

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CAUSE NO. 2006-CA-01498**

JAMES B. YELVERTON

APPELLANT

VERSUS

RHONDA H. YELVERTON

APPELLEE

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

**BRIEF OF APPELLEE
RHONDA H. YELVERTON**

ORAL ARGUMENT REQUESTED

**D. SCOTT GIBSON
ATTORNEY AT LAW
MS BAR NO 8460
P.O. BOX 208
GULFPORT, MS 39502
(228)863-0900
ATTORNEY FOR APPELLEE,
RHONDA YELVERTON**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CAUSE NO. 2006-CA-001498**

JAMES B. YELVERTON

APPELLANT

VERSUS

RHONDA H. YELVERTON

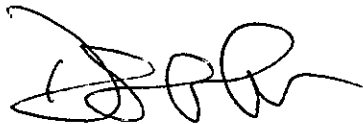
APPELLANT

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. James B. Yelverton, | Appellant |
| 2. Honorable Carter Bise | Chancellor |
| 3. Rhonda Yelverton | Appellee |
| 5. D. Scott Gibson | Attorney for Appellee |
| 6. Michael Malouf,
Melissa Malouf | Attorneys for Appellant |

So certified on this the 11 day of July, 2007.



D. SCOTT GIBSON
ATTORNEY FOR APPELLEE,
RHONDA YELVERTON

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT.....	2
The Chancellor was not manifestly wrong in denying Jim Yelverton’s request for modification because Jim Yelverton came into Court with unclean hands.....	2
CONCLUSION.....	4

TABLE OF AUTHORITIES

<i>Brennan v. Brennan</i> , 605 So. 2d 749, 752 (Miss. 1992).....	3
<i>Jerome v. Stroud</i> , 689 So.2d 755, 757 (Miss.1997).....	2
<i>Kincaid v. Kincaid</i> , 57 So. 2d 263 (Miss. 1957)	3
<i>Lane v. Lane</i> , 850 So. 2d 122 (Miss. Ct. App. 2002).....	3
<i>Sandlin v. Sandlin</i> , 699 So. 2d 1198, 1203 (Miss. 1997).....	2
<i>Setzer v. Piazza</i> , 644 So. 2d 1211, 1216 (Miss. 1994)	3

SUMMARY OF THE ARGUMENT

The Chancellor was not manifestly wrong in denying Jim Yelverton's request for modification because Jim Yelverton came into Court with unclean hands.

The chancellor found that Jim Yelverton had shown a material change in circumstances, however, due to Jim Yelverton's conduct the chancellor found that Jim had unclean hands and did not grant him his requested modification.

Just days before the hearings on the instant actions, Rhonda's contempt action and Jim's motion for modification on March 27, 2006, Jim Yelverton received the sum of \$ 34,000.00 as an income tax refund. He attributed at least 75% of these funds to his income. At the time that he received these funds, Jim was in contempt for failure to pay child support and alimony as a result of the Judgment of the Chancery Court of July 31st 2004. (T. 27) Further at the time he had received these funds he had made income of \$ 3,000.00 to \$ 4,000.00 from selling cars and \$ 7,000.00 from selling chicken wings. (T. 39-40). In spite of receiving this income from December 31, 2005 to the date of the hearing, March 27, 2006, Jim Yelverton paid no sum, zero (0.00) dollars, to Rhonda Yelverton for child support or alimony. He made absolutely no attempt to meet his obligations required by the Court. While at the time he was receiving this income and not paying any, zero, support, he had a race car, signed a lease for a new truck and his wife, Tracy, was driving a 2005 Hummer. (T. 42).

The chancellor did not err in refusing to a grant Jim Yelverton relief, he had unclean hands.

ARGUMENT

This is a modification action arising from a divorce Judgment. The standard of review employed in domestic relations cases is well-settled. Chancellor's have broad discretion. A chancellor's findings and his determinations will not be disturbed unless it can be determined that the chancellor actions are manifestly wrong, constitute an abuse of discretion, or represent the application of an erroneous legal standard. *Sandlin v. Sandlin*, 699 So. 2d 1198, 1203 (Miss. 1997)

Further issues of alimony and support are discretionary, and a reviewing Court will reverse only if a chancellor is manifestly in error, if the factual findings of the chancellor are manifestly wrong or clearly erroneous or if the chancellor has applied an erroneous legal standard. *Lane v. Lane*, 850 So. 2d 122 (Miss. Ct. App. 2002). *See also, Jerome v. Stroud*, 689 So.2d 755, 757 (Miss.1997).

The issue in the instant appeal is whether the chancellor was in error in finding that Jim Yelverton came before the Court with unclean hands based on the facts before the Court and thus not entitled a modification of support and alimony.

Jim Yelverton admitted that he had not paid all the support that was owed under the terms of the Judgment of the Court. He admitted that he was in contempt of the Court's Judgment. His defense was that he simply had the inability to pay. He admitted that for the three months leading up to the hearing, while earning various amounts of income and receiving a \$ 34,000.00 refund, he paid nothing, zero, (0.00) child support or alimony.

This Court has settled this law as follows:

...if the husband undertakes to exonerate himself because of his inability to pay his proof must conform to [these] rules, namely: 'That he earned all he could, the he lived economically and paid all surplus money above a living on the alimony decreed

to the wife. And such proof must be made with particularity and not in general terms. In such as case he must show what his earnings were and what his living expense was, including that of those legally dependent on him, but not of any other person. The payment of other debts or expenses will not excuse or justify his default, unless such payment was necessary in order to continue his business or occupation, because his wife's right to alimony is a prior and paramount claim on his earnings. Nor will the fact that his earnings were insufficient to support himself and pay alimony exonerate him if he has other money or property which he could sell or encumber to get money with which to make the payments, even though it may be exempt.

Kincaid v. Kincaid, 57 So. 2d 263 (Miss. 1957).

Jim Yelverton failed to make the required showing entitling him to a modification in the face of his conduct and income. From December 15, 2005 to March 27, 2006, although Jim received some \$45,000.00 income, (a small portion of which, but surely not all, was attributable to his wife, Tracy), Jim Yelverton paid zero dollars, (0.00), for child support and alimony. He did not sell his race car to make any payments and he entered into a \$337.00 per month lease for a new truck. “[N]o person as a complaining party can have the aid of a court of equity when his conduct with respect to the transaction in question has been characterized by wilful inequity.”

Lane v. Lane, 850 So. 2d 122, 126 citing *O'Neill v. O'Neill*, 551 So. 2d 228, 223 (Miss. 1989) and *Brennan v. Brennan*, 605 So. 2d 749, 752 (Miss. 1992). Surely Jim's conduct as settled by the evidence in the record clearly support the finding by the chancellor that was wilful and was inequitable as to his duties and obligations to his children and Rhonda.


Jim did not earn all he could, did not live economically, did not pay all surplus money above a living on the child support and alimony decreed. Jim paid his new wife, Tracy, at least \$1,7000.00, paid his lawyer \$7,000.00, leased a new automobile, paid other expenses and paid zero, (0.00), nothing to Rhonda for support and alimony as ordered by the Court. Beyond any doubt Jim Yelverton's hands were unclean and he was not entitled a modification. *Id. Setzer v. Piazza*, 644 So. 2d 1211, 1216 (Miss. 1994); *Brennan v. Brennan*, 605 So. 2d 749 (Miss.1992)

CONCLUSION

The chancellor did not err in refusing to award a modification to Jim Yelverton. Jim failed to make the requisite showings, he was in bad faith and he came before the Court with unclean hands. The chancellor's Judgment denying Jim Yelverton a modification should be upheld.

Respectfully submitted, this the 11 day of July, 2007.

~~RHONDA H. YELVERTON~~


BY: D. SCOTT GIBSON

CERTIFICATE OF SERVICE

I, D. Scott Gibson, attorney for the appellee, RHONDA YELVERTON,, certify that I have this day served a true and correct copy of the foregoing Brief of Appellee by United State mail postage prepaid on:

Mike Malouf,
Attorney for the Appellant
501 E. Capital Street
Jackson, MS 39201

Chancellor Carter Bise
Court Reporter
P.O. Box 1542
Gulfport, MS 39502

This the 11 day of July, 2007.



D. SCOTT GIBSON

D. SCOTT GIBSON
ATTORNEY AT LAW
MS BAR NO. 8460
P.O. BOX 208
GULFPORT, MS 39502
(228)863-0900

