

**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/CROSS-APPELLEE**

**ORAL ARGUMENT NOT REQUESTED**

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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/Cross-Appellee  
Ozark, AL
2. Calvin Taylor, Esquire  
Trial and Appellate Attorney for Appellant/Cross-Appellee  
Pascagoula, MS 39567

**FOR THE APPELLEE:**

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



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CALVIN TAYLOR, MSB [REDACTED]  
ATTORNEY FOR APPELLANT/  
CROSS-APPELLEE

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### **STATEMENT CONCERNING ORAL ARGUMENTS**

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

I.

#### **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.

## 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. 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.**

In her prior brief, Reyna Wells argued that 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.

Forrest Wells argues also argues that the amount of child support ordered by the trial court is erroneous and that income should be imputed to Reyna Wells since she is working on a part-time basis to care for her child. Citing *Gray v. Gray*, 745 So. 2d 234 (Miss. 1999) and *White v. White*, 722 So. 2d 731 (Miss Ct. App. 1999), Forrest Wells argues that Reyna Wells should pay child support in the amount of \$672.00 based a full-time work week. However, the *Gray* and *White* cases only state that imputing income are discretionary.

As previously discussed, prior to her marriage, Reyna Wells was gainfully employed as a registered nurse. (RE-095-097) In 2000, it was agreed that Reyna Wells would not work to concentrate on starting and rearing a family. (RE-097-115) Wife only worked full-time from March 2006 through October 2006 until it was apparent that she needed to spend more time rearing her young son, Ben Wells.

From 2000, Reyna worked full-time for a period of eight (8) months to pay legal fees for a costly and protracted divorce. This is not a case like *Gray* or *White* where a party is hiding income or simply choosing not to work. Reyna Wells is rearing a young son and not simply trying to avoid paying child support to Jeb and Josh Wells. The imputation of income is discretionary, and considering that

Reyna Wells has spent much of years as a parent rearing her children would be inappropriate in this case.



### **CONCLUSION**

In summation, Reyna Corridori Wells requests this Court's reversal and remand of the Judgment of the Jackson County Chancery Court on the issues raised. However, she disagrees with Forrest Wells that income should be imputed to her based on potential income. She submits that abundant reasons for this decision have been presented.

Respectfully Submitted,

**FOR: REYNA CORRIDORI WELLS**

**BY:** 

**CALVIN D. TAYLOR, MSB 09529  
ATTORNEY FOR APPELLANT/  
CROSS-APPELLEE**


**CERTIFICATE OF FILING**

I, CALVIN TAYLOR, do hereby certify that on October 21, 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 24 day of October, 2009.

A handwritten signature in black ink, appearing to be 'Calvin Taylor', written over a horizontal line.

**CALVIN TAYLOR**