

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SAMANTHA LOUISE SANFORD

APPELLANT

VERSUS

NO: 2010-CA-00873

LESLIE DEWITT SANFORD

APPELLEE

On appeal from the Chancery Court of Lamar County, Mississippi

BRIEF OF APPELLEE

ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record for Leslie Dewitt Sanford certifies that the following listed persons have an interest in the outcome of this case. These representations are made for the purpose that the Justices of this Court may evaluate possible disqualification or recusal:

1. Plaintiff/Appellant, Samantha Louise Sanford
2. Defendant/Appellee, Leslie Dewitt Sanford
3. David A. Pumford, Attorney for Leslie Dewitt Sanford
4. Erik M. Lowrey, P.A. Attorneys for Leslie Dewitt Sanford
5. Carol Ann Estes Bustin, Attorney for Samantha Louise Sanford
6. S. Christopher Farris, Attorney for Samantha Louise Sanford
7. Hon. Sebe Dale, Jr., Chancellor

This the 10th day of August, 2011.



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WAIVER OF ORAL ARGUMENT

The Appellee submits that oral argument would **not** be necessary or beneficial to the resolution of this case, and submits that the record, exhibits, and brief should be sufficient for the Appellate Court to determine that the Chancellor should be affirmed.

TABLE OF AUTHORITIES

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STATEMENT OF THE ISSUES

1. **WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN ENFORCING THE PROPERTY SETTLEMENT AGREEMENT AS READ AND TRANSCRIBED INTO THE RECORD BY BOTH PARTIES IN THE PRESENCE OF THEIR RESPECTIVE COUNSEL**
2. **WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN ENTERING THE FINAL JUDGMENT OF DIVORCE**

STATEMENT OF THE CASE
AND RELEVANT PROCEDURAL HISTORY

This case involves a divorce action and concerns matters principally from the Chancery Court entering a *Final Judgment of Divorce* on September 21, 2010. The parties to this divorce are the Appellant, Samantha Sanford (Samantha) and the Appellee, Leslie Sanford (Leslie). Throughout this Brief the transcript of Court proceedings shall be referenced “TR” by page number, the Clerk’s Papers are referenced “CP” and the Record Excerpts referenced “RE”. Trial Exhibits are referred to as “EX”. A copy of the Chancery Court docket is contained in the Record Excerpts of Appellee as well as a copy of the Clerk’s List of Papers. (CP 1-9) (RE 1-9). Also included in the Record Excerpts of Appellee are the *Joint Motion to Withdraw Fault Grounds* (CP 109) (RE 10), *Order Dismissing Fault Grounds* (CP 110)(RE 11), *Consent to Divorce* (CP 111-112) (RE 12-13), *Transcript of Agreement Between The parties* (CP 130-145) (RE 14-29), all of which are dated September 10, 2009, a *Transcript of Bench Ruling* dated May 24, 2010 (TR 41-45) (RE 30-34), and *Final Judgment of Divorce* entered September 21, 2010 (CP 240-261) (RE 35-56). The Chancellor made detailed findings of fact and conclusions of law in enforcing the *Agreement Between The Parties* dated September 10, 2009 and the *Final Judgment of Divorce* entered September 21, 2010, and did so consistent with Mississippi precedent and current law regarding the enforcement of settlements in divorce cases. Samantha did not file a Notice

of Appeal from this Final Judgment but rather filed a *Petition for Writ of Mandamus/Prohibition*. The Mississippi Supreme Court entered an *Order* on January 27, 2011, which dismissed the *Petition for Writ of Mandamus/Prohibition* and deemed the *Petition* to be a *Notice of Appeal*.

STATEMENT OF THE FACTS

On the 10th day of September, 2009, this matter was set for trial, but in lieu of a trial on the merits, both parties executed a *Joint Motion to Withdraw Fault Grounds* (CP 109) (RE 10), for which a corresponding *Order Dismissing Fault Grounds* was executed that day (CP 110) (RE 11). The parties also signed a written *Consent to Divorce* (CP 111-112) (RE 12-13). The written *Consent to Divorce* was signed by both parties and their respective counsel and stated that "All issues are settled and will be dictated into the record." (CP 111-112) (RE 12-13) As a result, both parties, under oath and represented by their respective counsel, on the same day, the day this matter had been set for trial, dictated into the record a *Property Settlement Agreement* which disposed of all matters pending before the Chancery Court. The *Property Settlement Agreement* was accepted by the Court as adequate and sufficient and the Court acknowledged that the same acted as the termination of the divorce litigation and all rights of the parties thereunder. The proceedings were held in open Court, on the record, with all parties represented by counsel. The record states in pertinent part as follows:

THE COURT: Mrs. Sanford, you stood there while it was being dictated by Mr. Lowrey and with some additions by your attorney. Did you hear all of it?

MRS. SANFORD: Yes, sir.

THE COURT: Did you understand all of it?

MRS. SANFORD: Yes, sir.

THE COURT: Is that your agreement and commitment?

MRS. SANFORD: Yes, sir.

THE COURT: Do you understand and commit to the Court that when it is reduced to writing and submitted to you for signature that you will sign it?

MRS. SANFORD: Yes, sir.

THE COURT: You do not have the privilege of backing out and changing your mind.

MRS. SANFORD: Yes, sir.

THE COURT: If you do so, you may subject yourself to the imposition of sanctions by the Court.

MRS. SANFORD: Yes, sir.

THE COURT: All right. On those assurances and what's dictated, I will be pleased to approve it. It is now approved and is the Order of the Court as of now. It will be reduced to a writing and signed by the parties.

A copy of the above and the entire transcript thereof appears in the Record Excerpts of Appellee (CP 130-145) (RE 14-29).

On October 12, 2009, Leslie received, by fax, a hand-written document, purported to be from Samantha Sanford, attempting to withdraw her Consent and demanding a trial

hereon (CP 113).

On December 2, 2009 the Chancery Court entered an Order. That Order stated in pertinent part as follows:

I.

That this matter was set for trial on September 10, 2009, and the parties executed and filed with the Court a *Consent to Divorce* wherein they agreed that they would withdraw any and all fault grounds and proceed pursuant to §93-5-2 of the Mississippi Code of 1972, as annotated, with a divorce on the grounds of irreconcilable differences, and that all issues are settled between the parties and will be dictated into the record.

II.

That based on that Consent, the Court signed an Order on September 10, 2009, allowing the parties to withdraw their fault grounds, dismissing the fault grounds and allowing the divorce to proceed on the grounds of irreconcilable differences, the Order was signed by both parties and the Judge in the presence of the parties.

III.

Contemporaneously therewith, the parties did announce their stipulation in the record, a copy of same has been reviewed by the Court, has been transcribed, and reflects all of the settlement of all issues regarding equitable distribution, child custody, child support, alimony, and all personal property with the only exception being that of household goods which is set out in Page 3 of the transcribed settlement statement.

The Chancellor further found and ordered as follows:

VI.

That on or about October 12, 2009, Samantha filed her own pleading where she attempted to withdraw her consent to the divorce and the binding agreement which was transcribed into the record on September 10, 2009.

VII.

The Court finds that the attempted withdrawal, some thirty-two (32) days after the stipulated agreement under oath by the parties, is not sufficient nor will the Court set aside that which the parties have consented in open Court; the Court has relied on the same and the Court and the parties are bound and will follow that which was dictated in the Consent.

VIII.

The Court further has determined it will follow this Court's standard procedure and it will not decide the issues of pots and pans as it relates to the parties. That the same is impossible to do by a Court and the same is also not economically feasible for the Court to do.

IX.

Therefore, the Court will appoint Lance Reid as a duly authorized and deputized commissioner of this Court to sell all household goods located at the home and to convert the same to cash. That Mr. Reid has done this in the past and is qualified to do so in this case. He will file a report and request for confirmation of the sale and notice the time of the sale.

X.

Both Samantha and Les are at liberty to bid on each and every item and that each and (sic)item will be sold separately and then the entire lot will be offered as a whole. Mr. Reid is charged to accept the bid which will bring the most money to the parties.

XI.

That upon completion of the sale, Mr. Reid will report back to the Court and the Court will determine at that time an equitable division of the proceeds of the sale.

XII.

The Court finds Samantha Louise Sanford in direct Contempt of Court as it applies to her testimony under oath on September 10, 2009, and her subsequent actions thereto. Samantha represented to this Court her full and complete agreement to the settlement and she would execute the documents when presented to her with the exception of the household goods. She is in contempt of this Court's Order through her own testimony under oath, by disavowing her previous sworn statements and has decided that she wants another deal. Additionally, it is obvious with her list of all the contents of the

house that her list of items under the stipulated agreement was not in good faith as well as her attempted withdrawal of her consent, which the Court finds is contemptuous based upon her sworn testimony of September 10, 2009.

(CP 156-159)

The Chancery Court entered a *Final Judgment of Divorce* on September 21, 2010 (CP 240-261) (RE 35-56). The Chancery Court cited that the parties had executed a *Joint Motion to Withdraw Fault Grounds* (CP 109) (RE 10), for which a corresponding *Order Dismissing Fault Grounds* was also executed that day (CP 110) (RE 11), and that also on that day the parties entered a written *Consent to Divorce* (CP 111-112) (RE 12-13), which was signed by both parties and their respective counsel and that stated “The designated issues are settled. All issues are settled and will be dictated into the record.” The Chancery Court found that the sworn pleadings of the parties met all of the jurisdictional and statutory requirements for the entry of a *Final Judgment of Divorce* (CP 240-261) (RE 35-56).

The Chancery Court found that “The parties hereto have made a full, adequate, sufficient and complete provision by agreement, as set forth in the transcript attached hereto as “Exhibit “A”, for the custody and maintenance of the minor child and for the settlement of any property rights between the parties. Said Agreement is attached hereto as Exhibit “A” and made a part hereof as if copied in full herein.” The Chancery Court found that the dictated *Property Settlement Agreement* sets out the entire agreement of the parties with specificity. Having noted compliance with the statutory requirements as set forth in Miss. Code Ann. § 93-5-2 *et. seq.* (2004), the Court awarded the parties a divorce absolute on the

ground of irreconcilable differences (CP 241) (RE 36).

The Chancery Court found as a matter of fact and law that Samantha was in direct, deliberate and willful contempt of Court as applied to her testimony under oath on September 10, 2009, and her subsequent actions thereto, finding that Samantha represented to the Court her full and complete agreement to the settlement and that she would execute the documents when presented to her. The Chancery Court found that Samantha was in contempt of that Court's order through her own testimony under oath, by disavowing her previous sworn statements and that she had not acted in good faith. The Court noted that it had previously ruled such actions contemptuous based upon her sworn testimony of September 10, 2009. The Court ordered that the previous *Order of Incarceration* is withdrawn by virtue of the *Writ of Habeas Corpus* issued by the Mississippi Supreme Court. The Court further ordered that the finding that Samantha is in willful and deliberate contempt of court remained and so found as a matter of fact and law. The Court accordingly assessed attorney fees to Samantha payable to Leslie in the amount of Nine Thousand Dollars (\$9,000.00), plus all costs of Court accrued since September 10, 2009 (CP 244) (RE 39).

The Chancery Court further ruled that "All other pending motions and pleadings before the Court are hereby dismissed as moot. All prior Orders of the Court, except as specified herein, are superceded by this Final Judgment" (CP 245) (RE 40).

SUMMARY OF THE ARGUMENT

The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in its ruling that the *Property Settlement Agreement* dictated into the record pursuant to the written *Consent to Divorce* was valid, enforceable and binding upon the parties. The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in entering a *Final Judgment of Divorce* in this action and the same was entirely consistent with current precedent in this State. Leslie would respectfully show the Court that Samantha Sanford waived any right to withdraw her Consent and the Chancery Court was correct to enforce the stipulated settlement. The findings of the Chancery Court are consistent with controlling Mississippi precedent as set forth in *Bougard v. Bougard*, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008) and *Cobb v. Cobb*, No. 2009-CA-00062 (Miss. Ct. App. March 9, 2010). Divorce agreements dictated into the record under such circumstances are valid, enforceable and binding upon the parties.

STANDARD OF REVIEW

The scope of review in domestic relations matters is strictly limited. The trial court is presumed to be correct unless the record shows otherwise. *Myers v. Miss. Farm Bureau Mut. Ins. Co.*, 749 So.2d 1172 (Miss. App. 1999). In reviewing the judgment of a chancery court, an appellate court "will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, applied an erroneous legal

standard, was manifestly wrong, or was clearly erroneous." *Hamilton v. Hopkins*, 834 So.2d 695, 699 (Miss.2003) (citations omitted). Additionally, where the chancellor has made no specific findings, the reviewing Court will proceed on the assumption that he resolved all such fact issues in favor of the appellee. *Newsom v. Newsom*, 557 So.2d 511, 514 (Miss.1990). A chancellor's interpretation and application of the law is reviewed de novo. *Tucker v. Prisock*, 791 So.2d 190, 192 (Miss.2001).

ARGUMENT

- 1. WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN ENFORCING THE PROPERTY SETTLEMENT AGREEMENT AS READ AND TRANSCRIBED INTO THE RECORD BY BOTH PARTIES IN THE PRESENCE OF THEIR RESPECTIVE COUNSEL.**

The cases cited by Samantha in her brief were handed down by the Mississippi Supreme Court and Mississippi Court of Appeals between 1985 and 1999, and they are not reflective of current Mississippi precedent. *Cassibry v. Cassibry*, 742 So.2d 1121 (Miss. 1999) is no longer good law by virtue of later precedent cited by Leslie herein. *Cook v. Cook*, 725 So.2d 295 (Miss. 1998) is also superceded by recent precedent and, unlike the case at bar, involved a situation where there was no written consent agreement. Likewise *Joiner v. Joiner*, 739 So.2d 1943 (Miss. Ct. App. 1999), in addition to being superceded by recent precedent, involved a vague and incomplete agreement - unlike the one incorporated into the *Final Judgment of Divorce* in this case (CP 240-261) (RE 35-56).

Conversely, the findings of the Chancellor as set forth in the *Final Judgment of Divorce* entered on September 21, 2010, are consistent with current Mississippi precedent. See *Bougard v. Bougard*, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008) where the Mississippi Court of Appeals held that divorce agreements dictated into the record and acknowledged by both parties are binding and shall be upheld.

On May 1, 2007, Charles and Mary Bougard were granted a divorce based on irreconcilable differences. The parties initially agreed to all the terms of the divorce, including the property division. However, Charles subsequently became aggrieved by the property division and appealed the chancellor's judgment. On April 16, 2007, the day the final divorce hearing was to occur, the parties came to an agreement on the division of the marital property. The agreement was read in open court and both parties agreed, as in the case at bar, that it would be binding upon them even if they did not sign a written agreed order, which was to be prepared later. After the hearing a written copy of the agreement was prepared for Charles to sign. However, he refused to sign the document. The chancellor then signed the order in accordance with his previous statements on the record. Charles argued to the appellate court that the Chancery Court erred in granting a divorce and dividing the property based on the terms of his agreement. On this issue the Mississippi Court of Appeals held as follows:

In this case, the division of the assets and the amount of alimony were set by an agreement of the parties. **The agreement was made between the parties on the day of the divorce hearing. The agreement was read into the record, and both parties agreed to be bound by the terms as read into the record. Further, the parties agreed to be bound regardless of whether they signed a written copy of the agreement read into the record.** Therefore, there was no need for the chancellor to apply the *Ferguson* or *Armstrong* factors. Clearly, this allegation of error is without merit.

Id. at 649 (emphasis supplied)

As Samantha argues in her Brief in the case at bar, Charles also argued on appeal that he could not be bound "to the terms of a divorce order on Irreconcilable Differences where no written document was ever prepared and agreed upon." The reviewing Court held this statement to be incorrect, stating that "This Court has held that "announcing in open court the settlement of the dispute that is the purpose for that hearing, with a recital of the terms of the settlement into the record, followed by an agreement to end the hearing, reflects an intention to be bound at that time." (citing *McDonald v. McDonald*, 850 So.2d 1182, 1189 (Miss. Ct. App.2002), *aff'd*, 876 So.2d 296 (Miss.2004)).

In *Bougard* the agreement was read into the record. Then the chancellor asked each party:

Okay. Now, you understand that if for some reason you change your mind after we get through here, when you walk out that door and you won't sign an order or whatever, then the Court is going to go back and I'm going to have this order that's been dictated into the record and entered the same as if you had put your signature on it here today; you understand that?

Both Charles and Mary Bougard stated that they understood and were agreeable to the chancellor's statement. The Mississippi Court of Appeals held that "Therefore, the parties had a binding agreement, following the procedure outlined in *McDonald*, and this allegation of error is likewise without merit." *Id.* at 650.

In *Rounsaville v. Rounsaville*, 732 So.2d 909 (Miss.1999) the Mississippi Supreme Court upheld a trial court's decision to grant a divorce based on irreconcilable differences where, at the time of the granting of the divorce, the parties had not entered into a property settlement, nor had the trial court adjudicated the presented issues as required under the statute. *Rounsaville*, at 911. The Mississippi Supreme Court held that the record in that case "clearly showed mutual consent" because the complaining spouse had signed a written consent to submit some disputed issues to trial before the chancellor, as provided by Section 93-5-2(3). The contesting spouse's substantive rights -i.e., actual consent to the divorce- therefore were not in question, and the divorce was upheld notwithstanding any failure to strictly comply with the statute.

In the recent case, *Cobb v. Cobb*, 29 So.3d 145 (Miss. App. 2010) the husband, who sought to set aside the irreconcilable differences divorce, asserted that the judgment of divorce was void because the chancery court failed to meet certain requirements of the irreconcilable divorce statute, as set forth in Miss. Code Ann. § 93-5-2 (2004). Dennis argued to the appellate court that the divorce judgment was void because the parties failed to execute a consent pursuant to Section 93-5-2(3), which provides in relevant part:

If the parties are unable to agree upon adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between them, they may consent to a divorce on the ground of irreconcilable differences and permit the court to decide the issues upon which they cannot agree. Such consent must be in writing, signed by both parties personally, must state that the parties voluntarily consent to permit the court to decide such issues, which shall be specifically set forth in such consent, and that the parties understand that the decision of the court shall be a binding and lawful judgment.... No divorce shall be granted pursuant to this subsection until all matters involving custody and maintenance of any child of that marriage and property rights between the parties raised by the pleadings have been either adjudicated by the court or agreed upon by the parties and found to be adequate and sufficient by the court and included in the judgment of divorce. Miss. Code Ann. § 93-5-2 (2004)

The Mississippi Court of Appeals found that this issue was without merit because Subsection (3), by its own terms, is operative only where "the parties are unable to agree upon adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between them." Under such circumstances, Subsection (3) allows the parties to, nonetheless, submit those issues they cannot agree upon to the court. The Court of Appeals found it clear that no issues were submitted to the chancellor. Instead, the record indicated that the judgment of divorce was entered pursuant to Section 93-5-2(2), which states:

If the parties provide by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties and the court finds that such provisions are adequate and sufficient, the agreement may be incorporated in the judgment, and such judgment may be modified as other judgments for divorce. Miss Code Ann. §93-5-2(2) (2004)

The Chancery Court found the settlement agreement to be adequate and sufficient. On appeal, Dennis did not argue that this finding was in error, or that the property settlement agreement was actually not adequate and sufficient in some respect, and because he offered no explanation of why this finding by the chancellor was in error the Mississippi Court of Appeals affirmed the Chancellor, stating as follows:

The legislative purpose behind Section 93-5-2 " is to provide a less painful alternative to the traditional grounds for divorce which require[s] ... parties to publicly put on proof of sensitive private matters." *Grier v. Grier*, 616 So.2d 337, 339 (Miss.1993). The statute expressly permits parties to " bargain on the premise that reaching an agreement will avoid the necessity of presenting proof at trial." *Id.* " The cornerstone of the process is mutual consent." *Id.* To ensure that end, the statute contains certain conditions. *Perkins v. Perkins*, 787 So.2d 1256, 1261 (Miss.2001) (citations omitted). The chief of these conditions is, " that neither spouse contest[s] its granting." *Id.* (quoting *Sanford v. Sanford*, 749 So.2d 353, 357 (Miss.Ct.App.1999)).

The Mississippi Court of Appeals found that Dennis gave actual consent to a divorce on the grounds of irreconcilable differences, had negotiated a property settlement agreement and further noted that at the hearing before the Chancery Court, as in the case at bar, Dennis acknowledged that he had voluntarily entered into the divorce, holding that the fact that Dennis appeared to be subsequently unhappy with his options and had subsequently changed his mind was not sufficient to put Dennis's substantive rights at issue: " wavering on whether a divorce should be entered may often occur and does not invalidate the divorce.... What is important is that agreement be validly expressed on the day that the chancellor is considering the issue." (citing *Perkins v. Perkins*, 787 So.2d 1256, 1261 (Miss.2001) (citations omitted)).

The appellate Court in *Cobb* further noted that Dennis did not argue a failure or defect of his actual consent to the divorce before the chancellor, and neither did he do so on appeal; his position was that the failure to formally withdraw the contests and denials, in and of itself, is reversible error. There is a presumption that the judgment of the trial court is correct, and the burden is on the appellant to demonstrate some reversible error to the appellate court. The appellate court found that Dennis has failed to do so: “Because the record shows mutual consent of the parties to divorce, we find that Dennis's substantive rights are not at issue, and therefore any failure to formally withdraw contests or denials was harmless error.” Samantha Sanford executed a both a *Joint Motion to Withdraw Fault Grounds* (CP 109) (RE 10) upon which a corresponding *Order* was entered, as well as a *Consent to Divorce*. (CP 111-112) (RE 12-13). The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in its ruling that the property settlement agreement dictated into the record pursuant to the written consent for divorce was valid, enforceable and binding upon the parties and did not apply an erroneous legal standard in entering a *Final Judgment of Divorce* in this action. Samantha Sanford waived any right to withdraw her *Consent* and the Chancery Court was correct to enforce the stipulated settlement. The findings of the Chancery Court are entirely consistent with controlling Mississippi precedent as set forth in *Bougard v. Bougard*, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008 and *Cobb v. Cobb*, No. 2009-CA-00062 (Miss. Ct. App. March 9, 2010). Divorce agreements dictated into the record under such

circumstances are valid, enforceable and binding upon the parties.

2. WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN ENTERING THE FINAL JUDGMENT OF DIVORCE

As set forth in Issue 1 herein above the Chancery Court correctly followed current Mississippi precedent in entering the *Final Judgment of Divorce* entered on September 21, 2010 (CP 240-261) (RE 35-56). The Chancery Court cited that the parties executed a *Joint Motion to Withdraw Fault Grounds* (CP 109) (RE 10), for which a corresponding *Order Dismissing Fault Grounds* was executed that day (CP 110) (RE 11), and that the parties also signed a written *Consent to Divorce* (CP 111-112) (RE 12-13), which was signed by both parties and their respective counsel and that stated “The designated issues are settled. All issues are settled and will be dictated into the record.” The Chancery Court found that the sworn pleadings of the parties alleged the ground of irreconcilable differences, that the Complaint so alleging had been on file for more than 60 days, that both parties had been resident citizens of Lamar County, Mississippi, for over 6 months immediately preceding the commencement of the action, as required by statute. The Court found no issues concerning process and that it had jurisdiction over the parties and subject matter and was the proper venue. (CP 240) (RE 35). The Chancery Court found both parties fit to share joint legal custody of the minor child and that it was in the child’s best interest that his physical custody be vested in Samantha as set forth in the transcript attached to the Judgment as Exhibit “A”

reflecting the parties agreement as transcribed at Court. (CP 241) (RE 36).

The Chancery Court found that “The parties hereto have made a full, adequate, sufficient and complete provision by agreement, as set forth in the transcript attached hereto as “Exhibit “A”, for the custody and maintenance of the minor child and for the settlement of any property rights between the parties. Said Agreement is attached hereto as Exhibit “A” and made a part hereof as if copied in full herein.” Having noted compliance with the statutory requirements as set forth in Miss. Code Ann. § 93-5-2 *et. seq.* (2004) the Court awarded the parties a divorce absolute on the ground of irreconcilable differences. CP 241) (RE 36)

The Chancery Court referenced the *Consent to Divorce* allowing the parties to withdraw their fault grounds, as well as the corresponding *Order* entered by the Chancery Court. The Court noted that the *Order* was signed by the Chancellor in the presence of both parties. The Court further noted that, contemporaneously with the withdrawal of fault grounds and the execution of their *Consent to Divorce*, the parties did announce their stipulation as to the settlement into the record, that the Court had reviewed the transcript and that the same reflects all of the settlement of all of the issues regarding equitable distribution, child custody, child support and personal property with the only exception being certain household goods set forth on Page 3 of the transcribed settlement and agreement. The Chancery Court found that, as a matter of law, divorce agreements dictated into the record and acknowledged by both parties are binding and are to be upheld, citing *Bougard v.*

Bougard, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008 and *Cobb v. Cobb*, No. 2009-CA-00062 (Miss. Ct. App. March 9, 2010) as well as citing Griffith, Mississippi Chancery Practice, 2nd Ed. Sec 650 at page 717 and also Miss Code Ann. §11-5-85 (2002) finding that “This is a court of equity. It is elementary that equity considers that done which has been decreed and should have been done.” (CP 242) (RE 37).

The Chancery Court found that the dictated *Property Settlement Agreement* sets out the entire agreement of the parties with specificity and the Court found that in the area of household goods Samantha was to go home and make a list of all items which she wished to have and that Les would review and submit a separate list if he did not agree. The Chancery Court found that pursuant to Samantha’s sworn testimony in open Court on May 24, 2010, the issue of any remaining personal property was then moot by virtue of Samantha’s testimony that she would receive various items of personal property, some marital, some pre-marital, all of which were specifically identified, as well as a cash payment of Twelve Thousand Dollars (\$12,000.00) from Leslie for any remaining interest in marital personal property. (CP 243) (RE 38).

The Chancery Court also noted that on or about October 12, 2009, Samantha filed her own pleading whereby she attempted to withdraw her *Consent To Divorce* and the binding agreement which was transcribed. The Court found this attempted withdrawal, some thirty-two (32) days after the stipulated agreement under oath by the parties, not sufficient to set aside the agreement which was consented to in open court, stating that the Court had relied

on the same and that the Court and parties are bound and will follow that which was dictated into the record, citing *Bougard v. Bougard*, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008) and *Cobb v. Cobb*, No. 2009-CA-00062 (Miss. Ct. App. March 9, 2010). (CP 243) (RE 38).

The Court further noted that on May 24, 2010, this matter came on for a hearing upon the *Motion For Citation For Contempt And To Enforce Settlement* filed by Leslie; the *Request for an On The Record Finding That The Proposed Property Settlement Agreement Is Not Adequate and Sufficient* filed by Samantha; the *Response to Request for an On The Record Finding That The Proposed Property Settlement Agreement Is Not Adequate and Sufficient* filed by Leslie; the *Motion to Dismiss and Motion for Sanctions* filed by Leslie; the *Second Complaint for Citation for Contempt* filed by Leslie; the *Response to Motion For Citation For Contempt And To Enforce Settlement* filed by Samantha; the *Motion for Substitution of Counsel, Discovery and Trial* filed by Samantha; that at that hearing the parties appeared with their respective attorneys, and upon the Court hearing testimony of the parties, reviewed all pleadings filed, the Court issued a bench opinion (TR 41-44) (RE 30-33) which was incorporated into the Judgment except as specifically modified with regard to the order for incarceration of Samantha. (CP 243-244) (RE 38-39)

The Chancery Court found as a matter of fact and law that Samantha was in direct, deliberate and willful contempt of Court as applied to her testimony under oath on September 10, 2009, and her subsequent actions thereto, finding that Samantha represented to the Court her full and complete agreement to the settlement and that she would execute the documents

when presented to her. The Chancery Court found that Samantha was in contempt of that Court's order through her own testimony under oath, by disavowing her previous sworn statements and that she had not acted in good faith. The Court noted that it had previously ruled such actions contemptuous based upon her sworn testimony of September 10, 2009. The Court ordered that the previous *Order of Incarceration* is withdrawn by virtue of the *Writ of Habeas Corpus* issued by the Mississippi Supreme Court. The Court further ordered that the finding that Samantha is in willful and deliberate contempt of court remained and so found as a matter of fact and law. The Court accordingly assessed attorney fees to Samantha payable to Leslie in the amount of Nine Thousand Dollars (\$9,000.00), plus all costs of Court accrued since September 10, 2009 . (CP 244) (RE 39)

The Chancery Court further ruled that "All other pending motions and pleadings before the Court are hereby dismissed as moot. All prior Orders of the Court, except as specified herein, are superceded by this *Final Judgment*. (CP 245) (RE 40) Therefore, contrary to the assertions made by Samantha in her Brief Of Appellant, there were no pending or outstanding pleadings to be ruled upon by the Chancery Court.

The entry of the *Final Judgment of Divorce* entered on September 21, 2010, (CP 240-261) (RE 35-56) and the findings of fact and conclusions of law contained therein correctly followed Mississippi precedent and were entirely consistent with the authorities cited by the Chancellor in that Judgment. The Chancery Court correctly found that as a matter of law divorce agreements dictated into the record and acknowledged by both parties are binding

and are to be upheld. See *Bougard v. Bougard*, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008) and *Cobb v. Cobb*, No. 2009-CA-00062 (Miss. Ct. App. March 9, 2010); Griffith, Mississippi Chancery Practice, 2nd Ed. Sec 650 at page 717; Miss Code Ann. §11-5-85 (2002) The Chancellor also had ample authority and basis in the record to cite Samantha in willful and deliberate contempt of court as a matter of fact and law. See *Caldwell v. Caldwell*, 579 So.2d 543, 546 (Miss. 1991).

CONCLUSION

The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in its rulings. The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in its ruling that the *Property Settlement Agreement* dictated into the record pursuant to the written *Consent To Divorce* was valid, enforceable and binding upon the parties. The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in entering a *Final Judgment of Divorce* in this action. The Chancery Court followed current precedent in this State in arriving at its findings of fact and conclusions of law. Divorce agreements dictated into the record under such circumstances are valid, enforceable and binding upon the parties. For the foregoing reasons, Leslie Sanford, Appellee, respectfully requests that the decision of the Chancery Court of Lamar County, Mississippi be affirmed.

Respectfully submitted this the 16th day of August, 2011.

A handwritten signature in black ink, appearing to read 'D. A. Pumford', written over a horizontal line.

David A. Pumford
ERIK M. LOWREY, P.A.
Counsel for Leslie Sanford

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SAMANTHA LOUISE SANFORD

APPELLANT

VERSUS

NO: 2010-CA-00873

LESLIE DEWITT SANFORD

APPELLEE

CERTIFICATE OF SERVICE AND FILING

I, David A. Pumford, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellee to the following counsel at their usual mailing addresses:

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TRIAL JUDGE

Hon. Sebe Dale, Jr.
Senior Chancellor
P.O. Box 1248
Columbia, MS 39429-1248

I, David A. Pumford, Attorney for the Appellee hereby certify, that I have actually mailed this date the Original and three copies of the Brief of the Appellee to the Mississippi Supreme Court.

THIS, the 16th day of August, 2011.


David A. Pumford

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