

NO. 2014-CA-00730

IN THE SUPREME COURT OF MISSISSIPPI

SHANE ANDERSON – PLAINTIFF/APPELLANT

V.

JAMES B. LADNER – DEFENDANT/APPELLEE

On Appeal from the Circuit Court of

Hancock County, Mississippi, Cause No. 13-0243

BRIEF OF THE APPELLANT

ORAL ARGUMENT 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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Shane Anderson – Plaintiff/Appellant
2. James B. Ladner – Defendant/Appellee
3. Angela Ladner (f/k/a Angela Anderson) – Plaintiff’s ex-wife and current wife of the Defendant
4. Jennifer Tyler Baker, Esq. – Defendant’s counsel
5. Sean J. Tindell, Esq. – Defendant’s counsel
6. Judge Roger T. Clark – Hancock County Circuit Court Judge

Attorney of Record for Shane Anderson, Plaintiff-Appellant

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STATEMENT OF THE ISSUES

I. WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT WHEN THE PLAINTIFF FILED HIS SUIT WITHIN THE STATUTE OF LIMITATIONS.

STATEMENT OF THE CASE

This case concerns itself with an alienation of affection claim brought by Shane Anderson, the Plaintiff/Appellant, against James B. Ladner, the Defendant/Appellee. On July 2, 2013, Anderson filed a complaint in Hancock County Circuit Court against Ladner, bringing claims for alienation of affection, reckless infliction of emotional distress, and punitive damages. Ladner answered the complaint and denied all of the allegations. Ladner then filed a Motion to Dismiss based on the statute of limitations. The Appellee argued that the joint filing of a divorce, based upon irreconcilable differences, triggered the running of the statute of limitations. The Appellant responded to the Motion and the trial court ordered that the Motion be converted to a Motion for Summary Judgment. Thereafter, Appellant Anderson submitted an affidavit asserting that he had marital relations with Angela Ladner after the filing of the divorce. The trial court ruled in the Defendant's favor, holding that the three year statute of limitations applied to the alienation of affection claim and that the claim was barred three year's following the filing of the divorce complaint. Furthermore, the trial court also dismissed the reckless infliction of emotional distress claim after stating that the language used in the complaint sounded like an intentional infliction of emotional distress claim and therefore was barred due to the one-year statute of limitations period. Lastly, the Plaintiff's claim for punitive damages was dismissed because it flowed from the Plaintiff's claims for alienation of affection and reckless infliction of emotional distress. On May 29, 2014, the Plaintiff timely filed a notice of appeal with this Honorable Court.

STATEMENT OF THE FACTS

The Plaintiff, Shane Anderson, (herein referred to as “Appellant” or “Anderson”) and Angela Ladner married on or about September 4, 1994.¹ At all times during the marriage, Anderson provided Angela Ladner with a comfortable home and lifestyle.² They shared a happy and loving relationship that produced one female child, Shelby, on April 23, 1998.³ Moreover, Anderson raised his step-children (Angela Ladner’s from a previous relationship) as his own.⁴

While too busy being the best father and husband that he can be, Angela Ladner initiated an adulterous affair with the Defendant, James Ladner (herein referred to as the Appellee or Ladner).⁵

On or around May 15, 2010, Angela Ladner asked Anderson for a separation.⁶ However, she suggested that they continue living together, but sleep in separate bedrooms.⁷ Anderson asked her to reconsider.⁸ On or around May 23, 2010, Angela Ladner and Anderson jointly filed for divorce.⁹ Angela Ladner moved out of the marital home although Anderson again begged her to reconsider.¹⁰ Despite the application for divorce, the Appellant, Shane Anderson, believed he and Angela Anderson could salvage their marriage.¹¹ Indeed, the parties did reconcile for a period of time between July 3, 2010 and July 15, 2010.¹² The couple engaged in sexual relations

¹ See Affidavits of Shane Anderson, Dated October 2, 2013. RE 6.

² Id.

³ Id.

⁴ Id.

⁵ Id. at RE 8.

⁶ Id. at RE 7.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

on more than one (1) occasion.¹³ Furthermore, between the period of July 3 through July 15, 2010, Angela Ladner moved back into the marital home so that Anderson could nurse her after her cosmetic surgery.¹⁴

Despite efforts to reconcile, Angela Ladner again moved out of the family home on or about July 15, 2010.¹⁵ Anderson and Angela Ladner finalized their divorce on or around August 11, 2010.¹⁶ Two months later, in October 2010, Anderson learned of the extramarital affair between Angela and James Ladner through his step-daughter, Kristen, in the presence of Chante Desplas.¹⁷ On July 2, 2013, the Appellant, Shane Anderson, filed this suit against the Defendant, James Ladner.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ See Affidavits of Shane Anderson, Dated May 29, 2014. RE 9.

¹⁷ See Affidavits of Shane Anderson, Dated October 2, 2013. RE 8.

SUMMARY OF THE ARGUMENT

The statute of limitations for alienation of affection claims is three years. The irreconcilable differences divorce statute mandates a sixty (60) day waiting period before the divorce is finalized. Consistency would dictate that the alienation of affection claim should begin running at the finalization of the divorce as the divorce statute gives the couple sixty (60) days to reconcile. Love is fickle. Feelings come and go. It is possible to reconcile for a brief period after the filing of the divorce complaint and ultimately still get divorced. Logic and reason would lead to the result that the affections were alienated at the finalization of the divorce on August 11, 2010 or July 15, 2010 at the earliest when Angela Ladner moved out of the marital home. Furthermore, the non-movant, Shane Anderson has signed a sworn affidavit, stating that he and Angela Ladner engaged in sexual relations thereby rekindling their affections after the filing of the divorce complaint. Furthermore, Anderson and Angela Ladner shared the marital home together through July 15, 2010. During this time, he nursed her after cosmetic surgery. Therefore there is a genuine issue of material fact when Angela Ladner's affections were alienated by the Appellee, and this Court should reverse the trial court's judgment to the contrary.

Moreover, Shane Anderson's complaint states a cause for negligent infliction of emotional distress because it reads in its entirety "Defendant's acts were **reckless** [emphasis added] and without justification, and that the acts of the Defendant evoke outrage and disgust in civilized society and that the pattern of conduct perpetrated by the Defendant caused **foreseeable harm** [emphasis added] to the Plaintiff." Therefore, reversal of the trial court's ruling is appropriate.

Lastly, punitive damages may be recoverable since the Plaintiff has suffered injuries from the willful and intentional acts of the Defendant. Therefore, reversal of the trial court's final judgment is appropriate.

ARGUMENT

STANDARD OF REVIEW

The Supreme Court and Appellate Court's standard for reviewing the grant or denial of motions for summary judgments is de novo.¹⁸ Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the *affidavits* [emphasis added], if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."¹⁹ The trial court's grant of summary judgment is reversed when triable issues of facts remains when the facts are viewed in the light most favorable to the non-moving party.²⁰ The burden of demonstrating that there are no genuine disputes of material fact is on the moving party.²¹ The benefit of the doubt is given to the non-moving party.²²

In the case *sub judice*, the Plaintiff contests that the facts submitted in the complaint, as well as the affidavits of the Appellant Anderson create a genuine issue of material fact as to when the Defendant alienated the affections that Angela Ladner had for the Appellant. The affidavits state that Anderson and Angela Ladner had sexual relations and other marital relations less than three years prior to the filing of the lawsuit in question. Summary judgment was not proper.

I. The Divorce of Anderson and Angela Ladner Was Finalized On or About August 11, 2010 and Anderson Filed This Suit On July 2, 2013. Therefore His Claim Is Within The Statute of Limitations

¹⁸ *Faul v. Perlman*, 104 So. 3d 148, 152 (Miss. App. 2012)

¹⁹ M.R.C.P. 56(c).

²⁰ *Robinson v. Singing River Hosp. Sys.*, 732 So. 2d 204, 207 (Miss. 1999)

²¹ *Moore ex rel Moore v. Mem'l Hosp. of Gulfport and Winn-Dixie of La., Inc.*, 825 So. 2d 658, 663 (Miss. 2002).

²² *Webb v. Braswell*, 930 So. 2d 387, 395 (Miss. 2006).

Miss. Code Ann. § 93-5-2 reads as follows: “Complaints for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard.”²³ The purpose of the waiting period after filing for divorce is presumably that the couple will change its mind before the chancellor enter a final judgment that dissolves the marriage and finalizes the divorce. As implied in Miss. Code Ann. § 93-5-2, a filing of the initial divorce complaint does not finalize the divorce as there is a sixty (60) day waiting period until a final adjudication and decree is entered.²⁴

Here, the joint complaint for divorce was filed on May 23, 2010. The divorce was finalized on August 11, 2010. Furthermore, Anderson and Angela Ladner engaged in intimate sexual relations on more than one occasion between May 15 and July 15, 2010.

For a claimant to prevail on his claim for alienation of affection, he or she must prove three elements: (1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) causal connection between such conduct and loss.²⁵ This tort has been recognized in Mississippi for at least eighty-five years.²⁶ The function of this tort is to compensate and provide justice to the wife or husband against a third-party paramour or mistress who has interfered with the wife or husband’s marital relationship.²⁷ The purpose of the tort of alienation of affection is to protect the institution of marriage, love, society, companionship and to address the right of consortium that is violated by the intrusion of an interloper.²⁸ These rights include: “the right to live together in the same house, to eat at the same table, and to participate together in the

²³ Miss. Code Ann. § 93-5-2.

²⁴ *Id.*

²⁵ *Carter v. Reddix*, 115 So. 3d 851, 856-57 (Miss. App. 2012).

²⁶ *McRae v. Robinson*, 145 Miss. 191, 110 So. 504 (1926)

²⁷ *Camp v. Roberts*, 462 So.2d 726, 727 (Miss. 1985).

²⁸ *Bland v. Hill*, 735 So. 2d 414, 417 (Miss. 1999).

activities, duties and responsibilities necessary to make a home.”²⁹ Alienation of affection is the only remedy available to a husband or wife who has suffered the aforementioned loss against a third party who caused the breakdown of the marriage.³⁰

Furthermore, Mississippi’s three-year general statute of limitations applies for alienation of affection claims.³¹ In regards to the statute of limitations, accrual of the claim occurs when the alienation of affection is **finally** accomplished.³² The affections of the spouse wronged are irrelevant to accrual of the claim.³³

Here, Angela Ladner’s affections were alienated by the final sound of the gavel when the divorce decree was finalized on or about August 11, 2010 or alternatively when she moved out on July 15, 2010. During the sixty day waiting period for the trial court to finalize the divorce, Anderson and Angela Ladner had sexual relations more than once. Furthermore, Anderson cared for his wife after her cosmetic surgery. Her affections were not alienated at that point. Her affections were alienated on July 15, 2010 at the earliest and on August 11, 2010 (the date of the finalized divorce) at the latest. In this instance, it would be intellectually dishonest and logically inconsistent to hold that a Plaintiff’s loss accrues at the time of the filing of the divorce complaint due to the fact that the statute provides a sixty (60) day period for reconciliation. The Plaintiff did indeed reconcile with Angela Ladner for a brief period. His brief reconciliation should entitle him to the protection of the sixty days and entitle him to bring his alienation of affection claim within the three year statute of limitations. Moreover, a bright-line rule that holds that the loss of affection accrued at the finalization of the divorce would be more consistent with

²⁹ *Id.* at (¶17).

³⁰ *Fitch v. Valentine*, 959 So. 2d 1012, 1020 (Miss. 2007)

³¹ *Carter v. Reddix*, 115 So. 3d 851, 857 (Miss. App. 2012) (citing Miss. Code. Ann. §15-1-49).

³² *Carr v. Carr*, 784 So. 2d 227, 229-30 (Miss. App. 2000) (emphasis added)

³³ *Id.*

the irreconcilable differences divorce statute because the statute itself provides an opportunity for reconciliation. Lastly, if a bright-line rule is not preferable to this Court, it should at least not penalize the Plaintiff for briefly reconciling with his wife as the accrual of alienation of affection claim began to run on July 15, 2010, again within the purview of the statute of limitations.

Here, a genuine dispute of material fact exists as to when James Ladner alienated the affections of Angela Ladner, whether Anderson and Angela Ladner had intimate relations after filing for divorce, and whether Anderson took care of Angela Ladner after her cosmetic surgery.

Because the Appellant and Angela Ladner finalized their divorce on August 11, 2010, the Court should hold that this begins the accrual of the tort as it destroys any chance of reconciliation and rekindling affections once alienated. Even if the Court is not swayed by this argument, Appellant Anderson and Angela Ladner briefly reconciled between May 15 and July 15, 2010. Thus, the cause accrued on or about July 15, 2010 at the latest and is within the time allotted to bring an alienation of affection claim against the Ladner. Moreover, a genuine issue of material fact exists when the affections of Angela Ladner were alienated. Thus the Court should reverse the lower court's ruling and remand this cause consistent with the Court's opinion.

II. The Plaintiff Discovered The Affair in October 2010 and His Claim for Negligent Infliction of Emotional Distress Is Within the Three Year Statute of Limitations

The Appellant discovered the secretive two-timing by his ex-wife in October of 2010 and filed his complaint on July 2, 2013 and is therefore within the statute of limitations.³⁴

Claims for negligent infliction of emotional distress (NIED) are governed by the catch-all three year statute of limitations.³⁵ For a plaintiff to succeed on an NIED claim, he or she must

³⁴ Miss. Code. Ann. §15-1-49

³⁵ *Randolph v. Lambert*, 926 So. 2d 941, 946 (Miss. App. 2006).

prove that some sort of physical manifestation of injury or demonstrable harm, whether it be physical or mental, and that harm must have been reasonably foreseeable to the defendant.³⁶ For a plaintiff to recover for mental anguish if there is no physical injury, he or she must show that the defendant's conduct must be malicious, intentional, willful, wanton, grossly careless, indifferent or reckless.³⁷

On the other hand, a claim for intentional infliction of emotional distress has a one year statute of limitations.³⁸ For a plaintiff to recover on an IIED claim, he or she must show the following elements: The defendant acted willfully or wantonly towards the plaintiff; the defendant's acts are ones which evoke outrage or revulsion in civilized society; the acts were directed at or intended to cause harm to the plaintiff; the plaintiff suffered severe emotional distress as a direct result of the act of the defendant; and such resulting emotional distress was foreseeable from the intentional acts of the defendant.³⁹

It is likely and more probable that the Appellant's complaint states a cause of action for NIED. The Appellant's complaint states the following language: "Defendant's acts were **reckless** [emphasis added] and without justification, and that the acts of the Defendant evoke outrage and disgust in civilized society and that the pattern of conduct perpetrated by the Defendant caused **foreseeable harm** [emphasis added] to the Plaintiff." Both type of claims have similar elements. However, the Appellant specifically plead the words "reckless" and "foreseeable harm." This should give an indication that Anderson plead a NIED claim. While it is true that Shane Anderson used the phrase "evoke outrage and disgust in civilized society," the entire paragraph, read together, implies a claim for NIED. Furthermore, since this is a claim for

³⁶ *American Bankers' Ins. Co. of Florida v. Wells*, 819 So. 2d 1196, 1208 (Miss. 2001).

³⁷ *Id.*

³⁸ *Carter v. Reddix*, 115 So. 3d 851, 858 (Miss. App. 2012).

³⁹ *Id.*

NIED, the three year statute of limitations applies, bringing the Plaintiff's claim within the time limit.

Therefore, this Honorable Court should reverse the trial court dismissal of the Plaintiff's NIED and remand this case for further proceedings.

III. Because the Plaintiff's Claims are Within the Statute of Limitations, Punitive Damages Are Allowed Under Applicable State Law

Because the Appellant has viable claims for alienation of affection and reckless infliction of emotional distress, punitive damages are allowed under state law.

Punitive damages predicated on actual damages are not recoverable if there are no actual damages.⁴⁰ ("It is well settled that in all cases where punitive damages are predicated on actual damages, if no actual damages are allowed, punitive damages are not recoverable, so it is unnecessary for us to discuss this proposition.")⁴¹

Here, as established above, the Appellant is within the three year statute of limitations. The Appellant reconciled briefly with Angela Ladner after filing for divorce. He nursed her after cosmetic surgery. In addition, they lived together at the marital home, and had intimate sexual relations. The earliest date that the affections were alienated were on July 15, 2010; the latest would have been August 11, 2010, the finalization of the divorce. Either date puts Shane Anderson within the purview of the three year statute of limitations as his complaint in the case *sub judice*. Since Shane Anderson has actual damages against the Appellee, punitive damages are recoverable.

Therefore, because the Appellant's claims are within the statute of limitations, Shane Anderson has actual damages he suffered and punitive damages are recoverable.

⁴⁰ *Miss. Power Co. v. Jones*, 369 So. 2d 1381, 1386 (Miss. 1979)(citing *Allen v. Ritter*, 235 So.2d 253 (Miss. 1970)).

⁴¹ *McCain v. Cochran*, 153 Miss. 237, 275, 120 So. 823, 828 (1929)

CONCLUSION

The three year statute of limitations applies to claims of alienation of affections. Furthermore, Miss. Code Ann. § 93-5-2 grants a couple who has filed for a divorce a sixty (60) day waiting period before the divorce is finalized. This interim period between the filing date of the divorce and the final decree offers the couple a chance of reconciliation. Taking the irreconcilable divorce statute into consideration, the finalization of the divorce should be deemed as the period that alienated the affection of the unfaithful spouse, not the filing of the divorce complaint. This extension would be logical and consistent.

Even if this Honorable Court is not willing to extend the law this far, it should allow for parties to file suit for this tort and count the date of accrual from the temporary reconciliation however brief. Either theory would place Shane Anderson's alienation of affection claim within the three year statute of limitations period.

As there is a genuine issue of material fact as to whether Shane Anderson and Angela Ladner reconciled after filing for divorce, this Honorable Court should reverse the trial court and remand this case consistent with its opinion.

Furthermore, the Appellant's pleading states a cause of action for negligent infliction of emotional distress and thus the trial court's order should be reversed and this cause remanded for further proceedings.

Lastly, the Appellant claim for punitive damages are recoverable as he has actual damages.

WHEREFORE, PREMISES CONSIDERED, the Appellant respectfully requests the relief above and prays that this honorable high Court reverse the trial court's order and remand this case for further proceedings.

RESPECTFULLY SUBMITTED, this the 4th day of February, 2015.

SHANE ANDERSON, PLAINTIFF

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CERTIFICATE OF SERVICE

I, EDWARD GIBSON, do hereby certify that I have on this 4th day of February 2015, I filed the foregoing document via the MEC, which sent notice to:

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I, EDWARD GIBSON, also certify that I have on this 4th day of February 2015, mailed a true and correct copy of the foregoing via U.S. mail, postage pre-paid, to:

Honorable Roger T. Clark
Circuit Court Judge
P O Box 1461
Gulfport, MS 39502-1461

SO CERTIFIED, This, the 4th day of February, 2015.

/s/ Edward Gibson