

COPY

IN THE SUPREME COURT OF MISSISSIPPI

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CA-01052

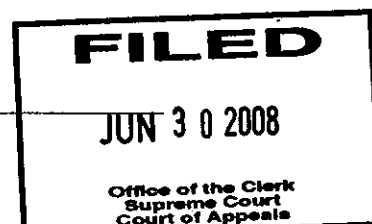
DAVID MAXWELL PACE-PRO SE

APPELLANT/DEFENDANT

v.

SALLY DAVIDSON PACE

APPELLEE/ PLAINTIFF



APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY

REPLY BRIEF FROM APPELLANT, DAVID PACE

ORAL ARGUMENT NOT REQUESTED

I. CERTIFICATE OF INTERESTED PERSONS

The Undersigned Appellant certifies that the following listed persons have a interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

- 1) David Pace- Appellant
- 2) Sally Davidson- Appellee
- 3) Wendy Martin
1113 Jackson Ave.
Pascagoula Ms 39568
- 4) Paulette Turner
1126 Jackson Ave. #102
Pascagoula Ms 39568
- 5) Judge Neil Harris
P.O. Box 998
Pascagoula Ms 39568

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Cases- Decisions- Rules

Dept. Of Human Services v Gaddis, 730 So. 2d 1116 (miss 1998).

Santosky v Kramer, 455 U.S. 745, 102 S. Ct. 1338, 71 L. ED 2nd 599 (1982)

Powell v. Akers, 792 So. 2D 240,244 (Miss 2001)

Rawson v Butta, 609 So. 2d 426, 431

Chambers v. Chambers, 213 Miss, 71, 73-74,56 So. 2d 33,33

Smith v. Smith , 614 So. 2d 394,396 (miss 1993)

Daigle v Daigle 626 So. 2d 140,144 (miss 1993)

Talbert v. Talbert No. –CT-00088-SCT

Churchill v. Churchill, 467 So. 2d 948

Petters v. Petters, So. 2d 722, 755 (Miss. 1990).

Mississippi Rules of Civil Procedure Rule 4h, 4a, 4e, Rule 81

REPLY BRIEF FROM APPELLANT TO APPELLEE'S BRIEF

In response to Sally Pace Langley 'Appellee' Brief I respond as follows:

Please note that Sally Pace has married the person "Russ Langley" she had a affair with for about three years while married to Appellant, David Pace. She has now changed her name to Sally Pace Langley, with complete knowledge that her divorce was under appeal to the Mississippi Court of Appeals, showing no respect for a case that is under Appeal. Sally Pace complains of treatment that led her to file for divorce. The Appellant responds as follows.

1) There has never been any evidence presented in the Chancery Court Case of any treatment to cause Sally Pace Langley to be granted a divorce other than the Adultery and Affair's committed by Sally Pace Langley that resulted in a child being born, Stormy Diane Langley while being married to Appellant. Sally Pace Langley has never presented any evidence to the Jackson County Chancery Court of any mistreatment of Appellee by Appellant.

2) The Appellant does admit that he is a yacht captain In Orange Beach Alabama where he has resided for the past ten years, as captain of sportfish yachts. There has never been any evidence presented to the Jackson County Chancery Court of Appellant having any type of alcohol or drug problem. The Appellant has never been cited by any Marine Enforcement Agency for consuming drugs or alcohol while in command of any vessel, boat or yacht. David Pace says this is just another time Sally Pace Langley falsely accuses him of something that just did not happen. How could Appellant maintain as Appellee state's on her un-numbered first page " Making a living by taking wealthy people fishing" with a alcohol or drug problem for over 15 years? The Appellant has not

had even a traffic ticket in over 15 years. No evidence was ever presented to the Jackson County Chancery Court of the Appellant having any drug or alcohol problem.

3) Sally Pace Langley claims Appellant owes her over \$12,000.00 in “back child support to this day”. There has never been any proof of any money Appellant owes back Child Support. There is no evidence entered that Appellant owes \$12,000.00 in back child support that is pending in the Jackson County Chancery Court.

4) Sally Pace Langley admits (un-numbered) page two of her Appellee Brief that “In September 2004 I fell in love with him and he completed the family that my children and I were needing. I did become pregnant and have his child in 2005.” The Appellee admits to the affair and adulterous relationship she carried on in front of me and my child. He moved in with Sally Langley and they lived as a family, all while being married to Appellant. What Sally Pace Langley did not tell the court is that the person, Russ Langley she was living with, was married too at the time, to a Chrystal Langley. The Applee also fails to admit that around that time (Septemebr 2004) not known to the Appellant , that Sally Pace Langley was also having sexual intercourse with the Appellant too. I guess Chancellor Neil Harris just took her word that that was Russ Langley’s baby with out ordering any DNA test. The Appellant states that Judge Harris should have “established the legitmany of the children for whom it is proving support to establish paternity in one to be their true biological father.” Dept. Of Human Services v Gaddis, 730 So. 2d 1116 (miss 1998). There never were any orders by Judge Neil Harris for DNA test to prove who the father was. The Appellant

may have rights to that child (Stormy Diane Langley) too. Judge Neil Harris never addressed the issue of the minor child (Stormy Diane Langley) or sought any “Clear and convincing “ proof standard which is constitutionally required in parental termination. Santosky v Kramer, 455 U.S. 745, 102 S. Ct. 1338, 71 L. ED 2nd 599 (1982). Judge Neil Harris never even sought any “clear and convincing” proof on who the child’s father really is, which would have been by ordering a DNA test. The Chancellor also failed to have on record any analysis of the Albright Factor. Powell v. Akers, 792 So. 2D 240,244 (Miss 2001) of the 18 month old child born to Appellee while married to Appellant. The Appellant does not think the child is his but thinks the Chancellor erred by not ordering a DNA test to prove who the biological father was. The Appellant through his attorney (Wendy Martin) filed a MOTION TO ESTABLISH PATERNITY OF UNBORN CHILD (Court Schedule April 28, 2005, copy attached). Appellant thinks the Chancellor erred by not ordering a Paternity Test on the Child “Stormy Langley” to establish who the father was.

5) Judge Neil Harris granted a divorce on the grounds of habitual cruel and inhumane treatment. According to Mississippi Case Law, The Plaintiff must prove habitual cruel and inhumane treatment of the preponderance of the credible evidence. Rawson v Butta, 609 So. 2d 426, 431. The Chancellor as a tier of fact, evaluates the sufficiency of the proof based on the credibility of the witness and their testimony. Chambers v. Chambers, 213 Miss, 71, 73-74,56 So. 2d 33,33. In the Chancery Court’s Transcription taken on March 14th 2007 the only witness was a Kathleen Garrison. Her testimony is not clear and convincing evidence. She has to be asked several times about dates and times that she is confused. On page 25 of the

transcription Kathleen Garrison is asked (on line 17) if she ever observed the David Pace or Sally Pace together. Katheleen Garretson answers NO. Then asked on line 19 if she ever knew how he (the Appellant) treated her when they were married. Again she answers NO. The Appellant has never been in any Sav A Rex in Pascagoula nor knows the witness. The Appellant states that this is far from proving Cruel and Inhuman Treatment. There was no evidence presented to grant a divorce on these grounds. Cruel and inhuman treatment “Means something more than unkindness or rudeness or mere incompatibility or want of affection” Smith v. Smith , 614 So. 2d 394,396 (miss 1993) Daigle v Daigle 626 So. 2d 140,144 (miss 1993) The Chancellor did not have clear and convincing evidence to grant a divorce on the grounds of Adultery. The Appellant thinks the Chancellor erred when he granted a divorce for cruel and inhuman treatment and refused evidence of adultery. Talbert v. Talbert No. –CT-00088-SCT.

In another decision by the Mississippi Supreme Court “mere unkindness or rudeness” is not enough for divorce under the ground of habitual cruel and inhuman treatment. Churchill v. Churchill, 467 So. 2d 948. The evidence in the court record is not enough for a finding of habitual cruel and inhuman treatment although the evidence does meet the grounds for adultery.

6) The Appellant was never served his divorce Complaint as required by Mississippi Rules of Civil Procedure. The Appellant states that without being served process, or waiver of process, within 120 days of the original filing of the divorce complaint, the Jackson County Chancery Court, or Judge Neil Harris has no in personam jurisdiction over the Appellant.

The Appellant claims that the Jackson County Court has held no in personam Jurisdiction over him. David Pace claims that he was never served a complaint for divorce and that in absence of a service or complaint for divorce and summons, that the original Complaint for Divorce and Ex-Parte Relief dated February 26, 2003 should have been dismissed by the Jackson County Chancery Court 120 days after filing as required by Mississippi Rules of Civil Procedure Rule 4 (h). The Appellant claims that Rule 4 (a) MRCP requires that a copy of the complaint to be served with the summon which the Appellant claims never were served. The Appellant has never signed any waiver of process and there is none filed with his cause in the Jackson County Court, as required by 4 (e) MRCP. There is no service of process or waiver of process in the cause or noted in the general docket. The Appellant has lived in Alabama before and during the marriage.

The Appellant claims that a Rule 81 Summons is mandatory and absent a Rule 81 summons, the Judgment is void. Powell 644, 50, 2d at 274. He also states that If a Judgment is void, the trial court has no discretion and must set aside the Judgment. *Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991) . “Personal jurisdiction jurisprudence, constitutional statutory amenability, as well as implementing procedure, is no different in domestic relations litigation that in other cases” *Petters v. Petters*, So. 2d 722, 755 (Miss. 1990). Sally Pace or her Attorney have not shown or entered into the record and can not show just cause of why such service was not made with in the 120 day period as required in 4 (e) MRCP. The action shall be dismissed as to that defendant with out prejudice upon the court’s own initiative with notice to such party upon motion and make proof of

service to the court.” Rule 4 (h) MRCP. The Appellant claims this case should have been dismissed by the court a long time ago.

7. In the Appellee Brief by Sally Davidson Langley she states” This appeal is just another attempt to prolong the process of getting on with my life “ the Appellant responds that this case was filed in the Jackson County Chancery Court February 26, 2003. Then the Mississippi Gulf Coast was hit by the greatest natural disaster in the history of the United States which was hurricane Katrina. The Jackson County Court Building was flooded with over six feet of water. The Court proceedings were postponed for a long time. Then both parties asked for continuance’s. Sally Langley’s Attorney asked for one. The Appellants Attorney asked for one due to her surgery (Wendy Martin). Appellant has attached copies of both of these continuance orders. These events have nothing to do with the Appellant or his scheduling of court dates. The Appellant has been at every court date required by the Chancery Court of Jackson County that his attorney or the court required him to attend, with exception of the day (March 14, 2007), the day the divorce was granted and signed by Chancellor Neil Harris. The Appellant was never notified by his Attorney that he had court that day. The Appellant swears to this Court that his older son had had a hernia operation the Friday before and was never notified that court was on March 14, 2007. The Appellant wants nothing more than a divorce from Sally Langley, he just wants the proper grounds and to know that the Appelle, her Attorney’s, and the Chancellor’s did things legal and by the rules. The Appellant states that the Appelle has embarrassed and caused much grief by her wide open adultery in plain view of Appellants young child, family and friends.

Respectfully Submitted

David Pace

David Pace

PROOF OF SERVICE

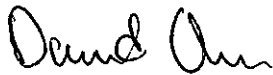
I, The undersigned certify that I have on this day 6-30 2008
caused to be served by United States Postage prepaid a copy to the foregoing
persons

Sally Davidson Langley
31 Clara Strength Ford
Waynesborough MS 39367

Wendy Martin
1113 Jackson Ave.
Pascagoula MS 39568

Paulette Turner
1126 Jackson Ave. #102
Pascagoula MS 39568

Judge Neil Harris
P.O. Box 998
Pascagoula Ms 39568



David Maxwell Pace-pro se

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

SALLY PACE

PLAINTIFF

VERSUS

APR 28 2004

NO. 2003-0391 PW

DAVID PACE

TERRELL MILLER, CLERK

By: *[Signature]*

DEFENDANT

MOTION TO ESTABLISH PATERNITY OF UNBORN CHILD

COMES NOW, DAVID PACE, (Defendant), by and through counsel of record, Wendy Martin, and respectfully requests the Court to Order the Plaintiff to submit to a pregnancy test and DNA test to establish the father of the unborn child, if one exists, and would show unto the Court in support of his motion, as follows:

1. The Defendant verily believes that the Plaintiff is currently pregnant.
2. The Defendant would show unto the Court that it is necessary to determine the biological father of the unborn child before proceeding further with this divorce.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that the Court order the Plaintiff to submit to a pregnancy test and provide proof to the Court of such pregnancy, if one exists, and further requests that paternity be established before granting a divorce in this matter.

Respectfully submitted,

MAX PACE

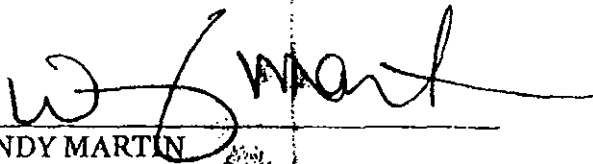
By:

[Signature]
WENDY MARTIN

CERTIFICATE OF SERVICE

I, Wendy Martin, do hereby certify that I have this day mailed by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing combined discovery to Marcus Pittman, attorney for the Plaintiff, at his usual business address.

This the 28th day of April, 2005.


WENDY MARTIN

Wendy Martin, Attorney at Law
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