

2010-CA-01847 RT

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## ARGUMENT

Kenneth's argument in his appellee brief is sporadic. Trina will address Kenneth's arguments on the issues as she presented them in her appellant brief.

### **I. THE CHANCELLOR ERRED BY NOT FOLLOWING THE GUARDIAN AD LITEM'S RECOMMENDATION AND NOT STATING THE REASONING FOR NOT ADOPTING THE GUARDIAN AD LITEM'S RECOMMENDATION IN ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

In discussing his position on this issue, Kenneth goes to some length to discredit or undermine the recommendations of the Guardian Ad Litem appointed in this case. Trina did not raise the GAL's recommendations or the performance of her duties as an issue in her appellant brief. Trina submits that any argument on this subject matter should be disregarded by this Court and should be stricken.

Kenneth argues that this case did not mandate an appointment of a GAL, and therefore, the chancellor was not required to state his reasoning for not adopting the GAL's recommendations in his Findings of Fact and Conclusions of Law.

However, Trina's position is that in cases where the chancellor acknowledges that the custodial parent's conduct could prove fatal to the child involved, the chancellor should be required to state his or her reasoning for not adopting the GAL's recommendations.

Kenneth admitted to drinking then driving with Kenzie in the vehicle. Kenzie reported to the GAL that she has been in a vehicle with Kenneth while he was drinking alcohol. Hannah Thorton, a minor, testified to the same and that Kenneth drank and drove with her 70% of the time in the vehicle. (T. p. 54-56, 219-223, 375-376).

Even if this case does not require the chancellor to state the reasoning for not adopting the GAL's recommendations, at a minimum, in a case such as this, the chancellor should include at least a summary review of the qualifications and recommendations of the guardian ad litem in

the court's findings of fact and conclusions of law. *Gainey v. Edington*, 24 So.3d 333, 340 (Miss. Ct. App. 2009). The chancellor did not mention any aspect of the work performed by the GAL in his Findings of Facts and Conclusions of Law.

Due to Kenneth's habit of drinking and driving with Kenzie, the chancellor erred by not stating his reasoning for not adopting the GAL's recommendation of awarding primary physical custody to Trina. Therefore, this Court must reverse the trial court's decision and award Trina primary physical custody of her daughter, Kenzie, terminate Trina's child support obligations and remand for a determination of Kenneth's child support obligations.

**II. THE CHANCELLOR ERRED IN DETERMINING A MATERIAL CHANGE IN CIRCUMSTANCES ADVERSELY AFFECTING THE CHILD DID NOT EXIST, AND NOT ALLOWING KENZIE TO TESTIFY OR INTERVIEW HER IN CHAMBERS.**

Kenneth's position is simply that there was not a material change in circumstances in the custodial home warranting modification of custody. However, he goes to great lengths to argue that his conduct and living situation do not constitute a material change in circumstances that adversely affects Kenzie. He even goes as far as to claim that Trina is as culpable as him for not complaining of his conduct earlier. By its plain meaning the word "culpable" connotes wrong or harmful conduct on behalf of Kenneth and should be construed against him. Kenneth has basically admitted to being culpable of misconduct towards Kenzie.

Trina stands by her appellant brief on all of the issues she has raised. This Court must reverse the trial court's decision and award Trina primary physical custody of her daughter, Kenzie, terminate Trina's child support obligations and remand for a determination of Kenneth's child support obligations

Respectfully submitted,

TRINA SULLIVAN

BY:

  
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For Appellant

**CERTIFICATE OF SERVICE**

I, TERRELL STUBBS, attorney of record for **APPELLANT, TRINA SULLIVAN**, do hereby certify that I have this day mailed postage prepaid a true and correct copy of the above and foregoing Brief of Appellant to the following:

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This the 14<sup>th</sup> day of December, 2011.

  
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