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SUMMARY OF THE REPLY ARGUMENT

The lower court's decision should not be disturbed due to the fact that there is no evidence in the record that the chancellor abused her discretion, was manifestly wrong, clearly erroneous or used an erroneous legal standard in entering the final order. Upon hearing all testimony presented, and evaluating all evidence submitted at the trial of this matter, the chancellor applied the standards for modification of custody, as set forth by current Mississippi case law. Therefore, the chancellor did not abuse her discretion in denying Mr. Miller's request for joint legal custody. This Honorable Court should uphold the decision of the trial court, and affirm the judgment therein.

ARGUMENT

I. Standard of Review

A chancellor's judgment in domestic relations matters will not be disturbed "when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was used." Kilpatrick v. Kilpatrick, 732 So.2d 876, 830 (Miss. 1999).

II. The Trial Court Did Not Err in Denying Mr. Miller's Request for Joint Legal Custody

Mississippi case law sets forth that "the non-custodial parent must prove: (1) that a substantial change in circumstances has transpired since the custody decree; (2) that this change adversely affects the child's welfare; and (3) that the child's best interests mandate a change of custody." Mabus v. Mabus, 847 So.2d 815, 818 (Miss. 2003). Mr. Miller did not prove the necessary factors, pursuant to Mabus v. Mabus, for the chancellor to award him joint legal custody. On November 14, 2008, the lower court heard testimony and evidence regarding custody of the minor child, Lance Miller. (Clerk's Records p. 000018). Subsequently, the Final Judgment of Child Custody and Support was entered on December 2, 2008, wherein Mr. Miller and Ms. Boyd were awarded joint physical custody, and Ms. Boyd sole legal custody. (Clerk's Records p. 000018). Since the Entrance of the Final Judgment of Child Custody and Support, Mr. Miller filed the following: (1) Petition to Modify Child Custody and Child Support Order; (2) Amended Complaint for Modification; and (3) Second Amended Complaint for Modification.

A trial took place on the Second Amended Complaint for Modification on October 4, 2010. Mr. Levi, through Counsel, argues in the Brief of Appellant, that “[b]efore the divorce either parent could take the child for medical assistance. Now that Sonya has full legal custody Levi must have her okay to do this.” He further states that “[t]his is a material change in circumstances from what existed at the time of the divorce judgment”. As a point of clarity, the parents of the minor child at issue here were never married. Further, it is neither relevant nor proper to bring forth actions that may or may not have taken place before the Final Judgment of Child Custody and Support was entered by the lower court on December 2, 2008. Once the Final Judgment of Child Custody and Support was entered, the rights of each parent, as it relates to the physical and legal custody of the minor child, were explicitly set forth in the same. From December 2, 2008, forward, Mr. Miller and Ms. Boyd have “joint physical custody of the minor child from week to week beginning immediately from 2:00 pm to 2:00 pm Sunday”, and as further specified with regard to specific holidays. (Clerk’s Records p. 000018). Said Judgment also sets forth with specificity that Ms. Boyd “shall have sole legal custody of the child.” (Clerk’s Records p. 000018). Therefore, no material change in circumstance has occurred between the time the December 2, 2008, Final Judgment of Child Custody and Support was entered to present.

In the Brief of the Appellant, it is argued that “one of the issues supporting Levi’s request for joint legal custody is getting Lance medical assistance when Lance is in Levi’s care.” Mr. Miller asserts that, due to Ms. Boyd’s job serving in the National Guard, she is either unavailable or will not return his inquiries regarding the minor child’s health. Mr. Miller further asserts that he must wait

on Ms. Boyd's response. However, during cross-examination of Mr. Miller during trial, he acknowledged that he was and is informed of the doctor Ms. Boyd, the legal custodial parent, had chosen to provide medical care to the minor child. (Court Transcript, p. 12, lns. 14-21). Mr. Miller also acknowledged, under preceding questions presented during cross-examination, that he understood legal custody to include "making important decisions for the child, such as school, medical, and other emergencies". (Court Transcript, p. 11, lns. 6-14) Mr. Miller further acknowledged that he understood Ms. Boyd to be the legal custodial parent. (Court Transcript, p. 11, lns. 15-24).

Based upon the testimony presented during trial, Mr. Miller's argument to support error by the trial court, regarding the inability to obtain needed medical care for the minor child in a timely fashion, is further diluted by Mr. Miller's intentional, knowing, and willful actions contrary to the December 2, 2008, Final Judgment of Child Custody and Support. On a regular basis, Mr. Miller obtained medical care for the minor child from a different doctor than the one chosen by Ms. Boyd, the legal custodial parent. (Court Transcript p. 12, lns. 22-24). One example of Mr. Miller's disregard is his choice to take the minor child to his (Mr. Miller's) doctor of choice when said minor child had strep throat while in Mr. Miller's physical custody. (Court Transcript p. 7, In. 5). Ms. Boyd acknowledged that it was determined that the minor child was ill, but had not exhibited signs of illness while in her physical custody. (Court Transcript p. 20, lns. 21-27). Testimony reflects that Mr. Miller obtained medical assistance from his doctor of choice, Dr. Delaney, instead of Ms. Boyd's doctor of choice; though, Ms. Boyd is the legal custodial parent. (Court Transcript p. 20, lns. 26-29). Mr. Miller does

not prefer Ms. Boyd's choice of doctor for the minor child, Dr. Chaney, due to a confrontation between Mr. Miller and Dr. Chaney. (Court Transcript p. 21, lns. 3-4). Therefore, Mr. Miller made the choice to utilize Dr. Delaney instead of Dr. Chaney when the minor child is in Mr. Miller's physical custody, which is in direct conflict with the lower court's December 2, 2008, Final Judgment of Child Custody and Support. By acting contrary to the lower court's Judgment, and in accordance with his own wants and desires, Mr. Miller is not acting in the best interest of the child nor providing a continuity of medical care for the minor child, which is one of the primary bases and/or rationales of sole legal custody. Again, no material change in circumstance has occurred between the time the December 2, 2008, Final Judgment of Child Custody and Support was entered to present. Therefore, the chancellor did not abuse her discretion in denying Mr. Miller's request for joint legal custody.

CONCLUSION

For the above reasons, the Appellee, Sonya Boyd, requests that this Court affirm the lower court's ruling. Mississippi case law states that a chancellor's judgment in domestic relations matters will not be disturbed "when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was used." Kilpatrick v. Kilpatrick, 732 So.2d 876, 830 (Miss. 1999). There is nothing in the record which exhibits that the chancellor abused her discretion or was manifestly wrong. Nor is there anything in the record that reflects that the chancellor applied an erroneous legal standard. Actually, the chancellor stated on the record the standard which is to be used in modification procedures, which are the factors set

forth in Mabus v. Mabus. (Court Transcript p. 28, lns. 19-29; Court Transcript. 29, lns. 1-2). The overwhelming weight of the evidence supported the chancellor's judgment.

The lower court did not commit error in denying Mr. Miller's request for joint legal custody. The chancellor acted within her discretion based upon evidence and testimony presented in the trial of this matter. The Appellee prays for such other relief as this Court deems appropriate.

Respectfully submitted this the 11th day of May, 2011.

Sonya Boyd, Appellee
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By:


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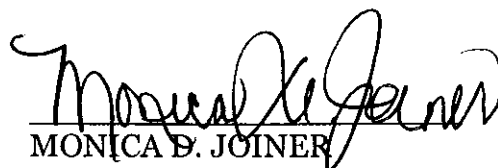
CERTIFICATE OF SERVICE

The undersigned does certify that he has this date mailed, via United States mail, postage pre-paid, and a true and correct copy of the above and foregoing Brief of Appellee to the following:

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So certified, this the 11th day of May, 2011.


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