

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

EDDIE J. COTTON

APPELLANT

VS


DOCKET NO. 2008-CA-00626

FANNIE M. COTTON

APPELLEE

APPELLEE'S BRIEF

APPEAL FROM THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an 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.

The Appellant: Mr. Eddie J. Cotton

The Appellee: Ms. Fannie M. Cotton

Attorney for Appellant:

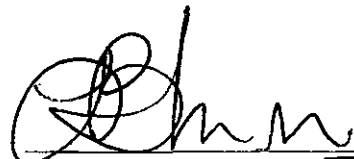
Hon. Ross R. Barnett, Jr.
501 South State St.
Jackson, MS 39201-5306

Attorney for Appellee

Hon. Leslie B. Shumake, Jr.
P.O. Box 803
Olive Branch, MS 38654

The Trial Judge:

Chancellor Vicki B. Cobb
P.O. Box 1104
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Leslie B. Shumake, Jr.
Attorney for Appellee
Fannie M. Cotton

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT REGARDING ORAL ARGUMENT	1
STATEMENT OF THE ISSUES	2
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT.....	6
CONCLUSION	11
CERTIFICATE OF SERVICE	12

TABLE OF CASES AND AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Matthews v. Jones,</u> 149 F2d. 893 (Miss. 1945).....	12
<u>Wallace vs Herron,</u> 43 So.2d 100 (Miss. 1949).....	12
<u>Woolridge vs Wooldridge,</u> 856 So.2d 446 (Miss. Ct. App. 2003).....	14
<u>Chrismond vs Chrismond</u> 52 So.2d 624 (Miss. 1951).....	15
<u>Taylor vs Taylor</u> 317 So.2d 442 (Miss. 1975).....	16
<u>Pickens vs Pickens,</u> 490 So.2d 873 (Miss. 1986).....	16

STATEMENT REGARDING ORAL ARGUMENT

Appellee does not believe that an oral argument will be helpful to the Court.

STATEMENT OF THE ISSUES

ISSUE I: The Court erred in granting summary judgment as to the annulment.

ISSUE II: The Court was correct in dividing the property of the parties, as the Court found certain real property to be titled in both parties' names.

ISSUE III: The Ferguson Factors were irrelevant in the ruling of the lower court as the Court found that there was not a valid marriage. However, there was ample proof of the consideration of the contributions of Mrs. Cotton to the marriage and her good faith in entering into the marriage.

STATEMENT OF THE CASE

The Appellee agrees with the assessment of the Appellant of the “Proceedings in Court Below”, contained in subpart “A.” of the Statement of the Case., but respectfully disagrees with the “Facts” as alleged in subpart “B” of the Statement of the Case. The Appellee would assert her Statement of the Facts below.

STATEMENT OF THE FACTS

The parties to this lawsuit were married in Shelby County, Tennessee on September 26, 1969, (Trial Exhibit 1) and separated in September of 2004. They did not cohabitate after that date. (CP 7). The Appellee was previously married to a John Tate at the age of sixteen (16) with the consent of her parents in Quitman County, Mississippi, on June 26, 1962 (Trial Exhibit 2). The Appellee, Fannie M. Cotton, has a tenth (10th) grade education. (T., P. 26) Fannie Cotton testified that she received a call from John Tate at some point stating to her that they were divorced, and she relied upon that statement. (T., P. 43). The Court ruled, however, that Mrs. Cotton's marriage to Mr. Cotton, the Appellant, was void and granted the motion for summary judgment asking for an annulment of the marriage. (T. P. 59.)

The court then proceeded with the trial on the issue of the equitable division of the property of the parties, which is correctly listed on page three (3) of the brief of the Appellant.

SUMMARY OF THE ARGUMENT

ISSUE I: The Court erred in granting summary judgment as to the annulment.

It is the Appellee's position that the Appellant did not meet his burden of proof in proving the invalidity of the parties' ceremonial marriage, and thus the Appellee should have been allowed to proceed with her divorce on the grounds of habitual cruel and inhuman treatment. To that end, it is believed that the trial record is replete with testimony regarding Mr. Cotton's physical and mental abuse of Fannie Cotton, and that she would have been entitled to a divorce on those grounds.

ISSUE II: The Court was correct in dividing the property of the parties, as the Court found certain real property to be titled in both parties' names.

The Appellee believes the Court ruled correctly in dividing the real and personal property of the parties, even taking into account the trial Court's ruling that the marriage was void.

In any event, the ruling by the court as to the non-existence of the marriage in one sense eliminated the need by Fannie Cotton to prove an equitable contribution to the assets of the parties, in particular the real property. She jointly owned the real property of the parties and as a joint owner of an undivided fifty per cent (50%) interest was entitled to a partition of the property just as any other property owned by unrelated parties. There was no argument made by Mr. Cotton as to the personal property to which Fannie Cotton was entitled, and there was no proof tendered by him that any of the real property was not jointly owned.

ISSUE III: The Ferguson Factors were irrelevant in the ruling of the lower court as the Court found that there was not a valid marriage. However, there was ample proof of the consideration of the contributions of Mrs. Cotton to the marriage and her good faith in entering into the marriage.

The trial itself revealed that the parties had, in good faith, entered into a marriage and had been married for over forty (40) years, despite a number of trials and tribulations. The parties at all times held themselves out as married, and there was no evidence that Mrs. Cotton had tried to deceive Mr. Cotton in any manner. She was married at the age of sixteen (16) and long assumed that she had been divorced based on a phone call from her former husband.

Since the trial Court did, in fact, rule that the parties marriage was void, this threw them into a partnership. Thus, it is the Appellee's position that the "Ferguson" factors would not be applicable. However, if the Court finds that there was, in fact, a valid married marriage, there was ample evidence from Mrs. Cotton and her children as to her many contributions to the marriage, both as a wife and mother and financially.

ARGUMENT

ISSUE I: The Court erred in granting summary judgment as to the annulment.

Our Court ruled long ago that Mississippi, (comparing a similar rule of law in Illinois), presumes a ceremonial marriage to be valid and that the burden of proof rested with Mr. Cotton to prove, not only a former marriage, but that is still subsisting. The Court goes on to state that this is a matter of sound public policy affecting not only the parties to the marriage but their children, the laws of descent and distribution, and the morals and standards of the community. **Matthews v. Jones**, 149 F.2d 893 (Miss. 1945).

It is the Appellee's position that although the Appellant may have met the burden of proof as to the existence of a prior marriage, he did not meet the burden of proof that it was still subsisting. Mrs. Fannie Cotton testified that she did receive a call from her husband as earlier

stated and was informed that they were divorced, a fact in keeping with public policy.

Wallace vs Herron, 43 So. 2d 100 (Miss. 1949) stands for the proposition that a ceremonial marriage raises a presumption that a deceased person's former marriage was dissolved either by death or divorce, and that the burden of overcoming such presumption rests on the proper party seeking the invalidity of the marriage. Again, it is our position that Mr. Cotton did not meet this burden.

ISSUE II: The Court was correct in dividing the property of the parties, as the Court found certain real property to be titled in both parties' names.

The proof at trial showed that title to the real property of the parties was held in both parties' names and thus each party had an interest in the same. (Trial Exhibits 7, 8 and 13) The parties agreed that they accumulated a home in Walls, Mississippi and approximately twenty (20) acres in Quitman County, Mississippi. The Appellee also testified that there was joint ownership of a home and lot in Tunica County, Mississippi, and that Mr. Cotton had been receiving rent on the property at \$300.00 per month since the separation. (T, P 153). Mr. Cotton did state that there was come confusion in the purchase of the Tunica County property but had zero proof to this effect. (There was also a home in Memphis accumulated during the marriage which was not in Mrs. Cotton's name.)

Thus, without a valid marriage, the parties' held the properties as partners, and the Appellee would submit that any equitable contribution made by either party would not be relevant in any action involving the real property. Each party had an undivided one-half interest in the real estate in question.

(In addition, the uncontradicted testimony was that there were a number of personal items

in the house which were Mrs. Cotton's personal items, and there was no dispute offered by the Defendant as to her immediate possession of the property.)

ISSUE III: The Ferguson Factors were irrelevant in the ruling of the lower court as the Court found that there was not a valid marriage. However, there was ample proof of the consideration of the contributions of Mrs. Cotton to the marriage and her good faith in entering into the marriage.

The Appellant in this cause constantly sought to blame the Appellee for the demise of the marriage and in fact testified adamantly, and, unbelievably, that the Appellee did little or nothing for him or their children during the marriage. His testimony was the only testimony at trial to this effect. (T., P. 199). All of the other witnesses, more particularly, his wife and his children, directly refuted his assertions. The witnesses all testified that Mrs. Cotton cooked, cleaned, took the children to school and to the doctor, and consistently performed all of the duties of a wife and mother for over forty (40) years. (T., PP. 116-174)

They also testified that she had the Appellant's supper on the table each and every night during the entire time of the marriage, had his lunch and breakfast made in the morning, and did his laundry. In essence she at all times took care of the children of the parties and her husband. There was further testimony, of course, that she did his while having full time employment for a five (5) year period at the beginning of the marriage, and later working part time as a care giver to assist in the finances of the parties. (T., PP. 145-147). She put all of her monies into the checking account maintained by Mr. Cotton, and he admitted that she brought the sum of \$119,000.00 into the marriage, at the very least (T. P. 196).

Lastly, Mr. Cotton could not explain why he did not list his pension plan on either his financial declaration form or responses to discovery, but did admit on the stand that the entire

amount was accumulated during the “marriage” of the parties. (T., PP 106-108) He denied knowing how much was in his pension plan, as well. Needless to say, whatever is in the account was due in large part to Mrs. Cotton herself, who took care of the Mr. Cotton, his home and his children, in order that he may work and accumulate the pension. Simply put, he could not have done so without her efforts.

One of the more recent cases dealing with the somewhat unique issues of law at hand is the case of **Wooldridge vs Wooldridge**, 856 So. 2d 446 (Miss. 2003). This case itself presents a concise and effective review of cases the Court has dealt with over the years in circumstances similar to our case. In the **Wooldridge** case the parties were married for ten years, divorced, and then resumed living together for another ten years or so, without remarrying. The former wife eventually sued her former husband for \$100,800.00 as compensation for domestic services, \$85,000.00 for their daughter’s educational expenses, attorneys fees and court costs.

The Court cites **Chrismond vs Chrismond**, 52 So. 2d 624 (1951) in stating:

We think that the equity powers of the court are sufficient to protect the rights of the putative wife, where the supposed marriage which she entered into in good faith turns out to be void, and that she is entitled to an equitable division of the property accumulated by their joint efforts during the time they lived together as husband and Wife. **Chrismond at 629.**

(The **Chrismond** case involved a husband who failed to affirmatively tell his wife that he had never formally filed for divorce). We believe this statement speaks directly to our case, as it was amply proven that the joint effort of the parties during this long time period were present, even absent a valid marriage.

The Appellant would assert that Mrs. Cotton deliberately and in bad faith entered into and stayed in the marriage to the Mr. Cotton for over forty (40) years. There is absolutely no proof

to this assertion. There is also the assertion made by Mr. Cotton that Mrs. Cotton understood she was still married to her first husband when she married Mr. Cotton, but, again, there is no proof offered at trial of this fact. Even taking the Appellant's position, it is our position that the case of **Taylor vs Taylor, 317 So. 2d 422 (Miss. 1975)** would apply. This case had as its facts a marriage by the wife to Mr. Taylor at the time she was actually married to another man. He married her anyway, and they lived together as husband and wife for twenty (20) years. In a well reasoned and compassionate ruling, the Court approved the Chancellor's statements that it would not be fair and equitable for the putative husband to walk out and leave Mrs. Taylor as if she were a perfect stranger. **Taylor at 422.** (Unbelievably, this is exactly what Mr. Cotton testified that he wanted to do and intended to do if the Court would allow it.) The Court further stated this:

The facts in this case demonstrate without question that the Chancellor did what a decent regard for the sensibilities of humanity demanded. These people lived together and shared the vicissitudes of life for eighteen (18) years. The separation cast her adrift just as surely as if she had been his lawful wife. The Chancellor appears to have decided that the strict letter of the law ought not to require him to ignore that he was dealing with human beings. He did not make the allowance as alimony but as support. He felt the man had an obligation, and this Court is not disposed to reverse the manifestly just decree under the particular circumstances. **Id at 422-423.**

Interestingly, it appears that the cases cited by the Court would allow for support for Mrs. Cotton in fairness, compassion and equity, and if anyone deserves these things we would maintain that Mrs. Cotton does.

Also the **Taylor** Court makes a second critical statement which applies to the case at bar:

Where parties such as these live together in what must at least be acknowledged to be a partnership and where, through their joint efforts, real property or personal property, or both, are accumulated, an equitable division of such property will be ordered upon the permanent breakup and separation. **Pickens vs Pickens, 490**

So. 2d 873-874. (Miss. 1986).

Likewise then, Mrs. Fannie cotton by the same reasoning would be entitled to an equitable division of all property, and we would submit that this should include the pension of the Appellant.

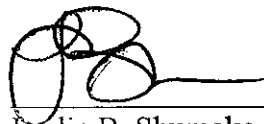
Finally, the Court reminds us:

...where one party to the relationship acts without compensation to perform work or render services to a business enterprise generally regarded domestic in nature, these are nevertheless economic contributions...They are to be valued by reference to the cost of similar services in the marketplace. Where, as here, the man accepted the benefit of such services, he will not be heard to argue that he did not need them and that their economic value should not be considered as the woman's economic contributions to the joint accumulation of property between them. **Id.**

Conclusion:

In summary, the Court is allowed by case law and the principles of equity and fairness to award Mrs. Cotton her rightful share of all of the assets accumulated during the purported marriage, as well as monthly support. To hold otherwise would be to lend legitimacy to Mr. Cotton's claim that she is entitled to nothing and that he is entitled to everything.

Respectfully submitted,



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CERTIFICATE OF SERVICE

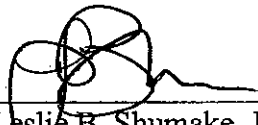
I, LESLIE B. SHUMAKE, JR., attorney for Appellee, FANNIE J. COTTON, hereby certify that I have on this day served a copy of the foregoing by United States Mail, postage prepaid on the following persons at these addresses:

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This the 2nd day of April, 2009.



Leslie B. Shumake, Jr.
Certifying Attorney