IN THE SUPREME COURT OF MISSISSIPPI

MARY (SMITH) HOSKINS **APPELLANT**

VS. **NO. 2008-CA-01369**

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

BRIEF FOR APPELLANT

OF COUNSEL TO APPELLANT:

Jay Westfaul, [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

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counselor of record for the appellant in this case 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. Jay Westfaul, Attorney for the Appellant
2. Honorable Mitchell M. Lundy, Jr., Chancellor
3. Honorable John S. Farese, Attorney for the Appellee
4. Farese, Farese & Farese Law Firm, Attorneys for the Appellee
5. Mary Smith Hoskins, Appellant
6. Ronald Hoskins, Appellee
7. H & H Land Developers, Inc., Batesville, Mississippi (an entity in which Mr. Hoskins is a part and to which Mrs. Hoskins may have an interest)

Certified, this 20th day of January, 2009.

Jay Westfaul, Attorney for Appellant

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STATEMENT OF THE CASE

Appellant, Mary (Smith) Hoskins[1] sued for a divorce on the grounds of Habitual Cruel and Inhuman Treatment and Wilful, Continued and Obstinate Desertion for the Space of One Year. After Mary and two witnesses testified, the Chancery Court dismissed the complaint based upon understandable mistakes of law and proof. Mary, feeling aggrieved, timely perfected her appeal to the Supreme Court of Mississippi.

Mary and her husband, Ronald Hoskins[2], were married in Panola County, Mississippi, in 1979 (R.6). They separated on December 29, 2004, (R.6) when Ronald told Mary that he hated and despised her, threatened to kill her, and, among other things, demanded that she leave the marital residence.(TR.8-9). Unfortunately, an audience was not present when Ronald made the threat and demand. (TR.12) Ronald had moved out of the couple's bedroom and taken up separate living arrangements six to eight months prior to the separation. (TR.10).

Mary, an educated healthcare worker (TR.14), immediately sought medical treatment for elevated blood pressure, a "pounding" heart and headaches, among other things, which she attributes to Ronald's mistreatment of her (TR.14), and subsequently was forced to take an increased dosage of medication(TR.15) and prescribed medication for anxiety and depression after informing her physician "what was going on in [her] home. . .and the pressure [she] was under." (TR.21). After

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[1]Hereafter referred to as "Mary" for clarity.

[2]Hereafter referred to as "Ronald" for clarity.

moving in with her two sisters (TR.15), removing herself from the marital discord and the harsh treatment inflicted by Ronald, her medical problems abated (TR.22).

Ronald, although stating that he wanted Mary to return to the marriage after making unfounded accusations of adultery (TR.96) and "submit herself as a wife," along with a list of other unreasonable demands (TR.96-98) [Ronald's testimony], changed the locks on the marital residence (TR.39) and failed to provide Mary with a key. As a matter of fact, her key to the main door of the marital residence could not open the door when she attempted to use it during the Noon recess on the day of trial. (TR.39, 84, 90, [corroborated TR.104-105]).

A host of additional evidence proving the ground of Habitual Cruel and Inhuman Treatment was adduced and shall be discussed in the body of this Brief. Unfortunately, while the Record adequately describes Ronald's cruel acts, the learned Chancellor, who did not have the benefit of the written Record at the time of his ruling, did not take note of some of these acts (TR.120). The Chancellor, while believing that Mary had adequately proven her case (TR.122, 125), mistakenly ruled as a matter of law that he was "concerned about the magnitude of necessity of a corroborating witness to prove grounds." (TR.120) [Emphasis added]. The Chancellor graciously clarified his opinion regarding the ground of "constructive desertion," and applied an erroneous legal standard when he mistakenly failed to find that Ronald did not "follow up" with his alleged request that Mary resume the relationship. Mississippi Law mandates that when an offer to resume a marital relationship is communicated, it must be "followed up" with further communications to adequately convey a good faith offer upon which unreasonable restrictions are not imposed.

Given Mary's testimony, and Ronald's admission thereof, that Ronald had changed the locks on the only door to the martial residence used by the parties, Ronald's allegation that he wanted to resume the marital relationship defies the imagination. Thus, the Chancellor had adequate legal

and equitable authority to do as he thought best and grant the divorce [TR.123-125], but he felt constrained by a poorly written Uniform Chancery Court Rule to do so.

SUMMARY OF THE ARGUMENT

Although the Chancellor opined that the Supreme Court would reverse his granting of a divorce in the case at Bar, the appellate court would have given the Chancellor broad discretion to award a divorce in this case based upon the two grounds sued upon. *McEwen v. McEwen*, 631 So.2d 821, 823 (Miss.1994). However, the chancellor felt constrained by, and relied upon, Uniform Chancery Court Rule 8.03, which has made a transformation through the years, through no fault of his or any Court, so that it now incorrectly and incompletely states the law regarding corroboration of testimony in divorce cases. In addition, the Chancery Court misapplied the law relative to "constructive desertion," given the overwhelming weight of the evidence by the requisite standard.

Admittedly, although the evidence was sufficiently corroborated given the current state of the law, many of the cruel and inhuman acts complained of by Appellant wife were committed in private. No audience was present to witness the atrocious acts. Nevertheless, given the totality of the circumstances, and the corroborating testimony of two witnesses, the Chancellor, had it not been for mistakes of law and the Court's application of an erroneous legal standard, should have not been constrained from granting a divorce.

ARGUMENT

I. **Standard of Review.** It is well settled in Mississippi Jurisprudence that the findings of a chancellor are upheld unless those findings are clearly erroneous or an erroneous legal standard was applied. *Hill. v. Southeastern Floor Covering Co.*, 596 So.2d 874, 877 (Miss.1992). A finding of fact is "clearly erroneous" when, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., Inc.*, 525 So.2d 746, 754 (Miss.1987). Broad discretion is afforded a Chancellor in his findings of fact given the evidence adduced as a whole. *McEwen v. McEwen*, 631 So.2d 821, 823 (Miss.1994).

II. **The application of an erroneous legal standard relative to "Corroborating Testimony" in a Divorce Action.** In its current form, Unif.Ch.Ct.Rule 8.03 reads, "In all **uncontested** divorce cases, except irreconcilable differences, the testimony of the Plaintiff must be substantially corroborated." [Emphasis added.] The case at bar is **contested**, but much more needs to be said about the reasons for, and the evolution of, this rule.

In ancient times, verbal answers were, of course, the norm, as illiterate people appeared before the King and, later, before Chancellors. Due to the nature of verbal testimony, corroboration was necessary, and answers must have been sworn. Later, when written answers "began to be allowed in lieu of the former oral examination," a long and elaborate process of pleading developed. *Mississippi Chancery Practice*, V. A. Griffith, § 347 (1925). Mississippi later eliminated all the "antiquities of useless form in bills" (complaints), but retained many requirements regarding

"answers under oath." Id. at §§ 348, *et. seq.*

The rule regarding "sworn pleadings" as of 1921, is totally devoid of any mention of the necessity of "corroboration" in divorce cases. However, it appears that the rule began to evolve in 1921 with the following:

> **RULE XVI.** All bills or petitions sent to the Chancellor to be acted on in vacation shall be verified by competent oath, or else shall be accompanied by affidavits, unless the matter is such as must be supported in any event by testimony formally taken and heard, and no decree or decretal order shall be granted on such unsworn bills or petitions unless accompanied by affidavits or evidence as aforesaid. And all such bills or petitions (except bills for injunction and petitions for writs of habeas corpus) must be filed with the clerk before being forwarded to the Chancellor, or presented to the court. And no paper will be filed by the clerk either in term time or in vacation until same be entitled and numbered.

Rules of Practice and Procedure for the Chancery Courts of the State. Revised and Promulgated by the Chancellors at Their Annual Meeting April 26th, 27th, 1921, *Acting under Sec. 2, Chap. 115, Laws of 1920.* (Miss.Legal Forms Ann., Ch.26, P. 312 - 316, William Eugene Morse. 1950).

The first case to be decided by the Mississippi Supreme Court on the issue of corroboration was *Anderson v. Anderson*, 190 Miss. 508, 200 So. 726 (1941). The Supreme Court could find no case which had dealt with the question, compared Mississippi's law to that of other jurisdictions, and found that "the latest tests are not in entire agreement" . . .but the "generally accepted view of the bench and bar" was "save in a case where, in its nature or owing to the isolation of the parties, no corroborating proof is reasonably possible". . .[corroboration would be necessary] "with the exceptions" [as stated]. *Anderson,* 190 Miss. At 512. [Emphasis added].

The only statute which that Court could find relative to the issue was § 1416, Code of 1930. "This view has had a large measure of confirmation in the fact that ever since courts were given jurisdiction in this State to grant final decrees of divorce, the statutes have carried the provision that

although the complainant must personally swear to the bill, it shall not be taken *pro confesso*.[3] Id.

Following this pronouncement of the Supreme Court in 1941, a Chancery Court rule was promulgated wherein it was stated that the complainant's testimony ". . .must be substantially corroborated by other witnesses, in all cases where from the nature of the case, the allegations of the bill or petition, or the testimony of the complainant or petitioner, **it shall reasonably appear that other persons know the truth about the matters in question**." Rule 20, *Rules of the Chancery Court*, Ch.26, *Mississippi Legal Forms*, William E. Morse (1965) [Emphasis added].

In 1981, the Supreme Court, in a very controversial and historic decision, ordered that the Mississippi Rules of Civil Procedure become effective January 1, 1982, adding that any and all statutes and court rules previously adopted to the contrary notwithstanding, and in the event of a conflict between these rules and any statute or court rule previously adopted these rules shall control. [Order 1. Supreme Court of Mississippi. May 26, 1981, Emphasis added].

With the advent of the new rules came the following, ". . .Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. **The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.**" Miss.Rule Civil Pro.11(a) [Emphasis added]. *See also* § 569, *Mississippi Chancery Practice*, (Judge Billy G. Bridges, *et. al.* (2000).

The Uniform Chancery Court Rules of 1987[4], contained the following regarding the subject:

> In all **uncontested** divorce cases, and all other matters ex parte, where under the practice of the court is required, the testimony of the

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[3]Miss.Code Ann. § 93-5-7 is the statute in its modern form.

[4]The ground of irreconcilable differences, Miss.Code Ann. §93-5-2 had been enacted.

> complainant or petitioner seeking relief, must be substantially corroborated by other witnesses, in all cases where from the nature of the case, the allegations of the bill or petition, or the testimony of the complainant or petitioner, **it shall reasonably appear that other persons know the truth about the matters of fact in question.**

Unif.Ch.Ct.Rule 3.05 (as amended through December 1, 1987) [Emphasis added].

Uniform Chancery Court Rule 8.03, in its present form of one sentence, apparently addresses uncontested cases and the issue of an irreconcilable differences divorce. *Peterson v. Peterson*, 648 So.2d 54 (Miss.1994).[5] The important portion of the rule deriving from previous case law and the pronouncement after the struggle in *Anderson, supra,* allowing a Chancellor to grant a divorce without corroborating testimony in certain circumstances, has disappeared for some unknown reason.

The case law is compelling that where no corroborating evidence is available due to the nature of the case or isolation of the parties, the Chancellor is certainly allowed to grant a divorce. *Brock v. Brock*, 205 Miss. 66, 38 So.2d 321 (1949). *Chambers v. Chambers*, 213 Miss. 71, 56 So.2d 33 (1952). *Heatherly v. Heatherly,* 914 So.2d 754 (Miss.2005) (*citing Chambers* and *Anderson*, Id.). *Tatum v. Tatum*, 247 Miss. 694, 157 So.2d 800 (1963).

Perhaps the most recent case detailing just how little corroborating evidence, if any, is necessary, is *Shavers v. Shavers*, No. 2008-MS-RO523.002, (Miss. Supreme Court, May 22, 2008. ¶¶ 35-42, *citing Chambers,* Id. and *Gardner v. Gardner*, 618 So.2d 108, 114 (Miss.1993)). In *Shavers*, the Chancellor himself did most of the questioning, and the Supreme Court of Mississippi upheld the Chancellor's awarding to the wife a divorce on the ground of Habitual Cruel and Inhuman Treatment based upon the totality of the circumstances and the sole corroborating witness: the

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Reed v. Reed, 839 So.2d 565 (Miss.Ct.App. 2003), mentioned the present rule, but that case involved a single, isolated incident as a basis for divorce, and is thus distinguishable from the case at Bar.

husband. Far less evidence was adduced in *Shavers* than in the instant case. Of course, the Chancellor in the case at Bar may not have had the benefit of *Shavers*; the undersigned readily admits that this writer had not read the case prior to preparing this Brief and did not bring it to the attention of the Chancellor, as the case was relatively new on the day of trial.

III. **The Chancery Court erred in not granting Mary a divorce on the ground of "Constructive Desertion," and further erred in failing to consider Ronald's testimony as substantial corroborative evidence.**

Mary charged Ronald with Wilful, Continued and Obstinate Desertion for the Space of One Year under Miss.Code Ann. § 93-5-1 after Ronald, with unyielding duress, coercion and threat, forced Mary to leave the marital residence on December 29, 2004, when Ronald engaged in the following conduct:

> (Mary): He threatened me. He came into the bedroom and touched my nose, and he said to me, to look at him. And he said, I'm going to kill you. No one else can live in this house – if I can't live here, no one else can live here. And he said that he would burn the house down, me in it. (TR.9 LL.5-10).

Ronald changed the locks on the doors to the marital residence. He did not provide her with a key and did not attempt any intervention when Mary went back to the residence to obtain furniture and other items. (TR.84). Ronald corroborated the fact. (TR.105). Ronald had not asked Mary to return to the marital residence from 2005 through the day of trial in 2008. (TR.94) [Corroborated by Ronald (TR.101)]. The Court took judicial notice that the parties had been separated for at least one year (TR.39,LL.16-18) and that the marriage had ceased, saying, "Obviously, it doesn't appear that y'all could get back together. . . ."(TR.125, LL.6-7).[6]

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[6] These facts are very similar to those contained in *Hoffman v. Hoffman*, 213 Miss. 9, 56 So.2d 58 (1952).

The Supreme Court has ruled that desertion can occur even within the same home, and has sustained divorces obtained on that ground with cases containing far less evidence than that which Ronald has caused Mary to suffer. The cause may be as complete under the same shelter as if oceans rolled between. *Graves v. Graves*, 88 Miss. 677, 41 So. 384 (1906). Here, the parties have been separated for several years. Constructive desertion is recognized in Mississippi. *Griffin v. Griffin*, 207 Miss. 500, 42 So.2d 720 (1949). *Handshoe v. Handshoe*, 560 So.2d 182 (Miss.1992). *Benson v. Benson*, 608 So.2d 709 (Miss.1992). *Lynch v. Lynch*, 616 So.2d 294 (Miss.1993).

The innocent spouse must react favorably to a good faith offer to return by the deserting party, and the deserting spouse (Ronald) must always be willing to take the innocent spouse (Mary) back. No unreasonable barrier may be erected by either party. *Rylee v. Rylee,* 142 Miss. 832, 108 So. 161 (1926). Here, Ronald placed numerous unreasonable and controlling barriers to Mary's return. (TR. 96-98 - Ronald's own testimony - and TR.55). Of major importance is the precedent that the deserting spouse (Ronald) must communicate the good faith offer and then give the other party (Mary) a reasonable time to consider the effort. The effort **must be followed up** to learn the reaction of the innocent party. *Thrasher v. Thrasher*, 229 Miss. 536, 91 So.2d 543 (1957).

None of these requirements were met. Ronald threatened to kill Mary, told her to leave, helped her leave, changed the locks on the marital home, placed unreasonable demands on her, never evidenced that he would change his ways and certainly, by his own testimony, even if one were to believe that he wanted her back, failed to "follow up" on any purported communication asking that she return, at least from a period of time from 2005 up until, and including, June 30, 2008. (TR.101). As evidenced in *Shavers, supra.,* and the other authorities cited, Ronald's corroboration of the events met the requirements of Unif.Ch.Ct.Rule 8.03 and all relevant case law.

IV. **The Chancellor applied an erroneous legal standard, and his findings were clearly**

erroneous when he ruled that, although Mary had presented sufficient evidence to obtain a divorce, that her two witnesses failed to corroborate the testimony and that while "he could give a divorce, ... the Supreme Court [would] reverse it... and [f]or that reason...[the divorce was denied]."

Mary charged Ronald with Habitual Cruel and Inhuman Treatment pursuant to Miss.Code Ann. § 93-5-1. The Chancellor's sole reason for dismissing the case was his opinion that Mary had failed to provide sufficient corroborating evidence. (TR.123-124). Of course, the manner in which Unif.Ch.Ct.Rule 8.03 has evolved into one sentence ostensibly relative to "uncontested divorces" might lead one to the same conclusion. Of course, the Chancellor could have granted a divorce which would, most likely, in the undersigned's opinion, have been upheld. In this case, Mary had two corroborating witnesses testify: her sister, Martha Bland. and her husband, Ronald. Far more evidence was adduced in this case than that required by *Rawson v. Buta*, 609 So.2d 426 (Miss.1992)[7].

It is well settled that a divorce on the ground of Habitual Cruel and Inhuman Treatment will be granted "when the conduct of the offending spouse endangers the life, limb or health, or create a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief or, in the alternative, be so unnatural and infamous as to make the marriage revolting to the unoffending spouse and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its continuance." *Russell v. Russell*, 128 So. 270 (Miss.1930). A study

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In *Rawson,* the Court held that while two photographs were insufficient corroborating evidence, there may be situations where the plaintiff would be powerless to produce an overabundance of supporting or independent evidence, and in those cases, the trial court would not be powerless to grant a divorce.

of the record shows by a preponderance of the evidence that Ronald was guilty of Habitual Cruel and Inhuman Treatment, and that his acts were either corroborated, or unable, due to their very nature, to be corroborated, *viz*:

- **Violence, threats, intimidation, and resulting illness:** On December 29, 2004, and sometime prior to that day (TR12), Mary was approached by Ronnie and told to leave. "He said he was beginning to hate me and despise me. And with him despising me it was best that I left because when you despise someone you begin to want to do something to them. And it was best that I leave." (TR.8) Ronnie touched Mary's nose, got in her face with red, mad eyes, told her to look at him and said he would kill her, making her uncomfortable and scared. (TR.9) She feared for her life. (TR.10). He told her to "get out. . .with force. . . .[a]nd then he pointed to the door." (TR.11) These instances and others like it were not performed in front of an audience. However, Mary testified that she was upset, could not eat much, that she – a medical professional – felt her blood pressure elevated, sought medical treatment from a physician (TR.13-15), and that she had to take medication for anxiety and depression which abated when she fled the marital residence. (TR.22) Those facts were corroborated by Martha Bland who testified that when Mary fled to her home, she was nervous and upset but after a short while she was greatly relieved:

> Q. And the times she acted jittery or nervous, was this before the separation or after?
> A. Well –
> FARESE: Your Honor, this [is] asking for an impression.
> A. It was before.
> THE COURT: Hold up. What's your objection
> . . .
> THE COURT: . . .I'm going to let him ask that. . .Was it before or after the separation?
> THE WITNESS: Before.
> THE COURT: Nervous and jittery?
> THE WITNESS: Yes. And sometimes upset.
> BY MR. WESTFAUL:
> Q. Have you had a chance to observe her after the separation?

A. Yes, I have. Because I've been around her more now.
Q. Have you noted any difference of how she acted then and now?
A. Yes. Her demeanor is totally different.
FARESE: Your Honor, that's leading.
THE COURT: [Overrules the objection]
A. Her demeanor is completely different at this time. After the separation, after a few weeks, few months or whatever. At first when she first came over to [my] house that night because she stayed with my sister and I, after she left the house. She was nervous and upset. But then after a while, her demeanor changed a whole lot.
FARESE: Your Honor, – [Objection which was overruled]
A. Also, as far as you were asking about was there any change. At one point, she was always going to the doctor, something was always wrong it seemed like. It seems like after the separation, it seemed like things, physically, she just changed.

(TR.114-116).

The Court found Martha's testimony to be credible, agreeing that she was truthful. [TR.121].

The Court did not have benefit of the record with regard to Ronnie's threats to kill, and erred in sustaining the following objection, which such argument goes to the very heart of this case:

> MR. WESTFAUL: . . .[P]eople don't – especially of this refined nature, your Honor, don't normally sit around fighting and fussing in front of everybody. And certainly a man as smart as Mr. Hoskins over here is not going to threaten to kill somebody in front of somebody –
>
> FARESE: Your Honor, I'm going to object and ask that be stricken.
>
> THE COURT: Sustained.
>
> MR. WESTFAUL: The simple fact is she testified that he threatened to kill her. There was nobody else around, unfortunately. Unfortunately, he didn't do it in public where I could bring more people in here. . .
>
> FARESE: Your Honor, the testimony is what it is. I don't think Mr. Westfaul can argue and adjust the testimony to what he thinks it is.
>
> THE COURT: I'm going to let him argue his case. *Let's don't stretch the testimony. I heard the testimony.* [Emphasis added].

(TR. 119-120).

The undersigned is well aware that a judge has a difficult job, and that it is far easier to read and cite from the record than it is for the judge to make findings of fact and conclusions of law without the benefit of such. The fact is that, at least in Mississippi, most of our judges do not have

computers generating testimony in "real time," as do some members of the judiciary in other places. The threats, intimidation, fear, apprehension, medical problems – all were contained in the record and cited herein. Still, we have far more evidence upon which a divorce can be granted, even more than the physical violence and threats thereof as previously noted.

- **Unfounded allegations of Adultery:** A divorce may be granted on the ground of Habitual Cruel and Inhuman Treatment, where, as here, the defendant constantly accused his wife of going with other men, and false allegations of immoral conduct, coupled with other mistreatment, warranted the award of a divorce. *McBroom v. McBroom,* 214 Miss. 360, 58 So.2d 831 (1952). *Hibner v. Hibner*, 217 Miss. 611, 64 So.2d 756 (1953). The record contains many such instances wherein Ronald engaged in such conduct:

> Mary testified:
>
> – "He just slandered my name" (TR.16 L. 20)
> – "Well, he was telling anybody that [would] listen, just drug my name through the mud. He would tell them that I left him for other men or another man. And then he included a co-worker of mine, this woman. And a cousin of his, said I was running around with her. Just anything he could think of." (TR.16 LL.23-28)
> – The statements embarrassed her and hurt her. (TR.17)
> – The behavior was continuous, first occurring in the 80's when Ronald accused Mary of going with his brother-in-law. (TR. 18)
> –Ronald threatened to rape her, but she couldn't call any witnesses because no one else was in her bedroom at the time. (TR.56)
>
> CROSS EXAMINATION OF MARY:
>
> – (MR. FAREESE): . . .The truth is he found you in a car with a coworker that he suspected you were seeing, didn't he? . . .He suspected that you were having an affair with this person?. . .Okay. He suspected at one point that you were having an affair with Lisa Cole. . .In fact, part of the problem he had leading up to this prior to the separation was Lisa Cole – y'all actually got in a fight, didn't you?. . .You had disagreements over the span of a couple days, but that that was based on Ronald's belief and concern that you were having an affair. . .Okay. You think – his suspicions were aroused that you were having an adulterous affair because you refused to have sex with him?. . .(TR.53-56)

The testimony was corroborated by Ronald:

MR. WESTFAUL:

> Q. Mr. Hoskins, have you ever accused your wife of committing adultery?
> A. I asked her was she going with Ray Shoemaker. I asked her was she going with Lisa Cole. I asked her those things. You asked me that question before, and I answered you the same. (TR.96, LL.7-12)

The testimony was further corroborated by Martha Bland, Mary's twin sister. (TR.110-111). The Court erred in failing to admit that testimony based on a "hearsay" objection, but the witness confirmed that while Mary had first told her that Ronald had accused Martha of bringing a man to meet Mary in her home (TR.110). Ronald later confirmed the entire conversation directly with Martha. (TR.111, LL. 5-21).

- **Ronald's constant controlling, belittling, infliction of emotional distress and embarrassing behavior:**

The Supreme Court has long held that in cases where Habitual Cruel and Inhuman Treatment is alleged, that in defining "cruel behavior," one must look to the entire course of conduct of the offending spouse, as well as the innocent party. An isolated incident in this category might not amount to cruelty. However, taking the record as a whole, one can easily label Ronald's conduct during the marriage to be cruel and inhuman, inflicting distress upon Mary which placed her life, limb and health in danger. *Ammons v. Ammons*, 144 Miss. 314, 109 So. 795 (1926). *Hulett v. Hulett*, 152 Miss. 476, 119 So. 581 (1925). *Long v. Long*, 160 Miss. 492, 135 So. 204 (1931). *Price v. Price*, 181 Miss. 539, 179 So. 855 (1938). *Hibner v. Hibner*, 217 Miss. 611, 64 So.2d 756 (1953). *Scott v. Scott*, 219 Miss. 614, 69 So.2d 489 (1954).

The record contains numerous instances of such conduct on the part of Ronald.

Mary's testimony:

– She was embarrassed by having to ask family members to take her in after being

kicked out of her marital home. (TR.15)

– Ronald was controlling, even putting a note on the thermostat that no one was to turn the air or heat on in the marital residence. Mary had to ask Ronald to use the parties' heating and air unit. (TR.17) It was hot in the house. (TR.43-44)

– The aforesaid rules and restrictions did not apply to Ronald's family members. When they visited he allowed them to sit on the furniture, go up and down the stairs, even allowed them to watch "the big screen TV." (TR.45 LL. 11-18) Mary's family members were treated differently (TR.45)

– Ronald constantly belittled Mary, telling her that she "looked old, and he looked young. Those types of things." (TR.18) Prior to 2004, during the course of the marriage, he "talked down" to her, as if she were a child. (TR.88)

– Ronald controlled all spending through the entire marriage, using Mary's salary for his personal gain, while allowing a wasteful dissipation of his funds. (TR.19) She is still making payments on a credit card upon which she received a $1,500 cash advance given to Ronald. (TR.31) She "cashed in" her state retirement in order to help build the marital residence. (TR.31, 34) The Internal Revenue Service confiscated portions of Mary's salary because Ronald failed to pay his taxes. (TR.37) She funded his Individual Retirement Account. (TR.42)

– Ronald imposed strict rules upon visits by Mary's family members, making them feel uncomfortable. He made Mary's family members remove their shoes before coming into the home, and had strict rules that they had to follow if they wished to sit on the furniture. This caused her to be embarrassed and uncomfortable. She said, "This is my house, but I had no say so." (TR.19-20)

– During the course of the marriage, Mary had to purchase clothing for her minor children (who have since reached the age of majority), and she is still making payments on a credit card which was used for that purpose.(TR.30-31)

The record clearly corroborates a course of conduct, not just an isolated occurrence, of Ronald's infliction of habitual cruel and inhuman treatment upon Mary. Consider, for example, his corroborating testimony:

Q. Did you remember telling her she needed to submit herself as a wife?
A. Yes, sir.
Q. Do you remember why you said that?
A. Why? Because she didn't cook for me, she didn't wash my clothes, she didn't iron my clothes.

(TR.96, LL. 21-26) In addition, he placed unreasonable sexual demands upon her:

Q. Is it true that you wanted to have sex with her five times a week?
A. I told Mary, I said Mary - - I'm going to tell you just what I said. I said Mary, I want you to submit yourself as a wife. I said, I wanted you to have sex with you five times a week, but I was just kidding when I told her that. I was just playing with her.
Q. Did you say you can handle that, can't you?
A. Pardon?
Q. Did you say you can handle that can't you? When you were talking about having sex with her?
A. No, I didn't

(TR.97-98).

And again, Martha's version of the events substantially corroborates Mary's testimony: She personally observed Ronald's demanding demeanor, with Ronald talking down to Mary, calling her "stupid." This type of behavior commenced at the beginning of the marriage. (TR. 109) Martha had to quit visiting Mary's home because Ronald always teased her about her weight. (TR. 109) Family get-togethers were difficult because Mary "was rushing saying she had to get back to the house." The Court erred in sustaining a hearsay objection as to the former statement. It was corroboration and a statement made by a party to the action. (TR. 112)

CONCLUSION

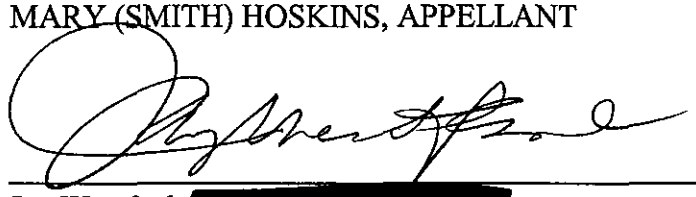
The Chancery Court applied an erroneous legal standard in concluding that it could not grant a divorce solely due to the lack of corroborating testimony after the Chancellor found that the Appellant Wife had, in fact, provided sufficient evidence to support her grounds for a divorce. The testimony was substantially corroborated. In the alternative, the Appellant would most respectfully show that Mississippi law does not require corroboration in divorce cases when the acts complained of are committed in private, where, by their very nature, corroborating testimony is unavailable. For these, and the reasons heretofore stated, the Appellant most respectfully moves this

Court to reverse the decision of the Panola County Chancery Court and remand for a new trial.

This is the 20th day of January, 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

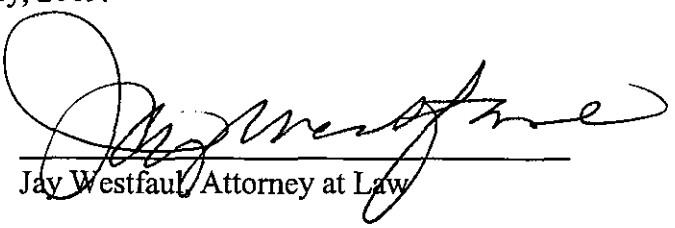
CERTIFICATE OF SERVICE

I, Jay Westfaul, Attorney for Appellant, certify that I have this day served a copy of the foregoing Brief of Appellant *via* First Class United States mail with postage prepaid on the following persons at the addresses so noted:

Honorable Mitchell M. Lundy, Jr.
Chancellor
Post Office Box 471
Grenada, Mississippi 38901

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

CERTIFIED, this 20th day of January, 2009.



Jay Westfaul, Attorney at Law