

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

MICHAEL WARREN ROBBINS

APPELLANT

VERSUS

NO. 2008-CA-02141

KATHERINE ANTOINETTE ROBBINS

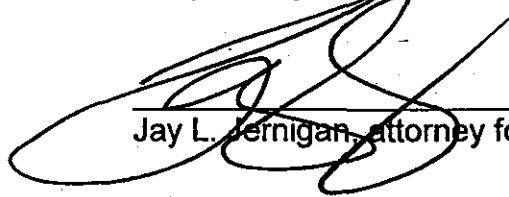
APPELLEE

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Michael Warren Robbins.-appellant
2. Katherine Antoinette Robbins-appellee
3. Jay L. Jernigan-attorney for appellant
4. Dave Pumford-attorney for Appellee in the Court of Appeals
5. Judge Johnny L. Williams, Jr.-Chancery Court Judge

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JL Jernigan', is written over a horizontal line.

Jay L. Jernigan, attorney for appellant

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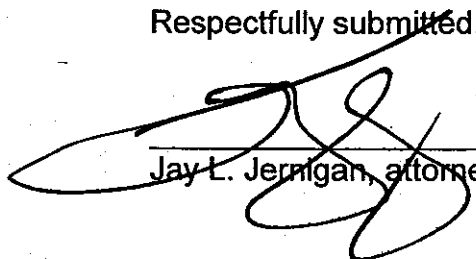
APPELLEE

STATEMENT OF ISSUES FROM THE APPELLANT

COMES NOW the Appellant and files this his Statement of Issues to be reviewed by the Mississippi Court of Appeals and would the following issues:

1. That the lower court failed to properly apply the standards in a modification of custody from one parent to the other parent.
2. That the Court failed to properly examine the Albright factors in the lower court's decision.

Respectfully submitted,



Jay L. Jernigan, attorney for Appellant

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STATEMENT OF THE CASE

COMES NOW the Appellant and files this his Statement of Case to be reviewed by the Mississippi Court of Appeals and would show the following statement and relevant facts:

**NATURE OF THE CASE, COURSE OF THE PROCEEDINGS
AND DISPOSTION IN THE COURT BELOW**

This case began with a Complaint for Modification of Custody of a eight year old girl sought by the natural father. That allegations of medical problems of the Appellee including morphine use, weight fluctuations, and a eating disorder in addition to problems with visitation both telephone and actual visitation and failing to get medical treatment for the minor child were a basis for the bringing of this action.

A trial was held on the issue of child custody where the Court found after hearing testimony from two experts appointed by the court that custody should remain with the Appellee.

**STATEMENT OF THE FACTS RELEVANT TO THE
ISSUES PRESENTED FOR REVIEW**

Appellee stated she has had custody of the minor child, Maddy, born April 4th, 2000 for the past three years. (TT page 6 lines 10-20) Appellee testified that in April 2004 she received a kidney transplant as both hers had failed. (TT pages 7-8

cumulative lines) Appellee testifies that she has been to an hospital or been hospitalized for numerous problems in excess of 18 times since the divorce. (TT pages 9-13 cumulative lines) Appellee testifies that she smokes cigarettes. (TT page 13 lines 8-28) Appellee testifies to being admitted to Hancock Medical Center in March of 2008. (TT page 15 lines 19-25) Appellee testified that even though court ordered to take her daughter for a medical exam she did not take her for a period of four months. (TT page 20 lines 11-27) Appellee testifies as to the minor child's kidney condition. (TT page 21 lines 13-23) Appellee testifies that even though her daughter was scheduled for a cystogram in May 2008 she had not taken her and had an appointment with the doctor a week after this trial. (TT pages 22-23 beginning on page 22 at line 16 and continuing thru line 13 on page 23)

Dr. Osborne a court appointed psychologist to help the court in evaluating custody testifies that child should be with the father. (TT page 53 lines 1-10) Dr. Osborne further testifies to eating disorder of Appellee. (TT page 58 lines 13-27) The child indicates a preference to Dr. Osborne to live with the father as she has a great relationship with the step mother. (TT page 61 lines 24-28) Dr. Osborne full report is admitted into evidence. (TT page 84 lines 9-16) (report is available in Record Excerpts)

Dr. Galloway who had previously been appointed in the original divorce and was subsequently appointed by the Court in this action to help the Court in custody evaluations reports that Appellee still has an eating disorder/ psychological problems. (TT page 97 lines 25-28) Dr. Galloway testifies that if she does not get treatment that the condition could cause her to kill herself. (TT page 98 lines 12-17) Dr. Galloway

testifies that if this Court awards custody to Appellant that the Appellee needs supervised visitation if she does not receive help. (TT page 103 lines 10-14)

Appellant testifies to the material change in circumstances including weight fluctuations of Appellee, hospitalizations of Appellee, telephone visitation problems, actual visitation problems, not getting the minor child necessary medical treatment. (TT pages 111-114 cumulative)

Appellee testifies that in January of 2008 the doctor ordered a cystogram in May of 2008 and that because that minor is rarely at home, at her dad's house, and May begins the summer that Appellee did not take the minor child to her scheduled appointment and that it was not until September 29, 2008 after the trial. (TT pages 191 lines 6-29 and page 192 lines 1-6) Appellee testifies she takes and has taken morphine since August 2006 and has refilled the prescription 10-12 times since October 2006. (TT page 194 lines 18-29, page 195 lines 1-20, page 202 lines 19-29)

Respectfully submitted,



Jay L. Vernigan, attorney for appellant

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SUMMARY OF THE ARGUMENT

COMES NOW the Appellant and files this his Summary of the Argument would shows the following Argument:

1. That the lower court failed in properly applying the three conditions precedent to a modification of custody that being (1) a substantial change in circumstances of the custodial parent since the divorce decree, (2) the change of circumstances adverse effect or impact on the minor child's welfare, and (3) the best interest of the minor child.
2. That further the Court misapplied the Albright factors in reaching the Court's Conclusion it appears that some of the testimony was not applied such as factor one which states that Appellee has taken the minor child to her appointments when in fact she has not. Additionally factor 3 states there was no testimony as to the child's preference when in fact there was as stated by Dr. Osborne due to the child liking her step mother. That when these factors, correctly used by the Court; the Appellant would not only be favored by Dr. Osborne in his testimony as Appellant was but also the Court in reaching its conclusions.

Respectfully submitted,


Jay L. Jernigan, attorney for appellant

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THE ARGUMENT

COMES NOW the Appellant and files this his Argument shows the contentions of the Appellant with respect to the issues presented and the reason for Appellants contentions:

THE LOWER COURT FAILED TO APPLY THE THREE FACTORS USED IN DETERMINING WHETHER OR NOT THERE SHOULD BE A CHANGE IN CUSTODY

The appellant states that there is no disagreement as to the basis or the law, Polk v. Polk, 589 So. 2d 123, (Miss 1991); Tucker v. Tucker, 453 So. 2d 1294 (Miss 1984); Phillips v. Phillips, 555 So 2d 698 (Miss 1989) and Pierce v. Chandler, 855 So.2d 455 (2003) that was applied in this case only that there was a missapplication of this facts to the three factors those being:

(1) a substantial change in circumstances

(a) the Appellant had been hospitalized over 18 times since the divorce (RE page 9-13 of TT)

(b) the Appellant is a regular prescriptive user of Morphine since the divorce (RE pages 194, 195, 202 TTs)

(c) the Appellant continues to smoke cigarettes in spite of her worsening health condition since the divorce (RE page 13 of TT)

(d) the appellant fails to take the minor child to regularly scheduled medical appointments (RE page 23, 22, 20 of TT)

(e) the Appellant fails to get any psychological help in regard to her eating condition/disorder which is ongoing since the divorce (RE page 59 of TT)

(f) the Appellant failed to allow visitation when it conflicted with minor child's cheerleading schedule since the divorce (RE pages 111-114 of TT)

2. the effect of the above change in circumstances adverse impact or effect on the minor child

(a) that the Appellant is not at home due to her hospitalizations and the minor is cared for by others

(b) anyone using morphine on a regular basis whether prescribed or not can not function as they would without the use of morphine thus parenting or the ability to parent must decline

(c) everyone recognizes the health problems of second hand smoke and certainly would or could affect a minor child adversely

(d) failure by the appellant to take the minor child to her medical appointments can not ever be condoned as it is the responsibility of the custodial parent to ensure the minor child's health and the failure to do so adversely affects the physical/mental well being of the child

(e) preventing normal visitation due to the child's activities adversely affect the relationship of the father/daughter and also gives the minor child a misconception of importance of activities over family

3. the best interest of the child

(a) the allbright factors address this issue

(1) The court found that the Age, Health and Sex of the child favors the mother stating that the Appellee has taken her to all of her appointments **when in fact testimony is the direct opposite and she has failed to care for the medical well being of the minor child. This should change by this Court and favor the Appellant.**

(2) The continuity of care favors Appellee when it should not because of her continual hospitalizations

(3) Parenting skills- neutral

(4) Willingness and capacity to Provide Primary Care-neutral

(5) Employment of Parent and Responsibilities of Employment-neutral

(6) Physical and Mental Health and Age of Parents- favors Appellant

(7) Emotional ties between parent and child- The court stated this is neutral **but should favor the Appellant as the child stated that she prefers to be with her dad as she and her step mom have a great relationship.**

(8) Moral fitness of the Parents-neutral

(9) Preference of the minor child at appropriate age-neutral

Consequently in the best interest of the minor child the lower Court should have allowed the change of custody.

Respectfully submitted,


Jay L. Jernigan, attorney for appellant

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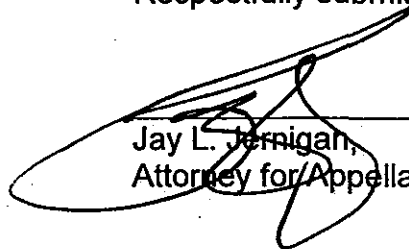
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CONCLUSION

The Appellant would ask that this Court reverse and render this case as to the custody of the minor child to be placed with the Appellant in that the lower court failed to apply the facts and evidence including two expert witnesses appointed by the Court to aid in evaluating custody.

Respectfully submitted,



Jay L. Jernigan,
Attorney for Appellant

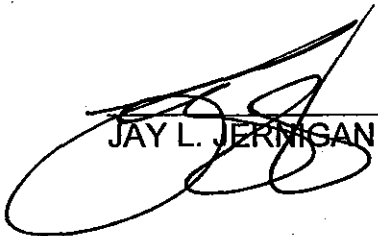
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the above appeal was mailed, postage prepaid, to the following:

Dave Pumford
525 Corrine Street
Hattiesburg, MS 39401

Judge Johnny L. Williams
Post Office Box 1664
Hattiesburg, MS 39403-1664
SO CERTIFIED, on this the 27th day of August, 2009.

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