

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MAXWELL LOMAX,

APPELLANT

VS.

CAUSE NO. 2014-TS-00865

TARA LOMAX,

APPELLEE

ON APPEAL FROM
THE CHANCERY COURT OF
OF DESOTO COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

Respectfully Submitted,

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	1
Table of Authorities	2
Argument	3
Conclusion	6
Certificate of Service.....	7

TABLE OF AUTHORITIES

Cases

Paschall v. Polk, 379 So. 2d 316(Miss. 1980) 4

Lenoir v. Lenoir 611 So. 2d 200 (Miss. 1992) 6

ARGUMENT

Max Lomax did not want a divorce from his wife. Max requested marriage counseling. Max wanted to give the marriage a chance.

Max testified as follows:

A. Absolutely not. That is the reason why I was seeking marriage counseling for the both of us. (Volume 1, Page 19).

Throughout the whole divorce proceedings, Max requested that his wife and himself seek marriage counseling. This was totally dejected by Tara and her attorney. Further, to the alleged bruises that Max caused on Tara during the marriage, Max testified to an incident at the Boiling Point prior to the marriage.

Max testified as follows:

A. These bruises started at the Boiling Point the Friday night we were at the bar dancing and cutting up. So some of the bruises didn't come from our physical altercation. We had a little bit of a dispute at the Boiling Point that night. (Volume 1, Page 28).

Further, the testimony proceeded as follows:

A. After she threw the car up in park a couple of times, sir, about three times, I slammed my car up in park. Tara's head, as well as mine hit the dash and the windshield, and that is where a lot of the bruises came from on the facial area. Now, dancing and cutting up and what knot at the night club on Friday night is where the others came from on the arms and stuff, I guess.

Q. Now, the big Boiling Point incident and the incident at Sardis Lake, now, that all happened July 21, 2012, didn't it?

A. It did, Sir.

Q. Ok, that all prior to the marriage?

A. Yes, Sir. (Volume 1, Page 30)

It was Max's defense that all alleged bruises shown by Tara by photographs at trial happened prior to the marriage.

In regards to marriage counseling, the following testimony was presented at trial.

Q. When did you and your wife talk about marriage counseling?

A. All the way from – well, we started talking about going to counseling before we ever got married to be honest about it.

Q. I know this is strange, but I believe it.

A. I have text messages to prove it over there in my box. I mean we talked about counseling all the way through our - , all the way through our relationship. Again, it was Max's defense that he wanted to try to save the marriage and the marriage was worth saving.

This Court has long stood by the proposition that “the law favors marriage, and requires clear testimony to invalidate it. The superstructure of society rest upon marriage and the family as its foundation. It is an institution, in the maintenance of which the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress. Marriage, would not be declared null and void upon anything less than clear and certain testimony. Paschall v. Polk, 379 So. 2d 316(Miss. 1980).

In regards to the wedding ring, Max testified as to the agreement between Tara and Max's mother:

Q. Was Tara present when your mother was telling y'all this?

A. Yes.

Q. What did Tara tell your mother?

A. Don't worry about it. If things don't work out, I'll give it to you right back.

Q. Because your mother gave the wedding ring, I guess, to you to give to Tara?

A. That is correct. Not to give to her, to loan to Tara until I could afford to – until I could afford to buy a stone that goes into the middle.

Q. Did Tara have that – was that the understanding that Tara left with?

A. Absolutely. (Volume 1, Page 38)

Max testified further:

Q. So the wedding ring was given to Tara under these conditions?

A. It was.

Q. That until you got able to buy her the wedding ring she wanted this would be used as a wedding ring.

A. That is correct. And she acknowledged that, and we talked about it in the text messages that we have. (Volume 1, Page 39).

It is totally clear from the record that Max and Tara had an agreement concerning the wedding ring. Again this is not a frivolous action filed by Max Lomax.

Divorces are not gifts to be distributed indiscriminately. Likewise, all elements of domestic relations practice might become part of the final decree, are not to be distributed as either gifts or penalties. Lenoir v. Lenoir 611 So. 2d 200 (Miss. 1992).

The attorney for Mrs. Lomax, filed an Amended Complaint for Divorce on April 16, 2014, alleging the additional grounds for divorce as: The Defendant is addicted to illicit drugs. Not one single piece of evidence or testimony was presented at trial to substantiate this claim.

A copy of the Amended Complaint for Divorce is attached hereto and marked as Exhibit "A" to this Brief.

If anyone has file a frivolous and baseless claims it would be Mrs. Lomax and her attorney.

CONCLUSION

In conclusion, there were no threats by Mr. Lomax to financially wreak havoc on Mrs. Lomax. Both parties entered into a marriage contract, which was preformed legally, and consummated. Mr. Lomax wanted to save his marriage at all cost. This was not the intentions of Mrs. Lomax nor her attorney. Nothing in this file represents any frivolous or baseless claims by Mr. Lomax.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, David Clay Vanderburg, the undersigned attorney, do hereby certify that I have this day mailed, by United States Mail, postage pre-paid, a true and correct copy of the above and foregoing Reply Brief of Appellant to the following:

Hon. Martin Zummach
Attorney for Appellee
7125 Getwell Rd., Ste. 201
Southaven, MS 38671

Honorable Percy Lynchard
Chancellor
Post Office Box 340
Hernando, MS 38632

SO CERTIFIED, this the 21st day of November, 2014.



David Clay Vanderburg MSB#6088
Certifying Attorney

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

TARA LOMAX,

Plaintiff,

vs.

Cause No.: 14-CV-204

MAXWELL LOMAX,

Defendant.

AMENDED COMPLAINT FOR DIVORCE

COMES NOW the Plaintiff, Tara Lomax, by and through her attorney of record, Martin Zummach, and files this her Amended Complaint for Divorce and in support of same would state as follows:

- 1 The Complaint for Divorce was filed on February 7, 2014.
2. An Answer to the Complaint for Divorce was filed on February 25, 2014.
3. Plaintiff adopts and reiterates all of her allegations and averments contained in her original Complaint. In addition thereto, Plaintiff amends her Complaint for Divorce to allege that she is entitled to a divorce inasmuch as upon information and belief, the Defendant is addicted to illicit drugs.

WHEREFORE, Plaintiff seeks and prays for the following relief:

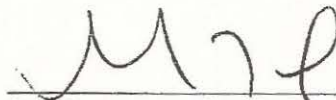
- 1 That proper process issue and be had on the Defendant, requiring Defendant to answer this Amended Complaint;



2. A divorce absolute from Defendant, completely and forever severing the bonds of matrimony between the parties;
- 3 Temporary and exclusive use of Plaintiff's residence located at 4498 Westminister Circle, Southaven, MS 38671 which was hers prior to the marriage;
4. Payment of Plaintiff's attorney's fee for both temporary and permanent matters;
5. Equitable division of all martial property; and
6. General relief as deemed wise and proper in the premises.

Respectfully submitted,

SPARKMAN, ZUMMACH & PERRY, P C.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Clay Vanderburg, vanderburglawfirm@yahoo.com via e-mail on this the 16th day of April, 2014

