IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MARY (SMITH) HOSKINS — APPELLANT

VS. — NO. 2008-CA-01369-COA

RONALD HOSKINS — APPELLEE

APPEAL FROM THE CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF PANOLA COUNTY STATE OF MISSISSIPPI

Lower Court No. B-07-05-218-ML

APPELLANT'S REPLY BRIEF

OF COUNSEL TO APPELLANT:

Jay Westfaul, Miss. [redacted]
THE WESTFAUL LAW FIRM
Governor Charles C. "Cliff" Finch Building
115 Eureka Street, Suite "A"
Post Office Box 977
Batesville, Mississippi 38606
Telephone: (662) 563-8482

ORAL ARGUMENT IS REQUESTED

TABLE OF CONTENTS

Table of Contents. 1

Cases, Statutes and Other Authorities Cited 2

I. Introduction 3

II. Reply to Specific Issues 4

III. Conclusion 6

IV. Relief Requested 7

V. Reason for Request for Oral Argument 7

Certificate of Service 8

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES:

Anderson v. Anderson, 190 Miss.508. 200 So.726 (1941) 4

Shavers v. Shavers, No. 2008-MS-RO523.002
(Miss.Supreme Court, May 22, 2008) 6, 7

STATUTES:

Miss. Code Ann. § 93-5-1 5

OTHER AUTHORITIES:

Uniform Chancery Court Rule 8.03 . . . . . 4, 7

Uniform Chancery Court Rules 4

APPELLANT'S REPLY BRIEF

I. Introduction. The learned counselor for the Appellee, while making many valid points and conclusory statements, failed to address the important issues brought forward by the Appellant. In this Reply Brief, the Appellant shall undertake to respond to the valid issues raised by the Appellee. Given the drastic change since 1941 in our understanding of "Domestic Violence," and the plight of those affected by same, we must consider the law in its proper context. Divorce is a statutory creature promulgated by the legislature. The undersigned counselor is of the belief that he need not reiterate the long history of "corroboration" and the remaining issues raised in this appeal to the Honorable Court of Appeals, realizing that anyone can view the same set of circumstances and come to different conclusions based on that person's view of the circumstances. It does not mean that one is "not telling the truth," or "misstating the facts;" it simply means that from where the witness is standing, his or her perceptions of the events may differ from others witnessing the same event. The undersigned takes issue with the statement contained in Appellee's Brief that: "She [Appellant] now wants this Court to overturn the Chancellor by re-wording his opinion to fit their reasons and attempting to change their position after the fact." Brief of Appellee at 17-18.

That statement was totally uncalled for and out of character for my colleague who is one of the best lawyers in the state. Neither the Appellant nor her undersigned lawyer are attempting to "re-word" anything. The record is what it is. This Appellant does not attempt to discredit the learned Chancellor, opposing counsel, or the judiciary by raising important questions over the history of the necessity of corroboration in a contested divorce proceeding.

II. Reply to specific issues. (a) The undersigned has carefully studied Appellees' Brief. It is based on the premise that no legal issues exist and that the Chancellor was thus free to hear the evidence and make his findings of fact. The Appellee fails to recognize that the case law has changed drastically since 1941. The Uniform Chancery Court rules have undergone extensive change since the precedents established in *Anderson v. Anderson*, 190 Miss. 508, 200 So. 726 (1941), were formulated into a rule which went in an opposite direction from that of the case law. The legislature never, in the undersigned's study at least, formed any opinion as to the necessity of corroboration of testimony in a contested divorce action. When the undersigned began a diligent study of the issue, it became apparent that corroboration was necessary because it has supposedly "always been required." Upon investigation, it was learned, and presented in Appellant's Brief that corroboration was not "always required," at least in its present form, quoting the Supreme Court's struggle with the issue in 1941 as previously noted. The undersigned readily admits that opposing counsel is correct in his statement that the Chancellor neither made reference to Unif. Ch.Ct. Rule 8.03 nor any of its predecessors which were carefully analyzed in the Appellant's Brief. However, the various rules and extensive study of the case law from 1941 to the present are important to an understanding of the subject. The learned Chancellor certainly did not have to provide citations in an oral opinion that he was "concerned about the magnitude of necessity of a corroborating witness to prove grounds," (TR.120), and that he was speaking from his extensive knowledge gained through the years from the Unif.Ch.Ct.Rules and the case-law. Of course, the last statement is the opinion of the undersigned, but while the Chancellor did not use those exact words, it is the opinion of the undersigned that he based his ruling on the rules as they exist. Any judge in this state knows

from attending judicial conferences that domestic violence is a topic that has transcended into a field of knowledge upon which boundless volumes have been written. We now know that husbands do not, as a matter of course, mentally, verbally and physically torture their wives (or *vice versa*) in the presence of others. Thus, there followed a careful discourse with citations to the record of specific instances of Habitual Cruel and Inhuman Treatment (Miss.Code Ann. § 93-5-1) along with Wilful, Continued and Obstinate Desertion for the Space of One Year (Miss.Code Ann. § 93-5-1) in Appellant's Brief.

The Chancellor felt as if he could move forward with the trial had it not been for the "magnitude of necessity of a corroborating witness to prove grounds," (TR.120). It is clear from a reading of the entire record that he wanted to move forward, but felt constrained to do so based solely on this "corroboration" issue.

(b) The undersigned is of the opinion that the record is clear: the Chancery Court failed to take into account the Husband's testimony – who could certainly be characterized as a "corroborating witness." The Appellee's "Statement of the Case" is factual, but written in a confusing manner. While the wife did, in fact, file a *Complaint for Divorce, etc.*, prior to the instant action, that action was dismissed <u>without prejudice</u> for reasons which need not be discussed and has no application to the case at bar. In that previous action, the husband filed an action against the wife, accusing her of Habitual Cruel and Inhuman Treatment and Adultery. That action, too, was dismissed <u>without prejudice</u>, voluntarily, and has no application whatsoever to this case. No ruling, opinion and/or decision was made in the first case; it is totally irrelevant, and as far as the record is concerned should not be considered in the case before this Honorable Court.

(c) The Appellant's Brief repeatedly reiterates that in these domestic violence cases, corroboration may be – and usually is – impossible to obtain. Abusers, such at the Appellee in the case at Bar, inflict their torture in private without an audience present. As carefully described in her Brief, Appellant carefully testified to these "private instances," and while it appears that the Court wanted to go forward with the trial, it felt constrained to do so given the current state of the rules. And, of course, the Court did not have benefit of *Shavers v. Shavers*, No. 2008-MS-RO523.002, (Miss.Supreme Court, May 22, 2008).[1]

(d) The Court should take notice of the Wife's extensive knowledge of medical issues when considering whether her "before and after" medical status requires corroboration. She, a medical professional, provided competent testimony as to her medical condition. No one questions that she was under the care of the physicians stated in the record. No one questions that she was ill while residing with Appellee and that she became well after being forced to leave.

(e) Learned counsel opposite failed to rebut the multitude of instances described by the Appellant in her case in chief to provide a basis for a divorce on the grounds sued upon.

> 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 [sic] treatment or constructive desertion.

Appellees Brief at 11.

The foregoing assertion is not supported by the evidence. Instance after instance of claims of Habitual Cruel and Inhuman Treatment, coupled with the facts lending credence to the

---

1 This lawyer was unaware of that case and did not bring it to the attention of the Chancellor on the day of trial.

additional ground sued upon, are reiterated time and time again in the record and enumerated in Appellant's Brief.

III. Conclusion. A careful study of the law reveals that it can be said with certainty that the Chancery Court's findings were clearly erroneous and an erroneous legal standard was applied given the current status of the law regarding the grounds sued upon, as well as the question of "corroborative testimony," regardless of Unif.Ch.Ct. Rule 8.03, the current base of knowledge relative to "domestic violence," the lack of any guidance regarding the subject being provided by the legislature, and the Supreme Court's application of these topics in *Shavers*, Id.

IV. Relief Requested. This Court is requested to reverse and remand this case to the Chancery Court of the Second Judicial District of Panola County for a new trial. The Appellant does not seek a change in the law, only clarification which supports her prayer for relief.

V. Reason for Request for Oral Argument. The Appellant would most respectfully show that the status of the law on the issues presented herein is confusing and that oral argument would be helpful to explain Appellant's position as to these issues given the diligent study of the same and would most respectfully ask for oral argument before this Honorable Court.

This is the 31st day of March, 2009.

Respectfully submitted,

MARY SMITH HOSKINS, APPELLANT

By: _____

Jay Westfaul, [redacted]
Attorney for the Appellant

OF COUNSEL:

THE WESTFAUL LAW FIRM
Governor Charles C. "Cliff" Finch Building
115 Eureka Street
Suite A
Post Office Box 977
Batesville, Mississippi 38606
Telephone: (662) 563-8482

CERTIFICATE OF SERVICE

I, JAY WESTFAUL, Attorney at Law, hereby certify that I have day served a copy of the foregoing Reply Brief *via* First Class United States mail, postage prepaid, on the following persons:

Honorable Mitchell M. Lundy, Jr.
Chancellor
Third Chancery Court District of Mississippi
Post Office Box 471
Grenada, Mississippi 38901

Honorable John S. Farese
Attorney at Law
Post Office Box 98
Ashland, Mississippi 38603

CERTIFIED, this, the 31st day of March, 2009.

Jay Westfaul,
Attorney at Law