

CERTIFICATE OF INTERESTED PERSONS

The undersigned 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 Circuit Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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This, the 21st day of April, 2009.



ROBERT D. EVANS, 

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STATEMENT OF THE ISSUES

1. DID THE LOWER COURT ACQUIRE JURISDICTION OF THE APPELLANT IN A COMPLAINT FOR DIVORCE WHEN HE WAS SERVED WITH A RULE 81 SUMMONS AND NOT A RULE 4 SUMMONS OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE.

STATEMENT OF THE CASE

The wife of Appellant hereinafter referred to as Wife, filed for a Divorce against the Husband. In addition, the wife filed a Motion for Temporary Support. As to both actions, although husband disputed that he was served, a Rule 81 Summons was issued versus a Rule 4 Summons.

It is the Husband's position that the Court lacked jurisdiction due to the uncontested fact that he was not served with a Rule 4 Summons under the Mississippi Rules of Civil Procedure (MRCP).

STATEMENT OF THE FACTS

Wife filed a Complaint for Divorce against the Husband on February 19, 2008. (Cp. p.1). Subsequent thereto, on February 29, 2008, wife filed for her Amended Complaint for Divorce. (Cp. p.5). On May 30, 2008, Wife also filed for her Motion for Temporary Support. (Cp. p.8).

The record reflects that Husband was served with a Rule 81 Summons as to the Amended Complaint & Motion on the 1st day of June, 2008 to appear on the 13th of June, 2008, and another Rule 81 Summons to appear on the 25th of July, 2008. (Cp. p.11 & 12 respectively). Husband did not appear at the designated hearings.

On June 18th 2008, the Lower Court granted Wife her request for Temporary Support. (Cp.

p.13). The Lower Court, on July 25th, 2008 granted a divorce to the wife with it's Judgment of Divorce. (Cp. p.17) and on August 29th 2008 entered it's Amended Judgment of Divorce. (Cp. p.22).

Husband on September 23rd 2008, filed his Motion to set aside Judgment pursuant to Rule 60 (b) MRCP. (Cp. p.24). A first Amended Motion to set aside Judgment was filed on September 29, 2008. (Cp. p.27). Said Amended Motion alleging he was not personally served with process; and irrespective of such, the Court lacked jurisdiction as a result of Husband not being served with a Rule 4 Summons versus the Summons under Rule 81 MRCP.

A hearing was held on October 31st 2008. (Cp. p.27) and the Court issued it's Opinion and Judgment denying husband's Motion. (Cp. p.33). Husband does not appeal the Court's decision on husband being actually served as that was a question of fact.

Husband appeals the sole issue on the jurisdiction of the Court via a Rule 81 Summons versus a Rule 4 Summons.

SUMMARY OF THE ARGUMENT

The Court did not obtain jurisdiction of the Husband as the Complaint for Divorce nor the Amended Complaint for Divorce as he was never served with a summons pursuant to Rule 4 of the MRCP.

As to the Motion for Temporary Relief, this is nothing more than a derivative action of the Original Complaint and the Court's lack of Jurisdiction of the Complaint would extend to the Motion for Temporary Relief.

ARGUMENT

The Court never obtained jurisdiction over the Husband on the divorce proceedings as he was not properly served with process. It is uncontested that Husband did not make an appearance

before the Chancery Court.

“The requirement for service of process depends upon the type of action. In suits for divorce, service of process is governed by Rule 4 of the Rules of Civil Procedure.” *Bell, Mississippi Family Law (First Edition) §19.03 p.471; Sanghi vs. Sanghi 759 So. 2d 1250, 1253 ¶11 (MS. COA 2000).*

Rule 4 (b) of the Rules of Civil Procedure states:

The Summons shall be dated and signed by the Clerk, under the Seal of the Court, contain the name of a Court and the names of the Parties, be directed to the Defendant, state the name and address of the Plaintiff's Attorney, if any, otherwise the Plaintiff's address, and the time within which these rules require the Defendant to appear and defend, and shall notify him that in case of his failure to do so Judgment by Default will be rendered against him for the relief demanded in the Complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons, except where service is made by publication, may contain, in lieu of the names of all parties, the name of the first party on each side and the name and address of the party to be served. *Summons served by process server shall substantially conform to Form 1A. Summons served by sheriff shall substantially conform to Form 1AA.* (Emphasis added).

The Summons in the present case followed the language of a Rule 81 Summons (Forms 1D and 1DD). This Summons, unquestionably, does not substantially comply with the requirements of MRCP therefore the Court was without jurisdiction to enter a Final Decree for Divorce or any other Orders that were derivative of the Complaint for Divorce. *Fletcher vs. Limeco Corp. 996 So. 2d 733, 777 ¶12 (MS. 2008); Hand, Mississippi Divorce, Alimony & Child Support (5th ed.), §8-4, ¶2.*

CONCLUSION

Fletcher makes it unquestionably clear that a Rule 81 Summons can not be substituted for a Rule 4 Summons of MRCP and the Judgment of Divorce and Order for Temporary Support are

void.

Respectfully submitted, this the 21st day of April, 2009.



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CERTIFICATE OF SERVICE

I, Robert D. Evans, Attorney for Appellant, do hereby certify that I have this day mailed
a true and correct copy of the above and foregoing document to:

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Hon. William G. Willard, Jr.
Coahoma County Chancery Court Judge
P.O. Box 22
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This, the 21st day of April, 2009.



ROBERT D. EVANS, [REDACTED]