

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MERLENE W. ANDERSON

APPELLANT

VS.

NO. 2008-CA-01785

DONALD R. ANDERSON

APPELLEE

BRIEF OF APPELLEE

REBECCA COLEMAN PHIPPS
605 TAYLOR STREET
PO BOX 992
CORINTH, MS 38835
TELEPHONE: 662/286-9211
FACSIMILE: 662/286-7003

ATTORNEYS FOR APPELLEE

NO ORAL ARGUMENT REQUESTED

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 and/or the Judges of the Court of Appeals may evaluate possible disqualification of recusal.

1. Donald R. Anderson, Appellee
2. Merlene W. Anderson, Appellant
3. Rebecca C. Phipps, counsel for Appellee
4. R. Shane McLaughlin, counsel for Appellant
5. Nicole H. McLaughlin, counsel for Appellant
6. D. Kirk Tharp, counsel for Appellant
7. Joshua Anderson, child of Appellant & Appellee
8. Samuel Anderson, child of Appellant & Appellee



REBECCA COLEMAN PHIPPS
ATTORNEY OF RECORD FOR
APPELLEE

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
STATEMENT REGARDING ORAL ARGUMENT.....	5
STATEMENT OF THE ISSUES.....	6
STATEMENT OF THE CASE.....	7
STATEMENT OF FACTS.....	8
SUMMARY OF THE ARGUMENT.....	13
ARGUMENT.....	14
CONCLUSION.....	18
CERTIFICATE OF SERVICE.....	19
CERTIFICATE OF FILING.....	20

TABLE OF AUTHORITIES

CASES

<i>Bell v. Parker</i> 563 So. 2d 594, 597 (Miss.1990)	14
<i>Bodne v. King</i> 835 So. 2d 52,58 (Miss. 2003).....	14
<i>Chamblee v. Chamblee</i> So. 2d 850, 859 (Miss. 1994)	14,15
<i>Dangle v. Dangle</i> 626 So. 2d 140, 144 (Miss. 1993).....	14
<i>Day v. Day</i> 501 So. 2d 353, 355 (Miss.1997).....	15
<i>Fisher v. Fisher</i> 771 So. 2d 364, 367 (Miss. 2000).....	14
<i>Gardner v. Gardner</i> 618 So. 2d 108, 133-114 (Miss. 1993).....	14
<i>Hibner v. Hibner</i> 217 Miss. 611, 64 So. 2d 756 (1953).....	16
<i>Horn v. Horn</i> 200 So. 2d 2003-CA-01744-CO-A.....	14
<i>Hulett v. Hulett</i> (Miss. 476, 497, 119 So. 2d 581, 586).....	15
<i>Kumar v. Kumar</i> 976 So. 2d 957, 962 (Miss. Ct. App. 2008).....	17
<i>Lawson v. Buta</i> 609 So. 2d 426, 431 (Miss. 1992).....	14
<i>Pearson v. Pearson</i> 761 So. 2d 157, 162 (Miss. 1990).....	14
<i>Reed v. Reed</i> 480 So. 2d 1163 (Miss. 1985).....	17
<i>Richard v. Richard</i> 711 So. 2d 884 (Miss. 1998).....	16
<i>Richardson v. Richardson</i> 711 So. 2d 884 (Miss. 1998).....	16
<i>Robinson v. Robinson</i> 554 So. 2d 300, 303 (Miss. 1989).....	15
<i>Stone v. Stone</i> 824 So. 2d 645, 646 (Miss. Ct. App. 2000).....	15

STATEMENT REGARDING ORAL ARGUMENT

Appellee believes that this Honorable Court can make an informed and appropriate decision without oral argument. Therefore, no oral argument is requested.

STATEMENT OF THE ISSUES

1. Whether the Chancellor erred in granting a divorce based on habitual cruel and inhuman treatment where there was no evidence of endangering or infamous conduct, but rather evidence of mere bickering and incompatibility.
2. Whether, in any event, the Chancellor erred in denying a divorce based on the doctrine of condonation.

STATEMENT OF THE CASE

Reverend Donald Anderson and Merlene Anderson were married on October 2, 1994 in Starkville, Mississippi. Both parties had been married prior to their marriage, and Reverend Anderson had two sons prior to this marriage and Mrs. Anderson had one son that had been born to her out of wedlock. The two children that are before this Court are Samuel Anderson, whose date of birth is November 10, 1988 and Joshua Anderson, whose date of birth is December 9, 1993. These children were by a prior marriage that ended when his Wife died from complications from childbirth. Merlene Anderson adopted these children after marrying Reverend Anderson.

Reverend Donald Anderson filed a Complaint for Divorce alleging the grounds of habitual cruel and inhuman treatment against Merlene Anderson on January 31, 2006. (R. Vol. 1, page 2) This Court entered an Emergency Order of Custody on the 2nd day of February, 2006. Merlene Anderson filed her Answer to Complaint for Divorce and Affirmative Matters on November 27, 2006. (R. Vol. 1, page 25)

This Honorable Court entered a Temporary Order on July 2007. At that time, it was alleged by the children that Merlene Anderson had physically and mentally abused said children and the Honorable Joey Cobb of the Tishomingo County Bar was appointed the guardian *ad litem* to protect the minor children's interest.

After multiple days of testimony, the final of which was July 31, 2008 and after receiving written arguments by both counsel, this Court entered an opinion and Final Judgment of Divorce on September 26, 2008 (R. Vol. 2, page 215)

Merlene Anderson then perfected this appeal. (R. Vol. 2, page 236).

STATEMENT OF FACTS

Donald Anderson (Reverend Anderson) and Merlene Anderson (Merlene) were married in Starkville, Mississippi on October 2, 1994. Shortly after their marriage, Merlene adopted Reverend Anderson's two children from his previous marriage, namely Samuel Anderson, whose date of birth is November 10, 1988 Joshua Anderson, whose date of birth is December 9, 1993. Samuel and Joshua's mother had died during Joshua's childbirth. Reverend Anderson was a Missionary Baptist minister and had been for over 20 years at the time of this trial. (T. Vol. 3, page 305) He had been the minister of Little Zion Missionary Baptist Church in Corinth, Alcorn County, Mississippi since 1990 (T. Vol. 3, page 309, T. Vol. 5, page 682) Merlene was employed with the United States Army Reserve in Tupelo, Mississippi. Merlene found it necessary to travel quite a bit for her job (T. Vol. 2, page 311 and T. Vol. 1, page 93, line 20)

In addition to being the pastor at Little Zion Missionary Baptist Church in Corinth, Mississippi, Reverend Anderson was also president of the State Missionary Baptist Church Convention (a National Organization). He had been a Congress President and local Dean of the Congress. Being president of the Convention of Missionary Baptist churches is a national job and is very demanding and is a very prestigious job among the Missionary Baptist churches (T. Vol. 2, page 306) Reverend Anderson also counsels members of his church as well as other individuals in the community. (T. Vol. 2, pages 307-310) (T. Vol. 2, page 309)

Reverend Anderson filed for divorce against Merlene on January 31, 2006 on the grounds of habitual cruel and inhuman treatment. An emergency order was entered by the Honorable Chancery Court of Alcorn County, Mississippi on February 2, 2006 ordering the parties to live separate and apart until a hearing could be had on the merits. After the trial began on July 23, 2007, both children testified to physical abuse by Merlene. Therefore the Court appointed the Honorable Joey Cobb of the Tishomingo County Bar to be the guardian *ad litem* to represent the interest of said children. The Court entered a Temporary Order on July 23, 2007 granting Reverend Anderson the temporary use of the home as well as temporary custody of the children.

At the hearing on July 23, 2007, Reverend Anderson testified that long before the children told him of the physical abuse, he noticed the extreme mental abuse Merlene was putting Samuel through. (T. Vol. 1, page 304, line 15) (T. Vol. 1, page 319) Reverend Anderson testified that Merlene treated Samuel very differently than she treated Joshua. Joshua himself testified that he felt like his mother treated him much better than his older brother (T. Vol. 1, page 88, line 11) (T. Vol. 2, page 283, lines 16-29) (T. Vol. 2, page 287, line 9) (T. Vol. 2, page 288, line 13) (T. Vol. 2, page 314-317) Samuel testified that he knew Merlene treated Joshua better than him. (T. Vol. 1, page 38, line 9 – 21) Samuel testified that he had seen Merlene strike his younger brother Joshua (T. Vol. 1 page 39, line 23 – 39) (T. Vol. 1 page 234, line 16, 17)(T. Vol. 1, page 236,239) Samuel testified that although the physical abuse ended when he was younger, the emotional abuse never did. (T. Vol. 2, page 272 and 273) It became so bad that Reverend Anderson found it necessary to have Samuel in counseling. (T. Vol. 2, page 317) Reverend Anderson testified that Merlene would buy Joshua things and not buy

Samuel things. On the night prior to the court hearing, both boys told their father that they had also been physically abused by Merlene. (T. Vol. 1, page 19, line 14 and T. Vol. 1, page 20, line 12) (T. Vol. 2, page 254, page 22, line 22) Samuel also testified that he felt like his brother would be unsafe left alone with Merlene and that if his parents continued to live together, there would be violence in the home. (T. Vol. 1, page 20, line 24)

Merlene admitted in her testimony that she did not "exercise judgment" in how she disciplined Samuel. (T. Vol. 1, page 95, line 21 and T. Vol. 1, page 95, line 23 and T. Vol. 1, page 99, line 13 and 14 and T. Vol. 1, page 103, line 1-8) Samuel testified there was even one incident when he had accidentally urinated on the toilet seat and floor, Merlene became very angry and attempted to have Samuel lick up the urine. (T. Vol. 1, page 47, line 2-25)

Reverend Anderson could not resume the marital relationship with his Wife knowing that not only had Merlene mentally abused one of his sons, namely Samuel, now he had learned she had physically abused both children. (T. Vol. 2, page 319, line 7-9) Reverend Anderson testified he did not know about the physical abuse until July 2007. To resume the marital relationship would be turning his back on his children.

At the trial, Reverend Anderson testified Merlene then had become physically abusive toward him. He was then forced to call a member of his church, whom was also a City of Corinth police officer to come and diffuse the situation. (T. Vol. 1, page 181) (T. Vol. 2, page 322-327)

All throughout the testimony in this case, Reverend Anderson made it clear that the most important things in his life were first his family and second his church. Reverend Anderson had spent his entire life building a reputation not only to become a long-term minister at a very large church in Corinth, Mississippi, but had obtained the office of president for the entire Baptist Missionary Convention. Reverend Anderson was held in very high regard, both in Alcorn County, the State of Mississippi and nationally in the Missionary Baptist denomination. Reverend Anderson testified that Merlene made the statement that “ that she would bring him and his church down” (T. Vol. 2, page 350-351) Merlene certainly tried to do that. Merlene testified that she went to a Bible Study group one Wednesday night and discussed their marital problems with that group. She also testified that she stood up one Sunday service in the church and discussed her marital problems. (T. Vol. 2, page 340-341) (T. Vol. 2, page 342) Merlene Anderson also testified that she went to the Women’s Conference at the State Convention and told the entire convention that she was having marital problems, and falsely alleged that those problems were caused by her husband having extra-marital affairs. Merlene also testified that she called the National Baptist Congress President, namely Mr. Arby Holmes to tell him that she believed that her husband had committed adultery. After the temporary hearing, Merlene admitted that she drove from Starkville to Corinth, Mississippi (a 3 hour drive) to attend church at Little Zion Missionary Baptist Church. Reverend Anderson testified that after the church services, she would speak to the ladies of the church telling them about all her marital problems. Merlene Anderson did everything she could possibly do to ruin Reverend Anderson’s reputation in his home church at which he had been a pastor for over 17 years and the National Convention of which he had

obtained the office of President. She did everything in her power to “bring him and his church down”.

Reverend Anderson testified that Merlene Anderson continually accused him of having affairs with every female person in which he came in contact. (T. Vol. 2, page 335) Reverend Anderson testified that every female he counseled, had on a committee, met with, etc. was a target of Merlene’s jealousy and accusations. He testified that she constantly inspected his cell phone and called any female whose number she found, thus violating pastor confidentiality. Merlene’s behavior and jealousy severely hampered his ability to effectively counsel the members of his church.

Reverend Anderson also testified that Merlene would continually bring up an incident that happened in Selmer, Tennessee, approximately 20 miles from Corinth, wherein a minister’s wife killed him and then was freed. Reverend Anderson, because of Merlene’s mental state, took all these references as a direct physical threat. (T. Vol. 2, page 331) (T. Vol. 2, page 354)

The Trial Court correctly ruled that taking all of the above as a whole gave Donald Anderson the proof needed to grant him a divorced based on habitual cruel and inhuman treatment.

SUMMARY OF THE ARGUMENT

This Court should affirm the Opinion and Final Judgment of Divorce rendered by the Chancery Court of Alcorn County Mississippi on the 24th day of September 2008 and filed September 26, 2008.

THE ARGUMENT

“In a bench trial, the trial judge has sole authority to determine the ability of the witnesses”. *Bell v. Parker* 563 So. 2d 594, 597 (Miss. 1990) *Pearson v. Pearson* 761 So. 2d 157, 162 (Miss. 2000) states that “this Honorable Court must adhere to the limited standard of review and domestic relation matters”.

This Court may disturb a Chancery Court’s decision **ONLY** if the Chancellor’s findings were supportive by substantial evidence and were manifestively or clearly erroneous or the Chancellor implied an incorrect legal standard. This Court must review the facts underlying a divorce decree most favorable to the Appellee. *Fisher v. Fisher* 771 So. 2d. 364,367 (Miss.2000)

Habitual Cruel and Inhuman Treatment is defined as behavior that files under either, or both, of the following categories

- (1) Conduct that endangers life, limb, or health or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the offending party or
- (2) Conduct that is so unnatural and infamous as to make the marriage revolting to the offended spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance.

Bodne v. King 835 So. 2d. 52, 58 (Miss. 2003) citing *Dangle v. Dangle* 626 So. 2d. 140, 144 (Miss. 1993) *Gardner v. Gardner* 618 So. 2d. 108, 113-114 (Miss. 1993) *Lawson v. Buta* 609 So. 2d. 426, 431 (Miss. 1992) *Horn v. Horn* 200 So. 2d. 2003-CA-01744-CO-A and *Chamblee v. Chamblee* So. 2d. 850, 859 (Miss. 1994)

The Chancery Court of Alcorn County correctly stated that habitual cruel and inhuman treatment may be established by ill-founded accusations, threats and

malicious sarcasm, insults and verbal abuse which cause such mental suffering as to destroy health and endanger the life of an innocent spouse. *Bodne*, 835 So. 2d at 59 (citing *Chamblee v. Chamblee* 637 So. 2nd 850, 859 (Miss. 1994) In *Stone v. Stone* 824 So. 2d. 645, 646 (Miss. CT. APP. 2000) found that a Husband's predominately verbal abuse of Wife supported divorce on this ground.

Robinson v. Robinson 554 So. 2d 300,303 (Miss. 1989) (quoting *Day v. Day* 501 So. 2d 353, 355 (Miss. 1997) stated that it is no longer required that a specific act be the proximate cause of a separation before a divorce may be granted.

As a general proposition, "it is not necessary that acts of alleged cruelty should be malicious, but that such acts are to be judged by the effect produced, and the motives prompting them are immaterial". (*Hulett v. Hulett* Miss. 476, 497, 119 So. 581, 586)

Reverend Anderson found Merlene's behavior of treating one child differently than the other to be mentally cruel to his children. Later, he was told by his children that she had physically abused them when they were younger. Certainly, these facts would make the marriage so revolting that he could not continue in that marriage relationship. Reverend Anderson testified, as well as both his children, that Merlene physically abused the children as well as the mental abuse upon Samuel. Even though a guardian *ad litem* later found the abuse to be remote in time, Reverend Anderson stated that once his children told him of this abuse, he could not turn his back on his children and continue the marriage. Doing so would be to tell his children that he did not believe them, and thus

would put them in a very precarious position. Reverend Anderson could not be expected to continue a marriage and make his children continue to live with someone that the children had both said had physically and mentally abused them.

In *Richard v. Richard*, 711 So. 2d. 884 (Miss. 1998), the Court held that false accusations of infidelity, coupled with other oppressive conduct, over a long period of time and without reasonable cause, was sufficient to support a divorce on the ground of habitual cruel and inhuman treatment. See also *Richardson v. Richardson* 856 So. 2d 426 (Miss. Ct. App. 2003). Therefore “if one spouse falsely and maliciously should circulate rumors concerning the other, charging any unlawful or immoral conduct which would naturally tend to cause shame, humiliation, or disgrace, the act would be cruel”. N. Shelton Hand, Jr. *MISSISSIPPI DIVORCE, ALIMONY AND CHILD CUSTODY* (6th Ed.) Section 4:12 at 131 (citing *Hibner v. Hibner* 217 Miss. 611, 64 So. 2d. 756 (1953))

The Honorable Chancery Court of Alcorn County was in the best position to observe the witnesses and the parties in this matter. The Chancery Court gave particular weight to Merlene’s persistent false accusations of infidelity against Donald, that she communicated unfounded accusations of mistreatment by him in public gatherings, such as by standing during religious gatherings at Donald’s church or other settings in which he had a visible role, and that she has engaged in ongoing emotionally abusive behavior toward his children, all of which were calculated to disrupt Donald’s family and work environment. The Court observed Merlene’s imprecatory declarations against Donald during the progress of the

trial, and her disingenuous accusations that the devil was luring him to seek relief from the marital relationship and that God was giving him signs of disapproval, through such incidents as a snake being found within the residence and the air conditioning failing to operate.

She continually made threats to him concerning the Selmer, Tennessee incident in which a minister's wife had killed her husband. The Court correctly found that the combination of Merlene's continuous false accusations, her continuous negative comments to both the congregation, the denomination's president, other members of his congregation and the fact that she mentally as well as physically abused his children made this marriage completely intolerable and he could not resume the marriage relationship.

Although Merlene testified that she and Donald engaged in sexual relations, the trial court is better suited to ascertain the truthfulness of a witness. The Court stated that "it is well established that in this State that habitual cruel and inhuman treatment is a course of conduct that may not be condoned merely by continued cohabitation". *Reed v. Reed* 480 So. 2d. 1163 (Miss. 1985). *Kumar v. Kumar* 976 So. 2^d. 957, 962 (Miss. Ct. App. 2008) stated that "where condonation has occurred, if the cruel conduct subsequently occurs, the previous offenses are revived for the Chancellor's consideration."

CERTIFICATE OF SERVICE


I, Rebecca Coleman Phipps, attorney for the Appellee in the above styled and numbered cause, do hereby certify that I have this day mailed a true and correct copy of Brief of Appellee to all counsel of record and the Trial Court Judge by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

R. Shane McLaughlin
Nicole H. McLaughlin
McLaughlin Law Firm
338 North Spring Street, Suite 2
PO Box 200
Tupelo, MS 38802

D. Kirk Tharp, Esq.
Attorney at Law
PO Box 7332
Tupelo, MS 38802

Hon. Jacqueline Estes Mask
Chancellor
PO Box 7395
Tupelo, MS 38802-7395

This the 15th day of Sept, 2009.


REBECCA COLEMAN PHIPPS
ATTORNEY FOR THE APPELLEE

CERTIFICATE OF FILING

I, Rebecca Coleman Phipps, attorney for the Appellee in the above-styled and numbered cause, do hereby certify, pursuant to Miss. R. App. P. 25(a), that I have this day filed the Brief of Appellee by mailing the original of said document and three (3) copies thereof via United States Mail, to the following:

Ms. Betty W. Sephton
Supreme Court Clerk
PO Box 249
Jackson, MS 39295-0248

This the 1st day of Sept, 2009.


REBECCA COLEMAN PHIPPS