2009-CP-01850 E

CERTIFICATE OF INTERESTED PERSONS

I, the undersigned Charles E. Hodum, attorney for the Appellee, hereby 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. COREY T. LEE, SR., Appellant
2. JEAN M. LEE, Appellee
3. CHARLES E. HODUM, Attorney for Appellee

CHARLES E. HODUM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTORY PROVISIONS

STATEMENT OF REFERENCES

Throughout this Brief of the Appellee, the Appellant, Corey T. Lee, Plaintiff/Counter-Defendant in the proceedings below, shall hereinafter be referred to as "Husband." Appellee, Jean M. Lee, Defendant/Counter-Plaintiff in the proceedings below, shall hereinafter be referred to as "Wife."

Citations to the record on appeal shall be designated by the volume, page number and line number, where applicable, i.e. (R.Vol. ___, p. __, ln. ____.)

STATEMENT OF THE CASE

In the Brief of the Appellant, Husband fails to provide an accurate picture of the case. Therefore, Wife submits this Statement of the Case.

Husband filed his *Complaint for Divorce* on August 8, 2007 in the Chancery Court of DeSoto County citing cruel and inhuman treatment and inappropriate conduct as grounds. (R.Vol.1, p. 5-6.) On January 22, 2008, Wife filed her *Answer and Counter-Complaint for Absolute Divorce* wherein she denied the grounds alleged against her and counter-alleged that Husband was guilty of cruel and inhuman treatment and that irreconcilable differences existed between the parties. (R.Vol.1, p. 23.)

Counsel for Husband withdrew, by consent, on September 26, 2008. (R.Vol.1, p. 33.) From said date through the conclusion of the trial, Husband appeared *pro se*, filing numerous motions and petitions on his behalf. (See R.Vol.1, pp. 2-3, 36, 39, 60).

On January 28, 2009, the Trial Court entered an *Administrative Order Setting Cause for Trial* which set the cause for hearing on March 30, 2009 and required that all written discovery and depositions were to be complete by March 2, 2009. (R.Vol.1, p. 84.) Said Order was signed by Husband. (Id.)

Husband failed to appear at the divorce trail. (R.Vol.2, p. 2, ln.2.) Husband later, in his *Motion to Vacate Judgment* and his later *Motion to Vacate Judgment or in the Alternative, Alter or Amend* cited his was unable to appear due to his transportation falling through and having to pick up his medication from the pharmacy. (R.Vol.1, pg. 101.)

As a result of his failure to appear, the trial judge granted an *ore tenus* motion to dismiss made by Wife at trial since there was no one there to prosecute Husband's complaint and no evidence before the Court with respect thereto. (R.Vol.2, p. 23, ln. 14.) Prior to trial, Wife submitted her Affidavit of Income, Expenses, Assets and Liabilities as required by Uniform Chancery Rule 8.05. (R.Vol. 2, pg. 39, ln. 9.) At the close of Wife's proof, the Court rendered its ruling which was memorialized in the *Final Decree of Divorce* which was entered on April 1, 2009. (R.Vol. 1, p. 85-98.)

The Trial Court granted Wife a divorce from Husband on the ground of habitual cruel and inhuman treatment. (R.Vol. 1, p. 86.) Wife was awarded the marital residence and the first mortgage on the property in the approximate amount of $160,159.00. (R.Vol.1, p. 93). Husband was ordered to pay and to refinance the second mortgage in the approximate amount of $28,400.03, as this indebtedness was incurred to finance Husband's amusement business. (Id.) Each party was awarded the personal property in his or her possession with the exception that Husband was to immediately return to Wife the Glock pistol. (Id.) The Trial Court awarded Wife the 2002 Jeep Cherokee Laredo and Husband the 1999 Lincoln Navigator. (R.Vol. 1, p.95). Husband was awarded all interest in the parties' business, Lee Enterprises. (R.Vol.1, p. 97).

As for the retirement and investment accounts of the parties, the Trial Court ordered that each party should keep all retirement in his or her separate names, except that Wife was awarded

$10,000.00 from Husband's AIG Financial Mutual Fund Account "to equalize the division of financial assets between the parties." (R.Vol.1, p. 96).

The *Final Decree* requires that Wife pay and hold Husband harmless for the Countrywide mortgage on the marital residence, one-half (1/2) of the balance on the Visa, Capital One, Macy's, Goodyear, and Ben Toole debts, as well as any other personal debt in her name. (R.Vol.1, p. 94). Husband was ordered to pay and hold Wife harmless for the second mortgage through Irwin Mortgage, the debt to Education Services, Discover, Chase, Sears, Bryan Edwards, Wachovia, Sallie Mae, EdFinancial, O.T. Sykes, as well as any debt in his name and in the name of Lee Enterprises. (R.Vol.1, p.94-95). Further, the Trial Court ordered Husband to pay one-half (1/2) of the balance on the Visa, Capital One, Macy's, Goodyear, and Ben Toole debts and to reimburse Wife the sum of $6,000.00 for the loan Wife received from her mother during the divorce. (Id.)

The Trial Court denied alimony to either party, but did order that Husband provide COBRA health insurance coverage for Wife for thirty-six (36) months. (R.Vol.1, p. 96.)

The Court further vested physical and legal custody of the parties' three (3) minor children in Wife and granted Husband reasonable visitation with the children, specifically on alternating weekends and alternating holidays, allowing for extended visits at Christmas and in the summer. (R.Vol. 1, p. 86-88.) The Court enjoined both parties from having overnight guests with whom they are involved romantically while the children are present. (R.Vol.1, p. 89.) The Court awarded child support to Wife in the amount of $2,181.36. (R.Vol. 1, p. 89.)

The *Final Decree of Divorce* provides that Husband shall pay Wife $2,181.36 per month as child support for the parties' three minor children. (R.Vol.1, p. 89.) The Court found this amount comports with the Child Support Guidelines based upon the evidence presented, particularly Exhibit 1. (R.Vol.2, p. 25, ln. 9-20; R. Exhibit 1.) The Court further ruled that

Husband shall pay the private school tuition for the parties' son Corey T. Lee, Jr., who is currently enrolled in private school. (R.Vol.1, p. 90.) The Trial Court found that the other two children should remain in public school, unless otherwise agreed by the parties. (R.Vol.2, p. 30, ln. 9.) The Trial Court also ordered that Husband shall pay the college expenses of the children. (R.Vol.1, p. 92.)

The Trial Court ordered that uncovered medical and extracurricular expenses of the parties' children would be paid seventy-five percent (75%) by Husband and twenty-five percent (25%) by Wife (R.Vol.1, p. 90-91,) and that Husband would maintain medical insurance for the children. (R.Vol.1, p. 91.)

On the same day as the *Decree* was entered, Husband filed a *Motion to Vacate Judgment* citing that he "did not appear on time for Hearing Scheduled" because he "suffers from hypertension and chronic neck and back pain." (R.Vol. 1, p. 101.) Husband further stated in his motion that he was in the process of hiring counsel to further proceed with the motion. (Id.)

Husband then did obtain counsel who filed a *Motion for New Trial or, in the Alternative, Motion to Alter or Amend* on his behalf on April 9, 2009. (R.Vol.1, p. 105.) Said motion sought for either a new trial or a revision of the Final Decree to, in part: 1. equitably reapportion the martial debt and dependency exemption, 2. recalculate child support, 3. recalculate the payment of educational expenses, and 4. require Wife to obtain her own medical insurance. (R.Vol. 1, p. 105-108.) The trial Court heard said motion on September 16, 2009, (R.Vol. 2, p. 31, ln. 3,) and an order was entered October 22, 2009 dismissing both Husband's *Motion to Vacate Judgment* and his *Motion for New Trial, or in the Alternative, Motion to Alter or Amend.* (R.Vol.1, p. 128.)

Husband filed his *Notice of Appeal* on November 11, 2009. (R.Vol. 1, p. 130.)

STATEMENT OF FACTS

The parties married on February 24, 1996. (R.Vol.1, pg. 6.) There were three minor children born of the marriage, namely: Corey T. Lee, Jr., D.O.B.: 07/24/1996; Newton Lee, D.O.B.: 09/20/1999; and Victoria Lee, D.O.B.: 06/24/2001. (Id.) Wife has been the primary caregiver during the lives of the children. (R.Vol.2, p. 4, ln. 17.) During the divorce, the parties had been operating informally under a Farese-style visitation plan. (R.Vol.2, p. 19, ln. 8.) However, during Husband's visitation with the children, he would expose them to his various paramours. (R.Vol.2, p. 20, ln. 1.)

The two youngest children attend public schools, but Corey Lee, Jr. attends private school. (R.Vol.2, p. 16, ln. 1.) This child, who at the time of trial was in the seventh grade, has been enrolled in the private school since the first grade, at Husband's insistence. (R.Vol.2, p. 16, ln. 6.) The cost for the private school is approximately $750.00 per month. (R.Vol.2, p. 16, ln. 12.)

It was undisputed at trial that Husband had mistreated Wife throughout the marriage and had a history of physical abuse towards Wife. (R.Vol.2, p. 9, ln. 12.) Additionally, Husband had relationships with other women throughout the marriage. (R.Vol.2, p. 9, ln. 9.)

EMPLOYMENT AND INCOME

At the time of the divorce, Wife was employed with the United States District Court in Memphis, and Husband was employed with the Shelby County Healthcare Corporation. (R.Vol. 2, p. 4, ln. 24.) Husband also owned his own business, Lee Enterprises. (R.Vol. 2, p. 5, ln. 7.) Husband had owned this amusement business for approximately ten years. (R.Vol. 2, p. 5, ln. 10-15.) Wife testified that Lee Enterprises owned seventy machines, each with an approximate value of $2,000.00. (R.Vol.2, p. 5, ln. 16).

The undisputed testimony at trial was that Husband earned approximately $101,922.00 in 2008 from his employment at Shelby County Healthcare and was capable of earning $50,000.00 per year from Lee Enterprises, but that he had some of the machines in storage which resulted in decreased earnings. (R.Vol. 2, p. 5, ln. 3 and p. 6, ln. 8-16.) Wife's annual gross income was approximately $46,000.00. (R.Vol.2, p. 8, ln. 4.)

EXPENSES

Wife testified that during the marriage, Husband provided the health insurance for her and the children. (R.Vol.2, p. 7, ln. 27.) After the separation, Wife paid for all the uncovered medical expenses of the children. (R.Vol.2, p. 8, ln. 1.)

At the trial, Wife testified that she was seeking to have Husband pay for medical insurance for three (3) years, as such would afford her the opportunity to further her education. (R.Vol.2, p. 8, ln. 21.)

PROPERTY

The parties had agreed, prior to trial, that the value of the marital residence was $250,000.00. (R.Vol.2, p. 9, ln. 26.) Wife testified that the first mortgage on the home was approximately $160,159.00 and that she consented to assuming that debt if awarded the residence. (R.Vol.2, p. 10, ln. 5-10.) The second mortgage on the home, in the amount of $28,400.03, had been taken out by Husband to finance Lee Enterprises. (R.Vol.2, p. 10, ln. 11.)

Certain enumerated items and certain unnamed items of personal property were located in the marital residence and in the possession of Wife, while other items, such as guns, were in the possession of Husband. (R.Vol.2, p. 12, ln. 16.)

Wife owned a 2002 Jeep Cherokee with an approximate equity value of $5,200.00. (R.Vol.2, p. 11, ln. 18.) Husband owned a 1999 Lincoln Navigator with an approximate equity value of $5,000.00. (R.Vol.2, p. 11, ln. 25.)

Each party owned bank and investment accounts in his or her own name. (R.Vol.2, p. 13, ln. 13.) Wife's employee Thrift Savings Plan was valued at approximately $25,752.35. (R.Vol.2, p. 13, ln. 21-27.) Wife testified that she was aware that Husband had several investment accounts, including accounts with AIG Financial and Morgan Keegan, which had a combined value of more than her Thrift Savings Plan. (R.Vol.2, p. 13, ln. 28.)

DEBTS

The parties owned a joint debt to O.T. Sykes in the amount of $935 for a root canal for one of the parties' sons. (R.Vol.2, p. 15, ln. 15.)

Husband owned certain debt in his own name, specifically: Educational services, $20,000.00; Discover card, $6,843.35; Chase credit card, $3,200.00; Sears credit card, $1,139.99; Brian Edwards, $1,500.00; Wachovia, $2,061.87; Sallie Mae, $20,571.06; and EdFinancial, $2,058.70. (R.Vol.2, p. 17, ln. 8.)

Additionally, Lee Enterprises owned certain debt: Firestone Financial, $2,023.00; a TouchTone Music bill, in an unknown amount; and a Capital One account, in an unknown amount. (R.Vol.2, p. 17, ln. 19.)

Wife testified that during the marriage she acquired certain debt in her sole name for the benefit of Husband and the family: Visa, Capital One, Goodyear, Macy's, and Bin Tool. (R.Vol.2, p. 18, ln. 6.) Wife also owned a debt to her mother in the amount of $6,000.00 to assist with attorney fees and living expenses during the pendency of the divorce. (R.Vol.2, p. 18, ln. 10 and 22.)

SUMMARY OF THE ARUGMENTS

This is a frivolous appeal. Husband chose to represent himself, failed to appear at trial, and not surprisingly, is dissatisfied with the ruling. He first expressed his dissatisfaction by filing a *Motion to Vacate the Judgment.* When it was clear that such a motion would not be

successful, he obtained counsel who filed a *Motion for a New Trial or in the Alternative to Alter or Amend the Judgment.* The basis for the motions were essentially the same as those issues which Husband has raised here on appeal, and the Trial Court denied each motion.

Husband's first argument is that the Trial Court erred the distribution, classification, and valuation of the marital assets. All three arguments are without merit. First, Husband does not provide this Court with any analysis of how the Trial Court erred in applying the Ferguson factors. Second, the only testimony before the Trial Court established that the parties owned no separate property. Third, the Trial Court did not abuse its discretion in its valuation of the marital assets. Wife testified as the value of several marital assets, including Husband's business and several of the marital debts.

Husband's second argument is that the Trial Court erred in the calculation of his child support obligation. The Trial Court, however, heard undisputed testimony from Wife regarding Husband's income, subtracted the legally mandated deductions, and properly calculated Husband's child support obligation.

The third argument made by Husband is that the Trial Court placed excessive restrictions on his visitation with the children. Although Husband does not agree with the injunction in the *Final Decree* which enjoins *both* parents from having overnight guests with whom he or she is romantically involved while the children are in that parent's care, his argument is without merit since the Court based this decision on the unrefuted evidence that such a restriction was the only way to ensure that the children were not placed in an unwholesome environment. (R.Vol.2, p. 20, ln. 21.) Such a restriction is well within the discretion of the Trial Court and should not be disturbed on appeal.

Husband's fourth argument is that the Chancellor abused his discretion in requiring Husband to continue to pay the private school tuition of the parties' oldest child. Husband's

only argument is a misplaced reliance on this Court's decision in Mizell v. Mizell, 708 So. 2d 55 (Miss. 1998) which concerns the award of college and advanced education expenses as child support, not with private school expenses. Id. at 62.

This Court should find that the Chancellor was within his discretion in ordering Husband to pay the tuition based upon the law as found in Southerland v. Southerland, 875 So. 2d 204 (Miss. 2004). In the case at issue, as in Southerland, the child had been enrolled in private school for numerous years at Husband's insistence, continued attendance at all times during the divorce, and Husband's income far greater than Wife's. The Trial Court's decision was appropriate based on the direction given to it by this Court in Cupit v. Cupit, 559 So. 2d. 1035, 1037 (Miss. 1990)., since it took into consideration the needs of the child, the financial resources of each parent and the record as a whole.

Husband's final argument that it was error for the Trial Court to make a custody determination without enumerating each Albright factor is based completely on his unhappiness with the Chancellor's decision and his incorrect misinterpretation of the law.

Husband incorrectly cites Sobieske v. Preslar, 755 So. 2d 410 (Miss. 2000), for the proposition that a trial judge must make findings of fact on the record as to the various Albright factors. Brief of the Appellant, p. 23. Instead, what this Court held in Sobieske is that, while it is preferable that a chancellor enumerate each factor in his or her findings of fact, the Appellate Courts of this State will defer to the discretion of the Trial Court where the judge referenced Albright and concluded that based on the evidence before him or her that one parent proved more suitable. Id. at 413.

In the present case, with regard to child custody, the Chancellor specifically listed several of the factors considered in addition to stating that, "[e]ven if all other factors were equal, the Court would then consider in the totality of the circumstances and find that the best interest of

the children would be served by placing their custody with the natural mother..." (R.Vol. 2, p. 24, ln. 24-26).

Even though the Chancellor did not enumerate each factor, he certainly specified which factors favored one parent over the other based on the evidence before him. Although it may have been preferable for him to have listed each factor and analyze each against the evidence, not doing so was not an abuse of his discretion. Therefore, this Court should uphold the Chancellor's award of custody to Wife.

ARGUMENT

I. THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR ON THE EQUITABLE DISTRIBUTION OF PROPERTY, DEBTS, AND TAX DEDUCTION ASSIGNMENTS.

Husband raises three arguments against the Trial Court's distribution of marital assets: the assets were not equitably distributed, the assets were not properly classified as separate or marital property, and the assets that were classified as marital property were improperly valued or unvalued. Husband fails to provide any argument as to how the Trial Court erred in equitably distributing the marital estate. The Trial Court did not have any basis to classify any of the assets as separate property based on the undisputed testimony at trial; therefore, the Chancellor properly classified all the assets as marital property. The Trial Court heard testimony from Wife about the value of certain marital assets, including Lee Enterprises, the parties' vehicles, and certain marital debt. Further, unvalued assets do not merit a reversal unless it is shown that the Chancellor has abused his discretion.

a. The Trial Court properly applied the Ferguson analysis when equitably distributing the marital estate.

Husband's first argument references the framework for equitable distribution in the State of Mississippi. Husband correctly cites Ferguson v. Ferguson as the seminal case in equitable distribution analysis. 639 So. 2d 921 (Miss. 1994). However, Husband does not cite the record

in this argument, nor does he attempt to make an argument challenging the distribution of the marital property. Husband instead quotes the equitable distribution analysis from Ferguson without arguing how the Trial Court abused its discretion in the distribution of the marital estate. Brief of Appellant, p. 16. Husband's mere recitation of the law without analysis or application to the facts at hand is not an argument and is a frivolous waste of this Court's time and Wife's money. Therefore, Husband's argument should be denied.

b. The Trial Court properly classified the marital assets.

The Trial Court properly classified the assets that belonged to the marital estate. This Court defined "marital property" in Hemsley as "any and all property acquired or accumulated during the marriage." Hemsley v. Hemsley, 639 So. 2d 909, 915 (Miss. 1994). "Assets acquired or accumulated during the course of a marriage are subject to equitable division unless it can be shown by proof that such assets are attributable to the one of the parties' separate estates prior to the marriage or outside the marriage." Id., at 914. The Trial Court heard testimony from Wife that several of the assets were acquired during the marriage. Moreover, there was no conflicting testimony or proof that any of the assets subject to equitable division were a result of either parties' separate estates or actions apart from the marriage. Because the Chancellor did not have any basis to classify any of the assets as separate property, he was well within his discretion in determining that the assets were marital property.

c. The Trial Court properly valued the marital assets.

The initial step in the division of marital assets is the assets' valuation. Ferguson v. Ferguson, 639 So. 2d 921, 929 (Miss. 1994). Father argues that the lower court erred in not assigning a value to Lee Enterprises, the marital home's furnishings, the marital debts, and the value of Husband's retirement accounts. Wife, however, testified as to the value of these marital

assets, including Lee Enterprises and marital debts. Wife's undisputed testimony established that Lee Enterprises has seventy (70) gaming machines, and each machine is valued at $2,000.00 for a total value of $140,000.00. (R.Vol. 2, p. 5, ln. 16.) Wife further opined that Lee Enterprises grosses about $50,000.00 per year. (R.Vol. 2, p. 6, ln. 12.) Wife valued the two family vehicles at $5000 and $5000. (R.Vol. 2, p. 11, ln. 22.)

The Trial Court also had a basis in its valuation of the marital debt. At trial, Wife testified that the marital residence was encumbered by two mortgages: one for $160,159.00 and the other for $28,400.03. (R.Vol. 2, p. 10, ln. 5 and 11.) She testified that one of the minor children incurred dental expenses in the amount of $935.00. (R.Vol. 2, p. 15, ln. 18.) Mother testified that Father had debts in the amount of $20,000.00 for educational services, a Discover credit card debt in the amount of $6,843.45, a Chase credit card debt in the amount of $3,200.00, a Sear's credit card debt in the amount of $1,139.99, a Brian Edward's debt in the amount of $1,500.00, a Wachovia debt in the amount of $2,061.87, a Sallie Mae debt in the amount of $20,571.06, and an Edfinacial debt in the amount of $2,058.70. (R.Vol. 2, p. 17, ln. 8.)

Unvalued assets do not merit a reversal unless the Chancellor has abused his discretion. MacDuffie v. MacDuffie, 21 So. 3d 685, 690 (Miss. App. 2009). Husband argues that personal items, such as household furnishings, have not been valued and that these unvalued assets merit reversal. The cornerstone of the equitable division analysis is fairness. Id, at 690. In MacDuffie, the trial court did not assign a value to several personal item and the parties' automobiles. Id, at 690. Instead, the trial court ordered that each party keep the personalty in their possession, and that the vehicles be sold and that each party would keep one-half of the proceeds arising from the sale of the vehicles. Id, at 690. The Mississippi Court of Appeals affirmed the ruling of the chancellor, holding that the chancellor did not abuse his discretion in this division of the marital assets. Id, at 694.

The Mississippi Court of Appeals also upheld the distribution of unvalued personal items in Spahn v. Spahn, 959 So. 2d 8 (Miss. App. 2006). In Spahn, the trial court ordered "each party may keep and become the sole owner of any personal property in their respective possessions as of this time." Id, at 14. The Mississippi Court of Appeals affirmed. Id, at 14. The Final Decree of Divorce in the instant matter states that "Husband shall receive all personal property presently in his possession and . . . Wife shall receive all personal property in her possession." (R.Vol. 1, p. 93.) The valuation of marital property in this matter is analogous to MacDuffie and Spahn. Instead of valuing each household item individually, the Chancellor ruled that each party would keep the personalty in their possession. The Trial Court ordered the marital debts to be divided equally between the parties. (R.Vol. 1, p. 94.) Because the division of assets in this manner is not abuse of the Chancellor's discretion, comports with fairness, and promotes judicial economy, this Court should affirm the ruling of the Chancellor.

Although Husband argues that the Trial Court did not calculate the value of his retirement accounts, this argument is without merit. During the parties' trial, the Court had before it Wife's Financial Statement pursuant to Uniform Chancery Rule 8.05 which included known values for each account based off the parties' discovery responses. Husband did not provide the Trial Court with his Financial Statement. Further, Husband did not provide more recent statements from his AIG retirement accounts in his responses to his supplemental discovery. If the Trial Court used inaccurate balances or divided any account without first having ascertained the balance, it is due completely to Husband's failure to comply with discovery and to appear at trial to present evidence on his behalf. Although Husband may desire that the Trial Court set out the value of his retirement accounts in its findings, the Trial Court's failure to do is not an abuse of discretion.

II. THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR ON THE AWARD OF CHILD SUPPROT AND THE SUPPORT WAS NOT SO EXCESSIVE AS TO CONSTITUTE ABUSE OF DISCRETION.

The Trial Court correctly determined Husband's child support obligation. Husband correctly cites Lahmann v. Hallmon, which held that chancellors are afforded considerable discretion and that their findings will not be reversed unless they are manifestly in error or abused this discretion. 722 So. 2d 614, 618 (Miss. 1998). The Mississippi Code Annotated provides a rebuttable presumption that when the parties' have three children, twenty-two percent of the obliging parent's adjusted gross income should be awarded as child support to the primary caretaker of the children. Miss. Code Ann. § 43-19-101(1). The calculations that the Trial Court used in determining Husband's child support obligations are on Exhibit One to the Record on Appeal. The Trial Court calculated Husband's child support by using Husband's W-2 statement from his employer, which reflected Medicare wages and tips of $101,922.88.) (R.Vol. 2, p. 4, ln. 28.) In addition to this income, Husband owns and operates Lee Enterprises. (R.Vol. 2, p. 5, ln. 9.) The Trial Court heard undisputed testimony from Wife that Lee Enterprises grossed $50,000.00 annually despite income tax returns reflecting a loss for the business. (R.Vol. 2, p. 6, ln. 13.) After subtracting the legally mandated deductions pursuant to Miss. Code Ann. § 43-19-101(3)(b), the Trial Court multiplied Husband's adjusted gross income by twenty-two percent and determined that Husband's child support obligation was $2,181.36 a month. (R.Vol. 1, p. 89.) Based on these facts, the Chancellor correctly applied Miss. Code Ann. 43-19-101, and was well within his discretion in determining that Husband's child support obligation was $2,181.36 a month.

III. THE CHANCELLOR DID NOT ERR BY PLACING REDTRICTIONS ON HUSBAND'S VISITATION WITH HIS MINOR CHILDREN AND THE INJUNCTION PREVENTING OVERNIGHT GUESTS OF THE OPPOSITE SEX WAS NOT SO EXCESSIVE AS TO CONSTITUTE ABUSE OF DISCRETION.

The Chancellor's ruling which enjoins both parties from having overnight guests with whom he or she is romantically involved while the children are in that parent's care is not an abuse of discretion, and therefore, is not a reversible error.

Husband is correct in his statement of the law as reflected in Dunn v. Dunn, 609 So. 2d 1277 (Miss. 1992), see Brief of the Appellant, p. 20. However, Husband fails to recognize that "[v]isitation should be set up with the best interests of the children as the paramount consideration..." Id. at 1286.

In Dunn, the restriction was that Father was not allowed to expose the children to his girlfriend. Id. However, the trial court made no finding that such exposure would be harmful to the children. Id. Therefore, this Court found that such a broad restriction, absent a showing of harm, was in error. Id.

The present case is distinctive from Dunn in several ways. First, the restriction here is a mutual injunction prohibiting both parties from having overnight guests with whom he or she is romantically involved while the children are in his or her care. (R.Vol.1, p. 89.) This restriction was requested by Wife at trial. (R.Vol.2, p. 20, ln. 10.) Wife testified that she believed that such restriction would ensure that the children were not placed in an unwholesome environment. (R.Vol.2, p. 20, ln. 21.) Husband offered no evidence to refute this claim.

Secondly, the present case differs from Dunn in that here, Husband has, or at least has a history of, multiple lovers. (R.Vol.2, p. 9, ln. 9.) There is nothing in the record that Husband is in a committed relationship with one woman. Instead, the only evidence received by the Trial Court was that Husband has had numerous affairs and that Husband has taken the children around at least one of his girlfriends while the parties were still married. (R.Vol.2, p. 20, ln. 5.)

The third, final and most important distinction between Dunn and this case is that the injunction here does not restrict Husband's visitation. The restriction in Dunn was a complete ban on father having his girlfriend around the children. Neither party here is restricted from having a person with whom he or she is romantically involved around the children; the restriction is limited only to having that person spend the night while the children are present. Husband can have as many sexual partners as he chooses; they simply can not spend the night with him when the children are in his care. Since Wife has the children the majority of time, this restriction is more burdensome on her than it is on Husband.

IV. THE CHANCELLOR DID NOT ERR BY REQUIRING HUSBAND TO PAY PRIVATE SCHOOL TUTITION OR WIFE'S HEALTH INSURANCE AS EXTRAORDINARY EXPENSES

A. Private School Tuition

The Trial Court did not err by ordering Husband to pay the private school tuition for the parties' oldest child in addition to the base child support award. Mississippi Code Annotated provides that the child support guidelines "shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state." Miss.Code Ann. § 43-19-101(1) (Rev.2000). It is within the discretion of the trial judge to make an award which exceeds the guidelines, so long as a finding is made on the record that application of the guidelines would be unjust or inappropriate based on the following criteria:

> (a) Extraordinary medical, psychological, educational or dental expenses;
> (b) Independent income of the child;
> (c) The payment of both child support and spousal support to the obligee;
> (d) Seasonal variations in one or both parents' incomes or expenses;
> (e) The age of the child, taking into account the greater needs of older children;
> (f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines;

> (g) The particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parents, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services;
> (h) Total available assets of the obligee, obligor and the child.
> (i) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Miss.Code Ann. § 43-19-103 (Rev.2000).

A trial court should consider the reasonable needs of the child, the financial resources and reasonable needs of each parent, and any other relevant fact shown by the evidence. Cupit v. Cupit, 559 So. 2d. 1035, 1037 (Miss. 1990).

Husband's argument relies solely on this Court's decision in Mizell v. Mizell, 708 So. 2d 55 (Miss. 1998). Such reliance is misplaced as Mizell is a case which concerns the award of college and advanced education expenses as child support, not with private school expenses. Id. at 62.

A more correct analysis of this issue and application of the law is found in Southerland v. Southerland, 875 So. 2d 204 (Miss. 2004). There, this Court held that the court below had not abused its discretion by requiring a father to pay private school tuition for the parties child where the court found that the father had made the decision for the child to attend private school, where the child had been attending the school for several years, where the child attended the school at all times during the divorce and where the father's income was much greater than the mother's. Id. at 207-208.

In the present case, the testimony at trial was that the parties' child, Corey T. Lee, Jr. was a seventh grade student enrolled at the private school, SBEC. (R. Vol. 1, p. 16, ln. 1.) Wife further testified that Husband made the decision for the child to enroll in private school and that, at Husband's insistence, the child had remained in the same school since first grade. (R. Vol. 1, p. 16, ln. 8.) The monthly tuition was $750.00. (R.Vol.2, p. 16, ln. 12.)

The undisputed testimony at trial was that Husband earned approximately $101,922.00 in 2008 from his employment at Shelby County Healthcare and was capable of earning $50,000.00 per year from Lee Enterprises, but that he had some of the machines in storage which resulted in decreased earnings. (R.Vol. 2, p. 5, ln. 3 and p. 6, ln. 8-16.) Wife's annual gross income was approximately $46,000.00. (R.Vol.2, p. 8, ln. 4.) Additionally, pursuant to the final order, Wife was responsible for considerable amount of debt, including the first mortgage on the marital residence. (R.Vol.1, p. 94).

The Trial Court found that "based upon the evidence before the Court, particularly with respect to Exhibit 1 [Husband's W-2]" that Husband would continue to pay the private school expense. (R.Vol.1, p. 25, ln. 12 and p. 30, ln. 9). In the case at issue, as in Southerland, the child had been enrolled in private school for numerous years at Husband's insistence, continued attendance at all times during the divorce, and Husband's income far greater than Wife's. Based on these considerations, the Chancellor correctly applied the direction of Cupit, taking into consideration the needs of the child, the financial resources of each parent and the record as a whole and was well within his discretion ordering Husband to continue to pay for the private school education of the parties' oldest child.

B. Health Insurance

Husband included in his Argument IV that the Trial Court erred by requiring him to pay Wife's health insurance as an extraordinary expense. However, Husband cited no law regarding this issue, referenced no fact in the record regarding this issue, and, in fact, made no argument whatsoever with respect to this issue. Therefore, purported prong of his argument should be denied.

V. THE CHANCELLOR DID NOT ERR, AS A MATTER OF LAW, IN FAILING TO ANALYZE AND MAKE APPROPRIATE FINDINGS AS TO EACH FACTOR UNDER ALBRIGHT v. ALBRIGHT.

The Trial Court properly made the child custody determination in the present case. Husband is correct in citing Albright v. Albright, 437 So. 2d 1003 (Miss. 1983), as the seminal case in child custody cases in Mississippi. However, Husband is incorrect in his assertion that error was committed by the Chancellor because he "did not address multiple Albright [sic] factors such as, [sic] the age of the children, which parent has the best parenting skills, physical and mental health and age of the parents, [sic] emotional ties of the parent child." Brief of the Appellant, p. 23.

Husband incorrectly cites Sobieske v. Preslar, 755 So. 2d 410 (Miss. 2000), for the proposition that a trial judge must make findings of fact on the record as to the various Albright factors. Brief of the Appellant, p. 23. Instead, what this Court held in Sobieske is that, while it is preferable that a chancellor enumerate each factor in his or her findings of fact, the Appellate Courts of this State will defer to the discretion of the Trial Court where the judge referenced Albright and concluded that based on the evidence before him or her that one parent proved more suitable. Id. at 413.

In the present case, with regard to child custody, the Chancellor specifically found as follows:

> "The Court finds that the parties are the parents of three children, all three of which continue to reside and have, based up on the evidence, always resided in the custody of [Wife]. That she is the fit, proper, and suitable person in whom custody should be granted pursuant to the factors set forth in Albright v. Albright, particularly with respect to the elements of the continuity of care, best parental skills, the willingness to provide primary care, and the home, school, and community record of the child. All of those factors lie with [Wife].
>
> Even if all other factors were equal, the Court would then consider in the totality of the circumstances and find that the best

> interest of the children would be served by placing their custody with the natural mother..." (R.Vol. 2, p. 24, ln. 6-26).

Even though the Chancellor did not enumerate each factor, he certainly specified which factors favored one parent over the other based on the evidence before him. Although it may have been preferable for him to have listed each factor and analyze each against the evidence, not doing so was not an abuse of his discretion. Therefore, this Court should uphold the Chancellor's award of custody to Wife.

CONCLUSION

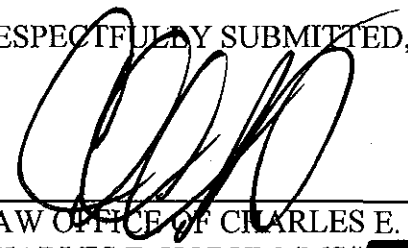
Husband's appeal is frivolous and without merit. He chose to represent himself in the divorce. He failed to appear for a properly ordered trial. The Chancellor issued a ruling based on the only evidence before the Court – the evidence presented by Wife. The result was that he was dissatisfied with the resulting *Final Decree of Divorce*. However, dissatisfaction is not grounds for an appeal.

Despite having learned the perils of self-representation at the trial level, Husband decided to represent himself in the current appeal. His brief misstates facts, provides an incomplete statement of the case, is replete with incorrect citations to the record, and most importantly, does not provide one sustainable legal argument to support his alleged claims of error. The arguments which are made are the same arguments which were made by Husband has used this Court as a forum in which to bring his arguments made at the Trial Court in his post-divorce motions, which were denied.

As a result of Husband's insistence on representing himself, Wife has incurred significant legal fees throughout the divorce and post-divorce process, including defending against the post-divorce motions and in preparing her response to Husband's frivolous claims on appeal. Therefore, Wife prays that this Court dismiss Husband's appeal and, pursuant to Rule 38 of the

Mississippi Rules of Appellate Procedure, award damages to Wife in the amount of double her attorney fees incurred as a result of defending against this frivolous appeal.

RESPECTFULLY SUBMITTED,



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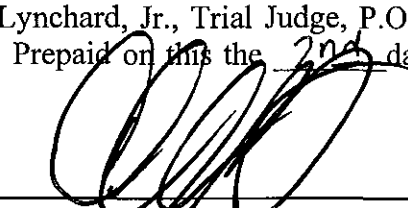
CERTIFICATE OF SERVICE

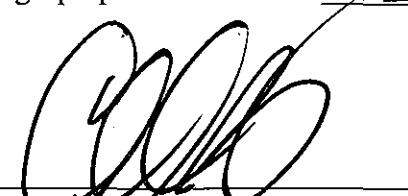
The undersigned hereby certifies that a true and exact copy of the foregoing *Brief of Appellee* has been served upon COREY T. LEE, SR., Appellant, *pro se* 5124 Skippy, Memphis, Tennessee 38116, and upon the Honorable Percy L. Lynchard, Jr., Trial Judge, P.O. Box 340, Hernando, Mississippi 38632 via U. S. Mail, Postage Prepaid on this the 2nd day of June, 2010.



CHARLES E. HODUM

CERTIFICATE OF FILING

I, the undersigned, hereby certify that pursuant to Miss. R. App. Pro. 25(a), I have filed this *Brief of Appellee* upon the Clerk of the Supreme Court of Mississippi, P.O. Box 249, Jackson, Mississippi 39205-0249 via U.S. Mail, postage prepaid on this the 2nd day of June, 2010.



CHARLES E. HODUM