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CERTIFICATE OF INTERESTED PERSONS

Case No. 2010-CA-00200

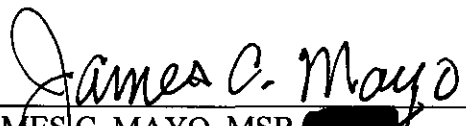
Lisa King Boyd

v.

Edward Matthew Boyd

The undersigned counsel of record certifies that the following listed persons have an interest in the out come of this case. These representations are made in order that justices of the Supreme Court are/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Lisa King Boyd - Appellant
2. Edward Matthew Boyd - Appellee
3. Fair & Mayo, Attorneys - Counsel for Appellant
4. Nettles & Rhea, Attorneys - Counsel for Appellee
5. Johnny Pope, Guardian ad Litem



JAMES C. MAYO, MSB [REDACTED]
Attorney of record for Lisa King Boyd

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ARGUMENT

ISSUE ONE:

THE TRIAL COURT ERRED IN GRANTING APPELLEE'S (MATT BOYD'S) MOTION TO DEEM ADMISSIONS ADMITTED AND OVERRULING APPELLANT'S (LISA BOYD'S) MOTION TO RECONSIDER; AND IN CONSIDERING THESE ADMISSIONS AS A MAJOR FACTOR IN THE AWARD OF CUSTODY

Matt Boyd erroneously argues that the April 1, 2009 "Second Agreed Scheduling Order"¹ (Trial Exhibits 41, RE 23) does not apply to his initial request for admissions; however the order itself recited:

".....that all responses to requests for admissions be submitted by each party to the other by July 1, 2009." (Trial Exhibits 41, RE 23)

However, Matt Boyd does concede that he was served with Lisa King Boyd's responses denying requests for admissions No.'s 2, 3, 4, 5, 7, 8, 9 and 10 within the longer time allowed² by the Court. MRCP R. 36 (The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the Court may allow....) (emphasis added). The April 1, 2009 Second Agreed Scheduling Order DOES NOT (emphasis added) exclude the initial requests for admission filed by Matt Boyd. The April 1, 2009 discovery order makes no mention of time as to prior or additional requests for admissions as argued by appellee; but clearly states that it applies to "all responses to requests for admissions." Given that the responses to the requests for admissions were timely served, the Court should not have considered the ten

¹All Counsel approved the extension.

²Lisa King Boyd timely filed her response on April 20, 2009 to the requests for admissions.

admissions in its custody determination. *Gilcrease v. Gilcrease*, 918 So. 2d 854 (Miss. Ct. App. 2005).

Moreover, the evidence introduced, including the Guardian ad Litem Reports and pleadings, contravene and deny those admissions. In addition, the evidence presented in open court was wholly insufficient, without the erroneous use of the admissions to award custody of the five children to Matt Boyd. Therefore, the Trial Court erred in deeming the requests admitted and using them in its application of the *Albright* factors in making the custody award of the five children to Matt Boyd.

ISSUE TWO

THE COURT ERRED IN REFUSING TO AWARD CUSTODY OF MARIAH BOYD, A CHILD OVER THE AGE OF TWELVE YEARS, WHO STATED A PREFERENCE TO LISA KING BOYD, APPELLANT

Prior to the trial on the merits, Mariah Boyd, age 14, filed a preference statement naming her preference as Lisa Boyd. Mariah is the biological child of Lisa King Boyd and the adoptive child of Matt Boyd. Though the Court granted the custody preference request of Cayla Boyd, it denied Mariah's preference request to live with her biological mother. In its opinion, the Court failed to follow the mandate of Miss. Code Ann. § 93-11-65 (2006), which requires the Chancellor to place in the record the reason or reasons why the wishes of any child were or were not honored. *See Polk v. Polk*, 589 So. 2d 123, 130 (Miss 1991). There are simply no facts contained in the record other than those showing that Lisa King Boyd is a fit mother for custody of all six daughters including Mariah. The Court erred in refusing Mariah Boyd's custody request and neither the Court in its opinion, nor Matt Boyd in his brief cited any reason why it is

in the best interest of Mariah to have custody of her awarded to Matt Boyd, over her preference for Lisa Boyd.

Moreover, the Court erred when it failed to place in the record the reason or reasons why the preference of Mariah was ignored. *Floyd v. Floyd*, 949 So. 2d 26 (Miss. 2007). It is well settled under Mississippi law that “when the chancellor denies a child his choice of custodial parent under § 93-11-65, then the chancellor must make on-the-record findings as to why the best interest of the child is not served.” *Id.* (quoting *Polk v. Polk*, 589 So. 2d 123, 130 (Miss. 1991)). Here, the Trial Court gave no valid reason in denying Mariah’s choice and certainly did not place in the record the reasons for ignoring her request. Thus, the Custody Award in regards to Mariah Boyd is due to be reversed.

ISSUE THREE

THE COURT ERRED IN ITS APPLICATION OF MISSISSIPPI CODE ANN. § 93-5-24 (9)(a)(I) AS IT PERTAINED TO THE AWARD OF CUSTODY OF THE FIVE YOUNGEST BOYD DAUGHTERS TO MATT BOYD, APPELLEE

The incidents of family violence, as set forth in the record, in Lisa Boyd’s Brief, and in the GAL Reports triggered Miss. Code Ann. § 93-5-24 (9)(a)(1). Moreover, the Court in its Opinion and Final Judgment Sua Sponte (TR 208 RE 88) found that the presumption had been raised when it opined:

“This Court finds that the presumption was triggered due to the tailbone accident where Matthew was in the kitchen disciplining Cayla and pushed Lisa into the dishwasher breaking her tailbone.”

However, the Court ignored the other incidents of family violence by Matt Boyd toward Lisa King Boyd and the children in awarding custody of the five minor children to Matt Boyd. The statutory presumption having been triggered both by the evidence, the Guardian ad Litem

Reports, and the Court on its own motion necessitates statutory compliance. Under the statute, the Court MUST by a preponderance of the evidence determine whether the presumption set forth in subsection (9) has been overcome. Miss. Code Ann. § 93-5-24 (9)(a)(I) (emphasis added). Here, the Court failed to consider all six of the factors outlined in the statute and make written findings to document how and why the presumption was overcome. *Lawrence v. Lawrence* 956 So. 2d 251 (Miss. App. 2006). The record is devoid of any such findings, and although he received counseling there is no evidence that Matt Boyd completed an anger management course as outlined in the statute. Thus, the Court failed in its statutory duty to make written findings as to why the presumption against awarding custody to the party perpetrating family violence was overcome when the Court awarded custody of the five children to Matt Boyd. Therefore, this custody award should be reversed.

ISSUE FOUR

THE COURT ERRED IN ITS APPLICATION OF THE ALBRIGHT FACTORS

The Court erred its application of the following factors outlined in *Albright v. Albright*, 437 So. 2d 1003 (Miss. 1993).

(2) Continuity of care prior to separation.

Here, the Court erroneously considered Request for Admission No. 7. Other than the Court's reliance on the admission, no facts exist in the record for the Court to have found that this factor favored Matthew Boyd. The record is clear that Matthew Boyd worked in Jackson and was frequently absent from the home. This factor should have favored Lisa Boyd.

(3) Parenting skills.

But for the Courts erroneous consideration of Requests For Admission No.8 and No. 10, this factor would have favored Lisa King Boyd. The Court ignored and failed to consider any of the numerous and frequent acts of Matt Boyd's violence toward his family in making this determination.

(7) Emotional ties of parent and child

The Court erred when it held this factor favored neither parent. The two oldest children, Cayla and Mariah, were adopted by Matt Boyd and the Guardian ad Litem noted in his report (TR Ex. 3 RE 101) that Mariah and Cayla had a close relationship with Lisa Boyd. This factor should have favored Lisa King Boyd.

(8) Moral fitness of the parent

But for its consideration of Requests For Admission No. 2, 3, 4, and 5 this factor would have favored Lisa King Boyd.

(10) Child preference

The Court admits this factor favors Lisa King Boyd as to Cayla and Mariah, but offered no findings as to why custody of Mariah was awarded to Matt Boyd.

But for the Court's misapplication of the *Albright* factors and reliance on the Request For Admission, a majority of the *Albright* factors clearly favor awarding custody of the children to Lisa King Boyd.

CONCLUSION

1. The trial Court erred in failing to honor its agreed April 1, 2009 Discovery Order as to Rule 36 deeming answers to requests for admissions admitted, when timely denials by Lisa

King Boyd were properly accomplished and applying said admissions in the award of custody and applying the admissions to the *Albright* Factors.

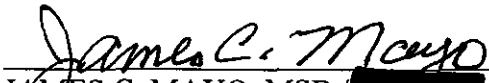
2. The Trial Court erred in failing to honor custody choice of Mariah Boyd, a child over the age of twelve (12) years and failed to give valid reasons for the denial.

3. The Trial Court erred in failing to properly apply Section 93-5-24 (9) in the custody award and to make written findings to document how and why the presumption was or was not triggered.

4. The Trial Court erred in improper application of the law and *Albright* Factors in awarding custody of the five (5) youngest girls to Matt Boyd.

This Court should reverse and render on the custody issue awarding all five (5) youngest girls to Lisa King Boyd and remand for further consideration the issue as to child support, visitation, tax deductions and all issues related to custody adjudicated by the Court; and/or reverse and render or remand on the custody preference issue of Mariah Boyd, render, reverse or remand on the statutory issues of Section 93-5-24 (9) and all issues related thereto; and finally reverse and render, or remand on the application issue of the *Albright* Factors and award custody of all six (6) girls to Lisa King Boyd and amend and resolve accordingly visitation, child support, tax deductions and all issues related to the proper custody award.

Respectfully submitted,


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CERTIFICATE OF SERVICE

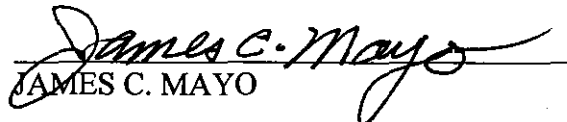
I hereby certify that I have mailed a copy of the above and foregoing document upon all counsel of record in this cause, by United States mail postage prepaid, to their office addressed, as shown below on February 17, 2011.

Judge Cynthia Brewer
Chancellor
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This, the 17 day of February, 2011.


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