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

TERRY STEIN

APPELLANT

VS.

NO.: 2008-CA-00820

KAREN STEIN

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 the Supreme Court may evaluate possible disqualifications or recusal.

Karen Stein
Plaintiff/Appellee

Terry Stein
Defendant/Appellant

Hon. Debra L. Allen
Attorney for Karen Stein

Hon. J. Peyton Randolph, II
Attorney for Terry Stein

Honorable Dewayne Thomas
Chancellor, Hinds County Chancery Court

This the 29th day of December, 2008.



DEBRA L. ALLEN
Attorney for Appellee

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STATEMENT OF THE ISSUES

- I. THE CHANCELLOR DID NOT ERR AS A MATTER OF LAW; THE CHANCELLOR APPLIED THE PROPER LEGAL STANDARD IN GRANTING KAREN STEIN A DIVORCE ON THE GROUNDS OF HABITUAL CRUEL AND INHUMAN TREATMENT
- II. THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR BY CREATING SEVERAL KEY INFERENCES IN HIS FINAL OPINION AS HE DID NO SUCH THING; THE CHANCELLOR'S OPINION WAS BASED ON CREDIBLE EVIDENCE IN THE RECORD
- III. IT WAS NOT MANIFEST ERROR FOR THE CHANCELLOR TO DISREGARD HUSBAND'S CLAIM OF RECRIMINATION
- V. THE DIVISION OF MARITAL ASSETS SHOULD NOT BE REVISED AS THE CHANCELLOR MADE A DETAILED REVIEW OF THE *FERGUSON* FACTORS AND EQUITABLY DIVIDED THE ASSETS

STATEMENT OF THE CASE

- A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN THE COURT BELOW

Karen Stein accepts the Statement of the Case as reflected in the Nature of the Case, Course of Proceedings, and Disposition in the Court Below sections of Terry Stein's brief.

- B. STATEMENT OF FACTS AND RESPONSE TO APPELLANT'S STATEMENT OF FACTS

Karen and Terry Stein were married in Prentiss, Mississippi on May 30, 1981. They separated in their county of residence of Hinds County, Mississippi on or about September 21, 2006, when Karen moved out of the family home. The parties had two children, Nicholas, born February 28, 1984, and Lindsey, born November 19, 1987. Nicholas was twenty-three years old as of the date of the trial. Lindsey was nineteen years old at the time of trial. (T. 170/15)

Both parties were consistently and appropriately employed throughout their marriage, Terry as an electrician and Karen as a registered nurse with Karen taking off only after each child was born. (T. 280/13-29) At one point in their marriage, Terry and Karen separated their finances with each contributing to the payment of certain household bills. Karen contributed all of her income to family purposes and saved very little while Terry saved as much as he could, and refused to contribute to any expenses which he deemed unworthy.

Karen must take an exception to blatant falsehoods set out in Terry Stein's Statement of Facts. In his brief, Terry Stein writes, "Karen was released from one of her positions at the University Medical Center, because she was engaging in an affair with another co-worker, and she was also released from another job, because some medications were unaccounted for and it was assumed she took them." These two statements are blatant lies. There is no transcript citation attributed to these comments because there is no such evidence in the transcript. They are lies and counsel for Terry Stein should be ordered to strike them from his brief.

Throughout the trial, much as in his marriage, Terry Stein hurled baseless accusations at Karen of affairs and illicit behavior involving drugs. While there is no doubt that Karen was prescribed medication for depression and may have briefly self-medicated herself somewhat, there is no proof whatsoever that Karen ever stole drugs as a professional nurse, mishandled drugs due to some addiction on her part, or lost any job due to any misconduct.

Karen must take further exception to certain others matters set out in Terry Stein's Statement of Facts as, unfortunately, simply false. Terry Stein, in his typical manner, alleges that Karen "failed to save for her retirement and instead chose to spend the money she earned on personal assets for herself, such as clothes and alcohol." Number one, there is no evidence whatsoever in the record before this Court that Karen was anything but a frugal, careful spender

who stretched her pennies by shopping at garage sales, discount stores, and second hand shops. It is outrageous and typical of Terry Stein that he would actually allege that buying “clothes” was a dissipation of assets. Secondly, as for the ridiculous allegation that Karen Stein “wasted” marital assets on “alcohol,” Terry completely overlooks the fact that he was the regular and long term user and abuser of alcohol in the marriage.

Karen Stein, Lindsey Stein, and Nicholas Stein all suffered from depression or other emotional problems during the volatile Stein marriage. Karen suffered from weight loss and high blood pressure from stress induced hypertension at an early age during the marriage. At one point, at the insistence of her sister, Peggy Murphy, a registered nurse, Karen was admitted for substance abuse treatment. Peggy, who worked in a drug and alcohol treatment center, suggested that Karen admit herself at her facility. Peggy was very clear that she did not think Karen was an alcoholic but that the alcohol abuse was a symptom of her depression and misery. Peggy wanted Karen at her facility where she knew she could guarantee that Karen got the attention she needed. Terry made an effort to actually participate in Karen’s treatment, Karen completed treatment at the facility, and Terry Stein continued his daily drinking habits. Karen had no more issues with alcohol abuse. (T. 145/28-29; T. 147/26)

Karen must again take exception to additional blatant falsehoods set out in Terry Stein’s Statement of Facts. It is written in Terry Stein’s brief to this Court that, “Karen also testified that the anxiety associated with her marriage caused her to lose weight; **however, evidence of diet pills found in the couple’s home was introduced at the hearing, which indicated that Karen’s weight loss was the result of measures she was purposefully taking instead.**” (Emphasis added) Terry Stein cites to the transcript for support for this false statement. The transcript reflects clearly that Karen “tried” some weight loss medication to get ready of “belly”

fat. She then clarified that, "I didn't take these medications throughout my marriage. ... But I probably took maybe five and it was not for me. It made me nervous. It made my heart beat fast. So, no, I didn't. I wasn't on it." (T. 12/20) Terry Stein presented no evidence whatsoever to rebut her testimony but instead twists the actual facts to persuade this Court.

Karen Stein denies having committed adultery and denies that Terry is entitled to the defense of recrimination. Terry presented no evidence that she committed adultery prior to the parties' final separation. While Karen readily admitted that she had been enjoying the company of an old friend of the family since the separation, she denied that she was having a sexual relationship with him.

SUMMARY OF THE ARGUMENT

Karen Stein presented a myriad of corroborated facts to prove the grounds for divorce of habitual cruel and inhuman treatment. Those facts are well documented by the Chancellor in his lengthy Memorandum Opinion which was adopted by reference in the Judgment of Divorce.

The Court below did not apply an erroneous legal standard and very clearly set out what the applicable law and burden of proof were and adhered to those standards.

Terry Stein alleges that the Court below "committed manifest error in creating several key inferences" by "presuming that because Terry could not affirmatively deny committing" certain alleged acts, that Terry must have committed them. The Court committed no error and only made the point, as put another way, that Terry Stein did not deny or refute certain allegations of fact proven by Karen and which supported her evidence of habitual cruel and inhuman treatment.

As to the defense of recrimination, the Chancellor ruled correctly and in strict accordance with applicable law. Further, the Chancellor is granted great discretion in applying the law of

recrimination to deny a party a divorce where it finds that the party seeking the divorce has committed some fault sufficient to equate to grounds for divorce. Here, there was insufficient proof of any conduct sufficient to constitute grounds. The Chancellor was well within his broad discretion to deny application of the defense of recrimination.

The Chancellor was within his discretion to award an almost fifty-fifty division of the parties' marital assets.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review in domestic relations cases is limited by the substantial evidence/manifest error rule. *Mizell v. Mizell*, 708 So.2d 55, 59 (Miss.1998). The appellate Court will not disturb a Chancellor's findings unless they are manifestly wrong, clearly erroneous, or if an erroneous legal standard was applied. *Id.* at 59 "This court will not substitute its judgment for that of the chancellor 'even if this Court disagrees with the lower court on the findings of fact and might . . . [arrive] at a different conclusion.'" *Owen v. Owen*, 798 So.2d 394, 397-98 (Miss. 2001) (quoting *Richardson v. Riley*, 355 So.2d 667, 668 (Miss.1978)). The burden of proof in a habitual cruel and inhuman treatment case is a preponderance of evidence. *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss.1993).

A Chancellor's finding that this standard of proof is satisfied is subject to an abuse of discretion standard of review. *Wright v. Wright*, 823 So.2d 586, 587 (Miss Ct.App.2002) (citing *Snoddy v. Snoddy*, 791 So.2d 333, 344 (Miss.Ct.App.2001)).

II. THE CHANCELLOR DID NOT ERR AS A MATTER OF LAW; THE CHANCELLOR APPLIED THE PROPER LEGAL STANDARD IN GRANTING KAREN STEIN A DIVORCE ON THE GROUNDS OF HABITUAL CRUEL AND INHUMAN TREATMENT

Karen has introduced sufficient evidence to obtain a divorce on the grounds of habitual cruel and inhuman treatment.

A. GENERAL STANDARDS:

The well known definition of habitual cruel and inhuman treatment is:

Habitual cruel and inhuman treatment may be established only by a continuous course of conduct on the part of the offending spouse which was so unkind, unfeeling or brutal as to endanger, or put one in reasonable apprehension of danger to life, limb or health, and further, such conduct must be habitual, that is, done often enough or so continuously that it may reasonably be said to be a permanent condition. Our cases require more than mere unkindness, rudeness, or incompatibility to support the granting of a divorce on the grounds of cruel and inhuman treatment. On the other hand, habitual ill-founded accusations, threats and malicious sarcasm, insults and verbal abuse may cause such mental suffering as to destroy health and endanger the life of an innocent spouse. ...

The Court is to employ a subjective standard “[b]ecause we have held that the impact of the conduct on the plaintiff suing for divorce under these grounds is crucial, we employ a subjective standard.” *Holladay v. Holladay*, 776 So.2d 662, 667 (Miss.2000)

The subjective standard imposed in cases of habitual, cruel and inhuman treatment was again emphasized in the case of *Reed v. Reed*, 839 So 2d 565, 571 (Miss Ct App. 2003) , wherein the Court Of Appeals stated, “Whether the conduct imposed by the offending spouse warrants a divorce for cruelty depends on the conduct’s effect on the suffering spouse. *Mitchell*, 823 So.2d 568, at 571 (Miss Ct App. 2002). The negative impact upon the complaining spouse may be to their physical or mental health.” *Rakestraw v. Rakestraw*, 717 So.2d 1284, 1288 (Miss. Ct. App.1998).

The Court in *Reed* further stated:

In *Bullock*, 699 So.2d at 1210, the court emphasized Mrs. Bullock’s medical condition. She was hospitalized for depression and had attempted suicide. *Id.* She also went through counseling and had bouts with hyperventilation, high blood pressure, and

stomach problems as a result of her unhappiness with the marriage and her husband's demeaning behavior. *Reed* at 571.

The Chancellor took into consideration the cumulative nature of Terry Stein's acts. In the case of *Savell v. Savell*, 240 So.2d 628, 629 (Miss.1970) our Supreme Court stated:

It is obvious that habitual cruel and inhuman treatment may consist of repeated acts of the same nature such as personal violence, or it may consist of a series of acts, some of the same nature and some of different natures, but which, when taken together, tend to cause pain and suffering on the part of the innocent spouse. There are many kinds of acts such as wilful failure to support, verbal abuse, neglect, and the like which, if taken alone will not constitute cruelty, but when taken together will manifest a course of conduct as a whole which may amount to cruelty. * * * (Bunkley and Morse's, *Amis Divorce and Separation in Mississippi*, § 3.14 [8], p. 122 ([1957])). *See also Sandifer v. Sandifer*, 215 Miss. 414, 61 So.2d 144 (1952); *Smith v. Smith*, 40 So.2d 156 (Miss.1949); and *Manning v. Manning*, 160 Miss. 318, 133 So. 673 (1931).

B. SPECIFIC CASE LAW APPLICABLE TO THE STEIN MATTER:

1. In the case of *Rakestraw v. Rakestraw*, 717 So. 2d 1284 (Miss CA 1998) the Court found that certain actions were part of the cumulative acts of habitual cruel and inhuman treatment, saying, "He frequently belittled Rebecca before family and friends by referring to her as 'stupid' or 'ignorant.' While Rebecca admitted to occasionally returning these insults, his unkind behavior extended beyond mere bickering. Although there is no confirmation that he ever struck his wife, William was prone to throwing household items about during what might best be described as temper tantrums."

2. Most recently, our Court has ruled in the case of *Cassell*, 2007MSCA 2006-CA-01001-121107 that evidence presented was sufficient to prove habitual, cruel and inhuman treatment:

At trial, Mary Lou testified that Nolen was emotionally and mentally abusive throughout the course of the marriage. According to Mary Lou, Nolen cursed her, called her names, berated her, and kept her diabetes medicine away from her. She testified that her husband also threw things during arguments and, on one occasion, he threw a filing cabinet across the laundry room that barely missed the couple's adult son, Matthew Cassell.

Mary Lou testified that her husband's behavior had an adverse affect on her mental and physical well-being. In June 2004, she experienced an anxiety attack, requiring emergency medical attention, that she attributed to her husband's conduct and all of the stress from the marriage. She also testified that she received psychological counseling during the marriage and was prescribed Lexapro. In addition to suffering from depression, she contemplated suicide during the marriage. Mary Lou testified that her health has significantly improved since the separation.

3. In the case of *Scaly v. Scaly*, 802 So. 2d 128, 131, (Miss. Ct. App. 2001), "Mrs. Scally offered testimony that during the course of their twenty-five years of marriage, Mr. Scally was moody, controlling, dominating, and verbally abusive. She testified that this conduct affected her health, and caused her to fear for her safety." The Court of Appeals upheld the granting of a divorce to Mrs. Scaly on the grounds of habitual cruel and inhuman treatment.

4. The case of *Stone v. Stone*, 824 So. 2d 645 (Miss. Ct. of App. 2002) is particularly applicable to the Stein matter. In the *Stone* case, the Court of Appeals affirmed the granting of a divorce on the grounds of habitual cruel and inhuman treatment. The Chancellor found that Mr. Stone had committed the following actions which constituted habitual cruel and inhuman treatment and those actions did not include any actual physical abuse. The Court considered the cumulative effect of Mr. Stone's actions, which included (1) repeated habitual

screaming in Mrs. Stone's face by Mr. Stone; (2) outbursts of temper by Mr. Stone when anger was physically displayed, including pushing or grabbing by Mr. Stone, which incidents frightened Mrs. Stone and created in her a reasonable apprehension of danger; (3) numerous displays of offensive vile language by Mr. Stone in the presence of Mrs. Stone, a woman of delicacy of sentiment; (4) Mr. Stone's continued critical complaints over the years of Mrs. Stone's overweight; (5) Mr. Stone's failure to show any affection towards Mrs. Stone; (6) repeated long periods of silence imposed by Mr. Stone when he would not speak to Mrs. Stone; and (7) Mr. Stone's constant criticism of Mrs. Stone over matters involving budget and finances.

Id.

5. In *Wires v. Wires*, 297 So. 2d 900 (Miss. 1974) this Court upheld the Chancellor's granting of a divorce on the grounds of habitual cruel and inhuman treatment "where the proof showed that the wife was jealous and accused the husband of philandering with his secretary; that her bickering caused their son to leave home; and that she made anonymous calls to his secretary." The husband complained that her behavior caused him to have a "knot in his stomach." Here, Karen suffered much greater physical and emotional damage from Terry than a "knot" in her stomach.

6. As to the necessary corroboration of physical and/or emotional injury, Terry Stein complains that Karen's proof was not sufficiently corroborated. In *McIntosh v. McIntosh*, 977 So. 2d 1257 (Miss. Ct. App. 2008) the Court affirmed the lower court and found that the testimony of friends and family corroborating the husband's depression and physical deterioration was "clear" and sufficient to prove the affect of the cruel and inhuman treatment. This Court, and our law, has never required the testimony of an expert witness to prove or corroborate mental or physical injury.

C. SPECIFIC ACTS OF HABITUAL CRUEL AND INHUMAN TREATMENT:

Terry Stein committed twenty six years of habitual cruel and inhuman treatment against Karen.

1. REPEATED HABITUAL SCREAMING AND ANGRY TIRADES

Terry Stein routinely screamed at Karen about trivial matters. Terry used the same phrase over and over again when he wanted to chastise Karen, "Karen, come here! I want to show you something!" and then berated her incessantly.

Karen testified that while Terry was hitting or shoving her, he would be "right up in my face... and he was furious and his face would be as red and spitting. It was – very angry." Terry would be one inch from her face, screaming at her and calling her names - "stupid and dumbass and stupid bitch." (T. 36/10-19) Terry had a regular habit of getting within inches of Karen's face on occasions "too many to count" and that this favorite tactic of his increased in frequency as the marriage went on. (T. 39/18-26) Karen testified that while Terry was screaming at her and was close to her face, he would "shove my shoulder many times." (T. 39/27-29) Karen said that the frequency of these assaults increased as the marriage went on. (T. 39/18-26)

Karen testified that Terry would get angry about some topic without provocation and would all of a sudden start in on her with, "Karen, come here." (T. 65/12-19) Karen testified that Terry habitually used a certain pet phrase when he was about to go on a tirade. She would hear, "Come here. I want to show you something." and she knew that she had done something wrong. (T. 67/15-18)

Terry Stein habitually exhibited rage and anger throughout his marriage to Karen. (T. 65/10) Karen described Terry when he was angry as "red and full of rage. He is full of rage." As Karen testified about Terry, erupting "out of the blue" she shook visibly and cried. (T. 65/20-27)

Karen testified that “standing up” to Terry made things worse and that she didn’t start telling him he was not going to treat her the way he had in their marriage until later in their marriage. Terry laughed at her when she stood up for herself. (T. 65-27-29 and T. 1-6)

Terry Stein’s anger intimidated Karen on a regular basis. Terry weighed 260 pounds at the time of separation and Karen weighed 120 or less throughout the marriage. (T. 34/24) Terry hit Karen “too many times to just say one.” (T. 35/4) Terry hit Karen many times, hitting her on the shoulder and shoving her against a wall. (T. 36-1) Terry did not deny these actions.

Karen’s sister Peggy witnessed Terry Stein’s “explosive” behavior. He would scream loud and she indicated that she could not scream in the Courtroom as loud as Terry did as it would be “too loud.” Peggy heard Terry scream at Karen in person and over the telephone. Peggy heard him curse Karen and call her stupid. Peggy spoke of overhearing Terry while she was on the telephone with Karen. Peggy said he was so loud you couldn’t know what he was saying but that he was just screaming. She questioned her sister about how she could let Terry scream and holler at her like that, calling his raving “just so loud and volatile.” (T. 123/17-28; T. 141/15-29; T. 142/1-6)

In describing Terry as a person, Peggy related Terry’s habit of sulking, of just sitting in the den of the home with a scowl on his face, ready to blow up about anything. Peggy said that most of Terry’s explosions were directed at Karen but she also witnessed him directing his tirades at their son. She observed the two of them screaming at each other with Nicholas calling his father a son of a bitch, reminding his father that he had already hit him and asking him if he wanted to hit him again. (T. 124/14-29) Nicholas incredibly denied his father ever hit him but admitted that he said what his Aunt Peggy heard. (T. 166/2-4)

Peggy told the Court how Karen would typically respond to Terry's rages. Karen never yelled back at Terry and would get very quiet. Karen didn't fight back. Karen retreated. Peggy recounted the fight she witnessed between Terry and their son Nicholas and said she was "embarrassed" and "shocked" and "frightened" at Terry's fury at Nicholas while Karen just "sat there" and didn't fight back or leave. (T. 6-19)

Peggy testified that Terry would be screaming so loudly and so fast at Karen that it was "just frightening." Peggy herself was intimidated by Terry, and she was aware that Karen was afraid of him. (T. 141-6)

2. PHYSICAL ABUSE

Approximately ten years into the marriage, Terry hit Karen and gave her a black eye the night before a camping trip. Terry's entire family observed this black eye the very next day and did nothing. Karen was humiliated to be in the presence of his family with a black eye inflicted by Terry. (T. 35/9-29) On direct examination, Terry couldn't "recall" giving his wife a black eye, (T.210/2-4) This Court specifically asked Karen if she had been afraid of her husband and she directly answered, "Yes." (T. 115/23-29 and T. 116/1-8)

Karen testified about Terry popping her with a wet towel and causing welts on her skin. (T. 36/20-29 and T. 37/ 1-9) Karen and Terry had gone camping with friends at the reservoir. Terry was intoxicated and Karen was wading in the water with some of the other women. (T.38/12- 29)Terry ordered Karen out of the water and she disobeyed. When she did come out of the water, Terry took a wet towel and hit the back of her legs with it and did this in front of everyone gathered there. (T.39/1-17) Karen testified that Terry struck her hard with the wet towel, leaving marks on the back of her leg. Peggy Murphy was called to the reservoir to pick Karen up and she saw the raised welts on Karen's thighs. (T. 126/7-25) Karen was embarrassed

and humiliated to be treated that way in front of other people. The guests looked away, embarrassed at being witnesses to the scene. (T. 39/9-13) Terry did not deny the incident at the reservoir but stated he couldn't "recall" it. (T. 201 21-27)

Terry threw plates of food at Karen because he didn't like the food. Karen cooked soup and because Terry did not like it, he took the whole pot off the stove and threw it out in the yard. (T. 37/12) On another occasion, Karen had cooked chicken, a dish Terry normally liked and Terry threw the dish out because it did not please him. (T. 37/26-29 and T. 38/ 1-5) When questioned about throwing food at Karen, Terry did not deny doing it and only stated, he didn't "recall" that event. (T. 201/28-29 and T. 202/1-3)

3. THREATS OF VIOLENCE

Terry threatened Karen with violence he did not necessarily actually inflict: telling her that he wanted to kill her and that she was lucky he didn't. Terry made this statement to Karen repeatedly over the course of the marriage, and when asked how many times Terry Stein told her she was lucky he didn't kill her, she answered, "I don't know how many times, Not every day, but too many to— 26 years worth." Karen estimated that Terry angrily threatened her life as often as two to three times a week. (T. 40/1-14)

Karen would often run and hide from Terry within their home, telling the Court that she was "really scared" because he was "right up in my face. He was red." After Karen would run to the bathroom or bedroom and lock the door, Terry would follow after her, knock on the door, and tell her she couldn't get away from him. (T. 41/ 6-8) Terry would hold his hand up to her as if he was going to hit her and she knew if she said anything to him he really would hit her. Karen stated that she would try to be calm and get away from him. (T. 40/15-29 and T. 41 1/1-3) Karen

regularly took the children and left Terry, going to her sister Peggy's home or to a hotel to get away from Terry. (T. 41/ 9-27)

4. CURSING/NAME CALLING

Karen testified to Terry cursing her outside of and in the presence of the children, calling her "dumbass bitch". Peggy Murphy testified to hearing Mr. Stein refer to Karen in a similar manner such as "stupid" or "stupid bitch" (T. 124/9-10) Terry called Karen a "stupid bitch" and a "dumbass bitch" in front of "anybody." At trial, Terry couldn't "recall" calling Karen a "stupid bitch" but admitted it "may" have happened. (T. 203/ 13-19)

5. FAILURE TO SHOW ANY AFFECTION

Karen testified that Mr. Stein was mean and unfeeling towards her, showing her little affection or kindness. Karen specifically testified about Terry, for example, not acknowledging Mother's Day because she was not his mother. Terry Stein admitted telling her this. (T. 252/16-22) Karen further testified that Mr. Stein did not acknowledge her birthday with presents or cards and Mr. Stein presented no evidence to the contrary.

Karen testified that Mr. Stein would allow them to eat in a real restaurant only once a year on their anniversary because, to put it bluntly, he was too cheap to take his family out to dinner.

6. FAMILY MEDICAL NEEDS IGNORED

Terry Stein has a distrust and animosity towards the health care profession which manifested itself in denying his family medical care. Terry Stein distrusted doctors. Karen testified that Terry's usual refrain on the subject of doctors was that they should be like a mechanic: if they can't fix something we don't need to have to pay them. (T. 60/1-5) Terry Stein

admitted this statement and affirmed his belief in that position, elaborating on this theory. (T 241/13-28)

The parties' daughter, Lindsey, broke her arm as a child while riding horses at a friend's home. When Karen arrived, she found her daughter laying on the couch crying with an obviously injured arm which she couldn't move and in a great deal of pain. When she attempted to take the child to the doctor, Terry refused to allow it. However, Karen ultimately disobeyed him two weeks later and took her daughter in for an X-ray which determined that Lindsey's humerus was fractured. (T. 60/10-29)

Karen confirmed that, because the child went two weeks without being splinted, the break did not heal as well as it would have had the child had immediate medical attention. Terry's attorney questioned why she, as a nurse, did not drive the child to the doctor despite Terry's demands that she not. Karen explained that if such an event happened now, she would have done just that, but tried to explain the level of control Terry had over her at that point in the marriage, by saying, "Because I'm married to somebody who forbid me to do that. And back then - right now I would. Back then there is a lot of things that I should have done and I didn't." Such was the fear she had of Terry, that she was too intimidated to even seek medical attention for her daughter. (T. 110/ 21-29 and T. 111/ 1-17)

Karen testified that neither Lindsey or Nicholas were allowed to get regular dental check-ups. Karen Stein's first mammogram in her life was one week before trial at the age of forty-eight (48). (T. 61/ 17-29)

While shopping with Lindsey in Wal-Mart, Karen fainted and collapsed to the floor. An ambulance took Karen to the hospital. Karen was advised to stay overnight for observation, and Terry insisted that she come home – against medical advice – because it cost too much money

for her to stay in the hospital overnight. (T. 42/ 12-29 and T. 43/1-28) Peggy Murphy spoke directly to Terry on the night Karen came home from the hospital after Terry refused to allow Karen to be admitted for observation. Peggy was aware that this was the second time Karen had fainted for no apparent reason. Terry admitted to Peggy that the doctors wanted to keep Karen overnight and run some tests to try to find what the problem was, but Terry stated he didn't "want to just pay them for her to lay up at the hospital." (T. 127/22-29 and T. 128 1-8)

Lindsey was a breech baby and Karen was going to require a Cesarean procedure and therefore, she was under doctor's orders to come immediately to the hospital if she went into labor. (T. 44/3-9) Karen went into labor one morning when she was at home with Terry, who was well aware that she was going into labor, well aware that it was a breech birth, and well aware of the medical repercussions. Nevertheless, Mr. Stein went on to work knowing that his wife was in labor and needed to go immediately to the hospital. (T. 44 /16-25) Karen continued to have contractions that morning and ultimately had to ask a neighbor to drive her to the hospital. (T. 44/ 2-9 and T. 45/19-24) Terry was working approximately 25 minutes from the hospital where Karen was delivering their first child, yet he took his time getting there, arriving approximately two hours later. (T. 45/24)

Karen likewise had a difficult pregnancy with Nicholas, suffering placenta previa, and was put on bed rest the last six weeks of the pregnancy. Placenta previa results in hemorrhaging and bed rest is necessary to keep pressure off of the cervix in an effort to prolong the birth for as long as possible to give the baby a greater chance of survival. (T. 45/28-29 and 46/1-11) Karen was placed on total bed rest for six weeks where she literally could not get out of the bed, could not go to the bathroom, had to lay on her side only to alleviate pressure to her vena cava; she could not even sit up. (T. 46/15-19)

Her sister Peggy, a registered nurse, took care of Karen during the day while working full time at night. (T. 46/24-28) Mr. Stein was at home with Karen during the night. Terry did not help her with her bedpan while he was at home with her; he left her to help herself. After using the bedpan herself, Karen emptied it into a 2 gallon bucket next to the bed. Peggy would empty it after she came in for the day after working all night. (T. 48/5) On direct examination, Terry Stein responded to the accusation that he did not help Karen during this time. Terry admitted that he "wired up" a room so Karen could have cable and television and left some items in an ice chest for her during the day. He admitted that Peggy helped with the "nursing type stuff" and cited as an example of "nursing type stuff" that Peggy would give Karen a bed bath. Terry readily admitted that he "didn't do all that" and claimed that he was "scared." (T. 216/18-29 and T. 217/1)

7. CONSTANT CRITICISM OVER MATTERS INVOLVING BUDGET AND FINANCES

Karen testified quite simply, "Terry - Terry is addicted to money. It comes before children- his own children. It comes before anything. And not what money will buy, but the money itself." (T. 51/11-14) Terry Stein himself admitted on direct examination that "99 per cent" of his and Karen's arguments were about money. (T. 203/26-29)

During the first six years of the children's lives, Karen did not work full time and Terry resented it. Karen had to shop at garage sales for her children's clothes. (T. 51/21) Terry would become very angry if Karen bought new clothes for the children, claiming that it was stupid. (T. 52/1)

Terry had so long harassed Karen about money that she finally opened her own checking account and she and Terry split the household bills like roommates. Karen testified, "I got tired of being yelled at for not balancing it or not balancing it right. And also any dime I spent I had to

account for it. Any dime on getting the kids ice cream cones, whatever. Anything. So I got my own checking account and we split the bills, except I paid all the kids' stuff." (T. 53/2- 9)

Terry Stein never once took his own son shopping for clothes. When it came time for the boy to graduate from high school, and he needed a suit - his first suit- to graduate in, Terry refused to buy his son a suit, claiming that it wasn't necessary. Nicholas' grandfather bought him a suit to wear at his graduation. (T. 52/4-14) Terry never refuted this allegation and admitted that he never took his son shopping.

Approximately a year and a half prior to the trial, Karen's father had become terminally ill. She and her sister Peggy tended to him in his home for the last two weeks of his life. This required that Karen take off two weeks from her job, without pay. She had used up her annual and sick leave by taking off work to go with her father to doctor's appointment and chemotherapy sessions. (T. 52/17- 29)

Karen had opened her own checking account by this time, and Terry expected her to pay her fair share of the household bills. Karen did not have sufficient funds to pay her "share" of the household expenses, including the electric bill. Terry refused to pay it. Karen told him she was worried about the power being shut off and Terry still refused. Karen had to borrow money from her mother for the first time in her life and she had to do it while her father was dying. Terry Stein refused to pay the electric bill for one month for the house his children lived in while his wife took off work to care for her dying father. (T. 53/23-29 and T. 54/2-22)

Karen's sister Peggy confirmed that Karen took off two weeks to be by her dying father's side and was "worried to death about how she was going to pay her part of the household bills." Peggy testified about how her husband and her other sister's husband were supportive of them, calling to check on them and their parents but that Karen was on her own. Terry was not

supportive, not helpful, and not interested in anything to do with Karen's father's death. All Terry Stein was worried about was that Karen was losing money while taking care of her terminally ill father. (T. 138/9-21)

Despite Terry's adamant claims that Karen was a spendthrift, the evidence showed that Karen was a good and frugal wife; she had no jewelry collection, no shoe collection, and the only diamond she owned was her engagement ring. She had no expensive hobbies; she was not a clothes horse. (T. 57/7-26) Peggy corroborated that Karen was not a spendthrift and did not deserve Terry's anger over spending. Peggy verified that most of the furnishings in the Stein home came from garage sales. Peggy noted that Karen drove a fifteen year old van with rust on the roof and that she would rather her children have things they needed than spend money on herself. (T. 142/5-14)

Terry Stein insisted that his wife and children wear second hand clothes while he enjoyed the pastimes he chose, buying four wheelers, guns, fishing equipment, and tools. (T. 58/2)

In twenty six years of marriage, the Stein children got to go on three vacations: two trips to Gulf Shores, Alabama with their parents and one trip with a church group to San Antonio, Texas, which was at no cost to Terry Stein. (T. 59/15-27)

Probably no testimony is more telling of Terry Stein's attitude about money than his own. After his son Nicholas was required to be treated at Brentwood Behavioral Healthcare of Mississippi for emotional and/or drug problems, the Steins received a bill for services. Terry was paying the house note, the car insurances, the cable bill, and the water bill. (T. 205/ 1-3) According to his Uniform Chancery Court Rule 8.05 financial statement, that meant Terry was spending approximately \$1,200.00 per month towards family expenses out of his adjusted gross income of \$3,0009.00. (Trial Exhibit 4)

Terry wanted Karen to pay the Brentwood Hospital bill because he thought he was paying enough of the family's expenses. Simple math shows that Terry had \$1,800.00 per month that he was not spending on family bills. Terry Stein also makes no mention of those family expenses that Karen was paying: health insurance for the family, food for the family, clothing for the family, school expenses for the children, general expenses of the children, school related costs, and all other family costs not considered by Terry Stein. While he saved \$1,800.00 per month, his son's medical bills went unpaid. When Terry realized that Karen had not been able to pay off the debt and the parties were being or were about to be sued, Terry produced some of his "savings" and paid his son's hospital bill. (T. 2004/24-29 and T.2051-12)

Terry Stein admitted at trial that not until after the divorce had been filed had he contributed any funds to the children's college expenses. Apparently Karen was also supposed to pay for that expense out of her income. (T. 228/5-11)

Terry evidenced during their marriage and at trial a disdain for Karen's contributions to the marriage. He made constant comments during the trial in an attempt to portray Karen as a spendthrift who squandered hard earned money. In response to the question "Is it your testimony that she wasn't bringing her money home to the family?", Terry Stein replied, "I don't know where it was going." When asked where he thought it was going, he replied, "I've been trying to find that out for twenty something years." (T. 231/ 814) Terry gave a begrudging credit to Karen for buying "stuff" and "some of the clothes and stuff for them." all the while maintaining that, because he paid the mortgage and some of the more regular standard bills, Karen could not have possibly have spent her income on anything worthwhile. (T. 231/8-20)

When pressed as exactly how Karen had been frivolous or wasteful with her income, Terry could not answer that question. Yet maintained that she was frivolous. He continued to

maintain the same refrain similar to what Karen no doubt heard everyday of her marriage,” I don’t know what she spent it on. I kept asking he that – where is it going? She said, The kids need things.” This, of course, was an unacceptable answer to Terry Stein. (T. 232/12-20) Karen paid all of the expenses of beauty pageants, proms, and senior year expenses.

When pressed on whether Karen was purchasing expensive jewelry, clothing, or had expensive hobbies that she squandered money on, Terry Stein recalled seeing “a dress hanging in a plastic bag on the closet door for two years.” To Terry Stein, this was his evidence of a spendthrift wife. (T. 232/2-11) Yet, on cross-examination, Terry Stein admitted that Karen alone paid over \$3,000 - \$4,000.00 for Lindsey’s braces while he made no cash contributions to the debt. (T. 262/2-9) Karen had unpaid medical bills and Terry claimed that he wasn’t even aware of them (T. 266)

At the time of the temporary hearing in October, 2007, after the September separation of the parties, Karen Stein had \$400.00 in her checking account and Terry Stein had \$12,000.00 in his account. (T. 259/25-27)

8. ABUSING ALCOHOL ON A REGULAR BASIS

Karen testified that Terry drank continuously and daily, drinking beer and Jack Daniels whiskey. Karen testified that about five years into their marriage Terry quit drinking Jack Daniels because it made him “mean and sick.” Karen testified that when he drank Jack Daniels, Terry threw up. She told the Court very specifically about Terry stopping daily to buy a twelve pack of Old Milwaukee Best before coming home from work and likewise buying a “tall boy” to drink on the way home. (T. 74/5/25) Mr. Stein would then sit down in front of a television set and drink beer until he passed out or fell asleep, with little or no interaction with herself and the family.

Karen testified that Terry literally followed this course of conduct throughout her marriage of over twenty-five years. (T. 72/19-29 and T. 73/1-8)

Terry continued to drink beer on a regular and his drinking of beer increased as the marriage went on. While Terry stated in discovery responses that he “might have one to four beers, but sometimes not any at all” per day, Karen specifically disputed that claim, testifying that Terry drank eight to ten or twelve beers daily and specified that he drank Milwaukee’s Best Light. (T.73/16-29; T. 74 1-2; and T. 75/2-11)

Karen testified that she would already be at home when Terry arrived from work at 3:30- to 4:00 p.m after a fifteen to twenty minute drive. Karen would see him walk in the home on a daily basis carrying a “big” beer in a brown paper bag and on “most days” carrying the single beer in a brown bag and a twelve pack of Milwaukee’s Best Light. (T. 74/5-25)

Karen testified that on the weekdays, Terry would sit in his recliner in front of the television and drink beer. (T.75/2-6) On the weekends, Terry drank more on the weekends, usually drinking another six pack on top of his usual twelve pack. (T. 75/ 7-11)

Karen told the Court about how Terry’s behavior got worse when he drank: he got angrier easier, he would “go off more” and anything going on could set him off more easily. (T. 75/12-17)

Peggy Murphy confirmed that Terry drank excessively. At the time that she was, in essence, mounting an intervention to help her sister due to her excessive consumption of alcohol, Peggy was also letting Terry know that she thought he was drinking way too much alcohol himself. Peggy was concerned that when her sister got home from treatment that Terry would continue his drinking habits.(T. 122/4- 28) Despite the fact that he admittedly thought

Karen was drinking too much alcohol, Terry Stein never quit his drinking. (T. 122-28) According to Peggy, the only times she observed Terry not drinking alcohol in his home when she was there was “[m]aybe on Christmas and when he went to work.” (T. 123/11-13)

In response to Karen’s allegations that he drank excessively, Terry testified on direct examination that he drank six to twelve beers on the weekend and during the week he may “come in and have one or two, May have three or four. May not have any.” (T. 203/4-9) On cross-examination, Terry Stein admitted that he did drink everyday while having previously denied it. (T. 257/13-14)

9. ENCOURAGING THE PARTIES MINOR DAUGHTER TO MOVE IN WITH HER BOYFRIEND AND EVEN ASSISTING HER TO DO SO BY PROVIDING BEDROOM FURNITURE, DESPITE KAREN’S ADAMANT DISAPPROVAL

Mr. Stein intentionally encouraged the parties’ minor daughter, Lindsey, to move in with her boyfriend during the divorce litigation. He then filed pleadings to cease child support. This was bad faith action on his part which typifies his personality and parenting history. After Karen moved out of the marital home, Lindsey moved in with her; she did not stay with Mr. Stein. Only when Karen objected to Lindsey staying overnight with her boyfriend and Mr. Stein showed his support for such behavior by buying Lindsey a mattress for she and her boyfriend to share at his home, did Lindsey literally turn on her mother and move in with her boyfriend.

10. MR. STEIN WAS CONTROLLING

Terry controlled Karen’s every move. Terry did not like for Karen to go anywhere, and he especially did not want her going out with her friends; nor did Terry want friends at their home. (T. 48/ 12-16) Terry always greeted Karen after a grocery store trip with questions: What took you so long? Where have you been? She felt it necessary to be prepared to account for her time to Terry and would literally plan or limit her errands to avoid his interrogations and suspicions. She

took care to plan her outings so as to try and make sure that Terry did not get mad at her, "I had to figure out now, look, he is going to get upset if I stay over this length of time or if I go by here on the way to go in this store or whatever or stop for this. So, I – it was always in the back of my mind, you know, I have got this much time before he is going to wonder if I have done something else or went somewhere else." (T. 48/27-29 and T. 49/1-4)

11. FALSE ACCUSATIONS OF ADULTERY

Terry repeatedly accused Karen of having affairs. He accused of her having sex with "Anybody. Neighbors, friends, people I worked with if I talked about them." (T. 49/5) If I said the name of any male I worked with, he thought I might be seeing them." (T. 49/18)

Terry accused Karen of having affairs with his friends. On one occasion he accused her of having an affair with his best friend. The Steins had gone out and one of their friends got too drunk to drive home and was horribly sick. The drunk man's wife asked for assistance in getting her husband home safely. By his own admission, Terry went home because he had had too much to drink. (T. 235/22-24) Karen helped and yet another friend of Terry's was to drive Karen home. (T. 49/21-22 and T. 50/17)

To get the man home, Karen had to travel from South Jackson to Grants Ferry Road and then back to Byram. She was home an hour and one half later. When Karen got home, Terry had locked her out of the home and wouldn't let her in, forcing her to go to the neighbor's home for help. After humiliating Karen, Terry later explained to her that he locked her out because he knew she was having an affair. (T. 50/1-17) Terry never refuted this act.

12. ABORTION

Terry Stein so loved his money that he demanded his wife get an abortion rather than have their third child. Karen was pregnant, and excited about telling Terry. At their once a year

special anniversary outing to Red Lobster, Karen was to share her news with Terry, Nicholas and Lindsey. In response to hearing that he was going to have another child, Terry was angry and demanded that Karen have an abortion. (T. 66/ 7-28) Karen testified they argued about her having an abortion but she ultimately submitted to Terry's demands. Terry was adamant that it "cost too much" to have another baby. Terry attended the only doctor's appointment he ever attended with Karen for the abortion. (T.66 /29 and T. 67/2-15)

Terry Stein denied forcing his wife to have an abortion. (T. 222/1-2) Yet, Terry Stein admitted that, when Karen told him about the baby at their anniversary dinner that he "didn't know what to do." He admitted that he thought about the fact that they were only on "one income." (T. 221/22-29) Ultimately, Terry claimed it was her decision.

Terry's claim that Karen was unhappy about the third baby are incredible. Why would she make the announcement on a special occasion? Why would she let her children know she was expecting a child if she wanted an abortion? Why would she even tell Terry if she wanted an abortion? Terry Stein's testimony is incredible and the trial court had full opportunity to assess his credibility.

13. NO EFFORTS AT LOVING BEHAVIOR

Mr. Stein contests a divorce and proclaims that he does not want a divorce. Yet, in the 14 months prior to trial, Mr. Stein did not make one effort to restore his marriage by directly contacting Karen in a loving and caring manner or by seeking counseling. Mr. Stein is contesting this divorce as a means to control Karen, and keep control over family funds held solely in his name. Karen has no retirement and no savings as she has been forced to spend her income on her children while Mr. Stein has been able to save money.

14. HISTORY OF FAMILY EMOTIONAL ILLNESS

Every member of the Stein family was diagnosed with and suffered from psychological problems, primarily depression and anxiety, while Mr. Stein claims he is the only emotionally healthy person. When questioned about this point, Terry Stein flippantly responded that if everybody in his family wore contacts and he didn't, was that his fault? (T. 249/25-26)

Both Stein children have suffered from severe emotional problems. (T. 62/8-10) Nicholas, whom Karen described as a very intelligent child with a great personality who everybody loves, was placed in Brentwood Behavioral Healthcare of Mississippi because he was suicidal. Nicholas entered Brentwood as a teenager because he had started cutting his arms. (T. 63/9-11) Karen testified that Nicholas began isolating himself in his room all the time. Nicholas was afraid to bring friends to his home for fear of how his father would behave. If Terry was gone, Nicholas would come downstairs and join the rest of the family. If Terry came home, Nicholas went to his room as would Lindsey. (T. 62/25-29 and T. 63/1 -11) Karen also testified that Nicholas had been very affected by his father's behavior and attitude.

Karen had tried talking to Terry about Nicholas' emotional problems and her concern about him, but Terry didn't think his son needed to go to a hospital and especially not a mental hospital. Yet at the same time, Terry Stein admitted that he was scared that Nicholas was going to kill him in his sleep. (T. 63/12-19)

As did Nicholas, Lindsey suffered emotional problems. Lindsey started having panic attacks and began seeing a psychiatrist regularly in the ninth or tenth grade. Terry Stein refused to acknowledge that Lindsey was suffering emotional problems and Karen testified that Terry just "didn't believe in it" and "didn't consider it anything that needed to be seen about." (T. 64/1-10) At the time of trial, Lindsey was still seeing a psychiatrist on a regular basis and was still being prescribed Effexor for anxiety and depression. (T. 63/20-29).

15. KAREN'S PHYSICAL SYMPTOMS

Karen began suffering from high blood pressure at the age of forty. The testimony was undisputed that, since separating from Mr. Stein, Karen has experienced relief from many of the health problems she suffered as a result of Mr. Stein's continuous cruel and uncaring behavior.

Karen's weight dropped down to an unhealthy 104 pounds during the end of marriage. (T. 34/29) Peggy corroborated that Karen suffered eating problems as a result of the emotional abuse and stress in her home. Peggy related that Karen had always been a small person, and that when she was stressed out or something upset her, Karen could not eat. Peggy commented from the witness stand that, as of the time of the divorce trial, Karen looked "better than she has ever looked in her life." Peggy told how Karen would get very thin during her marriage and that, as of the date of the divorce trial, she weighed a healthy amount for the first time since her marriage. (T. 144/3-9)

Peggy, a registered nurse, also noted in her testimony that Karen was diagnosed with hypertension and put on blood pressure medication at a very young age and at a time when she was not overweight. This was unusual to Peggy and caused her concern for Karen. Peggy testified that she thought and hoped that Karen's health problems related to her high blood pressure would dissipate once she had taken steps to get away from Terry Stein. Peggy recounted that she was aware that as of approximately a year after being separated from Terry Stein, Karen was advised that she should reduce her blood pressure medication. Karen was in fact becoming healthier after a year of freedom from Terry Stein. (T. 144/10-19)

Peggy Murphy suggested that Karen seek treatment for what she thought was abuse of alcohol and stress from her marriage. Peggy testified that she knew Karen was under a lot of

stress in her marriage because of the “yelling and screaming going on in the home to her.” Terry agreed with Peggy that Karen was drinking “too much beer.” Peggy testified that she discussed treatment with Karen and that Karen agreed that she was under “so much pressure and stress at home from being constantly yelled and belittled and berated at home.” Peggy actually drove Karen to the in-patient treatment center, not Terry. (T. 119/21-29 and T. 120/1- 17)

16. CHANGES IN KAREN AS A RESULT OF MARRIAGE

Peggy Murphy was a regular visitor in the Stein home for the first twenty years of their marriage, visiting regularly and often spending the night in their home. She had not visited in the home as regularly in the last five years of their marriage due to the tension in the home. (T.118/4-22)

Peggy was asked to discuss the relationship between Terry and Karen as she observed it. Peggy first recalled Karen as she was in high school, as “very vibrant, [and] outgoing.” Then, Peggy described Karen as she was when she entered college and described her as somebody she looked up to very much. Karen was in a singing and dance troupe, class favorite at Copiah - Lincoln College, and generally an involved and active person.

Peggy testified that, after Karen became involved with and married Terry, she saw changes in her personality that disturbed her. Peggy saw Karen “just gradually withdraw into a shell. It was such a slow process, but I knew – I had seen Terry scream and holler at her in front of my parents. ... About anything. It was explosive– it didn’t have to be– she didn’t have to do anything. It was always her fault. And he would explode without any stimulation, without any stimulus at all. And I saw her gradually withdraw into this shell.” (T. 121/4-23)

Peggy told the Court about how she finally got the courage to talk to her parents and Terry and Karen about getting Karen some help. Peggy, in essence, began an intervention to save Karen. (T. 121/23-26)

Peggy was explicit that she sought treatment for Karen in the treatment center where she worked because she would get better care there. (T. 120/3-13) It is apparent that Peggy used Karen's excessive drinking as a means to get her psychological counseling for other reasons than just her concerns about alcohol. Peggy testified that she hoped that Karen would get help with "wanting to drink beer" but also so "she could see things more clearly and be able to get stronger and defend herself and fight back or leave." (T. 120/19-25)

Peggy Murphy was clear that, prior to Karen's decline in or around 1998 and after her entry into the treatment program, she did not observe anything that would make her think Karen had a drinking problem. It is clear that Peggy thought Karen's excessive drinking was a symptom, not the source of her problems. (T. 121/ 27-29 and T/ 1-3)

After Karen returned from the treatment program, Terry Stein continued his usual drinking habits. (T. 122/ 23-29 and T. 123/ 1/14)

Terry Stein evidenced the same cavalier and unconcerned attitude towards his wife's health problems as he did his children's emotional problems. In Request for Admissions, Terry Stein was asked to admit or deny that his wife suffered from depression during their marriage. He answered, "Unknown." When questioned at trial as to why, he then readily admitted that Karen suffered from depression. Terry Stein played word games, claiming he didn't know if she suffered from depression because he had never seen any "official paperwork" on it. (T. 253/3-23)

III. THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR BY CREATING SEVERAL KEY INFERENCES IN HIS FINAL OPINION AS HE DID NO SUCH THING; THE CHANCELLOR'S OPINION WAS BASED ON CREDIBLE EVIDENCE IN THE RECORD

Terry raises as "manifest error" that the Court below made certain impermissible "inferences" from Terry Stein's failure to affirmatively deny certain acts of cruelty, *i.e.*, giving his wife a black eye, whipping her with a wet towel in the presence of others, *etc.*

The Court was presented with sure and clear proof that Terry Stein committed certain acts of cruel and inhuman treatment against Karen. Karen did not have to guess because she remembered. Terry, in contrast, as his brief admits, relied upon the fact that he was fifty two years old and that his "memory has been fading" (T.209)

In *Stribling v. Stribling*, 960 So. 2d 556 (Ct. App.2007), this Court stated "In our review of the chancellor's order, we accept all those facts and reasonable inferences therefrom which support the chancellor's findings." *Id.*

Further, this Court has stated in *Bodne v. King*, 835 So. 2d 52, 57 (Miss. 2003) that "[a]n appellate court will view the facts of a divorce decree in a light most favorable to the appellee. *Richard v. Richard*, 711 So.2d 884, 888 (Miss.1998). If specific findings are made without clear error, the appellate court will draw from those findings all reasonable inferences which support the trial court's ruling. *Bruce v. Bruce*, 687 So.2d 1199, 1203 (Miss.1996); *Mullins v. Ratcliff*, 515 So.2d 1183, 1189 (Miss.1987).

In fact, in *McKee v. Flynt*, 630 So.2d 44 (Miss.1993), this Court stated that the causal relationship is not necessarily required even in cases of cruel and inhuman treatment:

There must exist some causal connection between the habitual cruel and inhuman treatment and the parties' separation. *Fournet v. Fournet*, 481 So.2d 326, 329 (Miss.1985). However, application of this rule was limited by *Bias v. Bias*, 493 So.2d 342, 345 (Miss.1986).

Absence of proof of proximate cause does not in logic negate the reality of habitual cruel and inhuman treatment, which may indeed have been a proximate cause of harm to the health and physical well being of the plaintiff (as distinguished from the actual cause of the separation). The chancellor's primary inquiry must in justice be into the ground for divorce. That inquiry requires a dual focus: upon the conduct of the offending spouse and the impact of that conduct upon the plaintiff. If the requisite impact upon plaintiff is proved, there is little reason why we should arbitrarily dismiss because of the proximate cause of separation rule which no legislature has mandated. *Bias*, 493 So.2d at 345.

See also *Faries v. Faries*, 607 So.2d 1204, 1209 (Miss.1992). *Bias* further holds that acts occurring after the parties have separated may be considered in the charge of habitual cruel and inhuman treatment. *Bias*, 493 So.2d at 345.

IV. IT WAS NOT MANIFEST ERROR FOR THE CHANCELLOR TO DISREGARD HUSBAND'S CLAIM OF RECRIMINATION

In the case of *Dunn v. Dunn*, 156 Miss. 132, 134-135, 125 So. 562 (Miss 1930), this Court held that the recriminatory charge against the defendant must be established by the same character and degree of proof that would be necessary to grant a divorce if the complainant were the complaining party. (Citing *Banks v. Banks*, 118 Miss. 783, 79 So. 841)

In the case of *Ware v. Ware*, 2008-MS-A0430.004 (Ct App. 2008) the Court of Appeals affirmed the trial court's decision to apply the law of recrimination so as to deny a divorce. The Court in *Ware* set out the correct standard to apply, that is that, "The doctrine of recrimination is founded on the basis that the equal guilt of a complainant bars his/her right to divorce, and the principal consideration is that the complainant must come into court with clean hands." *Cherry v.*

Cherry, 593 So. 2d 13, 18 (Miss. 1991) (citing *Oberlin v. Oberlin*, 201 Miss. 228, 233, 29 So. 2d 82, 83 (1947)).

Mississippi Code Annotated section 93-5-3 (Rev. 2004) provides that: “If a complainant or cross-complainant in a divorce action shall prove grounds entitling him to a divorce, *it shall not be mandatory on any chancellor to deny such party a divorce*, even though the evidence might establish recrimination on the part of such complainant or cross-complainant.” (Emphasis added).

Karen Stein denies having committed adultery and Terry presented scant evidence on the subject. While Karen readily admitted that she had been enjoying the company of an old friend of the family, she denied that she was having a sexual relationship with him. In *Ware*, the husband admitted having an affair and the Court held that the chancellor was not required to deny him a divorce when he had proven that his wife had also committed adultery.

Moreover, in the case of, *Parker v. Parker*, 519 So.2d 1232 (Miss.1988), this Court discussed the doctrine of recrimination and took the position that it should deny a divorce to a party whose conduct, cruel and inhuman treatment, was the cause of the dissolution of the marriage, and grant a divorce to the party whose misconduct did not occur until after the parties were separated and the marriage, for all essential purposes, was dissolved. *See id.* at 1236. The Court held that the defense of recrimination should not have been invoked to prevent granting of divorce to the wife where there was no marital stability, the marriage had deteriorated to the point where there was no marriage, and the wife did not commit adultery during the time the parties lived together and cohabited as husband and wife. *Id.*

Therefore, even if the Court disagrees with the lower Court that there was insufficient proof of adultery on Karen's part, it is still within the Chancellor's discretion to decline to apply the defense of recrimination. In light of the lack of marital stability and the fact that the marriage had deteriorated to the point where there was no marriage, it would actually be inappropriate to deny Karen a divorce.

V. THE DIVISION OF MARITAL ASSETS SHOULD NOT BE REVISED AS THE CHANCELLOR MADE A DETAILED REVIEW OF THE FERGUSON FACTORS AND EQUITABLY DIVIDED THE ASSETS

The trial court appropriately cited and reviewed each and every factor of the seminal case of *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994) in making his division of marital property. Karen agrees with Terry that the Ferguson case is the controlling law on the issue of the equitable distribution of assets upon divorce.

Karen agrees with Terry that all assets owned by the parties were marital.

Terry bases his argument that he should receive a greater portion of the marital assets primarily on the, frankly, ridiculous argument that Karen "chose to spend money on personal assets for herself, such as clothing and alcohol, as opposed to saving it." (Terry's Brief Page 18) Terry claims that, in doing so, Karen "dissipated marital assets." Terry also advises this Court that Karen additionally "dissipated assets by spending thousands of dollars on a drug and alcohol rehabilitation program, and subsequently continuing to use alcohol." (Terry's Brief Page 18)

As to the claim that Karen dissipated marital assets by buying clothing, said argument is blatantly and actionably frivolous. Terry lamented the viewing of one dress hanging on the door in their closet in a plastic bag. (T. 232/5-11) Terry never presented any further evidence as to this one offensive article of clothing, *i.e.*, whether it was purchased by Karen, the cost if purchased, or whether the dress was given to Karen. Terry only knows that there was one dress.

As to the claim that Karen dissipated marital assets by buying alcohol, Terry again presents a frivolous argument to this Court. First, the evidence showed that only after years of enduring her horrific marriage to Terry did Karen develop a dependency on alcohol. Karen acceded to the wishes of her family, her sister, and indeed her husband to seek treatment for her alcohol dependency. The only evidence before the Court as to Karen's drinking habits after treatment was presented by Karen and her sister who each adamantly stated that Karen had not abused alcohol since entering and completing the treatment program and remained a moderate drinker. Each averred that Karen was never an alcoholic but that Karen was self-medicating with alcohol as a result of her misery at living with Terry Stein.

Terry, on the other hand, drank from the onset of the marriage and by his own admission, drank daily. Does the fallacy of this indisputed fact escape Terry and his counsel? How is that Karen dissipated assets purchasing alcohol while Terry did not?

Terry also claims that Karen dissipated assets by actually going into treatment. There is no citation to the record of this "fact" as this "fact" does not exist in any record before this Court. Terry presented no evidence whatsoever of there being a debt owed to the treatment center, of any amount insurance paid for said treatment, or of any amount he or Karen ever even paid to the treatment center. In fact, Terry seemed amazed at trial that Karen had any outstanding medical bills at all for any reason, such was his interest in his wife's health.

In addition, Terry Stein forgets his testimony that his wife needed treatment for alcohol dependency and that he fully supported her. On the one hand Terry wishes to portray himself in a good light for supporting his wife, whose alcohol dependency he likely caused, and on the other, punish her for "wasting" assets he has not even identified as being wasted. (T. 233/19)

Lastly, Terry again raises lies in argument to this Court and he should be sanctioned for it. In his brief Terry once again intentionally, knowingly, and falsely makes representations to this Court which are not only not supported by the record - they are contrary to the record. Specifically, Terry again lies and argues that Karen should not be allowed to share in the retirement funds accumulated solely during the marriage in his name because she could have saved her own if she had not been "continually fired due to her drug abuse, affairs, and irresponsible conduct." *Id.*

While parties are certainly entitled to argue inferences and invoke a certain amount of poetic license, Terry Stein and his counsel have repeatedly lied to this Court throughout his brief, repeating this unabashed lie that Karen was ever fired for any reason, much less for drug abuse, affairs, or irresponsible conduct. Without saying more, shame on Terry Stein and shame on his counsel.

CONCLUSION

This Court should affirm the ruling of the trial Court for the reasons set forth herein above.

Respectfully submitted,

KAREN STEIN

BY: 

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CERTIFICATE OF SERVICE


I, Debra L. Allen, attorney of record for the Appellee, Karen Stein, certify that I have this date served a true and correct copy of the above and foregoing *Appellee's Brief* via United States mail, postage prepaid, on the following persons:

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This the 29th day of December, 2008.


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