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STATEMENT REGARDING ORAL ARGUMENT

As noted in Appellant's principal brief, the issues in this appeal are straightforward and require reversal. While Appellant's counsel would welcome the opportunity to present this case orally, oral argument is not necessary to an understanding of the issues in this case.

REPLY ARGUMENT I.

THERE WAS OVERWHELMING EVIDENCE OF A PATTERN OF FAMILY VIOLENCE WHICH TRIGGERED THE STATUTORY PRESUMPTION.

Appellee's Brief tellingly ignores the Record-evidence of Gary's several instances of family violence. Appellee does make any argument, or even mention, the following evidence from which the Chancellor should have found a pattern of family violence:

1. Gary's admission that he "spanked" the children until they were bruised. (T. p. 191).
2. Gary admission that he whipped Melissa with a belt such that the bruises can be seen in exhibit number 9. (T. p. 192; Trial Exhibit No. 9).
3. Gary's admission that he once forced Melissa to the ground by her shoulders. (T. p. 197-98).
4. Alisa's testimony that Gary once beat her with a 2 x 2 "stacking stick" when she let a cow escape a gate such that she could barely walk the next day. (T. p. 41).
5. Melissa's testimony that Gary kicked her with his boot. (T. p. 298).
6. Melissa's testimony that Gary hit her in the face with a belt.

Appellee mistakenly relies on *Brumfield v. Brumfield*, 49 So. 3d 138 (Miss. 2010). In *Brumfield*, this Court had previously remanded the case to the Chancellor to make additional *Albright* findings and to make an express finding as to whether the statutory presumption of section 93-5-24 applied. *Brumfield*, 49 So. 3d at 141-42. On remand, the Chancellor made the express factual finding that that there was not a history of family violence, finding that the credible evidence proved only one isolated incident of violence. *Id.* at 143. This Court noted that the Chancellor's factual finding was reviewed deferentially and affirmed since the finding was supported by the record. *Id.*

This case presents precisely the opposite of the facts of *Brumfield*. Here, the Chancellor made no finding whatsoever as to whether, or not, the section 93-5-24 presumption was triggered. The closest the Chancellor came in this regard was a factual finding that Gary was "aggressive at times" with the children. (T. p. 580; *see also* T. p. 584). The Chancellor did not address the statutory presumption in this ruling. (T. p. 576-88). The Chancellor did not make any findings as to how or why the presumption was or was not triggered. (*Id.*).

Gary's admissions in the Record are enough to trigger the presumption standing alone. Gary admitted to hitting a child such that the child was bruised. Gary admitted that he forced a child to the ground by the shoulders. Gary candidly admitted that he had an anger problem and this fact is made indisputable by the record-evidence. The statutory presumption set out in Miss. Code Ann. § 93-5-24 should have been triggered in this case. This Court should reverse and remand with instructions for the Chancellor to apply the statutory presumption against Gary.

Alternatively, even if the un-contradicted evidence were not enough to clearly trigger the presumption, the Chancellor was nevertheless required to make express findings as to whether the presumption was or was not triggered. *Lawrence v. Lawrence*, 956 So. 2d 251, 263 (Miss. Ct. App. 2006). At a minimum the Court should reverse and remand for the Chancellor to state whether the presumption was or was not triggered.

REPLY ARGUMENT II.

THE CHANCELLOR FAILED TO EXPLAIN ANY REASON FOR NOT FOLLOWING THE GUARDIAN *AD LITEM*'S RECOMMENDATION.

Appellee's entire argument is that because the Chancellor conducted an *Albright* analysis, he did not have to explain the reasons that he did not follow the guardian *ad litem's* recommendation. This is incorrect.

Mississippi law requires on-the-record *Albright* findings for all initial custody determinations. *Powell v. Ayars*, 792 So. 2d 240, 244 (Miss. 2001); *Parra v. Parra*, 65 So. 3d 872, 876 (Miss. Ct. App. 2011). However, in cases involving the mandatory appointment of a guardian *ad litem*, the Chancellor must also state the reasons for rejecting the guardian *ad litem's* recommendation. *S.N.C. v. J.R.D.*, 755 So. 2d 1077, 1082 (Miss. 2000); *Floyd v. Floyd*, 949 So. 2d 26, 29 (Miss. 2007).

Merely conducting an on-the-record *Albright* analysis does not satisfy the requirement of explaining the rejection of a guardian *ad litem's* recommendation. *See Collins v. Collins*, 20 So. 3d 683, 694 (Miss. Ct. App. 2008) (Chancellor conducted *Albright* analysis and explained disagreement with guardian *ad litem's* opinion). If an *Albright* analysis is all that is required then the cases holding that the Court must explain its reasons for deviating from a guardian *ad litem's* report are superfluous, as the *Albright* factors are always required.

The law requires something more than a mere *Albright* analysis in cases were a guardian *ad litem* was mandatorily appointed, such as this case. In such cases, in addition to the *Albright* analysis, the Chancellor must separately state his reasons for rejecting the guardian *ad litem's* recommendation.

In this case the Chancellor did not state any reason whatsoever for rejecting the guardian *ad litem's* recommendation. The Chancellor's *Albright* analysis does not explain why the Chancellor rejected the recommendation.

Accordingly, the Chancellor's decision should likewise be reversed on this basis.

REPLY ARGUMENT III.

THE CHANCELLOR MADE NO FINDING AS TO WHY THE CHILDREN'S PREFERENCES WOULD NOT SERVE THEIR BEST INTERESTS.

Yet again for this issue, Appellee contends that Chancellor satisfied his duty of stating why he declined to follow the preferences of the children merely by conducting an *Albright* analysis.

As noted above, with respect to the Chancellor's refusal to follow the guardian *ad litem's* recommendation, an *Albright* analysis is required in all initial custody determinations. *See Powell,* 792 So. 2d at 244. *Parra*, 65 So. 3d at 876. Certain issues, such as rejecting mandatory guardian *ad litem* recommendations and rejecting the preferences of children over the age of twelve, require further findings by the Chancellor. If a consideration of the *Albright* factors alone were sufficient, the law would not require the Chancellor to make additional findings in these special circumstances.

The law does require the Chancellor to specifically make on-the-record findings as to why a child's preference will not serve the child's best interests if the preference is to be rejected. *Polk v. Polk*, 589 So.2d 123, 130 (Miss. 1991). Appellee does not point to anything in the Record where the Chancellor made any such finding. This is because the Chancellor did not make this required finding. The Chancellor in this case never stated why the children's preferences were against their best interests.

Because the Chancellor did not follow the children's stated preferences, and did not make any finding as to why the preferences would not serve the children's best interests, the decision should also be reversed on this basis.

REPLY ARGUMENT IV.

An apparent error in the transcription of the Record has been corrected by an Order of the Trial Court since Appellant's principal Brief was filed. The Record now reflects that the Chancellor stated that he was awarding custody "not to punish" Alisa.

While Alisa maintains that the Chancellor committed several reversible errors, and should be reversed based on the above assignments of error, Alisa withdraws Argument IV based on the revised Record.

CONCLUSION

Accordingly, Appellant respectfully requests the Court to reverse the Chancellor's decision.

RESPECTFULLY SUBMITTED, this the 12th day of June, 2012.

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CERTIFICATE OF SERVICE

I, R. Shane McLaughlin, attorney for the Appellant in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of **Reply Brief of Appellant** to all counsel of record and the Trial Court Judge by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

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Hon. Glenn Alderson
Chancellor
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This the 12th day of June, 2012.

R. Shane McLaughlin

CERTIFICATE OF FILING

I, J. Suzanne Bishop, paralegal for McLaughlin Law Firm do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the **Reply Brief of Appellant** by mailing the original of said document and three (3) copies thereof via United States Mail, to the following:

Ms. Betty W. Sephton
Supreme Court Clerk
P.O. Box 249
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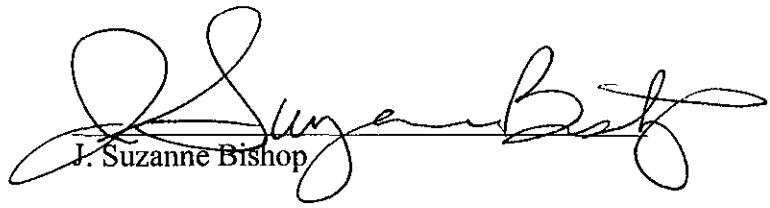
This, the 12th day of June, 2012.



J. Suzanne Bishop