2010-CA-00873-RT

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TABLE OF CASES

ARGUMENT

ISSUE NO. 1 THE CHANCERY COURT JUDGE ERRED IN ENTERING A JUDGMENT OF DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES WITHOUT A SIGNED PROPERTY SETTLEMENT AGREEMENT

Appellee begins his argument by representing to the Court that *"the cases cited as precedent by the Appellant in her brief are not reflective of current Mississippi precedent" and alleges that Cassibry v. Cassibry, 742 So.2d 1121 (Miss. 1998) is no longer good law by virtue of later precedent cited by Leslie herein.* These statements are absolutely incorrect.

Cassibry has not been overturned nor distinguished by any precedent of the Mississippi Supreme Court or the Court of Appeals. The only case citing *Cassibry* was *Brown v. Thomas, 757 So.2d 1091, 1094 (Miss. Apps. 2000).* This was a case involving specific performance of a real estate contract and was cited in support of a statute of frauds argument. The Court of Appeals held "therefore we need not be concerned with whether *Cassibry* has any relevance to general statute of fraud issues or is limited to the specific irreconcilable differences divorce statute that it interpreted."

In spite of counsel's misplaced argument to the contrary, *Cassibry* is still good law for the proposition that "an agreement to divorce based upon irreconcilable differences must be in writing and signed by the parties, a requirement that is not satisfied by a settlement agreement being read into the record. Cassibry at page 1125. Further, *Cook v. Cook , 725 So.2d 205 (Miss. 1998)* has been cited several times and has not been superceded, reversed nor distinguished by either appellate court of the State of Mississippi. Counsel cites no cases superceding, reversing

nor distinguishing *Cassibry, Cook* or *Joiner v. Joiner, 739 So.2d 1943.*

Counsel cites three cases in support of the actions taken by the Chancery Judge, *Bougard v. Bougard, 991 So.2d 646, 649-650 (Miss. Ct. App. 2008); Rounsaville v. Rounsaville, 732 So.2d 909 (Miss. 1999) and Cobb v. Cobb, 29 So.3d 145 (Miss. 2010).* None of these cases are even remotely or factually similar to the case sub judice. Bougard involved several contempt citations of the temporary support order that were incorporated into the dictated agreement along with the divorce. The agreement encompassed all issues and nothing was left open to resolve when the terms were dictated into the record. What clearly distinguishes the present case from *Bougard* is the following stipulation by both parties:

"Both 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." The case does cite *McDonald v. McDonald, 850 So.2d 1182, 1189 paragraph 25 (Miss. Ct. App. 2002)* for the proposition that " announcing in open court the settlement of the dispute that is the purpose of the 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." However, the *McDonald* case involved an agreement to modify a divorce decree that granted a divorce to Mr. McDonald on the grounds of adultery and awarding custody of the minor children to him. No where in this case does it address the statutory requirements of the irreconcilable differences divorce statute.

Rounsaville v. Rounsaville, 732 So.2d 909 (Miss. 1999), can actually be cited in support of the Appellant. The Chancery Court Judge entered a judgment of divorce on the grounds of irreconcilable differences on July 19, 1996. The judgment agreed to by both stated that the

property settlement agreement would be presented in 30 days and if they could not agree then either could petition the court to resolve any remaining issues. Obviously, this procedure was in clear and absolute violation of the irreconcilable differences divorce statute. While the Supreme Court condemned this procedure and admonished others not to use it, the Court ultimately upheld the granting of the divorce on July 19, 1996 as harmless. The clear reasoning of the Court was that both parties on September 20, 1996 **signed** a "written agreement" encompassing all issues between them and **signed** the Final Judgment that incorporated the "written and signed agreement into the final judgment". This is clearly a different set of facts than the case *sub judice.*

Cobb v. Cobb, 29 So.3d 145, 149 (Miss. 2010), can also be used to support the appellant's position. The parties after settlement negotiations, prepared a **written detailed agreed judgment signed by both parties** and presented to the judge the same day for entry as the final judgment of divorce. This is another case cited by Appellee that is clearly not comparable to the case *sub judice.*

ISSUE NO. 2 THE CHANCERY JUDGE ERRED IN PROCEEDING TO ENTER THE FINAL JUDGMENT OF DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES WHEN THERE WAS A PENDING MOTION TO RECUSE BEFORE THE JUDGE

Appellee did not address this issue. His arguments are nothing more than a regurgitation of his arguments on issue no. 1. Appellant will rely upon her arguments contained in her initial brief.

Respectfully submitted,
SAMANTHA LOUISE SANFORD,
Appellant

BY: _____

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CERTIFICATE OF SERVICE

S. Christopher Farris, the undersigned, does hereby certify that I have this date mailed a true and correct copy of the foregoing Motion for Additional Time to the Mississippi Supreme Court Clerk, Ms. Betty Sephton, Post Office Box 117, Jackson, MS 39205; Hon. Erik Lowery, 525 Corinne Street Hattiesburg, MS 39402 ; Hon. Dawn Beam successor Chancery Court Judge to Hon. Sebe Dale, Jr. by regular United States mail, postage prepaid.

DATED this the 15th day of September, A.D., 2011.

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S. CHRISTOPHER FARRIS