IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

DANIEL C. VAUGHN		**APPELLANT**
VS.		**CAUSE NO. 2009-CA-00915**
TERI W. VAUGHN		**APPELLEE**

ON APPEAL FROM
THE CHANCERY COURT OF CLAY COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

ELIZABETH FOX AUSBERN (MS Bar [redacted]
Fox Law Firm
330 E Madison Street
PO Box 167
Houston MS 38851
Telephone - (662) 456-4201
Attorney of Record for the Appellant

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I. *Motion To Compel Discovery.*

"[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived." *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989); *see also Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection"); *see also Drutis v. Rand McNally & Co.*, 236 F.R.D. 325, 337 (E.D. K y. 2006) (overrulin g plaintiff's untimely objections to interrogatories on the grounds that those objections were waived).

By failing to respond to the Craig's interrogatories in a timely fashion, Teri waived all of her objections. Notwithstanding her failure to bring timely objections, Teri spends a great deal of her *Appellee's Brief* asserting the objections she failed to bring. The vast majority of her argument deals with whether the interrogatories are against public policy, or if Craig should have characterized his requests. If Teri had wanted to address the propriety of these interrogatories, she should have done so within the time constraints Rule 33 (b) of the *Mississippi Rules of Civil Procedure.* Instead, she made—and continues to make—an out-of-time objection.

Teri does raise the issue of the Chancellor's statement on the record. According to Teri, "As the Chancellor stated, if any prejudice had been determined, he would have remedied the matter further." [*Appellee's Brief*, p.5] This, however, is not what the Chancellor said. Rather, the Chancellor said:

> It's going to be overruled for three reasons. It's out of time and there's no certificate ... of good faith with it, that I recall. And these people need some relief. The other thing is, if it develops in trial that you are prejudiced by the lack of discovery, then we'll leave the case open for you to develop it, okay? I want everybody to have a fair shot today."

[R.E. 23][1] Craig respectfully submits that the Chancellor abused his discretion when he entered this ruling.

First, the Chancellor is asking that Craig prove a negative, which is logically impossible. Teri failed to provide information. Because Teri failed to provide this information, Craig obviously has no access to the same. Because said information might have been unfavorable to Teri, such information might not have been presented by Teri. Thus, if Teri did not present it as evidence, Craig would not have had occasion to object to her failure to provide the same. Craig would have been prejudiced by his ignorance.

Lastly, this sets a dangerous precedent for other courts. Here, a timely motion to compel was filed. A certificate of good faith was incorporated in the motion. It followed the letter and the spirit of the rules. Notwithstanding, the chancellor allowed the non-objecting party to present un-proffered evidence with the hope that the objecting party would not be prejudiced thereby. If chancellors—or for that matter, circuit judges—were given such leeway in future cases, then motions to compel could be disregarded to the point where they would lack teeth. A trial court, eager to get matters resolved, could simply allow parties to practice trial by ambush. With due respect to the Chancellor, such a precedent would undermine the rules of discovery.

Craig respectfully requests that this Court remand this matter to the Chancellor for a rehearing on the issue of custody, and by extension, the support, of the minor child.

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[1] Incidentally, in her Appellee's Brief, Teri does not address Craig's argument that a valid certificate of good faith was included in the Motion, nor does Teri contend that the motion was filed out of time.

II. Equity in the Home.

Teri fails to address the issue of mathematical miscalculation, which is, in effect, Craig's entire argument in this regard. Craig, therefore, reasserts his previous argument in its entirety.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, DANIEL C. VAUGHN, the Appellant, respectfully requests that this Honorable Court, after a review of both parties' briefs, and the record in this case, reverse the Chancellor's Judgment insomuch as it pertains to child custody, child support, and the division of equity in the marital home, while affirming the grant of divorce and the division of the other marital assets, and remand the same to the lower court for a new trial on these issues.

Moreover, the Appellant requests general relief, whether legal or equitable, that this Court may deem meet and proper in the premises.

Respectfully submitted, this the ~~1st~~ 2nd day of July 2010.

DANIEL C. VAUGHN

BY: Elizabeth Fox Ausbern
ELIZABETH FOX AUSBERN
(MS B[redacted]

Prepared by:
Fox Law Firm
330 E Madison Street
PO Box 167
Houston MS 38851
(662) 456-4201

CERTIFICATE OF SERVICE

I, Elizabeth Fox Ausbern, counsel for Daniel C. Vaughn, do hereby certify that I have on this date filed a bound original and three (3) bound copies of this Reply Brief of Appellant with the Clerk of the Supreme Court.

I further certify that I have filed with the Clerk an electronic PDF copy of the Reply Brief of Appellant on CD-ROM.

I further certify that I have on this date sent a copy of the Reply Brief of Appellant ~~and the Record Except~~ EPA to the following persons via first-class mail, postage prepaid:

The Honorable Kenneth Burns
Chancery Court Judge
P.O. Drawer 110
Okolona, Mississippi 38860

The Honorable Carrie Jourdan
PO Box 1108
Columbus, MS 39703-1108

Respectfully submitted, this the ~~1st~~ 2nd day of July 2010.

BY: Elizabeth Fox Ausbern
ELIZABETH FOX AUSBERN
(MS Bar[redacted]