

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMES CRAIG PALCULICT

APPELLANT

VS.

CAUSE NO.: 2007-CA-01954

LUCIANA GASCON CURTIS PALCULICT

APPELLEE

REPLY BRIEF OF APPELLANT

APPEAL FROM THE CHANCERY COURT
OF DESOTO COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

Lee Ann Turner, [REDACTED]
Charles E. Winfield, [REDACTED]
PERRY, WINFIELD & WOLFE, P.A.
224 East Main Street
Post Office Box 80281
Starkville, Mississippi 39759
Telephone: (662) 323-3984
Telecopier: (662) 323-3920

Attorneys for Defendant/ Appellant,
James Craig Palculict

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ARGUMENT

I. DOCUMENTS IN LUCIANA'S RECORD EXCERPTS THAT ARE NOT EXTRACTED FROM THE RECORD SHOULD BE STRICKEN AND NOT CONSIDERED ON APPEAL.

It is well settled that "Mississippi appellate courts may not consider information that is outside the record." *Peden v. City of Gautier*, 870 So.2d 1185, ¶8 (Miss. 2004) (citing *Dew v. Langford*, 666 So.2d 739, 746 (Miss. 1995)).

In this matter, Luciana's record excerpts contain many documents (namely, pages 105 through 190) that are not a part of the appeal record. As listed on Luciana's Table of Contents for her record excerpts, entries number 12 ("Exhibit 'D' Response to Defendant's Set of Interrogatories and Requests" (sic)); 13 ("Exhibit 'E' Restraining Order After Hearing (Order of Protection)"); and 14 ("Agreed Temporary Order for Appellant Picking Up and Returning Minor Child to California") are not part of the record of this matter on appeal, and they should be stricken and not considered by this Court. Appellee's Record Excerpts, R.E. i.

The *Mississippi Rules of Appellate Procedure* provide that appellants "may add to the mandatory record excerpts brief extracts from the pleadings, instructions, transcript, or exhibits if they are essential to an understanding of the issues raised." Miss. R. App. P. 30(b). That rule further states that an appellee's record excerpts "may add other such extracts." *Id.* The documents itemized above that were added to Luciana's record excerpts are clearly *not* extracted from "the pleadings, instructions, transcript, or exhibits" in this matter. Nor are the documents in any way "essential to an

understanding of the issues raised in the appeal,” as they are wholly irrelevant to the appealed issues.

Luciana further failed to apply to the trial court or the appellate courts for an order allowing her to correct or supplement the record with all of the documents in her record excerpts. Miss. R. App. P. 10(e).

Accordingly, the portions of Luciana’s Record Excerpts that are not part of the record of this matter on appeal should be stricken and not considered by this Court.

II. LUCIANA CANNOT SEEK RELIEF OTHER THAN AFFIRMANCE OF THE TRIAL COURT’S RULING ON APPEAL SINCE SHE DID NOT FILE A NOTICE OF CROSS-APPEAL.

In her brief Luciana seeks (1) reversal of parts of the trial court’s ruling and (2) an award to her of additional relief. Luciana’s request for additional relief on appeal includes reversal of the trial court’s denial of her request for attorney’s fees, an award of attorney’s fees from this Court (even though she represents herself on appeal), and awards of separate maintenance and a lien on Jim’s retirement assets and stocks, among others.¹ (Appellee’s brief, pp. 18-20). Jim has not appealed the denial of attorney’s fees to Luciana, nor has he raised any issues related to separate maintenance or liens on retirement assets or stocks.

¹ Jim’s counsel had significant difficulty following all Luciana’s legal arguments and requests for relief in her *pro se* brief. As such, there certainly may be other issues for which Luciana is seeking reversal or an additional award from this Court that are not specifically included in this list. It is Jim’s intention that this argument cover any such additional issues, and his failure to list any other improperly raised issues should *not* be considered acquiescence to their adjudication by this Court.

The Mississippi Supreme Court has held that “[i]n order for the appellee to gain reversal of any part of the decision of a trial court about which the appellant brings no complaint, the appellee is required to file a cross-appeal.” *Dunn v. Dunn*, 853 So.2d 1150, ¶6 (Miss. 2003)(citing *Delta Chem. & Petroleum, Inc. v. Citizens Bank of Byhalia, Miss.*, 790 So.2d 862, 878 (Miss. App. 2001)). In sum, if she intended to raise her grievances with the trial court's judgment in this Court, Luciana needed to file a cross-appeal. She did not. Therefore, this Court should only consider Luciana's arguments as same relate to having this Court affirm the trial court's judgment, and should not consider her requests to alter or reverse the judgment below.

III. JIM'S REMARRIAGE DURING THE PENDENCY OF THE APPEAL SHOULD NOT PRECLUDE OR OTHERWISE PREJUDICE HIS ABILITY TO RECEIVE RELIEF FROM THE TRIAL COURT'S FINANCIAL AWARDS.

As Luciana indicates in her brief, Jim has remarried during the pendency of the appeal. Accordingly, Jim withdraws his request to have the award of the divorce entered between the parties set aside. However, there is no applicable authority that precludes Jim from being eligible for the financial and other relief he is seeking related to the trial court's failures to strictly comply with the irreconcilable difference divorce statute.

“Divorce in Mississippi is a creature of statute, and must maintain the integrity of the statutory guidelines. . . .” *Engel v. Engel*, 920 So.2d 505, ¶17 (Miss. App. 2006) (citing *Perkins v. Perkins*, 787 So.2d 1256, ¶ 25 (Miss. 2001). In the case *sub judice*, the irreconcilable differences divorce statute was not strictly complied with and “the consent to adjudicate did not specifically set forth the issues to be decided by the court.”

Engel at ¶14. As such, the trial court had no authority to rule on any matter not specifically consented to by the parties in writing. Miss. Code Ann. § 93-5-2.

While procedural errors in divorce proceedings that are deemed to be harmless generally do not warrant reversal (*See Rounsaville v. Rounsaville*, 732 So.2d 909, ¶ 11 (Miss. 1999); *Johnston v. Johnston*, 722 So.2d 453, ¶ 10 (Miss.1998)), the procedural errors of the trial court in this matter caused extreme financial detriment to Jim and require reversal.

The trial court prejudiced Jim in its award of rehabilitative alimony and life insurance benefits to Luciana and in holding that Jim be solely responsible for all of the costs and responsibility for transportation for visitation with the minor child, when Jim did not consent to the chancellor ruling on those issues or agree with Luciana to those provisions in writing.

Accordingly, the chancellor exceeded the authority granted to him under the irreconcilable differences divorce statute and committed reversal error by ruling on matters that were not specified in the written consent entered into by the parties, causing Jim to be prejudiced thereby.

CONCLUSION

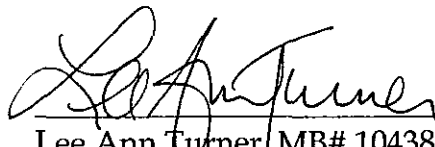
The portions of Luciana's Record Excerpts that are not part of the record of this matter on appeal should be stricken and not considered by this Court. This Court should also refuse to consider Luciana's requests to alter or reverse the judgment below, as she did not file a cross-appeal. Lastly, Jim's remarriage does not prejudice his right to relief in this Court, as the chancellor manifestly erred in ruling on issues that were

not specified in the parties' written consent resulting in significant prejudice to Jim.

Accordingly, the trial court's ruling should be reversed and remanded for further proceedings pursuant to applicable Mississippi law.

Respectfully submitted,

JAMES CRAIG PALCULICT

By: 
Lee Ann Turner MB# 10438

Lee Ann Turner, MB# 10438
Charles E. Winfield, MB# 10588
PERRY, WINFIELD & WOLFE, P.A.
224 East Main Street
P.O. Box 80281
Starkville, MS 39759
Telephone: (662) 323-3984
Facsimile: (662) 323-3920
Attorneys for James Craig Palculict

CERTIFICATE OF SERVICE

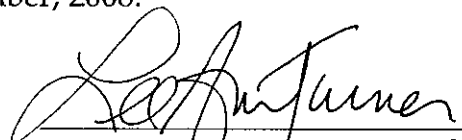
The undersigned does hereby certify that this day a true and correct copy of the above and foregoing instrument has been sent via U.S. mail, postage prepaid to:


Luciana Gascon Curtis Palculict, *pro se* Appellee
P.O. Box 2672
Antioch, CA 94531

Luciana Gascon Curtis Palculict, *pro se* Appellee
C/O Safe at Home Government Program
P.O. Box 1198, No.: 1557
Sacramento, CA 95812

Hon. Chancellor Mitchell M. Lundy, Jr.
P. O. Box 471
Grenada, MS 38901

So certified, this the 12th day of December, 2008.




Lee Ann Turner, 

CERTIFICATE OF FILING

Comes now, the undersigned, pursuant to Miss. R. App. P. 25(a) and hereby certifies that I have personally caused the foregoing *Appellant's Reply Brief* to be filed with the Clerk of the Supreme Court of Mississippi by placing the original and three (3) copies of said Brief in the mail, post prepaid, or other more expeditious form of delivery.

This the 12th day December, 2008.



Lee Ann Turner, 