

IN THE COURT OF APPEALS OF MISSISSIPPI

CHARLES BOUGARD

Appellant / Defendant

VS.

Case #2007-CA-00835

MARY BOUGARD

Appellee/ Plaintiff

CERTIFICATE OF INTERESTED PERSONS

This document is to certify that the only persons, associations of persons, firms, partnerships or corporations which have an interest in the outcome of this case are listed below:

(1). Charles Bougard, Appellant

(2). Karen Tyler, Attorney for Appellant

TABLES

Table of Contents

Certificate of Interested Persons	2
--	----------

Tables

Statement of Issues	3
----------------------------	----------

Statement of the Case	4
------------------------------	----------

Summary of the Argument	5
--------------------------------	----------

Argument	6
-----------------	----------

Conclusion	7
-------------------	----------

Table of Cases

Lazarus v. Lazarus	13
Shoffner v. Shoffner	13
Hankins v. Hankins	13
Carite v. Carite	14
Cork V. Cork	14
Moore v. Moore	15
Heatherly v. Heatherly	16
Engel v. Engel	16

Table of statutes and Other Authorities

95-5-1 and Chapters on Mississippi Divorce Law (reference)	
Sixth Amendment of the United States Constitution	17-18
Rules 43 and 60 -Mississippi Rules of Civil Procedure	16-18

Statement of the Issues Presented for Review

- 1. Whether the Chancellor erred in failing to hear all evidence including testimony on the overriding fact that the parties were not validly married at the date of their purported marriage ceremony.**
- 2. Whether the Chancellor erred in failing to make specific findings of fact and law prior to deciding on marital property and alimony issues.**
- 3. Whether Chancellor erred in seeking to enforce a Settlement Agreement which was not voluntarily agreed between the parties.**
- 4. Whether the Chancellor erred in failing to make specific findings of fact regarding the fraud and overreaching tactics of Plaintiff/ Appellee/ Wife in acquiring a mortgage loan in Charles Bogard's name.**
- 5. Whether the procedures applied in the divorce hearing were consistent with the Mississippi Rules of Civil Procedure and principles of basic due process under the United states Constitution, Sixth Amendment.**

Statement of the Case

This divorce appeal arises out of the errors and omissions occurring in the hearing in Chancery Court of Marshall County. The initial case began with the filing of the Complaint For Divorce and Temporary by Mary Bougard (hereinafter referred to as Appellee Wife) against Charles Bougard (hereinafter referred to as Mr. Bougard). The Complaint for Divorce was filed on or about June 16, 2004. In said complaint Appellee Wife alleged Habitual Cruel and Inhuman Treatment, Adultery, and Irreconcilable Differences and grounds. Appellee Wife sought In temporary and permanent relief the following:

- 1. Exclusive use and possession of the home at 838 St. Paul, Byhalla, Mississippi.**
- 2. Alimony.**
- 3. Use of Appellant Husband's 1992 Chevrolet Lumina and 1997 GMC pickup truck.**

- 4. Use of Appellant Husband's 1985 Chevrolet S-10
And 1988 Buick LeSabre**
- 5. Use and possession of her own personal effects.**
- 6. Equitable distribution of Appellant Husband's
retirement account from his job at City of Memphis.**
- 7. Exclusive ownership and interest in Appellee Wife's
own employment retirement account at ICS.**
- 8. Injunctive relief as to coming about her person.**
- 9. Payment of Plaintiff Wife's attorney fees and costs
associated with the divorce proceeding.**
- 10. The actual divorce itself.**

**The Order For Temporary Relief was entered on July 30,
2004 wherein Plaintiff Wife received all of her requests in the
temporary petition. (R. 21-22)**

**On or about August 27, 2004 Attorney Sidney Beck
filed an Answer wherein he denied most of Appellee Wife's
complaint and sought dismissal of the same.**

**On or about September 29, 2004 Appellee Wife filed a Motion
For Citation For Contempt. On or about October 13, 2004 ,
Attorney Beck filed a Motion To Reconsider (the Order for**

Temporary Relief). Attorney Beck stated that Mr. Bougard had no part in accruing the debts on the home and should not be ordered to pay them. On November 3, 2004, Attorney Beck filed an Answer to Motion For Citation For Contempt. In said Answer, Mr. Bougard sought dismissal of the Motion For Citation of Contempt.

On or about December 16, 2004, the Chancery Court issued a Contempt Order requiring Mr., Bougard to pay 506.57 in a house note to Citifinancial and 69.73 in homeowners insurance for a total of approximately \$1,220. Defendant had never had a hearing to ascertain the equity or inequity of holding him for this debt. Had such a hearing been held, the facts would have shown that Mr. Bougard did not play any role in acquiring this debt and that Appellee Wife already had the property before she met Mr., Bougard. Also, she had encumbered the property on her own several times prior to meeting Mr. Bougard. As such, said property could not be considered marital property. Additionally, Mr. Bogard denies ever having signed for the loan with

Citifinancial on June 1, 2001. (See page 33 of the transcript in Volume 3 of the Record.) (See also the actual loan document where the alleged signatures of Mr. Bougard do not match his actual signature which is shown throughout the Record.) Had The Chancellor made findings of fact and conducted a full divorce hearing prior to entering the Order For Temporary Relief on July 30, 2004 (Rec. 21-22) and the Contempt Order on December 16, 2004 (Rec. 52-54), Mr. Bougard would have a full and fair hearing prior to being railroaded into his current situation which is now being appealed. Mr. Bougard was incarcerated on or about May 14, 2005 regarding non payment of the debt to CitiFinancial.

On March 11, 2007, Mr. Bougard filed in Shelby County General Sessions Court contesting the debt to CitiFinancial. (Rec. 120)

On or about October 14, 2006, Attorney Sidney Beck filed a Motion to Withdraw as Counsel. (Rec. 102-103). Attorney Karen Tyler (Mississippi Bar #8167) was substituted as legal counsel for Mr. Bougard on December 8, 2006. (Rec. 112-113).

SUMMARY OF THE ARGUMENT

This appeal is being filed before the Mississippi Court of Appeals. The matter at issue in this case is the Judgment of Divorce which was entered on May 1, 2007. It incorporated the previous Order for Temporary Relief and the previous Order s of Contempt. All of this was a violation of Mr. Bougard's due process right to present evidence and confront witnesses.

The Chancellor erred in the following respects:

- 1. Failure to consider all relevant evidence.**
- 2. Failure to consider the fraud and unclean hands of Appellee Wife Mary Bogard.**
- 3. Failure to apply he proper standards when awarding alimony and when making property distribution.**
- 4. Failure to observe Mr. Bougard's right to a fair trial And representation by an attorney early on in the case (July 30. 2004).**

The divorce decree granted by the Chancery Court Judge of Marshall County Mississippi on May 1, 2007. (Rec. 135) Said

order provided that both parties were duly and lawfully married to each other on or about December 30, 1995 and lived together as husband wife until the date of their separation, occurring on or about May 11, 2004 in Marshall County Mississippi. Said divorce was granted on the grounds of Irreconcilable Differences as provided for in *Mississippi Code Annotated 93-5-2 (1972, as amended) (Rec. 133)*. The Appellant Wife dropped the alleged grounds for the divorce and the parties agreed to the divorce on the grounds of Irreconcilable Differences.

The Judgment of Divorce Order called firstly for Plaintiff Mary Bougard to receive exclusive ownership, use, and possession of the home located at 838 St. Paul, Marshall County, Mississippi. Defendant/ Appellant/ Husband was to execute a quitclaim to carry out the terms of the Court's order. The order made no findings of fact as to why this was considered an equitable decision by the Chancellor.

The attempted agreement/ settlement on May 1, 2007 by

the parties failed when the Appellee Wife's attorney held the threat of incarceration for contempt over Charles Bougard's head. After having been incarcerated in May 2005 for contempt, Mr. Bougard was fearful of further incarceration. In essence, Mr. Bougard has been railroaded throughout this whole proceedings without the opportunity for a full and fair hearing.

ARGUMENT

I. THE CHANCERY COURT ERRED BY FAILING TO HEAR AND CONSIDER ALL RELEVANT EVIDENCE.

A. Mr. Bougard's Lack of Education, Understanding, and Lack of Legal Representation

This fact is very significant in this case. Mr. Bougard's limited education and virtual illiteracy played a role in the initial marriage and the loan made by Appellee Wife on June 1, 2001 for which Mr. Bougard is now being held responsible. Mr. Bougard began offering some of this evidence on or about July 30, 2004 in The courtroom with Amanda Smith as legal counsel for Appellee Wife. At that time, Mr. Charles Bougard did not have legal

counsel. (Rec. 1-41 of the transcript). On page 31 of the transcript, Mr. Bougard acknowledged that he was unaware about the \$47,000 loan made by Appellee and was at work on the date that the loan was made. At this point, the Chancellor held Mr. Bogard liable for the loan, even though he denied having signed for it and had no attorney. Under the circumstances, the Chancellor erred by moving forward with the case under the circumstances.

B. Fraud By Appellee Wife Mary Bougard

Mr. Bougard's testimony on July 30, 2004, without an attorney implicated Mary Bogard in possible fraudulent activity. Rather than requiring further inquiry into this allegation, the Chancellor simply ignored it. (See Record transcript page 39 where the Chancellor simply went on with finding Mr. Bougard liable for the home debt without first allowing Mr. Bougard to obtain legal counsel.) This constituted an abuse of discretion by the Chancellor and a violation of Mr. Bogard's due process rights under the 14th Amendment of the U.S. Constitution.

II. The CHANCERY COURT ERRED BY FAILING TO USE THE PROPER LEGAL STANDARD IN AWARDING PROPERTY RIGHTS AND ALIMONY IN A DIVORCE.

A. Awarding Marital property

The appeals court has held that in order to divide marital property in a divorce action, certain steps have to first take place.

In order for the Court of Appeals to make a meaningful Review of the chancellor's decision in dividing marital property, he must separately consider and make findings of fact as to each of the relevant factors outlined in Ferguson as a prelude to his actual determination; the failure to make such findings is an abuse of discretion that requires reversal and remand. Lazarus v. Lazarus, 841 So. 2d 181 Miss. App. 2003

For purposes of division of marital property, a chancellor must consider, when applicable the following factors: (1) economic and domestic contributions by each party to marriage; (2) expenditures and disposal of marital assets by each party; (3) Market value and emotional value of marital assets; (4) value of non marital property; (5) tax, economic contractual and legal consequences of distribution; (6) elimination of alimony and other future frictional contact between parties; (7) income and earning capacity of each party; and (8) any other relevant factor that should be considered in making an equitable distribution.

Shoffner v. Shoffner, 909 So. 2d 1245 Miss App. 2005

For purposes of equitable distribution at divorce, the first duty of the chancellor is to categorize each asset as either marital or non-marital based upon the evidence presented. Hankins v. Hankins, 866 So. 2d 508 Miss. App. 2004

In the instant case, the Chancellor fails to make findings with regard to all of the relevant factors to be considered in property distribution. Relevant evidence is not addressed. For this reason, the chancellor's decision should be reversed and remanded. In this regard, a case very similar to the Bougard facts was considered at Carite v. Carite, 841 So. 2d 1148, rehearing denied, certiorari denied 842 So. 2d 578 Miss. App where the chancellor failed to completely evaluate the marital estate of former husband and wife in making distribution assets and made erroneous findings. In the Carite case, the Chancellor had failed to consider that wife owned the property before marriage and paid the mortgage alone.

B. Awarding Alimony

The case of Cork v. Cork, 811 So. 2d 427 Miss. App. 2001 gave a succinct outline of the factor to be considered in making

an alimony award. These include:

- (1) income and expenses of parties;**
- (2) health and earning capabilities of parties;**
- (3) needs of each party;**
- (4) obligations and assets of each party;**
- (5) length of marriage;**
- (6) presence or absence of minor children in the home;**
- (7) age of parties;**
- (8) standard of parties, both during marriage and at time of support determination**
- (9) tax consequences of spousal support order;**
- (10) fault and misconduct;**
- (11) wasteful dissipation of assets by either party;**
- (12) any other factor deemed by the court to be just and equitable in connection with the setting of spousal support. (These factors are commonly referred to as the Armstrong factors.)**

See also Moore v. Moore, 803 So. 2d 1214, rehearing denied, and certiorari denied.

In the instant case of Bougard, the Chancellor failed to make an analysis of these factors and a record of his findings of fact and law with respect to them. Without an attorney in July 2004 Mr. Bougard had no protection in the proceedings. Particularly, the court failed to consider the fact that Appellee Wife had greater education than Mr. Bougard (who was virtually illiterate); was aware of his Tennessee children and family at the time of

the Bogard marriage ceremony in Mississippi; and had a history of similar overreaching, gold-digging activity with a prior ex-husband. The Chancellor did not allow an opportunity for this relevant evidence to become a part of the record because no full hearing was held at any point with legal counsel prior to July 2004 when the Order for Temporary Relief was rendered. Attorney Sidney Beck did not appear before the Chancery Court until February 15, 2005. (Rec. 43-47).

III. MR. BOUGARD COULD NOT BE BOUND BY AN AGREEMENT WHICH WAS ENTERED UNDER THE THREAT OF INCARCERATION FOR CONTEMPT.

On April 16, 2007, the attorneys in this case met all morning to try to work out a settlement. However, Mr. Bougard was reminded by the Chancellor that he could be incarcerated for contempt as a carryover of the prior orders in the case. Later Mr. Bougard elected to seek appellate review of the entire matter dating back to the entry of the initial orders in the case at times when Mr. Bougard was unrepresentative.

Under Mississippi law where there is indication of disagreement with the order , even if it is read in open court, the parties cannot be bound. (See Heatherly v. Heatherly , 914 So. 2d 754 Miss. App. 2005.)

See the case of Engel v. Engel, 920 So. 2d 505 Miss. App. 2006 where divorce proceedings resulted in a

grant of divorce on grounds of irreconcilable differences failed to strictly adhere to statutory mandates.

Mr. Bougard cannot be held to the terms of a divorce order on Irreconcilable Differences where no written document was ever prepared and agreed upon.

IV. MR. BOUGARD WAS DENIED HIS RIGHT TO AN ATTORNEY WHEN THE QUASI-CRIMINAL ORDER WAS ENTERED AGAINST HIM ON JULY 30, 2004

According to the record in this case, the Chancellor entered the Order For Temporary Relief against Mr. Bougard on July 30, 2004. (Rec. 21-22) He retained an attorney on or about August 26, 2004 when an Answer was filed to the divorce. Prior to that time, Mr. Bougard did not have legal representation in court when he was questioned by Appellee Wife's attorney on July 30, 2004. At that time the court first held Mr. Bougard liable for the loan with Citifancial, resulting in the ultimate finding of contempt against him (wherein Mr. Bougard was incarcerated in May 2005. The fact that an order was entered against Mr. Bougard without An attorney on July 30, 2004 was a violation of his 6th Amendment right to counsel since the matter was quasi-criminal

in nature.


(See also Miss. Rules Civil Procedure 43 and 60 for a review of other steps to begin to correct the Bogard inequities that began in 2004.)

CONCLUSION

The Chancery Court made significant errors in the decision on May 1, 2007. In reality, this matter began on July 30, 2004 with the Order For Temporary Relief.

In this appeal, Charles Bougard, Appellant, seeks a complete reversal of the Chancery Court decision. Alternatively, he seeks a reversal and remand of the decision with findings of fact and law consistent with the Court of Appeals Order which will be rendered.

Respectfully submitted,



Karen Wilson Tyler, Bar # [REDACTED]
Attorney for Appellant,
Charles Bougard
1231 Tanglewood
Memphis, TN 38114
(901) 276-0392 or (901) 606-5367