

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2010-CA-01193

WILLIE JOHNSON, JR.
Appellant

v.

HAZEL GWENDOLYN JOHNSON
Appellee

REPLY BRIEF OF APPELLANT

On Appeal from the Chancery Court of Hinds County, Mississippi

FELECIA PERKINS, ESQ.
Mississippi Bar Number [REDACTED]
LAW OFFICE OF FELECIA PERKINS, P.A.
P.O. Box 21
Jackson, Mississippi 39205-0021
(601) 352-5053
Counsel for Appellant

Table of Contents	1
Table of Authorities	2
Introduction	3
Analysis	3
Conclusion	8

TABLE OF CONTENTS

TABLE OF AUTHORITIES

<i>Aetna Life Insurance Co. v. Thomas</i> , 146 So. 134 (Miss. 1933)	7
<i>Anderson v. Anderson</i> , 200 So.2d 726 (Miss. 1941)	4
<i>Chapel v. Chapel</i> , 700 So.2d 593 (Miss. 1997)	4
<i>Crenshaw v. Crenshaw</i> , 767 So.2d 272 (Miss. App. 2000)	4
<i>Fisher v. Fisher</i> , 771 So.2d 364 (Miss. 2000)	4
<i>McDaniel Brothers Construction Co. v. Jordy</i> , 185 So.2d 450 (Miss. 1966)	7
<i>Morris v. Morris</i> , 783 So.2d 681 (Miss. 2001)	4, 5
<i>Petersen v. Petersen</i> , 648 So.2d 54 (Miss. 1994)	4
<i>Savell v. Savell</i> , 420 So.2d 628 (Miss. 1970)	4
<i>Stein v. Stein</i> , 11 So.3d 1288 (Miss. 2009)	3, 4
<i>Talbert v. Talbert</i> , 759 So.2d 1105 (Miss. 1999)	4
<i>Thompson v. Martin</i> , 119 So.2d 349 (Miss. 1960)	7
Miss. R. App. P. 36	7

I. Introduction

According to the trial court, the Appellant transmitted a sexual disease to the Appellee despite an utter absence of any evidence throughout the trial substantiating such a finding. To date, Dr. Johnson endures this judicially sponsored label and its implications. As the Appellant's reputation is in the balance, he respectfully requests this Court to consider the chancellor's damaging reliance on a single, erroneous finding to justify a divorce based on habitual cruel and inhuman treatment.

The lower court further based its judgment on the Appellant's adulterous behavior. Indeed, the combination of adultery and allegations of the Appellant's transmission of a sexual disease strictly shape the court's judgment. However, there was no evidence presented that the Appellant transmitted to the Appellee a sexual disease.¹ Absent such evidence, only the issue of adultery remains and the very nature of adultery demands the application of a legal standard the lower court failed to acknowledge.

II. Analysis

A. There is simply no evidence to support the lower court's judgment of divorce

This Court will not disturb the findings of fact of a chancellor "when supported by substantial evidence unless the chancellor . . . applied an erroneous legal standard." *Stein v. Stein*, 11 So.3d 1288, 1290-91 (Miss. 2009). A chancellor's finding that a spouse's "conduct rose to the level of habitual cruel and inhuman treatment as defined as a ground for divorce in Miss. Code Ann. § 93-5-1 is a determination of law, and is reversible where the chancellor has employed an erroneous legal

¹ The Appellant scoured both the record and the lower court's opinion for any mention of a sexual disease. The only reference to such a disease appears in the lower court's opinion. The finding stems from the lower court rather than any party to the action.

standard.” *Id.* at 1290. Further, this Court has held “it judicially unsound to apply law governing divorce upon cruel and inhuman treatment to an issue of adultery.” *Talbert v. Talbert*, 759 So.2d 1105, 1110 (Miss. 1999).

There “must be corroboration of the complaining party’s testimony” for a divorce based upon habitual cruel and inhuman treatment. *Stein* at 1290; *Chapel v. Chapel*, 700 So.2d 593 (Miss. 1997); *Petersen v. Petersen*, 648 So.2d 54 (Miss. 1994). A divorce on the ground of habitual cruel and inhuman treatment will not be granted on the uncorroborated testimony of the complainant. *Anderson v. Anderson*, 200 So.2d 726, 727 (Miss. 1941). “Habitual cruel and inhuman treatment is not a catch-all category ... neither party is entitled to be granted a divorce without providing the proof necessary to support the grounds that are alleged.” *Crenshaw v. Crenshaw*, 767 So.2d 272, 276 (Miss. App. 2000). A foundation for such a divorce may be established by demonstrating “. . . a series of acts, some of the same nature and some of different natures, but which, **when taken together**, tend to cause pain and suffering on the part of the innocent party.” *Savell v. Savell*, 420 So.2d 628, 629 (Miss. 1970). Further, “a pattern of adultery during marriage **may be a factor in finding habitual cruel and inhuman treatment**, even if the adultery has been condoned.” *Fisher v. Fisher*, 771 So.2d 364 (Miss. 2000).

Acknowledging the absence of evidence in the record concerning a sexually transmitted disease, the Appellee argues instead that a well evidenced combination of abusive episodes and extramarital affairs rises to the level of extremes necessary to establish habitual cruel and inhuman treatment. To this argument, the Appellee relies heavily on *Morris v. Morris* for the proposition that a series of adulterous affairs coupled with allegations of abuse firmly satisfy the statutory requirements of habitual cruel and inhuman treatment. 783 So.2d 681 (Miss. 2001). The Appellee’s

reliance on *Morris*, however, is misplaced.

In *Morris*, this Court affirmed the chancellor's findings that the combination of violence, mental instability, and an adulterous affair was indeed sufficient to sustain a divorce based upon habitual cruel and inhuman treatment. *Id.* Confronted with an abundance of evidence in the record, the *Morris* Court considered the Plaintiff's predilection for self-mutilation, her suicide attempts, as well as repeated incidents of blackouts, paranoia, and hallucinations. *Id.* at 690. The Plaintiff endured years of trauma as he attempted to ease the Defendant's suffering and shield the marital children from the effects of the Defendant's mental disturbance. *Id.* This Court held that the accusations and evidence thereof rendered *Morris* "an excellent case on the facts in which to grant a divorce on the ground of habitual cruel and inhuman treatment." *Id.*

In the instant case, by contrast, not only is the record void of any mention of a sexual disease, it fails to corroborate the Appellee's allegations of abuse. By example, it is simply the Appellee's word that Dr. Johnson physically abused her. In fact, Dr. Johnson testified that he never abused his wife. T. 325-326. The Appellee's offer of medical records to support her allegations of abuse merely reflect the Appellee's version of events. T. 82-83; Ex. 9. The records neither substantiate the Appellee's story nor a medical professional's diagnosis of abuse. Ex. 9. Further, the Appellee alleges that Dr. Johnson placed the Appellee in such financial straits, she was reduced to begging for assistance. This allegation, however, ignores both the undisputed fact that from January 2001 to July 2006 Dr. Johnson overpaid the Appellee some \$44,486.21 in separate maintenance and that the Appellee holds an advanced degree affording her ample opportunity to find and maintain employment. T. 315. The Appellee plainly fails to incorporate any evidence in the record to support her allegations of abuse.

The underlying theme of this divorce proceeding concerns adultery, nothing more. The evidence the Appellee presented to support the finding that Dr. Johnson fathered a child outside the marriage was through Dr. Johnson's admission during cross-examination. T. 194. Indeed, he admitted that a DNA test proved his paternity. Certainly a pattern of adultery coupled with a series of corroborated acts of abuse might justify a divorce on the grounds of habitual cruel and inhuman treatment. The application of the law governing habitual cruel and inhuman treatment to an issue of adultery alone, however, is clearly erroneous.

Adultery, of course, is a well recognized ground for divorce in its own right. The very nature of adultery demands a consideration of the defense of condonation as well as the application of a more stringent burden of proof. To this end, the Appellee's proven condonation of Dr. Johnson's behavior is significant. The record is clear, Dr. Johnson and the Appellee resumed both cohabitation and sexual relations in the wake of Dr. Johnson's adulterous revelations. These considerations, however, were beyond the court's reach as it was determined to justify a divorce on the grounds of habitual cruel and inhuman treatment.

Despite an utter lack of evidence, Dr. Johnson has been judicially branded a carrier of sexual disease. As the Appellant continues to endure such a label, he respectfully requests this Court strike any mention of a sexual disease within the lower court's judgment. Further, Dr. Johnson acknowledges that he committed adultery, behavior condoned by his wife, and in light of the available evidence asks this Court to apply the relevant legal standard governing a divorce based on adultery.

B. All costs associated with this appeal should be assessed against the Appellee

Dr. Johnson has plainly demonstrated that the lower court employed an improper legal

standard. Absent a shred of corroborating evidence supporting a divorce on the grounds of cruel and inhuman treatment, only the issue of adultery remains. Again, the application of the law governing habitual cruel and inhuman treatment to an issue of adultery alone clearly compromises a well established basis for divorce. In light of Dr. Johnson's request for a reversal, he further asks that all costs associated with this appeal be assessed against the Appellee.

Pursuant to Mississippi Rule of Appellate Procedure 36, if a judgment is reversed, costs should be taxed against the Appellee. An Appellant obtaining reversal of judgment is entitled to reimbursement by the Appellee of all costs associated with the appellate process. *Thompson v. Martin*, 119 So.2d 349 (Miss. 1960). Appellant who pointed out to the Supreme Court that the lower court lacked jurisdiction, resulting in the case being reversed and remanded, was the successful party and costs of the appeal were properly taxed against the Appellee. *McDaniel Brothers Construction Co. v. Jordy*, 185 So.2d 450 (Miss. 1966). "Where judgment for plaintiff was reversed in part and Supreme Court rendered judgment which lower court should have rendered, defendant was successful party entitled to full costs on appeal." *Aetna Life Insurance Co. v. Thomas*, 146 So. 134 (Miss. 1933).

Here, the lower court should have applied the legal principles concerning adultery against the proven facts in this case. Dr. Johnson admits to adultery. The record reflects that the parties resumed both cohabitation and sexual relations in the wake of Dr. Johnson's admissions. T. 307. Despite these undisputed facts, the lower court relies on the uncorroborated testimony of the Appellee to justify its judgment of divorce. The record is void of any mention of a sexually transmitted disease. Allegations of abuse, both physical and financial, are wholly unsubstantiated. There is simply no act of abuse to couple with the admissions of adultery to satisfy the elements of

habitual cruel and inhuman treatment.

III. Conclusion

This Court must consider the implications of a ruling steeped in unfounded and ultimately scandalous accusation. There was neither any evidence the Appellant transmitted a sexual disease to the Appellee nor a shred of proof corroborating abuse. Heedless of the consequences, the lower court applied a series of unproven facts to the law governing habitual cruel and inhuman treatment, effectively branding Dr. Johnson a deviant. In the interests of justice, this Court should reverse the lower court's judgment of divorce.


This 4th day of April, 2011.

Respectfully submitted,

Dr. Willie Johnson, Appellant

BY: 

FELECIA PERKINS, ESQ.

Mississippi Bar Number 

LAW OFFICE OF FELECIA PERKINS, P.A.

P. O. Box 21

Jackson, Mississippi 39205

Office: (601) 352-5053

Counsel for Appellant

CERTIFICATE OF SERVICE

I, FELECIA PERKINS, hereby certify that I have this day caused to be mailed, U. S. mail, postage prepaid, a true and correct copy of the *Appellant's Reply Brief* to the following persons:

Sharon Patterson Thibodeaux, Esq.
P. O. Box 5367
Brandon, Mississippi 39047
Counsel for Plaintiff

Hon. Patricia Wise
Hinds County Chancery Court Judge
P.O. Box 686
Jackson, Mississippi 39205

SO CERTIFIED, this, the 4th day of April, 2011.



FELECIA PERKINS