IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE No. 2010-CA-01693

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JERRY M. STENNETT, JR. APPELLANT

VERSUS

LUANN ROBERSON DAWSEY APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed Persons have an interest in the outcome of this case. These representations are made in that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

TRIAL COURT JUDGE:

Honorable Carter Bise
Chancellor
Post Office Box 1542
Gulfport, MS 39502

APPELLANT:

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Respectfully submitted this the 19th day of September, 2011.

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STATEMENT OF THE CASE

An Agreed Judgment of Filiation, Support and Visitation was entered on or about the 10th day of September 2004. Upon review of DNA paternity test results in evidence, the Court found the Appellant, Jerry M. Stennett, Jr., to be the biological father of Zander Stennett, a male child, born the 10th day of April 2001, and Makenna Stennett, a female child born the 2nd day of June 2003. Luann Dawsey was awarded the continuation of the paramount care, custody and control of minor children, with generous visitation afforded Jerry M. Stennett, Jr., along with his obligation to pay statutory child support for the support of his minor children.

On or about the 2nd day of February 2010, LuAnn Dawsey advised Jerry M. Stennett, Jr., that she had voluntarily chosen to enter the Homes of Grace to make a positive adjustment in her life. She discussed that the children would stay with her parents to avoid minimal change in school and activities. No issue was raised at that time by Mr. Stennett as to the care and welfare of the minor children in their birth home with their grandparents, both of whom are healthy and willing to provide continuity of care for the children in the family home.

The Order for the Ex Parte Emergency Relief was granted on the 3rd day of February 2010 at approximately 11:30 AM. He immediately went

to the children's school, withdrew them from school and without further advice to family members, he drove them to Arkansas. The children were not advised of the immediate change, nor allowed to complete their school day. The children were not allowed to see their grandparents, nor return to their home. The children were advised of this abrupt change in their lives in the vehicle on their way to Arkansas.

In Arkansas, the children were enrolled in another school with an extraordinary social change. Although the children continued certain activities in which they participated while in their mother's care, they were now in a situation where they knew no one. The children were not familiar with Mr. Stennett's wife and had never lived with Mr. Stennett, except during periods of visitation.

Zander had been an excellent student, while in his mother's care and sustained his academic achievement, while with the Appellant. The appellant claims that Makenna improved her grades, while with Mr. Stennett. The Appellant's single measure for this claim is measured by the only "benchmark test" offered by Mr. Stennett was the one test with a grade of a 67/D. Makenna achievement recognition was not exclusive to that while in Mr. Stennett's care.

Since their births, the children had only known the family home with their mother and grandparents. The children excelled in their extended family home, where family after care was provided every day,

along with homework assistance. After Hurricane Katrina in August 2005, the damaged family home required repairs. Ms. Dawsey lived in the home of a friend until the home was able to be occupied. The other allegation of living with another male was addressed by Ms. Dawsey and was of brief duration. (Appellee counsel is without benefit of the trial transcript in order to specify this testimony.)

Upon the conclusion of the testimony and physical evidence, the lower court found the allegations by Mr. Stennett did not constitute a pattern of behavior detrimental to the minor children.

SUMMARY OF ARGUMENT

"Our review of domestic-relations cases is limited to the "substantial evidence/manifest error rule." *Howell v. Turnage*, No. 2009-CA-01509-COA (¶ 8) (Miss.2009) (citing *R.K.v. J.K.., 946 So. 2d 764, 772 (¶ 17) (Miss.2007).* citing *Mizell v. Mizell*, 708 So.2d 55, 59 (¶12) (Miss. 1998). As such, "(an appellate) court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous (,) or an erroneous legal standard was applied". *Id.* (citing *Mizell*, 708 So. 2d at 59 (¶ 13). The totality of the circumstances, along with the best interest of the children, includes their educational progress, home

stability and exposure to illegal or dangerous behavior. The chancellor applied a complete legal standard in refusing to modify the custody agreement through the chancellor's judgment and must be upheld.

ARGUMENT

The Appellant argues that the chancellor erred in his consideration of the totality of the circumstances in this child custody modification case. "A chancellor has substantial discretion in deciding contempt matters because of the chancellor's "temporal and visual proximity" to the litigants. *Gililland v. Gilliland,* 984 So. 2d, 364, (¶ 5,6) ¶ 19 (Miss. App. 2008) (citing *Mabus v. Mabus,* 910 So.2d 486, 491 (¶20)(Miss.2005). Wherein, the chancellor listens and observes the behavior of the witness before him. Those issues of fact, which become the totality of the circumstances, are immediately observed by the trier of fact. The facts in *Gilliland* include alcoholic rage and alcohol related automobile accidents. The child was subjected to harsh discipline by the live-in boyfriend.

"The importance of all the factors is in no way intended to be undermined or demeaned. All the factors are important, but the chancellor has the ultimate discretion to weigh the evidence the way he sees fit. 'The credibility of the witnesses and the weight of

capable of more than one reasonable interpretation, are primarily for the chancellor as the trier of facts.' " *Johnson v. Gray*, 859 So.2d 1006, (8) ¶ 36 (Miss. 2003), (citing *Chamblee* v. *Chamblee*, 637 So.2d 850, 860 (Miss.1994). In the chancellor's findings of fact at footnote 2, page 2 of 7, (the chancellor) "...finds that Stennett lacks credibility. He claimed that in 2009, Dawsey claimed that he owed her child support, and that as a result he had a problem with the IRS. He testified that he went to her and told her that he had hired an attorney and that she had better correct that, so they went to DHS and she signed a statement that he did not owe her anything. Exhibit 6, however, shows that as of April 2008, he was, in fact, in arrears $1,150.00. He had been in arrears for as much as $3,650.00 the month before." The question of unclean hands has not been addressed; however, the chancellor clearly stated his observation of the testimony by the Appellant, Jerry M. Stennett, Jr.

Appellant cites the application of the totality of the circumstances in *Powell v. Powell*, 976 So 2d 358 (Miss.2008). The immediate case and the facts shown in *Powell* are not comparable, wherein the daughter was subjected to a rape without follow-up counseling, an untreated speech impediment, observed her mother pull a gun on her grandmother, the son was two years behind in

school, and found difficulty in adjusting to three, and almost four, schools in five years.

The Appellee, with brief exception, remained in the same home she had occupied for 14 years with her parents and her children. The children were not behind in school, nor had any untreated physical or psychological problems.

The facts in *Hill v. Hill*, 942 So.2d 207 (Miss.2006), cited by the Appellant, are distinguished from the immediate case in that totality of circumstances included several relocations, drug habits, numerous men, numerous school changes and leaving the child with the non-custodial parent fifty percent of the time.

The substantial change in circumstances cited by the Appellant was isolated to the single voluntary, life improving decision that was made by Ms. Dawsey. No adverse change was proven by the Appellant, which, therefore, produced no need for a change of custody in the best interest of the children.

Where the chancellor found only isolated incident of two uses of meth and no drug addiction, although Mr. Stennett had introduced certain illegal substances to Ms. Dawsey in years prior. Her permanent residence was found paramount over residing with

a friend following Hurricane Katrina and a brief duration with another over the years prior to Zander's birth in 2001. She had sporadic employment, but did not receive her GED until Homes of Grace, which was another incentive for her to participate in their programs. Ms. Dawsey's behavior was strictly to improve her young life that she could do a better job for her children, parents and self.

The facts cited in *Masters v. Masters*, 52 So.3rd 1279 (Miss. 2011) illustrate that the custodial parent had numerous extramarital and unstable marital relations. The learning disabled child was educationally assisted by her mother's boyfriend, who had a 10th grade education and who had been arrested in the child's presence. They smoked in the child's presence. The totality of the circumstances in *Masters* resulted in factors, which favored a change of custody in the best interest of the minor child.

As the Appellant cites *Riley v. Doerner*, 677 So.2d 740 (Miss. 1996), the involved factors to determine custody included numerous residential moves, the child failing first grade and drug use.

Ms. Dawsey's pattern of judgment and reliance on others produces an environment, which does not result in foreseeable detrimental effects on the minor children. The complete standards for review having been applied by the chancellor did not warrant a change in custody of the minor children and that they should remain in the custody of their mother.

CONCLUSION

The chancellor having considered all of the evidence before the Court properly applied the entire body of determining standards in his decision. With the legal standards applied to the facts, the chancellor's judgment merits to be upheld in the primary, physical custody of the minor children remaining with the Appellee.

CERTIFICATE OF SERVICE

I, JOY HARRISON GOUNDAS, do hereby certify that I have this date mailed, via U.S. mail, postage prepaid to the usual mailing address of the above the Brief of Appellee to the foregoing persons of record:

HONORABLE CARTER BISE
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So, certified this the 19th day of SEPTEMBER 2011.

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