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SUPREME COURT OF THE STATE OF MISSISSIPPI  
COURT OF APPEALS

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CLIFFORD NOLAN JACKSON  
Appellant

v.

CHARITY LYNN JACKSON  
Appellee

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No. 2010-CA-00849

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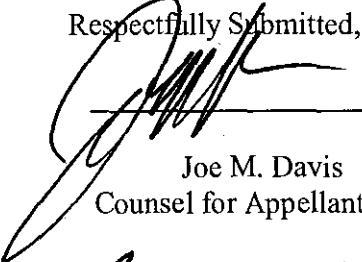
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**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following list of persons have an interest in the outcome of this case. These requirements are made in order that the judges for the United States Court of Appeals for the Thirteenth Circuit may evaluate disqualification or recusal.

1. Clifford Jackson, Appellant;
2. Charity Lynn, Appellee;
3. Hon. Joe M. Davis, Counsel for Appellant;
4. Hon. Rodney Shands, Counsel for Appellant;
5. Hon. Luther Crull, Counsel for Appellee;
6. Honorable John A. Hatcher, Chancellor.

Respectfully Submitted,



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Joe M. Davis  
Counsel for Appellant



Rodney Shands  
Counsel for Appellant

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### **STATEMENT OF THE ISSUES**

- I. Whether the Chancellor erred in his analysis of the *Albright* factors and the application thereof to the extent that Appellant should be awarded primary physical custody of his two children based on the evidence?

### STANDARD OF REVIEW

The Court found in *Jerome* that where the Chancellor improperly considers and applies the *Albright* factors, an appellate court must find the Chancellor committed error. *Jerome v. Strand*, 689 So.2d at 755 (Miss 1997).

“Like the chancellor, [the Mississippi appellant court’s] polestar consideration must be the best interest of the child.” *Hensarling v. Hensarling*, 824 So.2d 583, 587 (Miss.2002). The court reviews questions of law de novo. *Broome v. Broome*, 832 So.2d 1247, 1251 (Miss. Ct. App. 2002).

## ARGUMENT

The Appellate Courts have established guidelines for Chancellors to set forth their findings of fact and conclusions of law so that the reviewing court has something to go on to see why the Chancellor ruled a particular way and how that comports with the established law. In custody cases, the guideline to be used is the requirement that the Chancellor set forth how the facts and evidence fits into eleven factors as defined in the *Albright v. Albright*, 437 So. 2d 1003 (Miss 1983) case. These are to be weighed in each factor with the circumstances at hand. Charity wants you to overlook the meager findings the learned Chancellor set forth in this case and disregard the reason and purpose of the *Albright* factors. The ruling in this case basically called a draw on almost every factor despite the strong evidence that would have weighted fairly to extremely heavily to Cliff.

This is not the proper way custodial cases should be decided.

### **1. Age, Sex, and Health of the Children**

Charity argues that since the sex of a child is an *Albright* factor to consider, the Chancellor did that by stating “Because the children’s sex if female, this sub-factor favors the Plaintiff, Charity Lynn Jackson”. This is hardly the kind of reasoning expected in the determination of an *Albright* factor. Charity says the Chancellor did not apply a presumption of custody standard. However, the single sentence stating that the weighing goes to the mother simply because the children are female is exactly just that - a presumption and one prohibited by *Ivy v. Ivy*, 863 So. 2d 1010 (Miss Ct. App 2004).

Cliff had been taking care of his two daughters for nearly two (2) years as the primary custodial parent. At no point during that time has he incurred any problems due

to these children being girls. The chancellor erred in awarding this factor to Charity without some basis that Cliff in this situation would have trouble raising these girls. He had proven to the Court that he would have no such problem and would argue that it would be unhealthy to place girls in a home of promiscuity with Charity. The chancellor should have followed *Ivy* in holding that this factor remain neutral as both children were not of age to express a preference by law and are both in good health. *Ivy* at 1014.

**2. Continuity of Care Prior to the Separation**

Charity does not argue that the Chancellor erred in awarding this factor to Cliff.

**3. Parenting Skills**

In Charity's brief, she argues that since her affairs did not begin until a year after the separation and because the children were not exposed to the relationships, her multiple affairs should not be weighed against Cliff's excellent parenting skills. This is just not the case. Of course the children are negatively affected by a parade of men in and out of their lives. Of course Charity's action during the on going case should be examined in anticipation of what type of parenting skills she is going to employ in raising her two (2) innocent daughters. The Chancellor must compare the parenting skills of the parents and in this case the Chancellor erred by not adequately weighing Charity's multiple affairs. The Mississippi supreme court has on several occasions permitted a Chancellor to consider a parent's choice to spend time with a lover rather than her children.

In *Mabus*, the chancellor concluded that an affair "interfered with [the wife's] ability to effectively parent, *regardless of whether the children knew of it.*" *Mabus v. Mabus*, 890 So.2d 806, 817-18 (Miss.2003). (emphasis added). Also, according to



*Copeland*, an affair can be weighed against a parent under the parental-skills factor when the affair causes the parent to spend time away from the family. *Copeland v. Copeland*, 904 So. 2d 1066 (Miss. 2004)

Her numerous affairs definitely negatively impacted the stability and harmony of the children's lives and familial relationships resulting in Charity spending time with her various sexual partners rather than with her children.

The chancellor was in error when weighing this factor as it should have favored Cliff.

#### **4. Physical and Emotional Health and Age of the Parents**

Charity argues in her brief that Cliff was controlling and demanding but that argument is simply not substantiated by any other party. Cliff's family was around Cliff, Charity and the children on a daily basis and saw no evidence of this behavior. Charity states that she had to cook Cliff's supper at 4:30 in the morning but this is directly contradicted by the testimony that many suppers were eaten at Cliff's parents' home prior to the separation.

The true root of Charity's problems lie with her self-interest prioritization together with the focus on her impulsive behavior with multiple male partners.

The Chancellor was in error; this factor should have favored Cliff.

#### **5. Moral Fitness of the Parents**

Cliff does not argue that this factor *alone* should be used to grant custody of the children to him. That would be contrary to case law. However, he does argue that in the balancing test that is *Albright*, he is clearly the parent that should be awarded this factor. There is no possible argument that can be used that would justify a mother who has

committed three (3) affairs (including one on-going at the time of the hearing) to be balanced with a father that has refrained from any immoral activity and had the children in church each Sunday. This factor should have been awarded to Cliff and then the factors totaled for each parent. The Chancellor and Charity seem to argue that if this factor was awarded to Cliff it would be the equivalent of giving him the children due to her immoral behavior alone and that is not true. All of the cases cited by Charity bolster this position of Cliff that the factor must be awarded on it's on merit without consideration of how it affects the other factors. Morality is not limited to a single point in time; immorality tends to repeat itself. This factor deals with the morality of the parents, not whether there has been any adverse affect on the children at this time. This factor is to be examined to determine who would a better role model and moral compass to these children in the future based upon their actions in the past.

Cliff again asks this Court to review *Jerome*, 689 So. 2d at 757 (Miss. 1997). The Chancellor was held to be manifestly in error because he failed to determine custody under all the facts and circumstances and limited his review to constricted present circumstances. *Id.* The moral fitness of the wife should have been considered by the Chancellor even though the adulterous events were from the past and not current circumstances. *Id.* Second, the fact that the father has had temporary, primary custody of the children should have weighed in his favor. *Id.* The Chancellor could not ignore the past actions of the parties involved. *Id.* The decision of the Chancellor was reversed and remanded. *Id.* This is the same situation as the case above.

These points are exactly what Cliff is stating for review. The Chancellor committed an error to just ignore these points altogether.

**6. The Preference of the Child at an Age Sufficient to Express a Preference**

The Chancellor properly ruled that the children are not of an age to express a preference by law and that the factor favored neither party.

**7. Stability of the Home Environment**

Cliff lives in the marital home that the two girls have grown up in since their birth. It is also clear that there is a very strong familial bond between the children and their paternal grandparents. This relationship had been established by Charity and Cliff prior to the separation. Cliff's extended family have also displayed a very nurturing environment for the girls.

The life that the children live with Cliff has few variations from the life that they lived prior to the time when Charity left the home. The girls help their father tend to the cattle, play outdoors with their cousins, and surround themselves with close neighbors and family members that Cliff is able to provide for them. The girls live in their same room, go to the same Church and are surrounded with the life that they have been nurtured by throughout their lives.

Charity has no extended family in the nearby area. Her closest relative is her mother some forty-five minutes away from the children. Charity has no one of relation to care for the children while she is at work during the week or on the weekends.

Cliff has taken steps to see that the same people remain involved in the daughters lives. There has been no girlfriends or overnight sexual partners paraded in front of the children while in Cliffs care. His first priority is the girls well-being. This has been proven repeatedly by the evidence. Charity cannot make this claim because the evidence shows she has made decisions for a stable home.

The Chancellor was in error; this factor should have favored Cliff.

#### **8. Other Factors Relevant to the Parent-Child Relationship**

A final major factor that was not addressed by the chancellor was the religious presence and consistency exhibited by Cliff and his family. Cliff and his family have been faithful to attend church practically every time the doors have been open at Bethel Baptist Church. Not only do Cliff and the girls attend, but Cliff's entire extended family with them. Since her separation in 2008, Charity has occasionally visited Keownville Baptist Church. The pastor of Keownville Baptist testified that Charity attends and brings the children to church "not every time the doors are open", but when her job permits. From her own testimony, we know that Charity works "Monday, Tuesday and Saturday, and the next week, I work Sunday, Wednesday and Thursday." (T. at 20). Therefore, Charity, at most, can only attend church with her children every other Sunday and then every other Wednesday. This would essentially cut the children's religious development in half from that they have been receiving while in the custody of Cliff and his family. This factor should favor Cliff.

## CONCLUSION

The Chancellor abused his discretion when weighing the *Albright* factors in the manner he chose. The Chancellor should have judged each factor individually instead of attempting justify a joint custody arrangement. When the weight of the evidence is applied to the *Albright* factors in this case, it is clear that the fact of *Age, Sex and Health of the Children* should have been determined to be neutral. In addition, the factors of *Parenting Skills, Physical and Emotional Health and Age of the Parents, Moral Fitness of the Parents, Stability of the Home Environment and Other Factors Relevant to the Parent-Child Relationship* should have all been determined to favor Cliff. With these favoring Cliff, he would have been awarded custody of his daughters to allow them to continue to experience the safe, healthy and morally nurturing environment that they had experienced over the past two (2) years with their father.

WHEREFORE, the Appellant, Cliff Jackson, prays for judgment against Charity Jackson for the reasons stated above and respectfully requests that the Court reverse the chancery court's ruling and return primary custody of both girls in favor of Appellant, Cliff Jackson.

CERTIFICATE OF SERVICE

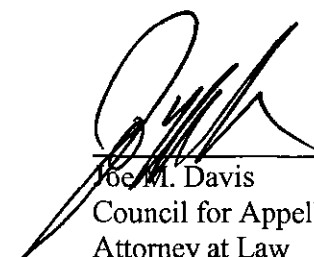
We, the undersigned counsel for Appellant, do hereby certify that we have this day caused to be served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to:

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Judge John Hatcher  
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Tupelo, Mississippi 38802

THIS the 29<sup>th</sup> day of December, 2010.



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