IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ADAM LUCAS — **APPELLANT**

v. — **No. 2011-CA-00015**

JEANNIE H. HENDRIX and JOHN E. HENDRIX — **APPELLEES**

PRINCIPAL BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

On Appeal from the
Chancery Court of Lowndes County, Miss.
No. 2010-0538

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss. R. App. P. 28(a)(1), 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.

1. Adam Lucas, *Appellant*
2. Charles D. Easley, *Trial & Appellate Counsel for Appellant*
3. David Neil McCarty, *Appellate Counsel for Appellant*
4. Jeannie H. Hendrix and John E. Hendrix, *Appellees*
5. Carrie A. Jourdan, *Former Trial Counsel for Appellees*
6. William P. Starks, II, *Trial Counsel for Appellees*
7. Tyler Lucas & Cody Lucas, *minor children of the Appellant*
8. The Honorable Dorothy W. Colom, *Chancellor of the Fourteenth Chancery Court District, Chancery Court of Lowndes County, Mississippi*

So CERTIFIED, this the 30th day of June, 2011.

Respectfully submitted,

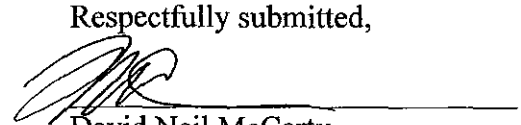

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Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Statement of the Issues Presented for Review

I. The Trial Court Failed to Employ the *Albright* Factors.

II. The Trial Court Improperly Weighed the Actions of Another Person Against the Natural Parent.

III. The Hendrixes Did Not Prove By Clear and Convincing Evidence that Adam Was an Unfit Parent.

IV. The Order Must Be Reversed Because the Legislature Has Not Defined the Process for Termination of Parental Rights.

Statement Regarding Oral Argument

Pursuant to MRAP 34(b), oral argument would assist the Court in resolving this case in two main ways. First, this case involves the right of a natural parent to keep custody of his children, one of the most fundamental rights in our society. Oral argument will detail the extremely heavy burden faced by a third party wishing to intrude upon those fundamental rights.

Second, oral argument is necessary to clarify the proper standard that should be applied in cases where a court weighs the rights of a natural parent versus a third party.

Statement of the Case

This is a case where grandparents seek custody of two children against the wishes of their father, who is also their natural born parent.

The father had a relationship with the daughter of the grandparents, and that relationship produced two beloved sons. The daughter of the grandparents passed away, and the father began the full-time support of his children. After several years, the grandparents acted to have his custody of the sons terminated. They sought full custody, and attempted to prove that the father was somehow immoral or otherwise unfit to be a parent to his sons.

The trial court agreed with the grandparents. The father appeals that ruling in order to gain back his family.

Facts and Procedural History

Certain facts are undisputed by the parties. Undisputed is that Adam Lucas and Shannon Hendrix had a relationship which produced two children, Cody (now aged 12) and Tyler (now aged 10). R. at 32, 33.[1] After the birth of the boys, Shannon passed away. R.E. at 8 n.1, 9. Adam has a ninth grade education and a GED. Tr. 176. His father died the same day Shannon passed away. Tr. 177.

Adam later married, and his wife Heather and the boys lived together along with her three children from a prior marriage. R.E. at 9. Adam and his family live in a home with three bedrooms and two bathrooms. R.E. at 9. The three brothers are in one bedroom, the sisters in another, and the parents in the third. R.E. at 9. There are two dogs that live in the home with the family. R.E. at 11. The home is on roughly an acre and a half of land. Tr. 85. They have a four-wheeler and a Playstation 3. Tr. 132, 164. The electricity has been cut off to the house before—once for three days, once for roughly a half hour. Tr. 154.

The boys are both all-star baseball players, but could do better in school. Tr. 55.

Shannon's parents, the Hendrixes, sought sole custody over their grandsons, and filed suit to terminate Adam's parental rights over Cody and Tyler. R. at 4. At trial, several disputed facts arose—although in most instances it was only that Mrs. Hendrix had a particular view of the facts different from the other witnesses. Mr. Hendrix did not testify at trial.

Mrs. Hendrix had been straining to obtain her grandchildren for some time. Speaking of the Hendrixes, Adam testified that "[e]ver since Shannon died, I been beat down by them every day." Tr. 186. Mrs. Hendrix had been investigated for kidnapping the boys on one occasion. Tr.

[1] Record cites will be as follows: to the Record itself, "R. at [page]." To the Record Excerpts of the Appellants, "R.E. at [page]." To the transcript of the trial, "Tr. at [page]."

58. She admitted on the stand that she took the boys without Adam's permission. Tr. 59. She further conceded that she did tell their father that she took them. Tr. 59.

Against this backdrop the Hendrixes sought to prove that Adam was an unfit father. The Hendrixes had claimed the boys lived in a dirty house with Adam. Yet the testimony of *every* other witness held otherwise—even those witnesses called by the Hendrixes. Adam's sister-in-law Rachel testified that she thought the house was fine. Tr. 77. His brother Lonnie thought the house was clean. Tr. 90. Adam's mother testified that "They have a very clean house," and that Adam's wife Heather actually cleaned her house as well. Tr. 202. Adam's aunt Joanne testified that the house was "very nice." Tr. 212. Another aunt testified that she "loves" the house, which is "just a couple of blocks behind" where she lives. Tr. 218.

Unlike the rest of the witnesses, Mrs. Hendrix believed Adam and the boys' home was very dirty. Tr. 30. Despite this testimony, Adam's wife testified that Mrs. Hendrix had left her dog at their house for dogsitting. Tr. 162.

The Hendrixes also claimed that the house was dangerous because there were two dogs. Again, Mrs. Hendrix had left her dog at the house before, proving that she did not think it too dangerous. The older boy, Tyler, testified that he played with the dogs. Tr. 126. Once he was bitten: "Yeah, one of them he bit me and it wasn't serious, but he bit me." Tr. 126. He testified the bite broke the skin, but he didn't have to go to the hospital. Tr. 126. Mrs. Hendrix did not even have knowledge about the dog bite, and when asked if "there [had] ever been any type of health care or injuries to the boys based on the dogs?" she answered "No. But Tyler has coughed a lot, you know." Tr. at 33-34.

Adam admitted that he had a history of drinking and was working to control his drinking, and that he attends AA meetings but occasionally took a drink. Tr. 187. He had gotten a DUI for "fishing and drinking." Tr. 181. His wife said that he "drinks, but he doesn't get drunk." Tr.

155. His brother Lonnie admitted Adam drank, but thought that it was "no different from everybody else I have seen drinking, you know." Tr. 87. Adam's sister-in-law thought that his drinking got worse after his father died. Tr. 75.

Mrs. Hendrix also alleged the children were underfed. Tr. 31, 33. Yet the other witnesses testified they always had food. Tyler said he always had food, clothes, and school supplies. Tr. 135. Adam said he always had food for his sons. Tr. 181. The boys' other grandmother testified there were no food complaints. Tr. 204.

Mrs. Hendrix attempted to make a great deal about having to pick the boys up one time when they were walking over a mile from the house. Tr. 49. Yet on questioning from the Hendrixes' counsel, Tyler admitted that when his grandmother came to pick him up, it wasn't because he was in danger—it was "[b]ecause I called her, cause I didn't want to ride the bus that day." Tr. 138.

Adam admitted it was tough going financially. He testified that it was "really hard to find" a job—"You got to take what you can get." Tr. 190. Adam testified he would do whatever it takes to get a job: "I mean, if it means digging a ditch, then I'm digging a ditch . . . If it means working at a sewer plant, I'm working at a sewer plant." Tr. 190. His wife Heather admitted that they struggle financially and "[t]he main thing we fight over is money honestly." Tr. 157. They also fought about how much leeway Adam would give the Hendrixes over the boys. Tr. 159.

For their parts, the boys were typical kids. They are both all-star baseball players. Tr. 55. Mrs. Hendrix testified she once caught the boys sneaking her cigarettes. Tr. 52. Tyler's teacher testified that he wasn't trying hard in school for a while. Tr. 95. She described Tyler as very "polite but he doesn't talk," and is very quiet but "seems like a happy child sitting in the classroom . . . ." Tr. 99, 112. He had a history of problems with math. Tr. 99. His grades are low save in Reading and Social Studies, where he had an 85 and 87, and he had a perfect grade

in P.E. Tr. 105. Ms. Price ultimately testified that she does "feel like he's trying now," and that "he's making an effort" in school. Tr. 113.

Cody's teacher said he was "doing ok" in school. Tr. 116. She testified that "[h]e does fine," "[h]e has friends," and "[h]e's lively." Tr. 117. The teacher further agreed that he was "just like most normal little boys," although his grades were not high. Tr. 123.

Importantly, despite all of Mrs. Hendrix's allegations of Adam's unfitness, she admitted that she never called the Department of Human Services regarding her grandsons. Tr. 62. Nor did she ever call the police. Tr. 67.

Despite the great wealth of evidence demonstrating that Adam was not an unfit father, and that the boys were just like most kids in Mississippi, the trial court agreed with the Hendrixes, ruling that Adam drank too much, the house was unclean, the children had had trouble in school, and that Adam had a poor work history. R.E. 11-15. The trial court granted full custody to the Hendrixes, and Adam timely filed an appeal of that ruling.

Summary of the Argument

This case must be reversed for four major reasons. Most notably, the trial court applied the wrong legal standard in two instances. First, the trial court failed to apply the *Albright* factors, which is a clear violation of Mississippi law.

Second, the trial court improperly assessed the alleged actions of Heather Lucas against Adam, even though the case law mandates that only the actions of the natural parent are taken into account.

Third, the Hendrixes failed prove by clear and convincing evidence that Mr. Lucas is immoral, mentally unfit, or otherwise unfit. Instead, the evidence at trial showed that the living conditions of the children were clean, that they were well cared for, and that Adam provided financially for them as best he could.

Last, this case must be reversed because a natural parent should never lose custody of children absent an affirmative act of the Legislature.

Standards of Review

Because the trial court failed to apply the correct standard of law, this Court must review the pleadings and make a new determination using the de novo standard. The Supreme Court "will examine [a] case de novo . . . when it is clear that the chancery court's decision resulted from a misunderstanding of the controlling law or was based on a substantially erroneous view of the law." *In re Dissolution of Marriage of Leverock and Hamby*, 23 So.3d 424, 427-28 (Miss. 2009) (internal quotations omitted).

Mississippi case law and statutory law place a heavy burden on third parties seeking to terminate the custody of a natural parent, and as such they face a profound burden at trial. See *K.D.F. v. J.L.H.*, 933 So.2d 971, 980 (Miss. 2006) (in Mississippi, it is presumed that it is in the best interest of a child to remain with the natural parent as opposed to a third party); Miss. Code Ann. § 93-13-1 (guardianship of children falls to surviving parent when one is deceased). The third party must prove by clear and convincing evidence that the natural parent is not fit to take care of their family. *K.D.F.*, 933 So.2d at 979.

Argument

For four reasons the order of the trial court terminating the rights of the natural parent must be reversed. First, because the trial court utilized the wrong legal standard when it failed to apply the *Albright* factors. Second, because the trial court improperly weighed the actions of another person against the natural parent. Three, because the Hendrixes failed to produce clear and convincing evidence of Adam's unfitness. Last, because absent an act of the Legislature, this Court should not approve the termination of parental rights.

I. Failure to Utilize the *Albright* Factors Triggers Automatic Reversal.

Because the trial court failed to use the correct legal standard, this case must be reversed. Specifically, the trial court did not weigh custody via the *Albright* factors, which warrants an immediate reversal and remand for a new trial and a determination by the trial court as to proper custody between the natural parent and the Hendrixes.

In Mississippi, in rare situations a third party may gain custody of the children of a natural parent. See *In Re Dissolution of Marriage of Leverock and Hamby*, 23 So.3d 424, 431 (Miss. 2009). Yet first a rigorous test must be passed: "[i]n a custody case involving a natural parent and third party, the court must first determine whether through abandonment, desertion, or other acts demonstrating unfitness to raise a child, as shown by clear and convincing evidence, the natural parent has relinquished his right to claim the benefit of the natural-parent presumption." *Id.*

After that point there is a second step. "If the court finds one of these factors has been proven, then the presumption vanishes, and *the court must go further* to determine custody based on the best interests of the child through an on-the-record analysis of the *Albright* factors." *Id.* (emphasis added) (citing to *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss.1983), which lists multiple factors to be considered before custody is granted).[2]

In the case at hand the trial court determined that Mr. Lucas, the natural parent, should not have custody of his two children. Yet the trial court failed to proceed to the *Albright* analysis. The Judgment of the trial court contains no reference to the *Albright* factors. R.E. 5-7. Nor does the Opinion and Final Judgment of the Court contain any reference or weighing of the

[2] The Supreme Court has reiterated that the *Albright* factors must be applied in third party custody situations as recently as three months ago. See *D.M. v. D.R*, 2011 WL 1168187, *4 (Miss. March 31, 2011) (citing to *Leverock* and *Albright*).

Albright factors. R.E. 8-15. Nor is there any "on-the-record analysis of the *Albright* factors" as required by the *Leverock* case or other Mississippi case law.

It is further clear from the record that the trial court employed the wrong legal standard because it expressly ruled that *Albright* did not apply. In ruling from the bench, the trial court held that "we have what's known as the best interest of the child analysis called the *Albright* factors, *but they don't apply when a third party seeks custody* . . . ." R.E. 17, Tr. at 269 (emphasis added). This is simply wrong in light of Mississippi Supreme Court precedent, and as a result this case must immediately be reversed for a further determination in the trial court of the *Albright* factors.

Because the trial court failed to employ the correct legal standard, the order granting custody to the Hendrixes over the natural parent of the children must be reversed.

II. The Trial Court Improperly Weighed Evidence Against the Father.

Because the trial court used the wrong legal standard in determining the actions of the natural parent, the order granting custody to the Hendrixes must be reversed. Specifically, the trial court improperly weighed the actions or alleged actions of Mr. Lucas' wife against him in contravention of Mississippi case law.

As noted above, in rare situations a third party may gain custody of the children of a natural parent. *Leverock*, 23 So.3d at 431. In the case at hand, there is only one natural parent remaining. So "[i]n a custody case involving a natural parent and third party, the court must first determine whether through abandonment, desertion, or other acts demonstrating unfitness to raise a child, as shown by clear and convincing evidence, *the natural parent has relinquished his right* to claim the benefit of the natural-parent presumption." *Id.* (emphasis added).

As the Court of Appeals has phrased it, the trial court determines if "the conduct of the *parent* is so immoral as to be detrimental to the child, or . . . the *parent* is mentally or otherwise

unfit to have custody of the child." *Schonewitz v. Pack*, 913 So.2d 416, 421 (Miss. Ct. App. 2005) (emphasis added). In other words, it is *only* the actions of the natural parent that are at issue in the analysis before the trial court—not the actions of any other person.

For example, in *Leverock* the Court ruled that "[w]e find on the record before us as a matter of law that [the father's] actions (or lack thereof) during the two and a half years before [the mother's] death constitute desertion." 23 So.3d at 431. It was only *the parent's* actions that were examined.

Yet the trial court clearly taxed Mr. Lucas with the actions of his wife, Mrs. Heather Lucas. Throughout the trial court's Opinion and Final Judgment, the trial court heavily scrutinized the alleged actions or inactions of Mrs. Lucas.[3] Specifically, the trial court noted that Mrs. Lucas was arrested for the sale of drugs; that she "was also heavily intoxicated in public;"[4] and that she smokes. R.E. 11-12.

The trial court used the alleged actions of Mrs. Lucas in order to damn the natural parent of the children, Mr. Lucas. Yet these contested allegations concerning Mrs. Lucas have nothing to do with the standard set by the Supreme Court, which only examine the actions or inactions of the *natural parent. Leverock*, 23 So.3d at 431. The actions or inactions of Mrs. Lucas have no role to play in determining if Mr. Lucas is immoral or otherwise unfit to care for his natural children.

Because the trial court improperly weighed the alleged actions of Mrs. Lucas against the natural parent, Mr. Lucas, the order granting custody to the Hendrixes must be reversed.

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[3] As will be addressed below, much of the trial court's opinion was not based on clear and convincing evidence, but rather solely on the testimony of Mrs. Hendrix.

[4] Despite the fact that Heather's conduct is irrelevant to the determination of Adam's parental fitness, this ruling was simply incorrect. The testimony instead showed that Heather had been sick on the day in question. Rachel Lucas recalled that Heather had two drinks. Tr. 82. Heather testified she only had one. Tr. 155. There was no direct evidence she was "heavily intoxicated."

III. Mr. Lucas Is Not Immoral, Mentally Unfit, or Otherwise Unfit.

Because the Hendrixes failed in proving by clear and convincing evidence that Mr. Lucas was immoral, mentally unfit, or otherwise unfit, the order of the trial court must be reversed.

At the outset, it is important to note that "it is presumed that the best interests of the child are served by remaining in the custody of the natural parent." *Logan v. Logan*, 730 So.2d 1124, 1125 (Miss.1998). For "[t]he presumption in all cases is that the child's parents will love it most and care for it better than anyone else and it is in the best interest of the child to leave it in the custody of a parent." *Moody v. Moody*, 211 So.2d 842, 844 (Miss.1968) (quoted with approval in *D.M. v. D.R.*, 2011 WL 1168187, *3-4 (Miss. Mar. 31, 2011)). "In order to overcome this presumption, there must be a clear showing that the parent is unfit by reason of immoral conduct, abandonment or other circumstances which clearly indicate that the best interest of the child will be served in the custody of another." *Id.*

Further, there are "fundamental liberty interests involved whenever the State interferes with the relationship between parent and child." *D.M.*, 2011 WL 1168187 at *3.

An important recent case on parental rights is *K.D.F. v. J.L.H.*, 933 So.2d 971, 979 (Miss. 2006). There, prospective adoptive parents argued that a biological father was "mentally and morally unfit" for fatherhood. *Id.* at 979. The parents who sought adoption argued the birth father was a longtime substance abuser and alcoholic and was immoral and irresponsible because he would have unprotected sex. *Id.* They also argued he was unfit because he had a spotty work history. *Id.*

The chancellor refused to terminate the birth father's parental rights, holding that even though he had a history of substance abuse and poor work history, this "did not rise to a level requiring termination of his parental rights." *Id.* In affirming the trial court's decision, the Supreme Court reiterated the high burden of proof in a termination case—"the burden of proving

mental or moral unfitness by clear and convincing evidence." *Id.* In the *K.D.F.* case, there was simply not "adequate evidence" that the birth father hand an "inability to raise his child based on mental or moral unfitness." *Id.*

In the case at hand, the trial court focused on roughly three areas in ruling that Adam was unfit to be a father to his sons: the cleanliness of his home, whether the children were well taken care of, and whether Adam drank too much and provided adequate financial stability for the family.[5] Each will be addressed in turn.

A. The Evidence Showed the House Was Clean and Safe.

The testimony showed that the house was clean—and even if it were not, a dirty house does not overcome the presumption that Adam Lucas is a fit parent to his children.

The trial judge ruled that "[t]he trailer the children live in is both overcrowded, unsanitary, and dangerous." R.E. 14.

Yet as noted above, the overwhelming weight of the testimony was that the home was clean. Even those witnesses called by the Hendrixes said so. Adam's sister-in-law Rachel testified that she thought the house was fine, as did his brother Lonnie, his mother, and both his aunts. Only Mrs. Hendrix argued the house was dirty—and she conceded that she had never reported Adam to DHS. Further, Heather testified Mrs. Hendrix had left her dog at the home while she was out of town.

The Lucas home has two dogs, and the children play with them, and Tyler said that one of the dogs once bit him, although it was not serious.

Left unsaid is one major point—even *if* the home were filthy, that does not rise to the level of terminating Adam's fundamental right to be a parent to his children. Even *if* the home were unsafe, that is simply not enough to overwhelm the inherent right Adam has to his children.

[5] This section will ignore those alleged facts pertaining to Mrs. Lucas that were improperly considered by the trial court. *See* Section II, *supra.*

The evidence showed the home was not dirty, and any scant evidence to the contrary is not enough to overwhelm the presumption of Adam's fitness as a parent.

The trial court's order was incorrect regarding both facts and law and must be reversed.

B. The Children Are Well Cared For.

Because the testimony showed that Tyler and Cody were well cared for by Adam, the order of the trial court must be reversed.

The trial court ruled that the children were at risk. R.E. 14. Yet the boys live in a home on roughly an acre and a half of land, and have a four-wheeler and a Playstation 3. Their teachers described them as polite and happy. They do not always get the best grades in all subjects, but do have some good grades, and are all star baseball players. Testimony on both sides said they got enough food and had clothing and school supplies. This was only disputed by Mrs. Hendrix. Tyler and Cody are simply normal little boys.

The testimony introduced at trial does not show that the boys were at risk, and as a result the trial court must be reversed.

C. Adam Does Not Have A Drinking Problem and Works As Best He Can.

The evidence at trial showed the Adam did not have a drinking problem and that he supported his family by working as much as he could.

The trial court ruled that Adam "has an alcohol problem that he refuses to address." R.E. 14. Yet testimony at trial was that Adam was in AA, although he occasionally relapsed. While he may have struggled with alcohol, he was trying his best to control any problem.

The trial court also ruled that Adam was seen publically drunk and driving with his children. R.E. 14. This apparently refers to an event at a July Fourth picnic where multiple witnesses said that Adam wasn't driving. For instance, Lonnie Lucas said he knew Adam did

not Knew Adam wasn't driving. Tr. 89. Heather testified she drove the family home. Tr. 155. This component of the opinion is simply wrong in light of the actual testimony at trial.

Further, Adam testified that he tried his best to get a job and would work any job he could get. Heather Lucas admitted that they had money problems and fought over money. Yet this is an issue common throughout America, especially Mississippi. The children have food, clothing, and school supplies. They ride four wheelers and play video games. They have pets.

Like the birth father in the *K.D.F.* case, Adam Lucas has had a spotty work history. Like the petitioner there, he has struggled with alcohol. In that regard, he is like many Mississippians. Those everyday troubles are simply not enough to warrant the termination of his parental rights of his sons. Those everyday problems are simply not enough to violate his fundamental right to rear and protect his sons. Unlike the *K.D.F.* case, the trial court here lowered the burden of proof to terminate Adam's parental rights. This is not the law, and as a result the trial court's order must be reversed and Adam's parental rights restored.

Because the evidence introduced at trial did not show that Adam was immoral or unfit to raise his sons, the order of the trial court must be reversed.

IV. A Natural Parent Should Never Lose Custody of Children Absent an Act of the Legislature.

A parent's relationship with their child is one of the most fundamental building blocks of our civilization, and is entitled to constitutional deference. Accordingly, in the absence of a legislative pronouncement, the courts should immediately cease granting custody to third parties while a natural parent remains alive.

"The ancient maxim of '*expressio unius est exclusio alterius*' . . . acknowledges the inference that items not mentioned are excluded by deliberate choice, not inadvertence." *USF&G Ins. Co. of Miss. v. Walls*, 911 So.2d 463, 466 (Miss. 2005). The Legislature has not affirmatively declared the manner in which a child may be taken from his or her natural parents;

rather, this is a creature of case law. See *Leverock*, 23 So.3d at 431. If the Legislature wished to elevate the rights of third parties to those of natural parents, it could do so, just as it has minutely detailed processes like adoption or foster parenting. *See* Miss. Code Ann. § 93-17-5, *et seq.* (adoption process); Miss. Code Ann. § 43-15-13, et seq. (creating foster system).[6]

Yet the Legislature has refused to craft such a system, and in light of this the courts can only presume that the shattering the bonds of a natural parent and child is not the will of the Legislature. The Court must decline to uphold the order granting custody to the Hendrixes because it does not pass constitutional muster.

CONCLUSION

For four reasons the order of the trial court terminating the rights of the natural parent must be reversed. First, because the trial court utilized the wrong legal standard when it failed to apply the *Albright* factors. Second, because the trial court improperly weighed the actions of another person against the natural parent. Third, because the Hendrixes did not prove by clear and convincing evidence that Mr. Lucas is immoral, mentally unfit, or otherwise unfit. Last, because a natural parent should never lose custody of children absent an affirmative act of the Legislature.

Therefore the order granting legal and physical custody to the Hendrixes must be reversed. In the alterative, and at the very least, this case must be reversed for a new trial in order to determine the applicability of the *Albright* factors to the custody issue between the natural parent and the Hendrixes.

Filed this the 30th day of June, 2011,

Respectfully Submitted,

[6] Because this is a matter of whether the trial court had the power and authority to terminate Mr. Lucas' constitutional right to his children, it involves subject-matter jurisdiction, and can therefore be considered by this Court. "Subject matter jurisdiction is an issue that may be raised by any party at any time, including being raised for the first time on appeal." *Wiggins v. Perry*, 989 So.2d 419, 428 (Miss. Ct. App. 2008); *See* M.R.C.P. 12(h)(3).

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have served by United States mail, postage prepaid, or via hand delivery if specified, a true and correct copy of the above and foregoing document, to the following persons at these addresses:

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THIS, the 30th day of June, 2011.

DAVID NEIL McCARTY, ESQ.