

IN THE SUPREME COURT OF MISSISSIPPI

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

NO. 2007-CA-01052

DAVID MAXWELL PACE-PRO SE

FILED

APPELLANT/DEFENDANT

v.

FEB 11 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

SALLY DAVIDSON PACE

APPELLEE/ PLAINTIFF

APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY

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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IV. STATEMENT OF THE ISSUES

A)Whether or not the Chancellor had In personam jurisdiction in this case.

B)Whether the Chancellor manifestly erred in granting a divorce for

cruel and inhuman treatment when adultery was admitted in court and the wife had had a child by another man.

C) Whether the Chancellor erred in not granting a continuance in this case.

D) Whether the Chancellor erred in not ordering a DNA test to prove who

the father of the child , Stormy Danielle Langley was

V. STATEMENT OF THE CASE

This case is an Appeal from the Jackson County Chancery Court granting Sally Davidson Pace a divorce for cruel and inhuman treatment by Chancellor Neil Harris on March 14, 2007. In the Final Judgment of Divorce the chancellor awarded Sally Davidson Pace a divorce for cruel and inhuman treatment. The final Judgment of divorce was filed in Jackson County Court on May 31, 2007. The Court states that it has Jurisdiction over David Pace (David) or Appellant. The case had been set for trial September 07, 2006 and a continuance was granted moving trial to November 17, 2006 and another continuance was granted moving the trial to March 14, 2007. The Appellant (4)

was never notified by his Attorney, Wendy Martin that he had court that day, March 14, 2007. A trial was held with out the Appellant present.

VI. STATEMENT OF RELEVANT FACTS

On April 30 , 2002 David and Sally were married in Mobile Alabama. They had a child , David Cruise Pace a male child who was born on November 13, 1998 prior to the marriage. The Appellant had been a resident of Alabama since 1997.

Sally Pace (the Appellee) filed for divorce on February 26, 2003. The Jackson County Court House was flooded and wiped out by hurricane Katrina. The trial for the divorce and been continued three times and the Appellant was never notified by his attorney, Wendy Martin that he had a trial on March 14th 2007. The trial was held in his absence and a appeal to the Mississippi Court of Appeals followed and is now in the hands of the Mississippi Court of Appeals.

VII. SUMMARY OF ARGUMENT

The Appellant has appealed this case for a number of grounds including that the Chancellor did not have personal jurisdiction over him due to never being served the original Complaint for Divorce. The Appellant also argues that the Chancellor granted a divorce for cruel and inhuman treatment when the Appellee admitted in open court of a adulterous relationship with a Russell Langley and had a child with this person while married to the Appellant. The Appellant argues that there was no evidence was presented in court to grant a divorce for cruel and inhuman treatment and that if the divorce was to be granted it should have been for adultery. The Appellant also states that his son had had a medical emergency and the day of court when notified by his attorney of court (the day of court) he should have been granted another trial date.

VIII ARGUMENT IN PERSONAM JURISDICTION

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 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.

IX ARGUMENT GROUNDS FOR ADULTRY

There had been three trial dates for the trial that took place on March 14, 2007. One had been postponed by Hurricane Katrina when the Jackson County Court House was flooded by a major hurricane. Then two more trial dates that were continued by Sally Pace's attorney and David Paces attorney having surgery. The Appellant David Pace was never notified that he had court and a trial on March 14, 2007. The day of the trial which was to start at 9.00 a.m. David Pace received a phone call from his Attorney, Wendy Martin. Mrs. Martin told David Pace that he had court that day. Being that David Pace lives in Orange Beach Alabama and that his older son Tom (from a previous marriage) had just had a hernia operation here in Alabama. Tom, David Pace's older son was told not to drive a car for three days, lives with his dad and had just had a serious hernia operation. The Appellant told his attorney Mrs. Martin that there was no possible way that he could be in court that day and to please ask the Chancellor for a continuance. Mrs. Martin asked for the continuance but was denied this request. I asked Mrs. Martin to just tell the Judge the truth, and let him know that she had never notified me that I had court. Mrs. Martin never told the Chancellor this and the case proceeded with out me. David Pace was not in court so what he has to go on is the court transcription, dated March 14, 2007.

David Pace swears to the court or any court that he was never notified by either Wendy Martin, Sally Pace or anyone that he had court on March 14, 2007.

David Pace never talked to Sally Pace on March 14, 2007 and she told the Chancellor on Page 8, line 11-17 on the Court Transcriptions by April Fondren.

In the court transcription dated March 14, 2007 Judge Neil Harris asked Sally Pace if she had a child by another man (page 13 line 16-18) Sally Pace answered yes to the court (page 13, line 18). The Appellant David Pace claims that if the chancellor was going to give a divorce that day it should have been for adultery as admitted in court to Judge Harris. "Where the person admits to adulterous conduct and this testimony circumstantial evidence, a divorce on the grounds of adultery will be affirmed." *Authur v. Authur*, 691 So. 2d 997, 1001 (Miss. 1997)

The appellant claims that the judge Should have given a divorce based on the testimony of Sally Pace, in court, on the record that she had not only committed adultery had had a child with another person other than David Pace. "Once properly married by law, the parties remain married until the entry of a final order of divorce". *McIlwain v. McIlwain*, 815 So. 2d. 476,479. and *Pucylowski v. Pucylowshi*, 741 So. 2d 998,1001 (10) (Miss Ct. App. 1999). Sally Pace admits that she had a child Stormy Danielle Langley (not Pace) who was eighteen months old at the time of the trial. Sally Pace also admits that at the time of the trial she is Living with Russell Langley and had been having this affair since 2004. Sally Pace was still having sexual intercourse with David Pace and that child could be his. The presumptive father must actually be married to the child's mother and at that time the Chancellor in this case should have ordered a paternity test. "The Department of

Human services has legal standing to challenge the presumption of legitimacy of children for whom it is providing support to establish paternity in one alleged to be their true biological father.” Dept. Of Human Services v. Gaddis, 730 So. 2d 1116 (Miss 1998). Now I feel Sally Pace was having sexual intercourse with three different guys including me. David Pace ask the Mississippi Court of Appeals to read pages 13-16 of Court Reporters Transcription. Adultery does not get much clearer that what Sally Pace told Judge Harris that day. “Adultery as a ground for divorce must be proved by clear and convincing evidence.” Brooks v. Brooks, 652 So. 2d 1113,1116 (Miss 1995). David Pace contends that clear and convincing evidence for adultery had be proven and admitted in court and to Chancellor Neil Harris.

X. Cruel and in Human Treatment

David Pace has never met a Kathy Garrison for Pascagoula Ms. Who was a witness against me in court. David Pace has never been in a Sav a Rex in Pascagoula Mississippi. Kathy Garrison testifies that she witnessed me but I have never met Kathy Garrison nor been in any place that she worked while I was married to Sally Pace. She also claims that Kathy Garrison never observed Sally Pace and David Pace together (page 25 line 17,18) and states that she did not know why Sally Pace was depressed. They mention a Dr. Fineburg who is a family doctor and is not specialized as a psychiatrist or psychologist. There was no evidence in court to prove any Cruel and Inhuman Treatment, Doctors reports or any evidence to support the grounds that supported these grounds.

Sally Pace is asked by Wendy Martin in the court transcription if I ever hit her and she answered no (Page 13 line 14, 15). David Pace claims that the Chancellor in this case

exceeded his authority in granting a divorce when the statutory requirements for Cruel and Inhuman Treatment was not met. David Pace also states that the Chancellor in this case, if he was going to grant a divorce it should have been on grounds of adultery.

David Pace also believes that Sally Davidson knew that there had been a mix up in the date of the court hearing and went and found someone, Kathy Garrison to come in and testify with out me being present to rebut. "Divorce is a statutory act and the statues must be strictly followed as they are in derogation of the common law" Kerosien v. Kerosien, 471 So. 2D 1206, 1210 (Miss. 1985). Again David Pace states that Judge Harris exceeded his authority in granting a divorce for cruel and inhuman treatment, when the statutory requirements had not been met.

XI. CONCLUSION

The trial court committed error in not dismissing the Complaint for Divorce due to lack of in personam jurisdiction. That the trial Chancellor erred in Granting a divorce for cruel and in human treatment when the statue was met for adultery. That the trail chancellor erred by not granting a DNA test to prove who the father of Stormy Langley was. That the trial Chancellor erred by not granting a continunce in this case.



Respectfully Submitted
David M. Pace - pro se

XII.PROOF OF SERVICE

I, The undersigned certify that I have on this day 11th day of February 2007 caused to be served by United States Postage prepaid a copy to the foregoing persons *David Davidson*

Sally Davidson Langley
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Waynesborough MS 39367

Wendy Martin
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