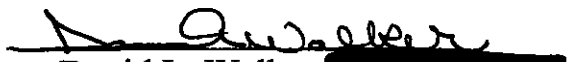
I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant hereby certifies 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. Eula Baby Price, Southaven, Ms.
2. James Price, Soutahven, Ms.
3. David L. Walker, Batesville, Ms.

Respectfully submitted,

This the 15th day of March 2009.



David L. Walker [redacted]
Counsel for Appellant

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IV. STATEMENT OF THE ISSUE

Whether the trial court erred in finding that the Appellee proved, by a preponderance of the 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 7th, 2006 alleging that the Appellant was guilty of habitual 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 wished to withdraw her complaint for divorce. R. at 2. The chancery court found that the Appellant had shown a pattern of conduct by the Appellant 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 16th, 2008. Clerk's papers at 15. The Appellant filed her notice of appeal on October 28th, 2008. Id. at 20.

APPELLEE'S TRIAL WITNESSES

A. BABY EULA PRICE

The parties were married on March 30th, 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. However, a garage or workshop was constructed on the property during the course of the marriage. R. at 7.

The Appellant was employed as a self-contract LPN nurse at the time of the marriage of the parties. At the time of the trial, she testified that she could not work and had applied for social security disability benefits. R. at 18. She had not received a favorable decision on her disability benefits at the time of the trial. R. at 19. At the time of the trial, the Appellant's income consisted of $200 in a temporary alimony payment from the Appellee and $142.00 in food stamp payment. Id.

After the temporary hearing in this case the Appellant applied for some credit cards in the Appellee's name. R. at 21. She was indicted by the grand jury of Desoto County, Ms. for false pretenses related to these cards and had entered a plea of guilty. Id. She had not been sentenced at the time of this trial. Id. She did this because she was hospitalized twice. R. at 22. Friends and relatives assisted her with her monthly living expenses. Id.

The Appellant executed a prenuptial agreement prior to marrying the Appellee. R. 24-25. She paid for the prenuptial agreement. R. at 25. she was under the impression that the attorney who drafted this agreement was working for both parties. Id. This agreement stipulated that the Appellee would retain sole use and possession of the marital home and that no alimony would be paid to the wife. R. at 25-26. She admitted that she

executed this agreement. R. at 26.

During the marriage of the parties, the Appellee called the police on her three times. She was charged with disorderly conduct or disturbing the peace. R. at 30. The first time that the Appellant was incarcerated the Appellee came to the jail and had her released. R. at 31. Someone else posted her bail the second time. R. at 31. She was also arrested on possession of marijuana charges. These were bogus charges and were dismissed. Id. The Appellee gave her a bong pipe for a Christmas present. R. at 32. She admitted that she smoked marijuana on a regular basis. Id. The Appellee purchased this marijuana for her. R. at 33.

In November 2005 the Appellant broke some dishes in the kitchen Because she was having an anxiety attack. She is bipolar. R. at 34. She also damaged the kitchen sink, but later replaced it. Id. Also, the Appellant was taking a shower when the Appellee opened the shower door and hollered at her. She then slammed the door and broke it. R. at 36. In June 2006 the parties and the Appellee's children went on a family vacation to Dollywood and a dispute arose between the parties over money. Id. The Appellee was upset with the Appellant. Id. He cussed her and she hit him. R. at 37. Blows were exchanged by the parties. She was knocked to the ground and hurt her leg. Id. She attempted to bit his finger because he was

pointing it in her face.. Id.

The parties had differences, but always seemed to work them out. However, the Appellee's daughter hated the Appellant. R. at 37-38. She did throw hot coffee on the Appellee's son. R. at 38. She put $10,000 cash into the backyard improvements including a concrete slab and electrical work. R. at 39. The majority of the funds used for the construction of the garage came from credit cards. 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 after the marriage to the Appellee. R. at 42. She suffered from depression prior to the marriage. R. at 43. She requested fifty percent of the Appellee's 401 (k) funds accumulated since the marriage of the parties. The Appellee contributed more funds this fund after the marriage. Id. The Appellee increased his 401 (k) contributions from one percent before the marriage to six percent after the marriage. R. at 44.

The Appellant was fifty four years old at the time of the trial. She is trained as an LPN. Id. She stopped working on October 14th, 2005. R. at 45. She could not perform the manual labor required of an LPN. R. at 46. The parties last had sex on July 1, 2006. Id. The Appellee knew that she used marijuana prior to the marriage of the parties. She secured the funds for the purchase of this marijuana from the Appellee.

She used the marijuana for pain control. R. at 47.

The parties had marital relations on multiple times after the incident in November 2005 and the shower incident. Id. They also had sexual relations after the incident at Dollywood and the incident involving throwing coffee on the Appellee's son. R. at 48.

The Appellant attributed the marital problems to the Appellee's children. She and the Appellant got along fine without the stepchildren. R. at 52. She cashed in a $1000 certificate of deposit and placed it in the joint marital account. R. at 54.

B. BARRY BRIDGFORTH, JR.

Barry Bridgeforth, Jr. testified that he had been a practicing attorney since 1994. R. at 56. He drafted a prenuptial agreement for the parties at the request of the Appellee. R. at 57. This document was executed on May 14th, 2004. Id. He acted on behalf of the Appellee. R. at 58. He admitted that he received a check for $350.00 for legal services signed by the Appellant in this matter. R. at 59. This check was written on the joint account of the parties. Id.

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 Mississipp. R. at 62. He appraised this property at $135,000. R. at 63. This property had a very well constructed metal building that was detached from the residence. Id. He estimated the value of this workshop at $8000. R. at 66.

D. JOSHUA C. PRICE

Joshua C. Price is the nineteen year old son of the Appellee. R. at 68. He saw the Appellant kick the Appellee in the butt and hit him in his back on a trip to Dollywood. Id. She slapped him a few times. R. at 69. She threw coffee on him when he was fifteen years old. R. at 70. He admitted that he and his sister did not have a good relationship with the Appellant. Id. He was born on Feb. 12, 1990. The coffee incident occurred before the separation of the parties. He wanted his dad to win this case. R. at 74. He denied that the Appellant took any defensive action concerning the Dollywood incident. R. at 75.

D. JAMES V. PRICE

The Appellant lived at 8287 Fairfax Cove, Southaven, Ms. in a house that was acquired prior to the marriage of the parties. This house is titled in his name. R. at 76. He testified that he made every mortgage payment due on this house. R. at 78. He was living with

the Appellant at the time the prenuptial agreement was executed. R. at 79. He admitted that he contributed to his 401 (k) plan during the marriage of parties. Id. He lived with the Appellant for twenty five months prior to the separation of the parties. Id. According to the Appellant the metal building was constructed with funds secured from credit cards. R. at 80. He was aware that the Appellant was taking medication for depression both before and after the marriage. R. at 83. He has seen her smoke marijuana at times. R. at 84. He denied that he brought marijuana for her. R. at 85. They argued over the Appellant smoking marijuana. Id. He admitted that he posted bail for her so that she could be released from jail for the dish breaking incident. R. at 87.

The Appellee denied that he had sexual relations with the Appellant after the June 2006 Dollywood incident. R. at 91. At the time of the trial, his 401 (k) had a balance of $54,580.36. He had contributed to this account for fifteen years. R. at 92. His annual income is approximately $70,000. R. at 93. He claimed that he paid for the metal building by paying off the credit card debt used to construct it. Id.

On cross examination the Appellee indicated that his interrogatory answer as to when the parties last had marital relations was incorrect. R. at 101. He admitted that he was living with Deborah Dunaway at the

time of the trial. She is a lady friend of his. R. at 101. She sleeps with him and they have sex together. Id. He had been having a relationship with her since January 2008. Id. More often than not, the parties would get along with each other. R. at 102. Problems in the marriage centered on his children. Id. He admitted that he increased his contribution to the 401(k) plan from one percent to six percent. Id. He did this because the marriage was good and he wanted to build a nest egg. Id. When things were good, the Appellant was a housekeeper, cook and sexual companion. Id. The dish smashing incident occurred in November 2005. R. at 103. They had sex multiple times after this and **forgave** each other for this incident. Id.

The Appellee did not want the Appellant back in his life because Ms. Dunaway is there now. R. at 105. He was done with her. Id. He admitted as a general proposition that the marital problems involved the stepchildren. R. at 106. He claimed that he was tired of the drug use by his wife and her abuse of him. Id.

VI. SUMMARY OF ARGUMENT

The trial court erred in finding that the Appellant 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 in its bench opinion that habitual cruel and inhuman treatment as a grounds for divorce must be proved by a preponderance of the credible evidence and a causal connection must exist between the treatment and the separation of the parties. R. at 112. **Rawson v. Buta**, 609 So. 2d 426 (Miss. 1992). It also relied upon **Bowen v. Bowen**, 688 So. 2d 1374 (Miss. 1997) for the definition of habitual cruel and inhuman treatment. This is treatment by one spouse to the other that consists of conduct that endangers the life, limb or health of the other that creates a reasonable apprehension of such danger rendering the relationship unsafe for the party seeking relief. R. at 113. It may be so unnatural and infamous as to make the marriage revolting to the non-offending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance. Id.

The trial court found that the Appellee had been the subject of numerous physical assaults by the Appellant as evidenced by the Dollywood incident and the plate and sink incident. R. at 114. According to the trial court, the Appellee has been subjected of verbal abuse as shown by both of those instances. Id. It also found destruction of the property, both during the marriage and after the separation of the parties and Appellant's entry of

a plea of guilty to false pretenses important factors in its analysis of the proof. Id. This conviction according to the trial court made the marriage revolting to the Appellee and rendered it impossible for him to discharge the duties of the marriage and to continue the marriage. R. at 115.

The trial court failed to comment on the Appellee's testimony that the parties had sexual relations on multiple times after the plate and dish incident and that they had forgave each other for this incident. R. at 103. Moreover, this incident happened in November 2005, more than seven months after the date of separation of July 1, 2006 claimed by the Appellant in his counter-complaint for divorce. Clerk's record at 11.

Moreover, the Appellee denied that he had sex with the Appellant after the Dollywood incident in June 2006, but claimed a date of separation of July 1, 2006. Id. and R. at 100. He admitted that his interrogatory answer as to when the parties last had sexual relations was incorrect.R. at 101. The Appellant testified that the parties had marital relations after the incident at Dollywood. R. at 48. Also, the trial court did not make any comment on the Appellant's drug use in its bench opinion and this was an important point for the Appellee because he was tired of the dope smoking by the Appellant. This was one of the reasons he was "done" with the Appellant. R. at 105.

The standard of proof required for habitual cruel and inhuman treatment is a preponderance of the evidence that shows more than unkindness or rudeness or mere incompatibility or lack of affection. **Daigle v. Daigle,** 626 So. 2d 140, 144 (Miss. 1993). A trial court may be reversed when its determination is manifest error and lacks substantial evidence to support the determination. **Daigle** at 144. The fact that the parties continued to have marital relations after the sink and dish and Dollywood incidents undermine the lower court's opinion that the Appellee had proven that the Appellant was guilty of habitual cruel and inhuman treatment. The continued cohabitation of the parties after the aforesaid incidents indicate that the Appellee did not fear for his life, limb or health at the hands of the Appellant. **Stennis v. Stennis**, 464 So. 2d 1161, 1162 (Miss. 1985).

VIII. CONCLUSION

In conclusion, the Appellant urges the Court to find that the Appellee did not prove his grounds for divorce by a preponderance of the evidence and that reversal is proper based upon a lack of substantial evidence to support that determination.

Respectfully submitted,

This the 15th day of March 2009.

David L. Walker [redacted]

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IX. CERTIFICATE OF SERVICE

I, David L. Walker, counsel for the Appellant, hereby certify that I have this day either mailed or hand-delivered a copy of the Appellant's brief to Hon. Percy Lynchard, Jr., chancellor0, and James Price, appellee, at their usual mailing addresses.

This the 15th day of March 2009.

David L. Walker