

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF CASES .....	ii
REBUTTAL ARGUMENT .....	1, 2
CERTIFICATE OF SERVICE .....	2, 3

2007-CP-00920  
SCT -  
Rebuttal Brief for  
Appellant

# TABLE OF CASES

Cases	Page No.
<i>Coldwell vs. Coldwell</i> , 823 So. 2d 1216, 1221 ¶ 19 (Miss. App. 2002) .....	2
<i>Pass vs. Pass</i> , 118 So. 2d 769, 773, 917 (MS. 1960) .....	2

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROBERT D. EVANS

PLAINTIFF/APPELLANT

V.

NUMBER 2007-CP-00920

BEVERLY B. EVANS

DEFENDANT/APPELLEE

**REBUTTAL ARGUMENT**

Appellee misses the point. Although Appellant is tempted to point out all of Appellee's untruths and misleading statements in her statement of facts, the record and the lower court's ruling speak for themselves. Appellee has not challenged the lower court's finding of fact and as a result accepts those findings. There is no issue before this Court on the finding of facts which is reserved for the lower court. The Lower Court, in its Finding of Facts found:

**Appellant has paid, in excess, all of the child support ordered by the Court. That his earnings have not increased whereas the wife's earnings have increased. That the oldest child is attending college away from home and the youngest child now lives with him half the time. That the father is paying expenses for this child. That the Appellee has contributed nothing toward the purchase of either child's clothing nor anything toward Elizabeth's college expenses (R.E. p. 27-29).**

It would now appear that Appellee wishes to challenge the Lower Court's Finding of Fact which is not an issue before this Court.

Appellee neglects to argue the issue at hand. Even though the Court found a material change in circumstances, the lower court felt it did not have the authority to modify a Divorce Decree with regard to the child support. Stated in Appellant's initial brief, the Lower Court felt, it did not have the authority under *Varner* to modify the Divorce Decree (R.E. p. 29, 40). This was clear error. The Lower Court ordered the Appellant to continue the same support which would also

occur even after the older child was emancipated. This is contrary to *Coldwell vs. Coldwell* 823 So. 2d 1216, 1221 ¶ 19 (Miss. App. 2002).

As to the issue of the youngest child's college expenses, there is absolutely no evidence or a request by Appellee to support the Court's Ruling. This was a child, at the time of the hearing, fifteen (15) years of age and had not entered high school. There could not possibly be evidence of college tuition at the time this child reaches college age comparing that with the father's income, which has not increased, nor of the child's aptitude at the time he is reaching college level. *Pass v. Pass*, 118 So. 2d 769, 773, 917 (MS. 1960).

The Appellee is also asking this Court to award it all court costs and attorney's fees. As the Lower Court stated, there was no evidence of any parties inability to pay their attorney's fees and therefore none were ordered. Following that same logic, this Court should not award Appellee any court costs or fees.

RESPECTFULLY SUBMITTED, this the 29<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
ROBERT D. EVANS, Plaintiff

**OF COUNSEL:**  
**ROBERTSHAW, NOBLE, EVANS & ROUNSAVALL**  
128 South Poplar Street  
Post Office Drawer 1498  
Greenville, Mississippi 38702-1498  
Telephone: (662) 378-2171  
Facsimile: (662) 335-9049

**CERTIFICATE OF SERVICE**

I, Robert D. Evans, do hereby certify that I have this day mailed a true and correct copy

of the above and foregoing document to:

Susan C. Smith, Esquire  
241 Main Street, Suite B  
Greenville, MS 38701

This, the 20<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
ROBERT D. EVANS

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

**ROBERT D. EVANS**

**PLAINTIFF/APPELLANT**

**V.**

**NUMBER 2007-CP-00920**

**BEVERLY B. EVANS**

**DEFENDANT/APPELLEE**

**FIRST AMENDED CERTIFICATE OF SERVICE**

I, Robert D. Evans, Plaintiff/Appellee, do hereby certify that I have this day served a true and correct copy of the foregoing Rebuttal Brief For Appellant, by mailing same by United States Mail with postage fully prepaid to the following:

Susan C. Smith, Esquire  
241 Main Street, Suite B  
Greenville, MS 38701

Hon. Billy Bridges  
520 Chuck Wagon Drive  
Brandon, MS 39042

**SIGNED**, this, the 12<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
**ROBERT D. EVANS, pro se**