

**IN THE SUPREME COURT OF MISSISSIPPI**

**SAMANTHA SANFORD**

**APPELLANT**

**versus**

**CAUSE NO. 2010-CA-00873**

**LESLIE SANFORD**

**APPELLEE**

\*\*\*\*\*

**BRIEF ON BEHALF OF APPELLANT**

\*\*\*\*\*

**ORAL ARGUMENT IS NOT REQUESTED**

By: S. CHRISTOPHER FARRIS  
Attorney for Appellant  
MS Bar Number [REDACTED]  
Rusnapper@aol.com  
6645 U.S. Hwy 98 W Suite #3  
Hattiesburg, MS 39402  
(601)271-2285

**CERTIFICATE OF INTERESTED PARTIES**

I, the undersigned counsel for the Appellee, do hereby certify that the following persons have an interest in the outcome of this case. These representatives are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Samantha Sanford, Appellant

Leslie Sanford, Appellee

Hon. S. Christopher Farris, Attorney for Appellant

Hon. Erik Lowery; Hon. David Pumford, Attorney for Appellee

Respectfully submitted this the 11<sup>th</sup> day of June, A.D. 2011.

  
S. CHRISTOPHER FARRIS

## **STATEMENT OF THE ISSUES**

<b>ISSUE NO.1</b>	<b>9</b>
<b>THE CHANCERY COURT JUDGE ERRED IN ENTERING A JUDGMENT OF DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES WITHOUT A SIGNED PROPERTY SETTLEMENT AGREEMENT BY THE PARTIES</b>	
<b>ISSUE NO. 2</b>	<b>10</b>
<b>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 PENDING BEFORE THE JUDGE</b>	

## **TABLE OF CONTENTS**

<b>TABLE OF CASES, STATUTES AND RULES</b>	<b>4</b>
<b>STATEMENT OF THE FACTS</b>	<b>5</b>
<b>SUMMARY OF THE ARGUMENT</b>	<b>8</b>
<b>ARGUMENT</b>	
<b>ISSUE NO.1</b>	<b>9</b>
<b>THE CHANCERY COURT JUDGE ERRED IN ENTERING A JUDGMENT OF DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES WITHOUT A SIGNED PROPERTY SETTLEMENT AGREEMENT BY THE PARTIES</b>	
<b>ISSUE NO. 2</b>	<b>10</b>
<b>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 PENDING BEFORE THE JUDGE</b>	
<b>CONCLUSION</b>	<b>11</b>
<b>CERTIFICATE OF SERVICE</b>	<b>12</b>

## **TABLE OF CASES, STATUTES AND RULES**

### **Cases**

<i>Cassibry v. Cassibry, 742 So.2d 1121, 1125 ( Miss. 1999)</i>	9
<i>Cook v. Cook, 725 So.2d 205 ( Miss.1998)</i>	9
<i>Joiner v. Joiner, 739 So.2d 1043, 1045 ( Miss. App. 1999)</i>	8, 9
<i>Kergosien v. Kergosien, 471 So.2d 1206 (Miss. 1985)</i>	9

### **Statutes**

<i>Miss. Code Ann. Section 93-5-2(2)</i>	10
<i>Miss. Code Ann. Section 93-5-2(3)</i>	10

### **Rules**

<i>Rule 1.11 of the Uniform Chancery Court Rules</i>	11
--	----

## **STATEMENT OF THE FACTS**

The Appellant, Samantha Sanford is the plaintiff in a divorce and custody case in the Chancery Court of Lamar County, Mississippi styled ***Samantha Sanford v. Leslie Sanford, Cause No. 2008-0025-GN-D***. She instituted this action by filing of a complaint alleging fault on the part of Mr. Sanford on January 28, 2008. She alleged that he was guilty of habitual use of drugs, of habitual drunkenness, habitual cruel and inhuman treatment or in the alternative irreconcilable differences. ( C.P. 12-20; R.E.12-19). The Sanfords had been married for **18 years** at the time of the filing of the complaint. They had one child born of the marriage, Leslie

Garrett Sanford, born March 14, 2002. Mr. Sanford responded with the filing of his answer basically denying all of her allegations including the request for divorce on the grounds of irreconcilable differences on April 25, 2008. ( C.P. 23- 24;R.E.23-24). An agreed order was entered continuing the request for temporary relief for May 14, 2008. ( C.P. 21: R.E. 21) An Order granting temporary relief was entered on June 19, 2008. The parties then engaged in the exchange of discovery as follows:

- 1) April 25, 2008, discovery was propounded to Mrs. Sanford.
- 2) July 9, 2008, Mrs. Sanford provided her responses to Mr. Sanford's discovery requests.
- 3) August 14, 2008, Mrs. Sanford submitted discovery request to Mr. Sanford. These requests were submitted 111 days after the filing of the Defendant's answer. **21 days past the 90- day discovery rule.**
- 4) April 17, 2009, Mr. Sanford files his request for admissions to Mrs. Sanford almost **nine months after the 90-day discovery period had expired.**
- 5) April 23, 2009, Mrs. Sanford answers the admissions.
- 6) May 11, 2009, Mrs. Sanford files a Motion to Compel Discovery responses that she submitted to Mr. Sanford 8 months prior.
- 7) May 14, 2009, Mr. Sanford files an objection to the motion alleging that the discovery period had already expired.
- 8) May 18, 2009, Mrs. Sanford files a notice of hearing on her Motion to Compel Discovery for May 27, 2009.
- 9) May 22, 2009, Mrs. Sanford files a re-notice of hearing on her Motion to Compel Discovery for July 20, 2009.

- 10) June 11, 2009 Order entered setting matter for trial on September 10, 2009.
- 11) September 02, 2009, Mr. Sanford files a Motion to Strike Mrs. Sanford's witnesses and documents proposed to be offered as part of the pretrial order.
- 12) September 02, 2009, Mr. Sanford files a Notice of Hearing on his Motion to Strike.
- 13) September 04, 2009, Mrs. Sanford files her supplemental responses to the discovery requests.

**NO ORDER IS EVER ENTERED GRANTING OR DENYING** Mrs. Sanford's request to compel discovery responses from Mr. Sanford prior to the trial.

On September 10, 2009, the day set for the trial, the parties filed a Joint Motion to Withdraw Fault Grounds and an Order was filed. ( C.P. 109-110; R.E.25, 26). The parties also entered into a consent the same day. However, before proceeding with the **filing** of the consent and a trial by the judge, the parties reached a tentative agreement and the consent was marked through announcing a settlement and then filed with the Court. ( C.P. 111, 112; R.E. 27, 28).

The parties dictated into the record the terms of their proposed settlement agreement with the written agreement to follow after Mrs. Sanford had an opportunity to go to the marital home and make a list of what personal property she wanted from the marital home.

After preparing the list, Mr. Sanford objected to the items she had selected. Mrs. Sanford then filed her own pleading requesting to withdraw her consent to a divorce on the grounds of Irreconcilable Differences.(C.P. 113; R.E. 29) Mr. Sanford then filed a motion to cite Mrs. Sanford for contempt for not signing the proposed property settlement agreement. ( C.P.115-122; R.E. 31-39) Mrs. Sanford filed a response to the citation of contempt requesting to proceed with discovery and a trial on all issues and included an affidavit.(C.P.146-154; R.E. 40-49)

Mrs. Sanford was never satisfied that the terms of the agreement were fair, adequate nor sufficient for the length of the marriage and assets. Mrs. Sanford filed a motion requesting an on the record finding that the terms of the proposed agreement were not adequate nor sufficient. (C.P.174-179; R.E. 49-54) Mr. Sanford filed his second motion to cite Mrs. Sanford for contempt with Rule 81 process obtained with a hearing date of May 24, 2010. The parties appeared before the Chancery Judge for a hearing on all outstanding motions. The Court upon conclusion of the hearing denied Mrs. Sanford's requested relief and found her in contempt of court. She could purge herself of contempt by signing the property settlement agreement and paying Mr. Sanford's attorney \$9,000.00. ( R. 42-43; R.E. 123, 124)

Mrs. Sanford chose instead to seek Habeas Corpus relief from the Mississippi Supreme Court. The Court granted her habeas corpus petition four days after it was filed. ( C.P. 217-218; R.E. 60, 61). Mr. Sanford filed a request to set aside the Court's release of Mrs. Sanford which was denied. ( C.P. 239; R.E.73). Mrs. Sanford filed motion to recuse the Chancery Judge after being released from incarceration ( C.P. 220-221; R.E.63-64) and to cite Mr. Sanford for contempt of the temporary order.(C.P. 227-229; R.E. 70). Mr. Sanford filed a motion for a trial setting. ( C.P. 222; R.E.65) All of these motions were noticed for a hearing on July 21, 2009. (C.P. 224-226; R.E. 67, 68). The attorneys and parties appeared but the matters were taken under advisement pending a ruling by the Mississippi Supreme Court on Mr. Sanford's request to set aside the Court's granting of Mrs. Sanford request for writ of habeas corpus. The Mississippi Supreme Court denied Mr. Sanford's request on July 29, 2009. ( C.P. 239; R.E. 73).

While the Motion to Recuse was pending before the Chancery Court Judge, he entered a "Final Judgment of Divorce" on September 10, 2010 on the grounds of irreconcilable differences



and also included the award to Mr. Sanford of \$9,000.00 in attorney fees for the contempt actions that were filed after September 10, 2009. He made the judgment nunc pro tunc to the 10<sup>th</sup> day of September, 2009. ( C.P. 240-261; R.E. 74-94). In response, Mrs. Sanford filed a Writ of Mandamus with the Mississippi Supreme Court which the Court deemed was a notice of appeal by Mrs. Sanford. ( C.P. 263; R.E. 96). She perfected her appeal to this court.

### **SUMMARY OF THE ARGUMENT**

The Chancery Judge did not have the authority to proceed to enter a “Final Judgment of Divorce” on the grounds of irreconcilable differences. These parties never submitted the issues to the judge for determination nor did they ever submit a signed property settlement agreement. The Judge recognized the need for Mrs. Sanford’s signature because he cited her for contempt and jailed her for “not signing the document”. This Court agreed that the judge could not incarcerate her for not signing the document. The Judge further committed error by entering the “Final Judgment of Divorce” when a proper motion to recuse was pending before him. The judgment of divorce should be reversed and rendered or declare void.

### **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 BY THE PARTIES**

The law is clear that a Chancery Judge does not have the authority to enter a judgment of divorce on the grounds of irreconcilable differences without either a consent to submit issues to him and a trial on those issues or a signed property settlement agreement. *Joiner v. Joiner*, 739

*So.2d 1043, 1045 ( Miss. App. 1999); Cassibry v. Cassibry, 742 So.2d 1121, 1125 ( Miss. 1999); Cook v. Cook, 725 So.2d 205 ( Miss.1998).* The requirements of the irreconcilable differences statute must be strictly followed when granting a divorce on irreconcilable differences.

*Kergosien v. Kergosien, 471 So.2d 1206 (Miss. 1985).*

The *Sanfords* did the exact same thing as the *Joiners*, they executed a consent that was not filed until after they had announced a settlement with a property agreement and judgment to follow. The consent is marked through and indicates a settlement of all issues. Therefore, the consent signed by the Sanfords was moot since the parties had taken the case out of the hands of the Chancery Judge to settle and settled the issues themselves. Either party would have been legally entitled to change their minds because there was no consent governing their actions only their own contractual agreement. The dictation on the record also indicates that the personal property issues were still left open for resolution of the parties. Mrs. Sanford was to inspect the home and make a list of what personal property, furniture and furnishings she desired from the home. When she submitted her list to Mr. Sanford he disagreed. Mrs. Sanford then filed a written letter to the clerk withdrawing her consent. However, the consent was already moot because the parties did not file the consent to allow the Court to rule upon those issues. Mrs. Sanford also filed a motion attacked the proposed contractual agreement on grounds of ineffective assistance of counsel, overreaching, duress, and the agreement not being adequate, sufficient nor equitable.

In *Joiner* at page 1046, paragraph 14 the Court of Appeals stated:

***“The frustration of the Chancellor with Mrs. Joiners’ apparently obstinate behavior is an understandable reaction in these circumstances but there is no provision in the law***

*that would permit the chancellor to relieve his frustrations by granting the divorce in the absence of the statutorily mandated “written agreement for the custody and maintenance of any children of the marriage and for the settlement of any property rights between the parties. ...” Miss. Code Ann. Section 93-5-2(2).*

The statute on irreconcilable differences divorce is unequivocal. *“No divorce shall be granted pursuant to this subsection until all matters...have been...agreed upon by the parties and found to be adequate and sufficient.”* *Id* at page 1046, paragraph 15; There is absolutely no dispute that the *Sanfords* had not agreed upon everything when they made their announced settlement on the record. Further, the Chancellor did not find the agreement to be adequate and sufficient nor address the concerns of fairness of the proposed settlement agreement.

Miss. Code Ann. Section 93-5-2(3) also states that *“The failure or refusal of either party to agree as to adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between the parties , or any portion of such issues, or the failure or refusal of any party to consent to permit the court to decide such issues shall not be used as evidence , or in any manner against such party.”*

The Judge’s entry of the Final Judgment of Divorce without any signed agreement by both parties on the grounds of irreconcilable differences is in direct violation of the statutory requirements and is plain reversible error.

**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 PENDING BEFORE THE JUDGE**

Mrs. Sanford filed motion to recuse the Chancery Judge after being released from incarceration ( C.P. 220-221; R.E.63, 64). Instead of ruling upon the Motion for recusal as


required by *Rule 1.11 of the Uniform Chancery Court Rules*, the Chancery Court Judge on his own volition, entered a "Final Judgment of Divorce" on the grounds of irreconcilable differences and also awarded to Mr. Sanford attorney fees for the contempt actions in the amount of \$9,000.00 on September 15, 2010 making it nunc pro tunc to the 10<sup>th</sup> day of September, 2009. (C.P. 240- 261; R.E. 74-94). The contempt matters were heard after September 10, 2009. It was clear, plain and reversible error for the Judge to enter such judgment.

### CONCLUSION

Mrs. Sanford would request that the final judgment of divorce wrongfully entered by the Chancery Court Judge be reversed and rendered or in the alternative declared void by this Court.

Respectfully submitted,  
SAMANTHA SANFORD, Petitioner

By:



S. CHRISTOPHER FARRIS

Attorney for Petitioner

Rusnapper@aol.com

Mississippi Bar No. [REDACTED]

6645 U.S. Highway 98, Suite #3

Hattiesburg, Mississippi 39402

601-271-2285

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this date mailed a true and correct copy of the foregoing Brief of Appellant, Samantha Sanford to the Mississippi Supreme Court Clerk, Ms. Betty Sephton, Post Office Box 249, Jackson, MS 39205; ERIK M. LOWREY, P.A., Attorneys at Law, Erik M. Lowrey MSB # [REDACTED], 525 Corinne Street, Hattiesburg, MS 39401; NO COPY was sent to the trial judge, Hon. Sebe Dale, Jr. because he has since retired.

DATED this the 11<sup>th</sup> day of June, A.D., 2011.

  
S. CHRISTOPHER FARRIS

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this date mailed a true and correct copy of the foregoing Brief of Appellant, Samantha Sanford to the Mississippi Supreme Court Clerk, Ms. Betty Sephton, Post Office Box 249, Jackson, MS 39205; ERIK M. LOWREY, P.A., Attorneys at Law, Erik M. Lowrey MSB # [REDACTED], 525 Corinne Street, Hattiesburg, MS 39401; Honorable Dawn Beam, Chancery Court Judge, 250 Broad Street, Suite 12, Columbia, MS 39429.

DATED this the 21st day of June, A.D., 2011.

  
\_\_\_\_\_  
S. CHRISTOPHER FARRIS