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COURT OF APPEALS**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RICHARD LAMAR GREEN

PETITIONER

v.

No. 2014-M-1803

CATHLEEN MARIE GREEN

RESPONDENT

PETITION FOR INTERLOCUTORY APPEAL

of
RICHARD GREEN
and
MOTION TO STAY

ORIGINAL

On Appeal from the
Chancery Court of Rankin County, Mississippi
No. 14-2115

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MOTION# 2014-3312

RICHARD LAMAR GREEN

PETITIONER

v.

No. _____

CATHLEEN MARIE GREEN

RESPONDENT

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Miss. R. App. P. 28(a)(1), the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Richard Lamar Green, *Petitioner*
2. David Neil McCarty, of the David Neil McCarty Law Firm, PLLC, *Appellate Counsel for Petitioner*
3. C. Justin Broome, of C. Justin Broome, Attorney at Law PLLC, *Trial and Appellate Counsel for Petitioner*
4. Cathleen Marie Green, *Respondent*
5. John Howard Shows, Connie Smith, and Richard A. Eisenberger, Jr., *Counsel for Respondent*
6. Hon. Dan Fairly, *Chancery Court of Rankin County, Mississippi*

So CERTIFIED, this the 23rd day of December, 2014.

Respectfully submitted,



David Neil McCarty
Miss. Bar No. 101620
Attorney for Petitioner

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PETITION FOR INTERLOCUTORY APPEAL

Comes now the Petitioner, Mr. Richard Green, and urges this Court to grant review where the trial court has deprived him of his property without due process, effectively terminated his parental rights without an evidentiary hearing or even one word of testimony from the father, and granted attorney's fees to the other party absent any finding of need or expense. In a startling departure from precedent, the trial court adjudicated the merits of this divorce case without a shred of testimony from the husband, via a so-called temporary hearing. Interlocutory review must be granted to cure these errors.

Introduction

This is a case about a divorce. Richard and Cathleen are married, and she filed for divorce, alleging that he physically assaulted her. The husband answered and denied the claim. The trial court conducted what was supposed to be a temporary hearing, and only the wife gave testimony.

Yet the trial court then proceeded to grant what can only be called a Final Judgment to the wife—prior to a trial, and prior to hearing one iota of testimony from the husband. Only 50 days after the wife filed her Complaint, and over a mere two pages, the trial court essentially terminated Richard's parental rights over the couple's child, ordered Richard to immediately liquidate his assets in favor of his wife regardless of cost, conducted an *Albright* determination and found in favor of the mother (again without hearing any testimony from Richard or a guardian ad litem), and granted her attorney's fees, even though she did not seek them and there was no evidence of need or cost.

This was no temporary order: even the trial court termed it what it was—a "Judgment." Yet there was no trial, no testimony from Richard, and no evidence upon which to base a Judgment.

These two pages violate the Mississippi Constitution of 1890, the Federal Constitution, and our well-settled precedent. It must be immediately vacated, and the impending trial date of January 12, 2015, immediately placed on hold so that this Court can untangle the stunning impact of the trial court's Judgment.

PROCEDURAL REQUIREMENTS

Interlocutory appeals are governed by Rule 5 of the Mississippi Rules of Appellate Procedure. Under Rule 5, this Court may grant an appeal from an interlocutory order if appellate resolution of the issue presented would "(1) [m]aterially advance the termination of the litigation and avoid exceptional expense to the parties; or (2) [p]rotect a party from substantial and irreparable injury; or (3) [r]esolve an issue of general importance in the administration of justice." MRAP 5(a).

This petition submits to the Court the following questions:

- I. Richard's Property Rights Were Violated.
- II. The Trial Court Effectively Terminated Richard's Parental Rights.
- III. The Failure to Make an *Albright* Determination Dooms the Order.
- IV. Attorney's Fees Were Improperly Awarded.

While only *one* of the Rule 5 requirements is required for this Court to find jurisdiction, in this case all *three* are met.

First, a ruling from this Court could immediately avoid devastating expense to Richard. The trial court ordered him to immediately liquidate a retirement fund, regardless that no divorce has been granted, and no determination that it is marital property. Under federal law, immediate liquidation will cause the fund to suffer tax penalties in the range of thousands of dollars. In essence, the trial court ordered Richard to destroy his financial property. This deprives him of due process before the forfeiture of his property. The trial court also ordered Richard to immediately pay attorney's fees to his wife, without a determination of need. Interlocutory review would defray these exceptional expenses to Richard.

Second, interlocutory review would protect Richard from the substantial and irreparable injuries in the Judgment. He would avoid forfeiting a portion of his retirement fund. He would also avoid the de facto termination of his parental rights by the trial court, which as it stands destroys his ability to see his child for over a year—without a hearing, without testimony from a guardian ad litem, and without one word from Richard.

Last, a recurring issue of general importance would be resolved by a definite ruling from this Court that a trial court cannot enter a Judgment ordering custody, dividing assets, and granting attorney's fees prior to hearing testimony, weighing evidence, and following the careful path developed by our precedent.

Statement of Relevant Facts and Course of Proceedings

There are only three relevant pleadings in this case, which spanned only 50 days before the wife requesting relief and the trial court granting Judgment. Nothing outside these pleadings should be considered. *See Greenwood Leflore Hosp. v. Miss. State Dep't of Health*, 980 So. 2d 931, 936 (Miss. 2008) (where Court ruled that “appellants are barred from raising this factual matter on appeal outside the record,” since “This Court consistently has refused to overturn factual findings based on factual matters not found within the record”).

Cathleen Green filed for divorce from Richard, alleging that she was “hospitalized after a domestic violence incident” *See* Complaint, attached as Exhibit “A,” at 2. Cathleen sought divorce on the basis of habitual cruel and inhuman treatment and habitual drunkenness, and “in the alternative, irreconcilable differences.” Ex. A at 2.

As part of the final relief sought, she requested “Husband shall convey to Wife any 401k, IRA, and any savings accounts, pension plans, military retirement plans and any and all other retirement plans and the like.” Ex. A at 3. She also asked for “sole legal and physical custody of the minor child,” as well as attorney's fees. Ex. A at 3.

Richard filed an Answer denying the allegations and the relief. *See Answer*, attached as Exhibit "B."

Just a few weeks after the Complaint was filed, the trial court conducted a hearing. *See Temporary Order and Judgment*, attached as Exhibit "C," at 1. The only testimony was from Cathleen. Ex. A at 1. Richard did not testify, and neither did anyone else other than Cathleen. As set out in the Judgment, the hearing was supposedly a "temporary hearing." Ex. A at 1. Yet in its Judgment, the trial court made a series of final dispositions and judgments as to Richard, his property rights, and his parental rights.

The Judgment speaks for itself, but the four core areas addressed in this Petition were the trial court's Judgment regarding:

Richard's Property and Due Process Rights

The trial court adjudicated that Richard immediately forfeit his retirement fund to his wife, including any federal tax consequences. Despite that the hearing was supposedly temporary, the trial court adjudicated that "Defendant's entitlement to or proceeds from, any retirement or 401k account of Defendant shall be and is immediately transferred to Plaintiff." Ex. C at 2. Richard was also ordered to "bear sole responsibility for all tax consequences resulting from this court order," despite the fact that it would immediately destroy portions of the retirement fund. Ex. C at 2.

Richard's Parental Rights

The trial court effectively terminated Richard's right to be a father, adjudicating him guilty of a crime, and forbidding him from seeing his child. Ex. C at 1. This was not temporary relief, because it established five final conditions on Richard before he could see his child, all of which presume that he would be convicted of a crime. First, Richard could not have any contact with his child unless he (1) filed a motion (2) establishing he was "clean and sober" (3) for the

period of a year, after having been through not only (4) rehabilitation, but as an (5) inpatient. Ex. A at 1. Richard did not testify, and no evidence is in the Judgment (or even a finding without trial) that he has an alcohol and drug problem.

Richard's Custodial Rights

The trial court immediately granted the wife sole custody of the child, stating that “a thorough analysis of all the *Albright* factors” was conducted. Ex. C at 2. There is no reference in the final judgment to even one of the 11 factors (indeed, the age of the child is not even mentioned in the Judgment). Richard did not testify, there has been no trial and no evidence, and no guardian ad litem has been appointed or testified.

Attorney's Fees to Cathleen

The trial court awarded Cathleen \$2,500 in attorney's fees “as Defendant is solely responsible for the commencement of this action.” Ex. C at 3. Yet Cathleen filed the action, and there is no finding of need or actual fee earned in the Judgment.

Current Status of the Case

Even though the trial court has already rendered what it captioned “Judgment” without a trial or testimony from Richard, this case is currently set for trial on January 12, 2015.

Statement Regarding Timeliness

Rule 5 of the Mississippi Rules of Appellate Procedure requires appeal of an interlocutory order within 21 days of the order it contests. The final Judgment of the Rankin County Chancery Court was entered December 12th, 2014. This Petition is filed 12 days later. It is therefore timely filed.

Statement Regarding Similar Pending Cases

Pursuant to MRAP 5(b), the Petitioner is unaware of any other case or petitions for interlocutory appeal pending before the appellate court related to the matter for which interlocutory review is sought in this case.

Argument

For four core reasons, this Court must grant interlocutory review. First, the trial court entered a final Judgment seizing Richard's retirement fund and immediately transferring it to his wife—without a trial, without a determination of the amount of the asset, whether it was marital property, or the testimony of Richard. The trial court also ordered an immediate forfeiture of a piece of the retirement fund by ordering it disposed of, which will cause it to immediately lose money per a federal tax penalty. The Judgment violates Richard's federal and state constitutional rights, and also violates precedent on the disposition of marital assets.

Second, the trial court effectively terminated Richard's parental rights by presuming he is guilty of a crime and placing a complicated series of burdens upon him before he can again see his child. None of these conditions comport with Due Process or Mississippi law. It was also done without testimony from Richard, at a supposedly "temporary" hearing.

Third, the trial court granted final custody to the wife without a trial or weighing the *Albright* factors.

Fourth, the trial court adjudicated that Richard pay attorney's fees absent any determination of need or amount warranted.

This series of pervasive violations of constitutional protections and precedent warrant interlocutory review and an immediate stay of the impending trial.

I. Richard's Property Rights Were Violated.

By seizing Richard's retirement fund absent evidence, a trial, or testimony, the trial court violated his rights to Due Process. By ordering it liquidated, the trial court also destroys some of the financial asset. This is not the law, and must be reversed.

It is a cornerstone of our judicial system that a court may only act if it has jurisdiction. "Jurisdiction of the subject matter is the power of the court to hear and determine cases of the general class to which the particular case belongs." *Duvall v. Duvall*, 224 Miss. 546, 552, 80 So.2d 752, 754 (Miss. 1955). "The subject matter means the nature of the cause of action and the relief sought." *Id.* In the end, "[t]he jurisdiction of a court is limited as to subject matter when it has not the power to hear and determine all classes of cases." *Id.*

As a result, "[i]f the court is without jurisdiction—subject matter or personal—no one is bound by anything the court may say regarding the (de)merits of the case." *Petters v. Petters*, 560 So.2d 722, 723 (Miss. 1990). As the Court of Appeals has held, "[a] valid judgment requires (1) jurisdiction of subject matter, or of parties and (2) due process of the law." *Roberts v. Roberts*, 866 So.2d 474, 477 (Miss. Ct. App. 2003). "If a court lacks jurisdiction *or* the requirements of due process are not met, the judgment is void and must be vacated." *Id.* (emphasis added).

Both the Fifth and Fourteenth Amendments to the United States Constitution forbid depriving a person of their property without due process of law. *See* U.S. Const. art. V (no person may "be deprived of life, liberty, or property, without due process of law"); U.S. Const. art. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws").

Likewise, the Mississippi Constitution forbids takings without proper procedure, guaranteeing

that “No person shall be deprived of life, liberty, or property except by due process of law.” Miss. Const. of 1890, Art. 3, § 14. These are core protections in our country and state.

There was no Due Process in this case for Richard. Only 50 days after the filing of his wife’s Complaint, without a final hearing, without his testimony, without evidence of the retirement fund’s amount, name, or location—indeed, without *anything* other than the bare allegations of Cathleen’s causes of action—the trial court rendered a Judgment against Richard. This does not comport with basic requirements of our State and Federal guarantees of Due Process, and must be immediately vacated.

There are other protections which were not met before the Judgment was entered. The Mississippi Supreme Court requires a determination of who owns the property, and if it is a part of the marital assets, before it can be divided. “In dividing the property of the divorcing couple, the chancellor must first classify their assets and liabilities as belonging to the marriage, to the husband, or to the wife.” *Smith v. Smith*, 856 So. 2d 717, 719 (Miss. Ct. App. 2003) (citing *Hemsley v. Hemsley*, 639 So.2d 909, 914 (Miss.1994)); *see generally Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994). Neither *Hemsley* nor *Ferguson* were addressed by the trial court in its Judgment. Nor was the key first step followed: “Property division should be based upon a determination of fair market value of the assets, and these valuations should be the initial step before determining division.” *Id.* at 929. The amount of the retirement fund does not appear in the order, nor the name of the fund, nor the location or any other meaningful information. This process was broken beyond repair. The failure to classify assets is in and of itself reversible error. *See Smith*, 856 So. 2d at 719; Bell, Deborah, BELL ON MISSISSIPPI FAMILY LAW, §6.02[1] (2005), at 155 (“A chancellor’s failure to classify assets is reversible error”).

Additionally, due to the trial court’s Judgment, Richard may face tax penalties which will in effect destroy some of the retirement fund. Early withdrawal of funds can be subject to 10%

tax. *See generally* <http://www.irs.gov/pub/irs-pdf/p575.pdf> (at page 32) (last visited Dec. 23, 2014); *Myrick v. Myrick*, 122 So. 3d 93, 98 (Miss. Ct. App. 2013) (where trial court took “judicial notice” that “Should either party withdraw all or any portion of retirement accounts prior to the age 59 1/2, the withdrawal will be subject to a penalty of 10% plus ordinary income taxes”).¹ The destruction of his personal property is a violation of Due Process, which is loath to destroy the possessions and defenses of a litigant. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (“a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause”). “The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.” *Id.* at 429.

Quoting *Zimmerman*, the Mississippi Supreme Court has recognized that “[i]t is without question that ‘a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause’ of the federal constitution.” *Albert v. Allied Glove Corp.*, 944 So. 2d 1, 6 (Miss. 2006).

There is a better way to handle this process than the trial court’s hasty Judgment. That would be to honor Due Process, conduct a trial, allow Richard to testify, have evidence available to review, and follow *Ferguson*. That process has been honed and refined since the creation of our country and our state, and must be followed in this case as in all cases. Because it was not followed in this case, the Judgment must be vacated.

¹ Because the trial court requires that Richard possibly “liquidate” the retirement fund, it may not be subject to one available exemption from the tax penalty. *See* 26 U.S.C.A. § 414(p) (excepting certain qualified domestic relations order from tax penalty in the event the right is simply assigned); *Jones v. Jones*, 904 So. 2d 1143, 1148 (Miss. Ct. App. 2004) (tax penalty could be avoided in certain cases through qualified domestic relations order).

II. The Trial Court Effectively Terminated Richard's Parental Rights.

Because the trial court placed a dizzying constellation of burdens on Richard before he could have any contact with his child, it constituted the immediate termination of his parental rights. This was done without obeying the rigorous steps which must be taken before we sever the bonds between father and child. This Judgment must be vacated.

“One of the features of our free society . . . is the virtually unfettered right of our citizens . . . to bear children and raise them according to the parents' value system, with almost no guidance or assistance.” *Gunter v. Gray*, 876 So. 2d 315, 317 (Miss. 2004). “Indeed, we consider raising our children to be a fundamental right, entitled to great protection.” *Id.* at 317 n.1. “Because parental rights are so important, we sharply limit the circumstances under which can be terminated by the government.” *Id.* The Legislature has set out the exclusive path towards termination of parental rights. Miss. Code. Ann. § 93-15-103.

In *Gunter*, a man was imprisoned, and had been found guilty of simple assault against his wife, as well as stalking her, and trespass of the property of her boyfriend. 876 So. 2d at 318. The trial court eventually terminated his parental rights. *Id.* at 319-20.

The Supreme Court reversed, stating that “the record demonstrates that Anthony has not been the ideal husband, ex-husband or parent,” but it was clear that the requirements of the statute had not been met. *Id.* at 320. Nor was the pattern of abuse required by the statute met. *Id.* Ultimately, “fear of what Anthony may do later is not grounds for termination of parental rights pursuant to § 93-15-103.” *Id.* at 322.

The trial court in this case effectively terminated the parental rights of Richard much as those of Anthony in the *Gunter* case were terminated. The key difference is that the trial court has not yet heard any testimony from Richard, any testimony from a guardian ad litem, or

considered any evidence outside of the one-sided testimony presented by Cathleen in the supposedly “temporary” hearing.

Yet based exclusively on that testimony, the trial court severed Richard’s bond with his child for *at least* one year and six weeks, presuming that Richard will be convicted of a crime and incarcerated. The Judgment requires inpatient treatment for drug and alcohol abuse, despite no testimony from Richard on that point, or expert testimony determining need, and adds another year beyond the date of any such treatment. “Until those conditions are met, Defendant shall not, under any circumstances, come within one thousand (1,000) feet of Plaintiff or [the minor child].” Ex. C at 1. This is tantamount to a termination of Richard’s parental rights, and must be vacated.

It also violates State law. “Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days.” Miss. Code. Ann. § 93-21-15(2)(c). The Judgment in this case is effective for at least 1 year, plus inpatient rehabilitation (reasonably expected to be six weeks). This violates the Legislature’s command.²

Because the Judgment effectively terminates Richard’s parental rights, and exceeds the time period it can be under State law, it must be vacated.

III. The Failure to Make an *Albright* Determination Dooms the Order.

“[T]he polestar consideration in child custody cases is the best interest and welfare of the child.” *Albright v. Albright*, 437 So.2d 1003, 1005 (Miss. 1983). There are eleven factors

² The Judgment also lacks the specificity required by the Legislature before disrupting a family. See Miss. Code. Ann. § 93-21-15(3) (“Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited”).

considered in a custody case, including the “health, and sex of the child;” “which has the best parenting skills and which has the willingness and capacity to provide primary child care;” “moral fitness of parents;” “the home, school and community record of the child;” “and other factors relevant to the parent-child relationship.” *Id.*

While the trial court stated that it has performed the Albright test in its Judgment, there has not yet been a syllable of testimony from Richard, or a guardian ad litem, nor any evidence at to the factors. The Judgment is fundamentally flawed because *Albright* can only be performed after this information has been received and weighed by the trial court.

As a general rule, “in cases of any complexity, tried upon the facts without a jury, the Court generally should find the facts specially and state its conclusions of law thereon.” *Tricon Metals & Services, Inc. v. Topp*, 516 So.2d 236, 239 (Miss. 1987). “Where, however, a case is hotly contested and the facts greatly in dispute and where there is any complexity involved therein, failure to make findings of ultimate fact and conclusions of law will generally be regarded as an abuse of discretion.” *Id.*

Without question, most *Albright* custody determinations are “hotly contested” with facts in dispute—and this case is as well. The general rule of *Tricon* has been applied to custody determinations. The Mississippi Supreme Court has repeatedly ruled that an *Albright* ruling will not be upheld when the trial court fails to rule with specificity on each factor. In 2001, the Court reversed a custody determination for failure to make specific findings of fact. *Powell v. Ayars*, 792 So.2d 240, 244 (Miss. 2001). The Court ruled that “[t]he opinion does not discuss specifically the remaining factors, including [the child’s] age and sex, continuity of care, and the parties’ employment.” *Id.* Because the Court would require “the entering of specific findings of fact, we hold this failure to be reversible error.” *Id.*

In doing so, the Court relied on five cases reversing a trial court for failing to reduce its fact-finding to a clear written record. *Id.* The Court expressed frustration when this occurred, as its “job as a reviewing Court is only to evaluate whether the chancellor’s decision was manifestly erroneous based on a proper analysis of each of the applicable *Albright* factors.” *Id.* However, “[t]his task becomes futile when chancellors fail to consider and discuss each factor when rendering decisions.” *Id.*

While the Court could peruse the record itself, it would “refuse to attempt to correspond the *Albright* factors to the evidence found within the record” to ascertain what the trial court had determined. *Id.* As a result, the Court reversed and remanded the *Powell* case for the trial court to enter make specific findings. *Id.*

In 2004, the Supreme Court again ruled that a trial court commits error by not reducing an *Albright* determination with specificity in its order. In such a situation, “the absence of specific findings prevented affirming the lower court with the confidence that the best result was reached.” *Brekeen v. Brekeen*, 880 So.2d 280, 286-87 (Miss. 2004) (quoting *Hollon v. Hollon*, 784 So.2d 943, 952 (Miss. 2001)).

Like *Powell*, in this case the trial court did not specifically discuss or even note many *Albright* factors. The Judgment must be vacated as a result.

Our law is clear that a parent’s right to the custody of their children is sacred, and a determination pursuant to *Albright* must be done with specificity. To fail to do so is an abuse of discretion which requires this Court grant interlocutory review.

IV. Attorney's Fees Were Improperly Awarded.

Because the trial court awarded attorney's fees to Mrs. Green even though she did not request that relief in her Complaint, made no showing of a need, and there was no finding that the expenses were actually incurred, the order must be reversed.

"[T]he touchstone issue in granting attorney's fees is a party's inability to pay her attorney's fees." *Ladner v. Ladner*, 49 So. 3d 669, 672 (Miss. Ct. App. 2010). A trial court should examine the specific financial situation of a party requesting fees and make specific findings. *Id.* A failure to do so will result in reversal. *Id.*

In its Judgment, the trial Court awarded attorney's fees without a request for fees or showing of need, or any reference to costs actually incurred. This error also warrants interlocutory review.

MOTION TO STAY

A stay is warranted in this case, where a final hearing is currently set for January 12, 2015. The Judgment has in effect destroyed any ability of Richard to actually defend himself at a hearing, and pre-adjudicated the many issues that a trial over this matter and final judgment would actually encompass. Until the Judgment is vacated, a trial of this matter is impossible. It is also impractical to request this relief from the trial court, as per the usual course of MRAP 8(c), because of the sweeping and dramatic relief it has already granted in advance of Richard's testimony, evidence, or any other features of a trial on the merits.

Due to the looming trial date, and the immediate and urgent harm caused to Richard by the Judgment, he respectfully requests a STAY be immediately entered.

CONCLUSION

For four reasons interlocutory review must be granted. The trial court's Judgment violated Richard's Due Process rights under both the Federal and Statute Constitutions, and

amounts to a forfeiture of his property. Second, the father's parental rights are effectively terminated by the Judgment. Third, the trial court granted final custody to the wife without a trial or weighing the *Albright* factors. Fourth, the trial court adjudicated that Richard pay attorney's fees absent any determination of need or amount warranted.

This series of pervasive violations of constitutional protections and precedent warrant interlocutory review and an immediate STAY of the impending trial, and the Judgment must be VACATED.

Filed this the 23rd day of December, 2014,

Respectfully Submitted,

Attorneys for Petitioner



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CERTIFICATE OF SERVICE

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

Ms. Muriel B. Ellis, Clerk
(via Hand Delivery)
MISSISSIPPI SUPREME COURT
P.O. Box 117
Jackson, Miss. 39205

John Howard Shows
Connie Smith
Richard A. Eisenberger, Jr.
SHOWS & SMITH LAW FIRM, PLLC
2950 Layfair Drive, Suite 101
Flowood, MS 39232

Honorable Dan Fairly
CHANCELLOR, CHANCERY COURT OF RANKIN COUNTY
P.O. Box 1437
Brandon, Miss. 39043

THIS, the 23rd day of December, 2014.



DAVID NEIL McCARTY

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

CATHLEEN MARIE GREEN

PLAINTIFF

VS.

CAUSE NO. 14-2115

RICHARD LAMAR GREEN

DEFENDANT

FILED

OCT 23 2014

LARRY SWALES
Chancery Clerk, Rankin County
Rec. in Bk. _____ Pg. _____

COMPLAINT FOR DIVORCE AND REQUEST FOR DOMESTIC ABUSE PROTECTION ORDER

COMES NOW the Plaintiff, Cathleen Marie Green (hereinafter referred to as "Wife"), by and through counsel, and files this her Complaint for Divorce and Request for Domestic Abuse Protection Order against Defendant, Richard Lamar Green (hereinafter referred to as "Husband"), and in support thereof would show the following:

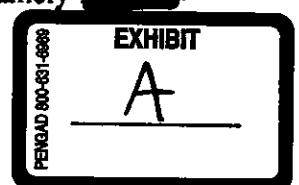
Jurisdiction and Venue

1. This Court has jurisdiction of the parties, has subject matter jurisdiction pursuant to the provisions of Miss. Code Ann., § 93-5-7 (1972, as amended) and is the proper venue for this action pursuant to the provisions of Miss. Code Ann., § 93-5-11 (1972, as amended).

2. Wife is an adult resident citizen of Rankin County, Mississippi and has been such for six (6) months preceding the commencement of this action. Husband is an adult resident citizen of Rankin County, Mississippi and has been such for six (6) months preceding the commencement of this action. Husband's Offender ID is 2014100014 and may be served with process at the Rankin County Jail.

The Facts

3. Wife and Husband were lawfully married in Biloxi, Mississippi, on January 12, 2009, and lived together as husband and wife in Rankin County, Mississippi until their separation in October, 2014. One (1) child was born to the union of the parties, namely [REDACTED]



██████████ a son, born ██████████ 2009. No children were adopted by the parties and Wife is not now pregnant.

4. Wife is of the Caucasian race and Husband is Caucasian and African American. Husband is not now engaged in the armed services of the United States of America.

5. Wife was hospitalized after a domestic violence incident on October 3, 2014. Following the incident, Husband took the child from the residence and attempted to flee the state. As a result, the child is currently residing with Dianna Riley, the child's maternal grandmother, at 403 Ivy Court, Pearl, Mississippi, pursuant to a Pearl Municipal Youth Court of Rankin County, Mississippi, Temporary Order dated the 7th day of October, 2014, while Wife is in recovery. A copy of the Order is attached hereto as "Exhibit A." Further, Wife will recite that the child currently resides in Mississippi and has resided at the following address for the past 5 years:

a. 403 Ivy Court Pearl, Mississippi 39208

Grounds for Divorce

6. Pursuant to the language, meaning and legislative intent of Miss. Code Ann. §93-5-1 (1972, as amended), Wife charges Husband with:
- a. habitual cruel and inhuman treatment;
 - b. habitual drunkenness; and
 - c. in the alternative, irreconcilable differences.

Relief Sought

7. Wife is entitled to, and should be awarded, the following relief:

- a. a permanent domestic abuse protection order against Husband for the benefit of Wife and the child;
- b. a full, final and absolute divorce from Husband;
- c. sole legal and physical custody of the minor child;
- d. Husband to pay all medical expenses of Wife related to Husband's attack on Wife;
- e. Husband to pay a reasonable monthly sum of child support and daycare expenses for the care, use, and benefit of the minor child;
- f. Husband to maintain health insurance for Wife and the child;
- g. Husband to pay all future college expenses for the benefit of the child;
- h. exclusive use, possession and ownership of the marital residence located at 403 Ivy Court, Peal, MS, with Husband being required to relinquish any and all interest therein;
- i. exclusive use, possession and ownership of all household furniture, all of the belongings of the child, appliances, vehicles, All Terrain Vehicles, and articles of household use accumulated by the parties during their marriage;
- j. Husband to pay all outstanding indebtedness incurred by the parties during the marriage.
- k. Wife to retain exclusive use, possession and ownership of all personal property owned by her prior to the marriage;
- l. Husband shall be responsible for payment of any and all uncovered medical, dental, optical treatment, etc., that is not covered by health insurance;
- m. Husband to pay Wife's attorneys' fees, as this action was commenced due to the marital misconduct of Husband; and
- n. Husband shall convey to Wife any 401k, IRA, and any savings accounts, pension plans, military retirement plans and any and all other retirement plans and the like.

Temporary Relief Sought

8. Wife prays that this her Complaint for Divorce and Request for Domestic Abuse

Protection Order also be treated as a Petition for Temporary Relief, and Wife prays that this Court will set for hearing as soon as practicable and without delay a Temporary Hearing awarding unto the Wife the following temporary relief, to-wit:

- a. Domestic Abuse Protective order against Husband for the benefit of Wife and the child;
- b. Temporary child support from Husband;
- c. Temporary medical expenses of Wife caused by Husband's attack;
- d. Temporary possession of all personal and marital property;
- e. Husband to pay all debts of the parties temporarily;
- f. Temporary alimony to be paid to Wife; and
- g. Husband to be enjoined from disposing or secreting any assets, whether real or personal or mixed, which belongs to the Wife or which was acquired during the marriage.

WHEREFORE, PREMISES CONSIDERED, Wife prays that this her Complaint for Divorce and Request for Domestic Abuse Protection Order be received and filed and that summons be issued for Husband, Richard Lamar Green, in the form and manner prescribed by law and that, upon a final hearing of this cause, this Court will enter its judgment awarding unto Wife the relief prayed for herein.

Prayer for General Relief

And if Wife has prayed for insufficient or improper relief, then she now prays for all other relief, general and specific, to which she may be entitled in the premises.

Respectfully submitted,


CATHLEEN MARIE GREEN



SHOWS & SMITH LAW FIRM, PLLC
JOHN HOWARD SHOWS, MSB #6776
CONNIE M. SMITH, MSB #102572
RICHARD A. EISENBERGER, JR., MSB #104882
2950 Layfair Drive, Suite 101
Waters Edge Office Complex
Flowood, Mississippi 39232
Telephone: (601) 664-0044
Facsimile: (601) 664-0047

STATE OF MISSISSIPPI
COUNTY OF RANKIN

This day personally appeared before me, the undersigned authority in and for the state and county aforesaid, within my jurisdiction, **Cathleen Marie Green**, who, having been by me first duly sworn, stated on oath that the matters, facts, allegations and things contained and set forth in the above and foregoing Complaint for Divorce are true and correct as therein stated, and further that this Complaint for Divorce has not been filed by collusion with the Husband for the purpose of obtaining a divorce, but that the cause or causes for divorce stated in the Complaint for Divorce are true as stated.


CATHLEEN MARIE GREEN

SWORN TO AND SUBSCRIBED before me, this the 22nd day of October, 2014.


NOTARY PUBLIC

My commission expires:

2/25/2018



IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

CATHLEEN MARIE GREEN

PLAINTIFF

VS.

CAUSE NO.: 14-2115

RICHARD LAMAR GREEN

DEFENDANT

**ANSWER TO COMPLAINT FOR DIVORCE AND REQUEST
FOR DOMESTIC ABUSE PROTECTION ORDER**

COMES NOW, Defendant, Richard Lamar Green, by and through counsel, and files this his Answer to Plaintiff's Complaint for Divorce and Request for Domestic Abuse Protection Order as follows:

Jurisdiction and Venue

1. Admitted.
2. Admitted.

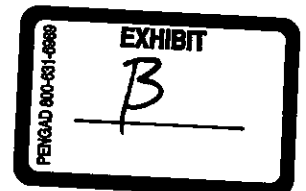
The Facts

3. Admitted.
4. Admitted.
5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, and, therefore, same are denied.

- a. Admitted.

Grounds for Divorce

6. Denied.
 - a. Denied.



b. Denied. Defendant would also assert that Plaintiff had actual knowledge of Defendant's condition at the time of marriage, thus barring the divorce on these grounds.

c. Denied.

Relief Sought

7. Defendant denies that Plaintiff is entitled to any of the relief sought in Paragraph 7 and subparagraphs (a) through (n).

Temporary Relief Sought

8. Defendant denies that Plaintiff is entitled to any of the relief sought in Paragraph 8 and subparagraphs (a) through (g). Defendant denies that Plaintiff is entitled to any of the relief sought in the unnumbered paragraph beginning with "WHEREFORE. . ."

Prayer for General Relief

9. Defendant denies that Plaintiff is entitled to any of the relief sought in the unnumbered paragraph beginning with "And if Wife. . ."

This the 2nd day of December, 2014.

Respectfully submitted,



RICHARD LAMAR GREEN

OF COUNSEL:


C. Justin Broome (MS Bar No. 104508)
Attorney for Defendant
C. Justin Broome, Attorney at Law PLLC
574 Highland Colony Parkway, Suite 320M
Ridgeland, MS 39157
Tel. 601-707-8957
Fax. 601-856-0901
Justin@broomelawms.com

CERTIFICATE OF SERVICE

I, C. Justin Broome, hereby certify that a true and correct copy of this document was sent to the following via the court's MEC filing system and electronic mail:

SHOWS & SMITH LAW FIRM, PLLC
John Howard Shows, MSB #6776
Connie Smith, MSB #102572
Richard A Eisenberger, Jr., MSB #104882
2950 Layfair Drive, Suite 101
Flowood, Mississippi 39232
Tel. 601-664-0044
Fax. 601-664-0047
jhshows@showssmith.com

This the 2nd day of December, 2014.



C. Justin Broome
Attorney for Defendant

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

CATHLEEN MARIE GREEN

PLAINTIFF

VS.

CAUSE NO. 14-2115

RICHARD LAMAR GREEN

DEFENDANT

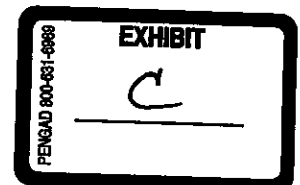
FILED
DEC 12 2014
LARRY SWALES
Chancery Clerk, Rankin County
Rec. In Bk. _____ Pg. _____

TEMPORARY ORDER AND JUDGMENT

This cause came on for temporary hearing before the undersigned Chancery Court Judge on the 3rd of December, 2014. Plaintiff presented oral testimony from Cathleen Marie Green.

After hearing the testimony, reviewing the pleadings and hearing arguments from counsel for both Plaintiff and Defendant, the undersigned Chancery Court Judge issued his opinion from the bench regarding the various requests for temporary relief as described in Plaintiff's *Complaint for Divorce and Request for Domestic Abuse Protection* and found as follows:

1. This Court has jurisdiction of the parties and the subject matter.
2. Plaintiff's claim for a Domestic Abuse Protection Order against Defendant for the benefit of Plaintiff and the parties' child, [REDACTED] is granted. If Defendant is ever released from custody, either by time served or exoneration, Defendant shall not have any contact with Plaintiff nor [REDACTED] until Defendant files a motion before this Court establishing that he has been clean and sober for a period of one (1) year and has been to an accredited inpatient rehabilitation facility for alcohol and drug dependency. Until those conditions have been met, Defendant shall not, under any circumstances, come within one thousand (1,000) feet of Plaintiff or [REDACTED].



3. Plaintiff's claim for temporary child support, temporary alimony, temporary medical expenses, and temporary payments of all debts of the parties from Defendant is granted. This Court conducted a thorough analysis of all the *Albright* factors and determined that the best interests of the minor child, Lincoln Patrick Green required that Plaintiff have sole legal and physical custody of the parties' son, [REDACTED]. Further, Defendant shall pay over to or otherwise liquidate (whichever may be most beneficial to Cathy) his entire Republic Services or any other 401k account to Plaintiff and bear sole responsibility for all tax consequences resulting from this court order. Defendant's entitlement to or proceeds from, any retirement or 401k account of Defendant shall be and is immediately transferred to Plaintiff.
4. Plaintiff's claim for temporary possession of all personal and marital property is granted. Plaintiff is granted the exclusive use, possession, and control of the marital house located at 403 Ivy Court, Pearl, Mississippi. This is to include all furniture, fixtures, and furnishings in the household. Moreover, Plaintiff is granted exclusive use, control, possession, and ownership of the GMC Envoy that is in her name and is hereby authorized and empowered to sell or otherwise dispose of the four-wheeler and keep all proceeds from any sale therefrom for her and her son's support.
5. Plaintiff's request to enjoin Defendant from disposing or secreting any assets, whether real or personal or mixed, which belongs to the Plaintiff or which was acquired during the marriage is granted.
6. Defendant shall immediately pay to John Howard Shows, Esq., as an interim

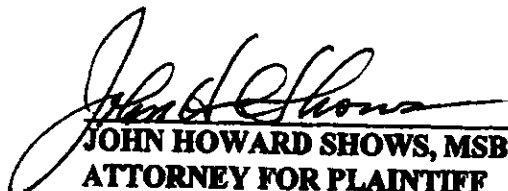
attorney fee for the representation of Plaintiff, \$2,500 as Defendant is solely responsible for the commencement of this action.

SO ORDERED AND ADJUDGED this the 12th day of December, 2014.



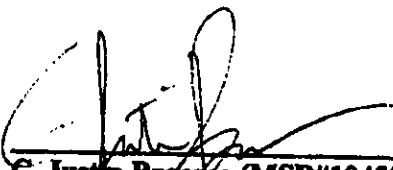
CHANCELLOR

Prepared By and Presented By:



JOHN HOWARD SHOWS, MSB #6776
ATTORNEY FOR PLAINTIFF
CATHLEEN MARIE GREEN

Approved as to Form Only:



C. Justin Broome (MSB#104508)
ATTORNEY FOR DEFENDANT
RICHARD LAMAR GREEN