IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-TS-01783

RHONDA YEAGER — Appellant

v.

DAVID KITTRELL — Appellee

Appealed from the Wayne County Chancery Court, Mississippi
Trial Court Case No. 2003-298
The Honorable Franklin C. McKenzie, Jr., Presiding

BRIEF OF APPELLEE

APPELLEE

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ORAL ARGUMENT NOT REQUESTED

IN THE SUPREME COURT OF MISSISSIPPI

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RHONDA YEAGER Appellant

v.

DAVID KITTRELL Appellee

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss.R.App.P. 28, Appellee submits the following list of names and addresses of all parties to the Trial Court's Final Judgment Denying Motion to Reconsider Transfer of Jurisdiction.

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SO CERTIFIED, this 1st day of June, 2009.

David Kittrell, Pro Se

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STATEMENT OF ISSUES

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3. WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION TO RECONSIDER RELEASING JURISDICTION

STATEMENT OF THE CASE

This appeal arises as a result of the Wayne County Chancery Court's ("Trial Court") Final Judgment Denying Motion to Reconsider Order Releasing Jurisdiction on October 22, 2008. (R.E. 18; C.R. 645) The Order Releasing Jurisdiction had been entered on August 3, 2007 (R.E. 11; C.R. 621-622), releasing the jurisdiction in a child custody proceeding to the court of a more convenient forum.

Appellee David Kittrell ("David")filed a Motion to Transfer Jurisdiction on February 5, 2007 (R.E. 9; C.R. 612 - 613) and noticed the Motion for hearing which was held on March 7, 2007.(R.E. 11; C.R. 621). Appellant Rhonda Yeager ("Rhonda") filed no response or objection to the Motion. (R.E. 1; C.R. 4-A). A hearing was held wherein Rhonda was given the opportunity to present evidence and authority. It was not until after the Trial Court entered its Order Releasing Jurisdiction that Rhonda filed any objection to the Motion to Transfer Jurisdiction when she filed a Motion to Reconsider Order Releasing Jurisdiction ("Motion to Reconsider") on August 13, 2007, (R.E. 12; C.R. 623 - 625) reciting constitutional issues.

In the meantime, on March 27, 2007, David filed a Petition for Jurisdiction in Navarro County, Texas (Appellant's Brief, p.5). Rhonda did not object to the jurisdiction in Texas. (Appellant's Brief, page 5).

Further, in the mean time, the Trial Court Chancellor communicated with the 13th District Court of Texas Judge ("Texas Court"). The Trial Court and the Texas Court agreed that the Texas Court is the more convenient forum.(R.E. 11; C.R. 621-622)

The Texas Court, upon receiving the Order Releasing Jurisdiction from the Mississippi Trial Court, after notice and hearing, entered an Order establishing jurisdiction and modifying visitation on September 10, 2007. (R.E. 14; C.R. 631-637).

It was not until February 12, 2008, **six months** after the Order Releasing Jurisdiction was signed, before Rhonda even set her Motion to Reconsider for hearing . (R.E. 15; C.R. 638)

On April 22, 2008, **eight months** after the Order Releasing Jurisdiction was signed, a hearing was held on Rhonda's Motion to Reconsider wherein the Motion was denied. (R.E. 17; R.R. 126-132)

On October 23, 2008, **fourteen months** after the Order Releasing Jurisdiction was signed Rhonda filed her Notice of Appeal on the Final Judgment Denying Motion to Reconsider Motion to Release Jurisdiction. (R.E. 19; C.R. 644)

On April 3, 2009, Rhonda filed her Brief which did not even mention "constitutional" issues, but was based on an issue of the application of the UCCJEA which was not raised in her Motion to Reconsider, such issue never having been raised before the Trial Court.

STATEMENT OF FACTS

A. Procedural History

1. David believes that a complete examination of the Record is necessary and will clarify many issues by laying the time line. When the Record is examined, it will be clear and no one will be "left to guess what the [Trial]Court based its decision upon" as Rhonda alleges. The Record was indexed very well by the Court Reporter. (R.E 1; C.R. 2-4-A)

2. "Competing custody interests", as alleged by Rhonda, does not describe this case, and this case certainly would be considered extraordinary to the "good chancery judges." Law enforcement agencies and child protective services have been involved in this case in the past and in the present.

The facts are that the State of Mississippi removed the children from the Physical Custody of Rhonda on May 30, 2004, and placed them under a Protective Plan. (R.E. 4; C.R. Vol 1 of Exhibits, Ex 5) The Trial Court subsequently granted temporary custody of Rheygen Kittrell ("Rheygen") and Trevor Kittrell ("Trevor"), (collectively "the Children") to David on July 28, 2004. (R.E. 2; C.R. 511-512) At that time, five years ago, David was a resident of Texas and the Children went to live with him. After a trial on the merits, on August 4, 2005, the Trial Court granted David permanent physical and legal custody of the Children. (R.E. 7; C.R. 557-558)

3. The Children have been living in Texas with David and have been attending

schools in Texas for five years[1]

4. Prior to the 2003 transfer of jurisdiction from Greene County to the Trial Court, an observer might consider the actions of the parties "agonizing back and forth between competing custody interests" as Rhonda claims. However, the Trial Court saw it differently.

In the Opinion of the Court re the Trial on the Merits, August 4, 2005 (R.R. 113-125; R.E. 6)

> "Based on what I see in these court files and the testimony, it appears that the vast, vast, vast majority of the problems can be laid squarely on Rhonda's shoulders for refusing David the court-ordered visitation that he was entitled to receive. (R.R. 114)
>
> "...I have heard no testimony one way or the other about moral fitness as far as David is concerned. I feel sure that if there were something there that was adverse to him I would have heard about it." (R.R. 123)
>
> "...The files reflect that they have been back in court multiple times since they were divorced ... and that it's all been about visitation issues and visitation not occurring. Judge Barlow at one time issued an order directing that the sheriff of Green County was authorized and directed to go and physically bring the children to the jail in the event Rhonda failed to appear for the exchange of visitation. ... The Sheriff of Green County in fact had to do that on multiple occasions, because Rhonda would not be there. On at least one occasion, he didn't get the children until 2:00 in the morning...Rhonda was held in contempt by Judge Barlow. She was given a jail sentence of 30 days in jail by Judge Barlow for willful contempt of Court. That sentence was suspended on good behavior, which apparently did not happen... The only thing I would have done different, is when I told the Sheriff to go and get the children, I would have said bring Rhonda with you and lock her up in the Green County Jail while the father has his visitation. That's the only thing I would have done different. Maybe that would have stopped some of this foolishness." (R.R. 113)

5. Rhonda stated correctly that "On December 19, 2005, the Chancery Court of

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[1] Not 10 months as Rhonda stated in her brief (Appellant Brief p. 14)

Wayne County, Mississippi entered its 'first' Final Order". There were motions filed, and the Final Order was entered on May 8, 2006. From that point the Record and Rhonda's statements differ:

First, there was no appeal pending when David filed his Motion to Transfer Jurisdiction on February 5, 2007. The Supreme Court entered its Order on January 19, 2007, which stated "The Motion to Reconsider Dismissal of Appeal with Prejudice is not well taken and should be denied" signed by Chief Justice James W. Smith, Jr.[2] (R.E. 8; C.R. 608); and

Secondly, it was over a year after Texas established jurisdiction that a bench warrant was issued.[3] (R.E. 20; C.R. 658, 659)

There were many other misleading or misstatements in Rhonda's Brief. Therefore, David is presenting the following Time Line, as set out in the Record, for reference and to clarify the misstatements made by Rhonda:

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[2] Not as Rhonda stated in her Brief "on January 19, 2007, this Court granted another opening for time to appeal." (Appellant Brief, p.3)

[3] Not as Rhonda stated in her Brief "This transfer as applied immediately led to Appellant being cited for Contempt in Texas with a Bench Warrant" (Appellant Brief, p.1)

Time Line

January 19, 1995 - Rheygen Born[4] (C.R. 16)

Feb. 15, 1996 - Filed for Divorce [5]- Rhonda filed for divorce in Greene County, MS (C.R. 15-22)

March 8, 1996 - Temporary Order - David was awarded very limited visitation with Rheygen. (C.R. 25-30)

May 3, 1996 - Trevor Born - Trevor was born prematurely in Waynesboro, MS (C.R. 65)

January 30, 1997 - Final Judgement of Divorce - (C.R. 64-71) At the time of Rhonda and David's divorce, Rheygen was one year old and Trevor was an infant. The custody order was vague as to visitation with Trevor, so Rhonda simply did not allow David to even see the infant. When Rhonda delivered Rheygen for visitation, she did not ever bring Trevor. (C.R. 52)

August 5, 1997 - Judgement to Clarify Visitation - Trevor was 15 months old when David was finally able to get an order that allowed him any visitation with Trevor. (C.R. 116-120)

November 21, 1997 - Contempt For Denial of Visitation Hearing - The court took the issue of contempt under advisement, and reserved the issue until a later date. The court stated that if it is determined by the Court in the future that the mother has unlawfully withheld the minor children from visitation it will give make up time and rule on the question of sanctions at that time. (C.R. 161-164)

May 18, 1999 - Second Contempt For Denial of Visitation Hearing - Order Signed. Rhonda was given a 30 day suspended jail sentence conditional on her future compliance with the visitation order. David was awarded make up visitation for 8 missed days and 16 days of remedial visitation. This order also authorized the Greene County Sheriff to "search for, locate, and pick up the minor children and deliver them to David Kittrell in the event that Rhonda failed or refused to deliver the minor children for court ordered visitation." Evidence was also ordered to be turned over to the District Attorney for further consideration as to whether or not formal charges of

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[4] Not January 10, 1995, as Rhonda Stated (Appellant's Brief, p. 7)

[5] Not early 2003 as Rhonda stated (Appellant's Brief, p. 2) She was married to her third husband by 2003 (C.R 93-94)

perjury should be lodged against Rhonda. (C.R 245-250)

June 8, 1999 - Rhonda's APPEAL - Rhonda appealed the May 18, 1999 court order wherein she was given a suspended jail sentence and ordered before the Grand Jury. (C.R. 230)

Mar 27, 2000 - Appeal Dismissed (C.R. 264)

August 4, 2000 - Visitation denied - Sheriff had to get children. David received the Children at 7:00 p.m. (C.R. Vol. 1, Ex.1)

September 13, 2000 - Order Suspending David's Visitation - Rhonda filed a motion to suspend David's visitation pending an investigation by the Mississippi DHS. When Trevor was almost 4 years old, Rhonda called the DHS and Trevor told the DHS worker that his Daddy David had put his finger in his hiney. (C.R. 358-362)

November 22, 2000 - Visitation denied - Rhonda failed to deliver the Children to the DHS office for Thanksgiving visitation. Furthermore, the DHS had no knowledge of the Children's whereabouts for three days. This occurred during the time that the Children were in DHS' custody. (C.R. Exhibit Vol 1, Ex 1)

March 2001 - Trevor Institutionalized - Rhonda called the DHS and told them Trevor was acting out sexually. The DHS removed Trevor from the home of Rhonda and put the four year old in Pine Belt Mental Health Facility for two weeks. (C.R. Exhibit Vol1. Ex 1)

June 22, 2001 - Denied visitation (C.R. Exhibit Vol 1, Ex 1)

January 2002 - David Moves to Texas. This information is not included in the Record because the case was in the Youth Court at that time. David updated the Greene County Record on July 23, 2003, after the Youth Court remanded the case back to the Greene County Chancery Court. (C.R. 384)

March 15, 2002 - Denied visitation (C.R. Exhibit Vol, Ex 1)

April 26, 2002 - Denied visitation (C.R. Exhibit Vol, Ex 1)

May 10, 2002 - Denied visitation (C.R. Vol, Ex 1)

October 28, 29, 30, 2002 - Youth Court Hearing - Two years after the fabricated sexual abuse accusation, there was a three day trial before the Youth Court, presided over

by the Trial Court Chancellor, Judge McKenzie, who advised that this farce should have ended a long time ago. (C.R. 368-374).

February 19, 2003 - Agreed Order Reinstating Visitation (C.R. 9)

July 12, 2003 - Denied visitation (C.R. Exhibit Vol 1, Ex.1) Sheriff had to get the Children, and did not get them until 2:00 a.m.

September 2, 2003 - Agreed Order On Motion To Transfer Greene County is the court of original jurisdiction of the divorce decree. The parties agreed to transfer the jurisdiction to Wayne County because David lived in Texas and the children lived in Wayne County with Rhonda. In its Order, the Greene County Chancery Court ruled that it had taken the UCCJA into consideration in that the children had lived in Wayne County for a period of time in excess of six months and because Wayne County was a more convenient forum. (C.R. 396,397)

December 18, 2003 - Denied visitation (C.R. Exhibit Vol 1, Ex 1) (Christmas vacation) The Sheriff had to get the Children. (C.R. Vol. 6, p. 77). David had driven from Texas for his visitation and then had to get the Sheriff to get the Children.

April 8, 2004 - Denied visitation (C.R. Exhibit Vol 1, Ex 1) (Easter vacation). (C.R. Vol. 6, p. 77). David had driven from Texas for his visitation and the Sheriff had to get the Children.

May 2004 - DHS Removed Children - The Waynesboro police and the Mississippi DHS were involved (C.R. Exhibit Vol. 1, Ex. 5,6) and DHS removed physical custody of the Children from Rhonda and placed them under a Protective Plan. (C.R. Vol. 1 of Exhibits, Ex 5,6)

July 28, 2004 - Temporary Custody - The Trial Court granted David, a resident of Texas, temporary physical and legal custody of the Children. The Children remained with David in Texas.[6] (C.R. 511)

July 2005 - Rhonda did not return Trevor according to the Court Order. Appellee had to get the attorneys involved to have Trevor returned (C.R. Vol. 6, pp.74-76)

August 4, 2005 - Permanent Legal and Physical Custody Granted to Appellee was ordered. The Final Order was not signed until December 16, 2005 (C.R. 557, 558)

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[6] This is to clarify Rhonda's time line that is misleading: "at some point Respondent moved to Navarro County and took the children with him" (Appellant's Brief p. 8)

August 4, 2005 - Non-Payment of Child Support- Rhonda testified that she had not paid the court ordered child support. (R.R. Vol.6, p. 95)

October 5, 2005 - Revocation Of Nursing License - The State of Mississippi Board of nursing revoked Rhonda's nursing license after hearing on the drug use at work on December 3, 2002. (C.R. Vol. 6, p. 93)

December 19, 2005 - Final Order entered. (C.R. 557, 558)

December 19, 2005 - Motion to Reconsider Order - Appellee filed a motion to reconsider order because the order did not reflect the summer visitation schedule which had been ordered (C.R. 559, 560)

December 30, 2005 - Motion for New Trial- filed by Rhonda (C.R. 562 - 564)

May 8, 2006 - Order Clarifying Visitation entered as final order (C.R. 567)

June 8, 2006 - Rhonda's APPEAL - Rhonda appealed the Final Order untimely. The appeal was dated June 8, 2006 after the time to appeal ended on June 7, 2006.[7] (C.R. 568)

July 14, 2006 - Certificate of Compliance - Rhonda paid $1,864.80 for costs of the Appeal. (C.R. 577)

September 13, 2006 - Appeal Dismissed - The Supreme Court of Mississippi dismissed the appeal as untimely.[8] (C.R. 583)

October 19, 2006 - Reopen Time For Appeal (Trial Court)- Rhonda was granted an order to reopen time for appeal. (C.R. 594)

October 24, 2006 - Rhonda's APPEAL - Second Notice of Appeal. Rhonda's first appeal was dismissed as untimely, Rhonda filed the appeal again. (C.R. 595)

November 7, 2006 - Certificate of Compliance - Rhonda paid $1,864.80 for costs of the Appeal. (C.R. 599)

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[7]Not as Rhonda stated in her Brief, "Appellant then threatened to Appeal." (Appellant's Brief, p. 3)

[8]

Not as Rhonda stated in her Brief, "The appeal never ripened largely due to economic concerns." (Appellant's Brief, p.3)

December 6, 2006 - Supreme Court Dismissed the second appeal with prejudice (C.R. 606-607)[9]

January 17, 2007 - Supreme Court Order. "The Motion to Reconsider Dismissal of Appeal with Prejudice is not well taken and should be denied" signed by Chief Justice James W. Smith, Jr.[10] (C.R. 608)

February 5, 2007 - Motion for Transfer of Jurisdiction - After all of Rhonda's appeal attempts had been exhausted[11], Appellee filed his motion to transfer jurisdiction. (C.R. 612, 613). No response or objection to the Motion was filed by Rhonda (C.R. 4-A)

March 7, 2007 - Hearing On Transfer of Jurisdiction. The Trial Court took the motion under consideration (C.R. 613) (C.R. 621,622)

March 27, 2007[12] - Petition To Establish Jurisdiction in Texas - In compliance with Mississippi Code Annotated Sec 93-23-207, David filed a motion for jurisdiction in Texas. Rhonda did not file an objection to jurisdiction in Texas. Rhonda stated in her Brief that she had 20 days to answer and did not. (Appellant's Brief, pp. 4,5)

May 11, 2007 - Citation For Contempt Filed[13] - Rhonda filed a Motion For Citation Of Contempt on May 11, 2007, two months after the hearing on the Motion for Transfer of Jurisdiction had been heard. (C.R. 614-616) (Appellant's Brief p. 5)

August 6, 2007 - Order Releasing Jurisdiction - After a hearing on the Motion to Transfer Jurisdiction and communication with the Texas Court, the Trial Court entered an Order Releasing Jurisdiction. (C.R. 621)

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[9]Not as Rhonda stated in her Brief "Appellant filed a timely notice of appeal." (Appellant's Brief, p.3)

[10]Not as Rhonda stated in her Brief "this Court granted another opening for time to appeal." (Appellant's Brief, p.3)

[11]Not as Rhonda stated in her Brief "while the appeal was pending" (Appellant's Brief, p.3)

[12]Not as Rhonda stated in her Brief "on March 7, 2008 in Texas, merely 2 days following the Motion for Transfer of Jurisdiction." The hearing on the Motion to Transfer Jurisdiction was held on March 7, 2007, and the Motion in Texas filed on March 27, 2007. (Appellant's Brief, p.4)

[13]Rhonda's statement in her Brief is misleading "The Chancery Court of Wayne County refused to hear the Motion for Contempt and only heard arguments of the Motion to Transfer Jurisdiction..." (Appellant's Brief, p.3)

August 13, 2007 - Motion to Reconsider Order Releasing Jurisdiction (C.R. 623,624) was filed by Rhonda, raising constitutional issues.

September 10, 2007 - Texas Order Modifying Visitation Signed - Upon the release of jurisdiction by Mississippi, in accordance with the UCCJEA, Navarro County Texas established jurisdiction.(C.R. 631-637)

December 26 - January 1, 2008 - Rhonda followed the Texas Court Order for Christmas vacation. She picked up and returned the Children in accordance with the Texas Order. (C.R. 642)

February 12, 2008 - Rhonda noticed her Motion to Reconsider Order Releasing Jurisdiction for hearing (C.R. 638)

March 14-23, 2008 - Rhonda followed the Texas Court Order for Spring Break visitation. Rhonda picked up and returned the Children in accordance with the Texas Order. (C.R. 642)

April 22, 2008 - Hearing on Rhonda's Motion to Reconsider Motion Releasing Jurisdiction (R.R. 126-132)

June 15 - July 27, 2008 - Rhonda exercised her Summer visitation in accordance with the Texas Order. Rhonda picked up and returned the Children in accordance with the Texas Order. (C.R. 642)

October 10, 2008 - Texas Writ of Capias - Texas issued a Writ of Capias for failure to appear and criminal nonpayment of child support. (C.R. 658,659) This was one year and one month after jurisdiction was established in Texas.[14]

October 22, 2008 - Final Judgement Denying Motion to Reconsider. This Order was signed over fourteen months after the Order Relinquishing Jurisdiction was signed. (C.R. 644)

October 23, 2008 - Notice of Appeal Rhonda's APPEAL #4 (C.R. 645)

November 5, 2008 - Writ of Habeas Corpus - In attempt to avoid a warrant for non payment of child support Rhonda filed a writ habeas corpus (C.R. 650-652)

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[14]Not as Rhonda stated in her Brief: "This transfer as applied immediately led to Appellant being cited for Contempt in Texas with a Bench Warrant Issued." (Appellant's Brief p. 1)

SUMMARY OF ARGUMENT

A. Rhonda abandoned her claim by 1) making no objection to the release of jurisdiction prior to the ruling by the Trial Court nor in the Texas Court; and by 2) dropping the claim in her Motion to Reconsider of the unconstitutionality of Miss. Code §93-27-201 as well as the UCCJA and substituting "whether the UCCJEA was applied correctly," an issue which had never been presented to the Trial Court.

Rhonda further abandoned her claim by not following through with her Motion to Reconsider in a timely matter and in the meantime submitting herself to the jurisdiction of the Texas Court by following its Order regarding visitation.

B. Mississippi adopted the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") as part of its Code in 2004 and repealed the Uniform Child Custody Jurisdiction Act ("UCCJA").

1. The Mississippi Code Annotated §93-23-207 and the UCCJEA that the Trial Court followed in releasing jurisdiction are exactly the same.

> "A court of this State which has jurisdiction to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." (Miss. Code Ann. §93-23-207(1))

2. The Trial Court has the authority to release jurisdiction in accordance with the Mississippi Code Annotated and the UCCJEA. The Trial Court exercised its authority by determining that the Trial Court was an inconvenient forum, that the Children had lived in

Texas for an excess of sixteen months at the time, and that Texas was a more convenient forum under the circumstances.

ARGUMENT

A. Abandonment/waiver of Claim

1. Rhonda's Notice of Appeal stated that she is appealing the Final Judgment Denying Motion to Reconsider Transfer of Jurisdiction.

The Mississippi Appellate Rules of Appellate Procedure state:

> **Content of the Notice of Appeal**. The notice of appeal shall specify the party or parties taking the appeal and the party or parties against whom the appeal is taken, and shall designate as a whole or in part the judgment or order appealed from." (M.R.A.P. Sec. 3(c))

However, Rhonda's Record Excerpts do not include the Final Judgment Denying Motion to Reconsider Transfer of Jurisdiction as required in accordance with M.R.A.P. 30(a)(2). Further, Rhonda's entire Brief is focused on the application of the UCCJEA in the Order Releasing Jurisdiction. Rhonda specifically states in her Brief: "The issue is whether the original Order Releasing Jurisdiction is lawful under the UCCJEA." (Appellant's Brief, p. 6) Rhonda abandoned her claim regarding the Final Judgment Denying Motion to Reconsider Transfer of Jurisdiction (C.R. 644) which addressed the unconstitutionality of the Order Releasing Jurisdiction and the unconstitutionality of the UCCJA. (C.R. 623-624). The Motion to Reconsider made no reference to how the UCCJEA was applied. Appellee and the Trial Court were first apprised of the issue of whether the "UCCJEA was applied correctly, if applied at all" in Appellant's Brief. (Appellants Brief, p.1).

Moreover, at the hearing on Rhonda's Motion to Reconsider held on April 22, 2008, the Trial Court ruled on the constitutional issues presented: "There's no authority that is

cited from the Supreme Court of Mississippi or any other state that makes a finding of the unconstitutionality of the situation. So, I am going to overrule your motion, and allow you to take it up with the Supreme Court... I'm not too prone to rule on constitutional questions and first impression." (R.E. 17; R.R. p. 131). In *Colburn v. State*, 431 So. 2d 1111, 1114 (Miss. 1983), the Court found that questions not presented to trial court will not be reviewed on appeal.

2. Rhonda further abandoned and/or waived her claim by not filing a response or objection in the Trial Court to the Motion to Transfer Jurisdiction. (R.E. 1; C.R. 4A)

David filed his Motion to Transfer Jurisdiction in the Trial Court on February 5, 2007, and noticed the hearing for March 7, 2007. A hearing was held wherein Rhonda had the opportunity to present evidence and authority. A Petition for Jurisdiction was filed in the Texas Court. Rhonda filed no response or objection to the change of jurisdiction in either the Trial Court or the Texas Court. Rhonda filed no motion or request to add any additional evidence or authority. Rhonda did not object to the jurisdiction change until after the Order Releasing Jurisdiction was entered (six months after the Motion was filed), after which she filed a Motion to Reconsider the Order Releasing Jurisdiction on August 13, 2007. By not objecting at any time prior to the Order being entered, Rhonda waived her claim. *Jessica Powers f/k/a Jessica R. McDonald v. Eric Tiebauer*, 939 So. 2d 749 (Affirmed 2005).

In *Powers*, the trial court ruled that because no objection was made prior to the trial court ruling and that Powers did not follow through timely with her Motion to Alter or Amend, she had abandoned her claim. The Supreme Court upheld the trial court's decision:

"...the chancellor noted at the final hearing in 2003, she took no action to notice the motion, set a hearing date, or otherwise pursue an adjudication of the motion until she objected to the name change at the final hearing on custody, support, and visitation. The chancellor found that Powers's failure to pursue the motion should be deemed an abandonment of the claim. We find that the facts support the chancellor's finding that Powers abandoned her claim; therefore, his decision was not an abuse of discretion." *Jessica Powers f/k/a Jessica R. McDonald v. Eric Tiebauer*, 939 So. 2d 749 (Affirmed 2005).

Rhonda further abandoned her claim by not even setting her Motion to Reconsider for hearing until February 12, 2008, **six months** after she filed the Motion. On April 22, 2008, **eight months** after the Order Releasing Jurisdiction was signed, a hearing was held on Rhonda's Motion to Reconsider. Although the Trial Court denied the Motion at the hearing, Rhonda did not file her Notice of Appeal until October 23, 2008, **fourteen months** after the Order Releasing Jurisdiction was signed. In the meantime, Rhonda followed the Texas Court Order regarding visitation (R.E. 16; C.R. 642). In *Gary Curtis Walker v. Sharon Dawn Walker Luckey, 474 So. 2d 608 (1985 Miss, LEXIS 2187)* the Supreme Court found that:

"if Mrs. Luckey had any reservations about the validity of Florida's jurisdiction over her child, she could have ...notify the Florida court of her allegation of Mississippi's continuing jurisdiction. For reasons known best to herself, she declined to do this and allowed Florida to assume jurisdiction over Jeremy.

"Mrs. Luckey apparently recognized the force and effect of the decree for nearly a year afterward, returning Jeremy to the custody of his father, pursuant to the terms of the decree, after both his summer 1982, and Christmas, 1982, visitations. This Court will not countenance the behavior of a parent who submits herself to the jurisdiction of another state when it suits her, then appeals to the courts of Mississippi to assume jurisdiction when that suits her better. ..

"If the UCCJA is to have any teeth at all, we must permit it to work in the manner in which it was intended - to give "Interstate Jeremy," and other children in his situation, some sense of permanence and stability in their

homes. For this reason, we reverse the chancellor's findings that the Florida decree was void, and order compliance with its terms instanter."

Rhonda had ample opportunity to object to jurisdiction in Texas. She admits in her Brief that she was served with process and had the opportunity to answer. Furthermore, she followed the Texas Court Order for Christmas vacation in December 2007, spring break in March 2008 and summer visitation in summer 2008, before she filed her Notice of Appeal on October 23, 2008. (R.E. 16; C.R. 642).

B. <u>The Trial Court followed the UCCJEA in applying Inconvenient Forum</u>

The issue of inconvenient forum was raised upon motion in the Trial Court by David. A hearing on the motion was held on March 7, 2007, wherein the parties were given the opportunity to submit argument and authorities. After the Trial Court considered all the relevant factors and communicated with the Texas Court, it entered an order on August 3, 2007, determining that the Trial Court is an inconvenient forum within the meaning of the Miss. Code Ann §93-23-207.

> "A court of this State that has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court, or motion of a party." (Miss. Code Ann. §93-23-207(1)

The Trial Court determined that it was an inconvenient forum after consideration of the factors outlined under Miss. Code Ann. §93-23-207, as outlined below:

> "(2) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate that a court of another State exercise jurisdiction. For this purpose, the court shall allow the parties to submit

information and shall consider all relevant factors, including:

(a) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;

(b) the length of time the child has resided outside this State;

(c) the distance between the court in this State and the court in the State that would assume jurisdiction;

(d) the relative financial circumstances of the parties;
(e) any agreement of the parties as to which State should assume jurisdiction;
(f) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
(g) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence;
(h) the familiarity of the court of each State with the facts and issues of the pending litigation."

The Wayne County Chancery Court in its *Order Releasing Jurisdiction* ruled that it had heard and considered the motion filed to transfer jurisdiction and listed the factors that supported the Miss. Code Ann. §93-27-207 as follows:

"1. This Court is an inconvenient forum within the meaning of Mississippi Code Ann. §93-27-207.

2. The minor children have resided within the State of Texas for a period of time in excess of sixteen (16) months. Prior to the date of this Order.

3. This Court has conferred with the Court of original jurisdiction in the State of Texas, and has agreed that Texas is a more convenient forum as determined within the framework of the Mississippi Code Annotated.

4. This Court hereby relinquishes jurisdiction of the above and foregoing Cause to a court in a more convenient forum." (R.E. 11; C.R. 621)

The factors not specifically addressed by the Trial Court in the Order Releasing

Jurisdiction were addressed in the Opinion of the Court dated August 5, 2005. (R.E. 6; R.R. 113-125). Substantial factors favor Appellee as follows:

(a) There is evidence of domestic violence in this case and is likely to continue in the future.

The State of Mississippi took the physical custody from Rhonda and placed the Children under a Protective Plan. "Based on the facts the children are at risk of being harmed in Rhonda Yeager's care."[15](R.E. 4,5; CR Vol. Exhibits. Ex 6)

After the Trial on the Merits, the Trial Court opined:

> "She has had a past substance addiction problem and has been diagnosed as being bipolar.... (R.R. p. 122, L.13-14) ...Rhonda's parenting skills led her to cocaine use and illicit sex in the presence of the children. Now, I don't want to risk putting these children back in a situation where the same thing can happen again." (R.R. 121, L.24-28)
>
> "Trevor went through what I call the child abuse of the child abuse allegation for a period of two years, being examined, poked and prodded, questioned by experts in the field of child abuse."(R.R. 121, L.20-23)... "There was absolutely no basis in fact whatsoever for the truthfulness of that allegation." (R.R. 115, L. 25-26)

That these allegations have continued, and are likely to continue, is shown by an *ex parte* letter from Rhonda's mother to the Trial Court Judge on May 27, 2008, six years after the Trial Court's ruling referred to above: "I also know, in my heart, that my grandson was sexually abused by his father when he was 3 ½, but because of a smart high paid lawyer from Florida, we were unable to prove it." (R.E. 16; C.R. 642).

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[15]Not as Rhonda stated in her brief: "There is no allegation of physical abuse by either party." (Appellant Brief, p.14)

(b) The Children have resided with David in Texas for almost five years, since July 26, 2004, and have only returned to the State of Mississippi for court ordered visitation.[16] (R.E. 2; C.R. 511)

(c) The distance between courts is irrelevant because David did not move to Texas after the Court granted custody to him, but rather already lived in Texas when the State of Mississippi removed the physical custody of the Children from Rhonda and the Court granted David, the natural father, resident of Texas, the custody of the Children.[17]

Rhonda claims that visitation is significantly difficult because of the distance; however, Rhonda's husband has commuted regularly to Texas where he has been employed for years. (R.E. 3; R.R. p. 107 L.6,7)

(d) Rhonda's financial difficulties have not been demonstrated to the court. Rhonda made no testimony regarding her financial situation nor did she clearly set forth in her Brief her financial disadvantage.[18] The State of Mississippi Board of Nursing did revoke her nursing license. (R.E. 3; R.R. 93) However, Rhonda testified that she did not have any plans to contest the revocation. That was October 2005 and she has had ample time to correct the conditions that led to the revocation. Rhonda did advise the court that

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[16]Not as Rhonda stated in her Brief: "The longest the children have resided outside of Mississippi is 10 months." (Appellant Brief, p.14)

[17]Rhonda's statement in her Brief is misleading: "at some point Respondent moved to Navarro County and took the children with him." (Appellant Brief, p.15)

[18]
Not as Rhonda stated in her Brief: "As set forth above, Appellant clearly is at a disadvantage financially." (Appellant Brief, p.15)

she was studying to be a cosmetologist. (R.E. 3; R.R. 93) However, that was in August 2005. She has had ample time to complete this training and seek employment. Rhonda is educated and should be able to work, plus her husband should be able to contribute to the household income. As far as David knows, Rhonda has not worked at all during the past five years.

David's financial situation is that he does work. He is an electrician and his wife is a teacher. In her Brief, Rhonda had the audacity to mock David regarding defending himself in court, as he had no choice but to defend himself and answer Rhonda's false allegations in both the Trial Court and in the Texas Court.[19] Both the Trial Court and the Texas Court have protected David and the Children from the false allegations of Rhonda.

(e) David has submitted to Rhonda several agreed orders to which Rhonda has never responded.

(f) All of the evidence prior to the Children's relocation and the causation of the Children's relocation was in the Wayne County Chancery Court (5 years ago). However, all of the current evidence is located in Texas including, but not limited to, the children, the children's schools, school records, teachers, principals, doctors, medical records, the Texas Department of Child Protective Services, the Navarro County Sheriff, Texas Attorney General and the Child Support Record, and countless others which have become involved in the Children's lives.

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[19]As Rhonda stated in her Brief: "Respondent has the financial means to answer all accusations in Wayne County Chancery Court as well as unleash a barrage of litigation in Texas to the disadvantage of Appellant."(Appellant Brief, p.15)

(g) The Texas Court is better able to decide the issues expeditiously and the procedures necessary to present the evidence because all of the current witnesses are located within the jurisdiction of the Texas Court and the evidence is filed in its court records.

(h) The Wayne County Chancery Court, Mississippi, Chancellor conversed with the 13th District Court of Navarro County, Texas, Judge and agreed that Texas is a more convenient forum.

The above factors are an accurate view of the circumstances which are supported by the Court Record.

C. The Trial Court applied the Mississippi Code Annotated §93-27-207 in accordance with the UCCJEA in this case

Under the UCCJA, the Mississippi Supreme Court has long held that the factor of the court of original jurisdiction cannot be solely relied upon to determine if a court has continuing exclusive jurisdiction. The UCCJA allows a court competent to decide child custody matters to decline to exercise its jurisdiction if it finds that it is an inconvenient forum and that the court of another state is more appropriate. The UCCJEA differs from the UCCJA in that the court of original jurisdiction has the continuing exclusive jurisdiction until the court of continuing jurisdiction determines that is not the court of convenient forum and that another state is the more convenient forum. The UCCJEA goes even further and requires that the courts of the different states must communicate to determine which court is the more convenient forum.

In *Brenda Castille Hobbs v. William Monroe Hobbs*, 508 So. 2d 677; 1987 Miss. LEXIS 2597 (1987 decided) the father filed with the Mississippi trial court a motion to modify the divorce decree and a motion to find the mother in contempt of court for violating the father's visitation privileges. In the meantime, the mother instituted proceedings in Louisiana to modify the Mississippi custody decree. The mother then filed with the Mississippi trial court a motion to transfer jurisdiction to Louisiana. The Trial court denied the motion to transfer jurisdiction and modified the custody decree. The Supreme Court of Mississippi reversed and remanded the trial court's decision. The Supreme Court found that the factor of the court of original jurisdiction cannot be solely relied upon to determine if a court has continuing exclusive jurisdiction.

> "The chancellor, no doubt relying solely upon the fact that the original custody decree had been rendered in his court, did not believe the UCCJA applied to this case. In this he was manifestly in error.
>
> "The first question the chancellor should have addressed was whether Mississippi was the proper state to exercise jurisdiction... Mississippi apparently was not the child's home state when William filed his petition because she had lived with her mother in Louisiana for approximately two years. There is nothing in the record to suggest there was any other basis for the chancellor to assume jurisdiction under this section.
>
> "Moreover, when a chancellor is apprised of a pending proceeding in another state, Miss. Code Ann. § 93-23-11 requires him to stay the custody proceedings and communicate with the court of the other state before assuming jurisdiction. (as amended by Miss. Code Ann. §93-27-207(3))

The Supreme Court ruled that whether Mississippi is the child's home state and that there were pending proceedings in another state, and when the trial court is apprised of a pending proceeding in another state, the trial court must stay the custody proceedings and

communicate with the court of the other state.

This is exactly the criteria that the Trial Court applied in the instant case.

In a more recent case, *Mercedes Garcia Lovell Ortega v. John M. Lovell*, 725 So. 2d 199; 1998 Miss. LEXIS 617 (December 17, 1998, Decided), the Court holds that a trial court must take into consideration factors other than location of original jurisdiction. In *Ortega*, while the daughter was visiting for summer vacation the father filed for change of custody in the original court even though the child had been living with her mother in California for many years. The court granted the father custody. However, the mother appealed, based on lack of jurisdiction. The Supreme Court of Mississippi agreed with the mother that Mississippi should not have ruled in this case because California was a more convenient forum. Moreover, the Court found that all of the current witnesses and evidence relating to the child's most recent well being were all located in California. Even though Mississippi was the court of original jurisdiction, the Supreme Court overturned the trial court's ruling because California was a more convenient forum.

> "Recent case law from this Court makes it clear that just because a Mississippi court can exercise jurisdiction does not mean it always should. The chancellor in the case sub judice relied solely on the fact that the original divorce decree was entered in this state in assuming jurisdiction over the custody of Kristina. The chancellor is not obliged to assume jurisdiction over a particular custody matter if another state's court is a more appropriate forum. ... California is the "home state" of Kristina, and it would be in her best interest to have the case decided there due to her significant connection with that state and the availability of evidence concerning her present or future care, protection, training and personal relationships.
>
> "A court may decline to exercise jurisdiction if it is not the most appropriate or convenient forum. If the court accepts jurisdiction as the more convenient

> forum, the court must determine if the action to be taken is foreclosed by an order or judgment of the other state court. Stowers v. Humphrey, 576 So. 2d 138, 140 (Miss.1991) (citing Hobbs v. Hobbs, 508 So. 2d 677, 680 (Miss.1987))."

This is exactly the criteria the Trial Court considered in the instant case.

In *Rexford V. Stowers v. Susan C. Humphrey*, 576 So. 2d 138 (1991 Miss. LEXIS 56) "Appellant father sought review of the decision of the Pike County Chancery Court (Mississippi), which granted appellee mother's motion to dismiss the father's child support and visitation petition for a lack of jurisdiction, and stayed the proceedings pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA). The Chancery Court stayed the proceedings. On appeal, the court affirmed and held that, although the Mississippi court had jurisdiction, the proceedings were properly stayed because Alabama was a more appropriate and convenient forum. The daughters had a closer connection to Alabama after living there for two and one-half years and evidence concerning the effects of visitation with their father was more readily available there."

This is exactly the criteria the Trial Court considered in the instant case.

Rhonda relied solely on *G.S. v. Ewing 786 P. 2d 65 (OK 1990),* an Oklahoma case, to support her argument. Although the history in this case is similar to the instant case, the issue appealed is not like our case. The Oklahoma case was an emergency situation where the welfare of the children was involved.

The decision in the Oklahoma case was not made solely because Oklahoma was the original jurisdiction that issued the original decree. The decision in this case was based

on the facts that "1) no action was pending in any other state; 2) Oklahoma was a convenient forum (substantial evidence needed to determine the custody issue was located within the State of Oklahoma); 3) the father had not engaged in reprehensible conduct; and 4) an emergency existed because of the mother's mental health." *G.S. v. Ewing*, 786 P.2d 65 (OK 1990). The trial court had the discretion to hear a cause if Oklahoma was an inconvenient forum, but determined that it was not an inconvenient forum.

> ¶17 "A trial court may decline to exercise jurisdiction pursuant to 10 O.S. 1981 if it finds two factors: (1) that Oklahoma is an inconvenient forum, and (2) that another state is a more appropriate forum. ...The trial court has discretion to determine whether its exercise of jurisdiction is appropriate considering the best interest of the child/children involved." *G.S. v. Ewing*, 786 P.2d 72 (OK 1990)

In *Ewing*, the parents divorced in Oklahoma and the mother moved with the children to Missouri. An emergency arose while the children were visiting their father in Oklahoma. The mother entered a hospital for treatment for codependency. The father enrolled the children in school in Oklahoma and then filed an emergency motion for temporary custody. The current substantial evidence relating to custody was located in Oklahoma and no proceedings had been established in a court in Missouri, therefore the Oklahoma Court determined that it was the more convenient forum.

The facts of this case and the instant case differ as follows:

1. Texas has established jurisdiction and has entered orders in a child custody proceeding. In the Oklahoma case, no other state had initiated child custody proceedings.

2. The father in the Oklahoma case filed his motion in the state of original jurisdiction because that is where he and the children lived and because substantial

evidence needed to determine the custody issue was located within the State of Oklahoma.

In the instant case the current records and witnesses relating to the children's well being, and the children, are located, and have been for almost five years, in the State of Texas. Therefore the court of original jurisdiction in the instant case is no longer a convenient forum.

3. In the instant case there was no emergency situation.

4. The other factor considered in the Oklahoma case was that the father seeking jurisdiction had not engaged in reprehensible conduct.

D. <u>Argument in Reply</u>

1. In Rhonda's Brief (Appellant's Brief, p.4), she stated that the Trial Court refused to hear her Motion for Contempt (R.E. 10; C.R. 614-616), and only heard arguments on the Motion to Transfer Jurisdiction. Rhonda filed her Motion for Contempt on May 11, 2007, after the hearing on the Motion to Transfer Jurisdiction (March 7, 2007) and after the Motion for Jurisdiction in Texas had been filed (March 27, 2007. The Trial Court adhered to Mississippi Code Annotated which states:

> "If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding." Miss. Code Ann.§93-27-207(2)

2. In Rhonda's Motion to Reconsider, she attached Affidavits of the Children stating their desire to live with their mother. The Children were removed from Rhonda's

physical custody by the State of Mississippi. Therefore, the Children's welfare, and not the age and desires of the Children, would be considered in a child custody proceeding. The Texas Court is best able to determine the current welfare and the best interest of the Children.

Further, Trevor was only eleven years old at the time he signed the Affidavit. (R.E. 13; C.R. 629). Trevor is a "special education" child. The Affidavit that he signed was beyond his "age appropriate" understanding, and he should never have been placed in that situation. This is the same child that the Trial Court stated: "The little lad was in pretty bad shape. I don't think he would have made it if this change had not occurred. I don't think this little boy would have succeeded in the educational system. He would not have made it. This is a wonderful opportunity for him in the opinion of the Court, to turn what was almost a certain failure into a success. (R.E. 6; R.R. P. 123, L 17-22)

Further, the Affidavit stated that Trevor had lived in Mississippi since the end of May and attended Bowie Elementary. What the Affidavit failed to mention was that Trevor was in Mississippi for court ordered summer visitation with his mother, and that Bowie Elementary is located in Navarro County, Texas.

E. <u>Supplemental Record</u>

At the hearing on the Motion to Reconsider, Judge McKenzie stated "There's no authority that is cited from the Supreme Court of Mississippi or any other state that makes a finding of the unconstitutionality of the situation. So I am going to overrule your motion." (R.E. 17; R.R. P.131, L2-7). Rhonda's attorney then asked "for a 15 day period

to brief the Court, or do you want to just take it straight up?" The Trial Court said "Just go ahead and enter an order." (R.E. 17; R.R., P. 131, L. 2-11) The attorney for Rhonda said that he would have an order within 10 days. (R.E. 17; R.R. 131, L. 16-17) Subsequently, the attorney for Rhonda presented to the Trial Court, without permission, without narrative or discussion, 122 pages of "illustrative cases" in their entirety (C.R. Supp. Vol. 1-122) even though the Trial Court had clearly denied the request to further brief the Court. These cases were not a part of the Record, and Appellant's attorney supplemented the record (by order entered on February 25, 2009) to include these cases. Therefore, David addresses the "illustrative cases" as follows:

None of the case authority presented had anything to do with "Constitutional Issues." Rhonda cited one of the submitted eight cases in her Brief *(G.S. v. Ewing*, 786 P. 2d 65 (OK 1990)), an Oklahoma case, which was discussed heretofore.

The other seven citations that Rhonda's attorney attempted to present to the Trial Court are discussed below:

Only four of the cases cited were Mississippi cases, none of which had any relevance to the instant case. Three were abduction cases and the other case was regarding an original jurisdiction determination for a guardianship where the ward and the applicants lived in different states.

1. *Cliburn vs Bergeron,* S.W.3d, 2002 WL 31890868 (Tenn.Ct. App.) - In *Cliburn,* a Tennessee case, the Trial court dismissed for lack of jurisdiction because

another state had continuing exclusive jurisdiction. In this case, Lousiana had to determine that it no longer has exclusive continuing jurisdiction or that the Tennessee court would be a more convenient forum. The Louisiana court had made neither finding. In other words the original state has a right of first refusal. Therefore, the Court of Appeals affirmed the trial court's dismissal. (C.R. Supp. Vol. P. 5-20)

In the instant case the court of original jurisdiction determined that a court of another state would be a more convenient forum.

2. *Owens vs. Huffman,* 481 So. 2d 231 (Miss. 1985) - In *Owens,* the Grandmother had abducted the child and had taken her to Arizona. Therefore, the grandmother violated the UCCJA, PKPA, and UCCJEA.

Owens is not relevant to the instant case. The children in this case were lawfully taken to Texas. (CR Supp. Vol. P. 22-40)

3. *Curtis vs. Curtis,* 574 So. 2d 24 (Miss. 1990) - In *Curtis*, the Father had abducted the child and had taken her to Mississippi. Therefore, the father violated the UCCJA, PKPA, and UCCJEA.

Curtis is not relevant to the instant case. Again Appellee did not kidnap the Children. The Children were lawfully taken to Texas. (CR Supp. Vol. P. 42-50)

4. *Scott vs. Somers,* 97 Conn. App. 46, 903 A.2d 663 (Conn. 2006) - In *Scott,* a Connecticut case, there was nothing in the record to indicate that Florida relinquished its jurisdiction. The judgement was reversed and the case was remanded with the direction to dismiss this matter for lack of jurisdiction. (CR Supp. Vol. P. 51-58)

In the instant case, Mississippi did relinquish jurisdiction prior to Texas establishing jurisdiction.

5. *The Matter of the Guardianship of Z.J.*, 804 So. 2d. 1009 (Miss. 2002) - In *Z.J.*, the potential guardians lived in a different state than the home state of the child. This was an initial determination, not a continuing jurisdiction case. (CR Supp. Vol. P. 59-68)

There are no similarities to the instant case.

6. *Mitchell v. Mitchell,* 767 So. 2d. 1078 (Miss. 2000) - In *Mitchell*, the child was visiting for summer visitation in Connecticut when the mother refused to return the children. The mother then filed a motion in Connecticut to modify based on the fact the child had been in the state for more than six months. The Mississippi court did not honor the Connecticut order because it had not relinquished jurisdiction and the child was in Connecticut unlawfully.(CR Supp. Vol. P. 84-96)

This is exactly contrary to the case at bar.

7. *Staats vs. McKinnon*, 206 S.W. 3d. 532 (Tenn. 2006 Affirmed) - *Staats* is a Tennessee case wherein Florida was the state of original jurisdiction. The Tennessee court conversed with the Florida Court and agreed that the Tennessee Court should exercise jurisdiction over the child custody issue. Tennessee was the home state of the child. (C.R. Supp. Vol. P. 98-122)

In the instant case, Mississippi relinquished jurisdiction and Texas is the home state of the Children.

F. Frivolous Appeal

In accordance with Mississippi Rules of Appellate Procedure (M.R.A.P.) 38, Appellee, David Kittrell, requests that this Honorable Court find this Appeal frivolous and award just damages and double costs to him, and dismiss this appeal.

In accordance with M.R.A.P. 46(d) Appellee further requests sanctions against Appellant Rhonda Yeager and Appellant's attorney for abuse of the court system in an effort to obstruct justice.

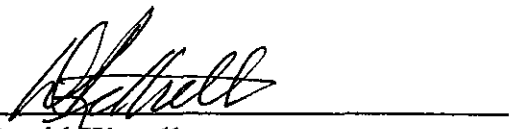
CONCLUSION

There has been no error committed by the Court of either State in regards to the releasing of jurisdiction and establishing jurisdiction. Reasons for the Release were listed, and proven facts were not questioned or considered suspect. Specific counterpoints have been given herein to every point in opposition provided by Rhonda. The attempt to find fault in the Release is just another tactic by Rhonda to drag out the custody battle and avoid her court-ordered duties. The letter and spirit of the UCCJEA remain in tact. If Rhonda is not even able to list the correct birthday of one of the children, we must question the validity of her other statements.

Rhonda stated that the only issue at hand was the case of jurisdiction, yet clearly revisits the case of custody while citing the emotional heartstrings that this type of case elicits. These ploys are little more than legally based filibustering.

Appellee David Kittrell respectfully requests this Court overrule Appellant, Rhonda Yeager's, issue and dismiss this appeal, or in the alternate, affirm the ruling of the Trial Court in all respects.

Respectfully submitted.



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CERTIFICATE OF SERVICE

The undersigned affirms that Appellee's Brief with Record Excerpts has been forwarded by U.S. Mail to the following:

The Honorable Franklin C. McKenzie, Jr.
Wayne County Chancery Court Judge
P.O. Box 1961
Laurel MS 39441

Eric Tiebauer
Attorney for Appellant
4363 Highway 145 North
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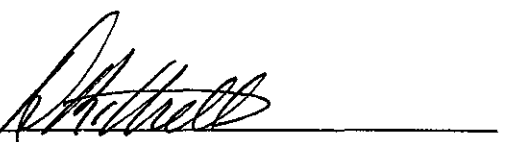
on the 1st day of June, 2009.



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