CERTIFICATE OF INTERESTED PERSONS

Docket No. 2008-TS-00712

Darian Dye, Appellant

v.

Frances Dye, Appellee.

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

- Darian Dye, Appellant
- Frances Dye, Appellee
- Chancellor Talmadge D. Littlejohn
- Will R. Ford, Attorney for Appellee
- William L. Griffin, Jr., Attorney for Appellee
- R. Shane McLaughlin, Attorney for Appellant
- Nicole H. McLaughlin, Attorney for Appellant

Will R. Ford
Attorney for Appellee

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STATEMENT OF THE CASE[1]

On October 7, 2005 Frances Dye (hereinafter referred to as "Frances") began these proceedings by filing a Motion for Emergency Custody and Other Relief and a Motion for Temporary Relief against Darian Dye (hereinafter referred to as "Darian") (R.9). She subsequently filed a Complaint for Divorce on November 1, 2005 (R.19). A Temporary Emergency Order was entered on October 7, 2005 giving Frances custody of the minor children (R.9, 15).

The parties were married June 6, 1995 and separated October 5, 2005. The parties had three children, Justin Blane Dye, born January 30, 1990; Chastity Suzanne Dye, born June 2, 1992; and Anna Grace Dye, born July 22, 1998 (R.19). Frances requested in her Complaint that she be given custody of the minor children and that Darian have restricted/supervised visitation. Frances also requested that Darian maintain a health insurance policy on her and the children and an equitable division of all assets and liabilities (R.20). Darian answered and filed a Counter-Claim on November 10, 2005. On November 22, 2005, the Chancellor modified the Temporary Emergency Order and enjoined Darian from any telephonic or electronic contact with Frances or the minor children and appointed Stephen Bailey as *guardian ad litem* of the minor children (R.47, 59). Although Darian filed a Counter-Claim requesting temporary and permanent custody of the minor children, he did not file any request for visitation with the minor

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[1] All references to the relevant records, trial transcripts, record excerpts and exhibits are referenced to herein as follows: "R" is Court Record; "T" is Transcript; "R.E." is Appellants Record Excerpts and "E" is exhibits.

children after the November 22, 2005 Order until July 18, 2007 (R.111). No hearing on his request for temporary custody was held. After Stephen Bailey was appointed the *guardian ad litem* on December 24, 2005 (R.59), there is no reference of any court activity until July 12, 2006.

On July 12, 2006, the parties withdrew their fault-based grounds and consented to a divorce on the ground of irreconcilable differences and submitted certain issues to the court for determination (R.87). The parties agreed that Frances should have full custody of the minor children and Darian would pay Frances twenty-two percent (22%) of his adjusted gross income as child support. He would provide health insurance for the minor children and each party would pay one-half of any medical, dental, drug and vision expenses not paid by insurance and, it was agreed that visitation would be held in abeyance until further Order of the court.

On January 17, 2007, Frances filed a Motion for Emergency Relief stating that she had been on Darian's group health insurance policy available through his employer, and that on or about January 1, 2007, Darian canceled her medical/health insurance coverage (R.97). Frances' health problems were noted on January 23, 2007 in a letter from Dr. Phil Jones (R.104, E.1).

On February 2, 2007, an agreed interim Order was entered that Darian would immediately take all action to reinstate Frances on his group health insurance policy through his employer retroactive to January 1, 2007. They also agreed that Darian would take possession of the TEC Service machinery, TEC Service tools and TEC Service inventory located at the marital home (R.106).

At the February 1, 2007 hearing, Frances' medical problems were discussed and a letter from Dr. Phil Jones was received into evidence (E.1, T.124). Testimony was elicited from Johnnie Long, of Horizon Sales, Frances' employer for the past 14 years. Mr. Long testified that Frances would work when she was sick and should be in the emergency room, and would rest on a pallet in the office in a back room on numerous occasions (T.130). Frances had a medical condition that was not being treated by medication as she could not get all of her medication because her insurance had been canceled (T.131). She takes medication, her drawer looks like a pharmacy with the medication she takes to function during the day (T.131).

On June 18, 2007, Darian filed a motion to hear the visitation issues (R.111). The *guardian ad litem* filed his preliminary Report and Recommendation on Visitation on August 23, 2007. Despite the allegations by Darian that he has been alienated from the child by Frances' false charges in this matter, the *guardian ad litem* found:

> I initially met with Anna Grace to discuss the idea of visiting with her father on August 1, 2007. Anna Grace seemed indifferent and relatively unconcerned about visiting with her father.... Anna Grace knew nothing of the alleged sexual abuse of her sister at that time... I consider it remarkable that Anna Grace has been spared from the tremendous turmoil that the family had faced during the time when criminal charges were pending against Darian. I believe that Frances and Anna Grace's older siblings did an excellent job of sheltering and protecting Anna Grace during this difficult time for the family (R.122).

On August 14, 2007, the *guardian ad litem* met with Anna Grace and with Dr. Trudi Porter present and, upon the advice of Dr. Louis Masur, discussed criminal charges of improperly touching Chastity in Chastity's private places. After the discussion, the *guardian ad litem* noted that:

> Anna Grace discussed school and multiple other topics unrelated to her visitation with her father. I expected numerous questions from Anna Grace about the criminal charges against her father, but she had no questions for me. She stated that she did not want to visit her father but did not seem to feel strongly about the issue (T.123).

The *guardian ad litem* also interviewed Chastity about these allegations along with her former counselor and stated:

> Although one can never be certain about these type of sexual abuse allegations, my gut feeling after my initial investigation was that something inappropriate happened between Chastity and Darian (R.125).

A hearing was held on August 1, 2007 and Frances was the only witness (T.147).

On November 14, 2007, Stephen Bailey, the *guardian ad litem*, testified that he watched forensic interviews of the tape of Chastity Dye where she detailed the allegations about the sexual abuse. He questioned Chastity pretty thoroughly. He spoke with Chastity's counselor, Dr. Trudi Porter, who is a psychologist in Tupelo (T.352). The forensic interview was taped in November, 2005 (T.354). There was no indication that Anna Grace had any fear of Darian in November, 2005 (T.354). The *guardian ad litem* understood that Darian was not seeking visitation of Justin and Chastity (R.356), and also testified that he did not believe at all that Anna was told by her mother or brother or sister about the pending criminal charges (T.363). He felt that they did a good job of protecting her in a very, very difficult situation (T.364). He has no reason to think that Frances was influencing her negatively with regard to Darian in any way (T.364). He had interviewed Chastity and spoke to the child's counselor, Dr. Porter, who had counseled the child at length and based upon all that information, his "gut reaction was that something inappropriate had happened there. That's how I felt about it" (T.366, 373).

Frances' 8.05 Financial Statement was offered as Exhibit 1 and Darian's as Exhibit 2 (P.4). Darian had filed an earlier 8.05 on November 6, 2005 (R.38, P.46). Darian testified at the hearing on July 12, 2006 that he had himself, Frances and all the kids covered under health insurance and that the cost of insurance on himself was free (T.6). During the marriage, he was employed at Day-Brite beginning in 1987 until June, 2000 (T.17). Darian's retirement account was $68,803.00. He also had a retirement account at the University of Mississippi which employment started in February or March, 2002 (T.17). Although he claimed loans to his parents, he admitted that he had no evidence or writing of any promissory note or deed of trust ever being executed or any repayments made on any alleged loans (T.22). He testified that the TEC Services his sole source of income from 2000 until early 2002, was dismal to say the least, then:

> ...9/11 hit and we went through a lot of hard times as we couldn't make payments on equipment or whatever invoices were, I had to borrow money, payroll, etc. There was a substantial amount of debt involved in that kind of stuff. We had stuff such as vehicles, you know, major vehicle breakdown type stuff and we borrowed money (T.21).

He also admitted that TEC Services was slow in the winter time, and he was not making any money so he decided to change jobs. He borrowed money from retirement just to keep TEC afloat (T.60,61). He admitted that he sold the S-10 and the Jimmy to his father for $5,000.00 to pay attorney fees (T.35). He got $30,000.00 out of his Day-Brite retirement in 2005 to keep TEC afloat (R.17). He started working part-time in February or March, 2002 for the University. He left Day-Brite in June, 2000 (R.17, 60, 61). He has a Citibank credit card with $11,000.00 solely in his name since October, 2005 (T.23), and he admitted he should pay it (T.97). His MBNA debt of $10,500.00 was a cash

advance on a credit card for legal bills (T.36). He did that in May, 2006 (T.24). He admitted that his November 16, 2005 8.05 showed Bank of America $3,000.00 and that he was paying $500.00 per month, and that he had used it since and it still had a balance of $3,000.00. He admitted that this account with Bank of America was basically a wash (T.26). He also testified that he used the $9,000.00 proceeds from the cash value of the Prudential life insurance policy to pay lawyers (T.36, 84). Darian admitted that the two tractors claimed by Frances to be owned by the parties were on his homeowner's policy and insured at $13,500.00 each (T.53, 54). That there was $3,917.00 cash in the house, but he denied taking it when he left (T.55). He also admitted that when the parties separated, there was $5,850.00 in the joint bank account and he took it (T.55,56, 87). He admitted that he pre-booked propane and paid $1,300.00 for that (T.56).

Darian further admitted that he owned two trailers which were currently at his brother's (T.59). He agreed with Frances on the $93,000.00 assessment of the 31 acres (T.63). He valued TEC Services, including machinery, tools and inventory for $24,500.00 (T.67,68). He has Emerson stock valued at $1,153.00. He last saw Frances' $1,000.00 tennis bracelet in October, 2005 (T.99). He had paid $1,200.00 in child support payments since October, 2005 (T.102, 114).

Darian conceded in his testimony that when it comes to remembering the financial aspects of their marriage, Frances was better at remembering than he was since she had the records and paid most of the bills (R.37,38). He testified that he had proposed to the court this his retirement should be equally divided (T.75,76). His proposal of the personal marital property was that he would receive 48.5% and Frances would receive

51.5% (P.81).

Frances testified on August 1, 2007 (T.152-233). She has $200.00 per month out-of-pocket expenses just for her medical (T.155). She cashed in her IRA of $25,000.00 for living expenses (T.157). She testified that all funds from Don Dye were gifts and that there were no deeds of trust filed or loans signed. The house and two acres was refinanced in February, 2002 (T.159,160). Since the separation of 2005, she has made all house payments, insurance and taxes (T.165). These payments of $801.00 per month on the house totaled $20,025.00. TEC Services, machines, tools and inventory located in the building behind the marital home, she values at $35,000. Frances testified that a few months before they separated, they were going through their liabilities and assets and discussing closing the business of TEC Services and that Darian admitted that the business was worth $35,000.00 (T.194). She also testified that they purchased the GMC Jimmy for Justin and, when she came back to the home after the emergency order was entered, the car was gone (T.167). She also testified that they had two tractors, a bush hog and a finishing mower that she valued at $30,000.00. That the tractors stay on their property. That they were insured on their homeowner's policy and kept on the property (T.168). Darian also took $3,917.00 in cash out of the marital home and $5,850.00 out of the checking account (T.168) and the $1,300.00 propane deposit (T.169). She had a $1,000.00 tennis bracelet at the house when she left but after they separated and it wasn't there when she returned (T.175). She also testified that in 2002 when they refinanced that Darian's income was $775.00 per month (T.181). Darian wasn't generating income at TEC: he was just generating debt (T.181). To her knowledge, nothing has been stolen or

damaged from the TEC shop. They paid over $20,000.00 for one set of equipment for TEC (T.195). They bought the house and 33 acres in 1996 and refinanced in 2002. "There was enough equity in the house and two acres that we were able to pull out the 31 acres where we would have no encumbrance" (T.184). A portion of her $25,000.00 IRA was generated during the marriage (T.189). She valued the S-10 pickup at $5,000.00, as it had a new motor and new tires (T.192). Darian's state retirement is $12,000.00 (T.197). The Prudential cash value withdrawn by Darian was $8,000.00 (T.197). The 1995 Jimmy has a value of $3,325.00 (T.198). She testified that Don Dye & Sons was owned equally by his father, brother and Darian (T.200). That they had four or five Ford Tractors, a John Deere and a Case (T.201). She also testified that the two tractors involved herein, one stayed hooked up to the bush hog and one hooked to the finishing mower and they were never put out where the other tractors were. They were always kept behind Darian's shop (T.201, 232). Darian took $5,850.00 out of the joint checking account within 24 hours after she left. She testified that she was primarily responsible for paying bills in the marriage which included $228.00 per month for support of Darian's other child (T.222).

Darian admits that "at the conclusion of the proof in this case the Chancellor undertook a thorough analysis of property classification and division" (R.E.4 and Appellant's Brief, p.5). That in the final analysis, the chancellor awarded Frances marital property valued at $183,567.00 and awarded to Darian marital property valued at $182,451.95 (R.E.4). Darian appealed the chancellor's classification and division of property.

SUMMARY OF THE ARGUMENT

The chancellor carefully considered all the facts and evidence in this case and his findings were not an abuse of discretion or manifest error and should be affirmed.

ARGUMENT

THE CHANCELLOR DID NOT ABUSE HIS DISCRETION, NOR WAS HE MANIFESTLY WRONG OR IN ERROR BY CONSIDERING DARIAN'S DAY-BRITE RETIREMENT IN THE EQUITABLE DISTRIBUTION OF ASSETS AND AWARDING COBRA HEALTH INSURANCE FOR FRANCES.

The scope of review in domestic relations matters is limited and the Chancellor's findings will not be disturbed when supported by substantial evidence, unless the chancellor abuses discretion, is manifestly wrong, clearly erroneous or applied the wrong legal standards. In reviewing domestic relations cases of this matter, the Appellate Court is not called upon or permitted to substitute its collective judgment for that of the chancellor. The Appellate Court's conclusion that it might have decided a domestic relations matter differently, standing alone is not a basis to disturb the results. Saliba v. Saliba, 753 So.2d 1095 (Miss. 2000); Sarver v. Sarver, 687 So.2d 749 (Miss. 1997); In Re: E.C.P, 918 So.2d 809 (Miss. App. 2005).

As stated in Reddell v. Reddell, 696 So.2d 287 (Miss. 1997), the Court clearly stated that there is a limited standard of review on appeals from Chancery Court and said:

> If substantial credible evidence support a chancellor's decision, it will be affirmed...the Court will not interfere with the findings of the chancellor unless the chancellor was manifestly wrong, clearly erroneous or wrong legal standards were applied. At p. 288

Accord: Carrow v. Carrow, 642 So.2d 901 (Miss. 1994); Neville v. Neville, 734 So.2d 352 (Miss. App. 1999).

Darian concedes that the Chancellor "undertook a thorough analysis of property classification and division (P.5 Appellant's Brief; T.409) as well as admitting that a spouse's wasteful disposition of marital property can be considered against a party in the chancellor's equitable division. There are numerous examples of Darian's disposition of marital property – he cashed out his life insurance policy for $9,000.00 (T.84); he sold the S-10 and Jimmy (T.35,157,191,192); kept the $1,300.00 propane deposit (T.169,204); took $5,850.00 out of the joint checking account (T.87,203); failed to disclose the ownership of Emerson stock (T.92); was in the dwelling when the $1,000.00 tennis bracelet was last seen (T.99); canceled Frances' health insurance (R.97); sold the People's Bank shares (T.36); took $3,917.00 in cash from the dwelling (T.168); and other facts clearly showing dissipation of assets.

In Ferguson v. Ferguson, 639 So.2d 921, 925 (Miss. 1994), the Supreme Court held that the chancellor should consider the degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise. Frances paid Darian's child support for another child in the amount of $228.00 per month from the joint account when he only made $775.00 per month (T.181). Ferguson also tells the chancellor that he should consider "any other factor in which equity should be considered." At p.925.

The Appellant has cited no cases where the court has held that the use of assets for attorneys fees are ordinary and reasonable living expenses. This Court has even held that the attempted dissipation of relevant funds can be considered. Shoffner v. Shoffner, 909 So.2d 1245 (Miss. App. 2005). In Lauro v. Lauro, 924 So.2d 584 (Miss. App. 2006) the

Court found the husband dissipated assets by liquidating his IRA and selling a vehicle. In Coggin v. Coggin, 837 So.2d 772 (Miss. App. 2003), where the husband left the marital dwelling, withdrew the cash value on insurance policies, cashed in state retirement and the wife used the cash value of her retirement to support the family, and the chancellor awarded the wife 80% of the marital estate and the husband 20%, the Court stated:

> Since the chancellor considered all relevant Ferguson factors, we cannot say that his judgment concerning the property division was manifestly wrong or clearly erroneous. Therefore, we affirm this part of the judgment. At p. 775.

Childs v. Childs, 806 So.2d 273 (Miss. App. 2000) Mr. Childs proved dissipation of a considerable amount of money and family assets. The Court stated:

> Mrs. Childs has argued that the family ultimately benefitted from these expenditures, while Mr. Childs argues the contrary. Such a conflict in testimony represents a classic question of credibility, which is to be resolved by the chancellor.... The parties offered testimony from which the chancellor might have accepted either position. However, the chancellor found that testimony offered on behalf of Mr. Childs to be more credible. The law is well settled that this Court is bound by the chancellor's findings of credibility. 806 So.2d at p.275.

In Rush v. Rush, 914 So.2d 322 (Miss. App. 2005), the Court awarded certain real property to the wife in part "because Sam had acted in bad faith by trying to sell the property before Mary could receive an interest in it." (At p.326).

Darian claims that the use and dissipation of the retirement account, the cashing in of his insurance policy, the sale of the vehicles and liquidation of other assets for attorneys fees should not be taken into account due to his acquittal. Like O.J. Simpson, he is woefully in error. It is well settled law that a judgment of acquittal in a criminal prosecution, where the burden of proof is substantially higher than in a civil suit, is not conclusive in a civil suit where the same allegations may have some relevance. Chatman

v. Modern Builders, 227 Miss. 339, 86 So.2d 350 (Miss.1956). In Chatman, the Court stated:

> Of course the verdict of the jury in acquitting Booth of the charge of murder or manslaughter is not controlling on the issue of whether the employee Chatman, was engaged in a willful attempt to injure or kill another at the time he received his knife wound, since in the trial of the criminal case the law required that the proof establish guilt beyond every reasonable doubt, whereas on the hearing before the Attorney Referee the issue was to be determined by the preponderance of the evidence. At p.352.

In Kelly v. King, 196 So.2d 525 (Miss.1967), the Court found that the action of the trial judge including the confession in the criminal case would not be conclusive of this question in a civil case.

In Young v. Davis, 164 So. 586, 174 Miss. 435 (Miss.1936), the Court held that the admission of the verdict of the jury that the Appellee was tried and acquitted of the charge was error. The Court stated:

> The parties in the two cases were different. The burden of proof was different. In the criminal case, the state was required to prove guilt beyond a reasonable doubt. In the civil action, the appellee was required to prove his case only by a preponderance of the evidence. The appellants had no opportunity to be heard in the criminal case, they were not parties to it. At p.586.

The chancellor made no finding of fact as to whether the charges of sexual impropriety were false in the case *sub judice*.

In Gregory v. Gregory, 881 So.2d 840 (Miss. App. 2004) where Mr. Gregory was arrested and charged with sexual abuse. Mrs. Gregory made numerous allegations of sexual abuse for a number of years and caused the child to be subjected to numerous medical examinations. The Appeals Court agreed with the chancellor's conclusion that the child had not been sexually abused but held:

> There was insufficient evidence, direct or circumstantial, that Mrs. Gregory made knowingly false claims of abuse. Further, we hold as a matter of law that honestly made claims even when later to have been erroneous, do not constitute habitual and cruel inhuman treatment. Though Mrs. Gregory may have willingly caused trouble for her husband which led to his arrest, the obligation of a parent to confront reasonably suspected abuse cannot become cruel or inhuman treatment. At p.843.

The Court upheld the chancellor's finding that no abuse of the child had occurred, but denied the award of attorneys fees to Mr. Gregory basing it on the fact that the charges were not shown, to use the statutory language, to have been "without foundation," and concluded:

> The chancellor never made a finding that Mrs. Gregory had fabricated the charges and had in some manner convinced the child to make the statements that he did. That may be a factor in addressing the significance of the contempt. What might almost be a factor is that Mrs. Gregory filed a motion within days of allegedly hearing her son make this claim, seeking an end to the unsupervised visitation. By seeking the immediate assistance of the court, Mrs. Gregory was pursuing what remedy was available... At p.844.

Frances did exactly what Mrs. Gregory did. She filed for emergency relief as soon as she learned of the charges (R.9). She filed for divorce and left the premises until an emergency order could be entered (R.19). The proof is clear that the child never knew about the criminal charges until told by her *guardian ad litem* in August, 2007. That Anna Grace had no fear of her father, is highly intelligent, and is "nine going on twenty five" (T.302).

The Appellant also claims that the chancellor abused his discretion by ordering him to provide Frances COBRA health insurance coverage for 36 months following the divorce. He cites no authority for this argument. The Court is not required to address an issue or argument which is not supported by authorities, Jones v. Jones, 878 So.2d 1061

(Miss. App. 2004); Hughes v. Hughes, 809 So.2d 742 (Miss. App. 2002).

In Pope v. Pope, 803 So.2d 499 (Miss. App. 2002), the Court affirmed the judgment of the trial court ordering the husband to pay COBRA for 36 months or the equivalent premium for 36 months. Accord: Driste v. Driste, 738 So.2d 763 (Miss. App. 1998).

In Tillman v. Tillman, 791 So.2d 285 (Miss. App. 2001), the chancery court ordered that once the ex-wife's COBRA health insurance expired, her ex-husband's obligation would be to pay the amount that the had previously been paying for COBRA coverage plus twenty-five percent of non-covered medical expenses. The Court of Appeals affirmed the chancellor and stated:

> Divorce, including the power of the chancellor to make provision for support and maintenance of divorcing spouses, is a creature of statute... Any financial provisions relating to the dissolution of a marriage, in order to be legally binding on the parties, must have as their basis some foundation in statute. In Mississippi, the chancellor's authority in this case is derived from Section 93-5-23 of the Mississippi Code which allows the chancellor, incident to granting a divorce, to "make all orders... touching the maintenance and alimony of the wife..." There appears to be no problem with the chancellor's order that Mr. Tillman continue to provide medical insurance for Mrs. Tillman since prior decisions of the Mississippi Supreme Court and this Court have condoned such requirements in varying forms... At p.288.

All of Darian's assignments of error are in essence, factual disputes and no more than a request for a "second bite of the apple," contrary to the controlling case law, stated in Bower v. Bower, 758 So.2d 405 (Miss. 2000):

> this Court does not reevaluate the evidence, retest the credibility of witnesses or otherwise act as a second fact-finder...if there is substantial evidence in the record to support the Chancellor's finding of fact, no matter what contrary evidence there may also be, we will uphold the Chancellor. At p. 412

The Court's rationale in Bower, supra, is stated in Howard v. Fulcher, 806 So.2d 328

(Miss. App. 2002):

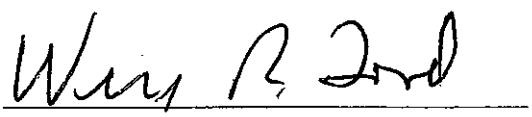
> The chancellor, by his presence in the courtroom, is best equipped to listen to the witnesses, observe their demeanor, and determine the credibility of the witnesses and what weight out to be ascribed to the evidence given by those witnesses...It is necessarily the case that, when conflicting testimony on the same issue is presented, the chancellor sitting as trier of fact must determine which version he finds more credible. At p. 332.

It is incumbent on the parties, not the chancellor to prepare evidence touching all matters to be tried. Dunaway v. Dunaway, 749 So.2d 112 (Miss. App. 1999). The goal of the chancellor is to do equity. Smith v. Smith, 994 So.2d 882 (Miss. App. 2008). There is no requirement the property division be equal. Jones v. Jones, 994 So.2d 706 (Miss. App. 2002). The chancellor considered all the relevant issues and the testimony of the witnesses and his decision should be affirmed.

CONCLUSION

For the foregoing reasons, Appellee Frances Dye, requests this Court to affirm the Chancellor's findings and judgment against the Appellant, Darian Dye.

RESPECTFULLY SUBMITTED,

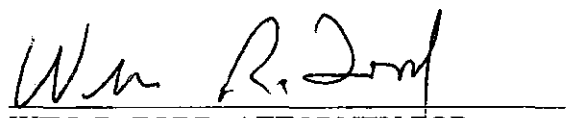


WILL R. FORD
POST OFFICE BOX 890
121 EAST BANKHEAD STREET
NEW ALBANY, MISSISSIPPI 38652
Telephone: (662) 534-9573
Facsimile: (662) 534-9574
[redacted]

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of March, 2009, served true and accurate copies of the foregoing Brief of the Appellee upon Chancellor Talmadge D. Littlejohn, Post Office Box 869, New Albany, Mississippi 38652; counsel of record for the Appellant, R. Shane McLaughlin, Esquire and Nicole H. McLaughlin, Esquire at Post Office Box 200, Tupelo, Mississippi 38802 by depositing same in the United States mail, first-class postage prepaid, addressed as indicated.



WILL R. FORD, ATTORNEY FOR APPELLEE

CERTIFICATE OF MAILING

I, Janet Hall Musgrove do hereby certify that I have this date, the 6th day of March, 2009, actually mailed the Brief of the Appellee by depositing same, postage prepaid, with the United States Postal Service.

JANET HALL MUSGROVE