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## **REPLY OF THE APPELLANT**

The Chancellor committed manifest error and/or abused his discretion when he failed to make a finding of fact that Bethany Wikel Miller's sexual misconduct with young men contributed to her young sons' emotional and behavioral problems. Bethany's misconduct began prior to her divorce from Brian when she engaged in sexual intercourse with a student at the high school where she taught. This misconduct continued during the years following the divorce, when despite the recommendations of the children's counselor, Melanie Benson, she cohabited with men, though unmarried, while the children were in the home, and on more than one occasion, engaged in sexual intercourse with one of these men, while the children were home. Accordingly, considering the evidence presented at trial, including the admissions of Bethany and the opinions of the only expert who testified, the Chancellor's decision to deny Brian Wikel's Complaint for Custody was not supported by substantial evidence.

In her *Brief in Response*, the Appellee, Bethany Wikel Miller, admits that prior to the parties' divorce, the Wikel children were well adjusted, with no behavior or school performance issues, but that following the parties' divorce, and for some time after, the children began experiencing emotional and behavior problems which Bethany felt were severe enough to warrant taking them to a counselor. Appellee's Brief at 4. The fact that the Wikel children received counseling for emotional and behavioral problems with Melanie Benson starting in March, 2005, and continuing for over 2 ½ years, until July, 2007, when they began counseling with another counselor, is clear and unambiguous proof that the children were experiencing adverse effects following their parent's divorce.

In his Opinion and Judgment, the Chancellor noted the following facts which were established at trial: (1) that the children were experiencing emotional and behavioral problems which required treatment by a professional counselor; (2) that unknown to Brian, prior to their divorce, Bethany had sex with one of her high school students eleven years her junior, and has had other young men spend the night with her in her home while her children were present; (3) that Bethany made Brian's visitation with the children difficult by denying him summer visitation 2 years in a row, refusing to take his calls, and refusing to share school records and information relating to the boys' activities. R.E. 4-5.

Melanie Benson, the children's counselor, was the only expert who testified at trial. Contrary to Bethany's contentions in her Response, Melanie Benson did in fact causally relate Bethany's misconduct with overnight male company to the children's emotional and behavioral problems, and she also causally related Bethany's efforts to exclude Brian from participating in the children's school and extracurricular events and her refusal to cooperate and communicate with Brian regarding the children's visitation.

Her opinion testimony regarding these two issues is as follows:

Q. Let me ask you this way: Do you have an opinion as to whether Mrs. Wikel's activities with overnight male company in the home caused or contributed to Zachary Wikel's adjustment disorder and adjustment disorder with depressed mood and mixed anxiety?

A. I think so, and the reason being is because there was the pressure that I felt like the children felt even when they came to therapy, whether it was okay to talk about, in particular, Will Miller or not, if it was okay to tell dad things about Will Miller or not, and just that pressure.  
Tr. 1:159, lines 9-19.

It should be noted that when the children were talking to the counselor in May 2005 and the summer of 2006 about their mother's overnight male guests, Bethany Wikel had not married Will Miller. Bethany married Will Miller on September 14, 2006, seven (7) days after she was served with process and Brian's Complaint for Modification of Custody. Tr. 1:19; 3:227.

Melanie Benson further testified as follows:

Q. Okay. Let me ask you, do you have an opinion as to whether Mrs. Miller's actions and inactions in refusing to support, promote, encourage the relationship between the boys and their dad caused or contributed to their adjustment disorder with mixed anxiety and depressed mood and other --

A. It added to the stressors, yes. It added to the stressors.

Q. So is that your opinion?

A. Yes.

Tr. 1:159, lines 25-29; 1:160, lines 1-5.

In his Opinion and Final Judgment, the Chancellor found that "Melanie Benson, the counselor testified for Brian, attributes the sons' problems to the parental divorce, the children not living with both parents, the transition between both parents' home and the tension between the parents. Most children of divorce experience these same problems and the children being the individuals they are often react differently." R.E. 7. However, considering the counselor's testimony as set forth above, the Chancellor was manifestly wrong and clearly erroneous when he attributed the children's problems simply to "transitioning issues." Melanie Benson's complete medical record, comprised of 36 pages of office notes taken at more than 23 visits with the children and their parents, was

introduced into evidence at the trial of this cause as Exhibit P-3. As reflected in her office notes and as set forth in her opinions at trial, Melanie Benson testified that Bethany's misconduct with overnight male company and her disrespect of the father/child bond contributed to the children's emotional and behavioral problems. The Chancellor committed error when he failed to find that Mrs. Wikel's sexual misconduct with young men prior to her marriage to Will Miller contributed to the children's emotional conditions and behavioral problems.

Contrary to Bethany's assertion, Melanie Benson's testimony has not been conflated in any manner: The excerpt cited by Bethany in her Brief in Response merely reflected the basis for the counselor's concerns expressed at trial about Bethany's overnight male company during the course of treatment of the children, and her opinion that Bethany Wikel refused to adhere to the counselor's recommendations regarding same. Melanie Benson testified that she had concerns about Bethany's pre-marital, overnight male company in the home, and that she had discussed these with Bethany on several occasions during their sessions.<sup>1</sup> Melanie Benson testified that she advised Bethany during the course of the boys' treatment that by bringing former boyfriend Cain Cannon and later Will Miller into the home (prior to their marriage) to spend the night while the boys were present, Bethany was confusing the children and exposing the children to feelings of detachment and abandonment. Tr. 1:139-140. Bethany and Brian

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<sup>1</sup> Melanie Benson testified that during the course of her treatment of Zachary and Garrett, the children mentioned their mother's male friend and the activities they did with him. Tr. 1:138-139. See also May 5, 2005 and May 26, 2005 office notes of Melanie Benson, R.E.42-43; Tr.Ex.3,pp.32-33. During a couple of sessions in the summer of 2006, Brian related his concern that Bethany's act of bringing men in and out of the children's lives was affecting the children and causing them confusion about father figures. Tr.1:14-16. Ms. Benson testified that she counseled Bethany to limit the children's contact with her male friends. Tr. 1:141. In at least two subsequent sessions, Brian and Bethany discussed Bethany's boyfriend, Will Miller<sup>1</sup>, spending the night in the home while the children were present, and how that might confuse the children about cohabitation. Tr.1:17-18.

had previously agreed in an earlier session in Summer 2006 that to have such overnight male company in the home while the children were present was in conflict with their moral teachings. Tr. 1:138-139.

Although not as significant as the damaging effects of Bethany's continued exercise of poor judgment, the Appellee's attempt to minimize the danger of Bethany's recklessness with regard to permitting 5 year old Garrett Wikel to handle a real firearm with live ammunition while in the "care" of a 17 year old boy merits reply. There is nothing normal and responsible about failure to abide by the laws of the State of Mississippi as pertains to children and hunter safety: M.C.A. Section 49-7-20.1(2) provides, "A child under the age of twelve (12) must be in the presence and under the direct supervision of a licensed or exempt resident hunter **at least twenty-one (21) years of age** when the child is hunting (emphasis added).

In her Response, the Appellee seeks to distract this Court from Bethany's continued exercise of extremely poor judgment which has, as indicated by the only expert who testified at trial, emotionally harmed her two young boys; poor judgment which began when she had a sexual affair with a high school student at the high school where she taught, prior to her divorce from Brian; poor judgment which continued as a result of her activities with overnight male company in the home and in the presence of the children, against the recommendations of the counselor, Melanie Benson.

#### CONCLUSION

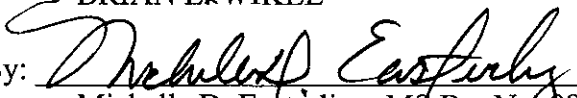
Without a doubt, there have been material changes in circumstances in the lives of the Wikel children and Mrs. Wikel (Miller) in particular, and these circumstances have adversely affected the Wikel children such that they required counseling for nearly three

(3) years after the divorce. The Chancellor committed manifest error and/or abused his discretion when he failed to find that Bethany Wikel's sexual misconduct with young men – which began prior to her divorce from Brian when she engaged in sexual intercourse with a student at her high school and continued during the years following the divorce, despite the recommendations of the children's counselor, Melanie Benson – contributed to her young sons' emotional and behavioral problems. For the reasons set forth herein as well as those contained in the Appellant's Brief previously submitted, it is in the best interest of the Wikel children to be in the care and custody of their father, Brian. The Chancellor's decision to deny Brian Wikel's Complaint for Modification of Custody should be reversed.

Respectfully submitted, on this the 26<sup>th</sup> day of October, 2009.

BRIAN E. WIKEL

By:

  
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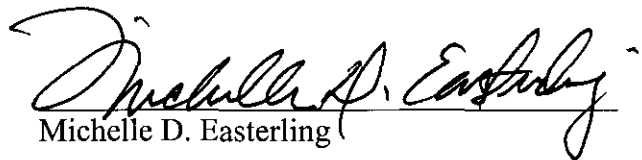
**CERTIFICATE OF SERVICE**

I, Michelle D. Easterling, Attorney for Appellant, Brian E. Wikel, hereby certify that I have this day caused to be served by first class mail, postage prepaid, a true and correct copy of the above Reply Brief of Appellant on the following persons:

Carrie A. Jourdan, Esq.  
P. O. Box 1108  
Columbus, MS 39703

Honorable Kenneth M. Burns  
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Okolona, MS 38860

SO CERTIFIED, this the 26<sup>th</sup> day of October, 2009.

  
Michelle D. Easterling