

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

---

**BHAVNA KUMAR**

**APPELLANT**

**VS.**

**NO. 2006-CA-01140**

**ARVIND M. KUMAR**

**APPELLEE**

---

**REPLY BRIEF OF APPELLANT**

---

**ORAL ARGUMENT REQUESTED**

**APPEAL FROM THE CHANCERY COURT  
OF LOWNDES COUNTY, MISSISSIPPI**

**Mark A. Chinn, MSB # [REDACTED]  
Lee Ann Turner, MSB # [REDACTED]  
Matthew Thompson, MSB # [REDACTED]  
CHINN & ASSOCIATES, PLLC  
4316 Old Canton Road  
Post Office Box 13483  
Jackson, Mississippi 39236  
Telephone: (601) 366-4410  
Facsimile: (601) 366-4010**

**Attorneys for Appellant,  
Bhavna Kumar**

## TABLE OF CONTENTS

Table of Contents.....	i
Table of Cases, .....	i
Argument	
<b>I.    Clarification of the Facts</b>	
A.    Arvind Attempts to Mislead this Court Regarding the Evidence Presented at Trial.....	1
B.    Police Reports and Hospital Records Corroborate the Testimony and Evidence at Trial .....	3
C.    The Requests for Admissions were “Conclusively Established” for all Purposes .....	4
D.    Multiple Arguments and Conclusions in Arvind’s Brief are not Supported by any Authority .....	5
<b>II. Arvind was Habitually Abusive and Cruel to Bhavna.....</b>	<b>5</b>
Conclusion.....	6
Certificate of Service.....	6

## TABLE OF CASES

	<b>Page No.</b>
<b>Mississippi Cases</b>	
<i>Fisher v. Fisher</i> , 771 So.2d 364 (Miss. 2000).....	5
<i>Grey v. Grey</i> , 638 So.2d 488 (Miss. 1991).....	5
<i>Lawrence v. Lawrence</i> , 2006 WL 2474029, (Miss. App., August 29, 2006).....	3
<i>Richard v. Richard</i> , 711 So.2d 884, (Miss 1998).....	4
<i>Rawson v. Buta</i> , 609 So.2d 426 (Miss.1992).....	4

## **I. CLARIFICATION OF THE FACTS**

### **A. Arvind Attempts to Mislead this Court Regarding the Evidence Presented at Trial**

There are several major factual inaccuracies in Arvind's brief that should be clarified. Foremost of these inaccuracies is Arvind's allegation that Bhavna did not provide corroborated proof at trial. Arvind proclaims that Bhavna's witness, Kusum Patel "never witnessed any abuse" and Bhavna's testimony was uncorroborated. (Brief of Appellee, p.5, 6). These statements are absolutely untrue.

Upon examination of Kusum Patel, it was established that **Ms. Patel saw the bruises and abrasions on Bhavna, left by Arvind's habitual abuse.** (Tr. 13, 24)(emphasis added). Ms. Patel testified she saw Bhavna's busted lip and when she and Bhavna spoke, Bhavna sounded "unhappy," that Bhavna and Arvind argued "all the time," that Arvind would leave Bhavna to do everything alone, and that when she was pregnant "Arvind hit her." (Tr. 13, 24).

Ms. Patel continued her testimony stating that Arvind punched Bhavna in the face requiring hospitalization in 1995. (Tr. 13). On multiple occasions Bhavna fled the marital home to take refuge with her sister in Atlanta. (Tr. 13-14). Ms. Patel specifically testified to seeing the bruises and busted lip that Bhavna suffered due to Arvind's abuse. (Tr. 24).

Q: Did you ever see any marks on her or bruises or anything like that?

A: **Yes. I seen it.** When she came in 1995, **I seen the mark.**

Q: Can you describe what you saw?

A: **Her face is bruised. Her lip is broken.** She is - - you know, you can tell **she is bleeding,** because that day she went to the hospital. Thereafter,

when she comes out from hospital, she pack up with the kids. She packs up her stuff, and she just came to Atlanta, and I saw her that day.

(Tr. 24)(emphasis added).

Q: From your personal observation, what have you seen of your sister, has her marriage to Arvind been a happy one?

A: No.

Q: What makes you think that?

A: Well, when I talk to my sister, she never sound happy... **She always have a fear that he might hit her.**

Q: Have you ever been aware of your sister seeking medical treatment for injuries that Mr. Kumar caused?

A: Yes. 1995, **Arvind hit her in the face, and she went to the hospital.**

(Tr. 13-14)(emphasis added).

Arvind also attempts to misconstrue Bhavna's testimony. Arvind cites (Tr. 34, 35) and argues these hold that Bhavna started physical fights, however, a close examination reveals that Bhavna clearly testified that she did not start the physical abuse Arvind subjected her to. She merely took the measures necessary to defend herself as best she could. (Tr. 134, 135). She even testified to attempting to defuse the situation by use of a "play fight" instead of a "fight-fight," hoping to avoid a physical altercation. (Tr. 135). Arvind, in his brief, attempts to again punish Bhavna for a "play fight" which was Bhavna's desperate effort to break free from the cycle of abuse. (Brief of Appellee, p.6)

Further, Arvind misconstrues the episode which forced Bhavna to abandon the marriage for the final time, when Arvind whipped Bhavna with his belt. Arvind argues that the parties reconciliation efforts prior to this caused any grounds Bhavna had to be condoned. (Brief of Appellee, p.8). Arvind provided no authority to support this and this assertion is contrary to case

law. Condonation, even if a true condonation exists, is conditioned on the offending spouse's continued good behavior. If the offending party does not mend his or her ways and resumes the prior course of conduct, there is a revival of the grounds for divorce. *Lawrence v. Lawrence*, 2006 WL 2474029, (Miss. App., August 29, 2006), *citing Manning v. Manning*, 160 Miss. 318, 321, 133 So. 673, 674 (Miss. 1931).

In practical effect, condonation places the offending spouse on a form of temporary probation. Any subsequent conduct within a reasonable time after resumption of cohabitation which evidences an intent not to perform the conditions of the condonation in good faith, may be sufficient to avoid the defense of condonation, even though the conduct so complained of in and of itself may not be grounds for divorce. *Lawrence*, 2006 WL 2474029, (Miss. App., August 29, 2006), *citing Armstrong v. Armstrong*, 32 Miss. 279, 283 (1856). An entire course of conduct rule applies. A party's conduct both before and after the alleged condonation can be joined together to establish the cause for divorce. *Lawrence*, 2006 WL 2474029, (Miss. App., August 29, 2006), *citing Armstrong v. Armstrong*, 32 Miss. 279, 283 (1856). Cf. *Bias v. Bias*, 493 So.2d 342, 343 (Miss. 1986).

Arvind's mischaracterization of Ms. Patel's role as a witness is disingenuous. She witnessed the bruises, abrasions, scratches, busted lips, marks, terror and depression all suffered by Bhavna, at the fists of Arvind. Likewise, Arvind's mischaracterization of Bhavna's testimony is not accurate, nor supported by the record.

#### B. Police Reports and Hospital Records Corroborate the Testimony and Evidence at Trial

Multiple document were entered into evidence at trial to further demonstrate Arvind's abuse of Bhavna. Numerous exhibits demonstrated Arvinds multiple arrests for violent behavior on

Bhavna as well as others, including a Columbus Police Officer. (Ex. 6, 9). Hospital records demonstrated Bhavna's, long-suffering, complaints of marriage, and depression and sense of helplessness as she even considered harming herself to escape Arvind's habitual, relentless abuse. (Ex. 5).

Bhavna was embarrassed and ashamed of the abuse she suffered at the hands of Arvind. Arvind was physically and verbally abusive and Bhavna lived every day in fear. (Tr. 29, 40). Bhavna sought counseling for the problems in her marriage, to no avail. Medical records demonstrated that Bhavna reported a "long history of marital problems, including emotional and physical abuse, and felt she had no other way out except suicide." (Tr. 38, Ex. 5). Every day of her marriage Bhavna feared the harm that was certainly to come.

C. The Requests for Admissions were  
"Conclusively Established" for all Purposes

Arvind's argument also completely ignores the significance and legal weight the numerous requests for admissions that were deemed admitted. These admissions "conclusively established" that Arvind had affairs during the marriage, physically abused Bhavna, tried to strangle her, hit her, yelled and cursed at her, stayed away from the home overnight and longer without notice to her, whipped her with a belt, punched her, caused her to be in fear of her personal safety, caused the marriage to be unbearable, and caused her to suffer mental abuse. (Tr. 24, 58-59, Ex. 4, R. 277, *Judgment*, June 5, 2006, pg. 4). All of these admissions regarding behavior and conduct have an impact on a cruelty based divorce. *Richard v. Richard*, 711 So.2d 884, 888 (Miss. 1998)(citing *Rawson v. Buta*, 609 So.2d 426, 431 (Miss.1992))

Arvind attempts to argue that adultery, along with the other admissions, cannot be cruelty, but offers no authority to support that argument. In fact Arvind cites no authority in his brief save

for the Judgment of the Chancery Court and the two cases the chancellor cited. In fact adultery, along with a host of other revolting behavior may be considered in a cruelty base divorce. *Id.*; see *Fisher v. Fisher*, 771 So.2d 364 (Miss. 2000).

D. Multiple Arguments and Conclusions in Arvind's  
Brief are not Supported by any Authority

It is well founded law that “any argument not supported by authority need not be considered. *Grey v. Grey*, 638 So.2d 480, 491 (Miss. 1994). Throughout Arvind’s brief, he makes factual and legal assertions with no authority cited to the record or case law precedent, as such these arguments must not be considered by this Court. Only one footnote in the brief is cited and the citation listed does not support the assertion made therein. Only two cases were cited in the brief, both cited by the Chancellor in the Court’s Final Judgment. Numerous legal conclusion and assertions are made throughout the brief with no citation to any authority, in as much, same must not be considered by this Court on appeal. *Id.*

**II. Arvind was Habitually Abusive and Cruel to Bhavna**

The Chancellor found that Arvind slapped Bhavna, struck her in the face busting her lip, Arvind grabbed her throat and whipped her with a belt. (Tr. 24, 58-59, Ex. 4, R. 277, *Judgment*, June 5, 2006, pg. 4).

The Chancellor found that violent events of “arguing and fussing,” including “pushing, shoving, and hitting” occurred two to three times each year during the course of the marriage and even in recent years those same violent outbursts continued at least once per year. (R. 278-79, *Judgment*, June 5, 2006, pg. 5-6). The Chancellor also noted that the testimony reflected that these violent outbursts occurred habitually and were witnessed by the children. (R. 279, *Judgment*, June 5, 2006, pg. 6). The Chancellor even cited testimony that Arvind had threatened Bhavna’s life “on three occasions.” (R. 279, *Judgment*, June 5, 2006, pg. 6).


### CONCLUSION

Bhavna Kumar has suffered through an abusive, terrifying marriage. Bhavna has been struck, cursed, whipped, beaten, battered and bruised. She has been hospitalized, victimized and terrorized. Bhavna's is supported by requests for admissions "deemed admitted", witness testimony, medical reports, police reports, photographs, severe injuries, bruises and the destruction left in Arvind's wake. Bhavna has sought relief through the police, medicine and the Courts. Arvind's relentless, continuous and habitual abuse created a reasonable apprehension of such danger, rendering the relationship unsafe for Bhavna.

Respectfully Submitted,

Bhavna Kumar

By: 

Matthew Thompson, MSB # 

### CERTIFICATE OF SERVICE

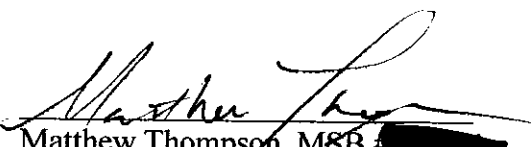
The undersigned does hereby certify that this day a true and correct copy of the above and foregoing instrument has been served, via U.S. Mail, postage prepaid, to:

Wilbur O. Colom  
Ed Pleasants, III  
The Colom Law Firm, L.L.C.  
200 Six Street North, Suite 102  
Post Office Box 866  
Columbus, Mississippi 39703-0866

Retired Chancellor Robert L. Lancaster  
14th District Chancery Court  
P.O. Box 884  
Columbus, Mississippi 39703-0884

Betty Sephton, Supreme Court Clerk  
Via Hand Delivery

SO certified, this the 18<sup>th</sup> day of June, 2007.

  
Matthew Thompson, MSB # 