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STATEMENT REGARDING ORAL ARGUMENT

When the entire record in this case is examined, including this appeal, the Appellee, Alex Noah Brumfield, "Alex", suggests that oral argument is not necessary, nor will it be beneficial to this Court in this matter. This action, commenced by the Appellant, Heather M. Brumfield, "Heather", on or about September 23, 2005, has, over its almost four (4) year odyssey, been the subject of depositions, written discovery, and several motion hearings, culminating in the Joint Petition with Agreements between the parties, and the Final Judgment of Divorce, the agreed child custody portion of same the subject of this appeal.

As such, the Chancellor in this cause, at the time of her decision, was possessed with considerable knowledge of the parties, their children and the controlling circumstance of the case that is normally found in most divorce cases, particularly under irreconcilable differences. From the Appellant's Brief, Alex submits nothing new of a clear and convincing nature in this case to require oral argument.

Therefore, your Appellee, Alex Noah Brumfield, does not request oral argument in this case, and requests this Court's denial of same. **Miss.R.App.P., Rule 34(b).**

REPLY STATEMENT OF THE ISSUE

The Final Judgment of Divorce, (CP-61), and Letter Opinion, (CP-57), are manifestly correct and should not be disturbed.

REPLY STATEMENT OF THE CASE

Procedural History and Disposition in the Court Below.

A review of Heather's Record Excerpts demonstrates a fairly "bare bones" approach to this Appeal. In only providing the basic requirements of the record, and selected portions of the trial transcript, apparently she forgot this entire record has been furnished the Court.

This being the case, it is to be remembered that Heather started this entire matter in late September, 2005. From this start, what was a hotly contested divorce proceeding evolved into a Voluntary Consent for Disposition of Divorce in Irreconcilable Differences and Adjudication of Other Related Issues on or about November 1, 2007.

After additional discovery and disclosures of the parties, as required under **Miss. Code 1972, Ann., Sec. 93-5-2 (Amend 2008); URCC, Rule 8.05,** the cause was set for hearing and on April 21, 2008, the Chancellor rendered her bench opinion following her April 18, 2008 Letter Opinion, (CP-57), followed by the Final Judgment of Divorce of May 16, 2008. (CP-61)

Heather then timely filed her very abbreviated Motion for Reconsideration of same. This Motion was denied by the Court on October 20, 2008. Feeling aggrieved from these allegedly adverse decisions by the Chancellor, on November 18, 2008, Heather timely perfected her appeal to this Court.

Factual Statement of the Case in Reply.

The Chancellor's Letter Opinion probably said it best when she stated: "The Court remains impressed that the parties married at a young age and managed to work together to accumulate a marital estate not unduly burdened by debt, and four healthy children during a time when the Father primarily worked while the Mother completed her education." (Opinion at Page 1, Paragraph 3). The Chancellor also noted that after completing her education and the tragic death of her Father in February, 2005, (T-81), Heather's life took a rather dramatic downturn.

Alex will not stoop to a blow-by-blow recounting of this downturn on Heather's part. The credible record in the entire case describes this fully, just as this record will also show his own credible shortcomings through the marriage. However, the learned Chancellor perhaps also said it best when she stated in her Opinion: "Perhaps if she (Heather) turned to her husband for support, rather than away from him, she would have been more successful in dealing with her problems." (Opinion at Page 1, Paragraph 3).

When examining the ***Albright*** factors, as urged by Heather factually, it is very apparent that the Chancellor, in both her Opinion and in the Final Judgment of Divorce as approved by the parties, though perhaps not enumerating the ten (10) recognized factors in a cookie-cutter fashion, each was addressed fully by the Chancellor. Again, this entire case is in its fourth year of completion. As such, both the parties and the Court have possessed abundant opportunities to examine all ***Albright*** factors and the facts and circumstances supporting the Court's determination of its decision. When examined objectively, the Final Judgment of Divorce, (CP-61), is both fair and equitable to the parties and, at this time, fully incorporates the best interest in the welfare and growth of their four fine children.

SUMMARY OF THE REPLY ARGUMENT

In her sole, unspecified issue in this appeal, Heather asserts the Chancellor erred in awarding sole physical custody of the four minor children of her and Alex to her now, former husband. In her equally unspecific litany of the ten (10) ***Albright*** factors, Heather does not recite any authorities to support her alleged factual considerations. Then there is Heather's conclusion that of these factors, all but two support her being granted custody of the children, again without supporting authorities.

This argument and Heather's approach to same is without merit. In his argument to follow, Alex will show that the Chancellor's determinations in this cause were fully and completely consistent with all ***Albright factors*** under past and present rulings on same and further, consistent with the actual facts and total circumstances of the history of his marriage to Heather.

When all is considered as to the "total body of work" that is a marriage and the rearing and nurturing of children, Alex Brumfield will show that the decisions of the Chancellor in this cause are manifestly correct and proper and should not be disturbed, but affirmed.

REPLY ARGUMENT AND CITATION OF AUTHORITIES

Reply Proposition: The Final Judgment of Divorce, (CP-61), and Letter Opinion, (CP-57), are manifestly correct and should not be disturbed.

It is highly interesting that in the case of ***Albright v. Albright,*** 437 So.2d 1003 (Miss. 1983), and its magnitude, our Court's opinion in same is so succinct. In effectively greatly modifying, if not overruling ***Cheek v. Ricker,*** 431 So.2d 1139 (Miss. 1983), and its preceding authorities, our Court has replaced the "tender years" principle with the "best interests of the child" doctrine. Since this ruling, there have been slightly over 100 reported decisions adopting

this doctrine, both in direct divorce actions, but primarily in post-divorce or other modification proceedings.

Though not specifying our Court's specific factors in the 1983 Opinion, the 100 or so cases since ***Albright*** have evolved the ten-step approach to a Chancellor's determination that has become the controlling doctrine in Mississippi. For Heather to even suggest that the learned Chancellor in her case did not properly weigh these factors is an insult to the Chancellor and the entire record of this cause over almost four (4) years. Quite frankly, entirely too many individuals have been burdened with Heather's frustrations and changes of direction over the past five years, including her children, and the Chancellor took pains to reach a Final Judgment that is quite fair and equitable to all parties, not just Heather.

STANDARD OF REVIEW

Just as Heather was rather non-specific in her argument, her sole reliance upon ***Sumrall v. Sumrall,*** 970 So.2d 254, 256 (Miss. 2006) as a standard for review is equally misplaced. A review of a child custody award is in fact limited. Reversal occurs only if a Chancellor is manifestly in error or has applied an erroneous legal standard. ***Williams v. Williams,*** 656 So.2d 325, 330 (Miss. 1995). Further, it is for the Chancellor to determine the credibility and weight of evidence adduced at trial. ***Chamblee v. Chamblee,*** 637 So.2d 850, 860 (Miss. 1994); Accord ***Powell v. Ayers,*** 792 So.2d 240, 243 (Miss. 2001). Under these standards, the decisions reached in Brumfield v. Brumfield are manifestly correct.

LEGAL PRINCIPLES

Alex submits at this point when one looks objectively at the Letter Opinion and its incorporation into the Final Judgment of Divorce and its impact on the four children, one will find the Chancellor in this cause did in fact consider all aspects of the ten (10) factors of ***Albright***

and its progeny with perhaps the exception of the preference of the individual children, none of which being at the sufficient age at the time of trial. The factors of age, the health and sex of the children, the continuity of care of the children, the best, present parenting skill of the parties, the present willingness and capacity of the custodial parent to provide primary child care, the employment of the parents and their responsibilities, the physical and mental health of the custodial parent, the emotional ties between parent and child; the moral fitness of the parents, the home, school and community records of the children, and the stability of the home environment and employment of the custodial parent are applied.

When the Chancellor stated, "Clearly, the Court does not want to cut her, (Heather), off from what is undeniable a close relationship between her and the children. However, the Court is unable to award her custody of the children due to these deficiencies." (Opinion at Page 2, Paragraph 2), these findings were succinctly summarized. The Final Judgment of Divorce shows no such cut-off.

This is not a case of unmarried parties or third parties and non-***Albright*** factors ***Hayes v. Rounds,*** 658 So.2d 863 (Miss. 1995). This is not a case of a married paramour seeking custody of his child from an affair after the death of the child's Mother. ***Vaughn v. Davis,*** 2009 WL 1664622, No. 2007-CA-02065-COA (Miss.App. June 16, 2009). This is not a case about a material change of circumstances. ***Williams v. Stockstill,*** 990 So.2d 774 (Miss. App. 2008).

Brumfield is a case of the best interest of the children and the final judgment of divorce incorporating these interests into a fair and equitable arrangement between the parents of the children protecting all these interests. ***Norman v. Norman,*** 962 So.2d 718 (Miss.App. 2007) It is also very much a case concerning the present moral character of the Mother. ***Davidson v. Coit,*** 899 So.2d 904 (Miss.App. 2005) Brumfield is also a case concerning the best interest of the

children in light of the present and immediately foreseeable circumstances of both parents. ***Street v. Street,*** 936 So.2d 1002 (Miss.App. 2006).

In this start of what will certainly be an on-going relationship among himself, Heather and their four children, Alex Brumfield respectfully suggests this full, complete and fair decision to all parties, should not be disturbed.

CONCLUSION

As stated earlier, marriage and the raising of children must be looked at as a total body of work between a husband and wife. If and when there are breakdowns in this relationship, it is incumbent upon our courts to attempt to resolve these problems, first in the best interests of the children and, secondly in a fair and equitable manner between the parents protecting their children's interests.

Alex Brumfield submits that he has presented abundant facts, reasons and authorities to support his contentions that the Chancellor in his and Heather's case did in fact, achieve these goals under the present circumstances of the dissolution of his marriage to Heather. He respectfully requests this Court's affirming of the Final Judgment of Divorce in this case for all purposes.

Respectfully submitted this, the 12th day of August, 2009.

ALEX NOAH BRUMFIELD,
Appellee

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CERTIFICATE OF SERVICE

I, GARY L. HONEA, Attorney of Record for the Appellee, Alex Noah Brumfield do hereby certify that I have this day filed the original and three (3) true and correct copies of the above and foregoing Reply Brief of the Appellee with the Honorable Kathy Gillis, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.

I further certify that I have delivered a true and correct copy thereof by United States Mail, postage prepaid, to the following listed persons:

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CERTIFIED this, the 12th day of August, 2009.

GARY L. HONEA