

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-TS-01813

REYNA CORRIDORI WELLS

APPELLANT

VERSUS

FORREST SIMPSON WELLS

APPELLEE

APPEAL FROM THE

CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

NO. 2004-0830JB

BRIEF ON BEHALF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

ATTORNEY FOR APPELLANT:

CALVIN TAYLOR, MSB# [REDACTED]

P.O. BOX 0006

Pascagoula, MS 39568-0006

Telephone: 228-696-0111

Facsimile: 228-696-0118

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CERTIFICATE OF INTERESTED PARTIES

The undersigned attorney of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or Justices of the Court of Appeals may evaluate possible disqualification or recusal.

1. The Honorable Jaye Bradley, Chancellor
Pascagoula, MS 39567

FOR THE APPELLANT:

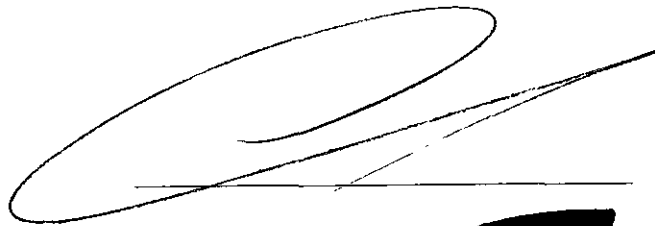
1. Reyna Corridori Wells, Appellant
Ozark, AL
2. Calvin Taylor, Esquire
Trial and Appellate Attorney for Appellant
Pascagoula, MS 39567

FOR THE APPELLEE:

1. Forrest Simpson Wells, M.D., Appellee
Ocean Springs, MS 39564
2. Gary Roberts, Esquire
Trial and Appellate Attorney for Appellant
Pascagoula, MS 39567

OTHER PARTIES IN INTEREST:

1. Joshua H. Wells
Ocean Springs, MS
2. Jeb T. Wells
Ocean Springs, MS
3. Ben C. Wells
Ozark, Alabama

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a diagonal stroke.

CALVIN TAYLOR, MSE [REDACTED]
ATTORNEY FOR APPELLANT

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Section 93-5-24(9)(a)(i), Miss. Code 1972 Ann. 25

Section 43-19-101, Miss. Code 1972 Ann. 26

STATEMENT CONCERNING ORAL ARGUMENTS

The Appellant does not request oral argument in this matter and contends that the facts and legal arguments are adequately presented in the briefs and record and oral argument would not significantly aid the decision process.

STATEMENT OF THE ISSUES

The Appellant, Reyna Corridori Wells, presents the following issues for the Court's consideration:

I.

CUSTODY OF MINOR CHILDREN

The trial court was incorrect in awarding custody of Jeb and Josh Wells to Husband.

II.

AWARD OF MARITAL RESIDENCE

The trial court was incorrect in awarding the marital residence to the Husband, as well as the trial court's determination relative to the equity therein.

III.

AWARD OF CHILD SUPPORT TO DEFENDANT

The trial court's decision to award Defendant child support and the amount of child support constitutes manifest error, is an abuse of discretion and is otherwise erroneous in the construction and application of law and principles of equity. The amount of child support is not supported by the proof or MCA §43-19-101.

IV.

DIVISION OF PERSONAL PROPERTY

The trial court was erroneous in its division of the parties' personal property, checking accounts and retirement accounts. Furthermore, the trial court's classification of some of the assets as the Defendant's non-marital assets is erroneous and not supported in fact or law.

V.

DENIAL OF ALIMONY

The trial court was incorrect to deny alimony and attorney's fees to Wife.

STATEMENT OF THE CASE

Course of Proceedings

On April 22, 2004, the parties hereto filed separate Complaints with the Chancery Clerk of Jackson County, Mississippi. Specifically, Reyna Corridori Wells (Wife) did file her Complaint for Declaratory Judgment (CP-001) with Forrest Simpson Wells (Husband) filing a Complaint for Divorce. (CP-006)

From the time of the filing of the respective complaints in April 2004, the parties did initially continue to live in the same household in Ocean Springs, Mississippi. Notwithstanding the absence of a physical separation, the parties appeared before the Family Master on temporary matters on September 30, 2004. The hearing resulted in the parties executing an agreed Order which was filed with the Court on December 9, 2004. (CP-020) The agreement of the parties provided, *inter alia*, for the payment of debts, preservation of assets and custody and visitation of the children. Relative to the minor children, the parties agreed that each parent would be vested with joint legal custody of twin boys, Jeb and Josh Wells, with Wife being further vested with paramount physical custody subject to Husband's alternating weeks of visitation. Further, the paternity of minor child, Ben Cohen Wells, was reserved for later adjudication and, by agreement; no visitation was afforded to Husband.

Wife filed her Counterclaim for Divorce on January 31, 2005. (CP-023) Upon the parties achieving a physical separation when the Husband moved from the residence in 2005, the trial court entered a subsequent Order on March 29, 2005, which continued the prior agreement relative to joint physical custody of Jeb and Josh on an alternating weekly basis, but awarded Wife use and possession of the marital residence. (CP-031) Wife continued to

maintain residence until after the Judgment of Divorce was entered on May 14, 2007, which granted the marital residence to Husband. (CP-049-057)

On October 13, 2005, the trial court ruled the post-nuptial agreement executed by the parties was void. (CP-039)

On December 8, 2005, the trial court denied Wife's petition seeking payment of her attorney fees which, at that time, were in excess of Forty Thousand Dollars (\$40,000.00). (CP-045)

This matter proceeded to trial on October 31, November 1 and November 2, 2006, in Jackson County, Mississippi. As the trial was not concluded, by agreement of the parties, the trial resumed in Greene County, Mississippi, on February 8 and February 9, 2007. At that time, both sides finally rested concluding the presentation of evidence.

Disposition in the Court Below

The Chancery Court issued its Findings of Facts and Conclusions of Law on April 17, 2007, and entered its Judgment of Divorce on May 14, 2007, which granted the parties a divorce on the ground of irreconcilable differences. (CP-050)

Additionally, the parties were awarded the joint legal custody of Jeb and Josh Wells, the twin boys born to them during their marriage. Husband was not adjudicated to be the father of Ben Wells, the third minor child born during the marriage of the parties as a result of artificial insemination. Husband was granted no legal rights, duties or obligations with respect to Ben Wells, and Wife was awarded the sole legal and physical custody of said

child. (CP-050-051). Husband was awarded the physical custody of Jeb and Josh Wells, subject to visitation rights. (CP-051-052).

Wife was ordered to pay Husband child support in the amount of Three-Hundred Thirty-Six Dollars (\$336.00) per month for the use and benefit of Jeb and Josh Wells. Husband was also ordered to continue to carry health and hospitalization insurance for the twins, while the parties would split equally any medical, dental, ocular or psychological expenses incurred on behalf of the twins that are not covered under said insurance. Both parties were ordered to maintain life insurance policies of at least One Hundred Thousand Dollars (\$100,000.00), with the twins listed as equal beneficiaries therein. (CP-052-053).

The total cost of the expert's appraisal and written report on Husband's business to the Court was ordered to be equally borne between the parties. (CP-053).

The following items were determined by the trial court to be non-marital assets and not subject to equitable distribution: Wife's furniture bought by her parents; Husband's Charles Schwab Retirement Account in the amount of Thirty-Two Thousand Dollars (\$32,000.00); Husband's share-owner interest in the Mississippi Coast Surgical Center valued at trial at Fifty-Two Thousand Three Hundred Thirty-Nine Dollars (\$52,339.00); and any increase in the value of Husband's Gulf Coast Plastic and Reconstructive Surgery PLLC since September 30, 2004. (CP-053-054).

The trial court ordered and adjudged that the marital estate be divided as follows:

(A) The marital home was awarded to Husband and Wife was ordered to convey her interest in the home to Husband. Husband was ordered to pay Wife one half of the equity in that home, which amounted to Forty One Thousand Eight Hundred Seventy-Eight Dollars

(\$41,878.00), within forty-five (45) days after the date of the Final Judgment. Wife was ordered to vacate marital home within forty-five (45) days of Final Judgment.

(B) The value of the marital furniture, appliances and household possessions owned prior to the separation of Husband and Wife was adjudicated to be Twenty-Five Thousand Dollars (\$25,000.00), and split equally among the parties. Additionally, Wife was ordered to leave this property in the marital home and was to be paid for her one-half equity amount at the time she receives the equity in the home.

(C) The Six Thousand Three Hundred Dollars (\$6,300.00) that Wife took from the family safe to use for expenses was determined to be a marital asset, and to be split equally between the parties, was ordered to be deducted from Husband's payment to Wife.

(D) The fair market value of Husband's Gulf Coast Plastic and Reconstructive Surgery, PLLC, was adjudicated to be One Hundred Forty-Eight Thousand Dollars (\$148,000.00) as of September 30, 2004. This sum was divided equally, with one-half of the business appraisal cost being subtracted from Wife's share, and was to be paid within ninety (90) days from the entry of the Final Judgment.

(E) Each party retained use and possession of their respective motor vehicles.

(F) Husband retained the sole ownership of the life insurance policy insuring his own life with approximately Four Thousand Five Hundred Dollars (\$4,500.00) worth of cash value, along with the checking account interest and the VALIC 401(k) account.

(G) Husband was granted the entire marital checking account, the Eight Thousand Two Hundred Twenty-Three Dollars (\$8,223.00) interest in the VALIC 401(k) account, and all of the marital interest in the his life insurance. (CP-054-056).

The trial court denied wife's request for alimony. (CP-056). The trial court also denied Wife's request for attorney's fees, ruling that each party has the ability to pay their own attorney's fees. (CP-056).

Following the entry of the Final Judgment, Wife filed her Rule 59 Motion to Alter or Amend Judgment or for New Trial (CP-058) and Husband filed his Motion for Reconsideration, New Trial, Alteration or Amendment of Judgment or Relief from Judgment. (CP-062) The trial court denied these motions to reconsider on September 12, 2007. (CP-066). Wife has perfected this appeal before this Honorable Court, and Notice of Appeal was filed on October 5, 2007. (CP-068).

Statement of the Facts

The parties were lawfully married to one another in the State of Alabama on May 25, 1996. This was the first marriage for both litigants and no children were born to either party before the marriage. The couple first resided together as Husband and Wife in Birmingham, Alabama. (RE-071-076)

Prior to marriage, Husband graduated high school in 1987, college in 1991 and medical school in 1995. (RE-071-076)

At the commencement of this union, Husband had just completed his second year of a five (5) year general surgery residency program at the University of Alabama at Birmingham (UAB). Upon Husband's graduation from UAB's general surgical residency in the Summer of 2000, the couple moved to Oak Park, Illinois, a Chicago suburb, where Husband began his plastic surgery residency. Husband completed the plastic surgery residency in 2003. (RE-071-076)

Husband was admitted to the practice of medicine, plastic and reconstructive surgery, in July 2003. Husband operates and is the sole owner of Gulf Coast Plastic and Reconstructive Surgery, which has maintained continuous operation in Jackson County, Mississippi. (RE-071-076)

Prior to the marriage, Wife graduated from high school in 1990 and community college in 1993 with a nursing degree. (RE-095-097)

When the parties married, Wife was gainfully employed as registered nurse in the labor and delivery department of UAB, a position she held since shortly after her graduation from college in 1993. (RE-095-097)

The stress of the couple being incapable of conceiving a child caused Wife to leave the labor and delivery field in 1997. After a short time, Wife found work as a nurse in a doctor's office which she maintained through the Summer of 2000 when the parties relocated to Illinois. After the Summer of 2000, Wife was not gainfully employed until divorce proceedings were commenced. (RE-097-115)

Wife received her Mississippi nursing license sometime prior to Hurricane Katrina's landfall in August 2005. Notwithstanding, Wife became employed full-time with Quality Home Health Care in the capacity of a pediatric nurse in March 2006 and continued same through October 2006. Commencing with November 2006, Wife's request to transfer from a full-time position to a part-time position was granted. Wife's employment status through the divorce proceedings was that of PRN which was described "as needed".

Soon after marriage the parties learned their shared desire to have children would need the assistance of a fertility specialist. While still living in Birmingham, the couple began in vitro fertilization utilizing Husband's sperm at UAB. This proved unsuccessful. (RE-097-115)

Undaunted by the failure of five in vitro procedures in Birmingham, the parties consulted a reproductive endocrinologist soon after the couple relocated to Illinois. Again Wife submitted to in vitro fertilization. However, due to a motility issue with Husband's sperm, the parties selected donor sperm from a cryobank in Fairfax, Virginia. Utilizing the donor sperm resulted in Wife conceiving after the first procedure. Twin boys, Jeb and Josh, were born on June 3, 2001. (RE-097-115)

Sometime after the birth of the twins, Husband and Wife decided to have another child. Husband wanted the couple to conceive a child by traditional means and the couple attempted to do so unsuccessfully. Desperate for another child and believing this would not occur naturally, Wife took matters into her own hands. Without Husband's knowledge or consent, Wife artificially inseminated herself resulting in the birth of Ben on February 4, 2004. Because the same donor sperm that was utilized for Jeb and Josh could not be obtained, Ben does not share the same parentage as his half brothers. Wife procured the donor sperm by charging it on her credit cards. (RE-117-119)

The parties moved from Illinois to Ocean Springs, Mississippi, in the summer of 2003 and purchased a home located at 605 Rue Maupessant Drive. (RE-77-78) Husband had accepted an offer from Singing River Hospital to establish a practice in Jackson County. In consideration, Husband was given a One Hundred Fifty Thousand Dollar (\$150,000.00) loan,

which would be forgiven in exchange for maintaining said medical practice for a period of three years. Forty Thousand Dollars (\$40,000.00) of that loan was used as a down payment on the marital home. (RE-079-081)

Prior to the birth of Ben, Husband discovered that Wife had become pregnant via artificial insemination after discovering Wife's credit card charges. Upon confrontation, Wife admitted that she had become pregnant through artificial insemination and expressed remorse for the deception. (RE-125)

After the discovery of artificial insemination, Husband threatened Wife with divorce if she did not sign a post-nuptial agreement. (RE-010-018).

Wife continually resided in the home from 2003 until ordered to vacate the marital home in the Final Judgment. Husband moved from the residence in early 2005 and returned following his award of the marital home in the Final Judgment. (CP-049)

Summary of the Argument

In the instant case, the Appellant is asking that the Jackson County Chancery Court's Final Judgment (CP-49) be reversed and remanded with respect to the award of custody of the minor children to Husband; award of the marital residence to Husband; award of child support to Husband, the division of assets of the parties; and the denial of alimony to Wife.

In the argument to follow, Reyna Corridori Wells (Wife) will discuss specific points in her request for reversal and remand. She contends the Chancellor's ruling did not take into account the best interests of the two minor children. She will also argue that the Chancellor erred in the awarding of the marital residence to Husband, as well as in dividing the equity

therein. Wife argues that the award of child support to Husband is improper, as well as the division of the assets of the parties. Finally, Wife argues that the Chancery Court's denial of Alimony to Wife and denial of attorney's fees are improper.

The Final Judgment of the Jackson County Chancery Court requires reversal and remand for additional consideration of the various factors in this case.

ARGUMENT AND AUTHORITIES

I. CUSTODY OF JEB AND JOSH WELLS

The trial court was incorrect in awarding custody of Jeb and Josh Wells to Husband.

The underpinning of any Judge's decision when custody of a minor child is contested is the child's best interest. In other words, "the polestar consideration in matters of child custody is the best interest of the child." *Rushing v. Rushing*, 724 So. 2d 911, 916 (Miss. 1998).

In considering the best interest of the child, the Court should evaluate and apply the factors enumerated and espoused in the seminal decision of *Albright v. Albright*.

The factors this Court must consider in attempting to determine what is in a child's best interest are as follows:

- (1) age, health and sex of the child;
- (2) a determination of the parent that has had the continuity of care prior to the separation;
- (3) which has the best parenting skills, and which has the willingness and capacity to provide primary child care;
- (4) the employment of the parent and responsibilities of that employment;
- (5) physical and mental health of the parents;
- (6) emotional ties of parent and child;

- (7) moral fitness of the parents;
- (8) the home, school and community record of the child;
- (9) the preference of the child at the age sufficient to express a preference by law;
- (10) stability of home environment and employment of each parent; and
- (11) other factors relevant to the parent-child relationship. *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983).

The Court should also factor in the equation which parent has had the continuity of care from the date of separation through the date the matter is submitted to the Court. *Caswell v. Caswell*, 763 So.2d 890, 893 (Miss. Ct. App. 2000). Neither factor is to be given more weight than the other. *Id.*

Finally, when considering Husband's request to have physical custody of Jeb and Josh, the impact on the twins of being separated from Ben must be taken into account. Guidance on this factor comes from the *Sparkman* decision which held, "in the absence of some unusual and compelling circumstance dictating otherwise, it is not in the best interest of children [siblings] to be separated." *Sparkman v. Sparkman*, 441 So.2d 1361, 1363 (Miss. 1983). In fact, this Court recognizes that the Mississippi Supreme Court and the Court of Appeals in prior decisions have been "extremely hesitant to separate siblings." *Owens v. Owens*, 2005-CA-00866-COA, (citing *Bredemeier v. Jackson*, 689 So.2d 770, 775 (Miss. 1997)).

"Although there is no 'hard and fast' rule that the best interest of siblings will be served by keeping them together, this Court has been extremely hesitant to separate siblings when their parents divorce." *Jackson* at 775.

With the legal framework set out *supra*, the Court applies the *Albright* factors as well as the other factors to the disputed facts of this case, keeping in mind that no one factor is given more weight than any other factor.

(1) *The age, health and sex of the child*: The twin boys were born five weeks prematurely on June 3, 2001, and are five years old. Their births were by caesarean section.

Josh was born with a condition known as ductus arteriosus which relates to the infant's body switching from fetal circulation to regular circulation. Fortunately, Josh's condition was corrected with medication. Josh remained in the hospital for twenty-one (21) days while Jeb was released with the Mother. (RE-018)

Due to Josh's prolonged hospitalization, he missed his opportunity to learn to suckle thus preventing any form of breast feeding. Josh's difficulty with feeding required the insertion of a nasogastric tube in the nose that terminated in the stomach. Wife testified Josh was fed by connecting a syringe to the nasogastric tube with gravity carrying the injected fluid to the stomach. Wife testified she fed Josh by this method every two hours for seven days. Thereafter, Josh was breast-fed for approximately six (6) months. (RE-018-019)

Both parties testified to separately noticing the precursor signs that Josh had cerebral palsy. Wife testified she first noticed Josh arching his back and looking toward the light in September 2001, when the parties were in Alabama for a birthday party for the paternal

grandfather. She also noticed that Josh would pull away when she held him. Wife testified Husband was dismissive of her observations and concerns of palsy. Josh's pediatrician confirmed the cerebral palsy during the children's scheduled visit. (RE-111-115)

Wife further testified about Josh's need for orthotic shoes due to his low tone stemming from the cerebral palsy. (RE-116)

Clinical Psychologist, Dr. J. Donald Matherne, was retained by Wife during the pendency of these proceedings. Dr. Matherne testified at trial and conducted separate psychological evaluations for both boys as well as Ben. All three evaluations were admitted into evidence. (RE-185-193)

Based on the history related by Wife that Josh was diagnosed with cerebral palsy during infancy, Dr. Matherne noted, notwithstanding the fact Josh does display some slight indication of cerebral palsy, and that Josh does not show a specific symptomatology consistent with cerebral palsy. Dr. Matherne further found Josh has an issue related to speech disfluency which is specifically related to a problem with language expression. (RE-082-084)

Wife further related a history to Dr. Matherne that Josh's developmental issues necessitated various interventions including physical therapy, occupational therapy and developmental therapy. The therapy sessions were performed once a week for two years in the parties' apartment in Illinois.

Dr. Matherne's diagnostic impression is that Josh is developmentally delayed and that Josh will benefit from a structured and consistent living environment and that it would not be advantageous to Josh to have isolated or limited contact with Ben. (RE-085-087)

Wife further testified that when the boys were approximately age two (2) and while Wife was toilet training the boys, Wife noticed that after Josh would use the toilet and after straining he would have a bulge in his groin on one side. Wife suspected Josh had a hernia, which was confirmed by Dr. Ed Dvorak. Dr. Dvorak was successful in surgically repairing the hernia. Between the surgery and the post-operative appointment, Wife noticed a bulge on the other side of Josh's groin which was again confirmed as a hernia by Dr. Dvorak. Josh tolerated the second procedure well and has no lingering effects from either surgery. (RE-121-124)

At the time of the divorce proceedings, Josh and Jeb attended kindergarten at St. John's Episcopal School in Ocean Springs, Mississippi. (RE-126)

Wife indicates that Josh's fine motor skills are somewhat delayed, but the issue was being addressed by Josh writing and coloring at home. The long-term prognosis was stated as being very good. (RE-121-124)

Relative to Jeb, Dr. Matherne also conducted a psychological evaluation wherein he reported Jeb may have some problems with fine motor and possibly gross motor coordination and the diagnostic impression is that Jeb's motor skills are developmentally. (RE-085-087)

Dr. Matherne specifically recommended in his report that the children, including Ben, stay together as a family unit. (RE-085-087)

Aside from the hernia surgeries and the developmental issues, the trial court found the twin boys are healthy, active children and that the boys are participating in soccer on a team coached by their father. (CP-244). The trial court simply ignored testimony that Wife spent the overwhelming amount of time with the twins.

The trial court found both parents were active in the children's schooling, notwithstanding indications to the contrary.

As Wife was the party predominately responsible for the early development, particularly with regard to Josh's medical and developmental needs, this factor clearly favors the Wife despite the determination of the trial court that this factor favored neither party.

(2) A determination of the parent that has had the continuity of care prior to the separation:

There is little contest that Wife was the primary care giver to the children prior to the parties' separation in April 2004. The proof showed that when the twins were born in Oak Park, Illinois, in June 2001, Husband was completing a demanding plastic surgery residency which, based on the testimony, would require Husband to be at the hospital for twenty-four (24) hours at the time. Wife testified that during this period, Husband had little interaction with the children and Husband refused to assist Wife with the bathing and feeding chores associated with the care of the parties' small children. Wife testified that when Husband was home, he would often separate himself in the bedroom and play games on his computer. Husband disputes this as he claims the apartment was so small as to preclude isolation. (RE-120)

The proof showed Wife was responsible for the feeding and daily care of the children as Husband would leave the residence before 6:00 a.m. and not return until 7:00 p.m. This was Husband's schedule when the parties remained in Illinois - the first two years of the children's lives. (RE-120)

Wife testified that during both of Josh's hernia surgeries, Husband did not take off work to care for Jeb and Ben. In fact, the operating surgeon's wife took care of Josh and Ben. The proof showed that Husband was scheduled to help Wife with the post-operative hernia care of Josh, as well as the other two boys. Instead, the afternoon of the surgery, Dr. Dvorak and Husband went shopping for fishing equipment for a planned excursion to Chandeleur Island in the coming days. (RE-121-124)

Meredith Saunders testified to joining the parties at the maternal grandmother's beach home on Ono Island, Alabama, when the twins were babies. Mrs. Saunders testified that the Husband spent very little time with the children, as she recalled, and the Husband spent a good portion of each day fishing. She also testified that one evening she assisted Wife with bathing the children as one child was throwing a tantrum. She testified Husband and his family were seated around the television and no one got up to help, even though one of the children was crying. (RE-088-092)

The maternal grandmother, Polly Corridori, testified to visiting in the parties home in Ocean Springs, Mississippi. Her testimony was that Husband would come in from work and generally go straight to his office upstairs and remain there until summoned for dinner. Husband denied this allegation. Mrs. Corridori further stated she observed little interaction

between Husband and the children and that the interaction she witnessed, in her opinion, was not age appropriate as Husband was overly rough with the twins. (RE-92-094)

However, the trial court ignored this evidence and ruled that this factor favored neither party, citing Husband's post-separation parental role in the children's upbringing, while ignoring testimony of his lack of interaction prior to separation. This factor favors the Wife, as the proof overwhelming showed, almost exclusively, that the Wife provided the continuity of care for the twin boys.

(2)(a) A determination of the parent that has had the continuity of care after separation:

As stated earlier, both parties filed competing Complaints in April 2004. Notwithstanding, the commencement of this litigation, the parties continued to reside in the same household until January 25, 2005, when Husband moved from the residence.

Wife maintains she continued to provide the continuity of care even after the parties' legal separation in April 2004. As proof, Wife submitted a picture taken at the twins' third birthday party in June 2004 at which Husband was not present. Husband admitted he did not recognize the picture and did not recall the children blowing out the candles. Husband stated that Wife failed to call his nurse and put the party on his schedule. Wife maintains she scheduled the party over lunch so Husband could attend and that Husband's nurse was notified of the party. Wife contended that Husband simply forgot the party.

Husband maintained he began sharing the responsibility for the care of the children after the entry of the temporary Order agreed to by the parties September 30, 2004, but not filed with the Clerk until December 9, 2004. (CP-020)

It is not contested that since January 25, 2005, the date of Husband's relocation from the marital residence, the parties shared joint custody of the boys.

From the date of the parties' legal separation April 24, 2004, through January 25, 2005, a period of nine (9) months, Wife continued to provide the primary care for the parties' minor children. From January 25, 2005, through the date of trial on February 9, 2007, a period of twenty-four (24) months, the parties shared this responsibility. The total period of separation was thirty-three (33) months. Based on the fact Wife provided the primary care for the children for the first nine (9) months of the parties separation and for twelve of the remaining twenty-four (24) months, a total period of primary care of twenty-one of thirty-three months or 64% percent of the post separation care, this factor is clearly in favor of the Wife. However, the Chancellor erroneously determined that this factor favored neither party.

(3) Which has the best parenting skills, and which has the willingness and capacity to provide primary child care:

Early in the children's lives, the record is clear that Wife overwhelmingly demonstrated the willingness and capacity to provide primary child care. This is important to note as Josh underwent therapy for a period of two years, and by all accounts, Husband's participation in this regard was little to nonexistent.

While it is obvious both parties are ready and willing to exercise primary physical custody of the parties' children, Husband's mother lived in his home on the alternating weeks Husband exercised custody in order to assist him with the children's care. Alternatively, Wife had Ben in her care all the time and the twins one-half of the time. Wife does not require any assistance with the children. This certainly is a testament to the fact Wife has the greater capacity to render care for the children.

Despite evidence to the contrary, the Chancellor ruled that this factor favored neither party and focused on the fact that Wife accumulated credit card debt during the course of the divorce litigation and did not work on a full-time basis. However, Wife was busy taking care of three children at the time; giving them the love and support she has showed them since birth. She did not become a loving, hands-on parent conveniently post-separation. This factor clearly favors the Wife.

(4) The employment of the parent and responsibilities of that employment:

It is not contested that both parties have been able to arrange their respective work obligation around the care of the children. During the divorce proceedings, Wife was on an "as needed" basis as a pediatric nurse and Husband demonstrated his ability to schedule his patients and surgical procedures around the children's care.

This factor is neutral. However, the trial court stated that this factor slightly favored Husband, and focused on hypothetical situations that ignored the fact that Wife had proven herself to be flexible in her work schedule and shown herself to be responsible for the care of a third child.

(5) Physical and mental health of the parents:

The physical and mental health of both parties is excellent.

This factor is neutral and was determined so by the trial court.

(6) Emotional ties of parent and child:

The litigants are bonded to the children and that the children are likewise bonded to the parties.

This factor is neutral and was determined so by the trial court.

(7) Moral fitness of the parents:

As Wife admitted to having a post-separation relationship with another man, Conley Freeman (whom she has since married), and considering Wife's failure to discuss and disclose the self-insemination procedure resulting in the birth of Ben and the surreptitious manner in which same was accomplished by Wife, this factor weighed in favor of Husband.

However, the trial court focused too much on Wife's post-separation credit card debt, which was accumulated to pay attorney's fees in a complex and protracted divorce proceeding. The trial court also ignored testimony of physical abuse committed by Husband.

(8) The home, school and community record of the children:

Notwithstanding Husband's contention that Wife missed parent-teacher conferences and other school related activities, all of which Wife disputes, nothing in the children's home, school and community record favors one parent over the other.

This factor is neutral and the trial court determined as such.

(9) The preference of the child at the age sufficient to express a preference by law:

Because the children are not of a sufficient age to express a preference, this factor is inapplicable, and the trial court determined as such.

(10) Stability of home environment and employment of each parent:

In that the Wife has remained in the marital home since the parties moved to Ocean Springs, Mississippi, in the Summer of 2003, and due to the Husband's having to move several times because of the hurricane, the Wife's home environment has been the most stable.

When considering the relative stability of each litigant's employment, the trial court found that Husband had been very successful as a plastic surgeon and sole owner of Gulf Coast Plastic and Reconstructive Surgery and Wife had been employed as a pediatric home health care nurse since March 2006.

The trial court ruled that this factor favored Husband. However, the trial court focused on the fact that Wife accumulated credit card debt as a result of these divorce proceedings and did not work full-time to pay those debts, despite the fact that she actually

the favor of one party that equity would require granting custody to that parent." *Divers v. Divers*, 856 So.2d 370 , 376 (Miss. Ct. App. 2003).

Wife made allegations that Husband was emotionally, physically and sexually abusive during the course of the marriage and invoked the rebuttable presumption against Husband having custody of the children as set forth at 93-5-24(9)(a)(i). Husband denied the allegations. The trial court ignored the testimony of abuse, yet unfairly focused on the fact that Wife accumulated credit card debt so that she could obtain representation in this divorce and custody proceedings. The fact that wife secretly inseminated herself in a desperate attempt to become pregnant when it was clear that the couple would not have a child through natural means was long admitted by Wife and she expressed remorse. The trial court also focused on the fact that Wife had a post-separation relationship with another man, a man she did not meet until February 2006, almost two years after her husband decided to leave her and file for divorce. Wife has since married this man. Wife should not be punished for the fact that she began a long-lasting relationship with another man after her marriage disintegrated and these divorce proceedings were well under way.

The trial court was incorrect in its analysis of the Albright factors. Upon proper consideration of these factors, the best interest of the parties' minor children, Jeb and Josh Wells, are best served by vesting primary physical custody with the Wife.

II. USE AND POSSESSION OF MARITAL RESIDENCE

The trial court was incorrect in awarding the marital residence to the Husband, as well as the trial court's determination relative to the equity therein.

The law prefers that the party which is vested with paramount physical custody of minor children should also be vested with the exclusive use and possession of the marital residence. *Chamblee v. Chamblee*, 637 So.2d 850, 863 (Miss.1994) (quoting *Mcllwain v. Mcllwain*, 441 So.2d 517, 518 (Miss. 1983)). In their discussion of the *Mcllwain* decision, the *Chamblee* Court asserted that *Mcllwain* stands for the proposition that it is an abuse of discretion for a trial judge not to award use and possession of the marital home to the party being vested with custody of the children. *Id* at 863.

As Wife should be vested with physical custody of Jeb and Josh, she should be credited with exclusive use and possession of the marital residence until the date that Wife remarried.

III. CHILD SUPPORT

The trial court's decision to award Defendant child support and the amount of child support constitutes manifest error, is an abuse of discretion and is otherwise erroneous in the construction and application of law and principles of equity. The amount of child support is not supported by the proof or MCA 43-19-101.

The trial court's decision to award Defendant child support and the amount of that child support constitutes manifest error, is an abuse of discretion and is otherwise erroneous in the construction and application of law and principles of equity. The amount of child support, Three Hundred Thirty-Six Dollars (\$336.00) per month is not supported by the proof or MCA §43-19-101.

IV. DIVISION OF ASSETS

The trial court was erroneous in its division of the parties' personal property, checking accounts and retirement accounts. Furthermore, the trial court's classification of some of the assets as the Defendant's non-marital assets is erroneous and not supported in fact or law.

In arriving at an equitable distribution of marital property, the Supreme Court has suggested trial judges consider the guidelines set forth in *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). The *Ferguson* factors are as follows:

1. Substantial contribution to the accumulation of the property.
 - a. Direct or indirect economic contribution to the acquisition of the property;
 - b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties, and duration of the marriage; and
 - c. Contribution to the education, training, or other accomplishment bearing on the earning power of the spouse accumulating the assets.
2. The degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.
3. The market value and the emotional value of the assets subject to distribution.
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse.
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution.

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties.

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

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

The Court should apply the facts of this case to the first *Feguson* factor, in the following manner:

1. Substantial contribution to the accumulation of the property.

a. Direct or indirect economic contribution to the acquisition of the property;

b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties, and duration of the marriage; and

c. Contribution to the education, training, or other accomplishment bearing on the earning power of the spouse accumulating the assets.

Both of the parties have made direct or indirect economic contribution to the acquisition of marital property, but it is obvious that the financial contribution of each has not been equal. When the parties initially married and lived in Birmingham, Alabama, the parties had virtually no assets. Wife was employed as a labor and delivery nurse and Husband was

completing his general surgery residence at UAB. Both parties testified that during this period, their respective incomes were essentially equal.

Upon the parties moving to Illinois, Wife did not work in order to focus on building a home and family and Husband focused on completing his plastic and reconstructive surgery residency. Husband testified that during this period he made approximately \$37,000 per year.

Upon the parties' relocation to the Mississippi Gulf Coast in June 2003, Wife remained at home to care for the twin two year old boys and Husband began his medical practice. Husband then formed Gulf Coast Plastic and Reconstructive Surgery to which he Husband is the sole shareholder.

Husband testified that the Singing River Hospital System paid a lump sum amount of \$150,000.00 to induce Husband to come to Mississippi and practice plastic and reconstructive surgery in the Singing River Hospital System. The payment was a loan that was forgiven in annual increments of \$50,000.00 for each year Husband remained in the hospital system. (RE-79-081)

It is obvious from the record there was a disproportionate and substantial contribution on Husband's part with regard to the marital property acquired after marriage. However, during this time, Wife contributed by maintaining the household for her family as well as performing the majority of the child rearing duties for the two children of the marriage. As such, this factor does not weigh in favor of either party.

b. Contribution to the Stability and Harmony of the Marital and Family Relationships as measured by Quality of Time Spent on Family Duties and Duties and Duration of the Marriage:

The evidence at trial showed Wife did become pregnant by utilizing donor sperm to self-inseminate resulting in the birth of Ben on February 4, 2004. Husband testified that this fact, along with Wife's use of credit cards and over-spending on food and family items at Wal-Mart, caused the fracture of the marital union.

Wife testified to sexual, emotional, and physical abuse she sustained at the hands of the Husband. Wife further testified that Husband spent little time performing family and domestic responsibilities. (RE-161-168)

Among the factors for equitable distribution of marital property is each spouse's contribution to the harmony and stability of the marriage. *Driste v. Driste*, 724 So.2d 1080 (Miss. App. 1998). As is the case in most failed marriages, it appears the breakup of the marriage was precipitated by the conduct of both parties. Accordingly, this factor is neutral.

c. Contribution to the Education, Harmony or other Accomplishments Bearing on the Earning Power of the Spouse Accumulating the Assets.

It is apparent from this record that neither party made any direct financial contributions to the training or any other accomplishment bearing on the earning capacity of either party. However, it is noted that Wife sacrificed her chosen career to focus on having and raising children. Therefore, this factor favors Wife.

2. The Degree to Which Each Spouse has Expended, Withdrawn or Otherwise Disposed of Marital Assets and Any Prior Distribution of Such Assets By Agreement, Decree or Otherwise:

Husband complained much during the trial about the credit card debt incurred by Wife. The proof has shown that Husband refused to assist Wife with these debts and Wife took those debts with her when the marital union disintegrated. Husband testified that Wife had credit card debt early in the marriage in Birmingham, Alabama, and that the debt was fully paid from the sale of their home. Wife testified she cashed out her retirement account and paid that debt. The parties did not live an extravagant lifestyle and, in fact, the parties both admit the home's furnishings in Mississippi had little value on the date the parties separated. Wife did admit that she took Six Thousand Seven Hundred Dollars (\$6,700.00) cash from the family safe to pay for household items and attorney's fees.

3. The Market Value and the Emotional Value of the Assets Subject to Distribution:

The parties purchased a home located at 605 Rue Maupessant, Ocean Springs, Mississippi. Husband testified the parties used the advance from Singing River Hospital for the down payment. Husband does not recall the initial down payment as being very large. Furthermore, the indebtedness with respect to Wife's Toyota Sequoia is part of the outstanding mortgage balance of Three Hundred Thirty-Three Thousand One Hundred Forty-Eight Dollars (\$333,148.00). Trial Exhibit 4, which is the appraisal of the residence, reflects a fair market value of Four Hundred Ten Thousand Dollars (\$410,000.00). (RE-169-184)

Husband testified he believed that approximately only Five Thousand Dollars (\$5,000.00) remained of the debt on the Sequoia and that said vehicle has a fair market value of Fifteen Thousand Dollars (\$15,000.00). Therefore the equity in the home is Eighty-One Thousand Eight Hundred and Fifty-Two Dollars (\$81,852.00) and the equity in the Toyota is Ten Thousand Dollars (\$10,000.00). Husband's vehicle, a Mazda Millennia, is paid for and has a fair market value of Five Thousand Dollars (\$5,000.00). Said value was established when Husband traded said vehicle for a new Ford Truck in 2007.

James Koerber was appointed to conduct a business valuation of Gulf Coast Plastic and Reconstructive Surgery. The valuation showed a fair market value of One Hundred Forty-Eight Thousand Dollars (\$148,000.00).

Gulf Coast Plastic and Reconstructive Surgery issued a check to Husband on March 4, 2004, in the amount Twenty-Eight Thousand One Hundred Dollars (\$28,100.00). Husband testified this was reimbursement for startup money placed into the company from the original hospital loan of One Hundred Fifty Thousand Dollars (\$150,000.00). Husband further testified this money was placed into his personal checking account which grew in value to Thirty-Two Thousand Dollars (\$32,000.00) on the valuation date of September 30, 2004, the date the parties appeared before the family Master for temporary hearing.

Husband further testified that on the valuation date of September 30, 2004, the Valic Retirement Account had a value of Ten Thousand Eight Hundred Fifty-Six Dollars (\$10,856.00), the Charles Schwab Retirement Account had a value of \$28,018 and the New England Financial Account had a value of Four Thousand Five Hundred Twenty-Four

Dollars (\$4,524.00). Finally, the parties admitted the home safe had approximately Six Thousand Two Hundred (\$6,200.00) in currency, which the Wife used.

The parties raised little contest that these items comprise the marital estate as they were clearly acquired after the parties were married through the joint efforts of each litigant.

4. The Value of Assets Not Ordinarily, Absent Equitable Factors to the Contrary Subject to Distribution, such as Property Brought to the Marriage by the Parties and the Property Acquired by Inheritance by and to the Individual Spouse:

The trial court found the record void of any assets which may be categorized in accordance with this factor.

5. Tax and Other Economic Consequences and Contractual or Legal Consequences to Third Parties, of the Proposed Distributions:

There was no evidence presented to the trial court that there would be any tax or other economic consequences, contractual or legal, to third parties due to the distribution of the marital assets.

6. The Extent which Property Division may, with Equity to Both Parties be Utilized to Eliminate Periodic Payments and other Potential Sources of Future Friction between the Parties:

Once the equity from the marital home is removed from the analysis as no one will realize any equity for some time, it was apparent at the time of divorce that Wife would

require continuing support from Husband to have any measure of financial security. The trial court stated that it awarded assets in whole rather than dividing assets between the parties.

7. The Needs of the Parties for Financial Security with due Regard to the Combination of Assets, Income and Earning Capacity:

Wife testified that her part-time status with her employer will yield an annual income of approximately Twenty-Four Thousand Dollars (\$24,000.00). Gulf Coast Plastic and Reconstructive Surgery, to which Husband is the sole share holder, reported income in 2005 of over Seven Hundred Thousand Dollars (\$700,000.00). Trial Exhibit 13 reflects Husband's income to be Two Hundred Sixty-Two Thousand Eight Hundred Thirty-Eight Dollars (\$262,838.00) in 2004 and Four Hundred Eighty-Five Six Hundred Nine Dollars (\$485,609.00) in 2005.

Husband further testified that in addition to paying his Wife temporary support of approximately Seven Thousand Dollars (\$7,000.00) per month, Husband was able to purchase a Twenty-Nine Thousand Dollars (\$29,000.00) Ford Truck, Three Hundred and Sixty Thousand Dollars (\$360,000.00) cash to purchase a parcel of realty in the Spring of 2006, Twenty-Eight Thousand Eighteen Dollars (\$28,018.00) cash for a partial interest in a surgery center in March 2005, Twenty-Seven Thousand Six Hundred and Fifteen Dollars (\$27,615.00) cash for a surgery center in August 2005 and another Forty Thousand Two Hundred and Fifteen Dollars (\$42,215.00) cash for a third surgery center in November 2005. Husband was also able to expend over Thirty Thousand Dollars (\$37,000.00) cash to pursue this litigation. Notwithstanding these acquisitions and expenditures, Husband was able to amass One Hundred Fifty-Six Dollars (\$156,000.00) cash in his business checking account.

Clearly, Husband's income substantially exceeds Wife's income. The trial court stated that each party was able to support themselves in a comfortable manner. (CP-249-250).

However, as stated above, Husband is at a much greater advantage than Wife.

8. Any Other Factors which in Equity should be Considered:

The trial court did not consider any other factors.

9. Summary of and Division of the Assets and Debts of the Parties:

Based upon the testimony and evidence presented in this matter and the previously discussed factors set forth in *Ferguson* and *Hemsley*, the Court should evaluate the non-marital and marital assets and debts of the parties:

Non-marital property is not subject to equitable distribution. *Devore v. Devore*, 725 So.2d 193 (Miss. 1997); *MacDonald v. MacDonald*, 689 So.2d 1079 (Miss. 1997). Assets are not subject to equitable distribution where it is shown such assets are attributable to one of the parties separate estates prior to marriage or outside marriage. *Arthur v. Arthur*, 691 So.2d 997 (Miss. 1997).

Husband's Non-Marital Assets:

The testimony and evidence established that Husband's after-acquired interest in three surgery centers and the unimproved parcel of realty are not marital assets and not subject to equitable distribution. The Ford truck and the cash-on-hand in the Gulf Coast Plastic and Reconstructive Surgery Account of One Hundred Fifty-Six Thousand (\$156,000.00) are also not marital assets subject to distribution. Husband's non-marital estate

has a value of Six Hundred Thirteen Thousand and Eight Hundred and Forty-Eight Dollars (\$613,848.00).

Wife's Non-Marital Assets:

Wife's engagement ring valued at Three Thousand Dollars (\$3,000.00) and the antique vanity seat having a value of One Hundred Fifty Dollars (\$150.00) and Jack Deloney print having a value of Four Hundred Dollars (\$400.00) comprise Wife's non-marital estate. Wife's non-marital estate has a value of Three Thousand Five Hundred and Fifty Dollars (\$3,550.00).

Marital Assets:

The following assets are considered by the Court to be marital property and subject to equitable distribution between the parties.

<u>Asset Description:</u>	<u>FMV:</u>	<u>Debt:</u>	<u>Equity:</u>
Marital Residence	\$410,000	\$328,148	\$81,852
Toyota Sequoia	\$15,000	\$5,000	\$10,000
Mazda Millennia	\$5,000	\$-0-	\$5,000
GCPRS	\$148,000	\$-0-	\$148,000
Personal Checking	\$32,000	\$-0-	\$32,000
Valic Account	\$10,856	\$-0-	\$10,856
Charles Schwab	\$28,018	\$-0-	\$28,018

New England Fin.	\$4,524	\$-0-	\$4,524
Cash In Safe	\$6,200	\$-0-	\$6,200
Cash Spent By Husband For Atty. Fees	\$37,000	\$-0-	\$37,000
Cash Given To Wife By Husband For Atty. Fees	\$2,500	\$-0-	\$2,500
Total:			<u>\$365,950</u>

As the equity in the marital home is hereby reserved, the total value of the assets available for equitable distribution are Two Hundred Eighty-Four Thousand and Ninety-Eight Dollars (\$284,098.00).

Based on the above findings and upon consideration of the relevant factors set forth herein, the above marital assets should have been evenly divided.

Accordingly, Husband should have been vested with the use, possession and ownership of the proceeds derived when Husband traded in the Mazda Millennia for the Ford truck, Gulf Coast Plastic and Reconstructive Surgery, personal checking account, Valic Account, Charles Schwab Account, New England Financial Account and cash expended on his attorney fees, for a total value of Two Hundred Sixty-Five Thousand and Three Hundred Ninety-Eight Dollars (\$265,398.00).

Wife should have been vested with the use, possession and ownership of the Toyota Sequoia, cash in safe and money expended on her attorney fees, for a total value of Eighteen Thousand and Seven Hundred Dollars (\$18,700.00). Further, to balance the distribution

aforesaid, Husband should have conveyed the cash sum of One Hundred Twenty-Three and Three Hundred Forty-Nine Dollars (\$123,349.00) unto Wife which will afford each litigant the equal sum of One Hundred Forty-Two and Forty-Nine Dollars (\$142,049.00).

V. DENIAL OF ALIMONY

The trial court was incorrect to deny alimony and attorneys fees to Wife.

Lump sum alimony is paid as an equalizer because property distribution has left the spouse's assets not balanced. *Miller v. Miller*, 874 So.2d 469, 472 (Miss. Ct. App. 2004).

The four factors the trial Court must consider when awarding lump sum alimony are as follows: (1) substantial contribution to accumulation of total wealth by either assisting in the spouse's business or quitting a job to stay home with the children; (2) the length of the marriage; (3) where recipient spouse has no other income or other estate is meager by comparison; (4) without the lump sum, the receiver would have no financial security. *Cheatham v. Cheatham*, 537 So.2d 435, 438 (Miss. 1988). The *Cheatham* Court stated "the single most important factor is the disparity of the separate estates." *Id* at 438.

In this case, the record is clear the Wife left gainful employment to focus on becoming pregnant and thereafter to raise a family. It is undisputed that Wife did not work outside the home from the spring of 2000 until March 2006. Clearly, Wife was committed to raising the twin boys and making the home life comfortable for her family.

The parties were married for eight years as measured from May 25, 1996, through the date the temporary matters were heard September 30, 2004. Although this is not a long

marriage by traditional standards, it may be considered lengthy by contemporary practices. Notwithstanding, the marriage is of sufficient length for consideration of lump sum alimony.

By any measure, Wife's non-marital estate of Three Thousand Five Hundred and Fifty Dollars (\$3,550.00) is meager when compared to Husband's non-marital estate of Six Hundred Thirteen Eight Forty-Eight Dollars (\$613,848.00).

Based upon the trial court's denial of other forms of periodic payments, lump sum alimony is necessary to insure Wife's financial security. The trial court incorrectly stated that the trial court's equitable division of the marital assets left no need for alimony.

VI. DENIAL OF ATTORNEY'S FEES

The trial court was incorrect to deny an award of attorney's fees to Wife.

Wife did not have funds to pay attorney's fees as she was a stay-at-home-mom. Previously, Husband gave Wife Twenty-Five Hundred Dollars (\$2,500.00) for attorney's fees, which was used up early on in the protracted proceedings. Therefore, wife had to rely on credit cards to help finance the divorce proceedings. Husband is a plastic surgeon and has virtually unlimited financial resources. As Husband and Wife agreed during their marriage that Wife would give up her career to stay at home with the children, Wife is hardly able to absorb attorney's fees in excess of Forty Thousand Dollars (\$40,000.00) on her own. Despite this fact, the trial court incorrectly refused to award attorney's fees to Wife.

CONCLUSION

In summation, Reyna Corridori Wells submits that she has shown abundant grounds for reversal and reexamination of the Judgment of the (CP-020-022) of the Jackson County Chancery Court. In this Judgment it is apparent that the Chancellor ignored the best interests of the children in granting custody to Husband. Chancellor also erred in awarding the marital residence to the Husband; ordering Wife to pay child support; dividing the marital estate; denying lump sum alimony to Wife; and denying Wife attorney's fees.

For the factual reasons and authorities presented above, Ms. Wells requests this Court's reversal and remand of the Judgment of the Jackson County Chancery Court on the issues raised. She submits that abundant reasons for this decision have been presented.

Respectfully Submitted,

FOR: REYNA CORRIDORI WELLS

BY: 

CALVIN D. TAYLOR, MSJ 
ATTORNEY FOR APPELLANT

CERTIFICATE OF FILING

I, CALVIN TAYLOR, do hereby certify that on June 11, 2009, I will mail via first class United States mail, postage prepaid, the original and three (3) copies of the foregoing Appellee's Brief addressed to Betty W. Sephton, Office of the Clerk of the Supreme Court, 450 High Street, Jackson, Mississippi 39201-1082, to be filed with the Court.

CERTIFICATE OF SERVICE

I, Calvin Taylor, Attorney for the Appellant, Reyna Corridori Wells, do hereby certify that I have delivered a true and correct copy thereof to the Honorable Jaye Bradley, Chancellor, at Pascagoula, Mississippi, and the Honorable Gary Roberts, Attorney of the Appellee, at Pascagoula, Mississippi.

CERTIFIED, this the 11 day of June, 2009.



CALVIN TAYLOR