

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

**NO. 2008-CA-00035**

**JULIE D. JONES**

**APPELLANT**

**VS.**

**DONALD G. JONES**

**APPELLEE**

**Appeal from the Chancery Court of  
Jefferson Davis County, Mississippi**

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**BRIEF OF APPELLEE**

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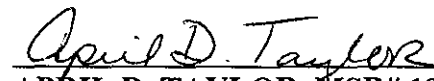
**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel 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 or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Julie Daley Jones, Appellant
2. Don Glenn Jones, Appellee
3. Honorable Joe Dale Walker
4. Harry R. Lane, Esquire
5. April D. Taylor, Esquire

Respectfully Submitted,

  
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## STATEMENT OF ISSUE

- I. THE TRIAL COURT PROPERLY CONSIDERED AND APPLIED THE *ALBRIGHT* FACTORS WHEN CITING PARENTING SKILLS FACTOR NEUTRAL BETWEEN THE PARTIES AND PARENT/CHILD RELATIONSHIP FACTOR IN FAVOR OF DON.
- II. THE TRIAL COURT PROPERLY APPLIED THE EVIDENCE TO THE *ALBRIGHT* FACTORS AND PROPERLY AWARDED CUSTODY OF SAMANTHA TO DON.

## STATEMENT OF THE CASE

### **I. COURSE OF PROCEEDINGS**

On March 28, 2007, Donald Glenn Jones filed a Complaint for Divorce, Child Custody and Other Relief in *Donald Glenn Jones vs. Julie Daley Jones*; Chancery Court of Jefferson Davis County, Mississippi; Cause No. 07-0068. (C.P. 005). On May 9, 2007, Julie Daley Jones filed her Answer to Complaint for Divorce, and Motion for Temporary Relief and Counterclaim for Divorce and Other Relief. (C.P. 010). On May 23, 2007, Donald Glenn Jones filed Plaintiff's Answer to Defendant's Counterclaim for Divorce, Custody, Support and for Temporary Relief. (C.P. 024).

On June 15, 2007, the Chancery Court of Jefferson Davis County, Mississippi, hereinafter referred to as the "trial court", entered a Temporary Order awarding the parties joint legal and physical temporary custody of their minor child, alternating every two weeks of custody. (C.P. 028).

On August 21, 2007, the parties filed a Joint Motion to Withdraw Fault Grounds for Divorce (C.P. 048) and Joint Consent for Judicial Determination of Outstanding Issues permitting the Trial Court "to decide the issues of the determination of custody of the minor child of the parties, visitation, and child support". (C.P. 061). On August 21, 2007, the parties entered into a Property Settlement Agreement. (C.P. 050).

On August 23, 2007, the trial court entered a Temporary Order of Visitation which remained in place until the Trial Court rendered a Final Judgment. (C.P.062).

On October 8, 2007, the trial court rendered its' bench ruling. (Tr. 244). On October 14, 2007, Julie Daley Jones filed a Motion for Reconsideration. (C.P. 068). On December 3, 2007, Donald Glenn Jones filed a Motion to Dismiss the Motion for Reconsideration. (C.P. 092).

On November 6, 2007, the trial court entered the Judgment of Divorce. (C.P. 083).

On December 4, 2007, the trial court denied the Motion for Reconsideration and on January 3, 2008, Julie Daley Jones filed her Notice of Appeal. (C.P. 095).

## **II. STATEMENT OF THE FACTS**

Appellee point's out that Appellant's rendition of the Statement of Relevant Facts fails to cite the record and some of the statements made in said Statement of Relevant Facts are not contained in or substantiated by the record. Pursuant to Rule 28 (a)(4) of the Mississippi Rules of Appellate Procedure: "State of the Case . . This statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the court below. There *shall* follow the statement of facts relevant to the issues presented for review, with appropriate references to the record." (Emphasis added). The Mississippi Rules of Appellate Procedure make it clear the statement of facts relevant to the issues are to have appropriate references to the record.

Don Glenn Jones ("Don") and Julie Daley Jones ("Julie") married on August 10, 1996. (Tr. 7). As a result of the marriage, one child was born, Samantha Elizabeth Jones, born February 5, 1997. *Id.* Samantha was raised in Prentiss, Mississippi and attends Prentiss Christian School. *Id.* Don and Julie lived directly across the road from Ronald Jones, Don's father, on property deeded to Don by Mr. Jones. (Tr. 39).

On September 19, 2001, the parties filed for a Joint Complaint for Divorce. (The trial court took judicial notice of Cause No. 01,0286, Chancery Court of Jefferson Davis County, Mississippi in the matter of dissolution of the marriage of Donald Glenn Jones and Julie Daley Jones, filed for record on 9-19-01 (Tr. 88)). Immediately after filing said complaint, Julie moved to Rhode Island to live with Joe Fairer. (Tr. 9). Julie met Mr. Fairer on the internet and had never met him in person prior to moving in with him. *Id.* While Julie resided in Rhode Island, Don took care of Samantha.

(Tr. 53). Approximately two months later, Don went to Rhode Island and moved Julie back and the parties reconciled their marriage. (Tr. 120).

The first three years of the parties' marriage, Julie stayed at home taking care of Samantha, cooking, and cleaning. (Tr. 76). Julie took care of Samantha during the week and Don took care of her on the weekends and on some occasions Don helped during the week. (Tr. 76). When Julie went back to work, they both took care of Samantha and shared in the cooking and the cleaning. (Tr. 77). When Julie began working at the video store, Don got Samantha up, got her fed, ready for school and took her to school. After work, Don picked Samantha up from the video store, start cooking and helped Samantha with her homework. (Tr. 83). Don works 7:30 a.m. to 4:30 p.m. for the Town of Prentiss (Tr. 73) and Julie is employed with Troy E. Cobb, working 8 to 5 Monday through Thursday and 8 to 4 on Fridays. (Tr. 165-66).

Don and Samantha spent a great deal of time together and participated in a lot of outdoor activities together. (Tr. 21, 25, 40, 54, 84, 103). Julie watched movies, roller skate, ride bike, go on walks and played games with Samantha. (Tr. 187).

In the summer of 2006, Julie took a vacation to England and stayed with Steve Ashton and his wife who she met on the internet. Nicole Jones, Julie's sister, asked Julie not to go or at least not to take Samantha until she knew it was safe to take her for two weeks to another country. (Tr. 56). The trip to England was originally planned as a family vacation for one week but subsequently, it was changed to two weeks (Tr. 120) and Don could not take off work. (Tr. 93). Don wanted his daughter to have a good time but did not know Julie and Samantha would not be staying together for the two weeks. (Tr. 82). There was testimony Steve Ashton painted a naked portrait of Julie and she brought the portrait back with her. (Tr. 14).



Julie spent much of her time on the internet meeting people in internet forums. (Tr. 83, 85, 146). Don testified Julie would come home, talk a little bit and then go to the computer. (Tr.83). However, there came a time when Julie began coming home and going straight to the computer. There were times she stayed on the computer til 12 to 1:00 in the morning and the days she had off, she may not go to bed til 5:00 in the morning. (Tr. 84). Julie testified she would get on the internet a few hours in the evening and there were occasions when she stayed up til one or two in the morning on it. (Tr. 18).

On March 28, 2007, Donald Glenn Jones filed a Complaint for Divorce, Child Custody and Other Relief and on May 9, 2007, Julie Daley Jones filed her Answer to Complaint for Divorce, and Motion for Temporary Relief and Counterclaim for Divorce and Other Relief. (C.P. 010).

On June 15, 2007, the trial court entered a Temporary Order awarding the parties joint legal and physical temporary custody of their minor child, alternating every two weeks of custody. ©. P. 028). Following separation, Don continued to reside in the marital home, Samantha continued to attend Prentiss Christian School and Julie moved to Hattiesburg with her mother in the Oak Grove public school area. (Tr. 169, 171).

On August 21, 2007, subsequent to the parties filing a Joint Motion to Withdraw Fault Grounds for Divorce (C.P. 048), the Property Settlement Agreement (C.P. 050) and Joint Consent for Judicial Determination of Outstanding Issues permitting the trial court "to decide the issues of the determination of custody of the minor child of the parties, visitation, and child support", the trial court conducted a hearing on said issues. (C.P. 061).

On August 23, 2007, the trial court entered a Temporary Order of Visitation (C.P.062) and on November 6, 2007, the trial court entered the Judgment of Divorce awarding physical custody of

the minor child to Donald Glenn Jones and visitation to Julie Daley Jones. (C.P. 083). Julie Daley Jones appealed.

### **SUMMARY OF THE ARGUMENT**

Appellant contends the trial court erred when it held the best parenting skills factor favored neither party and the parenting and parent/child relationship factor favored Don. Appellant argues “[t]he chancellor cannot hold in one breath that the parties share equal stature in parenting skills, then later hold the same factor against one party.” (Appellant’s Brief p. 6). After hearing the testimony, weighing the evidence and considering the *Albright* factors, the trial court held the parenting skills favors neither parent because the trial court found both exhibited good parenting skills with the child and no one testified differently and the parent/child relationship factor favors Don. Appellant fails to cite any case law in support of her argument the trial court erred by ruling the best parenting skills favored neither party and then the twelfth factor of parenting and parent/child relationship favoring a parent, in the case at hand, Don. The trial court properly considered and applied the *Albright* factors.

Appellant contends the trial court erred in applying too much weight to the single *Albright* factor of the mother’s moral fitness and disregarded other evidence relating to other factors. Appellant cites *Brekeen v. Brekeen*, 880 So.2d 280 (Miss. 2004) in support of her argument. In *Brekeen*, the court found “without doubt that the chancellor relied heavily on the fact the (sic) Barbara had an affair, thus placing too much weight on one *Albright* factor. From his consideration of the *Albright* factors, the chancellor found in favor of William (moral fitness and other relevant factors) and one in favor of Barbara (continuity of care prior to the separation). The remaining factors were found to be neutral.” *Brekeen*, 880 So.2d at 286.

However, *Brekeen* is clearly distinguishable from the case at hand. The trial court found five (5) factors favoring Don, the preference of the child factor not applicable because the child is under the age of twelve and the remainder of factors neutral. The five factors the trial court found in favor of Don is as follows: 1) willingness and capacity to provide for the minor child; 2) home, school and community; 3) stability of home environment; 4) moral fitness and 5) other relevant factors (Parenting and parent/child relationship).

Appellant further argues the chancellor overlooked the fact that the Rhode Island “incident occurred nearly six years prior to Don filing for divorce and, further, that Don himself requested that Julie return to Mississippi and resume the marital relationship, which she did, and that Don himself went to Rhode Island to get her.” (Appellant Brief p. 7-8). Appellant contends “[w]hatever fault that may have been applied to Julie’s actions was clearly condoned by Don.” (Appellant Brief p. 8). Appellant cites *Marshall v. State*, 584 So.2d 437 (Miss. 1991) in support of her argument that Julie’s misconduct should not be used in the *Albright* factor analysis because Don forgave her and reconciled their marriage. There is no Mississippi case law in which the theory of attenuation is applied in consideration of the *Albright* factors in determining custody.

Appellant contends “[t]he chancellor completely overlooks, or refuses to recognize, the voluminous evidence favorable to Julie, citing only what he found in favor of Don.” (Appellant Brief p. 8). Appellant contend the trial court erred but fails to cite from the record the “voluminous evidence” favorable to her. The trial court considered the *Albright* factors and properly awarded child custody of Samantha to Don and therefore should be affirmed.

## ARGUMENT

### STANDARD OF REVIEW

The applicable standard of review is well settled in that a chancellor's findings will not be disturbed unless it is determined "that the factual findings are manifestly wrong, clearly erroneous or the chancellor abused his discretion." *Hollon v. Hollon*, 784 So.2d 943, 946 (Miss. 2001). "A Chancellor sits as a fact-finder and in resolving factual disputes, is the sole judge of the credibility of witnesses." *Murphy v. Murphy*, 631 So.2d 812, 815 (Miss. 1994) (citing *West v. Brewer*, 579 So.2d 1261, 1263-64 (Miss. 1991)). The Court has held "when substantial evidence supports the chancellor's findings, we will not disturb his conclusions, notwithstanding that we might have found otherwise as an original matter." *Id.* (citing *Jim Murphy & Associates, Inc. v. LeBlue*, 511 So.2d 886, 894 (Miss. 1987), *affd* 557 So.2d 526 (Miss. 1990)).

#### **I. THE TRIAL COURT PROPERLY CONSIDERED AND APPLIED THE *ALBRIGHT* FACTORS WHEN CITING PARENTING SKILLS FACTOR IS NEUTRAL BETWEEN THE PARTIES AND PARENT/CHILD RELATIONSHIP FACTOR IS IN FAVOR OF DON.**

The Supreme Court has continuously held that "[t]he polestar consideration in child custody cases is the best interest and welfare of the child." *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983). In determining the best interest and welfare of the child, the following factors are considered:

health, and sex of the child; a determination of the parent that has had the continuity of care prior to the separation; which has the best parenting skills and which has the willingness and capacity to provide primary child care; the employment of the parent and responsibilities of that employment; physical and mental health and age of the parents; emotional ties of parent and child; moral fitness of parents; the home, school and community record of the child; the preference of the child at the age sufficient to express a preference by law; stability of home environment and employment of each parent, and other factors relevant to the parent-child relationship.

*Id.*

Appellant contends the trial court erred when it held the best parenting skills factor favored neither party and the parenting and parent/child relationship factor favored Don.

On October 8, 2007, the trial court rendered its' bench ruling and considered the *Albright* factors as follows:

- Age, Health and Sex of the Child favors neither party. The child is ten years of age. (Tr. 250).
- Continuity of Care Prior to Separation favors neither party. "Both parties testified in the hearing that y'all both took care of the child and I believe that situation was." (Tr. 250).
- Best Parenting Skills favors neither party. The trial court found that both exhibited good parenting skills with the child and no one testified differently. (Tr. 250-51).
- Willingness and Capacity to Provide for the Minor Child favors Mr. Jones. The trial court found "Mr. Jones testified that he has a flexible work schedule and he will continue to reside in the home in which the minor child has been living, which is just across the way from Mr. Jones' father's house. Mr. Jones's father testified that he helped look after the minor child. Mrs. Jones testified that she was residing with her mother in Hattiesburg, in a home owned by her mother, where she intends to live for approximately another year until she can find a place of her own. (Tr. 251).
- Employment of the Parents and the Responsibilities of Employment is neutral. The trial court held the factor "favors neither parent, because both parties testified that their employers worked flexible in that. (Tr. 251).
- Emotional Ties of the Parent/Child favors neither parent. (Tr. 251).
- Moral Fitness favors Mr. Jones. The trial court found "that Mrs. Jones has, on at least two occasions, met people over the internet. And on one occasion left, and went to Rhode Island, to live with a man whom she had only met, prior to her leaving, on the internet. That's what Mrs. Jones testified to. And that's what Mr. Jones testified to. On another occasion, Mrs. Jones went to England to stay with some people, who she only knew by meeting them over the internet. Mrs. Jones came home with a nude drawing of herself which she says was done by the man known as "Lobo", which she says was a nude drawing of some other person's body that had her head on it. Lobo was the man whose house she resided in while she was staying in England." (Tr. 251-52).

- Home, School and Community favors Mr. Jones. The trial court found Mr. Jones “has custody of the minor child. The child will continue to live in the same home where she lived prior to the separation. She will attend the same school, Prentiss Christian, which is the school she attended since she started school. I further find that Mrs. Jones testified that she plans, if she gets custody, to enroll the minor child in Oak Grove School.” (Tr. 252).
- Preference of the Child is not applicable here because the child is under the age of twelve. (Tr. 251).
- Stability of Home Environment favors Mr. Jones. The trial court found “[t]he minor child will be able to remain in the family home, and attend school at her school, and stay close their relatives. If the minor child was to live with Mrs. Jones, the child would live in the home of Mrs. Jones’ mother in Hattiesburg; would be uprooted from her surroundings; and, when Mrs. Jones found a place of her own, the minor child would again be uprooted.” (Tr. 252-53).
- Parenting and Parent/Child Relationship Factor favors Mr. Jones. The trial court held “I am concerned about Mrs. Jones’ use of the internet to meet people, who she gains trust in, and on the spur of the moment picks up and go meet them. On the trip to England, she took the minor child with her to meet people who she has only talked with on the internet. And while she was residing in the home of this man, she let the minor child stay with other people she had just met, in another location, away from the home where she was staying. On the other occasion, she took off to Rhode Island to meet and stay with another person she had only met on the internet. And at that time, she left her husband and child to live with this man. When the Court asked her if she met another person over the internet, would she, again, take off and meet this person? Her answer was, she did not know. I’m concerned about what could happen to the minor child and Mrs. Jones if she takes off to far away places to meet someone who she only knows through the internet; or, even if she meets these people and they come here to her house in Hattiesburg, or wherever she will be living.” (Tr. 253-54).

The trial court awarded physical custody of the minor child to Don and visitation to Julie. (Tr. 254).

Appellant argues “[t]he chancellor cannot hold in one breath that the parties share equal stature in parenting skills, then later hold the same factor against one party.” (Appellant’s Brief p. 6). The trial court held the parenting skills favors neither parent because the trial court found both exhibited good parenting skills with the child and no one testified differently and held the parent/child relationship factor favors Mr. Jones. Under the Other Factors Relevant to the Parent-

Child Relationship, the trial court expressed its' concern about Julie using "the internet to meet people, who she gains trust in, and on the spur of the moment picks up and go meet them". (Tr. 253).

Appellant fails to cite any case law in support of her argument the trial court erred by ruling the best parenting skills favored neither party and then the twelfth factor of parenting and parent/child relationship favoring a parent, in the case at hand, Don. The Best Parenting Skills factor and Other Factors Relevant to the Parent-Child Relationship are two separate factors a trial court is to consider in determining child custody. There is no Mississippi case law that dictates a trial court has to hold these two factors either both neutral or both have to be favorable to the same parent. If a trial court could not find one factor in favor of one parent and the other factor neutral or in favor of the other parent, there would be no need to have these factors as separate factors.

The trial court did not err when it held the Best Parenting Skills favored neither parent and then Other Factors Relevant to the Parent-Child Relationship favored Don.

## **II. THE TRIAL COURT PROPERLY APPLIED THE EVIDENCE TO THE *ALBRIGHT* FACTORS AND PROPERLY AWARDED CUSTODY OF SAMANTHA TO DON.**

Appellant contend the trial court erred in applying too much weight to the single *Albright* factor of the mother's moral fitness and disregarded other evidence relating to other factors. (Appellant Brief p. 5).

The trial court heard testimony and applied the evidence presented when it considered the *Albright* factors in determining child custody of Samantha. During the trial, Julie admitted to spending a few hours in the evenings on the internet and on occasion til one or two in the morning. (Tr. 18). Appellant states "[i]t is axiomatic that the internet now permeates daily life and has massive impact on international social interaction. The daily interaction of many peoples from many

countries, and the development of friendships through that interaction, is now commonplace.” (Appellant Brief p. 8). While it is true the internet is a conduit for international social interaction and the development of friendships, Julie used it as way to interact with people and would go off to other states or countries to meet them.

In 2001, Julie met Joe Fairer on the internet and moved to Rhode Island to live with him. (Tr. 9). Appellant states when she decided to go to Rhode Island, she believed her marriage to Don was over and she was there only for a total of two months. (Appellant Brief p. 7). Immediately prior to Julie moving to Rhode Island, the parties filed a Joint Complaint for Divorce. Appellant argues Don denied the existence of the joint complaint until confronted with the “official court file of that complaint during the trial.” (Appellant Brief p. 7). During trial, during the cross examination of Don Jones, the following transpired:

Q. Isn't it a fact that y'all had nearly filed for divorce on more than one occasion and, prior to the time that she left to go to Rhode Island, you actually did file for divorce?

A. Before 2001, no, we never did file for divorce. Or 2000 - - well, '99 when she left or whenever it was.

Q. I'm holding a file in my hand that is a file of the clerk report of Jefferson Davis County, Mississippi.

A. Uh-huh. (Affirmative Response).

Q. A joint complaint for divorce in the matter of the dissolution of the marriage of Donald Glenn Jones and Julie Daley Jones.

A. In 2001, yeah. Correct.

(Tr. 87). Don did not deny there was never a filing of divorce. Further, Appellant raises the issue Don omitted listing the prior divorce action in the mandatory reporting section of the complaint required by the UCCJEA. (Appellant Brief p. 7). This is a moot point due to the fact Appellant



failed to raise this procedural issue in the trial court.

The fact still remains Julie was lawfully married to Don when she “met” Joe Fairer on the internet, packed up her vehicle and moved in with him, not ever having met him in person prior to said move. Julie left Samantha with Don and moved to Rhode Island because she “had an opportunity at what [she] thought could be possibly a better opportunity for [her] life and possibly a relationship.” (Tr. 9).

Appellant argues the trial court overlooked the fact that the Rhode Island “incident occurred nearly six years prior to Don filing for divorce and, further, that Don himself requested that Julie return to Mississippi and resume the marital relationship, which she did, and that Don himself went to Rhode Island to get her.” (Appellant Brief p. 7-8). Appellant argues that “[w]hatever fault that may have been applied to Julie’s actions was clearly condoned by Don and should have been attenuated from consideration of the *Albright* factors.” (Appellant Brief p. 8). While Don did forgive his wife and the parties reconciled their marriage, it was still misconduct that can be considered under the *Albright* factors and in determination of child custody. Further, Julie’s internet use and pattern of meeting people on the internet did not change following the parties’ reconciliation.

Appellant cites *Marshall v. State*, 584 So.2d 437 (Miss. 1991) in support of her argument that her misconduct should not be used in the *Albright* factor analysis because Don forgave her and the parties reconciled their marriage. Appellant is requesting this Honorable Court apply a doctrine used in criminal cases to exclude tangible or testimonial evidence acquired during unlawful searches. Appellant correctly states “no reported case in the Mississippi record evincing the theory of attenuation in considerations of misconduct or fault related to considerations of Albright factors in determining custody.” (Appellant Brief p. 8). It is well settled in Mississippi case law that “[t]he

polesstar consideration in child custody cases is the best interest and welfare of the child.” *Albright*, 437 So.2d at 1005. Applying the theory of attenuation to consideration of the *Albright* factors in determining custody would shift the paramount consideration from the best interest and welfare of the child to weighing how forgiving a spouse is to misconduct or fault of a party during marriage. This would open up a pandora’s box in custody cases. While condonation of misconduct or fault of a party may preclude the granting of a divorce based on grounds, such as adultery; the misconduct or fault of a party may be considered under the *Albright* factors when determining child custody.

Appellant cites *Hollon v. Hollon*, 784 So.2d 943 (Miss. 2001) in support of her argument that “moral unfitness of a parent may be considered in a custody case, as long as it has a direct bearing on the child’s welfare.” (Appellant Brief p. 7). It appears Appellant misinterprets the holding in *Hollon* when she contends moral unfitness can only be considered when it has a direct bearing on the welfare of the child. While sexual misconduct “is not per se grounds for denial of custody”, it is an *Albright* factor to be considered and “is as important as any other and should be given its due consideration. . . .” *Hollon v. Hollon*, 784 So.2d at 949, 950.

In *Hollon*, the Court found that “[w]hile the chancellor analyzed the applicable factors, he did not do so with specificity, assigning very few to a particular parent. If, as *Albright* indicates, one factor should not outweigh another, the chancellor erred by determining the case on the basis of Beth’s moral fitness, when upon review, Beth clearly wound up with more factors weighing in her favor.” *Id.*, at 952. Appellant contends the trial court applied too much weight to a single factor in applying almost half of his ruling to his perception of Julie’s moral fitness and is punishing Julie and using his perception of her past misconduct or fault as a sanction against her in this custody award. (Appellant Brief p. 9). Appellant argues “[t]he chancellor completely overlooks, or refuses to

recognize, the voluminous evidence favorable to Julie, citing only what he found in favor of Don.” (Appellant Brief p. 8). Appellee would point out Appellant argues the trial court erred but fails to cite from the record the “voluminous evidence” favorable to her. The award of custody in the case at hand was not a “sanction” against Julie. Moral fitness was one factor weighed and when looking at the totality of the *Albright* factors, there is overwhelming evidence to support that more factors weighed in Don’s favor.

Appellant implies because she had filed for a divorce prior to moving to Rhode Island to live with a man she met on the internet, her conduct should not be considered under the moral fitness factor. (Appellant Brief p. 7). Appellant further implies it is socially acceptable to meet people on the internet. While it may be socially acceptable, Appellant met people on the internet and on the first occasion, packed up her vehicle and moved in with a guy she never met in person and on a second occasion, went to England on vacation meeting and staying with people she met on the internet.

In the summer of 2006, Julie went to England on “vacation” and stayed with Steve Ashton who she met on the internet. Steve Ashton’s internet screen name is “Lobo” and Julie admitted she told Lobo she loves him and he has told her he loves her. (Tr. 13). Julie took Samantha with her when she went to England. While in England, Samantha did not stay at the same residence where Julie stayed. (Tr. 12-13). Samantha stayed in a different location with people Julie had met on the internet but had not met in person prior to the trip.

Don testified the original plan for the England vacation was for one. (Tr. 120). However, subsequently, it was changed to two weeks and Don testified he could not take two weeks off from work to go. (Tr. 93.) He further testified regarding the excuses Julie made for him not to go on as

follows: "we could not take time off or both of us couldn't afford the time off; that there was nowhere - - you know, I would have to sleep either on the couch or somewhere like that. I'd even offered to get a motel. No, that's not necessary. So, I got the hint that I was not wanted to go." (Tr. 93). Don testified Julie took lingerie with her on the trip and it was something she did not wear at the house. (Tr. 106).

Further, there was testimony Steve Ashton painted a naked portrait of Julie and she brought the portrait back with her. (Tr. 14). Regarding the nude portrait, Appellant states "Don and Julie were aware that Steve was painting a portrait prior to the trip, had shown them working sketches of it, and had shown them the finished product prior to Julie leaving on the vacation (TR 146, at 19, through TR 147, at 24)." (Appellant Brief p. 8).

During examination of Julie by the trial court, the following transpired:

Q. Why would he be doing your head on a nude body?

A. He - I guess you would have to know the history that he had some really remarkable pictures where he - I didn't know the position or anything that it would be in. But he has this concept of different ideas where he actually painted it on wallpaper. And what ends up happening is that the design of the wallpaper, it's hard to tell - the rest is shaded out, and it's hard to tell where the person's - -

Q. When did he first - -

A. - - interest begin and where they end.

Q. Excuse me. Go ahead.

A. And basic - - it was just a different concept. It wasn't like just a regular painting. It was actually drawn on wallpaper, which gives it a totally different concept.

Q. When did he first tell you he was or show you show you he was drawing this picture?

A. Because he was an artist, I had - -

Q. When? When did he first do this?

A. I would say maybe a couple of months prior to me going.

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Q. What was your reaction when you found out he was painting your head on a nude body?

A. It was already discussed that I had told him and his wife both that, because he was an artist, I wouldn't mind having mine in portrait. The concept was left up to him.

(Tr. 227-28). Julie denied she posed for the nude portrait. (Tr. 147). However, Julie had a web cam (Tr. 78) and there was testimony by Donna Jones that on one occasion when she went to pick up Samantha to take her to the dentist that "Julie was sitting in front of the computer with no top on" and her bra was around her waist. (Tr. 26-27).

The following testimony from Julie Jones was elicited by the trial court:

Q. Did you feel comfortable going and – with someone you didn't know? Do you feel like you – let me go further with the question. Do you feel like you knew them well enough to take you and your 9-year-old daughter, 8-year-old daughter to go stay with these people for two weeks; is that right?

A. Yes, sir. I felt comfortable enough with them. Because it wasn't just one person that I knew. I knew him, his wife. His daughter is only two years older than me. I knew his mother-in-law very well. I used to talk to her at great length.

Q. All right. Is all of this over the internet?

A. The conversations beforehand, yes.

Q. Did you ever meet any of these people personally?

A. It wasn't possible, because they were in another country. It wasn't until I actually –

Q. Do you ever talk to them on the telephone?

A. Well, what we did was – not a telephone, but we had Yahoo voice, which is just like

talking on a phone.

Q. Did – when you went to Rhode Island, you didn't know this guy except, I assume, by web cam also?

A. We really didn't use web cam that much. It was mainly just conversations that he and I had had.

(Tr. 229-230).

Appellant cites *Brekeen v. Brekeen*, 880 So.2d 280 (Miss. 2004) in support of her argument the chancellor abused his discretion in applying too much weight to the single *Albright* factor of the mother's moral fitness. In *Brekeen*, the court found "without doubt that the chancellor relied heavily on the fact the Barbara had an affair, thus placing too much weight on one *Albright* factor. From his consideration of the *Albright* factors, the chancellor found in favor of William (moral fitness and other relevant factors) and one in favor of Barbara (continuity of care prior to the separation). The remaining factors were found to be neutral." *Brekeen*, 880 So.2d at 286. In *Brekeen*, the wife had an extramarital affair which caused her to leave the marital residence and termination from her employment. *Id.*, at 282. The Court stated that "[a]lthough [other factors relevant to the parent-child relationship] factor affords chancellors the opportunity to discuss other factors not already covered in the other *Albright* factors, this chancellor chose to solely rely on Barbara's affair." *Id.*, at 286. In *Brekeen*, the chancellor found two factors in favor of William by applying the same facts under the two factors and Barbara was found in favor of one factor. Therefore the application of her affair under two factors resulted in William being granted custody of the minor child.

However, *Brekeen* is clearly distinguishable from the case at hand. In the case at hand, the trial court found five (5) factors favoring Don, preference of the child factor not applicable because the child is under the age of twelve and the remainder of the *Albright* factors neutral. The five

factors the trial court found in favor of Don is as follows: 1) willingness and capacity to provide for the minor child; 2) home, school and community; 3) stability of home environment; 4) moral fitness and 5) other relevant factors. There is overwhelming evidence that said *Albright* factors favored Don. Appellant does not contend the trial court erred in its finding that these factors favored Don. Appellant merely contends the trial court applied too much weight to the single *Albright* factor of the mother's moral fitness and disregarded other evidence relating to other factors Appellant contends should have been in her favor. Appellant fails to address which *Albright* factors she contends should have been in her favor and evidence that would support such a finding.

Even if on its face it appears the trial court gave greater weight to one factor, in *Bradley v. Jones*, the court addressed the issue of weight of *Albright* factors and held that “[c]hild custody is a matter of equity which requires more than counting the votes in favor of the mother or father. A single factor can weigh so heavily in the favor of one party that equity would require granting custody to that parent.” *Bradley v. Jones*, 949 So. 2d 802, 804-05 (¶ 10) (Miss. Ct. App. 2006) (citing *Divers v. Divers*, 856 So. 2d 370, 376 (¶ 27) (Miss. Ct. App. 2003)). The court held that “[w]hile the chancellor in the case sub judice may have emphasized, to some degree, Bradley’s moving to Iowa, allegedly to follow a convict boyfriend, this was not the sole reason he granted custody to Jones. The record makes clear that the chancellor considered other factors. . . .” *Id.*, at 805.

In the case at hand, the trial court analyzed the moral fitness factor along with the other eleven *Albright* factors. When taking all of the *Albright* factors into consideration, there is substantial evidence in the record to support the chancellor’s award of custody to Don Glenn Jones. The trial court properly considered the *Albright* factors and properly awarded child custody of

Samantha to Don.

**CONCLUSION**

Based on the foregoing facts and case law, the trial court properly awarded physical custody of the minor child to Donald Glenn Jones with Julie Daley Jones having visitation. Therefore, this Court should affirm the trial court's Final Judgment.

Respectfully submitted,

**DONALD GLENN JONES**

  
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**APRIL D. TAYLOR, HIS ATTORNEY**



**CERTIFICATE OF SERVICE**

I, April D. Taylor, do hereby certify that I have this day mailed, via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Joe Dale Walker, Chancellor  
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Thirteenth Chancery Court District  
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This the 28th day of July, 2008.

  
**APRIL D. TAYLOR**