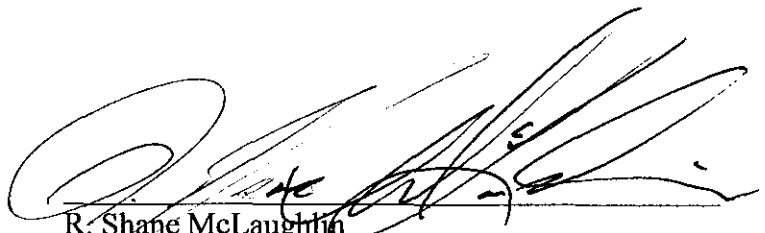
2011-CA-01880 COA T

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 Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Shassidy Gail Aydelott, Appellant
2. Christopher Adam Aydelott, Appellant
3. Dorothy Quartaro, Appellee
4. Jack Quartaro, Appellee
5. Chris Salazar, Natural Father of Acelynn Aydelott
6. William C. Stennett, counsel for Appellees
7. R. Shane McLaughlin, counsel for Appellants
8. Nicole H. McLaughlin, counsel for Appellants



R. Shane McLaughlin
Attorney of record for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

SECONDARY MATERIALS

STATEMENT REGARDING ORAL ARGUMENT

The Chancellor in this case awarded grandparent visitation over the parents' vehement objection despite the grandparents' admissions that they could not establish the statutory criteria for a "viable relationship."

The Chancellor's decision violates not only Mississippi law but also runs afoul of *Troxel v. Granville*, 530 U.S. 57, 67 (2000). This decision would unconstitutionally expand grandparent visitation in the State of Mississippi. Oral Argument should be granted to discuss this issue as well as the conclusiveness of Appellees' responses to the Requests for Admission in this case.

STATEMENT OF THE ISSUES

1. Whether the Chancellor erred in ignoring the Quartaro's responses to Requests for Admission, which admitted they had not had frequent overnight visitation with the children and that they had not financially supported the children.
2. Whether the Chancellor erred in awarding grandparent visitation since the statutory criteria for a "viable relationship" were undisputedly not established.
3. Whether the Chancellor erred in awarding grandparent visitation based on the *Martin v. Coop* factors.
4. Whether the Chancellor erred in denying the Aydelotts' Motion for Attorneys' Fees.

STATEMENT OF THE CASE

Appellees Dorothy Quartaro and Jack Quartaro filed a Petition to Establish Grandparents Visitation Rights on September 2, 2010, against Appellants Shassidy Gail Aydelott and Christopher Adam Aydelott. (C.P. p. 4).[1] The Aydelotts filed a Motion for Attorneys' Fees. (C.P. p. 16). The Court denied the Motion for Attorneys fees "without prejudice" and allowed the Aydelotts to again request attorneys' fees upon the conclusion of the case. (*See* C.P. p. 70, T. p. 34, 230).

The Aydelotts propounded a set of Requests for Admission to the Quartaros and the Quartaros responded on March 22, 2011. (C.P. p. 31-37).

The case was tried before Chancellor Talmadge D. Littlejohn on November 7, 2011. (T. p. 37). After a short trial, the Court awarded the Quartaros grandparent visitation once per month, with overnight visitation beginning after six (6) months. (C.P. p. 96-98, T. p. 251). The Court also again denied the Aydelotts request for attorneys' fees finding that the Quartaros were successful in their request for grandparent visitation. (T. p. 251).

The Aydelotts timely perfected this appeal. (C.P. p. 99).

[1] Clerk's Papers are cited herein as "C.P." and the trial transcript is cited as "T."

STATEMENT OF FACTS

Dorothy Quartaro is the biological mother of Shassidy Aydelott. (T. p. 38). Dorothy is married to Jack Quartaro, who adopted Shassidy when she was a child. (T. p. 38). Shassidy was twenty-six (26) years old as of the trial of this case. (T. p. 38, 209). Shassidy has two (2) children. (T. p. 209). Acelynn Salazar, who was a five (5) year old female, and Ryver Aydelott,[2] who was a two (2) year old female.[3] (T. p. 209).

It was generally undisputed at trial that Dorothy and Shassidy had a terrible relationship since Shassidy's youth. (*See, e.g.,* T. p. 86, 99). Dorothy admitted that she choked Shassidy and slapped her in the face when Shassidy was eighteen years old. (T. p. 87). Shassidy and Dorothy would reconcile during brief occasions over the years, but their relationship remained rocky. (*See, e.g.*, T. p. 73). Dorothy and Jack and Adam and Shassidy had not been on speaking terms for years preceding the trial of this case. (T. p. 99).

Dorothy filed an action for divorce from Jack, Shassidy's adoptive father, in April 2009. (T. p. 83). Dorothy claimed Jack had been violent and Jack was arrested as a result. (T. p. 83). Jack claimed that Dorothy "might have slapped [him] a time or two." (T. p. 133).

Shassidy and Dorothy's relationship permanently evaporated when Dorothy perceived that Shassidy was siding with Jack in the divorce action. (T. p. 83, 86). Dorothy testified that she was upset about Shassidy's support of Jack, and admitted that she said awful things to Shassidy during this time period. (T. p. 86). Dorothy told Shassidy she no longer wanted any

[2] The Trial Transcript spells the child's name as "River." The correct spelling is Ryver. (C.P. p. 4).

[3] Shassidy and her current husband, Adam, are the parents of Ryver. (C.P. p. 5). Shassidy and Chris Salazar are the parents of Acelynn. (*Id.*). Chris Salazar did not appear or defend against the Quartaro's request for grandparent visitation rights. Shassidy and Adam, however, vehemently disputed in the Trial Court, and still dispute, that the Quartaro's are entitled to grandparent visitation.

relationship between them and Dorothy entirely cut off contact with Shassidy. (*Id.*). Dorothy explained:

> Q: You mentioned that you and Shassidy had a falling out when she and your other daughter . . . sided with Jack during the divorce. Is that the truth?
>
> A: Right.
>
> Q: You were upset about that, weren't you?
>
> A: I was hurt.
>
> Q: You said that you said awful things to Shassidy during that time?
>
> A: Right. I told her I didn't want a relationship with her.
>
> Q: Did you tell her that you are no longer my daughter?
>
> A: I could have.

(T. p. 86).

During the divorce proceeding between Dorothy and Jack their marriage was declared void on grounds of bigamy. (T. p. 82). Jack Quartaro was married to someone else at the time of his previous purported marriage to Dorothy. (*Id.*). Dorothy and Jack subsequently reconciled and married on March 12, 2011. (*Id.*).

As of the date of trial in this case the relationship between Shassidy and her husband, Adam, and Dorothy and Jack was even more acrimonious. Dorothy had filed criminal charges against Adam in Justice Court which were still pending as of trial. (T. p. 100-101). Likewise, Shassidy had filed criminal charges against Dorothy which remained pending as of trial. (T. p. 100-101). The two couples did not speak to each other. (T. p. 99). The Chancellor noted the extreme hostility between the Parties as follows:

> I've never seen as much hatred and animosity manifested in my life. I've been in this business for over 50 years. I cannot believe what I've heard here today really except that it was given under oath.

(T. p. 240).

Dorothy and Jack claim that Shassidy subsequently denied both of them any contact with her children, Ryver and Acelynn, in early 2009. (*See*, T. p. 72). Prior to 2009, Dorothy claims that she and Jack had enjoyed a good relationship with Acelynn. (*See, e.g.,* T. p. 46). Dorothy claimed she saw Acelynn often from her birth until about age twenty-two (22) months. (T. p. 46). As to Ryver, Dorothy and Jack admitted they had never been given the opportunity to form any relationship with the child. (T. p. 71-72). The grandparents had only seen Ryver on two (2) occasions. (T. p. 71-72). Ryver never once visited with Jack and Dorothy. (*See, e.g.*, T. p. 210). It was undisputed that Ryver had never stayed overnight with Dorothy and Jack. (T. p. 72).

Shassidy and Adam contended that the Quartaros were not entitled to grandparent visitation under Mississippi law, and thus disputed the Quartaro's Petition. (*See, e.g.* C.P. p. 16). During discovery in this case, Shassidy and Adam propounded a set of Requests for Admission directed toward whether Dorothy and Jack claimed to meet the statutory criteria for grandparent visitation. (*See* C.P. p. 31-37; Trial Exhibits 3, 8). Dorothy and Jack served responses to the Aydelotts' Requests for Admission concerning the amount of their contact with the children and their financial support. (*Id.*). Dorothy's responses to the pertinent Requests for Admission were as follows:

> **REQUEST FOR ADMISSION NO. 1:** Please admit that you have not visited with the minor children in the last two years.
>
> **RESPONSE:** The Plaintiff admits the allegations contained in Requests for Admission No. 1 due to the fact that she was not allowed to visit with the children.

REQUEST FOR ADMISSION NO. 11: Please admit that you have never had frequent visitation with the minor children which included overnight visits for a period of at least one year.

RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 11, due to the fact that she has not been allowed to visit with the children.

REQUEST FOR ADMISSION NO. 12: Please admit that you have not provided financial support for the minor children.

RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 12 due to the fact that her daughter throws the things away that the Plaintiff buys for the children.

(Trial Exhibit 3; C.P. p. 35-37; Record Excerpts tab 3).

Similarly, Jack made admissions fatal to his claim for grandparent visitation as follows:

REQUEST FOR ADMISSION NO. 1: Please admit that you have not visited with the minor children in the last two years.

RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 1 due to the fact that he was not allowed to visit with the children once he reconciled with Dorothy Quartaro.

REQUEST FOR ADMISSION NO. 10: Please admit that you have never had frequent visitation with the minor children which included overnight visits for a period of at least one year.

RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 10, due to the fact that he has not been allowed to visit with the children.

REQUEST FOR ADMISSION NO. 11: Please admit that you have not provided financial support for the minor children.

RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 12 due to the fact that his daughter throws the things away that the Plaintiff buys for the children.

(Trial Exhibit 8; C.P. p. 31-33; Record Excerpts tab 2).

Dorothy affirmed the truth of her responses at trial. (T. p. 69-70). Jack testified that the questions were "vague" and "confusing." (T. p. 125). However, it is undisputed that neither

Dorothy nor Jack's responses to the Requests for Admission were ever amended or withdrawn. (T. p. 126). No objections were made to the Requests for Admission. (*See* C.P. p. 31-37; Trial Exhibits 3, 8).

Despite the lack of any evidence of frequent overnight visits and financial support of either Acelynn or Ryver, and the responses to the Requests for Admission, the Chancellor awarded the Quartaros grandparent visitation rights. The Chancellor denied a motion for involuntary dismissal based on the lack of necessary evidence and the Requests for Admission responses. (T. p. 175-77).

As discussed below, the Chancellor's decision was erroneous as a matter of law.

STANDARD OF REVIEW

A Chancellor's ruling on a question of law is subject to *de novo* review by this Court. *Warren v. Derivaux*, 996 So. 2d 729, 735 (Miss. 2008). Factual findings, however, are affirmed if they are supported by substantial evidence in the record. *Barnes, Broom, Dallas & McLeod, PLLC v. Estate of Cappaert*, 991 So. 2d 1209, 1211 (Miss. 2008).

SUMMARY OF THE ARGUMENTS

The Chancellor erred as a matter of law in awarding grandparent visitation since the statutory elements of a "viable relationship" were undisputedly not established. First, in responding to Requests for Admission, the Quartaros admitted that they: 1) had not visited with either of the children in the last two years; 2) had never had frequent visitation with either of the children which included overnight visits for at least one year; and 3) had not provided any financial support for either of the children.

Not only did the Quartaros conclusively admit the absence of a viable relationship in response to the Requests for Admission, the Quartaros trial testimony bears out the absence of a

viable relationship. The Record is devoid of evidence which could establish the statutory criteria. The Court need go no further than this to reverse and render the Chancellor's award of grandparent visitation.

The Chancellor should have never reached the *Martin* factors, since the statutory criteria were not satisfied. However, the Chancellor nevertheless erred in analyzing the *Martin* factors. Based on the undisputed facts in the Record, the *Martin* factors strongly militated against an award of grandparent visitation.

Finally, the Chancellor erred in denying the Aydelotts' Motion for Attorney's Fees. The Record does not support a finding that the incursion of attorney's fees would not work a financial hardship on the Aydelotts and the Chancellor's conclusion that the Aydelotts were not entitled to attorney's fees because the Quartaros were successful is erroneous as a matter of law.

ARGUMENT I.

THE TRIAL COURT ERRED IN FINDING THAT THE QUARTAROS WERE ENTITLED TO GRANDPARENT VISITATION AS THE STATUTORY REQUIREMENTS WERE NOT MET.

A. The Statutory Requirements for Grandparent Visitation.

In 2000, the United States Supreme Court held that broad third-party visitation statutes which allow visitation without regard for the parent's wishes or the parent's fundamental right to rear their children are unconstitutional. *Troxel v. Granville*, 530 U.S. 57, 67 (2000).

Mississippi has a much narrower grandparent visitation statute than the one at issue in *Troxel*. *See* MISS. CODE ANN. § 93-16-3. The Mississippi Supreme Court held that the Mississippi statute is constitutional because it is far narrower than the statute invalidated in *Troxel*. *See Stacy v. Ross*, 798 So. 2d 1275, 1279 (Miss. 2001).

The Mississippi statute provides for two types of grandparent visitation. MISS. CODE ANN. § 93-16-3. Visitation under subsection (1) requires a finding that the petitioning grandparents' child lost custody of the child. MISS. CODE ANN. § 93-16-3(1). This type of visitation was not at issue in this case.

Visitation under subsection (2), which is at issue in this case, may be awarded to grandparents only if the following is established:

> (2) Any grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent, provided the court finds:
>
> (a) That the grandparent of the child had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child; and
>
> (b) That visitation rights of the grandparent with the child would be in the best interests of the child.

> (3) For purposes of subsection (2) of this section, the term "viable relationship" means a relationship in which the grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months before filing any petition for visitation rights with the child, the grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home.

MISS. CODE ANN. § 93-16-3. Whether visitation is "in the best interests of the child" is to be decided based on the factors enumerated in *Martin v. Coop*, 693 So. 2d 912, 916 (Miss. 1997).

There is a strong presumption that "parents act in the best interests of their children" *Stacy*, 798 So. 2d at 1282. Grandparents have no common law right of visitation and an award of grandparent visitation must be reversed and rendered where the narrow statutory criteria are not proven. *Id. See also Settle v. Galloway*, 682 So. 2d 1032, 1035 (Miss. 1996).

B. The Requests for Admission Responses Conclusively Establish that the Quartaros Were not Entitled to Visitation.

The Court need go no further than the Quartaro's truthful responses to the Aydelotts' Requests for Admission to resolve this appeal. Both Dorothy and Jack conclusively admitted the following facts in responding to the Requests:

1. Neither Dorothy nor Jack had visited with either of the children within the last two (2) years as of March 22, 2011. (C.P. p. 31, 35).
2. Neither Dorothy nor Jack had frequent visitation with the children which included overnight visits for a period of at least one year. (C.P. p. 32, 36).
3. Neither Dorothy nor Jack provided any financial support for the children. (C.P. p. 33, 37).

The crucial Requests for Admission pertaining to the statutory criteria bear repeating:

REQUEST FOR ADMISSION: Please admit that you have not visited with the minor children in the last two years.

DOROTHY'S RESPONSE: The Plaintiff admits the allegations contained in Requests for Admission No. 1 due to the fact that she was not allowed to visit with the children.

JACK'S RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 1 due to the fact that he was not allowed to visit with the children once he reconciled with Dorothy Quartaro.

REQUEST FOR ADMISSION: Please admit that you have never had frequent visitation with the minor children which included overnight visits for a period of at least one year.

DOROTHY'S RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 11, due to the fact that she has not been allowed to visit with the children.

JACK'S RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 10, due to the fact that he has not been allowed to visit with the children.

REQUEST FOR ADMISSION: Please admit that you have not provided financial support for the minor children.

DOROTHY'S RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 12 due to the fact that her daughter throws the things away that the Plaintiff buys for the children.

JACK'S RESPONSE: The Plaintiff admits the allegations contained in Request for Admission No. 12 due to the fact that his daughter throws the things away that the Plaintiff buys for the children.

(C.P. p. 31-37; Record Excerpts tabs 2 and 3).

Pursuant to Rule of Civil Procedure 36, a matter is admitted unless the other party denies the request or objects to it within thirty (30) days. MISS. R. CIV. P. 36(a). The rule specifically provides as follows:

> Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission.

Miss. R. Civ. P. 36(b). Rule 36 is designed to provide an "authoritative manner of procedure." *DeBlanc v. Stancil*, 814 So. 2d 796, 801 (Miss. 2002). The Court in *DeBlanc* explained:

> A matter that is deemed admitted does not require further proof. Any admission that is not amended or withdrawn cannot be rebutted by contrary testimony or ignored by the court even if the party against whom it is directed offers more credible evidence.

DeBlanc, 814 So. 2d at 801.

This case does not present a scenario where a party simply failed to make timely responses to Requests for Admission. Rather, the Quartaros provided timely responses and expressly admitted that 1) they had not visited the children in two (2) years; 2) they had never had frequent visitation which included overnights for at least one year; and 3) they had not financially support the children. These facts were conclusively established based on the Quartaro's responses. Although the Record bears out that the admissions were, in fact, entirely accurate, in any event the Quartaros cannot argue inconsistently to the conclusive admissions.

The Quartaros did not object to the Requests for Admission, admitted to the Requests for Admission and never moved the Trial Court to allow the admissions to be withdrawn or amended under Rule 36(b).

The Quartaros can not possibly be entitled to grandparent visitation when they admitted the absence of the very statutory criteria they were required to prove. The Quartaros admitted, as a matter of law, that they did not have a "viable relationship" with the children since they admitted they had not had frequent visitation with the children which included overnights for at least one year and that they had not financially supported the children.

The Chancellor erred in ignoring the Quartaro's responses to the Requests for Admission. The Chancellor erred in denying the Aydelotts' motion for involuntary dismissal at the close of the Quartaro's case-in-chief based on the responses and in granting the Quartaros grandparent visitation.

The Chancellor's decision should be reversed and rendered in this regard.

C. There was no Evidence Establishing a "Viable Relationship" at Trial.

Notwithstanding the Quartaro's conclusive Request for Admission responses, there is simply no evidence in the Record which could establish a "viable relationship" as defined by section 93-16-13. The Chancellor's opinion effectively concedes that the statutory criteria were not established as follows:

> The financial considerations here are such that I feel like that there's been a viable relationship established to the extent that the grandparents could, but the proof before me is and this is absolutely corroborated by all of the parties here including defendants, that ***they've just refused it. How can you have visitation, how can you have a viable relationship if you can't have it, if you're denied that right.***

(T. p. 254) (emphasis added). As discussed below, this turns the statutory criteria on its head and is error as a matter of law. The Quartaros had to establish the statutory criteria to be entitled to visitation. If they had been denied contact all of the children's lives, as they generally were, then they could not be entitled to grandparent visitation. This is how the Mississippi statute works and how it is consistently construed so that it is constitutional under *Troxel*.

The Chancellor erred in effectively ignoring the statutory criteria. The absence of evidence proving each element is discussed fully below.

1. Frequent Overnight Visits

Dorothy claimed that she had extensive contact with one of the children, Acelynn, from her birth until about age twenty-two (22) months. Dorothy's testimony does not explain the

frequency of her visitation or whether there were overnight visits in Dorothy's home. The Record simply fails to prove this element of a viable relationship, even as to Acelynn.

Dorothy and Jack candidly admitted they had no relationship whatsoever with the other child, Ryver, and had only seen the child on one or two occasions. Two visits is not "frequent visitation" within the meaning of the statute. Moreover, Dorothy and Jack admitted that they had never had overnight visitation with Ryver. It is undisputable that Dorothy and Jack did not meet this criteria for grandparent visitation.

Dorothy and Jack did not introduce evidence sufficient to prove frequent visitation with the children which included occasional overnight visits. The Chancellor erred as a matter of law in awarding visitation.

2. Financial Support

Dorothy and Jack generally claimed that they had provided "financial support" to the children in that they allowed Shassidy and Adam to leave their mobile home on property they owned without charging rent.[4] (T. p. 70). Dorothy testified that her response to the Request for Admission, admitting that she had not financially supported the children, was true other than she had allowed Shassidy and Adam to leave their mobile home on her land. (T. p. 70).

By the time of trial Shassidy and Adam had moved from the property and lived about thirty (30) miles from Dorothy and Jack. (T. p. 208). Shassidy and Adam had lived miles away from Dorothy and Jack for about six (6) months as of the date of trial. (*Id.*).

The problem with Dorothy's contention in this regard is that it was also undisputed that Shassidy and Adam had a lease from Dorothy for the premises and Jack had attempted unsuccessfully to evict Shassidy and Adam from the land in May 2009. (T. p. 79-80; Trial

[4] Shassidy and Adam owned the mobile home and leased the real property where the mobile home was situated from Dorothy and Jack. (T. p. 70).

Exhibit No. 4). Both Dorothy and Jack signed the "Lease for Manufactured Home Lot on July 2, 2008. (Trial Exhibit No. 4). However, Jack Quartaro admitted that he filed an action to have Shassidy, Adam and the two children evicted from the property in May 2009. (T. p. 140). Jack executed an "Affidavit to Remove Tenant" from the property. (T. p. 140, Trial Exhibit 10). The Justice Court did not grant the eviction. (T. p. 140). However, Jack admitted he attempted to evict Shassidy, Adam and the children from the land in May 2009:

Q: Was that [the filing for an eviction] your effort to evict Shassidy and Adam?

A: Yes.

Q: And their children, right?

A: Yes.

(T. P. 141).

Thus, even the only tenuous financial support which Dorothy and Jack can point to they attempted to rescind in May 2009, about sixteen (16) months before the Petition for Grandparents' Visitation was filed. This could not possibly amount to financial support for a period of "not less than six (6) months before filing any petition for visitation rights" as required by the statute. There was insufficient evidence of any financial support of the minor children by Dorothy and Jack. This statutory criteria was likewise not proven.

In sum, the Record showed anything but a "viable relationship" between Dorothy and Jack and the grandchildren. There was no relationship whatsoever between the Quartaros and the children at the time of trial. Dorothy and Jack had not seen the children for at least two years before trial. The relationship between the Dorothy and Jack and the children's parents was extremely acrimonious. Dorothy had sworn out criminal charges against Adam Aydelott, which

remained pending as of the time of trial and Shassidy had criminal charges against Dorothy which were pending at the time of trial.

The Quartaros cannot point to sufficient evidence in the Record to establish a viable relationship with either of the children. There is a paltry amount of evidence as to some indefinite visitation with Acelynn over two (2) years before trial, and no evidence of financial support as to Acelynn. There is no evidence whatsoever as to either overnight visitation or financial support as to Ryver. The Record could not possibly support a finding that the statutory criteria for a viable relationship were met. Accordingly, the Chancellor erred as a matter of law in awarding grandparent visitation. The Chancellor's decision should be reversed and rendered since the Record does not support a finding of a viable relationship.

ARGUMENT II.

THE TRIAL COURT ERRED IN ITS ANALYSIS OF THE *MARTIN* FACTORS.

Only after the statutory criteria for a viable relationship are established would the Court proceed to the *Martin* factors. *See Bolivar v. Waltman*, No. 2010-CA-01982-COA slip op. at p. 5 (Miss. Ct. App. April 3, 2012). As discussed above, the criteria for a viable relationship were undisputedly not established and the Court need go no further than this to reverse and render in this case.

However, even if a "viable relationship" as defined by the statute was established in this case (which it was not), the Chancellor also erred in awarding visitation based on the *Martin* factors.

The Supreme Court has held that the Trial Court should analyze the following factors in making a grandparent visitation determination:

> 1. The amount of disruption that extensive visitation will have on the child's life. This includes disruption of school activities, summer activities, as well as any disruption that might take place between the natural parent and the child as a result of the child being away from home for extensive lengths of time.
>
> 2. The suitability of the grandparents' home with respect to the amount of supervision received by the child.
>
> 3. The age of the child.
>
> 4. The age, and physical and mental health of the grandparents.
>
> 5. The emotional ties between the grandparents and the grandchild.
>
> 6. The moral fitness of the grandparents.
>
> 7. The distance of the grandparents' home from the child's home.
>
> 8. Any undermining of the parent's general discipline of the child.
>
> 9. Employment of the grandparents and the responsibilities associated with that

employment.

> 10. The willingness of the grandparents to accept that the rearing of the child is the responsibility of the parent, and that the parent's manner of child rearing is not to be interfered with by the grandparents.

Martin v. Coop, 693 So. 2d 912, 916 (Miss. 1997). The Chancellor abused his discretion in analyzing the *Martin* factors, as discussed below.

The Chancellor abused his discretion in finding that the Quartaros' home was suitable for the children. The evidence established that two of the Quartaro's adult children, Randy Quartaro and Jennifer Quartaro were also residing in the home. (T. p. 146). Jennifer had a four-year-old son who lived with them, she was pregnant at the time of trial and was unmarried. (T. p. 146, 154). Randy testified that he was an unemployed drug user. (T. p. 167, 168). Randy admitted he had been actively using drugs as of about three to four months before trial, but he claimed he had stopped his drug use. (T. p. 168). Randy was also unmarried and his girlfriend was pregnant with his child. (T. p. 168).

Jennifer Quartaro candidly testified that she had observed Dorothy angry and had observed Dorothy behave violently. (T. p. 159). Jennifer saw Dorothy slap Shassidy on one occasion. (*Id.*). Jennifer also heard Dorothy and Jack yell and curse at each other when their divorce was going on. (T. p. 160).

Shassidy and Adam's wishes to avoid the type of environment that reared Randy and Jennifer were part of her reasons for not allowing her parents contact with her children. The Chancellor erred in finding that the Quartaros had the sort of suitable home as contemplated by *Martin*.

The Chancellor also erred in considering the age of the children. The Chancellor's entire factual finding as to this factor is as follows:

> Number three factor under *Martin* is the age or ages of the children. These children as I already indicated, are five and two years of age.

(T. p. 243). The Chancellor did not analyze the children's relatively young ages and whether the militated for or against visitation. The Chancellor manifestly erred in this regard. The Record established that these children did not know Dorothy or Jack Quartaro and had no relationship whatsoever with them. It was error to force young children into the care of effective strangers under the name of grandparent visitation.

The Chancellor next erred in evaluating the factor regarding the emotional ties between the grandparents and children. The Chancellor's opinion found that there was simply conflicting testimony as to the extent of the emotional ties. (T. p. 244). However, the Record simply does not bear this out.

It was undisputed that the Quartaros had last visited with the children about two (2) years before trial, when Acelynn was three (3) years old. They had no contact with Acelynn from age three (3) until age five (5). Based on this fact alone it is apparent there were no emotional ties between the Quartaros and Acelynn.

The failing of the proof is even more acute as to Ryver. The Quartaros admit they only saw Ryver once or twice and never kept the child overnight. The Quartaros admit they had no emotional ties with Ryver.

The Chancellor erred in awarding grandparent visitation in the face of this undisputed evidence.

The Chancellor erred in analyzing the moral fitness factor. The Record is replete with evidence of Dorothy and Jack's screaming, fighting, admitted episodes of physical violence and foul language. Dorothy and Jack were engaged in a bigamous marriage. Jack had been arrested for domestic violence against Dorothy. The Court succinctly stated "I don't find a great deal of

moral fitness on either side to help either one." (T. p. 245). However, the Court did not state whether this factor militated for or against visitation. The Chancellor should have found that this factor strongly weighed against the Quartaros exercising visitation. The Chancellor committed further error in this regard.

Finally, the Chancellor likewise erred in analyzing the factors regarding the grandparents' undermining of parental discipline and accepting the parents' rearing of the children. Dorothy testified that she would readily intervene if she concluded that Adam and Shassidy's discipline was "abusive." (T. p. 97). Dorothy recounted one instance where she saw Adam walking Acelynn up and down the driveway at night and Dorothy thought this was harsh treatment such that she intervened. (T. p. 97). Dorothy's testimony in this regard is telling:

> Q: Mrs. Quartaro, how many occasions have you interfered, objected to, or stopped either Adam or Shassidy from disciplining one of the children?
>
> A: Once.
>
> Q: Just once? Is that the time when Adam Aydelott was walking Acelynn down the driveway?
>
> A: Yeah.
>
> Q: Now, you told your lawyer that you understood that the natural parents under the law of this state and this country have the right to discipline their children, not the grandparents; right?
>
> A: To an extent, yeah.
>
> * * *
>
> Q: If you see one of these people going too far with their children, you will intervene and not let them go too far with discipline, will you not?
>
> A: If it's not appropriate, you're right. If it's not appropriate, I won't.
>
> Q: All right. And who's going to decide what's appropriate? Is that you, Mrs. Quartaro?

A: There is a line. I mean, you can go too far with something.

Q: You know it when you see it, don't you?

A: I'm learning.

(T. p. 96-97).

The Chancellor erred in ignoring Dorothy's past instances of interfering with the parent's rearing of the children and interfering in parental discipline. Dorothy made clear that whenever she viewed a parental action as "inappropriate" (as defined by her) she would readily intervene. This *Martin* factor strongly militated against awarding grandparent visitation and the Chancellor erred in concluding otherwise.

The Chancellor abused his discretion in analyzing the *Martin* factors. Even if the Quartaros had established the statutory requirements for grandparent visitation (which they did not) awarding grandparent visitation would nevertheless be error. On this basis as well the Chancellor's ruling should be reversed and rendered.

ARGUMENT III.

THE TRIAL COURT ERRED IN DENYING THE AYDELOTTS' REQUESTS FOR ATTORNEYS' FEES.

Miss. Code Ann. § 93-16-3 provides as follows:

> The court shall on motion of the parent or parents direct the grandparents to pay reasonable attorney's fees to the parent or parents in advance and prior to any hearing, except in cases in which the court finds that no financial hardship will be imposed upon the parents. The court may also direct the grandparents to pay reasonable attorney's fees to the parent or parents of the child and court costs regardless of the outcome of the petition.

MISS. CODE ANN. § 93-16-3(4).

The Chancellor in this case ostensibly made two (2) rulings on the issue of the Aydelotts' attorney's fees. After a hearing on the Aydelotts' Motion, the Chancellor concluded that paying their own attorney's fees would not work a financial hardship on the Aydelotts, although it was undisputed that the Aydelotts had about $43 in their bank accounts. To this end, the Chancellor denied the request for attorneys' fees "without prejudice" for the Aydelotts to again request fees at the conclusion of the case.

The Aydelotts introduced evidence of their attorney's fees during trial. However, the Chancellor found that the request for attorney's fees should be denied "because the grandparents have been successful in their petition here today." (T. p. 251).

Both of the Chancellor's conclusions are erroneous. It is undisputed that Shassidy was employed as a secretary and earned $12 per hour. (T. p. 10). At the time of the hearing on the Motion for Attorney's fees, Adam was employed as a mechanic and earned $14 per hour. (T. p. 11). As of the hearing on the Motion for Attorneys' fees, Shassidy had $43 in her checking account. (T. p. 24).

The Aydelotts paid an initial retainer of $1,500, and by the time of trial had incurred attorney's fees of $4,237.50. (Trial Exhibit No. 11).

The Chancellor's conclusion that such attorney's fees would not work a financial hardship on the Aydelotts is a clear-cut abuse of discretion. Moreover, the Chancellor's second ruling after trial that the Quartaros were not liable for attorney's fees because they were successful in their action for visitation rights is directly contrary to the statute. The Aydelotts were entitled to an award of attorney's fees "regardless of the outcome of the Petition." MISS. CODE ANN. § 93-16-3(4).

The Aydelotts request that the Chancellor's decision denying attorney's fees be reversed and that they be awarded attorney's fees incurred in the Trial Court of $4,237.50. The Aydelotts also request an award of attorney's fees incurred in this appeal. The Mississippi Appellate Courts generally award attorney's fees on appeal in the amount of one-half of what was awarded in the Trial Court. *Grant v. Grant*, 765 So. 2d 1263, 1268 (Miss. 2000); *Johnson v. Johnson*, 76 So. 3d 781, 788 (Miss. Ct. App. 2011). Accordingly, the Aydelotts request an additional award of attorney's fees incurred on appeal totaling $2,118.75, for a total award of $6,356.25

CONCLUSION

The Quartaros conclusively admitted the absence of the statutory criteria to establish a "viable relationship" in response to Requests for Admission. The Quartaros did not object to the Requests for Admission and their responses were never amended or withdrawn. The Chancellor erred in ignoring the Requests for Admission. The facts admitted in the Quartaros' responses were conclusively established such that an award of grandparent visitation was contrary to Mississippi law. Accordingly, the Chancellor's decision should be reversed and rendered.

Further, even aside from the Quartaros' admissions, the Record fails to establish the statutory criteria for a viable relationship. The Record is devoid of evidence to show that the Quartaros ever had frequent visitation with the children which included overnight visits or that the Quartaros financially supported the children.

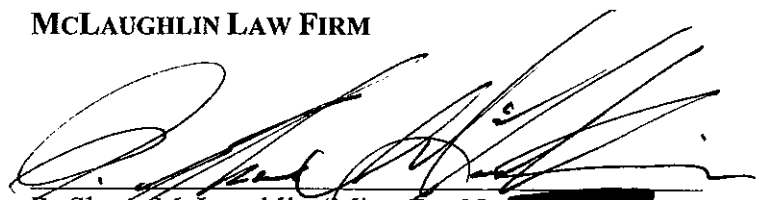
The Chancellor also erred in concluding that grandparent visitation was in the best interests of the children pursuant to the *Martin* factors. The *Martin* factors overwhelmingly indicate that grandparent visitation is not in the best interests of the children.

For myriad reasons, the Chancellor's grant of grandparent visitation should be reversed and rendered.

Finally, the Chancellor erred in denying the Aydelotts' Motion for Attorney's fees. The Court should reverse and render judgment awarding the Aydelotts attorney's fees incurred in the Trial Court and on attorney's fees on appeal.

RESPECTFULLY SUBMITTED, this the 27th day of April, 2012.

MCLAUGHLIN LAW FIRM

By: 

R. Shane McLaughlin (Miss. Bar No. [redacted]
Nicole H. McLaughlin (Miss. Bar No. [redacted]
338 North Spring Street Suite 2
P.O. Box 200
Tupelo, Mississippi 38802
Telephone: (662) 840-5042
Facsimile: (662) 840-5043
E-mail: rsm@mclaughlinlawfirm.com

ATTORNEYS FOR APPELLANTS

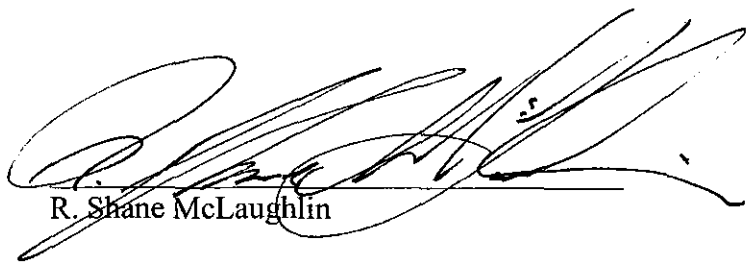
CERTIFICATE OF SERVICE

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

William C. Stennett
William C. Stennett Law Firm, PLLC
P. O. Box 702
Tupelo, MS 38802-0702

Hon. Talmadge D. Littlejohn
Chancellor
Post Office Box 869
New Albany, Mississippi 38652

This the 27th day of April, 2012.



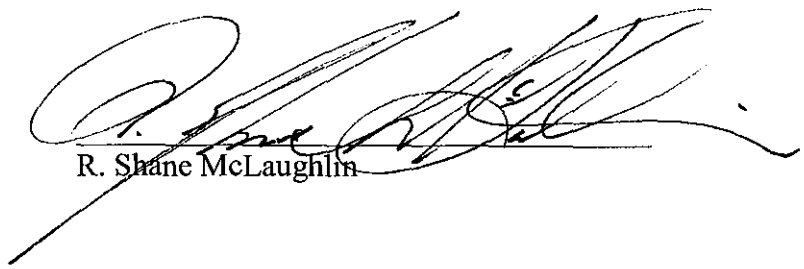
R. Shane McLaughlin

CERTIFICATE OF FILING

I, R. Shane McLaughlin, attorney for Appellants in the above styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the **Brief of Appellants** by mailing the original of said document and three (3) copies thereof via United States Mail, to the following:

Supreme Court Clerk
P.O. Box 249
Jackson, MS 38295-0248

This, the 27th day of April, 2012.



R. Shane McLaughlin