

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LEE ANN WILLIAMS

APPELLANT

VS.

CAUSE NO. 2009-CA-00974

NICHOLAS JOE WILLIS

APPELLEE

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ON APPEAL FROM  
THE CHANCERY COURT OF ALCORN COUNTY, MISSISSIPPI

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record hereby certifies that the following listed persons may have an interest in the outcome of this case. These representations are made in order that the judge of this court may evaluate possible disqualification or recusal.

Chancellor:                      The Honorable Jacqueline Estes Mask  
    Tupelo, Mississippi

Appellant:                        Lee Ann Williams  
    Corinth, Mississippi

Appellee:                         Nicholas Joe Willis  
    Pontotoc, Mississippi

Attorneys for  
Appellant:                        James D. Moore  
    Tupelo, Mississippi

Attorney for  
Appellee:                         Honorable Rebecca Phipps  
    Corinth, Mississippi 38835-0992

Guardian *Ad Litem*:            Honorable Joey Cobb  
    Iuka, MS 38852

**STATEMENT REGARDING ORAL ARGUMENT**

Oral Argument is not requested.

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## **I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Whether cumulative effect of no less than five different concerns regarding the health, education, and welfare of the minor child were sufficient to establish a material change in circumstances adverse to said child's best interest which would merit a change in custody or at the very least were sufficient to create a prima facie case at trial so that a directed verdict should not have been granted.

## STATEMENT OF THE CASE

### THE COURT PROCEEDINGS

1. On August 23, 2007, the Chancery Court of Alcorn County entered an order granting joint legal custody of Makenzie Cheyenne Willis born on June 1, 2000 to her parents, Nicholas Joe Willis and Lee Ann Williams (previously Lee Ann Stogner). The father was given periods of physical custody during the school year, subject to every other weekend and every other major holiday visitation by the mother. The mother was given periods of physical custody during the entire summer visitation with the exception of two weeks as well as every spring break, a week during Christmas time, and every other major holiday during the school year. The parties were each ordered to support the minor child while the minor child was in their care.
2. On February 15, 2008, the order of August 23, 2007 was modified to the extent that the mother was granted three weekends per month of visitation with the minor child during the school year and the Court reaffirmed that the father had no weekend visitation during the summertime when the mother had physical custody. The father was also found to be in contempt and admonished to comply with the Court's order of August 23, 2007 to keep the mother notified of any and all medical appointments and school activities for the minor child.
3. On May 22, 2008, Lee Ann Williams filed to modify the order of February 15,

2008 to the extent that she should be awarded sole custody of the minor child of the parties. On May 27, 2009, an order was executed by the presiding Chancellor, which was filed on June 3, 2009, which is the basis of this appeal. Said order denied the relief sought by the mother to grant her the custody of the minor child of the parties.

### **STATEMENT OF RELEVANT FACTS**

1. The minor child's grades have fallen since she has been staying with her father during the school year. Lee Ann Williams had to enroll said child at summer school during the summer of 2008. See transcript, page 17.
2. While in the physical custody of the father, the minor child came home with finger nail marks dug into her arm after being disciplined by her stepmother, Cheryl Willis. See trial transcript, pages 17-23.
3. The child's father failed to seek medical attention after the child had developed numerous cavities on her teeth. See trial transcript, page 24.
4. The child's father continued to fail to keep the mother advised of medical appointments and school activities. See trial transcript, pages 25-26.
5. The father failed to get medical attention for the minor child as needed. See trial transcript, pages 26-28.
6. The father and stepmother have been interfering with the mother's visitation. See trial transcript, pages 33-34.
7. Further parental interference is manifested by the fact that the father fails to give identifying information for the mother on medical records, school records, etc. See trial

transcript, pages 40, 42-43.

### **SUMMARY OF ARGUMENT**

The basically undisputed statement of relevant facts as indicated above clearly establishes a material change in circumstances adverse to the best interest of the minor child of the parties such that full custody of said child should be placed with the mother.

### **ARGUMENT**

At trial, Appellant Williams presented substantial evidence which establishes that a material change in circumstances has occurred with respect to the minor child of the parties both adverse to the best interest of said child, and that warrants a change in custody from that of joint custody to placing primary custody of said child with the mother. Due to a drop in grades, the mother had to enroll the child in summer school, over the objection of the father initially. See trial transcript, page 17. Furthermore, during the month of April, 2008, the step-mother of the minor child grabbed her so hard that she punctured the child's arm with her finger nails, leaving wounds that took a few weeks to heal. See trial transcript, pages 17-23. The father has taken no action to have the daughter receive adequate dental care for no less than nine cavities. See trial transcript, page 24. In addition to the lack of concern over the child's cavities, the father has also not sought proper medical care for a condition that the child has with warts on her fingers. See trial transcript, pages 26-28. Parental interference has been well documented in this case as indicated by the interference of the father and step-mother in failing to properly identify the mother in emergency and school contact information, as well as on certain medical records. See trial transcript, pages 40, and 42-43. Such interference is further evidenced by a refusal to allow



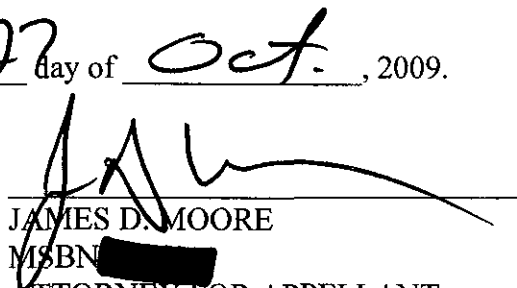
visitation one weekend during March, 2008. See trial transcript, pages 33-34.

The Chancellor's opinion confirms the existence of all the mother's concerns, but fails to consider that the totality of all of these circumstances establishes a material change in circumstances. See trial transcripts, page 137-142.

### CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the uncontradicted evidence in this cause establishes that a material and substantial change in circumstances exist as corroborated by at least five different areas of concern; i.e., falling grades, physical discipline leaving marks on the child, lack of medical attention and dental care, failure to keep the mother advised of educational and medical issues of the minor child, and parental interference with visitation and the mother's right to be identified in medical and school records as an emergency contact. The total effect of these circumstances demonstrate a material change in circumstances adverse to the best interest of the minor child of the parties such that custody should be vested with the mother, with the father to have reasonable rights of visitation.

RESPECTFULLY SUBMITTED, this the 27 day of Oct., 2009.

  
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**CERTIFICATE OF SERVICE**

I, James D. Moore, attorney for Lee Ann Williams, do hereby certify that I have on this date filed a bound original and three (3) bound copies of this Brief of Appellant with the Clerk of the Supreme Court. I further certify that I have filed with the Clerk an electronic copy of the Brief of Appellee on CD-ROM.

I further certify that I have filed with the Clerk four (4) copies of the Appellee's Record Excerpts, containing the Agreed Order of Modification of August 23, 2007, Order of February 15, 2008, Complaint for Contempt and Modification, Order being appealed, Testimony of Lee Ann Williams and the bench ruling.

I further certify that I have on this date sent a copy of the Brief of Appellant and the Record Excerpt to the following persons via first-class mail, postage pre-paid:

Honorable Jacqueline Estes Mask  
Chancellor  
P.O. Box 7395  
Tupelo, Mississippi 38802

Honorable Joey Cobb  
P.O. Box 773  
Iuka, MS 38852

Honorable Rebecca Phipps  
Post Office Box 992  
Corinth, Mississippi 38835-0992

RESPECTFULLY SUBMITTED, this the 27 day of Oct., 2009.

  
JAMES D. MOORE

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