

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RONALD RODRIGUEZ

APPELLANT / CROSS APPELLEE

VS.

No. 2007-CA-00132

ANNE RODRIGUEZ (ARMSTRONG)

APPELLEE / CROSS APPELLANT

***REPLY BRIEF OF  
APPELLEE AND CROSS-APPELLANT  
ANNE RODRIGUEZ (ARMSTRONG)***

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APPEAL FROM THE CHANCERY COURT  
OF RANKIN COUNTY, MISSISSIPPI

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**ANNE RODRIGUEZ (ARMSTRONG)**

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**ORAL ARGUMENT NOT REQUESTED**

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## ***I. ARGUMENT IN REPLY***

Ronnie did not file a brief in response to Anne's cross-appeal.

The Supreme Court of Mississippi has held repeatedly that "failure to file a brief is tantamount to a confession of error and will be accepted as such unless the reviewing court can say with confidence, after considering the record and brief of the appealing party, that there was no error." *Selman v. Selman*, 722 So. 2d 547, 551 (Miss. 1998).

A court in review is not required to reverse for failure to file a responsive brief. However, if an appellant's (or cross-appellant's) argument creates at least "enough doubt in the judiciousness of the trial court's judgment that the Court cannot say with confidence that the case should be affirmed," then the appellate court should not affirm. *Selman*, 722 So. 2d at 551 (quoting *Muhammad v. Muhammad*, 622 So. 2d 1239, 1242 (Miss. 1993)).

A review of both the record and Anne's cross-appeal brief raises more than enough doubt in the judiciousness of the trial court's judgment to cause this Court to reverse and remand the financial issues of equitable distribution, alimony, and attorney fees.

The need for a reversal and remand of these financial issues becomes even more obvious given the demands of *Brooks v. Brooks*, 652 So. 2d 1113, 1119 (Miss. 1995) (holding verbatim adoption of findings of fact and conclusions of law prepared by one litigant's attorney must be analyzed "with greater care" and subjected to "heightened scrutiny").

This Court should reverse and remand the issues of equitable distribution, alimony, and attorney fees for proper consideration by the trial court.

## II. CONCLUSION

In conclusion, there are four issues to this appeal.

The first issue, raised by the Appellant and Cross-Appellee, Ronald Rodriguez, concerns the fault ground upon which the divorce was granted. On October 9, 2006, the trial court entered its *Findings of Fact and Conclusions of Law*, finding unequivocally that Ronnie made admissions of adulterous behavior and concluding unequivocally that Anne met her burden of proof to establish her fault ground. The trial court relied upon Ronnie's multiple admissions of adultery. The court's reliance is proper and in keeping with established caselaw: an admission of adultery is sufficient prove adultery grounds. Thus, the arguments raised by the Appellant are without merit. This issue should be affirmed.

The second, third, and fourth issues, each raised by the Appellee and Cross Appellant, Anne Rodriguez (Armstrong), concern the financial issues of the divorce, namely, equitable distribution, alimony, and adultery. On December 22, 2006, days before retirement, the chancellor entered his *Opinion and Order*, which was a word-for-word adoption of Ronnie's attorney's proposed "Opinion and Order". The court's adopted conclusions of law of the December 22, 2006, *Opinion and Order* were not properly decided, were not legally adequate, and were not considered in response to the evidence presented at trial. The appellate court should thus reverse and remand these financial issues of equitable distribution, alimony, and attorney fees for proper consideration by the trial court.s

Respectfully submitted,  
Anne Rodriguez (Armstrong), Appellee and Cross-Appellant

BY:   
TRESA B. BARKSDALE (MS Bar# [REDACTED])

**CERTIFICATE OF SERVICE**

I mailed, postage prepaid, a true and correct copy of the above and foregoing *Reply Brief* to the following persons:

Michael P. Younger, Esq.  
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1700 W. Government Street, Building B, Suite 102  
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Honorable Thomas L. Zebert, Chancellor (Retired)  
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Pearl, MS 39208

Honorable Dan Fairly, Chancellor  
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Tamara Fulgham, Court Reporter  
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SO CERTIFIED this the 30<sup>th</sup> day of April, 2008.

  
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TRESA B. BARKSDALE (MS Bar# [REDACTED])