IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2009-CP-01657

GERARD VAN SULLIVAN **APPELLANT**

VS. **NO. 2009-CP-01657** Re

NATASHA DONIELLE SULLIVAN **APPELLEE**

APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

REPLY BRIEF OF THE APPELLEE NATASHA DONIELLE SULLIVAN

ATTORNEY OF RECORD FOR APPELLEE
NATASHA D. SULLIVAN

Brad A. Oberhousen[redacted]
Oberhousen Law Firm, PLLC
Post Office Box 3525
Jackson, Mississippi 39207
Telephone: (601) 352-2990
Facsimile: (601) 353-8506

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2009-CP-01657

GERARD VAN SULLIVAN	**APPELLANT**
VS.	**NO. 2009-CP-01657**
NATASHA DONIELLE SULLIVAN	**APPELLEE**

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 disqualification or recusal.

1. Honorable Denise Owens, Chancellor of the Fifth Chancery Court District;
2. Brad A. Oberhousen, Attorney for Natasha Danielle Sullivan;
3. Natasha Danielle Sullivan, Appellee;
4. Gerard Van Sullivan, Appellant.

Respectfully submitted this the 18th day of February, 2010.

By: 
Brad A. Oberhousen (MSB[redacted]
Attorney for Appellee

Oberhousen Law Firm, PLLC
Post Office Box 3525
Jackson, Mississippi 39207
Telephone: (601) 352-2990
Facsimile: (601) 353-8506

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2009-CP-01657

GERARD VAN SULLIVAN	**APPELLANT**
VS.	**NO. 2009-CP-01657**
NATASHA DONIELLE SULLIVAN	**APPELLEE**

REPLY BRIEF OF THE APPELLEE NATASHA DONIELLE SULLIVAN

STATEMENT OF ISSUES

Appellant Gerard Sullivan alleges the following in his Brief:

(1) The Chancellor erred in not granting a continuance as manifest injustice occurred which prejudiced the Appellant

(2) The Chancellor's division of marital property was manifestly wrong, clearly erroneous and clearly not equitable

(3) The Chancellor erred in awarding attorney's fees

It is common knowledge, not necessary for citation that a Chancellor has the authority and discretion to make decisions in equity and unless the is a clear abuse of discretion, the chancellor's decision will not be overturned.

STATEMENT OF THE CASE

Appellant and Appellee lived together throughout their marriage until they

divorced on April 6, 2009, in Terry, Mississippi. Appellant committed uncondoned adultery, was habitually drunk, and treated Appellee in a cruel and inhumane manner. On May 27, 2009, Appellant filed his Answer denying these facts. A Temporary Order was entered on June 9, 2009. On August 25, 2009, the court allowed the withdrawal of Appellant's counsel. Trial was set for September 14, 2009. Appellant sought a continuance which was later denied.

SUMMARY OF THE ARGUMENT

Appellee by and through her attorney, presented testimony and statements of fact into evidence which established by a preponderance of the evidence that Appellant was guilty of adultery. The Chancellor, after hearing the testimony and considering all of the evidence presented at trial, made a division of the marital property in a manner she felt was fair and just under the circumstances leading up to the divorce and presently. Lastly, the Chancellor, in her broad discretion, awarded attorney's fees to Appellee based on reasons presented at trial.

ARGUMENT

I. THE CHANCELLOR DID NOT ERR IN REFUSING TO GRANT A CONTINUANCE AND THE APPELLANT WAS NOT PREJUDICED BY THIS REFUSAL.

There is no direct rule for a Chancellor to follow regarding the grant or denial of a continuance. The Chancellor has full discretion here as well. No continuance was granted because the Chancellor, as recorded, stated that Appellant had plenty of time during the time he had an attorney and thereafter to secure the necessary witnesses for trial. The Chancellor further protected then Defendant by allowing him use of portions of

the home, use and control of half of the vehicles, and did not allow then Plaintiff to sale and/or have any liens placed on any of the marital property.

Furthermore, the Appellant was by no means prejudiced with this denial. Appellant has offered no evidence as to witnesses he would have produced had he been granted the continuance nor any additional evidence he could have presented to the court. Without a finding of the Chancellor abusing her discretion regarding this issue, this decision should stand. There simply was no means for a continuance, and very likely one may have been found to be an unnecessary delay to the Plaintiff.

II. THE CHANCELLOR'S DIVISION OF MARITAL PROPERTY WAS EQUITABLE AND NOT ERRONEOUS.

The Chancellor, in the Temporary Order, allowed then Defendant full and exclusive use of the game room and its furnishings. This Temporary Order further divided the automobiles in an equal manner thus not leaving then Defendant with nothing. Then Defendant was allowed to enter the marital property to remove his personal property as long he was supervised as was reasonable under the circumstances. Then Plaintiff was not allowed to sale or place a lien on any of the marital property, including the home and vehicles. This was ordered by the Chancellor to protect **both** parties until the trial.

Nevertheless, Appellant argues that the division of property was not equitable. Appellant bases this argument on *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994). This analysis, too, is inappropriate as comparison to the case at hand. In *Klauser v Klauser*, 865 So. 2d 363, the court referenced *Ferguson* and *Love* in its opinion; stating that the factors used in *Ferguson* is a "non-exclusive" listing of factors that a chancellor

may consider with other factors available. One other such factor being "contribution to the stability and harmony of the marital relationship."

Klauser next looked to *Love v. Love*, 687 So. 2d 1229, 1232 (Miss. 1997) for an explanation of property division and held that the division of property does not "require equal distribution." A Chancellor's goal is not to divide things in half either by number of items or monetary value.

Appellee was given the marital home with the current furnishings, the 2006 Dodge Charger, 2000 Ford F250, and the 1989 Chevrolet Corvette, $2650 for half of the cost of "clean up" of the marital property. Appellant was allowed to keep the television and other electronic items as well as the remaining vehicles, lawnmower and camper.

This may not have been an "equal" division of property based on monetary value or number of items, but based on the reason for the divorce and the financial condition and needs of both parties at the time of the Final Order, the Chancellor found this division to be in the best interest and deserving of both parties. Unless it can be determined that the Chancellor abused her discretion in making this division, the decision must stand.

III. THE CHANCELLOR'S AWARD OF ATTORNEY'S FEES WAS NOT IN ERROR.

The Chancellor did not order Appellant to pay all of the attorney fees as his brief attempts to convey. Here again, the Chancellor was completely fair and equitable in her decision. The Chancellor awarded to Appellee that Appellant pay twenty-five hundred dollars ($2500.00) in attorney's fees. The total attorney's fees and expenses billed to Appellee were for six thousand seven hundred four dollars ($6,704.00). The Chancellor

fairly and equitably divided the fee and only ordered Appellant to pay less than one-half of Appellee's attorney's fees. Appellant, nevertheless, tries to make the "inequitable" argument once again.

Appellant bases this allegation on *McKee v. McKee*, 418 So. 2d 764 (Miss. 1982). Appellant; however, has misconstrued what the McKee court said about attorney fees and the award of such. *McKee* is not about *who* pays the attorney fees, but rather about the fee *amount*. *McKee* states that attorney fees are allowed to be awarded as long as the fee is based on the cost of obtaining a competent attorney. *McKee* goes on to clarify that such fee is based on the skill of the attorney, the complexity of the issues, the time and labor involved, and any other factor as would qualify a fee for compensation for services rendered.

Appellant claims that Appellee offered no proof as to her inability to pay her own attorney fees and as such, there should have been no award of attorney fees. Again, Appellant relies on *McKee* for this argument. There is no language in *McKee* that expresses the need for counsel to prove their client is not able to pay before awarding attorney fees. In fact, this is an incorrect statement all together. Inability to pay becomes an issue when the defending party cannot pay, and that is not an issue in this case as Mr. Sullivan has the financial ability to pay the awarded fee.

Appellant also cites to *Norton v. Norton*, 742 So. 2d 126 (Miss. 1999), as his reason he should not have to pay the attorney fees, but again Defendant's analysis is flawed. First, *Norton* is a case of a divorce based on irreconcilable differences. The present case is a divorce based on adultery. Second, the fees in *Norton* were assessed due to the filing of a frivolous claim and this neither is at issue in the present case.

IN THE ALTERNATIVE, Appellee denies Appellant's brief on the ground of laches and estoppel. Appellant has acted according to the Final Order and has taken action to follow through on the demands of said Order. Because of these actions, Appellant has no right to now, after following through as if in agreement of the Order, complain and try to avoid rulings of the said Order.

Twin States Realty Co. vs. Kilpatrick, 26 So. 2d 356, 358 (1946), the Court stated:

> There is no hard and fast rule as to what constitutes laches. If there has been unreasonable delay in asserting claims or if, knowing his rights, a party does not seasonably avail himself of means at hand for their enforcement, but suffers his adversary to incur expenses or enter into obligations, or otherwise change his position...or if there has been actual or passive acquiescence in the performance of the act claimed of, then equity and good conscience to enforce such rights when a defendant has been led to suppose by the word [or silence or conduct] of the plaintiff that there was no objection to his operations.

By appellant taking action on the rulings in the Final Order, he has thereby accepted these decisions and is thus estopped from now arguing that he disagrees with the Order.

CONCLUSION

The Chancellor did not abuse her discretion in any manner nor at any time regarding any issue. A Chancellor has full discretion regarding issues in her court of

equity and unless there is a clear abuse of such discretion, the decision shall not be overturned. No party was prejudiced by the Chancellor's not granting a continuance as all necessary and available evidence was presented at trial sufficient for the Chancellor to make her rulings; and furthermore, Appellee had ample time to gather all the witnesses and information that he could have used at trial regardless of his becoming pro se.

The Chancellor could not have been any more fair to then Defendant at the time of the Temporary Order. Everything was divided and shared and protected equally for **both** parties. Property was further protected by not allowing any property to be sold or levied until evidence and testimony was presented at trial and a Final Order entered. Upon hearing the testimony and considering the evidence before her, the Chancellor made her decision based on al factors and issues presented.

The Chancellor did consider evidence as to economic hard times, as the record shows, and this is the appropriate analysis for a Chancellor with such a situation. Appellant states that the Chancellor's valuation was done in a manner that "shocks the conscience." Apparently Appellant does not understand the meaning case law has placed on "shocking the conscience." It was fair and reasonable that Appellant should have to pay for half of the clean up of the marital property. He lived on the property and helped put it in the condition it was in prior to the sale. Just because he will not be living in the home after the divorce, does not mean he should not be responsible for putting it back into the condition it was in at the time of moving in.

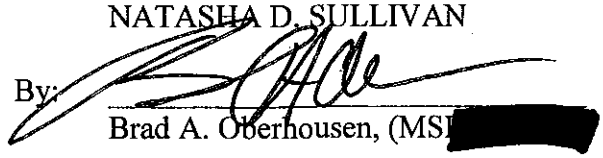
There is nothing further to state regarding the awarding of attorney's fees as it is clearly stated above that Appellant's argument regarding fees was totally distorted and not a correct analysis by any means. Regardless, this award was an equal division

between the two parties, even though the Chancellor could have had Appellant pay all of Appellee's attorney's fees. It is clear that the Chancellor has done all possible to be fair to both parties in this case.

WHEREFORE, PREMISES CONSIDERED, Natasha D. Sullivan requests that this Honorable Court affirm the decision of the Chancery Court of Hinds County, Mississippi.

Respectfully submitted,

NATASHA D. SULLIVAN

By: 

Brad A. Oberhousen, (MS[redacted]

CERTIFICATE OF SERVICE

I, Brad A. Oberhousen, the attorney record for Natasha D. Sullivan, hereby certify that I have this daycaused to be mailed, via US Mail, postage fully prepaid, a copy of the above and forgoing instrument to:

Gerald Van Sullivan, Pro Se Appellant
9365 Highway 35 South
Mize, Mississippi 39116

Honorable Trial Judge

Honorable Denise Owens
Post Office Box 686
Jackson, Mississippi 39205

THIS the 18th day of February, 2010.

Brad A. Oberhousen