
SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS

CLIFFORD NOALN JACKSON)
Appellant)

v.)

No. 2010-CA-00849

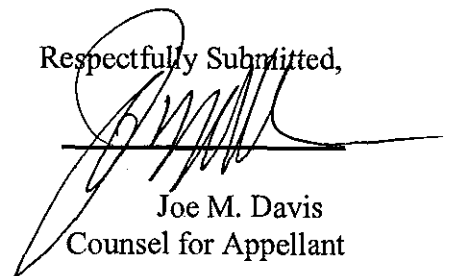
CHARITY LYNN JACKSON)
Appellee)

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. Luther Crull, Counsel for Appellee
5. Honorable John A. Hatcher, Chancellor.

Respectfully Submitted,



Joe M. Davis
Counsel for Appellant

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STATEMENT OF THE ISSUES

- I. Whether the Chancellor erred in his analysis of the *Albright* factors such that Appellant should be awarded primary physical custody of his two children?

STATEMENT OF THE CASE

A. Nature of the Case/Summary of the Argument

The issue on appeal before this Court is whether the chancellor abused his discretion in assessing the eleven *Albright* factors when awarding split custody between Appellant, Cliff Jackson (hereinafter “Cliff”), and Appellee, Charity Jackson. The chancellor remained neutral on nine of the eleven factors, siding one factor with Cliff and one factor with the Appellee. However, the factors of parenting skills, moral fitness, and other factors relevant to the parent-child relationship, strongly favor Cliff. In assessing these three factors, the chancellor did not weight, accurately, the fact that Appellee had multiple affairs, one of which was testified to as ongoing at trial. Also, the chancellor failed to levy any notion of the lack of religious training that the children are now receiving under Appellee’s care due to her atypical working schedule.

Furthermore, the chancellor found that the factor of age, health, and sex favored Appellee solely on the basis of gender. This judgment is in direct conflict with current Mississippi law and previous case law. Lastly, the chancellor found that the continuity of care factor favored Cliff due to, in part, to the time spent by the children with Cliff’s extended family which has had a very positive influence in the children’s lives. On the contrary, the chancellor made no reference to Cliff’s extended family in assessing the factor of stability of the home environment even though previous Mississippi case law specifically mentions close, extended family members as a key factor in awarding a preference of parties.

The Chancellor abused his discretion when assessing the eleven *Albright* factors. Primary physical custody of the children should be reinstated with Cliff Jackson which would be concurrent with the previous ruling on the August 4, 2008.

B. Course of Proceedings and Disposition In the Court Below

A temporary hearing was held August 4, 2008 when the chancellor granted Cliff Jackson primary physical custody of his two minor daughters. The chancellor stated that custody favored Cliff given Appellee's odd workings hours, the fact that Cliff lived in the marital home that the children grew up in, the close proximity of Cliff's extended family to the girls, and the tremendous amount of nurture that the girls have received from Cliff's side of the family.

From the time of the temporary order until the April 14, 2008 trial, Cliff retained primary, physical custody of the girls with visitation rights to the Appellee. At the April 14, 2010 hearing, the chancellor used the *Albright* factors to again assess the changes in both parents ability to raise the two girls.

The chancellor found that the first factor favored Appellee given that both children are female, even though the Mississippi statutory and case law states no such presumption should be given. Next, the chancellor found that the continuity of care factor favored Cliff given the positive influence that Cliff's family has had been in both girls' lives. Despite undisputed testimony of Appellee's numerous past and ongoing affairs, the chancellor sided the parenting skills factor with neither party. Since both parents were gainfully employed, the employment factor favored neither party.

Next, the chancellor said that neither party was in better physical or mental health, noting that Appellee's two year battle with depression and thyroid condition, which will

continue to need medication throughout Appellee's life, was not an "adverse factor" in her ability to parent her two small children. The court then found that both parents were emotionally connected to the children so that the emotional tie factor favored neither party.

Again, when analyzing the moral fitness factor, the chancellor held that even though there was un-contradicting testimony of Appellee's on-going affairs, because no adulteress acts were eye witnessed by the children, they did not have an "adverse impacted on the children." The chancellor found this factor to favor neither party.

Under the home, school, community factor as well as the preference of the children factor, the chancellor ruled that both factors were neutral to either party given both children's excellent performance in school and the fact that neither child had reached the age of twelve to legally have a voice in their preference of custody.

Finally, under the stability of the home and other factors, the chancellor ruled both factors neutral to either party. Compiling all factors, the chancellor found that one factor favored Appellee, one factor favored Cliff, and the rest favored neither party. Given the stale male as to judicial preference, the chancellor ordered split physical and joint legal custody in which each party would have primary, physical custody of the two minor children for alternating spans of two weeks.

Cliff Jackson then filed his timely appeal to this honorable Court.

C. Statement of the Fact

In 1993, Charity Lynn Jackson married Clifford Noland Jackson. (Corr. J. 2). From the marriage, the couple bore two children: Anna Grace Jackson and Molly

Elizabeth Jackson (hereinafter “the girls.”) (*Id.* at 5). The children were born July 21, 2002 (age 8) and December 20, 2004 (age 5), respectively. (Tr. 24).

After the children were born, Appellee went back to school to obtain an RN degree of nursing, working part time: 7:00 a.m. to 7:00 p.m. (Tr. at 77-78, 141). Almost every morning, Cliff’s mother, Cora Jackson (hereinafter “Mrs. Jackson”) would pick up the children around 6:30 a.m. while Appellee or Cliff were working or either Appellee was in class. (Tr. at 78). Both Cliff and Appellee would either take turns or together, attend to the feeding, clothing, bathing, and needs of their small children depending on the other’s work schedule. (T. at 107, 141).

Since their birth, Cliff and Appellee have taken their children to Bethel Baptist Church for the morning and evening services. (Tr. at 26-7). Cliff’s extended family also attends Bethel Baptist. (Tr. at 109). The whole family would also attend the Wednesday evening services together. *Id.* Cliff’s side of the family was especially close to the children physically and emotionally. *Id.* Just about every Sunday, Cliff’s parents would invite Cliff, Appellee, and their entire extended family over for Sunday lunch. (Tr. at 79, 80, 105). Not only on Sundays, but Cliff’s extended family would have two or sometimes three meals a week together. (Tr. at 118). The girls enjoyed playing frequently with their aunts, uncles, and first cousins at the numerous family meals and occasional sleep-over. (Tr. at 105, 139). Appellee’s side of the family was not as involved with the girl’s life as Appellee’s own mother lived some forty-five minutes away from the girls. (Tr. at 79).

As well as being a full-time, self-employed brick mason (Tr. at 135), Cliff raised cattle as part of his family’s income. (Tr. at 130). The girls loved to help Cliff tend to

and feed the cows. (Tr. at 138). Being a handyman, Cliff had a shop behind his house where he would construct various items and that the girls frequently played in while Cliff was there to supervise. (Tr. at 130).

Despite raising two little girls, having a loving family near by, and enjoying such activities as camping and water sports with friends, Appellee began taking antidepressant medication in 2006. (Tr. at 22, 141). Appellee would continue the medication for the next two years. (Tr. at 22). Appellee has also been diagnosed with hypothyroidism which is a condition where the thyroid gland does not make enough thyroid hormone and where continual medication is required for life, even if symptoms completely diminish. (*Id.*; <https://health.google.com/health/ref/Hypothyroidism>)

In the spring of 2008, Cliff remodeled the marital house for Appellee. (Tr. at 140). Cliff put down new hardwood floors, bought new living room furniture, put up new sheetrock, and painted. *Id.* However, before Cliff was finished with the remodeling, “[Charity] told me she was leaving. It ripped my heart out.” *Id.* Cliff’s father testified that the separation was “a surprise to everyone.” (Tr. at 124-5).

Appellee moved herself and the children in with Appellee’s mother and began working the 7:00 p.m. to 7:00 a.m. night shift at the hospital. (Tr. at 36). Shortly thereafter, one night in June of 2008, Cliff laid his feelings out on the line, expressing his concerns for Appellee leaving the family and the effects of raising their children in a broken home. (Tr. at 152). Cliff remarked that the whole situation “just tore me apart. It’s not fair to the girls.” *Id.* Appellee described her perception of this particular occurrence as an “altercation.” (Tr. at 159). Because of Appellee’s desertion, Cliff experienced some mild depression that passed after one prescription. (Tr. at 155).

On August 4, 2008, a hearing was held in which the chancellor placed physical custody of the girls with their father, Cliff. (Corr. J. at 1; Tr. at 36). The chancellor reasoned that Appellee was working odd hours at the hospital and that Cliff was living in the marital home and in close proximity to Cliff's side of the family whom are very fostering to the girls. (Tr. at 88). Since the separation and over the course of the last two years, Cliff has kept both children in good health. (Tr. at 135) Cliff has also handled all of the schooling for the children to which Appellee testifies that the girls are doing very well. (Tr. at 83).

In May of 2009, Appellee began dating a man named Robbie while still married to Cliff. (Tr. at 48). This relationship continued for approximately three months during which Appellee testifies to have engaged in sexual intercourse. (Tr. at 48). In September of 2009, Appellee began dating another man name Stephen in which she again testifies to having sexual relations. (Tr. at 49-50, 72). Yet again, in October of 2009, Appellee began dating another man named Ben whom she is still currently seeing and has testified to having sexual intercourse with, all while still married to Cliff. (Tr. at 51). Appellee admits that several of these men have had contact with the girls. (Tr. at 71). Appellee also testifies that another man named, Mark has spent the night at Appellee's house since her separation from Cliff. *Id.* Cliff has not dated anyone since the separation. (Tr. at 154).

Appellee's work schedule after the separation consisted of three, twelve hour shifts a week, 7:00 a.m. to 7:00 p.m., working Monday, Tuesday and Saturday the first bi-week and the next, Sunday, Wednesday and Thursday. (Tr. at 20). This work schedule allows the Appellee to only bring the girls to Appellee's current church, Keownville

Baptist, “not every time the doors are open”, as Appellee now works on Sunday mornings and nights plus Wednesday nights. (Tr. at 14-5).

Cliff’s parents and extended family continue to have regular meals together with Cliff and the girls as well as attend the same church that the girls have grown up in all their life. (Tr. at 116-8). The girls continue to enjoy feeding the cows, playing with their first cousins, and being outdoors with their daddy. (Tr. at 130). Cliff no long has time to construct items in his shop since no one else is at home and he must attend to the girl’s ever need as they are his top priority. (Tr. at 123, 130). Not only do the girls enjoy their childhood home, they have family and neighbors who love and surround them. (Tr. at 150).

On April 14, 2010, the chancellor granted joint legal and physical custody to both Cliff and Appellant when weighing the *Albright* factors, even though the chancellor remarked that Appellee had clear violated Miss. Code Ann. § 97-29-1 with her multiple adulteress actions. (Corr. J. at 2; Tr. at 90). The chancellor even pointed out in his Order that “adultery is a moral crime.” (Corr. J. at 8). However, the chancellor justified neutralizing the “parenting skills” and “moral fitness” *Albright* factors by stating that Appellee was deprived of some summer visitation and that the girls were not present in the house during the physical act of adultery thus they were not adversely impacted by Appellee’s multiple sexual relationships. (Corr. J. at 6,8). Appellee later acknowledged that Cliff gave her “all of the visitation that [the chancellor] allowed.” (Tr. at 37).

Appellant filed his notice of appeal to this honorable court on July 22, 2010.
(Notice of Br.).

ARGUMENT

WHETHER THE CHANCELLOR ERRED AND ABUSED HIS DISCRETION IN HIS APPLICATION OF THE *ALBRIGHT* FACTORS WHEN AWARDING SPLIT CUSTODY BETWEEN APPELLANT AND APPELLEE

In making a child custody determination, it is well settled law that the trial court is to consider several facts which include: [1] the age of the children; the health and sex of the children; [2] which parent had the continuity of care prior to the separation; [3] which parent has the best parenting skills and which has the willingness and capacity to provide primary child care; [4] the employment of the parents and their responsibilities in that employment; [5] the physical and mental health and age of the parents; [6] emotional ties between parent and child; [7] the moral fitness of the parents; [8] the home, school and community record of the child; [9] the preference of the child if of sufficient age; [11] the stability of the home environment and employment of each parent; and [12] any other relevant factors.

Davidson v. Coit, 899 So. 2d 904, 910–11 (Miss. Ct. App. 2005) (citing *Albright v.*

Albright, 437 So.2d 1003, 1005 (Miss.1983)

1. Age, Sex, and Health of the Children

Miss. Code Ann. § 93-5-24(7) states that “[t]here shall be no presumption that it is in the best interest of a child that a mother be awarded either legal or physical custody.”

The chancellor’s ruling is in direct conflict with this rule of law as the chancellor previously ruled this factor in favor of Appellee “because the children’s sex is female.”

(Corr. J. 5). This factor should remain neutral as both children were not of age to express a preference by law and are both in good health as held under similar circumstances in

Ivy v. Ivy, 863 So. 2d 1010, 1014 (Miss. Ct. App. 2004).

In *Ivy*, the chancellor combined the factors of age, sex and health of the children and found those factors, including the fact that the children were in apparent good health, to favor neither parent even though both minor children were female. *Id.*

2. Continuity of Care Prior to the Separation

The Chancellor found that this factor favored Cliff because a substantial more amount of time has been spent by the children with Cliff's family than with Appellee's. Cliff's family has clearly had a very positive influence in the children's lives. Therefore, argument pertaining to this factor would be self-defeating. This factor favors Cliff.

3. Parenting Skills

The chancellor erred in his application of the *Albright* factors by not adequately weighing Appellee's multiple affairs. The polestar consideration in vesting custody in one parent over the other must be the best interest and the welfare of the child, nonetheless, this does not preclude a chancellor from considering conduct associated with the adultery when it is relevant to one of the *Albright* factors. *Woodham v. Woodham*, 17 So. 3d 153, 159 (Miss. Ct. App. 2009). 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. *Id.*

Additionally, "[w]hile it is not the purpose of [appellate courts] to punish adultery, it is a factor to consider in awarding custody of minor children." *Mabus v. Mabus*, 890 So.2d 806, 817-18 (Miss.2003). 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.*" *Id.* (emphasis added). Also, according to *Copeland v. Copeland*, 904 So. 2d 1066 (Miss. 2004), 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. *Montgomery*, 20 So. 3d at 43.

Appellee has confessed to multiple affairs taking place within her home.

Whether the children were physically present or not should not affect the fact that this type of parental conduct would be adverse when weighing the Appellee's parenting skills factor. Not only did Appellee have previous affairs, she admitted to an ongoing affair at the time of trial for divorce and custody. Appellee had three boyfriends as well as spent time with another man mentioned above, all within a six month or less interval. It is reasonable to conclude that these relationships have and are taking away from time away that would otherwise be spent with the girls.

The chancellor justified neutralizing this factor, alleging Cliff "deprived the [Appellee] of summer visitation with the children." However, Appellee testifies that "[she] exercised all of the visitation [rights] that [the chancellor] allowed [her] to exercise" and "asked for more ... beyond what [the chancellor] ordered...." (T. at 37). Nonetheless, Appellee described her visitation rights as "very limited." *Id.*

The chancellor then neutralized past and ongoing adulterous affairs taking place in the children's home with that of Appellee's plea for visitation "beyond what [the chancellor] had ordered." The chancellor was in error when weighing this factor as it should favor Cliff.

4. Employment of the Parent and Responsibilities of that Employment

The Chancellor gave no preference to either parent under this factor as both Cliff and Appellee are employed, full-time, and are able to obtain an income to support their two girls. Factor is neutral.

5. Physical and Emotional Health and Age of the Parents

Appellee has hypothyroidism which is a condition in which the thyroid gland does not make enough thyroid hormone and where continual medication is required for life, even if symptoms completely diminish. Additionally, and despite having raising two little girls, having a loving family, and enjoying such activities as camping and water sports with friends, Appellee began taking antidepressant medication which continued for two years. Such spontaneous and prolonged depression may severely affect Appellee's relationship with her children on a daily basis.

The chancellor justified Appellee's lifetime thyroid condition combined with her prolonged depression with the fact that Cliff once took "part of a bottle" of medicine to cope with Appellee's desertion. The chancellor was in error; this factor should favor Cliff slightly.

6. Emotional Ties of Parent and Child

The Chancellor gave no preference to either parent under this factor. Factor is neutral.

7. Moral Fitness of the Parents

Morality is not limited to a single point in time; immorality tends to repeat itself. Therefore, the Mississippi Supreme Court has directed its lower courts to not look at the *Albright* factors in a vacuum of the present day and time ignoring the important past of these parents and their relationships to the children. *Jerome*, 689 So. 2d at 757 (Miss. 1997). To illustrate, in the *Jerome* case, 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 a constricted present circumstances. *Id.* The moral fitness of the wife should have been considered by the chancellor even though the adulteress events were

from the past and not present 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.*

Again, “sexual misconduct ... is not per se grounds for denial of custody, but in any event, the moral fitness of each parent is most certainly a factor to be examined in awarding custody.” *McCraw v. McCraw*, 841 So.2d 1181 (Miss.2003). Here, the Chancellor assumed that “there was no adverse impact on the children” during Appellee’s past and ongoing adulteress affairs, however, Cliff prays that this Court will not look at this case in a vacuum of the present day or on the surface of the facts and thus find that such behavior by the Appellee would weigh this factor in Cliff’s favor as he has remained faithful to Appellee throughout their marriage and prolonged separation.

8. Home, School, and Community Record of the Children

The Chancellor gave no preference to either parent under this factor. Factor is neutral.

9. The Preference of the Child at an Age Sufficient to Express a Preference by Law

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.

10. Stability of the Home Environment

When weighing the stability of the home environment, the Mississippi courts have considered numerous factors which contribute to a favorable home environment. *Montgomery*, 20 So. 3d at 46. Parents with extended family nearby have been favored,

Copeland, 904 So.2d at 1076, as has a father who took his child to church, *Pacheco v. Pacheco*, 770 So.2d 1007, 1010-11 (Miss.Ct.App. 2000).

In *Montgomery*, the chancellor was confronted with evidence that the father has maintained a stable routine and has ensured the children are cared for by his mother, the grandmother, while he is at work. 20 So. 3d at 46. He also has other family living nearby his home who have helped care for the children. *Id.* The father has taken it upon himself to make sure that his children attend church and other social activities, and he owns a home large enough for each child to have his or her own room. *Id.*

The facts in *Montgomery* are very similar to the facts of the case at hand. Cliff lives in the marital home that the two girls have grown up in since their birth. It is clear that Cliff's parents have been more than helpful in raising both girls and are committed to helping Cliff in any way possible as the girls continue to grow. Cliff's parents and extended family have also displayed a very nurturing environment for the girls.

Cliff's has extended family near by that have also been a major influence in the girls life. The case of *Neville v. Neville*, 734 So.2d 352, 355 (Miss.Ct.App. 1999), even held that the presence of an extended family can contribute to the stability of a child's life and is a legitimate factor that can give weight in a custody determination. In *Neville*, as is paralleled here, the children's life with their father was more stable and well-rounded as they were able to stay in the same school, play with cousins, ride horses and go on family vacations.

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

love to 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.

This factor should weight in favor of Cliff.

11. 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. In *Blevins v. Bardwell*, 784 So.2d 166 (Miss.2001), the Mississippi Supreme Court once again approved a chancellor's consideration of religious training in child custody proceedings.

In *Blevins*, the court explained that “future religious example” is not a factor listed in *Albright*, although it could theoretically fall within “other factors relevant to the parent-child relationship” or under “moral fitness of the parents” as found in *Albright*. *Id.* at 175. In *Davidson*, 899 So. 2d at 911–12, the court said that “[b]oth the mother and father should be vitally interested in seeing that their children get regular and systematic spiritual training.

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, Appellee has been visiting Keownville Baptist Church. The pastor of Keownville Baptist testified that Appellee 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 Appellee works “Monday, Tuesday and Saturday, and the next week I work Sunday, Wednesday and Thursday.” (T. at 20). Therefore,

Appellee, 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 that they have been receiving while in the custody of Cliff and his family.

This factor should favor Cliff.

CONCLUSION

The Chancellor has abused his discretion when weighing the *Albright* factors in the case at hand. No preference should be given to the Appellee solely on the basis of gender. Appellee's multiple acts of adultery should bear much more weight than previously held by the Chancellor in assessing both the moral fitness and parenting skills factor. The Chancellor failed to acknowledge the tremendous influence that Cliff's extended family has had in the girls' life when judging the stability of the home factor. Finally, the Chancellor was wrong in his evaluation of the other factor by making no reference whatsoever to the fact that Appellee's odd schedule and working hours burden both girls spiritual upbringing that they would be receiving if they lived primarily with their father, Cliff.

The chancellery court abused its discretion when it found a stalemate of preference for the parties under the *Albright* factors. The chancellor failed to evaluate all facts of the case adequately as well as ignored relevant Mississippi case law when making his decision.

WHEREFORE, the Appellant, Cliff Jackson prays for judgment against Appellee, Charity Jackson for the reasons stated above and respectfully requests that the Court

reverse the chancery court's ruling and render primary custody of both girls in favor of Appellant.

CERTIFICATE OF SERVICE

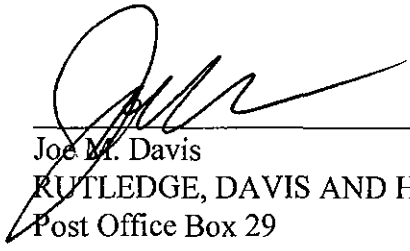
I, the undersigned counsel for Appellant, do hereby certify that I have this day caused to be served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Luther P. Crull, Jr., Counsel for Appellee
Attorney at Law
P.O. Box 2181
Grenada, Mississippi 38902-2181
(662) 227-0900

State of Mississippi Court of Appeals
P.O. Box 249
Jackson, MS 39205
(601) 359-3694

Honorable John Hatcher
Chancery Court Judge
P.O. Box 118
Booneville, MS 38829
(662) 728-2366

THIS the 24th day of September, 2010.



Joe M. Davis
RUTLEDGE, DAVIS AND HARRIS
Post Office Box 29
New Albany, MS 38652
(662) 534-6421

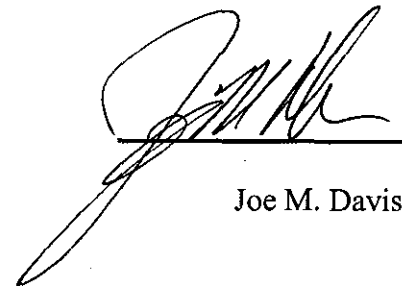
CERTIFICATE OF SERVICE

I, the undersigned counsel for Appellant, do hereby certify that I 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:

☒ Luther P. Crull, Jr., Counsel for Appellee
Attorney at Law
P.O. Box 2181
Grenada, Mississippi 38902-2181
(662) 227-0900

State of Mississippi Court of Appeals
P.O. Box 249
Jackson, MS 39205
601-359-3694

THIS the 22nd day of September, 2010.



Joe M. Davis

Joe M. Davis
Council for Appellant
Attorney at Law
Rutledge, Davis, Harris P.L.L.C.
P.O. Box 29
New Albany, MS 38652

