

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

2007-TS-00132

RONALD RODRIGUEZ

APPELLANT

VS.

ANNE RODRIGUEZ

APPELLEE

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

BRIEF OF APPELLANT

**Michael P. Younger
Mississippi Bar No. [REDACTED]
Younger Law Firm
1700 W. Government St.
Bldg. B, Ste. 102
Brandon, MS 39042
Telephone: (601) 825-5412
Fax: (601) 825-3949
Attorney for Appellant**

Oral Argument is Requested

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

2007-TS-00132

RONALD RODRIGUEZ

APPELLANT

VS.

ANNE RODRIGUEZ

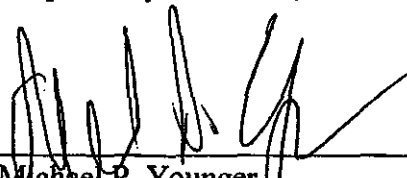
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following parties 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. Ronald Rodriguez, Appellant
2. Anne Rodriguez, Appellee
3. Michael P. Younger, Esq., attorney for Appellant
4. William Wright, Esq., attorney for Appellee
5. Bo Gregg, Esq., attorney for Appellee
6. Honorable Judge Thomas L. Zebert, Rankin County Chancery Court Chancellor

Respectfully submitted,



Michael P. Younger
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities.....	1
Statement of the Issues.....	2
Statement of the Case.....	3
Statement of the Facts.....	4
Summary of the Argument.....	6
Argument.....	7
Conclusion.....	12
Certificate of Service.....	13

TABLE OF AUTHORITIES

<u>Arthur v. Arthur</u> , 691 So.2d 997 (Miss. 1997).....	7
<u>Rushing v. Rushing</u> , 724 So.2d 911 (Miss. 1998).....	10
<u>Jordan v. Jordan</u> , 510 So.2d 131 (Miss. 1987).....	10
<u>Davis v. Davis</u> , 832 So. 2d 492 (Miss. 2004).....	10
<u>Brooks v. Brooks</u> , 652 So.2d 1113 (Miss. 1995).....	11
<u>Martin v. Martin</u> , 566 So.2d 704 (Miss. 1990).....	11
<u>McClelland v. McClelland</u> , 879 So.2d 1096 (Miss. Ct. App. 2004).....	11

STATEMENT OF THE ISSUES

ISSUE ONE

THE LOWER COURT ERRED IN GRANTING A DIVORCE ON THE GROUNDS OF UNCONDONED ADULTERY. THE EVIDENCE ADDUCED AT TRIAL WAS INSUFFICIENT TO SUPPORT UNCONDONED ADULTERY BY CLEAR AND CONVINCING EVIDENCE.

STATEMENT OF THE CASE

CASE

Because this trial record is so short, as far as the grounds for divorce are concerned, the undersigned will not delineate each and every portion of the record that refers to the proof adduced at trial upon which the lower court judge granted a divorce.

This case originated with the wife of William Wright contacting Anne Rodriguez, the Appellee, who informed the Appellee that her husband was having an affair, specifically an affair with his former secretary.

As a result of this conversation, the Appellee contacted William Wright's office and began taping conversations with the Appellant as well as keeping a diary.

On an occasion two days prior to the conversation upon which the grounds for divorce were granted, the Appellee cursed, ranted, and raved at the Appellant and the Appellee, at the trial, admitted that this was very uncharacteristic of her temperament throughout their marriage.

Consequently, several days later she tape recorded a conversation which lasted approximately forty-five (45) minutes.

It is submitted by the undersigned that the tape which was played at trial was insufficient to support a finding of uncondoned adultery by clear and convincing evidence.

STATEMENT OF THE FACTS

The Appellee tape recorded the Appellant several days after they had a confrontation wherein the Appellee has cursed, ranted and raved at the Appellant accusing him of an affair.

These conversations occurred after the wife of William Wright informed Mrs. Rodriguez that she knew or suspected that Mr. Rodriguez was having an affair with his former secretary.

It is important to note that at the trial of this cause, the Appellee admitted that there was no proof that Mr. Rodriguez had an affair with his former secretary and in fact, she had done enough investigation to find out that that allegation was entirely untrue.

However, because of the conversation between Mrs. Wright and Mrs. Rodriguez, Mrs. Rodriguez decided to tape record her husband's conversations after she had contact with William Wright.

In the tape recorded conversation, which was the basis for the finding of the lower court involving uncondoned adultery, Mrs. Rodriguez, for a long period of time kept accusing Mr. Rodriguez of having an affair which he steadfastly refused over and over and over again.

It was noted at the lower court trial that he had been asked the question about adultery at least sixty times before he came to a position in the conversation wherein he just admitted an affair with unknown women just to calm his wife down.

The lower court record would show that the tape recorded conversation involving these admissions were that he finally said, in order to calm his wife down, that he had an affair with two women in New Orleans years and years ago and he could not remember their names nor could he remember the locations wherein they had these "affairs".

In the trial, the Appellant testified that he never had an affair during the course of his marriage and that his admissions as to having an affair with these two unknown individuals were

simply to calm the wife down.

This Court, when listening to the conversation on tape, will see that the Appellant was under extreme pressure by his wife to admit something in order for him to be able to calm the situation down.

In this tape, the Appellant said that he had an affair with two different women years and years ago, but he couldn't remember their names and he couldn't remember the locations and this was consistent throughout the entire portion of the tape after these admissions were made.

Again, it is important to note that the Appellant, during the course of the trial, denied ever having an affair and stated that the only reason that he made the statements that he did on the tape was because it was the only way to get his wife to be quiet.

As the Court would note, she would have asked him approximately sixty (60) times before he made these "alleged" admissions, in order to establish something to be able to file a case for divorce.

It is submitted that the tape itself, as well as the testimony at the trial are totally inconsistent with the current Mississippi law and fall far short of proving uncondoned adultery by clear and convincing evidence.

SUMMARY OF THE ARGUMENT

The undersigned would show that the Chancellor erred in granting a divorce on the grounds of uncondoned adultery on the basis that the alleged admissions made on tape were not clear and convincing; therefore, no divorce should have been granted.

The Court should reverse this matter and render same due to the lack of evidence in this cause.

ARGUMENT

THE LOWER COURT ERRED IN GRANTING A DIVORCE ON UNCONDONED ADULTERY AND ERRED IN GRANTING SAID DIVORCE ON UNCONDONED ADULTERY WITHOUT HAVING CLEAR AND CONVINCING EVIDENCE OF SAME.

The lower court heard in open court testimony that the parties had been married thirty-seven years and the parties have two emancipated, grown children.

Without having to cite any case law at all, it is well recognized that adultery must be proven by clear and convincing evidence of an infatuation for a particular person of the opposite sex and a reasonable opportunity to satisfy that infatuation. Arthur v. Arthur, 691 So.2d 997 (Miss. 1997).

In the case at bar, the Appellee is relying on a forty-five minute audio tape to try to establish her grounds for divorce on the grounds of adultery.

In a close examination of the transcript of this tape and the tape itself, it is absolutely, positively certain that there was no proof of a particular person of the opposite sex, nor was there a clear and convincing bit of evidence of an infatuation for a particular person of the opposite sex and a reasonable opportunity to satisfy that infatuation.

The truth of the matter is that the Appellant, during the course of this taped, recorded conversation was dealing with his wife who had asked him at least sixty (60) times if he had an affair and who he had an affair with and he steadfastly denied having an affair.

The Appellant testified at trial that he finally said that he had had an affair years and years ago with two women in New Orleans, the names of whom he could not remember and the places of where they lived, worked, and where they had an opportunity to commit adultery were unknown to him.

The Appellant testified at trial that the only reason that he made the admissions of having an affair with unknown persons was to calm his wife down.

As has been previously noted in this brief, this whole case got started when the wife of William Wright went to Mrs. Rodriguez and told her that he was having an affair with a particular person who had been a previous secretary of the Appellant.

This conversation led to a series of events wherein the Appellee hired Mr. Wright to represent her in a divorce and also led to the taping of Mr. Rodriguez's conversation which is the subject matter of the finding of the court.

The Appellant testified at trial that on the Thursday before the conversation was taped on the following Saturday, he came home and his wife confronted him with extreme foul language, accusing him of having an affair with two different women, namely Julie Mayer and Deanne Wright, being the wife of William Wright.

On the Thursday conversation before the Saturday taping, the Appellee accused the Appellant of being a "f----ing liar" and directly accused him of having an affair with these women.

The Appellant denied the accusations and as the argument got more heated, the testimony at trial was, "she was not going to take no for an answer."

During the course of the taping on the Saturday after the Thursday conversation, the Appellant stated that he told his wife he had sex years before with two women whose names he couldn't remember and dates he couldn't establish along with not remembering any locations or opportunities to commit adultery.

The Appellant's position all along was that he never had an affair and the only way that he could calm his wife down was to admit to something so that she would get off his back.

In the tape recorded conversation on the Saturday in the first minute and a half of the conversation which appears on pages 4 and 5 of the transcript, it is very apparent that the parties had previously discussed the other women.

Particularly, the following was on tape and on the transcript:

Anne: "No, you don't. You would not have had sex with another woman."

Ronnie: "Yeah."

Anne: "If you still loved me back then you would not have done that."

Ronnie: "There you go."

Anne: "Bring it home to me."

Ronnie: "There you go."

Anne: "Having sex with me having it with a woman like that who is"

Ronnie: "There you go."

Anne: "So trashy."

Ronnie: "There you go."

Anne: "Well, I hope it was worth it."

Ronnie: "There you go."

Anne: "I hope"

Ronnie: "There you go."

Anne: "It was worth it."

Mrs. Rodriguez testified on the witness stand during the course of the trial that she knew now that Ronnie had not had an affair with either Deanne Wright or Julie Mayer and that she was trying to establish her grounds for divorce on two fictitious women who were thought up by Mr. Rodriguez just to get her off his back.

When the tape is listened to closely, it is quite obvious that the Defendant was coerced and basically ambushed by his wife.

In counting the number of times during the tape that the wife demanded to know who he was having an affair with, it turned out to be one hundred seven times in a forty-five minute conversations.

In looking at the Arthur case, there is absolutely no showing of any evidence by a clear and convincing fashion, of an infatuation for a particular person of the opposite sex, nor is there any testimony concerning reasonable opportunity to satisfy that infatuation with a particular person of the opposite sex.

It is plain from the testimony of both parties and the calendar and diaries kept by Mrs. Rodriguez that a couple of days after the Saturday ambush, Mr. Rodriguez told his wife that the two women he talked about were fictitious and that he had only done that to calm her down and also to get her off his back because "she would not take no for an answer."

The Appellee relies on several cases to try to boast her position that uncondoned adultery was proven by clear and convincing evidence.

The Defendant and the lower court cited Rushing v. Rushing, 724 So.2d 911 (Miss. 1998), Jordan v. Jordan, 510 So.2d 131 (Miss. 1987).

These two cases involved testimony at trial wherein the parties admitted, under oath, to having had an adulterous affair. This is far from the case at bar wherein the Appellant denied, under oath, that he had an affair and stated that his reasons for admitting to having had a relationship with two unknown women years in the past was simply to get his wife off of his back.

The lower court also cited Davis v. Davis, 832 So. 2d 492 (Miss. 2004). This case held

that clear and convincing evidence were met wherein under direct examination the husband admitted adulterous conduct.

Again, the Appellant denied under oath at trial that he had an affair and had recanted the tape recorded conversations several days after the conversation with his wife that was recorded.

It is submitted that this is far from clear and convincing evidence. As a matter of fact, there is no evidence at all of uncondoned adultery.

The lower court cites Brooks v. Brooks, 652 So.2d 1113 (Miss. 1995) and also Martin v. Martin, 566 So.2d 704 (Miss. 1990). These cases were again cases where the offending party admitted under oath to having had an adulterous affair.

Again, as has been noted above, the Appellant has never admitted having an adulterous affair and in fact denied same at trial and at his deposition.

The lower court also cites McClelland v. McClelland, 879 So.2d 1096 (Miss. Ct. App. 2004). In this case there were two allegations of the wife's affair plus the wife admitted one adulterous act.

Again, the Appellant has steadfastly denied from day one that he had an affair with anyone and the tape recorded conversation concerning two unknown women at unknown locations years and years ago is simply insufficient to support a granting of a divorce.

CONCLUSION

In the case at bar, it is submitted that the lower court erred in finding clear and convincing evidence on the grounds of uncondoned adultery.

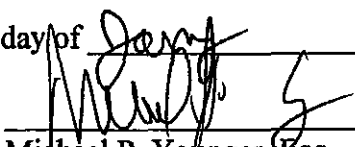
The Appellant, in a very heated tape recorded conversation, when repeatedly asked over one hundred time whether he had an affair, finally made a statement, just to get his wife to calm down, that he had had a relationship with two unknown women years ago in New Orleans. The Appellant could not remember their names, the places that they worked, nor could he recall any type of situation where they had an opportunity to culminate an infatuation. The case law is specific citing Arthur that you have to show by clear and convincing evidence that there was a relationship with a particular person and also a relationship of infatuation with that particular person, and an opportunity to act on that infatuation.

The Appellant, under oath, testified that he had never had an affair and that the tape recorded conversation was simply because "she would not take no for an answer."

The undersigned would submit that the evidence adduced in this cause was contrived and was not supported by sworn testimony in any shape, form or fashion; therefore, does not meet the burdens of Arthur and the other cases cited in the brief.

It is respectfully submitted that the issue of granting a divorce on the grounds of uncondoned adultery be reversed and rendered in favor of the Appellant.

Respectfully submitted this the 7 day of January, 2008.



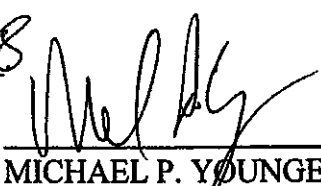
Michael P. Younger, Esq.
Mississippi Bar No. [REDACTED]
Younger Law Firm
1700 W. Government St.
Bldg. B, Ste. 102
Brandon, MS 39042

CERTIFICATE OF SERVICE

I, Michael P. Younger, do hereby certify that I have this date mailed a true and correct copy, via U.S. Mail, of the above and foregoing to:

Thomas L. Zebert, Chancellor
Rankin County Chancery Court
HAND DELIVERED

William Wright, Esq.
Bo Gregg, Esq.
P.O. Box 5003
Jackson, MS 39296-5003

This 7 day of January, 2028


MICHAEL P. YOUNGER