

THE FACTORS

**CHANCELLOR SANDY STECKLER
EIGHTH CHANCERY COURT DISTRICT**

**CLE ON THE ROAD IN GULFPORT
MAY 19, 2017**

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CHILD CUSTODY DETERMINATION

ALBRIGHT FACTORS

437 So.2d 1003 (Miss. 1983)

CAUSE: _____

NAME: _____

1. **Age, health, sex of the child.**
2. **Continuity of care prior to the separation.**
3. **Parenting skills and willingness and capacity to provide primary child care.**
4. **Employment of the parent and responsibilities of that employment.**
5. **Physical and mental health and age of the parents.**
6. **Emotional ties of the parent and the child.**
7. **Moral fitness of the parents.**
8. **The home, school, and community record of the child.**
9. **The preference of the child at the age sufficient by law, to express a preference.**
10. **Stability of home and employment of each parent.**
11. **Any other factor relevant to the parent-child relationship:**

MODIFICATION OF CUSTODY

Burden of Proof: Preponderance of Evidence

The Court must consider all of the events and facts which have occurred since entry of the last judgment. *Tucker v. Tucker*, 453 So.2d 1294 (Miss.1984); *Sanford v. Arinder*, 800 So.2d 1267, 1271-72 (Miss. Ct. App. 2001).

Requirements which must be met before a modification in custody may be ordered.

1. since the entry of the last judgment,
2. there has been a material and substantial change in the circumstances of the custodial parent

and

3. that the material change is adversely affecting the welfare of the child.

If YES, an adverse change is shown, then

4. whether the best interest of the child requires a change in custody

If YES, then

5. Look at the factors found in *Albright vs. Albright*, 437 So.2d 1003, 1005 (Miss. 1983), commonly referred to as “the Albright factors,” to ascertain the “suitable custody arrangement.

MINIMUM WAGE AND CHILD SUPPORT

01-02-2017

Mississippi does not have a state minimum wage, so the Federal minimum wage is used.

Minimum wage: \$ 7.25 per hour

Full time 40 hrs: \$ 290.00 per week

Full time month: \$1,256.57 GROSS MONTHLY PAY

LESS:

11% taxes (138.22)

\$1,118.35 ADJUSTED GROSS INCOME (AGI) FOR
CHILD SUPPORT PURPOSES

§43-19-101:

1 child = 14% AGI..... \$157.00*

2 children = 20% AGI..... \$224.00

3 children = 22% AGI..... \$246.00

4 children = 24%AGI..... \$268.00

5+ children=26%AGI..... \$291.00

* rounded figures

MODIFICATION OF CHILD SUPPORT

ADAMS FACTORS

Adams v. Adams, 467 So.2d 211 (Miss.1985)

CAUSE # and Style: _____

1. Increased needs caused by age and maturity of children:
2. Increase in expenses:
3. Inflation factor:
4. Relative financial condition and earning capacity of the parties:
5. The physical and psychological health and special medical needs of the child(ren):
6. The health and special medical needs of the parents, both physical and psychological:
7. The necessary living expenses of the paying party:
8. The estimated amount of income taxes the parties pay:
9. The free use of residence, furnishing and automobiles:
10. Any other factors and/or circumstances shown by the evidence:

EQUITABLE DISTRIBUTION

FERGUSON FACTORS

639 So.2d 921 (Miss.1994)

CAUSE # AND STYLE: _____

1. Economic and domestic contributions by each party to the marriage:
2. Expenditures and disposal of the marital assets by each party:
3. The market value and emotional value of the marital assets:
4. The value of the nonmarital property:
5. Tax, economic, contractual, and legal consequences of the distribution:
6. Elimination of alimony and other future frictional contact between the parties:
7. The income and earning capacity of each party:
8. Any other relevant factor that should be considered in making an equitable distribution:

SPOUSAL SUPPORT

ARMSTRONG FACTORS

618 So.2d 1278 (Miss. 1993)

CAUSE # and Style: _____

1. The income and expenses of the parties:
2. The health and earning capacities of the parties:
3. The needs, obligations, and assets of each party:
4. The length of the marriage:
5. The presence or absence of minor children in the home:
6. The age of the parties:
7. The standard of living of the parties, both during the marriage and at the time of support determination:
8. The tax consequences of the support decree:
9. Fault or misconduct:
10. Wasteful dissipation of assets by either party:
11. Any other factor deemed just and equitable in connection with the setting of spousal support.

SPOUSAL SUPPORT - LUMP SUM ALIMONY
ARMSTRONG FACTORS include these
CHEATHAM V. CHEATHAM

CAUSE # and Style: _____

1. **Substantial contribution to accumulation of the marital assets by quitting work or assisting in the business:**

2. **A long marriage:**

3. **Financial disparity:**

4. **Other considerations, including payor's assets and payor's stability or instability:**

SEPARATE MAINTENANCE

SHORTER v. SHORTER , 740 So.2d 352 (Miss.1999)

CAUSE # and Style: _____

1. The health of the husband and wife:
2. The combined earning capacity of the parties:
3. The reasonable needs of wife and children:
4. The necessary living expenses of the husband:
5. The fact that wife has free use of home and furnishings:
6. Other facts and circumstances:

MODIFICATION OF SEPARATE MAINTENANCE

Collins v. Collins, 132 So.3d 1066 (Miss.Ct.App.2014)

Factors to consider from *Crenshaw v. Crenshaw*, 767 So.2d 272, 276 (¶ 18)(Miss.Ct.App.2000) (quoting *Brendel v. Brendel*, 566 So.2d 1269, 1272 (Miss.1990); *Brabham v. Brabham*, 266 Miss. 165, 176, 84 So.2d 147, 153 (1955)) :

1. The Health of the husband and his earning capacity
2. The Health of the wife and her earning capacity
3. The Entire source of income of both parties
4. The Reasonable needs of the wife
5. The Reasonable needs of the child
6. The Necessary living expenses of the husband
7. The Estimated amount of income taxes the respective parties must pay on their incomes
8. The Fact that the wife has the free use of the home, furnishings, and automobile, and
9. Such other facts and circumstances bearing on the subject that might be shown by the evidence.

At ¶10

In *Kennedy v. Kennedy*, 650 So.2d 1362, 1368 (Miss. 1995), the supreme court compared the modification of separate-maintenance awards to the modification of child-support payments. The party that seeks to modify the chancellor's order "must demonstrate a 'substantial and material change in the circumstances of one of the interested parties arising subsequent to the entry of the decree sought to be modified.'" *Id.* (Quoting *McEwen v. McEwen*, 631 So.2d 821, 823 (Miss.1994)).

INCOME TAX DEPENDENCY EXEMPTION
LOUK FACTORS
761 So.2d 878 (Miss.2000)

CAUSE # and Style: _____

1. The value of the exemption at the marginal rate of each parent:
2. The income of each parent:
3. The age of the children and how long the exemption will be available:
4. The percentage of the cost of supporting the children borne by each parent:
5. The financial burden assumed by each parent under the property settlement agreement:
6. The value of the non-economic but valuable contributions made by the custodial parent (from Laird v. Blackburn, 788 So.2d 844 (Miss.Ct.App.2001):

AMOUNT OF ATTORNEY'S FEES TO BE AWARDED

MCKEE FACTORS

McKee v. McKee, 418 So. 2d 764 (Miss. 1982)

CAUSE: _____

NAME: _____

- 1. The Sum Sufficient to Secure a Competent Attorney.**
- 2. The Relative Financial Ability of the Parties.**
- 3. The Skill and Standing of the Attorney Employed.**
- 4. The Nature of the Case and Novelty and Difficulty of the Questions at Issue.**
- 5. The Degree of Responsibility Involved in the Management of the Cause.**
- 6. The Time and Labor Required.**
- 7. The Usual and Customary Charge in the Community.**
- 8. The Preclusion of Other Employment by the Attorney Due to the Acceptance of the Case.**

ATTORNEY FEES IN GRANDPARENT VISITATION CASES - § 93-16-3(4)

The statute reads in part:

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.

Evidence of financial hardship must be presented to get attorney fees; lack of evidence means if no fees are awarded, no error. *Woodell v. Parker*, 860 So.2d 781, 791 (Miss.2003).

GRANDPARENT VISITATION - 93-16-3 and 93-16-5

MARTIN v. COOP FACTORS

693 So.2d 912 (Miss.1997)

AND

SMITH V. MARTIN

_____ So.3d _____ (Miss. 04/20/17)

Must consider the best interests of the child in determining WHETHER the grandparents should receive visitation in the first place. Must also consider best interest of the child under Martin v. Coop to determine how MUCH visitation time grandparents should receive.

Any time a court awards grandparents visitation, it must first consider the factors set forth in Martin v. Coop, 693 So.2d 912 (Miss.1997), to ensure that the parent's right to rear his or her child is not improperly burdened. Those factors are as follows:

1. Amount of disruption extended visitation will have on grandchild's life
2. Suitability of Grandparents' home with respect to amount of supervision received by grandchild(ren)
3. Age of grandchild(ren).
4. Age, physical and mental health of grandparents.
5. Emotional ties between grandparents and grandchild.
6. Moral fitness of grandparents
7. Distance of grandparents' home from grandchild's home
8. Any undermining of parent's general discipline of grandchild
9. Employment of grandparents and responsibilities associated with that employment
10. Willingness of grandparents to accept that rearing of child is parent's responsibility and that parent's manner of child rearing is not to be interfered with by the grandparents

**NATURAL PARENT PRESUMPTION:
SURRENDER TO A COURT**

From *Smith v. Wright*, 160 So.3d 737, (Miss.Ct.App. 04-07-15)

¶ 11 “Our law clearly has a strong presumption that a natural parent’s right to custody is superior to that of third parties, whether grandparents or others.” *Grant v. Martin*, 757 So.2d 264, 266 (¶9)(Miss.2000). This presumption is forfeited, however, when a parent voluntarily relinquishes custody of a minor child through a court of competent jurisdiction. *Id.* At (¶10). “A natural parent may reclaim custody of the child only upon a showing by clear and convincing evidence that the change in custody is in the best interest of the child.” *Id.* When the Mississippi Supreme Court adopted this standard, it reasoned:

Because stability in the lives of children is of such great importance, we have carefully weighted the impact of establishing an exception, or a new standard, for such instances. While we do not want to discourage the voluntary relinquishment of custody in dire circumstances where a parent, for whatever reason, is truly unable to provide the care and stability a child needs, neither do we want to encourage . . . Irresponsible parent[s] to relinquish their child’s custody to another for convenience sake, and then be able to come back into the child’s life years later and simply claim the natural [-]parents’ presumption as it stands today.

Id. At 266 (¶9). In determining the best interest of the child, the court considers the following factors – ALBRIGHT FACTORS

FACTORS FOR
REBUTTAL OF NATURAL PARENT PRESUMPTION

Wilson v. Davis, 181 So.3d 991, (Miss. 2016)

Paragraph 7: Natural parent presumption may be rebutted

NEEDS: clear and convincing evidence of one of the following factors:

1. The parent has abandoned the child;
2. The parent has deserted the child;
3. The parent's conduct is so immoral as to be detrimental to the child; or
4. The parent is unfit, mentally or otherwise, to have custody.

Quoting Davis v. Vaughn, 126 So.3d 33, 37 (Miss.2013)(internal quotation omitted)

There is now a 5th FACTOR

Paragraph 9:

for 5th factor, the court is required to make very specific findings of fact on the record – HIGH THRESHOLD

RETURN TO PRINCIPLE: - 5th factor - Exceptional circumstances

“The natural parent presumption may be rebutted by clear and convincing evidence that actual or probable, serious physical or psychological harm or detriment will occur to the child if custody is placed with the natural parent, such that granting custody to the third party is substantially necessary to prevent such probable harm. In other words, if demonstrable, clear and convincing evidence exists that the child will suffer probable harm and detriment in the custody of the natural parent, the court may find that the natural parent presumption is rebutted, and consequently proceed to a determination of whether a custody award to the challenging party will be in the child's best interest. Such a finding must prevent probable harm to the child, and not simply find that the third party can provide the child with different or arguably 'better' things. See Moody, 211 So.2d at 844 (“The fact that someone else may be in a better position to furnish

the child a larger and more convenient home in which to live does not necessarily mean it would be in the best interest of the child to take it from a parent who is otherwise fit to have the custody of the child.”) This “exceptional circumstances” finding MEANS MORE THAN THAT A CHILD’S BEST INTEREST MAY BE SERVED BY THIRD PARTY CUSTODY; IT “REQUIRES PROOF OF SERIOUS PHYSICAL OR PSYCHOLOGICAL HARM OR SUBSTANTIAL LIKELIHOOD OF SUCH HARM.” *Watkins v. Nelson*, 748 A.2d 558, 565 (N.J.2000).

CLOSING AN ESTATE - CHECKLIST

CAUSE # and Style: _____

1. Judgment opening the estate or admitting will to probate is filed, and there is no contest.
2. Oath of executor/administrator filed.
3. The executor/administrator has properly filed his/her bond,
or
 bond was waived by the will
or
 bond was waived by sworn petition of all heirs w/entry of court order authorizing waiver
4. Letters testamentary or of administration issued.
5. The affidavit of known creditors required by § 91-7-145 was properly executed by the executor/administrator and filed before publication to creditors.
6. Publication of notice to creditors was made in some newspaper in the county that meets the criteria in § 13-3-31, for 3 consecutive weeks
AND
 it has been more than 90 days since the first publication
7. Inventory and appraisalment were done and timely filed
or
 were waived by the will
or
 were waived by all heirs by sworn petition with order so waiving
8. All accountings were timely filed and approved by court other (other than final accounting now before the court)
or
 waived by the will
or
 excused by the court

9. In the case of administration, publication for unknown heirs has been completed
AND
a judgment determining heirs has been presented
or
a judgment determining heirs will be presented in advance of presenting the final accounting
10. All interested parties to the estate have been served with the petition to close and all other closing documents, including the final accounting
AND
they have joined in the petition
or
they have been duly served with Rule 81 summons
AND
there is a proper return
or
there is a properly executed waiver
or
There is a properly executed joinder for each interested party
11. All probated claims have been paid and evidence of such payment is in the court file
or
the probated claims will be paid in the course of closing the estate
and
a final report will be filed evidencing payment
12. The attorney's fees and expenses, as well as those of executor/administrator, have been disclosed to all interested persons
AND
they have no objection

Testamentary capacity:

“The proponent of a contested will bears the burden of proving its validity in all respects. *Harris v. Sellers*, 446 So.2d 1012, 1014 (Miss.1984). A prima facie case of validity is made when the will and its record of probate are admitted into evidence. *Id.* The contestants then bear the burden of going forward with evidence to challenge the will’s validity. *Id.*” *McClendon v. McClendon [In Re Estate of Pigg]*, 877 So.2d 406 (Miss.Ct.App.2003), Paragraph 8. *See also Estate of Smith*, 722 So.2d 606 (Miss.1998).

Proponent must show capacity by PREPONDERANCE OF THE EVIDENCE

FACTORS:

TO BE MEASURED ON THE DATE OF THE WILL TO DETERMINE ISSUE OF CAPACITY:

“Testamentary capacity is a necessary prerequisite to a valid will. Miss.Code Ann. § 91-5-1 (Rev.1994). We look to three factors measured on the date of the will to determine the issue of capacity:

1. Did the testatrix have the ability to understand and appreciate the nature and effect of her actions?
2. Did the testatrix have the ability to recognize the natural objects or persons of her bounty and their relation to her?
3. Was the testatrix capable of determining what disposition she desired to make of her property?

Estate of Wasson v. Gallaspy, 562 So.2d 74, 77 (Miss.1990).” *McClendon v. McClendon [In Re Estate of Pigg]*, 877 So.2d 406 (Miss.Ct.App.2003) Paragraph 12. *See also In the matter of the Estate of Lela W. Holmes: Ollie Holmes-Pitkett, at al.l vs. Bertha Holmes-Price, as Executrix of the Last Will and Testament of Lela W. Holmes, et al.*, 961 So.2d 674 (Miss.2007); *Mask v. Elrod [In re Estate of Mask]*, 703 So.2d 852, 856 (Miss. 1996) and cases cited therein; *Estate of Smith*, 722 So.2d 606 (Miss.1998).

“Such capacity ‘is to be tested as of the date of the execution of the will.’ *Scally v. Wardlaw*, 123 Miss. 57, 878, 86 So. 625, 626 (1920).” *Mask v. Elrod [In re Estate of Mask]*, 703 So.2d 852, 856 (Miss. 1996)

Q1: Was there a confidential relationship?

Q2: Was that confidential relationship abused?

CONFIDENTIAL RELATIONSHIP

FACTORS FOR DETERMINING

Madden v. Rhodes, 626 So.2d 601 (Miss.1993)

1. Whether one person has to be taken care of by others
2. Whether one person maintains a close relationship with another
3. Whether one person is provided transportation and has their medical care provided for by another
4. Whether one maintains joint accounts with another
5. Whether one is physically or mentally weak
6. Whether one is of advanced age or poor health
7. Whether there exists a power of attorney between the one and another

Pope v. White, May 20, 2008, COA quoting *Holmes -Pickett v. Holems-Price*, 961 So.2d 674 (Miss.2007).

If it is determined that there was no confidential relationship, there is no presumption of undue influence.

If it is determined that there was a confidential relationship, there may be a presumption of undue influence.

A finding of presumption of undue influence may be rebutted.

PRESUMPTION OF UNDUE INFLUENCE

A presumption of undue influence arises

1. 'where a confidential relationship exists between a testator and a beneficiary under [the] will AND
2. the beneficiary has been actively concerned in some way with the preparation or execution of [the will] [citations omitted]

ALSO

3. "Suspicious circumstances surrounding the creation of the will will also raise the presumption" of undue influence."

Pope v. White, May 20, 2008, COA

UNDUE INFLUENCE BETWEEN HUSBAND AND WIFE

There is no automatic presumption of undue influence due to the confidential relationship between a husband and wife *Genna v. Harrington*, 254 So.2d 525, 528 (Miss.1971). This rule applies to both/either inter vivos gifts and testamentary gifts. *Estate of Langston v. Williams*, 57 So.3d 618 (Miss.2011). The one contesting the gift/transfer has the burden of proving there was undue influence by the spouse. *Id.*

REBUTTAL OF PRESUMPTION OF UNDUE INFLUENCE
FACTORS

If it is determined that a confidential relationship existed and there is a finding that there is a presumption of undue influence based upon the items found on Page 20,, there are **THREE FACTORS** which must be rebutted and proven:

Murray v. Laird, 446 So.2d 575 (Miss.1984):

1. **Good faith** on the part of the beneficiary factors to determine good faith:
 - A. The determination of the identify of the initiating party in seeking preparation of the instrument
 - B. The place of the execution of the instrument and in whose presence
 - C. What consideration and fee were paid, if any and
 - D. By whom paid and
 - E. The secrecy or openness given the execution of an instrument.
2. **Testatrix' full knowledge and deliberation** of actions and consequences factors to determine knowledge and deliberation:
 - A. Awareness of total assets and their general value
 - B. Understanding of the persons who would be the natural inheritors of the bounty under the laws of descent and distribution or under a prior will and how the proposed change would legally affect that prior will or natural distribution
 - C. Whether non-relative beneficiaries would be excluded or included and
 - D. Knowledge of who controls the finances and business and by what method, and if controlled by another, how dependent the testatrix was upon that person and how susceptible to influence by that person
 1. How dependent is the testatrix on those handling her finances?
 2. How susceptible is she to influence by those handling her finances?
3. **Testatrix' independent consent and action** - clear and convincing evidence

required. *Mullins v. Ratcliff*, 515 So.2d 1183 (Miss.1987). One way to show:

Independent advice of (a) a competent person, (b) disconnected from the grantee/testatrix and © devoted wholly to the grantor/testatrix' interest.

“The testimony of the proponents or interested parties is not sufficient to rebut the presumption of undue influence.” *Holmes-Pickett v. Holmes-Price*, 961 So.2d 674, 681 (Miss.2007).

ELEMENTS OF AN INTER VIVOS GIFT

From *Sanford v. Cowan*, 249 Miss 685, 163 So.2d 682, 694-94 (1964) quoting *McClellan v. McCauley*, 158 Miss. 456, 130 So. 145 (1930):

1. there must be a donor competent to make it,
 2. with freedom of will on his part
- and
3. intention to make it;
 4. a donee capable of taking a gift, which must be complete, and nothing left undone
 5. The property given must be delivered by the donor
 6. and accepted by the donee;
 7. the gift must go into immediate and absolute effect
 8. must be gratuitous
- and
9. must be irrevocable.

From Estate of Finley, 37 So.3d 687 (Miss.Ct.App.2010):

at page 690-91:

- ¶ 15 As previously stated, Mississippi law regarding confidential relationships and undue influence applies to both inter vivos and testamentary transactions. Howell [v. May, 983 So.2d 313] at 317 (¶ 14)[Miss.Ct.App.2007]. However, the Mississippi Supreme Court has created a distinction between inter vivos gifts and testamentary gifts on the matter of confidential relationships. In *Madden v. Rhodes*, 626 So.2d 608, 618 (Miss.1993), the supreme court noted that in an action for a will contest, if a confidential relationship exists, a presumption of undue influence arises only when there has been an abuse of that confidential relationship. **However, with inter vivos gifts, if a confidential relationship exists, “there is an automatic presumption of undue influence even without abuse of the confidential relationship. Such gifts are presumptively invalid.”** *Id.* The burden rests on the party seeking to set aside the inter vivos gift to demonstrate by clear and convincing evidence that a confidential relationship existed between the grantor and grantee, thus creating a rebuttal presumption of undue influence. (P. 691) Howell, 983 So.2d at 318 (¶¶ 14-16).

TPR CASES
RIGHT TO COUNSEL FOR INDIGENT PARENT

§ 93-15-113

(as revised and effective April 18, 2016)

§ 93-15-113(2)(b): The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parents' own choosing. **If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.**

INDIGENCE

Determination of status: indigent or not indigent.

If found to be not indigent, inquiry ends and no appointment of counsel required.

If found to be indigent, must consider **FACTORS** of whether appointment of counsel is needed.

WHETHER APPOINTMENT NECESSARY

Question of law subject to de novo review *Blakeney v. McRee*, 188 So3d. 1154 (Miss.2016)

Wise but not mandatory.

Lassiter v. Department of Social Services of Durham County, North Carolina, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981)

Ultimate question is whether the appointment of counsel in termination proceedings would have made a determinative difference in the outcome

If will make determinative difference, appoint

If will not make determinative difference, no not appoint

Lassiter v. Department of Social Services of Durham County, North Carolina, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981); *Blakeney v. McRee*, 188 So3d. 1154 (Miss.2016); *Pritchett v. Pritchett*, 161 So.3d 1106 (Miss.2015); *K.D.G.L.B.P. v. Hinds County Department of Human Services*, 771 So.2d 907, 910 (¶12)(Miss.2000).

**MUST MAKE ON-THE-RECORD DETERMINATION OF THE FACTORS:
4 FACTORS**

to evaluate in determining whether counsel should be appointed in TPR cases to indigent parent - taken from *Blakeney v. McRee*, 188 So3d. 1154, 1160 [¶ 15] (Miss.2016)(citing *Matthews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976) and used in *Lassiter v. Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981):

1. Whether the case involves “allegations of neglect or abuse upon which criminal charges could be based;”
2. Whether expert testimony will be offered;
3. Whether the case involves “specially troublesome points of law, either procedural or substantive;” and
4. Whether the presence of counsel “would result in a determinative difference in the proceedings.”

From *Pritchett v. Pritchett*, 161 So.3d 1106 (Miss.2015):

- ¶10. Pg1111 ...[t]he Supreme Court ultimately left the decision on whether to appoint counsel to be decided on a case-by-case basis by the state.”
- ¶11. The supreme court, in analyzing *Lassiter [v. Department of Social Services of Durham County, North Carolina]*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981)], stated:

One of the most important factors to be considered in applying the standards for court [-]appointed counsel is whether the presence of counsel would have made a determinative difference. The *Lassiter* decision thus states that appointment of counsel in termination proceedings, while wise, is not mandatory and therefore should be determined by state courts on a case-by-case basis.

Quoting from *K.D.G.L.B.P. v. Hinds County Department of Human Services*, 771 So.2d 907, 910 (¶12)(Miss.2000).