

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NO. 2010-CA-01226

JAMES EDWARD CARAMBAT

APPELLANT

v.

STACY RUTH CARAMBAT

APPELLEE

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BRIEF OF APPELLANT  
JAMES EDWARD CARAMBAT

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APPEAL FROM THE FINAL JUDGMENT OF  
THE CHANCERY COURT OF HANCOCK COUNTY

ORAL ARGUMENT NOT REQUESTED

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. James Edward Carambat - Appellant.
2. Stacy Ruth Carambat- Appellee.
4. Hon. Sanford Steckler- Chancery Court Judge, Hancock County,  
Mississippi.
6. Stephen J. Maggio- counsel for James Edward Carambat.
7. Rhonda Derenbecker- Counsel for Stacy Ruth Carambat.
8. Otis B. Crocker, III- Counsel for Stacy Ruth Carambat.
9. David L. Lord and Associates, P.A.- Counsel for Stacy Ruth Carambat

Dated: February 9, 2011.

  
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STEPHEN J. MAGGIO  
MSB NO. [REDACTED]

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## STATEMENT OF ISSUES

Whether the Chancery Court of Harrison County erred in granting a divorce to Stacy Ruth Carambat on the basis of habitual and excessive use of opium, morphine or other like drug?

## STATEMENT OF CASE

Stacy Ruth Carambat and James Edward Carambat were married on March 20, 1993. (CP 1, RE 5). On September 17, 2008 Stacy filed her Complaint in the Chancery Court of Hancock County, Mississippi. (CP 1-4, RE 5-8). For grounds, she pled, "Habitual Cruel and Inhuman Treatment", "Habitual Drug Abuse"<sup>1</sup>, and "Irreconcilable Differences". (CP 2, RE 6).

The matter proceeded to trial (CP 25, RE 13)<sup>2</sup>. At trial, Stacy conceded James' motion for directed verdict on the grounds of habitual cruel and inhuman treatment. On September 24, 2009 the Chancellor entered a Judgment of Divorce (CP 25-37, RE 19-25) granting Stacy a divorce on the statutory grounds of habitual and excessive use of opium, morphine or other like drug. (CP 25-37, RE 19-25).

On October 5, 2009, James filed his motion pursuant to Rule 59 for rehearing or to amend the judgment. (CP 38-40, RE 26-28). On February 24, 2010 the Chancellor entered an Amended Final Judgment of Divorce modifying custody, visitation and some of the property issues, but confirming its prior judgment of divorce. (CP 49-54, RE 29-34). It is from these orders that James appeals.

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<sup>1</sup> The Appellant recognizes that there is no statutory ground of "Habitual Drug Abuse" in Miss. Code Ann. § 93-5-1 (1972). However, this matter was tried with the consent of the parties on the issue of habitual and excessive use of opium, morphine or other like drug, which is the correct technical grounds for divorce as allowed by Miss. Code Ann. § 93-5-1 (1972).

<sup>2</sup> Although the Judgment reflects that the matter was tried on August 5<sup>th</sup> and 20<sup>th</sup> of 2009, the transcript indicates that the matter was actually tried on July 29<sup>th</sup>, 30<sup>th</sup> and August 20<sup>th</sup> of 2009. (TR 1, RE \*).

### SUMMARY OF ARGUMENT

The Chancellor erred in granting Stacy a divorce on the grounds of habitual and excessive use of opium, morphine or other like drug.

The record below reflects that Stacy was aware, prior to and during the course of the marriage, that James Carambat smoked marijuana on an almost daily basis, but that his marijuana use did not lead to a separation. The record below shows that his although his marijuana use was habitual but not “excessive”. Additionally, it showed it was very minimal and of little, if any, impact on his ability to work, provide for the family or to be engaged as a spouse and father. Further, James raises issue with the determination that marijuana is an “other like drug” in the same classification as morphine or opium.

James Carambat submits that Stacy Carambat did not meet her burden of proof and that Judgment of Divorce should be reversed.

## ARGUMENT

At the time Stacy Carambat filed for divorce they had been married for nearly fifteen years. Stacy sued for divorce on the grounds of "Habitual Drug Abuse" and, alternatively, for "Irreconcilable Differences". (CP 2, RE 6). James filed his Answer denying she was entitled to a divorce. (CP 21-24, RE 9-11).

The case proceeded to trial on July 29<sup>th</sup>, 30<sup>th</sup> and August 20<sup>th</sup>, 2009 (TR 1, RE 35) with the Chancellor granting Stacy a divorce on the statutory grounds of habitual and excessive use of opium, morphine or other like drug as provided in Miss. Code Ann. § 93-5-1 (1972). (CP 25-37, RE 19-25).

At trial, Stacy testified that she had known and dated James for couple of years prior to their marriage and that he had regularly smoked marijuana during that time, that she knew of his marijuana usage, and that he did not hide it from her. (TR 55, RE 42). She further testified that after they married he continued to use marijuana but his use remained consistent. (TR 55, RE 42). As to other drug usage during the marriage, Stacy testified that he used Xanax during the first five or six years of the marriage, but that he had not used any Xanax since then. (TR 56, RE 43). She further testified that James had admitted to using cocaine on one occasion very early on in their marriage and that he never used it again. (TR 56-57, RE 43-44).

As to his employment, Stacy testified that James had been employed in the printing industry throughout their marriage and that he went to work everyday. (TR 10, RE 40). She said that when she met and dated James that he was working at Century Graphics as a scanner operator. (TR 55, RE 42). She said he worked shift work and that he worked between five and seven days per week and that he continued this work and schedule after they married. (TR 56,



RE 43). She testified that he was eventually laid off at Century Graphics and that he then went to work for K & W in Baton Rouge and that his shift began at two in the morning Monday through Thursday. (TR 56, RE 43).

In 1999, the couple moved from Baton Rouge to Brandon, Mississippi as James was transferred there by his employer K & W. (TR 57, RE 44) . With the move, James received a promotion and raise in pay. (TR 58, RE 44A). He continued to work as a scanner operator earning between \$38,000 to \$40,000 per year and that he was promoted to head scanner. (TR 58, RE 44A). He continued to work as the head scanner at K & W in Brandon until the company went into bankruptcy. (TR 59, RE 45).

Following the bankruptcy of K & W, James went to work for Knight Abbey printing in Biloxi, Mississippi. (TR 60, RE 46). He stayed in the printing field, but became a customer service representative and his salary was \$36,000 per year plus commissions. (TR 60, RE 46). She admitted that the loss of his job at Century Graphics was because the company discontinued their printing press department and at K & W because the company filed for bankruptcy and that neither had anything to do with her husband and/or his marijuana usage. (TR 74-75, RE 58-59).

Stacy testified to one instance in the entire time they were married where she indicated that his marijuana usage affected his job performance. (TR 11, RE 41). However, she was impeached with her deposition testimony. In her deposition the following exchange occurred:

Q. And I asked you beginning at Line 22, the demotion in his work duties, was that a result of the error that he made at work or the result of them knowing that he had been using drugs, and you said that it was the result of the error at work, right?

A. Right.

Q. That's what you said?

A. Uh-huh.

Q. The next page I asked you, anybody at work link the error to his marijuana usage, and you said not to your knowledge, no?

A. Correct.

(TR 201-202, RE 80-81).

She said that after a year he was restored to his position which was a year to a year and half prior to her filing for divorce. (TR 65, RE 51).

As to the amount of the marijuana he normally used, she testified that he purchased a quarter bag once a month. (TR 8, RE 38) and that he usually spent between \$35 and \$50 per month on the marijuana. (TR 9, RE 39). She indicated that a quarter bag meant a quarter ounce of marijuana. (TR 61, RE 47) and it would usually last her husband the entire month or so. (TR 61, RE 47). This amounted to him using approximately .08 ounces of marijuana per day. (TR 62, RE 48). On occasion she objected to his spending money on marijuana and at times he would agree not to spend any money on marijuana. (TR 9, RE 39). Although she attempted to make his drug use appear as though it was a financial burden on the family, she admitted that the parties had a combined income of \$70,000 per year and that his purchases of marijuana amounted to approximately \$300 per year. (TR 59, RE 45). She admitted that his expenditures on marijuana were a very small part of their combined income. (TR 61, RE 47).

Stacy indicated that there were several periods during the marriage where he would not smoke marijuana for weeks. (TR 9, RE 39). She further testified that at no time during their marriage did she ever issue him an ultimatum to stop smoking or she would leave and she further

indicated that as far as he knew his drug use was not going to break up his marriage. (TR 62-63, RE 48-49).

As to family involvement, Stacy admitted that James regularly attended the boys football, soccer and basketball games; (TR 63, RE 49) that he helped the children with their homework; and, (TR 63, RE 49) that he took an interest in the children and loved them. (TR 63-64, RE 49-50). Under the terms of the agreed temporary order, the parties were alternating custody on a week to week basis and James had exercised all of his time with the children. (TR 68-69, RE 53-54). She testified that James regularly attended church services with her and the children before the separation and that although she had stopped attending, that James continued to take the children to church when he had them. (TR 84-85, RE 60-61).

On the issue of him becoming more socially inactive after moving to Diamondhead, Stacy testified, that it was, in part, the result of his getting older. (TR 205, RE 82). Stacy admitted that after the birth of their children she had become sexually withdrawn from James. (TR 206, RE 83). He said after the children were born that intimacy stopped between them and that he asked her to go see a doctor. (TR 215, RE 88). Stacy confirmed that she had become withdrawn sexually after the children were born. (TR 206, RE 83). He testified that he had become withdrawn, but it was due to the lack of intimacy. (TR 216, RE 89). She testified that in the time prior to filing for the divorce that he began attending family functions less frequently with her family, but that was because he preferred to stay at home or go fishing. (TR 208, RE 84). James stated that he started attending less frequently because did not feel close to his in-laws. (TR 214, RE 87).

As to Stacy's social life, James testified that after moving Diamondhead she expressed

that she wanted to get out more and he initially encouraged this. (TR 216-218, RE 89-91). Stacy testified that in the year prior to filing for divorce that she had started going out with a friend and that at first it was once a week, but that it had become more frequent and was occasionally on the weekends. (TR 67, RE 52). Stacy testified that James would take care of the children and that she had no problem leaving the children with him when she went out with her friend. (TR 68, RE 53). Moreover, as to the issue of the breakdown of the marriage, Stacy testified that she had met the man she was dating at the time of trial in 2007 and that they had begun communicating quite regularly in April of 2008. (TR 71, RE 55). She said that they had been texting and emailing each other and starting in the Spring of 2008 and that in the Summer of 2008, in the months just prior to her filing for divorce, they had begun a romantic relationship with each other and this effected the way she felt about her husband. (TR 72-73, RE 56-57)

In his testimony, James admitted that he had been smoking marijuana since he was fourteen and (TR 128, RE 62) and that his marijuana usage continued throughout his marriage. (TR 128, RE 62). At the time of trial he was fifty-five years old (TR 128, RE 62). Stacy testified that he smoked marijuana before going to work, but James testified that the only time he smoked in the mornings was early in the marriage when the couple lived in Baton Rouge and his shift did not start until 3:00 p.m. (TR 129, RE 63). James testified that after the children were born that he kept his marijuana and smoking paraphernalia in his garage in a cabinet. (TR 130, RE 64). He said that he usually took two puffs of marijuana in the garage when he got home after work. (TR 130, RE 64). As to the amount he purchased monthly, he said a quarter ounce was enough to make six or seven marijuana cigarettes. (TR 133, RE 65). James denied that the his demotion was caused by his marijuana use and denied that he had ever admitted such to his

wife. (TR 134, RE 66). He denied that he had been smoking any marijuana before going to work that day. (TR 134, RE 66).

He denied that his marijuana use caused him to be isolated from his family. (TR 135, RE 67). He stated that he and the boys would go fishing every Saturday morning and hunting for golf balls. (TR 150-151, RE 69-70). He had purchased them BB guns and they would go into the woods to shoot at targets. (TR 151, RE 70). He testified that he attended their sporting events and that afterwards the family would go out for pizza. (TR 152, RE 71). James said that the children had friends in the neighborhood and that they regularly interacted with them. (TR 152, RE 71). He testified that he was able to interact with the children and assist them with their homework even after having taken two puffs of marijuana. (TR 158-159, RE 76-77). He stated that after taking his few puffs of marijuana in the evening that he would go out and water his plants, that he would play with the children on the computer, or that they would go out and ride bikes or skateboards. (TR 212-214, RE 85-87). He said he would normally get home the same time each day and that the family ate dinner together at the table at least four times per week. (TR 213, RE 86). He said he never suffered an inability to attend to his family duties. (TR 214, RE 87). His children had no knowledge of his marijuana use. (TR 159, RE 77).

As to his relationship with his wife, he admitted that they had argued, but that it was because he felt that she was seeking to draw attention from other men and that at least one other man appeared interested in his wife. (TR 154-156, RE 72-74). He testified that they had another argument around Thanksgiving of 2008 after the divorce had been filed, but before the parties separated, because his wife had misled him as to where she was taking the children for the holiday and had, in fact, spent the day with the man of whom he was suspicious. (TR 161, RE

79). As such, the turmoil in the marriage was not caused by his marijuana use, but by his wife's deception and changing social morales.

As to his social activities, he stated that he was very active in his church. He attended services every Sunday, he served on the worship committee, and he belonged to a men's prayer group that he attended from time to time (TR 160, RE 78).

James also testified that he had stopped smoking marijuana in January of 2009 and that he did so because his children were getting older. (TR 137, RE 68). He admitted that he had quit in January of 2009 when he had not quit other times. (TR 137, RE 68). As to his cravings for marijuana during the marriage, he said he would quit from time to time, but that he was not addicted to marijuana, he did not have to have it every day and that his use was a casual thing. (TR 156-157, RE 74-75). He described the effects of his marijuana use as being a calming effect and less than that of having a couple of drinks at the end of the day. (TR 158, RE 76).

Miss. Code Ann. § 95-5-1 (1972) provides in pertinent part, "Divorces from the bonds of matrimony may be decreed to the injured party for .... Habitual and excessive use of opium, morphine or other like drug."

In *Ashburn v. Ashburn*, 970 So. 2d 204, 213, n. 7 (Miss. App. 2007) the Court held:

A grant of divorce on the ground of habitual and excessive drug use requires the complainant to "establish that the spouse's use of drugs (1) was habitual and frequent; (2) was excessive and uncontrollable; (3) and was of morphine, opium or drugs with the similar effect as morphine or opium." *Lawson v. Lawson*, 821 So.2d 142, 145(¶ 9) (Miss.Ct.App.2002) (citing *Ladner v. Ladner*, 436 So.2d 1366, 1375 (Miss.1983)).

*Ashburn*, 970 So. 2d at 213 (Miss. App. 2007).

Applying this standard to the case at hand, Mr. Carambat suggests that the Chancellor

erred in granting a divorce. He concedes that there was substantial proof his marijuana use was habitual. However, he takes exception that his wife proved her case on the remaining elements.

The agreed upon testimony at trial was; that he used marijuana prior to his marriage; that his marijuana usage remained consistent and did not increase after the marriage; that he bought a quarter ounce of marijuana each month, which was enough to make six or seven marijuana cigarettes; and, that he would take approximately two puffs each day after coming home from work. As to its effect on him, the testimony showed that he worked every day of the marriage except for brief periods of time when he lost employment due to his job being discontinued or the company going bankrupt. At the time of the divorce hearing, he had been employed by the same employer for several years since moving to the Diamondhead. There was disputed testimony regarding whether his marijuana use had affected his job performance. At trial, Stacy testified there had been one instance at work where he was demoted. James admitted he had been demoted for a mistake, but denied that it was due to his use of marijuana. In her deposition Stacy never mentioned the marijuana use when she was questioned about the demotion and she said she had no knowledge that it was caused because of marijuana use. Interestingly, Stacy did not choose to call anyone from James' employment to testify regarding this. Additionally, for at least a year and a half prior to her filing for divorce James had been reinstated to his previous position and salary. According to James, his marijuana smoking had no more effect upon him than did having a few drinks.

In construing the statute it must given its ordinary meaning. Miss. Code Ann. § 1-3-65 (1972) provides that "all words and phrases contained in the statutes are used according to their common and ordinary acceptance and meaning...." *Id.*

In *Ladner v. Ladner*, 436 So. 2d 1366 (Miss. 1983) this Court held, “We think that the term ‘excessive’ requires an abuse of drugs. In other words, the guilty spouse must be so addicted to the use of drugs that he cannot control his appetite for drugs whenever the opportunity to obtain drugs is present.” *Ladner*, 436 So. 2d at 1374 (Miss. 1983). In *Ladner, supra*, the Court noted that, “... [T]hat the mere use of drugs was not a ground for divorce, but that an abuse of them must be shown.” *Ladner*, 436 So. 2d at 1374 (Miss. 1983). To be certain, Miss. Code Ann. § 93-5-1 (1972) does not authorize a divorce because there has been some mere use of the prohibited drugs. The statute, by its very language, contemplates that a party may use morphine, opium or other like drug and could do so habitually and that alone would not meet the criteria for granting a divorce. A party seeking a divorce on such grounds is required to prove all three elements. *Ashburn v. Ashburn*, 970 So. 2d 204, 213 n. 7 (Miss. App. 2007). In the cases that have considered the question in this state, there has been clear evidence of the excessive nature of the drug use, uncontrollable nature of the addiction, and the adverse effect on the person using the drugs and the marriage. In *Ladner, supra*, the Court found:

Ladner ... sought and secured medication from several doctors for his condition. These medications included barbiturates and amphetamines ... [and] ... other drugs ... Dalmane, Librium, Ativan, Nalundar, Mellaril, Sinequan, Vivactil, Talwin, and Tylenol No. 3 with Codeine .... The testimony showed that Mr. Ladner was not truthful with his medical doctors concerning his frequency of use and dependency on these drugs. He exceeded the prescribed dosage.

The use of the drugs, although prescribed, affected Mr. Ladner's attitudes, actions, work habits, and family and social relationships. The work habits of Mr. Ladner became diminished with increased drug usage. He worked on an average of two days per week ... and other short irregular times. .... His wife ... recounted his activities at home as being hyperactive in the morning after taking Ritalin, and as being “immobile and non-functioning after taking his tranquilizers at the latter part of the day.” His non-business hours were spent at home in idleness or in agitation. ....



Social contacts with friends became nil. .... Mr. Ladner thought people were following him. Household valuables disappeared ... without explanation. The son's savings account was spent by Robert Ladner ....

Mrs. ... Ladner ... performed most of the duties and responsibilities for the child and home. .... She testified of her husband being violent and abusive to her in the presence of their son.

The child, Robert, was nervous. He did not have friends to visit him at home and was inclined to psychologically based physical complaints.

*Ladner*, 436 So. 2d at 1374 (Miss. 1983).

In *Ashburn v. Ashburn*, 970 So.2d 204 (Miss. App. 2007), the Court noted the following facts on the issue of the drug use being excessive.

He also testified that, since 2000, Mrs. Ashburn had been in rehab at least three times, but that none of these stints in rehab resulted in Mrs. Ashburn's conquering her drug addiction .... Mrs. Ashburn was self-medicating with her prescription drugs and taking such drugs in excess of the amount prescribed by her doctor .... He stated that Mrs. Ashburn continued to increase her drug dosages and that she started getting three month's worth of pills in a month through his insurance from work. Mr. Ashburn testified that the last time Mrs. Ashburn was in rehab was in February of 2004 due to her excessive use of prescription drugs. He stated that Mrs. Ashburn overdosed in the presence of P.J. and Emily sometime around January of 2004.

.... Mrs. Ashburn promised ... she would stop using drugs but that she had not .... Mrs. Ashburn entered a manic state in March 2005, during which time she was yelling at one time and sitting on the couch and drooling at another time .... Mrs. Ashburn was extremely over-medicated .... Mrs. Ashburn ... forged his name on checks written to a pharmacy and ... was facing forgery charges.

Denean Francis ... testified that she saw Mrs. Ashburn snort Oxycontin .... She also testified that, on December 18, 2003, Mrs. Ashburn stole a ... prescription for Lortab from her home and ... filled at the pharmacy .... Mrs. Ashburn told her that she stole the prescription so that she could commit suicide ....

*Ashburn*, 970 So. 2d at 208 (Miss. App. 2007).

Comparing the facts of these decisions to the case at bar demonstrates a clear distinction.

Mr. Carambat was not lying to obtain multiple prescriptions from various doctors without their knowledge. He was not abusing multiple substances. He had not become suicidal. He was not facing criminal charges. There was no testimony that his behavior had become erratic or that his work ethic suffered as a result of the marijuana usage. In fact, the testimony showed that he went to work every day, earned a good living, received promotions and pay raises and that he was an active and involved father and that for the year that the divorce was proceeding that he had shared joint physical custody on a week to week basis with his wife. The testimony shows that during the marriage he was involved in his church. He served on the church worship committee, he belonged to a prayer group and he attended services every Sunday. He was active around the home. He participated in household activities. He went fishing with his boys, he interacted with his family and children daily, the family ate dinner together frequently. He regularly attended the boys sporting events and went with the family to get celebrate afterwards. He got up each morning and went to work and came home at the same time most every night. His children and family were not socially isolated. On balance, the testimony shows a highly responsible and functioning adult member of society who is devoted to his family, children, work and church.

Beyond not proving that his drug use was excessive, Stacy failed to prove that his use of marijuana met the criteria of is an "other like drug" as stated in Miss. Code Ann. § 93-5-1 (1972). Initially, it should be noted that neither of the attorneys or the learned Chancellor were able to locate any decision where a spouse was granted a divorce solely because of marijuana use. Furthermore, there was no testimony presented by Stacy that marijuana was a drug like morphine or opium in its effect. As shown above, the testimony of the parties was reasonably in agreement and where there were disagreements they were relatively minor and explainable by

other circumstances. Overall though what is lacking in Stacy's proof is that her husband was incapacitated by his marijuana use. Additionally, she failed to prove any irrational behavior or that his marijuana use induced behavior which was "like in effect" to the use of morphine or opium. Such proof is necessary. In *Lawson v. Lawson*, 821 So.2d 142 (Miss. App. 2002) the Court held:

The *Ladner* court explained the language "other like drug" to mean "other like drug in effect." The *Lander* court further clarified that "[s]o far as the kind of drug is concerned, *chemical content is not important, but effect caused by use is the test.*" *Id.*

*Lawson*, 821 So. 2d at 145 (Miss. App. 2007). [Emphasis supplied].

In considering this element of the statute the Court in *Ladner v. Ladner*, 436 So.2d 1366 (Miss. 1983) focused on the effect the drug had on the alleged guilty spouse and not the technical chemical content of the drug itself. In other words, how the drug effects the person is the central focus. The *Ladner, supra*, Court went on to note:

In the scant number of ... cases which have addressed this problem, effect caused by use of the drug seems to be the key.<sup>FN6</sup> For example ... an individual may obtain a divorce from another whose use of drugs either "disqualifies the person a great portion of the time from properly attending to business," or inflicts "a course of great mental anguish upon the innocent party." N.D.Cent.Code § 14-05-08 (Supp.1981). In *Rindlaub, supra*, the Court noted that the defendant was an eye, ear and nose specialist who performed several successful surgeries on patients inspite of his morphine addiction. *The court then ruled that the plaintiff had failed to prove that the defendant was incapacitated or disqualified from attending to business a great portion of the time.*

<sup>FN6</sup>. The evil effects resulting from the continued and excessive use of opium or morphine are well known. They interfere as much, to say the least, with the happiness of married life, and produce other effects upon the marriage relation as deplorable, as those resulting from the excessive use of intoxicating liquors. *Gowey v. Gowey*, 191 Mass. 72, 77 N.E. 526 (1906) (defendant's appearance and conduct was attributed to addiction from excessive and continued use of opium).

We choose to construe the language "other like drug" as meaning "other like drug in effect." Consequently, *lower courts must find such adverse effects as those which would result from the habitual and excessive use of morphine or opium. Obviously, such factors as the guilty spouse's inability to support his wife and family or to properly attend to business should be considered. Additionally, the guilty spouse's incapacity to perform other marital duties or his causing the marital relationship to be repugnant to the innocent spouse are equally important.*

....

*Ladner*, 436 So.2d at 1374-75 (Miss. 1983). [Emphasis added].

As shown above, there was no credible evidence that Mr. Carambat's drug use interfered with his ability to support his family. Nor was there any substantial evidence that his actions had caused the marital relationship to become repugnant to his wife. Nor was there any proof of such adverse affects upon Mr. Carambat as would have resulted from the habitual and excessive use of morphine or opium. In fact, in the fifteen years they were married Stacy had never insisted that James stop using marijuana and that she had never threatened to leave him because of his marijuana usage. What does appear from the record is that his wife had become sexually withdrawn, that she had begun to devote more time to pursuing her own activities, and that in doing so she opened herself up to a relationship with another man and that was what ultimately led to the erosion of her feelings towards her husband. Mr. Carambat suggests that his minimal drug use was not the cause of the strife in the marriage. He was throughout the marriage a devoted husband and father who worked diligently to support his family.

#### CONCLUSION

James Carambat valued his family, worked hard to support them, was a dependable father and husband for over sixteen years. He was a respectable member of the community, attending church regularly and being involved in his parish. He was involved with his children, saw to

their needs, tended to their growth and development and religious upbringing. He was supportive of his wife, even though they had typical marital arguments, and wanted his marriage to work. As far as he knew things were agreeable between him and his wife and the argument which led to her asking for a divorce was after he questioned her activities with another man. In the evenings when his wife went out, she left him with the children and during their period of separation, he had joint physical custody of the children from week to week. His wife knew of his marijuana use before they married, he was above board with it throughout their marriage. His marijuana use did not increase. It did not affect his work. His wife never issued any demand that he quit or threatened to leave him. In light of these facts and taking into account the case law of this state, he submits that the Chancellor erred in granting her a divorce and he asks that this Court reverse the decision of the court below.

This the 9 day of February, 2011.

Respectfully submitted,

  
STEPHEN J. MAGGIO

CERTIFICATE

I, the undersigned, counsel of record for the Appellant certify that I have served a copy of the foregoing Brief, upon the following:

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Dated: February 9, 2011.

  
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