IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-01451-COA

IN THE MATTER OF THE ESTATE OF JOE HOWARD ESTES, DECEASED: GREG ESTES AND JEFF ESTES — **APPELLANTS**

v.

SARAH ESTES — **APPELLEE**

DATE OF JUDGMENT:	08/31/2011
TRIAL JUDGE:	HON. C. MICHAEL MALSKI
COURT FROM WHICH APPEALED:	LEE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:	T. K. MOFFETT
ATTORNEY FOR APPELLEE:	RHETT R. RUSSELL
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
TRIAL COURT DISPOSITION:	GRANTED WIDOW'S ALLOWANCE AND ONE-FIFTH SHARE OF THE ESTATE
DISPOSITION:	REVERSED, RENDERED AND REMANDED - 12/11/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

MAXWELL, J., FOR THE COURT:

¶1. The Mississippi Legislature has conferred upon widows and widowers a statutory allowance of one year's support for maintenance of the surviving spouse and children. But to receive this so called "widow's allowance," the surviving spouse must show he or she was supported by the decedent. Here, Sarah Young Estes (Young) was widowed when her husband, Joe Howard Estes (Estes), to whom she had only been married for nine months, died without providing for Young in his will. Young—who was seeking a divorce from

Estes at the time of his death and had been living apart from Estes since his health began sharply declining soon after they married—sought a statutory allowance. Because Young failed to show she was being supported by Estes, we find the chancellor erred by awarding her a $12,000 widow's allowance. Thus, we reverse and render this award.

¶2. Because we find the chancellor erroneously applied the law regarding a widow's right to take a child's share of the estate, we also reverse the chancellor's award to Young of one-fifth of Estes's estate, or $68,927.63. When a widow has clearly deserted or abandoned the marriage, she is estopped from claiming a statutory right to an inheritance. And while the chancellor heard evidence of Young's abandonment, he made no finding concerning estoppel. We therefore remand for a determination of whether Young clearly deserted or abandoned the marriage and, thus, was estopped from claiming a statutory right to an inheritance.

Background

¶3. Estes married Young on August 3, 2006. Shortly after they married, Estes suffered multiple health complications, requiring an amputation of one leg and surgery to clear a blocked artery. In late 2006, Young permanently moved from Estes's residence back into her own home. She filed for divorce from Estes a few months later.

¶4. While the divorce was still pending, Estes died testate on May 18, 2007, leaving Young and four children, who were not born of the marriage between Estes and Young. Estes's will named as co-executors his two sons, Greg Estes and Jeff Estes, who immediately probated Estes's will in the Lee County Chancery Court. Because the will contained no

provision for Young, she renounced it and filed a petition to appoint appraisers and for one year's support.[1]

¶5. Four years of contentious probate ensued. During this protracted fight, the co-executors challenged both the appraisal of Estes's estate and Young's separate property, as well as Young's right to a statutory widow's allowance and child's share of the estate. At a April 26, 2011 hearing, the co-executors put on lengthy testimony of Young's abandonment and mistreatment of Estes. The co-executors argued Young's desertion and dereliction of her marital duties should result in her having no interest in their father's estate. As they saw it, Young's acts were akin to those of the wife in *Byars v. Gholson*, 147 Miss. 460, 465, 112 So. 578, 578-79 (1927), in which the Mississippi Supreme Court held that a voluntarily estranged wife was not entitled to a widow's allowance. Having considered the evidence of desertion in determining whether Young should receive a widow's allowance under Mississippi Code Annotated sections 91-7-135 and 91-7-141 (Rev. 2004), the chancellor ordered Estes's estate to pay Young an allowance of $12,000.

¶6. But the chancellor did not consider evidence of Young's abandonment of the marriage when ordering that Young was entitled to one-fifth of the estate under Mississippi Code Annotated section 91-5-27 (Rev. 2004). Though acknowledging the co-executors' argument—that because of Young's actions, she was not entitled to inherit—had factual support, the chancellor held it lacked legal support. According to the chancellor, "like it or

[1] She also filed a petition for exclusive possession of the marital home, homestead property, and exempt property.

not," Young had an "automatic" right to inherit under the statute, without any legal exception.

¶7. Subtracting the $12,000 widow's allowance from the estate, the chancellor then calculated Young's one-fifth portion to be $68,927.63.[2] With the allowance, Young was to receive a total of $80,927.63.

¶8. The chancellor later entered a final judgment resolving the remaining disputed issues.[3] The co-executors timely appealed, arguing the chancellor improperly awarded Young a widow's share despite her abandonment of the marriage and improperly valued both Estes's and Young's estates when awarding Young a one-fifth share of Estes's estate. Because we find the chancellor abused his discretion and applied an erroneous legal standard when considering the evidence of Young's abandonment of the marriage and its effect on her statutory rights as Estes's widow, we need not reach the valuation issue.

Discussion

¶9. The chancellor made two findings regarding Young's statutory rights as Estes's widow—(1) that she was entitled to $12,000 as a widow's allowance for one year's support and (2) that she had an automatic right to one-fifth of the estate. We will not disturb a

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[2] In his original June 22, 2011 order, the chancellor had calculated Young's share of the estate without taking out the widow's allowance, giving her $70,427.63. After the co-executors filed for reconsideration under Mississippi Rule of Civil Procedure 59, the chancellor corrected this figure by order dated August 31, 2011.

[3] In this judgment, the chancellor denied Young's motion for exclusive possession of the marital home, homestead property, and exempt property.

chancellor's findings "when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong [or] clearly erroneous[,] or [applied] an erroneous legal standard[.]" *Sanderson v. Sanderson*, 824 So. 2d 623, 625-26 (¶8) (Miss. 2002) (quoting *Kilpatrick v. Kilpatrick*, 732 So. 2d 876, 880 (¶13) (Miss. 1999)).

I. Widow's Allowance

¶10. A widow or widower who was dependent on the surviving spouse is statutorily entitled to a year's allowance for his or her maintenance and that of the children, if any. Section 91-7-135 imposes a duty on "the appraisers [of an estate] to set apart out of the effects of the decedent, for the spouse and children who were being supported by the decedent, or for the spouse if there be no such children, or for such children if there be no spouse, one (1) year's provision[.]" Miss. Code Ann. § 91-7-135. This provision may take the form of money "necessary for the comfortable support of the spouse and children, or spouse or children, as the case may be, for one (1) year." *Id.*

¶11. Under section 91-7-141, the chancery court has discretion to "apportion the one year's allowance, or any part of it, according to the situation, rights, and interests of any of the children or the widow, and may direct the payment of any portion of the allowance which may be found necessary or proper to any of them." Miss. Code. Ann. § 91-7-141; *see also Bryan v. Quinn*, 233 Miss. 366, 368, 102 So. 2d 124, 125 (1958) (citations omitted) ("The rule is well settled in this State that the widow's allowance for one year's support is within

the sound discretion of the chancellor.").[4]

¶12. While the chancellor relied on this statutory authority to award Young a $12,000 widow's allowance, Young was not "being supported by the decedent" and, thus, not in need of provision from Estes's estate to make her comfortable. *See* Miss. Code Ann. § 91-7-135. So we find the award an abuse of discretion.

¶13. Our supreme court has clarified that the statute "relative to the widow's allowance provides that such allowance shall be set aside to the widow and children *who were supported by the decedent*." *In re Marshall's Will*, 243 Miss. 472, 479, 138 So. 2d 482, 484 (1962) (emphasis added). The statute places on the widow "the burden of establishing her claim to a year's support, [by] showing either that she was being supported by [her husband] at the time of his death or that she was away from him without fault on her part." *Id.* Here, Young clearly failed to meet this burden.

¶14. It is undisputed that Young left Estes's home by her own volition after his leg was amputated. And she was living in her own home at the time Estes died. In *Byars*, the Mississippi Supreme Court held that a widow who had been living apart from her husband, without his fault, and who was not supported by him, was not entitled to one year's support from his estate. *Byars*, 147 Miss. at 465, 112 So. at 578. We find the same is true here.

¶15. Because we find the widow's allowance was not supported by substantial evidence

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[4] Indeed, the appraisers' one-year allowance under section 91-7-135 "is advisory to, but not binding upon, the [c]hancellor," in whose sound discretion falls the determination of a widow's allowance for one year's support. *Bryan*, 233 Miss. at 368, 102 So. 2d at 125 (quoting *Moseley v. Harper*, 202 Miss. 442, 444, 32 So. 2d 192, 193 (1947)).

of Young's financial dependence on Estes at the time he died, the chancellor abused his discretion in awarding Young one-year's support. We reverse the award of a $12,000 widow's allowance and render judgment against Young's claim to one-year's support.

II. Child's Share of the Estate

¶16. The statutory right of a spouse to inherit when not provided for in the deceased spouse's will does not arise when there is clear desertion and abandonment. Yet the chancellor incorrectly believed it was automatic. So he reasoned he was bound to award Young one-fifth of the estate regardless of whether she had deserted or abandoned the marriage. Since this was a misapplication of law, we reverse the award of $68,927.63 and remand to determine whether Young's actions met the clear-abandonment standard and estopped her from inheriting from Estes's estate.[5]

¶17. Mississippi Code Annotated section 91-5-25 (Rev. 2004) allows a widow whose deceased husband "does not make satisfactory provision" for her in his will to renounce the unsatisfactory provision and elect to take the a child's share of the estate. *See also Bolton v. Barnett*, 131 Miss. 802, 827, 95 So. 721, 726 (1923) (holding second husband not provided

[5] While the co-executors did not raise as a separate issue Young's renunciation of the will, they raised the issue of Young's abandonment of the marriage and its effect upon Young's rights, as well as challenged the amount of the award of one-fifth of the estate. Thus, we find the question of the will's renunciation and Young's right to inherit a child's share is before us. But even were it not, reversal based on the chancellor's misapplication of the law would be warranted under plain-error review. "Plain-error review is properly utilized for 'correcting obvious instances of injustice or misapplied law.'" *Smith v. State*, 986 So. 2d 290, 294 (¶10) (Miss. 2008) (quoting *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 256 (1981)); *see also* M.R.A.P. 28(a)(3) (permitting this court to "notice a plain error not identified or distinctly specified" in the appellants' statement of issues).

for in his deceased wife's will was entitled to inherit a child's share of his wife's real property). Under section 91-5-27, when the husband's will makes no provision at all for his widow, no renunciation is required—it will be assumed that the widow has elected to take her share of the estate. Miss. Code Ann. § 91-5-27. Thus, the chancellor was correct in one sense that the right to inherit under 91-5-27 is "automatic" because, in contrast to the right under section 91-5-25, no act of renunciation or election of a child's share is required.

¶18. But the chancellor was incorrect that this automatic right to inherit, as if the deceased husband died without a will, arises in every situation without exception. The record shows the chancellor believed his hands were tied regarding Young's renunciation of Estes's will and right to inherit one-fifth of the estate. Although acknowledging the evidence supporting Young's abandonment of the marriage, the chancellor nonetheless awarded her a child's portion of the estate because he was not aware "of any case law at all that would reflect . . . that [Young] somehow would not be entitled to a child's portion[.]"

¶19. But there is Mississippi precedent of this nature. Our supreme court has previously acknowledged the operation of estoppel when a spouse trying to take a child's share of the estate has deserted or abandoned the marriage. *In re Marshall's Will*, 243 Miss. at 478, 138 So. 2d at 484; *Walker v. Matthews*, 191 Miss. 489, 511-12, 3 So. 2d 820, 826 (1941); *Williams v. Johnston*, 148 Miss. 634, 636-37, 114 So. 733, 733-34 (1927). In *Tillman v. Williams*, 403 So. 2d 880, 881 (Miss. 1981), the supreme court clarified what was required for estoppel: "Our Legislature has not seen fit to enact any legislation on this abandonment question. It is, therefore, obvious that the statute has to be strictly construed unless there is

a clear desertion and abandonment that sets up the estoppel."

¶20. While he acknowledged evidence showing Young's desertion or abandonment of the marriage, the chancellor did not make a finding of clear desertion or abandonment. This was because he mistakenly believed such an estoppel-type finding would have no legal effect on Young's right to inherit. Since the award of a child's share of the estate was based on an erroneous application of the law, we reverse the award to Young of one-fifth of the estate and remand for a determination of whether Young's action met the clear-abandonment standard of *Tillman*, thus estopping her from inheriting from the Estes's estate.[6]

¶21. **THE JUDGMENT OF THE LEE COUNTY CHANCERY COURT IS REVERSED, RENDERED AND REMANDED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

LEE, C.J., GRIFFIS, P.J., BARNES, ISHEE, ROBERTS AND FAIR, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION. RUSSELL, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY IRVING, P.J.

CARLTON, J., DISSENTING:

¶22. I respectfully dissent from the majority's opinion. I submit that the chancellor erred by failing to make a finding regarding the final accounting of Estes's estate before reducing

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[6] While we agree with Judge Russell that the chancellor legally erred by rejecting the co-executors' argument that Young was not entitled to inherit, we disagree that rendering is the proper disposition for this portion of the judgment. With the widow's allowance, the chancellor's finding that Young was entitled to an allowance was unsubstantiated. Young had the burden to prove she was being supported by Estes, which she failed to do, making rendering the appropriate disposition. But with the child's share of the estate, the chancellor made *no* finding—let alone a finding of clear abandonment, as required by *Tillman*—making remand proper, so that the chancellor, as the fact-finder, may determine whether Young is estopped from claiming an inheritance though sections 91-5-25 and 91-5-27.

the gross estate by the widow's allowance and the expenses of the estate. However, I find no evidence in the record that the chancellor abused his discretion in awarding Young a $12,000 widow's allowance or in determining the date-of-death value of Young's property. Therefore, I would reverse the chancery court's judgment in part and affirm in part.

¶23. The record reflects that Estes died testate on May 18, 2007, making no provision in his will for his widow, Young. Young renounced the will and sought one year's support, otherwise known as a widow's allowance. The chancery court granted Young a one-fifth share of the estate and a widow's allowance. The co-executors of the estate now appeal, arguing: (1) Young was not entitled to a widow's allowance; (2) the chancery court erred in valuing Young's property; and (3) and the chancery court prematurely apportioned the estate prior to a final accounting.

¶24. Young renounced the will and filed a petition to appoint appraisers and for one year's support and a petition for exclusive possession of the marital home, homestead property, and exempt property. On February 9, 2009, the chancery court issued an order appointing three commissioners to hire an appraiser to conduct an appraisal of Estes's estate and the date-of-death value of Young's property. The commissioners filed their report, and the co-executors filed an objection to the report, arguing that the commissioners improperly valued Estes's real property and Young's personal and real property. After a hearing on September 8, 2010, the chancery court denied the objection of the co-executors and confirmed the report. The chancery court stated that the co-executors were allowed to retain an expert to appraise Young's separate property, as long as it was completed and filed in a timely manner. The

co-executors filed their expert's appraisal of Estes's estate on April 13, 2011. The expert's appraisal did not contain a valuation of Young's property.

¶25. On June 22, 2011, the chancery court issued an order reaffirming the valuation provided in the commissioners' report, rejecting the appraisal of the co-executor's expert, and ruling that Young was entitled to $70,427.63 – representing her one-fifth share of Estes's estate. The court also awarded her $12,000 as a widow's allowance.

¶26. On August 31, 2011, the chancery court issued an order correcting the prior judgment and reducing the value of Estes's estate by the $12,000 widow's allowance prior to apportioning the estate to Young. The court then adjusted Young's one-fifth interest to reflect that deduction, reducing her share to $68,927.63. Young was to receive a total of $80,927.63, which included her widow's allowance. Additionally, the court denied Young's motion for exclusive possession of the marital home, homestead property, and exempt property.

I. WIDOW'S ALLOWANCE

¶27. Before turning to the issue of the widow's allowance, I must preface my discussion by recognizing that a chancellor's findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. *Consol. Pipe & Supply Co. v. Colter*, 735 So. 2d 958, 961 (¶13) (Miss. 1999). "This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong [or] clearly erroneous[,] or [applied] an erroneous legal standard[.]" *Sanderson v. Sanderson*, 824 So. 2d 623, 625-26 (¶8) (Miss. 2002) (citations omitted).

¶28. The record reflects that the chancery court granted Young a widow's allowance of $12,000 under Mississippi Code Annotated section 91-7-135 (Rev. 2004). This section empowers the chancery court to apportion the one year's allowance "necessary for the comfortable support of the spouse and children, or spouse or children[.]" *Id*. The co-executors challenge the $12,000 allotment on the grounds that Young and Estes were separated at the time of Estes's death and that Young was not supported by Estes at the time of his death.

¶29. A widow's allowance is considered to be "a matter of right whatever may be the condition of the estate, and the application therefor [is] a matter with which the administrator has no concern." *Harwell v. Woody*, 206 Miss. 863, 868, 41 So. 2d 35, 36 (1949) (quoting *Morgan v. Morgan*, 36 Miss. 348, 350 (1858)) (internal quotations omitted). The Mississippi Supreme Court has held that an administrator's opposition to a widow's allowance "is not contemplated by the statute, and should not be tolerated . . . ." *Morgan*, 36 Miss. at 350. Permitting the administrator to challenge the allowance would be counter to the reason behind the statute, which is to give immediate support to widows, widowers, and children. *Id.* Litigation of this support would delay the allowance, "depriving the parties of the humane provisions of the law at the very time when they [stand] most in need of it." *Id.*

¶30. The co-executors argue on appeal that Young is not entitled to an allowance, because the husband's duty to support the wife "is coupled with reciprocal obligations upon the wife to perform her duty imposed by such marital relations." *Byars v. Gholson*, 147 Miss. 460, 465, 112 So. 578, 579 (1927). Accordingly, because Young had moved from the marital

home by her own free will and had relinquished all her marital obligations, she was not entitled to support in the form of a widow's allowance.

¶31. The chancery court heard testimony of Young's failure to perform her marital obligations and heard the argument that under *Byars*, Young was not entitled to a widow's allowance. However, there is no evidence in the record that the chancellor abused his discretion or was clearly erroneous. Therefore, I find no error in the chancellor's award of a $12,000 widow's allowance to Young.

II. DATE-OF-DEATH VALUE OF YOUNG'S PROPERTY

¶32. The commissioners submitted their report on the appraisal of Estes's estate and the date-of-death value of Young's property, and the chancery court confirmed the report, denying the objections raised by the co-executors. However, the court gave the co-executors the opportunity to retain a separate appraiser to assess Young's property. The co-executors were directed that the report should be conducted and filed with the clerk of the court within a reasonable time from the October 11, 2010 hearing.

¶33. On December 17, 2010, Young filed a statement notifying the court that neither she nor her attorney had received any notification that the co-executors had retained an expert. The co-executors filed their expert's appraisal of Estes's estate on April 13, 2011. The appraisal did not contain a valuation of Young's property.

¶34. The chancery court held a hearing on April 26, 2011, and noted that the co-executors never requested that Young allow their appraiser to inspect her personal property; therefore, the appraisal of the date-of-death value of Young's property was never performed. The

chancellor also stated from the bench that it was inherently unfair for the co-executors to wait until the day the estate was set to close to attest that Young possessed property of significant value, which the co-executors attempted to do at the April 26 hearing.

¶35. The co-executors were given every opportunity to provide supporting evidence for their objections to the special commissioners' reported appraisal of Young's property. They failed to do so in a timely manner.

¶36. Accordingly, I find that the chancery court did not err in confirming the special commissioners' report. The co-executors failed to comply with the court's directive allowing their appraiser to value Young's property. Because the chancery court did not err in determining the date-of-death value of Young's property, I would therefore affirm the chancery court's judgment in part as to this issue.

III. APPORTIONMENT OF THE ESTATE

¶37. Young renounced the will and was granted a one-fifth share of the estate under Mississippi Code Annotated section 91-5-25 (Rev. 2004). The co-executors do not raise the issue of Young's right to renounce the will and receive a one-fifth share. Because it was not raised, I will not address the issue.

¶38. The co-executors contend that the trial court erred when it apportioned the estate into one-fifth shares prior to deducting the estate's debts from the gross estate. Young does not respond to this issue in her brief. If the appellee fails to address an issue in her brief, and the appellant's brief clearly shows that the trial court erred, this Court is not obligated to search the record on the appellee's behalf in order to counter or subvert the appellant's argument.

Westinghouse Credit Corp. v. Deposit Guar. Nat'l. Bank, 304 So. 2d 636, 637 (Miss. 1974).

¶39. To determine the estate to be divided among the heirs, the chancery court must first ascertain the gross value of the estate. And from that value, the chancellor must deduct the "debts of the decedent, administrative expenses[,] and funeral expenses[,] leaving the net value of decedent's estate." *Banks v. Junk*, 264 So. 2d 387, 392 (Miss. 1972); *see also In re Estate of Hollaway*, 631 So. 2d 127, 137 (Miss. 1993).

¶40. The special commissioners reported the value of Estes's estate to be $555,561.41 and the date-of-death value of Young's property to be $39,990.65. The chancellor then divided Estes's estate by five, apportioning it equally to Young and the four children, which came to $111,112.28. Additionally, the court subtracted the value of Young's property from her one-fifth share and reduced the share further by $694 for her proportionate share of the fees from the special commissioners and the appraiser, making Young's share $70,427.63.

¶41. The co-executors moved for the court to reconsider the judgment, arguing in part that if Young were to be granted a widow's allowance, then the allowance should have been subtracted from the value of Estes's estate prior to dividing it among the heirs. The co-executors also asserted that although the final accounting for the estate had not been filed at that time, certain expenses such as taxes and funeral expenses should have been paid from the estate before Young's share was apportioned.

¶42. On August 31, 2011, the court altered its prior judgment, deducting the widow's allowance from Estes's estate prior to division into one-fifth shares. Young's share was reduced from $70,427.63 to $68,927.63 ($555,561.41 - $12,000 = $543,561.41 / 5 =

$108,712.28 - $39,990.65 = $68,721.63). Including her widow's allowance, the estate was ordered to pay Young a total of $80,927.63. Clearly, the math is incorrect. The judgment amount is $206 greater than the mathematically accurate amount. Additionally, the August 31 judgment does not reduce Young's award by the $694 amount of fees subtracted in the June 22 judgment. Including the fees the correct judgment should be for $68,027.63 plus the $12,000 widow's allowance, totaling $80,027.63.

¶43. Both the June 22, 2011 judgment and the August 31, 2011 corrected judgment use the special commissioners' estate valuation of $555,561.41. Although $4,985 in funeral expenses were included in that valuation, a final accounting of the estate was not conducted in compliance with Mississippi Code Annotated section 91-7-291 (Rev. 2004).

¶44. The co-executors moved for a continuance to give them time to file a petition for a final accounting and for the chancery court to have a hearing on the matter. The chancery court did not respond to the co-executors' request. The co-executors should have been given leave to file a petition for a final accounting within a reasonable time period. Then, the chancery court should have determined if any remaining debts of the estate should be reduced from the gross estate prior to dividing the estate into one-fifth shares.

¶45. I find that the chancery court was premature in apportioning Estes's estate. The court should have made a finding regarding the final accounting of the estate before reducing the gross estate by the widow's allowance and the expenses of the estate. Therefore, I would reverse the chancery court's judgment in part and remand this issue to the chancery court for findings consistent with this opinion.

RUSSELL, J., CONCURRING IN PART, DISSENTING IN PART:

¶46. I agree with the majority that Young is not entitled to an award of a widow's allowance and that we should reverse and render on this issue. I also agree with the majority that the chancellor erroneously applied the law in awarding the widow a child's share of Estes's estate and reverse its decision as to that issue. I disagree with the majority's holding that the chancellor heard evidence but made no finding regarding Young's abandonment, and that remand is the proper disposition for this portion of the judgment. I would find that Young is estopped from inheriting from Estes's estate and reverse and render on this issue as well. The chancellor acknowledged that Young abandoned Estes but felt his hands were tied by the law. Therefore, I respectfully dissent.

RIGHT TO RENOUNCE WILL

¶47. It is undisputed that Mississippi law allows a widow or widower to renounce the will of a deceased spouse if she or he is left unprovided for in the will. Miss. Code Ann. § 91-5-25 (Rev. 2004). A surviving spouse's right to renounce the will of a deceased spouse is a personal right that abates at the death of the surviving spouse. *Shattuck v. Estate of Tyson*, 508 So. 2d 1077, 1081 (Miss. 1987).

¶48. While the right to renounce the will of a deceased spouse is provided for by statute, certain circumstances will prohibit a spouse from exercising this right. Under Mississippi law, willful desertion or abandonment of the marriage will estop a spouse from inheriting from the other spouse. *In re Marshall's Will*, 243 Miss. 472, 478, 138 So. 2d 482, 484 (1962). In the present case, it was established during trial that prior to Estes's death, Young

relinquished all her marital obligations and permanently moved from the marital home by her own free will. A review of the record indicates that Young and Estes were married only a couple of weeks before his leg was amputated above the knee on August 17, 2006. Young stated that she would not take care of a cripple. The evidence is undisputed that the Estes family, not Young, provided for the primary care and maintenance of Estes following his amputation and subsequent surgery in October 2006 for eighty percent blockage of his carotid artery. By the end of November, Young had left the marital home and moved back to the home she occupied prior to the marriage to Estes, and she did not return to the marital home until the death of Estes in May 2007. In the interim before Estes's death, Young refused to provide basic assistance and support to Estes while she attempted to have Estes declared mentally incompetent, allegedly attempted to poison him, allegedly attempted to hit him on at least two occasions, and filed for divorce on March 7, 2007. The record is replete with overwhelming evidence that Young voluntarily abandoned and deserted her marriage to Estes. "[D]esertion or abandonment is generally held to be a bar to any right to share in the estate of the deceased spouse." *Walker v. Matthews*, 191 Miss. 489, 3 So. 2d 820, 826 (1941).

¶49. This bar includes the right of the surviving spouse to renounce or contest the will of a deceased spouse. *Williams v. Johnston*, 148 Miss. 634, 114 So. 733 (1927). "[W]here the willful conduct of one of the parties to [a] marriage contract is such as will estop him or her from claiming any property rights of the other, the doctrine of estoppel will apply against the offending party." *Id*. at 635, 114 So. at 734.

¶50. In *Williams v. Johnston*, a wife died testate, leaving her entire estate to her daughter. *Id*. at 634, 114 So. at 733. The husband sought to renounce the will to obtain his statutory one-half share of the wife's estate. The court ruled that the husband was estopped from claiming a child's share of his wife's estate because he had deserted and lived apart from his wife for a number of years until her death. *Id*. The court further held that the husband's general conduct in willfully deserting his wife estopped him from claiming a right to share in her estate. *Id*. The husband was barred from any right he may have had to renounce or contest the will due to his willful desertion of the marriage. *Id*.

¶51. The majority cites *Tillman v. Williams*, 403 So. 2d 880, 881 (Miss. 1981), which provides that a clear desertion and abandonment of the marriage must be shown in order for estoppel to apply. However, in *Tillman*, there was doubt as to whether the widower had completely abandoned the marriage, and there was no evidence alluding to the parties' reason for separation. The couple simply separated for a number of years, but never showed any intention of obtaining a divorce. The opinion states, "None of the witnesses had any positive knowledge as to the reason for the separation of the parties or any relevant fact other than [that] he left." *Id* at 880. That is not the case here, as the record shows that after Estes encountered health problems following his leg amputation, Young refused to provide any care for him, permanently moved from the marital home in late 2006, and filed for divorce two months later. Here, the record is overflowing with evidence that Young voluntarily left Estes prior to his death with absolutely no intention of returning. Young's abandonment of Estes is clear and definitive throughout the record. Thus there is no need for a remand to

determine whether a clear desertion and abandonment took place.

¶52. The Mississippi Supreme Court's reasoning in the above-cited cases applies to the present case. Prior to Estes's death, Young stopped caring for Estes while he was ill, left the marital home, and returned to her own home. Young made it perfectly clear that she wanted nothing more to do with Estes after his leg amputation. Young completely abandoned the marriage, relinquished her marital duties, and had no intention of returning. Such willful conduct serves as a bar to Young's right to renounce Estes's will and her right to inherit from his estate.

¶53. For these reasons, I agree with the majority that the chancery court erred in awarding Young a one-fifth share of Estes's estate. However, I would reverse and render on this issue based on the overwhelming evidence that Young abandoned Estes.

IRVING, P.J., JOINS THIS OPINION.