

IN THE MISSISSIPPI SUPREME COURT

NO. 2014-CA-00966

ELLIS TURNAGE, APPELLANT

v.

ELLIS CHRISTOPHER BROOKS, a minor,  
And ALEX JARRET BROOKS, a minor,  
BY MARY BROOKS, Mother and Adult Next Friend, APPELLEES

ON APPEAL FROM THE CHANCERY COURT OF SECOND  
JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

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**BRIEF OF THE APPELLEES**

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IN THE MISSISSIPPI SUPREME COURT

ELLIS TURNAGE

APPELLANT

V.

NO. 2014-CA-00966

ELLIS CHRISTOPHER BROOKS, a minor,  
And ALEX JARRET BROOKS, a minor, BY  
MARY BROOKS, Mother and Adult Next Friend

APPELLEES

**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of appeal may evaluate possible disqualification or recusal.

1. Ellis Turnage, Appellant
2. Ellis Christopher Brooks, Appellee
3. Alex Jarret Brooks, Appellee
4. Mary Brooks, Appellee
5. Terence L. High of The High Law Firm, PLLC, counsel for Appellees
6. Tamekia R. Goliday of the Goliday Law Firm, counsel for Appellant
7. Honorable Edward Prisock, Special Chancellor

Respectfully submitted, this the 23<sup>rd</sup> day of December, 2015.

*s/ Terence L. High*  
TERENCE L. HIGH  
*Attorney for Appellees*

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

The following issues are presented in this appeal:

1. The Standard of Review of a Chancellor's Decision
2. Whether The Special Chancellor Did Not Commit Reversible Error When He Did Not Dismiss This Action Where The Record Evidence Did Not Indicate that Mary Brooks and Ellis Brooks Gave False and Misleading Testimony During Their Depositions and At Trial
3. Whether The Special Chancellor's Not Allowing Ellis Turnage Credit for Monetary Payments and Housing Provided to the Minor Children After November 13, 2008 is A Manifest Error Which Results in Unjust Enrichment to Mary Brooks
4. Whether The Special Chancellor Applied The Correct Legal Standard When It Ordered Ellis Turnage to Pay The College Expenses of the Minor Children
5. Whether The Pell Grants Received by Ellis and Alex Brooks Were Correctly Not Considered College Costs
6. Whether The Allegations Set Forth in Plaintiffs' Complaint at Paragraph 9 Does Not Constitute An Admission and Concession for Judicial Estoppel Purposes



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

### **A. Proceedings below.**

Mary Brooks on behalf of Ellis Christopher Brooks (a male child born on January 16, 1989) and Alex Jarrett Brooks (a male child born on May 16, 1994) brought a Complaint to Establish Filiation, for Child Support, Child Custody and Related Relief against Ellis Turnage in the Chancery Court of the Second Judicial District of Bolivar County, Mississippi on November 13, 2009. (R.5-10). On February 9, 2010, Mr. Turnage filed his answer to the complaint in this matter. (R.11-13).

Pursuant to the Special Chancellor's July 19, 2010 Order, DNA testing was conducted and confirmed Mr. Turnage as the biological father of Ellis Christopher Brooks and Alex Jarrett Brooks. Ellis Turnage filed his 8.05 Financial Statement with the Court on March 1, 2013. (R.25-35). After the completion of written discovery and depositions, a trial on the merits was held on March 1, 2013 and July 1, 2013, before Special Chancellor Edward C. Prisock, who is now deceased, at the Bolivar County Courthouse located in Cleveland, Mississippi.

On or about September 20, 2013, by and through counsel, Mary Brooks submitted to the Court her proposed findings of facts and conclusions of law. (R.38-46). Ellis Turnage, by and through counsel, submitted his proposed

findings of fact and conclusions of law on September 11, 2013. (R.173-240).

The Special Chancellor issued his Final Decree in this matter on June 4, 2014.

(R.113-121). The Special Chancellor ordered Mr. Turnage to pay child support in the amount of \$800.00 per month on behalf of Alex Brooks and \$800.00 per month on behalf of Ellis Brooks until each child reached the age of majority. (R.120).

The Special Chancellor also ordered Mr. Turnage to pay 80% of all reasonable college expenses of Alex Brooks commencing with his enrollment at the University of Mississippi in 2013. The Special Chancellor ordered Mr. Turnage to pay college expenses for Ellis Christopher Brooks while he attended the University of Southern Mississippi during the semester of Fall 2008, Spring 2008, and Fall 2009. (R.121). The Special Chancellor did give Mr. Turnage a credit of \$3,210 for monies Mr. Turnage spent on apartment rent at Crown Long Leaf Terrace for Ellis Christopher Brooks. *Id.*

Mr. Turnage filed his Notice of Appeal to the Supreme Court of Mississippi on July 8, 2014. (R.137-138).

**B. Facts relevant to the issues presented for review.**

Mary Brooks is an adult resident citizen of Madison County, Mississippi, residing at 119 Highland Cove, Ridgeland, Mississippi. T.24:10-11. Ellis Turnage is an adult resident citizen of Bolivar County, Mississippi, residing at 1214

South Street, Cleveland, Mississippi. This proceeding was commenced on November 9, 2009 when Plaintiffs filed their Complaint for Filiation, for Child Support, Child Custody and Other Relief against Ellis Turnage. (R.5-10). Mary Brooks and Ellis Turnage, who are both of the African-American race, were never lawfully married to each another. T.67:8-9, 203:21-22. Mary Brooks is the lawful mother of Ellis Christopher Brooks who was born on January 16, 1989 and Alex Jarrett Brooks who was born on May 17, 1994. Ellis Brooks and Alex Brooks were born out of a relationship between Mary Brooks and Ellis Turnage. After this proceeding was commenced, the parties had DNA tests conducted that confirmed that Ellis Turnage was the lawful father of Ellis Christopher Brooks and Alex Jarrett Brooks. T.29:23-26.

At all times, Ellis Brooks and Alex Brooks have resided with Mary Brooks. Mary Brooks has maintained physical custody of Ellis Brooks and Alex Brooks. Ellis Turnage did not seek custody of Ellis Brooks or Alex Brooks. Ellis Brooks turned 21 years of age on January 16, 2010.

House at 119 Highland in Ridgeland, Mississippi

Ellis Turnage purchased the house at 119 Highland Cove in Ridgeland, Mississippi as a gift for Mary Brooks, Ellis Brooks, and Alex Brooks. T.45:17-29. Ellis Turnage paid \$62,000.00 for the house in Ridgeland, Mississippi on January

14, 2002. T.220:23-26. Ellis Turnage paid for the house in full in 2002 and owed no monthly mortgage on the house. Tr. p. 280:16-20. Mary Brooks resides at the 119 Highland Cove address with Ellis Brooks and Alex Brooks. T.29:2-13. Ellis Turnage never told Mary Brooks that she had to pay rent to stay in the house. T.46:5-7. Mary Brooks pays for the utilities at 119 Highland Cove in Ridgeland, Mississippi. T.28:17-29:1.

Ellis Brooks graduated Madison Central High School in 2007 and attended college at the University of Southern Mississippi from 2007 to 2011. T.109:11-15.

#### College Expenses of Alex Brooks

Alex Brooks graduated from Madison Central High School in 2012 and attends college at the University of Mississippi. Alex Brooks maintained a 3.17 GPA at Ole Miss for the 2012 Fall Semester. T.37:16-20. At the trial of this case, Plaintiffs' counsel stipulated that Alex Brooks obtained a 3.0 GPA for the 2013 Spring Semester at Ole Miss. T.195:1-13. Also, Plaintiffs' counsel stipulated that Alex Brooks has the aptitude for college and to attend college. *Id.* Ellis Turnage and his counsel agreed to the offer of stipulation regarding Alex Brooks' aptitude for college. *Id.* Ellis Turnage never contacted Ole Miss to verify financial aid or tuition costs for Alex Brooks. T.288:1-10, 26-29. Mary Brooks took out a federal direct parent loan to pay her share of Alex Brooks' college expenses. T.30:6-24.

In the Fall of 2012, Mary Brooks purchased a laptop for Alex Brooks for college at a cost of \$899 that Ellis Turnage has not reimbursed her for his half of the expense. T.32:20-29, 33:1-19. In the Fall of 2012, Mary Brooks purchased eyeglasses for Alex Brooks at a cost of \$328 that Ellis Turnage has not reimbursed her for his half of the expense. T.34:1-17. Ellis Turnage did not paid his half of the expenses for Alex Brooks' eyeglasses and computer/laptop. T.285:5-24, 286:1-29, 287:1-4. Ellis Turnage did not purchase Alex Brooks an automobile for his graduation from high school. T.296:23-25. Ellis Turnage has not provided any monies to cover transportation costs of Alex Brooks traveling to and from Oxford, MS and Ridgeland, MS. Ellis Turnage is financially capable of paying 100% of the college tuition for Alex Brooks. T.305:21-26.

#### Child Support for Ellis Brooks and Alex Brooks

Ellis Turnage was under no Court Order to pay child support for Ellis Brooks and Alex Brooks. T.44:18-20. Ellis Turnage had no written agreement with Mary Brooks to pay child support for Ellis Brooks and Alex Brooks. T.280:7-10. Since the filing of the Complaint in this matter in 2009, Ellis Turnage has not paid child support in December 2009, 2010, 2011, 2012, and 2013. T.281:10-28. Prior to the lawsuit being filed in this matter, Ellis Turnage sent monies to Mary Brooks, but never indicated as child support. T.44:21-29, 45:1-16.

### 2006 Pontiac Grand Am

Ellis Turnage purchased a 2006 Pontiac Grand Am automobile as a gift to Ellis Brooks for his high school graduation in 2007. T.208:5-9, 221:3-8. The 2006 Pontiac Grand Am was titled as Ellis Turnage or Ellis Brooks (owners). Tr. p. 238:10-15.

### Income and Assets of Ellis Turnage

Ellis Turnage is employed as an attorney for his own law firm in Cleveland, Mississippi. On his 8.05 Financial Statement, Ellis Turnage indicated a gross monthly income of \$7,282.52. T.264:1-3. Ellis Turnage serves as legal counsel for the Bolivar County Board of Election Commissions and earns a salary of \$15,000 a year (\$1,250 a month). T.264:4-7. Ellis Turnage as legal counsel for the Bolivar County Sheriff Department and earns a salary of \$65,000 a year. T.264:8-11. His monthly salary as legal counsel for the Bolivar County Sheriff Department is approximately \$5,400.00 per month. T.264:16-19. Ellis Turnage received a settlement in the Burnley case of \$500,000.00 as legal counsel in installments of \$166,000.00 in 2008, 2009, and 2010. Tr. p. 307:17-24. Ellis Turnage owns real estate with a market value of \$3,489,500.00 according to his 8.05 Financial Statement. T.278:17-20. Ellis Turnage has investments worth \$254,454.56 according to his 8.05 Financial Statement. T.272:12-18. Ellis Turnage owns four

automobiles according to his 8.05 Financial Statement. T.269:25-28.

### College Tuition of Ellis Brooks

Ellis Turnage did not pay any of the college tuition for Ellis Brooks in the Fall of 2008, Spring 2009, or Fall 2009 academic years. T.136:28-29, 137:1-3 (page 133). Ellis Brooks took out student loans to pay for his college tuition and expenses in the Fall of 2008, Spring, 2009, and Fall 2009 academic years. T.134:1-13 (page 130).

### Other Children of Ellis Turnage

Ellis Turnage is also the father of Evan Turnage and Amber Woods. Until March 5, 2013, Ellis Turnage was under a Court Order from Divorce Decree to pay child support for Evan Turnage in the amount of \$1,000.00 per month. T.202:2-5. Ellis Turnage ceased paying child support for Evan Turnage on March 5, 2013 when Evan Turnage became 21 years of age. T.202:8-17. Ellis Turnage is under no agreement or Court Order to pay child support for Amber Woods. T.267:12-28.

### Interaction with Ellis Turnage

Alex Brooks and Ellis Brooks gave Ellis Turnage gifts for Father's Day, his birthday, and Christmas. Tr. p. 110:11-17 (page 105). Ellis Turnage did not visit Ellis Brooks, call him, or send him a card on his birthday, in the 9<sup>th</sup> grade, 10<sup>th</sup> grade, 11<sup>th</sup> grade, or 12<sup>th</sup> grade. Tr. p. 114:1-9 (page 108).



### **III. SUMMARY OF ARGUMENT**

The Appellant Ellis Turnage asserts that the Special Chancellor made several errors in his Final Decree of June 4, 2013. Also, Mr. Turnage alleges that the Special Chancellor in his Final Decree did not discuss all substantial contrary evidence. However, Mary Brooks, by and through her counsel, disagrees with Mr. Turnage's position. First, the Special Chancellor did not commit reversible error when he did not dismiss this action where the record did not indicate that Mary Brooks and Ellis Brooks gave false and misleading testimony during their depositions and at trial. Second, the Special Chancellor's not allowing Ellis Turnage credit for monetary payments and housing provided to the minor children after November 13, 2008 was not a manifest error which results in unjust enrichment to Mary Brooks. Third, the Special Chancellor applied the correct legal standard when it ordered Ellis Turnage to pay the college expenses of the minor children. Fourth, the Pell Grants received by Ellis Brooks and Alex Brooks were correctly not considered college costs. Fifth, the allegations set forth in Plaintiffs' Complaint at Paragraph 9 does not constitute an admission and concession for judicial estoppel purposes.

## IV. ARGUMENTS

### A. The Standard of Review of a Chancellor's Decision.

The Court's scope of review of a Chancellor's factual findings is a clearly erroneous or manifestly wrong legal standard. *Powers v. Powers*, 568 So. 2d 255, 257 (Miss. 1990). A Chancellor's legal conclusions, questions of law and application of a legal standard are reviewed de novo. *Marter v. Marter*, 914 So. 2d 743, 746 (Miss. Ct. App. 2005).

### B. WHETHER THE SPECIAL CHANCELLOR DID NOT COMMIT REVERSIBLE ERROR WHEN HE DID NOT DISMISS THIS ACTION WHERE THE RECORD EVIDENCE DID NOT INDICATE THAT MARY BROOKS AND ELLIS BROOKS GAVE FALSE AND MISLEADING TESTIMONY DURING THEIR DEPOSITIONS AND AT TRIAL

The Special Chancellor did not commit reversible error when he did not dismiss this action where the record evidence did not indicate that Mary Brooks and Ellis Brooks gave false and misleading testimony during their depositions and at trial. "Whe[n]... a case is hotly contested and the facts[are] greatly in dispute[,] and whe[n] there is any complexity involved therein, failure to make findings of ultimate facts and conclusions of law will generally be regarded as an abuse of discretion." *Tricon Metals & Ervs, Inc. v. Topp*, 516 So.2d 236, 230 (Miss. 1987). This court will remand for findings of fact and conclusions of law where it is not "obvious from a review of the record such that the absence of

written findings may be excused.” *Precision Interlock Log Homes, Inc. v. O’Neal*, 689 So.2d 778, 780 (Miss. 1997).

The present case was not a complex matter before the Special Chancellor. The Special Chancellor issued a nine-page Final Decree based upon the evidence that supported the Special Chancellor’s findings. The Special Chancellor heard the testimony at trial from Mary Brooks, Ellis Brooks, and Ellis Turnage. In his Final Decree, the Special Master stated that “[t]he 8.05 financial statements filed by both parties are simply unbelievable and both conflict with other evidence.” R.115-116.

**C. WHETHER THE SPECIAL CHANCELLOR’S REFUSAL TO GIVE ELLIS TURNAGE CREDIT FOR MONETARY PAYMENTS AND HOUSING PROVIDED TO THE CHILDREN AFTER NOVEMBER 13, 2008 IS A MANIFEST ERROR WHICH RESULTS IN UNJUST ENRICHMENT TO MARY BROOKS**

The Special Chancellor’s not allowing Ellis Turnage credit for monetary payments and housing provided to the children after November 13, 2008 is not manifest error which results in unjust enrichment to Mary Brooks. It is undisputed that Ellis Turnage purchased the house at 119 Highland Cove on January 14, 2002. R.114. When he purchased the house, Mr. Turnage paid for the house in full on that date. *Id.* Since that time, Mary Brooks has resided at that address along with Ellis Christopher Brooks and Alex Brooks. *Id.* The

record reflects that Mary Brooks never paid rent on the home and Ellis Turnage never made a demand for rent. *Id.* Also, it is undisputed that there was no Paternity Order in place regarding child support.

In his Answer to the Complaint in this matter, Ellis Turnage never raised any affirmative defenses in this matter. R.111-112. Mr. Turnage claims in his brief that the Plaintiffs never plead a claim seeking a declaration that monetary payment and shelter provided to them by Turnage constituted a gift, as concluded by the Special Chancellor. Appellant's Brief at 27. However, Mr. Turnage ignores the fact that the gift argument was raised by Plaintiffs after Mr. Turnage alleged that he should receive a credit for monetary payments and housing provided to Ellis Christopher Brooks and Alex Brooks. As previously stated, Mary Brooks never paid rent at the 119 Highland Cove address and Mr. Turnage never made a demand for rent. R.114. It should also be noted that neither Ellis Christopher Brooks or Alex Brooks ever moved in and lived with Mr. Turnage.

In his brief, Mr. Turnage cites to *Brewer v. Holliday*, 135 So.2d 117 (Miss. 2014). In *Brewer*, the Mississippi Supreme Court held that "in considering custodial parent's claim for past due child support, the chancellor should have considered the fact that one of the minor children had resided with non-custodial

parent for a year, and non-custodial parent provided direct support to the minor child. *Brewer*, 135 So.2d at 122. However, *Brewer* involved a married couple with a divorce agreement that addressed child support. Also, *Brewer* involved one of the minor children living with the non-custodial parent and the non-custodial parent had provided direct support to the minor child. In the present case, Mr. Turnage and Ms. Brooks were never married. There was no Paternity Order in place. Neither Ellis Christopher Brooks or Alex Brooks was living with Ellis Turnage. Additionally, in *Brewer*, the non-custodial parent was not given a credit of the monthly mortgage as child support while the minor child lived with him for a year.

Mr. Turnage also cites to *Alexander v. Alexander*, 494 So.2d 365, 368 (Miss. 1968) to support his unjust enrichment claim against Mary Brooks. In *Alexander*, the Mississippi Supreme Court allowed for a credit to be given to a non-custodial parent for the time that the child lived in the home of the non-custodial parent. However, in the present case, neither Ellis Christopher Brooks or Alex Brooks was living with Mr. Turnage.

In addition, Mr. Turnage cites to *Varner v. Varner*, 588 So.2d 428, 435 (Miss. 1991) to support his position that he is entitled to an equitable credit. In

*Varner*, the Court stated that to allow the custodial parent to be compensated for time that the child had lived with the non-custodial parent, absent visitation and other modification made by the Court, would be to unjustly enrich the custodial parent. However, *Varner* is inapplicable to the present case. In the present case, neither Ellis Christopher Brooks or Alex Brooks was living with Mr. Turnage.

The *Brewer*, *Alexander*, and *Varner* cases cited by Mr. Turnage are all cases involving a divorce, child support, child custody, and where one of the minor children starts living with the non-custodial parent. In those cases, the Court found that the custodial parent would be unjustly enriched under those circumstances. However, those cases are inapplicable in the present case where there was no marriage, no paternity order, and no minor child was living with the non-custodial parent.

**D. WHETHER THE SPECIAL CHANCELLOR APPLIED THE WRONG  
LEGAL STANDARD WHEN IT ORDERED ELLIS TURNAGE TO PAY  
THE COLLEGE EXPENSES OF THE CHILDREN SINCE THEIR  
EXISTS NO VIABLE RELATIONSHIP BETWEEN HIM AND THE  
CHILDREN**

The Special Chancellor did apply the correct legal standard when it ordered Ellis Turnage to pay the college expenses of the minor children. Under Mississippi law, an award for college expenses is in addition to the basic support

award. See *Wray v. Langston*, 380 So.2d 1262, 1264 (Miss. 1980)(“[t]he duty of a parent to provide a college education for his or her child contemplates support in addition to tuition and college costs, without which, provision for the college education would be in vain.”). Mississippi courts have stated that “[w]hen a father’s financial ability is ample to provide a college education and the child shows an aptitude for such, the court may in its discretion, after hearing, require the father to provide such education.” *Saliba v. Saliba*, 753 So.2d 1095, 1101 (Miss. 2000). In this case, there was no dispute that Alex had the aptitude for college based upon his freshman year grades at Ole Miss. R.114.

Although Mr. Turnage requested that the Chancellor disallow child support based on the lack of a healthy and caring relationship which was the fault of the two children. R.116. The Chancellor determined in his Final Decree that there was simply insufficient proof to show that this was the case. *Id.* The Chancellor did admit that the relationship between the children and Mr. Turnage was strained. *Id.* Regarding Mr. Turnage’s claim that Alex Brooks refused to have any type of father-child relationship with him, Mr. Turnage cannot dispute that Christopher Brooks and Alex Brooks have sent him gifts for Father’s Day, his birthday, and Christmas. (Tr. P 107:11-17).

In his brief, Mr. Turnage cites to *Caldwell v. Caldwell*, 579 So.2d 543, 548 (Miss. 1991) to support his proposition that a child may forfeit receiving support from a non-custodial parent when the child's actions are clear and extreme. However, in *Caldwell*, the Mississippi Supreme Court determined that the actions of the minor child were not clear and extreme. *Caldwell*, 579 So.2d at 548. The Court made this determination despite testimonial evidence from the minor child where he admitted during a hearing to modify child support that he "felt a great deal of hostility toward his father." *Id.*

#### E. WHETHER THE PELL GRANTS RECEIVED BY ELLIS AND ALEX BROOKS SHOULD BE SUBTRACTED AS COLLEGE COSTS

The Pell Grants received by Ellis and Alex Brooks were correctly not considered as college costs. The Pell Grants received by Ellis Brooks and Alex Brooks should not be subtracted as college costs. Unlike a loan, a federal Pell Grant does not have to be repaid. Eligible students receive a specified amount each year under the program. To be eligible for a Pell Grant, a student must have a financial need. (Exhibit P.27). The U.S. Department of Education determines a student's financial need by taking the student's information that he/she provides when applying for a Pell Grant (e.g. family income) and plugging it into a standard formula to produce a number called the Expected Family Contribution (EFC).



The EFC is then compared to the expected cost of attending college (tuition and fees, room and board, books, and supplies) to determine how much financial aid a student is eligible for.

Mississippi Rule of Civil Procedure 52(a) states that in bench trials, “the court may, and shall upon the request of any party to the suit or when required by these rules, find the facts specially and state separately its conclusions of law thereon and judgment shall be entered accordingly.” Miss.R.Civ.P. 52(a). In *Pilgram Rest Missionary Baptist Church v. Wallace*, the Mississippi Supreme Court stated that “[w]hile it is true the chancellor failed to cite any legal authority, this case is not terribly complex from a factual standpoint, and that facts as stated in her five-page Final Judgment adequately state her findings of fact and aptly explain what she did.” *Pilgram Rest*, 835 So.2d 67, 74 (Miss. 2003). In *Pilgram Rest*, the Mississippi Supreme Court found no error in the chancellor’s five-page Final Judgment that cited no legal authority where “[t]he Final Judgment provided us with an adequate record to review and established that the chancellor reviewed the evidence.” 835 So.2d at 74-75.

Likewise, in the present case, this case was not complex from a factual standpoint and the facts as stated in the Chancellor’s nine-page Final Decree

provided an adequate record to review and established that the chancellor reviewed the evidence provided at trial. In this matter, Ellis Turnage paid 50% of the college tuition for Ellis Christopher Brooks and Alex Brooks. R.186. In its ruling after the trial of this matter, the Chancellor ordered Ellis Turnage to pay 80% of the college tuition for Ellis Christopher Brooks and Alex Brooks. R.120. It is undisputed that Ellis Turnage has paid no child support on behalf of Alex Brooks while he has been a student a student at Ole Miss.

F. WHETHER THE ALLEGATIONS SET FORTH IN PLAINTIFFS' COMPLAINT AT PARAGRAPH 9 CONSTITUTES AN ADMISSION AND CONCESSION JUDICIAL ESTOPPEL PURPOSES

The allegations set forth in Plaintiffs' Complaint at Paragraph 9 do not constitute an admission and concession for judicial estoppel purposes. The Mississippi Supreme Court has held that there are three elements of judicial estoppel: A party will be judicially estopped from taking a subsequent position if (1) the position is inconsistent with one previously taken during litigation, (2) a court accepted the previous position, and (3) the party did not inadvertently take the inconsistent position. *Kirk v. Pope*, 973 So.2d 981, 991 (Miss. 2007).

As the Mississippi Supreme Court has stated, “[t]he purpose of judicial estoppel is to prevent parties from knowingly taking a position in once court that is contrary to

a position that party has asserted in, and that has been accepted by, another court.”

*Clark v. Neese*, 131 So.2d 556, 562 (Miss. 2013).

In the present case, the Chancellor issued its ruling regarding credits for payments made by Mr. Turnage and noted that credits which should be allowed Mr. Turnage as result of payments made by him were complicated by several facts. First, there was never support order entered. R.116. Second, there was never a designation made by either party whether payments made by Mr. Turnage were for child support, support of Mary Brooks, or gifts to Mary Brooks and/or the children. *Id.* The Court issued its ruling based upon the trial testimony and evidence presented at trial. At trial, the Chancellor had the opportunity to determine the credibility of the parties. Additionally, Mr. Turnage did not raise the issue of judicial estoppel with the Chancellor during the trial of this matter. It should also be noted that in Defendant’s Answer to the Plaintiffs’ Complaint to establish filiation, for child support, child custody and related relief, Defendant never asserted any affirmative defenses. R.11-13. Nor did Defendant amend his answer to assert affirmative defenses after taking the depositions of Mary Brooks and Ellis Brooks in this matter.

## VI. CONCLUSION

For the foregoing reasons, the Special Chancellor did not abuse its discretion and committed no reversible legal error; the Special Chancellor did not abuse his discretion by not allowing Ellis Turnage an equitable credit for the money and shelter he provided Ellis and Alex Brooks from November 9, 2008 to January 16, 2010 and May 16, 2015 to prevent unjust enrichment to Mary, Ellis, and Alex Brooks; the Special Chancellor committed no reversible error in ordering Ellis Turnage to pay the college expenses of Ellis and Alex Brooks; the Special Chancellor committed no reversible legal error by not subtracting the total amount of Pell Grants received by Ellis and Alex Brooks from their total college expenses. The Final Decree entered by the Special Chancellor should be affirmed.

Respectfully submitted,

**MARY BROOKS, APPELLEE**

BY HER ATTORNEY  
THE HIGH LAW FIRM, PLLC

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*Attorney for Defendant-Appellant*

**CERTIFICATE OF SERVICE**

I, Terence L. High, hereby certify that on December 23, 2015, I electronically filed the foregoing BRIEF OF THE APPELLEE with the Clerk of Court using the Court's e-filing system which sent notification of such filing to the following:

Tamekia R. Goliday                      [trgoliday@yahoo.com](mailto:trgoliday@yahoo.com)

This the 23<sup>rd</sup> day of December, 2015.

s/ Terence L. High  
TERENCE L. HIGH (MSB #99843)  
Attorney for Appellees

