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Table of Cases, Statutes and other Authorities

CASES

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ISSUES

1. Appellee's argument fails to address the effect of those allegations made by the parties of alternate, "fault" grounds for divorce.

In the Appellee's response to the first issue presented on appeal she fails to address the effect of those allegations made by each party of certain alternate "fault" grounds for divorce, and the effect of those alternate grounds for divorce remaining at the time the case was presented to the trial court. As the Court will recall in his Complaint the Appellant (Billy) alleges certain "fault" based grounds for Divorce, namely adultery, desertion and habitual cruel and inhuman treatment as well as alleging the "no-fault" ground of irreconcilable differences. In her Answer the Appellee (Nancy) not only denies that Billy was entitled to a divorce based upon his fault allegations, but also denies the allegations of Irreconcilable Differences.

Nancy then, through her Counter-Complaint against Billy, alleges that she is entitled to a divorce from Billy on the grounds of desertion, adultery, habitual cruel and inhuman treatment, and also Irreconcilable Differences. Billy, through his Answer to Nancy's Counter-Complaint, specifically denies all grounds for divorce alleged against him by Nancy including Irreconcilable Differences.

On the day set for trial, the parties entered into and filed with the trial court a "Consent Agreement" in an effort to comply with Mississippi Code § 93-5-2(3) and state therein that they have agreed that there are irreconcilable differences between them and consent to a divorce be granted to them on grounds of irreconcilable differences. The Trial Court, in its ruling, then recognizes that both parties plead irreconcilable differences as alternative grounds for divorce and states that "Though not stated the Court assumes the parties withdrew their various fault grounds for divorce, defenses and answers, but if not, the

Court hereinafter denies same as no proof was offered thereon.” (Corrected Judgment P. 2, paragraph V).

Although an argument can be made (and was by Nancy) that the entry of an agreement in contemplation of a divorce pursuant with Mississippi Code § 93-5-2(3) allows for the trial court to grant the divorce without having to allow the withdrawal by the parties of their respective denials to such relief, the argument does not address or contemplate the filing and denial by the parties of alternate “fault” grounds for divorce.

As was pointed out by both parties in their respective briefs, divorce in Mississippi is a creature of statute, and that strict compliance with the statutory provisions for a divorce on the ground of irreconcilable differences is required. See Engel v. Engel, 920 So.2d 505 (¶ 17)(Miss. App 2006), Perkins v. Perkins, 787 So.2d 1256, 1265 (¶ 25)(Miss. 2001). Furthermore the Supreme Court has stated that, when granting a divorce on the ground of Irreconcilable Differences, the express intent of the statute requires that there be no contest or denial to any ground for divorce, including those “fault” grounds which had been plead by the parties in the alternative. Alexander v. Alexander, 492 So.2d 978, 980 (Miss. 1986) As such it is often the practice, when presenting a divorce on the ground of Irreconcilable Differences, to request the trial court authorize the withdrawal of not only the parties’ respective answer, contest and denial to the granting of such a divorce, but also requesting the trial court authorize the withdrawal of all other grounds which may have been alleged by the parties in the alternative. The trial court here, as expressed in the ruling, specifically comments on this by saying the Court “assumes” that they had withdrawn them and, if not, because there was no evidence presented in support of the fault grounds, they were denied.

Because the statutory procedure was not followed by the parties' withdrawing both their contests and denials to the ground of Irreconcilable Differences as well as their failure to withdraw their respective alternative grounds for divorce, the trial court exceeded its jurisdiction in granting a divorce to the parties on the ground of irreconcilable differences.

2. The Court erred in failing to grant specific periods of visitation between the Appellant and the minor child.

As to this issue the Appellant would rely upon the argument made in his initial Brief.

3. The Chancellor erred in his allocation of the minor child's college expenses.

a. The Court failed to make any findings that Billy had the financial ability to pay any portion of Tyler's college expenses.

In that the Appellee did not address this issue, the Appellant would rely upon the argument made in his initial Brief.

b. The Court erred in the apportionment of the payment of Tyler's college expenses.

To the extent that the Appellee addressed this issue, it should be noted that in his initial brief Billy made no argument that he should be excused from his share of the payment of his minor child's college expenses. To the contrary, Billy is more concerned that his share of the obligation is not properly quantified based upon his ability to pay as it relates to Nancy's ability to pay.

The Mississippi Appellate Courts have long stated that a parent's financial obligations to provide support for their minor children should be based upon their ability to provide for such support. And, as stated in the initial brief, the Appellate Court's have further recognized the appropriateness in allocating the payment of portions of college expenses

based upon each party's respective ability to pay. If these parties' were still married and living together, it would be assumed that they would, through their joint efforts, seek to provide for the reasonable college expenses incurred by their child to the degree each would be able. And as stated in the initial Brief, if the parties' incomes were combined, then Nancy's income would represent approximately 60% of the total income while Billy's income would only represent 40%. So it stands to reason that, as they are now Divorced, each party should be able (and therefore ordered) to pay the percentage of the college expenses that relates to their respective percentage of their combined income. In other words, Billy should have been ordered to pay 40% of the child's college expenses and Nancy 60% because these amounts correspond with each of their respective abilities.

Furthermore, it should be noted that Nancy indicates in her brief that Billy's responsibility will only last two years, however the Court will recall that the trial court granted Nancy a money judgment against Billy which represented one-half of the child's prior college expenses. Billy respectfully requests that the allocation of college expenses be made retroactively as well as prospectively.

4. The Court erred in failing to make specific findings through its designation of marital assets and the equitable distribution thereof.

Although in her Brief Nancy gives a thorough and accurate recitation of the trial court's requirements when designating marital assets and then making an equitable distribution thereof, she fails to address the errors noted in Billy's initial brief as to the trial court's failure to make adequate findings (with specific examples thereof), and as such the Appellant would rely upon the argument made in his initial Brief.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BILLY J. COSSEY

APPELLANT

VS.

NO. 2008-TS-00829

NANCY L. COSSEY

APPELLEE

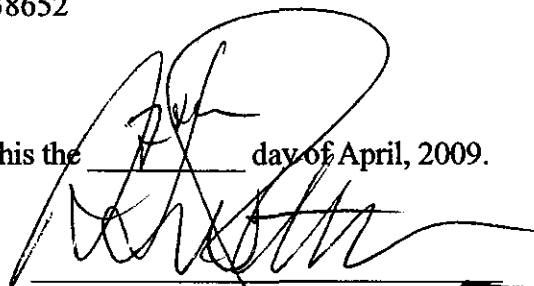
CERTIFICATE OF SERVICE

This is to certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing Reply Brief of Appellant to the following interested parties:

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RESPECTFULLY SUBMITTED, this the 7th day of April, 2009.



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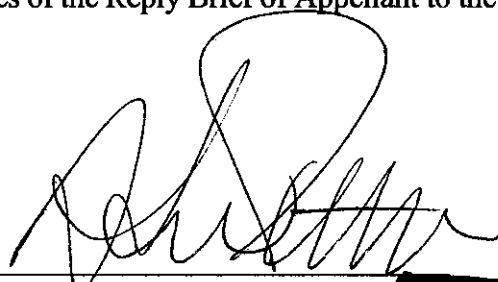
NANCY L. COSSEY

APPELLEE

CERTIFICATE OF MAILING

This is to certify that I shall on this day deposit in the United States Mail, postage prepaid, an original and three (3) true and complete copies of the Reply Brief of Appellant to the Clerk of the Supreme Court of the State of Mississippi.

This the 7th day of April, 2009.

A handwritten signature in black ink, appearing to read 'Adam A. Pittman', is written over a horizontal line.

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