorce complaint. However, upon further review, it was discovered that it was simply a custody petition. Gaye Lynn was correct in her testimony that Ed did not answer the divorce (second) complaint. (T. At 66). The petition for divorce (second action) filed on or about May 9, 1990, was never entered into evidence by either party. The only documentation of the second (divorce) action was the final judgment entered June

28, 1990, under Cause No. 456 of A.D. 1990, (Exhibit 7). Since divorce was not pled in the custody action, it was impossible for the Canadian court to enter any judgment for divorce in that case.

In a letter from the trial excerpts of *Shelnut I* Reeves Jones does state that "the record" showed that Ed was personally served with a complaint for divorce before Gaye Lynn. Except the "record" contained no evidence of that assertion. There was no complaint for divorce nor was there was evidence of service of process return in the record. Further, personal service of process in a foreign jurisdiction does not automatically bestow personal jurisdiction over the Defendant. Being "aware" of litigation against one does not create personal jurisdiction or an obligation to respond to a foreign court and Gaye Lynn and Ed both testified that there was no answer to the divorce complaint.

In *Shelnut I*, this Court stated:

> Whether we are examining enforcement of the judgment under statutory law or principles of comity, the ability of a court to give effect to a foreign judgment necessarily depends upon the judgment being valid in the first place. Because the duty to pay child support is a personal obligation, a valid judgment imposing child support in favor of a plaintiff may be entered only by a court having jurisdiction over the person of the defendant. ***Hamm v. Hall***, 693 So. 2d 906, 909 (Miss. 1997) (citing ***Kulko v. Superior Court***, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 13 (1978)). Thus, the question of whether the Canadian court had personal jurisdiction over Shelnut is crucial to the chancery court's ability to enforce the judgment. Shelnut successfully argued before the chancery court that because the Canadian court lacked jurisdiction over his person, the judgment for child support is void and unenforceable under the UIFSA.

And,

> 4. Shelnut filed an affidavit and pleading contesting personal jurisdiction in the Canadian court. He never made a physical ***1044** appearance in that court. The Canadian court granted Kern's request for a divorce on June 28, 1990, and also awarded Kern with child custody and child support. No appeal was taken by Shelnut.

The second quote above is, quite simply, untrue as written. The record does not reflect that Ed filed an affidavit or responded in any manner in the complaint for divorce filed on or about May 9, 1990. In the first (custody) case, Ed responded, filed an affidavit and was represented in a court hearing where a ruling for custody and child support was made against him. In the second (divorce) case, he did nothing. Had Ed done anything which would have constituted an entry of appearance,

he would then have become entitled to a notice of a hearing on the merits (to defend the attempt to levy another child support order against him). The final judgment in the second (divorce) action clearly states that there were no attorneys nor parties present, and that the decision was being made on the pleadings.

In this current attempt to register and enforce the divorce decree order for child support, the Department of Human Services presented no evidence to show Ed received the complaint for divorce, filed any pleadings, was given notice of any hearings, nor is there any evidence of notice attempted or process returned in the record presented to the trial court regarding a hearing on the merits. In Mississippi, even if a Defendant fails to appear, the court must find that he/she has been properly served with notice for a hearing on the merits and that the Plaintiff must put on a case on the record to obtain relief in the form of a personal obligation against the Defendant. The Final Judgment, on its face, clearly shows that none of those requirements were met in this case.

The Court was correct in *Shelnut I* in finding that the Canadian Order does not constitute an adjudication of personal jurisdiction over the issue of child support. In its discussion of (A.) of the Canadian Judgment in *Shelnut I*, the Court's Statement of the Facts was incorrect due to the confusion of the facts and because the first (custody) action and second (divorce) action were being represented by the Department of Human Services as one and the same, and, as a result, since there is no appeal from a Mississippi Supreme Court decision, an unjust legal result followed. Ed did not file an affidavit and pleading contesting personal jurisdiction in the second (divorce) action. He filed it in the first (custody) action. Ed did not do anything in the second action. The affidavit and pleadings, which are found in the record excerpt were as follows:

| | | |
|---|---|---|
| 1. | October 17, 1989 | Petition for Custody and child support filed by Gaye Lynn (UFC No. 1033 of AD 1989) |
| 2. | October 17, 1989 | Notice to Respondent of claims (UFC No. 1033 of AD 1989) |
| 3. | October , 1989 | Affidavit of Gaye Lynn in her claim for custody (UFC No. 1033 of AD 1989) |

| | | |
|---|---|---|
| 4. | November 22, 1989 | Affidavit of Ed Shelnut (UFC No. 1033 of AD 1989) |
| 5. | December 4, 1989 | An Order was entered in (UFC No. 1033 of AD 1989) granting Gaye Lynn child support. The order clearly states that it reviewed the affidavits of the parties and that both parties were represented by counsel. |
| 6. | January 17, 1990 | An order was entered stating that counsel for both parties were present and that the child support order would continue until further order of the court. |
| 7. | May 9, 1990 | Gaye Lynn filed for divorce in Canada.(UFC No. 456 of AD 1990). There is no evidence Ed was properly served; there is no evidence or testimony that Ed participated in this action. |
| 8. | June 28, 1990. | Just weeks after filing the divorce petition, the Canadian Court granted Gaye Lynn a Judgment of Divorce in UFC No. 456 of AD 1990 and ordered the "following corollary relief under the Divorce Act."... The Judgment further stated that it made its ruling based on pleadings and the evidence presented, but that neither party nor their counsel were present. |

This Court in *M.A.S. v. D.H.S.* said in P 10 that "*generally (emphasis added)*, collateral estoppel precludes parties from relitigating issues authoritatively decided on their merits in prior litigation to which they were parties or in privity. *M.A.S. v. D.H.S.*, 842 So.2d 527 (Miss. 2003). This Court in *M.A.S.* said that sometimes finality should yield to fairness because the prior order was incorrect. *Id.* Contrary to the Statement of Facts in *Shelnut I*, Ed did not participate in the second (divorce) action. He neither answered any complaint, retained counsel or was given notice of any final hearing. The facts as described by this Court in reaching its decision in the first appeal were wrong. Had the facts been accurately recited in *Shelnut I*, Canada's personal jurisdiction over Ed

for this case would have been found to be non-existent. The question is now, whether Ed is estopped from raising the personal jurisdiction defense before this court when the prior ruling was based on the Court's confusion as to the fact that there were actually two separate cases.

This Court has previously made it clear that after a petition is filed and served, there must be notice to the Defendant of a time and place for a hearing. *Sanghi v. Sanghi*, 759 So.2d 1250 (Miss. 2000). There is no evidence of any notice of a hearing on the merits on the second (divorce) action in this matter and the final Canadian order clearly states that Ed was not there and he had no counsel at the signing which was done administratively. There is evidence that Ed was noticed for a hearing in the first (custody) action and that he responded. Further, extensive research has found no case which supports being "aware of the divorce proceedings" as an excuse for denial of due process rights. There was a time space of only about six or seven weeks between the filing of the divorce petition and the final judgment. Even in Mississippi, in an irreconcilable differences divorce, 60 days are required to finalize a divorce. Practically speaking, Ed would have had to do some fancy footwork to hire an attorney, answer the pleadings and then be noticed for a hearing on the merits. Since the affidavit that has been used as evidence of his participation was actually the one used six months before in another separate legal case, the entire foundation of this action is based on a legal and factual falsity that cannot be ignored any longer.

Certainly the Canadian court had jurisdiction to grant a divorce between the parties. Mississippi would have had the same jurisdiction to grant a divorce, and the original trial court was correct in "finding that the Canadian court has jurisdiction in that case" to grant a divorce *in rem.* However, the Canadian court could not have jurisdiction to address custody, child support and other issues which would have placed a financial burden on Ed without notice and opportunity to be heard.

The Court in *Hamm v. Hall*, 693 So.2d 906 (Miss. 1997) cited to Am.Jur.2d "Divorce and Separation" §552 that:

> It is well settled, in accord with general rules applicable in other cases, that a decree for alimony and costs against a nonresident defendant cannot be based on constructive service except as against property found within the jurisdiction of the court, proceeded against in the divorce proceeding, and

> described in the complaint or petition. In other words, constructive service, whether made by publication or by actual service of process on the defendant outside the state, is insufficient to give jurisdiction on which to render a judgment for alimony against a nonresident which *909 would be personally binding. The acceptance of the decree by a defendant over whom no jurisdiction was obtained has been held not to estop the defendant from disputing the validity of a subsequent ex parte proceeding in the divorce suit by which the judgment was opened and a decree for alimony entered.

Am.Jur.2d _Divorce and Separation_ § 552

Had this Court, in its previous ruling in this matter, recognized that its statement of the facts of its ruling found on page 1043- 1044 (P4) were erroneous as to Ed's participation in the second (divorce) case, equity and justice would have been served at that time with the Court finding that Canada had no personal jurisdiction over Ed. The recitation of this mistake is not an attempt to collaterally attack this Court's prior ruling, but to give the Court an opportunity to correct its prior ruling.

Further, the Department of Human Services would have this court believe that the first (custody) action was an "interim" action; there was no petition for divorce in the first action; it was a separate and stand alone legal action for custody and child support. The only thing "interim" about the custody action was the order which stated that the child support would be as ordered until further order of the court. The Department of Human Services assertion is a serious misrepresentation and mis-characterization of the facts.

~~Even if this Court finds that it will not correct its mistake in *Shelnut I's* statement of facts~~ and final ruling, it must look for evidence that Ed was given proper notice of a final hearing wherein the divorce decree was granted. There is no evidence that he was given that notice or that he made an appearance in that action. This Court in *Shelnut I* said that public policy dictates that there be an end to litigation and if a party has participated in an action and the matters are tried, they should be forever settled as between the parties. This same Court in *M.A.S.* said that a manifest injustice is done when a wrong decision is allowed to continue to remain in effect when fairness dictates that a flawed order be vacated.

Mississippi requires notice and opportunity to be heard before any judgment is issued in a contested action. Rule 40 (b) MRCP. Rule 81 provides the framework for service of process in other special matters.

In *Morrison v. Mississippi Department of Human Services*, the Court found that there must be evidence that the party was actually served in order to obtain a judgment. When a Defendant raises the defense that he was not served with process for a hearing, it becomes the Plaintiff's burden to produce evidence that controverts the defense raised. *Morrison v. Department of Human Services* , 863 So.2d 948 (Miss. 2004). The Final Judgment of Divorce in Canada, which carries only the second cause number, clearly states, "This proceeding coming on before the Court this day at Saskatoon, Saskatchewan, in the absence of the parties and counsel, and upon considering the pleadings and the evidence presented." The Department of Human Services has yet to present any pleadings or evidence whatsoever that Ed or his attorney were afforded due process and participated in the second (divorce) action at all through the filing of an affidavit, answer, entry of appearance or other document evidencing his participation, or that there was notice to Ed of a hearing on the merits. Ed was ordered to pay child support when he clearly had no notice of a hearing on the merits or opportunity to appear to contest the judgment.

The Reciprocal Enforcement of Maintenance Orders Act, 1996, Canada, the Canadian federal Divorce Act and the Constitution of the United States require notice and opportunity to be heard in regard to any final order. Under Canadian law - all orders whether provisional, confirmation, variation or rescission of orders or registration of an order - all must be accomplished with notice of the proceeding and an opportunity to appear. Sections 6(2), 8(6)(d), 8(7)(d),8(9)(b). The Department of Human Services presented no evidence that Ed was properly notified of any proceedings or hearings in Canada in the second (divorce) case.

Though already presented in the Appellant's Brief, Ed would urge this Honorable Court to again refer to the following cases:

In *Floyd v. Floyd*, the Defendant answered the complaint and appeared in court for the first hearing. Subsequently, notices were sent for other hearings, but the notices were not "Notice of Hearing" documents. *Floyd v. Floyd*, 870 So.2d 677 (Miss. 2004). The Court found there must be strict compliance in giving notice and opportunity to be heard for a hearing in its reversal. *Id.*

In another case, the Mississippi Department of Human Services intervened as a statutory assignee of a former wife's child support payment to enforce an Alaskan ex parte modification order. The court refused to enforce the order as the information contained in the affidavit may have been obtained from other sources, nor could the litigation inspired document be considered public record, and the husband was not afforded a reasonable opportunity to be heard in opposition to the motion. *Mississippi Department of Human Services v. Fargo*, 771 So.2d 935 (Miss. 2000).

In *Hamm v. Hall*, a divorce action, the out-of-state Defendant was served by publication and a copy of the summons mailed to his supposed out-of-state address. He did not file an answer and did not enter an appearance. A judgment was entered against him for child support. *Hamm v. Hall*, 693 So.2d 906 (Miss. 1997). In *Hamm*, the court found that the original judgment was void as to the child support. The *Hamm* court also discussed *Reichert v. Reichert*, which addressed a notice of hearing issue. *Id.*, citing *Reichert v. Reichert*, 807 So.2d 1282 (Miss. Ct. App. 2002).

In *Edwards v. James*, the Court found that every Defendant or Respondent has the "right to notice in a court proceeding involving him and a right to introduce evidence at the hearing." *Edwards v. James*, 453 So.2d 684 (Miss. 1984). There is no evidence that, even if Ed had been properly served with a complaint for divorce, that he was served with any Notice of Hearing on a final hearing on the merits of the divorce action. Because Ed had no notice and opportunity to be heard at a final hearing in the second (divorce) action, the child support provisions of this foreign order are void and unenforceable under the laws of this state. Further, there is no document in which Ed consents to a child support obligation. It is well settled that Mississippi law requires a written agreement in the absence of a hearing, where the defendant-payor consents to any such child support obligation.

The *Morris* court found that a full and complete hearing must be held after due notice of the purpose of the hearing before an order may be entered. *Morris v. Morris*, 359 So.2d 1138.

Even if a Defendant is aware of a suit, the failure to comply with rules for the service of process, coupled with the failure of the Defendant voluntarily to appear, prevents a judgment from being entered against him. *Sanghi* at 1257. See also *Vincent v. Griffin*, 872 So.2d 676 (Miss. 2004).

In the *Fortenberry* case, the wife had moved to another state taking the minor child of the marriage with her. The father filed for divorce and did not plead any requests regarding child support. The trial court ordered the father to pay child support without any due notice or full and complete hearing at which the parties had the opportunity to call witnesses. The Supreme Court reversed the trial court finding that the father was denied due process. *Fortenberry v. Fortenberry*, 338 So.2d 806.

In considering personal jurisdiction over Ed as to the divorce action, the Supreme Court's ruling in *Shelnut I*, recited a procedural history which did not include the original complaint for custody and child support filed against Ed on October 17, 1989, in which he attempted to defend and contest jurisdiction in his affidavit dated November 22, 1989, *six months* before Gaye Lynn filed her divorce petition on May 9, 1990. The Supreme Court mistakenly found in Paragraph 4 of its ruling that Ed filed an affidavit contesting personal jurisdiction in the complaint filed in May, 1990, by Gaye Lynn. The affidavit and pleading contesting jurisdiction were filed in the first action and not the second. There is no evidence or testimony in the record which shows that either that same affidavit or another was filed in the divorce action. The procedural history in *Shelnut I* took no notice of the fact (now clearly shown) that there were two completely separate legal actions instituted by Gaye Lynn in Canada.

Ed would concede that if the facts as stated in the *Shelnut I* case had been accurate, personal jurisdiction over him would have been decided correctly. However, there now remains the question of personal jurisdiction under the now known facts of two separate Canadian actions and the lack of due process afforded Ed the second (divorce) action. Further, if there had been personal jurisdiction obtained through an act of entry of appearance or response to the divorce complaint, Ed

would have been entitled to notice and opportunity to be heard at a hearing on the merits. There is no testimony or other evidence that he was provided that notice or opportunity and there is no evidence that a hearing on the merits actually took place.

The trial court found that though the issue was raised, that there must have been two separate actions, when Ed found that the facts of the first (custody) action cause number was being used under the second (divorce) action cause number, it committed reversible error to find that there was only one action, not two. (Memorandum Opinion of the Court, p. 22). Though the trial court correctly found that there were two cause numbers and that the Canadian court must docket and file each pleading like most chancery courts in this state, it found there was only one divorce, child support and custody action filed in Canada. *Id.* In reviewing the record to render its opinion, the trial court neglected to review Exhibit 3 of the trial court which is a Petition filed October 17, 1989, Number U.F.C. No. 1033 of A.D. 1989. There is NO claim for a divorce in that petition. The Supreme Court found in its 2000 ruling that the divorce petition was filed on May 9, 1990. *Shelnut*, at 1043. In its ruling, the Supreme Court mistakenly said was served on Ed in what was the second (divorce) action, was actually the process served in the first (custody) action. It is clear there were two separate actions and that Ed was only served in the first action. The trial court erred in finding that there was only one action and that Ed's participation in the first action bound him in the second. This is like being served for a custody action in Mississippi but not for a divorce and the court saying that because you were served in the custody action, the court has personal jurisdiction over you for the divorce. Regardless of being served or not served, the Defendant still has a right to be noticed and to have an opportunity to be heard.

***2. The trial court did err in attaching the amended notice of registration back to the original notice filed in 1999;***

On September 26, 2005, the Department of Human Services filed its "amended" Notice of Registration of Foreign Support Order. Though the Title of the pleading was "Notice of Registration of Foreign Support Order Amended, it stated, *"Please take notice that the attached foreign child support order was registered with the Court on the 26th day of September, A.D. 2005 in the above referenced case. This order is enforceable as of the date of registration in the same manner as an*

*order issued by a tribunal of this state."* There was no request to relate it back to original request for enforcement filed in 1999. *The "Notice" states that the order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.* By the clear wording of the pleading, the registration attempting to be enforced was made on September 26, 2005. The Department of Human Services did not include Margaret Ann as a party, though she had reached her majority age of 16 (for child support purposes) and her majority age of 18 (for full emancipation) under Canadian federal law over three years and one year, respectively, prior to the filing of the "Amended" Notice of Registration in Mississippi. The original registration/enforcement litigation had been abandoned by the Department of Human Services after the remand from the Supreme Court in 2000, and at one point, the trial court dismissed it for failure to prosecute, though it set aside that dismissal in 2005. The original pleading which led to this appeal was the registration notice filed September 26, 2005.

The trial court erred in relating the Amended Notice of Registration back to the original litigation after its trip to the Supreme Court and back and then abandonment for several years. The pleading filed by the Department of Human Services in 2005 was clearly a new proceeding to register and enforce a foreign judgment. The Appellee misstates the 2005 pleadings as an action to confirm the registration; it was not because it used the date September 26, 2005 as the registration date, not the 1999 date.

Had the statute of limitations not run, the Department of Human Services and Gaye Lynn could have filed it as a Motion to Enforce on behalf of Margaret Anne in 2005, but Gaye Lynn's statute of limitations died on either Margaret Anne's 16th or 18th birthday, long before the "Amended" Notice of Registration was filed. Yes, the court required some type of notice to be filed by Department of Human Services to get back into court, however a new registration and new enforcement of the 1990 order was made long after Gaye Lynn could claim any standing to pursue child support under any scenario.

When the Department of Human Services was instructed to file "some type of notice" to start the case forward again on the enforcement proceedings, "Some type of notice" does not mean commencing new litigation with a new registration date, but simply filing a Motion for hearing for enforcement purposes. The Rules of Civil Procedure clearly state that when an original pleading is amended after an answer has been filed, the court must follow Rule 15. The trial court failed to follow that Rule. Had the Department of Human Services filed a supplemental pleading under Rule 15 (d) for enforcement purposes, there would have been no problem.

Rule 15, Miss. Rules of Civil Procedure, requires that any attempt to file an amendment to an original order must be made under certain restrictions. Permission from the trial court must be obtained and opposing party must be given an opportunity to be heard. "Otherwise, a party may amend a pleading only by leave of court or upon written consent of the adverse party.... A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading... " Rule 15. (d) of Rule 15 addresses supplemental pleadings which may be filed under certain conditions.

In this instant case, Department of Human Services could have filed a supplemental pleading or a pleading to enforce the order already registered, but did not do so. Rule 15 requires a leave of court to amend a pleading if no written consent is given by opposing party. Ed contested the Department of Human Services' filing of an "amended" notice as a part of his objection to the registration of the Canadian order. In its opening remarks, on September 27, 2007, the trial court said that the hearing was for all purposes a new hearing. The court then found in its Memorandum Opinion that the new pleading would relate back to the 1999 pleading. This is erroneous under the Rules.

This court has previously found that a putative amended complaint could not have been more than an attachment to the motion to amend until the court had ruled on that motion. *Wilner v. White*, 929 So.2d 315 (Miss. 2006). In this instant case, the Department of Human Services did not file the motion necessary to obtain permission to amend its 1999 pleadings. It filed a new registration and

enforcement notice. Further, allowing any amendment at that time would have prejudiced Ed even more: applications to amend pleadings should be promptly filed. *Webb v. Braswell*, 930 So.2d 387 (Miss. 2006). The Department of Human Services filed no motion requesting leave to amend its 1999 pleadings. It simply put "Amended" after the new Notice of Registration pleading. Ed objected to any attempt to amend the 16 year old pleadings.

The "amended" pleadings filed by Department of Human Services failed to join Margaret Anne as a party and she did not participate in this litigation. The trial court made no formal ruling before the hearing on whether the 1999 pleadings could be amended.

Ed was given no opportunity to object to any attempt to relate the new registration and enforcement pleadings back to the old pleadings until this appeal because the trial court did not formally rule on the issue until the Memorandum Opinion. The trial court's discussion of a statute of limitations argument was a confusing finding where an amended complaint related back to the original. That same discussion neglected to recognize Rule 15 was not followed by the Department of Human Services where there was no motion to amend the 1999 pleadings which could be heard in court and where Ed could be given an opportunity to be heard and to object. Since the Department of Human Services made no attempt to "amend" its original registration, but instead filed a new registration with a new registration date, the trial court could not relate it back in order to circumvent the statute of limitations for registration of a foreign order.

***3. The Mississippi Code, Annotated, does not allow for the extension of the statute of limitations as applied in this case;***

At the time of the filing of the "amended" registration notice in 2005, Margaret Anne was 19 years old and, under Canadian law was emancipated for all purposes. Gaye Lynn's rights to pursue enforcement had terminated under any scenario either when Margaret Anne turned 16 (for child support purposes) or when she turned 18 (for all other purposes).

Gaye Lynn could have proceeded only under the 1999 Notice of Registration had the Department of Human Services filed an enforcement pleading before Margaret Anne reached her

majority and only on behalf of Margaret Anne, as her own statute of limitations had passed in 1992. She and they did not. Further, the trial court announced at the beginning of the September, 2007 hearing that this was a "new hearing for all purposes." T at 4. If it was a new hearing for all purposes, the "amended" notice of registration, not only was the wrong pleading to file, instead of an enforcement proceeding, the Department of Human Services could no longer represent Gaye Lynn. Margaret Anne would have had to be the party seeking enforcement, since Gaye Lynn's right to pursue enforcement had finally died a long and lingering death. Gaye Lynn's three year limitation on enforcement of a foreign judgment is not the same as Margaret Anne's. Gaye Lynn could act on behalf of Margaret Anne as long as she was a minor, but not after Margaret Anne reached adulthood. Any residual right under any scenario that Gaye Lynn had to seek enforcement of the Canadian child support award in the 1990 divorce decree died before the 2005 pleadings were filed

Gaye Lynn again misrepresents Ed's position in this issue on page 9 of its brief. The savings clause applies to those under a disability. Margaret Anne had the disability, not Gaye Lynn. Margaret Anne may have been 13 years old at the time the registration of the foreign order was made in 1999, and qualified for use of the savings clause on behalf of Margaret Anne, however Gaye Lynn's statute of limitations had expired six years before and she did not bring the suit on behalf of Margaret Anne, but only for herself. Gaye Lynn did not have personal availability of the savings clause, only Margaret Anne.

The *Vice v. Department of Human Services* case conflicts with that of *Davis* because the mother was represented by the Department of Human Services instead of a private attorney. *Vice v. Department of Human Services*, 702 So.2d 397 (Miss. 1997); *Davis v. Davis*, 558 So.2d 814 (Miss. 1990). That Court found that Mrs. Smith had three years to seek enforcement of the child support order. The tolling as to the children's right is to three years after their majority is reached. In a special concurrence, the court said that the child support arrearage belongs to the child, not the

mother, and that the child was the only party who could bring the suit. *Vice*, citing *Williams v. Rembert*, 654 So.2d 26 (Miss. 1995).

The courts have held that a custodial parent has no standing to bring an action or seek additional support for a child after the child attains majority. *Taylor v. Taylor*, 478 So.2d 310 (Miss. 1985). Justice Lee dissented from the majority in the *Vice* case, finding that the judgment for back child support was unenforceable because the filing of the judgment was barred by the statute of limitations. He opined that the court had misconstrued *Wilson v. Wilson*, 464 So.2d 496, Miss. 1985) because the statute of limitations is tolled *only* for those under a disability. He further opined that the children should have filed for enforcement or been joined as necessary and proper parties.

Gaye Lynn was not under a disability. Granting her personal use of the savings clause is contrary to its intent and clear wording. Had Margaret Anne been the Plaintiff and had she appeared at this hearing, the argument may have been different. It is clear that the "amended" notice was filed more than three years after she reached her majority if the correct age of 16 is used, and the trial court ruled on the bench that this was a new hearing for all purposes, before finding in his Memorandum Opinion that the "Amended" Notice related back to the original one.

In *Brown v. Brown*, 822 So.2d 1119 (Miss. 2002), the court found that in a domestic (Mississippi) case, emancipation of a child who was the subject of a child support order does not bar an action to recover unpaid child support, but the claim of the parent is

> ...derivative and she must show proof from which an approximation can be made of sum that she paid in support of the child(ren) that compensated for the failure of their father to provide support. That derivative entitlement can come only from the child who still has the claim.

*Brown*, at 1123.

At the time the 2005 "Amended" Notice of Registration was filed, Margaret Anne was more than three years past her emancipation age of 16 under Canadian federal child support law. She is now over 21, five years past the Canadian age of majority for child support; her claim also would be barred by the three-year statute of limitations.

Gaye Lynn cites §15-1-59 of the Mississippi Code, the "savings clause".... clearly under that statute Gaye Lynn had no disability and Margaret Anne did.

It is inequitable for the courts to find that if the Mississippi Department of Human Services is the Plaintiff's representative, that they be allowed to present Gaye Lynn as their client when the client should have clearly been Margaret Anne, who though not present and who has never participated, should have been the plaintiff.

Gaye Lynn opines in her brief that it is not necessary to attempt enforcement of a registered foreign order at the time of the registration, then there would be at least two separate proceedings. If the trial court ruled at the beginning of the September, 2007 hearing that it was a new day for *all* purposes and the pleading commencing the litigation now under appeal states that the registration date is September 26, 2005, then Margaret Anne should have been the party. Even if the hearing had been styled as an enforcement proceeding, because Margaret Anne had reached her majority, she should have been a party. Gaye Lynn's argument makes no sense because no matter how old Margaret Anne was at the registration of the foreign order in 1999, when she became emancipated, she had to have been joined as a party, and especially since Gay Lynn was attempting to obtain child support she alleged was owed after Margaret Anne's 16th birthday.

The only Notice of Registration that the trial court could have possibly entertained was the Notice filed in September, 2005, and only on behalf of Margaret Anne at that point because Gay Lynn's statute of limitations had long passed, and the new one filed in 2005 on behalf of Gaye Lynn should have also been barred because Margaret Anne had reached her majority and Gaye Lynn had long lost her rights except as a derivative of any attempt that might be made by Margaret Anne. Though in the Appellant's Brief, Ed stated that the court could only have heard the 1999 registration on behalf of Gaye Lynn, it is clear now that the 1999 registration was not mentioned in the new filing and could not have been heard by the trial court.

The *Magallanes* case addressed enforceability of a foreign judgment quoted the statute that:

> all actions founded on any judgment or decree rendered by any court of record shall be ... if the person against whom such judgment was or shall be rendered was a resident of this state, such action, founded on such judgment shall be commenced within three years next after the rendition thereof, and not after.

*Miss. Code* § 15-1-45. Magallanes v. Magallanes, 802 So.2d 174 (Miss. 2001)

"The primary purpose of statutory time limitations is to compel the exercise of a right of action within a reasonable time. These statutes of repose apply with full force to all claims and courts cannot refuse to give the statute effect merely because it seems to operate harshly in a given case." Magallanes, at 176, citing Mississippi Dept. of Public Safety v. Stringer, 748 So.2d 662 (Miss. 1999). In that case, the Defendant did not file a timely response; however the court found that it was irrelevant as the judgment was unenforceable because it was not timely filed within the statute of limitations. Id. First, Gaye Lynn waited nine years to seek enforcement of a foreign judgment on a Mississippi resident and she never made any effort to include Margaret Anne to bring the savings clause into effect, then when a new proceeding was begun after Margaret Anne's emancipation, Gaye Lynn failed to join her as a party, though in the response to the 2005 "amended" notice of registration, the failure to join was pled.

***4. The child should have been attached as a party when she reached her age of majority;***

~~Rule 19 requires all necessary parties be joined in any litigation. In this instant action,~~ Margaret Ann was emancipated under Canadian law on July 31, 2002, which sets a child of the marriage as a child of two spouses or former spouses which is under the age of 16. (Exhibit 18 - Chapter 3 (2nd Supp.) Canadian Divorce Act). Even if the Court determined that emancipation was at 18, which occurred in 2004, Margaret Anne was not joined as a party, nor was she present nor did she participate in the "new" action.

Gaye Lynn cited Brown v. Brown, 822 So.2d 1119 (Miss. COA 2002)in an effort to have time stop for Margaret Anne at the age of 13. It is clear that once a child reaches emancipation age, anywhere in the proceedings, they should waive their rights or be joined. Neither was done in this

case. Ironically, Gaye Lynn wishes to use the "savings clause" for her own benefit to extend the time she could register and enforce the foreign judgment, then wants to stop Margaret Anne's aging for all purposes at 13. The "savings clause" is exactly in place to provide for the aging of children. Gaye Lynn cannot have her cake and eat it too. Yes, Margaret Anne may have been 13 when the order was first registered, however we are long past that time and Margaret Anne never been made a party.

***5. Canadian law is clear on the age of majority and Mississippi did not have the authority to extend that age, nor did the child qualify for such an extension under Canadian law;***

Gaye Lynn accurately cited the *Divorce Act's* "child of the marriage" definition. No where in the definition does the fact that a person over 16 and still in school is a "child of the marriage" for child support purposes, and in fact, Mississippi has clearly articulated that being a student is not a reason for extending child support. Margaret Anne was not ill or disabled. The term "other cause" is so vague as to be unenforceable. When the trial court attempted to place Margaret Anne in the "other cause" reason for continuing, he firmly made his own interpretation and that was not the standard used by Mississippi. When a court has to "interpret" the vague meaning of another statute, it must look to what the home state's meaning would be first. The trial court ignored Mississippi's law.

Gaye Lynn has petitioned the trial court to order child support to continue until Margaret Anne is out of school under the "other causes" clause. Since Margaret Anne, at the time of this brief is now 22 years old and still in school, there is no finality or clear concise standard under Gaye Lynn's reasoning to terminate child support. It is against public policy to enforce a provision that is vague, broad and open-ended, especially when there is no due process available to the payer, and the statute uses the word "may" in its extending language.

Further, Gaye Lynn fails to recognize that the Final Judgment clearly states that child support was only as long as "the child remains a child under the Divorce Act." A child under the Divorce Act ceases to be one when he/she turns 16. Gaye Lynn's continued involvement with the

maintenance office is irrelevant to whether or not Margaret Anne was emancipated under the Divorce Act for child support purposes at 16 or 18, when at the time of Gay Lynn's testimony in September, 2007, Margaret Anne was 21 and Gaye Lynn still wanted child support paid each month!

In its Memorandum Opinion of the Court, the trial court correctly found that Margaret Anne reached her age of majority for purposes of child support on July 31, 2002, and that the age of majority under the Divorce Act is 16. After a Motion for Reconsideration or for a New Trial was filed by Ed, the trial court changed its finding, and instead said the age of majority under the Divorce Act is 18 which is contrary to what the Divorce Act actually states. (Exhibit 18, Chapter Three of the Divorce Act). Even if the trial court were correct, Gaye Lynn's standing to attempt to prosecute the registration of the foreign judgment had expired under any worst-case scenario over a year before the "Amended" Notice was filed without including Margaret Anne as a party.

The Mississippi Department of Human Services has argued to the court that Margaret Ann is still considered a minor and that Ed's obligation to pay child support remains and is accruing, though Margaret Ann is five years past the legal age of majority for child support purposes in Canada. If one where to believe Gaye Lynn's interpretation of the Divorce Act, there is no definitive ending date for the obligation of child support on the paying parent if the Department of Human Services argument is to be believed; theoretically, child support could continue forever if the court made a literal interpretation, using the "other causes" reason. Under Mississippi law, still being in school is not a reason for continuing child support after the certain date of emancipation, which is set in Mississippi at 21. Under the law of the *Divorce Act* and a clear reading of the Final Judgment, Mississippi must read the age of emancipation at 16, because to do otherwise would result in an unjust result, especially when the law provides no provision for Ed or any other parent to contest the continuance of child support past the 16th birthday.

Under the laws of this state, even if the Canadian judgment of divorce were valid as to the original child support issue, there must be a specific ending to the obligation. There must also be notice and opportunity to be heard given to Ed in order to contest the continuance of any legally

ordered child support past Margaret Anne's 16th birthday. Ed received no notice of any attempt to continue child support. Mississippi law sets a final date at which a child is emancipated and provides that emancipation may occur sooner. The intention is that there must be some definitive point at which a child becomes emancipated and the parent's responsibility to provide for support ends. Canada's law is exactly the opposite, if Gaye Lynn and the Department of Human Services are to be believed. Child support goes until the custodial parent decides to kick the child out of the nest, even if he/she is 35 years old.

Mississippi has long held even if a child is still in school on the "magic" date, the parent's obligation ends. *Nichols v. Tedder*, 547 So.2d 766 (Miss. 1989). In that case, the court cited *Watkins v. Watkins*, 337 So.2d 723 (Miss. 1976), which held that the duty of care and maintenance is not extended to adult children and the duty imposed on parents to provide for their children ceases when the child reaches the age of majority. See also: *Miss. Code* §§93-5-23 and 93-11-65.

Mississippi does not recognize school as a reason to continue child support past the date certain. In fact, Mississippi does not recognize any reason for continuing a parent's obligation to support a child post majority even if the child is disabled. The only way a Mississippi child can receive child support past the age of majority is that the parents agree to it.

***6. Gaye-Lynn's conduct was deceitful and manipulative and did affect her qualification for a child support judgment;***

Before the child support payments in *Cunliffe v. Swartzfager*, 437 So.2d 43 could become a judgment the judgment had to be a valid one. The judgment on appeal in this case is not a valid judgment for all the reasons mentioned in #1 above.

Testimony and evidence were clear in the hearing that Ed was a school teacher, with no ties to Canada and little income. Gaye Lynn clearly knew his circumstances and knew that Ed had no support system in Canada. By taking the child to Canada in the middle of the night without notice to anyone, she intentionally destroyed any realistic means that Ed might have had to keep a relationship with his child, especially since she was involved already in divorce/separation

proceedings in Mississippi.

Gaye Lynn, in her testimony, admitted to telling Ed that he risked going to jail for not paying child support if he went to Canada. That should have been enough evidence that Ed would have been in fear had he attempted to see Margaret Anne. The testimony of the other witnesses for Ed support the situation that Gaye Lynn had made it clear that if they wanted a relationship on any level with Margaret Anne, they could not involve Ed at any level. Of course Gaye Lynn would not have threatened the other witnesses. She used them to attempt to drive a wedge between them and their son/grandson/friend. Other testimony of the witnesses confirmed that everyone knew that if Ed attempted to go to Canada, any future opportunity for a relationship with Margaret Anne on any level would be destroyed.

In *Cole*, the mother hid the children for eight years. *Cole v. Hood*, 371 So.2d 861, 864 (Miss. 1979). Gaye Lynn would have this Court believe that just because Ed knew where Margaret Anne was, generally, he should penalized for not seeing her. Gaye Lynn set every road block she could to make it almost if not impossible for Ed to have a relationship with his daughter, knowing he did not have the financial means or belief in his safety to go to a foreign country where he knew no one he could trust, to visit his child. When Gaye Lynn sneaked away in the dead of night to take Margaret Anne to a foreign country, knowing Ed could not follow, she effectively hid Margaret Anne in plain sight from Ed.

The *Cole* court also found that

> the doctrine did not have to be pleaded by the Defendant in order to receive relief, although it will require a plainer case if it is not so pleaded, for if at any time during the progress of the case, it becomes evident that the facts exist which call the maxim into use, it is the duty of the court to apply it, on the basis of sound public policy. Courts of equity do not countenance iniquity nor give it sanctuary, and to do so will not be forced upon the court because the Defendant fails to raise the question.

*Id.*

The doctrine of "unclean hands", *Taliaferro v. Ferguson*, 38 So.2d 471 (Miss.1949), was

applied and the previous trial court recognized Gaye Lynn's unclean hands even without the due process arguments. That court was emphatic that due to Gaye Lynn's actions in deliberately failing to allow Ed any relationship with Margaret Anne, they would not enforce the foreign judgment. Even in the various reasons for prolonging the litigation in this case at the trial court level, a recurring theme used by the Department of Human Services was that they could not find or contact Gaye Lynn.

In all proceedings to date, Gaye Lynn has been the Plaintiff, using the Mississippi Department of Human Services as her legal representation avenue. The Department of Human Services is not the actual Plaintiff, Gaye Lynn is. Under the laws of this state, it is clear that Gaye Lynn had three years to enroll the Canadian divorce decree for enforcement of child support by any means. Instead, she waited approximately nine years. In order to meet the three year threshold, Gaye Lynn could have gone back to court in Canada and filed a contempt action to bring the order to be enforced within the statute of limitations on foreign judgments in this state.

In *Brown*, the Court cited *Cole* and found that had Mr. Brown shown that his former wife had intentionally interfered with his contact with his children, the father's obligation to make the child support payments could have been waived. *Brown*, at 1124.

In reading the testimony and the evidence, it is clear that Gaye Lynn wanted no contact between the child and her father, and she did not consider at any point in time that contact with the father was in the child's best interests. She had no willingness to facilitate the exercise of access by the other parent. The prior trial court recognized Gaye Lynn's conduct and did not countenance it.

***7. The trial court applied undue bias against Ed in its commentaries and questioning.***

Certainly Gaye Lynn would not find the trial court's actions improper, as the trial court was clear in that it was entirely sympathetic to her and clearly was biased against the Defendant for

personal reasons discussed in the Appellant's brief. While Ed and his attorney can certainly and sympathetically and empathetically understand the emotional reasons behind the trial court's conduct, it was prejudicial to Ed in the extreme and placed Ed in a position where he knew his case could not be heard objectively, especially after a review of the Memorandum Opinion in this case. As parents we can stoutly state that we would never have countenanced Ed's failure to enter a foreign country, risk jail and all his possessions and his other family. But, we were not in Ed's shoes and, until we are, we cannot prejudice his case for personal reasons.

The Code of Judicial Conduct:

Canon 2A states that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B states that judges shall not allow their family, social, or other relationships to influence the judges' judicial conduct or judgment.

Canon 3B(4) states that judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities.

Canon 3C(1) states that a judge shall diligently discharge administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

While Ed has no desire to file a complaint against the trial judge, especially as the judge was clearly emotionally distraught at what he perceived was Ed's unfathomable conduct in view of the judge's own loss of a child, Ed believes the trial court's conduct both in chambers before the hearing

started and during the hearing created an environment in which Ed's case could not be fairly heard.

## CONCLUSION

As a matter of law, Ed did not receive the basic due process rights guaranteed to him under both Canadian and Mississippi law, which requires:

1. A Defendant is entitled to notice of an action filed against him. If a Defendant answers a complaint against him, he is entitled to notice of any hearing which affects his rights and standing in the action. In any litigation, notice and opportunity to be heard are the framework of our constitutional right to due process. Notice requires the Defendant be properly served with process of the complaint and also of any proceedings within the litigation. Based on the facts of the case, and considering the many precedents applicable to this case, Ed has clearly been denied due process under the laws of Mississippi and the United States, especially when the mistakes of fact made in *Shelnut I* are considered.

2. Mississippi cannot enforce a judgment of divorce in this case, and the trial court erred when the pleadings clearly show that:

a) The Statement of Facts in *Shelnut I*, upon which the entire ruling was based were erroneous.

b) Ed was not served with process and received no Notice of Hearing that would allow him an opportunity to defend the charges against him in a hearing on the merits in the second (divorce) action which is the only one on appeal here;

c) There was no hearing on the merits in the divorce case whose enforcement now under appeal;

d) The Statute of Limitations had passed for both Gaye Lynn and Margaret Anne at the filing of the 2005 pleadings;

e) The date of emancipation for child support purposes in Canada are confusing and mis-interpreted;

f) Margaret Anne failed to join in as a party once she reached her majority and before the last attempt to register and enforce a foreign judgment was filed;

g) The "savings clause" has been improperly used by Gaye Lynn to thwart the statute of limitations when she, through the Department of Human Services, filed a new Notice of Registration of Foreign Support Order with a new registration date, yet using the wording "Amended" inappropriately and without first requesting permission to do so as required by Rule 15, Rules of Civil Procedure, and further failed to join Margaret Anne as a party, as required under Rule 19, MRCP;

h) The trial court failed to address the issues of Rule 15 amendments and Rule 19 joinder until his Memorandum and Opinion. The Amended Notice of Registration must be considered as a new action from the one filed in 1999, especially in light of its new date of September 26, 2005;

i) The testimony and evidence was clear that Gaye Lynn began a successful, systematic process to terminate Ed's relationship with his child before she left Mississippi and followed through with it in her divorce and subsequent actions; and

j) The trial court's personal history prejudiced his ability to remain impartial.

Ed respectfully requests and prays that this court reverse the trial court and find that:

A. *Shelnut I* is vacated due to a mistake in the Statement of the Facts.

B. The trial court erred in failing to find that the Canadian Court failed to provide a means for Ed to exercise his fundamental due process rights in the judgment for divorce;

C. The trial court erred in failing to find that the Notices of Registration of Foreign Support Order, both original and Amended are barred by the statue of limitations for the reasons cited above;

D. The trial court erred in allowing the pleading filed September 25, 2005, to relate back to the original pleading filed in 1999;

E. The trial court erred in extending the Canadian age of emancipation for child support purposes from 16 to 18;

F. The trial court erred in failing to require joinder of the child as a party in the 2005 registration and enforcement filing.

G. The trial court erred for failing to waive enforcement of the child support judgment due to Gaye Lynn's alienation of the child from Ed;

H. The trial court erred in its failure to remain unbiased and for inappropriate participation in the hearing, as if the court were a third attorney.

I. For the trial court's failure to recognize that there were two actions, not one in Canada and that the facts of the first could not be attributed to the second.

---

This IS a tragic case. Ed and Margaret Anne have lost forever the relationship he so cherished and anticipated at her birth. Margaret Anne has failed to contact Ed even though she is now grown. The Canadian divorce decree should not be enforced because of all the reasons stated above.

Respectfully submitted, this the 9th day of August, 2008.

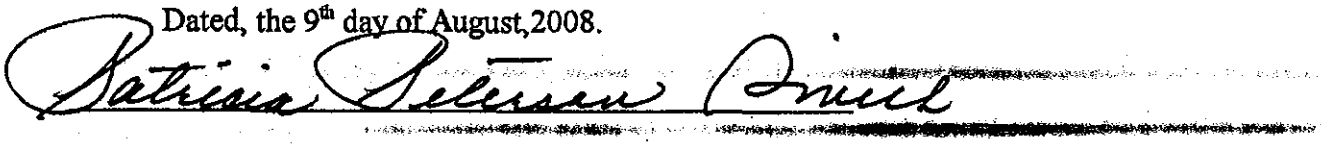
EDWARD SHELNUT

By: Patricia Peterson Price
His Attorney

## CERTIFICATE OF SERVICE

I, the undersigned attorney for Edward Shelnut, do certify that I have this day mailed a true and correct copy of the foregoing Appellant's Reply Brief to Jason Bayles, attorney for the Department of Human Services at P. O. Box 11677, Jackson, MS 39283, Honorable DeWayne Thomas, P.O. Box 686, Jackson, Mississippi 39205, and Ms. Toni C. Matlock, P.O. Box 686, Jackson, Mississippi 39205.

Dated, the 9th day of August, 2008.



U.F.C. NO. 1033 OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

==========

PETITION

==========

MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

EXHIBIT 10

WITNESS

SEP 27 2007

TONI C. MATLOCK, REPORTER

U.F.C. NO. 1033 OF A.D. 1989

# PETITION

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

## NOTICE TO RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by filing this Petition. The claim made against you appears in the following pages.

IF YOU WISH TO DISPUTE ANY OF THE CLAIMS, OR IF YOU WISH TO MAKE ANY CLAIM YOURSELF, either you or a lawyer acting on your behalf must prepare an Answer in Form 64 or an Answer and Counter-Petition in Form 65, serve it on the petitioner or the petitioner's lawyer, and file it, with proof of service, in this court office WITHIN 20 DAYS after this Petition is served on you where you are served in Saskatchewan.

If you are served elsewhere in Canada or in the United States, the period for serving and filing your answer is 30 days. If you are served outside Canada and the United States, the period is 40 days.

Before serving and filing an answer, you may serve and file a Notice of Intent to Answer. This will entitle you to ten more days within which to serve and file your answer.

If this Petition contains a claim for support, maintenance, alimony, custody of a child or division of property, you must serve and file a Financial Statement in Form 67 within the time set out above for serving and filing your answer, whether or not you wish to file an answer.

IF YOU FAIL TO SERVE AND FILE AN ANSWER, A JUDGMENT MAY BE GRANTED IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU ON ANY CLAIM IN THIS PETITION, INCLUDING DISSOLUTION OF YOUR MARRIAGE AND DIVISION OF YOUR PROPERTY.

If you do not oppose or dispute the Petition, but wish to be informed of subsequent steps in the action, you may serve and file a Demand for Notice in Form 10 and thereafter notice of all subsequent pleadings or proceedings shall be served on you.

IF THE PETITION SEEKS A DIVORCE, NEITHER SPOUSE IS FREE TO REMARRY until a Judgment of divorce takes effect.

This Petition is to be served within 6 months from the date on which it is issued, unless ordered otherwise.

This Petition is issued at Saskatoon, Saskatchewan, the 17th day of October, A.D. 1989.

ORIGINAL SIGNED BY
L. W. Gammel
LOCAL REGISTRAR

(seal) by

TO THIS HONOURABLE COURT:

CLAIM

1. I hereby ask this Honourable Court for the following relief:

(a) The Infants Act:

X --- Maintenance for the child of the marriage in the amount of $400.00 U.S. per month.

X --- Custody --- Access

--- Guardianship

(b) The Deserted Spouses and Children's Maintenance Act:

X --- Alimony for myself in the amount of $350.00 U.S. per month.

(c) X --- Costs

IN THE CIRCUMSTANCES set out below:

PARTICULARS OF MARRIAGE:

2. Date of marriage: June 20, 1981 at Saskatoon, Saskatchewan

3. I ceased to cohabit with the Respondent on or about March 28, 1989.

4. Wife's surname at birth: Kern

5. Marital status of husband at time of marriage: Single

6. Marital status of wife at time of marriage: Single

7. Wife's birthdate: December 3rd, 1954

8. Husband's birthdate: August 23rd, 1951

JURISDICTION:

9. My address is:

Gaye-Lynn Kern
MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

10. The Respondent's address is:

Edward Shelnut
262 North Sunset Terrace
Jackson, Mississippi 39212

11. I was born in Swift Current, Saskatchewan and raised in Swift Current and Saskatoon, Saskatchewan. I met the Respondent while studying in England. We were married on June 20, 1981 in Saskatoon. Subsequent to our marriage we moved to Atlanta, Georgia for 6 months and then we moved to Jackson, Mississippi where his family lives. I resided in Jackson, Mississippi until April 22, 1989 at which time I left and travelled to Saskatoon, Saskatchewan. I have therefore been resident in Saskatchewan since April 25, 1989.

CHILDREN:

12. The names and dates of birth of all children of the marriage are: There is one child of the marriage, namely,

MARGARET ANNE SHELNUT, born July 31, 1986.

13. The particulars of the past, present and proposed custody, care, upbringing and education of the said child are as follows: I have been primarily responsible for the care and upbringing of our child since the date of her birth. When the Respondent and I separated in March of 1989 I remained in the matrimonial home with our child and, thus, I have had the sole custody of our child since our separation. When I was forced by the actions of the Respondent to leave the matrimonial home on Saturday, April 22, 1989, I drove with our child to my parents home in Saskatoon, Saskatchewan. I have our child with me at the present time. It is my intention to continue with the custody of our child and to remain in Saskatoon with her.

14. I claim custody of the following children:

MARGARET ANNE SHELNUT, born July 31, 1986

15. The facts on which such claim for custody is founded are: I believe I am the person best able to meet all of her emotional and physical needs. I have been primarily responsible for her care and upbringing since her birth and believe it would be in her best interests if I was granted custody of her.

16. I propose to permit access to the said children as follows: In light of the Respondent's past conduct and behavior towards our child, I believe that any visitation of the child with the Respondent should be supervised by myself or an acceptable third party.

17. I claim access to the following children: N/A

18. The facts on which such claim for access is founded are: N/A

19. I claim support or maintenance for the following children:

MARGARET ANNE SHELNUT

20. Other than the parties hereto, the following persons may have an interest in the custody of or access to the said child: No other persons have an interest in the custody or access to the said child.

21. The nature of my relationship to and interest in the said child is as follows: I am the natural mother of the said child.

OTHER PROCEEDINGS:

22. The particulars and status of all other legal proceedings instituted with reference to the marriage, custody, support, maintenance or division of property are: On May 15th, 1989 I received a registered letter containing a Complaint for Custody and Support of a Minor Child which the Respondent had filed in the Hinds County Court in Mississippi. In response I filed a Special Motion to Dismiss on June 13th, 1989. Thereafter, no further proceedings have been taken by either the Respondent or myself in Mississippi.

SEPARATION AGREEMENTS AND FINANCIAL ARRANGEMENTS:

23. The dates of any written or oral separation or financial or custody agreements between the parties are: There have been no agreements entered into by the parties.

24. The Financial Statement of the Petitioner in Form 67 is attached hereto.

25. To the best of my knowledge the financial position, both income and assets, of the Respondent is: The Respondent is currently employed full-time at Systems Energy Resource Incorporated and earns approximately $25,000.00 U.S. per year. The Respondent remains in possession of the matrimonial home in Jackson, Mississippi, a vehicle, and has, to the best of my information and belief, a savings plan of the value of approximately $12,500.00.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 16 day of October, A.D. 1989.

SIGNATURE OF PETITIONER

This document was delivered by:

MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

and the address for service is same as above.

LAWYER IN CHARGE OF FILE: DONNA WILSON
TELEPHONE: (306) 244-2242

U.F.C. NO. OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

==========

NOTICE OF MOTION

==========

MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

EXHIBIT 8

WITNESS

SEP 27 2007

TONI C. MATLOCK, REPORTER

U.F.C. NO. OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that an application will be made to the presiding Judge in Chambers in the Unified Family Court, 9th Floor, Canterbury Towers, 224 - 4th Avenue South, Saskatoon, Saskatchewan on Friday, the 10th day of November, A.D. 1989, at 9:30 a.m. in the forenoon or so soon thereafter as counsel may be heard on behalf of the Petitioner, Gaye-Lynn Kern, for the following interim relief:

1. Pursuant to Section 3[1] of the Infant's Act:

   a. An Order that the Petitioner have interim custody of the infant child of the marriage, namely, Margaret Anne Shelnut, born July 31st, 1986;

   b. An Order that the Respondent pay to the Petitioner interim child maintenance in the amount of $400.00 U.S. per month;

2. Pursuant to the Deserted Spouses and Children's Maintenance Act :

a. An Order that the Respondent pay to the Petitioner interim spousal support in the amount of $350.00 U.S. per month.

AND FURTHER TAKE NOTICE that in support of this application will be read the Affidavit of the Petitioner, Gaye-Lynn Kern, the Financial Statement of the Petitioner, and such further and other material as counsel may advise and this Honourable Court may allow.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 16 day of October, A.D. 1989.

MITCHELL TAYLOR MATTISON CHING

PER: _____
DONNA WILSON,
Solicitor for the Petitioner,
Gaye-Lynn Kern

U.F.C. NO. OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

==========

AFFIDAVIT OF GAYE-LYNN KERN

==========

MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

EXHIBIT 11

WITNESS

SEP 27 2007

TONI C. MATLOCK, REPORTER

U.F.C. NO. OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHEINUT

RESPONDENT

AFFIDAVIT OF GAYE-LYNN KERN

I, GAYE-LYNN KERN, of the City of Saskatoon, in the Province of Saskatchewan, HEREBY MAKE OATH AND SAY AS FOLLOWS:

1. I am the Petitioner in this proceeding and as such have personal knowledge of the facts and matters hereinafter deposed to except, where stated to be on information and belief and where so stated I verily believe the same to be true.

2. I was born in Swift Current, Saskatchewan on December 3, 1954. I moved with my family to Saskatoon in 1966, and completed high school in Saskatoon. I attended the University of Saskatchewan from 1972 to 1976 and then moved to London, England to attend the Guildhall School of Music and Drama for a period of two years. I met the Respondent, who was also a student at the Guildall, in November of 1976. The Respondent was born and raised in Mississippi.

3. The Respondent and I were married in Saskatoon on June 20, 1981. Immediately thereafter we moved to Atlanta, Georgia for a period of 6 months. We then moved to Jackson, Mississippi as we both had teaching jobs in Jackson. The Respondent and I have one child of our marriage, namely, MARGARET ANNE SHELNUT, born July 31, 1986, in Mississippi. Margaret Anne has obtained full Canadian citizenship.

4. The Respondent and I had some difficulties in the early years of our marriage, however, it was after our child was born that our relationship began to deteriorate rapidly. The Respondent was, throughout our marriage, very demanding and controlling. The Respondent believed that because I was his wife I should agree with any decision that he made and that I should not question or dispute what he had decided for us. I was unable to accept the role which he thought I should play and, thus, the Respondent and I began having numerous arguments. On a few occasions prior to our child being born, the arguments led to physical violence. The Respondent, usually when drinking, would lose control and push me down. He would hold me down and threaten that he would hurt me unless I agreed to do whatever it was he wanted. He was always sorry after the said incidents, however, his behavior did not change.

5. After I found out I was pregnant with our child, the Respondent advised me that he only wanted a male child. He told me that I had two choices - either I should abort any female

child or continue having children until I had a male child. Our daughter was born in July of 1986 and the Respondent was very angry that she was not a boy. A week after she came home from the hospital the Respondent picked her up and shook her and yelled about her not being male. He became more verbally abusive towards me, constantly putting me down and telling me I could not do anything right. The Respondent started drinking more and I realized he had a serious problem with alcohol. To the best of my knowledge he drank approximately 10 ounces of Scotch each evening after work. I also believe that he was using marijuana but I do not know to what extent he was using the same.

6. There were many occasions from the time our child was born to the time we finally separated in March of 1989 when the Respondent became physically abusive. On July 30, 1988 we had a birthday party for Margaret Anne's second birthday. I was getting ready to take a picture of her when the Respondent stepped in front of the camera. He had been drinking continually throughout the day. I nudged him playfully out of the way and took the picture. After everyone had gone home I was sitting rocking Margaret Anne giving her a bottle when the Respondent came storming into the room and punched me very hard on my left arm. He told me he was angry that I had "humiliated him in front of his family" and that he was not going to allow me to treat him that way, especially in front of other people. Two days later I went to my doctor to have my arm examined. I discussed with my doctor the physical abuse and he recommended counselling.

I called my priest and went in to see him. The Respondent refused to see a counsellor but we did discuss what had happened. He told me that he would not hit me again and that things would be different from then on in. Unfortunately, our "truce" only lasted a few months.

7. On October 16, 1988 the Respondent came home from work and started drinking as usual. I was reading to Margaret Anne in our bedroom and fell asleep. Margaret Anne left our room and went into the den where the Respondent was watching television. The next thing I remember was being grabbed by my feet by the Respondent and him pulling me out of bed. He was yelling at me saying "what kind of a mother are you, not capable of putting a child to sleep". He then locked Margaret Anne and I out of the bedroom. Margaret Anne witnessed this entire incident and was extremely upset.

8. The Respondent was verbally abusive with Margaret Anne on numerous occasions. He would tell her that she was bad, instead of the incident being bad. The Respondent and I totally disagreed on the proper methods of disciplining our child. I would spank Margaret Anne on her bottom if I felt the circumstances warranted the same, however, the Resondent would not stop there. On one occasion in early December of 1988 he was trying to make her go to sleep when she got sick and vomited. He carried her into the bathroom where I was taking a bath and pushed her head down into the toilet. She was crying hard and he started hitting her on

the back, bottom and legs while holding her head down. I grabbed her away from him by stepping in front of the blows. I was able to calm her down but it took some time. The next day my parents, who were visiting, noticed bruises on her back, buttocks and legs. I realized then that the Respondent's behavior was totally out of control and that he needed professional help. He agreed to go to see our priest, however he only went three times. After Christmas he would not go back.

9. I could see that the Respondent's behavior was harming our child and I sought help for her and myself. I took Margaret Anne to a child counsellor, by the name of Brenda Chance. The counsellor had a number of sessions with Margaret Anne alone and advised me that Margaret Anne was both confused and upset about the Respondent's behavior towards her.

10. The Respondent and I finally separated on March 28, 1989. I had asked the Respondent to leave the home on a number of occasions previously, however, he refused saying "if I didn't like it I could leave". On March 28, 1989 I packed up his clothing into suitcases and chests and put them inside his car. I told him I was not letting him back into the house. The Respondent took his clothing and moved in with his grandparents.

11. The Respondent started making the mortgage payments on the matrimonial home after we separated. I paid for the phone bill, the credit card payments, and all other household expenses.

12. I was in contact with a family law solicitor on February 11th, 1989. My solicitor in Mississippi is Mr. Stanley F. Stater, III of the Stater Law Offices situate in Canton, Mississippi. The Respondent also went to see a solicitor, Mr. Tim Gowan, who then dealt directly with my solicitor. To the best of my information and belief the Respondent advised his solicitor that he wanted to reconcile and, thus, Mr. Gowan contacted my solicitor to discuss the same. I advised my lawyer that I would consider reconciliation if the Respondent would agree to in-patient treatment for alcohol and drug abuse as well as abuse counselling and therapy. The Respondent was not willing to agree to the same stating it was "ridiculous". I then started working with my lawyer towards a negotiated settlement of the issues of custody, access, maintenance, and division of property. Although my solicitor forwarded a proposal for settlement of these issues to the Respondent's solicitor, I was told by the Respondent that my position was "laughable". As part of my proposal I suggested that his visitation with our child should be supervised in light of the physical and pyschological trauma which she had already suffered. I am still of the view that any visitation should be supervised, at least for the present time, in light of Margaret Anne's age and past history.

13. I did not see the Respondent on very many occasions after our separation on March 28, 1989, however, when we did see each other (usually when I was dropping off Margaret Anne at the home

of his mother and step-father or his grandparent's for a visit), he was condescending and disagreeable. I know that he did not like the fact that I was living in "his" home while he had to stay at his grandparents. He kept telling me that he had every right to be in the home and I was constantly worried that he might decide to move back in. In fact he broke into the house on April 16, 1989 while I was at Church. He took locks off the doors, locking us out of the house, and then he left through the garage. I was able to get into the house and realized he took all the liquor, some household items and personal items of mine as well as the five dead-bolt locks. After this I never left the matrimonial home unattended. On April 20th, 1989 he came over and told me that he would cut off all the utilities if I did not let him move back in. I refused.

14. On Friday, April 21, 1989, I received phone calls from the utility companies advising me that the Respondent had called and requested that all the utilities be shut off. The utility companies were kind enough to advise me that they would not cut the utilities off for a period of 24 hours (except for the phone which was cut off at noon that day) and, thus, I had enough time to pack up a few of my things and Margaret Anne's prior to leaving. I had no relatives in Mississippi to turn to nor any close friends that I wanted to put in a position of possible danger. I decided that I had no option but to return to my parents home in Saskatoon.

15. I had decided after our separation that I would return to Canada as quickly as possible, however, I felt I could stay in Mississippi long enough to resolve all matters between myself and the Respondent before leaving. I also wanted to finish up my term at University where I taught, the term ending on May 15, 1989. The Respondent's actions made it impossible for me to remain in Mississippi any longer. I had told the Respondent on a number of occasions after we separated that I was thinking of returning to Canada with Margaret Anne. The Respondent kept telling me that I would end up going back to him, as he never believed our separation was final.

16. I arrived in Saskatoon on April 25, 1989 after driving for four days. I immediately contacted a solicitor, namely, Donna Wilson of the law firm of Mitchell Taylor Mattison Ching, and instructed her to commence custody proceedings as quickly as possible. I am advised by my solicitor and do verily believe that she was in contact with Mr. Stater in Mississippi to discuss this matter. She advised me that Mr. Stater told her that no Court proceedings had been commenced by either myself or the Respondent in Mississippi and that the parties had been attempting to work matters out by agreement as opposed to Court proceedings. In light of the same I instructed Ms. Wilson to draft all the necessary documents to commence an application in Saskatoon for interim custody and maintenance.

17. On Monday May 15, 1989 I attended at Ms. Wilson's office and executed all documents required to make my application for interim custody and maintenance. When I arrived home I received a registered package from Mississippi. The said package contained a Complaint for Custody and Support of a Minor Child which had been filed by the Respondent's solicitor in the Hinds County Court in Mississippi. The Complaint, a copy of which is attached hereto as Exhibit "A" to this my Affidavit, contains a claim by the Respondent for custody of Margaret Anne and child maintenance. Attached to the said complaint is a Summons advising that I had 30 days to deliver a response. After discussing the same with my attorney in Mississippi, Mr. Stater, he advised that I should file a Special Motion to dismiss the Complaint of the Respondent on the basis that the Mississippi Court lacks the jurisdiction over myself in order to proceed any further with the action. A copy of the said Special Motion to Dismiss was, I am advised by my solicitor, filed on June 13, 1989. Attached hereto as Exhibit "B" to this my Affidavit is a true copy of the Special Motion to Dismiss. My solicitor, Mr. Stater, advised that as soon as he heard anything further from the Respondent, or his solicitor, he would be in contact with me. I am advised by my solicitor, Ms. Wilson, that she spoke with Mr. Stater's office on October 13, 1989, and was advised that no further steps had been taken by the Respondent to pursue the claims set out in the Complaint. It is my belief that the Respondent was not seriously pursuing custody of our child but simply wanted to make attempts to have Mississippi found to be the proper jurisdiction for hearing the custody matter.

18. As stated in the preceding paragraph I do not believe that the Respondent seriously desires custody of Margaret Anne. Since my arrival in Saskatoon in April of 1989, the Respondent has only called twice, even though he has known my telephone number and my address since I arrived. During neither of the aforesaid telephone conversations did he request a visit with Margaret Anne. I realize it would be costly for him to come to Canada for a visit, however, it is my belief that if he is serious about pursuing her custody he would make the necessary arrangements to have a visit with her.

19. I believe that it would be in the best interests of Margaret Anne if I were granted custody of her. I have been the primary care-giver since her birth and in light of the Respondent's conduct and actions towards both her and myself I feel her safety would be in jeopardy if the Respondent had her in his care. I plan to stay in Saskatoon where I have a good support system, including my parents and two of my siblings. I also have support from my minister and friends that I remained in contact with over the years. I have, since arriving, made arrangements with Ethel Quiring for counselling for both Margaret Anne and myself. I believe our counselling has been very beneficial. I am noticing many improvements in Margaret Anne and believe she has adjusted very well to our move and our new life.

20. I am requesting that the Respondent be ordered to pay maintenance for our child and for myself. The Respondent works full-time at Systems Energy Resources Incorporated as a Management Aid. He has worked there for the past two and a half years. Previously, he taught drama at a high school called APAC. To the best of my information and belief he earns approximately $25,000.00 U.S. per year. Attached hereto as Exhibit "C" to this my Affidavit is a copy of our 1988 joint IRS Return. On page three of the said return it lists the Respondent's 1988 income as being $24,941.00 and my income as $8,633.00.

21. During my marriage to the Respondent I held a variety of jobs. I received my green card in August of 1981 and was, therefore, able to work in the United States. After moving to Jackson, Mississippi in early 1982 I taught voice and played for dance classes at APAC (Academic and Performing Arts Complex). I also played the piano at private parties and as well at the Sheraton Hotel and the Patio Club. In 1983 I taught speech and drama at Jackson Prep High and again played for dance classes at APAC and numerous private parties. In 1984 I was able to work more than I had previously as I got a job performing at the Petroleum Club on weekends. I also taught a large number of private students and continued with playing for dance classes. During 1985 I taught drama at APAC and then in September taught piano and voice at Jackson State University. I continued teaching piano and voice at Jackson State University in 1986, 1987, 1988 and from January to April of 1989 as well as teaching

privately and playing at various clubs. Unfortunately, I was unable to complete my full term at Jackson State University in light of having to leave Mississippi at the end of April. My work at Jackson State University was part-time only, as I had Margaret Anne to look after as well. The Respondent and I had discussed the issue of my working prior to Maragret Anne's birth and we agreed I should not work full-time after she was born.

22. When I first arrived in Saskatoon I lived with my parents, however, on August 21, 1989 I moved with Margaret Anne into a house in Saskatoon. I felt it was important that Margaret Anne and I have our own place and try to become more independant from my parents. The house that we are renting is owned by a friend and I was able to arrange a reasonable rent. I do not think that I could find an apartment for Margaret Anne and myself that would cost less.

23. In May of 1989, after I had been in Saskatoon for about one month, I started applying for jobs. Unfortunately, I did not find a job until September and, thus, my parents had to support myself and Margaret Anne while I was unemployed and not receiving any funds from the Resondent. In early July, the University of Saskatchewan advised me that they would hire me as a part-time sessional instructor for the 1989 - 1990 seesion. On September 7, 1989 I was advised that I would have 11 hours of work per week and would earn $26.00 per hour. On my Financial Statement I show my gross employment income as being the sum of $798.90 per month,

however, this is payable from September to April only. I will have to find summer employment in order to manage throughout the summer. It is my intention to apply for the After Degree Program in Education and hopefully commence the said program in September of 1990. The After Degree Program is a one year program. After completing the same I would have the necessary qualifications to teach in Saskatchewan and thereafter would be able to work full-time and earn a fairly adequate income.

24. I am requesting that the Respondent make maintenance payments for Margaret Anne in the amount of $400.00 U.S. per month and make interim spousal payments for myself in the amount of $350.00 U.S. If I was receiving maintenance from the Respondent I would no longer have to rely on my parents for support.

25. That I make this Affidavit in support of my application for custody and interim child and spousal maintenance.

SWORN BEFORE ME at the City of )
Saskatoon, in the Province of )
Saskatchewan, this day of )
October, A.D. 1989. )
)
)
)
)

A Commissioner for Oaths in and
for the Province of Saskatchewan.
Being a Solicitor.

GAYE-LYNN KERN

U.F.C. NO. 1033 OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

AFFIDAVIT OF EDWARD SHELNUT

I, Edward Shelnut, of Jackson, First Judicial District of Hinds County, Mississippi, HEREBY MAKE OATH AS FOLLOWS:

1. I am the Respondent in this proceeding and as such have personal knowledge of the facts and matters hereinafter deposed to except, where stated to be on information and belief and where so stated I verily believe same to be true.

2. It is admitted that Gaye-Lynn Kern is the Petitioner in this proceeding. Respondent has no knowledge of the remaining averments of paragraph 1. and if to be bound thereby denies same and demands strict proof thereof. Respondent would affirmatively show that this court has no personal jurisdiction of him in this matter.

3. The averments of paragraph 2. of the affidavit of Petitioner are admitted.

4. The averments of paragraph 3. of the affidavit are admitted except that Respondent has no knowledge of the averment that his daughter is now a Canadian citizen and if to be bound thereby, denies same and demands strict proof thereof.

Respondent holds that Margaret Anne Shelnut, having been born in the United States on July 31, 1986, as stated on her birth certificate, having a U.S. Social Security number and having as her permanent residence in Jackson, Mississippi, is a United States citizen.

5. The averments of paragraph 4. of the affidavit are denied.

6. The averments of paragraph 5. of the affidavit are denied.

7. The averments of paragraph 6. of the affidavit are denied. Respondent recalls the altercation on Margaret Anne's second birthday. Petitioner viciously jabbed Respondent with her elbow on his chest and arm as hard as she could three or more times in front of family and friends to get him out of the frame of a picture she was taking of Margaret Anne. After everyone else had left, I told her that that type of destructive behavior was intolerable and humiliating. Petitioner laughed at Respondent and said she did not think that she had elbowed Respondent very hard. Respondent then elbowed Petitioner on the arm exactly as hard as one of her many blows to Respondent. Respondent has no knowledge of the rest of paragraph 6.

8. The averments of paragraph 7. of the affidavit are denied.

9. The averments of paragraph 8. of the affidavit are denied. Respondent recalls taking a child psychology course and requesting that Petitioner stop calling their daughter "bad" and "brat" and other names, and Respondent maintains that he never physically or verbally abused Margaret Anne. Never was Margaret Anne bruised by her father.

10. The Respondent denies harmful behavior toward his child and has no knowledge as to whom Petitioner has allowed to see or counsel his child and if to be bound by the hearsay of paragraph 9. of the affidavit denies same and demands strict proof thereof.

11. The averments of paragraph 10. are admitted with the exception of the statement attributed to Respondent which is specifically denied.

12. Respondent admits making mortgage payments and supporting his child but denies the remaining allegations of paragraph 11. of Petitioner's affidavit.

13. The averments of paragraph 12. of the affidavit of Petitioner are specifically denied and Respondent attaches hereto and incorporates herein by reference the cover letter and "reconciliation proposal" propounded to him by Petitioner which includes among other demands that he quit claim his home to Petitioner.

14. The averments of paragraph 13. of the affidavit of Respondent are denied. Respondent did not "break in" his own home. Respondent did not wish to be confrontational with his wife or her family and when he discovered them away from his house, he entered his house by a back door with his house key by-passing the illegal front door lock Petitioner's family installed to deny Respondent access to his own home. Respondent discovered almost all community property already packed for the planned move to Canada even though Respondent had fulfilled all of the reconciliation requirements made by Petitioner in front of a witness on the day Petitioner surprised Respondent with demand that he vacate his own home. Respondent took only some personal items of his and removed the illegal lock. Respondent did tell Petitioner that he could only convince Petitioner and her family of his loving behavior if she would willingly let him move back into his home with all of them. Petitioner refused. Respondent said he would continue to pay the mortgage, but she and her family could pay the utilities. Respondent denies all other allegations in paragraph 13.

15. Respondent is without knowledge of the averments of paragraph 14. but if to be bound thereby, denies same and demands strict proof thereof. Petitioner and Respondent had spoken on the telephone and Respondent said that they both should be reasonable and adult and decide together what was

best for Margaret Anne. Petitioner agreed. The next day Petitioner had their telephone changed to an unlisted number while it was still in Respondent's name. Petitioner continued making long distance phone calls but prevented Respondent's being able to communicate with her or their daughter or her family by telephone. Respondent verified that the telephone was still in his name and had the phone service discontinued. True to his word, the Respondent had the electricity and the gas services which Petitioner had listed in Respondent's name only discontinued. As this was in the warm Spring, there was nothing unsafe or life threatening about these actions. Respondent denies all other allegations in paragraph 14.

16. Respondent has no knowledge of what Petitioner "decided" but if to be bound by these averments and the other averments of paragraph 15. of Petitioner's affidavit denies same and demands strict proof thereof. Respondent firmly believes that Petitioner has no just cause for any separation other than a recurring obsession to return to Canada and live with her family.

17. Respondent has no knowledge of the averments of paragraph 16. of the affidavit of Petitioner but if to be bound thereby denies same and demands strict proof thereof and would affirmatively show that jurisdiction properly lies in the First Judicial District of Hinds County, Mississippi.

18. Respondent has no knowledge of the averments of paragraph 17. of the affidavit but if to be bound thereby denies same and demands strict proof thereof.

19. Respondent denies the allegations of paragraph 18. which deal with matters he says, did not say, or thought, but has no knowledge of the remaining allegations of paragraph 18. and if to be bound thereby, denies same and demands strict proof thereof.

20. Respondent denies that it would be in the best interest of his daughter to be in the custody of her mother and denies that he has instructed his child or Petitioner and would show that it would be in the best interest of his child to be in his custody and further that this court is not the proper jurisdiction to determine custody of this child.

21. The Respondent denies that this court has jurisdiction to order him to pay child support in this matter or that he should be ordered to pay child support. Respondent would affirmatively show that Petitioner is an educated and able-bodied person who is well able to provide for herself and denies that he should be required to support the Respondent.

22. Respondent denies that Petitioner was unable to complete her term at Jackson State and denies that he agreed to Petitioner working part-time. The remaining allegations of paragraph 21., are admitted.

23. Respondent has no knowledge of the averments of paragraph 22. and if to be bound thereby denies same and demands strict proof thereof. Respondent has spoken to Petitioner by telephone and Petitioner told Respondent that she and Margaret Anne have moved back into house of Petitioner's parents because the house they had been loaned had been rented out.

24. Respondent has no knowledge of the averments of paragraph 23. of the affidavit but if to be bound thereby denies same and demands strict proof thereof. Respondent would like someone to support him while he went back to college full time, too.

25. Respondent denies that Petitioner is entitled to the relief or support requested or to any relief from this Respondent whatsoever.

FURTHER, Affiant sayeth not.

Edward Shelnut
EDWARD SHELNUT

SWORN TO AND SUBSCRIBED BEFORE ME, this the 22 day of November, 1989.

Rachel G. Wilson
NOTARY PUBLIC

My Commission Expires:
3-30-91

U.F.C. NO. 1033 OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

BEFORE THE HONOURABLE ) FRIDAY, THE 1ST DAY
)
MADAM JUSTICE M.Y. CARTER ) OF DECEMBER, A.D. 1989.

# O R D E R

Upon the application of the Petitioner, Gaye-Lynn Kern, and upon having read the Affidavit of the Petitioner and the Affidavit of the Respondent, Edward Shelnut, and upon having heard counsel on behalf of both the Petitioner and the Respondent,

IT IS HEREBY ORDERED AND ADJUDGED:

1. This Court may and does assume jurisdiction over the matters of interim custody, interim child maintenance and interim spousal maintenance.

2. The Petitioner, Gaye-Lynn Kern, shall have interim custody of the child, Margaret Anne Shelnut.

3. The Respondent, Edward Shelnut, shall pay interim child maintenance to the Petitioner, Gaye-Lynn Kern, in the amount of $300.00 (U.S. funds) for the month of December, 1989, such payment to be made forthwith.

4. The matters of access, ongoing interim child maintenance, and interim spousal maintenance are adjourned to a date to be fixed by the Registrar.

ISSUED AT the City of Saskatoon, in the Province of Saskatchewan, this 4th day of December, A.D. 1989.

DIANE L. BARKER

LOCAL REGISTRAR

U.F.C. No. 1033 OF A.D. 1989

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

BEFORE THE HONOURABLE ) WEDNESDAY, THE 17TH DAY
)
MADAM JUSTICE M.Y. CARTER ) OF JANUARY, A.D. 1990.

O R D E R

Upon the application of the Petitioner, Gaye-Lynn Kern, and upon having read the Financial Statement of the Petitioner and the Financial Statement of the Respondent, Edward Shelnut, and upon having heard counsel on behalf of both the Petitioner and the Respondent,

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Respondent, Edward Shelnut, shall pay interim child maintenance to the Petitioner, Gaye-Lynn Kern, in the amount of $325.00 (U.S. funds) per month, commencing on the 1st day of February, 1990, and continuing on the 1st day of each and every month thereafter until further Order.

ISSUED AT the City of Saskatoon, in the Province of Saskatchewan, this 19th day of January, A.D. 1990.

000004

DONNA C. SCOTT
LOCAL REGISTRAR

U.F.C. NO. 456 OF A.D. 1990

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL
DEPUTY LOCAL REGISTRAR

JUDGMENT

Court of Queen's Bench
U.F.C. - Saskatoon
JUL 5 1990
$ 95.00
Rec. No.

2 mailed to counsel
4 MEO

MITCHELL TAYLOR MATTISON CHING
Barristers and Solicitors
200 Scotiabank Building
111 - 2nd Avenue South
Saskatoon, Saskatchewan
S7K 1K6

000005

# JUDGMENT

C A N A D A
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

GAYE-LYNN KERN

PETITIONER

- and -

EDWARD SHELNUT

RESPONDENT

THE HONOURABLE JUSTICE Madam M.Y. Carter ) Thursday, THE 28th DAY OF June, ~~1989~~ 1990

This proceeding coming on before the Court this day at Saskatoon, Saskatchewan, in the absence of the parties and counsel, and upon considering the pleadings and the evidence presented:

1. IT IS HEREBY ORDERED THAT the Petitioner, GAYE-LYNN KERN, and Respondent, EDWARD SHELNUT, who were married on the 20th day of June, 1981, are divorced and, unless appealed, this Judgment takes effect and the marriage is dissolved on the 31st day after the date of this Judgment.

2. AND THIS COURT FURTHER ORDERS the following corollary relief under the Divorce Act:

(a) The Petitioner, GAYE-LYNN KERN, shall have custody of the infant child of the marriage, namely, MARGARET ANNE SHELNUT, born July 31st, 1986;

(b) The Respondent, EDWARD SHELNUT, shall pay to the Petitioner, GAYE-LYNN KERN, the sum of $325.00 (U.S. funds) per month as and for the maintenance of the infant child of the marriage, commencing on the 1st day of July, 1990 and continuing on the 1st day of each and every month thereafter for so long as the said child remains a child within the meaning thereof of the Divorce Act.

3. The maintenance provision of this Order is to be enforced by the Director of Maintenance Enforcement and all amounts owing pursuant thereto are to be paid through the Maintenance Enforcement Office, Box 2077, Regina, Saskatchewan, S4P 4E8, until further notice.

4. AND THIS COURT FURTHER ORDERS that the Petitioner, GAYE-LYNN KERN, shall have costs against the Respondent, EDWARD SHELNUT, which are hereby set in the amount of $350.00. The Petitioner shall have Judgment against the Respondent in the amount of the costs.

Per: Diane L. Barber
LOCAL REGISTRAR

NOTICE TO PARTIES

THE SPOUSES ARE NOT FREE TO REMARRY UNTIL THIS JUDGMENT TAKES EFFECT, AT WHICH TIME ANY PERSON MAY OBTAIN A CERTIFICATE OF DIVORCE FROM THE COURT. IF AN APPEAL IS TAKEN FROM THIS JUDGMENT IT MAY DELAY THIS JUDGMENT TAKING EFFECT.

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

FILED
SEP 26 2005
EDDIE JEAN CARR, CHANCERY CLERK
BY Shamette D.C.

DEPARTMENT OF HUMAN SERVICES PLAINTIFF

VS. CASE NO. U 99-1 R/1

EDWARD SHELNUT DEFENDANT

NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER
AMENDED

TO: Edward Shelnut
P. O. Box 71
Edwards, MS 39066

Please take notice that the attached foreign child support order was registered with the Court on the 26th day of Sept, A.D., 2005 in the above referenced case. This order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.

If you contest the validity or enforcement of the registered order, you must request a hearing within twenty (20) days after receiving this notice. Failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and any alleged arrearages, and precludes further contest of the order with respect to any matter that could have been asserted and of the alleged arrearages.

This the 26th day of Sept, A.D., 2005.

Jason Bayles, Senior Attorney
State of Mississippi
Department of Human Services
P. O. Box 11677
Jackson, MS 39283
432 1200
MS Bar No. [redacted]

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