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CERTIFICATE OF INTERESTED PERSONS

Case No. 2010-CA-00200

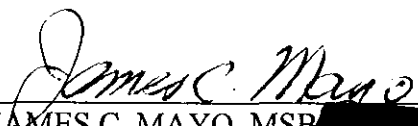
Lisa King Boyd

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

STATEMENT REGARDING ORAL ARGUMENT

Oral argument should be allowed because this case contains serious statutory and legal questions involving the refusal of the Court to properly apply the Albright Factors; misapplication of the Guardian ad Litem's reports and the errors contained therein; the custody award of five of six daughters to the Appellee, Matt Boyd; refusal by the lower Court to honor its own discovery order, deeming request for admissions admitted when denials were timely filed; improper consideration and application of Rule 36 M.R.C.P., and using such matters (though denied) in the custody award; refusal of the Court to honor a custody choice by a child over the age of twelve years and failure to give valid reasons for the Court's refusal; and failure to apply and properly interpret the spousal and child abuse statute, Miss. Code § 93-5-24 (9), in the award of custody.

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STATEMENT OF THE ISSUES

The issues before this Court are 1) deeming the requests for admissions admitted when the responses to those requests were timely filed pursuant to the lower Court's order, the subsequent improper consideration and application of Rule 36 M.R.C.P., and using such admissions in the custody award; 2) refusal of the Chancellor to honor a custody choice by a child over the age of twelve years, Mariah Danielle Boyd, and failure to give valid reasons for the refusal; 3) whether the Chancellor improperly applied the Albright factors to award of custody of five of the six daughters to Matt Boyd, as the award was against the overwhelming weight of the evidence; and 4) failure to properly apply and interpret the child and spousal abuse statute, Miss. Code Ann. § 93-5-24 (9), in the award of custody.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Lisa Boyd initiated this cause of action by filing her Complaint for Divorce, Custody and Other Relief against Matt Boyd in the Chancery Court of Leake County, Mississippi, on December 13, 2007.

B. COURSE OF THE PROCEEDINGS

The lower Court approved and agreed to a Temporary Order on December 19, 2007, which created alternating weeks of custody for the six daughters of the marriage, namely; Cayla Delaine Boyd, born June 6, 1990; Mariah Daniele Boyd, born May 11, 1995; Megan Ashley Boyd, born March 20, 1999; Margaret Ellen Recie Boyd, born June 30, 2001; Madeline Lisa Boyd, born June 22, 2003; and Emily Anna Boyd, born June 22, 2003; and other relief. The Order was also approved by Johnny W. Pope, Guardian ad Litem. This custody order remained in force and effect for more than two years until the final order of the Court dated January 5, 2010.

During the litigation, Johnny W. Pope, Guardian ad Litem filed four reports, dated January 2, 2008; August 27, 2008; August 27, 2009; and November 16, 2009.

Matt Boyd Answered and Counter-Claimed for Divorce, Custody and Other Relief on April 16, 2008. Lisa Boyd Answered the Counter-Claim on April 20, 2009. During the course of the litigation, each party propounded discovery, interrogatories, requests for production, and requests for admission.

The Second Agreed Scheduling Order was entered by the Court on April 1, 2009, allowing Lisa Boyd until July 1, 2009 to respond to Matt Boyd's request for admissions. On

April 20, 2009, Lisa Boyd timely filed her Answer to Requests for Admission, which was within the time allowed by the Second Agreed Scheduling Order.

Matt Boyd filed his Motion to Deem Matters Admitted on August 21, 2009, even though pursuant to the Second Agreed Scheduling Order, Lisa Boyd had timely responded to the requests for admission. Lisa Boyd subsequently filed a Motion to Reconsider advising the Court that she timely responded to the requests for admission. This Motion was denied on November 18, 2009.

Cayla Delaine Boyd, born June 6, 1990; and Mariah Daniele Boyd, born May 11, 1995, both being over the age of twelve years, filed a Statement and Affirmation of Preference on November 17, 2009, designating their mother, Lisa Boyd, as their choice for custodial parent.

The Court entered an Agreed Order filed November 18, 2009 allowing withdrawal of the adversarial pleadings. On November 18, 2009, Parties filed a Joint Stipulation-Irreconcilable Differences resolving the issues contained therein and submitted the following disputed issues to the Court:

1. Custody and visitation with the minor children of the parties namely, Megan Ashley Boyd, Margaret Ellen Recie Boyd, Madeline Lisa Boyd, Emily Anna Boyd, Cayla Delaine Boyd, and Mariah Danielle Boyd.
2. Amount of Child Support to be paid by the non-custodial parent.
3. Which party shall claim the children as a tax deduction on their Federal and State income tax.
4. Which party shall provide a policy of health insurance on the minor children.
5. Which party shall have the exclusive use of and ownership of the 1998 Chevrolet

Z071 truck, the 2001 GMC Yukon and the 2005 Nissan Centra.

6. Which party shall be responsible for the Guardian ad Litem fees.

On November 18, 2009, the Cause on the remaining issues was tried in the Chancery Court of Leake County, Mississippi, and on January 5, 2010, the Court entered its Opinion and Final Judgment from which Lisa Boyd appeals.

C. DISPOSITION OF THE COURT BELOW

On January 5, 2010, the Court entered its Opinion and Final Judgment on the remaining issues, awarding custody of Cayla Delaine Boyd, born June 6, 1990, to Lisa Boyd; and awarded custody of Mariah Daniele Boyd, born May 11, 1995; Megan Ashley Boyd, born March 20, 1999; Margaret Ellen Recie Boyd, born June 30, 2001; Madeline Lisa Boyd, born June 22, 2003; and Emily Anna Boyd, born June 22, 2003 to Matt Boyd, and adjudicated other remaining issues, visitation, child support, vehicle ownership, Guardian ad Litem fees, and other relief and granted the divorce on the grounds of Irreconcilable Differences and approved the Stipulation and resolution of issues agreed upon.

D. STATEMENT OF THE FACTS

On December 13, 2007, Lisa Boyd, filed her Complaint for Divorce in the Chancery Court of Leake County, Mississippi, against Matt Boyd. (Trial Exhibits 2 , RE 3) The parties have six daughters Cayla Delaine Boyd, born June 6, 1990; Mariah Danielle Boyd, born May 11, 1995 (Cayla and Mariah, being adopted by Appellee); Megan Ashley Boyd, born March 20, 1999, Margaret Ellen Recie Boyd, born June 30, 2001; Madeline Lisa Boyd, born June 22, 2003; and Emily Anna Boyd, born June 22, 2003. (Trial Exhibits 2, 3 , RE 3, 4)

On December 19, 2007, the lower Court entered a Temporary Order ordered custody to

alternate on a weekly basis between Lisa Boyd and Matt Boyd pending further Order of the Court. (Trial Exhibits 8, RE 9) The week on week off alternating custody award by the Court continued for two years until January 5, 2010, when the final judgment was entered. (Trial Exhibits 200, RE 80)

This week on week off custody arrangement of the six daughters was approved by the Parties, the Guardian ad Litem, and the Court. (Trial Exhibits 8, RE 9) Matt Boyd answered and Counter-Claimed for Divorce and Other Relief. Both parties propounded discovery. On April 1, 2009, by agreement of the Parties, the Court entered a Second Agreed Scheduling Order which indicated, among other things, [t]hat all requests for admissions, interrogatories, written depositions and request for production of documents be submitted by each party to the other by July 1, 2009. (Trial Exhibits 41, RE 23)

On April 20, 2009, Lisa Boyd responded to Matt Boyd's discovery, which included the following responses to the ten requests for admission:

1. Admit that you and the Defendant/Counter Plaintiff, Edward Matthew Boyd were married on or about August 7, 1998.
Plaintiff admits paragraph 1.
2. Admit that you have been guilty of habitual cruel and inhuman treatment toward Defendant/Counter Plaintiff, Edward Matthew Boyd.
Plaintiff denies paragraph 2.
3. Admit that the habitual and inhuman treatment by you caused the separation on or about the 13th day of December, 2007, in Leake County, Mississippi.
Plaintiff denies paragraph 3.
4. Admit that while you have been married to the Defendant/Counter Plaintiff, Edward Matthew Boyd, you committed adultery.
Plaintiff denies paragraph 4.

5. Admit that you have been married to the Defendant/Counter Plaintiff, Edward Matthew Boyd, the adultery caused the separation of the parties herein, on or about the 13th day of December, 2007.
Plaintiff denies paragraph 5.
6. Admit that you have taken Ritalin or similar drug that was prescribed for one of your children during the marriage.
I have been tested and diagnosed with ADHD. Prescribed medicines including Concerta and Ritalin. Matt has taken these medicines, which he refers to as "focusin' drugs" on several occasions (while driving long distances etc) although he has never been prescribed these meds.
7. Admit that Edward Matthew Boyd has been the primary care giver for said children prior to the separation of the parties herein, on or about the 13th day of December, 2007.
Plaintiff denies paragraph 7.
8. Admit that Edward Matthew Boyd's mother delivered and picked up the children from school, daycare and church due to you not being dependable.
Plaintiff denies paragraph 8.
9. Admit that the children request that Edward Matthew Boyd deliver the children to school due to the Plaintiff/Counter Defendant not being able to have the children delivered on time.
Girls have asked that Matt take them to school on occasion. I have been late more often than Matt. There was a bus that came right by our house, but Matt refused to let the children ride it. It was the Mt. Charity bus.
10. Admit that you did not consult with Edward Matthew Boyd in your decision to have the children receive the Gardasil HPV Vaccine.
Plaintiff denies paragraph 10.

(Trial Exhibits 156, RE 63)

On August 21, 2009, Matt Boyd filed a Motion to Deem Matters Admitted. (Trial Exhibits 138, RE 52) On November 17, 2009, Cayla Delaine Boyd and Mariah Danielle Boyd each filed a sworn Statement of Preference for Custodial Parent, naming their mother, Lisa Boyd, as the preferential parent. (Trial Exhibits 152, 153, RE 59, 60)

5. Admit that you have been married to the Defendant/Counter Plaintiff, Edward Matthew Boyd, the adultery caused the separation of the parties herein, on or about the 13th day of December, 2007.
Plaintiff denies paragraph 5.
6. Admit that you have taken Ritalin or similar drug that was prescribed for one of your children during the marriage.
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Plaintiff denies paragraph 7.
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Plaintiff denies paragraph 10.

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At the beginning of the trial, the Court granted Matt Boyd's Motion to Deem Matters Admitted (Trial Exhibits 152, 153, RE 59, 60) over the objection of counsel for Lisa Boyd. During the trial on November 18, 2009, Lisa Boyd filed a Motion to Reconsider on Deeming Request for Admission Admitted, attaching the answers timely filed on April 17, 2009, which were filed during the time permitted by the Court pursuant to the agreement of the parties. (Trial Exhibits 154 - 160, RE 61-67) The Court denied the Motion on November 18, 2009. (Trial Exhibits 172, RE 79)

On November 17, 2009, prior to the start of the trial, the Parties jointly moved to Amend the Complaint and Counter-claim and to enter a stipulation indicating that they agreed to a Divorce on Irreconcilable Differences. (Trial Exhibits 161, RE 68) The Court granted the Motion to Amend, and a Joint Stipulation was filed submitting the following issues to the Court:

1. Custody and visitation with the minor children of the parties namely, Megan Ashley Boyd, Margaret Ellen Recie Boyd, Madeline Lisa Boyd, Emily Anna Boyd, Cayla Delaine Boyd, and Marian Danielle Boyd.
2. Amount of Child Support to be paid by the non-custodial parent.
3. Which party shall claim the children as a tax deduction on their Federal and State income tax.
4. Which party shall provide a policy of health insurance on the minor children.
5. Which party shall have the exclusive use of and ownership of the 1998 Chevrolet Z071 truck, the 2001 GMC Yukon and the 2005 Nissan Centra.
6. Which party shall be responsible for the Guardian ad Litem fees.

(Trial Exhibits 165-171, RE 72-78)

The Court entered its Opinion and Final Judgment on January 6, 2010, awarding custody of Cayla Boyd to Lisa Boyd; and custody of Mariah, Megan, Margaret, Madeline and Emily to Matt Boyd. (TR 200-214, RE 80-94) The Court also adjudicated other issues of visitation, child support, tax deductions, health insurance, vehicle ownership, Guardian ad Litem fees, and approved the settlement resolution. (TR 200-214, RE 80-94)

During the course of the litigation, four Guardian ad Litem reports were filed by Johnny W. Pope. The Preliminary, Second and Supplemental Guardian ad Litem Reports, dated January 2, 2008, August 27, 2008, and August 25, 2009 respectively, all suggested that the week on week off custody arraignment continue (Trial Exhibit 3 , RE 95-135); and Addendum to Guardian ad Litem Supplement, dated November 16, 2009 states that Appellee's "NEW house is more than adequate." (Trial Exhibit 3, RE 136-137) Emphasis added

SUMMARY OF THE ARGUMENT

The Court erred in granting Matt Boyd's Motion to Deem Request for Admissions admitted. Although filed more than thirty days after service, the responses to the Requests For Admissions were filed within the time allowed by the Court, as allowed by Rule 36. Furthermore, the Court erred in considering these admissions in awarding custody of the five minor girls to their father.

The Court and the Guardian ad Litem misapplied the Albright factors, and after two years of a week on week off custody arrangement approved by the Court, the Court awarded custody of the five minor daughters to Matt Boyd.

The Court erred in refusing to honor a custody choice by a child over the age of twelve

years (Mariah), and neither the Court nor the Guardian ad Litem gave valid reasons, as required by law, for the denial.

The Court failed to apply Miss. Code Ann. § 93-5-24 (9), The Child and Spousal Abuse Statute, to the credible evidence presented in the trial of a history of spousal abuse thus creating a rebuttable presumption that custody of the five minor children should not be awarded to Matt Boyd. Moreover, in awarding custody of the five minor daughters to Matt Boyd in spite of the rebuttable presumption, the Court erred by failing to cite valid reasons for this decision in the record, as required by § 93-5-24 (9).

The Court and Guardian ad Litem ignored the Albright factors in their award and recommendations concerning the five minor children. The Guardian ad Litem gave no credible information to the Court that would support the award of custody of the five minor children to Matt Boyd. This ruling by the Court was against the overwhelming weight of the evidence and evinces error, misapplication of the law and not in the “polestar” best interest of the children.

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

On April 1, 2009, the lower Court entered an agreed order entitled “Second Agreed Scheduling Order” which in part stated the following:

It is further ordered and adjudicated that all responses to requests for admissions, interrogatories, written deposition, and request for production of documents be submitted by each party to the other by **July 1, 2009**. (Trial Exhibits 41, RE 23) (emphasis added)

years (Mariah), and neither the Court nor the Guardian ad Litem gave valid reasons, as required by law, for the denial.

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On April 20, 2009, two months before the deadline established by the Court's Order, Lisa Boyd filed responses to the Requests for Admission. (Trial Exhibits 68-106 , RE 28-51). Although the responses were filed greater than thirty days after the requests were served, the responses were filed within the time allowed by the Second Agreed Scheduling Order. Miss. R. Civ. P. 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). Since the responses were timely filed, the Court erred by deeming the requests for admission admitted.

More importantly, the Court relied on the admissions in awarding custody of the five minor children to Matt Boyd. In its custody award, the trial Court recited the procedural history, including the deeming request for admissions admitted as stated , "[t]herefore, this Court will consider each of the ten (10) admissions along with all other evidence presented...." (Trial Exhibits 106, RE 51) The Court erred in considering these admissions.

Throughout the Trial Court's Final Order it discusses the admissions. For example, in discussing the relative parenting skills of both parties, the trial court referenced that Lisa Boyd admitted Matt Boyd's mother had to transport children. (TR200, RE 80) In addition, in the Court's discussion of the parties relative moral fitness, the court again relies on Lisa Boyd's purported admission that she "admitted committing adultery and being guilty of habitual cruel and inhuman treatment toward Matthew which led to the parties separation." (TR 200, RE 80) The overwhelming weight of the evidence, the denial by Appellant to the Counter Claim, her timely responses to the admission requests, testimony by all witnesses, all Guardian ad Litem reports, lack of any response or date of adultery or habitual cruel and inhuman treatment in Appellee's response to discovery, overwhelmingly disputes the trial Court's finding on the moral

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fitness issue.¹

Under Mississippi law, “ matters of discovery are left to the sound discretion of the trial Court and discovery orders will not be disturbed unless there has been an abuse of discretion.” *Hamby v. Leverock*, 23 So. 2d 424, 432 (Miss. 2009) (quoting *Scoggins v. Baptist Mem’l Hosp. - DeSoto*, 967 So. 2d 646, 648 (Miss 2001)). Although Rule 36 is to be applied as written, “it is not intended to be applied in Draconian fashion....The rule was intended to be used as a means to determine which facts are not in dispute, not as a way to avoid adjudication of contested issues.” *Hamby*, 967 So. 2d at 432-33.

In *Hamby*, the Court relied on the Mississippi Court of Appeals decision in *Gilcrease v. Gilcrease*, 918 So. 2d 854 (Miss. Ct. App. 2005), which addressed the issue of using admissions in a child custody case. In *Gilcrease*, the trial court deemed the admissions admitted but ignored them in deciding the custody issue. *Id.* at 857-58. The Court of Appeals affirmed the decision finding that the chancellor acted properly as custody is a “judicial, not an evidentiary, determination.” *Id.* at 858-59. The court further stated that the chancellor's “actions were manifestly appropriate, as the folly of allowing child custody cases to be determined by admission is self-evident.” *Id.* at 859. The *Gilcrease* Court further warned that “[n]o right-minded chancellor should ever allow the custody of a child to be determined, in light of the

¹Interesting to note that even the Guardian ad Litem in his third (3) report, August 25, 2009, recited:

“I have not been apprised that either parent has been involved in an extra marital affair.” (TRIAL EXHIBITS 3, RE 99-122)

The Guardian ad Litem reports, four (4), recite his version of events occurring during the marriage, which are contrary to the Courts deeming requests admitted and the finding thereon.

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possible dire consequences to the child, based upon a Rule 36 admission.” *Id.*

Here, the Chancellor erred in using the admissions in the analysis of the *Albright* factors. The “polestar” consideration is the best interest of the child, and as the Gilcrease Court warned, the consequences to the child are too great to rely on admissions (especially disputed admissions) when determining the best interests of the child. Here, an analysis of the *Albright* factors that properly ignores the admissions weighs in favor of granting custody of the five minor children to Lisa Boyd, and the chancellor erred in using the admissions to award custody 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

Mariah Boyd, age fourteen, filed a preference statement on November 17, 2009, choosing her mother, Lisa Boyd. (TR 153, RE 60)² At the trial, Mariah Boyd testified in support of her statutory preference statement. (TR 109-110, RE 157-158) On cross examination, she revealed nothing that would support a denial of her choice. Furthermore, the Guardian ad Litem in his testimony at trial and in his four reports offered no valid reason for denying the statutory custody preference request of Mariah Boyd. (Trial Exhibit 3, RE 95-136) At trial, the Guardian ad Litem made only a casual inquiry of Mariah as to her preference choice and seemed aggravated upon discovery of her filing a preference statement, which by statute was Mariah’s right. (TR 398, 400, RE 214-215) Moreover, no testimony was introduced at trial which would negate Mariah’s

² Although the preference was not filed until the eve of the trial, the Guardian ad Litem filed a report on August 15, 2009, three months before the trial, indicating that “Mariah [Boyd] expressed an interest to live with Lisa [Boyd] several months ago.” (Exhibit 3, RE 123-135).

preference choice.

In evaluating the Albright child preference factor, the lower Court stated that Cayla and Mariah chose Lisa as the parent they prefer to live with on a full time basis. (Trial Exhibit 200-214, RE 80-94) This factor favored Lisa as it applies to Cayla and Mariah. (Trial Exhibit 207, RE 87) In its final order, the Chancery Court did not state in detail or make on the record findings as to why the best interest of Mariah Boyd was better served by ignoring her preference for custodial parent. (TR 200, RE 80)

Although the chancellor is not bound by the election of a minor child, if a chancellor refuses to follow a child's election, pursuant to Miss. Code Ann. § 93-11-65 (2006), the chancellor must place into the record the reasons for the refusal. *Floyd v. Floyd*, 949 So. 2d 26 (Miss. 2007) (citing Miss. Code Ann. § 93-11-65 (2006)). The pertinent portion of the statute states:

[I]f the court shall find that both parties are fit and proper persons to have custody of the children, and that either party is able to adequately provide for the care and maintenance of the children, the chancellor may consider the preference of a child of twelve (12) years of age or older as to the parent with whom the child would prefer to live in determining what would be in the best interest and welfare of the child. The chancellor shall place on the record the reason or reasons for which the award of custody was made and explain in detail why the wishes of any child were or were not honored. (Emphasis added).

Id. at 30. Thus, 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)).

The ultimate issue is the best interest of the child. When questioned at trial, the Guardian ad Litem testified that Lisa Boyd was a good mother.

Q. There is nothing in your report that really says Lisa is an unfit mother.

A. No sir, I've never said Lisa was an unfit mother." (TR 400, RE 215)

The Guardian ad Litem further testified as follows regarding Mariah Boyd's preference

"Q. As far as Mariah with much closer ties to Lisa there's been no change in that.

A. No, Sir.

Q. and that still exist today.

A. Yes, Sir, in my opinion."(TR 398, RE 214)

The lower Court honored the preference request of Cayla Boyd but denied that of Mariah Boyd without reason. In the case of *Phillips v. Phillips*, 2008-CA-02019-COA (Miss. Ct. App. 2010), the Court stated:

The applicable statute, Mississippi Code Annotated section 93-11-65(1)(a) (Supp. 2006), states The chancellor *may consider* the preference of a child of twelve (12) years of age or older as to the parent with whom the child would prefer to live in determining what would be in the best interest and welfare of the child. The chancellor shall place on the record the reason or reasons for which the award of custody was made and explain in detail why the wishes of any child were or were not honored.

Id. See also, Formigoni v. Formigoni, 733 So. 2d 868 (Miss. App. 1999).

Here, the Chancery Court gave no valid reason in denying Mariah's choice and did not place in the record the reasons for ignoring her request. For this reason alone, the custody award in regards to Mariah Boyd is due to be reversed.

ISSUE THREE

THE COURT ERRED IN MISAPPLICATION OF MISSISSIPPI CODE SECTION 93-5-24 (9)(a)(I) AS IT PERTAINED TO THE AWARD OF CUSTODY OF THE FIVE YOUNGEST BOYD DAUGHTERS TO APPELLEE

Miss Code Ann. § 93-5-24 (9)(a)(I) in part states:

(9)(a)(I) In every proceeding where the custody of a child is in dispute, there shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody of a parent who has a history perpetrating family violence. The court may find a history of perpetrating family violence if the court finds, by a preponderance of the evidence, one (1) incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the allegation or a family household member of either party. The court shall make written findings to document how and why the presumption was or was not triggered.

(ii) This presumption may only be rebutted by a preponderance of the evidence.

(iii) In determining whether the presumption set forth in subsection (9) has been overcome, the court shall consider all of the following factors:

1. Whether the perpetrator of family violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child because of other parent's absence, mental illness, substance abuse or such other circumstances which affect the best interest of the child or children;
2. Whether the perpetrator has successfully completed a batterer's treatment program;
3. Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate;
4. Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate;
5. If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has completed with its terms and conditions; and

6. Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(iv) The Court shall make written findings to document how and why the presumption was or was not rebutted.

(b) (I) If custody is awarded to a suitable third person, it shall not be until the natural grandparents of the child have been excluded and such person shall not allow access to a violent parent except as ordered by the court.

(ii) If the court finds that both parents have a history of perpetrating family violence, but the court finds that parental custody would be in the best interest of the child, custody may be awarded solely to the parent less like to continue to perpetrate family violence. In such case the court may mandate completion of a treatment program by the custodial parent.

Here there was credible evidence at trial regarding a history of family abuse committed by Matt Boyd. For example, the four Guardian ad Litem reports outline a history of physical family violence perpetrated against Lisa Boyd and the children by Matt Boyd. (Trial Exhibits 3, RE 95-137) The Guardian ad Litem Report, dated August 27, 2008, noted the following incidents of Matt Boyd's domestic violence:

There was a situation in Florida when Cayla was ten that Cayla got mud on the patio and Matt **grabbed her by the neck** and made her face the mud meanwhile yelling at her not to do it again. When Lisa saw what was going on he closed the sliding glass door and would not let her come out.

When Lisa was pregnant with the twins when they lived in Madison, Matt got mad and locked them in a bedroom. As shared in different ways by Lisa, Cayla, Mariah and Megan.

When living in 'too' small house on Singleton Road Cayla dyed her hair and it turned orange and he grabbed scissors and **shoved her head into wall and threatened to cut her hair off** because of the dye. She had to wash it out.

Upon returning from a visit with Lisa's parents in Oklahoma, Matt, Lisa and Cayla were getting things out of the vehicle and Cayla went and laid down on the bed. Matt got mad at Cayla and **grabbed her by the neck and put her head against the wall**. Lisa upon seeing it confronted Matt and **he threw Lisa into the**

dishwasher and hurt/broke her hip.

There was an occasion when Matt came in and the dishes were a mess and he **grabbed some of the dishes and threw them across the counter breaking them and he hit the cabinet with a broom stick.** When Cayla confronted about dishes he said they were his damn dishes and he can break them.

A few days prior to the separation Matt was asleep on the couch about one in the morning and Lisa awoke him and **he got angry at her and left marks on her.** Related by Lisa and Cayla with pictures.

Matt's use of alcohol tended to be a concern for some of the children. Some said he drank a lot and he was nicer when he didn't drink. Megan, Mariah, Cayla and Lisa shared this.

All the children said Matt screamed a lot.

Matt confirmed that Lisa did get hurt when she fell into the dishwasher when he pushed her off his back after she had jumped on his back when he was questioning Cayla as to why she failed to do as she was told. He also confirmed the breaking of the dishes and showed me the dent in the cabinet. I did have opportunity to see pictures of the incident prior to the separation. Matt did admit to drinking some alcohol but did not realize it was a problem."

Matt's anger issue has been a major problem within this family and needs to be addressed....

An issue which must be addressed is the alleged domestic violence perpetrated by Matt upon Lisa as set forth in Section 93-5-24 (9) of Mississippi Code of 1972 as amended. Matt has not been charged with domestic violence nor has he been convicted of it. It is not for me to say he would or would not have been convicted had a charge been filed. The main issue is the frequency of the alleged abuse and who was present.

The last episode which occurred just prior to the separation was only witnessed by Matt and Lisa. Cayla heard something but did not see anything happen. She did see Lisa shortly after the incident and witnessed marks and took pictures of the marks.

The incident which resulted in Lisa suffering an injury to her hip was witnessed by Cayla. There appeared to be more than a year's time separation between these incidents. In both incidents Lisa interfered with something Matt was doing. Did her interference justify the results suffered by Lisa? No.

There are other incidents of pushing and locking doors which did occur in the presence of some of the other children. These happened over the past several years. I am not aware that Matt has sought any counseling for his temper. It appears that much of his temper issues stem from his frustration with Lisa's failure to handle domestic responsibility.

The alleged abuse is not an isolated incident. However, the incidents took place over a number of years.

There was only one incident that resulted in serious injury and it happened about -- years ago. The incident could also have been ruled an accident in much the same way it could be declared to be an act of domestic violence.

(Trial Exhibit 3, RE 99)

The following is from the Guardian ad Litem Supplement, dated August 25, 2009,

Matt displayed much anger/frustration prior to the separation. He was known to rant and rave regularly about the house.

Matt's big issue was anger.

His disposition sometimes comes off as abrasive and mean.

(Trial Exhibit 3, RE 123)

Also, introduced at trial were Trial Exhibits No. 7 showing bruise marks administered by Matt Boyd to the children. (Trial Exhibits 7, RE 138) Lisa Boyd also testified to the family violence perpetrated by Matt Boyd. (TR 183, RE 181)

Q. Tell me: What was the tailbone incident? Would you tell the Court what happened?

A. Uh-huh (affirmative response). That was an incident where Cayla -- it was --

Q. Was it before the separation?

A. It was before the separation.. It was about --

Q. And where did it take place?

A. At 280 Barnes Road.

Q. Okay.

A. We were in the house at Barnes Road, and it was about August or September of '07. Cayla had on a dress. She was starting to go outside. And Matt had been in a rage. He was working himself up, and Cayla – he stopped her, and he said 'Are you just trying to show your boobs? Are you trying to make your boobs look bigger?' And she said, 'No.' And that was a common theme. And he said, 'Well, they're falling out,' and he started touching her, and he started grabbing her.

And I was in the kitchen as well and told him to leave her alone, that she was fine. And he got very enraged, and he grabbed her arm and started pushing, saying, 'She looks like a whore. She's dressed like a slut.' And I told him to stop and leave her alone, and when I did he grabbed her by the neck and put her against the wall and reached under her dress and grabbed her crotch and started shaking and said, 'This – this is all they want. This is all a boy wants. All they're doing is crawling after you, smelling' – I don't know the word. It was a nasty word. I believe the word was cunt – smelling like animal type. And he grabbed her crotch and held her by the neck and was shaking her and said, 'This is all the boys want.'

And when he did that I pushed him and told him to stop. So he turned around and told me to get off of him. He brought Cayla around to the countertop. It was against the wall. We have a counter that moves this way (indicating). He brought her over to the countertop and had a hold of her neck and leaned her over backwards like this (indicating) over the counter and was choking her and was looking for something. He said her was going to spank her.

I told him to let go, and he was still holding her and she was leaned over backwards. And I was trying to fight with him at this point to get him off, and I reached around him and grabbed his arm, trying to break and hold on Cayla, and when I did he let go of her, turned to me and grabbed me and picked me up and shoved me. And when he did I fell and hit the dishwasher, staying there for just a few minutes, and it injured by tailbone. (TR 183-184, RE 181-182)

Lisa Boyd further testified to the following instance of abuse by Matt Boyd toward Emily Boyd.

"A. The first three pictures are of Emily. She is one of the twins. This was taken at our house in Singleton. Emily has the marks on her legs in the

shape of a fly swatter where she had received a spanking from a fly swatter from Matt. When I confronted Matt about this and asked him if he had seen it, he said, 'Oh. Well, the fly swatter was broken.'

Q. Now, on to the other pictures.

A. Okay. This picture – these three pictures are of Emily, again, our six-year-old. This was taken at my rental house, and they are pictures of Emily's bottom and sunburn when she came home with bruises on her bottom. The next pictures of – three that are of Emily – they were taken at my rental house when they came home after being at Matt's house, and they had these bruises on their legs. The last two are of Margaret. She is my eight-year-old, and these are pictures during the same time, same day, and she had bruises that are in the shape of a strap.

(TR 195, RE193)

Lisa Boyd also testified regarding the following incident that occurred on September 19, 2008 at Carthage Elementary:

A. Okay. It happened at Carthage Elementary School in the back parking lot. It was Matt was picking the girls up from Boys and Girls Club where I volunteer, and I had the girls for him to pick up. We had gone into the parking lot to exchange, and I was getting some stuff out of the Yukon, and I opened the trunk to put Candace – who was present was Matt and myself, Mariah, Megan, Margaret, Madeline, Emily and Candace, Mariah's friend. She was starting to get her stuff out of the back, and I opened the trunk of the car so she could put it into the trunk of the Nissan. And when I did there was a box in there, a large crate. And when I opened it, it was full of liquor bottles, the half liter – I don't know what they are – large bottles. And I turned to Matt, and I said, 'Matt, do you want this?' And when I said that he got very angry and started saying, 'That's not mine. That's not mine. It's my parents. I just bought it for them.' And he came over and grabbed the box, picked the box up and put it in the Yukon. Candace was unloading her stuff, and he said, 'Well, I sure hope you got a good picture of that.' I should have stopped. I did not and said, 'Well, maybe that would be a good idea.'

Q. What happened? Did he strike you or did the –

A. When I said that and said, 'Maybe that would be a good idea,' and held my phone up, he grabbed my arm and started screaming, 'Get your hands out of

here.' And he pushed me and was trying to get the car door down. And Candace was standing at the back, and he said, 'Get away from my car. It's my car.' And then he pushed me and he shut the car door hatch and it hit me on the top of the head, and I ducked, and he closed it on Candace, and it had her pinned. He was holding it down and screaming at me, and I was trying to pry it up and saying, 'Candace is under there.' And he finally raised it up and Candace got out, and he said, 'It's your fault. It's all your fault. You shouldn't have been there.' The girls – two or three were in the car already. The rest of the girls were standing outside the car just still. So I helped them get in the car. I told them I was Okay, not to worry, and we left. (TR 196-197, RE 194-195)

Lisa Boyd further testified to the following incident of family violence that Matt Boyd committed while in Florida:

- A. Yes, In Florida we lived on St. Andrews Court. Cayla was about ten. I was pregnant with Margaret. Cayla was outside. She had been sweeping and cleaning. Matt had found a – he said that he found a pile of dirt under a rug that she had tried to hide. He was spanking her and saying horrible things. So I was coming out. The sliding doors were open. I was coming toward him telling him to stop, to let go of her. And when he did he pulled her across and shut the glass doors holding it closed, and I was trying to get out. Cayla was trying to get in, and some of the other kids were coming over, you know, upset. And when he finally came in I took the girls and went into our bedroom – the master bedroom at the back – and I locked the door. When that happened, Matt told me to unlock it. I wouldn't unlock it, and he broke through – broke the door frame.” (TR 200-201, RE 198-199)

Lisa Boyd also testified that Matt Boyd would call his daughters abusive names:

- A. He called the girls stupid, slut, trash, trailer trash, whore, pig. He called them lazy. He called them tittie babies.”
- Q. All right. What names, if any, did he specifically call [Cayla]?
- A. Cayla – he would call her slut, liar, trashy, lazy, just about whatever he called me. I mean it was so common.”(TR 202, RE 200)

Lisa Boyd also testified that he kicked his daughter Margaret Boyd in her bottom:

- Aand he kicked her in the bottom with his boot.

Q. What happened to her?

A. She fell down the stairs and landed on her knees.

Q. What did he do to you?

A. When I went up and told him to leave her alone, he grabbed me. He said to stay out of it. He grabbed a cord. He was going to spank Margaret. And I had grabbed it and grabbed him, and he grabbed me and started hitting me with the cord. And then he picked up a box. There was a box there that needed to be cleaned up, and I had it. And when he was calling us dirty, he shoved the box. It was a plastic bin box, and the lip of it caught my legs and cut down one of my legs.(TR 204, RE 202)

Cayla Boyd, the oldest daughter, also testified about the mental and physical abuse by Matt Boyd .

Q. Do you have any recollection of approximately when this occurred – when he made what remarks, if any, he made to you? Was it before you moved? Do you recall an approximate year or how old you were?

A. When I first started developing breasts, he made crude comments about them. And if I ever wore a shirt that maybe showed the off, he would make mean comments about them.

Q. How old were you when an occasion may have occurred – and you describe it in your own words to the Court and tell when it happened, if it did. Did he ever grab you by the throat?

A. He did.

Q. How old were you then?

A. I was probably sixteen or seventeen. And I was getting yelled at, and he held me up against the counter, like against my throat on the counter. And he had squeezed tight enough to leave fingernail marks on the side of my neck. And that same incident is when he broke my mom's tailbone.

Q. Okay. When did he do that?

A. He did that more than once – on that occasion and then an occasion when I was living with my grandparents, I believe.

Q. What was the occasion, if you recall – did you witness the accident or the

incident when you mother broke her tailbone?

A. I did.

Q. How old were you?

A. Sixteen or seventeen. The same night that he choked me.

Q. Was that the house we call the Malone house?

A. Yes.

Q. Just described to the Court what happened.

A. Whenever he was holding me against the counter, my mom tried to get his hands out from around my neck, and she had, like, her arms around his back trying to pull him off, and he threw her into the dishwasher, and she landed flat on her tailbone."

A. Sixteen to seventeen. He spanked Emily with the handle end of a fly swatter, and her legs were bleeding from spanking her so hard. He was spanking Madeline against the kitchen table one time and didn't want to move her away from the kitchen table because she was just high enough for her teeth to be right against the edge of the table. He has kicked Margaret out the front – the back door for something about coloring. I can't remember what it was. And he locked Emily outside. He's said very hurtful things to Mariah about – he wouldn't say it directly to Mariah, but he would say it loud enough for her to hear in front of her about –"

Q. What did you hear?

A. Making racist comments, telling Madline and Emily that her biological dad was glad to give her up. I can't remember the rest of it. He would tell Mariah that if she did something it was almost never up to par. It was never good enough. There was an incident – I have this written down. Can I look at my notes?

* * * *

A. There was an incident that he spanked Emily excessively because she wiped herself when she went to the bathroom, and she was six or seven. And then that's all that I can recall right now or what happened to my sisters.

* * * *

- A. There was a time that my mom was dying my hair when we lived on Singleton Road, and he didn't like the fact that I was dying my hair, so he went and grabbed the scissors out of the kitchen and came into the bathroom and threatened on cutting off my hair, and ended up throwing my head into the shower door, and it either grazed against the bathroom wall or where the towel was hanging because the towel got stained from the dye, and I had to wash it out and my hair turned orange.
- A. There was a time that he threw a tile at my mom. I'm not sure why. The night before we left I heard him doing something to her. I don't know what. I was in my room, and it was really late at night. (Reviewing notes) Margaret got in trouble for coloring, and when he put her outside, my mom -- I don't know what she said to him to make him mad, but she was holding a plastic bin -- I want to say of Christmas ornaments. I cannot remember. It was a plastic bin of something, and he hit it out of her hand and it caught her legs and scraped all the skin off the front of her legs. And then (reviewing notes) -- that's all that I can remember.
- Q. What incidents, if any occurred in your presence or in the presence of the children and you about any threats to kill any of the pets involved, if you were present?
- A. I can't remember his exact words and the exact date. It was usually about the cat. I can't remember. He was very violent to the dogs.
- Q. What incidents of pushing and shoving, if any, did you observe on you Malone or by Matt, if any?
- A. Pushing and shoving happened quite often.
- Q. Who did her push or shove?
- A. My mom, me and Mariah, mainly.
- Q. Tell the occasion about the dirt and what, in fact, occurred.
- A. I was getting out of the above ground pool, and I tracked mud on the outside patio, and he got very angry with me and grabbed me by the back of my neck and shoved my face into the mud and I had -- the

wet pile of mud right before the patio.

Q Did you ever hear anyone in your presence or in the presence of any of your sisters use the work tittie baby?

A. Yes.

Q. Who did that?

A. My dad.

Q. How often?

A. Extremely often.

Q. Did he use the word slut to anybody in your presence?

A. Yes.

Q. How frequently?

A. Maybe twice – two or three times.

A. He called my mother a liar.

Q. In your presence?

A. Yes. Often. I got called a liar a couple of times, but I don't remember – I just remember his voice. I don't remember when or where I was.

Q. Did he ever use the 'n' word?

A. Yes.

Q. Pardon?

A. Yes.

Q. Do you recall any occasion when Matt broke any dishes in your presence?

A. Yes.

Q. Tell the Court about that.

THE COURT: Give me some specific dates and time if you can recall.

Q. If you can recall when it happened.

A. It was probably in 2007 when we lived at his house in Barnes. It was just me and him in the kitchen, and he got angry, very angry, about something and took the broom handle of the broom that he was holding an – oh, he got angry about the dishes were in the sink because he preferred for them to be beside the sink. And they were beside the sink, and he got very angry and took the broom that he was holding and broke the stack of dishes that were beside the sink because there were some that was in the sink, and he was mad, and he broke all the dishes.

Q. Tell the Court, if you have any independent recollection or recollection, on any occasion that your mom woke your dad up and he got mad.

A. The night before we left, my dad was asleep on the couch, and my mom didn't want to wake him up. And so she went to grab the remote out of his hand, and he woke up whenever she did that, and he just started like, not screaming, but like grunting really bad, just like 'ooh' and went to his room and just like laid in the bed and just like 'ooh' so loud, and he went into the living room where she was and pinned her down with his knees on the upper part of her arm and then went back to his room, I think, and just went back to sleep." (TR 110-126, RE 158-173)

As a result of the numerous acts of violence by Matt Boyd against Lisa Boyd and his children, the Chancery Court failed in its statutory duty to trigger the presumption that Appellee had a history of perpetrating family violence, which was proven by the preponderance of the evidence. In contrast to what is required by Statute, the Chancery Court did not consider the six factors and make written findings to document how and why the presumption was or was not rebutted. *Lawrence v. Lawrence* 956 So. 2d 251 (Miss. App. 2006) (noting that Section 93-5-24(9) applies '[i]n every proceeding where the custody of a child is in dispute,' and does not

require a party to plead or specifically request the chancellor to follow the dictates of the statute).

The Chancery Court ignored the numerous incidents of Matt Boyd's violence over a prolonged period of time, citing only one (tailbone), and did not cover the factors necessary to rebut the presumption of so many violent episodes. (TR 113, RE 161) (TR 184, RE 182) There is no certification in the record that Matt Boyd successfully completed an anger management course.

Thus, the Chancery Court erred in overlooking this "violent behavior" of Matt Boyd and in ignoring the statute and in awarding of custody of five minor children to Matt Boyd in spite of the presumption, based on his history of family violence, that it is in the best interests of the five minor children to award custody to Lisa Boyd. The cause should be reversed and custody, as to the five youngest daughters, awarded to Appellee with a retooling of visitation, child support and all other issues related thereto appropriately.

ISSUE FOUR

THE COURT ERRED IN APPLICATION OF THE ALBRIGHT FACTORS

For over two years, the Chancery Court and the Guardian ad Litem approved Lisa Boyd's custody of her six daughters on a one week on one week off basis and the Court erred when it applied the Albright factors and determined that she was no longer the best parent to have custody of the five minor children. (TR 200, RE 80) The Albright factors as enumerated in *Webb v. Webb*, 974 So. 2d 274 (Miss. 2008) are as follows:

The factors used to determine what is in the best interest of a child with regard to custody are: (1) the age, health, and sex of the child; (2) a determination of the parent who had the continuity of care prior to the separation; (3) which parent has the best parenting skills and which as the willingness and capacity to provide primary child care; (4) the employment of the parents and responsibilities of that

employment; (5) the physical and mental health and age of the parents; (6) the emotional ties of the parent and child; (7) moral fitness of the parents; (8) the home, school, and community record of the child; (9) the preference of the child at the age sufficient to express a preference by law; (10) the stability of home environment and employment of each parent; and (11) other factors relevant to the parent-child relationship.

In a review of the Chancery Court's analysis, but for the error of the Court in considering the admissions, ignoring the preference, and misapplying the abuse statute, the Albright Factors would clearly favor Lisa Boyd. .

In analyzing the Albright Factors from the lower Court opinion and Final Judgment, Lisa Boyd submits that the court erred in its analysis of the following Albright factors.

(2) a determination of the parent who had the continuity of care prior to the separation;

Under this second factor, the trial court erroneously applied one of the admissions which Lisa Boyd timely denied. *See* Issue 1, *infra*. This factor would favor Lisa Boyd but for the Court's error.

(3) which parent has the best parenting skills and which has the willingness and capacity to provide primary child care;

Here, the Court ignored the physical violence and many tirades committed by Matt Boyd over a long period of time. *See* Issue 3, *infra*. The Court once again was erroneously influenced by an alleged admission, *see* issue 1, *infra*, as to transportation of the children. This factor would favor Lisa Boyd but for the Court's error.

(5) the physical and mental health and age of the parents;

Here, the Court ignored the physical violence and many tirades committed by Matt Boyd over a long period of time. *See* Issue 3, *infra*. This factor would favor Lisa Boyd but for the Court's error.

(6) the emotional ties of the parent and child;

Cayla and Mariah Boyd each signed preferences to have their mother as custodial parent. The Court erred when it ignored the preference of Mariah without giving any reasons in the record for doing so. Furthermore, the Court ignored the physical violence and many tirades committed by Matt Boyd over a long period of time. *See* Issue 3, *infra*. This factor would favor Lisa Boyd but for the Court's error.

(7) moral fitness of the parents

Here, the Court ignored the physical violence and many tirades committed by Matt Boyd over a long period of time. *See* Issue 3, *infra*. The Court once again was erroneously influenced by an alleged admission, *see* issue 1, *infra*, as to adultery committed by Lisa Boyd. This factor would favor Lisa Boyd but for the Court's error.

(9) the preference of the child at the age sufficient to express a preference by law

This factor favors Appellant as to Cayla and Mariah but favors neither parent as it applies to the younger children; however, under the rationale to keep all six (6) girls together since two oldest have properly preferenced their mother, all should be awarded to Lisa Boyd, especially since the trial Court went on to discuss separation of the siblings as another factor. Since the trial Court awarded Cayla to her mother and should have awarded Mariah to her mother, under this rationale, all girls should have been awarded to Lisa Boyd to keep them from being separated. This factor favors awarding custody to Lisa Boyd.

(10) the stability of home environment and employment of each parent

The Guardian ad Litem in his first three reports tilted toward Matt Boyd in his discussion of Matt Boyd's dwelling house being superior to the home Lisa Boyd initially occupied during the

first phase of the separation. However in the fourth Guardian ad Litem report dated November 16, 2009, the adequacy of Lisa Boyd's new home at 917 Pine Hill Circle, Carthage, MS 39051 was described as being "adequate for the six (6) girls." At trial, the Guardian ad Litem also testified that the new house occupied by Lisa Boyd was equal to Matt Boyd's house.

"Q. One of the big things in your August, 2008 report was the comparison of the house on Highway 16 (appellants) versus the house that Matt had.....

A. Yes, Sir, his is 280 Barnes Road

Q. 280 Barnes Road, but that's changed with this new house has it not.

A. Yes, Sir

Q. Would you say as far as the physical features on the house as ascribed in your report of July – of August 25, 2009, as far as the comparison of the two houses – the rental house versus the Barnes Crossing house – has been cured?

A. As far as the size of the house, yes. (Trial Exhibit 3, RE 136) (TR 89, RE 154) (TR 177, RE 175)

Thus, but for the error of the Court in considering the admissions, ignoring the preference, and misapplying the abuse statute, the Albright Factors would clearly favor Lisa Boyd. *Hollon v. Hollon* 784 So. 2d 943 (Miss. 2001) ("If, as *Albright* indicates, one factor should not outweigh another, the chancellor erred by determining the case on the basis of Beth's moral fitness, when upon review, Beth clearly wound up with more factors weighing in her favor."

CONCLUSION

1. The trial Court erred in failing to honor its agreed April 1, 2009 Discovery Order as to Rule 36 when it deemed admitted the requests for admission responses to which had been timely filed by Lisa Boyd. The Court further erred in using these admissions in its analysis of the

Albright factors when determining custody.

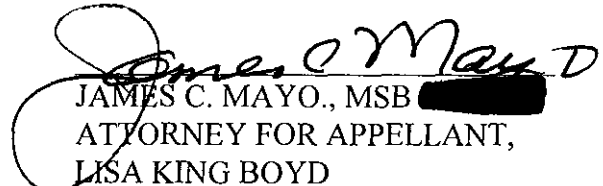
2. The trial Court erred in failing to honor the custody choice of Mariah Boyd, a child over the age of twelve years and failed to give valid reasons in the record for the denial.

3. The trial Court erred in failing to properly apply Miss. Code Ann. § 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 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 youngest girls to Lisa Boyd and should remand for further consideration the issue as to child support, visitation, tax deductions and all issues related to custody adjudicated by the Chancery 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 Appellant 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

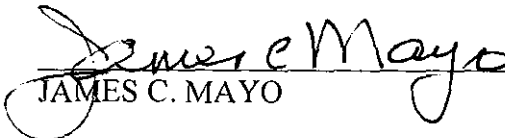
I hereby certify that I have mailed a copy of the above and foregoing document upon all counsel of record in this cause, by United States mail postage prepaid, to their office addressed, as shown below on September 15, 2010.

Judge Cynthia Brewer
Chancellor
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This, the 15 day of September, 2010.


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