

**SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

CHUCK WOOD

APPELLANT

VS.

CAUSE NO.: 2010-CA-00395

JASON CHAD COOLEY

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI
HONORABLE JAMES L. ROBERTS, CIRCUIT JUDGE**

APPELLANT'S REPLY BRIEF

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REPLY ARGUMENTS

Appellant, Chuck Wood, is submitting this reply brief to highlight the issues related to Michael Langley, the second paramour discovered during trial, and the two jury verdicts. Chuck Wood believes that the other issues are fully briefed and require no further response.

Michael Langley - An "Indispensable Party" is an Indispensable Party

The uncontradicted testimony at trial was that Jason Chad Cooley's ex-wife, Jennifer Cooley, had an adulterous sexual relationship with Michael Langley before the Cooley divorce in October of 2006. See Appellant's Brief, p. 39.

Chuck Wood propounded written discovery upon Jason Chad Cooley and asked Mr. Cooley to "list each and every person who may have discoverable information pertaining to [the Plaintiff's allegations]." Mr. Cooley failed to identify Michael Langley in his responses to Chuck Wood's discovery. See Appellant's Brief, p. 40.

Michael Langley was clearly a person with discoverable information pertaining to Mr. Cooley's allegations of alienation of affection and he was an indispensable party as contemplated under Rule 19 of the Mississippi Rules of Civil Procedure.

On page 25 of his Brief of Appellee, Jason Chad Cooley asks this Court to put on blinders for its analysis of the Rule 19/discovery issues surrounding Michael Langley. Mr. Cooley states that he had the "absolute right to seek relief against the person whom he believe[d] caused the alienation of affection with [Jennifer Cooley]." Further, Mr. Cooley states that Michael Langley's relationship with Jennifer Cooley is only relevant if Mr. Langley began his affair before Chuck Wood in January 2006.

Mr. Cooley's statement of his "absolute right" of election of who to sue for alienation of affection does not overcome Mr. Cooley's obligation to comply with discovery and the trial court's obligation to compel indispensable parties to be brought into litigation pursuant to Rule 19 of the Mississippi Rules of Civil Procedure.

Mr. Cooley's statement of the timing and relevance of Mr. Langley's affair is incorrect as Mr. Langley's relationship was initiated and ongoing at the time of the Cooley divorce in October of 2006. The alienation cause of action in Mississippi is not limited to the first person who had an affair with the plaintiff's spouse or ex-spouse. Indeed, all persons who undertake an affair and cause a loss of affection or consortium may be sued by the aggrieved plaintiff.

The tort of alienation of affections was recognized in Mississippi as early as 1926 in McRae v. Robinson, 145 Miss. 191, 110 So. 504 (1926). In Camp v. Roberts, 462 So.2d 726, 727 (Miss.1985), this Court held "[w]here a husband [wife] is wrongfully deprived of his rights to the 'services and companionship and consortium of his [her] wife [husband], he [she] has a cause of action 'against one who has interfered with his [her] domestic relations.' " Id. at 727 (citing Walter v. Wilson, 228 So.2d 597, 598 (Miss.1969), overruled in part on other grounds; Saunders v. Alford, 607 So.2d 1214, 1219 (Miss.1992)).

Fitch v. Valentine, 959 So.2d 1012, ¶15 (Miss. 2007).

Chuck Wood's ability to prepare for trial and present his defense was substantially impaired by Jason Chad Cooley's failure to disclose the identity of Michael Langley. The mention of Ms. Cooley's ongoing relationship with Michael Langley at trial and an "empty chair" instruction (C-11, Appellant's Brief, p. 22) is little consolation for Mr. Cooley's lack of full disclosure. Chuck Wood can only guess what attempts of romance and enticement were undertaken by Michael Langley to cause the alienation of the marriage of Jennifer Cooley to Jason Cooley. Mr. Cooley's entire trial

focused on Jennifer Cooley's first affair. The judgment against Mr. Wood should not be allowed to stand without Mr. Wood having the opportunity to explore and expose whether Mr. Langley's affair with Jennifer Cooley was a cause of the Cooley divorce.

The Rule 19/discovery issues surrounding Michael Langley were thrust upon the trial court after the trial had begun and the trial court, with a trial scheduled and a jury seated, elected to proceed with an "empty chair" instruction. Removed from the "heat of battle" in the courtroom it is clear that the trial court erred in not granting Wood's motion for mistrial after the discovery of Langley's sexual relationship with Jennifer Cooley.

The Jury Verdicts

The jury's first verdict: "We the jury find for the plaintiff and assess damages in the amount of attorney fees and court costs." (Emphasis added) (Transcript, p. 309 and Record Excerpts, p. 81) Chuck Wood cannot know or even wager to guess how or where the jury decided upon such a verdict. None of the jury instructions referred to or alluded to Jason Chad Cooley being compensated for his attorneys' fees or court costs.

The jury's second verdict: "We, the jury, find for the plaintiff and assess damages at \$100,000."

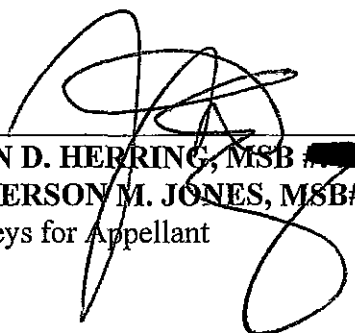
There is no law or case that allowed the jury to compensate Jason Chad Cooley for his attorney fees or costs as a result of Chuck Wood's actions to alienate the affection of Jason Chad Cooley's then-wife, Jennifer Cooley. The Court's instruction to continue deliberations (C-18, Appellant's Brief, p. 27) was given over the objection of Chuck Wood's counsel (see Appellant Brief, pp. 27-28) and it failed to instruct the jury that Jason Chad Cooley's attorney fees or costs should have no bearing or consideration in deliberations on the subject case. Mississippi Code Section

11-7-161 states: "If the verdict is not responsive to the issue submitted to the jury, the court shall call their attention thereto and send them back for further deliberation." When the trial court determined that the jury's first verdict was not responsive due to its failure to include a specific dollar amount, the trial court should have called the jury's attention to its error in fashioning an award around the plaintiff's attorney fees and costs. The \$100,000 verdict against Chuck Wood is the product of an ill-instructed jury and should not be affirmed by this Court.

CONCLUSION

Chuck Wood raises twelve (12) distinct issues that substantially weighed upon the outcome of the trial against Chuck Wood for alienation of affection. These issues do not belie a satisfactory effort to determine whether Chuck Wood's short affair with Jennifer Cooley caused the alienation of affections and what, if any, damages should have been awarded. Based upon the arguments presented here and in the Appellant's Brief, the judgment entered by the lower court should be reversed.

RESPECTFULLY SUBMITTED, this the 5th day of January, 2011.



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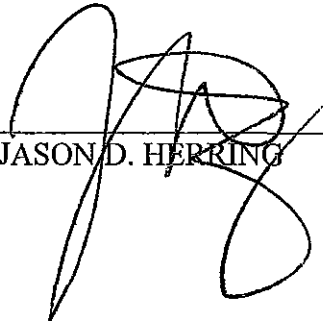
CERTIFICATE OF SERVICE

I, Jason D. Herring, do hereby certify that I have this day deposited in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Reply Brief to the following:

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Circuit Court Judge

Dated this the 5th day of January, 2011.



JASON D. HERRING