

COPY

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CAUSE NO. 2007-TS-01965**

CA

ROBERT EDGAR ATKINSON, JR.

APPELLANT

FILED

VERSUS

SEP 15 2008

BETTY RICHARDSON ATKINSON

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SUPREME COURT
COURT OF APPEALS

APPELLEE

Appeal from the Chancery Court of Hinds County, Mississippi
Cause No. G2005-61S/2

REPLY BRIEF OF THE APPELLANT

Oral Argument Requested

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STATUTES

I.

ARGUMENT

A. WIFE DID NOT PROVE ADULTERY OR HABITUAL AND CRUEL AND INHUMAN TREATMENT.

The trial court did not find direct evidence of adultery.

Husband's statement that he was staying with another woman until he found another place to live is not an admission of adultery. A bare conclusion based upon Husband's residence is insufficient. *Curtis v. Curtis*, 796 So.2d 1044 (Miss. Ct. App. 2001). There is no direct evidence that establishes adultery.

Cruel and inhuman treatment must be proven by a showing of conduct that either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance. *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss. 1993). A plaintiff must prove this ground by a preponderance of the credible evidence. *Gardner v. Gardner*, 618 So.2d 108, 113 (Miss. 1993).

The evidence offered by the Wife is too remote in time to establish anything. The Wife must show a causal connection between the Husband's conduct and the separation and the conduct must be related in time to the separation. *Cochran v. Cochran*, 912 So.2d 1086 (Miss. Ct. App. 2005). Such is not the situation in the case at bar.

For a plaintiff to be granted a divorce on the grounds of habitual cruel and inhuman treatment, there must be a causal connection between the cruel treatment and the separation from the household, and it must be related in point of time to the separation. *Fournet v. Fournet*, 481 So.2d 326, 329 (Miss. 1985); *Harrison v. Harrison*, 285 So.2d 752, 754 (Miss. 1973).

**B. THE DISTRIBUTION OF MARITAL ASSETS WAS
INEQUITABLE AND AGAINST THE DESIRES OF BOTH
PARTIES.**

Both parties offered direct testimony that the marital assets should be split 50-50.

In a long-term marriage such as this, where both parties worked and contributed to the financial success of the family, the assets should be divided equally. The Chancellor's division was not economically fair. Although the real property had belonged to Wife's family, the Husband is entitled to financial security and equity because of his long years of work and contribution. The Wife knowingly deeded the property to Husband as a birthday gift. It was not a decision she made lightly and therefore the trial court should follow the wishes of the parties and divide all assets equally. *Jones v. Jones*, 904 So.2d, 1143 (Miss. Ct. App. 2004)

Wife intentionally changed the deed to the homestead property. Her intent was to include Husband on the deed and Husband should share in the ownership of the property. The Chancellor's decision should be reversed.

II.

CONCLUSION

Wife did not establish adultery nor habitual cruel and inhuman treatment which led to the divorce. The real property should have been divided equally so both parties could enjoy the fruits of a long-term marriage.

CERTIFICATE OF SERVICE

I, Carolyn B. Mills, attorney for the Appellant herein, do hereby certify that I have this day served a copy of this Reply Brief of Appellant by United States mail, postage prepaid to the following:

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This the 15th day of September, 2008.



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