COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CAUSE NO. 2008-TS-00580

BILLY FRED MCCARRELL **APPELLANT**

v.

JANIE ANNETTE HYDE MCCARRELL **APPELLEE**

On Appeal from the Chancery Court of DeSoto County, Mississippi

APPELLANT'S BRIEF

William B. Seale, Esq.
Mississippi Bar No.: [redacted]
Taylor, Jones & Taylor, LTD
961 Main Street
Southaven, MS 38671
(662) 342-1300 – Telephone
(662) 342-1312 – Facsimile

Attorney of Record for
Appellant Billy Fred McCarrell

CERTIFICATE OF INTERESTED PARITIES

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 disqualification or recusal.

1. William B. Seale, Taylor, Jones & Taylor, LTD, Attorney for the Appellant;
2. William P. Myers & Amy Holliman Brown, Myers Law Group, Attorneys for the Appellee;
3. Billy Fred McCarrell, Appellant;
4. Janie Annette Hyde McCarrell, Appellee.

By: William B Seale

William B. Seale, Esq.
Mississippi Bar Number [redacted]

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STATEMENT OF THE ISSUES

1. Did the Chancellor abuse her discretion by awarding to the Appellee $1,800.00 per month rehabilitative alimony for a period of five (5) years, because the award was excessive and not supported by the evidence?
2. Did the Court err in its written opinion by ordering that the first payment of alimony was due on January 5, 2008 when the Final Decree was not entered until January 18, 2008?
3. Did the Court abuse its discretion in ordering the Appellant to, within thirty days of the Final Decree of Divorce, either provide Appellee with a late-model (no older than 2006 model), safe, reliable, and fuel efficient automobile or, within said time, convey unto Appellee title to the 1999 Jeep Cherokee and the 1997 Mazda for Appellee to use as trade-in on a new vehicle which she will purchase and $12,000.00 in cash to use toward the purchase of same, because it was excessive and not supported by the evidence.
4. Did the Chancellor abuse her discretion in ordering the Appellant to pay the Appellee attorney's fees in the amount of $15,803.39 by taking judicial notice of the **McKee** factors when those factors were not proven at trial?

STATEMENT OF THE CASE

This is a Divorce action brought in Chancery Court of Desoto County, Mississippi. Appellant filed for Divorce on August 2, 2006. Appellee filed an Answer and Counter-Complaint for Divorce. Appellant answered the Counter-Complaint. Both parties plead Irreconcilable Differences as one of the grounds for the divorce. The parties entered into an Agreed Order of Divorce and Property Settlement Agreement whereas, the Appellant was ordered to pay child support in the amount of eight hundred ($800.00) dollars in monthly child support. Joint legal custody was awarded to the parties. Physical custody was awarded to the Appellee. Appellant was awarded regular visitation with the minor child. The Agreement contained the division of personal property between the parties. Appellant agreed to take sole liability for all of the marital debts of the parties. Three issues remained for the Trial Court to decide. They were (1) alimony, (2) automobile for the wife, and (3) attorneys' fee. The Chancellor issued a Written Opinion. The Final Decree of Divorce was signed by the Chancellor on January 14, 2008 and the clerk entered it on January 18, 2008.

Appellant was ordered to pay the Appellee the sum of eighteen hundred ($1,800.00) dollars per month for five (5) years as Rehabilitative Alimony. Appellant was ordered to pay said Alimony beginning on January 5, 2008.

Appellant was also ordered to provide the Appellee a safe, reliable vehicle. The Appellant has complied with this provision in the Final Decree of Divorce and withdraws this issue from his appeal at this time

Appellant was ordered to pay the Appellee's attorney's fees in the amount of fifteen thousand eight ($15,803.39) hundred three dollars and thirty nine cents within 60 days of entry of the Final Decree of Divorce.

STATEMENT OF FACTS

The trial of this matter occurred on June 9, 2007.

Billy McCarrell (Appellant) and Janie Annette Hyde McCarrell (Appellee) were married on June 30, 1995. (TR 14). They had one child, a son named Billy James McCarrell who was born on November 7, 1996. (TR 14, 15) Appellant filed for Divorce on August 2, 2006. Appellee filed an Answer and Counter-Complaint for Divorce. Appellant answered the Counter-Complaint. Both parties plead Irreconcilable Differences as one of the grounds for the divorce. The parties entered into an Agreed Order of Divorce and Property Settlement Agreement whereas, the Appellant was ordered to pay child support in the amount of eight hundred ($800.00) dollars in monthly child support. Joint legal custody was awarded to the parties. Physical custody was awarded to the Appellee. Appellant was awarded regular visitation with the minor child. The Agreement contained the division of personal property between the parties. Appellant agreed to take sole liability for all of the marital debts of the parties. (RC pg.50). The Chancellor issued a Written Opinion that was filed on December 20, 2007. (RC pg.111). The Final Decree of Divorce was signed by the Chancellor on January 14, 2008 and the clerk entered it on January 18, 2008. (RC pg.62).

Appellant was ordered to pay the Appellee the sum of eighteen hundred ($1,800.00) dollars per month for five (5) years as Rehabilitative Alimony. Appellant was ordered to pay said Alimony beginning on January 5, 2008 and the Final Decree of Divorce was not entered with the Court until January 18, 2008. (RC pg. 62, 111).

Appellant was also ordered to provide the Appellee a safe, reliable vehicle. The Appellant has complied with this provision in the Final Decree of Divorce and withdraws this issue from his appeal at this time

Appellant was ordered to pay the Appellee's attorney's fees in the amount of fifteen thousand eight ($15,803.39) hundred three dollars and thirty nine cents within 60 days of entry of the Final Decree of Divorce. Appellee did not comply with the **McKee** factors required to prove attorneys' fee at trial. (TR 40-43). The Chancellor took judicial notice of the **McKee** factors and awarded the attorneys' fees in full even though Appellee only requested that she be awarded the balance of the attorney's fees owed in the amount of $11,303.39. (RC pg. 111).

SUMMARY OF THE ARGUMENT

No award of alimony should have been made by the Trial Court in this case based upon the totality of the circumstances of the marriage and considering the pertinent factors set out in **Armstrong** 618 So.2d 1278 (Miss. 1993).

The clerk's entry of an order pursuant to **Rule 58 of the Mississippi Rule of Civil Procedure,** which states: A judgment shall be effective only when entered as provided in M.R.C.P. 79(a). A chancellor's opinion is not a final judgment, **Banks v. Banks,** 511 So.2d 933, 935 (Miss. 1987). Therefore, the Final Decree of Divorce was effective as of January 18, 2008 and Appellant could not be ordered to pay alimony on January 5, 2008 because that was in the Chancellor's Written Opinion.

Appellant has complied with the order of the Court in the Final Decree of Divorce concerning the award of an automobile for the Appellee. Appellant has provided to Appellee an automobile that complies with the Court's ruling. Therefore, Appellant withdraws this issue from his appeal.

Appellee did not comply with the factors established in **McKee v. McKee,** 418 So.2d 764, 767 (Miss. 1982), and therefore the Trial Court had **no** choice but to deny any request for attorney fees. The Chancellor abused her discretion by taking judicial notice of the **McKee** factors.(RC pg. 111) and there is no case law that allows a Chancellor to take judicial notice prove attorney's fees, when an attorney does not comply with the requirements required by this Supreme Court. Appellant was never held in contempt by any Order from any Chancellor in this case. If an Appellee is not held in contempt, fees should not be awarded. **Hensarling v. Hensarling,** 824 So.2d 583, 593 (Miss. 2002). By the time of the trial, Appellant had paid all of

his temporary support payments current and Appellee was paid in full. (TR 86). Therefore, the attorney's fee award should be reversed.

ARGUMENT

I. ALIMONY

The case that gives guidance to the courts is **Armstrong v. Armstrong,** 618 So.2d 1278 (Miss. 1993), wherein the Supreme Court listed twelve factors to be considered in making alimony awards.

1. The parties' income and expenses: Appellant makes more money from his present occupation than Appellee, but he has substantially more expenses, including, but not limited to his business expenses. (Exhibit 12: Appellant's Financial Declaration). Appellant has agreed to take on all liability for all marital debts such as the deficiency judgment on the foreclosure of the marital home, the parties' tax lien, and the parties' Federal and State Tax Liabilities. Appellee has no liability for any of the marital debts whatsoever. (RC pg. 50). All she has is her living expenses and her personal debts as reflected on her Financial Statement. Appellee's monthly expenses on her Financial Statement were shown to be out of line, estimates, and excessive with many different figures being used for different expenses, such as her medical bills. (TR 94-100) The parties agreed that Appellant will continue to cover the minor child on health insurance and both parties will pay 50% of all non-covered expenses. (RC pg. 50). Appellee has no car note and she will have to pay for her own car insurance.

Appellant works full-time and Appellee works part-time at FedEx. (TR 24). There is no reason why Appellee should not be holding a full-time job. Appellee worked full-time prior to the marriage and during the first part of the marriage until the parties' son was born. (TR 15). She took off from work for a period of time and went back to work part-time at FedEx. (TR 17). She testified that she applied for several full-time positions at FedEx but did not get the jobs. She testified that the full-time jobs required a bachelor's degree or more experience job wise.

(TR 24). She testified that she applied for three (3) full-time jobs at Fed Ex, one at the Baptist Hospital in Desoto County, Mississippi, one at Oak Grove Elementary School and at some hotels being built. (TR 72, 73). She failed to get any of these jobs. No proof of employment applications supported her testimony. These were the only full-time jobs she applied for even though she was able to work full-time. She presented no justifiable reasons for her not being employed in a full-time job like she had before and during the marriage at Sunbeam Outdoor Products. (TR 15).

2. The parties' health and earning capacity: Both parties are in good health and this factor is even between the parties. Appellant's earning capacity has topped out because he is making more than he ever did during the marriage. Appellee has a higher earning capacity than the part-time work that she is doing today. She is working as a checker or sorter at Fed Ex, making over eleven ($11.00) dollars an hour. (TR 71). She works 30 hours per week. (TR74, 92). She worked full-time prior to the marriage and during the marriage and there is no reason she cannot work full-time now. (TR 48). She did not need a college degree in the past to work a full-time job. (TR 15, 44). But, now, on her third marriage, (TR 46) her plan is to go back to college and earn a degree. During this marriage, she attempted to go back to college and earned 9 hours of credit towards a business associate degree. (TR 76). She attended modeling school for a period of time during the marriage, but failed to follow through with that occupation. (TR 77, 78). She testified that she needs 64 hours to complete her degree, which will cost $80.00 per hour. (TR 27-29) (TR 38-39). She testified that FedEx will reimburse her for the cost of her college education if she passes the classes in the amount of $80.00 per hour, but will not pay for her books. (TR 76, 77). But she did not have the exact information on the reimbursement of college expenses and requirements of FedEx to pay such reimbursements. (TR 117). Appellant

testified that he would be willing to help her pay to go back to college, but does not want to pay for the tuition because FedEx will pay for that expense. (TR 255-256). Appellant has agreed to pay her $800.00 per month as child support which complies with the child support guidelines. She has no day care expenses and Appellant will take care of the child any time she needs him to as they have done since the separation of the parties.

3. The needs of both parties: Appellee's Financial Statement's expenses were proven inaccurate, out of line and estimates. She filed two (2) different Financial Statements with the Trial Court and attempted to change some of her figures for a third time at trial. (TR 92, 109-115). Her figure for groceries/food expense was in the amount of three-hundred eighty $380.00 dollars per month and included her daughter from a previous marriage. Appellant has no duty to support Appellee's daughter from the pervious marriage in any form or manner. (TR 94). Appellee estimated the parties' child's clothing expense. (TR 95, 96). She estimated the child's school expenses to be one-hundred fifteen ($115.00) dollars a month or one-thousand ($1,000.00) dollars over the child's nine (9) month school period. (TR 97). She listed fifty ($50.00) dollars a month for charitable contributions when she admitted she does not pay that amount to her church every month. (TR 98). She has no car note and no day care expense. Appellee should be able to meet all of her reasonable expenses, with the $800.00 per month child support paid by Appellant if she would find a full-time job.

4. The obligations and assets of both parties: As stated above, Appellee has no car note (TR 81-82) and no day care expenses that were proven at trial. By agreement, Appellant has assumed all liability for all marital debts of the parties. He purchased a house but has no equity in it. Purchasing a home is better than wasting your money on rent. There was no proof at trial

that Appellee's credit is too bad for her to purchase a home when she is paying $800.00 per month in rent.

By agreement, Appellee received all the assets of the marriage, including all the furniture, appliances, computer, and household items and tanning bed, free and clear of any debts and her jewelry and personal items. Appellant received only his tools, guns, pool table, ATV, deep freezer, motorcycle, clothes and personal items. He had to purchase new furniture, household furnishings, etc.

They both have the regular living expenses to pay.

5. Length of marriage: The parties were married for twelve (12) years. This is a middle range of marriage between ten and nineteen years. This is also Appellee's third marriage. In reviewing the cases heard on appeal in the middle range of length, alimony awards are less consistent. Rehabilitative or lump sum alimony awards were awarded in approximately forty percent of the cases. **Bell on Mississippi Family Law, Section 9.06[2][a]page 266.**

6. The presence of minor child in the home: By agreement, Appellee was awarded primary custody of the minor child, who was ten (10) years old and not of tender years. There was no proof in the record of any day care expenses, now or in the future. The child is a boy, who has a close relationship with his father. Appellant was awarded regular visitation and can care for him anytime that Appellant needs him to and will allow.

7. The parties' ages: At the time of the trial, Appellant was 44 years old and Appellee was 45 years old.

8. The parties' standard of living during the marriage and at the time support is determined: The marriage standard of living is a factor, not the actual measure of an award. Because of duplicating expenses when they live separate, most spouses will have at least a

slightly lower standard of living than during the marriage. The court determines what constitutes reasonable post-divorce expenses based on both the marriage standard of living and the funds available to the parties after the divorce. **Bridges v. McCraken,** 724 So.2d 1086, 1088 (Miss. Ct. App. 1998).

The court should look at the marriage as a whole during the entire twelve (12) years and not limit its review to the last few years when Appellant started a new occupation and began making more money in 2005. (TR 57 and Exhibits 15, 16, 17 & 18: TAX RETURNS). During the first few years of the marriage, both parties worked full-time and could barely meet their expenses. When their child was born, Appellee took off work and later went back to work part-time. They purchased a home in Eudora, which they gave back to the contractor. (TR 51-53). Their second house in Hernando was foreclosed on through the fault of both parties and their attorneys, who were representing the parties at that time. During the marriage, they acquired several tax liens and had Federal and State Income tax liabilities. (TR 55). Appellant provided used rebuilt cars to his wife and step-daughter during the marriage and the only new vehicle he purchased Appellee was repossessed. (TR 49-51). Appellee's daughter from her previous marriage lived with the parties for most of the marriage except for a short period of time when Appellee gave custody to the father and gave up child support. Eventually, the step-daughter moved back with the parties and Appellee never got the child support started back. (TR 47). Appellant supported his step-daughter for most of the marriage without much help from the father except for the child support until it was stopped. The parties clearly lived beyond their means. Reviewing the Income Tax Returns of the parties that were entered into evidence, the Court can clearly see that their marital income was lower in the beginning and middle of the marriage, than at the end, when Appellant's income began to increase in 2005.

9. Tax consequences of the spousal support order: Any award of alimony paid by Plaintiff can be deducted from his income tax, but this is not enough of a benefit to be a factor.

10. Fault or misconduct: Not a factor because this divorce was granted on the ground of irreconcilable differences.

11. Dissipation of assets by either party: The parties lost their equity in the marital home when it was foreclosed. Appellant made the payments but some of them were returned by his bank (TR121-124) and some by the mortgage company. (TR 68, 69). Appellee made no payments whatsoever on the house note because she stated that the mortgage company would not accept them until Appellant caught up on the payments. It looks like both parties were at fault along with their attorneys, who represented them at that time. Someone should have done something to save the home. The house was titled only in the Appellee's name so Appellant had no course of action available to him to save the house once the mortgage company refused the payments. Appellee could have filed a Chapter 13 Wage Earner and saved the house by having the Trustee set up a payment schedule for the mortgage and ordering the mortgage company to accept the payments. Instead the Appellee and her attorneys chose to do nothing, except to blame the Appellant for the foreclosure.

Appellant was ordered to pay Appellee $750.00 per week until the house was sold and then the support lowered to $400. (RC 12) (TR 85). Appellant paid her $9,750.00 in temporary support through the end of December, 2006, when he started paying her $400.00 per week. Most of the $9,750.00 was to be used to pay the house note, but Appellee never did make one payment. She could not explain what happened to the money during cross-examination except to say that she spent it on living expenses and attorney's fees. She paid $4,500.00 in attorney fees, but borrowed $1,200.00 from her mother to pay on the attorney's fees, as evidenced by her

Financial Statements and her testimony. Therefore, there is $6,450.00 not accounted for during the period through the end of December, 2006 that Appellee dissipated in some form or fashion. She did not pay it on the marital home and she did not spend all that money on her living expenses. Appellee did not pay rent until March, 2007, after she moved out of the marital home at the end of February. (TR 87-91).

Plaintiff testified that he cashed in the CD's to pay the temporary support and his bills. There was no proof or documents to prove otherwise. (TR 194-195). Appellant provided copies of all of his bank statements to the Appellee's attorney and was cross-examined on his deposits in detail during trial. Appellee also dissipated the marital assets by trying to go to college but quitting, going to modeling school and not following through with that occupation, having plastic surgery that was elective (TR 79-80), and helping Appellant spend money they did not have during the entire marriage.

12. Any other factor deemed to be just and equitable: Free use of a car is another factor to consider, along with no child care expenses proved now or in the future.

II. ERROR ON DUE DATE OF FIRST PAYMENT OF ALIMONY

The Trial Court, in her written opinion, ordered the Appellant to begin paying alimony on January 5, 2008, when the Final Decree of Divorce was signed by the Chancellor on January 14, 2008 and entered with the Court until January 18, 2008. (RC pg. 111). The usual practice for a Trial Court is to order something to be done within a certain time period after the Final Decree of Divorce is entered to allow the attorneys time to draft the Decree, approve it and present it to the Chancellor for entry. Also, the Final Decree of Divorce was not entered nunc pro tunc to January 5, 2008. (RC pg.62).

This is an important issue for the Appellant because he needs to know exactly what he owes the Appellee in child support and alimony. Prior to the Final Decree of Divorce being entered, the parties were under a Temporary Support Order that ordered the Appellant to pay $400.00 per week as support to the Appellee. (RC pg.22). The issue here is when the Final Decree of Divorce takes effect and takes the place of the Temporary Order. The Final Decree of Divorce ordered the Appellant to pay the Appellee $800.00 per month as child support and $1,800.00 per month as alimony. Appellant's position is that he should have paid $400.00 a week for the first three (3) weeks of January, 2008 through the 18th for a total of $1,200.00 in temporary support. After the 18th, he owed $800.00 per month child support and $1,800.00 a month in alimony that should be prorated for the rest of the month. If you divide the $800.00 per month by 31 days in January, he pays $25.81 a day in child support. Divide the $1,800.00 per month in alimony by 31 days and he pays $58.07 per day. After the 18th, there remain 13 days in the month. Multiply 13 by $25.81 and Appellant owed $335.53 in child support for the month of January, 2008. Multiply 13 by $58.07 and Appellant owed $754.91 in alimony for the month of January, 2008. If Appellant owes $1,200.00 in temporary support, $335.53 in child support and $754.91 in alimony for the month of January, 2008, that totals $2,290.44. That is a $309.56 difference in paying a total of $2600.00, as ordered by the Final Decree of Divorce. Also, this is an important issue for the Appellant because the Appellee has filed a Contempt action against him and a different Chancellor is presiding over the case and needs some guidance on what date to apply when calculating what Appellant owes to Appellee.

The clerk's entry of an order pursuant to **Rule 58 of the Mississippi Rule of Civil Procedure,** which states: A judgment shall be effective only when entered as provided in M.R.C.P. 79(a). A chancellor's opinion is not a final judgment, **Banks v. Banks, 511 So.2d**

933, 935 (Miss. 1987). Therefore, the Final Decree of Divorce was effective as of January 18, 2008 and Appellant could not be ordered to pay alimony on January 5, 2008 because that was in the Chancellor's Written Opinion.

III. AUTOMOBILE AWARD

Appellant has complied with the order of the Court in the Final Decree of Divorce concerning the award of an automobile for the Appellee. Appellant has provided to Appellee an automobile that complies with the Court's ruling. Therefore, Appellant withdraws this issue from his appeal.

IV. ATTORNEY'S FEES

Appellee did not comply with the factors established in **McKee v. McKee,** 418 So.2d 764, 767 (Miss. 1982), and therefore the Trial Court had **no** choice but to deny any request for attorney fees. The Supreme Court established the following factors for consideration in determining the proper amount of fees to be awarded:

1. The parties' relative financial ability:
2. The skill and standing of the attorney:
3. The novelty and difficulty of the questions:
4. The degree of responsibility involved in the management of the case:
5. Time and labor;
6. The usual and customary charge in the community;
7. Preclusion of other employment as a result of accepting the case.

An itemized statement should be submitted which was done by Appellee's attorney after Appellant objected to Appellee testifying about the **McKee** factors because she was not an attorney, and was not qualified to testify about factors 2 through 7. The objection of the

Appellant was sustained by the Court. (TR 40-43). Live testimony or sworn Affidavit from a licensed attorney who practices in this jurisdiction must be submitted along with the itemized statement of services rendered. If no evidence is presented to support an award, the award must be reversed. **Powell v. Powell,** 644 So.2d 269, 276 (Miss. 1994), **Carpenter v. Carpenter,** 519 So.2d 891 (Miss. 1988), and **Suess v. Suess,** 718 So.2d 1126, 1129-30 (Miss. Ct. App. 1998). There was no testimony from any attorney who stated that the hourly rate charged was the usual and customary charge in the community, no testimony as to the novelty and difficulty of the questions, no testimony as to time and labor, no testimony as to the skill and standing of the attorneys for the Appellee, or the preclusion of other employment as a result of accepting the case. As stated above, Appellant objected and his objection was sustained in reference to the attorney's fees issue.

Further, it was shown that Appellee had the ability to pay her attorney's fees because of the temporary support in the amount of $9,750.00 she received from Appellant through the end of December, 2006 and did not pay on the house note. She paid her attorneys four thousand ($4,500.00) five hundred dollars from the nine thousand seven ($9,750.00) hundred fifty dollars, paid to her by Appellant. (TR 87). Also, she testified while she was under direct testimony that she was asking the Court to order her husband to pay the remaining attorney's fees that she owed to her attorney and not the entire bill. (TR 43). If the Trial Court is allowed to take judicial notice of the factors required to prove attorney's fees, the Trial Court erred by awarding Appellee fifteen thousand eight hundred ($15,803.39) three dollars and thirty nine cents in attorney's fees. Appellee requested that she be awarded only eleven thousand three ($11,303.39) hundred three dollars and thirty nine cents because she paid four thousand ($4,500.00) five hundred dollars. (Exhibit "2").

The Chancellor abused her discretion by taking judicial notice of the **McKee** sanctions (RC pg. 111) and there is no case law that allows a Chancellor to take judicial notice prove attorney's fees, when an attorney does not comply with the requirements required by this Supreme Court.

Appellant was never held in contempt by any Order from any Chancellor in this case. If an Appellee is not held in contempt, fees should not be awarded. **Hensarling v. Hensarling,** 824 So.2d 583, 593 (Miss. 2002). By the time of the trial, Appellant had paid all of his temporary support payments current and Appellee was paid in full. Therefore, the attorney's fee award should be reversed.

CONCLUSION

No award of alimony should have been made by the Trial Court in this case based upon the totality of the circumstances of the marriage and considering the pertinent factors set out in **Armstrong**. The alimony award should be reversed.

The entry of the Final Decree of Divorce was on January 18, 2008 and that is the date it is effective. The Chancellor's Written Opinion is not a judgment and her order to start paying alimony on January 5, 2008 was improper and should not be enforced. Appellant's alimony and child support obligation should begin on January 18, 2008 and the amounts owed should be prorated according to the days left in the month of January because Appellant was ordered to pay Temporary Support until January 18, 2008.

Appellant has complied with the automobile provision of the Final Decree of Divorce by providing an appropriate automobile to the Appellee. Therefore, Appellant withdraws this issue from his appeal.

No attorney's fees should have been awarded because the Appellee did not comply with the **McKee** factors required by the Supreme Court to prove the attorney's fees requested. The Chancellor should not be allowed to take judicial notice of the **McKee** factors when they are not proven at trial. The Court further erred in awarding more attorneys' fees than Appellee requested. Appellant was never held in contempt by any Order in this cause. Therefore, the attorney's fees award should be reversed.

CERTIFICATE OF SERVICE

I, William B. Seale, Attorney for the Appellant in the above styled and referenced cause, do hereby certify that I have this day forwarded, via United States mail, postage pre-paid, a true and correct copy of the Appellant's Brief to William P. Myers and Amy Holliman Brown, Attorneys for Appellee, at P.O. Box 876, Hernando, Mississippi 38632, this the 6th day of November, 2008.

William B. Seale

CERTIFICATE OF SERVICE

I, William B. Seale, Attorney for the Appellant in the above styled and referenced cause, do hereby certify that I have this day forwarded, via United States mail, postage pre-paid, a true and correct copy of the Appellant's Brief to William P. Myers and Amy Holliman Brown, Attorneys for Appellee, at P.O. Box 876, Hernando, Mississippi 38632 and the Honorable Vicki Cobb, Chancery Court Judge, 245 Eureka St., P.O. Box 1104, Batesville, MS 38606. This the 7th day of November, 2008.

William B. Seale