IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CA-00074-COA

NATASHA L. BAUGHMAN — **APPELLANT/ CROSS-APPELLEE**

v.

BENJAMIN ALAN BAUGHMAN — **APPELLEE/ CROSS-APPELLANT**

DATE OF JUDGMENT:	01/06/2021
TRIAL JUDGE:	HON. MICHAEL CHADWICK SMITH
COURT FROM WHICH APPEALED:	MARION COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT/ CROSS-APPELLEE:	S. CHRISTOPHER FARRIS
ATTORNEY FOR APPELLEE/ CROSS-APPELLANT:	R. ALLEN FLOWERS
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	ON DIRECT APPEAL: AFFIRMED IN PART; REVERSED AND RENDERED IN PART; REMANDED. ON CROSS-APPEAL: AFFIRMED - 11/01/2022
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., WESTBROOKS AND SMITH, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. On January 6, 2021, the Marion County Chancery Court entered a judgment denying Alan Baughman's claim for separate maintenance, as well as Natasha Baughman's counterclaim for a divorce on the grounds of uncondoned adultery, habitual cruel and inhuman treatment, or irreconcilable differences. Natasha appeals, arguing that the chancery court erred when it did not grant her a divorce on the grounds of adultery or habitual cruel and inhuman treatment. Alan cross-appeals his denial of separate maintenance, arguing that the chancery court applied an erroneous legal standard and an incorrect burden of proof. We

find no error with the chancery court's determinations regarding Alan's claim for separate maintenance or Natasha's divorce ground of adultery. However, we do find that it was clear error for the chancery court to find that Natasha's claim of cruel and inhuman treatment was not proven. Because the chancellor applied the incorrect legal standard in his determination on this ground, and because substantial credible evidence supports granting a divorce on the ground of habitual cruel and inhuman treatment, we reverse and render judgment in favor of Natasha on this issue, and we remand the case to the chancery court for further proceedings in accordance with this opinion.

FACTS AND PROCEDURAL HISTORY

¶2. Alan and Natasha were married on June 9, 2001. No children were born of the marriage, but Alan's son from a previous marriage lived in the marital home until he reached the age of majority.

¶3. The couple separated in 2018, though testimony diverges on the exact date Natasha moved out of the marital home. Each party gave conflicting testimony regarding the date, but both parties mentioned May 2018. Since Natasha's counseling records also list May 2018 as the month for separation, the chancellor made a factual finding that May 2018 was the correct date for separation.[1]

¶4. On August 8, 2018, Alan filed a complaint in the Marion County Chancery Court for separate maintenance and related relief. Alan contended that Natasha had formally abandoned the marriage, and he requested use of the homestead property, insurance coverage

[1] The chancery court did not specify the day in May.

for the vehicles, and medical and dental insurance. He also requested that Natasha "satisfy and pay all debts incurred by the parties." Natasha answered on August 16, 2018, with the defense that Alan's conduct "[was] the sole proximate cause of the parties[']s separation," preventing him from being entitled to separate maintenance. She also raised the defense that Alan "[would] not allow her to return [to the homestead] to even retrieve . . . clothing and personal property." Natasha counterclaimed for divorce on the grounds of (1) uncondoned adultery; (2) habitual cruel and inhuman treatment, or, in the alternative, (3) irreconcilable differences. She also requested a hearing to establish temporary relief in order to "force [Alan] to provide support."

¶5. A temporary hearing was held on August 22, 2018. A temporary order was issued October 30, 2018, which gave Alan use and possession of the marital home and divided the debts between the parties. The order set a time later the same day for Natasha to remove her personal belongings from the home. In November 2018, Alan was diagnosed with multiple sclerosis, which Alan testified eventually led to the loss of his job the following year.

¶6. On October 24, 2019, the parties were both ordered to submit updated Rule 8.05 financial statements after Natasha failed to disclose land she owned on her statement and misstated the amount she paid for Alan's health insurance. *See* UCCR 8.05. After the conclusion of a contentious discovery period, the matter was set for trial for August 26 - 27, 2020. The parties agreed beforehand to bifurcate the issues: the first hearing would be held for issues related to the separation grounds for divorce, and later, if necessary, a second hearing would be held for issues related to property division. The court permitted the

bifurcation.

¶7. Testimony commenced regarding the cause of the separation and the grounds for divorce. Alan testified that Natasha was having an affair, "talking to another guy." Alan said he discovered the "affair" from a text conversation initiated by the other man's spouse on June 4, 2018. Natasha acknowledged she had a flirtatious relationship with another man in 2018, but in her deposition and answers, she denied that the relationship became sexual until May 2019, about one year after the separation. Alan testified that despite Natasha's affair, he did not seek a divorce and would be willing to reconcile with Natasha.

¶8. Natasha's account of the cause of separation is significantly different. Natasha first pointed to Alan's history of adultery. Both Alan and Natasha acknowledged Alan's adulterous contact with a woman in 2006. Both parties also testified that after this incident, they sought counseling and continued the marriage. Natasha testified about her other suspicions regarding affairs. She described her discovery of emails and texts from various women, once finding Alan at another woman's apartment. Alan did not admit to any additional affairs.

¶9. Natasha next described Alan's fits of rage, testifying that "he would yell and cuss" and break objects, including family items with sentimental value. In her deposition, she specifically mentioned a cross her grandmother gave her that Alan broke and that he laughed when she became upset. Natasha testified that although Alan did not hit her, "he would be intimidating towards me in word and body language." She also testified to a physical altercation between Alan and his son where she intervened and was cowed by Alan into a

corner. She also described incidents where Alan "busted through doors" (specifically, twice breaking a utility room door) to "come[] after [her]." Alan's testimony confirmed one instance of breaking glass in an exterior door. He described the incident as breaking the glass to enter the home because Natasha (who had the only key) would not let him inside and wanted to argue outside the home. He stated that he had to go inside and "use the bathroom really bad" due to a bowel issue, so he broke the window to enter the home. His testimony also alludes to the utility room door incident described by Natasha. Alan testified that "when she slammed the door, I stuck my hand out to catch the door, and it was a thin door and I punched a hole in the door. It cracked the door." Natasha explained her state of mind during the marriage as "[t]hrough the years there was just a constant anxiety of not knowing what might trigger these bouts of rage."

¶10. Natasha's counseling records, which were admitted into evidence, detailed marital issues starting in 2005. Few incidents were mentioned with specificity, as the notes provided only a one- or two-sentence summary of the counseling session. The records did, however, mention two specific instances where Alan "broke a cross [the] client's grandmother gave to her," and "[Alan's] rage including kicking a door." There were many additional references in the records of discussions of "threats of aggression," "the need for safety," "abuse by her husband," "escalating violence," "consequences to physical violence in the home," and "anger and rage episodes." General notes regarding Natasha's attempts to deal with violence and fear of Alan permeated the counseling records as far back as 2006.

¶11. Natasha then testified to two incidents she characterized as the "final straw" in her

marriage. First, Natasha testified that after she moved out of the marital home Alan sent her text messages that included nude and partially clothed pictures of her. The parties disputed whether these photos were taken voluntarily. In this series of texts, Alan outlined an offer that "expires at 4:45 sharp." Alan stated, "I'm gonna send [the] first screen shot out to [you're father] at 4:00. If your not around to explain." Natasha testified this referred to a "blackmail"[2] offer "for me to come to the house or else he is going to send out the [nude] photos to my dad and everybody." He also threatened to send the pictures to her sister and post them publicly on social media unless she agreed to talk to him in person regarding the allegations of her affair. Alan, in his testimony, acknowledged being the person who sent the photographs to Natasha in the text-message exchange labeled as Exhibit 21. When questioned about the accompanying text messages threatening to release them, Alan stated, "I don't recall that."

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[2] While the parties and the court characterize this episode as "blackmail," this behavior was criminalized three years later on July 1, 2021, in a statute prohibiting "revenge porn," which is a phrase "now common in popular usage." 2 Rights & Liabilities in Media Content § 13:18 (2d ed.) (updated June 2022). With this in mind, this is the language this Court will describe this incident. The pertinent portion of the statute is as follows:

> (2) A person commits an offense if the offender intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the depicted person's intimate parts exposed or engaged in sexual conduct and the offender makes the threat to obtain a benefit:
>
> (a) In return for not making the disclosure; or
>
> (b) In connection with the threatened disclosure.

Miss. Code Ann. § 97-29-64.1 (Supp. 2021). Although it was not a crime at the time Alan threatened Natasha with exposure of her nude photographs, this statute's eventual placement in title 97, chapter 29 of our statutes, "Crimes Against Public Morals and Decency," underscores the repugnant and revolting nature of this behavior.

¶12. Natasha next testified that after receiving the text messages, she met with Alan at the marital home to talk. She then described an incident that she depicted as a sexual assault or forced sex by Alan in order "to dominate and humiliate me." Natasha testified that she "repeatedly over and over told him I do not want to do this. You are forcing me to do this against my will." Alan testified that this sexual encounter was consensual and that "[he] would not do that."[3]

¶13. The date of the sexual encounter was never fully established. Natasha testified that after staying the remainder of the night in the home, she reported the encounter to her counselor the next day. This report is not reflected in her counselor's records around the time of the encounter. Natasha's counseling records did mention therapy practices relating to the "'terror' and 'panic'" she still felt after the "sexual assault from her husband" much later, on September 3, 2019. Alan testified that he did not recall telling his counselor about sending the photographs to Natasha and denied telling his counselor he engaged in sexual acts to humiliate Natasha.[4] Again, Natasha testified these two incidents were "the final nail in the coffin" that led to separation.

¶14. In June 2018, after the separation, the parties took a day trip to dine on the Gulf Coast for their anniversary. Alan testified that the trip occurred after the encounter, while Natasha

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[3] The chancery court refers to this sexual incident as "the encounter," so we will do the same to prevent confusion.

[4] While Natasha's counseling records were entered into evidence and contained in the record on appeal, Alan's counseling records were entered into evidence as "ID only"; although they are a part of the exhibits submitted on appeal, they are not properly before us. Accordingly, we will not refer to Alan's admissions to his counselor.

believed the trip occurred before the encounter. Natasha testified that she went on the trip reluctantly after Alan "begged me to do something with him" for their final anniversary. Alan submitted receipts as evidence to support his allegation of multiple trips the parties took to the coast in June and July 2018. Natasha denied taking multiple trips with Alan and testified that Alan had control of the bank account after the separation. Finally, Natasha described her anxiety, depression, stomach issues, and hair loss as a result of the state of her marriage. Natasha presented no witnesses to testify in her behalf regarding the grounds for her divorce.

¶15. On January 6, 2021, the chancery court entered its opinion and final judgment in the matter. The court first assessed Alan's separate-maintenance claim. The chancery court found that because the separation began in May 2018, and Alan's discovery of Natasha's alleged affair occurred in June 2018, the separation could not possibly have been caused by the alleged affair as Alan claimed. The court determined that the weight of the evidence supported Natasha's claims that ongoing marital issues led to the separation. The chancery court determined that because Alan's conduct materially contributed to Natasha's removal from the marital home, Alan's separate-maintenance claim was denied.

¶16. Next the chancery court assessed the grounds for divorce, starting with Natasha's adultery claim. The court found that Alan's admitted affair occurred in 2006, twelve years prior to Natasha's counter-complaint for a divorce, and the parties attended therapy and resumed marital relations after the affair. The court found that Natasha condoned the 2006 affair and failed to provide corroborating evidence of Alan's other alleged affairs. The court

then denied her counterclaim for divorce on the ground of adultery.

¶17. Finally the chancery court assessed Natasha's claim of habitual cruel and inhuman treatment. The court briefly noted Alan's and Natasha's testimony regarding the broken-door incident and the incident where Natasha tried to intervene during an altercation between Alan and his son. Then the chancery court opined the following about the threat of disbursing Natasha's nude photos and the encounter:

> Natasha also testified that the encounter with Alan was the "point of no return" for her after he forced her to have sex against her will. Alan stated that the encounter was consensual and that he would never physically hurt Natasha. Natasha offered no evidence that Alan ever hurt her physically, other than the encounter, which occurred after Natasha admitted to Alan that she was having an improper relationship. She also voluntarily went back to the home after Alan attempted to blackmail her with the nude photos. She knew or should have known that he would be upset. One could reasonably conclude that she went back voluntarily for the encounter because she didn't fear Alan. Additionally, she stayed the entire night in the same bed with Alan after the encounter. She took no action to document what she described as Alan's criminal behavior during that encounter. She did not alert authorities.[5] She said she called her therapist, but she offered no documentation supporting that assertion. Moreover, she only filed for divorce in response to Alan filing his initial Complaint.

The chancery court then determined that Natasha had not met the burden of proof for a single occurrence to be sufficient for a divorce on the ground of habitual cruel and inhuman treatment. The court stated "[A]lthough the therapist's records document general marital

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[5] These statements by the chancery court show a profound misunderstanding of intimate-partner sexual violence, which often goes unreported. A 2007 study of sexual assault in abusive relationships by the National Institute of Justice found that only six percent of women in the study contacted police after the first rape, and only eight percent applied for a protective order. Lauren R. Taylor & Nicole Gaskin-Laniyan, *Sexual Assault in Abusive Relationships*, Nat'l Inst. of Just. Journal, Iss. 256 (Feb. 1, 2007), https://nij.ojp.gov/topics/articles/sexual-assault-abusive-relationships.

problems, no specific conduct by Alan is documented by the therapist nor proved by Natasha that rises to the level of habitual cruel and inhuman treatment." After denying the claims for separate maintenance and two grounds for divorce, the chancery court ceased the effect of the temporary order that was in place.

¶18. Aggrieved, Natasha appealed the denial of the counterclaim for divorce on January 19, 2021. Alan cross-appealed the denial of his claim for separate maintenance on February 5, 2021.

STANDARD OF REVIEW

¶19. "In domestic-relation cases, our review is limited to whether the chancery court's findings were manifestly wrong or clearly erroneous, or the court applied the wrong legal standard." *Lindsay v. Lindsay*, 303 So. 3d 770, 779 (¶22) (Miss. Ct. App. 2020) (citing *Gwathney v. Gwathney*, 208 So. 3d 1087, 1088 (¶5) (Miss. Ct. App. 2017)), *cert. denied*, 303 So. 3d 419 (Miss. 2020). If substantial evidence in the record supports the chancellor's findings of fact, we will not disturb the decision. *Id*.

DISCUSSION

¶20. While both parties assert multiple issues on appeal, the issues can be consolidated into two major categories: (1) whether the chancery court erred in denying Alan's request for separate maintenance; and (2) whether the chancery court properly denied Natasha's grounds for a divorce.

I. Separate Maintenance

¶21. Alan argues the denial of his claim for separate maintenance was in error, asserting

that the chancery court improperly shifted the burden to him as the petitioner to determine why Natasha left the marriage and that the chancery court applied the wrong legal standard. We disagree.

¶22. This court has explained that "[s]eparate maintenance is . . . court-created equitable relief based upon the marriage relationship and is a judicial command to the husband to resume cohabitation with his wife, or in default thereof, to provide suitable maintenance of her until such time as they may be reconciled to each other." *Forthner v. Forthner*, 52 So. 3d 1212, 1219 (¶13) (Miss. Ct. App. 2010). "Whether the party requesting separate maintenance has engaged in significant conduct that negatively impacted the enjoyment of the marriage contract is a question of fact to be resolved by the chancellor." *Id*. at 1219 (¶15) (citing *Robinson v. Robinson*, 554 So. 2d 300, 304 (Miss. 1989)). This means "[w]e will not reverse unless the decision was against the overwhelming weight of the evidence." *McIntosh v. McIntosh*, 977 So. 2d 1257, 1267-68 (¶39) (Miss. Ct. App. 2008) (citing *Honts v. Honts*, 690 So. 2d 1151, 1153 (Miss. 1997)).

¶23. Alan argues that the proper analysis of separate maintenance consists of a three-part separate-maintenance test with "three tiers" that must be analyzed and fail before a separate-maintenance claim can be denied. Alan argues that his claim would have prevailed had the chancery court followed this three-tier method. This argument is incorrect. This Court repeatedly has stated there are *two* requirements that give a jurisdictional basis and power to grant separate maintenance claims: "(1) a separation without fault on the part of the [petitioner spouse], and [(2)] the [offending spouse's] willful abandonment of [petitioner

spouse] with refusal to provide support to [him or] her."[6] *Jackson v. Jackson*, 114 So. 3d 768, 775 (¶17) (Miss. Ct. App. 2013) (citing *Rodgers v. Rodgers*, 349 So. 2d 540, 541 (Miss. 1977)). One defense to separate maintenance is "misconduct on [petitioning spouse's] part which materially contributes to the separation, so that it may be said that the fault of the [petitioner] is equal to or greater than that of the [offending spouse]." *King v. King*, 246 Miss. 798, 803-04, 152 So. 2d 889, 891 (1963). Other cases clarify that the petitioner need not be completely blameless, only that they cannot materially contribute to the separation in amounts equal to or greater than that of the spouse they are suing for separate maintenance. *Huseth v. Huseth*, 135 So. 3d 846, 852 (¶13) (Miss. 2014).

¶24. Alan claims the jurisdictional basis and the defense are part of a "sequential test" that must be analyzed, but our precedent clearly states otherwise. Alan also disputes that he should be required to prove why Natasha abandoned the marriage. But Alan, as the party requesting separate maintenance, bears the burden of proof of his claim. *Jackson,* 114 So. 3d at 774, 777 (¶¶16, 23). After hearing the testimony of both parties, the chancery court declined to award separate maintenance to Alan because the court found the weight of the evidence supported that Alan's behavior was a material cause of the separation. The court noted that the May 2018 separation was prior to the June 2018 discovery by Alan of Natasha's flirtatious affair, and the affair was the only reason Alan gave for the separation. The chancery court thus determined that the weight of the evidence supported Natasha's

[6] While historically most often tied to wives, this remedy is available to spouses of both genders. *See Jackson*, 114 So. 3d at 775 (¶17) & n.5 (noting that separate maintenance is available to either spouse). We have updated the language accordingly.

contentions that Alan's conduct was the cause of the separation. This determination is supported by substantial credible evidence and will not be disturbed on appeal.

II. Grounds for Divorce

A. Adultery

¶25. Natasha appeals the denial of her divorce on the ground of adultery, arguing that the chancery court did not apply the "totality of conduct rule" as it applied to her condonation of Alan's adultery. Again, we disagree.

¶26. "In Mississippi one seeking a divorce on the grounds of adulterous activity must show by clear and convincing evidence both an adulterous inclination and a reasonable opportunity to satisfy that inclination." *Holden v. Frasher-Holden*, 680 So. 2d 795, 798 (Miss. 1996) (citing *Owen v. Gerity*, 422 So. 2d 284, 287 (Miss. 1982); *Magee v. Magee*, 320 So. 2d 779, 783 (Miss. 1975)); *see* Miss. Code Ann. § 93-5-1 (Rev. 2021).[7] As with separate maintenance, the party asserting the claim of adultery bears the burden of proof. *Mitchell v. Mitchell*, 767 So. 2d 1037, 1040 (¶5) (Miss. Ct. App. 2000). "Where the proof is circumstantial, the party asserting the adulterous relationship carries a heavy burden." *Owen*, 422 So. 2d at 287. This is because the proof must be "clear and convincing." *Mitchell*, 767 So. 2d at 1040 (¶5). "In cases concerning an allegation of adultery, the chancellor is required to make a finding of fact," which will not be set aside on appeal unless they are manifestly wrong. *Gerty v. Gerty*, 265 So. 3d 121, 131 (¶36) (Miss. 2018) (citing *Dillon v. Dillon*, 498

[7] The relevant portion of the statute states, "Second. Adultery, unless it should appear that it was committed by collusion of the parties for the purpose of procuring a divorce, or unless the parties cohabited after a knowledge by complainant of the adultery." Miss. Code Ann. § 93-5-1.

So. 2d 328, 330 (Miss. 1986)).

¶27. Condonation is an affirmative defense to adultery. *Id*. at (¶39). It is not an infallible defense, however. The Supreme Court has held:

> The mere resumption of residence does not constitute a condonation of past [marital] sins and does not act as a bar to a divorce being granted. Compare Miss. Code Ann. § 93-5-4 (1972).[8] Condonation, even if a true condonation exists, is conditioned on the offending spouse's continued good behavior. If the offending party does not mend his or her ways and resumes the prior course of conduct, there is a revival of the grounds for divorce.
>
> In practical effect, condonation places the offending spouse on a form of temporary probation. Any subsequent conduct within a reasonable time after resumption of cohabitation which evidences an intent not to perform the conditions of the condonation in good faith, may be sufficient to avoid the defense of condonation . . . . An entire course of conduct rule applies. A party's conduct both before and after the alleged condonation can be joined together to establish the cause for divorce.

Wood v. Wood, 495 So. 2d 503, 505 (Miss. 1986) (citations omitted).

¶28. In the present case, testimony by both parties establishes that Alan's admitted affair from 2006 was condoned by Natasha. The parties both testified that they received marital counseling and resumed the marriage for twelve additional years. Natasha testified to additional vague incidents where Alan had contact with women afterward, but Natasha provided no specifics and failed to provide any corroboration of these claims. The course-of-conduct rule, which Natasha argues the chancery court did not apply, also refers to "temporary probation" and "conduct within a reasonable time." Twelve years later is not a reasonable time. The chancery court found that Natasha failed to carry her burden on the

[8] The text of this statute is as follows, "It shall be no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse." Miss. Code Ann. § 93-5-4 (Rev. 2021).

adultery claim. Because this determination is supported by substantial credible evidence, we find no reversible error in this ruling.

B. Habitual Cruel and Inhuman Treatment

¶29. Natasha next argues that the chancery court erred when it failed to grant her a divorce on the ground of habitual cruel and inhuman treatment. Alan argues that Natasha failed to meet her burden of proof for habitual cruel and inhuman treatment. While the chancery court agreed with Alan, we find that the chancery court erred when it applied the wrong legal standard and that there was sufficient evidence to support the granting of the divorce on the ground of habitual cruel and inhuman treatment in the form of Alan's own testimony, admissions, and Natasha's counseling records.

¶30. A chancellor has the statutory authority to grant a divorce on the grounds of "habitual, cruel, and inhuman treatment." *Rawson v. Buta*, 609 So. 2d 426, 431 (Miss. 1992) (quoting Miss. Code Ann. § 93-5-1). A divorce is properly granted on this ground if either of the following applies:

> Conduct that evinces habitual cruel and inhuman treatment must be such that it either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance.

Fulton v. Fulton, 918 So. 2d 877, 880 (¶7) (Miss. Ct. App. 2006) (citing *Daigle v. Daigle*, 626 So. 2d 140, 144 (Miss. 1993)). In 2017 the Mississippi Legislature amended this portion of the statute to specifically include spousal domestic abuse. *Roley v. Roley*, 329 So. 3d 473,

492 (¶52) (Miss. Ct. App. 2021) (citing Miss. Code Ann. § 93-5-1 (Supp. 2017)). This amended portion of the statute allows domestic abuse to be "established through the reliable testimony of a single credible witness" Miss. Code Ann. § 93-5-1. The spousal abuse can include (but is not limited to):

> [T]he injured party's spouse attempted to cause, or purposely, knowingly or recklessly caused bodily injury to the injured party, *or that the injured party's spouse attempted by physical menace to put the injured party in fear of imminent serious bodily harm*; or
>
> That the injured party's spouse engaged in a pattern of behavior against the injured party of threats or intimidation, emotional or verbal abuse, forced isolation, sexual extortion or sexual abuse, or stalking or aggravated stalking as defined in Section 97-3-107, if the pattern of behavior rises above the level of unkindness or rudeness or incompatibility or want of affection.

Id. (emphasis added). Habitual cruel and inhuman treatment must be proved by a preponderance of the evidence. *Fulton*, 918 So. 2d at 880 (¶7).

¶31. The conduct in question must be "more than mere unkindness, lack of affection, or incompatibility." *Gwathney*, 208 So. 3d at 1089 (¶6) (citing *Lomax v. Lomax*, 172 So. 3d 1258, 1260 (¶6) (Miss. Ct. App. 2015)). Courts often have held that "[a]s a general rule, the habitual cruel and inhuman treatment must be shown to be routine and continuous; however, a single occurrence may be grounds for a divorce . . . ." *Boutwell v. Boutwell*, 829 So. 2d 1216, 1220 (¶14) (Miss. 2002); *Rawson*, 609 So. 2d at 431; *Lindsay*, 303 So. 3d at 781 (¶28); *Rakestraw v. Rakestraw*, 717 So. 2d 1284, 1287 (¶8) (Miss. Ct. App. 1998).

¶32. The statute requires the treatment and cruelty be "not such as merely to render the continuance of cohabitation undesirable, or unpleasant, but so gross, unfeeling and brutal as to render further cohabitation impossible, except at the risk of life, limb, or health on the part

of the unoffending spouse; and that such risk must be real rather than imaginary merely, and must be clearly established by the proof." *Kergosien v. Kergosien*, 471 So. 2d 1206, 1209 (Miss. 1985) (quoting *Howard v. Howard*, 243 Miss. 301, 303-04, 138 So. 2d 292, 293 (1962)). But the court must assess this cruelty on a subjective standard, not a reasonable person standard:

> [T]here is a dual focus on the conduct of the offending spouse and [its] impact . . . on the offended spouse. This specific inquiry is subjective. Instead of using an ordinary, reasonable-person standard, we concentrate on the conduct's effect on the particular offended spouse.

Gwathney, 208 So. 3d at 1089 (¶6) (internal quotation marks omitted) (quoting *Harmon v. Harmon*, 141 So. 3d 37, 42 (¶16) (Miss. Ct. App. 2014)).

¶33. "[T]here are many kinds of acts . . . which, if taken alone will not constitute cruelty, but when taken together will manifest a course of conduct as a whole which may amount to cruelty." *Dickinson v. Dickinson*, 293 So. 3d 322, 330 (¶21) (Miss. Ct. App. 2020) (quoting *Smith v. Smith*, 90 So. 3d 1259, 1263 (¶13) (Miss. Ct. App. 2011)). Accordingly, "[d]ivorces based upon habitual cruel and inhuman treatment are necessarily fact-intensive and require a case-by-case analysis." *Thornton v. Thornton*, 324 So. 3d 345, 351-52 (¶24) (Miss. Ct. App. 2021) (quoting *Littlefield v. Littlefield*, 282 So. 3d 820, 827 (¶19) (Miss. Ct. App. 2019)), *cert. denied*, 324 So. 3d 801 (Miss. 2021).

¶34. Typically, "[t]he party alleging cruel and inhuman treatment must . . . corroborate the testimony." *Rawson*, 609 So. 2d at 431 (citing *Chambers v. Chambers*, 213 Miss. 71, 73, 56 So. 2d 33, 34 (1952)). However, in some instances divorce can be granted on the uncorroborated testimony of the plaintiff where, due to "its nature or owing to the isolation

of the parties, no corroborating proof is reasonably possible." *Id*. (citing *Anderson v. Anderson*, 190 Miss. 508, 200 So. 726, 727 (1941); *Chambers*, 213 Miss. at 73, 56 So. 2d at 34). "The revised statute, [which adds domestic abuse to this ground], allows for corroboration in cases involving spousal domestic abuse by 'the reliable testimony of a single credible witness, *who may be the injured party*.'" *Roley*, 329 So. 3d at 492 (¶52) (quoting Miss. Code Ann. § 93-5-1)). Furthermore, "'the corroborating evidence need not be sufficient in itself to establish the ground' but rather 'need only provide enough supporting facts for a court to conclude that the plaintiff's testimony is true.'" *Lindsay*, 303 So. 3d at 781 (¶30) (quoting Deborah H. Bell, *Bell on Mississippi Family Law* § 4.02[8][d], at 74 (2005)) (citing *Anderson*, 200 So. at 728).

¶35. In the present case, the chancery court erred when it did not analyze Natasha's claim from her perspective, as is required. The chancery court found in its opinion that "[o]ne could reasonably conclude that [Natasha] went back voluntarily for the encounter because she didn't fear Alan." The court continued by noting as a basis for denying the divorce because Natasha took no action to document the encounter or to alert the authorities. Instead of what "one could reasonably conclude," the chancery court should have considered the "dual focus on the conduct of the offending spouse and [its] impact . . . on the offended spouse." *Gwathney*, 208 So. 3d at 1088 (¶6) (quoting *Harmon*, 141 So. 3d at 42 (¶16)). The effect of the conduct on the offended spouse is determined by a subjective standard that considers the impact on the offended spouse—in this case, Natasha—and not on an objective standard. *Morris v. Morris*, 783 So. 2d 681, 688 (¶22) (Miss. 2001); *Faries v. Faries*, 607

So. 2d 1204, 1209 (Miss. 1992). "This Court has held that [the] impact of the conduct on the plaintiff is crucial[.]" *Faries*, 607 So. 2d at 1209.

¶36. Additionally, the chancery court erred by supporting the denial of the divorce on this ground because "Natasha offered no evidence that Alan ever hurt her physically, other than the encounter . . . ." This finding by the chancery court is also in error. First, our caselaw notes that a single instance may be sufficient to allow a divorce on this ground. *Boutwell*, 829 So. 2d at 1220 (¶14). "The encounter" can be enough. Second, our caselaw also notes that "[p]hysical violence directed at the offended spouse is not required" to constitute cruel and inhuman treatment. *Bodne v. King*, 835 So. 2d 52, 58 (¶23) (Miss. 2003) (citing *Richard v. Richard*, 711 So. 2d 884, 889 (¶19) (Miss. 1998); *Morris*, 783 So. 2d at 688 (¶22)). Even the domestic-abuse portion of the habitual-cruel-and-inhuman-treatment statute specifically includes as a basis for divorce "the injured party's spouse attempted by *physical menace* to put the injured party in fear of imminent serious bodily harm." Miss. Code Ann. § 93-5-1(7) (emphasis added). Natasha testified to incidents of property destruction to her personal property. She testified about damage to the doors of the marital home, two instances of which Alan's testimony corroborated. She testified to being cowed into a corner by Alan after she attempted to intervene in a fight he had with his son.

¶37. Additionally, Natasha described an instance of being threatened with revenge porn, which Alan's testimony corroborated. She produced texts where Alan threatened to send a photograph of her exposed breast, as well as photos of her in her underwear, to her father and sister (and to post the photos on social media) unless she came to talk to him about the

failing marriage by a certain time that day. This exact act—intentionally threatening to disclose photos of a person's exposed intimate parts in order to obtain a benefit—while not illegal at the time, has since been criminalized as revenge porn by our Legislature as a crime against public morals and decency. Miss. Code Ann. § 97-29-64.1. Natasha described the forced sexual encounter with Alan, which was referred to in her counseling records as a sexual assault, that referenced the "'terror' and 'panic'" the encounter left her with. Her fourteen years of counseling records, while sparse on descriptions of specific events, still make up over a decade of references to marital abuse, rage, or marital violence. As a result, Natasha testified that she experienced anxiety, depression, stomach issues, and hair loss due to the state of her marriage.

¶38. Under the correct analysis, which mandates the chancellor consider the impact of the offending spouse's conduct on the offended spouse, Natasha sufficiently described multiple acts where Alan "attempted by physical menace to put the injured party in fear of imminent serious bodily harm" and where the impact was such that she suffered this fear. *Faries*, 607 So. 2d at 1209; *See* Miss. Code Ann. § 93-5-1. These acts, when "taken together . . . as a whole" constitute cruelty under the amended statute. *Dickenson*, 293 So. 3d at 330 (¶21). Under the correct analysis, Natasha has more than met her burden proving this ground by a preponderance of the evidence. *Fulton*, 918 So. 2d at 880 (¶7).

CONCLUSION

¶39. We agree that the chancery court had substantial credible evidence for its determination to deny Alan's separate-maintenance claim and Natasha's divorce

counterclaim on the ground of adultery. We therefore affirm the chancery court's judgment in part. But because the chancery court used an incorrect legal standard in its analysis of the ground of cruel and inhuman treatment, and because Natasha provided sufficient evidence that would entitle her to a divorce on this ground, the chancery court erred by denying her counterclaim for divorce. Accordingly, we reverse the judgment of the Marion County Chancery Court in part, render a judgment of divorce in Natasha's favor, and remand to the chancery court for further proceedings related to property division between the parties.

¶40. **ON DIRECT APPEAL: AFFIRMED IN PART; REVERSED AND RENDERED IN PART; REMANDED. ON CROSS-APPEAL: AFFIRMED.**

BARNES, C.J., McDONALD, McCARTY AND SMITH, JJ., CONCUR. EMFINGER, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. WILSON, P.J., GREENLEE AND LAWRENCE, JJ., CONCUR IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. CARLTON, P.J., NOT PARTICIPATING.