

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CAUSE NO. 2000-CA-01867**

**CAUSE NO. 2001-CA-00164**

**CAUSE NO. 2001-CA-01519**

**JOHN E. SHAVERS**

**APPELLANT**

**VERSUS**

**ANN B. SHAVERS**

**APPELLEE**

**APPEAL FROM THE CHANCERY COURT OF HARRISON, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**BRIEF OF APPELLEE, ANN B. SHAVERS**

**ORAL ARGUMENT NOT REQUESTED**

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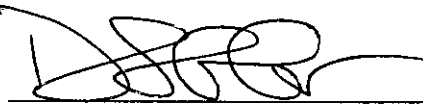
APPELLEE

**CERTIFICATE OF INTERESTED PARTIES**

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 judges of the Court of Appeals may evaluate possible disqualification or recusal:

- |  |  |
|--|--|
| 1. John Shavers,   | Appellant  |
| 2. Ann Shavers   | Appellee   |
| 3. Walter Wes Teel   | Chancellor   |
| 4. D. Scott Gibson and<br>Herbert J. Stelly, Sr.   | Attorneys for Appellee                             |
| 5. B.G. Perry, L.C. James<br>Robert Harenski,<br>Michael Cavanaugh<br>Edward Markle<br>Joe Sam Owen<br>J.N. Randall, Jr. | Attorneys for Appellant                            |
| 6. James Koerber   | Court appointed expert witness                     |
| 7. Michael Ratliff   | Attorney for court appointed expert, James Koerber |

So certified on this the 13 day of June, 2002.

  
\_\_\_\_\_  
D. SCOTT GIBSON  
ATTORNEY FOR APPELLEE  
ANN SHAVERS

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## **STATEMENT OF THE ISSUES**

- I. THE APPEAL SHOULD BE DISMISSED FOR FAILURE TO PROVIDE A SEPARATE STATEMENT OF THE ISSUES AS REQUIRED BY RULE 10 AND RULE 28 OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE.**
- II. THE COURT SHOULD NOT CONSIDER THE APPEAL, IT SHOULD BE DISMISSED FOR APPELLANT'S FAILURE TO SUPPORT HIS CONTENTIONS WITH CITATIONS TO AUTHORITY.**
- III. THE CHANCERY COURT MAINTAINED JURISDICTION OF THE DIVORCE ACTION UNTIL THE APPEAL OF THE DIVORCE JUDGMENT OF SEPTEMBER 2001.**
- IV. THE CHANCERY COURT DID NOT ERR WHEN IT GRANTED ANN SHAVERS A DIVORCE FROM JOHN SHAVERS ON THE GROUNDS OF HABITUAL CRUEL AND INHUMAN TREATMENT BASED ON THE TESTIMONY AND THE PARTIES' CONSENT TO A DIVORCE ON THOSE GROUNDS.**

## STATEMENT OF THE CASE

This appeal involves three consolidated appeals filed by John Shavers arising from a divorce action between he as the defendant, and Ann Shavers, the plaintiff.

In an attempt to lessen the confusion arising from the citations to the different volumes of records and transcripts on these consolidated appeals, the appellee will identify the records and transcripts as follows when referencing them in her brief:

For the Clerk's Papers, the Record, and Transcripts for the appeal and designation filed on November 1, 2000 by John Shavers, the first appeal, the Clerks Papers which consists of one volume completed on March 27, 2001 will be cited by appellee as "(R1. )" with a citation to the appropriate page; and the Transcripts of the May 4, 2000 hearing and October 2 and 3 hearing, related to that record which consists of two volumes and completed on January 29, 2001, will be cited by appellee as "(T1. )" with a citation to the appropriate page.

For the Clerk's Papers, the Record and Transcript for the appeal and designation filed on January 23, 2001, the second appeal, the Clerk's Papers which consists of five (5) volumes and completed on September 19, 2001 will be cited by appellee as "(R2. )" with a citation to the appropriate page; and the Transcript of the January 4, 2001 hearing related to that record which consists of one (1) volume completed on August 27, 2001, will be cited by appellee as "(T2. )" with a citation to the appropriate page.

For the Clerk's Papers, the Record and Transcript for the appeal and designation filed on September 19, 2001, the third appeal, the Clerk's Papers which consists of one volume and completed on January 3, 2002 will be cited by appellee as "(R3. )" with a citation to the appropriate page; and the Transcript of the May 29 -June 1, 2001 Trial and hearings related to the record which consists of three (3) volumes, will be cited by appellee as "(T3. )" with a citation to the appropriate page.

John Shavers did not comply with Rule 10 or 28 of the Mississippi Rules of Appellate

Procedure. Each requires a statement of issue for review by this Court. Both this Court and counsel for Ann Shavers are left to guess the error he contends occurred in the trial Court. Further, John Shavers fails to support the contentions made in his brief with citations to authority.

It should also be noted that John Shavers is the only appellant in this action. He was the only defendant in the divorce action. The Jesco corporate entities identified by John Shavers as additional appellants are not parties to this action, have never been made parties and have not been joined in this action. This is a divorce action between Ann Shavers and John Shavers. There are many twists and turns in this divorce action but for the purpose of these consolidated appeals, the following facts are pertinent:

In January 1999, after 30 years of marriage, Ann Shavers filed a complaint for divorce against John Shavers. The complaint alleged habitual cruel and inhuman treatment and irreconcilable differences as grounds for divorce. (R1. 1) (Appellee's RE. 1 ) After a two day hearing, a temporary order was entered on July 23, 1999. (Appellee's RE. 8) Due to the extensive nature of the parties' properties, the Court sought the parties' agreement on the appointment of an expert to value the parties' property. In its Order of July 23, 1999, the Court directed that James Koerber would be appointed as the Court's expert valuator in the event the parties were unable to agree. *Setting and Temporary Order*, (Appellee's RE. p. 5) The Court further ordered that John Shavers pay the retainer fee of the expert. *Id.* (R1. 102-107) (Appellee's RE. p. 10 ) The parties did not agree and James Koerber was appointed by operation of the Order.

On March 10, 2000, the Court entered another order addressing James Koerber's duties in the divorce litigation. *Order on Motion to Compel and for Sanctions* (Appellee's RE. 115) This order affirmed his appointment as the Court's expert and gave him the powers of a master pursuant to Rule 53 of the Mississippi Rules of Civil Procedure. (Appellee's RE. 116) This Order was not included in John Shaver's designations of the record. It is the subject of a separate motion in this court to

supplement the record.

On May 8, 2000 the Court entered another Order respecting James Koerber's appointment directing Koerber to employ an equipment appraiser, Mr. Sanderson, to replace Guy Blankenship who appointed by the March 10, 2000 Order. In this Order, the Court again ordered John Shavers to advance the costs of Mr. Sanderson's fee in the amount of \$ 4,000.00 and to advance the additional costs of James Koerber fees in the amount of \$ 8,500.00 and \$ 574.00. The Court reserved the assessment of these litigation costs between the parties for the final hearing. (T1. pp. N-P). In entering this Order, the Court reasoned that appraisals of the parties' property was necessary pursuant to *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994) and *Hemsley v. Hemsley*, 639 So. 2d 909 (Miss. 1994). (R1. 124) (Appellee's RE. 16)

On August 10, 2000 Ann Shavers filed a Complaint to cite John Shavers for contempt in which she alleged that John Shavers' failure to abide by the Court's Order of May 8, 2000 requiring him to advance the appraisers' fees, Dave Sanderson's in the amount of \$ 4,000.00 and James Koerber's in the amount of \$ 8,500.00 and \$ 574.00, constituted wilful contumacious contempt of Court. She also requested that she be allowed to sell real property in order to meet her financial needs due to the protracted nature of the litigation. (Appellee's RE. 19) John Shavers filed a motion to remove James Koerber as the Court's expert witness and to terminate alimony.

These motions were heard on October 2 and 3, 2000. During the testimony on the Motion for Contempt, Jim Koerber testified that John Shavers had not advanced any of the monies as directed by the May 8, 2000 Order and those funds were still owed. (T1. 5, 10) Testimony was also taken on John Shavers' motions to remove James Koerber and to terminate the temporary support and Ann Shavers' motion to sell real estate.

After the two day hearing the Court entered its Order. (Appellee's RE. 24) The court denied John Shaver's motion to remove James Koerber as not supported by the evidence and found Shavers

in contempt of court for failing to advance the appraisal fees as directed by the Court's Order of May 8, 2000. The Court stayed any punishment pending compliance and also ordered John Shavers to provide financial documents and information to James Koerber within ten (10) days. The Court allowed Ann Shaver to borrow funds against a piece of property and reduced support to \$ 500.00 per week upon her receiving the funds from the loan. *Id.*

On November 1, 2000, John Shavers filed a "*Joint Notice of Suspensive Appeal From the Final Civil Contempt Order and Related Orders of October 3, 2000*," referencing "Section 11-41-12 Mississippi Code Civil Practice and Procedure." (Appellee's RE. 28) Apparently this "Notice of Appeal" was filed in an effort to appeal the contempt provisions of the October 3, 2000 Order pursuant to Mississippi Code § 11-51-12, for on December 1, 2000 B.G. Perry acting as an attorney for John Shavers forwarded a letter to the clerk in which he stated that nothing else would take place in the litigation because the appeal was with supersedeas, referencing Section 11-51-12 M.C.A. (R2. 159) Yet no motion was filed to set bond, no bond amount was fixed by the Court and no bond had been posted. In fact no bond was set with respect to this appeal until well into proceedings on a second contempt complaint against John Shavers in January 2001.

Further, in spite of the position taken by his counsel's correspondence of December 1, 2000 that the divorce action was stayed, the record discloses that John Shavers, through the same attorney, continued to file various motions and pleading with the Court such as, a Motion to Dismiss the Divorce, (R2. 46, 55); a Motion to Recuse Herb Stelly, Sr., (R2. 261); a Motion to Set Application for Disqualification and an Amendment to Application for Disqualification, (requesting the Judge be removed or recuse himself), (R2. 266, 268); a Motion to Withdraw Motion to Dismiss Divorce, (R2. 298); and other motions were not designated but which were dealt with by the Court at the hearing of January 4, 2001.

On December 14, 2000 Ann Shavers filed another contempt action against John Shavers.

Again to have him comply with the provisions of the Order of October 3, 2000 requiring him to furnish financial information to James Koerber. John Shavers was ordered to provide the identified financial documentation within ten (10) days of October 3, 2000. As of December 14, 2000 he had not provided the information. (R2. 251) The divorce trial was set to begin on January 22, 2001 and without this data, James Koerber could not complete his valuations and report to the parties and the Court in time for the trial. This contempt action was set for hearing on January 4, 2001.

On January 2, 2001 John Shavers filed another novel pleading for a divorce action, a "Notice of Federal Removal." Attached to this pleading was a *Notice of Federal Removal* which had been filed with the Federal District Court for the Southern District of Mississippi, in Biloxi on the same day. (R2. 322)(Appellee's RE. 43-49) Attached to the *Notice of Federal Removal* filed with the Federal District Court was the December 14, 2000 Motion for Citation of Contempt filed by Ann Shavers. John Shavers did not attach any other pleadings, claims, or complaints to his *Notice of Federal Removal* filed with the Federal Court. (R2. 316, 322) (Appellee's RE. 43-49).

The hearing scheduled for January 4, 2001 went forward. At this hearing the Court took up the various motions filed by John Shavers, including the motion to Recuse Mr. Stelly, the motions for Disqualification and other motions. The Court also heard testimony on the contempt motion filed on December 14, 2000. The Court found most of the defendant's motions frivolous, meritless and without basis in law or fact. (Appellee's RE 64-76) It was at this hearing that Mr. Perry, one of Mr. Shavers' many attorneys in this matter, disclosed to the Court that he is not a divorce lawyer and hasn't been one for many years. (T2.6) It was not until this hearing that John Shavers requested the Court set an appeal bond under Miss. Code Ann. § 11-51-12 with respect to his appeal of the contempt provisions of Order of October 3, 2000. The Court set the bond at \$ 7000.00. On January 5, 2001 the appeal bond was filed with the Clerk of Court. (R2. 490) John Shavers now claims that the filing of this appeal bond stayed the entire divorce case.

In the order from this hearing, the Court found John Shavers in contempt for his failure to provide the documents ordered to be produced to Mr. Koerber by the October 3rd Order. (Appellee's RE. 70 ) The court stayed the punishment pending compliance by John Shavers.

On January 23, 2001 John Shavers filed a *Notice of Suspensive Appeal From Final Civil Contempt Order and Money Judgments Entered January 8, 2001*. (Appellee's RE.77) Shavers appealed only the provisions of paragraph 8(E) and paragraph 13 of the Order of January 8, 2001. Paragraph 8(E) deals with the citation of contempt for failure to produce the documents and paragraph 13 awards attorneys fees to Jim Koerber for having to retain an attorney due to Shavers' bad faith use of process. Shavers had issued a Rule 81 Summons and served it on Mr. Koerber to be present and defend at the hearing on January 4, 2001. (T2 111- 16) *See also*, (Exhibit 12, January 4, 2001 Hearing) John Shavers has failed to address these issues in his brief on this appeal, has failed to allege these as error and fails to support any contention on these issue with argument or citation to authority.

Due to the problems realized by the Court at the hearing on January 4, 2001, the Court reset the trial of the case for two weeks beginning May 29th, 2001. After numerous confrontations over discovery, subpoenas, discovery motions removed to federal court and various other stalling tactics on the part of John Shavers the matter came to trial on May 29th, 2001. At trial, the parties entered into a *Consent to Divorce on the Grounds of Irreconcilable Differences and Request that the Court Decide Controverted Issues Between the Parties* pursuant to Miss. Code Ann. § 93-5-2. Not uncharacteristically, the parties did not agree on any issues and gave all issues to the Court for resolution. (Appellee's RE. 82 ) After more than two days of testimony, the parties began settlement negotiations. After a day and a half of settlement negotiations, the parties submitted a consent settlement agreement to the Court. (T3. 328). At that time the parties agreed that Ann Shaver would go forward with her divorce on the grounds of habitual cruel and inhuman treatment. (T3. 328) John

Shavers consented to and did not contest Ann Shavers obtaining a divorce on the grounds of habitual cruel and inhuman treatment. (T3. 328)(T3. 343). In that regard, Ann Shavers was examined by the Court on factual basis of her claim and the jurisdictional requirements (T3. 330-31). Mr. Shavers served as the corroborating witness to those facts, (T3. 330) Ann's uncontested testimony was that there were problems, arguments, fights, disputes and disagreements between the parties. She testified that if she remained in the marriage, it would be injurious to her life, safety, health, both physically and emotionally; (T3. 332). The Court, based on the uncontested testimony and the prior testimony in the case granted the divorce on the grounds of habitual cruel and inhuman treatment. (T3. 332) John Shavers not only did not object to this procedure, but he and his attorneys consented to the divorce on these grounds. (T. 343) The Court inquired of Mr. Shavers understanding of the procedure and the settlement and he agreed to it. *Id.* The transcript of this consent agreement is included in the Appellee's Record Excerpt pp. 85-103.

The Court reserved to the parties the right to submit an irreconcilable differences divorce for approval. However, no such irreconcilable difference divorce or agreement was presented to the Court and consistent with the parties uncontested divorce settlement, the Court entered its Judgment of Divorce on September 7, 2001. (Appellee's RE.104 )(R.3. 100)

John Shavers filed a Notice of Appeal appealing only the provision of the Judgment which grants the divorce on the grounds of habitual cruel and inhuman treatment. (Appellee's's RE. 113) After the Notice was filed, the court corrected the date in its Judgment from August 23 to June 1, 2001 pursuant to Rule 60. John Shavers' appeals were consolidated by this Court.

## SUMMARY OF THE ARGUMENT

John Shaver's appealed the contempt aspects of the order of October 3, 2000 arising incident to the divorce action. The contempt finding was based upon his failure to advance court costs, expert witness fees, of the expert appointed by the Court to value the parties' assets as required by *Ferguson, Hemsley* and as approved by *Mace v. Mace*. The Court had directed John Shavers to advance the costs of the expert because it had left the income producing assets of the parties in his hands during the pendency of the litigation. Though the Court repeatedly advised the parties that these costs would be reassessed at the trial of the action, John Shavers refused to advance the costs until he was held in contempt for his failure to do so.

John Shavers does not assert any issue of error, does not contend that the findings of fact were incorrect or that the chancellor abused his discretion in finding him in contempt and his arguments that because the Temporary Order of July 1999 appointing Koerber expired in November 1999 it could not serve as the basis for contempt is based upon an ignorance of the record or a misrepresentation of the record. Several orders were entered after November 1999 addressing the function of James Koerber in the litigation.

Further, John's argument that his November 1, 2000 appeal stayed the divorce action pursuant to Miss. Code Ann. § 11-51-12 is as equally without merit and contrary to a reasonable interpretation of the statute.

The removal of the contempt action filed on December 14, 2000 did not divest the trial court of jurisdiction or in any manner stay the divorce action pending the removal action. The sweep of the removal was controlled by the complaint removed, which was the contempt action he attached to his notice of removal, not the divorce action. This contention is without support of authority and should be dismissed.

John Shavers fails to set forth any contention of error with regard to his second appeal, the

appeal of the Order of January 8, 2001. John Shavers was again held in contempt for failure to follow the Court's order to provide financial documentation to James Koerber so that the valuations could be completed and the case could proceed to trial. This appeal is not addressed, is without merit and should be dismissed. John Shavers was not prejudiced by the contempt finding of January 8, 2001 as the Court withheld punishment pending his compliance.

Finally, John Shavers was represented by at least four attorneys during the divorce trial. He agreed and consented to Ann Shavers obtaining a divorce on the grounds of habitual cruel and inhuman treatment. Neither he nor his gaggle of attorneys objected to the procedure. He cannot now claim that the Court was in error. He consented to the habitual cruel divorce, under oath and on the record. He cannot now complain that the Court erred in granting the divorce on habitual cruel and inhuman treatment.

John Shavers' appeal has no merit and should be dismissed with all costs assessed against him. Ann Shavers should be awarded her attorneys fees in defending this appeal.

## ARGUMENT

Ann Shavers filed for a divorce against John Shavers after more than thirty years of marriage. The complaint was filed on January 25, 1999. At the time the divorce complaint was filed the parties owned various close corporations either individually or jointly, real and personal property. On July 23, 1999 after two days of testimony, the Court entered a Temporary Order in the matter which among other things, set temporary support, temporarily granted possession of the marital home to Mrs. Shavers, temporarily put the income producing assets of the couple in the hands of John Shavers, and provided for the appointment of an expert witness to value the property and holdings of the parties.

The order provided that in the event the parties were unable to agree to an expert, James Koerber was automatically appointed as the Court's expert. (R1. 8-13) <sup>1</sup> The order also required John Shavers to advance the costs of Jim Koerber's expert fees as costs and that the costs would be reassessed between the parties at time of trial. James Koerber was appointed to value the properties of the parties as required by *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994) and *Hemsley v. Hemsley*, 639 So. 2d 909 (Miss 1994). The manner of this appointment was recently approved by this Court in *Mace v. Mace*, No. 2000-CA-01283-SCT (Miss. 2002). In the *Mace* case, this Court noted that chancellor's may appoint an independent expert to value the parties property. *Id* at p. 4, citing 706 of the Mississippi Rules of Evidence.

After two years and five months of maneuvering by John Shavers and his many lawyers, the divorce went to trial. At the end of the day, the testimony elicited from James Koerber, was that the value of the various corporations owned by the parties was somewhere between 4 million dollars and

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<sup>1</sup> The temporary hearing lasted for more than two days. At this hearing, both parties testified to the physical altercations between them. The transcript of this hearing was introduced as an exhibit to the testimony at the trial of the divorce held on May 29, 30, 31 June 1st. The chancellor relied on this testimony in granting the divorce on the grounds of habitual cruel and inhuman treatment. (T3. 332)

5.2 million dollars depending on the manner of valuation. (T3. 121-35) The parties real property not held in corporations was valued in excess of one million dollars.

At the divorce hearing, the parties stipulated to an agreement for the settlement and division of their property. This agreement was dictated into the record in conjunction with an uncontested divorce on the grounds of habitual cruel and inhuman treatment to which both parties agreed. (T3. 328-342)

During the divorce litigation, two contempt motions were filed against John Shavers by Ann Shavers. One was filed on August 10, 2000 (R1. 74) and the other was filed on December 14, 2000 (R2. 251) The August 10th motion was to cite John Shaves for contempt for failure to advance the expert witness fees as required by the Court's orders, and the December 14th 2000 motion was to was a request to cite him for contempt for failure to provide documents as ordered by the Court in its October 3, 2000 order. *Id.*

On January 2, 2000 John Shavers filed a *Notice of Removal* in the Federal District Court for the Southern District of Mississippi in Biloxi, Mississippi. John Shavers attached to the *Notice of Removal* the December 14, 2000 motion for contempt filed against him. At the motion hearing on January 4, 2000, the Court inquired of B.G. Perry one of Mr. Shavers' many lawyers regarding the removal issue and the following colloquy transpired:

THE COURT: If Judge Bramlet will take this divorce trial, it will be a novelty and oh, it would be wonderful.

MR. PERRY: Your Honor, we didn't send him the whole thing now.

THE COURT: Oh, you sent him the contempt portion or tried to....

(T2. 32-35) emphasis added.

Although less than clear, John Shavers seems to be appealing the contempt aspects of the order of October 3, 2000 based on his contention that Order appointing Koerber expired on

November 1, 1999 and his “suspensive appeal” of the October 3, 2000 contempt provisions divested the chancery court of jurisdiction to proceed. It further appears from his brief that he contends that the orders and actions of the Court were stayed by the removal of the Motion for Contempt of December 14, 2001 to federal court. Finally, it appears that he contends that chancellor’s grant of a divorce on the grounds of habitual cruel and inhuman treatment based on his consent agreement was error.

**I. THE APPEAL SHOULD BE DISMISSED FOR FAILURE TO PROVIDE A SEPARATE STATEMENT OF THE ISSUES AS REQUIRED BY RULE 10 AND RULE 28 OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE.**

Although Mrs. Shavers through undersigned counsel has attempted to glean the issues raised by John Shavers on his three appeals as set out above, John Shavers did not provide a statement of the issues either at the time that he designated parts of the record for his appeals as required by Rule 10(b)(4) of the Mississippi Rules of Appellate Procedure; and he did not provide a statement of issues in his brief as required by Rule 28 (3) of the Mississippi Rules of Appellate Procedure.

Both Rule 10(b)(4) and Rule 28(3) of the Mississippi Rules of Appellate Procedure require the appellant provide a statement of the issues. Rule 10 requires a statement of the issues when only part of the record is designated for purposes of appeal. Mr. Shavers designated only a part of the record for each of the three appeals that he has noticed. As a result, he was required to file a separate statement of the issues pursuant to Rule 10 (b)(4). He has not done this. Further, Rule 28(3) requires a separate statement of issues and states, that “ no issue not distinctly identified shall be argued by counsel....” Miss. Rule App. Proc. 28(3). The provisions of each rule on this issue is mandatory and as result the appellant’s appeals should be dismissed.

This Court addressed this issue in *Broadhead v. Bonita Lakes Mall, Ltd.*, 702 So. 2d 92

(Miss. 1997). In *Broadhead*, the appellees claimed that an issue that the appellant argued before the Court on appeal had been waived due to the appellant's failure to list the issue in the statement of issues required by Rule 10 (b)(4). The Court stated that generally, the Court will not address an issue not set forth in the statement of issues because it has been waived. However, it did note that a party can raise an issue in either a statement pursuant to Rule 10, or Rule 28(3). *Broadhead v. Bonita Lakes Mall, Ltd.*, 702 So. 2d at 106.

The Court can also notice plain error not identified or specified in the designation of record or statement of the issues when an issue of substantial justice is at stake. *Chamblee v. Chamblee*, 637 So. 2d 850, 866 (Miss. 1994). However, John Shavers did not provide a statement of issues under either provision of the rules of appellate procedure, and the matters addressed in his brief do not effect an issue of substantial justice. Therefore, there are no issues for this Court to address, they have been waived, and the appeal should be dismissed.

**II. THE COURT SHOULD NOT CONSIDER THE APPEAL, IT SHOULD BE DISMISSED FOR APPELLANT'S FAILURE TO SUPPORT HIS CONTENTIONS WITH CITATIONS TO AUTHORITY.**

Not only has John Shavers failed to identify the issues for his appeal, he has also failed to support any of the statements or contentions of his brief with citations or authority and the Court should not consider these appeals. The law is well established in Mississippi that appellate Courts of this state are not required to address any issue that is not supported by reasons and authority. *New Bellum Homes, Inc. v. Swain*, 806 So. 2d 301, 306 (Miss. App.2001), citing *Hoops v. State*, 681 So.2d 521, 535 (Miss.1996) (citing *Pate v. State*, 419 So.2d 1324, 1325-26 (Miss.1982)). Further, Mississippi Rules of Appellate Procedure 28(a)(1)(6) gives the requirements for the argument in an appellate brief:

The argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied upon.

*New Bellum Homes, Inc. v. Swain*, 806 So. 2d 301, 306 (Miss. App.2001) *citing* Rule 28 (a)(1)(6). John Shavers fails to support any argument he makes in his brief with authorities. [T]he failure to cite any authority is a procedural bar, and the Court is under no obligation to consider the assignments. *Belvins v. Bardwell*, 784 So. 2d 166, 180 (Miss. 2001) *citing* *Smith v. Dorsey*, 599 So. 2d 529, 532 (Miss. 1992), *citing* *R.C. Petroleum, Inc. v. Hernandez*, 555 So.2d 1017, 1023 (Miss.1990); *Brown v. State*, 534 So.2d 1019, 1023 (Miss.1988); *Shive v. State*, 507 So.2d 898 (Miss.1987); *Read v. S. Pine Elec. Power Ass'n*, 515 So.2d 916 (Miss.1987); *Devereaux v. Devereaux*, 493 So.2d 1310 (Miss.1986); *Pate v. State*, 419 So.2d 1324 (Miss.1982).

John Shaver's failure to cite authority to support the contentions and assertions of his brief preclude the Court from considering his arguments, (for lack of a better term, there are no assignments of error), on this appeal. *Grey v. Grey*, 638 So.2d 488, 491 (Miss. 1994) *citing* *Matter of Estate of Mason v. Fort* 616 So.2d 322, 327 (Miss.1993); *R.C. Petroleum, Inc. v. Hernandez*, 555 So.2d 1017, 1023 (Miss.1990); *Kelly v. State*, 553 So.2d 517, 521 (Miss.1989), *citing* *Brown v. State*, 534 So.2d 1019, 1023 (Miss.1988), *cert. denied*, 490 U.S. 1007, 109 S.Ct. 1643, 104 L.Ed.2d 158 (1989), *Shive v. State*, 507 So.2d 898 (Miss.1987), and *Pate v. State*, 419 So.2d 1324 (Miss.1982). *See also* *Turner v. Turner*, 612 So.2d 1141, 1143 (Miss.1993). John Shavers' appeal should be dismissed.

### **III. THE CHANCERY COURT MAINTAINED JURISDICTION OF THE DIVORCE ACTION UNTIL THE APPEAL OF THE DIVORCE JUDGMENT OF SEPTEMBER 2001.**

John Shavers contends that the Chancery Court lost jurisdiction of the Divorce action on four occasions: First, in January 2001, when he filed his appeal bond pursuant to Miss. Code Ann. § 11-51-12 on his appeal of the October 3, 2000 Order of Contempt; second, when he removed the contempt action of December 14, 2000; third, when he filed his appeal bond related to the appeal of the contempt aspect of the October 3, 2000 order; and finally, when he appealed the provision

of the Divorce Judgment of September 7, 2001. With the exception of the last appeal, the chancery court maintained jurisdiction over the divorce action throughout, despite John Shavers' legal gyrations.

**A. The appeal of the contempt aspects of the Order of October 3, 2000 did not divest the chancery court of jurisdiction of the divorce.**

John Shavers' attempt to convince this Court that the first appeal in this case divested the Chancery Court of jurisdiction is meritless. The statute that John Shavers relies on for his appeal is Miss. Code Ann. § 11-51-12. Shavers was found in contempt for failure to advance the costs of the duly appointed expert witness, James Koerber. *See Mace v. Mace*, No. 2000-CA-01283-SCT (Miss. 2002). The Court withheld adjudication of the punishment pending John Shavers' compliance with the Order. *Order of October 3, 2000*, ¶ 4 (R1. 80) He was not incarcerated. Section 11-51-12 provides in pertinent part:

- (1) A person ordered by any tribunal, except the Supreme Court, **to be punished for a civil contempt**, may appeal to the court to which other cases are appealable from said tribunal....
- (2) Where the **punishment for civil contempt** is other than jail confinement, the contemnor shall be allowed to appeal upon the posting of a bond, payable to the appellee, with sufficient sureties, to be approved by the tribunal appealed from, in an amount to be fixed by such tribunal, conditioned to abide the results of the appeal.
- (3) All appeals allowed in accordance with the provisions of this section shall operate as a supersedeas.

Miss. Code Ann. § 11-51-12 (1999), emphasis added.

John Shavers does not make any contention in his brief that there is any error in the fact finding of the Court with respect to its finding of contempt or that the contempt adjudication is not supported by the evidence. His contention is that the Court lost jurisdiction of the divorce upon his posting the appeal bond in January 2001 with respect to the appeal of the contempt provisions of the October 3, 2000 order. First, under the statute, an appeal is not appropriate until there is a

punishment for the contempt. Since the Order of October withheld punishment, the order was not final and not appealable under the statute.

Secondly, contempt actions are separate and distinct causes of actions, even if filed within a pending lawsuit. Such actions require separate process, *see, Sanghi v. Sanghi*, 759 So. 2d 1250, 1253 (Miss. App. 2000); and separate procedures are provided to allow an appeal of the punishment adjudication for contempt, even if the underlying action has not been finally adjudicated. This is the procedure provided by Miss Code Ann. § 11-51-12. To suggest that an appeal of a contempt adjudication divest the Court of jurisdiction of the underlying action pending resolution of the contempt appeal ignores the purposes of the statute.

As a separate action, the appeal did not divest the chancery court of jurisdiction of the underlying divorce action.

**B. The improvident removal of the December 14, 2000 contempt action filed by Ann Shavers did not stay the underlying divorce action in the State Court.**

John Shavers contends in his brief, without citation to authority, that the Notice of Federal Removal filed on January 2, 2001 in the Federal District Court divested the chancery of jurisdiction to continue to proceed with the divorce action. To be clear, the Motion to Cite for Contempt filed by Ann Shavers on December 14, 2000 to enforce the provisions of the October 3, 2000 Order was the claim removed to the federal court.

As has been demonstrated, the contempt action filed by Ann Shavers on December 14, 2000 is a separate and distinct cause of action from the underlying divorce action, even if filed within the divorce action. *Sanghi v. Sanghi*, 759 So. 2d 1250, 1253 (Miss. App. 2000). John Shavers attached a copy of the Motion for Contempt, not a copy of the Divorce Complaint to his notice as the record clearly reflects. (R2. 322-28) Contrary to his contentions in his brief, the sweep of his improvident removal and thus the 28 U.S.C. § 1446 stay was limited to the Motion for Contempt

and did not encompass the divorce action. Even B.G. Perry, one John's many attorneys, recognized the separateness of the divorce action and the contempt action as they related to the removal as demonstrated by the following colloquy between he and the chancellor on the removal issue:

THE COURT: If Judge Bramlet will take this divorce trial, it will be a novelty and oh, it would be wonderful.

MR. PERRY: Your Honor, we didn't send him the whole thing now.

THE COURT: Oh, you sent him the contempt portion or tried to....

(T2. 32-35)(Appellee's RE. 54) emphasis added. The procedures for removal are set forth in 28 U.S.C. § 1446 and require that the pleading upon which the removal is based to be attached to the petition for removal. The December 14, 2002 Motion to Cite for Contempt was attached to the *Notice of Federal Removal*.

Further, to determine the propriety of federal removal, the Federal Court looks to the "well pleaded" allegations of the plaintiff's complaint to determine its "federal character" if any. It is the plaintiff's complaint and its allegations that determines whether a federal court has subject matter jurisdiction. As stated by the fifth Circuit in Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F. 3d 362, (5th Cir. 1995), "[a] determination that a cause of action presents a federal question depends upon the allegations of the plaintiff's well-pleaded complaint." *Id.* at 366, *citations omitted*. Shavers removed the Motion to Cite for Contempt not the divorce.

The objective of civil contempt is to compel obedience to the orders of the court. Shepard v. Shepard, 769 So.2d 242 (Miss. App. 2000) *citing*, Jones v. Hargrove, 516 So.2d 1354, 1357 Miss.1987), *See Also* Alexander v. Brown, 2000 WL 1017042 (Miss.App. 2000) *citing*, Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 120 (Miss.1989). Here as in the Sheppard case, the issue was a failure to provide documents ordered to be provided

by the Court. The contempt action was brought to coerce compliance with the State Court's Order directing he provide documents to the Court's expert witness so that the litigation could move forward. It has no federal characteristics.

Interestingly, John Shavers contends in his removal notice that the federal court had original jurisdiction over the removed action as an Unfair Debt Collection Practices Act, he said nothing of the divorce action. *Notice of Federal Removal*, (R2. 322).

The plaintiff's Motion for Citation of Contempt, is certainly not an artfully drafted complaint alleging a claim under the Fair Debt Collections Practices Act. A defendant may not remove on the basis of and anticipated defense or even inevitable federal defense, but instead must show that a federal right is 'an element, and an essential one, of the plaintiff's cause of action.'" *Id.* at 336 *citing*, Gully v. First Nat'l Bank, 299 U.S. 109, 111, 57 S.Ct. 96, 97, 81 L.Ed. 70 (1936).

District Judge Senter's statement in Dequise v. NPC International, Inc., 950 F. Supp. 168 (N.D. Miss. 1997) is applicable to John Shavers removal of the contempt action, "[this] Court has no discretion regarding retention of this action, as it has at no time possessed subject matter jurisdiction over the plaintiff's complaint." *Id.* at 169. As in Dequise, Ann Shaver's complaint asserts only state law claims for contempt and no federal claims. The Motion for Citation of Contempt could not have been brought originally in federal court. Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F. 3d 362, 366, 368; Merkle v. Federal Express Corp., 886 F. Supp. 561, 564 (N.D. Miss. 1995).

The defendant's reliance on the venue statute of the Fair Debt Collections Practice Act, 15 U.S.C. § 1692i(a)(2)(B) as a basis for federal jurisdiction, however much displaced, is contrary to his claim that the divorce was removed.

The foregoing demonstrates that the plaintiff's complaint controls the sweep of the removal, the application of the removal procedure and the extent of the removal stay. In this case it was the

Motion to Cite for Contempt of December 14, 2000, not the Divorce Complaint, that John Shavers attached to his Notice of Federal Removal. The sweep of the removal stay of 28 U.S.C. § 1446 did not extend to the divorce action.

This is further demonstrated by the Federal District Court's order of August 13, 2001, the Order Remanding Cases, which sets forth what the Court acted on. The order remanded the "Motion to Cite for Contempt" and a discovery motion, and makes no mention of the divorce action because it was never it. (R3. 82).

Finally, even though the chancellor acted on the Motion to Cite for Contempt on January 4, 2001, there is nothing in the record that demonstrates that John Shavers suffered any prejudice. The contempt provisions of the Order of January 8, 2001 simply directed John Shavers to provide the documents as ordered and reserved ruling on the punishment aspect pending compliance with the Order. *Order, January 8, 2000* ¶ 8(E). (R2. 505) Because the Court did not seek to enforce its contempt finding, the Court's proceeding with the contempt aspects of the motion at the January 4, 2001 hearings, if error, was harmless. *Accord, Sanghi v. Sanghi*, 759 So. 2d 1250, 1254 (Miss. App. 2000).

**C. The posting of the supersedeas bond related to the Notice of Appeal of November 1, 2000 did not divest the Chancery Court of Jurisdiction, nor stay the underlying divorce action.**

On November 1, 2000, John Shavers filed a Notice of Appeal of the contempt aspects of the Order of October 3, 2000 pursuant to Miss. Code Ann. § 11-51-12. (R2. 7) No supersedeas bond was sought until the January 4, 2001 hearing. (T2. 35-37) On that date the Court set the appeal bond for the appeal at \$ 7,000.00. *Id.* Without the support of any meaningful argument or citation to authority, John Shavers now contends that the posting of this appeal bond stayed the entire divorce case and the Court was enjoined from going forward with the litigation; that all actions taken by the Court after November 1, 2000 are nullified. *Brief of Appellant* pp. 9-10.

As stated, the supersedeas bond filed by John Shavers was filed with respect to the Order of Contempt that was entered by the Court on October 3, 2000, and has no bearing, operation or effect on the divorce action. Section 11-51-12 relied upon by Shavers limits the stay to the “punishment” for contempt.

1) A person *ordered... to be punished* for a civil contempt, may appeal to the court to which other cases are appealable from said tribunal. If jail confinement is ordered to compel the payment of any monetary sum, the contemnor shall be allowed to appeal upon the execution of an appearance bond, payable to the appellee, with sufficient sureties, in the penalty of one hundred twenty-five percent (125%) of such sum as he has been adjudicated in contempt for failure to pay, unless the court shall determine that a lesser bond should be required. The bond shall be conditioned to abide the results of the appeal.

(2) *Where the punishment for civil contempt* is other than jail confinement, the contemnor shall be allowed to appeal upon the posting of a bond, payable to the appellee, with sufficient sureties, to be approved by the tribunal appealed from, in an amount to be fixed by such tribunal, conditioned to abide the results of the appeal.

(3) All appeals allowed in accordance with the provisions of this section shall operate as a supersedeas.

Miss. Code Ann. § 11-51-12 (emphasis added). The supersedeas provided by the statute has no effect on the underlying divorce action. The only reasonable interpretation is that the supersedeas provision stays the “punishment” imposed by the Court for the contempt. While counsel has been unable to find specific authority on this point, a close look at this Court’s decision in *Jones v. Hargrove*, 493 So. 2d 346 (Miss. 1986), suggest the manner in which the statute is applied. In that case, the defendant, Mr. Jones was found in contempt for his failure to pay child support. The Chancery Court, in order to enforce the order of contempt, committed Mr. Jones to jail. He filed a habeas corpus petition with the Circuit Court of Choctaw County and was released on an appearance bond. The Chancery Court then entered a supplemental order again incarcerating Jones. Mr. Jones applied to the Supreme Court for a stay of the Chancery Court’s supplemental

order. This Court issued the stay pending the determination of the appeal. Mrs. Hargrove asked for reconsideration of the stay order. The Court considered the provisions of Miss. Code Ann. § 11-51-12 and applied it to stay the "punishment," the effect, of the supplemental order pending the determination of the appeal. *Jones v. Hargrove*, 493 So. 2d 346, 347 (Miss. 1986). The provisions of the statute in no way apply to the underlying divorce.

Additionally, John Shavers paid the amount ordered to be paid by the trial Court in its October 3, 2000 Order. (T2. 36-38) Therefore the issue is moot.

**IV. THE CHANCERY COURT DID NOT ERR WHEN IT GRANTED ANN SHAVERS A DIVORCE FROM JOHN SHAVERS ON THE GROUNDS OF HABITUAL CRUEL AND INHUMAN TREATMENT BASED ON THE TESTIMONY AND THE PARTIES' CONSENT TO A DIVORCE ON THOSE GROUNDS.**

In his brief, John Shavers, contends that the Chancellor erred when he entered a Divorce Judgment on the grounds of habitual cruel and inhuman treatment after the parties failed to present an irreconcilable differences divorce judgment to the Court. Again, John Shavers cites no authority for his contention.

On May 29, 2001, this matter went to trial on the issue of the divorce. The parties tried the case for two and a half days at which time they requested that the court allow them to attempt to negotiate the settlement of the matter. (T3. 328) At the outset of the trial on May 29, 2001 the parties entered into a *Consent to Divorce on the Grounds of Irreconcilable Differences and Request that the Court Decide Controverted Issues Between the Parties*. (R3. 79-81)(Appellee's RE.82) Each party executed this document and it was approved by the Court. (T3. 12) In this document, for purposes of the divorce trial, the parties agreed to withdraw their grounds for divorce and allow the Court to enter the divorce on the grounds of irreconcilable differences and decide the contested issues.

After more than two days of trial, and a day and a half of settlement negotiations, the parties

reached a settlement agreement. (T3. 328) The parties dictated the complete terms of the settlement agreement into the record and attached the written terms as an exhibit to the settlement agreement. At the time that the parties dictated the terms of the agreement into the record, the parties, for the specific purpose of making the settlement binding without the need for a signed property settlement agreement, agreed that Ann Shavers would go forward with her divorce on the grounds of habitual cruel and inhuman treatment. The parties agreed that the divorce would be granted by the Court on those grounds. (T3. 328-29)

John Shavers was represented by counsel throughout this procedure. John Shavers specifically agreed to this procedure, and John Shavers corroborated the elements of the divorce to the Court. (T3. 328- 344) Further, after these issues were addressed on the record in the presence of Mr. Shavers, the Court specifically inquired of him regarding the settlement agreement and the granting of the divorce on the grounds of habitual cruel and inhuman treatment.

THE COURT: All right. Mr. Shavers, same series of questions. You've heard the settlement announcement read into the record with additions and corrections. Is that true, sir?

MR. SHAVERS: That's correct.

THE COURT: Do you understand it?

MR. SHAVERS: Yes, I do.

THE COURT: Do you agree with it?

MR. SHAVERS: Yes I do.

THE COURT: Do you understand, sir, that you are bound by it right this minute even though it might take a day or two for the attorneys to get me the paperwork?

MR. SHAVERS: Yes.

THE COURT: All right, sir. Do you have any questions of the Court?

MR. SHAVERS: No, sir.

THE COURT: Have you had and ample opportunity to confer with your lawyers about the settlement?

MR. SHAVERS: Yes, sir.

THE COURT: You are satisfied with their services on your behalf?

MR. SHAVERS: Yes.

(T3. 343-44). It is clear from this examination that John Shavers consented to the divorce on the grounds of habitual cruel and inhuman treatment and to the terms of the settlement. Further, his three attorneys at no time objected to this procedure.

This Court has consistently held that appellate courts will not put trial courts in error for contentions not presented first to the trial court for resolution, and an issue not presented to the trial court cannot be first argued on appeal. *New Bellum Homes, Inc. v. Swain*, 806 So. 2d 301, 305 (Miss. App. 2001) citing, *Chassaniol v. Bank of Kilmichael*, 626 So.2d 127, 133-34 (Miss.1993). See also *Seaney v. Seaney*, 218 So.2d 5 (Miss.1969); *A.H. George And Co. v. Louisville & N.R. Co.*, 88 Miss. 306, 40 So. 486 (1906). John Shavers did not raise this issue with the trial court at trial nor was it raised by post trial motion. This issue has been waived.

Further, while Mississippi law now permits a party to appeal a consent judgment in chancery court, consent agreements are not ordinarily subject to appellate review. *Rushing v. Rushing*, 724 So. 2d 911, 915 (Miss. 1998) citing, *Askew v. Askew*, 699 So.2d 515 (Miss.1997). In the present case, as in the *Rushing* case, John Shavers complains that the Court did not have sufficient evidence to award an divorce on the grounds of irreconcilable differences. Although the Court relied upon the uncontradicted and uncontested testimony of Ann Shavers in this regard heard at both the settlement hearing and at the temporary hearing, no such evidence was required as John effectively conceded the conduct in open Court on the record. The chancellor's grant of divorce on the ground of habitual cruel and inhuman treatment should be affirmed for the foregoing reasons.

## CONCLUSION

John Shavers failed to provide a statement of the issues on this appeal pursuant to either Rule 10 or Rule 28 of the Mississippi Rules of Civil Procedure his contentions should not be considered.

John Shavers has failed to support his contentions with citation to authority and the Court should not consider the contentions on this appeal.

The chancery court did not lose jurisdiction of this divorce action until the appeal of the divorce Judgment of September 2001. John Shavers' appeal of the contempt provisions of the October Order did not divest the chancery court of jurisdiction, nor did the filing of the supersedeas bond for that appeal on January 5, 2001. The chancery court did not lose jurisdiction of this case when John Shavers improvidently removed the Motion for Citation of Contempt of December 14, 2000 and the stay of 28 U.S.C. § 1446 had no application to the divorce action.

John Shavers consented to an uncontested divorce on the grounds of habitual cruel and inhuman treatment. Evidence on this conduct was placed into the record without objection. Further, without objection, the Court relied on the previous testimony of the parties given at the temporary hearing in granting the divorce on habitual cruel. There is sufficient evidence in the record to support the finding of habitual cruel and inhuman treatment and as Shavers raises this issue for the first time on appeal he cannot now be heard to complain.

Finally, Ann Shavers requests this Court grant her attorneys fees and all costs in having to respond to this appeal.

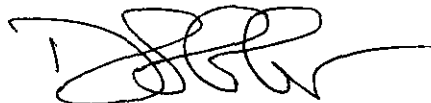
Respectfully submitted, this the 13 day of June, 2002.

ANN SHAVERS, APPELLEE  
BY:   
D. SCOTT GIBSON

CERTIFICATE OF SERVICE

I, D. Scott Gibson, do certify that I have served the foregoing Brief of Appellee on John Shavers by mailing same to B.G. Perry, attorney for Appellant at his usual mailing address of P.O. Box 815 Southaven, MS 38671 postage fully prepaid; and on the Honorable Walter Wes Teel, Chancellor, at his usual mailing address of P. O. Box 404 Gulfport, MS 39502.

This the 13 day of June, 2002.



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