

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

NO. 2008-TS-01944

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HEATHER M. BRUMFIELD

PLAINTIFF/APPELLANT

V.

ALEX NOAH BRUMFIELD

DEFENDANT/APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Hon. Debbra K. Halford, Chancery Court Judge of the Fourth Judicial District
2. Heather M. Brumfield, Plaintiff/Appellant
3. Alex Noah Brumfield, Defendant/Appellee, *Pro Se*
4. Edwin L. Bean, Jr., Esq., P. O. Box 1322, McComb, MS 39649
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STATEMENT OF THE ISSUES

The Chancellor erred in Awarding Sole Physical Custody of the parties' four minor children to the Appellee, Alex Noah Brumfield.

STATEMENT OF THE CASE

I. Procedural History

On April 18, 2008, the Chancery Court of Walthall County, Mississippi, granted Heather M. Brumfield (hereinafter referred to as “Heather”) and Alex Noah Brumfield (hereinafter referred to as “Alex”) a divorce on the basis of Irreconcilable Differences. The parties entered their consent for the court to make a decision on equitable division of martial assets and debts, custody of the children and all related issues, and whether or not the plaintiff/cross-defendant was in contempt of the Temporary Order. The court made a disposition of martial property, martial debts, and awarded sole physical custody of the parties’ four minor children namely: Debra Alexis Brumfield, born November 28, 1997, Alli Marie Brumfield, born September 6, 2000, Bret Noah Brumfield, born October 18, 2001, and Hali Breanna Brumfield, born October 20, 2002, unto Alex. That letter ruling was ultimately converted to a Final Judgment of Divorce which was entered of record on May 16, 2008.

On May 21, 2008, Heather filed her Motion for Reconsideration asking the court to reconsider its ruling regarding the issues of child custody and property division. After hearing Heather’s Motion for Reconsideration, the court denied the motion and the Order Denying Motion for Reconsideration was filed on or about October 20, 2008.

On or about November 18, 2008, Heather perfected her appeal to this court.

II. Statement of Facts

Alex was called adversely and admitted that Heather and Alex were married on July 25, 1998, and separated on March 10, 2007. (R.6). Four children were born of the marriage namely: Debra Alexis Brumfield, born November 28, 1997, Alli Marie Brumfield, born September 6, 2000, Bret Noah Brumfield, born October 18, 2001, and Hali Breanna Brumfield, born October 20, 2002. Alex agreed that Heather was the children's primary care giver during their marriage. (R.11). He also agreed that Heather paid the children's school expenses (R.26), the children were strongly attached to Heather, (R.31) that Heather was better equipped to discuss with young girls the facts concerning sex and puberty, (R.31), that he had no evidence that she had exposed the children to any sexual relations with another man, (R.36) and that the two youngest children were so emotionally attached to her that they slept with her every night (R.45).

Tami Tolar, Heather's sister, testified that Heather was a good mother and had been the children's primary care giver throughout their life (R.50). She further testified that Alex got very upset when he learned that Heather was pregnant (R.52), that Heather was a good house keeper considering the fact that she worked a full-time job and had to keep house for six (6) people four of whom were young children (R.54), and she never saw Alex do homework with the children. (R.55).

Debby Sue Harris, Heather's mother, testified that Heather had been the children's primary care giver throughout their life. (R.79). She testified that Alex drank beer every night and he was hardly with the children before separation. (R.80-88).

Heather testified that since separation that she had lived in her grandmother's house with just her and the kids. (R.98). She further testified that Alex got all the children's birthdays wrong

and one child's name wrong during his testimony. (R.99-100). Heather worked two jobs while going to school and raising two children. (R.101). Heather attended school to raise the children in opposition of Alex's feelings whose comment was, "a woman's job was to stay home, cook, and raise the children." (R.102). Alex told the children that he did not like them. (R.103). Alex told Heather that he didn't want Alli and questioned her paternity. (R.107). Throughout Debra and Alli's lifetimes, Heather was their primary care giver. (R.109-110). When Heather told Alex that she was pregnant with Bret he again denied paternity. (R.111). In 2003, Heather attended college had long hours at school, and raised three (3) children while maintaining a 4.0 average. (R.120-121). In 2004, Heather got her BA in Elementary Education and Special Ed from the University of Southern Mississippi. (R.124). Although she was the primary care give of four (4) children, and working a full-time job, Alex called Heather fat, lazy, and stupid in front of the children. (R.127). Before the separation from Alex, she and the kids had only been away from the other two times during their lifetimes. (R.143). Throughout the children lifetimes, Heather attended church every Sunday, Sunday night, and every Wednesday night, and was a GA leader, and a Vacation Bible School director. (R.158). Heather was the one that did the bed time prayers, and blessing before meals with the children. (R.160). Alex physically assaulted her in front of the children. (R.166-168). At the time of the final hearing on the merits on February 28, 2008, Alex had violated the child support provisions of the Temporary Order and was three months behind in the payment of temporary child support (R.209).

Alex did not show up for Hali's tonsillectomy, but did for Bret's. (R.230). Not only did Alex fail to show up for Hali's tonsillectomy, but he did not even contact her for seven days following her surgery, nor has he paid any of the medical expenses relating to her surgery.

(R.221). Between the time of the entry of the Temporary Order and Final Hearing on the merits, Alex had not gotten the children for all of his scheduled visitations. (R.219-220).

The Chancery Court of Walthall County, entered its Letter Ruling on April 18, 2008. (R.E.57). In this Letter Ruling, the Chancellor found that Heather was clearly the principle care taker for the children and that she had an undeniably close relationship between herself and the children. (R.E.57-58). Yet, the Chancellor awarded sole physical custody unto Alex in spite of those findings.

SUMMARY OF THE ARGUMENT

If the court had weighed the *Albright* factors in this case, those factors would have favored Heather and she should have been awarded the sole physical custody of the parties' minor children. Because the record is void of any analysis that the court made on each *Albright* factor, no determination can be made as to how the Chancellor arrived at her decision to award sole physical custody unto Alex and this case should be reversed.

ARGUMENT

A. Standard of Review

“Matters of child custody fall within the sound discretion of the Chancellor.” *Sumrall v. Sumrall*, 970 So. 2d 254, 256 (Miss. 2006). A Chancellor’s decision will be affirmed unless the decision is manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.* “Substantial evidence from the record must support the Chancellor’s decision.” *Id.*

B. The Chancellor Erred When She Failed To Weigh The *Albright* Factors.

The *Albright* case is the perennial case upon which this court has relied in making child custody determinations. *Albright v. Albright*, 437 So. 2d 1003,1005 (Miss. 1983). In *Albright* this court outlined the following factors that a court must weigh in making child custody determinations: (1) The age of the child; (2) The health and sex of the child; (3) Which parent had the continuity of care prior to separation; (4) Which parent has the best parenting skills; (5) And which has the willingness and capacity to provide primary child care; (6) The employment of the parents and their responsibilities in that employment; (7) The physical and mental health and age of the parents; (8) Emotional ties between parent and child; (9) The moral fitness of the parents; (10) The home, school and community record of the child; (11) The preference of the child if of sufficient age; (12) The stability of the home environment and employment of each parent; (13) And any other relative factor.

In the court’s Letter Ruling of April 8, 2008, the court stated, “Regarding the custody of the minor children, the court has carefully considered each of the *Albright* factors relative to the minor children and their custody.” Then the court went on to state in its findings/opinions that Heather has some emotional problems arguably stemming from the circumstances of her father’s

death. That Heather was clearly the principle care giver for the children. That since her father's death she had not demonstrated the ability to provide nurturing and stability demanded by four (4) children of these ages without considerable intervention by others. She further found that Heather had change jobs repeatedly, did not have a stable source of income, and that the maintenance of her household and provision of meals was lacking, that she had financial irregularities and that she had exposed the children to several illicit relationships. The court, however found, that Heather had an undeniably close relationship with the children.

In its Letter Ruling, the court found that Alex had maintained a stable work, church and home environment, and that he had not been the primary care giver for the children during their infancy. Those were all the findings that the court made in awarding custody to Alex.

This court has found, "...that a Chancellor's failure to make specific findings as to each individual *Albright* factor is reversible error." *Davidson v. Coit*, 899 So. 2d 904, 911 (Miss. 2005) citing *Powell v. Ayars*, 792 So. 2d 240, 249 (¶33) (Miss. 2001).

In *Powell, supra* this Court cited *Hayes v. Rounds*, 658 So. 2d 863 (Miss. 1995) by stating that, "[w]hile we cannot say that the chancellor's conclusion is so lacking in evidentiary support as to be manifest error, in the absence of specific findings we cannot affirm with confidence that the best result has been reached." *Id* at 244. The Court further stated in *Powell* that, "...in cases of any complexity, tried upon facts without jury, court's generally should find facts specially and state its conclusion of law thereon.... and failure to make such finding of ultimate fact and conclusions of law would generally be regarded as abuse of discretion." *Id* at 244. In reversing the Chancellor in *Powell*, this Court stated, "A determination of child custody will be held erroneous where a Chancellor is not thorough in his discussion, factor by factor, of

Albright.” *Id* at 250.

In the case *sub judice*, the Chancellor stated that she considered the *Albright* factors, but made no analysis of each factor as required by *Powell* and *Davidson*. Therefore, this case should be reversed and remanded for findings consistent with those cases.

C. All Of The *Albright* Factors, With The Exception Of Two Favored Heather

Heather respectfully submits that had the court weighed each *Albright* factor the facts would have support awarding sole physical custody of the parties’ minor children unto her.

Heather submits the following facts under each factor:

(1). Age, health and sex of the child:

The ages of the children in this case were not relevant as the youngest, Hali Breanna Brumfield was five (5) years of age at the time of trial. Also, the health of the children was not relevant as all four of the children were healthy without any chronic health problems. However, with respect to the sex of the children, three of the children were girls with Bret Noah Brumfield being the only boy. Alex admitted during the trial that Heather was better equipped to discuss things with the girls such as puberty, sex and other female related items. Therefore, Heather had an edge with respect to this factor.

(2). A determination of the parent that has the continuity of care prior to the separation:

Every witness that testified in this case testified that Heather had been the primary care giver during the children’s lifetimes. That was admitted to by Alex and all of his witnesses. Heather testified that Alex told her that a woman’s job was to stay at home and raise the children. That he would not take care of the children, and that he didn’t like children. Heather testified and

it was un rebutted that she raised four children and attended full-time school in order to get her education without any help from Alex. Before the separation, the parties' minor children had only been away from her two times during their lifetimes. Heather attended church every Sunday, Sunday night, every Wednesday night, was a GA leader and Vacation Bible School Director. Her testimony was un rebutted that she was the only one that taught the children their bedtime prayers and blessings before meals.

Therefore, the facts weighed heavily in favor of Heather on the issue of continuity of care prior to separation.

(3) Which parent has the best parenting skills, and which has the willingness and capacity to provide primary child care.

Alex drank beer every night and hardly spent any time with his four children prior to separation. Alex dipped snuff in front of his children and told them it was not okay for them, but it was for him. Alex gets the children up for school at 6 a.m. and takes them to his aunt's who lives down the road to catch the school bus. As opposed to Heather who can drive the children to and from school as a school teacher at their school. Alex's feelings regarding child care can be summed up by his comments to Heather, "that a woman's job was to stay home, cook, and raise the children." Alex had physically assaulted Heather in the presence of the minor children. Alex had violated the Temporary Order and had not paid his court ordered child support, nor had he provided any health insurance to the children. Alex had not gotten the children for all his scheduled visitations. Heather was the one that did the bed time prayers, and blessing before meals with the children. She paid all the children's school and medical expenses. Heather worked a full-time job and kept house for six people. Heather had the children in church at every

opportunity and volunteered to be a GA leader and Vacation Bible School Director.

In the court's Letter Ruling the court found that Heather, "...was clearly the principle care taker for the children."

Therefore, this factor favored Heather.

(4). The employment of the parent and responsibilities of that employment at the time of trial:

Alex was employed by the North Pike, Mississippi School District as a Bus mechanic at the bus barn. Alex has to leave for work at 6:30 a.m. to get to work on time. At the time of trial, Heather was unemployed, but had a contract with the Tylertown School System to teach school at the beginning of the next school year. It goes without saying her hours as a school teacher would be compatible with her children's hours as students. Also, Heather is equipped by special training as a Special Ed teacher to help her children cope with many problems that they will encounter in their lifetimes.

Therefore, that factor should have favored Heather.

(5). Physical and Mental Health and age of the Parents:

The record is silent as to the parties ages; however, there is not much difference in Alex and Heather's ages. Neither Alex nor Heather have any mental health problems.

However, the court appeared to place much emphasis on Heather's depression from which she suffered for approximately six (6) months following her father's death. Heather and her witnesses all admitted that it was a very depressing and emotional time for Heather. They testified that after approximately six (6) months that she recovered and was back to normal.

Therefore, at the time of trial, this factor could have slightly favored Alex.

(6). Emotional ties of parent and child:

Alex did not know any of the children's clothing sizes. He did not know the children's teacher's names. He had health insurance available through his employer, but did not place his children on it. In Alex's trial testimony, he got all the children's birthdays wrong and one child's name wrong. Alex told Heather that he would not take care of the children because he didn't like children. Alex questioned the paternity of Bret and Alli. At the time of trial, Alex was three months behind in his child support under the Temporary Order. In the year preceding the divorce, he did not attend Hali's tonsillectomy and did not visit her for over seven days following her tonsillectomy.

It is obvious from the court's Letter Ruling that the court determined from all the testimony that there was, "...an undeniably close relationship between her and the children.

Therefore, these facts clearly favor Heather with respect to the emotional ties of parent and child.

(7). Moral Fitness of the parents:

There was testimony that Heather had dated two men following the separation between her and Alex, and she admitted having sexual relations with one of them. However, the record is absent of any facts that would show that she exposed the children to any illicit relationship. After separation there was one occasion when a male friend came to visit one night, and while walking out the door to leave, he gave Heather a good night kiss on the cheek which was witnessed by the children.

However, the record reveals that Heather and Alex's oldest daughter Alexis, was conceived prior to marriage and was seven (7) months old at the time of Heather and Alex's marriage on July 25, 1998.

Therefore, this factor should not have favored either party.

(8). The home, school and community record of the child:

This factor favors Heather in that she has been a school teacher throughout the children's lifetimes, and has provided for their basic educational needs which resulted in all four children making excellent grades and posing no disciplinary problems at school at the time of trial.

Therefore, that factor should have favored Heather.

(9). The preference of the child at the age sufficient to express a preference by law:

That factor favors neither Heather nor Alex as none of the children had reached the age sufficient to express a preference by law.

(10). Stability of home environment and employment of each parent and other factors relevant to parent-child relationship:

At the time of trial, Alex was living in the former marital domicile while Heather was living in her grandmother's house by herself with her children. The record is devoid of any evidence that would tend to prove that either party had an unstable environment in which to raise their children.

Therefore, that factor should have favored neither party.

Therefore, when analyzing the *Albright* factors is evident that the analysis favored sole physical custody of the parties' minor children being awarded to Heather.

CONCLUSION

In the absence of the court's analysis of the *Albright* factors, this court cannot make a determination as to whether or not the Chancellor made a correct determination as to custody in this case. The appellant, Heather Brumfield, would respectfully submit that if the court had weighed each *Albright* factor, that in the final analysis, the court would have awarded custody of her four children to her. Accordingly, Heather urges this court to reverse the Chancellor's erroneous ruling, or at the very at least, remand this case for a new trial for specific findings of fact and analysis of each *Albright* factor, and this case should be reversed.

Everything Mom

How did you find the energy, Mom
To do all the things you did,
To be teacher, nurse and counselor
To me, when I was a kid.

How did you do it all, Mom,
Be a chauffeur, cook and friend,
Yet find time to be a playmate,
I just can't comprehend.

I see now it was love, Mom
That made you come whenever I'd call,
Your inexhaustible love, Mom
And I thank you for it all.

By Joanna Fuchs

Respectfully submitted on this the 14 day of June, 2009.

HEATHER M. BRUMFIELD

BY: 

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CERTIFICATE OF SERVICE

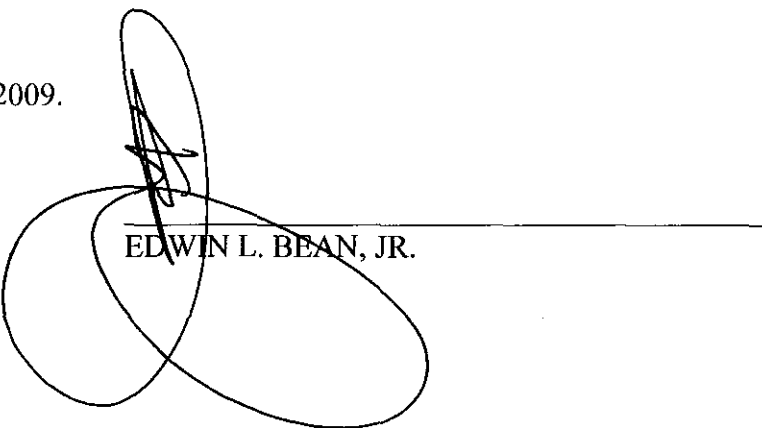
I, Edwin L. Bean, Jr., do hereby certify that I have this day mailed postage prepaid by U.S. Mail, a true and correct copy of the above and foregoing documents to the following:

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This the 11th day of June, 2009.



EDWIN L. BEAN, JR.