

IN THE SUPREME COURT OF MISSISSIPPI  
DOCKET NO. 2008-CA-01802

**COPY**

---

EULA PRICE

V.

JAMES PRICE

---

**FILED**

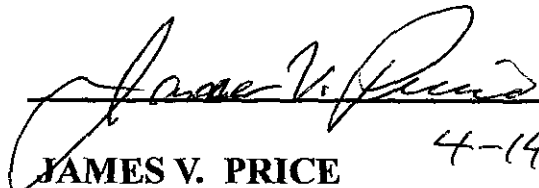
APPELLANT

APR 14 2009

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

APPELLEE

APPELLEE'S BRIEF

  
JAMES V. PRICE 4-14-09  
PRO SE  
8287 FAIRFAX COVE  
SOUTHAVEN, MS 38671  
662-393-2532

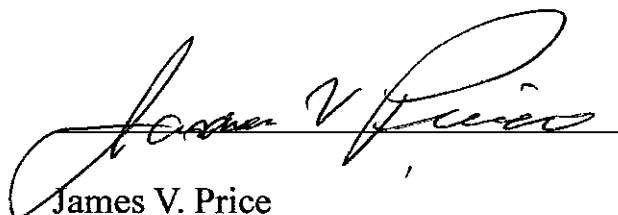
## 1. CERTIFICATE OF INTERESTED PERSONS

The Pro Se Appellee acknowledges that the following 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 judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Baby Eula Price, Hernando, Ms. (Incarcerated Desoto County Jail)
2. James V. Price, Southaven Ms.
3. David Walker, Batesville, Ms.

Respectfully submitted,

This the 14 day of April 2009.



James V. Price  
Appellee Pro Se

## **II. TABLE OF CONTENTS**

I.	Certificate of interested persons.....	i
II.	Table of contents .....	ii
III.	Table of authorities.....	iii
IV.	Statement of issues .....	1
V.	Statement of the case .....	2-10
VI.	Summary of argument.....	10
VII.	Argument.....	11-13
VIII.	Conclusion.....	13
IX.	Certificate of service.....	14

#### **IV. TABLE OF AUTHORITIES**

1. Bowen V. Bowen, 688 so. 2d (Miss. 1997).....	11
2. Rawson v. Buta, 609 So. 2d 426 (Miss. 1992).....	11

#### **IV. STATEMENT OF THE ISSUE**

The trial court found that the Appellee did show by a preponderance of evidence, that he is entitled to a divorce from the Appellant based upon habitual cruel and inhuman treatment.

## **V. STATEMENT OF CASE**

The Appellant, Baby Eula Price, filed a complaint for divorce in the Chancery Court of Desoto County, Mississippi on July 3, 2006. Clerk's papers at 4. The Appellee, James V. Price, filed a counter-complaint for divorce on July 7, 2006 based on cruel and inhuman treatment. Clerk's papers at 11-12. The chancery court conducted a trial in this case on September 22, 2008. Prior to the trial, the Appellant announced to the chancery court that she wished to withdraw her complaint for divorce. R. at 2. The chancery court found that the Appellant had shown a pattern of conduct toward the Appellee that constituted habitual cruel and inhuman treatment. R. at 114. The Final Judgment of Divorce was filed with the clerk of the court on October 16, 2008. Clerk's papers at 15. The Appellant filed her notice of appeal on October 28, 2008. Id. at 20.

## **APPELLEE'S TRIAL WITNESSES**

### **A. BABY EULA PRICE**

The parties were married on May 30, 2004 and separated on July 1, 2006.

R. at 5. The Appellee owned the marital home prior to the marriage of the parties. R. at 6. A workshop was constructed on the property during the

course of the marriage. R. at 7. Eula testified that she had taken James gold ten-yr anniversary ring that had been awarded to him by his employer FedEx and that she had sent him an e-mail threatening to sell the ring. R. at 9. Eula testified that Mr. Price's only obligation was his court order to pay a sum of \$200.00 monthly and that he had done so for the 25 month period and that he had maintained car insurance and medical insurance on her also during that 25 month period R. at 13. Eula testified that she and James had filed a joint bankruptcy and that she was aware that he had paid back the indebtedness and that she had not paid anything toward it. R. at 14. The Appellant was employed as self-contract LPN nurse at the time of the marriage of the parties. R at 16. At the time of the trial she testified that she had been fired on one occasion as a result of a "hot " drug test for marijuana. R at 17. She testified she had applied for social security benefits. R at 18. She had not received a favorable decision for disability benefits at the time of the trial. R at 19. After the temporary hearing in this case Eula applied for several credit cards in James' name. R. at 21. She was indicted by the grand jury of Desoto County, Mississippi for false pretenses related to these credit cards and had entered a plea of guilty. Id. She had not been sentenced at the time of this trial. R. at 21.

She testified that she was awaiting sentencing scheduled for Nov. 10, 2008. R. at 21-22. During the marriage of the parties, the Appellee had to call the police on her three times. She admitted she was charged twice by the police for disorderly conduct or disturbing the peace. R. at 30. She was also arrested on possession of marijuana charges R. at 31. She admitted that she smoked marijuana on a regular basis. Id.

In November 2005 the Appellant broke some dishes in the kitchen sink, she also damaged the kitchen sink, she testified that she threw the dishes so hard that they punched a hole in the sink. R at 34. She admitted that she slammed the shower door and broke it R. at 36. In June 2006 the parties went on a family vacation to Dollywood and a dispute arose between the parties over money. R. at 36. Eula testified that she thought the children should buy their own tickets into Dollywood out of the \$100.00 each that they were given for food, drinks, snacks, and souvenirs. Id. Eula testified that she kicked James in the buttocks and hit him in the back with her fist and slapped him in the face several times. R. at 37. Grabbed his finger and tried to bite it off. Id. All in the presence of his children. Id.. She claimed the Appellee's daughter hated her. R. at 37-38. She admitted that she did



throw hot coffee on the Appellee's son R. at 38. She claimed she put \$10,000.00 cash into the backyard but that she had no documentation. R. at 39. She testified that the majority of the funds used for the construction of the workshop came from credit cards R. at 40. She admitted that James paid \$83.00 weekly out of his paycheck to settle their joint bankruptcy and that she had never paid anything toward the settlement of those joint debts. R. at 40. She claimed a fifty percent interest in the marital home and everything in it. R. at 41. She was diagnosed with a bipolar condition. R. at 42. She requested fifty percent of the Appellee's 401(k) funds that accumulated since the marriage of the parties. R. at 43.

The Appellant was 54 years old at the time of the trial. she is trained as a LPN. R. at 45. She testified that she stopped working October of 2005. Id. Eula admitted that she consumed marijuana regularly and that she got it from her son. R. at 46. The Appellant attributed the marital problems to the Appellee's children. R. at 52.

### **B. Barry Bridgforth, Jr.**

Barry Bridgforth, Jr. has been a practicing attorney since 1994 R at 5. . He drafted a prenuptial agreement at the request of Mr. Price. R. at 57.

This document was executed on May 14, 2004. Id. He acted on

behalf of Mr. Price. R. at 58. He testified that the prenuptial agreement itself acknowledges that Eula is not represented by counsel. He mailed Eula correspondence reminding her to seek independent counsel. R. at 58.

### **C. Bill sexton**

Bill Sexton testified that he was employed as a real estate appraiser. R. at 61. He appraised the property at 8287 Fairfax Cove, Southaven Ms. The court accepted Mr. Sexton as an expert witness in the field of real estate appraisals in the State of Mississippi. R. at 62. He appraised this property at \$135,000. R. at 63. Mr. Sexton testified that more was paid for the building than could ever be gotten in the marketplace based on where it is. R. at 63. He testified that the property had a metal building that was detached from the residence. Id. He testified that the building could actually be a deterrence to buyers somewhat like a swimming pool could. R. at 64. He estimated the value of this work shop at \$8000.00. R. at 66.

### **D. JOSHUA C. PRICE**

Joshua C. Price is the nineteen year old son of the Appellee. R. at 68. He saw Eula kick his father in the butt and punch him in his back with her fist on a trip to Dollywood. Id. He testified that someone at the hotel called

the police because Eula was screaming so loud. R. at 68. He said his father was trying to calm her down he was not screaming. She was slapping, hitting, and pushing, his father. Eula slapped James a few times. R. 69. She threw hot coffee on him when he was 15 years old and it went all down his front. R. at 70. He and his sister did not have a good relationship with Eula. Id. When Eula vacated the marital home after the temporary hearing almost everything was missing . at 71. There was debris and trash all over the home, and someone had set a fire extinguisher off in the home. Id. Josh was born on February 12, 1990. The coffee incident occurred before the separation of the parties. R. at 74. His father did not take any defensive action concerning the Dollywood incident. R at 75.

#### **D. JAMES V. PRICE**

The Appellee (James) lives at 8287 Fairfax Cove, Southaven, Ms. In a house that is deeded exclusively in his name. R. at 76. This house was owned by Mr. Price and his wife from a prior marriage. Id. The property was purchased in 1995. Id. Subsequently he and his former wife divorced and the property was quitclaimed to Mr. Price. R. at 77. He made every mortgage payment due on his house. R. at 78. He had contributed to his 401 (k) plan during the marriage of the parties. R. at 79. He lived with Eula

twenty-five months prior to the separation of the parties. Id. The metal building was constructed from funds secured from credit cards. R. at 80.

Eula was fired from her job as a nurse because she failed a drug test. R. at 84. He had seen her smoke. R. at 84. He did not like her smoking he could not be around it because he is subject to random drug tests as a driver at FedEx Freight. Id. His concern about secondhand smoke was that he was afraid it would cause him to fail a drug screen and he feared he would lose his job. R. at 84-85. He denied that he bought marijuana for her. R. at 85. They argued over Eula's marijuana smoking. Id. He got tired of coming home and she would be sitting in the den smoking on a pipe. He said he would have to go to a separate room to be away from the second hand smoke. R. at 85. Eula took some dishes from over the sink and started throwing them in the sink and threw one so hard it made a gash in the stainless steel sink. Id. He called the police and that they pressed charges against her because she would not follow the officers instructions to not interrupt him. R at 86. He and her brothers all got along fine. R at 88. They decided to take the kids to Dollywood in June of 2006 for a family vacation. They had agreed to give the kids \$100 a day to spend for entertainment, he said he did not intend for them to pay their own

admission into the park. R at 89. Eula started raising cane at the park over money and said the children were going to pay their own way in. He said no we've got some more money. Id. He said they walked to the car she was screaming and hollering, they got the money out of the trunk, he was walking back to give the kids money to pay their way in with when she kicked him in the butt and hit him in the back with her fist. When they returned to the motel Eula started screaming and hollering again and someone called the police to their room. Id. Prior to the police arriving she started hitting him and slapping him and tried to bite his finger off. Id. James testified that he had not had sexual relations with Eula subsequent to the Dollywood incident. R at 91. James testified that he had paid off the joint bankruptcy debt and that Eula had contributed nothing toward that indebtedness. R. at 94. After Eula vacated the house at five o'clock on Friday that there was stuff strewn everywhere. R. at 95-96. When he walked in the den he thought there was baby powder everywhere he later realized that someone had set the fire extinguisher that he kept in the kitchen off all over the house. R. at 96. Eula broke into his shop and stole a lot of his personal belongings including his power tools. R. at 97. He didn't care if he ever saw Eula again, she had been

indicted by the Desoto County grand jury he had to be in Hernando on Nov, 10, 2008 to testify in the false pretense case against her. R. at 99. James testified that he paid the bankruptcy off at the rate of \$83 a week. R at 104. James did not want Eula back in his life because he was tired of the drug use by his wife and her habitual abuse of him. R. at 105. James problem with his wife and the drugs were not caused by his children and when she broke the dishes and went to jail the children were not even present. R. at 107. He met Debra Dunaway in November R. at 107-108. James had not had a relationship with Ms. Dunaway until after January of 2008. Debra Dunaway was not the reason for the separation from his wife. R. at 108. James had been separated from his wife for 18-20 months prior to meeting Ms. Dunaway and that meeting her had nothing to do with the commencement of the divorce action or the separation of the parties. R. at 109. The separation was more predicated on the violence in the marriage. Id.

## **VI. SUMMARY OF ARGUMENT**

The trial court did find that the Appellee proved, by a preponderance of the evidence, that he is entitled to a divorce based upon habitual cruel and inhuman treatment.

## VII. ARGUMENT

The trial Court stated that at the outset of this proceeding, the Appellant announced through counsel that she would no longer be seeking a divorce and would seek no relief from trial court, but would merely defend the allegations of divorce as raised in the counterclaim. The Appellee went forward then and presented proof in open court. The trial courts bench opinion stated that pursuant to Rawson v. Buta, 609 So. 2d 426, a Supreme Court case habitual and cruel inhuman treatment as a grounds for divorce must be proved by a preponderance of credible evidence, and a casual connection must exist between the treatment and the separation of the parties. The trial court also stated that Bowen v. Bowen is the primary case cited for habitual cruel and inhuman treatment divorces.

Bowen is cited at 688 So. 2d 1374, a Supreme Court case. In Bowen the Supreme court opines that habitual cruel and inhuman treatment consists of conduct that endangers the life, limb, or health that creates a reasonable apprehension of such danger rendering the relationship unsafe for the party seeking the relief, or is so unnatural and infamous as to make the marriage revolting to the no offending spouse and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its

continuance.

Here the Court has found that the Appellee has shown by a preponderance of evidence that he is entitled to a divorce absolute from the bonds of matrimony which exist between he and the Appellant. Toward those grounds of cruel and inhuman treatment, the Appellee has shown that he has been the subject of numerous physical assaults by the Appellant as evidenced by the Dollywood incident, as well as the plate and sink incident. He's been the subject of verbal abuse as shown by both those instances. The destruction of the property, both during the marriage and after the separation of the marriage, by destruction to the marital home, and perhaps more importantly, by the conviction and guilty plea of the Appellant for false pretenses awaiting sentencing in November.

The Court found that these incidents collectively showed a pattern of conduct by the Appellant toward the Appellee which constituted habitual cruel and inhuman treatment, that the physical assaults as well as the guilty plea toward the false pretense conviction which is a felony conviction is sufficient to meet the elements of habitual cruel and inhuman treatment as set forth in Bowen v. Bowen, and particularly with respect to the felony conviction is infamous to the extent that it makes the marriage revolting to



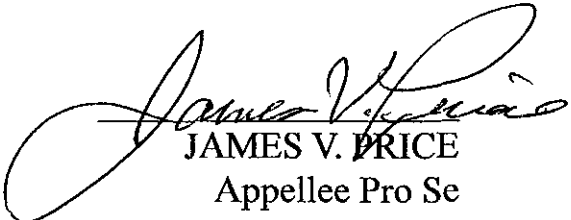
the Appellee and renders it impossible for him to discharge the duties of the marriage, and thus, destroying the basis for its continuance. Accordingly the trial Court granted the Appellee a divorce on the grounds of habitual cruel and inhuman treatment.

### **VIII. CONCLUSION**

In conclusion, the Appellee urges the Court to find that the Appellee did prove his grounds for divorce by a preponderance of evidence and the trial courts decision be affirmed.

Respectfully submitted,

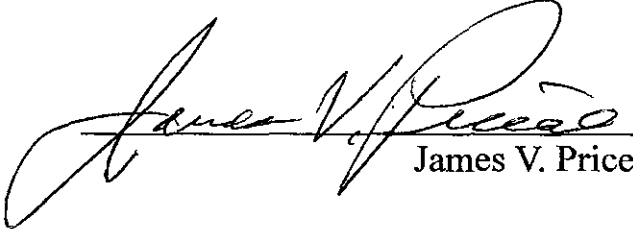
This the 14 day of April 2009

  
JAMES V. PRICE  
Appellee Pro Se  
662-393-2532

## IX. CERTIFICATE OF SERVICE

I, James V. Price, Pro Se Appellee, hereby certify that I have this day either mailed or hand delivered a copy of the Appellee's brief to Hon. Percy Lynchard, Jr., Chancellor, and Appellant Baby Eula Jones Bell Price's Counsel, David L. Walker at their usual mailing addresses.

This the 14 day of April 2009.

  
James V. Price