

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**HOMER D. THOMPSON, III**

**APPELLANT**

**VS.**

**CAUSE NO.:2010-CA-10351**

**STEPHEN M. BROWN AND TRUE TEMPER  
SPORT, INC. A/K/A TRUE TEMPER  
CORPORATION**

**APPELLEE**

**Appeal from the Circuit Court of Monroe County, Mississippi  
Cause No.:CV10-005-GM**

---

**REPLY BRIEF OF APPELLANT, HOMER D. THOMPSON, III**

---

**JEFFERY M. NAVARRO,  
ATTORNEY FOR THE APPELLANT,  
HOMER D. THOMPSON, III  
P.O. BOX 162  
AMORY, MS 38821  
662-256-3706  
Fax No.: 662-256-3706  
jeffnavarro53@att.net  
MBN [REDACTED]**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**HOMER D. THOMPSON, III**

**APPELLANT**

**VS.**

**CAUSE NO.:2010-CA-10351**

**STEPHEN M. BROWN AND TRUE TEMPER  
SPORT, INC. A/K/A TRUE TEMPER  
CORPORATION**

**APPELLEE**

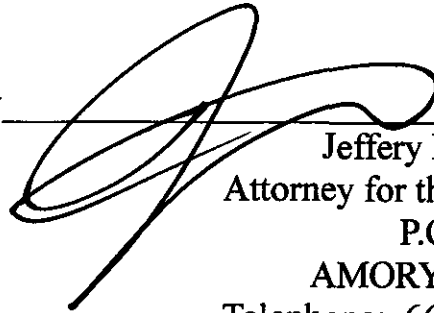
**CERTIFICATE OF INTERESTED PERSONS:**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Homer D. Thompson, III;
2. Jeffery M. Navarro;
3. Stephen M. Brown;
4. True Temper Sports, Inc., a/k/a True Temper Corporation;
5. Sheryl Bey; and
6. Kirk D. Tharp.

Respectfully Submitted,  
HOMER D. THOMPSON, III,  
Appellant

By

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Jeffery M. Navarro,  
Attorney for the Appellant

P.O. BOX 162

AMORY, MS 38821

Telephone: 662-256-3706

Facsimile: 662-256-3706

jeffnavarro53@att.net

MBN: 3755

## **TABLE OF CONTENTS:**

1. Certificate of Interested Persons.....	Page i
2. Table of Contents.....	Page iii
3. Table of Authorities.....	Page iv
4. Statement of the Issues.....	Page 1
5. Statement of the Case.....	Page 2
6. Statement of the Facts.....	Page 2
7. Summary of the Argument.....	Page 3
8. Argument.....	Page 5
9. Conclusion.....	Page 10
10. Certificate of Service.....	Page 11

## TABLE OF AUTHORITIES:

### A. TABLE OF CASES:

<i>Ashcroft v. Iqbal</i> , 129 S.Ct. 1937 (2009).....	page 7
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2008).....	page 7
<i>Children’s Medical Group, P.A. v. Phillips</i> , 940 So.2d 931, 933 (Miss., 2006).....	pages 3-5, 7-8
<i>Fitch v. Valentine</i> , 959 So.2d 1012 (Miss. 2007).....	page 7
<i>Kirk v. Koch</i> , 607 So.2d 1220 (Miss. 1992) .....	ages 6-7
<i>Saunders v. Alford</i> , 607 So.2d 1214,1215 (Miss., 1992).....	page 6

### B. STATUTES:

### C. RULES:

<i>M.R.C.P.</i> 8.....	pages 5-6
<i>M.R.C.P.</i> 12 .....	pages 1, 3,5-6

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**HOMER D. THOMPSON, III**

**APPELLANT**

**VS.**

**CAUSE NO.:2010-CA-10351**

**STEPHEN M. BROWN AND TRUE TEMPER  
SPORT, INC. A/K/A TRUE TEMPER  
CORPORATION**

**APPELLEE**

**Appeal from the Circuit Court of Monroe County, Mississippi  
Cause No.: :CV10-005-GM**

---

**BRIEF OF APPELLANT, HOMER D. THOMPSON, III**

---

**STATEMENT OF THE ISSUES:**

1. Is there a set of facts which would support a claim against the Defendant, TRUE TEMPER SPORTS, INC.?

A) In General, for negligence, under *M.R.C.P.* 12 (b)(6)?

B) Under a Theory of Vicarious Liability?

**STATEMENT OF THE CASE:**

**A. NATURE OF THE CASE, COURSE OF THE PROCEEDINGS, AND  
DISPOSITION IN THE COURT BELOW:**

Thompson, the Appellant, (hereinafter “Thompson”) relies upon his rendition of the Statement of the Case regarding the “Nature of the Case, Course of the Proceedings, and Disposition in the Court Below” as set forth in his original Brief.

**B. STATEMENT OF THE FACTS:**

Thompson relies upon his rendition of the Statement of the Case regarding the “Statement of the Facts” as set forth in his original Brief.

### **SUMMARY OF THE ARGUMENT:**

There are two (2) separate theories of liability as to the Appellee, TRUE TEMPER SPORT, INC., (hereinafter “True Temper”). The first is under a general negligence theory. The second is as to vicarious liability.

The Supreme Court has recently and clearly ruled that an alienation of affections claim against an employer for general negligence should survive a Motion to Dismiss under *M.R.C.P.* 12 (b)(6). *Children’s Medical Group, P.A. v. Phillips*, 940 So.2d 931, 933 (Miss., 2006).

The standard of review which the trial court should have applied to the Appellant’s complaint pursuant to *M.R.C.P.* 12 (b)(6) was that “it must appear to a *certainty* that the plaintiff is entitled to *no relief under any set of facts* that could be proved in support of the claim.” *Children’s Medical Group, P.A. v. Phillips*, 940 So.2d 931, 933 (Miss., 2006). The trial court failed to employ this standard in the case before it. As in *Children’s Medical Group, P.A., supra.*, it is not possible for the Court to say that “there are no possible facts which could result in” TRUE TEMPER SPORT, INC.’s “liability for alienation of affections.” *Id.* at 935.



As to the sustainability of Thompson's complaint under a theory of vicarious liability, admittedly the Court's ruling in *Children's Medical Group, P.A., supra.*, appears to be a barrier. However, the unique position occupied by the co-defendant/ Appellee, Stephen M. Brown, as both the plant manager and head of human resources for the True Temper creates a factual situation making the applicability of vicarious liability to Thompson's claim reasonable.

## **ARGUMENT:**

### **A. ISSUE I:**

**Is there a set of facts which would support a claim against the Defendant, TRUE  
TEMPER SPORTS, INC.?**

#### **A) In General under *M.R.C.P.* 12 (b)(6)?**

As a general proposition, Thompson does not take issue as to the law which True Temper cites in its Brief regarding pleading under *M.R.C.P.* 8. However, Thompson does dispute True Temper's effort to contend that he did not plead a case for alienation of affection in his Complaint against True Temper.

Despite True Temper's smoke and mirrors campaign to the contrary, Thompson's Complaint is sustainable under *Children's Medical Group, P.A. v. Phillips*, 940 So.2d 931 (Miss. 2006). True Temper has tried ably to re-create the law of pleading a case for alienation of affection against a paramour and his employer in spite of the Supreme Court's recent decision in *Children's Medical Group, P.A.*, *supra*. Nonetheless, True Temper's circuitous efforts must fail inasmuch as the Court is bound to follow the Supreme Court's prior controlling decision.

True Temper has cited a variety of alienation of affection cases which set out the burden of proof which a plaintiff must meet in order to prove such a claim.

*Saunders v. Alford*, 607 So.2d 1214,1215 (Miss., 1992) for the proposition that Thompson must: 1) identify True Temper's wrongful conduct; 2) establish his wife's loss of affection or consortium; and 3) a causal connection between the conduct and the loss. *Saunders, supra*, went to trial before a jury on the issues of alienation of affection and criminal conversation. The plaintiff lost on the issue of alienation of affection. On appeal, the plaintiff did not challenge the jury's findings, and the Court noted:

We are not here concerned with the tort of alienation of affections. That cause was decided adversely to the plaintiff and he does not challenge that disposition by cross appeal. Our task is but to consider the extent to which it is advisable to judicially abolish the tort of criminal conversation and whether we have the authority to do so.

*Id* at 1218.

As a result, *Saunders, supra*, is not instructive to the Court on the issues before it vis-a- vis *M.R.C.P.* 12 or *M.R.C.P.* 8.

True Temper has cited *Kirk v. Koch*, 607 So.2d 1220 (Miss. 1992) for the proposition that Thompson must prove that the his wife was induced to abandon

him due to some direct act on the part of True Temper. *Kirk*, did not concern a corporate defendant. Moreover, in *Kirk* the case went to trial, and the issue on appeal was whether the evidence adduced at trial was sufficient to make a prima facie case of alienation of affection.

Also relied upon by True Temper is *Fitch v. Valentine*, 959 So.2d 1012 (Miss. 2007). However, as with the other cases cited by True Temper, the parties in *Fitch* went to trial before a jury. The case is not an adequacy of pleading case such as *Children's Medical Group, P.A., supra*, which is not supportive of True Temper's position. Instead, *Fitch, supra*, concerns itself with whether alienation of affection should exist as a tort in Mississippi. *Id.* at 1019.

True Temper's efforts to discredit the Court's ruling in *Children's Medical Group, P.A., supra*, is misplaced. The U.S. Supreme Court's decisions in *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2008), would not have affected the *Children's Medical Group, P.A., supra* Court's decision on the issue of alienation of affection. To consider otherwise is speculation at its best.

True Temper relies upon these case to support its contention that “Thompson’s complaint must allege specific facts showing True Temper’s intentional wrongful conduct that persuaded Barbara to commence an extramarital affair with Brown. It does not.” (True Temper’s Brief at page 4). That contention flies in the face of what the Supreme Court found sufficient in the *Children's Medical Group, P.A., supra*.

## B. ISSUE II:

2. Is there a set of facts which would support a claim against the Defendant, TRUE

TEMPER SPORTS, INC.?

B) Under a Theory of Vicarious Liability?

As Thompson has admitted previously in his original Brief consistent with the Court’s ruling in *Children’s Medical Group, supra*, the concept of holding an employer liable in the area of alienation of affection under a theory of vicarious liability for the acts of an employee should not normally be tenable. However, uniquely in this case, the paramour in question not only served as the plant manager of True Temper’s plant where the relationship between Brown and Thompson’s wife began, but he also served as the corporate vice-president of True

Temper and the head of its Human Resources department. As such, Brown was the enforcer of True Temper charged with stopping employees from developing relationships such as he developed with Thompson's wife. As a general proposition, it is unequivocally true as True Temper argues and the case law points out, that employers are not in the "business" of promoting affairs between their employees; and therefore, employers should not be liable to a cuckold for alienation of affection. It is equally true, as a general proposition, that the public expects that such an atmosphere would not be tolerated in a work place. That is to say, a spouse has peace of mind in knowing that an employer would not tolerate an affair between his/her spouse and a fellow employee. This peace of mind would be even greater when the employer is a large enough entity to have a human resources department. Uniquely in this case, True Temper's enforcement officer, the person charged with rooting out affairs between employees and putting an end to those relationships, was the person having the affair with the fellow employee. This case is one in which the fox was left to guard the henhouse.

**CONCLUSION:**

The Court should reverse the lower Court's ruling on both theories of Thompson's case. The Court should allow Thompson to proceed in this case and do discovery. Relevant discoverable facts are available, and Thompson should not be denied his day in Court.

Respectfully submitted,  
HOMER D. THOMPSON, III,  
APPELLANT



---

JEFFERY M. NAVARRO,  
ATTORNEY FOR THE PLAINTIFF

P.O. BOX 162  
AMORY, MS 38821  
662-256-3706  
Fax No.: 662-256-3706  
jeffnavarro53@att.net  
MBN: [REDACTED]

CERTIFICATE OF SERVICE

I, Jeffery M. Navarro, Attorney for the Plaintiff, do hereby certify that I have this day mailed, by U.S. Mail, first class, postage prepaid, a true and correct copy of the above and foregoing APPELLANT'S REPLY BRIEF to the following at their usual addresses:

Hon. Sheryl Bey  
P.O. BOX 14167  
Jackson, MS 39236

Hon. Kirk D. Tharp  
P.O. BOX 7332  
Tupelo, MS 38802

Hon. Thomas J. Gardner, III  
Monroe County Circuit Judge  
P.O. BOX 1100  
Tupelo, MS 38802-1100

CERTIFIED, this the 11<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
Jeffery M. Navarro