

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES MALCOLM HARRIS, JR.

Appellant

VS.

CA
CAUSE NO.: 2007-~~7~~-00873

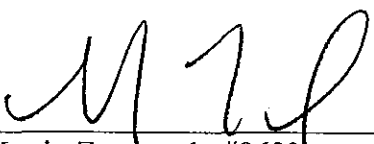
KIMBROUGHLY HARRIS

Appellee

CERTIFICATE OF INTERESTED PERSONS

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 the judges of the Court of Appeals may evaluate possible disqualifications or recusal:

1. Honorable Mitchell Lundy, Judge
2. James Malcolm Harris, Appellant
3. Kimbroughly Harris, Appellee
4. Malenda Meacham, Attorney for Appellant
5. Anne Jackson-Hodum, Attorney for Appellant
6. Martin Zummach, Attorney for Appellee



Martin Zummach, #9682
Attorney for the Appellee

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TABLE OF AUTHORITIES

<i>Young v. Vincent</i> , 828 So. 2d , 821 (Miss. Ct. App. 2002)	1
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This case is very simple. The time line and facts are undisputed. Based upon the time line and the facts, the ruling of the Chancellor below should be affirmed and sanctions should be awarded the appellee pursuant to Rule 38 of the Mississippi Rules of Appellate Procedure for the appellant's filing of the frivolous appeal at hand inasmuch as no reasonable Appellant (person) could expect success.

In the case of *Young v. Vincent*, 828 So. 2d , 821 (Miss. Ct. App. 2002), the standard applied to M.R.A.P. 38 Motion for Sanctions is as follows:

Under Mississippi Rule of Appellate Procedure 38, the Court imposed double sanctions for the frivolous appeal, noting that the Mississippi Rule of Appellate Procedure 38 tests for frivolousness is identical to that under Mississippi Rules of Civil Procedure 11, whether a reasonable person would have any hope for success.

The relevant and necessary facts of this case are undisputed. They are:

1. The parties were married for 24 years. (R. Vol. I, page 18; R.E. Tab 3).¹
2. On February 15, 2006, Mr. Harris filed a Complaint for Divorce. On April 28, 2006, an Amended Complaint for Divorce was filed. (R. Vol. I, page 3; R.E. Tab 1)
3. A temporary hearing was held on June 29, 2006. (R. Vol. I, page 14; R.E. Tab 2).
4. At the temporary hearing, Mr. Harris agreed to pay "reasonable maintenance associated with the marital home at 8935 Oakwood Lane, Olive Branch, Mississippi 38654 **including taxes** and insurance and care for the pool and grounds". (R. Vol. I, page 15; R.E. Tab 2)
5. DeSoto County tax notices were mailed out in December 2006. More specifically,

¹ As used in this Brief: "R" refers to Trial Court's Record of the proceedings.
"R.E." refers to Record Excerpts.

December 12, 2006. (Transcript of Proceedings, Volume II, page 13, lines 2-27; page 14, lines 7-10; R.E. Tab 7) These tax notices included the tax bill in the amount of \$2,777.85 representing the 2006 (January 1, 2006 through December 31, 2006) taxes which had accrued on 8935 Oakwood Lane, Olive Branch, Mississippi 38654 during the preceding year. (R. Exhibit 1; R.E. Tab 8)

6. A settlement conference between the parties was held on December 19, 2006. A Property, Child Support, and Child Custody Agreement was executed by the parties on that same day, December 19, 2006. (R. Vol. I, pages 18-31; R.E. Tab 3)

7. That Property Settlement Agreement was approved by the Honorable Trial Court below on the next day, December 20, 2006. (R. Vol. I, pages 16-32; R.E. Tab 4)

8. The Property, Child Support, and Child Custody Agreement has two paragraphs that are referred to by the parties. The appellant, Mr. Harris and his counsel focus on paragraph 14 which states:

REAL ESTATE CONVEY. Husband agrees that Wife shall have exclusive, use, title and possession of the parties,[sic] property located at 8935 Oakwood Lane, Olive Branch, MS 38654 described as follows:

See attached Exhibit "A."

Husband further agrees to execute and deliver to Wife any and all debts and instruments necessary to convey title of said real estate to Wife. Wife agrees to assume liability for all debts on the aforesaid properties.² (Emphasis added); (Assumed as of December 20, 2006, the date of the Order) (R. Vol I, page 25)³

² It is unclear what is meant by "properties" as only the marital home was conveyed.

³ Said conveyance did not transpire until January 2, 2007 when Mr. Harris finally executed the quit claim deed to the marital home, long after the taxes were incurred for calendar year 2006.

9. However, the appellee , Mrs. Harris relies herein on paragraph 16 of the Property, Child Support, and Child Custody Agreement which states:

DEBTS. The parties agree that the Husband shall be responsible for any and all marital debt accumulated during the marriage. . . (Accumulated before December 20, 2006, when the marriage ended) (R. Vol I, page 26; R.E. Tab 3)

10. In addition, it is crystal clear that the earlier Temporary Order, which was in place prior to the Final Decree, indicated that Mr. Harris would be responsible for taxes on the marital home as a marital debt. (R. Vol. I, pages 14-15; R.E. Tab 2)

11. It was uncontroverted that DeSoto County bills its taxes in *arrears*. (Transcript of Proceedings, Volume II, page 13, lines 19-27; R.E. Tab 7). In other words, the property taxes accrue and are due for January, February, March, April, May , June, July, August, September, October, November and December of any given calendar year as they accrue, but that calendar year's tax bill is then mailed out in December of that same year and is billed in arrears for the months that have already been taxed. (Transcript of Proceedings, Volume II, page 13, lines 19-27; R.E. Tab 7)⁴

12. Mr. Harris agreed to be responsible for marital debt which accumulated up to the time of the divorce. (R. Vol. I, page 26; R.E. Tab 3) That date of divorce was December 20, 2006.

⁴ This makes absolute sense. When one buys a home or sells a home, a per diem tax estimate must be made indicating the daily amount of taxes due and that have accrued as of the date of closing so that the seller may pay their portion at closing and the buyer is then responsible for their portion after the date of transfer.

13. The marital debt, which has been stipulated to, included property taxes accumulated through the date of divorce of December, 20, 2006. (R. Vol. I, pages 14-15; R.E. Tab 2)

14. The Chancellor ordered Mr. Harris to pay the property taxes as a marital debt through the date of the divorce or December 20, 2006. (R. Vol. I, pages 60-66; R.E. Tab 6)

15. It was the sworn and uncontroverted testimony of Mrs. Harris that Mr. Harris had earlier told her, after the divorce was granted, that he would not pay the property taxes, and that further, he would spend \$10,000.00 in attorney fees to insure that he did not have to pay the property taxes. (Transcript of Proceedings, Volume II, page 41, lines 26- 27; R.E. Tab 9)⁵

What better example of spite and revenge can one have? In the case at hand, this appeal being filed by Mr. Harris is nothing more than a spiteful attempt to harass and seek revenge upon his ex-wife, Mrs. Harris.

The undersigned could not help but notice that appellant's counsel, Mrs. Malenda Harris-Meacham cited to the undersigned's closing argument.

In said quoted closing argument, the undersigned rhetorically stated:

"Sounds like to me you need to sue me for malpractice." (Transcript of Proceedings, Volume II, page 50, lines 7-8; R.E. Tab 10) (Appellant's Brief, page 9, paragraph 1)

What Mrs. Harris-Meacham failed to set out for this Court is the fact that this statement was in response to Mr. Harris' counsel's statement in her earlier closing argument that the undersigned, Mr. Zummach, was responsible for the drafting of the Property, Child Support, and

⁵ Mr. Harris was present at the hearing and did not dispute the quote made by Mrs. Harris.

Child Custody Agreement, and that the undersigned, Mr. Zummach, “dropped the ball.”

(Transcript of Proceedings, Volume II, page 48, lines 3-6; R.E. Tab 11) The statement made by Mr. Harris’ lawyer in her closing argument was untrue then, and is untrue now. Mr. Harris’ lawyer drafted the Property, Child Support, and Child Custody Agreement, and she knows it full well.

Regardless of who drafted the Property Settlement Agreement , both lawyers and their clients approved it, but since Appellant’s lawyer chooses to argue that the terms of the agreement should be interpreted against the scrivener, Appellee asks — Where in the record is anything established, other than in closing argument, who the draftsman/draftswoman of the Property, Child Support, and Child Custody Agreement was?

In any event, there can be no dispute as to the terms of the Temporary Support Order, the Divorce Decree, and the fact that DeSoto County bills its property taxes in arrears for the months preceding the billing itself.

It cannot be disputed that the taxes were a martial debt because it was stipulated to and agreed by Mr. Harris.

CONCLUSION

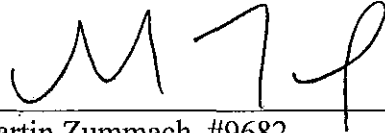
The Chancellor did the right thing when he could have very well ordered Mr. Harris to pay the tax bills through the time the property was actually conveyed or January 2, 2007. (Transcript of Proceedings, Volume II, page 6, lines 6-7; R.E. Tab 13) (R. Exhibit 4)

Counsel for Mrs. Harris submits to this Honorable Court that he wishes to supplement the record herein should the Court issue a show cause order why Mr. Harris should not be required to

pay as Rule 38 sanctions the attorney fees of Mrs. Harris for the preparation of the response herein to the frivolous appeal filed by Appellant.

Respectfully submitted,

SPARKMAN-ZUMMACH, P.C.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has caused a true and correct copy of the above and foregoing via U.S. mail to: Anne Jackson-Hodum, 107 Stateline Road E., Ste. I Southaven, Mississippi 38671; and Malenda Meacham, P.O. Box 566, Hernando, Mississippi 38632 on this the 19 day of February, 2008.



MARTIN ZUMMACH

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day mailed, postage prepaid, a true and correct copy of the above and foregoing Appellee's Brief to:

Malenda Meacham, Esq.
P.O. Box 566
Hernando, Mississippi 38632

Anne Jackson-Hodum
107 Stateline Road E., Ste. I
Southaven, Mississippi 38671

Honorable Mitchell Lundy
DeSoto County Chancellor
P.O. Box 471
Grenada, Mississippi 38902

on this the 19th day of February, 2008.


MARTIN ZUMMACH