

**IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO. 2010-CA-01939**

MONA CATES

APPELLANT/CROSS APPELLEE

v.

ELIZABETH SWAIN


APPELLEE/CROSS APPELLANT

**ON APPEAL FROM THE CHANCERY COURT
OF TATE COUNTY, MISSISSIPPI,
CHANCELLOR PERCY L. LYNCHARD, PRESIDING**

REPLY AND CROSS APPELLEE BRIEF

Oral Argument Requested

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTRODUCTION.....	1
ARGUMENT.....	1
I. MISSISSIPPI LAW REPUDIATES THE HOMOSEXUAL RELATIONSHIP UPON WHICH SWAIN BASES HER CLAIMS FOR RELIEF	1
II. THE EVIDENCE ADDUCED AT TRIAL FAILS TO SUPPORT SWAIN'S UNJUST ENRICHMENT AWARD	5
III. THE CHANCERY COURT CORRECTLY DENIED SWAIN'S REQUEST FOR THE IMPOSITION OF A CONSTRUCTIVE AND/OR RESULTING TRUST	9
CONCLUSION	13
CERTIFICATE OF FILING AND SERVICE	16

TABLE OF AUTHORITIES

Cases	Page
<i>Allgood v. Allgood</i> , 473 So.2d 416 (Miss. 1985).....	11
<i>Allred v. Fairchild</i> , 785 So.2d 1064 (Miss. 2001).....	11
<i>Davis v. Davis</i> , 643 So.2d 931, 935-936 (Miss. 1994)	3, 5, 7
<i>In the Matter of the Estate of Gates</i> , 876 So.2d 1059 (Miss. App. Ct. 2004).....	11
<i>In the Matter of the Estate of Hood</i> , 955 So.2d 943 (Miss. Ct. App. 2007).....	11
<i>In the Matter of the Estate of Horrigan</i> , 757 So.2d 165, 170 (Miss. 2000).....	10, 11
<i>Koval v. Koval</i> , 576 So.2d 134 (Miss. 1991).....	7, 11
<i>McNeil v. Hester</i> , 753 So.2d 1057, 1064 (Miss. 2000).....	9, 10, 11
<i>Nichols v. Funderburk</i> , 881 So.2d 266, 270 (Miss. Ct. App. 2004).....	3
<i>Russell v. Douglas</i> , 138 So.2d 730 (Miss. 1962).....	11
<i>Saulsberry v. Saulsberry</i> , 78 So.2d 758 (Miss. 1955).....	10
<i>Sojourner v. Sojourner</i> , 153 So.2d 803, 807-809 (Miss. 1963)	9, 10, 11
<i>Thornhill v. Thornhill</i> , 905 So.2d 747 (Miss. Ct. App. 2004).....	11
Constitution	
Article 14 Section 263A	2

TABLE OF AUTHORITIES

	Page
Statutes	
Miss. Code Ann. § 79-13-202	4
Miss. Code Ann. § 79-13-306(1).....	4
Miss. Code Ann. § 79-13-401(f)	4
Miss. Code Ann. § 93-1-1(2) (2004)	2
Miss. Code Ann. § 97-29-1	3

INTRODUCTION¹

This Court must reverse Swain's unjust enrichment award. The reversal either must vacate outright Swain's unjust enrichment award on the ground that Swain's Complaint fails to state a recognizable cause of action under applicable Mississippi law or, in the alternative, reverse the unjust enrichment award, remanding the case to the Chancellor with directions to enter an unjust enrichment award in favor of Cates in the amount of \$303,985.31. In either event, this Court should award attorney fees and costs to Cates for this appeal and remand the case to the Chancellor directing him to award attorney fees and costs to Cates for the proceedings in the Chancery Court.

ARGUMENT

I. MISSISSIPPI LAW REPUDIATES THE HOMOSEXUAL RELATIONSHIP UPON WHICH SWAIN BASES HER CLAIMS FOR RELIEF

At the outset of her brief, Swain admits that she bases her claims for relief upon "a loving, trusting, and cohabitative relationship" with Cates that began when she and "Cates met and began dating" and that lasted five years. Swain Br. at 3. The evidence before the Chancellor clearly established, and Swain does not dispute the fact, that the "loving, trusting, and cohabitative relationship" referenced in Swain's brief constitutes her five year homosexual relationship with Cates. R. 0557-0558.

In early 2000, Swain solicited a same sex partner with an internet advertisement where she represented herself as a single lesbian seeking another female for a long term "monogamous" relationship in which she "want[ed] to have or adopt kids." R. 032-33; R. 0420-0421; Tr. 84-85. Cates responded to Swain's solicitation. R. 0421-0424; Tr. 17. After meeting Cates, Swain

¹ Swain filed a "reply" and "appeal brief". Swain's brief is not, in part, a "reply" brief. Rather, it is an appellee brief. Miss. R. App. P. 28. Moreover, Swain's cross appeal brief at filing failed to include a requisite "Statement of Issues." *Id.* At the direction of the Court, Swain later supplied a "Statement of Issues" for her cross appeal brief. Hereafter, Swain's brief shall be referenced as "Swain Br. at ____."

showered Cates with e-mails in which she professed, among other things, her love of Cates, her intent to make Cates her wife and her hope that their homosexual relationship would last forever. R. 0423-0435; R. 0557-0560. Swain conceded that her e-mails to Cates accurately described her relationship with Cates. R. 0557-0558. Eventually Swain and Cates began a sexual homosexual cohabitation that spanned six years. Other than their homosexual cohabitation there was no other relationship between Swain and Cates. In Swain's mind her homosexual cohabitation with Cates formed a confidential and fiduciary relationship between them that entitled Swain to a joint interest in property purchased during the cohabitation, regardless of the fact that she contributed nothing to the purchase, and to having Cates provide her a residence. R. 012; R. 0557-0558.

In September 2005, Swain retired from the military. R. 0542-0543. After retirement, she refused to work. R. 0560; Tr. 199. She began drinking alcohol heavily and arguing with community residents. Tr. 199. These events led Cates to terminate her homosexual relationship with Swain. R. 0543-0544; R. 0560-0562. Thereafter, Swain left Mississippi and once again started soliciting on the internet for another lesbian lover. R. 0570. In addition, Swain initiated the lawsuit underlying this appeal seeking a property settlement from the termination of her homosexual relationship with Cates, "including but not limited to" a joint interest in "a 2002 Volkswagen Cabrio, two Chihuahua dogs, . . . an E-Trade Account" and "[her] portion of any and all property, monies or other tangible items acquired during" her homosexual relationship with Cates, regardless of whether she participated in the acquisition of the property. R. 012; R. 049.

Mississippi law, both constitutional and statutory, bans homosexual marriages as a matter of public policy. Article 14, Section 263A of the Mississippi Constitution; Miss. Code Ann. §§ 93-1-1(2)(2004). Moreover, Mississippi law rejects mere cohabitation as an acceptable relationship, abolishing common law marriages between a man and a woman as early as 1956

and even making it a crime for a man and a woman to cohabit. Miss. Code Ann. §§ 97-29-1. Clearly, Mississippi public policy which rejects homosexual marriages repudiates cohabitation between two homosexuals as a recognizable relationship creating property rights under Mississippi law. As a consequence, Mississippi law prohibits the provision of equitable rights to another participant in a homosexual relationship upon the termination of that relationship.

It makes no difference whether the homosexual relationship involves “domestic contributions,” “rendered services” or “financial contributions.” *Nichols v. Funderburk*, 881 So.2d 266, 270 (Miss. Ct. App. 2004). Provision of property rights involves “public policy questions . . . [that] are best left to the legislative process . . . [and courts] are unwilling to extend equitable principles” to relationships either specifically rejected by the legislature or that the legislature refuses affirmatively to adopt. *Davis v. Davis*, 643 So.2d 931, 935-936 (Miss. 1994).

Initially, the Chancery Court recognized the prohibition against equitable relief from the dissolution of a homosexual relationship. In denying Cates’ early motion to dismiss Swain’s complaint it stated:

. . . the Mississippi Constitution prohibits homosexual marriage, and that the appropriate case law . . . *Davis v. Davis* prohibits unmarried persons from seeking equitable relief by way of palimony or otherwise . . . Certainly, there can be no equitable relief based on [a homosexual] relationship . . .

R. 088-089; R. Exc. III and IV. However, when deciding the case after trial for Swain, the Chancellor inexplicably ignored the evidence, including Swain’s admission, establishing Swain’s homosexual relationship with Cates as the basis for Swain’s claims for relief and the law barring such claims. Tr. 213. It disguised the monetary award to Swain as an unjust enrichment award when, in fact, it constituted equitable relief arising from the termination of a homosexual

cohabitation.² Left uncorrected, the Chancery Court's action threatens a calamitous flood of palimony suits disguised as unjust enrichment claims from the termination of common law marriages and/or homosexual marriages or cohabitations. It also makes a mockery of Mississippi public policy as established by the Mississippi legislature. The Chancellor clearly committed reversible error in providing Swain an unjust enrichment award.

According to Swain "[t]he fact that Swain and Cates maintained a homosexual relationship . . . is not the central issue in this matter . . . It was Cates' clear abuse of this confidential relationship that prompts this Court's intervention and an equitable division of assets among the parties." Swain Br. at 19. Respectfully, if the homosexual relationship between Swain and Cates is not the central issue, how can the "clear abuse" of that relationship give rise to any rights. Moreover, the relationship between parties is the "central issue" when determining the rights that arise from the relationship. Banned relationships do not give rise to rights. Otherwise the relationships would not be banned. Homosexual relationships, whether marriages or cohabitations, are repudiated specifically by Mississippi law. As such, no rights flow from the relationships to any of the participants.

² In denying Cates' Motion to Dismiss Swain's Complaint, the Chancery Court held that there remained the question of whether two homosexuals, totally separate and apart from a homosexual marriage or cohabitation, could enter into a partnership or joint venture and whether Cates and Swain, in fact, had done just that. The evidence at trial clearly refuted that Cates and Swain had entered into a partnership or joint venture apart from their homosexual cohabitation. First, Swain admitted that her relationship with Cates was based on their homosexual cohabitation. R. 0557-0558. Moreover, the evidence established that there was no business purpose underlying the relationship between Cates and Swain as is required by the Mississippi Partnership Act. Miss. Code Ann. §§79-13-202. Rather, according to Swain, her relationship with Cates required Cates to provide her a residence for life, hardly a business for profit. R. 012. Similarly, the purchase of residences by both Cates and Swain provided neither with the right of mutual control and joint obligation and liabilities over the other's purchase, a necessary element of a partnership or joint venture under the Mississippi Partnership Act. Miss. Code Ann. §§79-13-306(1) and 79-13-401(f). Because of the evidence, the Chancery Court could not and did not find that a partnership or joint venture existed between Cates and Swain apart from their homosexual cohabitation. Thus, the Chancery Court eliminated the only basis for relief that it said possibly existed at the time it denied Cates' Motion to Dismiss the Complaint.

Swain attempts to distinguish *Davis v. Davis*, 643 So.2d 931 (Miss. 1994). The attempt is unavailing. According to Swain the *Davis* Court recognized "a trust agreement" in the cohabitation of a man and a woman but denied relief from the dissolution of the cohabitation on the ground that the common law wife already had received her "fair share" from the relationship. Swain Br. at 13. Nothing could be further from the truth. In the closing paragraph of its opinion, the *Davis* Court stated:

Our legislature has not extended the rights enjoyed by married people to those who choose merely to cohabit. To the contrary, cohabitation is still prohibited by statute. Elvis was well compensated during and after the relationship. We see no reason to advocate any form of "palimony," when the legislature has not spoken.

Davis v. Davis, 643 So.2d at 936. In other words, it was the legislature's action that determined that cohabitation did not give rise to rights, not the monies received during the relationship. Since the legislature rejects cohabitation as a recognizable relationship under Mississippi law, there was no basis to provide equitable relief from the dissolution of the cohabitation.

Since Swain admittedly bases her claims for relief on a barred homosexual relationship under Mississippi law, she fails to state an actionable claim. Accordingly, this Court must reverse the Chancery Court's unjust enrichment award in Swain's favor, award attorney fees and costs to Cates for this appeal and remand the case to the Chancery Court with directions to the Chancellor to dismiss Swain's Complaint and to award attorney fees and costs to Cates for the Chancery Court proceedings.

II. THE EVIDENCE ADDUCED AT TRIAL FAILS TO SUPPORT SWAIN'S UNJUST ENRICHMENT AWARD

Swain spends just one page defending her unjust enrichment award. Swain Br. at 18. Swain litters her meager defense with broad conclusory statements such as "Cates was clearly unjustly enriched . . .," "Cates was substantially enriched," "Swain invested a substantial amount

of money, labor, materials, and time into acquiring and improving . . . real and personal property” and “[t]he learned chancellor’s decision that unjust enrichment has occurred is clearly supported by the facts.” *Id.* Absent from Swain’s conclusory statements is any analysis and review of the actual evidence adduced at trial. There is good reason for the glaring omission. The evidence in this case absolutely fails to support Swain’s unjust enrichment award.

First, Swain even refuses to correct the obvious mathematical mistake made by the Chancellor in computing the \$44,995 unjust enrichment award he rendered for Swain, stating “this court should at a bare minimum affirm the Chancellor’s judgment in the amount of \$44,995.00.” Swain Br. at 18-19. According to the Chancellor, the \$44,995 included (1) a purported \$38,000 payment Swain provided Cates, (2) a \$5,000 payment Swain provided Cates, (3) \$4,449 spent by Swain for the purchase of carpet for Cates and (4) a credit of \$2,500 to Cates for her payment of the escrow money on Swain’s purchase of her Florida residence. R. 0172; Appellant/Cross Appellee R. Exc. 2. The payments utilized by the Chancellor to reach \$44,995 do not equal \$44,995. Rather, those amounts total \$44,949. Thus, just based on the use of simple addition and subtraction, the evidence fails to support Swain’s \$44,995 unjust enrichment award.

In addition to an arithmetic mistake, the Chancellor erred in the amounts used by him to reach the Swain unjust enrichment award. Swain never paid Cates \$38,000. Rather, Swain provided Cates \$34,000 after Swain’s sale of her Florida residence. Tr. 30. Similarly, Cates did not make a \$2,500 escrow payment for Swain. It was a \$2,000 payment. Tr. 31. When the correct amounts are included in the Chancellor’s unjust enrichment calculation, the correct amount totals \$41,449 – not \$44,995. As with the Chancellor’s arithmetic miscalculation, Swain ignores the use of blatantly incorrect monetary amounts.

Arithmetic miscalculation and the use of incorrect amounts aside, the real problem with the Chancery Court's unjust enrichment award lies in its failure to credit Cates and Swain with all the money they spent to promote, facilitate and maintain their homosexual cohabitation. An unjust enrichment award requires that the Court credit all parties with their contributions to a venture. *Koval v. Koval*, 576 So.2d 134, 138 (Miss. 1991) (all monies paid by the parties shows or does not show unjust enrichment). Picking and choosing between contributions made by the concerned parties hardly constitutes the "just" calculation of enrichment. When all monies are included that were paid to promote, facilitate and maintain their homosexual cohabitation, the result shows that Swain, NOT Cates, was unjustly enriched by Cates in the amount of \$303,985.31. To borrow a phrase from Swain's brief when discussing the *Davis* case, Swain already has received her "fair share" from Cates and thus is entitled to no more. Swain Br. at 13. Indeed Swain owes Cates.

In Florida, Swain purchased a residence at which Cates lived rent free. Swain alone financed the purchase. She paid all costs attributable to the purchase, including mortgage payments, both principal and interest payments, real estate tax payments and a mortgage pay-off payment at the time Swain sold the residence. The total costs paid by Swain amounted to \$115,041.95, an amount that clearly benefited Cates.

While in Florida, however, Cates made payments to assist Swain in purchasing and maintaining the Florida residence, as well as making payments on other items that directly benefited Swain. Thus, Cates deposited \$32,940 into a Florida bank account on which both Swain's and Cates' names appeared. Swain deposited no monies into the account. Of the \$32,940, \$29,359.29 was utilized to maintain Swain's residence. In addition, Cates purchased a Mercedes for Swain that cost \$38,306.08 with finance charges. Cates paid \$11,000 in cash to reduce the financed purchase price. In conjunction with the Mercedes purchase, Cates cancelled

a \$10,400 car note that Swain owed on a RAV4. Ultimately, Swain traded the Mercedes in on the purchase of a Lexus. Cates also paid \$2,953.36 for insurance for Swain's vehicle. Finally, Cates paid the \$2,000 escrow payment on Swain's purchase of the Florida residence. In total, Cates provided Swain \$55,712.65 in benefits while cohabitating with her in Florida. When that amount is deducted from the \$115,041.95 spent by Swain on the purchase of the Florida residence, the amount remaining that enriched Cates equals \$59,329.30.

Washington and Mississippi present a different result. There, Cates purchased residences, paying all costs attributable to those purchases. That cost figure equals \$415,741.64, an amount that does not include other costs Cates paid that are attributable to the maintenance of those residences. Tr. 193-194; Tr. 198. Swain, on the other hand, claims that she "invested time, money and materials into the real property [in Washington and Mississippi] in excess of \$71,439.39, plus paid utilities in the approximate amount of \$7,080, and paid car insurance payments on the parties' vehicles, including her own car, in the approximate amount of \$4,500." Swain Br. at 15. Swain's claimed costs are not supported by the evidence. Swain Br. at 15.³ The only costs actually paid by Swain that she could document from the Washington and Mississippi residences amounted to \$52,427. R. 0541-0543; Tr. 35-36; Tr. 51-56; and Tr. 135.

When the actual cost figures paid by Swain and Cates in Florida, Washington and Mississippi are combined, the totals reflect that Cates paid \$471,454.29 in costs from which Swain benefited⁴ and that Swain paid \$167,468.98 in costs from which Cates benefited. Those figures, in turn, show that Swain, not Cates, was unjustly enriched from her homosexual habitation with Cates in the amount of \$303,985.31.

³ Swain's record citations on her claimed costs do not support her paid cost contention.

⁴ Swain does not dispute the actual costs paid by Cates.

The Chancery Court's unjust enrichment award in favor of Swain fails to account for all monies paid by Swain and Cates during their homosexual cohabitation. Assuming the doctrine of unjust enrichment can be used to thwart the public policy of Mississippi against homosexual relationships and the provision of equitable rights to those relationships, this Court must vacate and reverse the Swain unjust enrichment award and remand the case to the Chancery Court with directions that the Chancellor enter an unjust enrichment award in Cates' favor in the amount of \$303,985.31 and award attorney fees and costs to Cates for the proceedings in the Chancery Court. In addition, this Court should award attorney fees and costs to Cates for this appeal.

III. THE CHANCERY COURT CORRECTLY DENIED SWAIN'S REQUEST FOR THE IMPOSITION OF A CONSTRUCTIVE AND/OR RESULTING TRUST

At trial, the Chancery Court denied Swain's request for imposition of a constructive and/or resulting trust. R. 0171; Appellant/Cross Appellee R. Ex. 2. Specifically, the Chancery Court found that Swain failed to prove fraud or abuse and that neither Swain nor Cates held title to real property for the benefit of the other. *Id.* The Chancery Court's findings should be affirmed.⁵

The Chancery Court's finding is subject to a limited standard of review. "The findings of a chancellor will not be disturbed on review unless the chancellor was manifestly wrong, clearly erroneous, or applied the wrong legal standard." *McNeil v. Hester*, 753 So.2d 1057, 1063 (Miss. 2000). In short, this Court reviews the chancellor's findings for "abuse of discretion." *Id.*

Constructive and resulting trusts are creatures of equity designed to protect participants in established and legally recognized relationships from wrongful deprivations of property rights arising from those relationships. *Sojourner v. Sojourner*, 153 So.2d 803, 807-809 (Miss. 1963). The requisite elements of a constructive and resulting trust include (1) a "technical fiduciary

⁵ Swain cross appealed the Chancery Court's September 30, 2010 decision. Thus, Cates addresses the part of that decision adverse to Swain.

relationship” or “an informal relationship where one person trusts in and relies upon another, whether the relation is moral, social, domestic or merely personal”, (2) an enforceable agreement or promise, (3) a breach of the agreement or promise, (4) fraud, abuse or duress, and (5) unjust enrichment. *Sojourner v. Sojourner*, 153 So.2d at 807-808 (relying in part on *Saulsberry v. Saulsberry*, 78 So.2d 758 (Miss. 1955)). Each element must be established by clear and convincing evidence. *McNeil v. Hester*, 753 So.2d 1057, 1064 (Miss. 2000), *In the Matter of the Estate of Horrigan*, 757 So.2d 165, 170 (Miss. 2000).

Swain failed to prove any of the requisite elements for the establishment of a constructive or resulting trust. First, Swain bases her claim for the imposition of a constructive or resulting trust on her five year lesbian relationship with Cates. In her complaint and in her appellate brief to this Court, Swain alleges that she and Cates were “cohabitants.” She also admitted that her amorous e-mails to Cates in which she professes her love and her desire for a long term relationship, including marriage, “reflect” and “evidence” the confidential and fiduciary relationship alleged in the complaint. R. 0558. Mississippi public policy, however, renounces homosexual relationships and refuses to accord such relationships any rights under Mississippi law. As a consequence, Swain’s homosexual cohabitation with Cates cannot support the imposition of either a constructive or a resulting trust.

While Swain wants this Court to ignore her homosexual relationship with Cates, it cannot. Other than Swain’s lesbian relationship with Cates, there was no other relationship between them. They had no recognizable family relationship. They certainly were not partners or joint venturers in a business for profit in which they shared joint obligations and liabilities as required by the Mississippi Partnership Act. Swain’s complaint alleged, and it was Swain’s unrealistic and unsupported belief as born out by the evidence, that it was incumbent on Cates to provide her a residence, apparently in perpetuity; to purchase personal property for her, such as

the Volkswagen Cabrio in which Swain invested nothing but claims one-half interest and to invest in an E-Trade account solely using her own funds for Swain's benefit. Expenditures of money to promote, facilitate and maintain a lesbian relationship do not constitute "a business for profit," in which joint obligations and liabilities are shared or an enforceable promise supporting the imposition of a constructive or resulting trust. Such expenditures violate Mississippi public policy and, therefore, do not create any rights. That Swain left Mississippi and immediately began seeking a lesbian relationship by posting her profile once again on the Internet proves conclusively the nature of her lost relationship with Cates.

Every case upon which Swain relies for the imposition of a constructive or resulting trust involves relationships recognized by Mississippi law as a basis to create rights. *Allred v. Fairchild*, 785 So.2d 1064 (Miss. 2001) (twenty year business associates); *In the Matter of the Estate of Horrigan*, 757 So.2d 165 (Miss. 2000) (grandchildren and grandparent); *McNeil v. Hester*, 753 So.2d 1057 (Miss. 2000) (niece and nephew); *Koval v. Koval*, 576 So.2d 134 (Miss. 1991) (parents and sons); *Allgood v. Allgood*, 473 So.2d 416 (Miss. 1985) (mother and son); *Russell v. Douglas*, 138 So.2d 730 (Miss. 1962) (aunt and nephew); *Sojourner v. Sojourner*, 153 So.2d 803 (Miss. 1963) (sister and brother); *In the Matter of the Estate of Hood*, 955 So.2d 943 (Miss. Ct. App. 2007) (father and child); *Thornhill v. Thornhill*, 905 So.2d 747 (Miss. Ct. App. 2004) (son and stepmother); *In the Matter of the Estate of Gates*, 876 So.2d 1059 (Miss. App. Ct. 2004) (cousins). In contrast, Mississippi law specifically repudiates the relationship upon which Swain relies to create rights. *See, infra*, at pp. 1-6.

In addition to her failure to prove a relationship which could form the basis of a constructive or resulting trust, Swain failed to prove an enforceable promise under Mississippi law. An agreement between two lesbians to cohabit violates Mississippi public policy against homosexual cohabitation. Moreover, Cates provided Swain a residence for 2 1/2 years in

Washington and Mississippi, respectively, rent free. Swain did not participate in the financing of the property. That Swain provided funds to help support herself does not provide a basis for a constructive trust. That Cates stopped providing Swain a residence upon the dissolution of their five year lesbian relationship does not constitute a breach of an enforceable promise. Rather, it reflects a consequence flowing from the end of their lesbian relationship.

Swain also failed to establish any fraud or abuse in a breach of an enforceable promise, the grounds upon which the Chancery Court based its denial of a constructive trust. When Swain and Cates moved from Washington to Mississippi, Swain retired from the military. Her income became approximately \$18,000 a year. She was fully aware that Cates alone financed the purchase of the Mississippi residence and titled the property in her, Cates', name only. Swain lived in Mississippi rent free, refusing to obtain employment. She began drinking alcohol heavily by her own admission. She became abusive to the neighbors. Not surprisingly, the lesbian relationship between Swain and Cates ended with Swain voluntarily leaving Mississippi, after Cates "removed Swain" from Cates' home. Swain Br. at 12. There absolutely was no fraud or abuse shown. Rather, rational reasons supported the termination of the lesbian relationship between Swain and Cates.

Finally, neither Swain nor Cates ever held title to property for the other. When Swain purchased the Florida residence, her name appeared on the purchase and sale documents; she paid the mortgage and real estate taxes and her name alone appeared on the title. Though Cates funded a Florida bank account to assist Swain in paying costs attributable to the Florida residence, including expenses for capital improvements to increase the value of the residence and provided other financial benefits to Swain, including the cancellation of a car lease, the purchase of a car and the payment of insurance, Swain considered herself the legal owner of the Florida

residence. Cates merely resided at the house rent free providing financial assistance to promote, facilitate and maintain her lesbian relationship with Swain.

When Cates bought residences in Washington and Mississippi, her name alone appeared on the purchase documents; her name only appeared on the mortgage, she paid all mortgage and real estate tax payments and her name solely appeared on the title. Swain lived rent free in both residences, and provided some financial assistance in the payment of living expenses. Swain did not work in Mississippi. Swain's contention that her name did not appear on the title because she did not trust her "husband" makes no sense. The "husband" caused no trouble on the Florida residence. Indeed, he allowed Swain to use his name in order to get a military mortgage while at the same time not demanding that his name be placed on the title to the property. When the Florida residence was sold, the husband neither demanded, nor received, any portion of the sale proceeds. In addition, Swain admitted that a spouse can have an investment totally separate and apart from the other spouse. Swain's name did not appear on the titles to the Washington and Mississippi residences for one reason – she neither owned nor had a financial interest in the residences. Accordingly, there is no basis supporting the imposition of a resulting trust on Cates' Mississippi residence.

For all these reasons, the Chancery Court correctly rejected Swain's request for the imposition of a constructive or resulting trust.⁶

CONCLUSION

In 2000, Swain and Cates began a homosexual cohabitation that lasted five years. Other than their homosexual cohabitation, they had no other relationship. In the five years they cohabitated with each other, they lived in three different residences. Swain purchased one

⁶ Though the Chancery Court only addressed the fraud issue on his refusal to impose a constructive and/or resulting trust, other grounds founded in the evidence may be used to support the Chancery Court's decision.

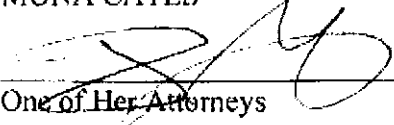
residence in which Cates lived rent free, contributed to the payment of living expenses and purchased a car for Swain, cancelling a previous car note owed by Swain. Cates purchased two residences in which Swain lived rent free and provided monies for the payment of some living expenses. In the last year of her homosexual cohabitation with Cates, Swain did not work, began drinking alcohol excessively and became abusive. As a result, Cates terminated her homosexual cohabitation with Swain and removed her from the residence which she purchased and titled solely in her name. The homosexual cohabitation between Swain and Cates violates the public policy of Mississippi, and as a result, the termination of the cohabitation does not give rise to a claim for equitable relief, through the doctrines of unjust enrichment, constructive trust or resulting trust.

The unjust enrichment award provided Swain by the Chancery Court should be reversed and the case should be remanded to the Chancery Court with directions that the Chancellor award attorney fees to Cates for the proceedings in the Chancery Court. Alternatively, the unjust enrichment award provided by Swain should be vacated and the case should be remanded to the Chancery Court with directions that the Chancellor enter an unjust enrichment award for Cates in the amount of \$303,985.31 and award attorney fees and costs to Cates for the proceedings in the Chancery Court. Finally, this Court should affirm the Chancery Court's denial of the request for the imposition of a constructive and/or resulting trust and award Cates attorney fees and costs for this appeal.

Respectfully submitted, this the 8th day of July, 2011.

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CERTIFICATE OF FILING AND SERVICE

We, Jonathan S. Masters of Holcomb Dunbar P.A., one of the attorneys for Appellant/Cross-Appellee Mona Cates, and Janet Brower, actual mailer of the Reply and Cross Appellee Brief of Mona Cates, certify that we have this day forwarded via regular mail the original and three copies of the foregoing Reply and Cross Appellee Brief of Mona Cates to the Clerk of the Mississippi Supreme Court at 450 High Street, Jackson, MS 39205-0249, and one (1) true and correct copy of the same to the following individuals:

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This, the 8th day of July, 2011.



JONATHAN S. MASTERS



JANET G. BROWER