IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MICHAEL WILLIAMS **APPELLANT**

VS. **NO. 2018-CA-010904**

CHANTELLE HANLEY WILLIAMS **APPELLEE**

ON APPEAL FROM THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI

BRIEF OF APPELLANT
(ORAL ARGUMENT NOT REQUESTED)

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CERTIFICATE OF INTERESTED PARTIES

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

Michael Williams, Appellant

Frank Garrison, Counsel for Appellant

Heather M. Aby, Counsel for Appellant

Chantelle Hanley Williams, Appellee

Christopher Tabb, Counsel for Appellee

Trey O'Cain, *Guardian ad Litem*

Honorable Robert G. Clark, III, Madison County Chancellor

*/s/ Heather M. Aby*_____
Heather M. Aby, Esq. (MSB #100749)
COUNSEL FOR APPELLANT

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STATEMENT OF ORAL ARGUMENT

ORAL ARGUMENT NOT REQUESTED

STATEMENT OF THE ISSUES ON APPEAL

I. Whether the lower court erred in awarding a divorce on the fault ground of habitual, cruel and inhuman treatment.

II. Whether the lower court erred in its application of *Albright*.

III. Whether the lower court erred in finding all of Chantelle's testimony to be credible and none of Michael's testimony to be credible based only on their demeanor and behavior during trial.

STATEMENT OF ASSIGNMENT

Appellant does not believe this is a matter that must be heard by the Mississippi Supreme Court. Michael Williams believes the issues are well-settled for review by the Mississippi Court of Appeals.[1]

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition.

This is an appeal of a divorce case filed by Chantelle Williams (hereinafter "Chantelle") on January 8, 2016 in the Madison County Chancery Court against her husband, Michael Williams (hereinafter "Michael"). Chantelle sought a divorce from Michael on the grounds of habitual, cruel and inhuman treatment or, in the alternative, irreconcilable differences (R. 28-29).

The parties were married in 2002 and, according to the Complaint, separated on

[1] Citations to the Record on Appeal will be (R.__) and citations to the Transcript on Appeal will be (Tr.__).

or around November 15, 2015. (R. 26). At the time of the filing of the Complaint, the parties had two children: Patrick Michael Hanley Williams, a male, born February 16, 2004 and Oliver Ray Hanley Williams, a male, born July 28, 2005. (R. 27).

Appellant filed his Answer and Affirmative Defenses and First Counterclaim on February 16, 2016 (R. 44-46).

On February 10, 2017, the Chancellor appointed Honorable Trey O'Cain as the *Guardian ad Litem* in the case. (R. 69-71).

The Court held hearings on: September 25, 2017 (Tr. 1); November 8, 2017 (Tr. 24); November 15, 2017 (Tr. 150); January 12, 2018 (Tr. 163); January 17, 2018 (Tr. 200) and February 4, 2018 (Tr. 581). The final hearing in the case was held on January 23-24, 2018, in Madison County Chancery Court. (Tr. 267-69).

On July 5, 2018, the Chancery Court entered a Second Amended Opinion of the Court and Final Judgment of Divorce (hereinafter "*Opinion and Order*") from which Michael now appeals. (R. 303). In the *Opinion and Order*, the Chancellor granted Chantelle a divorce on the grounds of habitual, cruel, and inhuman treatment and further granted Chantelle sole legal and physical custody of the parties' minor children. (R. 319-320).

II. **Statement of Relevant Facts.**

In the *Opinion and Order*, the Chancellor relied upon Chantelle's testimony to find: Michael's "temper and constant abuse of her" (R. 306-307); Michael "constantly" yelling at and belittling her (R. 307); Michael forcing her to have sexual relations; that living with Michael adversely affected her physical and emotional health (R. 307) and

that the idea of returning to Michael was repulsive to her and she was in fear for her safety. (R. 307-308). The Chancellor found that Michael's behavior caused Chantelle to seek and obtain medical treatment for depression. (R. 307).

Chantelle claimed Michael's habitual, cruel, and inhuman treatment of her was the cause of the separation. She claimed Michael was "abusive emotionally, and he had physical periods of abuse." (Tr. 349). She claimed he was "often . . . abusive" and that this abuse occurred "weekly" just prior to the separation. (Tr. 349). Chantelle also testified she left the marital residence in November, 2015 due to Michael's "gas lighting." (Tr. 349). Chantelle asserted she suffered "depression" and "suicidal ideations" as a result of this alleged treatment. (Tr. 349-50).

The *Guardian ad Litem* relied solely on Chantelle's testimony about Michael's alleged conduct as to her claim of habitual, cruel, and inhuman treatment. (R. 534). The *Guardian ad Litem* spoke to a number of people about the underlying issues, including Chantelle's father (Tr. 508, 534, 538-39); Jeremy Williams (Tr. 515, 539, 541, 543); Morgan Williams (Tr. 515, 543-44, 547-48) and others, but none provided evidence of Michael's alleged habitual, cruel, and inhuman treatment of Chantelle during the marriage.

Chantelle admitted there were no witnesses to Michael's alleged mistreatment of her. (Tr. 382). Chantelle's mother, who had lived with them for "extended periods of time" during the marriage, and who had vacationed with Michael and the children, did not testify. (Tr. 383-84). Chantelle's father, who had lived with them for "extended periods of time" during the marriage, did not testify. (Tr. 383). A friend, Martha, who Chantelle lived with for a period, did not testify. (Tr. 414). Martha and her husband, who had socialized with the Williams', did not testify. (Tr. 414). Nor did any of these

persons provide the *Guardian ad Litem* with evidence of Michael's alleged habitual, cruel, and inhuman treatment of Chantelle.

Michael vehemently denied Chantelle's claims. (Tr. 292, 295-96). Other witnesses who testified at trial, or who provided information to the *Guardian ad Litem*, had no evidence that Michael engaged in behavior during the marriage that would constitute habitual, cruel, and inhuman treatment. Danny and Donna Ott lived immediately next door to the Williams' for seven (7) years and had occasion to see the Williams' interact with each other during that time. (Tr. 450-52). Danny Ott testified that he could overhear things at the Williams' house (Tr. 450). Danny Ott never saw or heard Michael scream at anyone in his family; abuse Chantelle; threaten Chantelle or push, shove or assault Chantelle. (Tr. 450-51). Mr. Ott had not even "heard [the Williams'] yell and scream at each other." (Tr. 457).

Donna Ott could hear even "normal" conversations at the Williams' house from her house but never overheard any arguments between the Williams', and never heard Michael yelling or screaming at Chantelle. (Tr. 460-61). Donna Ott never saw Michael abuse or yell at Chantelle. (Tr. 462). It appeared to Donna Ott that the Williams were "happy" and "wanted to be together." (Tr. 462).

Jeremy Williams, Michael Williams 'adult son, never witnessed "fights or mistreatment by one or the other" and never witnessed "any altercations" between Chantelle and Michael. (Tr. 543).

Michael and other family members helped Chantelle and supported Chantelle through her cancer treatments. (R. 319, 514-515). The Williams' took a second honeymoon not long before Chantelle filed for divorce. (Tr. 385) Chantelle asked

Michael to return home after their final separation (Tr. 390, 517).

Chantelle was diagnosed with cancer in July of 2013 or 2014. (R. 390). At trial, Chantelle claimed that Michael was "often . . . abusive" and that this abuse occurred "weekly" just prior to the separation. (Tr. 349-50). Chantelle also testified that she left the marital residence in November of 2015 because of Michael's "gas lighting." (Tr. 349). Chantelle asserted that she suffered "depression" and "suicidal ideations" as a result of this treatment. (Tr. 349-50). The Chancellor found that Michael's behavior caused Chantelle to seek and obtain medical treatment for depression. (R. 307).

Chantelle conceded, however, that her uncle first prescribed her an "anti-depressant . . . in conjunction with [her] cancer" years before she and Michael separated. (Tr. 350, 389-90). Prior to the cancer diagnosis, Chantelle had never been prescribed anti-depressants. (Tr. 393). Chantelle had never sought counseling for depression prior to her cancer diagnosis. (Tr. 394). As of January 23, 2018, long after she left Michael in late 2015, she still suffered from, and was being medically treated for, depression. (Tr. 363-64).

Michael testified that, during Chantelle's battle with cancer, he took care of her, changed her bandages and transported her where she needed to go. (Tr. 319). Michael and other family members helped Chantelle and supported Chantelle through her cancer treatments. (Tr. 319, 514-515).

The Williams' were frequently around other people: Jeremy (Tr. 154, 543); Danny Ott (Tr. 450-51, 457); Donna Ott (Tr. 460-62); Martha (Tr. 414); Chantelle's mother (Tr. 383-84); Chantelle's father (Tr. 384); friends from church (Tr. 514-15) and so on. The Williams' next door neighbors, the Otts, could hear even "normal" conversations at the

Williams' house from their house. (Tr. 460).

The *Guardian ad Litem*, appointed by the Court over a year after the filing (R. 69-71) testified at length in the trial (Tr. 469-554), but, for evidence of Michael's marital conduct, he relied only on the statements and testimony of Chantelle Williams. (Tr. 534). The *Guardian ad Litem* testified as to "angry interactions with" Michael, what he "perceived to be" Michael's attempts at parental alienation and Michael's "fierce resistance" to some of the *Guardian ad Litem*'s suggestions (Tr. 480, 500). The *Guardian ad Litem* volunteered that Michael "hated him." (R. 518).

The *Guardian ad Litem* testified that Michael's daughter and son wanted nothing to do with him (Tr. 515). The *Guardian ad Litem* testified about Michael's allegedly abusive relationship with his adult daughter, Morgan. (Tr. 547-549). Her allegations concerned conduct well before Michael and Chantelle's marriage, and Morgan had "no information" about any abuse in this case. (Tr. 548).

In the *Opinion and Order*, the Chancellor, in granting Chantelle a divorce on the grounds of habitual, cruel, and inhuman treatment, emphasized "the particular significance of its personal observation of all the witnesses in this matter, but particularly in regards to Chantelle Hanley Williams and Michael Williams." (R. 306). The Chancellor found Chantelle to be wholly credible. (R. 306). Based on "Michael Williams' flippant, condescending, evasive and insulting behavior," found Michael to lack all credibility. (R. 306). The Chancellor specifically noted that Michael "argued with the *Guardian ad Litem*," disobeyed court orders and allegedly used offensive language when referring to the Court. (R. 306-307). The Chancellor did not mention, reference or rely on any evidence of Michael's conduct during the marriage other than

the testimony of Chantelle Williams. (R. 306-308).

Michael desperately wanted his children to testify on his behalf. (Tr. 267-269). He specifically asked the Chancellor to summon them to testify. (Tr. 268). The Chancellor denied this request and ruled they could testify only "if they are properly summoned to be here." (Tr. 272). The Chancellor did not explain to Michael how to do this. Michael specifically asked for an order to "go and get them and bring them up here" to testify. (R. 267). The Court denied Michael's request.

The Chancellor found that Michael worked "hard to destroy the children's relationship with Chantelle Hanley Williams." (R. 317). *Chantelle, however, did this on her own.* Chantelle testified that she considered voluntarily terminating her parental rights and *even* discussed it with one of the children. (Tr. 435-436) Chantelle often had difficulties caring for and handling the minor children. (Tr. 517-518, 531). The children testified in a prior hearing that they preferred to live with Michael. (T. 462-63; T. 472-73).

SUMMARY OF THE ARGUMENT

The lower court erred in finding a fault basis to award unto Chantelle a divorce of and from Michael. Evidence was not presented to the Court sufficient to support an award of a divorce on the basis of habitual, cruel and inhuman treatment. Such an award should not stand.

In addition to erring in its award of a divorce, the Chancellor likewise erred in its application of *Albright* to reach the conclusion that sole physical custody should vest with Chantelle.

In reaching both erroneous conclusions, the lower court relied heavily upon the testimony and report of the *Guardian ad Litem* to include uncorroborated allegations and impermissible hearsay but not allowing two of the most important potential witnesses to testify – the minor children of the parties. Such errors should not stand. The *Second Amended Judgment* is ripe for reversal by this Court.

ARGUMENT

I. Standard of Review.

The scope of review in domestic relations matters is limited, and the appellate court will not disturb the chancellor's findings *of fact* unless the finding were "manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Crow v. Crow*, 622 So. 2d 1226, 1227 (Miss 1993). However, *questions of law* are reviewed *de novo*, and when a lower court "misperceives the correct legal standard to be applied" the appellate courts do not give deference to the findings of the trial court because the error was one of law, not fact." *Brooks v. Brooks*, 652 So. 2d 1113, 1117 (Miss. 1995). If warranted, the lower court will be reversed upon review "because of an erroneous interpretation of application of law." *Id.*

The issues presented to this Court requires a *de novo* analysis of the award of a divorce between the parties as well as a clearly erroneous analysis with regard to the award of physical custody of the minor children of the parties.

II. The Chancellor erred in awarding a divorce based on the grounds of habitual, cruel, and inhuman treatment.

"Habitual cruel and inhuman treatment is conduct that either: (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger and renders the

relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to render the marriage revolting to the non-offending spouse, making it impossible to carry out the duties of the marriage, therefore destroying the basis for its continuance." *Farris v. Farris*, 202 So. 3d 223, 231 (Miss. Ct. App. 2016) (quoting *Heimert v. Heimert*, 101 So. 3d 181, 184 (Miss. Ct. App. 2012)).

To determine whether grounds have been proven, the Court must examine the conduct of the offending spouse and what impact the conduct had on the innocent spouse. *Smith v. Smith*, 90 So. 3d 1263-64 (Miss Ct. App. 2011). Even if plaintiff produces evidence sufficient to show the spouse committed habitual cruel and inhuman treatment, the plaintiff must also show that the offending spouse's conduct actually caused the impact on the plaintiff and caused the parties to separate. *Id.*

"To prove habitual cruelty, the plaintiff must show more than mere unkindness, rudeness, or incompatibility." *Id.* at 1263. "[G]enerally the plaintiff must show a pattern of conduct." *Id*. The conduct must be habitual, done often and over a sufficient length of time such that its recurrence can be reasonably expected. *Burnett v. Burnett*, 271 So. 2d 90, 92 (Miss. 1972). Mere "bullying, intimidation and constant criticism" is insufficient conduct to meet the requirements for a divorce on the grounds of habitual cruel and inhuman treatment. *Hassett v. Hassett*, 690 So. 2d 1140, 1146 (Miss. 1997) (citing *Steen v. Steen*, 641 So. 2d 1167, 1170 (Miss.1994)).

A. The Chancellor erred in finding that Chantelle Williams presented sufficient proof of Michael's conduct to establish habitual, cruel, and inhuman treatment because Chantelle's testimony was uncorroborated.

Chantelle was required to prove habitual cruel and inhuman treatment by a preponderance of the evidence. *Shavers v. Shavers*, 982 So. 2d 397, 403 (Miss. 2008).

Crucially, Chantelle had to corroboration of her testimony about Michael's alleged habitual, cruel, and inhuman treatment. *Id*. Chantelle failed to do that.

In the *Opinion and Order*, the Chancellor failed to mention, much less analyze, the requirement for Chantelle to corroborate her testimony. The Chancellor did not address, explain or analyze Chantelle's failure to corroborate her claims. Thus, the Chancellor applied an erroneous legal standard. *This is reversible error*.

Chantelle's uncorroborated testimony about Michael's conduct during the marriage is legally insufficient to establish habitual cruel and inhuman treatment as a ground for divorce. *Hoskins v. Hoskins*, 21 So. 3d 705, 707 (Miss App. 2009). A divorce on the ground of habitual cruel and inhuman treatment "cannot prevail on the uncorroborated testimony of the complainant." *Anderson v. Anderson*, 200 So. 726, 727 (Miss. 1941). There must be corroborating evidence that the offending spouse's conduct rose to the level of habitual, cruel, and inhuman treatment. *None existed in the case at bar.*

In *Cochran v. Cochran*, 912 So. 2d 1086 (Miss. App. 2005), the Mississippi Court of Appeals upheld a Chancellor's decision to require corroboration of the plaintiff's allegations of habitual, cruel, and inhuman treatment as a ground for divorce. In Cochran, the plaintiff wife, like Chantelle, testified about her husband's fits of anger, destruction of property, and name-calling. *Cochran*, 912 So. 2d at 1087. Plaintiff in *Cochran*, like Chantelle, alleged violence and threats of violence during the marriage. *Id*. at 1088. Yet, even with her co-worker's testimony that she saw bruises on the plaintiff numerous times, the Chancellor found, and the Mississippi Court of Appeals affirmed, that plaintiff failed to provide sufficient corroboration of her testimony for the court to find habitual, cruel, and inhuman treatment. *Id*. at 1089-90.

In *Chamblee v. Chamblee*, 637 So. 2d 850, 860 (Miss.1994), the Mississippi Supreme Court affirmed a Chancellor's decision to deny the wife a divorce on the ground of habitual cruel and inhuman treatment where she was the only witness who offered testimony regarding conduct during the marriage that she claimed constituted habitual, cruel, and inhuman treatment. *Chamblee v. Chamblee*, 637 So. 2d 850, 860 (Miss.1994). *See also Hasset v. Hasset*, 690 So. 2d 1140, 1146-47 (Miss., 1997) (affirming denial of divorce on habitual, cruel and inhuman treatment grounds where only wife testified about husband's conduct).

The only witnesses who testified in support of a finding of habitual, cruel, and inhuman treatment were herself and the *Guardian ad Litem* and the only witness who testified about Michael's alleged conduct during the marriage was Chantelle. In the *Opinion and Order*, the Chancellor relied solely on Chantelle's testimony to find: Michael's "temper and constant abuse of her" (R. 306-307); Michael "constantly" yelling at and belittling her (R. 307); forcing her to have sexual relations; living with Michael adversely affected her physical and emotional health (R. 307) and the idea of returning to Michael was repulsive and that she was in fear for her safety. (R. 307-308). *None of these claims were corroborated.*

The Chancellor relied on the testimony of the *Guardian ad Litem*, but the *Guardian ad Litem* did not corroborate Chantelle's claims with any distinct evidence. The *Guardian ad Litem* merely relied on her testimony about Michael's alleged habitual, cruel, and inhuman treatment. (Tr. 534). While the *Guardian ad Litem* spoke to a number of people about the case, including Chantelle's father (Tr. 508, 534, 538-39; Ex. 188-89); Jeremy Williams (Tr. 515, 539, 541, 543; Ex. 180); Morgan Williams (Tr. 515, 543-

44, 547-48; Ex.189-91); and others, none of them provided evidence about Michael's habitual, cruel, and inhuman treatment of Chantelle during the marriage.

Chantelle conceded she had no corroboration. She admitted that there were no witnesses to Michael's alleged mistreatment of her. (Tr. 382). Chantelle's mother, who lived with them for "extended periods of time" during the marriage, and who vacationed with Michael and the children, did not testify. (Tr. 383-84). Chantelle's father, who lived with them for "extended periods of time" during the marriage, did not testify. (Tr. 383). A friend, Martha, who Chantelle lived with for a period, did not testify. (Tr. 414). Martha and her husband, who socialized with the Williams', did not testify. (Tr. 414). Nor did any of these persons provide the *Guardian ad Litem* with evidence of Michael's habitual, cruel, and inhuman treatment of Chantelle.

Conversely, there was an abundance of evidence that Michael did not engage in habitual, cruel, and inhuman treatment. The Chancellor ignored and did not address this evidence except to state, based solely on Michael's conduct after the separation, mostly his conduct during trial, that Michael lacked credibility. (R. 306). Michael repeatedly and vehemently denied Chantelle's claims about his conduct (Tr. 292, 295-96). *Michael was not, however, the only witness who denied Chantelle's claims.*

Danny and Donna Ott lived immediately next door to the Williams' for seven (7) years (Tr. 450). Danny Ott had occasion to see the Williams' interact with each other a lot (Tr. 451-52). Danny Ott also testified that he could overhear things at the Williams' house (Tr. 450). Yet, Danny Ott testified he had never seen or heard Michael scream at anyone in his family; abuse Chantelle; threaten Chantelle; or push, shove or assault Chantelle. (Tr. 450-51). Mr. Ott testified he had not even "heard [the Williams'] yell and

scream at each other." (Tr. 457).

Donna Ott testified that she could hear even "normal" conversations at the Williams' house from her house. (Tr. 460). Donna Ott never overheard any arguments between the Williams' and never heard Michael yelling or screaming at Chantelle. (Tr. 461). Donna Ott never saw Michael abuse or yell at Chantelle. (Tr. 462). It appeared to Donna Ott that the Williams were "happy" and "wanted to be together." (Tr. 462)

The *Guardian ad Litem* testified that Jeremy Williams, Michael Williams' son, also had no any evidence of "fights or mistreatment by one or the other" and Jeremy Williams never witnessed "any altercations" between the two. (Tr. 543).

The Chancellor also ignored and failed to address testimony that Michael and other family members helped Chantelle and supported Chantelle through her cancer treatments. (Tr. 319, 514-515). The Chancellor ignored testimony that Chantelle asked Michael to return home *after* their separation. (Tr. 517). The Chancellor ignored and failed to address testimony that the Williams' took a second honeymoon not long before Chantelle filed for divorce. (Tr. 385). Further, even though the Chancellor allowed a massive amount of hearsay evidence in the record through the *Guardian ad Litem*, none of this hearsay evidence included evidence corroborating Chantelle's claims of habitual, cruel and inhuman treatment.

By failing to require corroboration, the Chancellor applied an erroneous legal standard. Additionally, by simply adopting all of Chantelle's testimony as credible, finding all of Michael's testimony as incredible, and ignoring the testimony and evidence about Michael's marital conduct from all of the non-parties who testified live or through the *Guardian ad Litem*, the Chancellor's finding of habitual, cruel, and

inhuman treatment was manifestly wrong. This Court should reverse the Chancellor's decision.

B. The Chancellor erred in finding that Chantelle presented sufficient proof that Michael's marital conduct impacted her and caused the parties' separation.

Chantelle also failed to provide corroboration for her claim that living with Michael adversely affected her physical and emotional health (R. 307). The Chancellor pointed to this as "evidence" of habitual, cruel, and inhuman treatment, but there was no reliable medical evidence to establish that cohabitation with Michael "caused" her any of claimed physical or emotional issues. Again, the Chancellor relied only on Chantelle's uncorroborated testimony and thereby applied an erroneous legal standard.

Chantelle claimed to be depressed and attributed that to Michael, but she conceded that her oncologist first prescribed her an anti-depressant . . . in conjunction with [her] cancer." (Tr. 350). Chantelle was diagnosed with cancer in July of 2013 or 2014. (Tr. 390). Chantelle had never need or been prescribed anti-depressants before her cancer diagnosis (Tr. 393). Chantelle never sought counseling for depression prior to her cancer diagnosis. (Tr. 394). Over an approximately two-year period when she had cancer, which involved numerous surgeries, Michael testified that he took care of Chantelle, changed her bandages, and transported her where she needed to go. (Tr. 319). Michael and other family members helped Chantelle and supported Chantelle through her cancer treatments. (Tr. 514-515).

Chantelle suffered with cancer, the event that prompted the prescription of anti-depressants, years before the separation with Michael (Tr. 350). Chantelle testified that,

on January 23, 2018, two years after she left Michael, that she still suffered from, and was being medically treated for, depression. (Tr. 363-64). Chantelle testified that she decided to leave before Michael left for Alaska for work in 2015, but, soon after that, she asked him to return (Tr. 517).

The record is clear: Chantelle first needed anti-depressants when she was diagnosed with cancer, and continued to need them regardless of her cohabitation with Michael. In the absence of a qualified medical expert to support Chantelle's contention that Michael's conduct during the marriage caused her depression, or some other independent evidence that Michael caused her physical and emotional health to suffer, the Chancellor's finding is manifestly wrong. Chantelle provided no corroboration for her testimony that Michael's conduct negatively affected her physical and emotional health and the Chancellor erroneously adopted her testimony whole cloth.

Chantelle testified that Michael's conduct caused the separation. She testified that Michael was "abusive emotionally, and he had physical periods of abuse." (Tr. 349). Yet, she also testified that, well before this conduct, she suffered from depression and was prescribed anti-depressants and continued to suffer from, and take medication for, depression well after the separation from Michael. (Tr. 350, R. 363-64). In the absence of some other testimony or evidence to support this, it was manifestly wrong for the Chancellor to find that Michael's conduct caused the parties to separate. Shortly after Michael "caused" the separation, she asked him to return. (Tr. 517).

Only Chantelle's testimony addressed the cause of the parties' separation. No other witness testified, and she presented no other evidence, that his conduct caused them to separate. *Smith*, 90 So. 3d at 1263-64. *Chantelle's testimony alone, without*

more, that Michael's conduct caused the separation is insufficient to prove this impact and causation. *Hoskins v. Hoskins*, 21 So. 3d 705, 707 (Miss App. 2009). A causal connection must exist between the treatment and the separation. *Fournet v. Fournet*, 481 So. 2d 326, 328 (Miss.1985). *No such connection existed in the matter before the lower court; thus, reversal is required.*

C. The "Isolation" exception to the corroboration requirement for habitual, cruel, and inhuman treatment does not apply to this case.

Mississippi jurisprudence does allow for an exception to the corroboration requirement – in cases where the parties live in isolation from other people. *See Jones v. Jones*, 43 So. 3d 465, 478 (Miss. Ct. App. 2009); *see also Cochran v. Cochran*, 912 So. 2d 1086, 1089 (Miss. Ct. App. 2005).

The *Anderson* exception, as it is commonly known, applies in cases where due to "'the isolation of the parties, no corroborating proof is reasonably possible.'" *Cochran*, 912 So. 2d at 1089 (quoting *Anderson v. Anderson*, 200 So. 726, 727 (Miss. 1941)). The exception to the corroboration requirement should apply only "in the rarest of circumstances." *Id*. *This is not an Anderson exception case.*

In the *Opinion and Order*, the Chancellor did not rely on the *Anderson* "isolation" exception. The Chancellor did not mention, *nor* was there any evidence of, the parties' isolation from other people. The record is silent as to facts that would warrant the isolation exception.

In fact, the record is replete with evidence that the Williams' were frequently around other people: Jeremy (Tr. 543); Danny Ott (Tr. 450-51, 457), Donna Ott (Tr. 460-62), Martha (Tr. 414), Chantelle's mother (Tr. 383-84), Chantelle's father (Tr. 384),

friends from church (Tr. 514-15), and so on. The Williams' next door neighbors, the Otts, could hear even "normal" conversations at the Williams' house from their house. (R. 460).

The evidence does not support a finding that Michael and Chantelle Williams were so isolated that corroboration of Chantelle's claims of habitual, cruel, and inhuman treatment would be difficult or impossible. As such, Chantelle's testimony required some testimony or other evidence to corroborate her claims of habitual, cruel, and inhuman treatment. As the record lacks any corroboration, the Chancellor was manifestly wrong and applied the incorrect legal standard when it granted Chantelle a divorce on the grounds of habitual, cruel, and inhuman treatment. *Reversal is required.*

D. The Chancellor erred by finding evidence of habitual, cruel, and inhuman treatment as grounds for divorce based on allegations of irrelevant conduct and conduct unrelated in time or substance to Michael's conduct toward Chantelle during the marriage.

The Chancellor relied heavily on the testimony of the *Guardian ad Litem* as to allegations of Michael's conduct wholly unrelated to or well before the parties' marriage. In the *Opinion and Order*, the Chancellor expressly relied on the testimony from the trial. (R. 308). Other than Chantelle's testimony, much of the evidence related to the allegations of habitual, cruel, and inhuman treatment was the mostly *impermissible hearsay* testimony by the *Guardian ad Litem*.[2]

[2] As set forth *supra*, the only evidence of marital conduct upon which the lower court relied were the uncorroborated statements and testimony of Chantelle Williams and the *Guardian ad Litem*. (R. 534). The *Guardian ad Litem* did not testify that anyone else, including Chantelle's father (Tr. 508, 534, 538-39; Ex. 188-89); Jeremy Williams (Tr. 515, 539, 541, 543; Ex. 180); Morgan Williams (Tr. 515, 543-44, 547-48; Ex.189-91); and others, or anyone else provided evidence of Michael's conduct during the marriage that could support the finding of habitual, cruel, and inhuman treatment.

The lower court erroneously relied heavily on, and included as evidence of Michael's "controlling behavior" Michael's conduct with the *Guardian ad Litem* after Chantelle had filed her divorce complaint. The *Guardian ad Litem* testified as to "angry interactions with" Michael. (Tr. 480). The *Guardian ad Litem* also testified on what he "perceived to be" Michael's attempts at parental alienation. (Tr. 480). The *Guardian ad Litem* testified, and the Chancellor relied upon, Michael's "fierce resistance" to some of his suggestions (Tr. 500). *None of this is related to Michael's conduct toward Chantelle during their marriage.*

The *Guardian ad Litem* testified that Michael's daughter and son wanted nothing to do with him (Tr. 515). This testimony had nothing to do with Michael's conduct during his marriage to Chantelle. The *Guardian ad Litem* testified about Michael's allegedly abusive relationship with his adult daughter, Morgan. (Tr. 547-549). These impermissible hearsay allegations concerned conduct well before Michael and Chantelle's marriage and Michael's daughter had "no information" about any abuse in this case. (Tr. 548).

The Chancellor also cited Michael's failure to comply with court orders as evidence of his habitual cruel and inhuman treatment toward Chantelle. (R. 306). The Chancellor also relied, in part, on audio recordings that reflected Michael discussing the litigation in front of the minor children, "demeaning" Chantelle, and referring to the judge using offensive racial terms (R. 307). The Chancellor's reliance on these irrelevant facts as evidence of habitual, cruel, and inhuman treatment is clearly erroneous.

The evidence and testimony outlined above, relied upon by the Chancellor, is immaterial to the issue of whether Michael's conduct toward Chantelle during the marriage rose to the level of habitual cruel and inhuman treatment necessary to grant a divorce.

The Chancellor ignored relevant evidence of Michael's conduct that diminishes Chantelle's claims of habitual, cruel, and inhuman treatment. *For example*, the opinion and judgment does not mention that Michael and other family members helped Chantelle and supported Chantelle through her cancer treatments. (Tr. 319, R. 514-515) and ignores the fact that Chantelle asked Michael to return home after their separation (R. 517).

The Court did not allow two witnesses to Michael's conduct during the marriage that Michael wanted to testify. (Tr. 267-69). In her case, Chantelle did not call either of her children to testify as to Michael's conduct during the marriage. The *Guardian ad Litem* did not testify about what he learned from the children about Michael's conduct during the marriage.

Michael desperately wanted his children to testify on his behalf. (R. 267-269). He specifically asked the Chancellor to summon them to testify. (R. 268). The Chancellor denied this request and ruled that they could testify only "if they are properly summoned to be here." (R. 272). The Chancellor did not explain to Michael how to do this. Michael specifically asked the Court for an Order to "go and get them and bring them up here" to testify. (R. 267). The Court denied Michael's request.

The Chancellor relied upon irrelevant testimony and thwarted Michael's attempt to present relevant testimony. *The Chancellor's decision was manifestly wrong and this*

Court should reverse the award of divorce based on habitual cruel and inhuman treatment.

III. The Chancellor erred in its analysis of *Albright*.

In *Albright*, the Mississippi Supreme Court held that the *best interest of the child* must be the polestar determination in all custody decisions. *Edwards v. Edwards*, 189 So. 3d 1284 (Miss. Ct. App. 2016). "In determining the best interest of the child in custody disputes, it is the court's duty to consider that the relationship of parent and child is for the benefit of the child, not the parent." *Id*. *See Reno v. Reno*, 176 So. 2d 58, 62 (Miss. 1965).

To determine the best interest of a minor child, a chancellor must consider the following *Albright* factors when evaluating the fitness of each parent:

> age, health, and sex of the children; continuity of care; parenting skills and the willingness and capacity to provide primary child care; employment responsibilities of the parents; physical and mental health and age of the parents; moral fitness of the parents; emotional ties of the parents and children; home, school and community records of the children; preference of children twelve years of age or older; stability of the home environment of each parent and other relevant factors.

Albright v. Albright, 437 So. 2d 1003, 1005 (Miss. 1983).

"Determining custody is not an exact science." *Lee v. Lee*, 798 So. 2d 1284, 1288 (Miss. 2001). *Albright* provided facts to help a chancellor navigate a "labyrinth of interests and emotions." *Id*. While *Albright* is not meant to be a mathematical formula, the reasoning behind the analysis of each must be rooted in evidence and facts and not speculation or argument. The final analysis must be rooted in and supported by substantial evidence. *In the instant matter no such evidence existed.*

A. The Chancellor erred in failing to make finding of fact as to each *Albright* factor.

While the lower court was the trier of fact and in the best position to make a decision – such a decision cannot stand in light of the failure to make findings of fact with regard to each factor. *See Parra v. Parra*, 65 So. 3d 872, 876 (Miss. Ct. App. 2011) (reversing for failure to make *Albright* findings of fact); *see also Pellegrin v. Pellegrin*, 224 So. 3d 555, 562-63 (Miss. Ct. App. 2017) (reversing award of custody to father for failure to make *Albright* finding). The lower court simply makes conclusory statements rather than analyzing the factors – factors in place to guide a chancellor from reaching erroneous conclusions as occurred in the instant matter (R. 316-19).

B. The lower court impermissibly relied upon hearsay of the *Guardian ad Litem* in reaching a decision on physical custody.

In *Ballard v. Ballard*, the Mississippi Supreme Court found that a chancellor's award of custody may not be based upon hearsay evidence in a *Guardian ad Litem's* report. 255 So. 3d 126, 132-34 (Miss. 2017).

In the instant matter, the lower court continued its reliance upon both the report of the *Guardian ad Litem* as well the hearsay testimony of the *Guardian ad Litem* in reaching a decision on the issue of physical custody of the minor children. (R. 319). Chantelle did not have witnesses present to testify on her behalf. The testimony at trial was limited to that of her, Michael and the *Guardian ad Litem*. *The minor children were not even allowed to testify at the final hearing in this case*. (Tr. 267-69).

Instead, the Court placed a great deal of weight on the uncorroborated hearsay testimony of the *Guardian ad Litem* in reaching many conclusions under its *Albright* analysis.

C. The Chancellor erred in application of the following *Albright* factors to the facts.

1. *The Age, Health and Sex of the Minor Child.*

The Williams Children are both male. The Williams Children were thirteen (13) and eleven (11) at the time of the trial of this matter. The lower court erroneously found this *Albright* factor favored Chantelle. (R. 316). The lower court failed to even consider the sex, age or preference of these children. *See Smullins v. Smullins*, 77 So. 3d 119, 128 (Miss. Ct. App. 2011) (father favored on age and sex of six-year-old-boy). *This factor should have properly favored Michael.*

2. *Continuity of Care.*

The lower court found this factor favored Chantelle *but* only due to Michael's alleged actions. The court, however, did not explain its reasoning or make findings of fact in support of its determination. It is clear from a review of the record that the minor children were happier with their father and even the *Guardian ad Litem* recommended in his favor at one point during the litigation. (Tr. 496). While the lower court may not have liked the litigant; such dislike does not mean the Chancellor is excused from following the proper legal reasoning. *This factor should have properly favored Michael*.

3. *The Best Parenting Skills*

The court erroneously found this factor favored Chantelle – This is true even

though Chantelle, on "more than one occasions" admitted she thought about terminating her parental rights and even discussed it with one of the children and that she often had difficulties caring for and handling the minor children. (Tr. 435-36, 517-18, 531). As with the previous factor, the lower court failed to support its reasoning. Chantelle admitted to mental health issues and suicidal thoughts (Tr. 349-50).[3] The *Guardian ad Litem* previously recommended custody to Michael (Tr. 496). There were no facts presented to substantiate this factor weighing in favor of Chantelle. *This factor should have properly favored Michael.*

4. *Willingness and Capacity to Provide Primary Child Care*

Again, the lower court failed to analyze this factor and/or erroneously analyzed the factor of willingness and capacity to provide primary child care. The lower court found in favor of Chantelle on this factor due to Michael allegedly working "hard to destroy the children's relationship with Chantelle Hanley Williams."

This is simply an improper analysis of this factor. *See Wilson v. Wilson*, 79 So. 3d 551, 567 (Miss. Ct. App. 2012) (father favored on employment and capacity to provide childcare based on his flexible schedule). *See also White v. White*, 166 So. 3d 574, 586 (Miss. Ct. App. 2015) (favoring father, who had been in the same job, located close to the marital home and with flexible hours, since the couple married, over mother, who had changed employment multiple times and whose job required travel and being on call at night). In the instant matter, the lower court simply failed to reference any relevant evidence and analyze the true nature of this factor in light of the facts before it and thus

[3] The lower court erroneously blamed this on Michael even though Chantelle's mental health issues had been long-standing.

erred in finding this factor favored Chantelle.

5. *The Physical and Mental Health and Age of the Parents*

The lower court erred in finding this factor favored Chantelle. *The lower court's conclusory statements regarding the factor of mental health of the parents is illustrative of its abuse of discretion in this regard*. Chantelle has suffered from mental health and has attempted suicide. (Tr. 349-50). The lower court erroneously blamed all of her mental health issues on the allegations about Michael's conduct. Such is clear error and not supported by the record in this case.

Instead, the law of the State of Mississippi favors Michael on this factor. In *Sellers v. Rinderer*, the Mississippi Court of Appeals found in favor of a father on mental health over a mother who had attempted suicide and suffered from paranoid delusions. 248 So. 3d 930, 935-36 (Miss. Ct. App. 2018). *See Kalmon v. Kalmon*, 221 So. 3d 1058, 1062 (Miss. Ct. App. 2017) (favoring father on mental health because of mother's suicide attempt). *This factor should have properly favored Michael.*

6. *Emotional Ties Between Parent and Child*

The lower court simply concluded the children were "isolated and estranged from Chantelle Henley Williams because of actions of Michael Williams." (R. 318). This does not constitute an analysis of anything. It is conclusory in nature. Further and most significantly, the minor children were prohibited from testifying at the trial of this matter. (Tr. 267-69). Thus, the only testimony regarding their emotional ties to either parent came from the parties or the *Guardian ad Litem*. *This factor should have properly favored Michael.*

7. *Moral Fitness of the Parents*

The lower court erred in making the statement that "Michael has been abusive to Chantelle, as well as other family members from the past." (R. 318). In so doing, the Court impermissibly relied upon the uncorroborated hearsay of the *Guardian ad Litem* and little else. *This factor should have been found to be neutral or in favor of Michael.*

8. *The Preference of the Child at the Age Sufficient to Express a Preference by Law*

The lower court provided one statement with regard to this *Albright* factor: "Neither of the children testified as to any preference." The Williams' children should have been allowed to testify in this matter. It was clear error on the part of the Chancellor to not allow such testimony. As set forth *supra* Michael requested the lower court's assistance so that the minor children could testify at the trial. The court, however, declined to provide any such assistance to the *pro se litigant*.

At the same time, the lower court, purportedly relying on "all" of the evidence *completely ignored that the children testified in a prior hearing that they preferred to live with Michael*. (Tr. 132-33, 142-43, 339, R. 319). The record absolutely establishes that *this factor should have favored Michael.*

IV. The Chancellor erred in finding all of Chantelle's testimony to be credible and none of Michael's testimony to be credible based only on their demeanor and behavior during trial.

It is well settled law that a Chancellor's findings of fact will not be reversed on appeal unless those findings are obviously wrong. Faced with conflicting testimony, the Chancellor is the ultimate trier of fact and is charged with evaluating witnesses, testimony, and evidence "where it is capable of more than one reasonable

interpretation." *Bowen v. Bowen*, 982 So. 2d 385, 395 (Miss. 2008). The appellate courts will not "substitute its judgment for that of the chancellor even if [they disagree] with the lower court on the finding of fact and might arrive at a different conclusion." *Sanderson v. Sanderson*, 170 So. 3d 430, 434 (Miss. 2014).

Rather than evaluating the witnesses, testimony and evidence, however the Chancellor in this case merely adopted wholesale Chantelle's version of disputed events based on nothing more than the perception of the parties' behavior during a tense, stressful two-day divorce trial.

In its *Opinion and Order*, the Court, stressed the importance and primacy of Michael's conduct during the litigation and trial to support the finding of habitual, cruel, and inhuman treatment well before litigation even commenced. The Court emphasized "the particular significance of its personal observation of all the witnesses in this matter, but particularly in regards to Chantelle Hanley Williams and Michael Williams."(R.306). *The lower court abused its discretion by putting "particular significance" on these observations, and, as explained herein, failing to even consider facts inconsistent with those observations.*

While the Chancellor is the fact-finder and ultimate arbiter on the credibility of witnesses, the "all or nothing" approach to the evidence and adopting wholesale Chantelle's version of all events taints the objectivity of his findings on the issues raised herein, is an abuse of discretion, manifestly wrong, and constitutes reversible error.

CONCLUSION

For the reasons set forth *supra* the lower court erred in awarding a divorce to Chantelle Hanley Williams and *further* erred in awarding unto her custody of the minor children. Michael Williams respectfully requests the Court reverse Chancellor in this matter.

CERTIFICATE OF SERVICE

The undersigned counsel does certify that this day a true and correct copy of *Appellant's Brief* has been delivered to all counsel of record via MEC as well as to Honorable Robert G. Clark, III as follows:

So dated, this the 8th day of July, 2019.

/s/ Heather M. Aby

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