

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**BRIEF OF APPELLEE**

---

**ON APPEAL FROM THE CHANCERY COURT OF NESHOPA COUNTY, MISSISSIPPI**

Prepared and submitted by:

**WADE WHITE**  
Attorney for Appellee

**JORDAN & WHITE, ATTORNEYS**  
501 Main Street  
Post Office Drawer 459  
Philadelphia, MS 39350  
Phone: (601) 656-2451  
Facsimile: (601) 656-2458  
wadewhite@bellsouth.net  
MS State Bar No. [REDACTED]

**COPY**

## TABLE OF CONTENTS

Table of Authorities	iii
Certificate of Interested Parties	iv
Statement of the Issue	v
Statement of the Case	vi
Summary of the Argument	viii
Argument	1
Conclusion	10
Certificate of Service	12

## TABLE OF AUTHORITIES

<u>Citation</u>	<u>Page</u>
<i>Brawley vs. Brawley</i> , 734 so. 2d 237 (Miss. App. 1999)	2
<i>Bredemeier vs. Jackson</i> , 689 so. 2d 770 (Miss. 1997)	2
<i>Bubac vs. Boston</i> , 600 so. 2d 951 (Miss.1992)	2
<i>Phillips vs. Phillips</i> , 555 so. 2d 951 (Miss. 1989)	2
<i>Smith vs. Todd</i> , 464 so. 2d 1155 (Miss. 1985)	2
<i>Bland vs. Bland</i> , 620 So. 2d 1155 (Miss. 1993)	2 & 8
<i>Riley vs. Doerner</i> , 677 So. 2d 740 (Miss. 1996)	8 & 9

*Table of Authorities composed and filed pursuant to Rule 28 (a) (2) of the M.R.A.P.*

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**CERTIFICATE OF INTERESTED PARTIES**

---

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 and/or Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

Interested Parties:

Shelby Beason, Appellee

Candice Beason Sullivan, Appellant

Honorable Wade White, Attorney for Appellee

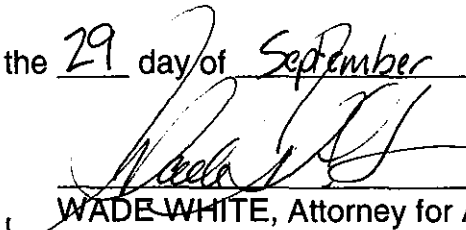
Honorable Terry L. Jordan, Attorney for Appellee

Honorable J. Max Kilpatrick, Trial Court Judge and Chancellor for the Sixth Chancery Court District

Honorable Samuel C. Martin, Attorney for Appellant

Honorable Robert Bresnahan, Trial Attorney for Appellant

RESPECTFULLY SUBMITTED, this the 29 day of September, 2009.

  
WADE WHITE, Attorney for Appellee

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**STATEMENT OF ISSUE**

---

COMES NOW, Shelby Beason, and pursuant to Rule 28 (b) of the M.R.A.P. and recites the Statement of Issue presented and asserted by Appellant:

1. Whether the Chancery Court erred in finding that there had been a material change of circumstances adverse to the best interest of the minor children.

*Statement of Issue composed and filed pursuant to Rule 28 (b) of the M.R.A.P.*

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**STATEMENT OF THE CASE**

---

COMES NOW, Shelby Beason, and pursuant to Rule 28 (a) (4) of the M.R.A.P. and files this his Statement of the Case:

Shelby Beason (hereinafter referred to as "Shelby" and Candice Beason Sullivan (hereinafter referred to as "Candice") were divorced in Neshoba County on the basis of an irreconcilable difference divorce on February 9, 2005, by Judgement of Divorce. As general practice allows, a Separation and Property Settlement Agreement (hereinafter referred to as the "Separation Agreement") previously signed and dated by Shelby and Candice was incorporated into the Judgement of Divorce. In that separation agreement Candice was awarded physical custody of their minor children and Shelby was awarded liberal visitation.

On December 7, 2007, Shelby filed a Petition to Modify Separation and Property Settlement Agreement. The basis for the modification sought by Shelby was that there had occurred a substantial change of circumstances since the execution and implementation separation agreement that is adverse to both minor children. In his Petition, Shelby sought sole legal and physical custody of the minor children with Candice receiving restricted visitation of the minor children. Candice responded to Shelby's Petition by filing an Answer and Defenses and Motion to Dismiss to the Petition on January 17, 2008. Additionally, Candice filed a Counter Complaint for

Contempt and Modification on January 23, 2008. After first holding a temporary hearing concerning the immediate well-being of the minor children, the Chancery Court tried the matter over the course of three (3) days—February 25, 2008; June 12, 2008; and June 13, 2008. In that trial, testimony of nineteen (19) witnesses were presented and fifteen (15) exhibits were introduced. At the conclusion of the last day of trial, the Chancery Court made a seven (7) page Bench Opinion (for temporary purposes) dated June 20, 2008, and it was incorporated into an Order Taking Evidence Under Advisement and Establishing Temporary Custody executed on July 7, 2008. The Chancery Court then delivered a thorough twenty-nine (29) page Bench Opinion dated August 27, 2008, which incorporated into a Final Judgment executed by the Chancellor on September 29, 2008. In that Final Judgment custody of the minor children were awarded to Shelby on the basis that he had met the burden of proving beyond a preponderance of evidence that there has been a material change in circumstances since the entry of the Judgment of Divorce which incorporated the Separation Agreement. It is from that Final Judgment and basis that Candice makes her appeal and assigns error.

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**SUMMARY OF ARGUMENT**

---

The Chancery Court did not err in the finding that there had been a material change in circumstances which would be adverse to the best interest of the minor children. In fact, that Chancery Court made a thorough review of the abundant testimony and exhibits to conclude that the circumstances in the custodial home had materially and significantly changed since February 9, 2009—the day of Shelby's and Candice's divorce. The Chancery Court made this correct conclusion after it heard testimony that Candice lived with several men in the presence of the minor children, exposed the minor children to her violent and unstable relationships with men, required law enforcement to be called to her home to quell fights while the children were in the home. Additionally, the Court heard testimony from the teachers of the minor children that the children were often tardy when Candice would bring them to school and that this would cause one of the minor children to become frustrated and cry at school. Further, valid testimony was submitted to the Court that Candice would not administer one of the minor children his daily medicine and that he would be sick at school.

Shelby would show that the Chancery Court was in fact correct to conclude that there had been a material change of circumstance since the divorce and that this material change of circumstance was adverse to the minor children. Additionally,



Shelby would show that the record is full of evidence to support his contention and the Chancery Court's finding.

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

**ARGUMENT**

---

Issue:        Whether the Chancery Court erred in finding that there had been a material change in circumstances adverse to the best interest of the minor children.

**FACTS**

As previously stated, Shelby Beason (hereinafter referred to as "Shelby") and Candice Beason Sullivan (hereinafter referred to as "Candice") were granted a Judgement of Divorce on the grounds of irreconcilable differences. Incorporated into their Judgment of Divorce was a Separation and Property Settlement Agreement (hereinafter referred to as "Separation Agreement"). In this separation agreement, among other things, Candice agreed to be given physical custody of their two (2) minor children, and Shelby agreed to be given liberal visitation with the minor children. However, on December 6, 2007, Shelby filed a Petition to Modify this Separation Agreement and several hearings ensued. The Chancery Court held in its final ruling on this matter that there had been a material change of circumstances adverse to the minor children such that it would warrant the Court to review the best interest and welfare of the minor children in respect to the *Albright* factors. In determining what was in the best interest of the minor children using the *Albright* factors, the Chancery Court,

looking at the totality of the circumstances, determined that it was in the best interest of the minor children for Shelby to be delivered their custody. However, Shelby shall not discuss the Chancery Court's *Albright* determination because Candice has not assigned error to this portion of the final judgement.

For Shelby to have availed in this cause as he did, he had to show the Chancery Court, by the preponderance of the evidence, that a material change in circumstances has occurred in the home of Candice. More specifically speaking, Shelby must satisfy a three part test as set out in *Brawley* by showing: "(1) a substantial change in circumstances of the custodial parent since the original decree, (2) the substantial change's adverse impact on the welfare of the child, and (3) the necessity of the custody modification for the best interest of the minor child." *Brawley vs. Brawley*, 734 so. 2d 237 (Miss. App. 1999); see also *Bredemeier vs. Jackson*, 689 So 2d 770 (Miss. 1997); *Bubac vs. Boston*, 600 So 2d 951 (Miss. 1992); *Phillips vs. Phillips*, 555 So. 2d 700 (Miss. 1989); *Smith vs. Todd*, 464 So. 2d 1155 (Miss. 1993). Shelby satisfied all three prongs of this test.

In making the determination that there had been a material change of circumstance adverse to the minor children as noted above, the Chancery Court took into consideration the testimony of nineteen (19) witnesses and introduction of fifteen (15) exhibits. For Candice to be successful in her appeal, she will be required to show that the Chancery Court was "manifestly wrong, clearly erroneous or the proper legal standard was not applied." *Bland vs. Bland*, 620 So. 2d 543, 544 (Miss. 1993). Shelby would submit that the Chancery Court was neither manifestly wrong nor clearly erroneous in its ruling based on the evidence it was presented, and a summary of that

evidence is as follows:

**MATERIAL CHANGE OF CIRCUMSTANCES ADVERSE TO THE MINOR CHILDREN**

Evidence submitted to Chancellor over the course of this three (3) day trial showed that the minor children, while in Candice's custody, were exposed to the following: (1.) continuous chaotic and volatile, if not dangerous, environment; (2.) unsuitable and undesirable living conditions; (3.) poor medical care; (4.) poor educational attention; and (5.) adulterous affairs; and (6.) ever-changing schedule.

1. Continuous chaotic and volatile, if not dangerous environment.

The Chancery Court heard testimony as to the chaotic and volatile, if not dangerous environment to which the minor children were exposed. Such testimony was as follows: Candice engaged in many fights with her new husband, Levi, in the presence of the minor children (Hrg. Transcr. vol. 2, 177:23 [Feb. 25, 2008]) Candice and Levi "fought every day" (Hrg. Transcr. vol. 2, 177:27 [Feb. 25, 2008]); the effect of repeated fighting in front of the children was that the children "got to where they really didn't seem like it was no big deal anymore" (Hrg. Transcr. vol. 2, 207:26 [Feb. 25, 2008]); when Candice and Levi fought in front of the minor children it would make them cry (Hrg. Transcr. vol. 2, 208:16 [Feb. 25, 2008]); one of the minor children would ask Candice "why do y'all fight? Why do y'all holler at each other" (Hrg. Transcr. vol. 2, 208:7 [Feb. 25, 2008]); Candice had placed two restraining orders on her husband Levi (Hrg. Transcr. vol. 2, 184:26-184:29 [Feb. 25, 2008]); during the marriage, Candice charged her husband, Levi, with Simple Assault–Domestic Violence, Phone Harassment and then later Disturbance of a Family (Hrg. Transcr. vol. 2, 182:1 [Feb. 25, 2008]); Candice and Levi had gotten into a fight over the house payment and he had threatened to shoot himself (Hrg. Transcr. vol. 2, 183:29-184:13 [Feb. 25, 2008]);

Candice's new husband wielded a gun outside of the house that Candice and the minor children were in and shot into the air. (Hrg. Transcr. vol. 2, 182:1-185:16 197:8 -197:4-197:25 [Feb. 25, 2008]); the minor children were upset over the situation where Levi pulled a gun outside the house where the minor children were (Hrg. Transcr. vol. 3, 539:1-539:16 [June 12, 2008]); Candice's new husband jumped on the hood of Candice's car with the minor children in the car (Hrg. Transcr. vol. 2, 198:7-198:25 & 207:14 [Feb. 25, 2008]); Levi had sent Candice pictures of a blood soaked hand. Hrg. Transcr. vol. 2, 201:14 (Feb. 25, 2008).

Candice's own father, Mr. Blake Warren (hereinafter referred to as "Blake") testified that he was called to Candice's home to stop a fight between Candice and Levi that left the home severely damaged. Hrg. Transcr. vol. 4, 478 (Feb. 25, 2008). Upon his arrival and seeing the damage, Blake testified he immediately went to the bedroom of the minor children to check on them. Hrg. Transcr. vol. 4, 478:6 (Feb. 25, 2008). Blake's review of the house was that there was "mirror broken, the door going outside was broken off the hinge. A glass was thrown through one of the glass doors on the cabinet. And there was something, a phone or something was thrown through a sheetrock wall." Hrg. Transcr. vol. 4, 479:6-479:6 (Feb. 25, 2008). Blake testified that the minor children were sleeping in the room "adjacent" to where the physical damage occurred. Hrg. Transcr. vol. 4, 479:28 (Feb. 25, 2008). Because of this fight, the minor children were unable to attend school the following day. Hrg. Transcr. vol. 5, 633:17 (June. 26, 2008).

Despite all this violence, Candice returned methodically to her relationship with Levi and exposed the minor children to the danger and chaos. Candice still assigns error in the Chancery Court's finding that these material changes had an adverse effect

to the minor children even though Chancery Court heard this and similar testimony for three (3) days.

2. Unstable and undesirable living conditions.

The Chancery Court heard testimony that since Shelby and Candice had been divorced, Candice's electricity has been disconnected because of non-payment and that money was always in need in her home, despite high earnings by both Candice and Levi. Hrg. Transcr. vol. 2, 174:21 (Feb. 25, 2008).

Further, the Chancery Court heard testimony from Levi that minor children would "sometimes" go without eating. Hrg. Transcr. vol. 2, 204:4 (Feb. 25, 2008). This obvious neglect is augmented by the testimony of Kathy Beason (hereinafter referred to as "Kathy"), Shelby's mother and also a teacher at the minor children's school, who testified as to how she found the children some mornings as Candice had dropped them off. Kathy testified that Candice had sent the children to school with them having not eaten breakfast and instead having given them microwaveable Lean Cuisine Mexican Dinners as a breakfast. Hrg. Transcr. vol. 2, 262:17 (Feb. 25, 2008).

3. Poor Medical Care

The Chancery Court heard substantial testimony related to Candice's neglectful attention toward the specific medical needs of one of the minor children. Shelby and his wife, Marlo Beason, testified that one of the minor children would return from stays at Candice's home and that his pill count would be unchanged—meaning none of the allergy pill prescribed would have been removed from the bottle and administered during stays with Candice. Hrg. Transcr. vol. 3, 315:26-316;14 (June 12, 2008). Further, Emmy Majure, an elementary school teacher for that minor children, testified that the minor child would have sneezing fits that would distract him at school. Hrg.

Transcr. vol. 1, 52:23 (Feb. 25, 2008).

Astonishingly, this Chancery Court also heard testimony where a note was sent home with one of the minor children concerning the nurse's concern regarding the minor child's heart beat and appearance. The testimony went on to show that when Shelby learned of this directive from the school nurse, he immediately took the minor child to a medical specialist. Upon Candice learning of this, she punished the minor child and became infuriated because the minor child was taken to a doctor. Hrg.

Transcr. vol. 1, 74:14-77:24 (Feb. 25, 2008).

4. Poor educational attention.

One of the minor children's first grade teachers, Mrs. Renee Warmack, testified that one of the small children was nervous (Hrg. Transcr. vol. 1, 24:7 [Feb. 25, 2008]) and if rushed would "just shut down." Hrg. Transcr. vol. 1, 24:13 (Feb. 25, 2008). It was later testified by Candice's new husband that the minor children were usually running late for school when they stayed with Candice. Hrg. Transcr. vol. 2, 203:27 (Feb. 25, 2008). Mrs. Sylvia Pope, a teacher for one of the minor children, testified that one of the children received 18 tardies, which means the children arrived at the school gate after 8:00 a.m. when classes begin at approximately 7:50 a.m. Hrg. Transcr. vol. 1, 38:20 (Feb. 25, 2008). Mrs. Pope continued to testify that the minor child in her class would be "frustrated" because he realized that he would be behind. Hrg. Transcr. vol. 1, 40:14 (Feb. 25, 2008). Kathy Beason, Shelby's mother, testified that she would check the book bags of the minor children and find that Candice had not had the minor children complete their homework when they were at her home. Hrg. Transcr. vol. 2, 261:10 (Feb. 25, 2008).

## 5. Adulterous affairs

Shortly after her divorce from Shelby, Candice took up with an individual named Billy Todd. Mr. Todd testified that he would stay nights with Candice and engage in sex with the minor children present in the house. Hrg. Transcr. vol. 1, 14:14 (Feb. 25, 2008). Candice also confessed to Levi Sullivan, her husband, that she was having an extra-marital affair with Mr. Calvin Johnson. Hrg. Transcr. vol. 2, 172:24 (Feb. 25, 2008). Candice testified that Calvin Johnson would come to the house in the presence of the minor children, but denied that the two did anything inappropriate in front of the children. Hrg. Transcr. vol. 4, 530:24 (June 13, 2008). Candice denied that Mr. Calvin Johnson spent the night at her home when the children were present. Hrg. Transcr. vol. 5, 621:21 (June 13, 2008). Candice was presented pictures taken by Angela Johnson, Calvin Johnson's wife. Hrg. Transcr. vol. 5, 621:18-625-6 (June 13, 2008). See also Exhibit 13. Angela Johnson testified earlier that when she suspected that Candice and her husband were having an affair she took a picture of Calvin's vehicle at Candice's house in early morning hours. Hrg. Transcr. vol. 2, 241:9-243-13 (February, 2008). Candice testified that it was Calvin's vehicle in her driveway and that no lights were on in the home. Hrg. Transcr. vol. 5, 622:11-13 (June 13, 2008). Further, Levi Sullivan, Candice's new husband, testified that Candice was pregnant when they were married. Hrg. Transcr. vol. 2, 206:8 (February 25, 2008).

## 6. Ever-changing schedule

The Chancery Court heard testimony of the minor children being required to be awakened at 4:00 and 5:00 in the morning because of Candice's hectic and changing work schedule. Hrg. Transcr. vol. 2, 180:9 (Feb. 25, 2008). During the minor children's stays with Candice their starting time and ending point for each day varied depending



on her work schedule or her relationships with her family, Levi's family or Shelby's family.

Despite the Court hearing the testimony cited above, Candice assigns error in the Chancery Court's finding that there had occurred a material change in circumstances adverse to the minor children. Additionally, Candice must show that the Chancellor's ruling was "manifestly wrong, clearly erroneous or the proper legal standard was not applied." *Bland vs. Bland* 620 So. 2d 543, 544 (Miss. 1993). As far as her assignment of error, it can only be assumed that she depends on the first two because the Chancellor did, in fact, apply the proper legal standard. Therefore, Candice's argument can only be that the Chancery Court had no basis for relying on the adverse effect displayed by the minor children as testified to and summarized above.

Additionally, the Chancery Court was well knowledgeable of the resiliency of the minor children, despite the constant chaos in their custodial home. Despite there being testimony that the material changes did, in fact, adversely effect the minor children, Candice's argument in her appeal fails to recognize the observation made by the Mississippi Supreme Court in *Riley vs. Doerner*. *Riley vs. Doerner*, 677 so. 2d 740. In Riley, the Supreme Court held that "where a child living in a custodial environment clearly adverse to the child's best interest, somehow appears to remain unscarred by his or her surroundings, the chancellor is not precluded from removing the child for placement in a healthier environment. *Riley* at 744. The trial court in *Riley* heard testimony of the minor child being exposed to a custodial home environment where there was dangerous and illegal behavior such as drug use. *Id.* Similar, the Chancery Court here heard testimony of continuous fighting in the custodial home where the children resided where, among other things, guns were being fired as threats and for

attention, portions of the home being destroyed, criminal charges being lodged and restraining orders being issued. The concern raised by the Mississippi Supreme Court in *Riley* should be carried over here: A child's resilience and ability to cope with difficult circumstances should not serve to shackle the child to an unhealthy home, especially when a healthier home beckons. *Id.*

**IN THE SUPREME COURT OF MISSISSIPPI**

**CANDICE BEASON SULLIVAN**

**APPELLANT**

**VS.**

**CAUSE NO.: 2008-CA-01827**

**SHELBY BEASON**

**APPELLEE**

---

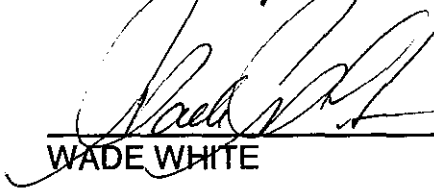
**CONCLUSION**

---

The Chancery Court did not err in finding that there had occurred a material change in circumstances adverse to the minor children. This is because the Chancery Court heard testimony of the repeated acts of violence in the custodial home witnessed by the children. The Chancery Court heard testimony deteriorating conditions of the minor children's home life and mother's life style and, consequently, its effect on the children's health and education. The Chancery Court heard testimony and viewed exhibits showing Candice's multiple romantic engagements, outside of marriage or extra-maritally, while in the home with the minor children. Therefore, Candice's efforts should fail when she attempts to show that the Chancery Court was manifestly wrong or clearly erroneous in determining that there occurred a material change that adversely affected the minor children. Again, and despite actually having weighed significant evidence of an adverse effect on the minor children, the Chancery Court is not precluded from removing the children for placement in a healthier environment where a child living in a custodial environment clearly adverse to the child's best interest, somehow appears to remain unscarred by his or her surroundings.

The Chancery Court made the correct finding in its August 27, 2008, Opinion,  
based on the testimony presented and case law.

Respectfully submitted, this the 29<sup>th</sup> day of September, 2009.

  
WADE WHITE

Prepared and submitted by:

WADE WHITE  
Attorney for Appellee

JORDAN & WHITE, ATTORNEYS  
501 Main Street  
Post Office Drawer 459  
Philadelphia, MS 39350  
Phone: (601) 656-2451  
Facsimile: (601) 656-2458  
wadewhite@bellsouth.net  
MS State Bar No. [REDACTED]

IN THE SUPREME COURT OF MISSISSIPPI

CANDICE BEASON SULLIVAN

APPELLANT

VS.

CAUSE NO.: 2008-CA-01827

SHELBY BEASON

APPELLEE

---

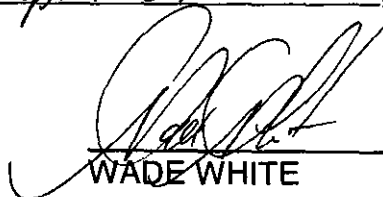
CERTIFICATE OF SERVICE

---

I, the undersigned attorney, do hereby certify that I have this date mailed a true, correct, and complete copy of the above and foregoing document to following individuals and address and faxed to the following facsimile number:

Honorable Samuel C. Martin  
Attorney for Appellant  
Marc E. Brand and Associates  
Post Office Box 3508  
Jackson, Mississippi 39207-3508

THIS, the 29<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
WADE WHITE

WADE WHITE  
Attorney for Appellee

JORDAN & WHITE, ATTORNEYS  
501 Main Street  
Post Office Drawer 459  
Philadelphia, MS 39350  
Phone: (601) 656-2451  
Facsimile: (601) 656-2458  
wadewhite@bellsouth.net  
MS State Bar No. [REDACTED]