

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
2006-CA-01237**

**THOMAS WILLARD POOL, JR.**

**APPELLANT**

**VS.**

**SHERRY CLAY POOL**

**APPELLEE**

**APPELLANT'S REPLY BRIEF**

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

**(Oral Argument Requested)**

**PREPARED BY:**

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## **TABLE OF CONTENTS**

Table of Contents.....	Page 2
Argument.....	Page 3
Conclusion.....	Page 7
Certificate of Service.....	Page 8

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**ARGUMENT**

In her brief, Appellee (hereinafter “Sherry”) makes repeated references about the Appellant’s (hereinafter “Buddy”) “penile implant” and purported relationship with an individual who is “openly gay.” (Appellee’s brief p. 3, ¶ 3; p. 27, ¶ 7, 8, 9, 10, 11.) Interestingly, Sherry’s record excerpts do not contain the pertinent pages of the transcript pertaining to this testimony. A full review of the transcript in context will show that, this line of questioning began on page 36 of the transcript, line 6. (Reply RE p.1, l. 6) and continues through transcript page 42, line 25. (Reply RE p. 7, l. 25). Sherry’s counsel began asking about the necessity of a penile implant and then began to ask Buddy about some photographs. Buddy’s counsel promptly objected, as the photographs were a discovery violation in that they had been asked for in discovery and had not been provided. (This further bolsters Buddy’s position for a continuance.) In fact, Sherry’s counsel admitted that the photographs had been asked for and had not been produced. (Reply RE p.2, ll. 14-17) Based upon that, the Court sustained the objection (Reply RE p. 2, ll. 20-21). Sherry’s counsel then asked a question regarding whose house had Buddy stayed at in February, 2007. (Reply RE p. 2, ll. 25-26). Buddy’s counsel again objected on the basis that discovery responses had not been supplemented since April, 2005 and therefore, this testimony constituted trial by ambush. Thereafter followed many lines of objections (Reply RE p. 3, l. 7 - p. 4, l. 15) The substance of that objection by Buddy’s counsel was that, on the separate maintenance claim, allegations of fault which

cause the separation had to exist at or prior to the time of separation, not in February of 2007, some three (3) months before trial. The Court erroneously overruled the objection. (Reply RE p. 4, ll. 18-22) Sherry's counsel then asked what the sexual preference of an acquaintance of Buddy's was. (Reply RE p. 5, ll. 6-7) Buddy's counsel again objected on the grounds of relevance (Reply RE p. 5, ll. 8-9) and because the discovery responses had never been supplemented (Reply RE p. 5, 14-19). The Court overruled the objection and instructed Sherry's counsel to lay a foundation of personal knowledge (Reply RE p. 6, ll. 5-10) That overruling of the objection by the Court was plain error and clearly erroneous. Sherry's counsel then began laying a foundation to imply that Buddy was having a homosexual relationship with Harold. (Reply RE p. 6, ll. 17-29). Finally, Buddy's counsel again objected to this irrelevant line of questioning, which was also a blatant discovery violation and the Court finally got it right and sustained the objection as an irrelevant fishing expedition. (Reply RE p.7, ll. 23-24). (Buddy maintains it was also a discovery violation and overly prejudicial.)

By taking these isolated quotes out of context and by relying upon information the substance of which was ruled irrelevant and inadmissible at the trial of this matter, Sherry has again failed to show candor towards this tribunal in her brief. It would be also interesting to note that in her brief, Sherry makes no attempt to rehabilitate her credibility. In fact, her credibility is exactly what is at issue. She is entirely unbelievable. In order for the Trial Court to rule in her favor, her credibility was paramount since it was her word alone upon which the verdict was based. Buddy would have like for Sherry to explain certain inaccuracies in her testimony, particularly why she said her mother was dead in her deposition. It is a violation of all the rules of equity, as well as against the traditional notions of fair play and substantial justice for Sherry to

include this slanderous and prejudicial information in her brief, out of context and knowing it had been ruled inadmissible at the trial of the matter. It is a blatant attempt to inflame this Court against Buddy with scurrilous accusations. As such, Sherry should be subject to sanctions for filing a false and misleading brief.

As to Sherry's response to Buddy's complaint that the interrogatories and requests for productions were never properly answered, it is interesting to note that in her brief, nowhere does Sherry cite any case law which would tend to show that her interrogatories and request for production of documents were properly answered. Mississippi Rule of Civil Procedure 33 (b) applies to answers to interrogatories and states in part, "Each interrogatory shall be answered separately and **fully** in writing under oath." M.R.C.P. 33 (b)(1). By her own admission, Sherry did not fully answer the interrogatories and requests for production, as the only documents produced were prior to the separation, nor did she timely supplement those interrogatories or request for production of documents. Additionally, we have seen how Sherry attempted to use the Court's excusing her discovery violations as an opportunity to conduct the trial by ambush by bringing up these false and scurrilous accusations of homosexual conduct against Buddy at the trial of this matter. It is well settled law in the State of Mississippi that there can be no relief granted without a basis in law. Since Sherry has filed no case law in support of her contention that her discovery responses were fully, completely, truthfully, and adequately answered, she is entitled to no relief. Furthermore, the primary remedy for discovery violations is to grant the moving party a continuance so as to have full discovery and avoid trial by ambush. Clearly, the Court abused its discretion in denying the continuance and as such, Buddy is entitled to a reversal on that ground.

In her argument in support of the award of separate maintenance, Sherry never disputes that Buddy continued to provide for her after the separation. This is an essential prong of the separate maintenance test and because it has not been rebutted, Sherry cannot prevail. Furthermore, Sherry makes no argument and cites no case law that would show that she is entitled to separate maintenance when her conduct during the separation is such that she is spending three (3) consecutive nights in the home of another man. Her weak allegations that she had a witness who would coöperate her obviously perjured testimony is insufficient for her to prevail on this point. That witness did not testify at trial and was not subject to cross examination and therefore, those allegations are not supported by the record and are totally without merit. This Court cannot sanction an award of separate maintenance in a case where the movant for separate maintenance has conducted themselves in the way that the video tape clearly shows Sherry conducted herself during the separation. As such, Buddy is entitled to a reversal on the award of separate maintenance.

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
**CONCLUSION**

For the foregoing reasons, the judgment of the Chancery Court of Lauderdale County should be reversed and Buddy should be granted a divorce on the grounds of adultery and the case remanded to the Court for an equitable division of marital assets. The award for separate maintenance should be reversed and rendered and Sherry should be ordered to disgorge all payments made to her during the pendency of this appeal to Buddy. The award of attorney's fees should be set aside, as clearly, Sherry was at fault and had adequate resources with which to pay her own attorney. Further, Sherry should be subject to sanctions for her false and misleading brief, which failed to show candor towards this tribunal and relies upon irrelevant evidence which was inadmissible at trial of this matter and which was improperly cited to this Court.

Respectfully submitted, this the 20<sup>th</sup> day of April, 2007.

THOMAS WILLARD POOL, JR.  
APPELLANT

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**CERTIFICATE OF SERVICE**

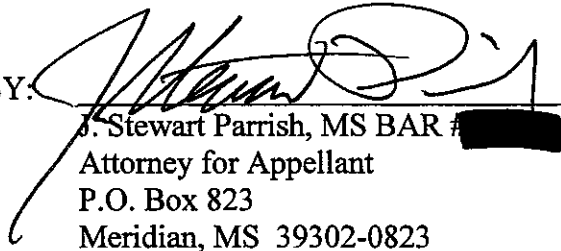
I, J. Stewart Parrish, Attorney for Appellant, do hereby certify that I have delivered by placing a copy of Appellant's Reply Brief to the United States Mail, postage prepaid, addressed to the following individuals:

Honorable Judge Sarah Springer  
Former Lauderdale County Chancellor  
P.O. Box 534  
Pattison, TX 77466

Honorable Bob Bresnahan  
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So certified, this the 20<sup>th</sup> day of April, 2007.

BY: \_\_\_\_\_

  
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