IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EDDIE J. COTTON **APPELLANT**

VS. **Case No. 2008-CA-00626**

FANNIE M. COTTON **APPELLEE**

APPEAL FROM THE CHANCERY COURT OF DESOTO COUNTY

BRIEF OF THE APPELLANT EDDIE J. COTTON

Ross R. Barnett, Jr.
Attorney for Appellant
Eddie J. Cotton
[redacted]
Barnett Law Firm
501 South State Street
Jackson, Mississippi 39201-5306
601-948-6640

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EDDIE J. COTTON **APPELLANT**

VS. **Case No. 2008-CA-00626**

FANNIE M. COTTON **APPELLEE**

I. 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 this Court may evaluate possible disqualifications or recusal.

1. Eddie J. Cotton, Appellant

2. Fannie M. Cotton, Appellee

3. Leslie Shumake, Jr., Esquire
   Attorney for Appellee
   Post Office Box 803
   Southaven, Mississippi 38671

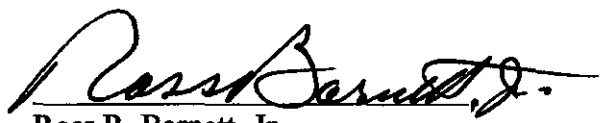
4. Helen B. Kelly
   Attorney for Appellant, post hearing, pre-appeal
   Post Office Box 1631
   Batesville, Mississippi 38606

5. Ross R. Barnett, Jr.
   Attorney for Appellant
   501 South State Street
   Jackson, Mississippi 39201-5306

6. Honorable Vicki B. Cobb (trial judge)
   Chancellor
   Third Chancery Court District
   Post Office Box 1104
   Batesville, Mississippi 38606

7.. Femi Salu, Esquire
Original Attorney for Appellant at Hearing
Post Office Box 842
Southaven, Mississippi 38761

8. Steven G. Roberts
Original Attorney for Appellant
6263 Poplar Avenue, Suite 1032
Memphis, Tennessee



Ross R. Barnett, Jr.
Attorney for Appellant
Eddie J. Cotton
[redacted]
Barnett Law Firm
501 South State Street
Jackson, Mississippi 39201-5306
601-948-6640

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EDDIE J. COTTON **APPELLANT**

VS. **Case No. 2008-CA-00626**

FANNIE M. COTTON **APPELLEE**

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES

CASES:

IV. STATEMENT OF THE ISSUES

THE COURT WAS MANIFESTLY WRONG AND CLEARLY IN ERROR IN DIVIDING MR. COTTON'S PROPERTY IN VIOLATION OF THE PRECEDENTS OF THIS COURT WHICH REQUIRE GOOD FAITH ON BEHALF OF THE PART SEEKING EQUITABLE DISTRIBUTION IN A VOID MARRIAGE SITUATION.

THE LOWER COURT'S FINDINGS WERE WITHOUT BASIS IN SUBSTANTIAL CREDIBLE EVIDENCE IN THAT THERE WAS NO EVIDENCE TO SUPPORT THE LOWER COURT'S PREMISE THAT APPELLEE DID NOT KNOW SHE NEEDED A DIVORCE FROM A LIVING SPOUSE TO LEGALLY REMARRY.

THE PROPERTY DIVISION FAILED TO APPLY THE APPROPRIATE LEGAL STANDARD TO THE FACTS AND WAS UNSUPPORTED BY SUBSTANTIAL EVIDENCE IN THAT IT DID NOT APPLY THE FERGUSON FACTORS OR WEIGH THE EVIDENCE IN THE LIGHT OF THE SAME.

V. STATEMENT OF THE CASE.

A. Proceedings in Court Below.

Appellee Fannie M. Cotton filed suit for divorce (March 8, 2005) in the Chancery Court of DeSoto County. CP 6. Appellant Eddie J. Cotton counterclaimed for annulment (April 4, 2005) alleging the couple's marriage was void due to Fannie's previous, existing marriage. CP 22. Following a March 6, 2007, hearing of the matter, the court entered judgment decreeing annulment of the marriage (CP 245-46, RE 8-9) and dividing the property between the parties, including a division of a retirement account belonging solely to Eddie M. Cotton. CP 248, 255-56, RE 1-, 17-18.

Eddie M. Cotton now appeals the property settlement decreed by the court below. CP 271.

B. Facts.

The court below found as fact that Appellee Mrs. Fannie B. Cotton (Mrs. Cotton, herein) married Johnny L. Tate (not a party) in Quitman County, Mississippi, on June 26, 1962. CP 245,

RE 8. Subsequently, on September 26, 1969, and without an intervening divorce from Johnny L. Tate, Mrs. Cotton purported to marry[1] Appellant Mr. Eddie J. Cotton in Shelby County, Tennessee. CP 245, RE 8.

The proof showed that Mr. Cotton was not aware that Mrs. Cotton had failed to obtain a divorce from Tate prior the Cottons' purported marriage. CP 248-249, RE 10-11. The court appears to excuse Mrs. Cotton's bigamy by stating that she was "only twenty-three (23) years old when she married Mr. Cotton," did not understand that she needed a divorce to remarry, and that "both parties entered into their purported marriage in good faith." CP 249, RE 11.

The undisputed testimony by Mrs. Cotton, however, was that she knew she "had a marriage license by" Tate and that she "didn't get a divorce" from him. T 43. She admitted she first learned that Tate had claimed to have divorced her only after her marriage to Mr. Cotton. T 43-44. There was no documentary evidence before the court of when the purported divorce (by Tate) occurred or if it in fact ever occurred. T 47. Neither was there any real evidence that Mrs. Cotton didn't know she needed a divorce to remarry. Mrs. Cotton herself could not even identify the date Tate supposedly told her he had obtained a divorce from her. T 47.

During the course of their purported marriage, Mrs. Cotton and Mr. Cotton reared a child from Mrs. Cotton's first marriage,[2] had two other natural children, and adopted another child.[3] CP 249, RE 11.

---

[1]For simplicity's sake, Appellant, in this brief and any others filed by him herein, will refer to the void attempted marriage of the parties as the parties' "marriage."

[2]Rodney, who was "five or six" at the time of the parties' marriage.

[3]Because all four children were adults at the time of the proceedings, there was no need for the court to consider their interests. CP 249-250, RE 11-12.

The proof also showed that Mrs. Cotton is on full mental disability through the Social Security administration through which she receives a monthly pension of $864.00. T 146-47.

Following a March 6, 2007, hearing of the matter, the court entered judgment decreeing annulment of the marriage [CP 245-46, RE 8-9] and making an "equitable division" of the property accumulated during the course of the purported marriage. CP 251, RE 13.

The court itemized and divided the property, as follows:

(1) Mr. Cotton's retirement account: The court awarded 40% of the retirement account income to Mrs. Cotton;

(2) a 1999 Cadillac automobile titled in Mr. Cotton's name: the court awarded the Cadillac to Mr. Cotton;

(3) a 1993 Chevrolet and a 1991 Mazda truck titled in both names: the court awarded exclusive possession and use to Mrs. Cotton;

(4) the couple's "marital home" at 655 Cedar Lake Drive, Walls, Mississippi (titled in both names), valued at $270,000, with a mortgage of $157,233.01, and owners' equity valued at $112,766.99; the court ordered that, if Mr. Cotton wished to continue to occupy the home, he must pay to Mrs. Cotton an amount equal to one-half the equity in the home in return for a quitclaim deed, else the home must be sold and the proceeds divided between the parties;

(5) a house and lot in Memphis, Tennessee (owned by and titled to Mr. Cotton, Eugene Smith, and Jessie H. Smith): the court, having heard no evidence concerning acquisition of the property, determined it to be solely Mr. Cotton's property;

(6) a house in Quitman County, Mississippi (titled in Mr. Cotton's and Mrs. Cotton's names) (no evidence of value adduced), and acreage in Tunica County, Mississippi (titled in both

names) (no evidence of value adduced other than monthly rental of $300): the court ordered the properties sold and the proceeds divided equally between the parties, with the rent divided equally until the Tunica property is sold; and

(7) household furnishings; since Mr. Cotton did not object to a list of items requested by Mrs. Cotton, all items she requested were awarded to her, with the exception of window coverings, which the court said were to remain with the home.

CP 251-52, RE 13-14.

VI. SUMMARY OF THE ARGUMENT

THE COURT WAS MANIFESTLY WRONG AND CLEARLY IN ERROR IN DIVIDING MR. COTTON'S PROPERTY IN VIOLATION OF THE PRECEDENTS OF THIS COURT WHICH REQUIRE GOOD FAITH ON BEHALF OF THE PARTY SEEKING EQUITABLE DISTRIBUTION IN A VOID MARRIAGE SITUATION.

While there must be a valid marriage before a court can order alimony to a spouse upon the dissolution of the relationship, the Supreme Court holds that a court's equity powers are sufficient to protect the rights of a putative wife, and that she is entitled to an equitable division of the property accumulated by their joint efforts during the time they lived together. Mississippi's leading case on the subject, however, requires good faith on the part of the party seeking equitable distribution. In the instant case, the supposed wife, Fannie Cotton, knew she was already legally married to another man when she attempted to contract a marriage with the Appellant, Eddie Cotton. Under the law and policy of this state, she should not be allowed any portion of the property titled to Mr. Cotton, regardless of when the same was acquired.

THE LOWER COURT'S FINDINGS WERE BASED ON PREJUDICE AND BIAS AGAINST APPELLANT AND WITHOUT BASIS IN SUBSTANTIAL CREDIBLE EVIDENCE IN THAT THERE WAS NO EVIDENCE TO SUPPORT THE LOWER COURT'S PREMISE THAT APPELLEE DID NOT KNOW SHE NEEDED A DIVORCE FROM A LIVING SPOUSE TO LEGALLY REMARRY.

The lower court premised its decision on a finding that both parties entered their marriage in good faith. As noted above, there was no basis in the record for such a determination. The plain evidence was that Mrs. Cotton understood she was still married when she attempted marriage with Mr. Cotton, and the law presumes that persons know the legal effects of their acts. There being no evidence in this case to overcome that presumption, the decision of the lower court should be reversed.

THE PROPERTY DIVISION FAILED TO APPLY THE APPROPRIATE LEGAL STANDARD TO THE FACTS AND WAS UNSUPPORTED BY SUBSTANTIAL EVIDENCE IN THAT IT DID NOT APPLY THE FERGUSON FACTORS OR WEIGH THE EVIDENCE IN THE LIGHT OF THE SAME.

Even if a bigamist is entitled to a property settlement upon the annulment of her unlawful marriage, the court below manifestly erred in distributing the property as it did because if failed to consider the *Ferguson* factors. While a failure to recite each of the *Ferguson* critera does not necessarily require reversal, a chancellor's findings must be specific enough for the reviewing Court to find that the guidelines were followed. That situation does not exist in this case. This is not simply a case of a court failing to recite all the *Ferguson* factors. Four of the eight factors apparently were not considered at all. This case must be reversed for that reason if for no other.

VII. ARGUMENT

A. STANDARD OF REVIEW.

The Supreme Court's "scope of review in domestic relations matters is limited by [the] familiar substantial evidence/manifest error rule." *Brennan v. Brennan*, 638 So. 2d 1320, 1323 (Miss. 1994). The Court will not disturb the findings of a chancellor unless his findings were "manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." 638 So. 2d at 1323. The word 'manifest,' as defined in this context, means "unmistakable, clear, plain, or indisputable." 638 So. 2d at 1323. Where such error exists, however, the "Supreme Court will not hesitate to reverse" the lower court. *Tilley v. Tilley*, 610 So. 2d 348, 352 (Miss. 1992). This is such a case.

B. THE COURT WAS MANIFESTLY WRONG AND CLEARLY IN ERROR IN DIVIDING MR. COTTON'S PROPERTY IN VIOLATION OF THE PRECEDENTS OF THIS COURT WHICH REQUIRE GOOD FAITH ON BEHALF OF THE PARTY SEEKING EQUITABLE DISTRIBUTION IN A VOID MARRIAGE SITUATION.

The law on annulments is clear, if not always consistently applied, in the precedents of this state. *Chrismond v. Chrismond*, 52 So. 2d 624, 628 (Miss. 1951), sets out the rule: "This Court has held that a valid marriage must exist before the court can allow alimony to the wife." On the other hand, the Court has said,

> We think that the equity powers of the court are sufficient to protect the rights of the putative wife, where the supposed marriage *which she entered into in good faith* turns out to be void, and that she is entitled to an equitable division of the property accumulated by their joint efforts during the time they lived together as man and wife.

Id., 52 So.2d at 628-629 (emphasis added).

The Mississippi Supreme Court has extended the "equitable division of property" principle to at least one "unique" case of unmarried persons living in a husband/wife relationship in *Pickens v. Pickens*, 490 So. 2d 872 (Miss. 1986). *Pickens*, though, was an entirely different case from the one before this Court. The Court, in fact, called *Pickens*, "an arguably unique factual setting." *Pickens*, 490 So. 2d at 873.

The Pickens were married in 1948. They divorced in 1962, but resumed living together without remarrying in 1963. When Mr. Pickens retired in 1983, the couple separated permanently. Observing that Mrs. Pickens had worked outside the home for twenty years and had taken care of the household, the Court said:

> Where parties such as these live together in what at least be [sic] acknowledged to be a partnership and where, through their joint efforts, real property or personal property, or both, are accumulated, an equitable division of such property will be ordered upon the permanent breakup and separation [footnote omitted].

The *Pickens* case, however, bears little resemblance to the case before this Court. In Pickens, the couple actually had been married at one time. Bigamy was not involved. Moreover, both parties were aware of their marital status or lack thereof when they began cohabitating after their divorce. The *Chrismond* genus of cases, of which *Pickens* is a mutated species, requires good faith on the part of the spouse seeking the equitable distribution. *See*, *Chrismond*, 52 So.2d at 628-629. *See also*, *Davis v. Davis*, 643 So.2d 931 (Miss. 1994), (unmarried partner denied equitable distribution where she was not "innocent" in the circumstances.) In *Pickens* there was mutual good faith, or, at least mutual understanding of the state of the cohabitation.

In this case, Mrs. Cotton, was in no way innocent, and there was no mutual understanding that Mrs. Cotton lacked the legal ability to contract a marriage. Despite the lower court's glossing of the facts, Mrs. Cotton admittedly entered a marriage knowing that she was married

to Mr. Tate (T 43-44) and knowing that she had not been divorced from him. T 47. There is nothing in the record from which any other conclusion could be reached. That Mrs. Cotton was young and did not understand the necessity of a divorce from a living first spouse as a prerequisite to a second marriage is a conclusion the lower court drew without supporting evidence in the record. CP 249, RE 11. A decent respect for the institution of marriage and sound state judicial policy demand that bigamy not be so handily excused.

Even *Taylor v. Taylor*, 317 So.2d 422 (Miss. 1975), which, against the precedents of this Court (5-4 decision), awarded alimony (justified as and styled "support," rather than alimony) to a bigamist, did not give almost half of everything the non-bigamist spouse owned to the bigamist wife. Rather, the Court approved only a relatively small sum to the bigamist ($75.00 per month for thirty-six months), and plainly, not because it was justified in law or equity, but because the woman was down and out and elicited the Court's sympathy. *Taylor v. Taylor*, 317 So.2d 422, (Miss. 1975). Candor requires the recognition that the majority opinion in *Taylor* deviated seriously from the historic jurisprudence of this Court and that the minority opinion more accurately stated the judicial policy of this State:

> *Chrismond* adjudicated the rights of a woman who attempted to enter into a marriage in good faith, but Viola Taylor did not act in good faith because she knew she had a living husband when she attempted to marry Louis James Taylor. *She was guilty of bigamy and does not fall within the class entitled to equitable relief* (emphasis added).

Taylor v. Taylor, 317 So.2d 422, (Miss. 1975) (Dissent, 5-4 decision), alimony. *See also*, *Redmond v. Broadus*, 153 Miss. 889, 122 So. 194 (Miss. 1929) (necessary element of good faith absent where bigamist woman entered equity seeking alimony and attorney fees from her former purported husband); and *Woodson v. Colored Grand Lodge of Knights of Honor of America*, 97

Miss. 210, 52 So. 457 (Miss. 1910) (bigamist woman estopped from claiming insurance benefits against husband's widow). The decision should be reversed.

C. THE LOWER COURT'S FINDINGS WERE BASED ON PREJUDICE AND BIAS AGAINST APPELLANT AND WITHOUT BASIS IN SUBSTANTIAL CREDIBLE EVIDENCE IN THAT THERE WAS NO EVIDENCE TO SUPPORT THE LOWER COURT'S PREMISE THAT APPELLEE DID NOT KNOW SHE NEEDED A DIVORCE FROM A LIVING SPOUSE TO LEGALLY REMARRY.

The lower court premised its decision on a finding that both parties entered into their marriage in good faith. CP 249, RE. As noted above, there was no basis in the record for such a determination. To the contrary, the plain evidence was that Mrs. Cotton understood she was still married to a living Mr. Tate when she attempted marriage with Mr. Cotton. It is an old and well-known principle that all persons are presumed to know the legal effect of their acts. *Crabb v. Wilkinson*, 202 Miss. 274, 32 So.2d 356, 358 (1947). There was no evidence adduced to overcome that presumption. The chancellor manifestly erred in reaching such a conclusion without any substantial credible evidence to support it. Accordingly, the decision should be reversed.

In this case, the lower court likewise seemed more influenced by sympathy for Mrs. Cotton or animosity toward Mr. Cotton than by the hard fact that Mrs. Cotton was an admitted bigamist and that Mr. Cotton in no way knew of that bigamy at the time of the marriage. The court, after all, opined that Mr. Cotton "is certainly not the innocent one in this marriage." CP 253, RE 15. The court's belief as to who was the nicer party within the attempted marriage, of course, was not the issue. The real decisive fact should have been that Mrs. Cotton, without Mr. Cotton's knowledge, knowingly attempted a bigamous marriage. Having done that, she should

not now be treated as an innocent party because of allegations that Mr. Cotton was less than an ideal mate. Had the court been faced with a divorce situation, such allegations might have been relevant. Given Mrs. Cotton's status as a bigamist seeking her putative husband's retirement account, automobiles, and real estate, however, such considerations should not have been permitted to affect the court's decision regarding property distribution, which they obviously did.

With no substantial evidence to support it, the decision should be reversed.

D. THE PROPERTY DIVISION FAILED TO APPLY THE APPROPRIATE LEGAL STANDARD TO THE FACTS AND WAS UNSUPPORTED BY THE WEIGHT OF THE EVIDENCE IN THAT IT DID NOT APPLY THE FERGUSON FACTORS OR WEIGH THE EVIDENCE IN THE LIGHT OF THE SAME.

Even if a bigamist is entitled to a property settlement upon the annulment of her marriage, the court below manifestly erred in distributing the property as it did.

Under *Ferguson v. Ferguson*, 639 so. 2d 921 (Miss. 1994), a chancellor is obligated to consider certain factors in reaching an equitable division of marital property. Those factors are:

1. substantial contribution to the accumulation of the property;

2. the degree to which each spouse has expended, withdrawn, or otherwise disposed of the marital assets;

3. the market value and the emotional value of the assets;

4. the value of assets not ordinarily subject to distribution absent equitable factors to the contrary;

5. tax, economic, contractual, or legal consequences to third parties;

6. the extent to which the property division may, with equity to both parties, be utilized to eliminate period 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.

Ferguson, 639 so. 2d at 928.

While a failure to recite each and everyone of the *Ferguson* criterion does not necessarily require reversal, a chancellor's findings must be specific enough for the reviewing Court to find that the guidelines were applied. *Glass v. Glass*, 857 So. 2d 786, 790 (¶ 10) (Miss. Ct. App. 2003). In the instant case, there is no indication whatsoever that all the Ferguson factors were considered. In fact, from the record, it is apparent that some factors were not considered at all. For instance, there was no evidence or consideration of the degree to which [either] spouse has expended, withdrawn, or otherwise disposed of the marital assets (factor two). It would be extremely important, for instance, to know what agreements the Cottons had, if any, with each other or others regarding the assets, especially the retirement fund. Yet, the chancellor made no findings regarding that issue, nor does there appear to have been any evidence adduced on that point.

The *Ferguson* factors also require consideration of the market value of the assets, as well [factor three]. Yet, there was no evidence of the market value of Mr. Cotton's retirement fund, the vehicles, or two of the properties, before the Court.

Likewise, there was apparently no consideration of "the needs of the parties for financial security with due regard to the combination of assets, income, and earning capacity [factor seven] For instance, there was clear evidence that Mrs. Cotton receives a monthly disability check in the amount of $864, but no evidence of the amount of Mr. Cotton's monthly check or the value of his pension. The only evidence before the court was Mr. Cotton's statement that, "They sends me a check. I get a $200.00 check. I get a $1,700.00 check." T 110. Yet, the court arbitrarily awarded Mrs. Cotton 40% of Mr. Cotton's retirement fund.Without a determination of the value

of and/or the income from that fund, and any agreements or legal obligations associated with that fund, the court could not possibly have applied factor seven.

On top of that, the court failed consider the value of Mrs. Cotton's social security pension and failed to divide it. The Court gave Mrs. Cotton a 40% interest in Mr. Cotton's retirement account but did not consider the value of Mrs. Cotton's pension in doing so.

Finally, the court did not consider other factors that equity should consider [factor eight]. For example, as mentioned above, the court ignored or excused Mrs. Cotton's bigamy. It is a long-standing maxim of equity that those who come into equity must come in with clean hands. Griffith, Chancery Practice, § 42 (1950), Equitable distribution of property, is without question, a matter of equity and is in derogation of the positive law.[4] This long-standing maxim of equity should at least have been considered.

This is not simply a case of a court failing to recite all the *Ferguson* factors. Factors two, three, seven, and eight obviously were not considered at all. Certainly the opinion does not give evidence of such consideration. This case must be reversed for that reason if for no other. *Glass v. Glass*, 857 So. 2d 786, 790 (¶ 10) (Miss. Ct. App. 2003).

VIII. CONCLUSION

This is not a case of an entirely innocent woman being abandoned with nothing. The Appellee, Mrs. Cotton, is a bigamist who already owns half interest in most of the couples'

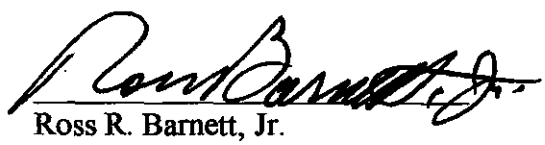
---

[4]The chancellor below admitted that the line of cases upon which its opinion relied for equitable distribution in this case "deviates from our statutory provisions and creates a remedy where there is none in statute." CP 253, RE 15.

property and has a Social Security disability pension besides. Before 40% of Mr. Cotton's retirement fund was awarded to her, she already was in substantially the same shape asMr.Cotton.

Premises considered, the Appellant, Eddie J. Cotton, prays that this Court will reverse the decision of the lower court and enter judgment awarding him full legal and equitable interest in all properties titled solely to him, including but not limited to his retirement fund. In the alternative, Appellant prays that this Court will remand this matter for a hearing for the purpose of taking additional evidence concerning the division of the property accumulated during the course of the parties' purported marriage, including Mrs. Cotton's disability pension, and that this Court will instruct the lower court to consider and apply the *Ferguson* factors in so doing.

Respectfully submitted,



Ross R. Barnett, Jr.
Attorney for Appellant
Eddie J. Cotton

Ross R. Barnett, Jr.
Attorney for Appellant
Eddie J. Cotton
[redacted]
Barnett Law Firm
501 South State Street
Jackson, Mississippi 39201-5306
601-948-6640

IX. PROOF OF SERVICE

I, the undersigned counsel of record for the Appellant, certify that I have this day caused to be served by United States Mail, postage prepaid, a copy of the foregoing to the following persons:

1. Leslie Shumake, Jr., Esquire
Attorney for Appellee
Post Office Box 803
Southaven, Mississippi 38671

2. Helen B. Kelly
Attorney for Appellant at Hearing
Post Office Box 1631
Batesville, Mississippi 38606

3. Honorable Vicki B. Cobb (trial judge)
Chancellor
Third Chancery Court District
Post Office Box 1104
Batesville, Mississippi 38606

4. Femi Salu, Esquire
Original Attorney for Appellant at Hearing
Post Office Box 842
Southaven, Mississippi 38761

5. Steven G. Roberts
Original Attorney for Appellant
6263 Poplar Avenue, Suite 1032
Memphis, Tennessee

This the 11 day of December, 2008.

Ross R. Barnett, Jr.
Attorney for Appellant
Eddie J. Cotton
[redacted]
Barnett Law Firm
501 South State Street
Jackson, Mississippi 39201-5306
601-948-6640