

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
NO. 2007-CA-00981**

**ALAN RAY PRICE, SR.,**

**RESPONDENT/APPELLANT**

**VS.**

**JENNIFER HUTCHINSON PRICE,**

**PETITIONER/APPELLEE**

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**BRIEF FOR APPELLEE**

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Appeal from the Chancery Court of Desoto County, Mississippi  
Cause No: 06-01-0060

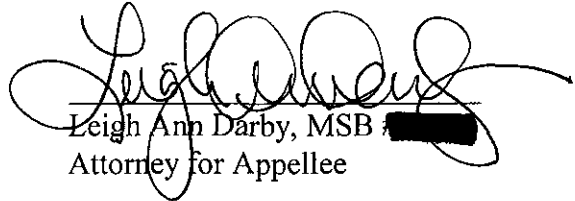
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## CERTIFICATE OF INTERESTED PERSONS

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 judges of the Court of Appeals may evaluate possible recusal issues.

- |                                     |                         |
|-------------------------------------|-------------------------|
| 1. Alan A. Price, Sr.,              | Respondent/Appellant;   |
| 2. Jennifer Hutchinson Price,       | Petitioner/Appellee;    |
| 3. Leigh Ann Darby                  | Attorney for Appellee;  |
| 4. Steven G. Roberts                | Attorney for Appellant; |
| 5. Honorable Mitchell M. Lundy, Jr. | Chancellor              |

  
Leigh Ann Darby, MSB [REDACTED]  
Attorney for Appellee

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## STATEMENT OF ISSUES

1. The Chancellor did not err in finding that the Appellee had not overreached the Appellant or committed fraud.
2. The Chancellor did not err in not barring the Contempt Action by the Appellee based on the "Clean Hands" Doctrine.
3. The Chancellor did not err in denying the modification of the Final Decree of Divorce as to financial matters and as to the date of the modification.
4. The Chancellor did not err in the award of attorney fees to the Appellee.

## STATEMENT OF CASE

1. The Parties were divorced on March 27, 2006, after entering into a Property Settlement Agreement dated February 28, 2006 which was incorporated into the Final Decree of Divorce. (R. 11-28)

2. On March 29, 2006, Jennifer H. Price filed a Chapter 7 Bankruptcy action in the United States Bankruptcy Court for the North District of Mississippi in Cause Number 06-10591.

3. On April 19, 2006, Jennifer filed a Petition for Contempt and Other Relief against Alan stating that Alan was in willful contempt of the previous orders of this court as a result of his willful failure to abide by the terms of the parties' Property Settlement Agreement dated February 28, 2006, and filed March 27, 2006.

4. On June 14, 2006, Jennifer filed her First Set of Interrogatories and Request For Production of Documents and served same on Alan. Alan failed to answer same and Jennifer was required to file a Motion to Compel. Upon the filing of said Motion to Compel an Order was entered on August 22, 2006, ordering Alan to comply with Jennifer's discovery request on or before September 8, 2006. Further, said order states that a determination was to be made by this court as to the appropriate fee to be taxed to Alan. On October 12, 2006, Jennifer was required to file a petition to cite Alan for contempt as a result of his willful failure to comply with Jennifer's discovery request on or before September 8, 2006.

5. On July 28, 2006, Alan forwarded an Order Lifting Automatic Stay to the United States Bankruptcy Court for the Northern District of Mississippi in order to have the automatic stay lifted as to Jennifer's Chapter 7 Bankruptcy. Said stay was lifted on August 3, 2006.

6. On August 22, 2006, Alan herein filed a Counter-Petition to Modify Final Decree of

Divorce and Cite For Contempt.

7. A hearing was then held on December 1, 2006, as to the Petition and Counter-Petition and a ruling was then issued by the court on February 9, 2007. The Order For Contempt and Other Relief was executed nunc pro tunc on April 24, 2007 and filed May 7, 2007. (R. 50-53)

## STATEMENT OF FACTS

1. Jennifer testified to the court that Alan was delinquent in the payment of monthly child support in the sum of \$1750.00 per month for the benefit of the said minor children of the parties. At the time of trial Jennifer testified that Alan owed a child support arrearage of \$1850.00. Upon further review Jennifer acknowledged that Alan should be given credit toward said child support arrearage for the sum of \$800.00 which Alan had previously paid to Jennifer for school uniforms for the benefit of the said minor children. Alan was unable to provide any additional documentation of child support payments made to Jennifer for the benefit of the said minor children of the parties thus leaving Alan with a child support arrearage of \$1050.00 through November 30, 2006.

2. Jennifer testified to the Court that Alan had allowed both her medical insurance coverage and the medical insurance coverage for the benefit of the said minor children lapse. As a result of same, Jennifer testified that she has not been able to afford insurance coverage for herself and insurance coverage was not provided to her by her employer. She was able to gain insurance coverage through Mississippi Medicaid for the benefit of the minor children.

3. Jennifer testified that Alan was to assist her in obtaining a 2005 Nissan Maxima or vehicle of equal value. It must be noted that to "assist her" is certainly vague terminology. Jennifer testified that Alan was to give her money to get a vehicle while Alan testified that he made a few telephone calls concerning said vehicle. Jennifer further testified that she does not own a vehicle at this time and has not owned one since the Property Settlement Agreement had been entered into.

4. Jennifer testified to the court that Alan was delinquent in the payment of monthly



alimony in the sum of \$4500.00 per month. At the time of trial Jennifer testified that Alan owed an alimony arrearage of \$29,200.00. Alan was unable to provide any additional documentation of alimony payments made to Jennifer thus leaving the Alan with an alimony arrearage of \$29,200.00 through November 30, 2006.

5. Jennifer testified to the court that Alan had failed to pay a series of outstanding indebtedness owed by the parties as specifically set out in the Property Settlement Agreement. Jennifer further testified that said debt was solely in her name and she was not financially able to pay same. Jennifer then testified that she had filed a Chapter 7 Bankruptcy action with the services of Hon. Jim Amos. Further, said debt was discharged in her bankruptcy action and at that time Alan was also relieved of his obligation to pay said outstanding indebtedness due to said indebtedness being in the name of Jennifer only.

6. Jennifer testified to the court that Alan had been delinquent in the payment of private school tuition for the benefit of the minor children of the parties. Alan had failed to pay the tuition on a monthly basis but it must be noted that the Property Settlement Agreement failed to specifically set out when said tuition was to be paid. Further, at the date of trial, the private school tuition for the parties minor children was current.

7. Jennifer testified to the court that Alan had failed to maintain a life insurance policy in the sum of 1.5 million or no less than 1 million. Jennifer testified that there was one (1) life insurance policy with a face amount of \$250,000.00 in effect that she had been paying and she should be named the owner of said policy. When questioned Alan did not oppose said policy ownership being vested in Jennifer. Alan also testified that he had failed to maintain a life insurance policy in the sum of 1.5 million or no less than 1 million.

8. Jennifer testified that as a result of the willful contempt of Alan she should be awarded attorney fees and expenses in the sum of \$6307.50 which she testified was a reasonable sum based on the services rendered to her. Said sum also included attorney fees incurred as a result of the Motion to Compel and additional Petition for Contempt.

9. Alan requested this court to find Jennifer in contempt of the previous orders of this court as a result of her moving the minor children from the marital home without his written consent. He further advised the court that the Jennifer had filed a Chapter 7 bankruptcy action which ultimately allowed her to bankrupt the marital residence. Jennifer testified that at the time of the divorce, the payments on the marital residence were approximately six (6) months delinquent and that Alan had advised her that he would provide her with the necessary sum to bring said payments current. Jennifer then testified that Alan never gave her the money necessary to catch up on the house payments and she had no option but to file a Chapter 7 bankruptcy action. She also testified that said residence was only financed in her name and that Alan was not effected by her bankruptcy action.

10. Alan requested that the previous orders of this court be modified to allow a reduction in the monthly alimony to be paid by Alan to Jennifer.

11. Alan requested that he no longer be required to provide medical insurance coverage for the benefit of Jennifer and the minor children of the parties. He further testified that he had terminated the medical insurance coverage for the benefit of the Jennifer and the minor children shortly after the divorce was finalized.

12. Alan requested that he no longer be required to pay the marital debt as set out in the previous orders of this court. Jennifer testified that said marital debt was solely in Jennifer's

name and that she had included all of said marital debt in her Chapter 7 Bankruptcy action.

13. Alan requested that he be allowed to claim the said minor children of the parties as tax exemptions but he also testified that he had not filed Federal and/or State income tax returns for the last three years nor had he filed for extensions.

14. Alan requested that Jennifer be required to pay his attorney fees and all court cost.

## **SUMMARY OF ARGUMENT**

1. On February 28, 2006, Alan R. Price freely and voluntarily entered into the Property Settlement Agreement which was then incorporated into the Final Decree of Divorce. At no time did Jennifer overreach Alan or committed fraud and no proof of same was presented at trial. Further, Alan failed to pursue any available action to set aside said Final Decree of Divorce and Property Settlement Agreement.

2. Jennifer had "Clean Hands" when she came before the Court on her Petition For Contempt. There was no action on her part that amounted to willful misconduct or fraud that "would be condemned and pronounced wrongful by honest and fair minded men." *Banks v. Banks*, 648 So.2d 1116, 1126 (Miss. 1994).

3. Alan came before the court with "Unclean Hands" and as a result of same he was not entitled to a modification of the Property Settlement Agreement as set out in the Final Decree of Divorce. Further, payments under the said Property Settlement Agreement had vested through the date of the Order for Contempt and Other Relief which was finally entered on May 7, 2007. Further, it should be noted that Alan did not file his Petition for Modification until August 22, 2006.

4. Jennifer was entitled to an award of reasonable attorney fees as a result of the willful contempt of Alan.

## ARGUMENT

1. The Chancellor did not err in finding that the Appellee had not overreached the Appellant or committed fraud.

Alan raises this issue on appeal in order to go behind the Final Decree of Divorce in an attempt to now “fix” it. Alan was very candid in testifying that he had agreed to the original terms of the divorce in an attempt to “get it over with” and now wanted to modify various provisions. Through Alan’s work as a real estate appraiser he was familiar with our legal society, had an extensive financial background and was familiar with the nature of contracts. He acknowledged in the Property Settlement Agreement that he had been advised to seek legal representation of his own which he failed to do. (R, 20).

The simple fact that Jennifer filed Bankrupt should not be found as an act of fraud. Alan and Jennifer both testified that they knew that the home mortgage was severely delinquent at the time of the execution of the Property Settlement Agreement. Jennifer testified that Alan had advised her that he would give her the money necessary to bring the six (6) delinquent mortgage payments current but when he failed to do so, she had no option but to file a Chapter 7 bankruptcy action. By filing the bankruptcy action, Jennifer was able to delay the marital home from being foreclosed in an attempt to allow the minor children to get out of school prior to having to move out. Further, she testified that Alan actually benefitted from her bankruptcy action due to the fact that all of the marital debt that he was ordered to pay as set out in the Property Settlement Agreement was solely in her name and he was now technically relieved of said debt.

In his Counter-Petition to Modify Final Decree of Divorce and Cite for Contempt, Alan

failed to pled fraud and/or that he had been overreached. Further, if he truly felt that he had such a defense he failed to proceed with the appropriate legal action to have said Final Decree of Divorce and Property Settlement Agreement set aside.

2. The Chancellor did not err in not barring the Contempt Action by the Appellee based on the “Clean Hands” Doctrine.

Jennifer was not in contempt of the provisions of the Property Settlement Agreement as set out in the Final Decree of Divorce as a result of her filing a Chapter 7 Bankruptcy action. There was no action on her part that amounted to willful misconduct or fraud that “would be condemned and pronounced wrongful by honest and fair minded men.” *Banks v. Banks*, 648 So.2d 1116, 1126 (Miss. 1994). Further, Jennifer’s actions were certainly not willful. She testified that she did not want to “loose” her house but that due to it being severely delinquent she had no option. Further, she testified that the marital home was financed solely in her name resulting in her actions having no effect on Alan whatsoever. She also testified that Alan ultimately benefitted as a result of her filing the bankruptcy action due to the fact that the marital debt in the approximate sum of \$82,000.00 as set out in the Property Settlement for Alan to pay was solely in her name. The bankruptcy action technically terminated Alan’s obligation to said creditors.

3. The Chancellor did not err in denying the modification of the Final Decree of Divorce as to financial matters and as to the date of the modification.

It is the position of our legal system that to be allowed to seek relief by way of

modification it is necessary for the Petitioner to come before the court with “clean hands”. In *Hooker v Hooker*, 205 So2d 276 (Miss 1967) the Supreme Court determined that one may not petition for modification of the original decree without showing either that he has performed it or that his performance has been wholly impossible. It is apparent from the testimony before this court that Alan did not have “clean hands” as a result of his failure to abide by the previous orders of this court. The testimony clearly showed Alan to be in willful contempt of the previous orders of this court. Further, Alan failed to show that his performance of said obligations was wholly impossible. The Alan’s financial declaration reflected the fact that he grossed approximately \$10,000.00 per month as a self employed real estate appraiser. “A party ordered to make support payments may “purge” or otherwise exonerate himself from a contempt citation on proven grounds of “inability to pay”. The evidence must be particular and not cast in general terms alone, and a failure to show “inability to pay” will cause the payer to fail in his defense against a contempt citation.” *Hopton v. Hoption*, 342 So 2d 1298 (Miss. 1977) The Alan was unable to show in specific terms that he had an “inability to pay” and further testified that he “should not be required” to continuing paying under the terms of the parties divorce decree.

Our courts have previously stated that “where the parties to the divorce action have expressly agreed and consented to the terms of the court order that one of them wishes to have the court modify, the court has the authority if not even the responsibility to be a bit more demanding before any modification will be afforded the parties.” *Iverson v. Iverson*, 762 So.2d 329 (Miss. 2000) “It is understood that court orders are to be taken seriously and they are not to be changed or modified in an atmosphere any less than the one that existed at the time of the entry of the divorce decree. Further, the mere assumption by the Chancellor that too much alimony or

child support had been granted will not justify modification after the entry of the initial court order.” *Shaeffer v. Shaeffer*, 370 So.2d 240 (Miss. 1979)

To grant a modification in the present case this court must find first that the Alan comes before this court with “clean hands” and then that there has been a material and substantial change which was not or could not have been reasonably anticipated at the time of the entry of the most recent order. *Brocato v. Walker*, 220 So. 2d 340 (Miss. 1969) Further, where the parties should have reasonably anticipated the material changes, now being relied upon, for modification, at the time of the entry of the most recent order, the court is not obligated to accommodate the new request for modification. In the present case, the Alan has not experienced a material and substantial change which would warrant a modification of the parties divorce decree. Very little time has passed since the parties divorce was finalized on March 27, 2006. Since that time the Alan was continued working for himself as a real estate appraiser. The Alan attempted to testify that since the divorce his income has dropped due to the effects of increased interest rates in the real estate market but on cross examination he did acknowledge that he had been in the real estate business for many years and that the fluctuation of interest rates was an anticipated change that did effect his income. Further, he testified prior to the divorce being finalized that he was experiencing financial difficulties and had continued to experience these same difficulties since the divorce had been finalized. The Alan was very candid in testifying that he had agreed to the original terms of the divorce in an attempt to “get it over with” and now wanted to modify various provisions.



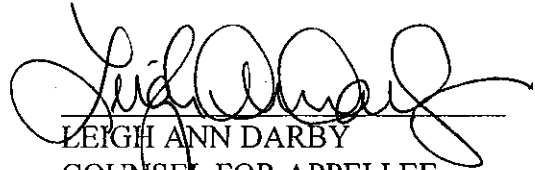
4. The Chancellor did not err in the award of attorney fees to the Appellee.

The court first determined that the failure of Alan to abide by the terms of the Final Decree of Divorce prompted the contempt action filed by Jennifer. Alan through his own admission acknowledged that he had failed to comply with various provisions of the Final Decree of Divorce. Secondly the court found Jennifer to be successful in the pursuit of her contempt action. "If the injured party is successful then he or she is entitled to be granted a reasonable attorney fees for having pursued the action." *Mixon v. Mixon*, 724 So.2d 956 (Miss. 1998)

**CONCLUSION**

For the above and foregoing reasons the Appellee, Jennifer H. Price, respectfully requests this court to affirm the decision of the Chancery Court of DeSoto County, Mississippi.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Leigh Ann Darby', is written over a horizontal line.

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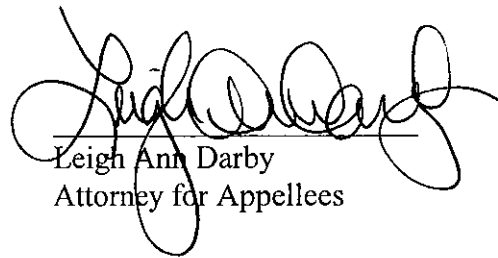
## CERTIFICATE OF SERVICE

I, Leigh Ann Darby, do hereby certify that I have this day mailed by United States Postal Service, postage prepaid and properly addressed a true and correct copy of the forgoing Brief of Appellee to the following:

Hon. Steven Roberts  
6263 Poplar Avenue, Suite 1032  
Memphis, Tennessee 38119

Hon. Mitchell M. Lundy, Jr.  
Chancellor  
P.O. Box 446  
Grenada, MS 38901

THIS the 21<sup>st</sup> day of July, 2008.



Leigh Ann Darby  
Attorney for Appellees