

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

**ALISA GALE ROLISON**

**APPELLANT**

**VS.**

**NO. 2011-CA-00192**

**GARY WAYNE ROLISON, JR.**

**APPELLEE**

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**APPEAL from THE CHANCERY COURT OF TIPPAH COUNTY, MISSISSIPPI**

**Tippah County Chancery Court Cause No. 2008-226-A  
Honorable Glenn Alderson, Chancellor**

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**BRIEF OF APPELLEE, GARY WAYNE ROLISON, JR.**

**Appellee requests oral argument.**

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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 judges of this Court may evaluate possible disqualification or recusal:

1. ALISA GALE ROLISON, Appellant;
2. GARY WAYNE ROLISON, JR., Appellee;
3. HONORABLE GLENN ALDERSON, Chancellor;
4. SHANE McLAUGHLIN, ESQ., Attorney for Appellant;
5. JAK M. SMITH, ESQ., Attorney for Appellee.

Respectfully submitted,

GARY WAYNE ROLISON, JR., APPELLEE

BY: 

JAK M. SMITH

MSB No. 

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## **I. STATEMENT OF THE ISSUES**

- A. THE CHANCELLOR'S WELL-REASONED APPLICATION OF THE ALBRIGHT FACTORS PROVIDED MORE THAN SUFFICIENT REASON FOR REJECTING THE RECOMMENDATION OF THE GUARDIAN AD LITEM AS TO THE OLDEST CHILD, MELISSA ROLISON. SUBSEQUENT EVENTS HAVE MADE THIS ISSUE MOOT.**
- B. THE CHANCELLOR'S REJECTION OF THE CHILDREN'S PREFERENCES IN THIS CASE WAS BASED UPON SUBSTANTIAL EVIDENCE.**
- C. APPELLANT, ALISA ROLISON, FAILED TO ADDUCE SUFFICIENT EVIDENCE TO TRIGGER THE PRESUMPTION OF §93-5-24(9)(a).**
- D. ALISA'S CONTENTION THAT THE CHANCELLOR AWARDED GARY CUSTODY TO PUNISH HER IS MERITLESS.**

## **II. STATEMENT OF THE CASE**

- A. NATURE OF THE CASE, COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW.**

On August 8, 2008, Gary Rolison ("Gary") and Alisa Rolison ("Alisa") filed a joint complaint for an irreconcilable differences divorce. (C.P. 9) Alisa subsequently withdrew her consent for an irreconcilable differences divorce. (C.P. 20) On May 13, 2009, Gary filed an amended complaint for divorce based on habitual cruel and inhuman treatment and adultery. (C.P. 21-30) The Court entered a temporary order on July 9, 2009, giving Gary temporary custody of the four minor children. (C.P. 38)

The trial on the merits commenced on December 16, 2009, in Tippah County, Mississippi. Testimony was taken from Alisa adversely. (Supplemental Transcript (S.T.) 1-90) The Court adjourned the trial due to allegations made by Alisa that Gary had been abusive to her and the children. On December 16, 2009, an order was entered appointing a guardian *ad litem*, Stephen Bailey, to determine if there had been any abuse or neglect of the children. (C.P. 64-65) The matter was continued until September, 2010.

When the case resumed on September 7, 2010, the Court bifurcated the case into issues of grounds/custody, which were tried on September 7, 8 and 9, 2010, and property division, which was tried on January 13-14, 2011. (T. 9)

At the close of testimony on grounds and custody, on September 9, 2010, the Court gave an oral opinion in which the Court granted a divorce to Gary on the grounds of Alisa's uncondoned adultery and granted custody of all four children to Gary. A written interim order was entered on December 16, 2010, incorporating the judge's ruling. (C.P. 132-134)

Alisa does not contest the Court's decision to award Gary a divorce on the ground of Alisa's uncondoned adultery.

The property issues were tried on January 13 and 14, 2011, and a final judgment of divorce was entered on January 14, 2011. (C.P. 138-143) Neither Gary nor Alisa have appealed the Court's property division ruling. Alisa appealed some aspects of the Court's custody ruling only.

Alisa timely perfected this appeal. (C.P. 148)

Several months after the Court entered its Final Judgment of Divorce, the Court modified custody and gave custody of Melissa to the maternal grandparent. (See Interim Order filed January 12, 2011).

#### **B. STATEMENT OF FACTS**

Gary and Alisa were married on July 15, 1989. (S.T. 4) Gary and Alisa have four children: Melissa, Andrew, Rachel, and Anna Kate. (T. 51) At the time of trial, Melissa was 17 years old, Andrew was 15, Rachel was 12, and Anna Kate was 4. (T. 51) Alisa is a special education teacher at Ripley Middle School. (T. 54) Gary works for his family's timber business in Ripley. (T. 160)

Alisa and Gary each sought custody of the parties' four children. Gary was given temporary custody of the minor children at a hearing held in Ripley on July 9, 2009. (C.P. 38) After a three-day trial September 7-9, Gary was given interim full custody of the minor children. (Interim Order, C.P. 132-134) The facts supporting the Chancellor's decision are compelling.

The story begins about ten years after the parties were married in 1989. Until 1989, Alisa had been a good mother and a good wife. As the marriage progressed, however, Alisa began having significant mental health problems. Alisa's mental problems became so pronounced that

even she recognized that she needed help. Dr. Clyde Sheehan, a well-respected psychiatrist in Tupelo, Mississippi, began treating Alisa in 2007. (See Exhibit 5, Dr. Sheehan's medical records of Alisa Rolison.) Dr. Sheehan diagnosed Alisa with bulimia (when under stress she vomits) (Exhibit 5, p.1), ADHD, mood disorder, bi-polar disorder (Final Report of GAL, T. 33, 36, C.P. 118), general anxiety disorder, and numerous social phobias, to mention but a few. (Exhibit 5) Alisa was also treated at Parkwood Hospital where she was diagnosed with borderline personality disorder. (S.T. 75-76) At the conclusion of Alisa's testimony on the first day of trial, December 16, 2009, the Chancellor recognized that Alisa had bi-polar disorder: "*The Court can observe that the mother is bi-polar. I can observe that. And I can tell by your actions, Mrs. Rolison.*" (S.T. 88)

Dr. Sheehan began treating Alisa on a regular basis (approximately weekly) (Exhibit 5) in 2007, and continued treating her until trial in 2010. During her course of treatment, Dr. Sheehan prescribed numerous medications and frequently adjusted Alisa's medications in a vain attempt to stabilize Alisa's wide mood swings. Gary attended several of Dr. Sheehan's sessions with Alisa. Gary noted on several occasions (08/23/07; 10/05/07; and 01/09/08) that Alisa was acting "aggressive" while on her medications (primarily Adderall). Alisa took six weeks off from work in late 2007 because of her inability to cope with her mental health issues. (Exhibit 5) On January 21, 2008, Dr. Sheehan noted in his records that Alisa was "... *having altercation with 15-year-old daughter (Melissa). Unable to stay on task and complete sentences.*" On February 4, 2008, Dr. Sheehan noted: "*She states her outbursts are still present towards her children, but more controllable.*" (Exhibit 5)

In May 2008, Alisa and Gary separated for the first time. (S.T. 21) Alisa purchased a house down the road from Gary.<sup>1</sup> Alisa and Gary were then supposed to share the children equally (S.T. 14), however, Gary would have to get the children from Alisa on numerous occasions because she could not control them. When Alisa had the children, the children would

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<sup>1</sup> 60 CR 849, Blue Mountain, MS (S.T. 17)

sometimes call Gary and tell him that Alisa would not get out of bed, and Gary would have to go get them. (T. 125-126)

Also, in May of 2008, Alisa reported to Dr. Sheehan, "*When mad with husband and the world, she shoplifted pork chops and salad from Wal-Mart last week.*" (Exhibit 5) Alisa had a court date set and Dr. Sheehan noted that two months previously she started shoplifting small items from different stores. (Exhibit 5) Alisa almost lost her job over the shoplifting incident. (T. 405) Alisa falsely reported to her employer (see testimony of James Wesley Storey) that she shoplifted because she did not have any money. This was not true. (T. 404-405)

Dr. Sheehan reported that around September 17, 2008, Alisa got into a fight with her daughter, Melissa. During the fight, Melissa ruptured Alisa's spleen, and Alisa had to have surgery. (Exhibit 5) (T. 322)

On August 8, 2008, the parties filed a joint bill for divorce, but Alisa withdrew her consent to the joint divorce on February 17, 2009. (C.P. 20) Both Gary and Alisa testified that they were making an attempt to get back with each other during this time frame. Finally, in December of 2008, Alisa and Gary separated for the final time. (S.T. 15, 18) Alisa moved to her home and Gary remained in the marital home, with the parties having the children about equal time. (S.T. 14, 16)

Because of her mental problems, Gary reported that he had to treat Alisa like another one of the children. As her condition worsened over the last ten years, Gary had to assume more and more responsibility with the children and constantly adjust to Alisa's bizarre conduct. (T. 125)

Unfortunately, the parties oldest child, Melissa, age 17, also suffered from bi-polar disorder. (T. 88) Melissa was admitted to Parkwood Hospital on at least three occasions. (T. 95) Melissa would superficially cut herself. Alisa and Melissa would fight, and Melissa admitted that she was aggressive toward the other children.

After the parties separated in December 2009, Alisa had a sexual relationship with a Sam Renfroe. (T. 11-12)

Around May 2009, Alisa's conduct became more and more aberrational. On the weekend of May 8, 2009, Alisa had all four of the children at her house. Alisa invited over an "old college" friend, Michael Bailey<sup>2</sup> (S.T. 22), and his 19-year-old son (S.T. 37) who spent the weekend (Friday, Saturday and Sunday nights (S.T. 39)) with Alisa and her four children. (S.T. 37) Alisa admitted that Michael Bailey slept in the bed with her, in the home with the children present (S.T. 47), and Alisa allowed Mr. Bailey's 19-year-old son, Blaine, to sleep in the same bed with Melissa, who was 16 years old at the time.<sup>3</sup> (S.T. 40, 44) Alisa initially contended that there was nothing wrong with letting Michael Bailey spend the night with her in the presence of the minor children, (S.T. 25, 46, 47) but later admitted that this was wrong and was not a good example. (S.T. 24)

Gary went to Alisa's house that weekend and discovered Michael Bailey and his son, Blaine, staying at Alisa's house for the weekend. (See Exhibit 1 to December 16 hearing.)

On Monday, May 11, 2009 (S.T. 51), Alisa took the parties' 15-year-old son, Andrew, out of school for the entire day and left him alone with Michael Bailey at her house; Gary found out and confronted Alisa. (S.T. 49, 52)

On Wednesday, May 13, 2009, Gary filed for divorce, alleging uncondoned adultery. (C.P. 21-30)

The Court set a temporary hearing in Oxford for June 4, 2009. (S.T. 27) At the Oxford hearing, Judge Alderson specifically instructed Alisa that she was not to have the children around Michael Bailey, her paramour (S.T. 57-58), entered an interim order regarding same, and continued the case to give Alisa time to retain counsel. (S.T. 28-31)

In July of 2009, Alisa violated the Interim Order by having the children in the presence of Michael Bailey in Iuka, Mississippi. (S.T. 31, 56, 58) Melissa testified that on the trip to Iuka in

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<sup>2</sup>Alisa stated that she had not seen Michael Bailey for 20 years but had been talking to him on the phone for sometime prior to May of 2009. (S.T. 23, 24, 50)

<sup>3</sup>Later it would come out at trial that Melissa had a sexual relationship with Blaine Bailey, but not that weekend. (T. 22, 25)

the summer of 2009, she knew that there had been an order that her mother was not to be around Michael Bailey in the presence of the children. (T. 322) Melissa initially testified that she did not see the children around Michael Bailey on that trip, but on further cross-examination, changed her testimony after being confronted with a statement she had given in July right after the day of the incident:

*Q Ma'am, isn't it true according to that statement that you specifically saw Michael Bailey with your two siblings, the two older siblings, that you were with your father on that trip, right?*

*A Yes, sir.*

*Q Looking to see if your mother was violating the court order?*

*A Yes, sir.*

*Q And you found your mother with the two children, the two middle children?*

*A Yes, sir.*

*Q Right there with Michael Bailey?*

*A Yes, sir.*

*Q According to your statement?*

*A Yes, sir.*

Again, when she tried to back-pedal on these questions, the Court asked her:

*Q Now, did you see your mother and the two younger children in Corinth (sic) Iuka?*

*Mr. Smith: Iuka, Judge.*

*The Court: Iuka, with, what is his name?*

*Mr. Smith: Michael Bailey.*

*The Court: With Michael Bailey.*

*The Witness: Yes. (T. 326)*

Melissa also admitted that she videotaped Michael Bailey with the children. Melissa did not mention anything about her father hitting her mother. (T. 328) Melissa testified that her mother began chasing her, and she ran away. (T. 328) Melissa also testified that she saw her mother grab her father's leg and try to get his phone. (T. 328)

After this incident, a temporary hearing was held in Ripley, Mississippi, on July 9, 2009, and after Alisa admitted under oath that she had violated the order and had had the children in the presence of Michael Bailey (S.T. 32-33), the Court gave temporary custody of the children to Gary.<sup>4</sup> (S.T. 33) Alisa later admitted under oath that having the children in Michael Bailey's presence was wrong. (T. 88)

What kind of person was Michael Bailey such that the Court ordered Alisa not to have this man around her in the presence of the children? How well did Alisa know Michael Bailey? When questioned about Michael Bailey's background, Alisa admitted that she had not seen Michael Bailey in 20 years prior to having him spend the night with her and the children at her home in May of 2009. (S.T. 50) Alisa also admitted that she had had a sexual relationship with Michael Bailey. (T. 9, S.T. 60)

What did he do for employment? At no time during any of the hearings in this case, did Alisa know what Michael Bailey did for a living, or whether he even had a job. (S.T. 61-63) Despite the ongoing close and sexual relationship with Michael Bailey, at the September 2010 hearing, Alisa testified she did not know what he did for a living, although she assured the Court that Michael Bailey had just gotten his old job back as a lobbyist. Michael Bailey has not worked at all since Alisa has known him. (T. 91)

Did Michael Bailey and Alisa use illegal drugs? On the May 7, 2009, weekend that Michael Bailey spent with Alisa and the children, Michael Bailey asked Melissa where he could find some marijuana. (T.317) Later on, Alisa admitted that she and Michael Bailey smoked marijuana on several occasions. Alisa further admitted that she and Michael Bailey had also done illegal drugs together during their relationship over the last year.

*Q Mrs. Rolison, you and Michael Bailey have also done illegal drugs together, have you not?*

*A Yes, marijuana.*

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<sup>4</sup> Michael Bailey was present at the temporary hearing in Ripley, and at the conclusion of the temporary hearing, was arrested on a number of outstanding warrants. Alisa testified that she went to the jail shortly thereafter and posted bond for Mr. Bailey.

*Q How many times?*

*A About three.*

*Q Where did the two of you do marijuana together?*

*A In luka. (T. 91)*

They had smoked the marijuana in the summer of 2009. (T. 92)

What was Michael Bailey's criminal background? Alisa saw Michael Bailey being arrested on the day of the temporary hearing in Ripley. Alisa then stated she had no idea what other criminal charges Michael Bailey had against him (S.T. 27, 63, T. 88), and Alisa brazenly stated to the Court that she did not care if Michael Bailey had a criminal background. (S.T. 63) Michael Bailey and Alisa also got into trouble in Tennessee when they found a purse in the Wal-Mart parking lot. (T. 88) They used a credit card found in the purse to purchase gasoline for Alisa. Alisa saw nothing wrong with it at the time and even informed her children that this was "like finding a hundred dollar bill." (T. 88, 120)

The guardian *ad litem* questioned Alisa about her relationship with Michael Bailey. Alisa began her relationship with Michael Bailey in probably the summer of 2009. On that occasion, she went to Tennessee with Michael Bailey.

**CROSS-EXAMINATION BY GUARDIAN AD LITEM, STEPHEN BAILEY:**

*Q Now, you and Mr. Bailey also got into some trouble with the law up in Tennessee, did you not?*

*A Yes.*

*Q Tell the Court what type of legal trouble the two of you got into up there?*

*A Possession of open container of beer. And Mr. Bailey was a - what was it, we found a purse - or he found a purse in the parking lot and didn't know whose it was.*

*Q At a Wal-Mart, right?*

*A Uh-huh. Wal-Mart. And didn't know whose it was, you know, it's like finding a hundred dollar bill in the parking lot and pick it up, and anyway it was left in a cart - in a shopping cart, and he took the - the purse and took - found a debit card in it, and used the debit card to put gas in my vehicle. We were going to take the purse back the next day and we were surrounded by police. (T. 88-89)*

...

*Q Well, whether he found the purse or stole the purse, you knew it was wrong for him to use that person's debit card to fill your vehicle up with gas, did you not?*

*A Yes.*

*Q Now, explain to the Court, if you would, here you are a mother of four children, you are married, you are off in Tennessee with a man that is not your husband, and you are using a stolen credit card to fill your vehicle up with gas. During that incident were you in a manic phase of your bi-polar disorder, or were you having like a bad reaction to the medication, what caused you to do that?*

*A I can't explain it.*

*Q There is no explanation?*

*A I - I don't know - it was wrong. It was wrong and I know that. (T. 88-89)*

This occurred in July of '09. (T. 90) Michael Bailey pled guilty to the charges against him in the State of Tennessee related to the wrongful use of the debit card. (T. 90)

Did Michael Bailey have any mental problems? Michael Bailey also suffers from bi-polar disorder. (T. 88) Alisa admitted that she told Stephen Bailey that Michael Bailey was bi-polar. (T. 91) Michael Bailey also had an epileptic seizure during this weekend of May 7, 2009. (S.T. 25)

At the December 16, 2009, hearing, the first day of trial, Alisa assured the Court that she was no longer seeing Michael Bailey. (S.T. 60, T. 16) Under cross-examination, however, Alisa admitted that she had been seeing Michael Bailey and had borrowed money from her mother to begin a business with Michael Bailey. (S.T. 59) When court resumed in September of 2010, Alisa again testified that she had not been seeing Michael Bailey (T. 9), but under cross-examination admitted that she had just stopped her relationship with him in August, just before court. (T. 15-16)

Alisa admitted she violated the court order and had the children around Michael Bailey. She admitted going on trips to Mobile, Alabama with Michael Bailey, smoking marijuana with Michael Bailey, and maintaining an ongoing sexual relationship with him over the many months of the parties' separation.

Alisa also had her own very substantial problems. After the temporary order was entered, Alisa admitted that she had attempted suicide on at least one occasion. Again, Stephen Bailey questioned her:

*Q How many times have you attempted suicide, Ma'am?*

*A Once.*

*Q That was by means of an overdose of medication?*

*A Prescription medication, yes.*

*Q You were hospitalized right after that?*

*A Yes.*

*Q That's when you were at Parkwood for about ten days, is that correct?*

*A No, that was a different occasion.*

*Q How many times have you been hospitalized in Parkwood?*

*A Once.*

*Q How many times have you been hospitalized for treatment of a psychiatric disorder.*

*A Once at Parkwood.*

*Q Once at Parkwood. Okay. How long were you there at Parkwood?*

*A I think ten days.*

Alisa was further involved in a series of shoplifting incidents. Again Stephen Bailey questioned her:

*Q The shoplifting that you were involved in, you were asked a moment ago, when did that take place?*

*A It took place in, I guess, '08.*

*Q Where did that happen?*

*A At the grocery store.*

*Q Here in Ripley?*

*A Uh-huh.*

*Q How many times did you shoplift?*

A About three or four.

Q Were you in the midst of a bi-polar manic episode when that happened?

A Possibly.

Q Do you have any other explanation for why you would do such a thing?

A No, it was stupid. (T. 93-94)

Alisa also admitted that she had not told the truth in her interrogatory answers about another affair she had had after the separation. (T. 10-11) When questioned in her interrogatories, Alisa only admitted a sexual relationship with Michael Bailey. However, at the September 2010 hearing, she confessed that she had also had a sexual relationship with a Sam Renfroe just after the separation from Gary. (T. 10-12)

Despite her many significant problems, Alisa testified that she should have custody of the children because Gary had allegedly been physically abusive to her and several of the children.

Alisa alleged that on one occasion, she and Gary had been tending cows, and Gary became angry when she let some of the cows out of the pasture. Alisa stated that Gary beat her on the shoulders and head with a "2x2 stacking stick" to the point that she could not walk the next day. (T. 41)

On cross-examination, however, Alisa admitted that the alleged incident happened 4-5 years before. (T. 42) Alisa never took out any charges against Gary on this incident. (T. 76) There were no medical records to support Alisa's self-serving charge and no witnesses were aware of this incident. Gary adamantly denied that he had done anything but playfully "*popped her on the butt*" with the stick after she had let the cows out, and denied that this playful act caused Alisa any bodily harm. Indeed, nowhere in Dr. Sheehan's medical records, is there any mention that Gary had ever physically abused Alisa or the children. (Exhibit 5) A simple statement in Dr. Sheehan's 35-page record appears, dated May 22, 2008, "*Husband can be verbally abusive.*" (Exhibit 5)

Alisa also testified that Gary had been physically abusive to the children.

The guardian *ad litem* summarized Alisa's allegation:

*"Alisa has alleged that Gary Wayne was physically abusive to her during the course of the parties' marriage and then on at least four separate occasions, he was physically abusive to the children in the following manners:*

- a. According to Alisa, the worst incident of physical abuse occurred in January of 2010, when Gary Wayne was alleged to have locked Melissa outside of his place of residence in the cold for approximately 15 minutes before allowing the child to return to the home. Gary Wayne was also accused during this incident of pushing Melissa to the floor because she failed to mind him; and*
- b. Alisa has alleged that Gary Wayne made Rachel throw shoes at Melissa as hard as Rachel could throw the shoes because Melissa and Rachel had been in a fight. According to Alisa, Gary Wayne also threw shoes at Melissa on this occasion and allowed Rachel to throw Gary Wayne's steel-toed work boots at Melissa; and*
- c. Alisa has alleged that on another occasion, Gary Wayne spanked Melissa with a belt to the extent that he left a mark on Melissa's thigh; and*
- d. Alisa has alleged that Gary Wayne has spanked Andrew too hard and left a mark on Andrew." (Report of GAL, C.P. 115-123)*

As to the alleged acts against the children, they should be looked at and scrutinized in light of the testimony. There was an allegation by Melissa and Alisa that Gary had put Melissa outside the house on one occasion when it was cold outside. (T. 40) There was no testimony about how cold it was outside, but there was significant testimony by Alisa and Gary corroborated by Melissa that on occasion Melissa was out of control. Alisa quite clearly corroborated that Melissa had mental illnesses, had bi-polar disorder, and had been in Parkwood Hospital on at least three occasions for cutting herself and perhaps other problems. (T. 95) Alisa testified that Melissa would become "out-of-control" to the point that she would have to be restrained in the home by Alisa. Gary never restrained her according to Alisa. (T. 95-96)

Melissa testified that on one occasion her father "... *pushed me to the floor, and held my neck to the floor and then he spanked me and then kicked me with his boot. And he locked me out.*" (T. 298) Melissa alleged that she had thrown a cup, and Gary had asked her to pick it up. Melissa told the judge that Gary got mad at her when she could not find it. Judge Alderson questioned her when she tried to excuse her conduct of throwing the cup and said she could not find it. Judge Alderson said that he did not believe her and that she was just being bull-headed.

He then asked her, *"That's more it, isn't it?"* The witness: *"Sir?"* The Court: *"You were being bull-headed, weren't you."* The witness: *"I really didn't look for it."* The Court: *"Well, that's what I'm talking about. So don't play games with me. It's not going to do you any good."* (T. 299) Melissa alleged she threw the cup because her father, Gary, yelled at her for not thawing a chicken properly. (T. 299)

Also on one occasion, Melissa claimed that her father had been hitting her in the head with a belt and her mother tried to get the phone and call 911 but he wouldn't let her. (T. 302) Judge Alderson said, *"I want you to be honest with me, because you start sugar-coating this thing and I know what I'm going to do. I don't think you are being honest with me now, when I asked you those questions. Honesty is going to work."* (T. 303) Melissa alleged Gary spanked her two times; on one occasion he left a bruise, and on the other he did not. Later on, when Melissa's father spanked her, she did not remember whether her mother was present. Melissa alleged that her father left a bruise on her leg. (T. 307) Melissa alleged that Gary also left a bruise on her arm when he grabbed her while he was whipping her. (T. 309) Gary denied that he ever left a bruise on her arm. This was back in the 9<sup>th</sup> or 10<sup>th</sup> grade (T. 310) and the other alleged bruise incident was last year. (T. 310) On one occasion Melissa claimed that her father hit her in the face with a belt, but it was a long time ago and she did not remember much about it. (T. 310) Gary was trying to spank her leg but allegedly hit her in the face. (T. 311)

Melissa admitted hitting her mother on one occasion. (T. 338) She also admitted that some of the altercations she had had with her father were caused by her misbehaving and she caused her dad to be upset. (T. 350) She could not remember the number of times that her parents had had to restrain her by putting their arms around her to physically restrain her or hold her down or hold her back because she was out of control. Melissa admitted at court that she was taking a sleeping medicine and further taking Busprirone for anxiety.

Andrew was asked if his father ever whipped him, and he said: *"Not really, just for like disciplinary purposes and stuff like that."* Andrew admitted that Gary had never slapped him but had pushed him on one occasion. (T. 359) Alisa alleged that Gary hit Andrew in the head.

Andrew described the incident as follows: *"We were past Dumas, we were on the way to Tupelo, and I think I might have said something that offended him or something, but he grabbed my jacket and I don't know if he meant to or purposely or not, but he sort of hit me in the head."*

Andrew admitted that his father yelled at his mother and the mother yelled at him. (T. 362) He stated that his father had pushed him on about four occasion in the last few years. (T. 364)

Andrew also admitted an incident that occurred this summer in which his father tried to take his cell phone away from him because he had been picking on the younger sister. Andrew described that his father got in his face but he never physically touched him. Andrew is 16 years old and admitted that he hit his father in the side of the head but Gary did not hit him back. Gary took his cell phone away from him. (T. 373-373) Melissa never saw Gary whip Andrew in a way that was inappropriate. (T. 312)

On none of these occasions did anyone even remotely suggest that any of the children had sustained any significant injuries.

Melissa had her own set of problems. Melissa had been at Parkwood on three occasions for mental problems. (T. 32, 94) Melissa had been cutting herself, but Alisa did not know if Melissa had attempted suicide. (T. 95) Melissa has probably cut herself eight times on her arm, piercing her lip and her ear with a safety pin or cutting her arm with a knife and piercing her lip and ear with a safety pin. (T. 95) Melissa has also been diagnosed as bi-polar. (T. 95)

Alisa was questioned by Stephen Bailey:

*Q At times when Melissa is in the midst of a manic episode of her bi-polar disorder, does she get totally out of control?*

*A She has, yes.*

*Q Has that child gotten so out of control in the past that you and Gary Wayne have had to physically restrain her?*

*A Yes.*

*Q Have you yourself had physical fights with Melissa in the past?*

*A Yes.*

*Q Has she hit you?*

A Yes.

Q Have you hit her back?

A No.

Q What do you do when she strikes you?

A I just try to hold her like this?

Q What does Gary Wayne do when she hits him?

A I don't know if I have ever seen her hit him?

Q To your knowledge has Gary Wayne ever had to restrain Melissa?

A Not to my knowledge.

Q How many times has Melissa gotten so violent with you that you had to hold her like you demonstrated to the Court and physically restrain her?

A Not many, two or three.

Q Has that child ever injured you in one of these altercations?

A Yes.

Q What has she done to you?

A She hit me on my side. (T. 95-96)

It should further be noted that the injuries caused to Alisa by Melissa required surgery.

### **III. STANDARD OF REVIEW**

A chancellor's findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his or her discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Sanderson v. Sanderson*, 824 So.2d 623, 625-26 (§ 8) (Miss. 2002) (citations omitted). Furthermore, we "will affirm the [child-custody] decree if the record shows any ground upon which the decision may be justified. . . . We will not arbitrarily substitute our judgment for that of the chancellor who is in the best position to

evaluate all factors relating to the best interest[] of the child." *Mosley v. Mosley*, 784 So.2d901, 905-06 (§ 15) (Miss. 2001) (quoting *Yates v. Yates*, 284 So.2d 46, 47 (Miss. 1973)).

#### **IV. SUMMARY OF THE ARGUMENT**

The guardian *ad litem* recommended that Gary be given the three youngest children but because Melissa (the 17-year-old) was so disruptive, the guardian *ad litem* thought that Alisa should be given custody of Melissa to get Melissa away from the other children. The Chancellor did not accept this recommendation. The Chancellor rendered a well-reasoned opinion properly applying the *Albright* factors in support of his decision. The Chancellor carefully set out why he did not follow the recommendation of the guardian *ad litem*. The Chancellor based his decision on his analysis of the *Albright* factors and the fact that the Chancellor found that Alisa had made a wreck of her life. Alisa had: (1) significant mental problems (bi-polar, borderline personality disorder, bulimia, etc., etc.); (2) violated the court orders in having the children around Michael Bailey; (3) had a sexual relationship with Sam Renfroe and Michael Bailey; (4) attempted suicide; (5) had to be treated at Parkwood Hospital; (6) stolen the credit card and used it to purchase gas; (6) allowed her daughter to have an affair with Blaine Bailey; and (7) been found guilty of shop-lifting on several occasions. Gary had no girlfriend, no criminal record, no mental problems, no alcohol or drug use, and was the only island of stability in this entire case. Melissa's custody has been rendered moot because of subsequent events.

The Chancellor was further criticized by Alisa for not addressing the two oldest children's request to live with their mother. First of all, no Chancellor in the State of Mississippi would have acceded to these children's request in light of the mother's conditions as set out hereinabove, and the Chancellor was well within his authority in not giving Alisa custody of the two older children. The Chancellor carefully set out detailed reasons for not granting the two older children's request.

Alisa has asked this Court to reverse the Chancellor because the Chancellor allegedly failed to make findings as to whether the presumption was triggered under §93-5-24. Alisa's

contention that the Chancellor should have applied the domestic violence provisions of 93-5-24 is unfounded, and she failed to carry her burden of proof. The "*rebuttable presumption that custody should not be placed with a parent who has a history of family violence*," only comes into effect if the Court finds after the testimony that there was proof, by a preponderance of the evidence, that there was a history of family violence. Mississippi Code Annotated, §93-5-24, provides that to find a history of perpetuating family violence, there must be proof by a preponderance of the evidence of: ". . . *one (1) incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the allegation or a family household member of either party.*" It is obvious from the proof in this case that the Chancellor did not find one incident of family violence on Gary's part that resulted in any serious bodily injury. Likewise, the Chancellor did not find that there has been a pattern of family violence against Alisa or any member of the family. If the Court had found a single incident of family violence that resulted in serious bodily injury or if the Court had found a pattern of family violence against Alisa or another family member, then the presumption would have been triggered and the Court would have had to have addressed this issue. Alisa's counsel attempted to raise the provisions of §93-5-24 in his argument, but simply raising the issue in argument falls far short of the restrictions of §93-5-24 and the requirement that there must be proof of family violence.

Alisa criticized the Chancellor for giving Gary custody of the children as a means to "punish Alisa." Alisa's "punishment" argument is based upon a phantom that does not exist – the transcript's original omission has been corrected by the court reporter. In the original transcript the language was as follows:

*"I'm going to award custody of the four children to the father. And I'm doing this, mother, to punish you, I'm thinking of the children. I think basically you are a good woman, but you've got to get your life together. You've made a mess out of it."* (T.P. 588)

However, it was later discovered that the record was incorrect. Upon examination of the court reporter's audio recording, the Chancellor had actually stated:

***"I'm going to award custody of the four children to the father. And I'm not, mother, doing this to punish you, I'm thinking of the children. (Emphasis added.) I think basically you are a good woman, but you've got to get your life together. You've made a mess out of it."***

The record was corrected under Mississippi Rules of Appellate Procedure to reflect what the Chancellor had actually stated, rendering meritless this ground of appeal.

## **V. ARGUMENT**

### **A. THE CHANCELLOR'S WELL-REASONED APPLICATION OF THE ALBRIGHT FACTORS PROVIDED MORE THAN SUFFICIENT REASON FOR REJECTING THE RECOMMENDATION OF THE GUARDIAN AD LITEM AS TO THE OLDEST CHILD, MELISSA ROLISON. SUBSEQUENT EVENTS HAVE MADE THIS ISSUE MOOT.**

The guardian *ad litem*, Stephen Bailey, recommended that Gary be awarded three of the four children. Melissa Knight, the psychologist who testified, also recommended that Gary be awarded three of the four children, the sole exception being Melissa. Alisa castigates the Chancellor for not setting out why he did not follow the guardian *ad litem*'s recommendation. Contrary to her contentions, the Chancellor very carefully set out why he did not accept the guardian *ad litem*'s recommendation in his lengthy *Albright* analysis. The Court's *Albright* analysis consumed fourteen pages of the transcript (T. 576-590), and reflects that the Chancellor clearly and cogently understood the facts and applied the law as it related to this case. Secondly, common "*walking around*" sense that a Chancellor is required and expected to exercise mandated that Alisa Rolison not have custody of the children. Her significant mental health issues, bi-polar disorder, borderline personality disorder, and ADHD, not to mention certain social phobias, would have called into question any Chancellor who gave such a person custody of a child. Alisa's contention that the Court erred by rejecting the guardian *ad litem*'s recommendation to give Alisa custody of Melissa when Alisa had exposed the children to a criminal, who himself had bi-polar disorder, when Alisa had been having sexual relations with the man while the children were present in the home is stupefying. Alisa had been to Parkwood

Hospital, had attempted suicide, smoked marijuana, found guilty of shoplifting, stolen a credit card and used it, just to mention a few of her problems.

The guardian *ad litem*'s recommendation to let Alisa have the child was not based on anything other than the fact that Melissa was so disruptive to the other three children. It was not based on any thought that Alisa would offer any stability, but was simply based on the perception by the guardian *ad litem*, the psychologist and DHS that Melissa was so disruptive to the other three children that she should be kept away from them and given to Alisa.

The Chancellor had every prerogative to keep the children together and as recognized by the guardian *ad litem* in his final report as follows:

*"Melissa, possibly as a result of her bi-polar disorder and other difficulties, has become an almost impossible child for Gary Wayne to manage in his home. Melissa realizes that she will soon be 18 years of age and feels as if she should be able to make all decisions pertaining to where she will live and how she will live her life. The continued presence of Melissa in the home with the other children, due to Melissa's mental and behavioral problems, has produced an unhealthy environment for all the children. (Emphasis added.) This factor should be taken into consideration by the Court probably more strongly than any other factor in this case."* (C.P. 118)

The guardian *ad litem* further stated:

*"Although Melissa has been disobedient and difficult, I believe it is best for her at this time to be allowed to live with her mother so that she does not cause further discord in her father's home. This recommendation is based partially upon the fact that Melissa will be 18 years of age in a few weeks, meaning that it will be very difficult, if not impossible for Gary Wayne to discipline her if she does not wish to reside with him. This recommendation is also based upon the belief of Social Worker Kadie Hall and therapist Melissa Knight, that it is in the best interest of Melissa to reside with her mother. Both Ms. Hall and Ms. Knight have observed the extreme personality conflict between Melissa and her father and believe that this personality conflict, combined with Melissa's mental health issues, create an unhealthy situation for Melissa if she continues to reside with her father."* (C.P. 121)

The Chancellor clearly included his reasons for rejecting the guardian *ad litem*'s recommendation:

*"The Court has read the guardian *ad litem*'s report. I have all of the respect in the world for Mr. Bailey, he has been guardian *ad litem* in this court for a long time on numerous cases. He is very thorough. He is very good at it, and probably the best I have ever seen. And I have a lot of respect for Kadie (DHS Social Worker), I've known her since she's been - I've been judging she's been DHS, and she does a good job and she's given me a report. And I've taken*

into consideration both of the reports. ... (T. 582) I realize that my ruling is on the factors – from the Albright factors differs somewhat from the guardian ad litem's, and his report. However, his recommendation was custody go to the father of the three younger children, Andrew, and the two younger girls. And Melissa go with mother. Mrs. Hall's recommendation, said Melissa go with mother, and the three younger go with the father. I am not going to accept those recommendations. This is the first time that I have not accepted the recommendations, especially of the guardian ad litem since I've been judge.

I am worried about Melissa. She testified from the stand that it's been better with daddy for the last six months. In her written statement she was not derogatory toward daddy. I asked her what would happen if I gave daddy custody, and she said, 'Well, I will wait until my 18<sup>th</sup> birthday.' That's when I explained to her that the 18<sup>th</sup> birthday played no part in this." (T. 587-588)

The Court concluded by stating:

"I'm going to award custody of the four children to the father. And I'm not, mother, doing this to punish you, I'm thinking of the children. (Emphasis added.) I think basically you are a good woman, but you've got to get your life together. You've made a mess out of it." (T. 588)

The Court could not have been more clear as to why it did not accept the recommendation of the guardian ad litem.

As Professor Bell states in her work on family law:

"While a guardian ad litem is useful to the court, particularly in cases involving allegations of abuse and neglect, the court remains the ultimate fact-finder and is not required to follow the guardian's recommendation." *Hensarling v. Hensarling*, 824 So.2d 583, 587 (Miss. 2002); *Passmore v. Passmore*, 820 So.2d 747, 752 (Miss. Ct. App. 2002). See *J.P. v. S.V.B.*, 987 So.2d 975, 983 (Miss. 2008) (chancellor adequately explained reasons for rejecting guardian's report). Bell on Family Law §12.10[5].

**B. THE CHANCELLOR'S REJECTION OF THE CHILDREN'S PREFERENCES IN THIS CASE WAS BASED UPON SUBSTANTIAL EVIDENCE.**

Melissa testified that she wanted to live with her mother. Andrew said he wanted to live with both of the parents. The Court did not go with the preference of the children for the reasons set out in the Court's analysis of the Albright factors. As to Melissa, the Court stated, "*Melissa wants to live with mother. And I think the reason that Melissa wants to live with mother is because Melissa can call the shots and Melissa can dictate, and I don't know whether you call that emotional ties or not, I think it's her wanting to be the chief.*" (T. 586)

Of course, a chancellor does not have to accede to the wishes of a child. As Professor Bell states:

*"A preference based on a desire to escape discipline or heavily influenced by one parent's hostility to the other will be disregarded. For example, a chancellor properly awarded custody to a mother over her son's wish to live with his father, who allowed him to chew tobacco, ride a four-wheeler, and give him a .357 magnum. A child's wish to live with a non-custodial parent has been denied in a number of cases because the requested placement would separate the child from other siblings." Bell on Family Law, §12.03[10]. See Franklin v. Kroush, 622 So.2d 1256, 1257 (Miss. 1993) (refusing father's request to modify solely on child's preference; modification would separate child from younger siblings). Bell on Family Law, §12.03[10].*

The Chancellor in the instant case adequately explained why he did not think it in the best interest of the two older children to be with their mother. The Chancellor's careful analysis of the *Albright* factors is sufficient for this Court to affirm the Chancellor. This Court has affirmed a chancellor's award of joint custody over a daughter's express wish to live with her father, even in the absence of findings of fact. See *Phillips v. Phillips*, 45 So.3d 684, 693-694 (Miss. Ct. App. 2010).

**C. APPELLANT, ALISA ROLISON, FAILED TO ADDUCE SUFFICIENT EVIDENCE TO TRIGGER THE PRESUMPTION OF §93-5-24(9)(a).**

To trigger §93-5-24, Mississippi Code Annotated, Alisa had the burden of convincing the Chancellor by a preponderance of the evidence that at least one incident of serious bodily injury had occurred or that there was a pattern of violence toward Alisa or the other family members. Alisa failed to carry her burden of proof. First, there were no reports of any serious bodily injury of Alisa at Gary's hands. Moreover, there is substantial evidence in the record that more than blunted any allegation that Alisa made about the "love-pat" incident.

At trial, Alisa made numerous allegations about Gary's alleged violent behavior toward her and the children. Dr. Sheehan treated Alisa for three years before the trial, and he kept very detailed notes. (Exhibit 5) Alisa admitted she had every opportunity to tell Dr. Sheehan about any of her problems. (S.T. 66) Dr. Sheehan's records do not reveal that Alisa ever mentioned Gary being physically abusive to her or any of the children. On the other hand, Alisa told Dr. Sheehan that she was aggressive toward the children. (S.T. 68, 73) Alisa also met with a

counselor, Leah Headings, after the parties separated. Alisa again had every opportunity to vent her complaints against Gary. No such complaints were ever made. Alisa spent ten days after the parties' separation in Parkwood Hospital due to her mental problems. At no time did she ever make a complaint about Gary to anyone at Parkwood Hospital. (T.136) Alisa admitted she never took out any charges against Gary. Perhaps most telling was the substance of the text messages Alisa sent Gary before and during the separation by which she accepted the blame for their problems and thanked Gary for saving her life. For example:

*"146, 11/30/09, thank you for letting Melissa go today. It means so much to me. I am not a bad person I just make poor decisions."* (T. 140)

...

*"I am not a bad person. I am a good person who has not always made the best choices in her life."* (T. 140)

...

*"189, the first of first. I am truly sorry for what I have put you through."* (T.141)

...

*"193, it's the 6<sup>th</sup> of January (2010). Thank you for being there for me and caring, it means the world to me. I love you."* (T. 141)

There were no text messages to Gary criticizing him for any physical or verbal assaults. (T. 142)

Even if the Court finds that Judge Alderson did not specifically, and in writing, document why the presumption was not triggered because he did not think there was family violence, surely the Court's documentation of Alisa's mental illness, substance abuse, and the other circumstances related to her conduct with Michael Bailey would require the Chancellor to give the child to Gary. This Court did not find that Gary was a perpetrator of family violence. As the guardian *ad litem* found, it was obvious from the record that Melissa did not tell the truth, her mother was biased, and therefore the judge did not find that he was a perpetrator.

In his careful analysis of these allegations, the guardian *ad litem* found as follows:

*"Ultimately, I do not believe that either party in this case has abused or neglected their minor children. Alisa seems to have over-dramatized many of the incidents where she claims that Gary Wayne abused the children. I would characterize Gary Wayne's the physical discipline of the children as being excessive on occasion due to Gary Wayne spanking the children at times when he was extremely angry. However, I would stop short of calling the spanking that he has administered to the children 'child abuse'. I do believe that Gary Wayne has an anger management problem which has been aggravated by having to deal with an extremely difficult situation with the parties' daughter, Melissa, who has multiple serious mental health issues."* (C.P. 117)

Our court system should not be quick to find corporal punishment as violence. To do so, would condemn every generation of future parents to impotence in their ability to punish and instruct their children. The Chancellor rejected Alisa's contention that Gary's spanking of a 17-year-old child was "family violence."

In the case of *Brumfield v. Brumfield*, 49 So.3d 138 (Miss. App. 2010), this Court had no problem in affirming a chancellor on a factual case eerily similar to the instant case. In *Brumfield*, the Court of Appeals affirmed the chancellor's decision to give custody of four children, three girls and one boy, to the father. The wife had alleged that the presumption of Mississippi Code Annotated §93-5-24 would apply since "During one such argument in September 2005, Alex pinned Heather against the wall, threw her to the ground, and hit her twice with a belt, resulting in his prosecution for simple assault." *Brumfield* at 141. The chancellor expressly found that the violent incident was isolated and that Alex did not have a history of perpetuating family violence, as defined by the statute. The chancellor further found no presumption against granting Alex custody of the children. *Brumfield* at 142. In the instant case there is no evidence of any serious bodily injury, or any injury at all. The Court in *Brumfield* found:

*"The only physical injuries Heather described as resulting from the incident were relatively minor - scratches to her face - and she was uncertain exactly how they had occurred."* *Brumfield* at 143. In determining that the presumption did not apply, the Court of Appeals stated: "The chancellor's findings with regard to the statutory presumption must stand unless she 'was manifestly wrong, clearly erroneous, or applied an improper legal standard.' J. P. v. S.V.B., 987 So.2d 975, 980 (Miss. 2008). We can find no abuse of discretion in the chancellor's findings that the single incident did not result in 'serious bodily injury,' as required by the statute to support a finding of a history of family violence. Likewise, we cannot say that the chancellor abused her discretion in

finding no 'history of family violence' as defined by the statute and, consequently, no statutory presumption against awarding custody to Alex. Instead, we think the chancellor properly considered this incident in her Albright analysis, which we shall discuss below." *Brumfield* at 143.

In *Brumfield*:

"Heather, suffered from depression, began habitually smoking cigarettes, stopped going to church, and stopped doing many of the household chores she had previously done. Alex testified that when she was not at work, Heather would lie around and insist that she be left alone, leaving him to care for the children. Alex stated that since February 2005, he had assumed the role of the children's primary caregiver. The chancellor found that since her father's suicide, Heather's mental health and parenting skills had not fully recovered. Heather admits that she suffered from depression after her father's death, but she disputes Alex's testimony that he ever took a leading role in caring for the children." *Brumfield* at 145.

"Heather also admitted that she had had a sexual relationship with a married man during the marriage and there was testimony that Heather and this married man had been together around the children." *Brumfield* at 148.

"The chancellor faulted Heather for exposing the children to the extramarital relationship." *Brumfield* at 149.

"The Court of Appeals also found that the chancellor was careful to emphasize that Heather was faulted for exposing the children to extramarital relationships; Heather was not faulted for simply engaging in adultery." *Brumfield* at 149.

As the Court stated in *Brumfield*:

"Where there is conflicting testimony, the chancellor, as the trier of fact, is the judge of the credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation. *Bowen v. Bowen*, 982 So.2d 385, 395 (Miss. 2008) . . . Also, while Heather points out that it was essentially undisputed that she was the children's primary caregiver in the early years of the marriage, we think the chancellor was correct in focusing her analysis on more recent years." *Brumfield* at 145.

The chancellor largely accepted Heather's account of the September 2005 incident but "although Alex's conduct was 'inexcusable,' the chancellor noted that it had occurred at a stressful time and that both parents had acted outrageously in challenging each other's authority over the children. The chancellor concluded that it was an isolated incident and that, weighed against the other Albright factors, it did not justify awarding custody of the children to Heather." *Brumfield* at 149.

It should be noted that the problems that Mrs. Brumfield had, depression, adultery, etc., nowhere approached the conduct and behavioral problems of Alisa Rolison. As the Court stated in *Brumfield*:

*"Again, this Court cannot reweigh the evidence on appeal. We are limited to determining whether the chancellor's findings are supported by substantial evidence." Brumfield at 149.*

**D. ALISA'S CONTENTION THAT THE CHANCELLOR AWARDED GARY CUSTODY TO PUNISH HER IS MERITLESS.**

In support of Alisa's allegation that the Chancellor intended to punish her, Alisa cites the following opinion of the Chancellor:

*"I'm going to award custody of the four children to the father. And I'm doing this, mother, to punish you, I'm thinking of the children. I think basically you are a good woman, but you've got to get your life together. You've made a mess out of it." (T.P. 588)*

It was later discovered after Alisa submitted her brief, that the transcript was incorrect. The court reporter did not properly transcribe the record. Through his attorney, Gary requested that the court reporter listen to the audio of the record to determine if this was a proper transcription. After the court reporter had an opportunity to listen to the audio transcription, the court reporter contacted Gary's attorney and reported that the transcription of the original record was incorrect.

Gary moved to correct the record after an audio review of the testimony revealed that the Court had actually said:

*"I'm going to award custody of the four children to the father. And I'm not, mother, doing this to punish you, I'm thinking of the children. (Emphasis added.) I think basically you are a good woman, but you've got to get your life together. You've made a mess out of it."*

Upon proper motion by Gary's attorney, the Chancellor entered an order correcting the record, and this record was submitted to the Court of Appeals under the appropriate Rule of Appellate Procedure. Since this incorrect transcription of the record was the only basis for the Alisa's assertion that the Court was "punishing" Alisa and since the Court, in the corrected

record, assured Alisa it was not punishing her, Alisa's argument has no basis and should be denied.

In *Brumfield v. Brumfield*, the mother likewise alleged that the court had given the father custody of the four children to "punish" her for her adultery.

*"Heather also suggests in her brief on remand that the chancellor 'punished' her for the adultery by awarding Alex custody of the children. We acknowledge that under our law a chancellor may not use marital fault as a sanction in custody awards. Albright, 437 So.2d at 1005. The chancellor should consider adultery as part of moral fitness, one of the Albright factors, and moral fitness must be 'only one factor when considering what was in the best interest and welfare of the children.'" Brumfield at 149.*

...

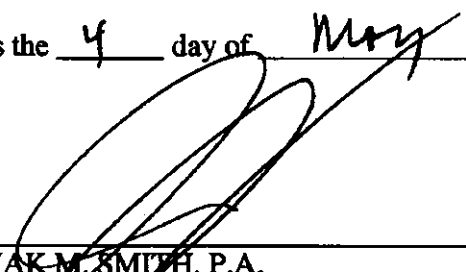
*"Although her discussion of moral fitness was brief in both opinions, the chancellor was careful to emphasize that Heather was faulted for exposing the children to extramarital relationships; Heather was not faulted for simply engaging in adultery. The Court found that the chancellor's decision on this factor was supported by substantial evidence." Brumfield at 149.*

## **VI. CONCLUSION**

The Chancellor made the correct decision in awarding custody of the four children to Gary Rolison. Alisa Rolison's severe mental problems, her decisions regarding her boyfriends, her exposure of her children to her boyfriend, her other criminal background, and her use of drugs all combined to afford this Chancellor a pretty easy decision as to who should have the children. Gary offered the only island of stability to whom the Chancellor could have given the children. Alicia faults the Chancellor for not adhering to statutory guidelines of addressing issues that Alisa claims should have been addressed. The Chancellor clearly made the right, and perhaps, the only decision he could have made under these circumstances. Neither the Chancellor nor the guardian *ad litem* felt that the allegations of Alisa Rolison amounted to substantial proof of domestic violence which would have triggered §93-5-24. Many references were made in the testimony by the Chancellor that he did not believe Alisa Rolison. Likewise, the guardian *ad litem* did not feel Alisa's testimony was worthy of belief and was embellished and exaggerated. Alisa wants the Appeal Court to reverse the Chancellor not because the Chancellor made the wrong decision, but because of Alisa's misguided perception that the

Chancellor did not fully explain his reasoning. Chancellor Alderson fully explained his reasoning in his analysis of the *Albright* factors and in other comments made during the trial. In judging the actions of the Chancellor, this Court has a long history of looking at the substance of a chancellor's decision in how it relates to the best interest of the children. Alisa's criticism of the Chancellor amounts to a microscopic hyper-technicality view that a chancellor should be reversed for failing to dot every "i" and cross every "t", even though the Chancellor made the right decision. If a conductor forgets to punch a ticket for a passenger, when the passenger has paid for his ticket, boarded the right train, and reached his intended destination, the remedy is not to send the passenger back to his point of origin to get his ticket punched, but simply to let him off the train. Alisa would have the Appellate Court send this case back to the Chancellor when the right result was reached for the right reason after a detailed *Albright* determination. To have given these children to Alisa under these circumstances would have been criminal. The Appellate Court would have thought the Chancellor had lost his mind.

RESPECTFULLY SUBMITTED, this the 4 day of May, 2012.



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**CERTIFICATE OF SERVICE**

I, Jak M. Smith, Attorney for Appellee, certify that I have this day filed this *BRIEF OF APPELLEE, GARY WAYNE ROLISON, JR.* with the Clerk of this Court:

Ms. Kathy Gillis, Clerk  
Supreme Court of Mississippi  
P. O. Box 249  
Jackson, MS 39205-0249

and have served a copy of this *BRIEF* by United States Mail with postage prepaid on the following person(s):

Honorable Glenn Alderson, Chancellor  
P. O. Drawer 70  
Oxford, MS 38655

Honorable R. Shane McLaughlin  
Attorney at Law  
P. O. Box 200  
Tupelo, MS 38802  
(Attorney for Appellant)

This the 4 day of May, 2012.

  
\_\_\_\_\_  
JAK M. SMITH