BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS

STEPHANIE BOLTON — APPELLANT

VS. — NO.: 2009-TS-01288

RANDY BOLTON, JR. — APPELLEES

APPELLANT'S BRIEF

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BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS

STEPHANIE BOLTON — APPELLANT

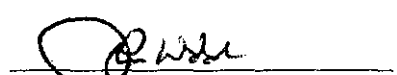
VS. — NO.: 2009-CA-01955-COA

RANDY BOLTON, JR. — APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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.

1. Stephanie Bolton, Paradise, California, Appellant;
2. John D. Weddle, Esq., Tupelo, MS, Counsel for Appellant;
3. Randy Bolton, Jr., Itawamba County, Mississippi;
4. Shane McLaughlin, Esq., Tupelo, MS, Counsel for Appellees;
5. Kirk Tharp, Esq., Tupelo, MS, Counsel for Appellees;
6. Honorable Jacqueline Estes Mask, Chancellor;



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I. TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS i
I. TABLE OF CONTENTS ii
II. TABLE OF AUTHORITIES iii
III. STATEMENT OF THE ISSUES 4
IV. STATEMENT OF THE CASE 5
A. Procedural History 5
B. Factual History 6
V. SUMMARY OF THE ARGUMENT 10
VI. ARGUMENT 12
A. Standard of Review 12
B. The trial court erred in its modification of visitation on an interim basis. 12
C. The trial court erred in finding that a material change in circumstances existed since the prior decree that adversely affected the welfare of Tyler. 14
D. The trial court erred in finding that it is in the best interest of Tyler under the *Albright* test to modify custody thereby separating him form his siblings. 17
E. The trial court erred in granting appellee credits against his vested child support obligation. 18
VII. CONCLUSION 21
VIII. CERTIFICATE OF SERVICE 22

II. TABLE OF AUTHORITIES

Cases

Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983) 12
Brand v. Brand, 482 So.2d 236, 237-38 (Miss. 1986);..... 19
Brown v. Brown, 764 So. 2d 502, 504-505 (Miss. Ct. App. 2000)..... 18
Cornelius v. Overstreet, 757 So.2d 332 (Miss.Ct.App.2000)..... 19
Dorr v. Dorr, 797 So.2d 1008 (Miss.App. 2001) 11, 19
Forsythe v. Akers, 768 So. 2d 943, 948 (Miss. Ct. App. 2000) 16
Franklin v. Kroush, 622 So. 2d 1256, 1257 (Miss. 1993), ... 18
Giannaris v. Giannaris, 960 So.2d 462 (Miss. 2007)..... 12
Holmes v. Holmes, 958 So. 2d 844 (Miss. Ct. App. 2007)..... 18
Johnson v. Johnson, 913 So.2d 368 (Miss.2005) 10, 13
McCracking v. McCracking, 776 So. 2d 691, 693 (Miss. Ct. App. 2000) 16
Mizell v. Mizell, 708 So.2d 55, 59 (Miss. 1998). 12
Moore v. Moore, 757 So. 2d 1043, 1050 (Miss. Ct. App. 2000)..... 18
Owens v. Owens, 950 So.2d 202 (Miss.2006). 14
Powell v. Powell, 976 So. 2d 358, 361-63 (Miss. Ct. App. 2008)..... 17
R.K. v. J.K., 946 So.2d 764, 772 (Miss. 2007)..... 12
Robison v. Lanford, 841 So. 2d 1119, 1123-24 (Miss. 2003)..... 16
Rubisoff v. Rubisoff, 242 Miss. 225, 235, 133 So.2d 534, 537 (1961) 19
Sellers v. Sellers, 638 So.2d 481, 484 (Miss.1994) 11, 17
T.K. v. H.K., 24 So.3d 1055 (Miss. Ct. App. 2010)..... 17
Tanner v. Roland, 598 So.2d 783, 786-87 (Miss. 1992)..... 11, 20

Statutes

Miss.Code Ann. § 75-17-7 19

III. STATEMENT OF THE ISSUES

1. Whether the chancellor erred in its modification of visitation on an interim basis thereby effectively modifying custody prior to the completion of the hearing on the merits and thereby placing the Appellee in a better position for permanent custody under *Albright*.
2. Whether the chancellor erred in finding that a material change in circumstances existed since the prior decree that adversely affected the welfare of Tyler.
3. Whether the chancellor erred in finding that it is in the best interest of Tyler under the *Albright* test to modify custody thereby separating him form his siblings.
4. Whether the chancellor erred in giving appellee credits against his vested child support obligation.

IV. STATEMENT OF THE CASE

A. Procedural History

The parties in this action filed for divorce on or about January 3, 2002 requesting a divorce on the grounds of irreconcilable differences. The parties filed a separation child custody and property settlement agreement that was approved by the court and made a part of the final decree for divorce. Appellant was granted primary custody and control of parties minor children namely Tyler Michael Wade Ward born July 28, 1994 and Jennifer Ann Bolton born March 18, 2002, hereafter referred to as "Jenny". Elizabeth Page Ward is also in the custody of the appellant at the time of the divorce.[1] Appellant and the minor children reside in Paradise, California where they were enrolled in school at the time these proceedings began; appellee resides in Itawamba County, Mississippi with his parents. The appellee filed a petition for modification of decree on or about July 23, 2007 requesting that the custody of Tyler be modified to grant the appellee full legal and physical custody of Tyler only. *Appellant's Record Excerpts* at 4. Appellee alleged that there had been a substantial and material change in circumstances adversely affecting the best interest of Tyler since the separation of the parties, that Tyler's relationship with his mother has deteriorated, and that the minor child has repeatedly requested to live with his father. *Id.* In August of 2007, appellee, after having Libby, Tyler, and Jenny in Itawamba County for the summer, sent Libby and Jenny back to California by airplane as the parties agreed, but unbeknownst to the appellant until Jenny and Libby arrived at the airport in California, had kept Tyler in Itawamba County.

[1] Elizabeth Page Ward, age fifteen at the time of the proceedings, gave testimony at the hearing. Elizabeth, or "Libby" is a half sister to the parties children. Libby is not appellee's biological child but she considers him to be her father. *T.* at 75.

T. at 641-642. The parties entered into an agreed order on or about August 15, 2007 wherein full custody would remain with the appellant, but the matter would be set for review the following summer. The cause came on for hearing on July 9, 2008 and on July 25, 2008. At the end of the day on July 25, 2008, testimony had not been completed. The court, on its own motion, entered an interim order at that time ordering that on an interim basis the appellee would have extended visitation with Tyler until further order of the court and that Tyler would be enrolled in the Itawamba County school system until further order of the court. The court went on to award the appellant visitation with Tyler for the upcoming Thanksgiving holiday. At the end of the proceedings, the chancellor entered an order stating that there had been a substantial and material change in circumstances since the entry of the *Judgment for Divorce - Irreconcilable Differences* which adversely affects the minor child and awarded the appellee primary legal and physical custody of Tyler. The court also ruled on appellant's contempt for child support issue ruling that the appellee was in contempt, but gave appellee significant credits against the child support arrearage before granting appellant a judgment.

B. Factual History

Appellant lives in Paradise California, having relocated there after the parties' divorce in 2003. At the time this action was filed by appellee, she lived there with Libby, Tyler, and Jenny and worked at her father's grocery store within walking distance of their home. *T.* at 15. Appellee still resides in Itawamba County, Mississippi. At the hearings held on four separate dates in 2008; two in July, and two in December, Libby, appellant, and Tyler testified regarding Tyler's accomplishments in his extra-curricular activities in

California and his musical talents. *T.* at 5-7, 138, 169-171. Tyler plays several instruments and was in a band in California. Libby testified that Tyler seemed happier with appellee in Mississippi, but testified that she would not want to "lose her little brother" and that she just wants her little brother to come back home. *T.* at 10-11, 228. Libby testified that Tyler is also happy in California because of all the activities he has there. *T.* at 225. Libby testified about the friction between appellant and Tyler stating that they argue over such things as Tyler performing his chores. *T.* at 10, 12. Libby testified that appellant sometimes left the children at home by themselves but that Libby, who is fifteen years old, was left in control and that Tyler and Jenny did what they were told and behaved. *T.* at 8-9. Libby stated that sometimes Tyler was given a choice to stay at home or go to the family grocery store and he most of the time stayed home. *T.* at 13. Libby also pointed out some ways Tyler acts more aggressively in Mississippi than in California, describing ways that he has been aggressive toward her and telling appellant over the phone "I'm not afraid of you" and "I hate you." *T.* at 60-61, 237-239.

Even though Tyler complained about being left at home alone or with Libby in charge, he testified that at times he chose to stay at home and he was not bothered by it. *T.* at 153, 183-185. Even though Tyler testified that he was afraid of appellant and he wanted to live with his father, he also testified that he loved both his parents and had never expressed to the school counselor that he was afraid of appellant. *T.* at 187, 196. Tyler complained about appellant yelling at him and sometimes using curse words and even stated that on one occasion, she threw a television remote at him but missed. *T.* at 173-174. Tyler admitted, however, that appellant had never struck him. *T.* at 139.

Tyler complained about seeing Richard, appellant's boyfriend, intoxicated when he came over to the house, and on one occasion playing with his musical instruments, but stated that Richard had never harmed him or any of his musical instruments. *T.* at 150, 169. Appellant is no longer seeing Richard. *T.* at 691.

Appellant testified that Tyler had never told her that he wanted to live with appellee prior to this action being filed. *T.* at 77-78, 641. Appellant learned of his decision when in August of 2007, Libby and Jenny returned home from summer visitation without Tyler. *Id.* Appellant did not believe Tyler was afraid of her. In support of her contempt of court action against appellee, appellant testified that appellee owed her over $13,000.00 in child support arrearage.

Appellee testified that he was concerned over the children being left alone, the children's grades, and the drinking problems of Richard. Appellee apparently believed the children were being left alone because Tyler had told him so over the phone. *T.* at 409. Appellee has never observed any of the complaints he has against appellant at her home in California. *T.* at 408. Appellee denied that appellant was a bad mother and admitted that the only difference between Tyler's situation and his two sisters was that Tyler had requested to come live with him. *T.* at 443-444. Appellee admitted that he would not have filed a petition for modification of custody had Tyler not asked if he could live with appellee. *T.* at 444. Appellee admitted that he owed child support in excess of $14,000.00 but produced Western Union transfers totaling $2,939.00 and requested credit for it against the child support arrearage. *T.* at 381-387, 389-390. He admitted that these transfers did not specify the purpose of the payments. *T.* at 312. Appellant testified that she never received the sum of money he claimed, but possibly

received some of it. *T.* at 625. Appellee also requested that he be given credit against child support for airline ticket purchases and for times he resided with the appellant after their divorce. *T.* at 327, 391-395. The parties disagreed on these time periods.

V. SUMMARY OF THE ARGUMENT

The chancellor erred in its modification of visitation on an interim basis. The chancellor's interim order granting extended visitation with appellee until the case may be completed effectively modified custody of Tyler without the requisite finding that a material change in circumstances had occurred in violation of the Supreme Court's ruling in *Johnson v. Johnson*, 913 So.2d 368 (Miss.2005). Regardless of the terminology utilized, the chancellor modified the original decree as to custody without finding the requirement of a substantial and material change in circumstances adversely affecting Tyler's welfare. By awarding the appellee extended visitation, the chancellor was able to attribute the *Continuity of Care* and *School Record Albright* factors to the appellee; factors that would not have favored appellee had the chancellor not entered the *Interim Order*. Further, the chancellor separated siblings without a finding on the record to support same.

The chancellor erred in finding that a material change in circumstances existed since the prior decree that adversely affected the welfare of Tyler. To support a finding that a material change in circumstances exists that adversely affects Tyler, the law in Mississippi requires evidence of harm or danger to the child. While Tyler testified repeatedly that he desired to go live with his father, it was error for the chancellor to use Tyler's preference, an *Albright* factor, as a basis for the chancellor's finding that the requisite material change in circumstances had been met.

The chancellor erred in finding that it is in the best interest of Tyler under the *Albright* test to modify custody thereby separating him form his siblings. By granting the

modification of custody and placing Tyler with appellee on an interim and permanent basis, the chancellor separated Tyler from Jenny, his younger sister, and Libby, his older half-sister. There is a strong preference in Mississippi law for keeping siblings together unless unusual circumstances justify their separation. *Sellers v. Sellers,* 638 So.2d 481, 484 (Miss.1994). Appellant would also point out that separation of the siblings in this case, due to the long distance between the parties, is more detrimental since the siblings are not able to see each other often.

The chancellor erred in granting appellee credits against his vested child support obligation. The chancellor in the Order granting modification of custody dated January 13, 2009, found the appellee to be in contempt of court for his failure to pay child support. However, the chancellor applied equitable credits toward the unpaid child support. Under Mississippi Law, each monthly obligation that remains unpaid past its due date takes on the nature of a judgment that may not be modified by the court thereafter. *Dorr v. Dorr,* 797 So.2d 1008 (Miss.App. 2001). The child support in this case should not have been reduced by the chancellor on equitable grounds any more than the chancellor could alter or amend the underlying obligation itself once it took on the aspect of a final judgment. *Tanner v. Roland,* 598 So.2d 783, 786-87 (Miss. 1992)

VI. ARGUMENT

A. Standard of Review

When the Supreme Court reviews domestic relations matters, the scope of review is limited by the substantial evidence/manifest error rule. *Giannaris v. Giannaris*, 960 So.2d 462 (Miss. 2007) *citing R.K. v. J.K.*, 946 So.2d 764, 772 (Miss. 2007) and *Mizell v. Mizell*, 708 So.2d 55, 59 (Miss. 1998). Therefore, the Court will "not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Id.*

"[T]he polestar consideration in child custody cases is the best interest and welfare of the child." *Albright v. Albright,* 437 So.2d 1003, 1005 (Miss. 1983)

B. The trial court erred in its modification of visitation on an interim basis.

The trial court's interim order granting "extended visitation" with appellee until the case may be completed effectively modified custody of Tyler without the requisite finding that a material change in circumstances had occurred. The hearing had not been completed and the matter had been re-set for the following December.[2] The Court further ordered that Tyler would be enrolled in school in Itawamba County and that the appellant would be granted Thanksgiving visitation with Tyler with her providing the cost of roundtrip travel for Tyler. *Appellant's Record Excerpts* at 21.

Regardless of the terminology utilized in the *Interim Order*, the Court, in essence, modified the original decree as to custody without finding the requirement of a substantial and material change in circumstances adversely affecting the child's welfare.

[2] The court made the ruling on an interim basis at the conclusion of the testimony for that day on July 25, 2008; just prior to the school year. The case was set and concluded on December 15, 2008 and December 16, 2008.

The Court in so doing abused its discretion. In *Johnson v. Johnson*, 913 So.2d 368 (Miss.2005), a modification of custody action was filed by Sandra Johnson seeking full custody of the parties' minor child.[3] The trial court in *Johnson* found the proof offered by both parties insufficient to show a material and substantial change of circumstances that would warrant modification of custody. However, the Court adjusted the visitation schedule by awarding "primary physical visitation" to Sandra and ordered Alex Johnson, the father, to pay monthly child support. *Johnson,* 913 So. 2d at 370-371. The Supreme Court reversed stating that it was "unwilling to hold that a chancellor may modify custody without finding the requirement of a substantial and material change in circumstances that adversely affects the child's welfare." The Court held that the chancellor abused his discretion in effectively modifying the custody arrangement by calling it visitation. *Id.* The trial court in the case at bar made a similar ruling by modifying custody under an interim order. The trial court made no finding that a material change in circumstances adversely affecting the welfare of Tyler had occurred. In fact, neither the transcript of the trial court's decision to grant extended visitation nor the *Interim Order* itself states a basis for the modification. *T.* at 248-251, *Record Excerpts* at 21. Furthermore, the parties were already operating under a visitation schedule that was established by agreement in an *Agreed Order* filed with the trial court on August 16th, 2007. Neither party had requested modification of the visitation on a temporary basis after the entry of that order.

By awarding the appellee extended visitation, the chancellor was able to attribute the *Continuity of Care* and *School Record Albright* factors to the appellee; factors that

[3] Sandra and Alex Johnson had been exercising joint legal and physical custody under the prior decree.

would not have favored appellee had the chancellor not entered the *Interim Order*. *See Record Excerpts* at 57-59. Considered another way, the trial court's basis in awarding the modification of custody to appellee under the *Albright* analysis was the product of its own abuse of discretion.

The Court also abused it's discretion in ordering a separation of the siblings without evidentiary support as required by *Owens v. Owens*, 950 So.2d 202 (Miss.2006). "In the absence of some unusual and compelling circumstance dictating otherwise, it is not in the best interest of children [siblings] to be separated." *Id* at 206.

C. The trial court erred in finding that a material change in circumstances existed since the prior decree that adversely affected the welfare of Tyler.

In early August of 2007 after the end of summer visitation with appellee, appellee had sent Libby and Jenny on the airplane back to California at the end of the summer, but without consulting appellant, held Tyler in Itawamba County. *T.* at 641-642. On August 15, 2007, the parties entered into an *Agreed Order* that was filed with the Court on August 16th, 2010 wherein the parties agreed that custody of Tyler and Jenny would remain with appellant and Tyler was sent back to California with appellant. *Record Excerpts* at 18. The order specified some needed modifications to visitation, and set the case for review the following summer.

The Chancellor found that a material change in circumstances which adversely affects the welfare of the child existed:

> based upon the child's frequently being left home alone by the mother, the mother's frequent yelling and scolding of the child, the older sibling's testimony concerning the deteriorated relationship between the mother and the child and the need for the child to have another place to live, the child's being increasingly

> unhappy, miserable and isolated because of the breakdown in the relationship between mother and child, and the child's testimony on multiple occasions through the two-year span of this litigation regarding his desire to no longer reside with his mother and his preference to reside primarily with his father.

Record Excerpts at 56-57.

Although the chancellor made a finding that one of the material change in circumstances which adversely affects Tyler had been that he was "frequently left home alone by Appellant", the testimony does not support this finding. Elizabeth Ward, hereafter referred to as "Libby", Tyler's older sister, age 15 at the time of the proceedings, testified that when appellant would leave the home, Libby would be left in charge. *T.* at 8. Libby testified that when she is left in charge Tyler and the younger sister, Jenny, do what appellant tells them to do and that they behave. *T.* at 8-9, 14. Libby testified that between the time they get home from school and the time appellant comes home from work, Tyler is given the option to stay at home with Libby or to go to his grandfather's grocery store where appellant works. *T.* at 13. Libby testified that their home is within walking distance of the grocery store; less than a mile. *T.* at 15. Appellant testified that Tyler is never left at home alone. *T.* at 94-95. Tyler testified that when appellant is not at home due to finishing work or when she went out with Richard, her former boyfriend, Tyler is left at home with his sisters. *T.* at 182-184. Tyler testified that he is left home alone every now and then. *T.* at 184. Tyler testified that he is sometimes given the choice to either stay at home or go to the store and work; that he sometimes stays at home by choice and has never gotten in any trouble at home with appellant not present, and that staying at home without appellant there doesn't bother him. *T.* at 185. With respect to the chancellor's finding that appellant frequently yelled

and scolded Tyler, there was no testimony to support any adverse affects this had had on Tyler. Tyler himself testified that his mother had never struck him and that he agreed with her manner of discipline when she would punish him by taking music lessons away. *T.* at 173, 188, 198. The chancellor also referred to a breakdown or deterioration in the relationship between appellant and Tyler but did not refer to any specific portions of the transcript to support the finding. Libby testified about the friction between appellant and Tyler over such things as doing chores. *T.* at 41. However, Libby also testified that she would be upset about Tyler staying in Mississippi because she would be "losing her little brother" *T.* at 11.

To support a finding that a material change in circumstances exists that adversely affects Tyler, the law in Mississippi requires evidence of harm or danger to the child. *See Robison v. Lanford*, 841 So. 2d 1119, 1123-24 (Miss. 2003),[4] *McCracking v. McCracking*, 776 So. 2d 691, 693 (Miss. Ct. App. 2000),[5] and *Forsythe v. Akers*, 768 So. 2d 943, 948 (Miss. Ct. App. 2000).[6] While Tyler testified repeatedly that he desired to go live with his father, it was error for the chancellor to use Tyler's preference, an *Albright* factor, as a basis for the chancellor's finding that the requisite material change in circumstances had been met. *Record Excerpts* at 57. Furthermore, the Court has held that the chancellor should consider the totality of the circumstances in determining whether a material change has occurred that adversely affected Tyler. *See T.K. v. H.K.*,

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[4] Testimony by the mother that the father drank heavily, without evidence of harm or danger to the minor child and evidence of an isolated spanking hard enough to leave bruises was not sufficient to show a material change in circumstances adverse to the child.

[5] No material change in circumstances adverse to the child by leaving the minor child with a responsible fourteen-year-old after school, which incidentally is the approximate age of Tyler and is younger than Libby.

[6] The court erred in modifying custody due to the mother's cohabitation that did not adversely affect the minor children.

24 So.3d 1055 (Miss. Ct. App. 2010) *citing Powell v. Powell*, 976 So. 2d 358, 361-63 (Miss. Ct. App. 2008). Consideration of the totality of the circumstances should have included Libby's testimony about the fun things Tyler gets to do when visiting appellee in Mississippi, the expensive gifts that appellee has lavished upon Tyler, the extra-curricular activities that Tyler has excelled at in California, and the improvements Tyler made in school in California prior to the *Interim Order* being entered. *T.* at 5, 18, 229, 332, 169-170, 429-439. It should also be considered that the only reason Appellee filed the modification was because Tyler asked him if he could move to Mississippi. *T.* at 444-445. Appellee stated on cross-examination that he "would never try to take Tyler from Stephanie. The boy asked me if he could live with me, you know." *T.* at 444. Appellee agreed that the only difference between Tyler's situation and the two girls' situation is that Tyler asked appellee to stay with him. *T.* at 445.

D. The trial court erred in finding that it is in the best interest of Tyler under the *Albright* test to modify custody thereby separating him form his siblings.

By granting the modification of custody and placing Tyler with appellee on an interim and permanent basis, the chancellor separated Tyler from Jenny, his younger sister, and Libby, his older half-sister. As the Court is well aware, there is a strong preference in Mississippi law for keeping siblings together unless unusual circumstances justify their separation. *Sellers v. Sellers,* 638 So.2d 481, 484 (Miss.1994)In making the decision to separate Tyler from his sisters, appellant assumes the chancellor relied upon Libby's testimony that Tyler seemed happier in Mississippi with appellee. *T.* at 52.

Libby also testified that she was concerned over Tyler's aggressive behavior that he exhibited in Mississippi that he normally does not exhibit in California. *T.* at 11, 59. In a number of cases, courts have declined to follow the child's stated preference to live with one parent to specifically prevent the separation of siblings. *See Franklin v. Kroush*, 622 So. 2d 1256, 1257 (Miss. 1993), *Brown v. Brown*, 764 So. 2d 502, 504-505 (Miss. Ct. App. 2000), *Moore v. Moore*, 757 So. 2d 1043, 1050 (Miss. Ct. App. 2000)

The chancellor cited *Holmes v. Holmes*, 958 So. 2d 844 (Miss. Ct. App. 2007) to support its decision. *Holmes* is easily distinguishable from the case at bar. In *Holmes*, the trial court specifically referenced the mother's mental health assessment by a licensed psychiatrist and the report from the guardian ad litem as heavily influencing his decision; that based upon the mother's diagnosed borderline personality disorder and high potential for violence, the chancellor felt that it was in the best interest of the son to be separated from the mother, and consequently his siblings.[7] *Id.* at 848. *Holmes* is further distinguished due to the chancellor's recognition in that case that the siblings would spend the weekends together; a benefit that cannot be enjoyed by the siblings in the instant case due to the long distance between the parties. *Id.* at 846.

E. The trial court erred in granting appellee credits against his vested child support obligation.

The chancellor in the Order granting modification of custody dated January 13, 2009, found the appellee to be in contempt of court for his failure to pay child support in the amount of $14,537.00 through August of 2007. *See Appellant's Record Excerpts* at

[7] The mother in the *Holmes* case acted violently towards her son, and had been involved in violent altercations with the husband during their marriage.

60-61. However, the chancellor applied credits toward the unpaid child support totaling $9,801.35 and granted appellant judgment plus interest in the amount of $4,735.65. *Id.* These credits were applied from funds not designated as child support sent from appellee to appellant by Western Union when appellant would call him and tell him she needed money. *Id. See also T.* at 312-313. The chancellor also applied credits for one-half of airline ticket from Thanksgiving of 2007; credit for time the parties resided together after their divorce;[8] and credit for child support paid from July 2008 through December of 2008.[9]

A judgment, by law, accrues interest from the time it is entered. *Miss.Code Ann.* § 75-17-7; *Cornelius v. Overstreet*, 757 So.2d 332 (Miss.Ct.App.2000). Although appellant had not heretofore been granted judgment for child support arrearage, this rule has specifically been applied to such recurring periodic court-ordered obligations as child support and periodic alimony. *Brand v. Brand*, 482 So.2d 236, 237-38 (Miss. 1986); *Rubisoff v. Rubisoff*, 242 Miss. 225, 235, 133 So.2d 534, 537 (1961). As to child support in particular, each monthly obligation that remains unpaid past its due date takes on the nature of a judgment that may not, in the ordinary course, be modified by the court thereafter. *Dorr v. Dorr*, 797 So.2d 1008 (Miss.App. 2001). Included in this notion of finality is the proposition that each such unpaid installment begins to accrue interest at the legal rate, not from the time it may subsequently be formally reduced to judgment by a contempt or other appropriate enforcement proceeding, but from the time the obligation became due and owing and was not paid. *Id.* citing *Brand*, 482 So.2d at 237-38. The

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[8] Both parties admitted to living together after their divorce from September of 2004 through March of 2005; however, they disagreed on residing together from May 2003 through August 2004 so the chancellor gave appellee credit for one-half of the child support for that time period.

[9] This child support accrued during Tyler's stay with appellee pursuant to the *Interim Order*.

child support in this case should not have been reduced by the chancellor on equitable grounds any more than the chancellor could alter or amend the underlying obligation itself once it took on the aspect of a final judgment. *Tanner v. Roland*, 598 So.2d 783, 786-87 (Miss. 1992) (stating that a parent is liable for the interest which has accrued on each delinquent child support payment and that the Court cannot relieve the civil liability for such support payments that have already accrued). The chancellor's equitable credits for appellee's voluntary payment of funds to appellant not designated as child support, voluntary payment of airline tickets, and credit for times when the parties resided together was error and should be reversed. Furthermore, the granting of credit for child support paid during the existence of the *Interim Order* is unsupported under Mississippi law. As already stated, the chancellor in the *Interim Order* granted to the appellant "extended visitation" with Tyler. All child support accrued and paid should not be credited.

VII. CONCLUSION

Based upon the foregoing argument and authorities, the chancellors decision to modify custody of Tyler should be reversed. Although courts clearly have the authority to execute orders on an interim basis, the use of an interim order in this case to effectively grant custody of Tyler to the appellee prior to the end of the proceedings without any basis in precedent or law not only is an abuse of discretion, but also afforded the appellee a better position under the *Albright* analysis.

The appellee not only has to show that a material change in circumstances has occurred, but also that the change in circumstances adversely affects the minor child. The appellee in the instant case has failed to show any adverse effects.

Appellant also requests the Court to consider the extreme impact separation of siblings is having upon siblings that live apart by such a great distance. Because the siblings cannot frequently spend time together on weekends, this makes the separation fall under heavier scrutiny.

Lastly, the chancellor's equitable credits against child support arrearage are unfounded and should be reversed.

Respectfully submitted this the 18th day of May, 2010.

Stephanie Bolton
Appellant

John D. Weddle
Counsel for Appellant

VIII. CERTIFICATE OF SERVICE

I, John D. Weddle, Counsel of Record for Appellant, do hereby certify that I have, this date, postage pre-paid, mailed via United States Postal Service First Class mail, a true and correct copy of the foregoing Appellant's Brief to the following at their usual business addresses:

Honorable Jacqueline Estes Mask
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