

**IN THE COURT OF APPEALS 10/15/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 96-CA-00102 COA**

**STEPHEN M. PARCELL**

**APPELLANT**

**v.**

**KATHERINE LOVE PARCELL**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. THOMAS L. ZEBERT

COURT FROM WHICH APPEALED: RANKIN COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

PAUL E. ROGERS

ATTORNEY FOR APPELLEE:

HARLON H. VARNADO

NATURE OF THE CASE: DOMESTIC RELATIONS

TRIAL COURT DISPOSITION: JUDGMENT OF DIVORCE IN FAVOR OF APPELLEE BASED  
ON GROUND OF HABITUAL CRUEL AND INHUMAN TREATMENT.

BEFORE THOMAS, P.J., KING, AND MCMILLIN, JJ.

MCMILLIN, J., FOR THE COURT:

Stephen M. Parcell brings this appeal from the judgment of divorce entered against him and in favor of Katherine Love Parcell in the Rankin County Chancery Court. The sole basis for his appeal is that the chancellor erred in awarding the divorce in favor of Mrs. Parcell on the ground of habitual cruel and inhuman treatment.

On appeal, this Court is bound by the manifest error standard of review. *See Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994). Based on a review of the record, we do not find manifest error in the judgment of the chancery court, and we therefore affirm.

I.

## FACTS

Stephen M. Parcell and Katherine Love Parcell were married on October 13, 1993. Mrs. Parcell testified that the parties began experiencing trouble in January 1994 when Mr. Parcell began to monitor and control her actions. Mr. Parcell insisted on driving her to work each morning, as well as picking her up in the afternoon, and he would become furious when her job demanded extra time. Mr. Parcell also exerted control over the time Mrs. Parcell spent with her friends, as well as her time at home, where he took his obsessions so far that he insisted on going into the bathroom with her while she showered. According to Mrs. Parcell, Mr. Parcell would often pace and scream, keeping the house in an uproar until 2:00 A.M. or 3:00 A.M. and would literally "froth at the mouth." At that point, Mrs. Parcell became fearful of what Mr. Parcell would do each time he lost control.

Mr. Parcell testified that the subject of most of their disputes was Mrs. Parcell's children from a former marriage who lived with them during their marriage. According to Mr. Parcell, the arguments were caused by the fact that Mrs. Parcell allowed the boyfriends and girlfriends of her teenage children to "sleep over" at their home. There was also friction between Mr. Parcell and Chris, Mrs. Parcell's eldest son, concerning Chris's use of drugs, as well as conflicts with other friends of her children, who allegedly used drugs -- all of which kept Mr. Parcell busy "throwing people out of the house all night long." Mr. Parcell, who had served a term in Parchman until October 1986, was still on probation, and any evidence of drugs in his home or environment would have caused an automatic revocation of his probation. Mr. Parcell testified that he never hit any of the children, but had "gotten up in their faces."

After five short months of marriage, Mrs. Parcell left Mr. Parcell, following a fight between Mr. Parcell and her daughter in which Mr. Parcell again "lost control." After she left, Mr. Parcell placed all the parties' possessions in storage and refused to let Mrs. Parcell have anything. The three attempts made by Mrs. Parcell to retrieve some of her possessions failed because she feared being alone in the house with Mr. Parcell.

Pursuant to a court order from a temporary hearing, Mrs. Parcell was allowed to recover her clothing without problems. Mr. Parcell testified that Mrs. Parcell could get the children's clothes and the remainder of her possessions at any time; however, he also testified that he did not know the location (other than Brandon) or name of the storage facility. According to Mr. Parcell, he merely pays the monthly rental fee to the person with whom he now lives, Ms. Regina Walker, and she pays the

storage fee.

In addition to the testimony of Mrs. Parcell and Mr. Parcell, the chancellor heard the testimony of two of Mrs. Parcell's friends, Laurie Farrish and Tina Hall, who both testified that they had observed Mr. Parcell's verbal mistreatment of Mrs. Parcell. According to Farrish, Mrs. Parcell was afraid to do anything because Mr. Parcell always "hovered over her." On one particular incident, Mr. Parcell told Farrish of his plan to get Mrs. Parcell's children out of the house, and, during that same conversation, he also caused Farrish to become concerned for Mrs. Parcell's welfare when he told her that his term in Parchman was a result of stabbing his own mother.

Tina Hall testified that Mr. Parcell always wanted Mrs. Parcell's children out of the house, and that the couple's main problem was in the discipline of the children. Hall further testified that during the marriage, Mrs. Parcell's nerves were shot, and she had lost a lot of weight. It was Hall's opinion that Mrs. Parcell seemed much happier after the separation.

After hearing the testimony of the parties and friends of Mrs. Parcell, the chancellor awarded a judgment of divorce on the ground of habitual cruel and inhuman treatment in favor of Mrs. Parcell. It is from this judgment that Mr. Parcell brings this appeal.

II.

Law

Mr. Parcell argues that Mrs. Parcell's testimony concerning her allegations of habitual cruel and inhuman treatment were not corroborated. He further argues that the proof was insufficient to sustain the judgment of divorce on the ground of habitual cruel and inhuman treatment, and that the decision of the chancellor was, therefore, contrary to law.

The scope of review employed by this Court in domestic relations matters is limited. *Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994). The chancellor "evaluates the proof based on the credibility of witnesses and the weight of their testimony." *Gardner v. Gardner*, 618 So. 2d 108, 112 (Miss. 1993) (citations omitted). The findings of the chancellor will not be disturbed unless "the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Steen*, 641 So. 2d at 1169 (citations omitted).

Habitual cruel and inhuman treatment, as a ground for divorce, must be proved by a preponderance of the evidence, as opposed to the higher standard of clear and convincing evidence. *Daigle v. Daigle*, 626 So. 2d 140, 144 (Miss. 1993). The party making the allegation of habitual cruel and inhuman treatment normally must present corroborating evidence to support his or her testimony. *Rawson v. Buta*, 609 So. 2d 426, 431 (Miss. 1992) (citations omitted). In those cases where no corroborating proof is "reasonably possible" due to the nature of the action or the isolation of the parties, a divorce may be granted on the uncorroborated testimony of the plaintiff. *Id.* (citations omitted).

The degree of cruelty which a party must prove to establish the ground of habitual cruel and inhuman treatment is not such that continued cohabitation is merely unpleasant or undesirable, but "so gross,

unfeeling and brutal as to render further cohabitation impossible except at the risk of life, limb or health . . . ." *Steen*, 641 So. 2d at 1170 (citations omitted). The behavior of the offending spouse must go beyond "unkindness or rudeness or mere incompatibility or want of affection." *Smith v. Smith*, 614 So. 2d 394, 396 (Miss. 1993) (citations omitted). Further, the course of conduct by the offending spouse usually must be "habitual, that is, done so often or continued so long that it may reasonably be said a permanent condition," *Wilson v. Wilson*, 547 So. 2d 803, 805 (Miss. 1989); however, a single incident may provide the ground for divorce. *Gardner*, 618 So. 2d at 113 (citations omitted).

The chancellor issued a detailed final opinion in which he held that Mrs. Parcell had proved habitual cruel and inhuman treatment by a preponderance of the evidence. The chancellor determined that Mrs. Parcell's testimony was credible and believable and revealed her husband's course of conduct, consisting of ranting and screaming all hours of the night, as well as an insistence to control Mrs. Parcell's whereabouts, even in her own house. Further, the chancellor determined that this course of conduct adversely affected and intimidated Mrs. Parcell, who became fearful of Mr. Parcell. In addition, the chancellor set out the pertinent portions of the testimony of Mrs. Parcell's two witnesses and determined that their testimony was sufficient to corroborate Mrs. Parcell's testimony in regard to Mr. Parcell's actions to control her and the effects those actions had on Mrs. Parcell. Finally, the chancellor determined that the time frame of five months was still "sufficient time to comply with the continuous and systematic factor."

We find that the facts set out in the chancellor's opinion in support of his judgment are well supported by the testimony and evidence preserved in the record. We agree with his determination that Mr. Parcell's actions went beyond mere incompatibility and were, therefore, sufficient to warrant the judgment of divorce on the ground of habitual cruel and inhuman treatment. Further, the testimony of the two witnesses, Laurie Farrish and Tina Hall, served as sufficient corroboration of Mrs. Parcell's allegations of cruel and inhuman treatment. Accordingly, we affirm the judgment of the lower court.

**THE JUDGMENT OF THE RANKIN COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, KING, PAYNE, AND  
SOUTHWICK, JJ., CONCUR. BRIDGES, P.J., NOT PARTICIPATING.**