

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2010-CA-01916

JIMMY SCOTT THOMPSON

APPELLANT

-VERSUS-

TAMMY HUTCHISON

APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

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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 order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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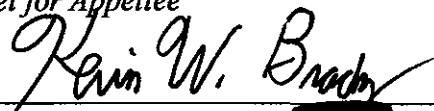
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STATEMENT REQUESTING ORAL ARGUMENT

Appellee submits that this matter does not involve difficult, confusing, or conflicting law, nor does this matter involve a matter of first impression; however, oral argument may assist the Honorable Court in reaching its ultimate determination.

STATEMENT OF ISSUES

Though not required under Rule 28(b) of the Mississippi Rules of Appellate Procedure, Appellee makes the following statement of the issues before the Honorable Court, which may clarify the issues presented by Appellant.

- I. Did the Chancellor err in failing to find a material change in circumstances which adversely affected the minor children?**
 - A. Did the Chancellor fail to consider *Mississippi Code Annotated* § 93-5-24(9)?**
 - B. Did the Chancellor err in its consideration of trichotillomania and emotional harm?**
- II. Did the Chancellor err in failing to examine the *Guardian Ad Litem*?**
- III. Did the Chancellor fail to make specific findings of facts and conclusions of law?**

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This matter is an appeal from the Chancery Court of Rankin County, Mississippi. The lower court denied the request by the father to change physical custody of the parties' minor children from the mother to the father.

II. COURSE OF THE PROCEEDINGS

Jimmy Scott Thompson, Appellant, (hereinafter referred to as "Scotty") and Tammy Hutchison, Appellee, (hereinafter referred to as "Tammy") were divorced on or about December 30, 1998. (R.E. 3).¹ Pursuant to the *Final Judgment of Divorce*, the parties were to share joint legal custody of their two (2) minor children with physical custody of the minor children to be with Tammy pursuant to *Mississippi Code Annotated* § 93-5-24 (1972, as amended). The two (2) minor children are Kelly Ashton Thompson, born July 15, 1995, (hereinafter referred to as "Kelly") and Jonathan Hayden Thompson, born May 12, 1998, (hereinafter referred to as "Hayden"). (T.R. 7).

On or about September 23, 2004, an *Order of Modification* was entered increasing Scotty's child support obligation. (R.E. 4). Since the entry of the *Final Judgment of Divorce*, neither party sought a modification of the custodial arrangement until the instant case was filed. (R.E. 3-6).

On or about December 18, 2008, Scotty filed a *Petition for Modification of Child Custody and Other Relief* seeking modification of both the legal and physical custody of the parties' two (2) minor children. (R.E. 4). The allegations in Scotty's *Petition for Modification of*

¹ Citations to the Record are designated as (R. __), to the Record Excerpts as (R.E. __), and to the Transcript of Testimony as (T.R. __).

Child Custody and Other Relief failed to make any specific allegation as to the reason for seeking modification. Rather, the *Petition for Modification of Child Custody and Other Relief* provided a bare minimum notice.

The matter was set for trial on April 2, 2009. It was at this trial date that the Chancellor learned that the nature of the allegations proffered by Scotty were of alleged abuse of the minor children of the parties. These allegations of abuse prompted the Chancellor to appoint the Honorable Prentiss Grant as *Guardian Ad Litem* pursuant to the mandatory requirements of *Mississippi Code Annotated* § 93-5-23. The *Guardian Ad Litem* conducted his investigation and submitted a preliminary and follow up report to the Chancellor and parties. (R.E. 4-5).

III. DISPOSITION OF THE COURT BELOW

The trial in the instant case was heard on June 7, 2010. Scotty presented his case in chief, which included the testimony of the following persons: 1) Scotty; 2) Tony Hutchison, the husband of Tammy and stepfather of the two (2) minor children of the parties (hereinafter referred to as "Tony"); 3) Hayden, the twelve (12) year old son of the parties; 4) Donna Thompson, the sister of Scotty and aunt of the two (2) minor children of the parties (hereinafter referred to as "Donna"); and, 5) Frankie Thompson, the mother of Scotty and grandmother of the two (2) minor children of the parties (hereinafter referred to as "Frankie"). (T.R. 2).

Once Scotty completed his case in chief, an *ore tenus* dismissal motion was made by counsel for Tammy. (T.R. 204-206). The Chancellor, in a lengthy ruling from the bench, dismissed Scotty's request for modification of custody. The Chancellor succinctly stated that Scotty failed to prove a material change in circumstances which adversely affected the minor children. (T.R. 206-236). (R.E. 7-37).

Scotty replaced his trial counsel and filed a *Motion for New Trial, for Specific Findings of Facts and Conclusions of Law and Other Relief*. (R.E. 42-46). The *Motion for New Trial, for Specific Findings of Facts and Conclusions of Law and Other Relief* was heard on September 14, 2010. (T.R. 237-244). The Chancellor reviewed his bench ruling and denied the relief sought by Scotty in his *Motion for New Trial, for Specific Findings of Facts and Conclusions of Law and Other Relief*. (T.R. 237-244). Scotty filed this appeal.

IV. STATEMENT OF RELEVANT FACTS

Scotty and Tammy were married on September 1, 1994. The parties were divorced on December 30, 1998, by a judgment of the Chancery Court of Rankin, Mississippi. The parties have two (2) minor children, of whom Tammy has physical custody.

After the divorce, Tammy married Tony Hutchison. (T.R. 74-75). Tammy and Tony have two (2) minor children of their own. (T.R. 74). Tony testified that his marriage was good, but had become strained due to Scotty's continuous accusations that Tony is a child abuser and that Scotty is trying to take custody of the parties' children away from Tammy. (T.R. 96, 100-103).

Scotty, at the time of the trial, was engaged to be married. (T.R. 47, 56). Scotty had fathered a child out of wedlock with his fiancée. (T.R. 7). Scotty could not give a specific time as to when he planned to wed his fiancée. (T.R. 56-57). Scotty had no problem exposing Hayden and Kelly to his extramarital situation as he testified that he and his children would stay with his fiancée overnight. (T.R. 47).

At the time of the trial, Scotty was primarily living with his mother in a manufactured home in Brandon, Mississippi. (T.R. 22-23, 47). Tammy and Tony live outside of Carthage, Mississippi in a recently constructed home. (T.R. 97).

Scotty is a police officer with the Morton Police Department. (T.R. 5). Tammy is a juvenile investigator with the Choctaw Police Department of the Mississippi Band of Choctaw Indians. (T.R. 65). Tony is self employed in the lawn care industry. (T.R. 73).

Tony has been involved in Hayden's life for over nine (9) years. (T.R. 75). Tony attempted to teach Hayden the value of work by allowing Hayden to work with him in the summer at his lawn care business. (T.R. 75). Tony involves Hayden in extracurricular activities, such as hunting and fishing. (T.R. 75, 90). In fact, Tony took Hayden hunting when Hayden killed his first deer. (T.R. 113-114). Tony did so after Scotty could not or would not take Hayden hunting. (T.R. 114-115). Tony thought enough to have Hayden call Scotty from the hunting field to allow Scotty to join in the celebration of Hayden killing his first deer. (T.R. 114-116, 152).

Scotty attempts to portray Tony as a vicious madman who bullies Hayden. Scotty made at least three (3) allegations to the Mississippi Department of Human Services (hereinafter referred to as "MDHS") that he believed his two (2) minor children with Tammy were being abused. (T.R. 31-32, 35). MDHS found the allegations of abuse to be unfounded. (T.R. 31-32, 35).

Scotty's main focus at trial was the alleged "choking" of Hayden by Tony. Tony admitted that he put his hands on Hayden's shoulder close to his neck. (T.R. 80-81). This action was characterized as "choking" by Scotty, but the testimony did not indicate that Tony was "choking" the child. There was no indication that Tony attempted to injure or maim Hayden, nor was there any injury. This incident was the second of the three unfounded reports Scotty made to MDHS. (T.R. 32).

Tony also admitted that he put his finger on Hayden's face cheek. (T.R. 94). This action was done to show Hayden that annoying others is wrong. (T.R. 94-95). Again, there was no indication that Tony attempted to injure or maim Hayden, nor was there any injury. As the trial testimony indicates, Tony's actions toward Hayden were conducted as a reaction to Hayden's wrongful behavior toward his siblings. (T.R. 93-95).

Hayden testified that his only problems with Tony have been the alleged "choking" and the finger in the face. (T.R. 133, 164). Hayden testified that he wasn't afraid of Tony. (T.R. 167). Scotty and his family believe that Tony is a child abuser and have made such statements in front of Hayden. Hayden testified that one of his aunts refers to Tony as a "child abuser". (T.R. 166-167).

Testimony was presented that Tony had disciplined Kelly. Tony admitted that several years earlier he had used corporal punishment and reddish marks were left when he accidentally struck Kelly's legs rather than the buttocks. (T.R. 109-110). Kelly was not called by Scotty to testify, nor was any evidence introduced regarding this incident. Scotty testified that he reported the incident to MDHS and the allegations that Tony was abusing Kelly were deemed unfounded. (T.R. 31). This was the first of the three reports made by Scotty to MDHS. (T.R. 31). Scotty never tried to seek relief from the Court regarding this incident. (R.E. 3-6).

As Scotty attempted to portray Tony in such a negative light, it is important to examine Scotty as well. Scotty testified that he depends a great deal on his family, especially his mother. (T.R. 20-21). Scotty does not care about the minor children's personal hygiene as he does not make Hayden bathe or shower everyday (T.R. 141, 198). Hayden testified that he stays up until midnight and sleeps until noon at Scotty's residence during the summer. (T.R. 130-131).

Hayden testified that he has more chores, stricter rules, and goes to church more with Tammy and Tony than he does with Scotty. (T.R. 148). Scotty's attempt to portray himself as a person who attends church was in stark contrast to Hayden's testimony. (T.R. 24-25). Hayden testified that Scotty only goes to church on Easter. (T.R. 156). Hayden testified that Tony reads the Bible and his family prays at Tammy's house. (T.R. 156).

Scotty is former military and is thirty percent (30%) disabled from post traumatic stress disorder and from depression. (T.R. 49-50). Scotty is required to take medication for these conditions. (T.R. 50). Even though he suffers from these conditions, Scotty plays and allows Hayden, a twelve (12) year old child, to play graphic and violent mature rated video games such as *Red Dead Redemption*, *Call of Duty: Modern Warfare*, and *Grand Theft Auto*. (T.R. 52-54). Hayden testified that he knew he was too young to play these mature video games, but Scotty allowed him to do so. (T.R. 131-132). Scotty admits to playing war video games, despite the fact he suffers from post traumatic stress disorder. (T.R. 54).

The testimony of Scotty regarding a 4 wheeler accident was significantly different than that of Hayden and Tony. Scotty alleged that Hayden was injured several years earlier in a 4 wheeler accident and had scrapes on his body. (T.R. 11, 54-55). Scotty's sister, Donna, also testified that Hayden was injured from an ATV accident. (T.R. 173). Tony testified that an accident occurred within the past year and while the bumper of the 4 wheeler was bent, no injuries occurred. (T.R. 106-107). Hayden testified that he was never injured in a 4 wheeler accident. (T.R. 153-154). The testimony of Scotty and Hayden are polar opposites.

Scotty attempted to blame Tammy for Hayden's bruised buttocks from a paddling at school. (T.R. 9, 37-38) (Exhibit P2-photographs). Scotty claims that he made no allegations against Tammy or Tony regarding the paddling, but that is disingenuous. (T.R. 35, 37-38).

Scotty wrongfully suspected that Tony and/or Tammy injured Hayden. (T.R. 60-61). This is evident as Scotty filed a *Motion for Immediate Emergency Hearing* seeking emergency custody of Hayden if it were proven that Tammy and/or Tony caused the bruising. (R.E. 5). Scotty filed his motion even though Hayden himself testified that the bruising was caused by a paddling from his teacher and this was confirmed by the *Guardian Ad Litem* in his report. (T.R. 133-135). In fact, the photographs of the bruised buttocks have no bearing on this case at all.

Scotty testified that for two (2) years Hayden experienced diarrhea when his visitation periods with Scotty ended. (T.R. 12). Hayden has been diagnosed with ADHD and trichotillomania. (Exhibit P1). Scotty failed to produce any medical evidence to link any of these conditions to any circumstances at the home of Tammy. Hayden first testified that he only got diarrhea when he was sick. (T.R. 154). Hayden then changed his testimony to reflect Scotty's testimony. (T.R. 154). Hayden testified that he no longer suffers from trichotillomania. (T.R. 154).

Scotty relied on medical documents from Dr. Byram, which fail to indicate any material change adversely affecting Hayden. (Exhibit P1). The medical documents and testimony simply showed a diagnosis of ADHD and trichotillomania. (Exhibit P1). Even though Scotty relied on the documents, Scotty's testimony was that he did not believe Hayden should be on any medication. (T.R. 43). It is confusing that Scotty relied on these diagnoses to try and prove a material change, but then testified that Hayden did not need medication. In fact, Scotty unilaterally modified Hayden's ADHD medication without consulting Tammy. (T.R. 18). Scotty's paranoia had led him to believe that Tammy had Hayden placed on medication as a reaction to his filing for change of custody. (T.R. 45).

SUMMARY OF THE ARGUMENT

The Chancellor is granted broad discretion when determining matters regarding custody of minor children. The Chancellor weighed the evidence presented by Scotty and determined that Scotty failed to present sufficient evidence of a material change occurring in the home of Tammy that adversely affected the minor children of the parties. As such, the decision of the Chancellor should be affirmed.

The domestic violence presumption found in *Mississippi Code Annotated* § 93-5-24(9)(a) (i) only applies when there has been a showing of a “history of perpetrating family violence.” According to the statute, a court may find a history of family violence if there is at least “one (1) incident of family violence that has resulted in serious bodily injury” or a “pattern of family violence.” *Id.* The domestic violence statute was not triggered as Scotty failed to show either requisite situations. There was no serious bodily injury, nor a pattern of family violence. As such, the Chancellor did not have to address the issues in written form. Even if the Chancellor should have made written findings as to why the statute was not triggered, the appropriate remedy is for this Honorable Court, on its own motion, to request the Chancellor to make such findings. Reversal and remand is not warranted.

The Chancellor sat in the best position to ingest the evidence presented by Scotty. The Chancellor reviewed an unsigned letter from Tara Mills, the counselor for Hayden, as well as minimal medical records regarding Hayden. Tara Mills' letter indicated that Scotty (referred to in her letter as Jimmy) was mean to Hayden and that Hayden was not scared to go home to Tammy. The photographs introduced by Scotty were admitted into evidence, but are irrelevant to the case as the paddling was from a teacher.

Scotty failed to produce any evidence that Hayden's trichotillomania and ADHD was caused by any outside influence. In fact, the report of the *Guardian Ad Litem* indicated that his research showed the condition may be genetic. A genetic cause is plausible as Kelly suffered from trichotillomania during her childhood. Absent expert medical testimony, any speculation as to the precise cause of Hayden's ADHD and trichotillomania is just that - speculation. Scotty had the opportunity in his case in chief to present evidence of a causal connection between Hayden's trichotillomania and ADHD and Hayden's home life, but Scotty failed to do so.

The *Guardian Ad Litem* submitted his reports to the Chancery Court as instructed. The *Guardian Ad Litem* was present during the trial and examined several of the witnesses presented by Scotty. The *Guardian Ad Litem* was readily available for examination by Scotty, as well as the Chancellor. It can be surmised that the trial strategy of Scotty was not to call the *Guardian Ad Litem* to the stand to testify. It can be assumed this was because the *Guardian Ad Litem's* recommendation was for physical custody of Hayden and Kelly to remain with Tammy.

The Chancellor properly denied Scotty's request for specific findings of fact and conclusions of law. The Chancellor reviewed his bench ruling. Said ruling addressed the testimony of Scotty's witnesses and their credibility, examined Tara Mills' letter regarding Hayden's counseling, assessed the medical conditions of Hayden, and indicated a thorough review of the *Guardian Ad Litem's* investigation from the reports. The bench ruling is very specific as to what factual evidence the Chancellor considered. The bench ruling sufficiently addresses the appropriate legal standards for modification of custody. The Chancellor applied his findings of fact to the appropriate legal standard. As such, the Chancellor made sufficient specific findings of fact and conclusions of law in his bench ruling.

STANDARD

To successfully modify an order granting child custody, a non-custodial party must prove that (1) a material change in circumstances has occurred which affects the child, (2) the substantial change adversely affects the child's welfare, and (3) that the modification of custody is in the best interest of the child. *White v. White*, 26 So.3d 342, 349 (Miss. 2010) (citing *Johnson v. Gray*, 859 So.2d 1006, 1013 (Miss. 2003)). All presented evidence must be viewed in light of the totality of the circumstances when determining whether modification of custody is necessary. *White*, 26 So.3d at 349 (citing *Weigand v. Houghton*, 730 So.2d 581, 585 (Miss. 1999)).

The question of which parent would better serve the welfare of the minor child as custodial parent is not reached unless the chancellor finds a material change in circumstances adversely affecting the child. *Powell v. Powell*, 976 So.2d 358, 361-62 (Miss. App. 2008) (citing *McCracking v. McCracking*, 776 So.2d 691, 694 (Miss. App. 2000)). If no material change in circumstances is found, the occasion to consider the minor child's best interests does not arise and a court is required to keep custody as it is. *Id.*

Only if a movant successfully shows a material change in circumstances in the custodial parent's home and the material change is adverse to the minor child, would the best interest test be utilized. The factors used to determine a minor child's best interest are as follows:

1. the age, health and sex of a child;
2. which parent had continuing care of the child prior to separation;
3. which parent has the best parenting skills;
4. which parent has the willingness and capacity to provide primary child care;
5. the employment responsibilities of both parents;

6. the physical and mental health and age of parents;
7. emotional ties of the parent and child;
8. the parents' moral fitness;
9. the child's home, school and community record;
10. the preference of a child at the age of twelve (12);
11. stability of the home environment and employment of each parent; and,
12. other relevant factors.

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

In a custody modification proceeding, a chancellor's findings will not be disturbed on appeal when the findings are supported by substantial evidence, unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard.

Powell, 976 So.2d at 361 (citing *Sanderson v. Sanderson*, 824 So.2d 623, 625-26 (Miss. 2002)).

ARGUMENT

In this appeal, the Chancellor's findings were supported by substantial evidence. None of the exceptions to the rule that a chancellor's findings will not be disturbed are applicable. Therefore, the Chancellor's ruling should be affirmed.

I. Did the Chancellor err in failing to find a material change in circumstances which adversely affected the minor children?

A chancellor, as fact finder in a domestic relations case, is obligated to decide who is telling the truth, and if the same chancellor heard all of the testimony at all of the hearings in the case, he or she is in the best position to determine the credibility of those witnesses. *Mosley v. Atterberry*, 819 So.2d 1268, 1273 (Miss. 2002). The Mississippi Supreme Court succinctly stated that "[i]t is not our place to substitute our judgment for that of the trial court, absent manifest error or abuse of discretion." *Id.*

Material changes in circumstances adversely affecting a child and warranting a custody modification have been found in cases where the evidence supporting modification is extreme (i.e. custodial parent was emotionally unstable and may have been suicidal - *Sanford v. Arinder*, 800 So.2d 1267 (Miss. App. 2001), custodial parent may have been an alcoholic and took the child to a bar - *Parker v. South*, 913 So.2d 339 (Miss. App. 2005), and custodial parent was on house arrest - *Williams v. Stockstill*, 990 So.2d 774 (Miss. App. 2008)). These cases are only a few examples, but they stand in stark contrast to the sporadic incidents in the case.

In the instant case, the Chancellor heard all of the testimony and reviewed the exhibits presented by Scotty. The Chancellor stated that the testimony of Scotty was in many ways contradictory to the testimony of Hayden. (T.R. 208-210) (R.E. 9-11). The Chancellor expressly

stated that if he were to believe Scotty's allegations, then he could not believe Hayden's testimony. (T.R. 208-209) (R.E. 9-10). Therefore, the Chancellor, as the fact finder, sought out the truth to the best of his ability and after examining all of the evidence, determined that no material change adversely affecting Hayden existed. As the Chancellor did not abuse his discretion, clearly err, or apply an incorrect legal standard, his finding must be upheld.

A. Did the Chancellor fail to consider *Mississippi Code Annotated* § 93-5-24(9)?

In every proceeding where the custody of a child is in dispute, "there shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody of a parent who has a history of perpetuating family violence." *Mississippi Code Annotated* § 93-5-24(9)(a)(i) (Rev. 2004). A history of perpetuating family violence must be proven by a preponderance of the evidence that there was either a pattern of family violence against a member of the household or a single incident of family violence that results in serious bodily injury. *Id.*

Lawrence v. Lawrence, 956 So.2d 251 (Miss. App. 2006), which is cited by Scotty as authority for reversal, can be distinguished from this case. The parties in *Lawrence* were involved in an ongoing physical confrontation, holes were knocked into walls, and one party striking the other in front of the child resulting in a bloodied nose. *Id.* at 262. The incidents in the instant case do not rise to such a level. Scotty tries to characterize the incidents as "striking" and "choking" Hayden, but the testimony does not reflect the actions in the same manner as suggested by Scotty. Scotty also characterizes an argument in which a pregnant Tammy called the police over a television remote as violence.

Scotty tries to persuade this Honorable Court that Tony would be guilty without a trial of assault under *Mississippi Code Annotated* § 97-3-7 (Rev. 2004). It is important to note that for the purposes of this statute, for Tony to be guilty, he would have to be attempting bodily injury or using physical menace to put Hayden in fear. No testimony backs up this argument from Scotty.

Scotty finally points out Hayden's testimony that Hayden felt unsafe at the home of Tammy and Tony. Scotty conveniently ignores the letter from Tara Mills, which he relies so heavily on, where Hayden told Tara Mills that he was "not scared to go home." (Ex. P3).

A more appropriate case for this Honorable Court to rely on is *Brumfield v. Brumfield*, 49 So.3d 138 (Miss. App. 2010). In *Brumfield*, the father pinned the children's mother against a wall and hit her twice with a belt, leading to a simple assault prosecution against him. The trial court granted custody to the father. *Id.* at 141. The Mississippi Court of Appeals remanded for lack of specificity as to the *Albright* factors but on its own motion, asked the chancellor to determine whether the statutory presumption against granting custody to a parent with a "history of family violence" should have been enforced and it instructed the parties to offer additional briefing to address the chancellor's supplemental findings. *Id.* at 142. After the chancellor made the requested supplemental findings, the actions were still insufficient to trigger the presumption, and the award of custody to the father was upheld. *Id.* at 141-142

The presumption that it is detrimental to the child and not in the best interest of the child to be with a parent who has a history of perpetuating family violence is sound and necessary. The Chancellor in the instant case did not have to make written findings regarding why and how the presumption was or was not triggered. This is because Scotty failed to show a history of family violence existed or a serious bodily injury occurred. Even if written findings are required, reversal is not the appropriate relief. This Honorable Court should simply request the Chancellor

make his findings in writing regarding *Mississippi Code Annotated* § 93-5-24(9)(a)(i) (Rev. 2004) and allow the parties to brief the supplemental findings.

B. Did the Chancellor err in its consideration of trichotillomania and emotional harm?

1. Trichotillomania

Scotty argues that the Chancellor ignored all the allegations presented at trial and relies exclusively on *Gilliland v. Gilliland*, 969 So.2d 56 (Miss. App. 2007). In *Gilliland*, the mother suffered from trichotillomania and was not awarded full custody of the children. Scotty would have this Honorable Court believe that the trichotillomania was the sole reason the father was awarded custody in *Gilliland*. In *Gilliland*, the mother had serious emotional problems and severely over-disciplined the children, which such discipline was noted to near physical and mental abuse. *Id.* at 69. These were factors the chancellor used in making an *Albright* determination.

Unlike *Gilliland*, Hayden suffered from trichotillomania, but does not currently have the infliction. A causal connection between the disorder and the family situation was never attempted or established. As noted by the *Guardian Ad Litem*, the condition may be a genetic disorder, which is supported with Scotty's testimony that Kelly may have had the same condition. No medical evidence was presented by Scotty which connects Hayden's trichotillomania to Tammy, Tony, or anything. Scotty's failure to produce any additional evidence to support his argument before the Chancellor is his own fault.

2. Emotional harm

If the alleged emotional harm of Hayden constituted a material change adversely affecting Hayden to the point that he should be removed from his mother's home, it is implausible that it could be resolved in a few therapy visits with a counselor. (Exhibit P3). Moreover, rather than trying to ensure that Scotty's goal of gaining custody of Hayden, one might expect Scotty to be grateful that just a few counseling sessions were so beneficial to Hayden to the point of his stating that he felt significantly better about his situation and no longer needed the help of a counselor. (R. E. 16). (Exhibit P3). The evidence produced by Scotty simply did not convince the Chancellor that Hayden suffered emotional harm.

Scotty is confused as to the events surrounding his second MDHS report. Eva Tisdale, not Tara Mills, was brought in to testify at the first scheduled trial by Tammy because of Scotty's bare minimum petition for relief. Eva Tisdale was the caseworker for Scotty's second unfounded report to MDHS. Once the Chancellor heard that Scotty would be addressing the same allegations, the Chancellor ordered the appointment of the *Guardian Ad Litem*. Prentiss Grant was appointed in this action and not through any action of the MDHS.

II. Did the Chancellor err in failing to examine the *Guardian Ad Litem*?

The role of a guardian ad litem in Mississippi jurisprudence is not uniform, but instead varies depending on the circumstances of the particular case. *S.G. v. D.C.*, 13 So.3d 269, 280 (Miss. 2009). In some cases, the guardian ad litem may be called to testify, and in others, the role may be more limited. *Id.* at 280. The reports of the guardian ad litem in this case were sufficient to fulfill the duties assigned to it by the court, and therefore, his testimony was not required.

In the instant case, Prentiss Grant met with the minor children and thoroughly investigated the allegation of Scotty. It is confusing as to whether Scotty believes the investigation was lacking or that the *Guardian Ad Litem* did not testify. Either way, neither issue was addressed at the trial court level and thus the relief sought by Scotty should be denied.

III. Did the Chancellor fail to make specific findings of facts and conclusions of law?

The Chancellor in this case made elaborate findings of fact, and it would have been grossly unproductive and duplicative for the court to restate specific findings of fact simply because Scotty requested them. The Chancellor's bench opinion was sufficiently specific because this case was not complex. There have been no allegations on appeal that the wrong legal standard was set forth by the Chancellor in his bench ruling. Therefore the only argument by Scotty is that the Chancellor did not address the domestic violence statute or the trichotillomania.

Mississippi Rule of Civil Procedure 52(a) has been construed to mean that a trial court has permissive discretion regarding whether to issue findings of fact and conclusions of law in cases that are not complex. *Golleher v. Robertson*, 830 So.2d 694, 697 (Miss. App. 2002) (citing *Tricon Metals and Services, Inc. v. Topp*, 516 So.2d 236, 239 (Miss. 1987)). Where a trial judge declined to make specific findings of fact on request of a party, but made general findings of fact and conclusions of law, the judge technically complied with the requirements of Mississippi Rule of Civil Procedure 52. *Golleher*, 830 2d at 697.

The Chancellor was thorough in his review of his bench ruling. As such the request for relief by Scotty should be denied.

CONCLUSION

Chancery courts are afforded broad discretion in family law matters. The chancellors sit in a unique position as finder of fact and as finder of law. The equitable powers of a chancellor cannot be disregarded. To do otherwise would undo over a century of well settled precedent.

The Chancellor did not err regarding his decision to dismiss the action filed by Scotty. Scotty failed to show unto the Honorable Court that a material change in circumstances had occurred in the household of Tammy. Scotty also failed to show any adverse affect on the minor children of the parties. As such, the Chancellor never had to employ the *Albright* factors to determine the best interests of the minor children.

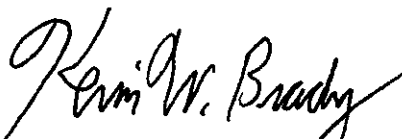
The Chancellor was not required to consider the domestic violence statute. Allegations alone are sufficient to require the appointment of a guardian ad litem; however, in order for the domestic violence statute to be triggered, an allegation alone is insufficient. The incidents alleged did not rise to the level to trigger the domestic violence statute.


Scotty had the opportunity to examine the *Guardian Ad Litem*. The report from the *Guardian Ad Litem* was available to Scotty and the report did not recommend modifying custody. The *Guardian Ad Litem* was present during the trial and was available for examination by Scotty and the Chancellor. Scotty tactically chose not to examine the *Guardian Ad Litem*. Scotty is now trying to use his failure as method to secure a new trial.

Tammy respectfully requests that the decision of the Chancery Court of Rankin County, Mississippi be affirmed and that all costs and attorney fees regarding this appeal be assessed against Scotty.

RESPECTFULLY SUBMITTED,

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The undersigned counsel does hereby certify that this day a true and correct copy of the foregoing Brief of Appellee has been delivered via United States mail postage pre-paid to the following persons:

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