IN THE SUPREME COURT OF MISSISSIPPI

NO. P-204-7 W/4

IN THE MATTER OF THE ESTATE OF
THELMA M. McCULLOUGH, DECEASED

ARLEAN MORANT LEACH, ET AL.

Appellants

VERSUS

GERALDINE YATES, ADMINISTRATRIX and
JIM HOOD, ATTORNEY GENERAL OF MISSISSIPPI

Appellees

REPLY BRIEF FOR THE APPELLANTS:

ON APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY
FIRST JUDICIAL DISTRICT

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for the Appellants certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Arlean Morant Leach – Petitioner (Appellant)
2. Daniel Lawrence Morant– Petitioner (Appellant)
3. Linda Ann Morant – Petitioner (Appellant)
4. Tommy Earl Morant – Petitioner (Appellant)
5. Carolyn Ann Morant Fairley – Petitioner (Appellant)
6. Johnny Earl Morant – Petitioner (Appellant)
7. James Morant Jr. – Petitioner (Appellant)
8. Jessica Morant – Petitioner (Appellant)
9. Kendrian Collins – Petitioner (Appellant)

10. Lester Clark, Jr. and Nathan L. Clark, III; Arin Clark Adkins, Clark and Clark Attorneys, PLLC – Counsel for the Appellants (Appellants)

11. Geraldine Yates – Administratrix, Respondent (Appellee)

12. Pat A. Catchings – Counsel for Administratrix, Respondent (Appellee)

13. Jim Hood – Miss. Attorney General, Respondent (Appellee)

14. Shawn Shurden – Assistant Attorney General, Respondent (Appellee)

THIS the 20th day of July 2009.

Arin Clark Adkins

ARIN CLARK ADKINS

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ARGUMENT

As cited both in the Appellants' Brief and in the Brief presented by the Attorney General, *Western Line Consol. School Dist v. Greenville Mun. Separate School Dist.,* 433 So.2d 954, 957 (Miss. 1983) states that "in court decisions wherein the constitutionality of a statute looms on the horizon: if it is not necessary to rule upon the constitutionality of a statute, it is necessary that a court not rule upon it." If the particular facts of the case at bar makes it possible to resolve the matter without reaching the constitutional issue, then it is incumbent upon this Honorable Court to do so.

That very opportunity for constitutional avoidance is before this Court. The Appellants' Brief and this Reply Brief contain clear authority aside from the constitutional considerations in question. As such, the Court is given a basis upon which to overturn the lower court ruling without having to reach the constitutionality of Miss. Code Ann. § 91-1-15 (1972), *As Amended.*

> (3) An illegitimate shall inherit from and through the illegitimate's natural father and his kindred, and the natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:
>
> (c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under Sections 91-1-27 and 91-1-29. However, no such claim of inheritance shall be recognized unless the action seeking an adjudication of paternity is filed within one (1) year after the death of the intestate or within ninety (90) days after the first publication of notice to creditors to present their claims, whichever is less; . . .
>
> Miss. Code Ann. § 91-1-15(3)(c).

This section of the statute refers to the limitation period applicable to Appellants' claim. This subsection uses the terms "natural father" and "intestate". The statute does not define whether the intestate is or must be the natural father. The terms natural father and intestate are not interchangeable. In this subsection of the statute, the limitations period is not tied to the death of the natural father, but to the intestate.

In *Miller v. Watson,* 467 So.2d 672 (Miss. 1985), and also in *Kimble v. Kimble,* 447 So.2d 1278 (Miss. 1984), the Mississippi Supreme Court found that the cause of action accrued with the death of the *intestate.* The intestate was not the heir's parent/natural father in either case. With these precedents, the Court recognizes that timely action should be brought once there is an actual claim.

In both *Miller* and *Kimble* the Court found that the parties were able to inherit after a timely response in the Estate of the intestate; in *Miller* the intestate was the grandmother; and in *Kimble,* the intestate was the grandfather. In both cases the Court held that paternity could be established once the claim arose, at the death of the intestate, not the heir's natural father.

This is the central issue in the case at Bar; that the Appellants filed timely claims following the death of their father's sister, the *intestate* Thelma McCullough. To go against this

logic, as the Chancellor did, despite the precedents found in *Miller* and *Kimble*, brings a more rigid application of § 91-1-15 requiring specific consideration of the constitutional issues in question.

In *Trimble v. Gordon,* 430 U.S. 762, 771 (1977) the U.S. Supreme Court stated that "courts should accord substantial deference to a State's statutory scheme of inheritance." The scheme of inheritance for illegitimates in the State of Mississippi is stated in § 91-1-15. In *Miller* and *Kimble*, we find that the "intestate" is the recently deceased with an Estate to probate. As a result, this matter should end there. The Appellants should be recognized as the rightful heirs of Thelma M. McCullough and allowed their inheritance.

If however this Court disagrees that Appellants' claim arose at the death of the intestate, Thelma McCullough, and the Constitutional issue must be reached, then "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *U.S. v. Salerno,* 481 U.S. 739, 745 (1987).

Appellants contend that § 91-1-15 as applied by the Chancellor, creates a set of circumstances in which today, illegitimate children, (with the same situation as the Appellants herein), are <u>always</u> prevented from inheriting through the family of their natural father. This even though they were noticed, responded, and potentially recognized as heirs. They would not be allowed their inheritance because they did not prove paternity before or shortly after the death of their natural father who had no Estate to probate over twenty-five years ago. This is certainly not the intent of the statute, and as applied by the Chancellor, § 91-1-15 cannot be considered valid.

I. If Mississippi Code § 91-1-15, is applied interpreting the natural father as the intestate, then it violates the Equal Protection Clause of the Fourteenth Amendment as it prevents the Appellants from taking an inheritance *only* because of their status as illegitimates.

Lalli v. Lalli 439 U.S. 259 (1978) sets out standards and requirements for establishing paternity *only during* the father's lifetime. "After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judicial decree during the father's lifetime as the exclusive form of proof of paternity." *Lali* at 263.

Consideration must be given as to whether such a rigid standard can be constitutionally valid in today's reality. The question becomes whether requiring paternity establishment *only* prior to death in order for inheritance is truly constitutional, and hence, whether *Lalli* can remain controlling authority.

The answer to this query appears to be "No" since the Mississippi Legislature went back after *Lalli* and carved out statutory allowances with revisions to § 91-1-15. Thereafter, the Mississippi Supreme Court handed down *Miller* and *Kimble*, whereby setting precedent for how the intestate is determined and not requiring the intestate to be the natural father. Such actions suggests that perhaps *Lalli* was then, and certainly is more so now, overly strict in its requirement.

In *Kimble*, the Mississippi Supreme Court found that the cause of action accrued with the death of the *intestate*. The intestate was not the heir's parent/natural father in this case, or in *Miller*. With this precedent, the Court recognizes that timely action should be brought once there is an actual claim. The term "intestate" is not defined Miss. Code Ann. § 91-1-15, but as indicated in *Kimble*, a claim accrues to an illegitimate as a result of the death of an intestate.

> Section 91-1-15 contains two separate periods of limitation. The first appears in subsection (3)(c) wherein an adjudication of paternity after the death of the intestate is permitted if such action is filed within one (1) year after the death

of the intestate or within ninety (90) days after the first publication of notice to creditors, whichever is less.

The second period of limitation is in subsection (3)(d)(ii)¶; 2 wherein the legislature provided that any claims existing prior to July 1, 1981, concerning the estate of an intestate whose death occurred prior to such date (July 1, 1981) by or on behalf of an illegitimate or an alleged illegitimate child to inherit from or through its natural father to be brought within three years from date.

As we interpret the legislative intent the three year period relates solely to those claims accruing to an illegitimate as a result of the death of an intestate prior to July 1, 1981. The one year or ninety (90) day period of limitation is therefore applied only to those cases where the intestate died subsequent to July 1, 1981.

Kimble at 1282-1283 [Emphasis added].

Neither in Miss. Code Ann. § 91-1-15 nor the discussion in *Kimble,* do we see the terms "intestate" and "natural father" used interchangeably. In *Miller v. Watson,* the *Kimble* case is followed in that an illegitimate grandchild was able to prove paternity after the natural father had predeceased the intestate.

Mrs. Lula Bell Miller Watson, the Administratrix of the Estate of Mrs. Eunie Elkins Miller, her mother, filed a petition in the Chancery Court of Choctaw County seeking to be adjudicated the sole heir at law of her mother. She also sought to confirm in herself title to certain lands which had belonged to her mother. Mrs. Watson and her brother, J.D. Miller (deceased), were the only children of their parents, Mrs. Eunie Elkins Miller and Arthur Miller. (Arthur Miller had predeceased Mrs. Eunie Elkins Miller by several years.)

Frank Miller, the appellant, filed an answer to Mrs. Watson's petition in which he claimed to be the illegitimate child of J.D. Miller. In his answer he sought a one-half share of the estate of his alleged grandmother, Mrs. Eunie Elkins Miller.

Miller at 673.

In both *Miller* and *Kimble* the Court found that the parties were able to inherit after a timely response in the Estate of the intestate; in *Miller* the intestate was the grandmother; and in *Kimble,* the intestate was the grandfather. In both cases the Court held that paternity could be established once the claim arose, at the death of the intestate (not necessarily the heir's natural father).

In Mississippi's reaction to *Lalli*, with revisions to § 91-1-15 followed by *Miller* and *Kimble,* the State demonstrated a preference for more protection of a family's property rights. Mississippi wants the family to inherit when possible. *Lalli* acts as a minimum level of protection. So, the state of Mississippi is constitutionally justified in enacting more protection than what is provided by *Lalli*.

In the case at bar, Ms. Geraldine Yates (Administratrix) by her Attorney Pat Catchings, cites to *Estate of Davidson*, 794 So.2d 261 for the proposition that the Chancellor is correct in denying Appellants on the grounds they did not prove paternity within three years of the death of their father.

Davidson can be distinguished from Appellants' case. Even though they are similarly trying to prove paternity, they are doing so for different reasons. In *Davidson,* Ms. Pringle was seeking to prove heirship for the purpose of taking a share of her natural father's estate.

> . . . Shannon told Pringle that he would give her some of the proceeds from Delia's estate, which primarily consisted of the property of W.H. Davidson that was distributed to Delia in 1975 and to which Pringle now claims she is entitled.
>
> *Davidson*, at 264.

The Appellants are not seeking their father's property because he never had an Estate opened at his death. Mr. Davidson's Estate was probated in 1975, with the proceeds going to his then wife. His illegitimate daughter then brought an action fourteen years later, concerning her father, Mr. Davidson's estate. Compared to the Appellants' in the case at Bar, they never had an Estate opened for their father. The important distinction is that Appellants are seeking an interest in their Aunt's Estate.

Even though in the *Miller* case, the father of the illegitimate had predeceased the intestate; the illegitimate child did indeed take his share of the grandmother's inheritance through representation after her death, following an after-the-fact establishment of paternity. *Lalli* would

not have allowed this, but Mississippi did. The same is true for the *Kimble* case, which was the precedent *Miller* followed; and it should also apply to the Appellants' case as well.

As still controlling authority, *Lalli* puts forth the reasons the standard is authorized constitutionally as (1) improving the reliability of the fact-finding process, (2) promoting the fair and final administration and settlement of estates by minimizing the possibility of delay and uncertainty; and (3) reducing fraudulent paternity claims; *Lalli,* at 270-72.

The Appellants' hurdle requires consideration of the case at Bar in relation to those three aspects. Are those ends met here? Could instead, the state find a balance of these interests with after-the-fact establishment of paternity? *Miller* and *Kimble* tell us the answer is "Yes."

In *Trimble*, the message was clear that illegitimates cannot be discriminated against unless the state has something approaching a compelling interest for doing so. Such interests are orderly distribution of intestate estates and timely clearing of title to real estate. The same is true in *Lalli.* But how can denying Appellants relief based on the date of their father, Mr. Morant's death when he is not the intestate in question pursue any of these interests?

The Appellants were young people when their father died. Since he had nothing to leave them, they had no reason to probate his Estate and incur legal fees trying to establish paternity in or around 1978 or no later than 1984. Are these compelling and orderly reasons to justify denial of their inheritance now? Is their Equal Protection served by denying them solely because their parents were never married? If the answer to this question is yes, merely because the Appellants are illegitimate and the continuation of *Lalli*, one must take into consideration the wake of *Lalli* and what standards have been established for a more just resonance of the rule. It is Mrs. McCullough's Estate in which Mississippi has a legitimate interest in administering efficiently. Had Mr. Morant married the Appellant's mother, there would be no issue. So what interest is

then so compelling to deny the Appellants Equal Protection solely because of their status as illegitimates?

Lalli is now over thirty years old. A careful review of the three standards set out in *Lalli* requires consideration as to whether furthering the state's interest can *only* be met by requiring the intestate to be the natural father as interpreted by the Chancellor. Because of the application of § 91-1-15, with *Miller* and *Kimble* following, logic suggests that after thirty years reconsideration of *Lalli* is in order.

In denying the Appellants their inheritance, there will be; (1) no improved reliability of the fact-finding process; (2) no promotion of fair and final administration of estates; and (3) no reduction of fraudulent paternity claims, as required by *Lalli, (supra* at 270-272). The only state interest that will be promoted is that this Estate will escheat to the state. It is well-settled precedent that escheats are not preferred. 27 Am. Jur. 2d, Escheats; § 5, (at 877).

II. If Mississippi Code § 91-1-15, is applied interpreting the natural father as the intestate, then the Due Process Clause of the Fourteenth Amendment is violated as the Equal Protection Clause should provide illegitimate children adequate notice or opportunity to be heard.

The Attorney General takes no position on who the intestate was, or when Appellants' action accrued. Their position was stated specifically, "the State takes no position on when their [Petitioners'] cause of action accrued" (T.T. 50, 1. 3-5). Rather, the Attorney General's position for this case argues only for the constitutionality of the Due Process clause *in general.* As a result, the specific issues at hand, (*i.e.* who is the intestate, and when did the action accrue), never became a central focus for this case.

A. Substantive Due Process

Substantive Due Process examines whether there is sufficient justification for government action. Illegitimate children fall into the category of "intermediate scrutiny." Prior to the Appellants' deprivation of their liberty interest in their property, according to this level of

scrutiny, the government must show that governmental interests are furthered by substantially related means. The Attorney General emphasized the "reasonably related" standard. However, restrictions based on illegitimacy are more typically subjected to "intermediate scrutiny" in the Equal Protection context on the grounds that they involve sex discrimination.

> Caban, challenges the constitutionality of § 111 of the New York Domestic Relations Law (McKinney), under which two of his natural children were adopted by their natural mother and stepfather without his consent. We find the statute to be unconstitutional, as the distinction it invariably makes between the rights of unmarried mothers and the rights of unmarried fathers has not been shown to be **substantially related** to an important state interest.
>
> *Caban v. Mohammed*, 441 U.S. 380, 381-382 (1979) [Emphasis added].

In a sex-based case, *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), the Mississippi Supreme Court added the requirement that, to be valid, a sex-based classification requires an "exceedingly persuasive justification."

> We begin our analysis aided by several firmly established principles. Because the challenged policy expressly discriminates among applicants on the basis of gender, it is subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. Reed v. Reed, 404 U.S. 71, 75 (1971). That this statutory policy discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review. Caban v. Mohammed, 441 U.S. 380, 394 (1979); Orr v. Orr, 440 U.S. 268, 279 (1979). Our decisions also establish that the party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an "exceedingly persuasive justification" for the classification. Kirchberg v. Feenstra, 450 U.S. 455, 461 (1981); Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 273 (1979). The burden is met only by showing at least that the classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives." Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142, 150 (1980).
>
> *Mississippi University for Women* at 723-724

As explored in Appellants' Brief, there are no governmental interests that can *only* be furthered by requiring a pre-death establishment of paternity, or a ninety (90) day post-death establishment. *Miller* and *Kimble* have provided clear parallels under which similar parties were allowed to inherit, while maintaining an effective state balance. The Appellants' case provides

an excellent example that their father's Estate and their aunt's Estate can both, indeed, be effectively reconciled and balanced by a current probate and establishment of heirship by and through the *current* intestate, rather than adhering to the strict exclusion standard set out in *Lalli*.

B. Procedural Due Process

The Assistant Attorney General, focused significantly on the rules associated with the Procedural Due Process Clause of the Fourteenth Amendment, and the historical validation of same. His citations are accurate as to what standards prevail. The notice provision of the Due Process Clause was almost the exclusive focus of his argument.

In actuality, the Appellants in the case at Bar were not allowed their Procedural Due Process, as Procedural Due Process allows for notice *and* hearing. The Appellants were given notice by the Administratrix, but were denied a full hearing to put forth their evidence that they are the rightful heirs of Thelma McCullough, through their father, Daniel L. Morant, Sr. From the Chancellor's rulings in this case, it appears that the Appellants would have been recognized as the natural children and heirs of Daniel Morant, but for the misapplication of § 91-1-15.

The Appellee Brief for Geraldine Yates (Administratrix) by Ms. Catchings, states that the Appellants did not meet their burden of proof in presenting sufficient evidence. Ms. Catchings goes on to state that the Chancellor was correct in finding that Appellants' claim arose at the time of their father's death over twenty-five years ago and that Appellants should have proved paternity at that time. Even though the Administratrix by and through Ms. Catchings were silent throughout the entire proceedings on these matters by Appellants, they now feel compelled to state a position against Appellants, by submitting a responsive brief at this stage in the process.

Appellee's Brief states that Appellants did not prove by clear and convincing evidence that they were the natural children of Daniel Lawrence Morant, Sr. This is true to the extent that Appellants never got the opportunity to present their evidence or testimony.

On February 9, 2005, Geraldine Yates (Administratrix) by Ms. Catchings filed their Petition for the Approval of the Accounting for the Discharge of the Administratrix and for the Closing of the Estate. In this sworn to and subscribed court document (Rec. 87-92) it is stated, *inter alia*, that the Appellants herein are heirs to the intestate, Thelma McCullough. The Chancellor agreed to this Petition and then later overturned her own decision, to which the Appellants herein sought relief.

In the Hearing on the Motion to Reconsider the Appellants were present and prepared to present evidence and testimony that Daniel Morant was their natural father. But the Chancellor denied Appellants the opportunity to do so, stating that a decision must first be made on the Motion to Reconsider before presenting evidence. (T.T. 42) Despite this clear directive from the court, the Chancellor denied Appellants on the grounds that they did not present evidence.

In her Order Denying Motion For Reconsideration, the Honorable Chancellor cited § 91-1-15 and stated that the Appellants "must first establish by clear and convincing evidence that they were the natural children of Daniel Lawrence Morant, Sr. [Appellants] have failed to meet this burden of proof. In order for the [Appellants] to inherit through Daniel Lawrence Morant, Sr. by right of representation, the [Appellants] action to determine paternity should have been filed or brought within three (3) years after July 1, 1981."

The Honorable Chancellor has effectively barred Appellants from ever presenting their evidence and testimony, ignoring *Miller* and *Kimble* entirely and relying exclusively on § 91-1-15(3)(d)(ii)(Para. 2). The reliance upon this part of the statute was due to the Chancellor misinterpreting the term "intestate" to mean "natural father". Such is not the case.

Multiple times, the Appellants were ready to put forth evidence that would clearly establish them as the children of Daniel L. Morant Sr. They were prepared to demonstrate this with credible testimony, along with Birth Certificates (Rec. 176-184) and Affidavits of Heirship

as well as the fact that their father listed them as dependant children to the Social Security Administration when he became disabled. (Rec. 199-220) This evidence would have surely established paternity had the Chancellor given Appellants the opportunity to present such evidence along with their own testimony.

Denying Appellants the opportunity to present their evidence and testimony, solely on the basis of an erroneous interpretation of § 91-1-15, does not square with *Miller* and *Kimble.* Those cases clearly stated whom to consider as the intestate and those illegitimates were allowed to prove their claims pursuant to § 91-1-27 and § 91-1-29. Therefore, the Chancellor should have allowed Appellants the opportunity to present evidence and testimony to establish the paternity. Not doing so was a denial of Appellants' Procedural Due Process.

CONCLUSION

Applying the authorities as cited herein, this Court should find that Appellants' claim accrued at the death of Thelma McCullough and not upon the death of Daniel L. Morant, Sr. Appellants urge this Court to find that Appellants are the natural children of Daniel L. Morant, Sr., and by virtue of this status are thus the heirs of Thelma McCullough.

The Honorable Chancellor failed to recognize the intestate as Thelma McCullough, rather finding that the intestate was Daniel L. Morant, Sr., and ruled according to that decision only. As a result, an erroneous legal standard was applied, allowing for reversal on those grounds.

Appellants were denied their Procedural Due Process. The Administratix knew to notice them and did so. The Appellants responded within the prescribed period of time after the death of their aunt. According to the law in *Miller* and *Kimble,* this is a timely response. What was considered Due Process with notice and hearing for Mr. Miller and Ms. Larsen (in the *Kimble* case), is not what occurred in the case at Bar. The record suggests that the Appellants evidence

and testimony of paternity would have been adequate had they been allowed to present same, but they were not allowed the opportunity to do so.

The Appellants participated at every level of this case, and were excluded from presenting their testimony and evidence. As a result, it cannot be found that they were provided with Procedural Due Process. They were not provided with a full hearing, as constitutionally guaranteed, before their deprivation of a property interest.

The Appellants were barred solely because of the Chancellor's determination that the intestate was Daniel L. Morant Sr. who died twenty-five years before his sister, Thelma M. McCullough. This misapplication of the law provides an avenue for reversal without reaching the constitutional issue.

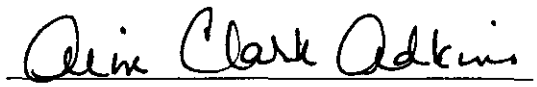
In finding Appellants the sole heirs at law of Thelma M. McCullough, and that their claim arose only upon her death, Appellants will have complied with § 91-1-15(3)(c) in that their claim was, in fact, timely filed; such that the net proceeds of Thelma McCullough's Estate should be disbursed to Appellants herein, share and share alike, per stirpes, as her rightfully adjudicated heirs at law.

In the alternative, if this Court finds that Appellants are the sole heirs at law of Thelma M. McCullough and/or of Daniel L. Morant, Sr., but are still barred from recovering the Estate herein pursuant to § 91-1-15(3)(d)(ii)(Para. 2), then Appellants ask this Court to find the Chancellor's application of § 91-1-15 unconstitutional as it follows *Lalli* too closely, and is unnecessary under Mississippi's historical interpretations of this issue. Because the application of *Lalli* is oppressive, the obstacle to overcoming the constitutional hurdle may be broached. The logic of the law may be ready for a revision after thirty years of an oppressive precedent.

Appellants respectfully request that they be recognized as the heirs to the Estate of their aunt, Mrs. Thelma M. McCullough, and therein be granted their rightful inheritance.

Respectfully submitted,

ARLEAN MORANT LEACH and DANIEL LAWRENCE MORANT, JR., on their own behalf, and on behalf of the other named Appellants

By: 
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CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I this day delivered by U.S. Mail and/or by FedEx, postage prepaid the original and three (3) true copies of the foregoing Appellants'/Appellant's Appeal Reply with a disk of same in Word format to the Hon. Betty W. Sephton, Clerk of the Mississippi Supreme Court, at her regular mailing address, P. O. Box 249, Jackson, MS 39205-0249; and also one (1) true copy to the following at their regular mailing address:

Geraldine Yates, Administratrix
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Jackson, MS 39205

THIS the 20th day of July 2009.

Arin Clark Adkins
ARIN CLARK ADKINS

AMMENDED CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I this day delivered by U.S. Mail and/or by FedEx, postage prepaid the original and three (3) true copies of the foregoing Appellants'/Appellant's Appeal Reply with a disk of same in Word format to the Hon. Betty W. Sephton, Clerk of the Mississippi Supreme Court, at her regular mailing address, P. O. Box 249, Jackson, MS 39205-0249; and also one (1) true copy to the following at their regular mailing address:

Honorable Patricia D. Wise
Chancellor of the Fifth Chancery District
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THIS the 20th day of July 2009.

/s/ Nathan Clark

NATHAN L CLARK III