

2009 CA 00537 SCT T

**CAUSE NUMBER 2009-CA-00537 CIVIL DOMESTIC RELATIONS**

The undersigned **WILLIAM TIMOTHY WHITE** certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

(Here list names of all such persons and identify their connection and interest.)

Tracey B. Farrell  
917 North James St.  
McComb, Ms. 39648

By William T. White  
Pro Se.

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### **Cases**

1. *Ellis v. Ellis*, 840 So. 2d 806, 811 (¶18) (Miss. Ct. App.2003) (citing *Davis v. Davis*, 829 So. 2d 712, 714 (¶9) (Miss. Ct. App. 2002)). (R- 46)
2. *Sally v. Sally*. Mandated 01/08/2002 ruling by the Mississippi Court of Appeals. (R- 19, 25-30)

### **Statutes**

1. Rule 5.04 Uniform Chancery Court Rules. (R- 40 ), (Exc- 114 )
2. Rule 54 of the M.R.C.P. (R- 43,49,52,53 ), (Exc- 115 )
3. Rule 58 of the M.R.C.P. (R- 19, 23, 35 ), (Exc- 115 )
4. Rule 79(a) of the M.R.C.P. (R- 19,20,23,24,29,35 ), (Exc- )

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**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS**

**WILLIAM TIMOTHY WHITE**

**APPELLANT**

**V.**

**CAUSE NUMBER 2009-CA-00537  
CHANCERY COURT NO 2004-61**

**DEPARTMENT OF HUMAN SERVICES  
STATE OF MISSISSIPPI**

**APPELLEE**

**APPELLANT'S OPENING BRIEF**

DATE OF TRIAL COURT	3/12/2009
JUDGMENT:	
TRIAL JUDGE:	LEM MITCHELL/HON. DEBBRA HALFORD
COURT FROM WHICH APPEALED:	PIKE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	RUSSELL HOLMES
NATURE OF THE CASE:	CIVIL-DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	WILLIAM TIMOTHY WHITE WAS FOND IN CONTEMPT FOR FAILURE TO PAY TRACEY FARRELL PROPER CHILD SUPPORT.
MOTION FOR RECONSIDERATION:	DENIED 3/23/2009

1. This is an appeal from the Chancery Court of Pike County, Mississippi, that went before the Family Master Lem Mitchell, where William Timothy White (White) was found in contempt for failure to pay support payments. Aggrieved by that decision, White has appealed. White presents eight issues for this Court's consideration:

**I.**

Whether the effective date of the increase in payments was considered to be March 1, or May 1, 2008?

**II.**

Whether the Custody Order filed on April 18, 2008, clearly instructed White of when the increase in child support was to begin?

**III.**

Whether White should be found in contempt and due \$785.00 for failing to comply with an ambiguous order in which the Court found the effective date for support increase to be on March 1<sup>st</sup> instead of May 1<sup>st</sup>, 2008?

**IV.**

Did the court error in including a \$250.00 payment for August 2007 in calculating the amount in arrearage, when White was previously found not in contempt on a Motion for Contempt filed by Farrell, on February 15, 2008, which included the payment in question?

**V.**

Whether the mere fact, that Farrell claims to have filed her 2007 IRS returns prior to the ruling by the Chancery Court on February 19, 2008, constitute reason enough for the court to not revisit the previous order of which was ambiguous as to whether White could begin to exercise his rights in 2007 or 2008?

**VI.**

Whether money spent on behalf of the children by White, for school activities and recreational activities, with Farrell approving and having knowledge of these payments, can be considered as child support?

**VII.**

Whether the court was in error when calculating support payments due by using time periods that were not within the April 14, 2008 through August 31, 2008 time frame as requested in the DHS petitioned?

**STATEMENT OF FACTS**

On October 26, 2006 a Petition to Establish Paternity, Child Custody, and For Other Relief, cause number 2004-61, was filed by White in order to establish paternity and gain custody of his daughter Alexandre White and to modify his previous agreed order dated April 5, 2005, concerning Blaine White from joint physical and legal to full custody. (Exc. -84,85).

On December 11, 2006 a hearing before the Chancery Court of Pike County resulted in an Agreed Temporary Order that gave White alternating weekly visitation with Alexandre White and increased his previous support payments from \$400.00 to \$500.00 per month to begin December 15, 2006 for both children. The previous Agreed Order on

April 5, 2005 had given White alternating weekly visitation along with joint physical and legal custody of Blaine White. (R-p. 8-11)

Copies of payments to Farrell or on Farrell's behalf were provided to the Chancery Court by White documenting payments over and above the ordered child support that totaled more than \$13,000.00.

Counsel for Farrell filed an Amended Motion for Citation of Contempt on February 15, 2008 raising several issues but the item relevant to this appeal is the August 2007 claim of failing to pay support in the amount of \$250.00. (Exc.- p.90-92)

On February 19, 2008 the Chancery Court of Pike County rendered an opinion in the custody case of White v. Farrell in reference to their two minor children Blaine and Alexandre White. (Exc.- p.93-113)

In the aforementioned ruling the Chancellor first addressed the February 15, 2008, Motion for Citation of Contempt and found White not to be in contempt of any claims made by Farrell. (Exc. - p.93)

In the February 19, 2008 order the chancellor increased White's child support payments from \$500.00 per month to \$670.00 per month. The order failed to specify a specific date the increase would need to begin being paid by White, unlike the two previous custody orders which gave specific dates. (R – p. 14), (Exc. p. 17)

Evidence of Farrell's 8.05 and testimony before the court verified she was unemployed and had been since the relationship with White began in February 1998.

In light of the aforementioned fact of Farrell's unemployment the court ruled that, White, would be entitled to claim both children as dependants until such time Farrell can no longer claim her oldest son Mikey and she becomes gainfully employed. Prior to the November 2006 proceedings, there was no between the two parties as to which party could claim either of the children. (R- p. 13), (Exc. p. 112)

The December 11, 2006 Agreed Temporary Order resulted in the two parents sharing custody for the entire year of 2007 due to the initial cause not concluding until February 19, 2008. (R. – 8)

The final Custody Order was signed by the Chancery Court Chancellor on April 14, 2008 and filed with the Clerk of Court on April 18, 2008. (R- 12, 14)

White did not receive a copy of the prepared order until May 5, 2008.

For reasons unknown, Farrell's counsel, Mark Holmes, failed to prepare the Custody Order within the 10 days in accordance with Rule 5.04 of the Uniform Chancery Court Rules. R. -14, 40) (Exc. 114)

On October 8, 2008, Department of Human Services of the State of Mississippi, ("DHS") represented by Russell Holmes, filed a Petition For Contempt and Other Relief unto the Chancery Court of Pike County, against White. (R- 4-18)

The aforementioned petition by DHS only petitioned the court to review support payments due from 04/14/2008, through August 31,2008. (R-4)

Additionally the DHS petition filed included hand written notes in paragraph 2, "The Court increased the child support on April 14, 2008. in "Exhibit A1". (R-4)

The aforementioned DHS petition came on for hearing before the Family Master, Lem Mitchell, of the Chancery Court of Pike County on February 12, 2009.

During the said hearing DHS argued that the increase in child support of \$170.00 was effective March 1, 2008, and not the April 14, 2008 as DHS had previously noted in their original petition.

Additionally DHS argued that White owed \$250.00 for a support payment that was returned without White's knowledge in August 2007. This same payment was part of a the Motion for Contempt filed by Farrell on February 15, 2008 before the Chancery Court Chancellor, in which White was not found to be in contempt.

At conclusion of said hearing the Family Master requested both parties to submit written arguments as to their position of the effective date of when the \$170.00 increase should have began being paid by White and why White should and should not be found to be in contempt.

White submitted and filed a response on Feb 17, 2009 in support of his belief that the 1<sup>st</sup> increase in payment was due on May 1, 2008. In his argument he argued that under M.R.C.P. Rule 58, a judgment is not considered to be in effect until such time it is entered as provided in M.R.C.P. Rule 79(a) and cited Scally v Scally, mandated 01/08/2002 ruling by the Mississippi Court of Appeals. (R-23-29)

White also argued that DHS had failed to prove that if any support was in arrearage then it was an amount less than the required monthly payment of \$670.00 per month and should not be found in contempt because these amounts were less than 30 days delinquent.

DHS counsel, Russell Holmes, also offered a response to the Family Master's request in the form of a letter that was not filed with the clerk of court, dated February 19, 2009. In his response he argued that the bench opinion of the Court became legally effective on the time and date rendered by the Court, February 19, 2009. (Exc. – 114,115)

Additionally Mr. Holmes notated that the order was not signed by the Chancellor until April 14, 2008 and not filed with the Chancery Clerk until April 18, 2008. He also



address that counsel for Farrell, Mark Holmes did not prepare the order in accordance with Rule 5.04 of the Uniform Chancery Court Rules. (Exc. – 114,115)

DHS also conceded that the Court did not state a specific month for the child support to start and there was ambiguity in the start date. (R. – 58,59)

On or about February 27, 2009 a opinion was forwarded to White and DHS as to the findings of the Chancery Court Family Master, Lem Mitchell.

On March 4, 2009, White filed a Motion For Reconsideration unto the Chancery Court of Pike County. (R-40-57)

On March 12, 2009 a Judgment was filed by the Family Master, it was signed by Lem Mitchell on March 4, 2009 and signed by the Chancellor Debbra Halford on March 8, 2009. (R. -58-61)

The Judgment found that White was in contempt for failing to make the proper support payments and ordered him to pay \$785.00 to bring the support current through August 31, 2008. (R- 58-61)

In calculating the amount due the Family Master went back to December 15, 2006, which was not within the time frame properly petitioned before the court. (R-59)

In the Petition for Contempt before the Family Master, DHS, ask for the court to review the amount due from April 14, 2008 through August 31, 2008, in item 3 of original Petition by DHS on October 8, 2008.

Included item 3 of the Family Master's Judgment, he notated that neither the Bench Opinion nor the Signed Custody Order specified what date the increase in child support was to begin. (R. -58-59)

In item number 4 of the Judgment the Family Master stated " This Court finds that the effective date of the order increasing child support from \$500.00 to \$670.00 per month was March 1, 2008. (R. -59)

In addressing the White's position that the Chancery Court Custody Order filed on April 18, 2008 gave him the right to claim the children on his 2007 tax returns as well as any future returns, the Family Master seem to merely take the position that because Farrell had supposedly filed her returns prior to the February 19, 2009 opinion, that she was entitled to claim both children for 2007.

Finally the judgment did not view payments for school and recreational expenses paid by White to be child support.

On March 23, 2009 Family Master, Lem Mitchell and Chancery Court Chancellor, Debbra Halford signed and filed a Order Denying Motion For Reconsideration filed by White.

Now White prays unto Supreme Court of Mississippi, through his timely appeal filed on March 30, 2009, to reverse the decision of the lower court and find in favor of White.

### **SUMMARY OF ARGUMENT**

White offered unto the Chancery Court, Family Master, Lem Mitchell, that he and DHS read the February 19, 2008 custody order differently in reference to when the Court Order became effective and when White was required to begin paying the increase of \$170.00 per month. Said order was not signed until April 14<sup>th</sup>, and not filed until April 18, 2008, and the failure of the Court or the Order to State a Specific date increase was to commence causes issue. The order for reasons unknown was not prepared in the 10 days allowed and this fact leads White to believe his increase was due May 1, 2008 not March 1, 2008 as DHS now argues.

White contends that with Ms. Farrell claiming the children on her 2007 tax returns that it has cost him \$3,610.00 and that these amounts should have been credited to White for support payments.

White also contends that extra money spent outside of the Custody Order, on the children's behalf for school and recreational activity should be credited toward White's child support obligations.

Finally White presented several issues as to why the February 19, 2008 Custody Order was ambiguous and on certain facts DHS also argued that ambiguity existed. In fact without using the word ambiguous the Mr. Mitchell addressed the failure of the Bench opinion and the Custody orders failure to specify a date.

### **ARGUMENT**

White was involved in a tedious custody battle with Tracey Farrell that began with the birth of their son Blaine White in November of 2003. In April 2005 White and Farrell agreed to joint physical and legal custody of Blaine in which White agreed to pay \$400.00 per month in child support. Unfortunately due to a history of abuse of narcotics and alcohol by Farrell the two parties were never wed. Her abuse resulted in an arrest and Farrell entered drug court going through rehab. During this time the two parties attempted to reconcile. During that period an additional child was conceived their daughter Alexandre in November 2005.

White continued to attempt to reconcile but to no avail and in November 2006, White felt that the only solution was to petition the court for custody of both children. On December 11, 2006 a hearing before the Chancery Court of Pike County resulted in a Temporary Order giving both parents equal time with the children and increasing White's child support from \$400 to \$500 per month payable on the 1<sup>st</sup> and 15<sup>th</sup> of each month.

During the hearing White presented unto the court documents totaling more than \$25,000 in child support payments made to Farrell or on behalf of Farrell. This amount exceeded the ordered Child support in excess of \$13,000. This evidence is not before this court but is offered as to a possible explanation as to why the court did not find White in contempt on a Motion filed by Farrell on February 15, 2008 as follows (Exc. p 90-92, 93).

On February 15, 2008, Farrell filed a Motion for Contempt against White in which she made several claims but the one relative to this action is the claim of a returned check in August 2007.

After a fifteen month battle a final order was rendered on February 19, 2008. On this day the court first ruled on the motion for contempt and the Chancellor, found White not to be in contempt and is reflected in the court transcripts in paragraph 1. (Exc. 93)

In the ruling the court failed to identify any material change that would allow for a modification of the order previously agreed to in reference to Blaine but in an attempt to bring piece to the children White did not appeal the Courts ruling on Custody.

The relevant matters before this court that were included in the February 19, 2008 ruling include: 1. The court increasing the child support an additional \$170 to \$670 per month. 2. The failure of Farrell's counsel to prepare the Custody Order in the 10 days as required by Uniform Chancery Court Rule 5.04. 3. The Custody Order giving White the right to claim both children as dependants for tax purposes but failed to be specific as to whether that included the year 2007 that the two parties spent in litigation or if it was to start in 2008.

White did not receive a copy of the signed and filed Custody order until May 5, 2008 some 76 days after the opinion and 55 days after it's filing date of April 18, 2008.

Previous to receiving the Custody Order White filed a 2007 return and was notified that his return was being rejected because another party had claimed the children for 2007. After attempting to contact Ms. Farrell for more than three weeks, to determine if she had claimed the children, Ms Farrell informed White that she had claimed both and that he was not to be able to claim the children until 2008. White disagreed with Ms. Farrell's position and his attempts to resolve this matter with Farrell were unsuccessful.

This difference of opinion resulted in Ms. Farrell contacting DHS claiming that White should have been paying the increased support payments in March 2008.

In the DHS, Petition for Contempt and Other Relief, handwritten notes made note that the increased child support began on April, 14, 2008. White would agree that the increase in support payments took effect in April but would aver that the effective date was actually April 18, 2008, which was the filing date of the Custody Order. (R.-4)

White would offer as he did in his Defendant's filed February 17, 2009, "Response To Court Request For Evidentiary Support and Request for Relief", that a Judgment is not considered to be in effect under M.R.C.P. Rule 58, until such time it is entered as provided in M.R.C.P. 79(a).

Additionally in same said Response, White offered in defense case law *Scally v. Scally* Mandated 01/08/2002 ruling by the Mississippi Court of Appeals, stating, "The signing date of the judgment is not the entry date. It becomes **effective** only {"when entered as provided in M.R.C.P. 79(a)."}, and citing Rule 58 of M.R.C.P.

White was under the opinion that being that Ms. Farrell had testified and sworn on her 8.05 that she was and had been unemployed that Ms. Farrell would have no reason to file a return for 2007.

Upon receiving said Custody Order, White, notice modifications to the order that were not part of the opinion rendered by the court, ie (If the two parties can not agree on the summer visitation then White shall have the first two weeks of the month).

White avers that the order was ambiguous as to when increased payments were intended to begin, and due to some 55 days elapsing before the order was signed and another 4 days before it was filed with the clerk of court, White would aver that the increase of \$170.00 in child support would not have been due until the first applicable payment date after the April 18, 2008 filing date, which would be May 1, 2008.

White also avers that had the order not also been ambiguous in reference to the tax returns he would have received \$2,578.00 in a refund for 2007 IRS returns instead of having to pay \$1,032.00 for a total expense to him of \$3,610.00

White avers in his March 4, 2009 Motion for Reconsideration, that the February 19, 2009 Custody order was ambiguous and therefore he should not be found in willful contempt, and that the rule finds that an order found to be ambiguous should be found in favor of the party not preparing such order.

Additionally White offered a defense in case law as to willful contempt in *Ellis v. Ellis*, 840 So. 2d 806, 811 (¶18) (Miss. Ct. App. 2003) (citing *Davis v. Davis*, 829 So. 2d 712, 714 (¶9) (Miss. Ct. App. 2002)). White states that it follows that if the order was unclear, then White cannot be held in willful contempt for failure to comply.

White also argued in the Motion for Reconsideration that the Farrell's counsel, Mark Holmes for preparing the order and violated Rule 5.04 of the Uniform Chancery Court

Rules and that Mark Holmes had made modifications to said Custody order that were not in the Chancellor's ruling.

White would also aver that had Chancellor held Mark Holmes accountable in preparing the order in the time allowed by Rule 5.04 of the Uniform Chancery Court Rules, his payments would have been due in March and therefore the matter concerning March and April 2008 support payments, would not be before the Mississippi Appeals Court now.

### **STANDARD OF REVIEW**

The Court should review the Chancery Court's finding that the effective date the increase in support payments due by White to begin on March 1, 2008 instead of May 1, 2008, using a De Novo review of M.R.C.P. Rule 54, 58 and 79(a).

The Court should review the Chancery Court's ruling as to if White received clear instructions, as to when the increased support payments should begin, using a Substantial evidence standard of review. (R-17)

The Court should review the Chancery Court's finding of White in contempt by using the clearly erroneous and substantial evidence review. Citing *Ellis v. Ellis*, 840 So. 2d 806, 811 (¶18) (Miss. Ct. App.2003) (citing *Davis v. Davis*, 829 So. 2d 712, 714 (¶9) (Miss. Ct. App. 2002)). It follows that if the order was unclear, then White cannot be held in willful contempt for failure to comply.

The Court should review the Chancery Court's finding of White to be liable for the \$250.00 August 2007 payment using substantial evidence and clearly erroneous standard. (Exc. 93 ).

The Court should review the Chancery Courts decision not allow White the right to claim the dependant children for the tax year 2007 simply because Farrell claims to have filed her returns prior to the February 19, 2008, Custody Order, using an abuse of discretion standard.

The Court should review the Chancery Courts decision that additional money spent by White for school and recreational activities is not to be considered child support using De Novo and an abuse of discretion.

The Court should review the Chancery Court decision to calculate the amount of support due by White in going back to December 15, 2006, when the DHS Petition only requested the Court to rule on payments due from April 14, 2008 through August 31, 2008, using a De Novo standard and substantial evidence standard..

## CONCLUSION

1. White should be found not to be in contempt of the April 18, 2008 Custody Order.
2. An order should be prepared correcting any ambiguous language pertaining to effective dates and which party can claim the children for the tax year 2007 and in the future.
3. White should be given credit for all payments made for school and recreational activities as well as the expenses he has incurred with his 2007 liabilities to the IRS.
4. White should not be required to pay the \$250 August 2007 payment that was addressed in Farrell's Motion for contempt filed on February 15, 2008 and ruled on by the court on February 19, 2008.

White prays for any other relief, general or specific, as the Court may deem fit and proper in the premises.

Respectfully submitted on this the 29<sup>th</sup> day of July, 2009

WILLIAM TIMOTHY WHITE

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Pro Se  
1054 Murray Rd.  
McComb, Ms. 39648  
601-248-1759  
whitesandsrealty@cableone.net

PREPARED BY:  
WILLIAM TIMOTHY WHITE  
1054 Murray Rd.  
McComb, Ms. 39648  
601-248-1759  
whitesandsrealty@cableone.net

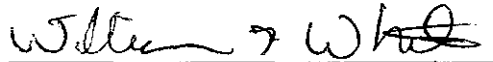
## CONCLUSION

1. White should be found not to be in contempt of the April 18, 2008 Custody Order.
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3. White should be given credit for all payments made for school and recreational activities as well as the expenses he has incurred with his 2007 liabilities to the IRS.
4. White should not be required to pay the \$250 August 2007 payment that was addressed in Farrell's Motion for contempt filed on February 15, 2008 and ruled on by the court on February 19, 2008.

White prays for any other relief, general or specific, as the Court may deem fit and proper in the premises.

Respectfully submitted on this the 29<sup>th</sup> day of July, 2009

WILLIAM TIMOTHY WHITE



Pro Se  
1054 Murray Rd.  
McComb, Ms. 39648  
601-248-1759  
whitesandsrealty@cableone.net

PREPARED BY:  
WILLIAM TIMOTHY WHITE  
1054 Murray Rd.  
McComb, Ms. 39648  
601-248-1759  
whitesandsrealty@cableone.net

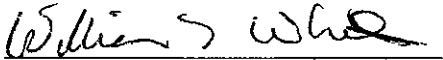
CERTIFICATE OF SERVICE

I, William T. White, do hereby certify that I have this day delivered a true and correct copy of the foregoing Appellant's Brief in reference to cause 2009-CA-00537 postage prepaid by U.S. Mail, to:

Pike County Chancery Clerk of Court  
P.O. Box 309  
Magnolia, Ms. 39652

Russell Holmes  
P.O. Box 665  
McComb, Ms. 39649

On this the 29<sup>th</sup> day of July, 2009



William T. White  
1054 Murray Rd.  
McComb, Ms. 39648  
(601) 248-1759

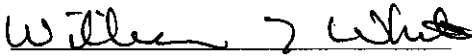


CERTIFICATE OF SERVICE

I, William T. White, do hereby certify that I have this day delivered a true and correct copy of the foregoing Appellant's Opening Brief and Excerpts in reference to cause 2009-CA-00537, by US Mail, Postage prepaid to:

Hon Debbra Halford  
P.O. Box 575  
Meadville, Ms. 39653

On this the 3rd day of August, 2009



William T. White  
1054 Murray Rd.  
McComb, Ms. 39648  
(601) 248-1759