

2011-CA-00035

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BEVERLY GRIGGS EASLEY

APPELLANT

VS.

Case No. 2011-CA-00035

MATTHEW JASON EASLEY

APPELLEE

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CERTIFICATE OF MAILING

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I, Elizabeth Fox Ausbern, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 19th day of August, 2011, I hand delivered, to the Mississippi Supreme Court Clerk the original and three copies of the Brief of Appellant.

SO CERTIFIED, this the 19th day of August, 2011.

A handwritten signature in cursive script, reading "Elizabeth Fox Ausbern", written over a horizontal line.

ELIZABETH FOX AUSBERN,  
Attorney for Appellant

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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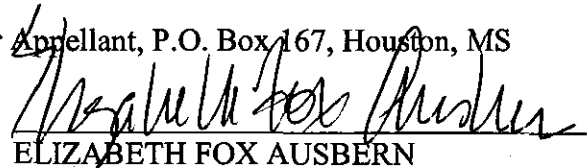
**MATTHEW JASON EASLEY**

**APPELLEE**

**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 justices of the Supreme court and/or the Judges of the court of appeals may evaluate possible disqualification or recusal.

1. Beverly Griggs, Easley, Appellant (Defendant), 140 Lackey Drive, Calhoun City, MS 38916 ;
3. Honorable Ed Roberts, Chancellor, P. O. Box 49, Oxford, MS 38655;
4. Paul M. Moore, Jr., Attorney for Appellee, P. O. Box 230, Calhoun City, MS 38916-0230; and
5. Elizabeth Fox Ausbern, Attorney for Appellant, P.O. Box 167, Houston, MS 38851.



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## **TABLE OF AUTHORITIES**

### **CASES:**

1.     Albright v. Albright . . . . . 4, 5  
          437 So. 2d 1003 (Miss. 1983)
2.     Sellers v. Sellers . . . . . 5  
          638 So. 2d 481 ( Miss. 1994)

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## **STATEMENT OF THE ISSUE**

Whether the Chancellor committed manifest error and abused his discretion by awarding primary custody of the minor children to Matthew Jason Easley when uncontroverted testimony demonstrated Beverly Griggs Easley to be the primary caretaker and provider of the boys.

## **STATEMENT OF THE CASE**

The parties, Matthew Jason Easley (hereinafter referred to as "Matt") and Beverly Griggs Easley (hereinafter referred to as "Beverly") were married on November 2, 1996, and lived in Calhoun County, Mississippi until their separation which occurred on January 22, 2010. Matt lives at 620 Highway 8 West, Calhoun City, Mississippi and Beverly resides at 144 Lackey Drive, Calhoun City, Mississippi.

Matt initiated the underlying divorce action when he filed for divorce and child custody based upon the statutory ground of cruel and inhuman treatment or Irreconcilable Differences on or about March 12, 2010 ( R 2-10; RE 40-48) An Answer was filed on or about April 5, 2010 ( R 33-38; RE 49-53) and a Counter-Complaint for Divorce, Child Custody, Temporary Relief and other Relief was filed on May 12, 2010. ( R 33-57; RE 54-56)

On April 9, 2010, the parties appeared before the Chancellor for a temporary hearing. Each side was only allowed thirty (30) minutes to present his or her case. A Temporary Order was entered on May 11, 2011, that awarded temporary custody to Matt despite outlining his rigid work schedule of 6:00 a.m. to 8:30 p.m. ( R 58-62; RE 68-72)

The trial on the merits was finally heard on September 22, 2010. The only issue before the lower court was custody of the minor sons.

The parties have two (2) children, namely, Jacob Chase Easley, born March 30, 1999, and Jonathon Ross Easley, born February 5, 2002. At the time of trial on September 22, 2010, the boys were 11 (Jacob) and 8 (Jon Ross). ( R 165; RE 8)

The oldest son, Jacob, has been diagnosed with Oppositional Defiant Disorder,

Attention Deficit Hyperactive Disorder and Bipolar Disorder. ( R 165; RE 8) He was hospitalized in Diamond Grove for 16 days when was five (5) years old. Jacob has been on some medications since that hospitalization. ( R 170)

The younger child Jon Ross, has extremely severe excema and has to be given allergy shots and breathing treatments. ( R 165; RE 8)

At the time of trial, Matt was employed as a farm laborer working from 6:00 a.m. to 8:30 p.m. Matt previously changed jobs six (6) times in the past thirteen (13) years. ( T 129; RE 120).

The evidence before the Court overwhelmingly demonstrates that Beverly was the parent who did the majority of the cooking, cleaning and most importantly caring for the children. The lower court noted that Beverly provided “continuity of care” of the minor children prior to separation. Then, the lower court stated that joint physical custody would probably be the best solution for this family but awarded Matt with primary physical custody of the minor children. The Chancellor gave preference on the *Albright* factors of “age and sex of the children” and also familiarity of the “home, school and community records” of the children to Matt. All other factors from *Albright* were considered neutral by the Chancellor. ( R 163 - 171; RE 132-134)

## **SUMMARY OF THE ARGUMENT**

In any case concerning child custody, the polestar consideration of the Court is best interest of the child. *Albright v. Albright*, 437 So. 2d 1003 (Miss. 1983). In the case before the bar, the Chancellor failed to make specific findings of facts in properly weighing the evidence and failed to properly apply the *Albright* factors relative to custody of the minor children. A Chancellor is allowed latitude and broad discretion in weighing factors concerning the well-being of children. However, specific findings of facts for each factor must be carefully weighed in accordance with the evidence presented. The Chancellor's opinion contradicts facts in evidence and is erroneous. For instance, the Chancellor held "home, school and community records" of the children favored Father. Thereafter, the opinion then cites two paragraphs stating that no calls were being made from school about the children and "erroneously stating" the grades have improved regarding the children. ( R 169; RE 12).

On the previous page of the opinion, an analysis of the "continuity of care" factor was made concerning the parent with the best parenting skills. The Chancellor acknowledged "that Mother keeps them on schedule and is more active with their school." ( R 168; RE 11).

A cursory review of the opinion revealed that the Court found the "age and sex of the children" favored Father because the children like to go "home and do male-oriented things and are in need of male discipline." ( R 169; RE 12) Again, the Opinion fails to make specific findings of facts supported by the evidence or to mention the many activities that are enjoyed by the minor sons with their Mother. Specifically, the Mother



was the party responsible for signing the boys up for sports, getting them to camp and enjoying many recreational activities with them.

The testimony revealed that Father took the children hunting for two months out of the year. The opinion failed to mention how the age of the children could be weighted. Obviously, 8 and 11 year old boys need much supervision and guidance which, as testimony revealed, and was uncontradicted, Mother provided.

### **ARGUMENT**

**Whether the Chancellor committed manifest error and abused his discretion by awarding primary custody of the minor children to Matthew Jason Easley when uncontroverted testimony demonstrated Beverly Griggs Easley to be the primary caretaker and provider of the boys.**

The polestar consideration of the Court concerning the custody of the children is their best interest. See Sellers v. Sellers, 638 So. 2d 481 (Miss. 1994). Several factors have been outlined to provide guidance in properly weighing and determining the party which should have custody. See Albright v. Albright, 437 So. 2d 1003 (Miss. 1983).

In the case before the bar, the Chancellor vaguely analyzed the necessary factors as applied to the evidence before the Court. Erroneous statements were made that were unsubstantiated by credible evidence. As such, each of the *Albright* factors should be carefully re-examined in accordance with the record. These factors include:

#### *Age and sex of the child*

In making a determination concerning the parent favored by the “age and sex of the children”, the Chancellor noted that Jacob was 11 and Jon Ross 8, at the time of trial. Because the children liked to hunt and do male-oriented things with Matt and were in

need of male discipline, the Court held this factor favored the Father. The Court failed to note that the children did many activities with Beverly including biking, inner-tube riding, participating in sports events, camping and going to movies. ( T 180-181; RE 142-143). The facts before the bar unequivocally demonstrate that Beverly was the parent responsible for signing both boys up for sporting events. Likewise, Beverly was the party primarily responsible for the medical and physical needs of the children necessary for children that are still dependents because of their tender age. ( T 170-175; RE 133-138). Beverly provided testimony as to the discipline she issued for Jacob when he has one of his meltdowns. Many witnesses testified that Jacob did not respond well to anyone when he had difficulty with his defiant disorder, including Calhoun City Elementary Principal, Dr. Lisa Langford, Beverly and maternal grandmother, Mary Easley. ( T 163; RE 132; T 188, 191; RE 144-146; T 208-210; RE 152-154). Therefore, the Court erroneously favored Matt on this factor and made reference to Beverly's witness agreeing that Jacob responded to male authority. The lower court failed to recognize all testimony including that of Michelle Jones, who stated that Jacob was handled appropriately by Beverly. ( T 199-203; RE 147-151).

#### *Health of the children*

The Court found that this factor favored neither party. Testimony revealed that Jacob had been hospitalized at Diamond Grove at five years of age. He had been diagnosed with Oppositional Defiant Disorder, Attention Deficit Hyperactive Disorder, (ADHD) and Bipolar disease since that time. ( T 170; RE 133). He was followed by Dr. Ross Collins out of Memphis that saw him in Tupelo. ( R 170; RE 133). Jacob is on

several medications for these conditions including: Deplin 7.5 mg. (antidepressant), Intuit 3 mg. (ADHD), Lamictal (anti seizure medicine used for bipolar disorder), and Zyprexa 2.5 mg (antipsychotic drug that helps him sleep). ( T 170; RE 133). Matt could not even identify the medications that Jacob was taking at either hearing. ( T 103-104; R 115, 116). He acknowledged repeatedly that Beverly not only purchased but also provided those medicine and was attentive to Jacob's medical needs. As such, this factor strongly favored Mother.

As to Jon Ross, he is required to take allergy shots which are administered by Beverly. Jon Ross has allergies and severe excema. ( T 170; RE 133). Testimony disclosed that Matt allowed the minor children to be filthy which bad for Jon Ross' terrible excema. Additionally, he allowed the children to wear clothes that were tightly fitted and constricting. ( T 172; RE 135). On one occasion at "The Children in the Middle" session, Matt allowed one of the minor sons to wear pink flip-flops to the session. ( T 172; RE 135).

On another occasion, he failed to respond to the school when Jon Ross was having a serious breathing attack and needed intense treatment. ( T 102, 103; RE 114, 115). When contacted about Jon Ross' condition, the principal of the school, Dr. Lisa Langford, was instructed by Matt to give Jon Ross a benadryl. Thereafter, Beverly was contacted and came to the school with the breathing treatment and took Jon Ross to the emergency room. ( R 102; RE 114).

A close analysis of the record reveals that the "health of the children" factor certainly should favor Beverly as she has been the party responsible for seeing to the

medical needs of the children. Evidence that is uncontradicted reveals that Beverly, not Matt, attended each and every session of intense counseling sessions regarding Jacob's mental needs and treatment plan. Beverly has been attending to Jacob's health needs since he was hospitalized at 5 years old at Diamond Grove.

Both parties agreed at trial that Beverly had been the responsible party for providing the medication dispensers for Jacob. ( T 15, 44; RE 92, 100). Matt testified he simply gave the medications although he did not know for what they were prescribed.

#### *Continuity of care*

The Court did recognize the "continuity of care" favored Beverly. Obviously, not only did Beverly provide the continuity of care prior to the separation but also after separation. She has been the responsible parent to see that school lunches are paid; she has been the responsible parent to administer to the important medical needs of each son; she has attended Jacob's intensive counseling sessions both at the school and with the doctor; she administers Jon Ross' allergy shots and oversees his breathing treatments. ( T 102-103, 115-116, 171, 176; RE 114-115, 117, 118, 134, 139). Matt has attended a couple of times.

Again, when Jon Ross is having an asthma attack at school, Matt's mother informed the school officials to contact Beverly. ( T 148; RE 124).

#### *Parenting skills*

The Chancellor's Opinion failed to make specific findings of facts as to this factor. Further, this assessment was noted "the Father is better able to handle Jacob in his discipline problems, but the Mother keeps him on a schedule and is more active with their

school.” ( R 168; RE 11) The Chancellor erroneously determined that this factor favored neither party. The record revealed that Matt allowed Jacob to slip out of the house and ride a 4-wheeler without a helmet resulting in a wreck on a County Road; he ignored the important medical needs of Jon Ross when he was having a breathing attack at school; he failed to provide appropriate attire that fit the children; he failed to sign the children up for sporting events; he did not attend Jon Ross’ special Awards Day; he acknowledged that Beverly did the cooking and cleaning in the family and provided assistance with homework. Beverly testified that she had enrolled Jacob in Excel and was the primary party assisting with homework. Certainly, the factor of “best parenting skills” strongly favors Beverly.

*Willingness and capacity to care for the children*

The Chancellor noted that this factor favored neither parent. However, the record demonstrated Mother enjoyed valuable family time with the boys and consistently contributed to homework responsibilities. Furthermore, Mother maintained proper hygiene among the boys which is extremely important at tender ages of 8 and 11. In contrast, Matt worked at the time of trial from 6:00 a.m to 8:00 or 8:30 p.m. ( T 75; RE 103). Testimony reflected that the paternal grandmother, not Matt, was consistently willing to care for the children. Obviously, having a support system is valuable. However, the lower court seemed to place much weight and emphasis on the paternal grandmother assisting in feeding, transporting, and parenting the minor sons. According to the proper analysis and application of Albright factors, the Chancellor should make a close examination of which parent, Mother or Father, not grandmother is willing and

capable of caring for the children.

Mother's job schedule and her past history of providing for the children and her eagerness to step-in and care for Jacob and Jon Ross clearly demonstrates that this factor should favor her. After the temporary hearing in April 2010, Matt immediately called Beverly to see if she could help assist in transporting the children to and from school for the first week that he was to have custody. She happily and readily did so. This request from Matt should have immediately demonstrated to the Court that Beverly was the one providing completely for the minor sons and not at times only convenient to her schedule.

#### *Employment*

Again, the Chancellor stated this factor favored neither party and made note "that both parents had the flexibility to take care of whatever needs to be done." ( R 168-169; RE 11-12). However, the Chancellor failed to analyze how Matt did NOT make the proper adjustment to his work schedule to take care of the important medical needs of Jon Ross when he was having a breathing attack. He did NOT adjust his schedule on the first week of custody that he was awarded in April 2010, or make arrangements to sign the children up for sports as it would interfere with his work schedule nor did he even see that the children were properly dressed at times.

Beverly has been employed as a registered nurse with North Mississippi Home Health for 5 years as of July 10, 2011. Matt has had 6 different jobs in thirteen 13 years. At the time of the temporary hearing, he had been laid off and was unemployed. After the hearing on September 22, 2010, he was laid off from his job with L.C. Vance Farms. Thereafter, he became employed as a night security guard.

Nevertheless, for this analysis, Father testified he worked 6:00 to 8:00 at night doing farm work. His mother, Diane Easley, testified he would get off work 6:30 to 7:30 and get the children in bed 8:00 - 8:30. Beverly testified that she was able to do paperwork in the afternoon and pick the children up from school at 3:00 p.m. Her schedule allowed her the flexibility of working 7:00 to 2:00 if necessary, and doing her paperwork at home. Mother has consistently juggled her work schedule to accommodate the needs of the children while contributing more financial input to the marriage. Mother's testimony overwhelmingly substantiated her capacity to contribute more economic and non-economic benefits to the rearing of the children. Therefore, this factor strongly favors Mother.

#### *Health of the parent*

The Chancellor noted that this factor favored neither party. However, an examination of Matt's behavior, especially his mental health, would indicate that this factor should strongly favor Beverly.

Initially, at the temporary hearing in April 2010, Matt adamantly denied any threats of suicide. ( R 93-94, T 22-23). Later, he did acknowledge mental instability being prevalent in his family as his cousin had committed suicide. Likewise, he acknowledged his threat of suicide. ( T 22; RE 93). Later at the trial in September 2010, Matt was questioned under oath about denying his threat of suicide in discovery responses. ( T 99, 101; RE 112, 113). Again, he changed his story to state that he did threaten suicide. ( T 81; RE 104).

On August 12, 2010, Matt was examined by Samuel Fleming, PHD., a Clinical

Neuropsychologist. In Dr. Fleming's report he made the following observation:

Mr. Easley produced a valid MMPI profile; however, his validity scale configuration indicates a naive, defensive individual who has strong needs to be seen favorably to others...These individuals typically have a low tolerance for stress and pressure... Such a performance is indicative of an individual who is presenting with an adjustment disorder and/or marital problems. Mr. Easley generally sees others as dishonest, selfish and unreasonable. He is likely critical and suspicious of others, and generally perceives others as treating him badly.

( R Exhibit "4" on 09/ 22/ 2010; RE 84-87).

Additionally, Dr. Fleming reported:

His score on adaptability scale was consistent with characteristics that make the parenting task more difficult by virtue of the child's inability to adjust to changes in his or her physical or sexual environment... Results of the parenting domain indicate that Mr. Easley is currently under considerable stress.

( R Exhibit "4" on 09/ 22/ 2011; RE 84).

In the diagnosis section of the report, Dr. Fleming noted AXIS I: Adjustment Disorder with mixed depression and anxiety. ( R Exhibit "4"; RE 84).

Beverly submitted two (2) psychological examinations for review. The first completed in August, 2009 and another in May, 2010. ( R Exhibit "8", T 178); ( RE 88, 140). Beverly's psychological examination completed by Dr. Morris Alexander indicated the clinical profile is completely within normal limits with no significant psychopathology. The report stated no significant problems in having unusual thoughts, peculiar experiences, antisocial behavior, unhappiness, depression, elevated mood, heightened activity, marked anxiety, problematic behaviors used to manage anxiety or difficulties with health or physical functioning. ( R Exhibit 8, September 22, 2010 hearing; RE 88). Furthermore, diagnostic impressions listed only "Phase of Life (Life Circumstance).



In considering the health of the parent, the Chancellor failed to analyze or discuss either of these reports. Obviously, an individual who is highly suspicious of others and perceives others as treating him unfavorably would most likely have difficulty in providing appropriate parenting boundaries. Again, Matt was diagnosed with a Adjustment Disorder with Mixed Depression and Anxiety, whereas Beverly had no psychological diagnosis.

*Emotional ties to child*

The Chancellor noted this factor favored by neither party. He did recognize that the younger child Jon Ross (8 years) was closer to his Mother. ( R 169; RE 12). All witnesses indicated the strong emotional relationship Jon Ross has with Beverly.

Even the paternal grandmother testified about the strong emotional tie between Jon Ross and Beverly. ( T 149; RE 125).

The Chancellor made the erroneous assumption that Jacob had stronger emotional ties to Matt. However, Beverly indicated when Jacob's disorder of Oppositional Defiance is active, then he clashes with all people. ( T191; RE 146). Her discipline method with Jacob reverts to taking privileges and/or items away as punishment. Matt's method of discipline resorts to "tear him up." ( T 191; RE 146). In fact, Beverly called the police when Jacob threatened to run away because he couldn't attend a ball game. ( T 190; RE 145). Beverly further stated after the incident there were no other problems after Jacob met with an officer who was utilized to reinforce the importance of appropriate behavior. ( R 190; RE 145).

Dr. Lisa Langford, Calhoun City Elementary Principal, testified that until the

divorce action she had always called Beverly in dealing with issues, including discipline, involving the minor sons. ( R 160-162; RE 129-131). After examination about who Jacob responds better to involving outbursts, Dr. Langford stated, "It is my opinion when Jacob was having an outburst that he responded to neither." ( T 163; RE 132).

Dr. Langford is an independent party that provided testimony that was unbiased.

Therefore, the record demonstrates that Matt does not have some magical powers to exhibit masculinity that creates an effective method of discipline. Rather, the record revealed Jacob was terrified of being beaten by Matt e.g. (incident at school when his head was slammed in the dash and accident when 4-wheeler accident occurred). The Chancellor erroneously stated in his Opinion that "children want to do male oriented things and are in need of male discipline." If this were the case to be applied in determining factors relevant to all *Albright*, then all custody of male children would be awarded to the Father. Again, this line of reasoning is flawed and discriminatory.

#### *Moral fitness*

The Chancellor again noted this factor favored neither party. However, specific findings concerning Beverly's long term tenure as a Youth Sunday School teacher at the Pleasant Hill Baptist Church was omitted from the Opinion. ( T 192; RE 147). Beverly and the children are presently attending Shiloh Baptist Church. Beverly has enrolled Jacob in the AWANA program on Wednesday nights.

#### *Preference of a child*

The children are not old enough to state a preference and therefore this factor is inapplicable.

*Home, school or community record*

The Chancellor erroneously stated that this factor favored Father. This assertion was made despite the fact the Chancellor reported that "**Mother** is more involved in regards to school and in attending school functions where Father did not." (Emphasis added) ( T 166; RE 9) .

The Chancellor reasoned that since the temporary hearing:

where the Father was awarded physical custody of the children, there have been no calls from the school about the children, and their grades have steadied. In fact, both parents stated the current arrangement of alternating every week is working well."

( R 169; RE 12).

This assumption is completely erroneous. Beverly testified that Jacob has an F in Math, and he always has problems with school. ( T 179; RE 141). Upon cross-examination, Beverly stated that Jacob was probably growing out of some of his problems due to "maturity and medication." ( T 179; RE 141). Again, Dr. Langford testified that Jacob responds to neither party when having emotional outbursts. Dr. Langford also noted that she would **always** call Beverly. ( R 161-163; RE 130-132). (emphasis added) The record indicates that any control of Jacob's behavior would be indicative of the medication, not that Matt was awarded temporary custody of the children.

Beverly's job allows her more flexibility providing assistance with school assignments. Matt testified that his mother, Diane Easley, assisted with homework. However, the maternal grandmother stated she realized she could not assist the children and saw the children were enrolled in the Excel program.

According to Dr. Langford, Beverly attended all school meetings concerning the

children compared to Matt attending only a couple. ( T 160-162; RE 129-131).

Matt's testimony revealed that he had to find out about the children's grades ( T 24; RE 95). that he needed Beverly's help with the house payment; that his mother helps out with the children ( R 20); that Beverly is supposed to know the name of Jacob's doctor; that he could not name the important medications Jacob was taking; that all medical, dental and vision insurance premiums should be the responsibility of Beverly; that he could not recall the name of Jacob's important doctor; that even though Jacob is supposed to see this doctor quarterly, he hasn't been in the last year because he has been busy, although unemployed for a period of time prior to the hearing; When examined about household responsibilities, Matt stated that Beverly "done it more because she offered" concerning cooking. ( T 29; RE 99). On cross-examination concerning his involvement with Jacob's medical treatment Matt responded "am I supposed to ask to do I need to do this, do I need to do that, do I need to take off work, she needs to ask the same thing." ( T 29; RE 99).

His attitude at the April 2010, when he was awarded temporary custody of the minor sons, was that of an unconcerned, disinterested parent who offered little or no assistance to household chores or responsibilities, while acknowledging that he was not the primary breadwinner of the family.

At this hearing, Matt also indicated that he took Jon Ross to Beverly for shots. (T 75; RE 103) The school never calls him. This was true even though he was supposedly involved parent in the boys lives. He acknowledged that one of the boys had holes in his shoes and inappropriate clothing.

At the hearing in September 2010, Matt acknowledged that he failed to respond to the school when contacted concerning a breathing attack Jon Ross was suffering. ( T 89; RE 105; T 102; RE 114-115). Beverly was the parent that arrived on the scene to take Jon Ross to the emergency room and see about his appropriate medical care. ( T 89; RE 105; T 102, RE 114-115). This event occurred even though Matt stated he was the parent responsible for the children and should be awarded custody of the boys.

Also under Matt's direct supervision and care, Jacob was allowed to sneak out of the house and without a helmet, drive a 4-wheeler and have an accident on a county road. ( T 90; RE 106). While in Matt's care, Jacob was acting like he was sighting a gun to shoot someone. ( T 93; RE 109). Although he is the allegedly the strong, disciplinary parent, Jacob was not properly supervised as acknowledged by Matt. ( T 95; RE 111).

Again, when questioned about Jacob's medical conditions at the September hearing, Matt responded "I've not got that, I've not went in depth to see what it is all about." ( T 104; RE 116).

Matt acknowledges under oath that Beverly took care of the cooking and cleaning more. ( T 115) When questioned about intensive mental counseling sessions Jacob attended, Matt stated that he had been once since the separation to see Lee Ann Hillhouse, although he could not identify her name under oath and had also been years ago to Jackson one time in an attempt to locate a doctor for Jacob. ( T 116; RE 118).

Upon questioning about interrogatory response Number 20 about treatment of Jacob since he was 5, Matt responded "well I have took him a time or two." ( T 116; RE 118). When questioned concerning Jacob's medications, Matt responded: "I know what

they look like but I can't...I'm not a doctor or nurse or nothing. I just know what they look like pills." ( T 117; RE 119).

Therefore, even after the temporary hearing, Matt made no efforts to familiarize himself with Jacob's medical conditions or medications, even though the doctors have stressed that Jacob needs close monitoring because of the therapeutic/lethal effects with these adult medications. ( T 117; RE 119). Certainly, a parent that was favored with the factor of *home, school and community records*, of the children would have made himself aware and more attentive to the condition and medications of his child. Likewise, this Father would have supervised more appropriately the conduct and behavior of the children and responded to the school request. Finally, Matt did acknowledge Beverly to be a good mother.

Ms. Diane Easley, paternal grandmother, corroborated testimony of Beverly. Ms. Easley stated that Beverly cooked for the children when she was working and she took care of the medications. ( T 145-146; RE 121-123) She acknowledged that her son (Matt), would change if she (Beverly) didn't leave him. ( T 146; RE 122) Although a retired LPN nurse, Grandmother Easley could not identify Jacob's medications. ( T 147; RE 123). Furthermore, Grandmother Easley told Dr. Langford, when contacted about Jon Ross' condition, to get Beverly about the breathing treatment. ( T 148; RE 124). This was done when Ms. Easley's son had temporary custody of the grandchildren.

Grandmother Easley described Jacob's condition as a "teenage attitude problem like any other kid." ( T 149; RE 125). Ms. Easley acknowledged that her son arrived home from work around 6:30 or 7:30 and would go to bed between 8:00 and 8:30. She

also acknowledged that Beverly's schedule was quite flexible.

The only other witness that testified for Matt was a friend Brent Parker. Mr. Parker recalled an incident where Matt was contacted as any other father would be concerning a child's behavior. This incident took place about three years ago. (T 64; RE 102). He stated that he had not worked with Matt in two years. ( T 63;RE 101) Mr. Easley's brother's testimony was offered as cumulative to demonstrate him to be a good father.

Certainly, Matt and his mother have substantiated that the home, school or community record factor overwhelmingly favors Beverly. The Chancellor erroneously made this assumption without outlining specific findings or conclusions.

#### *Stability of the home environment*

The record clearly demonstrated that Matt left the children a significant part of the time with his mother. The children have been shuffled back and forth and do not have a stable home environment with Matt.

The Chancellor astutely noted that Beverly "kept them on a schedule and is more active with their school." Allowing the children to be on a routine schedule contributes enormously to stability in the home environment. Beverly testified about her present home, the boys bedrooms, the bicycles they had obtained, the proximity to the school. It was obvious from her testimony the children had adjusted in the home. Contrary to what the Court made reference to about the children being kept "in the home", where they had lived the last 4 years, a home is not defined by brick or wood but by the people and relationships in the home. The record overwhelmingly acknowledged that the more

stable home environment to be with Beverly.

*Other factors relevant to parents/child relationship*

Matt denied at the temporary hearing, but later admitted at the hearing on September 22, 2010, that he did threaten and attempt suicide. His response to that was that “everybody threatens this”. ( T 81; RE 104). However, Matt’s mother appeared shocked and dismayed when questioned about whether she knew her child had threatened to take his own life. The record also demonstrates his family history with suicide and instability. Dr. Fleming’s report should be factored and weighed concerning Matt’s adjustment disorder. (September 2010 hearing Exhibit “4”; RE 84-87).

It is overwhelmingly clear that credible evidence has been established in this case to favor primary physical custody of the minor sons, Jacob and Jon Ross, being awarded to Beverly. None of the Albright factors should favor Matt. The Chancellor failed to recognize credible evidence that was presented and misapplied the law by giving preference to Matt for the factors of “stability of the home, school and community records of the children” and the “age and sex of the children.” It would appear that much weight was given to the fact that the boys wanted to go hunting with their Father and do male oriented things; that they were in need of male discipline. The record indicated that John Ross did not even like to hunt and would prefer to play his video games. Furthermore, the record indicated that John Ross was more bonded with his Mother than his Father.

For the aforementioned reasons, the Chancellor did not consider all credible evidence in his brief attempt to provide an analysis of specific findings of fact, according to Albright 437 So. 2d 1003 (Miss. 1983). ( R 163-171 ad RE 6-14). The lower Court’s



decision must be reversed and an award of custody rendered to Beverly, as the Chancellor failed to apply factors appropriately to consider the best interest of the children. Albright 437 So. 2d 1003 (Miss. 1983).

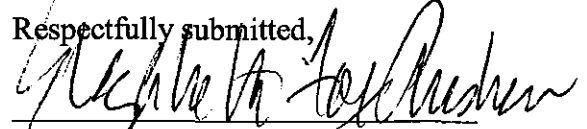
### CONCLUSION

In the present case, the record is not enormous and not many witnesses were presented for testimony as is normally the case in a divorce proceeding in a rural area. The sole issue of the court is whether the Chancellor properly applied all Albright factors and made specific findings of facts as to those factors. Obviously, the Chancellor's opinion is contradictory in awarding preference to Matt as to "the home, school and community records" of the children factor. The overwhelming evidence presented by all witnesses demonstrated Beverly as the parent that was responsible for all activities and needs of the minor children.

The Chancellor appeared to justify Matt's ability to care for the children by including the children's grandmother. However, the standard by which parents shoulder burdens of responsibility for the children is the appropriate and correct standard.

Therefore, Beverly would request that this matter be reversed and rendered, vesting her with the primary physical custody of Jacob and John Ross.

Respectfully submitted,



ELIZABETH FOX AUSBERN

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