

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO. 2007-CA-00-00816-COA**

**MONTE STUART MORRIS**

**APPELLANT**

**VERSUS**

**LOU ANN JAMES MORRIS**

**APPELLEE**

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

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**REPLY BRIEF OF APPELLANT  
MONTE STUART MORRIS**

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**HERMAN M. HOLLENSED, JR.**  
MSBN [REDACTED]  
**BRYAN NELSON, P.A.**  
Post Office Drawer 18109  
Hattiesburg, MS 39404-8109  
(601-261-4100)

**ATTORNEYS FOR APPELLANT  
MONTE STUART MORRIS**

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## **TABLE OF AUTHORITIES**

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### **STATEMENT REGARDING ORAL ARGUMENT**

The Appellant, Monte Stuart Morris, submits that oral argument is unnecessary, unless the Judges or Justices of the reviewing court believe that oral argument will assist them in construing the parties' arguments and reaching a just decision in this case.

## ARGUMENTS IN REPLY

In his initial brief, Monte offered arguments and authorities in support of his request for relief from the lower court's judgment. In addition to those arguments and authorities, Monte replies herein to certain points raised in the Appellee's brief.

Lou Ann acknowledges that modification of alimony is proper where a divorce has been granted on the ground of irreconcilable differences, and where there has been a material change in circumstances, with either one or both of the parties. Lou Ann argues that the Chancellor's refusal to reduce Monte's alimony was not an abuse of discretion, claiming that Monte failed to establish there had been a material change in circumstances as a result of after-rising circumstances not reasonably anticipated at the time of the divorce. Monte submits that based upon the uncontradicted facts and evidence, he clearly established that there had been a substantial and material change of circumstances since the divorce, some of which were not foreseen, and that the Chancellor failed to acknowledge, recognize, and take those obvious changes into account in reaching his decision. Monte further submits that considering the facts and evidence as a whole, the Chancellor abused his discretion in denying Monte's request for a reduction in his alimony payments.

Lou Ann portrays herself as a poor, pitiful, disabled person, who is able to work but very, very, little, and who steps out of her home only to buy necessities and attend church. Her admissions clearly show otherwise. Lou Ann begins on page six of her brief mentioning that she has Cushing's disease for which she had three surgeries prior to the divorce. While it is true Lou Ann was diagnosed with Cushing's disease, Lou Ann's attorney fails to acknowledge her admission that she is now able to work more in her occupation as a registered dietician, but has consciously chosen not to because she would lose her disability benefits. He further ignores Lou Ann's admission that her claimed disability did not prevent her from taking vacation trips to New York City; Destin,

Florida; Portland, Oregon; Clarksdale, Mississippi; and even China, the year prior to the hearing on the parties' petitions for modification; and that her disability status did not stop her from taking shopping trips, seeing Broadway shows, walking a lot and site-seeing while vacationing. (TT. Pp. 69-71). Such activities are not the kind engaged in by a truly disabled person.

In her brief, Lou Ann complains that she pays for the parties adult son's car note and her eighteen year old daughter's automobile maintenance, insurance and taxes, while ignoring that all of those expenses were accounted for in her sworn financial statement reflecting she still should have at least \$1,626.00 per month of income left over, after paying for all those expenses, as well as all of her and her children's other living expenses. (TT. Ex. 7).

Lou Ann inaccurately represented in her brief that the Chancellor "reduced" Monte's child support obligation for Kevin, when in fact the Chancellor recognized that Monte was no longer required by the divorce judgment or Mississippi law to pay child support for Kevin, since he had turned 21 years of age and is now an adult. Moreover, Lou Ann's brief did not acknowledge that the Chancellor increased Monte's child support payments for Anna Clair to the maximum amount allowed by the statutory guidelines.

Lou Ann also mischaracterized Monte's lifestyle as being "quite extravagant," in an unfounded conclusory statement which obviously is untrue. In an effort to support that statement, Lou Ann merely points to the facts that Credit Bureau Central pays \$1,500.00 per year for Monte's USM Eagle Club dues, which has been the case for many years beginning before the divorce; that Credit Bureau Central pays for tickets for Monte and his family to attend USM athletic events, as it did for many years before the divorce; that Monte is a member of the Hattiesburg Country Club, which has been enjoyed by him and his family, including Kevin and Anna Claire, for many years before and after the divorce; that Monte has an entertainment budget totaling \$700.00 per month

(\$175.00 per week), which is inclusive of his payment of country club dues and all other entertainment expenses; that Monte and Christina own two Sea Doo's reflected on his financial statement as being valued at \$17,000.00 (for the Sea Doos, televisions, and lawn mower); and that Monte and Christina have two Cadillac vehicles. (TT. Ex. 1) Not surprisingly, Lou Ann failed to point out that the Cadillac vehicles are 2003 models purchased used, one of which has 67,500 miles on it and a value of \$20,000.00, and the other having 60,055 miles on it and a value of \$12,000.00. (TT. Ex. 1). Those facts simply do not rise to the level of an "extravagant lifestyle" as exaggerated by Lou Ann. Apparently, Lou Ann will not be pleased unless and until Monte and Christina are driving old model vehicles valued at \$5,000.00 each; that Monte and his family are no longer attending any USM sporting events; that Monte and his children are no longer allowed to use the Hattiesburg Country Club; and that Monte has been relegated to spending nothing on entertainment for himself and his family, so he can support Lou Ann's world travels and provide her with an exorbitant monthly "cushion" in excess of \$1,600.00 per month.

In her brief, Lou Ann disingenuously states that Monte had an increase in income for the year 2006, because his salary was increased by \$20,000.00 (from \$55,000.00 to \$75,000.00 per year), ignoring Monte's uncontradicted testimony that his salary was increased to help with paying his monthly living expenses that he could not pay on a \$55,000.00 salary, and that ultimately Monte's part of the business profits would be reduced at the end of the year because of his increase in salary. In any event, the fact remains uncontradicted that Monte's total income from the family business for 2006 was between \$75,000.00 and \$90,000.00, which is substantially less than the almost \$150,000.00 a year he was making from the family business at the time of the divorce.

Lou Ann's brief inaccurately describes Monte's brief as having leaped into an *Armstrong* analysis without addressing whether there had been a substantial change in circumstances. In doing

so, Lou Ann's counsel completely ignores the undisputed and uncontradicted facts set forth in great detail with page references in Monte's brief. Lou Ann simply refuses to recognize the obvious, that is, that Monte's income has been substantially reduced by at least 40% and more in some years since the divorce, while Lou Ann's income has doubled, and that Monte cannot meet his current reasonable living expenses with his current income while Lou Ann has a large monthly surplus of income after paying her expenses. Lou Ann further fails to acknowledge that Monte could not have foreseen whether Lou Ann would receive Social Security disability benefits at the time of the divorce, and if so, in what amount, when the Social Security Administration denied her claim for disability benefits on two occasions after the divorce. More importantly, at the time of the divorce, Lou Ann was not receiving any Social Security disability payments, and she did not start receiving those payments until over a year after the divorce.

Lou Ann's brief concludes by stating that, "the record simply does not support Monte's contention that his 'reasonable means and living expenses' can no longer be met with his current income." The uncontradicted record without any legitimate dispute shows otherwise, and specifically that: 1) Monte's income dropped several years in a row after the divorce, and in 2006 was only 60% of what it was at the time of the divorce (\$90,000.00 as opposed to \$150,000.00), and 2) after paying reasonable living expenses, Monte goes in the hole about \$2,800.00 per month because of his reduction in business income. On the other hand, the uncontradicted record shows: 1) Lou Ann's income has doubled from about \$30,000.00 per year at the time of the divorce, to \$60,000.00 at the time of the hearing on Monte's petition for modification, 2) Lou Ann's income is now adjusted upward yearly based on inflation, and she now has government sponsored health insurance for the rest of her life, 3) Lou Ann is now able to take several vacations a year from coast to coast, with an additional trip to the other side of the world, despite her claimed disability, and 4)



after paying her monthly expenses as shown on her sworn financial statement, including those for her well travelled lifestyle, and the expenses of her children, she still has over \$1,600.00 per month left over as a "cushion", which she incredibly describes in her brief as "small".

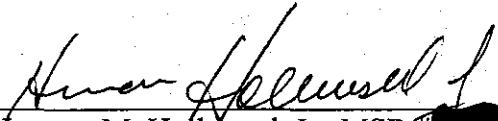

### CONCLUSION

In a nutshell, Lou Ann's real argument is that as long as Monte has a positive net worth, he should be required to pay her a large amount of periodic alimony so she can live debt free and take multiple vacations around the United States and the world, and that Monte should not be entitled to any relief from his alimony payments until he has a zero or negative net worth. That is not and should not be the law. Instead, courts are required to consider the totality of the circumstances at the time of the divorce as compared to the time of the hearing on the petition for modification, and reach a fair and equitable decision. *Anderson v. Anderson*, 692 So.2d 65, 72 (Miss. 1997). If the evidence establishes there has been a clear and substantial material change of circumstances, and it would be unfair for periodic alimony to continue at all, or to continue in the amount awarded at the time of the divorce, the award of periodic alimony should be terminated or reduced to a reasonable amount considering the relevant circumstances. *Beacham v. Beacham*, 383 So.2d 146 (Miss. 1980). Because the undisputed facts show there has been a material substantial change in unforeseen circumstances, and it would be inequitable and unfair for alimony to continue at all, the Chancellor abused his discretion in this case and his decision should be reversed, and Monte's periodic alimony payments should be terminated. Alternatively, the award of periodic alimony payments should be substantially reduced by this Court, or the case remanded for a determination of periodic alimony based on proper consideration of all the relevant facts and the application of proper legal standards.

Respectfully submitted,

MONTE STUART MORRIS, Appellant

By:

  
Herman M. Hollensed, Jr., MSB#   
Of Counsel

BRYAN NELSON, P.A.  
Post Office Box 18109  
Hattiesburg, MS 39404-8109  
Telephone: (601) 261-4100  
Facsimile: (601) 261-4106  
*Attorneys for Appellant*

## CERTIFICATE OF SERVICE

I do hereby certify that I have this date forwarded via First-Class Mail, postage prepaid, the original and three copies of the *Reply Brief of the Appellant* to the Clerk of the Supreme Court of Mississippi for filing and a true and correct copy of the brief to:

David A. Purnford, Esq.  
525 Corinne Street  
Hattiesburg, MS 39401

Chancellor Johnny L. Williams  
Post Office Box 1664  
Hattiesburg, MS 39403-1664

THIS, the 11<sup>th</sup> day of July, 2008.

  
HERMAN M. HOLLENSSED, JR.