

**IN THE SUPREME COURT OF MISSISSIPPI**

**LEVI MILLER**

**APPELLANT**

**VS.**

**NO. 2010-CA-01756**

**SONYA BOYD**

**APPELLEE**

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**BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUESTED**

**An Appeal From the Chancery Court of  
Madison County, Mississippi**

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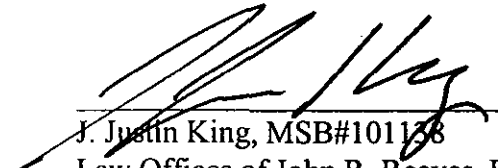
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**CERTIFICATE OF INTERESTED PERSONS**

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Pursuant to Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Their representations are made in order that the Justices of the Supreme Court and/or the Justices of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Cynthia Brewer, Chancellor
2. Levi Miller, Appellant
3. Monica D. Joiner, Attorney for Appellee
4. Sonya Boyd, Appellee
5. John R. Reeves, Attorney for Appellant
6. J. Justin King, Attorney for Appellant

  
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## **TABLE OF CONTENTS**

	Page(s)
Certificate of Interested Persons .....	ii
Table of Contents .....	iii
Table of Authorities .....	iv
Statement of the Issue .....	1
Statement of the Case .....	2
Summary of the Argument .....	3
Argument .....	4
I.    Standard of Review .....	4
II.   The Trial Court Erred In Denying Levi's Request for Joint Legal Custody .....	4
Conclusion .....	6
Certificate of Service .....	7

## TABLE OF AUTHORITIES

Page(s)

### **Mississippi State Cases**

Kilpatrick v. Kilpatrick, 732 So.2d 876 (Miss. 1999) ..... 4

Mabus v. Mabus, 847 So.2d 815 (Miss. 2003) ..... 4

**STATEMENT OF THE ISSUE**

The trial court erred by denying Levi's request for joint legal custody.

## STATEMENT OF THE CASE

Appellant Levi Miller (“Levi”) and Appellee Sonya Boyd (“Sonya”) have one child together, Lance Spencer Miller (“Lance”). Via a November 14, 2008, Final Judgment of Child Custody and Support Decree, Sonya was awarded sole legal custody of Lance and the parties were awarded joint physical custody. Levi was ordered to pay child support to Sonya. (Clerk’s Papers, p. 1).

On October 26, 2009, Levi filed a Petition to Modify Child Custody and Child Support Order. Through his petition, Levi sought joint legal custody and a decrease in his child support obligation. (Clerk’s Papers, pgs. 1-2).

On or about June 30, 2010, Levi filed an Amended Petition for Modification. Through his amended petition, Levi sought joint legal custody, a decrease of his child support obligation, and to be allowed to claim the child every other year as a dependent for income tax purposes. (Clerk’s Papers, pgs. 15-16).

On or about July 6, 2010, Levi filed a Second Amended Petition for Modification. Through his second amended petition, Levi sought joint legal custody and a decrease of his child support obligation. The second amended petition did not request that Levi be allowed to claim the child as a dependent for income tax purposes. (Clerk’s Papers, pgs. 21-22). Sonya filed an answer to the second amended petition on or about August 4, 2010. (Clerk’s Papers, pgs. 30-32). The answer essentially amounted to a general denial.

The case was tried on October 4, 2010 and the relief requested by Levi was denied. The only witnesses were Levi and Sonya (Trial Transcript (T), pgs. 1-31). An Order setting forth the court’s decision was entered on October 4, 2010. (Clerk’s Papers, p. 46). Levi timely appealed the case on or about October 22, 2010. (Clerk’s Papers, p. 47).

### **SUMMARY OF THE ARGUMENT**

The trial court erred by denying Levi's request for joint legal custody. Levi proved a material change in circumstances which adversely affects the child. It was therefore error for the court to deny Levi's request for joint legal custody. This court should reverse the decision of the trial court and render judgment awarding joint legal custody to the parties.

## 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 Erred In Denying Levi's Request for Joint Legal Custody**

The standard for modifying custody is "the non-custodial party 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 815m 818 (Miss. 2003). Levi proved the factors necessary for the chancellor to award him joint legal custody. The parties were originally granted joint physical custody with Sonya receiving legal custody. (T., p. 5, lns. 4-5). Levi testified that since the entry of the judgment he encountered issues which necessitate joint legal custody. (T., p. 6 ln 2).

One of the issues supporting Levi's request for joint legal custody is getting Lance medical assistance when Lance is in Levi's care. Levi often takes care of Lance during the day. (T., p. 17, lns. 28-29). When Sonya is serving in the National Guard she is either unavailable or will not return Levi's inquiries. So, if there is an important medical decision to be made, Levi must wait on Sonya's response which could be days or a whole week. (T., p. 6, ln. 20- p. 7, ln. 2). Around the time of trial Lance had strep throat when Levi picked up Lance for visitation. (T., p. 7, lns. 3-14). Sonya confirmed this. (T., p. 20, lns. 21-27). Levi tried to contact Sonya but she was either unreachable or unresponsive. The child had to suffer until Sonya finally responded. (T., p. 7, lns. 3-14). Levi



testified that Lance had four ear infections in the last year. (T., p. 8, ln. 12). Had Levi had joint legal custody, Levi could have acted quicker and Lance wouldn't have had to needlessly suffer.

Before 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. Sonya is often not available. This is a material change in circumstances from what existed at the time of the divorce judgment. The child's needless suffering because of this is certainly adverse to his interests. It is not in Lance's best interest to needlessly suffer. Therefore, it would be in the best interest of Lance that Levi have joint legal custody so he can tend to Lance's health needs and alleviate any needless suffering Lance may experience.

It was error for the court to deny Levi's request for joint legal custody.

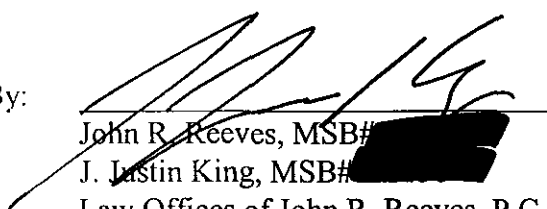
### CONCLUSION

The trial court erred by denying Levi's request for joint legal custody. Levi presented evidence that it was in Lance's best interest that Levi be awarded joint legal custody based on the substantial change in circumstances that was adversely affecting Lance. Due to Sonya's absence and failure to communicate, Lance suffers when he needs medical assistance when in Levi's care. This necessitates Levi having joint legal custody. It was erroneous for the court to deny Levi's request for joint legal custody.

Based on the arguments set forth herein, this court should reverse the decision of the trial court and render judgment awarding joint legal custody to the parties.

Respectfully submitted,

By:

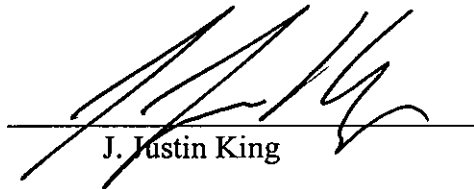
  
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**CERTIFICATE OF SERVICE**

I certify that I mailed a true copy of this document to the following, via First Class U.S. Mail, postage prepaid on March 11, 2011.

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