

CERTIFICATE OF INTERESTED PARTIES

I, Appellant, Robert S. Parker, Pro Se by necessity, pursuant to M.R.A.P.

28(a)(1), certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Brenda and David Murphy - Tessecca Bliven's ("Bliven") parents who have an interest in the attorneys fees;
2. Lisa M. Parker - my wife who has stayed by my side through this case and my jailing; and,
3. Mississippi Department of Health and Human Services ("DHS") - take my child support payments.

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STATEMENT OF ISSUES

1. I have been deprived of liberty without due process and access to court because I could not afford an attorney.
2. The Chancellor's May 8, 2008, Order was wrong and unjust.
3. The Chancellor was wrong in dismissing my July 31, 2007 and January 24, 2008, Petitions.
4. The Chancellor was wrong in finding me to be in contempt of court on April 21, 2008.
5. The Chancellor was wrong in ordering me to be jailed on April 21, 2008.
6. The Chancellor's Judgment of February 25, 2009, was wrong.
7. Attorneys fees are wrong based on the facts of this case.

STATEMENT OF THE CASE

NATURE OF THE CASE:

This case is about my right to time with my daughter and my fight to exercise this right in the courts. Because I could not afford an attorney, the courts denied my rights, dismissed my case, and took away my right to liberty by jailing me without a full and fair trial.

COURSE OF THE PROCEEDINGS:

Though I was paying child support without an order to do so, Bliven would not allow me to have any private time with my daughter. I asked her to go to mediation through DHS, which was free, but she refused and filed her Petition. Through Attorney William Ducker ("Ducker"), I got some time with my daughter and was told I had to pay \$300.00 in child support. I told Ducker I could not and he told me to get my taxes together and ask for a reduction. When I did this, I was told by DHS that I was in arrears and could not ask for a reduction. On July 31, 2007, Ducker filed for a reduction and for contempt by Bliven for denying time with my daughter and joint legal custody. There was a conference with the Honorable Sebe Dale, Jr., Chancellor, Lamar County Chancery Court ("the Chancellor") in December and Ducker told me that his Petition had been thrown out. I fired him. On January 24, 2008, after seeking help from the Father's Rights Advocacy Group ("the Group"), I filed a Petition to get more time with my daughter. Bliven answered and counter claimed trying to take my time with my daughter away and saying really bad things about me, my wife, our home, and my step-sons. In response, I filed a motion to strike to explain to the court the truth. Bliven filed a motion asking to dismiss my Petitions. Our motions were both set for hearing on April 21, 2008.

There was a chambers conference and I tried to tell the Chancellor that I was not in arrears. The Chancellor did not read any of my papers. He and Bliven's Attorney, Sheila Smallwood ("Smallwood"), conducted a hearing on her affirmative defense about my child support arrears. I was intimidated and not allowed to present my documents or cross examine the DHS officer about my payments. The Chancellor said I was in contempt of court and ordered me to be jailed until I could pay the arrears. I did not have the money because it had already been taken from my IRS refund so my wife borrowed it from my grandmother and got me out of jail. DHS then had to refund the money I had paid.

DISPOSITION IN TRIAL COURT:

On April 21, 2008, the Chancellor gave a bench ruling and on May 8, 2008, issued an Order that said that my Petitions were dismissed. I asked to amend my January 24, 2008 Petition and the Chancellor sent me a letter stating that I could not. I appealed but my appeal was dismissed as premature because Bliven's counter complaint was still pending. On February 25, 2009, the Chancellor ordered that I pay \$2,500.00 in attorneys fees to Smallwood, giving a Final Judgment. I appealed from this final Judgment.

STATEMENT OF THE FACTS:

1. The "total monthly income" on my April 28, 2006, Financial Statement (Page 0022) is blank.
2. Section IV of the May 9, 2006 Temporary Order (Page 0030) states that I shall pay \$300.00 per month "in compliance with the Child Support Guidelines set forth in Section 43-19-101 of the MS Code".

3. The July 10, 2006 DHS Notice of Redirection of Child Support Payments (Page 0033) states that all future support payments made payable to the custodial parent “are to be redirected to the MS Department of Human Services, Central Receipting and Disbursement Unit.”
4. Paragraph IV of the April 26, 2007 Judgment of Paternity, Support and Other Relief (Page 0045) states “the parties shall share joint legal custody”.
5. Paragraph IV(g) of the April 26, 2007 Judgment (Page 0046) states “The Father shall have such other reasonable visitation with the minor child as can be mutually agreed upon by the parties . . .”
6. Paragraph “IV” of the April 26, 2007 Judgment of Paternity, Support and Other Relief (Page 0047) states “Robert S. Parker shall continue to pay the sum of \$300.00 per month . . . in compliance with the Child Support Guidelines . . . and shall be paid through the Lamar County Chancery Clerk’s office along with their customary fee.”
7. The “Agreed to Form and Consent” on the April 26, 2007 Judgment (Pages 0048 and 0049) shows that Ducker was not present when the Judgment was signed.
8. Paragraph III of the July 31, 2007, Respondent’s Petition for Modification (Page 0054) states “the \$300.00 per month child support continues to accrue and the Respondent is not financially able to pay that amount at this time. . . .”
9. Paragraph V of the July 31, 2007, Respondent’s Petition for Modification (Page 0054) states “Petitioner is actually in contempt of this Court because of her failure to allow visitation as prescribed by prior Judgment. . . That the parties have joint

legal custody and the Court should order the Petitioner to place Respondent on the school pickup list.”

10. The Total Monthly Income on the July 27, 2007 Exhibit “A” (Page 0058) states \$2,519.00.
11. The Expense Statement on the July 27, 2007 Exhibit “A” (Page 0059) states business expenses that were to be deducted from the total monthly income to for my true income.
12. Paragraph 7 of the January 24, 2008 Petition of Robert Parker to Modify Custody and Visitation (Page 0070) states “There has been a permanent, material and substantial change of circumstances requiring that the previous Judgment be modified. . . . the Petitioner allows such other visitation rarely, sporadically and completely at her discretion. . . . The present visitation schedule does not allow for the amount of time needed for the child to know and bond with her father as an equal parent”.
13. Paragraph 7© of the January 24, 2008 Petition (Page 0071) states “Petitioner is pregnant again, with no husband, and is having/ will have difficulty taking care of Gabrielle while pregnant and when her new child is born. A more equal sharing of parental responsibilities would be in the best interest of all parties.”
14. Paragraph 7(d) of the January 24, 2008 Petition (Page 0071) states “Petitioner has failed to comply with the existing Judgment’s requirements for joint legal custody.”
15. Paragraph 10 of the January 24, 2008 Petition (Page 0073) states “Respondent is presently ordered to pay the sum of \$300.00 per month in child support, and

requests that the Court modify the child support in accordance with the state guidelines should the Court grant the request for modification of visitation. A revised and updated Personal Financial Statement is attached as Exhibit "B".

16. Section II(8) of the January 24, 2008 Exhibit B - Personal Financial Statement (Page 0078) states "other income: Self-employment Parker's Contracting: 992.16".
17. Section II(10) of the January 24, 2008 Exhibit B - Personal Financial Statement (Page 0078) states "Total monthly income: 992.16".
18. Section II(11) of the January 24, 2008 Exhibit B - Personal Financial Statement (Page 0078) states "Net monthly pay: 992.16".
19. Affirmative Defense No. 2 of the February 29, 2008 Answer to Petition of Robert Parker to Modify Custody and Counter-Complaint for Contempt and Modification (Page 0084) states "Robert Parker comes into Court with unclean hands and is currently behind in child support in the amount of \$450.00 and therefore is barred from seeking any relief based on his current and ongoing contempt."
20. Paragraph VI of the February 29, 2008 Answer (Page 0086) states "Lamar County DHS has intervened to the extent necessary to collect past due support including interception of Robert Parker's tax refund for child support arrearage. A copy of the Affidavit of Accounting will be produced prior to a trial on this matter."
21. Paragraph X of the February 29, 2008 Answer (Page 0086) states "Robert filed for a Modification requesting a reduction in child support on July 31, 2007 which was not addressed by this Honorable Court in a conference held in Marion

- County Chancery Courthouse on December 6, 2007 due to improper service on the Defendant. Further, Robert Parker cannot meet the test for a modification”.
22. Paragraph V of the February 29, 2008 Counter-Complaint for Contempt and Modification (Page 0089) states “Robert is in willful and contumacious contempt . . . the Lamar County DHS has had to intercept Robert’s income taxes due to his delinquency in child support.”
23. Paragraph VI of the February 29, 2008 Counter-Complaint (Page 0089) states “Tessecca request of this Honorable Court to incarcerated Robert in the Lamar County Regional Jail Complex until such time as Robert becomes current on his child support along with all court cost, interest and attorneys fees.”
24. Paragraph VIII of the February 29, 2008 Counter-Complaint (Page 0090) states “requests of this Honorable Court to modify Robert’s visitation to exclude overnight visitation and to require that the visitation be supervised. . . . to appoint a guardian ad litem at the expense of Robert Parker to investigate the environment in which Gabby is place during her period of visitation.”
25. Paragraph XI of the February 29, 2008 Counter-Complaint (Page 0091) states “That based on the contempt of Robert Parker, Tessecca is entitled to attorneys fees in the amount of \$2,500.00”.
26. Page 8 of my March 20, 2008 Memorandum (Page 0126) states “He (Ducker) informed my wife how to fill out the Financial Statement for ‘self-employed income’ and then filed the Petition for Modification on July 30, 2007.”
27. Page 41 of my March 20, 2008 Memorandum (Page 0153) states “Respondent currently awaits a joint income tax refund for the year 2007 in the amount of

\$4,429.00 to his credit on or about April 1 (See Exhibit “W”). DHS has indicated that it will take a lien for arrears from this income tax refund, and Respondent’s wife has agreed to waive her right to the ‘injured spouse rule,’ so as to expedite payment of the arrears to Petitioner as soon as possible thereafter. Thus, by the time of this hearing on April 21, there will be no arrears, making Petitioner’s allegation that Respondent is in willful and contumacious contempt of the April 21, 2007 Judgment moot.”

28. The October 24, 2006 Child Support Order Review Determination/ Challenge Request (Page 0162) states “You do not meet the criteria for a review of your child support order at this time. . . . You must be current with your child support.”
29. The June 25, 2007 Tower Loan letter to the Chancellor (Page 0164) states “Robert S. Parker has made application to our company for an increase on the principal balance of Mortgage Loan No. 63500 to pay child support arrears to current.”
30. The June 26, 2007 Ducker letter to Smallwood (Page 0180) states “Enclosed please find what is a good faith effort on behalf of my client to catch up all the arrearage of which he owes. . . . It is my intent to get him caught up and then file a Petition for Modification to reduce it, because Robert’s income is about half of what it was at this time last year.”
31. My July 16, 2007 letter to DHS (Page 0190) states “attached is a copy of the letter from the IRS Financial Management Service. . . . The IRS’ EFT to DHS in the amount of \$1,376.92 needs to be applied to this case as soon as possible to satisfy

the major part of this Judgment . . . Please take whatever action is necessary to ensure that this amount is applied to this Case ID as soon as possible.”

32. The July 13, 2007 Department of the Treasury, Financial Management Service letter to me (Page 0192) states “we applied all or part of your Federal payment to a debt you owe. Forrest Department of Human Services, Attention: Child Support, purpose: child support, . . . amount to this creditor: \$1,376.92. . . . We will forward the money taken from your Federal payment to the agency to be applied to your debt balance”.
33. The September 19, 2007 DHS letter to me and Access and Visitation Program Questionnaire (pages 0195-6) confirm my attempts to get Bliven to participate in free mediation services to resolve our problems with “contact or parenting time, communication between parents, and education.”
34. The October 17, 2007 DHS letter to me (Page 0202) confirms that Bliven did not complete her survey and refused mediation, “our office was informed by Ms. Tessecca Bliven that visitation was not an issue.”
35. The November 14, 2007 email from my wife to Ducker’s office (Page 0204) states “The last time the IRS sent tax money to DHS, it ‘floated’ and took some time, despite my efforts to expedite it, to get the money into Tess’ account.”
36. The January 24, 2008 Noncustodial Parent Review of Child Support Order (Page 0216) confirms my continued attempts to obtain a reduction through DHS.
37. The March 3, 2008 letter from DHS to me (Page 0221) states “The review of your child support order resulted in no change being made in the amount of your child support obligation. The reason for this decision is: CURRENTLY BOTH

PARTIES ARE REPRESENTED BY PRIVATE ATTORNEYS AND THERE IS COURT ACTION PENDING.”

38. Paragraph V of the March 24, 2008 Response to Motion to Compel and Motion to Dismiss (Page 0228) “would incorporate by reference all the affirmative defenses set forth in her Answer and Counterclaim including . . . that Parker comes into Court with unclean hands and is currently behind in child support in the amount of \$600.00 and therefore is barred from seeking any relief based on his current and ongoing contempt”.
39. My June 6, 2008 Affidavit (Page 0311) states “On Saturday, April 19, 2008, I received the attached April 17, 2008, letter and Request to Release IRS Joint Tax Refund from Francis Pearce, Supervisor III, Child Support Enforcement, Forrest County DHS . . . letter and Request were provided to the Honorable Judge Sebe Dale, Jr. and opposing counsel in a mandated meeting in chambers prior to the hearing on April 21, 2008, but were not allowed by Judge Dale to be introduced into the record.”
40. The April 17, 2008 Pearce letter to me (Page 0313) states “This form must be completed if you are requesting that your income tax interception be released before the 6 month required waiting period. . . . I understand that Mrs. Parker is not going to file an injured spouse claim”.
41. The Request to Release IRS Joint Tax Refund (Page 0314) is signed by my wife and notarized by the Lamar County Clerk of Court on April 21, 2008.

42. My August 4, 2008 Statement of Evidence (Pages 0345 and 0346) document the proof I was not in arrears provided to the Chancellor and Smallwood in the chambers conference prior to the hearing.
43. The March 21, 2008 Department of the Treasury, Financial Management Service, Notice (Page 0352) documents that \$897.00 of my 2007 joint income tax refund was applied to my debt to the MS Department of Human Services, Jackson MS, in payment of my child support.
44. My March 24, 2008 letter to DHS (Page 0354) sent the IRS notice and asked DHS to “take whatever action is necessary to ensure that this amount is applied to this case ID as soon as possible as there are currently court proceedings pending”.
45. My March 23, 2009 Statement of Evidence (Pages 0388 and 0389) documents “I told Judge Dale I was not behind in my child support on April 21, 2008. I told him the DHS Affidavit of Accounting he used was not complete. I told him that I was holding a copy of the DHS check refunding my IRS interception just days after I had been put in jail for being ‘in arrears’. I told him that I was not in contempt on that day. I also told him there had been prior IRS interceptions, and by asking for attorneys fees for reading my paperwork, Attorney Smallwood knew of the pending IRS interception on that day.”
46. Paragraph II(c)(2) of my April 7, 2008 Memorandum in Opposition to Motion to Dismiss (Page 0475) states “at the time of the hearing on April 21, Respondent will not be in arrears. In fact, Respondent’s 2007 Federal Income Tax refund posted to his account on March 21 and a lien for the arrears, in the amount of \$892.00, was withheld by the IRS from his refund and sent to DHS to satisfy their

lien. (See Exhibit B). Accordingly, Respondent is not in arrears and he cannot be found to be in contempt or to have 'unclean hands'. . . . Respondent has at all times attempted to inform this Court, DHS, Bliven, and Smallwood . . . of his financial circumstances which caused the arrears to occur in the first place and to obtain a downward modification".

47. In the Official Transcript of the April 21, 2008 hearing (Page 5, line 25), I testified "I've paid what I could."
48. In the Official Transcript (Page 6, lines 4-17), when asked why I had not paid my "full" child support as "ordered by this court", I testified "Because it was unjustly given to me without financial statements on me. It was a blank financial statement. . . . I objected in the courtroom that I could not, but my attorney at the time said that's what the Judge had handed down and that's what I had to pay. I told him right then that I could not pay it. He said, get your financial statement together. Bring it back in, and then we'll do a remodification of it. He did not let me know that once I got in the arrears at that time there was no coming back on it. You had to stay. Then they changed the rule that says I can come forward even being in the arrears, but I am no longer in the arrears."
49. In the Official Transcript (Page 7, lines 5-26), when asked if the July 31, 2007 Financial Disclosure was true and correct, I testified "I do not remember signing it or filling it out. . . . this is an inaccurate financial statement. . . . I filed amended returns with my tax returns that reflect differently. I did not know what my true income was at the time until I did a true financial statement, and I have that in my file if you would like that."

50. In the Official Transcript (Page 10, lines 17-23), when asked if I agreed with the affidavit of accounting arrearage amount of \$1,047, I testified “No, ma’am, I do not. . . . Because it’s paid and it’s moot.”
51. In the Official Transcript of the April 21, 2008 hearing (Page 10, lines 24-29, page 11, lines 1-3), when asked if I had proof that it had been paid and whether the child’s mother had received all of the money she was entitled to, I testified “Yes, ma’am, I do. It’s been paid. Whether she’s received it or not, I’m not sure. DHS keeps money in a Jackson account that revolves around until someone pulls it out. The money is paid and it’s in there. I have the records showing it.”
52. In the Official Transcript (Page 11, lines 4-10), Smallwood stated “If it is paid you are indicating that it’s been withheld from your taxes; is that right?” I testified “some of it withheld from my taxes. As always when I would get in arrears for paying an amount that I could not pay when my taxes would come in, they would take the money. That’s why we’ve been trying to file for a reduction of child support based on my true income.”
53. In the Official Transcript (Page 11, lines 11-13), Smallwood confirmed her knowledge of the DHS IRS interception procedure by stating “And last year your taxes were intercepted as well to pay child support, weren’t they?” I testified “Yes, ma’am, they were.”
54. In the Official Transcript (Page 14, lines 10-29, page 11, lines 1-9), Amanda Sakalarios, Lamar County DHS officer (“Sakalarios”), testified that she was “not the keeper of the record. The proper person to testify as to the contents of the record keeping of the money would be possibly a supervisor. Francis Pierce, the

supervisor for Forrest County, is available to testify in the office. I could call her. She's ready to come up and testify if you need to hear from her. I can say that's what this is, you know, what she's asking me. I can say, yes, this is the affidavit of accounting. Yes, I did bring this from the office. Yes, they did sign and notarize it, but that's the extent to what I can . . . I would not be the proper person to be testifying."

55. In the Official Transcript (Page 15, lines 17-23), on the Court receiving into evidence the DHS affidavit of accounting, Sakalarios further testified "I just wanted to clarify that." The Court stated "I understand that. You are not the keeper of the record." Sakalarios replied "Yes, sir. I just wanted to make that clear."
56. In the Official Transcript (Page 15, lines 27-29), Smallwood misled the court regarding the DHS affidavit of accounting by stating "that's all the questions I have for her. I think the document speaks for itself."
57. In the Official Transcript (Page 16, lines 3-25), I tried to cross examine Sakalarios about the pending IRS interception "to show her this document here and see if this is the lady she is referring to that has the power to say what needed to be said." The Court did not allow me cross examination of Sakalarios before the DHS Affidavit was entered as evidence.
58. In the Official Transcript (Page 19, lines 6-10), Smallwood asked for me to go to jail stating "If I may, Judge, I am requesting that Mr. Parker be incarcerated as a result of his contempt until he fully purges himself of that contempt."

59. In the Official Transcript (Page 19, lines 11-26), Smallwood stated “It has taken me hours to read these 50 page memorandum opinions, . . . Based on his contempt, I would ask that he be required to pay those fees.”

SUMMARY OF THE ARGUMENT

On April 21, 2008, I was deprived of my liberty by the Lamar County Chancery Court without due process in violation of the Mississippi State Constitution and the Constitution of the United States of America. This happened because I could not afford an attorney and tried to represent myself. This happened because Smallwood deliberately misled the Court about “arrears” to have me found in contempt and jailed even though I had paid the entire amount due by IRS interception one month prior to the hearing. This happened because the Chancellor would not listen to my side of the story, look at my evidence of payment, read my papers which showed my evidence of payment, and require the keeper of the record testify as to whether I was in arrears before ordering me to be jailed.

The Chancellor’s finding of contempt was not based in fact or in law. The facts showed that there was a pending IRS interception that satisfied “payment” of the arrears. The Chancellor used an outdated, inaccurate financial statement. There was no “clear and convincing” evidence as the evidence I had contradicted the evidence presented by Bliven, and this required testimony by the keeper of the record to give the “clear and convincing” testimony about the arrears before I was deprived of my liberty and my case dismissed. This makes the Chancellor’s finding of contempt, based solely on me “being in arrears”, erroneous and without basis, and it should be reversed.

The dismissal of my Petitions and the subsequent awarding of attorney fees were based solely on the Chancellor’s erroneous finding of contempt. These should also be reversed, including an order requiring expungement of my arrest record.

ARGUMENT

“Thousands of our citizens are denied the basic right of equal access to the courts because they are poor and cannot afford an attorney. The Supreme Court cannot, and will not, sit by in tacit acquiesce.” (Justice Dickinson, 4/19/08 “Access to Justice public hearing is April 18 in Gulfport” by Beverly Pettigrew Kraft).

I am one of these citizens. I am a man with “a 7th grade education” (Transcript at Page 11, lines 27-28). I am a man who works with his hands and is trying to provide for his family, for his children by the means he has, his business as a self-employed drywall contractor (Transcript at Page 12, lines 2-4). I am a man who when confronted with the expected birth of my second daughter, provided for Bliven during the pregnancy and my daughter from the time of her birth, without a court order to do so and without any private visitation being allowed by Bliven (Pages 0113 - 0114). I am a man who tried to get private visitation with his daughter by asking Bliven to go through free DHS mediation, only to be served in response with court papers by Bliven (Pages 0012-0016 and 0114). I am a man who has, since that time, tried both through proposed DHS mediation and through court action, to get more time with my daughter, to be able to exercise my joint legal custody, and to get a reduction of an amount of child support that I could not pay and that was not in compliance with the MS child support guidelines (Pages 0114-0120). And, finally, I am a man who is before you today because I tried to get more time with my daughter, under the advice of the Group, and was put in jail because I could not afford an attorney.

Mississippi is so hard on “deadbeat dads”, but when I tried to be a fully involved father by coming before the Court, I was not given due process. I ask you, the justices of

this honorable court, to consider my brief, Pros Se by necessity, the way you did in *Klein v. McIntyre*, 966 So.2d 1252 (Miss. 2007). I ask that you order justice by reversing the Chancellor's finding of contempt and ordering of attorneys fees based upon contempt, and by ordering the expungement of my arrest record.

I. I have been deprived of liberty without due process and access to court because I could not afford an attorney.

"Article 3, Section 14 of the Mississippi Constitution provides, HN3 'No person shall be deprived of life, liberty, or property except by due process of law.' HN4 The guarantee of procedural due process, includes the right to a fair and impartial trial." *Brown by & Through Webb v. Blackwood*, 697 So.2d 763, 769 (Miss. 1997).

It was a denial of my right to due process for the Court to order me to pay an amount of child support that I could not pay based on my real income. From the beginning of this case, the Judgments have not been fair and impartial. This case was started by Bliven because of me asking for time with my daughter. I wanted mediation through DHS, which would not cost either of us anything, but Bliven refused. Ducker, who I hired to represent me in this case, went into conference with the Court and Smallwood and told me that the Court had said I had to pay \$300.00. I told him I could not pay. The Court issued a Temporary Order in this amount which stated that the parties had agreed. I did not agree. I objected to Ducker in the Courtroom at the first hearing. There was no hearing, I was not allowed to testify as to my income, there was no documented proof of income, and the Child Support Guidelines were not used. I did not get my day in court. Ducker led me to believe that this was a temporary order and that if I got my taxes together, I could then ask for a reduction before it was a final judgment.

(Pages 0113-0115). Because I could not pay this amount, I got in the arrears and was denied a reduction through DHS. (Pages 0115-0116 and 0162). I was trying to let everyone know I could not pay this amount, but no one listened so I started to have arrears.

I was denied my right of due process by not being allowed to present evidence that I could not afford to pay the ordered child support. At the next hearing, I was in arrears. Ducker knew I could not pay this amount. Again, he went into conference with the Court and Smallwood. I had given him proof that I paid child support from before my daughter was born, and he said the Court was taking this into consideration and would give a Judgment on the amount I would have to pay. I also gave him proof that Bliven was not doing what the first order said about visitation and joint legal custody. There was no hearing, I was not allowed to testify as to my income or about Bliven not doing right, Ducker had my tax returns but there is no way these were used because the income on them does not support \$300.00 per month. (Pages 0116-0117). I did not get my day in court.

My right of due process was violated by the Judgment signed two months later ordering that I continue to pay \$300.00 and that I pay back and retroactive child support or be found in contempt. (Pages 0047 - 0048). I had been doing everything I could to pay and I did not have that kind of money. Again, I asked Ducker about a reduction. He said he would file for a reduction and for contempt because of Bliven continuing to do wrong (I couldn't even pick up my child from daycare without her okaying it - Page 0300) if I could find a way to pay the arrears. I tried to get the money from my mortgage company and then through amended income tax return refunds.

I was denied my right of due process by not being able to present evidence that I could not pay the ordered child support at the hearing in December 2007. Ducker filed for a reduction on July 31, 2007. (Pages 0053-0055). He served it on Smallwood in August and over the next months she was and then was not Bliven's attorney. She used being Bliven's attorney to get the hearing on this continued in September and then not being her attorney to get this thrown out in December 2007. She had not filed anything stating that she was not Bliven's attorney. On the day of the hearing, I told Ducker that I wanted to talk to the Judge. I told him that I would not agree to anything until I had my chance to speak. He told me he was just going to talk to Smallwood, and then he came out of the Judge's chamber. He told me that my Petition had been "thrown out". (Pages 0120 - 0122 and 0123 - 0124). Again, I had no hearing, no voice, no proof of the truth. I did not get my day in court.

I was denied access to court because I could not afford an attorney. I fired Ducker on that day and tried to get another attorney. They all wanted \$3,500.00 up front and then told me it could cost as much as \$10,000.00. I contacted the MS Legal Defense Fund but they told me they did not provide legal assistance for this kind of civil case. I didn't have that kind of money but I knew I had to do something for my daughter, who cried because Bliven would not allow her to stay with me. I then turned to the Internet to try to find out what I could do. The Group asked why I didn't already have joint custody of my daughter. They told me it was my right due to how close she lived, her age, and Mississippi law. They said all I had to do is take the Petition they drafted to Court and the Chancellor would see how fair it was and probably sign off on it without a hearing.

They said they had done this all over the United States, including Mississippi. I thought that I would finally get my time with my daughter. I was very wrong.

Because I could not afford an attorney, I tried to get more time with my daughter by filing a Petition Pro Se. I was denied my right of due process and access to court by both Smallwood and the Chancellor because I was not an attorney. I did what the Group said and then Smallwood filed papers trying to take what little visitation I did have away. I then filed papers to tell the Court the truth about everything. I was doing the best I could, trying to follow procedure, and trying to tell the whole truth to the Court. I still thought I would get my day in Court.

Instead, when I stood up in the Courtroom at the calling out of our case on April 21, 2008, the Chancellor told me to sit down. He called me and Smallwood into his chambers. They started talking about me being in arrears. I handed him proof that I was not in arrears. He “handed my proof back to me and stated that he had an official document stating that I was behind.” (Page 0346). I told him that I had proof in the papers that I had filed. (Page 0346). He told me “he was not going to read my pleadings and that he was going to ‘show me how law works.’” (Page 0346). He “stated we were going into court and if he found that I was behind on my child support and had unclean hands, he was going to throw me in jail.” (Page 0347). And this is what he did. This was not fair. This was not impartial. This was not done according to the law. I was not given due process.

I was not given due process and a fair and impartial hearing to counter Bliven’s claims of arrears and the incomplete evidence she gave to the Court. Smallwood questioned me. I testified that I had paid the amount and was not behind. (Transcript at

Page 10, lines 20-23). Smallwood admitted she knew of both the pending and the prior IRS interceptions (Transcript at Page 11, lines 4-5 and 11-13). There is no way she could have not known that the DHS Affidavit was incomplete because the amount of the IRS interception was not on the Affidavit. She did know, by reading my “50 page memorandum opinions” (Transcript at Page 19, lines 13-14), that I had done everything within my power to get my payment into Bliven’s account. She must have known that the law says I have to pay it, not that Bliven had to receive it. And she knew that there was a procedure that had to be followed by DHS to get the payment into Bliven’s account. Other than signing the forms and asking for the money to be put into the account as soon as possible, there was nothing else I could do to get the money into Bliven’s account. With this knowledge, she still moved to have me thrown in jail. (Transcript at Page 19, lines 7-10). This not only deprived me of my liberty but to me was not a proper thing for an attorney, an officer of the court, to do.

The Court denied me due process by receiving into evidence an Affidavit which the keeper of the record did not testify to as to being complete when I said it was not. Sakalarios testified that she was not the keeper of the record and could not testify as to “the contents of the record keeping of the money”. She offered the keeper, Pearce, to testify about this. (Transcript at Page 14, lines 21-28). The Chancellor did not want to hear the testimony of Pearce. (Transcript at Page 15, lines 8-23). The letter from Pearce confirms that it was she who was working on getting the IRS interception payment into Bliven’s account. (Page 0350). If the Chancellor had heard Pearce’s testimony and considered my evidence, there would not have been a finding of contempt or me being jailed. But, instead, he relied solely on the incomplete Affidavit and Smallwood’s urging

that “I think the document speaks for itself.” (Transcript at Page 15, lines 27-29). This was not fair. This was not impartial. This was very wrong and unjust.

The Court denied me due process by receiving into evidence the DHS affidavit without allowing me to ask Sakalarios about it or present my proof that it was not complete. I am sure I did not know the proper lawyer way to do this, but being that I was Pro Se and by my own testimony, a man with a 7th grade education, the Court should have at least heard what it was I had to say and what Sakalarios would say about Pearce and the IRS interception payment. When I heard Pearce’s name, I looked at my proof and found her signature on the letter about releasing the payment to Bliven. (Transcript at Page 16, lines 12-14). The Chancellor asked me why I wanted to cross examine Sakalarios and I told him I wanted to “show her this document here and see if this is the lady she is referring to that has the power to say what needed to be said”. (Transcript at Page 16, lines 17-19). The Chancellor told me “I’ve accepted her testimony on that already. Unless she wanted to refute it, she’s already testified to that.” (Transcript at Page 16, lines 20-22). She had not testified about DHS procedure and IRS payments, but I was intimidated. I did not know what to do if I could not present my evidence and question Sakalarios to get DHS testimony about Pearce and the IRS payment, so I told the Chancellor that I did not have any questions of Sakalarios. (Transcript at Page 16, line 23). Shouldn’t I have had the right to question her before I was ordered to jail even if I didn’t know all of the right forms of questions to ask? Shouldn’t the Chancellor have given me some time and allowed me to ask some questions to see if there was anything to my claim that it was paid? How is this fair and impartial? How is this due process? I wasn’t there because I wanted to be. I could not afford an attorney and for this I was

punished by being put in jail and I was not in arrears. This is a due process violation. “A due process violation occurs where a party is not allowed a full and complete hearing before being deprived of life, liberty or property.” *Childers v. Childers*, 717 So.2d 1279, 1281 (P8) (Miss.1998). “If a full and complete hearing is not allowed by refusing a party seeking a reduction his opportunity to present evidence, then the party is thereby deprived of due process.” *Childers* HN2. Being intimidated, I did not call any other witnesses. (Transcript at Page 19, lines 27-29 and Page 20, lines 1-3).

On April 21, 2008, I was also deprived of my due process and access to court because I was not allowed to have a hearing of my motion to strike Bliven’s bad claims in her counter complaint and my request for equal parenting time with my daughter without due process. “. . . the request seeking modification of child support and clarification of visitation rights are new issues that require a hearing. Due Process is implicated, HN2 ‘If a full and complete hearing is not allowed by refusing the defendant his opportunity to present evidence, then the defendant is thereby deprived of due process.’” *Weeks v. Weeks*, 556 So.2d 348, 349-50 (Miss. 1990) (citing *Fortenberry v. Fortenberry*, 338 So.2d 806 (Miss. 1976)). *Childers* at page 8. The Chancellor dismissed both of my Petitions and all of my other papers without a full hearing based on the affirmative defense that I was in the Court with “unclean hands” being in arrears in child support. “Concerning the issue of unclean hands, we found that the facts substantially supported the chancellor’s finding that Martin had come into court with unclean hands. *Id* at 1043 (P27). However, we held that this fact did not preclude the chancellor’s consideration of Martin’s petition to modify because the entry of final judgment of total arrearage cleansed Martin’s hands and revived the issue of modification. *Id.* At 1043

(P29).” *Howard v. Howard*, 968 So.2d 961 (Miss. 2007). First, I was not in arrears and my hands were clean. The Chancellor’s finding of contempt was not based in fact or law and his dismissal of my Petitions based on this was wrong. Even if I had been arrears, I took the right actions by seeking reduction through DHS and then the Court. “Since the father followed the proper procedure in a seeking a reduction in his obligations, a finding of contempt was not appropriate.” *Grissom v. Grissom*, 952 So.2d 1023 (Miss. 2007). But I was not in arrears, and per *Howard*, my Petitions should not have been dismissed.

“Article 3, Section 24 of the Mississippi Constitution provides, HN5 ‘All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.’” *Stuart v. Stuart*, 956 So.2d 295 (Miss. 2006). The Courts were not open to me to get help in getting more time with my daughter and for a downward modification of child support to an amount that I could pay with my self-employed income. Justice was not administered and my due process right was violated.

I was denied due process by the May 8, 2008 Order not dismissing Bliven’s Counter-Complaint but dismissing my papers. My motion to strike was also scheduled for hearing on that day. The Chancellor did not hear my motion and said that all of my paperwork was dismissed. He left me with nothing to defend against Bliven’s bad and unsupported claims. What followed me being put in jail was a further attack on my family. Smallwood filed a complaint with the MS Bar Association to investigate my wife for “practicing law without a license”. Now they were going after her livelihood and business reputation, and it was the Group who had put together all of the legal stuff

in my papers. Shortly after, my wife was diagnosed with breast cancer. Through all of this, Bliven, while asking the Court to take away my overnight, unsupervised visitation, was allowing ordered visitation and promoting more overnight, unsupervised visitation, when it benefitted her. Smallwood even sent an email to my wife's ex-husband trying to find someone to testify that we had a "bad" environment. He told Smallwood that she was wrong for trying to take my daughter away and that if our environment was anything less than good, he would have already done something because of his sons. Still Bliven persisted on moving forward with the Counter-Complaint and there was nothing I could do because all of my papers had been dismissed. Smallwood noticed the Counter-Complaint for trial on February 25, 2009.

I was denied due process by Smallwood being awarded attorneys fees for falsely sending me to jail and getting my case dismissed. In the end of 2008, me and Bliven reached an agreement to resolve the visitation issues. I sent a letter to Smallwood asking if and on what she was going to trial in February, but she did not answer it. When she came in the courtroom on February 25, I again asked her why we were there. She said she was asking for attorneys fees for all of the papers I had filed. I told her that she had misled the Court about the DHS affidavit. In chambers, Smallwood told the Chancellor "she in no way intended to mislead the court." (Page 0389). The Chancellor said he "was giving her attorneys fees because he had found me to be in contempt on April 21, 2008. He said 'it's a no brainer.'" (Page 0389). "I told Judge Dale I was not behind in my child support on April 21, 2008. I told him the DHS Affidavit of Accounting he used was not complete. I told him that I was holding a copy of the DHS check refunding my IRS interception just days after I had been put in jail for being 'in arrears'. I told him

that I was not in contempt on that day. I also told him there had been prior IRS interceptions, and by asking for attorneys fees for reading my paperwork, Smallwood knew of the pending IRS interception on that day.” (Page 0389). He did not listen to any of this. He was not fair. He was not impartial. He awarded attorneys fees to Smallwood to be paid within 30 days. Even though I had put all of this past me with me and Bliven working things out, I had no choice but to appeal because I could not pay this amount. I knew if I didn’t, she would go right back to Court and try to have me put in jail again.

My due process rights were denied by me not being allowed to review and contest the Judgment prepared by Smallwood. At the end of the in chambers conference, the Chancellor asked Smallwood to prepare a Judgment for him to sign awarding the attorneys fees. Smallwood told him she had already prepared one leaving the amount blank. The Chancellor filled in the amount and signed it. When I got a copy later that day, it said that I had reviewed it and there was a line for me to sign “as to form”. I was not allowed to review it or contest it even though it said I had to pay \$2,500.00 within just 30 days and it made it seem as I had agreed to continue to pay \$300.00 per month in child support. This is not due process. This was not fair. Smallwood was rewarded for withholding information about the IRS payment that the Court needed to make a fair and impartial ruling about contempt.

All of these were due process violations and the only way to make up for them is to reverse the finding of contempt, expunge my arrest record, and reverse the Judgment awarding \$2,500.00 in attorneys fees.

II. The Chancellor's May 8, 2008, Order was wrong and unjust.

I was not in arrears on April 21, 2008. I was in arrears at other times but I was constantly trying to get reductions, through DHS and the Court, based on my true self-employment income. I was trying to let everyone know why I was in arrears and that it was not for any other reason but that I could not pay this amount. But on April 21, 2008, I was not in arrears and the Chancellor finding me to be in contempt of court for failure to pay child support, ordering I be jailed until I could pay the arrears, and granting Bliven's Motion to Dismiss both of my Petitions were all wrong and should be reversed.

A. The Chancellor's finding of contempt and unclean hands on April 21, 2008 was wrong

Bliven said I was in "contumacious contempt" for not paying my child support as ordered. Worldnetweb.princeton.edu says it means "willfully obstinate" or "stubbornly disobedient". How could I be willful or stubborn about something I could not do based on my income? I have always tried to provide for my daughter but my income has never supported an award of \$300.00.

1. The order of \$300.00 per month was wrong and not based upon the MS Child Support Guidelines

Section 43-19-101 of the Mississippi Code of 1972, as Amended, provides "Child support award guidelines." In determining "gross income from all potential sources that may reasonably be expected to be available to the absent parent," the Court is to consider "income from self employment." Self employment income is defined by the Internal Revenue Service as the net profit or loss for a business and is determined by line 31 of Schedule C for sole proprietors. The amount of \$300.00 per month is 60% of my adjusted gross income for 2005 (\$6,029.00 - Pages 0506 and 0511) and 44% of my

adjusted gross income for 2006 (\$8,261.00 - Page 0514). I have full custody of my oldest daughter, Alexa Rae Parker.

Section 43-19-101(1) provides that “the following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or **modifying** of child support awards in this state: Number of children percentage of adjusted gross income: 1 - 14%.” (Emphasis added). Subsection (2) further provides that:

The guidelines provided for in subsection (1) of this section apply **unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.** (Emphasis added).

Subsection (3)(d) adds that “if the absent parent is **also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children.**” (Emphasis added).

Finally, subsection (3)(e) states that the total amount of adjusted gross income, less the allowable deductions provided for in subsections (3)(a-d), is to be divided by twelve to “obtain the monthly amount of adjusted gross income.” The only exception is in cases where the adjusted gross income is “more than Fifty Thousand Dollars (\$50,000.00) or less than Five Thousand Dollars (\$5,000.00).

Considering the above, had the Court been requested to apply these Guidelines, the appropriate amount of child support per the Temporary Order on May 22, 2006, would have been \$70.34 per month (i.e., AGI 6,029(14%)/12) and this does not take into

consideration any allowance for me having full custody of my daughter, Alexa. The Temporary Order was represented to this Court to be an “agreement by the parties,” my financial statement was incomplete (income tax returns had not been filed in 5 years), there was no financial statement in the Court record for Bliven, and I objected to Ducker because I knew I could not pay this much.

At the time of the February 28, 2007, hearing that led to the April 21 Judgment, had the Court been requested to apply these Guidelines, the appropriate amount of child support would have been at or less than \$96.38 (i.e., AGI 8,261(14%)/12) again, not taking into consideration my daughter, Alexa. And, the amount of “retroactive” and “back” child support should have been calculated using these amounts as well.

2. I did object to the amount of \$300.00

Seely v. Stafford, 840 So.2d 111 (Miss. App. 2003) says that “the time for him to object to the monthly amount being greater than the statutory guideline was at the time of that decree.” (P15). *Seely* “voluntarily executed the property settlement agreement. By doing so, Seely represented to the chancellor that the amount of child support, and the other terms of the property settlement agreement, were fair, equitable and acceptable.” (P15). I did not agree to the \$300.00 per month. I did “challenge the initial decree” (*Seely* P10). I objected to Ducker in the courtroom the day of the first hearing when he said the Chancellor had awarded this amount (Page 0115). I had never paid that much and there was no basis for this amount because I did not know what my income was at the time (Page 0022). My objection was left silent by Ducker’s agreement to the amount and the signing of the Temporary Order (Page 0029), in chambers, by Ducker and Smallwood. But I did not agree to that amount (I knew I couldn’t pay it), I did not sign

that Order, and the terms of the “agreement” were not read in open court to give me a chance to object to the Chancellor himself. *Samples v. Davis*, 904 So.2d 1061 (Miss. 2004).

I objected to Ducker in the courtroom the day of the second hearing (Pages 0116 - 0117). My objection was again left silent by Ducker’s agreement to the amount which led to a Judgment of both the continued monthly child support and back and retroactive child support (Pages 0045 - 0049). His agreement led to a Final Judgment which “will allow subsequent modification only upon a showing of appropriate circumstances that justify the modification.” (*Seely* P16). But, again, I did not agree to the amount, I did not sign it, and the Order was not read in open court. In fact, the Final Judgment was not signed until two months later and Ducker was not present when it was signed. He signed a blank last page and faxed it to Smallwood. (Page 0049).

3. There was a change in circumstances to get a reduction

“Appropriate circumstances” were presented by Ducker in the July 31, 2007 Petition for Modification of Child Support. (Pages 0053 - 0056). I had lost my contract with the hotel, my income was decreased even more, and I was doing everything I could to pay the arrears so as to “come into court with clean hands”. Ducker told my wife to fill out the Financial Statement to file with the Petition. (Page 0120). Because I am self-employed, she was unsure of what to put for income. She first used the IRS definition (business income minus business expenses) but Ducker said she should only deduct labor expenses from the income received for the prior 6 months. The result was the Financial Statement that stated a monthly income of \$2,519. This amount was not correct (I did not deposit this amount free and clear every month) and did not reflect what income

would be for the next months. The hearing on this was delayed for months during which time arrears continued. By the time of the “hearing on December 6, 2007, my records did not support this amount of monthly income. Because Ducker had not personally served Bliven, the Petition was “thrown out” and Ducker told me that the Judge had thumbed through the financial statement and though my expenses were high, the income was still enough to keep the award at \$300.00. (0123-0124). Most of the expenses listed were actually business expenses which should have been deducted from my business income. This Financial Statement, though wrong, was dated July 30, 2007.

In July 2007, DHS changed its rule so that a noncustodial parent in arrears could ask for a modification of child support through DHS. (Pages 0214 - 0215). I decided to split the issues and try to obtain a reduction through DHS while seeking additional time with my daughter from the Court. (Page 0125-0126 and 0216-0220). DHS declined my request because of the pending legal case. (Page 0221).

4. I paid “what I could” on the advice of my attorney, Ducker

“The Court has previously held in *Mizell* that a chancellor was within its discretion in not finding in contempt a father who ceased child support payments on the grounds that his attorney advised such action.” *Mizell*, 708 So.2d at 64.

In the courtroom on May 1, 2006, I told Ducker I could not pay \$300.00 per month. The most I had ever paid to Bliven was \$200.00 per month and I had my other daughter, Alexa, to fully support too. My financial statement was blank because I was behind in filing my taxes. Ducker told me that the Chancellor ordered the \$300.00. He was my attorney and I believed him. When asked “why didn’t pay your full child support as ordered by this Court?”, I replied “Because it was unjustly given to me

without financial statements on me. It was a blank financial statement. It was ruled. I objected in the courtroom that I could not, but my attorney at the time said that's what the Judge had handed down and that's what I had to pay. I told him right then that I could not pay it. He said, get your financial statement together. Bring it back in, and then we'll do a remodification of it. He did not let me know that once I got in the arrears at that time there was no coming back on it." (Transcript at Page 6, lines 4-17).

I could not pay this and so I got arrears. If I didn't have the \$300.00, I waited until I got it and then paid it. I am self-employed so my income is not the same every month. Some months I would clear more and try to catch up, and others I would have very little income and I would get further in arrears. Ducker told me to "Pay what I could each month" because "it looks better to pay something every month" even if it were less than the full amount. So this is what I tried to do. Before filing the July 31 Petition, I met with him and he told me if \$150.00 was what I could pay, I should pay it. He documented this in the Petition (Pages 0053-0055).

It was also Ducker who led me to believe that the Court had temporarily reduced my child support to \$150.00 per month for the months of October and November 2007 (Page 0121). He then told me on December 6, 2007, at the conference in Marion County, that "October and November 2007 were covered" (Page 0124), and then he paid \$300.00 to DHS "on my behalf to cover it (Exhibit S)" (Pages 0125 and 0212 - 0213). Bliven would later say that I had "unilaterally reduced" my child support to \$150.00, but it was Ducker who told me to do it if that was all I could pay as long as I paid something each month. I paid what I could on the attorney advice of Ducker.

5. I was not in arrears on April 21, 2008

The DHS Affidavit of Accounting documents that I was in arrears most of the time. It also shows that on most months I paid something, again on the advice of Ducker. This confirms that I was not willfully or deliberately disobeying the Order. Even though I objected to the child support amount of \$300.00, I still tried to pay it, to get reductions through DHS and the Court, and to try to catch up arrears by allowing IRS refunds to be intercepted by DHS. No, I was not able to pay \$300.00 every month, and I did go into the arrears. (Transcript at Page 5, lines 23-25, Page 6, line 3). The DHS records do show this. (Exhibit 3 to the Transcript). I was and still am self-employed so my income is not the same every month. Some months I would earn more and try to catch up and others I would have very little income and get further behind. If not for my wife finding errors in my income tax returns that led to refunds, I would have been in arrears on April 21, 2008. Not because I deliberately or willfully did not pay, but because I did not have the means to pay based on my income.

For 2005, my business income was \$8,016.00 and my adjusted gross income was \$6,029.00 (Pages 0506 and 0511). For 2006, my business income was \$8,887.00 and my adjusted gross income was \$8,261.00 (Page 0514). I was ordered to start paying \$300.00 per month May 2006. My first payment was documented by DHS in June 2006 in the amount of \$200.00. Payments were made for \$300.00 in July and September 2006, with arrears of \$700.00. This was the month I tried to get a reduction through DHS and was denied because I was in arrears. (Pages 0115 and 0162). By December I tried to catch up by paying \$600.00 but my arrears were \$1,000.00

In January 2007, I lost the hotel contract which led to more finance problems. By the time of the hearing on February 28, 2007, I had made no payments yet for the year and arrears were at \$1,300.00. To make it worse, the Judgment was given in April which also awarded back and retroactive child support for \$1,500.00. There was no way I could come up with this large amount. At the time, the IRS was threatening to do a lien on my property to pay back taxes and because of business losses to do with the hotel contract, I was behind on other business and personal accounts. My wife did my taxes for 2006 and on noticing errors in my filing status by my accountant, I was able to file amended returns for the years 2000 - 2005 which resulted in refunds due to me. I had to work through the IRS Advocate but I eventually received all of the refunds due to me.

DHS had placed a lien with the IRS, so in August 2007, the IRS credited the first of the refunds to DHS in payment of my child support arrears in the amount of \$1,376.92 (Page 0268). Because of DHS procedure, unless a request was made to put the money in Bliven's account, it would not be done until 6 months later. I asked that the money be put into the account, even though I really needed it bad, to pay the Judgment for the arrears. (Page 0190). This still left arrears of \$673.00. On Mr. Ducker's advice, I paid \$150.00 in September, October and November 2007 but this still left arrears of \$1,273.08 (Page 0268). In December 2007, the second IRS interception in payment of my child support arrears in the amount of \$1,276.00 was credited to Bliven's account. Again, I needed the money very badly. My truck's engine needed to be replaced, making it very difficult for me to even get to a job to work my business, and I still had delinquent accounts to pay. Even with this large payment, arrears totalled \$447.08. (Page 0268).

In January and March 2008, I paid \$150.00 and in the beginning of April 2008, I paid \$300.00. This left arrears of \$897.08 as of my April 2008 DHS Statement. (Page 0353). In March, me and my wife did our first joint income tax return. This made us due a refund. Smallwood's papers said I was in arrears and asked that my case be dismissed and I be put in jail. I really wanted my day in Court and I definitely did not want to go to jail. A hearing was set for April 21, 2007. On March 21, 2007, the IRS sent me a notice that \$897.00 was being withheld from our joint refund in payment of my child support arrears. (Page 0505). On March 24, I sent the notice to DHS and asked, as I had before, that the money be put into Bliven's account as soon as possible. (Page 0504). The law I read said I had to pay the arrears or show why I couldn't pay them. These facts and documents of the IRS payment were put in my papers filed with the Court in opposition to Bliven's papers to dismiss my case and jail me. (Pages 0152-0153 and Pages 0475 - 0476) filed with the Court on March 20 and April 7, 2008. Copies were sent to the Chancellor and Smallwood. In my mind, when I walked into the Courtroom on April 21, 2007, I would not be in arrears (Page 0351) and I would finally get my day in Court. Once again, I was wrong.

On the Saturday (4/19) before the Monday (4/21) hearing, I received a letter with a form for my wife to sign from Pearce. (Pages 0349-0350). On arriving at court, we had the Clerk of Court notarize the form and make us some copies for the Chancellor and Smallwood. When I went into the Chancellor's chambers for a conference, I had in my hand copies of the letter from Pearce (Pages 0346, 0350), the signed, notarized form requesting immediate release of the funds to Bliven's account (Pages 0346, 0349), my receipt for the money order for child support mailed to CRDU on March 30 (Pages 0346,

0351), the March 21 IRS Notice (Pages 0346, 0352), my most recent Statement from DHS (Pages 0346, 0353), and my March 24 letter to DHS requesting that the interception be put into Bliven's account as soon as possible (Pages 0346, 0354). This is what I showed to the Chancellor and Smallwood (Page 0346). This was proof that I had paid my support. I had done what the law said and I was not in arrears.

6. The Chancellor failed to consider my evidence that I had paid

Being ProSe, the Chancellor was supposed to "credit not so well pleaded allegations so that a pro se prisoner's meritorious complaint may not be lost because inartfully drafted. Mississippi courts will also allow the same deference to pro se litigant in civil actions." *Klein*. He did not. Instead, he told me in chambers that he would not read my paperwork and that he would "show me how law works". (Page 0346). What followed was no consideration of my evidence or testimony about the IRS payment.

I testified that the arrears on the DHS Affidavit were "paid and it's moot". (Transcript at Page 10, line 23). The Chancellor did not ask why the DHS Affidavit did not reflect my payment. I testified I had proof that it was paid. (Transcript at Page 10, line 26). The Chancellor did not ask to see my proof. I testified about the DHS procedure, that "DHS keeps money in a Jackson account that revolves around until someone pulls it out. The money is paid and it's in there. I have the records showing it." (Transcript at page 11, lines 1-3). The Chancellor did not ask about the DHS procedure or for my proof of it. Smallwood asked "it's been withheld from your taxes; is that right?" and I testified "Some of it withheld from my taxes. As always when I would get in arrears for paying an amount that I could not pay when my taxes would come in, they would take the money. That's why we've been trying to file for a reduction of child

support based on my true income.” (Transcript at Page 11, lines 4-10). The Chancellor did not ask about the payment and DHS procedure. Smallwood asked “and last year your taxes were intercepted as well to pay child support, weren’t they?” and I answered “Yes, ma’am, they were.” (Transcript at Page 11, lines 11-13). Again, the Chancellor did not ask about the DHS procedure for tax liens or about the record of my payment by tax refund interceptions. The Chancellor was provided with enough testimony by me to at least consider my proof of payment, but he did not. The Chancellor failed to consider all evidence before finding contempt.

7. The Chancellor used an outdated, incorrect financial statement to determine my current income

When asked “why didn’t pay your full child support as ordered by this Court?”, I replied “Because it was unjustly given to me without financial statements on me. It was a blank financial statement. It was ruled. I objected in the courtroom that I could not, but my attorney at the time said that’s what the Judge had handed down and that’s what I had to pay. I told him right then that I could not pay it. He said, get your financial statement together. Bring it back in, and then we’ll do a remodification of it. He did not let me know that once I got in the arrears at that time there was no coming back on it.” (Transcript at Page 6, lines 4-17). Smallwood then introduced the financial statement filed by Ducker with the July 31, 2007 Petition, **9 months before this hearing**. There was another, updated and accurate, financial statement that was filed with my Petition on January 24, 2008, just 3 months prior to the hearing. It was in the file and was the most current financial statement in the file. It should have been used to determine any arrears or future child support payments.

Smallwood questioned me about the income of "\$2,500.00" per month on the outdated and inaccurate financial statement from July 31, 2007. I told her that it was "an inaccurate financial statement." In fact, my papers in the Court file had already given the information about Ducker informing my wife to fill it out incorrectly for self-employment income (Page 0120), but when I tried to give more information, I was told "You'll have a chance to put on your own case since you are representing yourself." (Transcript at Page 7, lines 17-28). There was no chance for me to put on my own case.

8. The Chancellor failed to require the keeper of the record testify

Sakalarios testified "I'm not the keeper of this record. The proper person to testify as to the contents of the record keeping of the money would be possibly a supervisor. Francis Pearce, the supervisor for Forrest County, is available to testify in the office. I could call her. She's ready to come up and testify if you need to hear from her." (Transcript at page 14, lines 21-29). With my testimony about the IRS payment which was not on the Affidavit, there was no way to confirm whether I was really in the arrears without having Pearce testify. Sakalarios went on to repeat that she "would not be the proper person to be testifying" (Transcript at Page 15, lines 8-9) but the Chancellor, stated that "I understand that. You are not the keeper of the record." still received the DHS Affidavit into evidence. (Transcript at Page 15, lines 20-29). This was wrong. In a case in which you are going to send a man to jail without a way to get out if he does not have the money, the Chancellor must have "clear and convincing" evidence. Just my testimony, not even considering the document proof I showed to the Chancellor in chambers, was enough to make it necessary that the keeper of the record testify as to whether I really was in the arrears.

9. The Chancellor did not allow me to cross examine Sakalarios

Before evidence is received by the Chancellor, shouldn't both sides have the chance to talk to the witness about the document? I tried to do this with Sakalarios when the Chancellor asked if I had any questions for her. I asked to "approach the witness" and the Chancellor said "I don't know. What do you want to approach the witness for?" I stated "I want to show her this document here and see if this is the lady she is referring to that has the power to say what needed to be said." (Transcript at Page 16, lines 12-19). The Chancellor refused me a chance to confirm my proof with Sakalarios by stating "I've accepted her testimony on that already. Unless she wanted to refute it, she's already testified to that." (Transcript at Page 16, lines 20-22). The Chancellor denied me my right to talk to the witness and try to put on my case that I did pay. This was wrong.

B. The Chancellor's order for me to be jailed on April 21, 2008 was wrong.

Coming before the Chancellor on April 21, 2008, I was representing myself because I could not afford an attorney. Before ordering me to be jailed, it was his responsibility to make sure all evidence and testimony was considered. The opposite is what occurred. I seemed to have been held to an even higher standard than Smallwood. She was allowed to introduce an outdated financial statement to support my "income", an incomplete DHS Affidavit that even her own DHS witness could not testify to, and she admitted that she knew of the other and pending IRS interception as a means of payment of my child support without the Chancellor questioning her as to the pending one. All of this in a case in which she was asking for and the Chancellor was more than willing to order the taking my liberty.

“The right of a trial court to commit a defaulting father to jail until he complied with a decree for child support was dependent upon his ability to comply with the decree, and in determining his ability to pay, the amount of his past earnings and the manner in which they were expended was not controlling. The proof was without dispute that the father had no property and no means except such as he earned by his labor.” *Dickerson v. Horn*, 50 So.2d 368 (Miss. 1951). “It was an error to commit appellant to jail until he should have paid the stated arrears, and for this error the decree of the court below, insofar as it commits appellant to jail until he shall have paid the designated amounts, is reversed and the cause is remanded.” *Hooker v. Hooker*, 205 So.2d 276 (Miss. 1967).

My papers and testimony show that I could not pay the amount of \$300.00. I was not in arrears on April 21, 2008, but this was through IRS tax refund interceptions, not by my monthly income. I had try to pay the amount and had at all times taken the proper actions by notifying both DHS and the Court of my inability to pay and requesting reductions. Even if the Chancellor did not believe my evidence of not being in arrears, he still should not have ordered me to jail until I paid the arrears because the record showed that I did not have the means to pay the arrears and would have had to stay in jail without a chance of getting out.

C. The trial court was wrong in dismissing my July 31, 2007 and January 24, 2008, Petitions.

“All that need be shown is that there is a prior decree providing for reasonable visitation rights which is not working and that it is in the best interests of the children as fostering a positive and harmonious relationship between them and their divorced parents to have custody provisions made specific rather than flexible and attendantly vague.”

Childers HN7. “The chancery court also erred when it refused to hold a hearing to determine the specific visitation provisions that were in the children’s best interest.”

Childers.

The Chancellor dismissed my Petitions and all of my papers without consideration of how this would affect my daughter. Fortunately, things worked out between me and Bliven and she agreed to dismiss her claims of an “unsafe” environment in my home. But at the time my Petitions and papers were dismissed, there was no such agreement, and I was left to defend against those very wrong claims without any of my papers. This was wrong.

III. The Chancellor’s Judgment of February 25, 2009, was wrong.

“Judge Dale stated that he was giving her attorneys fees because he had found me to be in contempt on April 21, 2008. He said ‘it’s a no brainer.’” (Page 0389).

Smallwood has not contested my Statement of Evidence of that chambers conference on February 25, 2009. I was not in contempt on April 21, 2008. The Chancellor’s award of attorneys fees was based on contempt. The finding of contempt should be reversed and so the attorneys fees that were based on this finding should also be reversed. Smallwood deliberately and stubbornly withheld information about the pending IRS tax payment that showed I had paid the amount and it was just a matter of paperwork to get it onto the DHS Affidavit. She then asked the Chancellor to put me in jail based. An award of attorneys fees to Smallwood is wrong and should be reversed.

CONCLUSION

This case should not be before you today. Bliven should have agreed to mediation in 2006 and there would be no case. Bliven should have agreed to mediation in 2007 and there would be no case. There would be no attorneys fees because mediation through DHS is free. All of this, including this appeal, would not be if not for Bliven refusing mediation.

The case is before you today. In it, one of Mississippi's lesser known citizens, a laborer with a 7th grade education, a loving husband and father, asks you to give him back his rights of due process and equal access to court. I am that citizen. My name is Robert S. Parker and on April 21, 2008, I was ordered to be taken to jail by the Lamar County Chancery Court. I was handcuffed and my ankles were bound by shackles and I was paraded before my loving wife, my mother, my grandmother, and my in-laws who were there to support me in my attempt to get more time with my daughter. I was treated like any other criminal, fingerprinted, rectum probed while naked, stripped of my clothes and my identity as I sat in jail wondering if and when I would get out. I wondered this because I was ordered there until I paid my arrears but I had already paid them so I was not sure of the how or what or when of my future on the outside. My wife worked very hard to get me out that evening, but it didn't stop the local paper from listing me as a criminal to be seen by my friends, by my contractors, by my enemies. The irony was that DHS had to refund me the money the IRS had paid for my arrears, and I received that check only days after the order to jail me was given.

All of this happened because the Court did not know or did not want to know DHS procedure. The Court did not consider everything before it robbed a man of his

freedom. It also happened because an attorney wanted to win at any cost. She withheld information that would have prevented me from going to jail and then asked the Judge to send me to jail. It also happened because I could not afford an attorney and did not know how to demand my right to put on my evidence and question her witness as to the truth. And to make it all worse, as if it could be, the Court then rewarded the attorney with attorneys fees for falsely sending me to jail.

The Supreme Court has vowed to “begin to understand the true scope and nature of the problem, and then move to solve it.” What happened to me is the scope and nature of the problem. And you have, today, the opportunity to start to solve it, one case and one citizen at a time, beginning now by reversing the trial court’s finding of contempt, ordering the expungement of my arrest record, and reversing the trial court’s award of attorney’s fees.

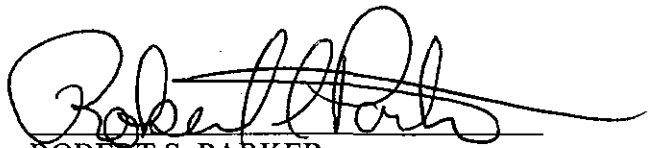
CERTIFICATE OF FILING AND SERVICE

I, ROBERT S. PARKER, Pro Se by necessity, certify that in accordance with M.R.A.P. Rule 25(a), I have on this day filed my Original Brief and Record Excerpts with the Clerk of the Supreme Court of Mississippi, and I have served a copy to the attorney for Tessecca Bliven and the Chancellor in this case, by placing the original and three copies for the Clerk and a copy for the following, into the United States mail, postage prepaid, and properly addressed, on this day:

Sheila H. Smallwood
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P. O. Box 933
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ATTORNEY FOR TESSECCA BLIVEN

Honorable Sebe Dale, Jr.
Chancellor
Lamar County Chancery Court
P.O. Box 1248
Columbia, MS 39429

This the 21st day of July, A. D., 2009.


ROBERT S. PARKER
PRO SE

SUPREME COURT

COURT OF APPEALS

STATE OF MISSISSIPPI

NO. 2009-CP-00470

ROBERT S. PARKER
Respondent/ Appellant

versus

TESSECCA BLIVEN
Petitioner/ Appellee

APPEAL FROM THE LAMAR COUNTY CHANCERY COURT

ADDENDUM TO ORIGINAL BRIEF
OF THE APPELLANT, ROBERT S. PARKER

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INDEX - ADDENDUM

1. Mississippi Constitution - Article 3, Sections 14 and 24
2. Mississippi Code of 1972, as Amended - Section 43-19-101