IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-01412
CONSOLIDATED WITH 2008-M-1855

TOULMAN D. BOATWRIGHT, JR. — APPELLANT

- VERSUS -

GRACE BONDS BOATWRIGHT — APPELLEE

APPEAL FROM THE CHANCERY COURT OF
MARSHALL COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

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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 refusal.

(1) Toulman D. Boatwright, Jr., Appellant;

(2) Grace Bonds Boatwright, Appellee;

(3) Helen Kennedy Robinson, attorney for Appellant;

(4) Kent and Amanda Smith, attorneys for Appellee;

(5) Honorable Edwin H. Roberts, Jr., Chancellor, Eighteenth Chancery Court District.

WITNESS my signature on this the 20th day of July, 2010.

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STATEMENT OF THE ISSUES

TOULMAN D. BOATWRIGHT, Appellant, by counsel, pursuant to Miss. Sup. Ct. Rule 10 (b) (4), states the following issues to be decided on appeal:

(I). Did the Chancellor err in denying Appellants Motion to Alter or Amend or For A New Trial?

(II). Did the Chancellor err in refusing to recuse himself in this matter?

(III). Did the Chancellor err in failing to disclose his personal relationship with opposing counsel?

(IV). Did the Chancellor err in sanctioning Appellant and his attorney for filing a Motion To Recuse?

(V). Was the Chancellor's refusal to order that Appellant be reimbursed for child support paid to Appellee for the benefit of the minor child, Hannah Boatwright, during the time she was in the custody of his parents, and for refusing to order Appellee to pay back support during the time the minor child was in the custody of the paternal grandparents error and based on bias?

(VI). Did the Chancellor err in holding Appellant in willful contempt for failing to pay certain college related expenses of the minor child, Wynne Boatwright?

(VII). Did the Court err in fining Appellant $1,000.00 for having been found in willful contempt?

(VIII). Did the Chancellor err is ordering that Appellant to continue to pay support and college tuition for the benefit of the minor child, Wynne Boatwright?

(IX). Did the Chancellor err is ordering Appellant to pay attorney fees as a result of his finding of willful contempt?

(X). Were the Chancellor's rulings based on his bias against him and in favor of Appellee?

IN THE SUPREME COURT OF MISSISSIPPI

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- VERSUS -

GRACE BONDS BOATWRIGHT **APPELLEE**

BRIEF OF THE APPELLANT

STATEMENT OF THE CASE

On October 19, 2007, Appellee, Grace Bonds Boatwright, hereinafter referred to as Ms. Boatwright, filed a Petition for Contempt and Modification alleging mainly issues of non-payment by Mr. Boatwright of certain expenses incurred on behalf of the minor children. (RE 58-63) On October 3, 2008, Appellant, Toulman D. Boatwright, Jr., hereinafter referred to as Mr. Boatwright, filed an Amended Answer and Counter-Petition. (RE 104-115). An Agreed Temporary Order was entered giving Mr. Boatwright additional visitation with Hannah Boatwright and appointing Jennifer Shackelford Guardian ad Litem for Hannah on December 4, 2007. (RE 64-66) In July of 2008, on motion of the Guardian ad Litem Dr. Wyatt Nichols, a psychologist, to conduct evaluations of the parties and the minor child, Hannah Boatwright. Dr. Nichols was later directed to evaluate the minor child, Dunn Boatwright, too.

On May 20, 2008, Ms. Boatwright, filed a Motion for Emergency Relief and noticed it for hearing on May 23, 2008. (RE 67-72) On May 23, 2008 a Substitution of Counsel was entered substituting the Honorable Helen Kennedy Robinson as counsel for Mr. Boatwright. (RE 76) Without a hearing the Court ordered on the 23rd of May, that Mr. Boatwright's visitation with his minor child, Dunn Boatwright, be suspended until the hearing on the Motion for Emergency Relief.

Mr. Boatwright filed a Motion for Temporary Relief on September 5, 2008 requesting he no longer be required to pay support unto Ms. Boatwright for the benefit of Hannah, that he pay it directly to the paternal grandparents, and that Ms. Boatwright also pay support for the benefit of

Hannah. (RE 78-80) A Temporary Order was entered on September 29, 2008, directing Mr. Boatwright to pay support for Hannah in the amount of $100.00 to the paternal grandparents. (RE 102)

Mr. Boatwright filed his Motion to Recuse on October 6, 2008. (RE 116-129) At approximately 4:30 in the afternoon the day before the hearing, Ms. Boatwright's attorneys filed a 50 page Response to Motion to Recuse and Counter-Motion for Sanctions. (RE 130-180) A lengthy hearing was had on October 16, 2008. On that date the trial court took the matter under advisement and ordered the parties to appear before the Court on October 28, 2008 for rendition of his opinion. On that day, the Chancellor delivered a 3 to 4 hour opinion which is part of the record on the Petition for Review consolidated with this appeal. (RE 181)

A hearing on the merits of all pending motions, petitions and counter-petitions was scheduled before Chancellor Edwin H. Roberts, Jr., on February 9,10, 12, 2009. (RE 214) As a result of said setting, counsel opposite filed a Notice of Motion setting her Counter-Motion for Sanctions on February 9, 2009. (RE 223-225) Mr. Boatwright filed a Response to the Counter-Motion for Sanctions on February 2, 2009. (ARE 226-244) The Guardian ad Litem filed her report which included a copy of the report from Dr. Nichols the court appointed psychologist on February 9, 2010. (RE 265-282) At the conclusion of the hearing on February 12, 2009, Chancellor Roberts directed to the attorneys to submit findings of fact and conclusions of law and took the matter under advisement until March 11, 2009, at which time the parties were to appear before him for rendition of his opinion. (RE 291-331; 398-432) The date was later changed to March 10, 2010. The Court also directed that argument on the Counter-Motion for Sanctions filed by Amanda and Kent Smith in response to Mr. Boatwrights's, Motion for Sanctions, would be heard on March 10, 2010. Prior to March 10, 2010, the attorneys received a letter dated February 13, 2009, by facsimile from Chancellor Roberts reiterating that on March 10th the Court would hear "argument" on the Counter-Motion for Sanctions. (ARE 283-285)

Chancellor Roberts rendered his opinion in open court on March 10, 2009. (ARE 38-117) The opinion together with "argument" on the Answer to Motion to Recuse and Counter-Motion for

Sanctions, took approximately four to five hours.

On March 26, 2009, the attorneys and the Guardian ad Litem had an on-the-record conference with Chancellor Roberts for clarification purposes. At that conference, Chancellor Roberts based on his ruling on March 10, 2010, that he would hold a hearing on Writ of Inquiry to determine the amount of attorney fees to be awarded to Ms. Boatwright due to Mr. Boatwright having been found in contempt of court, scheduled the Writ of Inquiry for April 9, 2009. (RE 360)

On April 3, 2009, counsel for Mr. Boatwright received an updated fee statement from counsel opposite with a total amount requested of $39,000.00. (ARE 127-143)

During the afternoon of April 8, 2009, Mr. Boatwright's attorney learned that Kent Smith had taken Chancellor Roberts turkey hunting that morning. The morning before a hearing wherein Mr. Smith was requesting the Court award his client over $39,000.00 in attorney fees. Mr. Boatwright's attorney contacted Mr. Boatwright to discuss the matter and her responsibility under Rule 8.3 of the Rules of Professional Conduct. Mr. Boatwright and his attorney felt that this matter should be reported to the Judicial Performance Commission and did in fact file a report by facsimile on the afternoon of April 8, 2009. Counsel for Mr. Boatwright requested the court continue this matter until such time as she could file a new Motion to Recuse. Mr. Boatwright and his attorney appeared before Chancellor Roberts on the morning of April 9, 2009 for the scheduled hearing on Writ of Inquiry to determine the amount of attorney fees. Mr. Boatwright's attorney requested an "in camera" conference with the Chancellor and Ms. Boatwright's attorneys. Mr. Boatwright's attorney informed the Chancellor that on the previous day information had come to her attention which gave her a duty pursuant to Rule 8.3 of the Rules of Profession Conduct to file a report with the appropriate agency and requested a continuance of the hearing in order to give her time to file a new Motion to Recuse. The Chancellor granted the continuance request. (CRT 1098, 3-4; RE 865) Prior to dismissing counsel and the parties, the Chancellor signed the proposed Order from his March 10, 2009 ruling. (ARE 118-126) On April 13, 2009, Mr. Boatwright's attorney filed a Motion to Allow the filing of a sealed Motion to Recuse. (RE 362-363) On April 14, 2009, Chancellor Roberts signed the Order Imposing Sanctions. (RE 144-145) On April 16, 2009, Mr. Boatwright filed a

Motion to Alter or Amend or for A New Trial based on newly discovered evidence. (ARE 379-382) On May 5, 2009, Mr. Boatwright filed an Amended Motion to Alter or Amend or for A New Trial. (ARE 387-390) Prior to Mr. Boatwright having filed a new Motion to Recuse, Chancellor Roberts entered on his own motion an Order of Recusal on April 20, 2009. (ARE 146). The order stated that Chancellor Roberts was recusing himself from further hearings in this case, "in the best interest of equity and justice." Prior to recusing himself the Court signed all orders involving sanctions and attorney fees, but recused himself with the Motion to Alter or Amend or for a New Trial was still pending. At no time during the hearings on the Motion to Recuse or at any other time did Chancellor Roberts disclose his close personal relationship with Kent Smith.

On July 24, 2009, Chancellor Alderson entered an Order Denying the Motion For a New Trial, etc. (ARE 147)

SUMMARY OF ARGUMENT

Mr. Boatwright would show that the visitation and custody matters raised with the court below were resolved by the recommendations of the Guardian ad Litem and the court appointed psychologist and that he is not asking this Court for any relief regarding those issues.

(I). Did the Chancellor err in denying Appellants Motion to Alter or Amend or For A New Trial?

Mr. Boatwright did not learn until after the final hearing in this matter, but before the entry of any orders on the Judges' ruling, the newly discovered evidence which was the subject of his Motion to Alter or Amend or for a New Trial. Chancellor Alderson was placed in the untenable position of ruling on the motion when he had not heard any of the trial on the matter. Mr. Boatwright believes there was ample evidence on which his motion should have been granted, and request the ruling of Judge Alderson be reversed and that this Court render decision thereon or reverse and remand for a new trial.

(II). Did the Chancellor err in refusing to recuse himself in this matter?

Mr. Boatwright filed his Motion to Recuse in October of 2008 because he believed Chancellor Roberts had always been bias against him and based on comments made by the Chancellor prior to the filing of the motion and actions taken by the Chancellor on motions filed by

both sides he believed the past behavior of bias would continue. Throughout the proceeds on the Motion to Recuse, Chancellor Roberts held Mr. Boatwright to the "appearance of impropriety" standard. Mr. Boatwright feels that this standard is not appropriate in a situation where the Chancellor harbors actual bias or where a conflict exist. It was error for the Chancellor to have refused to recuse himself in this matter.

(III). Did the Chancellor err in failing to disclose his personal relationship with opposing counsel?

The Chancellor had a duty to disclose his personal relationship with counsel opposite and chose not to do so. Even after a Motion to Recuse was filed, wherein that disclosure would have been relevant no such disclosure was made. Instead, knowing they had information they did not believe Mr. Boatwright and his attorney would learn, they launched an outright attack on Mr. Boatwright and his attorney which had no limits. The three to four hour ruling on the Motion to Recuse was not simply a Chancellor ruling according to the facts and law as usual. The Chancellor adopting most of the argument made by counsel opposite in their Response to the Motion to Recuse, looked for every opportunity to belittle, criticize, and insult Mr. Boatwright and his attorney. This continued in the Chancellor's ruling on the merits of the case on March 10, 2009 wherein his rulings and findings of fact of willful contempt were not supported by the evidence or the law. After sanctioning Mr. Boatwright and his attorney almost $6,000.00, finding Mr. Boatwright in contempt for failure to pay approximately $1,700.00, fined him $1,000.00 for each contempt, ordered he be incarcerated until the approximate $2,700.00 was paid, and ordered a hearing be held upon writ of inquiry to determine the amount of attorney fees to be paid to counsel opposite. Then upon Mr. Boatwright and his attorney learning that counsel opposite had taken the Chancellor turkey hunting the day before the hearing scheduled to determine the attorney fees and that a report had been made regarding the incident, recused himself on his own motion. If the Chancellor had not known this conduct was wrong, he would have continued to refuse to recuse himself as he had so adamantly done before. The Chancellor committed reversible error when he failed to disclose is relationship with counsel opposite.

(IV). Did the Chancellor err in sanctioning opposing counsel and his attorney for filing a Motion

To Recuse?

At the conclusion of the trial in this matter, on March 10, 2010, the Chancellor on his own motion ordered there be a hearing on Writ of Inquiry to determine the amount of attorneys fees to be awarded to Ms. Boatwright's attorneys as a result of Mr. Boatwright having been found in willful contempt of court.

The Chancellor was informed on April 9, 2009 prior to the hearing on Writ of Inquiry, by counsel for Mr. Boatwright that she had learned information the afternoon before that pursuant to Rule 8.3 of the Code of Professional Responsibility required her to file a complaint with the appropriate tribunal on April 8, 2010. Mr. Boatwright requested a continuance of the Writ of Inquiry until she could file a sealed Motion to Recuse based upon the newly discovered evidence. The Chancellor granted the continuance. On April 9, 2009, prior to the attorneys leaving court, the Chancellor signed the Order on the merits of the February hearing. On April 14, 2010, Chancellor Roberts signed an Order Imposing Sanctions against Mr. Boatwright and his attorney for filing a frivolous Motion to Recuse. On April 20th, 2009, less than a week later, Chancellor Roberts recused himself on his own motion. Mr. Boatwright would show that it was error for Chancellor Roberts to have denied his Motion to Recuse when once his relationship with counsel opposite was found out, he recused himself on his own motion. Mr. Boatwright would show that at all time during this proceeding that he had grounds in support of his Motion to Recuse, but that what he lacked was the underlying basis for those grounds. The Chancellor as well as counsel opposite were at all times aware of the underlying basis for Mr. Boatwright's grounds and failed to make any disclosure thereof throughout all the heated proceedings on the Motion to Recuse. At the conclusion of the hearing held on the Response to Motion to Recuse and Counter-Motion for Sanctions on March 10, 2009, the Chancellor sanctioned Mr. Boatwright and his attorney the sum of $5,938.11 for filing a frivolous Motion to Recuse. The Chancellor's sanctioning of Mr. Boatwright and is attorney were clearly erroneous, contrary to law, and imposed for the sole purpose of punishing Mr. Boatwright and his attorney for requesting that he recuse himself. It is this type of result that places attorneys in a difficult situation when it is necessary to ask a Chancellor to recuse themself from a matter. It is

certainly highly suspicious in this situation where the Chancellor signed the Order Imposing Sanctions and six days later recused himself on his own motion.

(V). Was the Chancellor's refusal to order that Appellant be reimbursed for child support paid to Appellee for the benefit of the minor child, Hannah Boatwright, during the time she was in the custody of his parents, and for refusing to order Appellee to pay back support during the time the minor child was in the custody of the paternal grandparents error and based on bias?

From May 23, 2008 when Hannah was placed in the custody of the paternal grandparents until September of 2008, Mr. Boatwright continued to pay support for Hannah to Ms. Boatwright. The Chancellor was in error for refusing to Order that he be reimbursed for these payments.

From September of 2008 until March of 2009, Mr. Boatwright continued to pay support to Ms. Boatwright for the benefit of Wynne and Dunn, and paid support to the paternal grandparents for Hannah. The Chancellor erred in refusing to order Ms. Boatwright to pay back support for Hannah during this time.

(VI). Did the Chancellor err in holding Appellant in willful contempt for failing to pay certain college related expenses of the minor child, Wynne Boatwright?

On August 28, 2007, Ms. Boatwright billed Mr. Boatwright for the sum of $1,011.98 for college expenses of Wynne's. The majority of this amount was $842.63 for a computer purchased in May or before months prior to Wynne enrolling in college. It also included Home Depot and Target expenses. Mr. Boatwright did not feel these were legitimate college expenses and did not pay these items. On September 7, 2007, Ms. Boatwright billed Mr. Boatwright $2,582.78 for Wynne's tuition and books. Mr. Boatwright paid this amount. The only amounts Mr. Boatwright did not pay were amounts in which he had a good faith belief were not legitimate college expenses. It was error to find him in contempt for failing to pay for items which were not a necessary college expense.

(VII) Did the Court err in fining Appellant $1,000.00 for having been found in willful contempt?

The Court fined Mr. Boatwright $100.00 for each finding of willful contempt which was to be paid to the Chancery Clerk of Marshall County. The findings of contempt involved failure to timely pay certain out-of-pocket medical expenses, timely provide proof of life insurance, failure to

pay college expenses addressed in issue VI above, and failure to provide a complete copy of his income tax return. It was error for the Chancellor to have found Mr. Boatwright in willful contempt for failure to pay associated college expenses which involved payment of items not directly related to college expenses and which Mr. Boatwright had a good faith belief that he should not have to pay.

The fine of $1,000.00 should be reversed and Mr. Boatwright should be reimbursed said amount.

(VIII). Did the Chancellor err is ordering that Appellant to continue to pay support and college tuition for the benefit of the minor child, Wynne Boatwright?

The Chancellor's denial of Mr. Boatwright's request to be relieved of any further duty to pay support for his minor child, Wynne, because she refused to visit him or even acknowledge him as her father, and had moved in with her boyfriend without any telling him and without his approval.

(IX). Did the Chancellor err is ordering Appellant to pay attorney fees as a result of his finding of willful contempt?

Mr. Boatwright would show that it was error to have found him in willful contempt for failure to pay out-of-pocket medical expenses, provide timely proof of life insurance and provide a copy of his income tax return, and for failing to pay certain college related expenses of the minor child, Wynne. Therefore, it was error for the Court to Order him to pay attorney fees.

(X). Were the Chancellor's rulings based on his bias against him and in favor of Appellee?

Mr. Boatwright would show that the rulings of the Chancellor were not supported by the record and were showed complete bias against him by the Chancellor. The record clearly shows the manner in which he, his attorney, and his witnesses were treated by the Chancellor. The Chancellor's rulings should be reversed.

ARGUMENT

(I). Did the Chancellor err in denying Appellants Motion to Alter or Amend or For A New Trial?

> Rule 59(e) of the Mississippi Rules of Civil Procedure allows a party to move for amendment of a judgment following its entry, and further gives the court authority to grant a new trial when appropriate.

> Rule 60 of the Mississippi Rules of Civil Procedure provides for relief from judgment for the following reasons which are relevant to Mr. Boatwright's motion: (1) fraud, misrepresentation or other misconduct of an adverse party; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); and, (3) any other reason justifying relief from the judgment.

The Motion was heard before Chancellor Alderson on July 9, 2009. Chancellor Alderson felt this was a matter for the appellate courts and overruled the motion. (CRT 1129, 20-22) The Chancellor was in an awkward position since he had not presided over the trial or any other motions.

Chancellor Alderson stated that he understood the reason for the motion he was hearing was because Mr. Thomas, Marshall County Chancery Clerk and a deputy sheriff talked about Judge Roberts and counsel opposite going hunting the day before the hearing on attorney fees and that Chancellor Alderson was present and heard the conversation. (CRT 1120, 9-29)

Kent Smith, one of the attorneys for Ms. Boatwright, testified at the hearing on July 9. 2009, that he had taken Judge Roberts hunting on his property in Marshall County on April 8, 2008, the day before the hearing on $39,000 in attorney fees he was requesting he be awarded. (CRT 1123, 17-27) Mr. Smith further testified that he was not aware of any time during these proceedings or during heated motion to recuse, where Judge Roberts disclosed his relationship with him on the record. (CRT 1124, 1-9) Mr. Smith testified that he began taking Judge Roberts hunting in 2006 and that they had probably hunted together about eight times since that time. (CRT 1124, 26-29) He further testified that there had been bad feelings between he and Judge Roberts in the past because Judge Roberts represented his ex-wife in their divorce, but that once Judge Roberts took office he patched things up with him. (CRT 1125, 20-29; 1126, 1-18) Mr. Smith testified that he had never invited Judge Alderson hunting. (CRT 1126, 19-29) Mr. Smith further testified that this is a case in which he and his wife have a lot of personal involvement. They are close personal friends with Ms. Boatwright. So close that they named themselves as alternative people for placement of custody of the minor child Dunn Boatwright. He stated he and his wife had attended Dunn's kindergarten graduation. He stated that his wife accompanies Ms. Boatwright for visitation exchanges. (CRT 1127, 1-29) He further testified that Wynne Boatwright's wedding was going to be held at his home.

(CRT 1128, 10-15)

The newly discovered evidence regarding counsel opposites relationship with the Court could not have been discovered earlier by Mr. Boatwright. It is information that was only brought to Mr. Boatwright's attorneys attention the afternoon prior to the hearing on Writ of Inquiry. Prior to receiving the information regarding counsel opposite and the Chancellor's friendship, neither Mr. Boatwright or his attorney had any knowledge of the relationship between the Chancellor and counsel opposite. Mr. Boatwright feels that this is information that should have been disclosed to him years ago. And, that in light of his Motion to Recuse it was information which would have led to a different result and ultimately changed the outcome of the entire case. It was error for Chancellor Alderson to overrule the Motion to Alter or Amend or For a New Trial. The rulings of Chancellor Roberts regarding all findings of willful contempt, imposition of fines, sanctions, refusal to order reimbursement of support paid to Ms. Boatwright for the benefit of Hannah while she was in the custody of Mr. Boatwright's parents, refusal to order Ms. Boatwright to pay back support for Hannah, refusal to relieve Mr. Boatwright of further duty to pay support for the benefit of the minor child, Wynne, and finding Ms. Boatwright was entitled to be awarded attorney fees should be reversed and a new trial before an impartial chancellor should be ordered.

(II). Did the Chancellor err in refusing to recuse himself in this matter?

> Rule 1.11 of the Uniform Chancery Court Rules provides in part: "Any party may move for the recusal of a judge of the chancery court if it appears that the judge's impartiality might be questioned by a reasonable person knowing all the circumstances or for grounds provided in the Code of Judicial Conduct or as otherwise provided by law."
>
> The Supreme Court in, *Schmidtz v. Bermudez*, 5 So.3rd, 1064 at ¶ 3, (Miss.2009)stated, "Of a trial judge's numerous duties, the one which over shadows all others and the one which must be closely guarded and carefully protected is the duty to ensure that all litigants receive a fair trial before an impartial tribunal."
>
> "In determining whether a judge should have recused himself, the reviewing court must consider the trial as a whole and examine every ruling to determine if those rulings were prejudicial to the complaining party." *Jones. V. State*, 841 So.2d 115, 125 (Miss. 2003)(citing *Hunter v. State*, 684 So.2d 625, 630-31 (Miss. 1996). "[T]his Court...will look to the whole trial and pass upon questions

> on appeal in the light of the completed trial. Every act and movement had during the entire trial will be considered, and if we are unable to find that rulings have been prejudicial to the defendant, we will not reverse." *Hunter v. State*, 684 So.2d 625, 630-31 (Miss. 1996) (citing *Adams v. State*, 220 Miss. 812, 817, 72 So.2d 211, 213-14 (Miss. 1954) (quoting *Garrett v. State*, 187 Miss. 441, 455, 193 So. 452, 456 (Miss. 1940).

Mr. Boatwright may not have known the reason for the bias at the time he filed his Motion to Recuse. Bias is a state of mind. Without a proper disclosure of the relationship between the Chancellor and opposing counsel, there is no way Mr. Boatwright could have known the reason the Chancellor harbored bias. There was no doubt in Mr. Boatwright's mind that the bias the Chancellor had exhibited toward him in the past would continue in the rulings on new matters that were currently pending before the Court.

On May 20, 2008, Ms. Boatwrights filed a Motion for Emergency Relief a noticed it for hearing on May 23, 2008. (CRT 67-71) The Motion for Emergency Relief was signed by one of the attorneys for Ms. Boatwright. There was no accompanying affidavit signed by Ms. Boatwright as required by Rule 65 of the Mississippi Rules of Civil Procedure. Mr. Boatwright's attorney, Helen Kennedy Robinson, had just been retained and appeared at the hearing on May 23, 2008 and requested a continuance. The Guardian Ad Litem could not be present on that day. No hearing was had on the motion. The Court wanted the Guardian ad Litem present for the hearing and counsel for Mr. Boatwright needed time to prepare for the motion hearing. The Court, without a hearing, granted the motion on a temporary basis and schedule it for hearing a week later. No order was entered on that day. The Chancellor ordered that Hannah Boatwright be placed in the custody of the paternal grandparents. The Chancellor suspended Mr. Boatwright's visitation with his minor child, Dunn Boatwright. Ms. Boatwright's expert, Ruth Cash, could not be present on the date the hearing was rescheduled so the matter was continued over and over until the final hearing in February of 2009. It was only scheduled for hearing after Mr. Boatwright's attorney filed a Motion to Dismiss the Emergency Motion on or about July 14, 2008 and filed a Motion for Setting on her Motion to Dismiss. (RE 21) A few days later counsel opposite filed a Response and Motion for Setting of her Motion For Emergency Relief. (RE 22)

Dr. Nichols, the court appointed psychologist recommended that Mr. Boatwright have regular visitation with Dunn. (RE 282) The Guardian ad Litem recommended standard visitation between Mr. Boatwright and Dunn, in part, based on Dr. Nichol's findings and recommendation. (RE 275) The Court had terminated his visitation rights in this proceeded on May 31, 2008, and had later allowed supervised visits based on the recommendations of the Guardian Ad Litem. The Chancellor was obviously upset with the recommendations of the Guardian ad Litem and Dr. Nichols. He attempted to interpret Dr. Nichols recommendation to mean that it should stay supervised as it was at the time Dr. Nichols was seeing the parties. The Court questioned Ms. Boatwright's expert, Dr. Cash in an attempt to get her to agree to his interpretation. (CRT 647, 6-18; 648, 9-15; 649, 5-21; 651, 1-13) After the second day of trial in this matter, to resolve the confusion of the Court and Ruth Cash regarding what Dr. Nichols meant by regular visitation, the Guardian ad Litem contacted Dr. Nichols and he faxed her a letter to alleviate any confusion. The letter was read into the record and explained that he meant typical unsupervised visitation. (CRT 730, 1-17)

Mr. Boatwright argued in his Petition for Review which has been consolidated with this appeal that the Chancellor's suspending his visitation rights with his minor child, Dunn, without a hearing was evidence of the Chancellor's bias. The Guardian ad Litem testified that she had spoken with Ms. Boatwright's expert, Ruth Cash, about her recommendations regarding visitation with Dunn. (CRT 731, 17-29) The Guardian ad Litem testified that Ruth Cash had told her that stopping visitation between Dunn and his father would be harmful to Dunn, that it would do more harm than good. (CRT 732, 1-7) The Guardian ad Litem admitted that is exactly what happened in this case. (CRT 732, 8-11)

> "When restrictions are placed on visitation, there must be evidence that the particular restriction is necessary to avoid harm to the child. *Cox v. Moulds*, 490 So.2d 866, 867-868 (Miss. 1986) A lack of this evidence will render the chancellor's restrictions on the non-custodial parent's visitation manifest error and an abuse of discretion". *Fulk v. Fulk*, 827 Sol2d 736, 742 (¶21) (Miss. Ct. App. 2002) (citing *Dunn v. Dunn*, 609 So.2d 1277, 1286 (Miss. 1992)).

In the present case the chancellor did not just place restrictions on visitation, he suspended visitation and he did so without a hearing.

Kent and Amanda Smith, hereinafter referred to as counsel opposite, have represented Ms. Boatwright since 2003. They are close personal friends of Ms. Boatwright and had a personal interest in the outcome of the case. At the conclusion of the hearing on February 12, 2009, Chancellor Roberts directed the parties together with their Findings of Fact and Conclusions of Law to name persons whom the parties each recommended as alternative custodians of the minor children of the parties. The alternative custodians recommended by Ms. Boatwright and her attorneys were Amanda and Kent Smith. (RE 430-431)

The Motion to Recuse filed by Mr. Boatwright was turned into the case of the century by Chancellor Roberts as well as by opposing counsel. After filing a 50 page Response and Counter-Motion for Sanctions, counsel opposite subpoenaed numerous witnesses to the hearing on the motion. The hearing lasted three to four hours. At the conclusion of the hearing, the Chancellor took the motion under advisement and directed the parties to appear before in on another date for his ruling. Due to the late filing of the Response and Counter Motion for Sanctions, hearing on it was delayed to a later undetermined date. The Chancellor's ruling on the motion lasted three to four hours during which he launched an an outright attack upon Mr. Boatwright and his attorney for filing the motion. Chancellor Roberts continued to make derogatory remarks about Mr. Boatwright throughout all proceedings. In fact, you will not find anywhere in the Chancellor's opinions anything he ever acknowledged that Mr. Boatwright did right. The basis for Mr. Boatwright's Motion to Recuse was that he believed the Chancellor was clearly bias against him. He did not know why he was bias. There was no doubt that his past rulings had been bias against Mr. Boatwright and the examples of that are set out in his Petition for Review. As the proceedings at issue progressed, Mr. Boatwright and his attorney believed the pattern of bias was continuing and would continue through the final hearing in this matter. The Motion to Recuse was turned into a highly contested matter and an outright assault on Mr. Boatwright. The Chancellor became indignant that Mr. Boatwright dared to ask him to recuse himself. There was a lengthy hearing and ruling that took half a day. At no time during those proceedings did the Chancellor disclose his relationship with counsel opposite.

At 4:30 in the afternoon the day before the hearing on the Motion to Recuse, counsel opposite filed a fifty (50) page response and Counter-Motion for Sanctions. Due to the late filing, the Counter-Motion for Sanctions was not heard the day of the hearing on the Motion to Recuse. It was set for hearing at the final hearing in this matter. (RE 214) At the conclusion of the final hearing in this matter, counsel opposite had not put on any proof regarding the Counter-Motion for Sanctions. The court scheduled argument on the Motion for March 10, 2009, prior to his final ruling in the matter. (RE 285)

In his ruling on the Motion to Recuse the Chancellor made a conclusion of law as follows:

> "That a reasonable person under the totality of the circumstances would not harbor any doubt about this Court's impartiality where..." (CRT 270, 22-25)

Mr. Boatwright was deprived of the right to even know the "totality of the circumstances regarding the Court's bias in this case. At no time during these proceedings, did the Court disclose his relationship with counsel opposite. This relationship was relevant to the issue of recusal and should have been disclosed by the Chancellor.

> Canon 3E (1) of the *Code of Judicial Conduct*, provides, in part, "Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances..." The comment to the rule states, "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." Mr. Boatwright would show that *Canon 3 (b)(5) of the Code of Judicial Conduct*, provides, "A judge shall perform judicial duties without bias or prejudice."
>
> "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." *Buchanan v. Buchanan*, 587 So.2d 892, 895 (Miss. 1991).

The Chancellor committed reversible error for failing to recuse himself upon motion of Mr. Boatwright. The past record in this matter contain ample evidence of the Chancellor's bias against Mr. Boatwright and almost every ruling and finding by the Court in these proceedings which began in October of 2007 clearly show he was in fact bias in this matter. The rulings of Chancellor Roberts regarding all findings of willful contempt, imposition of fines, sanctions, refusal to order

reimbursement of support paid to Ms. Boatwright for the benefit of Hannah while she was in the custody of Mr. Boatwright's parents, refusal to order Ms. Boatwright to pay back support for Hannah, refusal to relieve Mr. Boatwright of further duty to pay support for the benefit of the minor child, Wynne, and finding Ms. Boatwright was entitled to be awarded attorney fees should be reversed and a new trial before an impartial chancellor should be ordered.

(III). Did the Chancellor err in failing to disclose his personal relationship with opposing counsel?

> *Canon 3(e)(1((a) of the Code of Judicial Conduct*, provides, "disqualification of a judge when his impartiality might reasonably be in question, included by not limited to instances where the judge has a personal bias or prejudice concerning the party, and a judge shall respect and comply with that law and shall act at all times in a manner that promotes public confidence and integrity and impartiality of the judiciary."

The Chancellor's conduct in not making a full disclosure of his relationship with counsel opposite clearly violates this Canon.

> The comment to Canon 3E (1) of the *Code of Judicial Conduct* states, "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

When a motion to recuse is as highly contested as the one in this case, a full disclosure of the Chancellor's relationship with opposing counsel should have been made. This type of failure to disclose is what undermines public confidence in the integrity of our judiciary.

The basis of Mr. Boatwright's Motion to Recuse was that the Chancellor harbored bias against him. *Black's Law Dictionary, Fifth Edition*, defines bias, in part, as "Condition of the mind, which sways judgment and renders judge unable to exercise his functions impartiality in a particular case." This leaves a litigant in somewhat of a disadvantage when arguing the reason for the bias. It is the state of mind of the judge presiding over the case. The litigant can attempt to show rulings and acts of the Judge which he believes to be a result of the bias, but has no way of proving the actual "state of mind" of the judge. In this case, Mr. Boatwright knowing the Chancellor had been bias against him coupled with instances and rulings in the current proceeding which he believed were based on bias, did what he was required to do by law in order to preserve the issue of bias on appeal

by filing the Motion to Recuse. Although Mr. Boatwright's Motion to Recuse was highly contested by the Court and counsel opposite, the Chancellor never disclosed his relationship with counsel opposite.

> "In determining whether a judge should have recused himself, the reviewing court must consider the trial as a whole and examine every ruling to determine if those rulings were prejudicial to the complaining party." *Jones. V. State*, 841 So.2d 115, 125 (Miss. 2003)(citing *Hunter v. State*, 684 So.2d 625, 630-31 (Miss. 1996). "[T]his Court...will look to the whole trial and pass upon questions on appeal in the light of the completed trial. Every act and movement had during the entire trial will be considered, and if we are unable to find that rulings have been prejudicial to the defendant, we will not reverse." *Hunter v. State*, 684 So.2d 625, 630-31 (Miss. 1996) (citing *Adams v. State*, 220 Miss. 812, 817, 72 So.2d 211, 213-14 (Miss. 1954) (quoting *Garrett v. State*, 187 Miss. 441, 455, 193 So. 452, 456 (Miss. 1940))).
>
> The standard for review of a judges failure to recuse himself has been clearly established by this Court and was clearly set out in *Rutland v. Pridgen*, 493 So.2d 952, 1181-1182 (Miss.1986): Quoting, *Ruffin v. State,* 481 So.2d 312, (Miss. 1984), the Supreme Court said, "When a judge is not disqualified under Sec. 165 of the Mississippi Constitution, or Sec. 9-1-11, the propriety of his or her sitting is a question to review only in case of manifest abuse of discretion." Id. at 317. See also, *Coleman v. State,* **378 So.2d 640** (Miss.1979). We went on to modify the rule set forth above, to include an objective test that "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. Rutland at 954." Cantrell, 507 So.2d at 332 (Sullivan, J., concurring). We find that in light of the fact that (1) Judge McKenzie's brother is a senior partner in the law firm representing Forrest County General Hospital, obviously a part of the medical community, coupled with (2) allegations and testimony that the medical community in Forrest County assisted in electing the judge, this would lead a reasonable person, with knowledge of the circumstances, to harbor doubts about Judge McKenzie's impartiality. We make the point that this test is an objective one, and under the facts presented below we have no choice but to reverse on this matter. The issue is not any wrongdoing on the part of Judge McKenzie, but the potential for such and moreover, how this situation appears to the general public and the litigants whose cause comes before this judge. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge, who must possess the disinterestedness of a total stranger to the interest of the parties involved in the litigation, whether that interest is revealed by an inspection of the record or developed by evidence aliunde the record." *Yazoo & M.V.R. Co. V. Kirk*, 102, Miss.41, 55, 58 So.710, 713 (1912) In accordance with the rules of law above

> discussed, and the facts of this case, we are of the opinion that a reasonable person, knowing all the circumstances, would harbor doubts as to Judge McKenzie's impartiality. Therefore, we find that the interest of justice would best have been served had Judge McKenzie recused himself in this matter." *Jenkins v. Forrest County General Hosp.*, 542 So.2d 1180, 1181-1182 (Miss. 1988).

(IV). Did the Chancellor err in sanctioning Appellant and his attorney for filing a Motion To Recuse?

"One is not at liberty to await the outcome of litigation and then seek disqualification of the Judge." *Jackson v. Jackson*, 732 So.2d 916, 925-926 (¶16) (Miss.1999).

In the case of *In re: Linda A. Hampton*, 919 So.2s 949, 956 (¶25) (Miss. 2006), This Court has consistently held that failing to object to a trial judge's appearance in a case will result in a waiver. Citing *Tubwell v. Grant*, 760 So.2d 687, 689 (Miss.2000).

The Chancellor repeated throughout his ruling on the Motion to Recuse and on the Counter-Motion for Sanctions that he did not believe Mr. Boatwright or his attorney investigated the allegations raised in the Motion to Recuse. The Chancellor found that no investigation had been made because transcripts of previous proceedings had not been purchased. The evidence cited below will show that the Chancellor and counsel opposite were first made aware of Mr. Boatwright's allegations of bias on May 23, 2008 during the in chambers conference held regarding Ms. Boatwright's Motion for Emergency Relief. The Court's response was to misquote a statement made by Mr. Boatwright some three years prior which the court stated was that he was "giving up that he was not going to fight for visitation with his daughters." (CRT 158, 22-29) The Guardian ad Litem testified that she took notes and that what Mr. Boatwright said at the February 2005 hearing was that, "He isn't going to force them to see him. He wants to but he won't force. They will change their minds one day." (CRT 129; 10-14) A copy of a portion of the transcript from the May 31, 2006 proceedings was attached to Ms. Boatwright's Response and Counter-Motion for Sanctions. (RE 165, 24-29; 166, 1) This was almost a year and a half after Mr. Boatwright made the statement. The Chancellor stated at the May 31, 2006, proceeding, "The Court recalls that Mr. Boatwright, in this Court's opinion by his comments and

his language and representations through him and his counsel to the Court gave up, if you will, his attempts to have a relationship with his daughters. He wasn't interested as I recall, his comments and his attitude." At that time, counsel for Mr. Boatwright informed them that she had not yet had the opportunity to investigate the allegations. (CRT 160, 15-29) After conducting their investigation and after new evidence of bias in the form of comments made by the Chancellor and his rulings at the hearing on motions on September 16, 2008, Mr. Boatwright filed his Motion to Recuse. (RE 116-128) Mr. Boatwright and his counsel signed affidavits which are attached to the Motion to Recuse as required by Rule 1.11 of the Uniform Chancery Court Rules setting out the conclusions to be drawn which formed his grounds for recusal. (RE 126-128)

This case involved a Motion to Recuse that was turned into a heated matter wherein the Chancellor as well as counsel opposite attempted to turn the tables and put Mr. Boatwright and his attorney on the defensive. Counsel opposite started taking the Chancellor turkey hunting not long after the Chancellor took office. Counsel opposite testified that prior to the Chancellor taking office there were hard feelings between them. This was not a reciprocal arrangement where each would take the other hunting. It was just counsel opposite taking the Chancellor turkey hunting on property he owned in Marshall County. This clearly poses an appearance of impropriety. A turkey hunt is certainly a thing of value. It was error for the Chancellor to have failed to disclose his relationship with counsel opposite, especially in light of the Motion to Recuse. It was error for the Chancellor to have failed to disclose that he had gone hunting with counsel opposite the day before a hearing wherein counsel opposite was requested he be awarded over $39,000.00 in attorney fees.

Counsel opposite argued in her Counter-Motion for Sanctions that counsel for Mr. Boatwright did not investigate because there were transcripts available which counsel for Mr. Boatwright had not read. (RE.173, 183) Counsel for Mr. Boatwright did not read the transcripts because they were all hearings that were settled. Mr. Boatwright nor his attorney were ever asked who they questioned or interviewed regarding the information contained in the Motion to

Recuse. Many of the allegations raised were matters which directly involved Mr. Boatwright. Mr. Boatwrights filed his Motion to Recuse on or about October 6, 2008, after a phone conference with the Judge, opposing counsel, and the Guardian ad Litem, did not resolve the issue. Mr. Boatwright and his attorney had no idea counsel opposite and the Chancellor would turn the motion into a federal case. The matter was set for hearing on October 16, 2008. At approximately 4:30 p.m. on October 15, 2008, counsel for Ms. Boatwright filed a some 50 page Response to Motion to Recuse and Counter-Motion for Sanctions. In addition, counsel opposite had subpoenaed witnesses for the hearing. Due to the late filing of the Response and Counter-Motion this matter dragged on until March of 2010 when a hearing was held on her Counter-Motion for Sanctions. Other than argument, the majority of the hearing was repetitive, with counsel opposite calling witnesses to repeat what was said at the hearing on the Motion to Recuse. At the conclusion of the hearing on the Counter-Motion for Sanctions, the Chancellor took a ten (10) minute break before rendering a lengthy opinion which quoted law, stated he considered the McKee factors in determining attorney fees, reviewed counsel opposites bill, and wrote an opinion which took 30 or 40 minutes to render. (CRT 971, 20-29; 972-986; 987, 1-21) There is no way to write a lengthy detailed opinion in ten minutes. Mr. Boatwright believes the Chancellor had made his decision prior to hearing the Counter-Motion and that same was based on bias. At the time of the hearing on the Motion to Recuse and the Counter-Motion for Sanctions, Mr. Boatwright nor his attorney had been informed of the Chancellor's relationship with counsel-opposite. Nor were they ever informed by the Chancellor or counsel opposite.

In his ruling on the merits of the case on March 10, 2009, the Chancellor held that Ms. Boatwright was entitled to attorney fees as a result of Mr. Boatwright having been found in willful contempt. He set a writ of inquiry for April 9, 2010 in Oxford, Mississippi. Based on information learned by counsel for Mr. Boatwright the afternoon before the hearing, she filed a Complaint with Judicial Performance by fax on April 8, 2009. Mr. Boatwright and his attorney appeared at the hearing on April 9. 2009. Counsel for Mr. Boatwright requested an "in camera" conference wherein she requested based on information which had been brought to her attention

the day prior she had filed a complaint with the appropriate authority and requested a continuance to allow her time to file a new Motion to Recuse based on the newly discovered evidence. The Chancellor granted the continuance. (CRT 1097, 21-29)

The Mississippi Supreme Court held in *Bean v. Broussard*, 587 So. 2d 908, at ¶ IV (Miss.1991), "A pleading or motion is frivolous within the meaning of Rule 11 only when, objectively speaking, the pleader or movant has not hope of success." Had the Chancellor or counsel opposite disclosed their relationship to Mr. Boatwright during these proceedings, the reason for the court's bias would have been known to all parties and their attorneys and Mr. Boatwright would not have had to spend the amount of time he did in showing actions of the Court that were bias. The Chancellor stated in his ruling on the Counter-Motion for Sanctions, "This Court is going to find in this case that Mr. Boatwright's motion to recuse based on the totality of the circumstances could not be found by a reasonable person that they would have found that the Court was biased or prejudiced against Mr. Boatwright." (CRT 977, 27) Had any reasonable person known the totality of the circumstances there would be no way they would find that the court was not biased or prejudiced against Mr. Boatwright.

The Chancellor adopted counsel opposites argument, "that we did not investigate because we did not read the transcripts." (CRT 978, 1-23) The Chancellor further found, "The Court finds that Mr. Boatwright and his attorney did not read the transcripts that were available had they asked for them and finds further that most of the orders signed in this case were agreed orders, but that does not mean as counsel well knows that has practiced in front of this Court that there was not a transcript." (CRT 978, 24-29; 979, 1-3) It is hard to imagine that one would guess that there would be a transcript of a proceeding in which Mr. Boatwright knew no witnesses were called and wherein an agreed order was entered. The only record imaginable would be reading the agreement into the record, and since it was reduced to writing there is no reason the transcript would be necessary. The Chancellor and counsel opposite took the position that the only way to investigate Mr. Boatwright's allegations was to review prior transcripts. Mr. Boatwright nor his attorney were ever asked if they interviewed witnesses, talked to prior

counsel of Mr. Boatwright, or reviewed the Court file. Mr. Boatwright and his attorney clearly reviewed the court file in this matter as a thorough and detailed history of this case is set out in the Petition for Review which has been consolidated with this case. And even had Mr. Boatwright and his attorney reviewed the transcripts which counsel opposite and the Chancellor believed to tell a different story, the portions of the transcripts which they deemed relevant and attached to these proceedings was reviewed and addressed specifically in Mr. Boatwright's Response to the Counter-Motion for Sanctions and made Mr. Boatwright's points made in his Motion to Recuse. (RE 226-243) Mr. Boatwright feels compelled to address each transcript that is available that counsel opposite and the Court argue that show the allegations made by him in his Motion to Recuse were not true. It is important to keep in mind that every time Mr. Boatwright's visitation with his daughters was modified in a manner that diminished it in someway, his visitation with the youngest child, Dunn Boatwright, was never modified. He had standard visitation with Dunn from the beginning to the case up until the Emergency Hearing on May 23, 2008. The following allegations regarding proceedings which he believes show the Courts past bias against him and raised in his Motion were:

Mr. Boatwright alleged that, "in August of 04, an Order was entered modifying Respondent/Counter-Petitioner's visitation rights with his two daughters as requested by the mother in her Counter-Petition, but there was no finding that the mother was in contempt for denial of visitation. On this day, since the Guardian Ad Litem had not made a written report, a record was taken of her report." That was the only record taken on that day.

Counsel opposite questioned Mr. Boatwright regarding the record taken on August 13, 2004 at the hearing on the Motion to Recuse. Counsel opposite stated to Mr. Boatwright while questioning him, "Do you realize that, that there was a court record of the proceedings that happened on August 13, 2004? That means we were out in court, people were testifying and a record was taken." (CRT 65, 22-26) Mr. Boatwright responded with a question, "People testified out in court that day?" (CRT 65, 27) Counsel opposite responded, "That's right. The guardian ad litem, she gave a recommendation." (CRT 65, 28-29) Mr. Boatwright responded, "Well, I

remember her standing to the side over there, but I'm talking about there weren't other people that were testifying." (CRT 66, 1-3) Counsel opposite responded, "Okay. That's how you remember it." (CRT 66, 4) That is not just how Mr. Boatwright remembers it the transcript of that date clearly proved that is what happened and counsel opposite argued throughout these proceedings that it showed the contrary and she had them right in front of her.

Mr. Boatwright alleged a hearing was begun on May 31, 2006 regarding Petitioner/Counter-Respondent's Petition for Contempt for non-payment of certain court ordered expenses and upon Respondent/Counter-Petitioner's Counter-Petition for Contempt of matters involving visitation and other relief and that, "Prior to Respondent/Counter-Petitioner putting on evidence of the contempt allegations raised by him the court stopped the hearing and refused to allow him to call witnesses in proof of his allegations upon a finding that he came into court with unclean hands." (RE 119) Respondent/Counter-Petitioner had raised unclean hands in his Petition, too, but was not allowed to put on proof of same.

Counsel opposite argued in her Response to Motion to Recuse that this allegations was not true and the transcript of the proceedings proved it was not true. A copy of the transcript was attached to counsel opposites Response and Counter-Motion for Sanctions. The transcript shows that Ms. Boatwright was allowed to proceed on her Petition for Contempt and that Mr. Boatwright was not allowed to proceed on his Petition for Contempt. Mr. Boatwright was only allowed to call witnesses in defense of Ms. Boatwright's contempt allegations. The Chancellor did state in his opinion that once Mr. Boatwright purged himself of contempt he could bring his Counter-Petition for Contempt back before the Court. The transcript proves the allegation made regarding this proceeding in Mr. Boatwright's Motion to Recuse were in fact true. (RE 166, 27-29; 167, 1-8)

The Court and counsel opposite argued that all the transcripts that were available would have proved that the allegations raised by Mr. Boatwright in his Motion to Recuse were untrue. They are referring to the portions of the two transcripts cited above from the August 4, 2004 proceedings where there is a transcript of the Guardian ad Litem reading her report into the

record, and the May 31, 2006 transcript of the hearing on Ms. Boatwright's Petition for Contempt, wherein Mr. Boatwright was not allowed to proceed on his Counter-Petition. The transcript of the May 31, 2006, proves the allegation made by Mr. Boatwright.

The Chancellor's finding that the allegations raised by Mr. Boatwright were frivolous because he did not read transcripts is clearly erroneous and based on bias. There is no support in the record for this finding, in fact the record reflects the contrary. Adopting counsel opposites argument regarding failure to read transcripts proves a failure to investigate clearly shows the bias exhibited by the Chancellor in this matter.

Mr. Boatwright alleged in his Motion to Recuse, "Respondent/Counter-Petitioner would show that each time court was held in Marshall County prior to the hearing beginning he observed Petitioner/Counter-Respondent and her brother coming from the Judges chambers while he sat in the courtroom. Different counsel represented Respondent/Counter-Petitioner at this time, but he has described in detail that the witness were coming from the right of the hallway (where the Judge's chambers is located and not from the left which is where the witness room is located)." (RE 120) There is no other room to the right of the courtroom door, but the judges chambers. Mr. Boatwright testified at the hearing on the Motion to Recuse that, "(CRT 57, 10-29; 58, 1-17) Counsel opposite states at the hearing on the Motion to Recuse in a question to Mr. Boatwright, "So you don't know, but you file a motion to recuse stating that you do know like it's a fact that you've seen Bobby and Grace in chambers talking to the judge?" (CRT 78, 1-4) Mr. Boatwright made no allegations contained in the entire sentence of counsel opposite. Five months after the hearing on the Motion to Recuse counsel opposite again questioned Mr. Boatwright along the same line at the hearing on her Counter-Motion for Sanctions on March 10, 2010. Counsel opposite asked, "Now, let me ask you this. And when you swore to that motion to recuse, isn't it true that you swore to some allegations that you saw your former brother-in-law and ex-wife go back into chamber with the judge." (CRT 930, 24-28) Mr. Boatwright responded, "I saw them go that way, yes." (CRT 930, 29) Counsel opposite continued to make the same statements regarding Mr. Boatwright swearing in his Motion to

Recuse that he saw Ms. Boatwright' brother and Ms. Boatwright going into chambers. All counsel opposite had to do was to read the details set out in the Motion to Recuse which was served upon them.

This is how the entire Motion to Recuse was handled. Counsel opposite would make untrue accusations which had no basis in fact and which the record reflects just the opposite and the Court would adopt her allegations as fact.

Hannah Boatwright testified at the hearing on the Motion to Recuse that, "before court started in Marshall County she would normally sit in the back room." (CRT 96, 26-28) Hannah further testified that the room she was in was straight across from the courtroom door. (CRT 99, 1-6) She further described that the Judge's chambers was located to the right of the courtroom door. (CRT 99, 11-15) Hannah testified that prior to court she had seen her mom and her uncle walk past the courtroom door towards the judge's chambers. (CRT 99, 23-29, 100, 1-2) Hannah stated that she was not saying she saw her mother and uncle talking to the Judge that she just saw them going to his chambers. (CRT 100, 9-12)

The Court found in his ruling on the Counter-Motion for Sanctions on March 10, 2010, "Had even a minimal effort been made by Mr. Boatwright and his counsel, they would have known that most of these allegations were false. An example of that is Mr. Boatwright's claim that he saw and his daughter saw Mr. Bonds, who is Ms. Boatwright's brother, go into the Judge's chambers. He previously admitted , as did his daughter under oath, that they never saw this, this never occurred, and he admitted that again here today in court. However, that was the sworn affidavit contained with his motion." (CRT 980, 5-17)

The finding of the Chancellor is clearly erroneous and not supported by the facts of this case. Just a quick review of the Motion to Recuse filed by Mr. Boatwright shows that he never stated in his motion nor testified that he actually "saw" Ms. Boatwright or Bobby Bonds go into chambers. Mr. Boatwright stated exactly what he and his daughter observed, that both Ms. Boatwright and her brother were seen going down the back hall toward the judges chambers. There is no other room that they could be going to in that direction. The Chancellor and counsel

opposite are well aware of this. The conclusion to be drawn from what they saw is that they were going to the Judge's chambers. This clearly presented an appearance of impropriety. If Ms. Boatwright and her brother had been out in the courtroom as was Mr. Boatwright and his witnesses, this appearance would have been avoided.

In his ruling on the Counter-Motion for Sanctions, the Chancellor found, "It is undisputed, that the attorney for Mr. Boatwright did not talk with the guardian ad litem or opposing counsel about the prior hearings regarding this case." (CRT 979, 1-14) There is absolutely nothing in the record to support this finding. The Guardian ad Litem was never asked the question, nor was counsel for Mr. Boatwright.

The Court further found, "the attorney did not speak with any of the court personnel, the clerk of Marshall County, or any other neutral third party to investigate the allegation." (CRT 979, 13-29) This ruling is not supported by anything in the record. The only court personnel that testified was the Chancery Clerk, Chuck Thomas, at the hearing on the Motion to Recuse. He was never asked if Mr. Boatwright or his attorney had talked to him.

The Chancellor found in his opinion on the Counter-Motion for Sanctions, "It's apparent that according to Ms. Robinson, she did read the court file in this case, but she took no further steps to ascertain the allegations that her client apparently was making to her." (CRT 981, 22-27) This statement by the Court is a clear example of the Court's bias against Mr. Boatwright. It was not only apparent from the argument set out by counsel for Mr. Boatwright that she had read the court file, it was apparent in the Motion to Recuse, Petition for Review, and Response to Counter-Motion for Sanctions as well as argument and testimony presented, that she had read the court file. Minute details of the history of this case were set out by counsel for Mr. Boatwright. That could not have been done without a thorough review of the court file. In addition, the record does reflect that counsel for Mr. Boatwright did discuss the matter of the Court's bias with the Chancellor and counsel opposite in chambers on the date she entered an appearance in this case, and specifically discussed some instances with the court which her client believed showed bias, although counsel and the Court disagree as to whether the Court's explanation fully and

finally resolved the matters discussed. (CRT 158, 22-29; 159, 1-29; 160, 1-29; 161, 1-29; 162, 1-15) This banter between counsel for Mr. Boatwright and the Chancellor clearly shows the matter was discussed with counsel opposite and the court, not on one, but on two occasions. Counsel for Mr. Boatwright informed the Court that she had just been retained and had not yet had the opportunity to "investigate" claims made by her client regarding the bias of the Court. (CRT 160, 25-26)

Mr. Boatwright also alleged in his Motion to Recuse that almost all proceedings were resolved in chambers without a hearing. Counsel opposite acknowledges this in her Response to the Motion to Recuse and Counter-Motion for Sanctions. (RE 132) Mr. Boatwright testified at the hearing on the Motion to Recuse that the majority of matters were resolved with the attorneys in chambers with the Chancellor. (CRT 50, 28-29; 51, 1-4) Mr. Boatwright was present each time court was scheduled in this matter and is an important witness as to what occurred.

The allegations made by Mr. Boatwright in his Motion to Recuse regarding previous proceedings before the Court were regarding constant restrictions on his visitation rights with his daughters and the Court's failure to ever enforce these visitation rights. Mr. Boatwright is the best witness as to what visitation he received with his daughters and nothing argued by the Court or counsel opposite shows his visitation rights were ever enforced.

Counsel opposite argued and Ms. Boatwright testified that Mr. Boatwright filed the Motion to Recuse because he wanted a "clean slate". (RE 145; CRT 956, 25-28) This was simply the opinion raised by Ms. Boatwright's attorney and in no way corroborated, yet the Chancellor also adopted this argument.

The Chancellor having just held over and over again in his opinion that Mr. Boatwright and his attorney did not investigate because they did not read transcripts, now finds that we should have known that what had previously occurred in this case could not have been ascertained from the court file and that somehow we knew that the transcripts would tell a different story. (CRT 982, 9-29) Counsel opposite's entire argument in her Response to the Motion to Recuse and her Counter-Motion for Sanctions was that if we had viewed past

transcripts of what she called hearings, we would have known that what Mr. Boatwright was alleging was not true. (RE 130-146) Mr. Boatwright testified that after reading those transcripts which counsel opposite believes show he was wrong about prior proceedings, that he disagrees that the transcripts show that. (CRT 949, 16-29; 950, 1-28) Counsel opposite in argument on the Motion for Sanctions stated that counsel for Mr. Boatwright had a duty to investigate. She argued further that it was her opinion we should have read the transcripts and failing to do so was a failure to investigate. (CRT 954, 17-29, 955, 1-25) The Court nor counsel opposite ever asked Mr. Boatwright or his counsel if they conducted an investigation. They asked on numerous occasions if we read transcripts. There are many other ways of investigating such as talking to past attorneys and/or paralegals, parties present in the Court room, and reviewing the court file. The Petition for Review filed on behalf of Mr. Boatwright by his attorney clearly shows much time was spent in reviewing the history of this case. Counsel opposite argued on her Motion for Sanctions, "There were facts readily available that disputed the validity of each and every allegation made by Mr. Boatwright in transcripts, in the court file, in what potential witnesses would have told her had she interviewed." (CRT 955, 29; 956 1-7) This statement is simply untrue. Counsel opposite's position throughout the Motion to Recuse was that we did not read transcripts, and that had we done so we would know our allegations were untrue.

In his opinion the Chancellor found, "I'm aware based on the long history of this trial and these people of their financial abilities and Mr. Boatwright is fully and financially able to pay attorney fees." (CRT 985, 26-29; 989, 1) The Chancellor determined the ability to pay attorney fees based upon pass history of the case, rather than on current financial information testified to and put in evidence. Mr. Boatwright's 8.05 introduced at trial as Exhibit 4, shows his total gross monthly income to be $2,833.33; after mandatory taxes are taken out to be $1,897.26; and, after he pays all support ordered by the Court to Ms. Boatwright some $1,377.00, his remaining income is $520.26. His 8.05 shows there is $6,000.00 owing on his work truck and a debt of $5,500.00 to a local bank. (ARE 148-155)

"Of a trial judges numerous duties, the one which overshadows all others; the one which

must be closely guarded and carefully protected, is the duty to insure that all litigants receive a fair trial before an impartial tribunal. Every rule of professional and judicial conduct is aimed directly at that goal." *Schmidt v. Bermudez*, 5 So.3rd 1064, at ¶2 (Miss.2009).

The day the Motion for Sanctions was set to be heard, counsel opposite called Mr. Boatwright as a witness and went over testimony from the Motion to Recuse. (CRT 924, 21-22) After counsel opposite started questioning Mr. Boatwright about matters already covered in the Motion to Recuse, counsel for Mr. Boatwright objected because the information was repetitive and because all pending motions had been scheduled to be heard at the final hearing. (CRT 925, 29; 926, 1-15) The Court responded, "that's not the Court's remembrance of it." (CRT 926, 16-24) There were only two times hearing of this motion were addressed with Mr. Boatwright's attorney up through the conclusion of the final hearing. One, was the Order of Setting. (ARE 214) The other was when counsel opposite called up his motion for sanctions at the conclusion of the trial and the court did at that time say it would be heard later. (CRT 914, 26-29; 915, 1-9)

Regarding her defense that every time Mr. Boatwright came into court in the past requesting relief that he was given relief by the Court, counsel opposite questioned Mr. Boatwright about counseling she alleged in her Response to the Motion to Recuse that he did not attend. (CRT 934, 26-29; 935, 1-12) On cross Mr. Boatwright's attorney attempted to question him regarding the allegation the he did not follow the instructions of the Court regarding the counseling ordered by the Court.. (CRT 950, 26-28) Counsel for Mr. Boatwright was interrupted by an objection that this was not relevant to the Motion for Sanctions. (CRT 950, 29; 951, 1-4) Mr. Boatwright's attorney had objected to that very line of questioning and was overruled. (CRT 934, 11-24) The Court asked why counsel for Mr. Boatwright's question was relevant. (CRT 951, 5) Counsel opposite responded that she asked the question because of allegations made by Mr. Boatwright in his Motion to Recuse and that she was just trying to get to the basis of his allegations. (CRT 951, 14-25) The Court chastised Mr. Boatwright's attorney and limited what she could ask regarding the issues he raised in his pleadings, he was not allowed to defend himself regarding the allegation made by Ms. Boatwright that he never followed the instructions

of the Court such as attending counseling. (CRT 951, 26-29; 952, 1-25)

Had Mr. Boatwrights knowing the Chancellor harbored bias against waited until the final hearing and the ruling of the Chancellor his request for the Chancellor to recuse himself would have been barred. He would not have had the right to allege bias in his appeal.

Mr. Boatwright's Motion to Recuse was certainly not filed for the purpose of delay. First, a Motion to Recuse is not normally made into such an ordeal and takes very little time. Second, because he is the one who was prejudiced by the delay it caused. The Chancellor had suspended his visitation rights with his minor child without a hearing in May and then managed to delay a hearing, thus depriving Mr. Boatwrights of his visitation rights, once again in this case, as long as she could. Upon final hearing, thanks to the Guardian ad Litem and the Court appointed psychologist his visitation was restored. The May 23, 2008 day that the attorneys appeared before the Court on Ms. Boatwright's Motion for Emergency Relief wherein the Chancellor suspended Mr. Boatwright's visitation with his which was allowed to drag out without a hearing for months is one example of the Chancellor's bias raised in his Motion to Recuse which was argued in his Petition for Review before this Court.

Canon 3(b) of the Code of Judicial Conduct, states, "A judge shall dispose of all judicial matters promptly, efficiently and fairly."

Mr. Boatwright's counsel argued at the hearing on the Motion for Sanctions, "that her client's was denied due process of law when his visitation rights were suspended without a hearing." (CRT 965, 20-29; 966, 1-29; 967, 1-29; 968, 1-7)

> The Supreme Court held in, *Wilburn v. Wilburn*, 991 So.2d. 1185, 1192 ¶15 (Miss. Sup.Ct. 2008), quoting, *Fortenberry v. Fortenberry*, 338 So.2d 806 (Miss. 1976), "the parties should be afforded a full, complete hearing at which the parties have an opportunity to call witnesses in their behalf and be heard by themselves or by counsel. If a full and complete hearing is not allowed by refusing the Defendant his opportunity to present evidence, then the Defendant is hereby deprived of due process."

Counsel opposite argued in her Response to Motion to Recuse and Counter-Motion for Sanctions, that Mr. Boatwright's allegation that every time he went to court to have his visitation

enforced that his visitation was further restricted is unfounded. (RE 131) A review of the history of the Orders in this case supports Mr. Boatwright's allegation. The history of the Orders is set out in his Petition for Review which is consolidated with this appeal. From the entry of the first temporary order before the divorce is final for some period thereafter, Ms. Boatwrights refused to allow Mr. Boatwrights to exercise his visitation rights. When he filed his first Petition for Contempt because of her refusal to all him to exercise his visitation, the Chancellor's solution was not to hold Ms. Boatwrights in contempt, it was to appoint a Guardian ad Litem to get to the bottom of visitation problems. (RE 131-132)

The entire time counsel opposite spent in fighting the Motion to Recuse counsel opposite knew of their personal relationship with the Chancellor. From the day the Motion to Recuse was first brought up, counsel for Mr. Boatwrights was bewildered by the vengeance with which it was fought. The reasons are apparent from the testimony of counsel opposite at the hearing on the Motion to Alter or Amend or for a New Trial. (CRT 1122-1128) The Court sanctioned Mr. Boatwrights and his attorney the sum of $5,938.11. (CRT 986, 16-29; 987, 1-9) Mr. Boatwrights contends that the Chancellor's sanctions were against the overwhelming weight of evidence, contrary to law, and are based solely on bias.

(V). Was the Chancellor's refusal to order that Appellant be reimbursed for child support paid to Appellee for the benefit of the minor child, Hannah Boatwrights, during the time she was in the custody of his parents, and for refusing to order Appellee to pay back support during the time the minor child was in the custody of the paternal grandparents error and based on bias?

The Court of Appeals held in the case of *Department of Human Services v. Marshall*, 856 So.2d 441, ¶20 (Miss. App.2003) "Child support is for the benefit of the child, and a child should not be penalized because of the conduct of the parents."

On May 23, 2008, the Court ordered that the minor child, Hannah Boatwrights, be placed in the custody of the paternal grandparents. From that time until hearings on motions, Mr. Boatwrights continued to pay support for the benefit of Hannah unto Ms. Boatwrights. An Order was entered on September 29, 2009, ordering Mr. Boawright to pay unto the paternal

grandparents the sum of $100.00 per month support for Hannah. (ARE 156) He continued to pay support to Ms. Boatwrights on the other two minor children of the parties. Ms. Boatwrights was not ordered to pay any support for the benefit of Hannah. (CRT 745, 19-29) The Chancellor refused to order that Mr. Boatwrights be reimbursed for child support paid to Ms. Boatwrights for the benefit of Hannah during the time she was in the custody of the paternal grandparents. (ARE 122) Child support is the right of the child, it should not be used to punish one of the parents, and in this case the grandparents. A look at the 8.05's of the parties will show that Ms. Boatwright's income is four times that of Mr. Boatwrights. (CRT 157-162) Hannah is about to start college and her expenses are much greater than the minor child, Dunn Boatwrights. Mr. Boatwrights has paid one-half the college tuition and associated expenses for Wynne Boatwrights until she turned 21 and he will have to pay all of Hannah's college expenses.

In his final ruling the Chancellor placed Hannah in the temporary custody of the paternal grandparents until school recessed for the summer and ordered that she be in the temporary custody of the paternal aunt and uncle during the summer. The Chancellor directed Mr. Boatwrights to pay $120.00 in child support for Hannah, to be paid to his parents and sister, and to continue to pay support to Ms. Boatwrights for Dunn and Wynne. (CRT 1067, 9-29; 1068, 1069, 1-22) The Court did not require Ms. Boatwrights to pay any support for the benefit of Hannah. (CRT 1069, 14-28)

The Chancellor found, "Mr. Boatwright's request for reimbursement of support paid towards Hannah to Ms. Boatwrights while she was in the grandparents' custody is denied. And part of the reason for the denial of that is that Mr. Boatwrights, in this Court's opinion, brought this whole matter on himself by virtue of this phone conversation and his other actions and the Court doesn't think it ought to reward that type of conduct." (CRT 1060, 5-13) From the date of the Emergency Hearing, in May of 2008 through hearing of motions in September of 2008, Mr. Boatwrights continued to pay support to Ms. Boatwrights for the benefit of Hannah, even though at her own request Hannah had been removed from her custody and placed in the custody of the paternal grandparents. The Court's ruling is clearly erroneous, contrary to law, and based on the

Chancellor's bias.

(VI). Did the Chancellor err in holding Appellant in willful contempt for failing to pay certain college related expenses of the minor child, Wynne Boatwright?

Mr. Boatwright was found to be in willful contempt for failing to pay for a computer, a Home Depot bill, a book fee, a deposit fee, and an orientation fee. Ms. Boatwright testified that on August 28th, she sent him bills for these items, but that all bills were not legible. (CRT 464, 8-16) She testified that she sent him an invoice for the computer dated May 4, 2007 on August 28th. (CRT 464, 8-18) Ms. Boatwright first testifies that the computer was a graduation gift from her to her daughter, but later retracts that statement. (CRT 465, 21-29) The aforementioned testimony shows that Wynne had not even started college when the computer was given to her, consequently, how can it be an expense associated with college. Ms. Boatwright further testified that at the time she gave Wynne the computer she was applying to different colleges and still trying to decide what she was going to do. (CRT 466, 10-12)

Ms. Boatwright testified that when Wynne moved in with her boyfriend she did not let Mr. Boatwright know. (CRT 513, 13-16) Mr. Boatwright confirmed this in his testimony. (CRT 744, 12-15) Mr. Boatwright had not had any visitation with his daughter, Wynne, in three or four years. (CRT 744, 15-24) He testified he was not even invited to her high school graduation. (CRT 745, 10-11)

Mr. Boatwright testified that he received a bill for a computer on August 28, 2007 for a computer purchased May 4, of 2007. (CRT 796, 27-29; 797, 1-6) Mr. Boatwright testified that he did not pay for the computer because he did not believe it was a valid college expense, that Wynne was not even in college at that time. (CRT 797, 7-29; 798, 1-6) Mr. Boatwrights testified that he was billed for $2,518.00 in college expenses and tuition. (RE 215-216; CRT 798, 7-17) Mr. Boatwrights paid this amount. (ARE 239)

> A citation of contempt is proper only when the contemnor has willfully and deliberately ignored an order of the court. **Riddick v. Riddick**, 906 So.2d 813,826¶42 (Miss. 2004), (citing **Cooper v. Keyes**, 510 So.2d 518, 519 (Miss. 1987).
>
> The Court in **Riddick**, disagreed with the Chancellor's

finding that Mr. Riddick was in contempt for refusal to pay college expenses because Mr. Riddick had a good faith belief that he did not have to pay. The Court commented that, "Mr. Riddick always pays his child support and had paid other expenses." Id.

The evidence clearly shows that Mr. Boatwrights pays his child support, insurance reimbursement, private school tuition, and an exorbitant amount in out of pocket medical expenses. It makes no sense that over a few small payments he would subject himself to be held in contempt of court, if he did not have a good faith belief that those expenses were not legitimate.

> The Court of Appeal held in the case of Hunt v. Asanov, 975 So.2d 899, 902¶9 (Miss.2008), (quoting Ellis v. Ellis, 840 So.2d 806, 811 (Miss.Ct. App.2003), "One may defend a contempt proceeding with the defense that the court order was unclear." "It follows that if the order was unclear, then Dr. Asanov cannot be held in willful contempt for failure to comply." Id.

In the Final Decree of Divorce, Mr. Boatwrights was ordered to pay one-half the cost of the minor children's college tuition and associated college expenses. (RE 46)

Ms. Boatwrights testified that Wynne Boatwrights was attending college at Columbia State in Franklin, Tennessee, and that she resided with her boyfriend there. (CRT320, 11-22) She testified further that she did not approve of Wynne living with her boyfriend, but that she was eighteen (18) so there was nothing she could do. (CRT 320, 23-29)

Ms. Boatwrights testified that she billed Mr. Boatwrights for a computer, orientation fee, a down payment on tuition, some Home Depot expenses, and a book. (CRT 321, 24-29) She testified Mr. Boatwrights was $1,011.98 in arrears on reimbursement of his one-half of these expenses. (CRT 323, 20-22)

(VII). Did the Court err in fining Appellant $1,000.00 for having been found in willful contempt?

The Chancellor ruled, "Mr. Boatwrights is further to pay a fine of $100 for every contempt. That money will be paid into the registry of Marshall County. By the Court's calculation, he's in contempt seven times for being late and/or failure to pay out-of-pocket medical payments, once for failure to pay college expenses, once for failure to provide the tax return and once for the failure to provide proof of insurance. Therefore, he owes, $1,000 to Marshall County immediately and he's remanded to the custody of the Marshall County Sheriff's Department until such fine is paid." (CRT 1057, 15-27)

It is unclear what seven times the Chancellor referred to, it was clearly not testified to by Ms. Boatwrights. Mr. Boatwrights was found in contempt for failure to pay $694.39 and fined $700.00 for said contempt. This ruling is clearly erroneous and based on the bias of the Chancellor.

(VIII). Did the Chancellor err is ordering Appellant to continue to pay support and college tuition for the benefit of the minor child, Wynne Boatwrights?

> In *Caldwell v. Caldwell*, 823 So. 2d 1216, (¶ 13) (Miss. App.2002), the Court of Appeals stated, " the statutory language is not exclusive. The statute only defines when a court may find that a child is emancipated as a matter of law. Other situations, not contemplated by the statue, may also establish emancipation." The court quoted, *Rennie v. Rennie*, 718 So.2d 1091, 1093-94 (¶8-9) (Miss. 1998), "For example, a child having a baby out of wedlock or moving out of the parent's home to live with a boyfriend or girlfriend." Id.

Mr. Boatwrights testified that Ms. Boatwrights did not inform him that Wynne was moving in with her boyfriend. (CRT 744,12-18) Ms. Boatwrights admitted that she did not inform Mr. Boatwrights that Wynne was moving in with her boyfriend, she simply mailed him a copy of the lease with the boyfriends name on it with no explanation when she billed him for rent. (CRT 513, 13-25) The Chancellor ordered that child support for Wynne not be altered. (CRT 1056, 22-23)

The Chancellor found, "Mr. Boatwright's petition to terminate support with regards to Wynne is denied." (CRT 1060, 1-4)

The testimony is undisputed that Wynne and Mr. Boatwrights have no relationship. The history of the case shows that Mr. Boatwright's visitation rights awarded in the Temporary Order entered prior to the entry of the Final Decree of Divorce and the Final Decree of Divorce were never enforced by the Court. Mr. Boatwrights filed four Petitions for Contempt in an attempt to have his visitation rights with his daughters enforced to no avail. Despite these facts, the Chancellor found that all problems with Wynne and Mr. Boatwright were the fault of Mr. Boatwright. In his Amended Counter-Petition for Contempt filed on October 3, 2008 that was the subject of this hearing, Mr. Boatwright asked the Court to relieve him of any further duty to

pay support for Wynne. (RE 108-109)

In his Findings of Fact and Conclusions of law, Mr. Boatwright specifically requested he be relieved of any duty to pay college expenses on behalf of Wynne as of the date of filing his Amended Counter-Petition. (RE 313-315) Mr. Boatwright further quoted the applicable statute regarding a minor child cohabiting with a member of the opposite sex.

> Section 93-11-65 (2)(b)(iii) of the Mississippi Code of 1972, Annotated, provides as follows: "Unless otherwise provided for in the underlying child support judgment, the court may determine that emancipation has occurred and no other support obligation exists when the child cohabits with another person without the approval of the parent obligated to pay support."

Wynne Boatwright, not only started having an affair with a man who was eight years older than she while she was a senior in high school. The man was a teacher in that high school. Sometime after her first semester in college, she moved in with this man without the knowledge or approval of Mr. Boatwright.

Ms. Boatwright testified that once Wynne was eighteen she could no longer tell her what to do. (CRT 484, 1-23) She testified that Wynne moved from school to school and admitted that part of the reason was to be with her boyfriend. (CRT 510, 25-29; 511, 1-28)

(IX). Did the Chancellor err is ordering Appellant to pay attorney fees as a result of his finding of willful contempt?

The Chancellor found, "Mr. Boatwright is in contempt of this Court, civil contempt, he shall be responsible for some of Ms. Boatwright's attorneys fees associated with her contempt petition." (CRT 1043, 17-21) The Chancellor directed a writ of inquiry with regard to determining an amount for those attorneys fees be heard at a later date. (CRT 1058, 1-7) Counsel opposite was unable to get their fee statement into evidence because they failed to provide it in discovery. So upon his own motion the Chancellor determined they should have another bite at the apple.

> The parties in Harmon v. Yarbrough, 767 So.2d 1069, 1072 ¶13 (Miss.App.2000) disagreed on what were "college expenses". The Court of Appeals held, "civil contempt should not usually be found for failure to comply 'with indefinite or incomplete terms.'"

> "Contempt occurs only if the failure to comply amounts to a deliberate violation of a decree." Citing, **Caldwell v. Caldwell**, 579 So. 2d 543, 546 (Miss. 1991).

Petitioner/Counter-Respondent first would have to prove that Respondent/Counter-Petitioner was in willful contempt in order to recover attorney fees as requested in her Petition for Contempt. She would then have to put on some proof as to the amount of those fees as well as the reasonableness of the fees.

> "Sufficient evidence must exist to accurately assess a proper fee. Caldwell v. Caldwell, 823 So.2d 1216, (quoting, McKee v. McKee, 418 So.2d 767). There was no such proof introduced into evidence. In Newel v. Hinton, 556 So.2d 1037, 1043(Miss. 1990), the Supreme Court held, "An award of attorney's fees in a contempt case is proper. (quoting, Stauffer v. Stauffer, 379 So.2d 922, 924 (Miss. 1980), and the award of fees is largely entrusted to the sound discretion of the chancellor. (quoting, Cheatham v. Cheatham, 537 So.2d 435, 440 (Miss. 1988). However, there is a limitation as outlined in McKee v. McKee:

(X). Were the Chancellor's rulings based on his bias against Appellant and in favor of Appellee?

> In *Hunt v. Asanov*, 975 So.2d 899, 902-03 (¶11) (Miss.App.2008), the Court of Appeals reversed a finding of willful contempt and held, "Before a party may be held in contempt for failure to comply with a judgment, "the judgment must be complete within itself...leaving open no matter or description or designation out of which contention may arise as to meaning." Citing, *Davis v. Davis*, 829 So.2d 712, 714 (¶9)

There were numerous instances of the Chancellors bias in this matter. Mr. Boatwrights would show that the record is replete with instances of bias, as follows:

A. In response to Ms. Boatwright's allegation of contempt regarding non-payment by Mr. Boatwrights of certain out-of-pocket medical expenses, Mr. Boatwrights propounded Request for Production of Documents, requesting copies of cancelled checks where Ms. Boatwrights paid these expenses. The Chancellor ruled it was irrelevant whether she had actually paid the expenses for which she was requesting the court reimburse her, and denied Mr. Boatwright's Motion to Compel the cancelled checks. (CRT 23-27)

B. The Chancellor adopted the Findings of Fact and Conclusions of Law of counsel opposite on almost every issue and further adopted matters argued at the hearings by counsel

opposite.

> The Court of Appeals held in, *Rodriguez v. Robdriguez*, 2 So.2d 720, 725 ¶10 (Miss.App.2009), After the hearing on December 12, 2006, the parties' respective counsel(s) submitted competing, proposed findings of fact and conclusions of law. Ronnie's proposal was adopted verbatim by the chancellor as the equitable division of the marital estate. The supreme court has stated that " whether a trial court may adopt verbatim, in whole or in part, the findings of fact and conclusions of law of a party is within the court's sound discretion." *Rice Researchers, Inc. v. Hiter*, 512 So.2d 1259, 1266 (Miss. 1987) When a chancellor does adopt, verbatim, the proposed findings of fact and conclusions of law prepared by a party, this Court " analyzes such findings with greater care and the evidence is subjected to heightened scrutiny." *Gutierrez v. Bucci*, 827 So.2d 27, 31(¶ 13) (Miss.Ct.App.2002) (quoting *Brooks*, 652 So.2d at 1118).

In his applications of a $543.47 payment made to Ms. Boatwrights by Mr. Boatwrights as reimbursement for out-of-pocket medical expenses, the Chancellor found that it was unclear where the payment should be applied so he refused to give him credit on the amount of arrearage that was alleged, he gave him credit on future payments. (CRT 1038, 13-26) Counsel opposite argues in her Finding of Facts and Conclusions of Law that he should not be given credit for the $543.47 as it was unclear where it should be applied. (RE 406, ¶2)

Mr. Boatwright was found in willful contempt by failing to provide a complete copy of his Income Tax Return to Ms. Boatwright by the required date. Mr. Boatwright had only provided Ms. Boatwright the first page of his return. The first page of an Income Tax Return shows your total income and the amount of taxes owing on same. Counsel opposite argued that Mr. Boatwright's failure to provide a complete copy of his return was willful contempt in her Findings of Fact and Conclusions of Law. (RE 406) The Chancellor found Mr. Boatwright in willful contempt for failure to provide a complete copy of his return. (CRT 1040, 24-29; 1041, 1-5) Mr. Boatwrights was found in willful contempt for failure to timely provide proof of life insurance. (CRT 1041, 6-16) Counsel opposite argued in her Findings of Fact and Conclusions of Law that Mr. Boatwright did not provide proof of life insurance in a timely manner. (RE 406)

Mr. Boatwright was found to be in willful contempt for failure to pay $694.39 in out-of-pocket medical expenses. (ARE 119, ¶4) Counsel opposite argued in her Findings of Fact and

Conclusions of Law that Mr. Boatwright should be found in willful contempt for failure to pay $762.33 in out-of-pocket medical expenses. (RE 408) Mr. Boatwrights was found in willful contempt of court for failure to pay $1,011.98 reimbursement for college related expenses. (ARE 119, ¶4) Counsel argued in her Findings of Fact and Conclusions of Law that Mr. Boatwright should be in held in willful contempt for failiure to pay $1,011.98 in college related expenses. (RE 409)

Counsel opposite argued against terminating support for Wynne Boatwright. (RE 410) The Chancellor declined to terminate support. (CRT 1049, 29; 1050, 1-3)

Counsel opposite argued Mr. Boatwright should not have custody of Hannah Boatwright. (CRE 422) The Chancellor declined Mr. Boatwright's request for custody of Hannah. (ARE 120, ¶8)

Counsel opposite argued in her Findings of Fact and Conclusions of Law that the Court order the minor child, Dunn, to continue counseling with Ruth Cash and further argued how the cost of same should be paid. (RE 423) The Chancellor's ruling adopted the request of counsel opposite. (ARE 122, ¶17) Counsel opposite made the same argument which the Chancellor adopted regarding counseling of the minor child, Hannah. (RE 423; ARE 120-121, ¶10)

Counsel opposite argued Mr. Boatwright should attend anger management classes, although this was not plead by her. (RE 423) The court ordered the parties to attend anger management classes. (ARE 124, ¶24)

The Chancellor adopted the argument of counsel opposite regarding support for Wynne Boatwright. (RE 425, ¶11; ARE 123-24, ¶22)

The Court adopted the argument of counsel opposite regarding an award of attorney fees to Ms. Boatwrights. (RE 428; CRT 1057, 28-29; 1058, 1,7)

Although she did not request so in her pleadings, Ms. Boatwrights testified that she preferred to communicate with Mr. Boatwrights by facsimile, but that he refused to buy a fax machine. (CRT 317, 6-29; 318, 1-11, 18-29) In his ruling, the Chancellor did just that. He ordered Mr. Boatwrights to purchase a fax machine. (ARE 124, ¶23)

C. When the Chancellor ruled that Ms. Boatwright would have standard visitation with Hannah, Mr. Boatwright's attorney pointed out that Dr. Nichol's recommendation was that visitation take place only as directed by a counselor. The Chancellor ignored the argument and stated, "that is not how I remember it", and ordered standard visitation. (CRT 1074, 3-20)

Although it was contrary to the recommendation of the court appointed psychologist and the Guardian ad Litem, counsel opposite argued in her Findings of Fact and Conclusions of Law that Ms. Boatwright should have standard visitation with the minor child, Hannah. (RE 423) The Court did exactly as she argued, although upon request of the Guardian Ad Litem the parties had a conference with the Court two weeks later and that ruling was modified. (CRT 1074, 3-20) The Chancellor at that time retracted the above ruling like it was never what he meant. (CRT 1086, 11-29; 1087, 1-1-29;1088, 1-10) In her Motion for Emergency Relief filed in May of 2008, Ms. Boatwright stated she feared for her safety if Hannah was not removed from her home, but after the final hearing she wants standard visitation with no safeguards. (RE 70,¶11)

D. At the time this matter was set for final hearing there were motions pending by both parties, including the Counter-Motion for Sanctions filed by Ms. Boatwright. (RE 214) The matter was tried for three days and at the conclusion counsel for Ms. Boatwright had not put on any proof on their Counter-Motion for Sanctions. They were unable to get their bill for attorneys fees into evidence because they had failed to produce in during discovery. Ms. Boatwright testified she had incurred a total of $36,000.00 in attorney fees and expenses. (CRT 392, 19-20) She further testified that the fees included expert witness fees, cost of purchasing transcripts, and the cost of deposing experts. (CRT 392 25-28) In her Petition for Citation of Contempt and Modification, Ms Boatwright requested, "That Respondent should be required by this Honorable Court to pay Petitioner's attorney fees and expenses associated with this contempt action." (RE 60) Ms. Boatwrights did not request attorney fees for the modification proceedings or in defending the Counter-Petition for Modification and Contempt filed by Ms. Boatwright. At the conclusion of the trial counsel opposite argued that he should be allowed to come back later and put on proof of attorney fees. (CRT 912, 25-29; 913, 1-11)

Counsel for Mr. Boatwright addressed the Court at the end of the testimony regarding her pending Motion to Dismiss the Motion for Emergency Relief filed by Ms. Boatwright. (CRT 914, 10-13) Before she could finish the Court cut her off stating, "Well, Ms Robinson, okay, and I'm cutting you off. But I announced at the beginning of this trial that the Court was considring every one of those pleadings at this trial, and so there's no need for you to call that motion up at this point." (CRT 914, 14-19) Then counsel for Ms. Boatwright addressed the Court stating, "Your Honor, the final thing I was just handed, and I'm coming in late, there is a pending motion for sanctions regarding a motion that was filed and heard previously, I think over in Benton County and the order issued. And the staff attorney had told us that the motion for sanctions would be heard at the conclusion of this trial...And I assume it will be after any decision was made but I wanted..." (CRT 914, 26-29; 915, 1-6) This was the first Mr. Boatwright and his attorney had heard about the motion for sanctions not being heard along with everything else that was pending. The Chancellor responded to Ms. Boatwright's counsel, "And that's the Court - - that's the direction from the Court. That's what I intend to do. (CRT 915, 7-9)

E. The Court throughout these proceedings never passed up an opportunity to criticize or demean Mr. Boatwright. Throughout Mr. Boatwright's testimony the court abrubtly interruped him, as he did his attorney during her argument. Ms. Boatwright and her attorneys were treated totally different.

F. The Chancellor chastised Mr. Boatwright in his opinion because of drinking that occured at a party given by Hannah at his home. The Chancellor found no problem with the same behavior of Ms. Boatwright regarding the minor child Wynne. Ms. Boatwright testified that, although the divorce decree prohibits either party from allowing the minor children around persons while consuming alcohol that she did not think that was a big deal if it were Wynne. (CRT 509, 26-29; 510, 1-7) Ms. Boatwright did not deny that Wynne's friends drank at her home and admitted that she allowed some drinking in Wynne's presence. (CRT 510, 8-24)

G. Throughout the Chancellor's opinion, he finds all testimony presented by Ms. Boatwright to be credible, and almost no testimony presented by Mr. Boatwright to be credible

unless it admits a fact alleged by Ms. Boatwright or when it was testimony detrimental to Mr. Boatwright. (CRT 987-1063)

H. That although Dr. Nichols was more qualified than Ruth Cash, and although Dr. Nichols conducted psychological examination on both parties as well as Hannah and Dunn, the Chancellor put a greater weight on Dr. Cash's testimony because she made negative findings regarding Mr. Boatwright. (CRT 1019, 2-29; 1020, 1-16)

I. In his Counter-Petition for Contempt Mr. Boatwright asked the court to hold Ms. Boatwright in contempt for her failure to provide 48 hour notice of doctor's appointments as had been previously ordered by the Court. Ms. Boatwright had testified that she preferred to notify Mr. Boatwright by email or fax so that her notices were not always timely. (CRT 317, 2-14) Letters sent via certified mail to Mr. Boatwright were introduced and clearly show her failure to notify Mr. Boatwright of doctors appointments as ordered by the Court. (ARE 163-64, 174, 179, 181-82, 185, 187, 197, 201, 204, 217, 219) She admitted her notice was not timely but the Chancellor still refused to hold her in contempt.

The Court refused to hold Ms. Boatwright in contempt. (CRT 1034, 7-29; 1035, 1-20)

J. In his final ruling in this matter the Chancellor found, "With regard to the emergency motion and the motion to dismiss the emergency, both of which have now become moot, in light of the Court's ruling, they are going to be dismissed. (CRT 1056, 25-28) Mr. Boatwright's visitation with his son had been suspended without a hearing. For four months, Mr. Boatwright had no visitation with his son, and for the next five months after that he only had sporadic supervision for part of a day which were supervised. Mr. Boatwright had no holiday or summer visitation during the period of May of 2008 through Februrary 2009, and the Chancellor finds the issue is "moot". Based on the findings of the Guardian ad Litem and the court appointed psychologist, Mr. Boatwright's visitation with his son was restored after the final hearing in this matter. (CRT 1058, 13-18) The Guardian ad Litem testified that she had reviewed the report submitted by Dr. Ruth Cash and talked with her at length. The guardian stated that Dr. Cash had told her that stopping Dunn's visitation with his father would be harmful to Dunn, and that it was

what had happened in this case. (CRT 732, 1-15)Ms. Boatwrights was not reprimanded by the Court for filing an emergency motion and never bringing it for hearing before the court, when the effect was to cost her son and his father nine months of visitation. Time that can never be restored between Mr. Boatwright and son was taken without a hearing and the allegations raised in the motion were found not to require any restriction on Mr. Boatwright's visitation.

Respondent/Counter-Petitioner would show this case is analogous to the recent case of **Wilburn v. Wilburn**, 991 So.2d 1185, 1195 (Miss.2008), wherein the Court found the Chancellor's reduction of visitation a form of retribution against the mother when the recommendations of experts was that she have additional visitation based on the need of the child to be with the mother more often.

K. The transcript of the February 2009 hearing shows the confusion by both parties regarding the payment of expenses of the children. Most of the confusion involved the payment and method of billing of out-of-pocket medical bills. Pursuant to the Final Decree of Divorce, once Mr. Boatwright received the Explanation of Benefits, hereinafter referred to as EOB from Ms. Boatwright, he had thirty days in which to reimburse Ms. Boatwright that expense. (RE 45-46) Ms. Boatwright sent the EOB's along with a letter that listed everything Mr. Boatwright owed her at the time on child support, private school tuition, reimbursement of out-of-pocket medical expenses, reimbursement for ½ the cost of medical insurance, and college tuition and related expenses. Mr. Boatwright received one to five of these letters per month. (ARE 163-219) Mr. Boatwright would pay a total amount and write in the "for" line of his check the breakdown of what expenses he was paying. If the payment or part of the payment was for reimbursement for out-of-pocket medical expenses, Mr. Boatwright wrote OP (out-of-pocket) meds and the amount. (ARE 220-242)

Mr. Boatwrights was found in willful contempt for failing to pay certain out-of-pocket medical expenses. Pursuant to the Final Decree of Divorce, Mr. Boatwrights was ordered to reimburse Mrs. Boatwrights one-half of all out-of-pocket medical expenses incurred on behalf of the minor children. (RE 45, 46) Mrs. Boatwrights testified that she billed Mr. Boatwrights for

only one-half of the expenses, except on one occasion she billed him for the whole amount because she felt it was his fault the child missed the appointment and the counselor had billed her for the entire amount. (CRT 314, 1-29) It is hard to believe that someone who paid the sum of $12,827.15 in support for the period in question, would willfully fail to pay the small amounts for which he was found in willful contempt, and then later paid additional amounts just to be certain. (RE 356-358)

The Final Decree of Divorce provided that Mr. Boatwrights had thirty (30) days to reimburse Ms. Boatwrights for out-of-pocket medical expenses after receipt of proof of said expense. (RE 46) Ms Boatwrights testified that she provided proof by way of certified letters with EOB's attached. (CRT 300, 23-24) Ms. Boatwrights testified that she could not identify which bills Mr. Boatwrights had paid. (CRT 315, 16-29) The bills Ms. Boatwrights sends contain a list from her of everything Mr. Boatwrights owes her at the time. It includes child support, private school tuition, reimbursement for the cost of medical insurance, college tuition and associated expenses, and out-of-pocket medical expenses. Some of the items are due immediately and some are due in thirty days. When Mr. Boatwrights sends her a payment, he writes in the "for" column of the check a breakdown of the categories and the amount for each category that he is paying. (CRT TR 451, 27-29; 452, 1-17; 461, 29; 462, 1-10) Mrs. Boatwrights attorney argued and Mrs. Boatwrights testified that the way he paid was so confusing they could not tell you what he had paid. (CRT 302, 4-11; 451, 8-22; 491, 15-29; 492 1-15) Mr. Boatwrights agrees that the method of billing and payments were confusing. Mr. Boatwrights testified that some months he receives five or six bills per month. (CRT 771, 4-7) The Guardian ad Litem understood the confusion in the billing and payment record, and believed it to be such a source of contention between the parties, that she made a recommendation in her report regarding future payment of expenses. (CRT 275-76). In his ruling, the Chancellor followed the recommendation of the Guardian ad Litem regarding future payment of support. It is the confusing payments that no one could follow that Mr. Boatwrights was held in contempt for non-payment of certain items. He was not held in contempt for failure to pay all of any court

ordered expense. The chart provided as an Exhibit to his Findings of Fact and Conclusions of Law shows the amounts he has paid to Ms. Boatwrights. (RE 355-58)

When asked how much Mr. Boatwrights paid during the relevant period of time, Ms. Boatwrights stated she did not know. (CRT 471, 8-19) Mr. Boatwrights continued to testify as to the confusion of the payment and billing of out-of-pocket medical and how he had other people, including attorneys, go over all the billing and how everyone came up with different amounts owing. He testified if anyone found anything that was omitted he would right a check to Ms. Boatwrights for the additional amounts he was told to pay. (CRT 774, 28-29; 775, 1-29; 776, 1-29; 777, 1-29; 778, 1-22)

Mr. Boatwrights attempted to put on proof in the form of showing when he received a bill and what check paid that bill, but the Court became impatient and did not want to hear testimony in that form. (CRT 771, 21-28; 774, 13-29; 775,1-19) The Chancellor repeatedly interrupted Mr. Boatwright's testimony before he had the opportunity to give a complete explanation. CRT (770, 20-29; 772, 12-21, 29; 773, 15-29; 774, 1-5, 15-26; 775, 9-23) Mrs. Boatwrights introduced letters which contained her billing to Mr. Boatwrights from June 6, 2006 through October 27, 2007. (CRT 307, 23-29) Mr. Boatwrights attempted to produce cancelled checks from payments he made on those bills May of 2006 through of October of 2007, and five other checks of payments made after October of 2007. (CRT 781, 22-29; 782, 1-26) Counsel opposite strongly objected. (CRT 782, 27-29; 783, 1-20; 784, 1-29; 785 1-29; 786, 1-6) The Court after allowing counsel opposite a recess allowed Mr. Boatwrights to introduce the checks counsel opposite did not object to and to question her client about the remaining payments. (CRT 786, 7-20; 787, 1-29; 788, 1-15) The check were marked as Exhibit 27. (ARE 220-242) Mr. Boatwright testified that when his attorney reviewed the bills for out-of-pocket medical that she found two bills which she did not think he had paid, so he wrote a check for $275.00 and sent a letter to Ms. Boatwright explaining that it was for the out-of-pocket medical bills he had missed. (CRT 790, 5-29; ARE 242)

On cross-examination, Ms. Boatwright's attorney informed Mr. Boatwright that the total

her client was alleging he was in arrears in out-of-pocket medical expenses was $2,478.45, the Court also found this as a fact, and that if he was given credit for everything he paid, that he would have only paid $2,229.59. (CRT 814, 10-13; 1006, 2-6) Mr. Boatwright pointed out that he had made a payment of $245.00, but was only given credit for $215.00. (CRT 814, 14-15) Counsel for Ms. Boatwright found and admitted the mistake. (CRT 817, 8-12) Mr. Boatwrights testified that Ms. Boatwright made appointments at play therapy for the minor child, Dunn, during the time of his summer visitation, after he told her he was going to be out of town and then billed him $312.50 for the missed appointments. (CRT 818, 11-24) Mr. Boatwright testified that he should be given credit for that entire amount because the Court had told the parties in the past that when he had the children they did what he wanted to do and that he took Dunn out of town. (CRT 818, 25-29; 819, 1-17) The Chancellor found that it was reasonable for Ms. Boatwright to charge Mr. Boatwright for the entire amount of the missed appointments. (CRT 1036, 11-17) Ms. Boatwright testified that she billed Mr. Boatwright $305.84, the entire amount for appointments with a counselor, Frank Hudspeth, which were missed during Mr. Boatwright's summer visitation. (CRT 494, 22-29; 495, 1-2) The Chancellor found that these amounts were made during periods of Mr. Boatwright's summer visitation. (CRT 1006, 6-11) Mr. Boatwright was only ordered to pay one-half of out-of-pocket medical expenses. Ms. Boatwright testified that Frank Hudspeth was a play therapist. (CRT 498, 9-20) Mr. Boatwright should not have ordered to pay this full amount, and it certainly should not have been considered as an arrearage on a willful contempt. There was never anything in any court order that said that either party should pay the full amount of any missed appointments.

Mr. Boatwright testified that his former attorney discussed whether OPTTI (Oxford Play Therapy) was a legitimate bill and after some discovery she thought he should pay them so he wrote a check for $543.47 to pay his one-half of that expense and wrote for out-of-pocket medical expenses in the for line of the check. (CRT 791, 13-29; 792, 1-27; ARE 221) A copy of the check dated during the period right after the current litigation began was introduced into evidence and marked as Exhibit 29, along with a copy of the check for the same month showing

clearly it was not for items billed and due that month. (ARE 221) The Chancellor declined to give Mr. Boatwright credit for the $543.47 toward out-of-pocket medical expenses when calculating any arrearage owing by Mr. Boatwright. Instead, the Chancellor said he could use the $543.47 as a credit on future payments, although it was paid in February of 2008. (CRT 1038, 13-26) This ruling was contrary to the facts presented at the trial of this matter, contrary to law, clearly erroneous and based on bias. The Chancellor only found that Mr. Boatwright was in contempt in the amount of $694.39. With the credit for what he had paid it would have brought the figure to $150.92. And, if Mr. Boatwright is credited back for being billed the entire amount for Frank Hudspeth, he will have over paid $6.25, which is close to what Mr. Boatwright and two attorneys representing him in this matter calculated.

The Chancellor found, "It's ordered, adjudged and decreed that Mr. Boatwright is in contempt for his failure to pay the out-of-pocket medical expenses, college expenses and failure to provide the tax return and insurance information by the required designated times." (CRT 1057, 3-8)

This finding is clearly erroneous, contrary to the evidence and testimony presented at trial, contrary to law and based on bias. Even Ms. Boatwright did not testify that the tax returns and insurance were not provided timely. Her testimony was that Mr. Boatwright provided incomplete information.

The Chancellor further found, "Mr. Boatwright should pay $604.39 for the out-of pocket medical expenses and $1,011.98 for the college expenses immediately. He is remanded to the custody of the Marshall County Sheriff's Department until those amounts are paid. (CRT 1057, 9-14) This ruling was clearly erroneous and based on the Chancellor's bias. Ms. Boatwright had alleged that Mr. Boatwright was in willful contempt for failure to pay $2,478.45. The testimony , the ruling of the Chancellor, recommendation of the guardian ad litem, and the evidence presented is undisputed that the method of billing and the method of payment were too confusing. It was clearly erroneous for the Chancellor to find Mr. Boatwright in willful contempt when everyone agreed it was impossible to keep up with the out-of-pocket medical

expenses. Mr. Boatwright believed that the computer was a gift, but that in any event it was not a necessary college expense. It was purchased prior to Wynne even enrolling in college. Mr. Boatwright had a good faith belief that this was not a legitimate expense associated with college as ordered in the Final Decree of Divorce. (RE 46) There is also no way Mr. Boatwright could have known that purchasing vinegar and other items at Home Depot and Target were expenses which were associated with college. Expenses associated with college is a broad term and open to many interpretations.

Mr. Boatwright testified that he totaled the amount of out-of-pocket medicals that he had paid and had cancelled checks for and the total was $2,159.59. (CRT 794, 21-29; 795, 1-29)

The Court would not allow Mr. Boatwright to testify to and explain each item he was billed for and to show where he paid it. (CRT 772-775) Mr. Boatwright attempted to simply explain what he had paid stating how he calculated what he paid over the relevant period. (CRT 776, 1-29; 777, 1-4) Mr. Boatwright testified that he calculated adding everything he paid and that he had paid more than he was suppose to. (CRT 777, 6-17) Upon questioning by the Court, Mr. Boatwright further explained how he determined that he had paid more than he should have. (CRT 777, 18-29; 778, 1-22) Mr. Boatwright was found in willful contempt for failure to timely pay the sum of $2, 478.45 in medical expenses. (CRT 1036,8-11) All attorneys, the Guardian ad Litem and the parties had testified as to how confusing the billing and method of payment was in this case, which is addressed above in detail. Mr. Boatwright was held in willful contempt of court for failure to pay certain out-of-pocket medical expenses, college related expenses, failure to provide complete copies of his income tax return, and failure to provide timely proof of life insurance. Mr. Boatwright contends that he paid all amounts that were requested of him in out-of-pocket medical expenses of the minor children with the exception of certain expenses he believed he should not have paid. He was held in contempt for failure to pay the sum of $694.39.

The Chancellor warned the parties, "These parties have had years to come up with a system for tracking these payments. Therefore, this court is going to warn both parties that if this issue comes up again before this Court, it is this Court's intent to appoint a C.P.A. to review the

discovery obtained complete copies of Mr. Boatwright's tax returns for 2006." (CRT 1005, 2-5) On cross-examination, Ms. Boatwright clarified what she meant by recent, "since we filed in October of 2007." (CRT 429, 1-10) Ms. Boatwright further stated that even after being provided a complete return in December of 2007, she and her attorney kept requesting complete copies because they did not understand why there was not business return, and was surprised to learn that it was because Mr. Boatwright did not have enough income that year to file a business return. (CRT 429, 13-29; 430, 1-24) The Chancellor found that Mr. Boatwright did not provide Ms. Boatwright with a complete tax return. (CRT 1040, 24-28) To find Mr. Boatwright in willful contempt for only providing the first page of his return is clearly erroneous, contrary to the evidence and a result of bias.

M. Mr. Boatwright testified that he did provide Ms. Boatwright proof of life insurance prior to these proceedings. (CRT 744, 1-5) The Chancellor found that Ms. Boatwright testified that she received a copy of the policy with the distribution of the amounts among beneficiaries omitted. (CRT 293, 29; 294, 1-12; 1009, 1-14)

N. Mr. Boatwright was not found in contempt for failure to reimburse Ms. Boatwright $76.37 toward Marshall Academy tutition as requested by Ms. Boatwright. (CRT 325, 5-7) Mr. Boatwright testified that Ms. Boatwright had billed him more than once for Marshall Academy tuition and as a result of paying what he was billed he had a credit of $594.26. (CRT 761, 6-14; 762, 3-29; 763, 1-12)

The Court found Mr. Boatwright's testimony regarding an overpayment in private school tuition which he should have received credit toward any unpaid out-of-pocket medical expenses to not be credible. The Court found that the method by which the tuition was billed was to confusing for Ms. Boatwright to have met his burden of proof and declined to give him credit. (CRT 1036, 26-29; CRT 1037, 1-8) While Mr. Boatwright was testifying the Court interrupted his testimony and questioned him at length regarding Marshall Academy's billing and how he calculated that he overpaid because Ms. Boatwright billed him for amounts he had already paid so he paid it again which gave him a overpayment of $594.26. (CRT 764, 12-29; 765-768; 769,

1-11) After questioning Mr. Boatwright at length the Chancellor stated, "All right. I've got you now. I'm clear." (CRT 769, 10-11) It is hard to imagine how the Chancellor can question a witness at length, have the witness explain over and over, and then say I understand and then hold it was so confusing he did not meet his burden of proof. Mr. Boatwright also introduced all cancelled checks showing the payments to Marshall Academy. (ARE 220-242)

Mr. Boatwright believes that the Court has shown that it is completely bias against him which is evidenced in almost every ruling he has made in this case from 2003 until the present.

CONCLUSION

Mr. Boatwright request Chancellor Alderson's denial of his Motion for a New Trial be reversed. He further request Chancellor Robert's denial of his Motion to Recuse, Imposition of Sanctions be reversed and rendered. He further request Chancellor Robert's failure to disclose his relationship with counsel opposite be found as reversible error. Mr. Boatwright request a new trial on the following rulings of Chancellor Roberts: Finding Mr. Boatwright in willful contempt for failure to provide proof of life insurance, failure to provide a complete copy of his Income Tax Return, failure to pay certain out-of-pocket medical expenses, refusal to order Ms. Boatwright to reimburse him for child support paid to her for the benefit of Hannah when Hannah was in the custody of the paternal grandparents, refusal to order Ms. Boatwright to pay back support for the benefit of Hannah during the time Hannah was in the custody of the paternal grandparents, for fining Mr. Boatwright $1,000.00 for having been found in willful contempt, for failing to relieve Mr. Boatwright of the duty to pay support for Wynne Boatwright, and for ordering that Mr. Boatwright should be responsible for some of the attorney fees incurred by Ms. Boatwright in bringing her contempt action.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, **Helen Kennedy Robinson**, do hereby certify that I have this mailed via U.S. Mail or Federal Express postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to:

Hon. Kent and Amanda Smith
P.O. Box 849
Holly Springs, MS 38635

Honorable Edwin Roberts, Chancellor
P.O. Box 49
Oxford, MS 38655

Supreme Court of Mississippi
450 High Street
Jackson, Mississippi 39201

This the 30th day of July, 2010.

HELEN KENNEDY ROBINSON