IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MARY (SMITH) HOSKINS — **APPELLANT**

v. — **DOCKET NUMBER 2008-CA-01369**

SECOND JUDICIAL DISTRICT, PANOLA COUNTY CHANCERY CAUSE NO. B-07-05-218-ML

RONALD HOSKINS — **APPELLEE**

BRIEF OF THE APPELLEE: RONALD HOSKINS

Appeal from Decree of the Second Judicial District of Panola County, State of Mississippi, Cause No. B-07-05-218-ML

Oral Argument is not requested

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CERTIFICATE OF INTERESTED PERSONS

That 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 and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Mary Smith Hoskins, Appellant;
2. Ronald Hoskins, Appellee;
3. Jay Westfaul, Esq., Attorney for Appellant;
4. John S. Farese, Esq., Attorney for Appellee;
5. Honorable Mitchell M. Lundy, Jr., Chancellor, Second Judicial District of Panola County, Mississippi.

Respectfully submitted, the 18th day of February, 2009.

JOHN S. FARESE, [redacted]
Attorney for Defendant-Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. STATEMENT OF THE CASE

The Appellant, Mary (Smith) Hoskins, filed for divorce for the second time in the Second Judicial District of Panola County, Mississippi against the Appellee, Ronald Hoskins, on or about April 30, 2007. Mary had previously filed a similar complaint several years earlier that was voluntarily dismissed. This complaint filed by the Appellant claimed grounds for divorce of habitual, cruel and inhumane treatment and wilful, continued and obstinate desertion for the space of one year pursuant to Miss. Code Ann. §93-5-1. Mr. Hoskins answered the complaint and the matter came to trial on the merits on June 30, 2008.

At the trial on the merits the Appellant presented her case including testimony in open court and documents. Upon the Appellant resting, Mr. Hoskins moved to the have the cause dismissed based on the position that the Appellant failed to provide evidence to prove either ground she plead in the complaint. The Court sustained the motion and dismissed her complaint for divorce for failing to meet her required burden of proof on either ground for divorce. Mrs. Hoskins appeals the decision and opinion of the Chancellor claiming certain errors as enumerated below.

II. STATEMENT OF THE FACTS

The parties herein were married on August 4, 1979 in Panola County, Mississippi. Both parties have been gainfully employed and co-habitated as man and wife, until December of 2004 when the Appellant, Mary Hoskins left the marital home under her own volition and never sought to return.[1] Mr. Hoskins worked his entire adult life in construction and continues to this day. Mr. Hoskins even built the marital home.

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[1]T. P47, L21 thru P49, L21.

Mr. Hoskins has maintained throughout the two actions brought by the Appellant that he is ready and willing to continue the marital relationship, even testifying to such in the hearing held in the first cause. In this second cause filed by the Appellant, she charged Mr. Hoskins with habitual, cruel and inhumane treatment and wilful, continued and obstinate desertion for the space of one year pursuant to Miss. Code Ann. §93-5-1.

Regarding the claim of habitual, cruel and inhumane treatment early in the testimony it was obvious that Mrs. Hoskins did not have the requisite grounds for divorce. The Appellant admits that Mr. Hoskins never physically touched here or abused her in anyway, but based her claim for habitual cruel and inhumane treatment on assertions that Mr. Hoskins is controlling.[2] She based her claims that he is controlling on instances of him regulating the use of the heating and air conditioning unit and making visitors remove their shoes[3]. She further claimed he treated others differently than his family while in the marital home.[4] She complained of arguments with the Appellee during the marriage that the court described after hearing all the testimony presented as "trivial."[5] These arguments usually centered around finances and the heating and air conditioning in the home, and the in-laws.[6] Lastly, but equally as important, there was never medical testimony offered to corroborate claims that this alleged treatment cause her any health problems or that she was ever injured by the actions of the Appellee.

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[2]T. P43-47.

[3]T. P43-47.

[4]T. P122, L27.

[5]T. P122, L27.

[6]T. P45.

The Appellant further claimed wilful, continued and obstinate desertion for the space of one year pursuant to Miss. Code Ann. §93-5-1. The theory espoused by the Appellant was based on "constructive" desertion. Trying to support this theory Mrs. Hoskins provided testimony that she left the marital residence on December 29, 2004.[7] She later returned to the home to take most of the furniture and home furnishings from the home.[8] She then obtained and apartment and never attempted to return.[9] Despite claiming that Mr. Hoskins threw her out and changed the locks, we learned that in fact she left on her own and never attempted to return.[10]

Since the date Ms. Hoskins left the home, Mr. Hoskins has remained in the marital home and Ms. Hoskins has not attempted to return.[11] No testimony was adduced that showed she feared for her safety, that Mr. Hoskins otherwise threatened her to the point she felt it necessary to call the authorities or seek assistance from others.[12]

III. SUMMARY OF THE ISSUES

A. ISSUE 1:Did the chancellor err in his ruling relative to "corroborating testimony" and misinterpret or misapply a Chancery Court Rule in making his decision?

B. Issue 2: Did the chancellor err in his analysis of the law relative to the claim of "constructive desertion"?

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[7]T.P48, L6.

[8]T. P48-49.

[9]T.P49.

[10]T.P49.

[11]T. P94, L16-19.

[12]T.P49.

C. Issue 3: Did the chancellor err in his finding that substantial "corroborating testimony" was not offered by the appellant?

D. Issue 4: Did the chancellor apply an erroneous legal standard when denying the appellant a divorce based on the ground of habitual cruel and inhumane treatment or "constructive desertion?"

IV. SUMMARY OF THE ARGUMENT

The findings of a chancellor will not be disturbed on review unless it is found that he abused his discretion, was manifestly wrong, or made a finding which was clearly erroneous.[13] It appears that the Appellant wrongly believes the Chancellor based his decision in the case *sub judice* relying on Uniform Chancery Court Rule 8.03.[14] This despite the fact that the Chancellor never mentions Chancery Court Rule 8.03 in his ruling and the rule itself specifically refers to testimony adduced in "uncontested" divorces.[15] The assignment of error based on this theory fails on its face as it is a misstatement of the position of the Chancellor. To assert that his decision was made based on a reliance on Rule 8.03 is simply a misunderstanding or misinterpretation of his ruling. While Rule 8.03 may be rooted in some of the original case law from which the rule is based, the Chancellor's ruling was made in reliance with a long line of cases which addressed the need for an aggrieved party to present corroborating evidence that would convince a prudent person that the testimony of that party is true and not exaggerated for

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[13]Bank of Mississippi v. Hollingsworth, 609 So. 2d 422, 424 (Miss. 1992)

[14]See Appellant's Brief, Summary of Issues, Summary of Argument and Argument.

[15]Mississippi Uniform Chancery Court Rule 8.03.

the purpose of obtaining a divorce.[16]

The remainder of the basis for appeal by the Appellant appears to be based loosely on an intermingling of her position regarding corroboration and an implication that the Chancellor applied a faulty legal standard. Of course, what the faulty legal standard is, is not clearly enumerated in the Appellant's brief. Throughout her argument it appears that the Appellant misconstrued the ruling of the Chancellor. The Appellant asserts that the Chancellor ruled that she had proven her case for habitual cruel and inhumane treatment, but could not grant it because of the lack of corroboration. That is simply not what the Chancellor ruled. In explaining his ruling the Chancellor opined that Mrs. Hoskins "testified to **some** things...that given the benefit of all **inferences** would **possibly** meet the burden of proof to go forward..."[17] At no point did the Chancellor say that Mary Hoskins had "presented sufficient evidence to obtain a divorce."[18] The Chancellor did express a concern about the lack of corroboration from her witnesses in regards to both of her listed grounds, but his final ruling was based upon her failure to meet her burden of proof.[19]

The Appellant's brief is full of assertions that were never proven decisively at trial. Things like threats to kill and demands made by Mr. Hoskins are things that simply were not credible assertions by Mrs. Hoskins. In looking at the argument put forth it appears that this appeal is not about mistakes of law or abuse of discretion, but the fact that the Appellant cannot

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[16]Anderson v. Anderson, 200 So.2d 726, 728 (Miss. 1941)

[17]T. P122, L19-23.

[18]Appellant's Brief, pg.12.

[19]T. P123-124.

fathom that the Court may not have found her side of the story to be completely credible. Her failure to provide corroborating testimony simply backed the Chancellor's position.

As mentioned previously, the findings of a Chancellor will not be disturbed on review unless it is found that he abused his discretion, was manifestly wrong, or made a finding which was clearly erroneous.[20] The aforementioned high level of scrutiny is in place because the Chancellor is the finder of fact. The Chancellor is privy to the facts as they are presented, and not the facts as shown through the "filter" of the appellant and his counsel. The Appellant does not present a valid argument as to the Chancellor misapplying the relevant law, it is rather apparent that appellant simply did not agree with the Chancellor's interpretation of the facts and subsequent decision. The decision of the trial court must be upheld.

V. ARGUMENT

A. ISSUE 1:Did the chancellor err in his ruling as it relates to "corroborating testimony" and in doing so misinterpret and/or misapply Chancery Court Rule 8.03?

As mentioned in the summary *supra* the argument that the Chancellor misinterpreted or misapplied a Chancery Court Rule simply does not hold water. At no point did he rely on UCC Rule 8.03 in making his decision.[21] He never even referred to it.[22] The argument put forth by the Appellant on this point appears to center around dicta focusing on the evolution of a Chancery Court Rule that is simply not relevant to the case sub judice. Accordingly, it is very difficult to comprise a rebuttal to a position that is based on a supposition that the Chancellor

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[20] *Bank of Mississippi v. Hollingsworth*, 609 So. 2d 422, 424 (Miss. 1992)

[21] T. P120, L21-P125, L20.

[22] T. P120, L21-P125, L20.

made a ruling relying on something, when in fact he did not. However, out of an abundance of caution the Appellee will address the role of corroboration in the case before the Court.

Obviously the the Chancellor did call into question the level of proof provided by the Plaintiff, and that his concern was exacerbated when the Appellant admittedly did not provide the necessary testimony to corroborate her account of events.[23] As the Appellant notes, *Anderson v. Anderson* is the original case addressing corroboration in contested matters.[24] Since the original ruling in *Anderson* the Court has expounded on corroboration over the years and has upheld the denying of divorces because of the lack of corroborating evidence.[25] The ruling throughout the years have touched on virtually every contested ground for divorce under Mississippi law, including, but not limited to, habitual cruel and inhumane treatment.

The requirement of corroborating evidence goes to the heart of the divorce statute in Mississippi. The overwhelming public interest in preserving marriage has prompted the courts to adopt a method and analysis of the grounds to result in proof that will convince a prudent person that the plaintiff's testimony is truthful and not a product of exaggeration in order to obtain a divorce.[26] The Court has allowed over the years for different manners of providing corroboration. Corroboration may be provided any number of ways including but not limited to, testimony of friends or family, private investigators, tape recordings, medical or mental health

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[23]T. P120, L21-P125, L20.

[24]Anderson v. Anderson, 200 So.2d 726 (Miss. 1941).

[25]*See* Hassett v. Hassett, 690 So.2d 1140 (Miss.1997); Chamblee v. Chamblee, 637 So.2d 850 (Miss.1994); Gardner v. Gardner, 618 So.2d 108 (Miss.1993); Reed v. Reed, 839 So.2d 565 (Miss.Ct. App. 2003); Stennis v. Stennis, 464 So. 2d 1161 (Miss. 1985).

[26]Anderson v. Anderson, 200 So.2d 726, 728 (Miss. 1941).

professionals, the alleged offending spouse's testimony, or even a paramour in situations involving adultery.[27]

I think it is also important to note that corroboration cannot be provided by hearsay testimony. Obviously, having a witness testify to events that have only been communicated to them by the spouse seeking the divorce undermines the intended safeguard that corroboration provides. In the case presented by the Appellant, many of the allegations where only attempted to be corroborated by hearsay testimony that was properly not allowed by the Chancellor. The level of allegations levied by the Appellant are of a nature that a reasonable person would expect someone, anyone, to have some personal knowledge of these acts and their alleged effect on the Appellant. Despite attempting to show that Mr. Hoskins caused her health problems because of his actions, there were no offers of corroboration from medical providers. This is one of the most glaring areas where the position of the Appellant falls short. She continually refers to the elevated blood pressure along heart and headaches that she wants the Court to attribute them to the conduct of Ronald.[28] However, instead of providing medical proof to back this claim she simply laments in hindsight that the Judge did not go along with her assertions.

It is important to note that the Courts have recognized that there are situations where corroboration may have to be excused. The Courts have found that situations where corroboration was impossible because of threats or intimidation by the other party to witnesses.[29]

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[27]Hassett v. Hassett, 690 So.2d 1140 (Miss.1997); Rushing v. Rushing, 724 So.2d 911, 914-15 (Miss. 1998); Faries v. Faries, 607 So.2d 1204, 1209 (Miss. 1992); Ferguson v. Ferguson, 639 So.2d 921, 931 (Miss. 1994).

[28]*See* Appellant's Brief.

[29]Shelton v. Shelton, 477 So.2d 1357 (Miss. 1985).

Of course, excusing corroboration in those situations does not in turn lower the burden to be met by the plaintiff. Without credible corroboration, cross-examination or questioning by the Court should be of a nature as to absolutely ensure that grounds for divorce exist.[30] There have not been allegations by the Appellant or proof presented to lead one to believe that the case before the Court is one where corroboration, or the lack of it, should be overlooked. In fact, as noted herein the Appellant attempted to provided corroborating testimony and simply failed. After proclaiming her sister knew of conduct of Ronald along with one of their sons, neither testified to acts as severe as she wanted the Court to believe existed. Now, in hindsight, she wants it to be looked at differently and asked this court to excuse the complete lack of corroboration.

It is very important to note that even the Appellant's counsel admits during his response to the motion to dismiss that he agrees with the Chancellor in regards to the lack of credible corroboration.[31] His argument at that point is not that Judge Lundy was misapplying UCC Rule 8.03, but that he "pulled" the testimony as hard as he could out of her and that was all that she knew.[32] He the added that she was being honest based on what she knew.[33] That is the crux of the issue concerning corroboration in the case before the Court. The Appellant didn't claim that corroboration was impossible or not available, it simply turned out that the corroborative evidence she presented was not sufficient as to convince the Chancellor that grounds for divorce existed. In fact, during her testimony the Appellant claims that her sister witnessed the acts she

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[30]Anderson v. Anderson, 200 So.2d 726, 727 (Miss. 1941).

[31]T. P120, L21 thru P23.

[32]T. P121, L1-7.

[33]T. P121, L6.

complained of along with one of her sons.[34] Despite that assertion, she then admits to not asking the son to testify to what he supposedly saw and after the sister's testimony it was clear she only had personal knowledge of "trivial" arguments between the parties.[35]

It appears the Appellant simply has issue with the idea of what corroboration is and why it is important. Further, the brief submitted simply focused on the Appellant's view of the evolution, at least their view of the evolution, of a Chancery Court rule that is not relevant to the case at bar. In the end corroboration is a necessary mechanism the Chancellor uses to ensure that the testimony of the Plaintiff is not exaggerated for the purpose of getting the divorce. This ruling shows that this safeguard is functioning exactly as it is intended.

B. Issue 2:Did the chancellor err in his analysis of the law relative to the claim of "constructive desertion"?

As with Issue 1, it appears the focus of the Appellant in regards to this issue is misguided. Throughout her brief she refers to case law that is not relevant to her claim for constructive desertion and particularly the reason her claims were denied by the Chancellor.

The Appellant's claim for a divorce based on the grounds of "constructive" desertion essentially failed before it got started when she was unable to provide evidence of conduct by Mr. Hoskins which would rise to the level required in cases of habitual cruel and inhumane treatment. Constructive desertion occurs when the spouse is driven away from the home by conduct which

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[34]T. P87.

[35]T. P122, L27.

makes the marriage unendurable or dangerous to life, health or safety.[36] Constructive desertion is granted when in lieu of remaining in the home and enduring conduct which is habitually cruel and inhumane treatment, the spouse instead leaves the marital home.[37] While it is not necessary to show that the offending spouse intended to drive the spouse from the home, the moving party must show that the separation was caused by the conduct of the Defendant.[38] Like habitual cruel and inhumane treatment constructive desertion is to only be used in "extreme cases."[39]

There is simply no way that the case before the Court rises to this lofty standard. First, the conduct complained of by Mrs. Hoskins is clearly not of the nature that a reasonable person would say makes the marriage unendurable or dangerous to life, health or safety. Claims of him being controlling and talking down to her, claims that were not even corroborated by other witnesses, simply do not rise to the level necessary to uphold a claim of habitual cruel and inhumane treatment or constructive desertion.

In addition, the argument for error by the Appellant in regards to this claim appears to center around case law that applies to a standard desertion claim. While terms like "follow up" that the Appellant relies on in her brief does refer to desertion claims. It can only be an issue in a constructive desertion claim if the party first meets the burden explained above. The reason for the "innocent" party leaving the marital home, must be caused by the conduct of the "offending"

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[36]Griffin v. Griffin, 42 So.2d 720 (Miss. 1949); Benson v. Benson, 608 So.2d 709, 711 (Miss. 1992); Day v. Day, 501 So.2d 353 (Miss. 1987); Shorter v. Shorter, 740 So.2d 352 (Miss. App. Ct. 1999).

[37]Shorter v. Shorter, 740 So.2d 352, 358 (Miss. App. Ct. 1999).

[38]Griffin v. Griffin, 42 So.2d 720, 722 (Miss. 1949).

[39]Id.

spouse. Only then should the Court consider evidence of the willingness or unwillingness of the parties to resume cohabitation. The attempt to use the *Rylee* case and analogous scenario is misguided. Making that comparison fails to acknowledge that the Court must have first found that Mary left the home because of conduct of Ronald that would meet the "unendurable or dangerous to life, health or safety" standard discussed above. It is obvious that the Chancellor never got past that original prong that must be met in a constructive desertion case. Mary never proved that the conduct of Ronald rose to the level that her abandoning the marital home could have been blamed on conduct of that nature.

However, despite the fact that the trial court never made a finding that Mary met her burden of proof as it relates to her leaving the marital home the court still addressed Ronald's willingness to take Mary back and resume the marital relationship. The Chancellor noted in his opinion that the evidence showed Ronald was willing to take her back and there was not proof otherwise.[40] The Chancellor also noted that he believed that Mary never attempted to re-enter the home after she chose to leave.[41] Even if the Chancellor had found the evidence to have met the first prong he addressed how it failed to meet the second.

When you consider the proof presented and read the decision of the Court it is clear the Chancellor did not make a mistake of law or of the proof as alleged. He clearly listened to the testimony and was able to consider the credibility of what was presented. In the end he properly found that Mary Hoskins clearly failed to meet the burden required in a case of constructive desertion. The Appellee would go further to say that to grant a divorce on constructive desertion

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[40]T. P124.

[41]T. P124.

in this scenario would be contrary to the intent of the ground. To allow a person to leave the home of their own accord and admittedly never even attempt to return to seek and be granted a divorce on this ground is simply unconscionable and would essentially undermine the divorce statute in Mississippi.

C. Issue 3: Did the chancellor err in his finding that substantial "corroborating testimony" was not offered by the appellant?

The Appellant lists this as a separate issue in her "Statement of the Issues" but does not address it separately in her argument. The Appellee will address this issue more in depth below, but feels it is relevant to state here that there is not indication in the record or in the brief of the Appellant further implies in her argument that the Chancellor failed to consider any of the other "corroborating" testimony presented when making his decision. There is nothing in the record to indicate that is true. The Court simply found that the testimony presented did not corroborate the allegations of the Appellant and accordingly he found she did not meet her required burden.

D. Issue 4: Did the chancellor apply an erroneous legal standard when denying the appellant a divorce based on the ground of habitual cruel and inhumane treatment or "constructive desertion?"

While it appears that the final issue presented is at the very least an extension of the other issues, the Appellee will attempt to address it without repetition. The Appellee fails to see an argument in the Appellant's brief that the Chancellor applied the improper legal standard in considering a divorce on the grounds plead. It appears the Appellant wants the Court to believe that what amounted to *dicta* expressed by the trial court regarding his wish that the irreconcilable differences statute be amended, is somehow an indication that she had proven her grounds. That

was not the opinion of the Court.

Once again it appears the Appellant failed to follow the opinion of the Chancellor when forming the issue she presents the Court on appeal. The Appellant claims in her brief that "the Chancellor's sole reason for dismissing the divorce was his opinion that Mary had failed to provide sufficient corroborating evidence."[42] If you read the opinion of the Chancellor, that is certainly not sole reason for sustaining the Appellee's motion and it flies in the face of the allegation contained in this sub-section which claims an improper legal standard. Regurgitating selected portions of the testimony presented and claiming that should have been enough simply is not grounds for overturning the ruling of the Chancellor.

The Chancellor expressed concern throughout his opinion about the lack of corroboration, but in the end the failure of the Appellant to meet her burden in regards to either ground she plead was the reason for dismissing her claim.[43] Corroboration was obviously a big part of the reasoning in dismissing the claim in regards to habitual cruel and inhumane treatment, however, simply reading the ruling of the Court tells you that he did in fact consider all the evidence and apply the proper standard. The Chancellor tells us right there in black and white what he believed Mary Hoskins showed in presenting her case.

> *"In order to get a divorce in Mississippi on grounds, you have to say something other than the marital strife or disagreements or those kinds of things."*[44]

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[42]Appellant's Brief, P.12.

[43]T. P120-122.

[44]T. P123, L22-25.

That is what Mary Hoskins showed to the Court at trial. That she and Ronald had normal marital strife and disagreements which led to her deciding to leave and not go back. That is what her witnesses corroborated. The parties had arguments while playing card games and other trivial matters.[45] Despite what the Appellant claims, the Chancellor never indicated that Mary had met her burden but he simply would not give her a divorce solely because of a lack of corroboration.

Of course, the Appellant acknowledged and agreed with the Court while arguing against the motion to dismiss her lack of corroborating testimony was certainly a factor in while weighing the testimony.[46] As has already been shown, corroboration is very important in establishing grounds for divorce.[47] In fact, the Appellee would argue that it is well within the discretion of the Chancellor to dismiss the Appellant's divorce because of a lack of corroboration in a case like we have before the Court. The credibility of her testimony is certainly called into question when she fails to corroborate her testimony to the decree you see here. It appears now that the Appellant wants to re-write the ruling of the Chancellor in order to make it fit a reason for an appeal.

Lastly, in regards to the corroborating testimony, the Appellant never put forth an explanation that may have excused the requirement that she present corroborating evidence, so the Chancellor never addressed it being a situation that would call for it being excused. In fact, as it has been stated here many times and is acknowledged in the Appellant's Brief, she did put

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[45]T. P123, L27 thru P124, L4.

[46]T. P120, L29.

[47]Anderson v. Anderson, 200 So.2d 726, 728 (Miss. 1941).

forth two witnesses she fully intended to corroborate her side of the story.[48] Appellant's counsel even tried to explain away failure of the Appellant's sister to adequately corroborate her testimony by telling the court he "pulled it out of her as hard as he could."[49]

It was apparent from those comments that it was not a situation that corroboration was impossible, but one where the Appellant thought her sister would testify to something she simply was not going to do. Further, while she focuses on her perception of the ruling in regards to the corroborating witnesses she did present, the Appellant fails to even acknowledge the fact that she was free to present medical testimony to support her claims that she suffered from health problems as a result of Mr. Hoskins conduct. The Appellee contends she did not present such evidence because it simply does not exist.

As to the claim of constructive desertion, I will not regurgitate the case law and standard required for obtaining a divorce under that ground. Mrs. Hoskins' own testimony was determinative of that claim. While under cross-examination Mrs. Hoskins told us that not only did she leave and leave on her own volition, but she NEVER attempted to return.[50] She attempted to claim, solely based on hearsay testimony, that Mr. Hoskins changed the locks to the home.[51] Of course, she later explained that she did not know either way because she had never attempted to return after taking all the furniture from the home.[52] In his ruling, the Chancellor

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[48]Appellant's Brief, P.12.

[49]T. P121, L4.

[50]T. P59 L 19.

[51]Mrs. Hoskins attempted to testify that her son told her Mr. Hoskins changed the locks.

[52]T. P59 L 19.

again clearly explained his ruling in regards to the constructive desertion claim, *"I don't think she ever attempted to get back in."*[53] The Judge also properly recognized that Mr. Hoskins has been consistent in his willingness to have his wife return, even testifying to it years before in the previous hearing.[54] Lastly, Mrs. Hoskins never provided evidence that she left the marital home because of conduct which made the marriage unendurable or dangerous to life, health or safety. That failure is fatal to her claim.

The Chancellor also made it clear that the fact that there was no credible testimony to support her allegation that Mr. Hoskin's conduct was the reason for her leaving the marital home was a problem in the eyes of the trial court.[55] Neither of the essential elements of a constructive desertion claim were proven at the trial on the merits.

By the time the Appellant had concluded her case-in-chief it was clear the situation the trial court was dealing with. Mrs. Hoskins decided she did not like living with the Appellee any longer. She did not like the way he thought they should live and things like being prudent with the utilities and food were not things she wanted to listen to. Eating meals together as a family and keeping a clean home, again things she disagreed with the Appellee about. They had trivial arguments and suffered normal marital strife. But she left, cleaned out the home furnishings and never tried to return.[56] She now wants this Court to overturn the Chancellor by re-wording his

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[53]T. P124, L 22-23.

[54]T. P124, L27.

[55]T. P.123, L 2-5; *see also* discussion under Issue *A supra* regarding "constructive" desertion.

[56]T.P59, L19.

opinion to fit their reasons and attempting to change their position after the fact.

VI. CONCLUSION

In conclusion, the Chancellor was not manifestly wrong, nor did he abuse his discretion in making his ruling in the case sub judice. The Chancellor did not dismiss the claim of the Appellant "solely" because of a lack of corroborating testimony. The Chancellor applied the proper law and based his decision on credible facts presented during the trial of the case. The Chancellor properly determined the facts and the credibility of them by considering the corroborating testimony, or lack of it, presented by Mary Hoskins. This was a clear cut case of a Plaintiff not meeting their required burden of proof. The decision by the trial court should be affirmed.

RESPECTFULLY SUBMITTED, this the 18th day of February, 2009.

RONALD HOSKINS, APPELLEE

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CERTIFICATE OF SERVICE

I, John S. Farese, Attorney of Record for the Appellee, Ronald Hoskins, do hereby certify that I have this day served by United States Mail, postage pre-paid, a true and correct copy of the above and foregoing "**BRIEF OF THE APPELLEE: RONALD HOSKINS**" to the following:

Jay Westfaul, Esq.
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Honorable Mitchell M. Lundy, Jr
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DATED, this, the 18th day of February, 2009.

JOHN S. FARESE, [redacted]

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I have, this day placed the original of the above and foregoing **BRIEF OF THE APPELLEE: RONALD HOSKINS,** together with three (3) copies of the same and an electronic disk containing the text of the brief in Word Perfect 12.2, in the regular United States Mail, postage pre-paid, addressed to:

Betty W. Sephton
Supreme Court Clerk
Supreme Court of Appeals, Mississippi
Post Office Box 249
Jackson, Mississippi 39205-0249

THIS, the 18th day of February, 2009.

JOHN S. FARESE, [redacted]
Attorney for Defendant-Appellee