

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TABATHA RENEE QUICK

APPELLANT

VS.

NO. 2008-CA-01333

JEFFREY DALE QUICK

APPELLEE

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BRIEF OF APPELLEE JEFFREY DALE QUICK


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ON APPEAL FROM THE CHANCERY COURT  
OF SIMPSON COUNTY, MISSISSIPPI

*Oral argument not requested.*

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**NO. 2008-CA-01333**

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**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 may evaluate possible disqualification or recusal.

(1) Jeffrey Dale Quick, Appellee  
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(2) Tabitha Renee Quick, Appellant  
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(6) Honorable Joe Dale Walker  
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13<sup>th</sup> Chancery Court Division  
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(7) Honorable Larry Buffington  
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(8) Honorable Tommy Joe Harvey  
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Respectfully submitted,

  
By: TERRELL STUBBS, ATTORNEY  
FOR JEFFREY DALE QUICK  
APPELLEE

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## **STATEMENT OF THE ISSUES**

- I. THE CHANCERY COURT OF SIMPSON COUNTY DID NOT LACK PERSONAL JURISDICTION OVER TABABTHA QUICK AT THE TIME OF THE JANUARY 7<sup>th</sup>, 2008 HEARING, AND DID NOT ERR BY PROCEEDING WITH THE HEARING IN HER ABSENCE BECAUSE THE SERVICE OF PROCESS WAS SUFFICIENT PURSUANT TO MISS. R. CIV. P. 4.**
- II. THE CHANCERY COURT OF SIMPSON COUNTY, MISSISSIPPI DID NOT ERR WHEN IT CONSIDERED THE *ALBRIGHT* FACTORS WITHOUT BOTH PARENTS BEING PRESENT.**
- III. THE CHANCERY COURT OF SIMPSON COUNTY HAD JURISDICTION TO ISSUE A RULING IN THIS CASE.**
- IV. THE ORDER ENTERED BY THE SIMPSON COUNTY CHANCERY COURT ON JANUARY 10<sup>th</sup>, 2008, WAS FAIR AND EQUITABLE, AND DID NOT CREATE AN UNDUE HARDSHIP ON TABITHA QUICK.**
- V. CONCLUSION**

### STATEMENT OF THE CASE

On July 18<sup>th</sup>, 1998, the Appellant, Tabatha Renee Quick Windsor Saint and the Appellee, Jeffrey Dale Quick, hereinafter referred to as Ms. Quick and Mr. Quick, respectively, were married in the State of Alabama. The parties separated in Simpson County, Mississippi on September 15, 2006. (R. 14)

On March 14, 2007, the Simpson County Chancery Court of Mississippi issued a Final Judgment of Divorce, granting a divorce to Ms. Quick and Mr. Quick. (R. 7). Pursuant to the divorce Decree, the parties entered into a Child Custody, Support and Property Settlement Agreement in which they agreed to share joint legal and joint physical custody of their three minor children with Ms. Quick having primary physical custody. The lower court approved this agreement of the parties and incorporated it in the Final Judgment of Divorce. (R. 17).

On June 27, 2007, Mr. Quick filed a Petition for Citation of Contempt and for Modification, alleging *inter alia*, that he was an adult resident citizen of the State of Louisiana, and that Ms. Quick was an adult resident citizen of the State of Alabama, and that this Court retained jurisdiction of the parties and the subject matter. Mr. Quick alleged in his Petition, that Ms. Quick had failed and refused to allow him any custody or visitation with the parties' children, and that consequently, she was in contempt of Court for failure and refusal to abide by the terms of the Final Judgment of Divorce. (R. 38-40).

Mr. Quick further alleged in his petition that since the entry of the Final Judgment of Divorce, there had been material and substantial changes in circumstances that adversely affected the children. Specifically, Mr. Quick alleged that (a) Ms. Quick failed to properly care and provide for the children, which had adversely affected the children; (b), Ms. Quick failed to provide a stable home environment for the children, which had adversely affected the children; (c) Ms. Quick had exposed the children to circumstances which adversely affected them; (d) Ms.

Quick had done things to and with the children which had adversely affected the children mentally and/or physically; and (e) Ms. Quick had refused Mr. Quick his rights of custody and visitation. (R. 40-41).

Mr. Quick requested a modification of the Final Judgment of Divorce, and asked the Court to grant him custody of the parties' children and to terminate his obligation to pay child support payments. Mr. Quick also asked the Court to require Ms. Quick to pay a reasonable sum of child support as well as other expenses. (R. 41-42).

On July 17<sup>th</sup>, 2007, Mr. Quick's Attorney, also the Attorney of Record in this matter, filed a Proof of Service-Summons in the Simpson County Chancery Clerk, swearing by oath that he served the Summons and Petition upon Ms. Quick by Certified Mail Service, restricted delivery, on or about July 16<sup>th</sup>, 2007. (R. 46). The summons was mailed to Tabatha Quick at 289 Mahar Rd., Albertville, AL 35950. (R. 49) The Summons indicated that Ms. Quick was to appear in the Smith County Chancery Court Building on July 25<sup>th</sup>, 2007, and that failure to appear and defend would cause a judgment to be entered against her. (R. 47). The certified mail receipt was signed by Tabatha Windsor<sup>1</sup> on July 2, 2007. On the certified mail card that was signed by Tabatha Windsor, the article was addressed to Tabatha Quick, at 289 Mahar Rd, Albertville, AL, 35950. (R. 48).

Subsequently thereafter, Ms. Quick filed a Motion to Transfer Jurisdiction on August 3, 2007, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Miss. Code Ann. § 93-27-101, *et seq.* (R. 50-51). In her Motion to Transfer Jurisdiction, Ms. Quick alleged, *inter alia*, that a Protection Order was entered on or about May 1, 2007, in the Circuit Court of Marshal County, Alabama, and that on May 22, 2007, she filed a

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<sup>11</sup> Tabatha Quick remarried after her divorce from Jeffrey Quick. Her married name became Tabatha Windsor, and later became Tabatha Saint. (T. 47, 58).

Petition for Modification in the Circuit Court of Marshal County, Alabama, Albertville Division. (R. 50). Ms. Quick further alleged that the Petition for Modification was set in the Circuit Court of Marshal County, Alabama for August 10, 2007. (R. 50, 59-60).

Ms. Quick indicated in her petition that she had lived in the State of Alabama for almost two (2) years. She further noted that Mr. Quick lived in Louisiana and had lived there for a considerable period of time. Ms. Quick maintained that Alabama was the 'more' convenient forum in which to resolve the 'then' pending litigation. (R. 53).

Ms. Quick further stated that the Court in each State would have to become familiar with the facts and issues in the pending litigation, regarding the allegations of abuse, but that the Department of Human Resources in Alabama had already began an investigation into the abuse allegation. Therefore, Ms. Quick surmised that Alabama was the most convenient forum for resolution of the modification filed and any issues of visitation. (R. 53-54).

Ms. Quick appeared before the Chancery Judge for the Chancery Court of Simpson County in Covington County, Mississippi, on August 9, 2007, for a hearing on the Motion to Transfer Venue/Jurisdiction. (T. 5).

On September 18, 2007, the Chancery Court of Simpson County, Mississippi entered an Order denying the Motion to Transfer Venue/Jurisdiction. The Court found that it had full jurisdiction of the parties and the subject matter and that it would continue to maintain jurisdiction. (R. 92). Ms. Quick never appealed this Order.

Consequently, on the same day, the Chancery Court of Simpson County entered an Order of Contempt and Modification against Ms. Quick. (R. 94). The Chancery Court found that Ms. Quick was in contempt of Court for her failure and refusal to allow the Appellee, custody and visitation with his three (3) minor children in accordance with the prior Final Judgment of

Divorce of this Court. The Court modified the Final Judgment of Divorce to require that the Appellant allow the Appellee to make up his custody and visitation with the children. (R. 94-98).

Afterwards, on November 13, 2007, Mr. Quick filed a Petition for Citation for Contempt and for Modification against Ms. Quick. (R. 99-105). Also on November 13, 2007, a summons was sent to Ms. Quick to appear before the Chancery Court on January 7<sup>th</sup>, 2008. (R. 107). The Proof of Service-Summons was signed by Ed Teal, process server, on December 31<sup>st</sup>, 2007, and filed on January 3, 2008, in the Chancery Court of Simpson County, Mississippi. Also on January 3, 2008, Mr. Quick's attorney served Ms. Quick with process by Certified Mail Service, return receipt requested, restricted delivery. The Proof of Service was filed in the Chancery Court of Simpson County, Mississippi. (R. 109). The envelope was returned, "unclaimed." (Supplemental R. 4-5)

On January 10<sup>th</sup>, 2008, the Chancery Court of Simpson County, Mississippi entered an *Order of Contempt and Modification of Final Judgment of Divorce and Prior Order of This Court, nunc pro tunc* to January 7<sup>th</sup>, 2008. In the *Order*, the Chancellor found that the Simpson County Chancery Court had jurisdiction of the parties and the subject matter. The Chancellor further found that Ms. Quick was in contempt of Court for failure and refusal to abide by the terms of the Order of Contempt and Modification entered on September 18<sup>th</sup>, 2007; and that she was in contempt of Court for her failure and refusal to allow Mr. Quick to make up his visitation as previously ordered by the Court. The Court further found that there were material and substantial changes in circumstances, which adversely affected the children. In accordance with the *Albright* factors, the Court in rendering its decision, found in favor of Mr. Quick, and granted him full legal and physical custody of the children. The Court gave Ms. Quick standard

visitation with the children, with said visitation being held in abeyance until she appeared before the Court. (R. 110-112).

Subsequently on February 22, 2008, Ms. Quick filed a Rule 60(b) *Motion for Relief from Orders*. In her Motion, Ms. Quick alleged that the Chancery Court Order of January 7<sup>th</sup>, 2008 was void for lack of personal jurisdiction over her and void for insufficiency of service of process. Ms. Quick moved for relief from the Order on the basis that Mississippi was no longer the home state for her or the children. She indicated that litigation between the parties over child custody had been filed in Alabama and was on-going. (R. 113-114).

Mr. Quick filed his response and defenses to the Rule 60(b) Motion on February 26, 2008. (R. 115-118).

A Proof of Service-Summons was sent to Ms. Quick via Certified Mail, return receipt requested, restricted delivery, on March 27<sup>th</sup>, 2008. It was mailed to 289 Mahan Road, Albertville, AL 35950. The same was filed in the Chancery Court of Simpson County, Mississippi on March 31, 2008. (R. 120, 122). It was returned to sender "unclaimed" on March 20, 2008. (R. 122- 123). On March 27, 2008, Ms. Quick was also sent a Proof of Service-Summons, Certified Mail, return receipt requested, restricted delivery, to the address of 979 Pleasant Grove Cutoff Rd., Albertville, AL 35950-3647. It was returned to sender "unclaimed" on March 20, 2008 (R. 124-127).

On April 16, 2008, Ms. Quick entered a special appearance for the purpose of contesting the jurisdiction of the Chancery Court of Simpson County. She also filed a Motion to Dismiss. She alleged that the Court Order of January 7<sup>th</sup>, 2008, was void because she was never served with personal process, and that as a result, the Chancery Court of Simpson County lacked jurisdiction. Ms. Quick also alleged that the Court failed to comply with the Uniform Child

Custody Jurisdiction and Enforcement Act. She further asserted that because she and the minor children were citizens of the State of Alabama, and no longer residents or citizens of Mississippi, and because Mr. Quick was no longer a citizen of Mississippi, there was no significant connections with this State, and that substantial evidence was no longer available in this State concerning the children's care, protection, training and personal relationships. (R. 128-131).

Mr. Quick filed a timely response to the Motion to Dismiss on April 23<sup>rd</sup>, 2008). (R. 133-135).

At the hearing on May 21<sup>st</sup>, 2008, the Chancery Court Judge held that he had previously denied the Motion to Transfer Venue and Jurisdiction on September 18<sup>th</sup>, 2007, based on what was before him at the time. He further held that his Court was the proper court of venue and that he had jurisdiction of the matter. He indicated that the parties were divorced before his Court in 2006, and therefore, his Court continued to have subject matter jurisdiction continuing concerning the health, welfare, safety, support and custody of the children. (T. 24). The Chancellor stated on the record that he personally spoke with Judge Hawk in Alabama concerning this case, and that Judge Hawk had called his office in Monticello, Mississippi, five or six days prior to the May 21<sup>st</sup>, 2008, hearing. The Chancellor was not in at the time so Judge Hawk spoke with the Chancellor's administrator. Judge Hawk informed the Chancery Court administrator that he was not accepting jurisdiction of this matter in Alabama and was conferring all jurisdiction to the Chancery Court of Simpson County, Mississippi, and to the Mississippi Courts concerning the matters pending. (T. 24, 26).

During the May 21<sup>st</sup>, 2008 hearing, Ms. Quick testified that she did not receive a summons for the January 8<sup>th</sup>, 2008, hearing. She further testified that on two occasions when Mr. Ed Teal attempted to approach her with process, she did not accept the summons. Ms.

Quick admitted to the Court that she was aware that Mr. Teal was attempting to serve her and that she then proceeded to file charges against Mr. Teal for following her. (T. 30). Mr. Quick's attorney pointed out to the Court that the Rule 4 summons was also sent to Ms. Quick via certified mail, return receipt requested, restricted delivery and was returned unclaimed. (T. 31). During questioning at the hearing of May 21<sup>st</sup>, 2008, Ms. Quick admitted to the Court that she gave her prior address as 259 Mahan Road in Albertville, Alabama, and that her current address was 979 Pleasant Grove Cutoff Road in Albertville, Alabama. Ms. Quick acknowledged to the Court that the latter address is where Mr. Ed Teal came to her home, and was also where she received her mail. She further testified that she refused to claim her mail, by not signing for it. (T.59).

On cross-examination, Ms. Quick admitted that she knew what the yellow, certified mail cards were, but that she did not claim them. (T. 66). She admitted that since the Judge entered the August, 2007 Order, she had only allowed Mr. Quick to visit his children twice. (T. 67). Furthermore, Ms. Quick admitted that she knew that the Chancery Court of Simpson, County, Mississippi had retained jurisdiction but she continued to file in Alabama. (T. 68.).

Ms. Quick testified that she found out about the Orders from the Simpson County Chancery Court that were entered after August, 2007, by being served with papers in an Alabama courtroom. (T.74). Ms. Quick found out about the May 14<sup>th</sup>, 2008, hearing from her attorney at the time. According to her, she was sent a paper in the mail that was not certified, and she opened the mail, which informed her of the court date. (T. 77).

Mr. Ed Teal testified during the hearing on May 21<sup>st</sup>, 2008, that he took the summons from Marshall County, Alabama, to Ms. Quick's residence on December 31<sup>st</sup>, 2007. He testified that he signed the document as the service processor. (T. 80). Mr. Teal testified that he followed

Ms. Quick into her driveway and left the paper with her, and that he personally delivered it to her. (T. 82). He acknowledged that he dropped them at her husband's feet, because Ms. Quick walked out of the room. (T. 82-83). Mr. Teal testified that as he placed the papers on the ground, Ms. Quick walked out of the house, and Mr. Teal told her, "Tabatha, here's your papers." (T. 83). Mr. Teal testified that Ms. Quick and her husband refused to physically accept the papers. (T. 84).

During the May 21<sup>st</sup>, 2008 hearing, the Chancery Court Judge stated that there was evidence that a certified mailed envelope, return receipt requested was also sent to Ms. Quick on January 2<sup>nd</sup>, 2008. The Court found that notice was sent to Ms. Quick on November 28, 2007, December 6, 2007, December 13, 2007 and December 20, 2007, and that the certified mail, returned receipt requested, restricted delivery, was sent back from the post office unopened with the notation on it marked "unclaimed". The Court further found that Mr. Teal did in fact, properly serve process on Ms. Quick for the hearing that was held on January 7<sup>th</sup>, 2008. The Chancery Court also found that Ms. Quick refused to accept personal service by Mr. Ed Teal, and that her refusal was an attempt to evade process of this Court. The Chancery Court overruled the motion to set aside or dismiss the January 7<sup>th</sup>, 2008 Order. (T. 91-92.).

On July 14<sup>th</sup>, 2008, the Chancery Court of Simpson County, Mississippi entered an Order of Contempt against the Appellant/Respondent, indicating that she had been served with process in the time and manner required by law. (R. 136-138). The Court found that Ms. Quick had failed and refused to deliver the parties' children to Appellee/Petitioner, as previously ordered by the Court, and thereby, placed Ms. Quick in custody until she could be transferred to the Sheriff's office. The Court ordered her to turn the children over to the custody of Mr. Quick, and

further ordered that she have no visitation with the parties' minor children until further Order of the Court. (R. 136-138).

Ms. Quick filed a Rule 60(b) Motion for Relief from Orders on the same day as the Contempt Order was entered. (R. 139). On July 14, 2008, the Court denied Ms. Quick's Rule 60(b) Motion. (R. 141).

Subsequently, on July 30, 2008, Ms. Quick filed a Notice of Appeal to the Supreme Court of Mississippi asking for relief from the Order of Contempt, the Order Denying Rule 60(b) and the Order Denying the Motion To Dismiss. (R. 143).

### **SUMMARY OF THE ARGUMENT**

The Chancery Court of Simpson County, Mississippi had personal jurisdiction over Ms. Quick at the time of the January 7<sup>th</sup>, 2008, hearing because she was properly served with process pursuant to Mississippi Civil Procedure, Rules 4(d)(1)(A) and Rule 4(c)(5). Therefore, the Court did not err in proceeding with the hearing in her absence.

The Chancery Court of Simpson County properly considered the *Albright* factors in rendering a decision on Mr. Quick's petition to change custody, and thus, did not err in considering those factors without the presence of Ms. Quick since she failed to appear.

The Chancery Court of Simpson County had continuing jurisdiction in the case at hand, and did not err when it found that it was more convenient forum in which to handle the petitions.

Ms. Quick created an undue hardship on herself by purposely trying to avoid coming to Court and by not complying with the Order of the Simpson County Chancery Court to allow Mr. Quick visitation with his children. Therefore, the Order entered by the Simpson County Chancery Court on January 10<sup>th</sup>, 2008, was fair and equitable.

## **STANDARD OF REVIEW**

Questions of law are granted *de novo* review by an appellate court. *Triple C Transport, Inc. v. Dickens*, 870 So.2d 1195 (Miss. 2004). The issue of whether a trial court has jurisdiction is a question of law. Therefore, the standard of review in this case on the issue of jurisdiction is *de novo*. *Trustmark National Bank v. Johnson*, 865 So. 2d 1148, 1150 (Miss. 2004).

For questions related to fact-finding, the Appellate Courts will not disturb a Chancery Court's ruling "unless [t]he chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *R.K. v. J.K.*, 946 So.2d 764, 772 (Miss. 2007) citing *Mizell v. Mizell*, 708 So.2d 55, 59 (Miss. 1998).

## **ARGUMENT**

### **I. THE CHANCERY COURT OF SIMPSON COUNTY, MISSISSIPPI HAD PERSONAL JURISDICTION OVER TABATHA QUICK AT THE TIME OF THE JANUARY 7<sup>th</sup>, 2008, HEARING, AND DID NOT ERR BY PROCEEDING WITH THE HEARING IN HER ABSENCE BECAUSE THE SERVICE OF PROCESS WAS SUFFICIENT PURSUANT TO MISS. R. CIV. P. 4.**

Ms. Quick asserts that Mr. Teal's "attempted" service of process on December 31<sup>st</sup>, 2007, failed to comply with the requirements of Miss. R.Civ.P. 4(d)(1)(A), for service upon an individual, and that as a consequence, the Chancery Court lacked personal jurisdiction over her at the time of the January 7<sup>th</sup> 2008, hearing.

"When a defendant is a non-resident of the state...and the court has jurisdiction of the subject matter, it is necessary that complainants be able to obtain process on a non-resident defendant by some means; otherwise, parties would not be able to enforce their rights in a judicial proceeding." *Lexington Insurance Company v. Buckley*, 925 So. 2d 859 (Miss.Ct. App. 2006) citing *Mosby v. Gandy*, 75 So. 2d 1024, 1030 (Miss. 1979). Thus, to enter a valid

judgment, “a court must not only have jurisdiction of the subject matter, but also of the persons or the parties to give validity to its final judgment.” *Lexington*, 925 So.2d at 864.

In the case at hand, there is no dispute that the Simpson County Chancery Court has subject matter jurisdiction. The Simpson County Chancery Court is the Court in which the parties chose to bring their original divorce action, and the Court which ultimately issued the Final Judgment of Divorce in this matter. Accordingly, pursuant to the Divorce decree, the parties also entered into a Child Custody, Support and Property Settlement Agreement that was finalized in the Chancery Court of Simpson, County, Mississippi on March 14, 2007. Therefore, the primary issue before this court is whether the Chancery Court had personal jurisdiction over Ms. Quick. The determinative factor rests on whether or not service of process was effectively carried out in accordance with Rule 4 of the Mississippi Rules of Civil Procedure.

This Court has held that “[t]he concept of personal jurisdiction comprises two distinct components: amenability to jurisdiction and service of process.” *Lexington Insurance Company v. Buckley*, 925 So. 2d at 865; citing *James v. McMullen*, 733 So. 2d 358 (¶ 3)(Miss. Ct. App. 1999). “Service of process is simply the physical means by which [personal] jurisdiction is asserted. *Id.* (citations omitted). “The existence of personal jurisdiction...depends upon the presence of reasonable notice to the defendant that an action has been brought.” *Lexington*, at 865, quoting *Noble v. Noble*, 502 So.2d 317, 320 (Miss. 1987).

In *Noble*, the issue presented to the Court was whether summons issued under Mississippi Rules of Civil Procedure 4(c)4(C) was sufficient to confer personal jurisdiction over a non-resident defendant for purposes of rendering a monetary judgment against the defendant. *Noble*, 502 So.2d at 318. The Court in *Noble* noted that the plaintiff used Rule 4(c)(4)(A) and 4(c)4(C) for purposes of issuing the summons against Eli noble, the non-resident defendant in that case.

*Id.* at 319. Rule 4(c)(4)(A) and 4(c)(4)(C) deals with service by publication and the mailing of the publication, first class mail service, postage prepaid, to the defendant at his post office address. *Noble*, 502 So.2d at 319. This Court concluded in *Noble* that there was not any proof that the defendant had received summons, and therefore, questioned the reasonableness of notice. The Court specifically stated, “[i]t is acknowledged that the mail was not returned to the clerk, but this Court holds that at the trial court level, the adequacy of notice is not met for rendition of a monetary judgment. There can be no ‘valid judgment imposing a personal obligation or duty in favor of the plaintiff’ against this defendant under this process.” *Id.*

The *Noble* Court found that the summons did not confer personal jurisdiction over the defendant without answer or general appearance by the defendant. The Court further found that the publication method of Rule 4(c)(4)(C) did not allow personal jurisdiction without his appearance. *Noble*, 502 So. 2d at 320 (citations omitted). Of particular interest, and applicable to this case, is the fact that this Court went on to hold that **“[h]ad the plaintiff followed the procedure of Rule 4(c)(5) and secured service of process by certified mail, return receipt requested, restricted delivery, personal jurisdiction over the defendant to render a personal judgment would have been accomplished under the facts of this case.”** *Id.* (emphasis added).

In this case, this is exactly the procedure followed. Mr. Quick utilized the methods of service of process set forth in Rule 4(c)(1) with said methods being carried out under Rule 4(d)(1)(A). Concomitantly, Mr. Quick also employed the methods available under Rule 4(c)(5).

Mississippi Rules of Civil Procedure Rule 4(d)(1)(A), provides that summons and complaint shall be served together upon a person by either sheriff or process server. The rule dictates that a copy of the summons and complaint has to be delivered to the individual personally or to an agent authorized by appointment or by law to receive service of process; or

“(B) if the service under subparagraph (1)(A) of this subparagraph of this subdivision cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant’s usual place of abode with the defendant’s spouse or some other person of the defendant’s family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10<sup>th</sup> day after such mailing.”

In the case at hand, Mr. Teal tried on several occasions to deliver the summons and complaint to Ms. Quick. She admitted that she tried to avoid receiving service. Mr. Teal testified that on December 31<sup>st</sup>, 2007, he followed Ms. Quick into her driveway and left the paper with her. (T. 82). He did testify that he dropped them at her husband’s feet, because Ms. Quick walked out of the room. (T. 82-83). As soon as Mr. Teal placed the papers on the ground, Ms. Quick walked out of the house, and Mr. Teal told her, “Tabatha, here’s your papers.” (T. 83).

Mr. Quick asserts that this Court should find that Ms. Quick was properly served with process in accordance with Rule 4(d)(1)(A), as evidenced by the record and court testimony.

In the alternative, if the Court finds that Ms. Quick was not properly served within the scope of Rule 4(d)(1)(A), then certainly the Court should find that service of process was rendered in full compliance with Mississippi Rule Civil Procedure 4(c)(5). The evidence is quite clear that Mr. Quick’s attorney sent the proof of service summons to Ms. Quick via certified mail, restricted delivery, return receipt requested. (R.109; S.R. 1). During the May 21<sup>st</sup>, 2008 hearing, the Chancery Court Judge stated that there was evidence that a certified mailed envelope, return receipt requested was sent to Ms. Quick on January 2<sup>nd</sup>, 2008. The Court found

that notice was sent to Ms. Quick on November 28, 2007, December 6, 2007, December 13, 2007 and December 20, 2007, and that the certified mail, returned receipt requested, restricted delivery, was sent back from the post office unopened with the notation on it marked “unclaimed”. (T. 91-92; S.R. 1.). The mail was never marked returned for improper or incorrect address. It was simply returned “unclaimed” which evidenced that Ms. Quick simply refused to pick up her mail. Furthermore, she admitted that she knew what the yellow, certified mail cards were, but that she did not claim them. (T. 59, 66). Mr. Quick asserts that *Noble, supra*, is applicable in this instance because he properly complied with Rule 4(c)(5). Consequently, Mr. Quick asserts that because Ms. Quick had knowledge, and was properly served in accordance with Rule 4(c)(5), she should not be allowed to prevail on the issue of improper service of process.

Ms. Quick also argues that “residence service” was not properly rendered in accordance with Miss. R. Civ. P. 4(d)(1)(B).

Miss. R. Civ. P. 4(d)(1)(B) provides that if service cannot be made in accordance with Rule 4(d)(1)(A) with reasonable diligence, then it can be made by leaving a copy of the summons and complaint at the defendant’s usual place of abode with the defendant’s spouse who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. The Rule also provides that service in this manner is deemed complete on the 10<sup>th</sup> day after such mailing.

Mr. Quick acknowledges that Ms. Quick’s husband would not accept service. However, Mr. Quick maintains that Mr. Teal properly served process upon Ms. Quick in accordance with Rules 4(d)(1)(A) and Rule 4(c)(5), by providing her with notice that she was being served, and then by dropping the papers near her husband, and additionally, by providing her with verbal

notice that those were her papers. Ms. Quick has admitted that she has attempted to avoid service of process in this matter. As stated by this Court in *Lexington, supra*, the existence of personal jurisdiction...depends upon the presence of reasonable notice to the defendant that an action has been brought.” *Lexington*, at 865, quoting *Noble v. Noble*, 502 So.2d 317, 320 (Miss. 1987). The evidence is overwhelming in this case that establishes that Ms. Quick had reasonable notice that an action had been brought. She received notice of the contempt petition filed against her in June, 2007, and she subsequently appeared in the Chancery Court of Simpson County in August, 2007, on her Motion to Transfer Jurisdiction. (T. 5). Moreover, Ms. Quick was aware of the Court Order of September, 2007, which denied her Motion to Transfer Jurisdiction, and which found her in Contempt. (R. 92, 94). **Ms. Quick never appealed the Order entered September 18<sup>th</sup>, 2007 (emphasis added).**

Ms. Quick should not be allowed to prevail on the issue that the Chancery Court of Simpson County lacked personal jurisdiction because she was not served properly, especially since the record is replete with evidence which demonstrates that she had knowledge of the actions, and attempted to subvert them by refusing to accept service of process after the initial Contempt Order was entered against her in September, 2007.

Accordingly, Mr. Quick asserts that Ms. Quick was properly served with process in accordance with Miss. R.Civ. P. 4(d)(1)(A) and Rule 4(c)(5).

## **II. THE CHANCERY COURT OF SIMPSON COUNTY, MISSISSIPPI DID NOT ERR WHEN IT CONSIDERED THE *ALBRIGHT* FACTORS WITHOUT BOTH PARENTS BEING PRESENT.**

Ms. Quick maintains that the Court erred when it proceeded with a hearing on Mr. Quick’s petition to change custody on January 7, 2008, without her being present, and further

erred when it considered the *Albright*<sup>2</sup> factors without her presence. As support for her contention she cites the case of *Wade v. Wade*, 967 So.2d 682 (Miss.Ct.App. 2007).

In *Wade*, the husband filed for divorce, and had the complaint and summons personally served on the wife the same day. The wife never appeared nor responded to the complaint within thirty days. The Chancery Court of Simpson County entered a final judgment of divorce in the husband's favor on the grounds of cruel and inhumane treatment. The court also awarded joint legal custody of the parties' minor child and primary physical custody to the father. The Court ordered the mother to pay child support, provide insurance and maintain a life insurance policy upon herself in the amount of \$100,000 with the minor child as the beneficiary. After the wife received a copy of the judgment of divorce, she filed a motion to set aside the judgment and for a new trial pursuant to Mississippi Rules of Civil Procedure, Rule 59. The Chancery Court granted the wife's motion in part, revisiting the issue of custody based on the *Albright* factors. *Wade*, 967 So.2d at 683.

It is worth noting at this juncture, that Ms. Quick stated in her brief that the Chancery Court in *Wade* revisited the issue of custody based on the *Albright* factors, "finding that it was error to conduct a hearing on custody and consider the *Albright* factors when both parents were not present." The *Wade* case does not state that the chancellor granted the motion in part because he erred in conducting a hearing to consider the *Albright* factors when both parents were not present. In fact, there is no language of this sort in that case. The Court of Appeals, in reviewing *Wade*, noted that the chancellor's rationale for granting the motion in part was clear from the order, where the Order stated that "the motion was 'granted in part' because of equitable considerations and that the court would revisit the issue of custody for a determination

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<sup>2</sup> *Albright v. Albright*, 437 So.2d 1003 (Miss. 1983)

based on the *Albright* factors- an exercise not undertaken in the original grant of custody. *Wade*, 967 So. 2d at 684.

It is obvious from a reading of *Wade*, that the Chancellor realized that he did not consider the *Albright* factors at all in the original grant of custody, unlike the case at hand.

Notwithstanding, once the issue of the adverse and material change in circumstances arose in the present case, the Chancellor did consider the *Albright* factors, even though Ms. Quick was absent. The Chancellor rightfully did so, because he found that Ms. Quick had been properly served with process and failed to appear. Therefore, he continued with the hearing in accordance with his authority to do so, and he thereby fully considered the *Albright* factors. (R. 111). In his Order of Contempt and Modification of Final Judgment of Divorce and Prior Order of filed January 10, 2008, the Chancellor found “[t]here has been a material and substantial change in circumstances, which has adversely affected the children and the Court having considered the *Albright* factors in rendering its decision and the majority of said factors being in favor of the Petitioner, Jeffrey Dale Quick, this court finds that it would be in the children’s best interest to modify the Final Judgment of Divorce and the prior Order of Contempt and Modification.” (R. 111)

Ms. Quick also stated in her brief that the Court of Appeals in *Wade* affirmed the chancery court’s decision to not decide an issue of child custody without both parents being present. Mr. Quick argues that Ms. Quick misinterprets the Court of Appeal’s ruling in *Wade*. While the Court of Appeals did state that the Mississippi Supreme Court has held that the failure of a chancellor to make findings of fact as to the applicable *Albright* factors is reversible error, we do not have such an instance in this case. *See Wade* 967 So 2d at 684. In this case, the

Chancellor specifically considered the *Albright* factors. As to the issue of the presence of both parents, the Court of Appeals stated:

“[c]ertainly, a more prudent determination of custody may be made when based upon evidence presented from both parents rather than evidence presented by only one. Where a chancellor has the opportunity to consider the argument of both parents, the facts and circumstances affecting his determination are presumably more fully developed. It follows that a chancellor is able to make a more informed decision, thereby, ensuring to a higher degree of certainty that the best interest of the child is met.

*Wade*, 967 So.2d at 684.

Ms. Quick erroneously maintains that the *Wade* court established that it was error for a court to entertain a petition for change of custody and to consider the *Albright* factors when both parents are not present for the hearing. The *Wade* Court held that it was error for a court not to consider the *Albright* factors. The Court merely opined that it would be better if both parents were present so that a chancellor would be able to consider both arguments and fully develop his decision. However, the Court did not create a hard and fast holding that the absence of one parent alone is an error, especially where, as in this case, the Chancellor considered the *Albright* factors. If Ms. Quick’s argument is taken literally, then a parent engaged in a custody dispute with the other parent, who is faced with the possibility of losing custody, might be tempted to just not show up for Court, and have the matter linger indefinitely, because a Court would never be able to reach a decision, using the *Albright* factors, if the other party was not present for the hearing. This is certainly not what the Appellate Court meant in *Wade*, and therefore, Mr. Quick asserts that Ms. Quick should not prevail on this issue.

### **III. THE CHANCERY COURT OF SIMPSON COUNTY HAD JURISDICTION TO ISSUE A RULING IN THIS CASE.**

Ms. Quick argues that the Simpson County Chancery Court erred when it did not transfer jurisdiction of this case to the Circuit Court of Marshall County, Alabama. She maintains that

the evidence in this case clearly establishes that neither the parties nor the children had any significant connection with the State of Mississippi, and therefore, the more convenient forum for the action was, in her opinion, the State of Alabama. Ms. Quick stated in her brief that she and the children had been living in Alabama for two years; that the children were enrolled in school in Alabama and were “doing well and finally that their entire lives were connected to Alabama, and that Mr. Quick no longer lived in Mississippi.” (T. 17-19). Ms. Quick indicated that her Motion to Transfer Jurisdiction set forth sufficient evidence showing that neither party had any significant connection with the State of Mississippi any longer, and that Alabama was clearly the more convenient forum to handle this matter.

“As a matter of state law, a court that enters the original custody decree has jurisdiction to subsequently modify the decree separate and apart from the jurisdictional section of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *Jones v. Starr*, 586 So.2d 788, 790 (Miss. 1991) citing *Stowers v. Humphrey*, 576 So.2d 138, 141 (Miss. 1991). The *Jones* Court, which continues to be good law, clearly establishes that the Chancery Court of Simpson County continues to have jurisdiction in this case to modify the custody decree because it was the court that issued the original custody decree in this case.

Mr. Quick also maintains that even if an Alabama Court has jurisdiction, because the mother nor children are no longer present in this state, the Chancery Court of Simpson County has continuing jurisdiction in this case pursuant to the Mississippi Code Ann. § 93-27-202.

Mississippi Code Ann. § 93-27-202 provides:

“(1) Except as otherwise provided in Section 93-27-204, a court of this state which has made a child custody determination consistent with Section 93-27-201 or 93-27-203 has exclusive, continuing jurisdiction over the determination until:

- (a) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this

state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent currently do not reside in this state.

(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under 93-27-201.

Ms. Quick errs in her argument for the simple fact that the Chancery Court of Simpson County made the initial child custody determination consistent with Section 93-27-201. Additionally, pursuant to the statute, Mr. Quick, the father of the children continues to have a significant connection with this state. He presently lives in Mississippi. Ms. Quick stated in her brief that Mr. Quick no longer resides in the State of Mississippi, but lives in Louisiana. After the divorce, Mr. Quick worked in Louisiana, and in his initial Petition for Contempt, noted that he was a citizen of Louisiana. Notwithstanding, he testified at the hearing held on August 9<sup>th</sup>, 2007, that he did not have a home in Louisiana, nor did he pay any rent there. Mr. Quick works for a drilling company, and was staying in Louisiana because of his work. (T. 35, 127) Mr. Quick traveled back and forth to Mississippi. The record indicates that Mississippi is the state in which the children were to be delivered for visitation purposes. Mr. Quick is currently living in Mississippi, and has done since "before Christmas 2007." (T. 127, 137). Therefore, the Chancery Court of Simpson County did not err in continuing to maintain jurisdiction over this case for the purpose of modifying the child custody decree.

In *Jones, supra*, the Mississippi Supreme Court determined that the trial court could decline to exercise its continuing jurisdiction if it determined that there was a more convenient forum. *See Jones*, 586 So. 2d at 790; *See also* Miss. Code. Ann. § 93-23-13 (1994). In the instant case, the Chancery Court of Simpson County decided that it was the more

convenient forum since it had issued the divorce decree approximately five (5) months before Ms. Quick filed the Motion to Transfer Jurisdiction on August 3, 2007, and because it continued to have subject matter jurisdiction over the case. Additionally, the evidence establishes that shortly after the Chancery Court issued the Divorce Decree on March 14<sup>th</sup>, 2007, additional matters began to arise in this case, which warranted the Chancery Court's intervention. On June 27, 2007, Mr. Quick issued a summons to Ms. Quick. Shortly thereafter, Mr. Quick filed a petition for Citation for Contempt and for Modification on June 27<sup>th</sup>, 2007 because Ms. Quick failed to comply with the very custody decree that she agreed to enforce. (R. 38)<sup>3</sup>. These events triggered the successive motions and petitions, which caused the Chancellor to deny the Motion to Transfer Jurisdiction, until a decision was made regarding the outcome of the pending matters. Of particular significance, is that Ms. Quick was present at the August, 2007, hearing in which the Chancellor denied the Motion to Transfer Jurisdiction, and Ms. Quick failed to appeal the denial of this jurisdiction issue. She had ample opportunity to do so after the Court's ruling. Yet she did nothing. Furthermore, Ms. Quick admitted that she knew that the Chancery Court of Simpson, County, Mississippi had retained jurisdiction but that notwithstanding, she continued to file her petitions in the Alabama Court. (T. 68.). Ms. Quick should not be allowed to now come before this Court and argue that the Chancellor lacked personal jurisdiction. She had ample opportunity to appeal this very issue but she did not.

As to the issue of jurisdiction, Mr. Quick further asserts that the Chancellor correctly decided to maintain jurisdiction over the matter because there existed substantial evidence in this state concerning the children's care, protection, training and personal relationships. Mr. Quick remained in the state, and the children were brought to Mississippi to visit with their father, at

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<sup>3</sup> The record index inadvertently states that the Petition for Citation for Contempt and for Modification was filed on June 27<sup>th</sup>, 2008. However, the document itself establishes the correct filing date of June 27<sup>th</sup>, 2007. (R. 38)

least on two occasions before Mr. Quick was compelled to file his motion for contempt and for modification. Because the matter was on-going between Mr. and Ms. Quick, there existed the issue of the care, and protection of the children. These are certainly issues that were within the Chancery Court's purview to decide based upon *Albright*, since the Chancellor had just recently issued the final divorce decree and custody agreement.

**IV. THE ORDER ENTERED BY THE SIMPSON COUNTY CHANCERY COURT ON JANUARY 10, 2008, WAS FAIR AND EQUITABLE, AND DID NOT CREATE AN UNDUE HARDSHIP ON TABITHA QUICK.**

Ms. Quick maintains that the Chancery Court of Simpson County committed numerous errors in this case. However, as Mr. Quick has set forth in his brief, Ms. Quick was properly served with process by Mr. Teal. Therefore, Ms. Quick had notice of the January 10<sup>th</sup>, 2008 hearing. In addition to the personal service, Mr. Quick's attorney sent a certified mail notice to Ms. Quick. It was returned, "unclaimed." Ms. Quick even admitted during the hearing on May 21<sup>st</sup>, 2008, that she was aware that Mr. Teal was attempting to serve her and that she then proceeded to file charges against Mr. Teal for following her. (T. 30). Therefore, she had notice of the pending hearing but failed to show. Because Ms. Quick was properly served with notice, the Court did not err in making a decision as to the best interests of the children in accordance with the *Albright* factors, and in subsequently, changing the custody of the children, without Ms. Quick's presence.

Additionally, Mr. Quick asserts that the lower Court did not err in not transferring jurisdiction of the matter to the Circuit court of Marshall County, Alabama, because the Chancery Court, as the original issuing court, continued to have jurisdiction of the matter. The


Chancery Court did not err in deciding that it was the more convenient forum in which to decide the pending matters.

Ms. Quick maintains that the Chancery Court created a hardship on her when it suspended her visitation rights and placed her in jail pending delivery of the children to Mr. Quick. Mr. Quick asserts that it was not the Court that created a hardship, but Ms. Quick herself. The record and evidence establishes that she purposely tried to avoid coming to the Chancery Court of Simpson County to have this matter decided, despite the fact that she had appeared after her divorce on one other occasion in this matter. She appeared at the August 9<sup>th</sup>, 2007, hearing on the Motion to Transfer Jurisdiction. (T. 2). The Chancery Court properly found Ms. Quick to be in contempt of its prior Court order, and therefore, did not commit err in enforcing the contempt matter, by having her incarcerated until she presented the children to Mr. Quick.

#### V. CONCLUSION

Based on the foregoing arguments and presentation of evidence, the Orders of the Chancery Court of Simpson County should not be set aside and the custody of the children should remain with Mr. Quick. Mr. Quick further asserts that this Court should find that the Chancery Court of Simpson County, Mississippi, had continuing jurisdiction, and further that the Chancery Court was the more convenient forum in which to litigate the issues related to contempt and change of custody.

Respectfully submitted,

By:   
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FOR JEFFREY DALE QUICK  
APPELLEE

**CERTIFICATE OF SERVICE**

I, TERRELL STUBBS, attorney of record for APPELLEE, JEFFREY DALE QUICK, do hereby certify that I have this day mailed postage prepaid a true and correct copy of the foregoing Appellee's Brief to the following:

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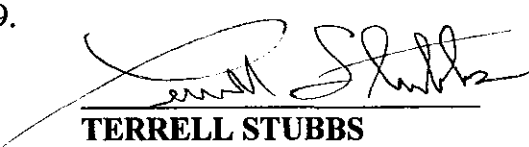
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