

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CHARLES E. ALLEN, III, Deceased**

**APPELLANT**

**VERSUS**

**CAUSE NO. 2007-CA-02047**

**JANET ELLEN DAVIS ALLEN**


**APPELLEE**

---

**APPEAL FROM THE CHANCERY COURT OF PEARL RIVER COUNTY,  
MISSISSIPPI  
BRIEF OF APPELLANT-(ESTATE OF CHARLES E. ALLEN, III)**

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**ORAL ARGUMENT NOT REQUESTED**

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[REDACTED]

## **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel for Appellant, Certifies the following parties have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

### **Chancellor:**

Honorable James H.C. Thomas, Jr.  
Chancellor  
P.O. Box 807  
Hattiesburg, MS 39403

### **Appellant:**

Estate of Charles E. Allen, III., Deceased  
C/O Arthur D. Carlisle, Esq., Executor  
900 Washington Ave.  
Ocean Springs, MS 39564

### **Appellee:**

Janet Ellen Davis Allen  
609 Pine Street  
Picayune, MS 39466

### **Attorney for Appellant:**

Michael J. Vallette  
Attorney at Law  
900 Washington Ave.  
Ocean Springs, MS 39564

### **Attorney(s) for Appellee:**

Carol Ann Bustin, Esq.  
Joseph E. Fillingane, Esq  
109 Fairfield Dr. Suite 109  
Hattiesburg, MS 39402

Respectfully submitted, this the 28<sup>th</sup> day of July, 2008.

  
MICHAEL J. VALLETTE

## **STATEMENT REGARDING ORAL ARGUMENT**

Appellant, Estate of Charles E. Allen, III, respectfully submits that oral argument is not necessary in this case. This case involves well-settled straight forward principles of law which are neither close nor complex. The briefs of the parties adequately address the legal issues raised and the Chancery Courts Opinion is concise and well-reasoned. Further, the undisputed facts are abundantly clear from the record and oral arguments would not be of benefit to the Appellate Court.

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## **TABLE OF AUTHORITIES**

### **CASES:**

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Owen v. Abraham, 102 So.2d 372 (Miss. 1958)

Pittman v. Pittman, 375 So.2d 415 (Miss. 1979)

Wells v. Roberson, 209 So.2d. 919 (Miss. 1968)

### **STATUTORY AUTHORITY:**

§ 15-1-69 Mississippi Code Annotated 1972, as amended

§ 93-5-31 Mississippi Code Annotated 1972, as amended

### **STATEMENT OF THE ISSUES**

1. Whether the Trial Court erred in failing to strike the Motion to Reconsider filed by Janet Ellen Davis Allen, for having been filed untimely, and for failing to set forth significant facts evidencing a satisfactory reconciliation of the parties.
2. Whether the Trial Court erred in setting aside its Judgment Quashing the Joint Application To Set Aside the Divorce, and allowed Janet Ellen Davis Allen, to put on proof of the parties alleged reconciliation after Charles death.
3. Whether the Trial Court had jurisdiction to proceed on the Joint Application of the Parties to Set Aside their divorce, after the death of one of the parties, namely, Charles E. Allen, III.
4. Whether the Trial Court erred in allowing Janet Ellen Davis Allen to put on proof regarding the reconciliation of the parties marriage, pursuant to §93-5-31, Mississippi Code Annotated 1972, as amended, after the death of Charles E. Allen, III.
5. Whether the Trial Court erred in not dismissing the action to Set Aside the Divorce, due to the failure of Janet Ellen Davis Allen to file a Revivor of the action subsequent to the death of Charles E. Allen, III.
6. Whether the Trial Court erred in holding that the evidence adduced at the trial of this matter was sufficient to set aside the divorce of Charles E. Allen, III and Janet Ellen Davis Allen.

### **STATEMENT OF THE CASE**

The parties hereto, Charles E. Allen, III and Janet Ellen Davis Allen were married on or about November 24, 1996, in St. Tammany Parish, Louisiana.

There were no children born to this marital union and none were adopted.

The Parties subsequently lived together as husband and wife, until their divorce from one another in the Chancery Court of Pearl River County, Mississippi, which Final Decree of Divorce was entered on September 23, 2002.

On or about May 17, 2006, there was filed in the Chancery Clerks Office of Pearl River County, Mississippi a Joint Application to Revoke Judgment of Divorce, which had been signed by the parties.

Prior to any action being taken by the Court on the Joint Application to Revoke Judgment of Divorce, and prior to an Order being signed revoking the divorce, Charles E. Allen, III, died on June 16, 2006.

On August 11, 2006 Counsel for Janet Ellen Davis Allen, filed an Entry of Appearance in the divorce action. Subsequent thereto, on August 18, 2006 Arthur D. Carlisle, as Executor of the Estate of Charles E. Allen, III, (Cause No. 06-0126-PR-W, in the Chancery Court of Pearl River County, Mississippi) filed his entry of appearance in the divorce action.

On June 5, 2007 Chancellor James H.C. Thomas, Jr., entered a Judgment Quashing the Application to set aside the divorce. Said Judgment stated that the Court would entertain a motion to reconsider this finding should the co-applicant timely file such a request and show sufficient facts evidencing a satisfactory



reconciliation of the parties.

On June 22, 2007 Counsel for Janet Ellen Davis Allen file a Motion for Reconsideration of Judgment Quashing Application. Subsequent thereto, The Executor for the Estate of Charles E. Allen, III, filed a Motion to Strike Motion to Re4consider as not being timely filed and not setting forth sufficient facts evidencing a satisfactory reconciliation of the parties.

On October 2, 2007, a hearing was held and evidence was presented concerning the reconciliation of the parties. On October 19, 2007, the trial Court entered its Judgment Revoking the Divorce of Janet Ellen Davis Allen and Charles E. Allen, III, subsequent to the death of Charles E. Allen, III.

## **STATEMENT OF THE FACTS**

The Parties hereto, were married on November 24, 1996 in St. Tammany Parish, Louisiana. There were no children born to the union of the parties. The parties filed a Joint Petition for Divorce in the Chancery Court of Pearl River County, Mississippi on June 27, 2002. (RE 2-11), and a Final Judgment of Divorce was entered on the grounds of Irreconcilable Differences on September 23, 2002 (RE 12-24). In the Divorce action Janet Ellen Davis Allen was represented by Counsel and Charles E. Allen, III, was Pro Se. (RE 3-4, 13-14).

On May 17, 2006, almost 4 years after the Final Judgment of Divorce was entered, the parties filed a Joint Application to Revoke Judgment of Divorce. (RE 21-24)

On June 16, 2006 Charles E. Allen, III, died in his home in Pearl River County, Mississippi (RE 42, 43), prior to any Judgment Revoking the Judgment of Divorce being entered.

Thereafter, on August 11, 2006, Counsel for Janet Ellen Davis Allen, filed an entry of appearance on behalf of Janet Ellen Davis Allen (RE 25). Shortly thereafter, on August 18, 2006, Arthur D. Carlisle, on behalf of the Estate of Charles E. Allen, III, filed an Entry of Appearance in the divorce action (RE 26)

On June 5, 2007, the Honorable Chancellor James H.C. Thomas, Jr., entered a Judgment Quashing the Application to set aside the divorce. (RE 27) Said Judgment stated that the Court would entertain a motion to reconsider this finding should the co-applicant timely file such a request and show sufficient facts evidencing a satisfactory

reconciliation of the parties. (RE 27).

On June 22, 2007 Counsel for Janet Ellen Davis Allen filed a Motion for Reconsideration of Judgment Quashing Application. (RE 28-30). On June 27, 2007, the Executor of the Estate of Charles E. Allen, III, deceased, filed a Motion to Strike Motion to Reconsider as not being timely filed and for not setting forth sufficient facts evidencing a satisfactory reconciliation of the parties. (RE 31-33)

On October 2, a hearing was held and evidence was presented concerning the reconciliation of the parties. Prior to any witnesses testifying counsel for the Estate of Charles E. Allen III, deceased, objected to the hearing taking place due to the fact that the death of Charles E. Allen, III, caused the action to Revoke the Divorce to abate, and the Court to lose jurisdiction over this matter. Furthermore counsel for the Estate objected to the trial courts jurisdiction due to the fact that no revivor had been filed to revive the action to Revoke the Divorce, prior to one year after the death of Charles E. Allen, III. (RE 44-46).

Counsel for the Estate of Charles E. Allen, III, further objected to the Court proceeding because in its Judgment Quashing Application (RE 27) to revoke the divorce, the Court stated that it would "...entertain a motion to reconsider this finding should he co-applicant timely file such a request and show sufficient facts evidencing a satisfactory reconciliation of the parties." (RE 27). As previously stated counsel for Janet Ellen Davis Allen filed a Motion to Reconsider (RE 28-30), however, it was not timely filed, in that it was filed on June 22, 2007, eleven days after the Judgment Quashing Application to set aside divorce. Furthermore, the Motion For Reconsideration did not set forth any

“...facts sufficient facts evidencing a satisfactory reconciliation of the parties” (RE 27).

The Court took the motions of counsel for the Estate of Charles E. Allen, III, under advisement, and proceeded to hear from the witnesses (RE 46), concerning the alleged reconciliation.

The first witness called was Janet Ellen Davis Allen. Ms. Allen testified that she lives at 609 Pine Street, Picayune, Mississippi with her mother. Her early testimony was vague, as she had trouble remembering things such as dates. She could not remember when she and Charles E. Allen, III, married, and could not state why the two of them got a divorce (RE 46, 48-49), yet she is the one who hired a lawyer and filed the divorce (RE 2-11).

Ms. Allen also testified that when the Joint Application to Set Aside the Divorce was signed by she and Charles, they were sitting side by side at Hancock Bank in Picayune, and that they left the bank, after opening a joint checking account and drove straight to the Courthouse in Poplarville, Mississippi and filed the Joint Application. (RE 50). Charles put \$500.00 in the checking account when it was opened. No other monies were ever placed in this account by Charles, or anyone else. (RE 59)

Ms. Allen further testified that she and Charles had reconciled shortly after Hurricane Katrina because they had been talking on the phone (RE 51) and after she fell and was in the hospital and rehab from mid-September through November 1, 2005. (RE 52). However, she had not moved in with Charles Allen in his home, nor had he moved in with her in her home. He did sometimes spend the night at her home. (RE 51).

However, Ms. Allen also testified that Charles Allen never came to see her while she was in the hospital for those six weeks. (RE 52, 57). When she got out of rehab she went back to her home at 609 Pine Street, Picayune, Mississippi, and she and Charles continued to talk on the phone. (RE 53). Beginning in late March, or early April, 2006 Ms. Allen would spend the weekend at Charles' house in Picayune, and go back to her house on Sunday or Monday. (RE 53).

On cross examination Ms. Allen testified that she was living at her home on Pine St., in Picayune, Mississippi, but spent the weekends at Charles' house at Hideaway Lake every weekend beginning in April 2006 until his death on June 16, 2006. Her housekeeper would pack her clothes and she would go and spend the weekend with Charles (RE 54-55).

On cross examination Ms. Allen was not able to explain why she testified on direct that the Application to Set Aside the Divorce was signed on May 4, 2006 and she and Charles drove straight to the Court house in Poplarville to file the Application, yet the application contains a "file-stamped" date of May 17, 2006.

The day Charles E. Allen, III died Janet Ellen Davis Allen was living at her home at 609 Pine Street. Charles' body was found in his home at Hideaway Lake by his house-keeper on Friday June 16, 2006. The house-keeper called Ms. Davis on the phone and told her Charles had died. (RE 58).

Finally, Ms. Allen testified that Charles paid the bills at his house and Ms. Allen's mother paid the bills at her house. (RE 59).

The next witness was Beverly Slaydon, who testified that she began working for Charles Allen as a house-keeper in February 2006. She testified that she was at his house twice a week on Tuesdays and Fridays, three to four hours each day. (RE 60-61). While working at Charles' home Beverly would hear Charles talk on the phone to Ms. Allen , and she observed Ms. Allen come spend the weekends with Charles during the time she worked for Charles, however, it was not every weekend. Ms. Slaydon's testimony was that she observed that Ms. Allen probably spent the weekend with Charles six or seven times during the time she worked for him, prior to his death (RE 63). Ms. Slaydon further testified that while fulfilling her duties as house-keeper at Mr. Allen's home that she did not observe any of Ms. Allen's personal belongings at the home (RE 64).

On cross examination Ms. Slaydon testified that it was obvious to her that Ms. Allen was not living at Charles' house. She was living at her mothers house. She never noticed any of Ms. Allen's clothing in the closets at Mr. Allen's house, nor did she notice any make-up that was left at Mr. Allen's house by Ms. Allen, nor did she see any other things that one might find if a woman was living in the home. (RE 65-66).

The next person to testify was Patricia Faye Beard who testified that she worked as a caretaker for Ms. Allen from November 2005 through May 2006, Monday through Friday of each week. (RE 67).

Ms. Beard testified that she saw Charles sign the Application to Revoke Divorce at the Courthouse in Poplarville, and that she is the one who filed the papers (RE 68-69).

Ms Beard then testified that the Application to Revoke the Divorce was signed by the parties in the car outside of the courthouse in Poplarville (RE 71-72) Ms. Beard also testified that Janet Allen lived at 609 Pine Street and Charles lived at his house in Hideaway Lake. (RE 74).

The Appellee's herein then rested their case and the Estate of Charles E. Allen, III, called Arthur Carlisle to the stand, the Administrator of Mr. Allen's Estate. (RE 75) Mr. Carlisle testified that he had known Charles Allen since 1969, and that he likened his relationship with Charles Allen to that of brothers. Mr. Carlisle further testified that he and Charles were working on a couple of cases together, and that he is attorney who prepared the Application To Revoke the Divorce for Charles, and that he had probably prepared 4 or 5 of them for him (RE 76-77)

Mr. Carlisle testified that he was absolutely sure that Charles Allen had no intent to ever reconcile with Janet Allen. (RE 78) Further Mr. Carlisle testified that Charles Allen felt that Janet had cheated him out of the home at 609 Pine Street Picayune, Mississippi and his purported attempt to revoke the divorce was a subterfuge by Charles Allen to attempt to recover the home he believed he was cheated out of. (RE 78-79, 90).

Mr. Carlisle also testified about the Saturday after Charles' death, when he drove to Picayune to see Janet Davis Allen. Mr. Carlisle testified that he hugged Janet's neck and expressed his condolences, and the first thing out of Janet's mouth was "I am not paying for the funeral" (RE 80). Mr. Carlisle testified further, that he had spoken to Charles Allen on the Wednesday before his body was found on Friday. Mr. Carlisle

stated that he called Charles home all day long on Thursday but got no answer. He opined that he is certain that Charles died on Thursday June 15, 2006, the day before his body was found on Friday. (RE 81)

Mr. Carlisle testified that Charles did not have multiple sclerosis as previously testified to by Janet or her witnesses. Charles had been diagnosed with muscular dystrophy, a rare form that very seldom expresses itself in people his age. (RE 82)

Mr. Carlisle went on to testify that he went to see Charles Allen no less than every two weeks, sometimes it would be every week. He stated that many time he would go to Charles home at Hideaway Lake, and that based on what he saw while at Charles home, no one other than Charles was living at the home. There were no signs of any females clothes there. Mr. Carlisle also testified that it was his belief that no one else lived at the house other than Charles based on what he saw at Charles home the day after Charles' funeral when he went to inspect the home (RE 82).

Mr. Carlisle further testified that he had personal knowledge that Charles had a relationship with a female attorney during the time both before and after Hurricane Katrina. He did not know the woman's name but he was sure that Charles was seeing someone other than Janet Davis Allen. (RE 83).

Mr. Carlisle concluded his direct examination by stating that a statement that Janet had made when she testified earlier, shocked him. That was that Mr. Carlisle failed to even mention Janet's name when he spoke at the funeral of Charles Allen. What



shocked Mr. Carlisle was that he did not even speak at Charles Allen's funeral. Mr. John Mozingo was the one who spoke at Charles funeral. (RE 83-84).

On cross examination, Mr. Carlisle, when asked about how he knew Mr. Allen had thrown away the prior Applications to Revoke Divorce that he had prepared for Charles, testified that he saw one of the Applications in the trash can. (RE 85-86)

Further on cross examination Mr. Carlisle testified that it was his understanding that Charles "...never intended to Ms. Davis again, never intended to revoke the divorce..." (RE 87) Mr. Carlisle went on to explain that the reason Mr. Allen felt he had been cheated out of the marital home is because Charles had signed the deed to the home to Janet prior to the divorce, but he knew it was not valid because it had not been acknowledged, by a notary public. (RE 87-88)

Mr. Carlisle further on cross examination, when asked if maybe the reason Charles and Janet were not living together prior to the divorce being set aside, was because they were old fashioned and did not want to live together until they were married testified that he has personal knowledge that Charles and Janet lived together before they married initially. He testified that he saw it, he was there, he saw her clothes in his closet. He testified that he knew that that was not the way Charles and Janet lived. (RE 89).

The final witness to be called was Ms. Mary E. Davis, Janet Davis Allen's mother. She testified that she spoke with Mr. Carlisle on Friday, the day Charles body was found. She stated at one point that Mr. Carlisle told her he had not seen Charles in a

while and then immediately stated that Mr. Carlisle told her he had not spoken to Charles some time. (RE 91)

### **SUMMARY OF THE ARGUMENT**

Charles E. Allen, III, and Janet Davis Allen, divorced on September 23, 2002. They subsequently filed a Joint Application to Revoke the Divorce, pursuant to Mississippi Code Annotated, 1972, as Amended, on May 17, 2006.

Shortly after the Joint Application to Revoke the Divorce was filed Charles E. Allen, III died on June 16, 2006.

Prior to the death of Charles E. Allen, III, the parties did not as is required by § 93-5-31 Miss. Code Ann. 1972, (As Amended), produce satisfactory evidence of their reconciliation. No Judgment Revoking the Judgment of Divorce was entered before the death of Charles E. Allen, III.

Upon the death of Charles E. Allen, III, his interest in the Joint Application to Revoke Judgment of Divorce ceased to exist and so did the jurisdiction of the Court to proceed on the Joint Application of the Parties.

The trial Court by entering its Judgment Revoking the Divorce has entered a Judgment against a dead person. A Judgment against a dead person is a nullity.

Because the Application filed by the parties was a Joint application, the death of Charles E. Allen, III., abated the action and it cannot be revived. It was a Joint Application. By the mere name of application, "Joint Application", the death of one of the joint parties causes the Application to die with the applicant. When one of the parties dies the action, by its own terms is abated.

Furthermore, the Judgment of the trial Court in entering the Judgment Revoking Divorce, is barred, by the fact that the Estate of Charles E. Allen, III, nor anyone else filed a revivor, to continue the action after the death of Charles E. Allen, III, pursuant to § 15-1-69 within one year of the death of Charles E. Allen, III.

The Chancellor's decision was manifestly wrong, clearly erroneous, an abuse of discretion, and the Chancellor applied an erroneous legal standard, and the Judgment Revoking Divorce entered by the trial Court on October 24, 2007 should be reversed.

## ARGUMENT

§ 93-5-31 Miss. Code Ann. 1972, as amended, provides that:

“The judgment of divorce from the bonds of matrimony may be revoked at any time by the court which granted it, under such regulations and restrictions as it may deem proper to impose, upon the joint application of the parties, and upon the production of satisfactory evidence of their reconciliation”

In the case sub judice, the parties did indeed file a Joint application to Revoke Judgment of Divorce that occurred approximately four years prior. However, prior to producing any evidence at all, much less, satisfactory evidence of their reconciliation, Charles E. Allen, III, died.

The case of Wells v. Roberson, 209 So2d 919, 922 (Miss. 1968), citing Gerault v. Anderson 1 Miss. (Walker) 30 (Miss 1818), holds that, on the death of one party his interest ceases, and the jurisdiction of the court ceases also. Further, the Court in Wells v. Roberson, cited the case of Parker v. Horne, 38 Miss. 215 (Miss. 1859) for the proposition that a judgment against a dead person is a nullity. The Court in Wells v. Roberson, further cited the case of Owen v. Abraham, 102 So 2d 372, (Miss 1958) stating that in Owen, “...this court struck down as a nullity a decree rendered after the death of the defendant in a divorce action.” The

Court in Owen v. Abraham, went on to quote from Griffith, Mississippi Chancery Practice sections 591 and 620, stating, "...it follows from this rule, even if there were no other, that litigation is not to be carried on by or against any deceased person. The impossibility of such thing is apparent however, upon its mere mention." The Court went on to quote from section 620 of Griffith, Mississippi Chancery Practice, § 620 saying, "...And likewise a decree rendered against a defendant or after his death is void, if he was the sole defendant, or was an indispensable party to the suit-although the interlocutory decree were rendered while he was alive."

In this case, there can be no doubt, Charles E. Allen, III, was an indispensable party to the suit. The Judgment entered by the trial Court should be declared to be a reversed and declared a nullity.

Appellant would further cite the case of Kerr-McGee Corp. v. Hutto, 401 So 2d 1277, quoting again from Griffith Mississippi Chancery Practice, § 620, "A valid decree cannot be rendered in favor of two persons, one of whom at the time is dead. Such a decree is void. And likewise, a decree rendered against a defendant after his death is void, if he was the sole defendant or was an indispensable party to the suit."

In addition to the above proposition that the death of Charles Allen caused the Application to Revoke Divorce to abate, is the proposition that

subsequent to the death of Charles Allen, neither he, or anyone on his behalf, nor, did Janet Ellen Davis Allen file a revivor within one year from the death of Charles E. Allen, III, in order to revive the action, which abated upon his death.

Pursuant to § 15-1-69, Mississippi Code Annotated, 1972, (As Amended) "If in any action...the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto,...the plaintiff may commence a new action for the same cause, at any time within one year after the abatement...and his executor or administrator may, in case of the plaintiff's death, commence such new action, within the said one year."

Appellant would show that at no time subsequent to the death of Charles E. Allen, III, did Janet Ellen Davis Allen, or anyone else, for that matter, file a revivor within one year of Charles death. Appellant would argue that this too, takes jurisdiction of the case away from the lower Court, and the Court should not have proceeded to hear testimony regarding whether or not sufficient evidence existed to revoke the Judgment of Divorce.

Appellant would also show that the trial court erred in failing to strike the Motion to Reconsider filed by Janet Ellen Davis Allen, for

having been filed untimely, and for failing to set forth significant facts evidencing a satisfactory, reconciliation of the parties. On June 11, 2007, the trial Court entered its Judgment Quashing the Joint Application to Set Aside Divorce. In that Judgment the Court stated it would entertain a motion to reconsider this finding should the co-applicant timely file such a request, and show sufficient facts evidencing a satisfactory reconciliation of the parties.

Pursuant to MRCP 59 such a motion shall be filed not later than 10 days after the entry of the Judgment. The Judgment was entered on June 11, 2006. The last day to file the Motion to Reconsider would have been on June 21, 2006. The Motion to Reconsider filed by Janet Ellen Davis Allen was filed on June 22, 2006, and therefore should be dismissed.

In addition to being filed untimely, the Motion to Reconsider, pursuant to the trial Courts Judgment Quashing Judgment Application, did not comply with the trial courts order that it show sufficient facts evidencing a satisfactory reconciliation of the parties. All the Motion to Reconsider stated is that Janet Ellen Davis Allen stood ready to prove through testimony and other evidence that such a reconciliation had occurred. Appellant would show that the Motion to Reconsider should have been stricken as requested by the Estate of Charles E. Allen, III in its Motion to Strike Motion to Reconsider.



Finally, Appellant would show that the evidence adduced at the trial held in this matter, was not sufficient to set aside the Divorce of the parties. The Testimony of the witnesses was conflicting at best. The evidence showed that the parties were talking on the telephone and at the most dating over the period of time from September 2005 until the weekend before Charles Allen's death on June 16, 2006.

Mr. Carlisle testified that the whole process of filing the Joint Application to Set Aside the Divorce was a subterfuge by Charles E. Allen, III. to attempt to get title to his home back, which he believed Janet had wrongfully taken from him. Given this background, it is not surprising to hear testimony that the parties would be talking and possibly dating one another.

However, the evidence was un-contradicted that Janet lived at her home, and Charles lived at his. None of Janet's clothes, make-up, or other personal belongings were seen or Charles home when she was not spending the weekend, which, according to the testimony only happened five or six times, from April 2006 until Charles' death on May 16, 2006. Furthermore, the evidence was un-contradicted that Janet or her mother paid the bills at her home and Charles paid the bills at his home.

The Court must also review the testimony of Arthur Carlisle, a

long time friend and associate of Charles E. Allen, III, who testified that Charles had let him know in no-uncertain terms that he never intended to marry Janet, and never intended to proceed with the Joint Application to Revoke the Divorce.

Appellant would show that the evidence adduced at the trial of this matter did not meet the level of evidence required to revoke the Judgment of Divorce, and the Judgment Revoking Divorce should be reversed and vacated.

### CONCLUSION

Appellant would show that the Judgment of the Trial Court should be reversed on all issues. The trial court did not have the authority or jurisdiction to proceed to trial on this matter. Further, the case of Janet Ellen Davis Allen was barred by the fact that she did not file a revivor in the Joint Application to Revoke Divorce, and due to the fact that her Motion to Reconsider was untimely and did not contain evidence of a satisfactory reconciliation of the parties. Finally, Appellant would show that even if the trial court should have proceeded, to trial, the evidence adduced at the trial did not meet the necessary burden that the parties had a satisfactory reconciliation as required by § 93-5-31, Mississippi Code Annotated, 1972, (As Amended).

ESTATE OF CHARLES E. ALLEN, III,

BY:   
MICHAEL J. VALLETTE

**CERTIFICATE OF SERVICE**

I, MICHAEL J. VALLETTE, do hereby certify that I have this day sent via U.S. mail, postage prepaid a true and correct copy of the foregoing Appellants Brief to the following individuals:

Honorable James H.C. Thomas, Jr.  
Chancellor  
P.O. Box 807  
Hattiesburg, MS 39403-0807

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Arthur D. Carlisle, Esq.  
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Ocean Springs, MS 39564

SO CERTIFIED, this the 28<sup>th</sup> day of July, 2008.

  
MICHAEL J. VALLETTE

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