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SUPREME COURT
COURT OF APPEALS**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2009-CP-¹⁸⁵⁰~~0850~~

COREY T. LEE

APPELLANT

VS

JEAN M. LEE

APPELLEE

APPEAL FROM THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

Corey T. Lee, Pro Se

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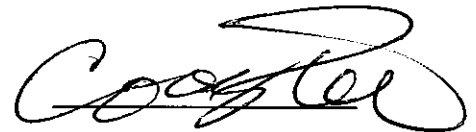
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ORAL ARGUMENT NOT REQUESTED

CERTIFICATE OF INTERESTED PERSONS

The undersigned certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Corey T. Lee, Appellant
2. Jean M. Lee, Appellee
3. Charles E. Hodum, counsel for Appellee

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Corey T. Lee, Pro Se

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ARGUMENT

- I. THE CHANCELLOR COMMITTED MAINFEST ERROR ON THE EQUITABLE DISTRIBUTION OF PROPERTY, DEBTS, AND TAX DEDUCTION ASSIGNMENTS.**
- II. THE CHANCELLOR COMMITTED MANIFEST ERROR ON THE AWARD OF CHILD SUPPORT AND SO EXCESSIVE AS TO CONSTITUTE AN ABUSE OF DISCRETION.**

- III. THE CHANCELLOR ERRED BY PLACING RESTRICTIONS ON MR. LEE'S VISITATION WITH HIS MINOR CHILDREN AND SO EXCESSIVE AS TO CONSTITUTE AN ABUSE OF DISCRETION.
- IV. THE CHANCELLOR ERRED BY REQUIRING MR.LEE TO PAY PRIVATE SCHOOL TUITION AND MRS. LEE'S HEALTH INSURANCE AS AN EXTRAORDINARY EXPENSE.
- V. THE CHANCELLOR ERRED AS A MATTER OF LAW IN FAILING TO ANALYZE AND MAKE APPROPRIATE FINDINGS AS TO EACH FACTOR UNDER ALBRIGHT V. ALBRIGHT, 437 So. 2d 1003, 1005 (Miss.1983).

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STATEMENT OF THE ISSUES

- I. Whether the Chancellor made the required findings of fact to make an equitable division of property, debts and tax assignments.
- II. Whether the Chancellor made the required finding of facts and conclusions of law in determining the correct amount of child support payments from Mr. Lee.
- III. Whether the Chancellor erred in placing restrictions on Mr. Lee's visitation with his minor children without making the required findings of fact and conclusions of law.
- IV. Whether the Chancellor erred in requiring Mr. Lee to pay private school tuition and Mrs. Lee's health insurance as an extraordinary expense.
- V. Whether the Chancellor erred in awarding full custody of the couple's minor children to Mrs. Lee without making the required findings of fact and conclusions of law.

STATEMENT OF THE CASE

Corey Lee filed his Complaint for Divorce against Jean Lee on August 8th 2007. (T. Vol.1, p.1). Jean answered and filed a Cross Complaint on January 22, 2008. (T. Vol.1, p.1).

The matter was tried before the Chancery Court of Desoto County on March 30th 2009. (T. Vol. 2, p. 509). Corey was late due to illness, the Chancellor started the case without him and when Corey arrived he was not allowed to address the court. (T. Vol. 2, p. 509).

The Court rendered its opinion shortly after the speedy trial on March 30th 2009, awarding Jean a divorce from Corey on the grounds of habitual cruel and inhumane treatment. (T. Vol. 2, p. 509).

The Trial Court entered an Amended Order denying Corey Motion for a New Trial and/or Motion to Alter or Amend Judgment on October 22nd, 2009. (T. Vol. 3, p. 149). Corey timely perfected this appeal. (T. Vol. 6, p. 1).

STATEMENT OF THE FACTS

Corey and Jean were married on February 24th, 1996 in Memphis, Tennessee. (Id.) The couple resided together in Southaven, Mississippi, in Desoto County at the time of their separation in August 2007. (Id.) Corey filed the initial complaint for divorce on August 8th, 2007. (T. Vol. 1, p.1).

Three children were born to the marriage, Corey Lee II (age 13), Sir Newton Lee (age 11) Barbara Victoria Lee (age 9). (T. Vol. 4, p. 5). Both parties have worked throughout the marriage and at the time of the divorce Corey was employed by the Shelby County Health Care Corporation and Jean with the United States District Court both located in Memphis, Tennessee. (T. Vol.4, p. 5).

The trial court found there was sufficient evidence to grant Jean custody of the couple's three minor children. (T. Vol. 4, p. 25). Based upon Jean's testimony that the kids resided primarily with her and she was the major person for their care and nurturing over their lives. (T. Vol. 4, p. 5). No supporting documentation or evidence was submitted to the court to prove her claim.

Based on Jean's testimony, that she had concerns about the children being around other women, (T. Vol. 4, p. 20, 21) the trial court found there was sufficient evidence to enjoin either party from having the children overnight with a paramour or placing the children in any unwholesome environment. (T. Vol. 4, p. 26).

The trial court found there was sufficient evidence that Corey should pay \$2,181.36 a month to Jean in child support based on her testimony. (T. Vol. 4, p. 26).

Jean testified Corey makes \$101,922.00 per year from the Shelby County Health Care Corporation. (T. Vol. 4, p. 6). She testified that Corey makes \$1,000.00 per machine per month and that he has 70 machines, which would be \$70,000.00 a month and \$840,000.00 a year. (T.Vol. 4, p. 6, 7). She later testified that Corey makes at least \$50,000.00 gross per year from the machines. (T. Vol. 4, p. 7). Jean and her attorney prepared the document that was submitted as evidence to reflect child support payments in the amount of \$2,181.36 which was based on the Mississippi Child support guidelines. (See, e.g., Exhibits Vol. 4 Ex.1).

The Trial Court stated Ferguson V. Ferguson in determining marital property but did not give value to numerous marital assets and debt assignments. (T. Vol. 4, p. 28-30).

The following table lists the value that was assigned to marital assets and debts:

PROPERTY	VALUE
Marital Residence	\$250,000.00
Value of Lee Enterprises	Not assigned a value
Marital Home contents and furnishings	Not assigned a value
Vehicles	Not assigned a value
Jean Lee retirement account	\$25,000.00

Corey Lee retirement account	Not assigned a value
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DEBT	AMOUNT
Dentist Bill	\$935.00
Educational Service	\$20,000.00
Discover	\$6,843.35
Chase	\$3,200.00
Sears	\$1,139.99
Brian Edward	\$1,500.00
Wachovia	\$2,061.87
Sallie Mae (Debt Continue)	\$20,571.06
Educational Finances	\$2,058.70
Erwin Home Equity	\$28,0000.00
Lee Enterprises Debt	Amount not assigned
VISA	Amount not assigned.

Capital One	Amount not assigned.
Goodyear	Amount not assigned.
Macy's	Amount not assigned.
Debt to mother	Amount not assigned.

The trial court awarded Jean the marital home (\$90,000.00 equity) and furnishings, personal property, 2002 Jeep Cherokee, Glock pistol, jukebox, \$25,000.00 from her retirement, \$10,000.00 from Corey's retirement. For an estimated equity amount of \$135,000.00. (T. Vol. 4, p.27-30).

The trial court issued an order to make Mr. Lee pay private school tuition for his oldest son Corey of \$750.00 a month and monthly medical expenses for Jean. (T. Vol. 4, p. 31). The trial court awarded Jean all tax deductions and exemptions for the couple's three children. (T. Vol. 4, p. 31). The trial court awarded extra school expense and medical bills be paid on a 75 to 25 percent ratio with Mr. Lee paying the higher percentage. (T. Vol. 4, p. 26-27). The court ordered Mr. Lee to pay all college tuition for all of the children if they choose to go to college. (T. Vol. 4, p. 31).

The trial court awarded the following assets to Corey: Lee Enterprises (value not given), 1999 Lincoln Navigator (value not given), and own personal property (T. Vol. 4, p. 27-30). For a non-determined value.

The trial court determined Corey should pay \$92,309.90 of the marital debt and bills from his business, Firestone Financial (\$2,023 a month), and Touch Tone Music bill that was not listed. (T. Vol. 4, p. 27-30).

As discussed fully below, the evidence presented at trial did not support the trial court rulings and the court erred by not awarding an equitable distribution of property and assignment of debts. Accordingly, for the below reasons, Corey Lee Sr. requests this court to reverse the Trial Court's decisions.

STANDARD OF REVIEW

This Court employs a limited standard of review of property division and distribution in divorce cases. *Owen v. Owen*, 928 So. 2d 156,160 (Miss.2006). A Chancellors' decisions as to property distribution are upheld so long as it is supported by "substantial credible evidence." *Carrow v. Carrow*, 642 So. 2d 901, 904 (Miss. 1994).

However, such deference is not afforded to the Chancellor's conclusions of law. *Marshall v. Gipson Steel, Inc*, 806 So. 2d 266 (Miss. 2002). The Court reviews the Chancellor's interpretation and application of the law de novo. *Singley v. Singley*, 846 So. 2d 1004, 1006 (Miss. 2002).

This Court employs a limited standard review in child custody cases. *Mixon v. Mixon*, 724 So. 2d 956, 959 (8) (Miss. Ct App. 1998). However, "where the chancellor improperly considers and applies the Albright factors, an appellate court is obliged to find the chancellor in error." *Hollon v. Hollon*, 784 So. 2d 943, 346 (11) (Miss. 2001).

SUMMARY OF THE ARGUMENTS

Several errors require reversal of the Trial Court's decision in this case. First, the division of marital assets and debts were incorrectly calculated and there were multiple omissions on the type and amount of assets. For example, the trial court erred by not properly laying a foundation on what was marital property.

Next, the trial court committed manifest error by not assigning value to numerous assets such as Lee Enterprises, Corey's retirement account, household furnishings and other debts and assets.

Also, the trial court abused its discretion and committed manifest error by ordering Mr. Lee to pay \$10,000.00 from his retirement account to Mrs. Lee without determining the value of his retirement account. The trial court leaves Corey Sr. perplexed on how the marital estate was divided fairly if numerous assets and debts were not valued. The record is not clear and transparent for this court to make a decision and should be reversed and remanded to the Trial Court to consider all assets.

The Trial Court committed manifest error by not determining the correct amount of child support Mr. Lee should pay. The trial court relied solely on the incompetent and speculative testimony from Mrs. Lee as evidence and determined that Mr. Lee should pay \$2,181.36 a month. Mrs. Lee testified that Mr. Lee made \$1,000.00 a month on each of seventy machines (seventy thousand dollars a month). Then she testified that Mr. Lee grossed \$50,000.00 a year off the machines.

The trial court stated that it was guided by 43-19-101 of the Mississippi Code to establish the amount of child support. Under these guidelines 22 percent of Mr. Lee's adjusted gross income should have been used to calculate his child support obligations.

However, even with the \$50,000.00 of gross business income allowed into evidence Mr. Lee's adjusted gross income was not used in calculating his child support obligations. His business debts were acknowledged in Trial Court as; Lee Enterprises, Touch Tone Music and Capital One. It's clear the trial court was not guided by 43-19-101 of the Mississippi code and abused its discretion and committed manifest error by ordering Mr. Lee to pay an erroneous amount of child support and ordering him to pay health care for Mrs. Lee. This ruling would severely impact him financially. The child support obligations and health care coverage for Mrs. Lee should be reversed and remanded.

The trial court committed manifest error and abused its discretion by placing restrictions on Mr. Lee's visitation with his minor children. The trial court based its decision solely on the speculative testimony of Mrs. Lee. There was no evidence submitted to prove the children had been exposed to an unsafe environment or to

women that Mr. Lee was romantically involved with. The proper foundation was not laid to restrict Mr. Lee's visitation with his children. Thus, this Court should reverse this decision.

The trial court next erred in ordering Mr. Lee to pay private school tuition for his oldest son Corey as an extraordinary expense. It's well established by Mississippi case law that private school tuition is considered part of child support.

Finally, the Trial Court committed reversible error by awarding Mrs. Lee sole legal custody of the couple's three minor children. The proper foundation was not laid to determine if Mrs. Lee was more suitable than Mr. Lee to provide quality care for the children. There was no evidence or additional testimony from anyone in trial court to determine appropriate Albright factors. Thus, the Court should reverse the Trial Court ruling.

ARGUMENT I.

THE CHANCELLOR COMMITTED MANIFEST ERROR ON THE EQUITABLE DISTRIBUTION OF PROPERTY, DEBTS, AND TAX DEDUCTION ASSIGNMENTS.

A. The framework for equitable distribution.

The equitable distribution analysis involves the following steps: 1) classifying assets as either marital or separate; 2) valuation of the assets; 3) division of marital property equitably; 4) awarding alimony as needed following the division of marital assets. See, e.g. *Ferguson v. Ferguson*, 639 So. 2d 921, 925 (Miss.1994). The Supreme Court in *Ferguson* held that Chancery Courts look to the following factors in making an equitable division:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contributions are as follows:
 - a. Direct or indirect economic contributions to the acquisition of the property;
 - b. Contributions to the stability and harmony of the marital and family relationships as measured by quality; quantity of time spent on family duties and duration of the marriage; and
 - c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.
2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.
3. The market value and the emotional value of the assets subject to distribution.
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;
7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,

8. Any other factor which in equity should be considered.

B. Several errors require reversal of the Trial Court's decision in this case.

First, the Chancellor did not properly classify marital property. Equitable division of assets begins with the chancellor's classification of assets as marital versus non-marital. *Hemsley v. Hemsley*, 639 So. 2d 909, 914-15 (Miss. 1994).

Next, the Chancellor committed manifest error that requires reversal, because the valuation of assets was improperly done. The Chancellor did not assign value to numerous assets such as Lee Enterprises, Mr. Lee's retirement account, household furnishings and Mr. and Mrs. Lee's debts. Also, the Chancellor committed manifest error by awarding Mrs. Lee \$10,000.00 from Mr. Lee's retirement account without listing the amount Mr. Lee had in his retirement account. "The established precedent requires that all marital assets must be considered to reach an equitable division of those assets." *Hopkins v. Hopkins*, 703 So. 2d 849, 850 (¶7) (Miss. 1997).

The foundational step to make an equitable distribution of marital assets is to determine the value of those assets based on competent proof. *Dunaway v. Dunaway*, 749 So. 2d 1112, 1118 (¶14) (Miss. Ct. App. 1999) (citing *Ferguson*, 639 So. 2d at 929).

Next, the Chancellor orders Mr. Lee to pay half of Mrs. Lee's debt including money to her mother, Mrs. Miller, without listing the amount he would have to pay. Then the Chancellor awards Mrs. Lee all tax deductions for the couple's three children. The Trial Court leaves Mr. Lee perplexed on how the marital estate was divided fairly, if numerous assets and debts were not valued. The record is not clear and transparent for this court to make a decision and should be reversed and remanded to the Trial Court to consider all assets. See, *Ferguson v. Ferguson*, 639 So. 2d 921, 925 (Miss.1994).

ARGUMENT II.

THE CHANCELLOR COMMITTED MANIFEST ERROR ON THE AWARD OF CHILD SUPPORT AND SO EXCESSIVE AS TO CONSTITUTE AN ABUSE OF DISCRETION.

The Trial Court awarded an inappropriate amount of child support under Mississippi Code Annotated section 43-19-101. The guidelines provide that when three children are due support, 22% of the child support obligor's adjusted gross income should be awarded for child support. To determine adjusted gross income pursuant to the guidelines, the following legally mandated deductions must be subtracted from the obligor's gross income:

- (i) Federal, state and local taxes. Contribution to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

- (ii) Social security contributions;
- (iii) Retirement and disability contributions except any voluntary retirement and disability contributions.

Miss. Code Ann. 43-19-101

The Trial Court erroneously orders Mr. Lee to pay \$2,181.36 per month to Ms. Lee for support of the parties' three minor children. This was based upon the evidence that was submitted at the Trial Court and Mrs. Lee's speculative and inconsistent testimony.

First, Mrs. Lee claims Lee Enterprise grosses \$840,000.00 a year. Then, makes the assertion that Mr. Lee intentionally reduced his income in 2006 while the couple was married. Mrs. Lee offered no clear and convincing evidence to support her claims. She makes serious allegations against Mr. Lee but does not offer any proof to support her claims.

The Trial Court committed manifest reversible error and abused its discretion by allowing Mrs. Lee's speculative testimony and exhibit 1 that was marked into evidence. Clearly, the Trial Court did not follow the guidelines of 43-19-101 of the Mississippi Code. Under those guidelines 22 % of Mr. Lee's adjusted gross income was supposed to be used. The Trial Court did not establish Mr. Lee's adjusted gross income but stated it did. The Trial Court acknowledges that Lee Enterprises had business expenses. In a similar case, this Court reversed a Trial Court when an incorrect calculation was applied. See. Lee v. Stewart 724 So. 2d 1093, 1097 (¶9) (Miss 1998). This Court has stated that chancellors are afforded considerable discretion and his findings will not be

reversed unless he was manifestly in error or abused his discretion. *Lahmann v. Hallmon* 722 So. 2d 614, 618 (Miss 1998).

ARGUMENT III.

THE CHANCELLOR ERRED BY PLACING RESTRICTIONS ON MR. LEE'S VISITATION WITH HIS MINOR CHILDREN AND SO EXCESSIVE AS TO CONSTITUTE AN ABUSE OF DISCRETION.

The Trial Court committed reversible error and abused its discretion by entering an order concerning visitation which is inconsistent with the general Mississippi guidelines. The Trial Court issued an order stating Mr. Lee could not have overnight guests of the opposite sex whom he was romantically involved with when the children are in his custody.

There was no evidence presented to the Trial Court that Mr. Lee had the children around other women he was romantically involved with. Nor was it determined that the children were in an unsafe or unhealthy environment while they were with Mr. Lee.

This Court has held that "evidence must be presented that a particular restriction on visitation is necessary to avoid harm to the child before a chancellor may properly impose the restriction. Otherwise, the chancellor's imposition of a restriction on a non-custodial parent's visitation is manifest error and abuse of discretion". *Dunn v. Dunn*, 609 So. 2d 1277, 1286 (Miss.1992).

ARGUMENT IV.

THE CHANCELLOR ERRED BY REQUIRING MR. LEE TO PAY PRIVATE SCHOOL TUITION AND MRS. LEE'S HEALTH INSURANCE AS AN EXTRAORDINARY EXPENSE.

The Trial Court committed reversible error in ordering Mr. Lee to pay private school tuition for his oldest son, Corey, as an extraordinary expense. There was no evidence submitted on the cost and the agreement to send Corey Jr. to private school. The Supreme Court has held that private school tuition is part of child support. See *Mizell v. Mizell* 708 S0. 2d 55, 60 (Miss.1998).

Also, the trial court did not properly determine if Mr. Lee had the financial capacity to pay private school tuition and Mrs. Lee's health insurance as an extraordinary expense. Mr. Lee's adjusted gross income was not calculated correctly and the amount of financial debt he assumed is unknown. The Supreme Court has stated that even where parents agree to send children to private school, support awards made in consideration of this expense must also be reasonable in light of both parents' financial means. See *Cupit v. Cupit*, 559 So. 2d 1035, 1038 (Miss.1990).

ARGUMENT V.

**THE CHANCELLOR ERRED AS A MATTER OF LAW IN FAILING TO
ANALYZE AND MAKE APPROPRIATE FINDINGS AS TO EACH FACTOR
UNDER ALBRIGHT V. ALBRIGHT, 437 So. 2d 1003, 1005 (Miss. 1983);**

A. The framework for child custody.

The Albright case provides Mississippi courts with guidelines for determining the best placement of the child after custody disputes. These factors include:

- (1) age, health and sex of the child;
- (2) determination of the parent that had the continuity of care prior to the separation;
- (3) which has the best parenting skills and which has the willingness and capacity to provide primary child care;
- (4) the employment of the parent and responsibilities of that employment;
- (5) physical and mental health and age of the parents;
- (6) emotional ties of parent and child;
- (7) moral fitness of parents;
- (8) the home, school and community record of the child;
- (9) the preference by law;
- (10) stability of home environment and employment of each parent; and
- (11) other factors relevant to the parent-child relationship.

Albright, 437 So. 2d at 1005.

Marital fault should not be used as a sanction in the custody decision, nor should differences in religion, personal values and lifestyles be the sole basis for custody decisions. *Id.*

B. The Trial Court concluded, based on Mrs. Lee's testimony that the children resided primarily with her, that she be granted sole and legal custody of the children. The Trial Court did not address multiple Albright factors such as, the age of the children, which parent has the best parenting skills, physical and mental health and age of the parents, emotional ties of parent child.

Also, Mrs. Lee's claims were not substantiated by evidence or testimony from other witnesses at Trial Court. The Supreme Court has held that "In order to lend some degree of clarity to the chancellor's decision process and thereby make an appellate review as meaningful as possible .The chancellor should properly make findings of fact on the record as to the various factors under Albright v. Albright". See Sobieske v. Preslar, 755 So. 2d 410, 413 (¶12) (Miss. 2000). It is not enough for the chancellor to simply state that he considered these factors. Hamilton v. Hamilton, 755 So. 2d 528, 531 (¶10) (Miss. Ct. App. 1999).

CONCLUSION

The Trial Court committed manifest reversible error in: 1) determining the marital estate, debts and tax deductions were allocated fairly at trial although numerous assets and debts were not assigned value and awarding all tax deductions to Jean; 2) finding that child support guidelines under Mississippi Code Annotated section 43-19-101 were appropriately followed in awarding child support. However, the Trial Court failed to make the required findings of fact and conclusions of law in determining Mr. Lee's adjusted

gross income; 3) failing to make the required findings of fact and conclusions of law before placing restrictions on Mr. Lee's visitation with his children; 4) by requiring Mr. Lee to pay private school tuition and Mrs. Lee's health insurance as an extraordinary expense; 5) failing to list all the Albright factors before determining child custody.

Accordingly, the Trial Court did not conduct specific findings of fact and conclusions of law and for the above and foregoing reasons Appellant Corey T. Lee requests this Court to reverse the Chancery Court's decision and to remand these matters for further proceedings.

CERTIFICATE OF SERVICE

I, Corey T. Lee, Appellant in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of the Appellant's Brief to counsel of record and the Trial Court Judge by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

Charles Hodum

Attorney at Law

269 South Center Street

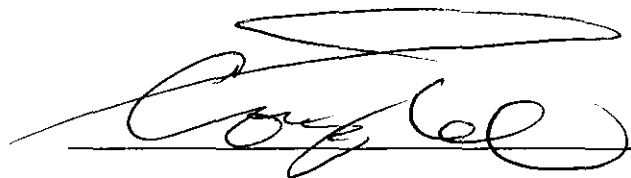
Collierville, Tennessee 38017

Hon. Percy Lynchard, Jr

P.O. Box 340

Hernando, MS 38632

This, the 5th day of April, 2010.

A handwritten signature in black ink, appearing to read 'Corey Lee', written over a horizontal line.

Corey T. Lee