

**IN THE COURT OF APPEALS 12/3/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-01203 COA**

**RALPH M. MCCRARY**

**APPELLANT**

**v.**

**ILONA JOHNSON MCCRARY**

**APPELLEE**

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

TRIAL JUDGE: HON. PERCY LEE LYNCHARD, JR.

COURT FROM WHICH APPEALED: DESOTO COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

JACK R. JONES III

ATTORNEY FOR APPELLEE:

NANCY BALL

NATURE OF THE CASE: CIVIL/DIVORCE

TRIAL COURT DISPOSITION: APPELLEE GRANTED DIVORCE ON GROUNDS OF CRUEL  
& INHUMAN TREATMENT

BEFORE THOMAS, P.J., DIAZ, AND SOUTHWICK, JJ.

THOMAS, P.J., FOR THE COURT:

Ilona McCrary was granted a divorce from her husband Ralph McCrary on the ground of habitual cruel and inhuman treatment. Ralph appeals the chancellor's decision, raising one issue as error:

**I. WHETHER ILONA PROVED HABITUAL CRUEL AND INHUMAN TREATMENT BY A PREPONDERANCE OF THE EVIDENCE.**

Finding no error, we affirm the chancellor's decision.

**FACTS**

Ralph and Ilona were married on August 28, 1976, in Georgia. They filed for separation on October 12, 1994, in Desoto County, Mississippi. Ralph and Ilona continued to live in separate rooms in the family home until Ilona moved out of the house after Ralph threatened her with a gun.

After a period of separation, Ilona filed for divorce. At trial Ilona presented testimony about Ralph's treatment of her during the course of the marriage and after the separation. Ilona testified about a number of abusive incidences during which she feared for her life. Ilona testified that Ralph would mentally abuse her by telling her that "it wouldn't do any good to leave him because nobody else would have me." She stated that Ralph kept guns in the house even though she was frightened of an accidental shooting. After a gun was accidentally discharged in the house, Ralph ridiculed Ilona because she was very upset about the incident.

Ilona testified about one incident which occurred while Ralph and Ilona were separated but living in different rooms of the same house; Ralph entered her bedroom waving a gun at her. She asked Ralph to put the gun away, but he refused. She stated to the court:

I don't remember his exact words or anything, but it was something along the lines that I couldn't get away, you know I couldn't run fast enough. I was so rattled, I don't remember all of what the conversation was. As he was walking out the door he looked back at me and said, "Oh, by the way I was physically and sexually abused as a child," and then he left.

Ilona testified as to her state of mind after the incident:

I didn't sleep that night. I was--I had gotten so stirred I laid there and looked at the door, because every noise I heard I thought was him coming back, and I knew I was going to be dead if he came back. So closer to morning I remember rolling over on my pillow and not looking at the door and thinking well this way he can just come in and shoot me and I won't know it and then it will be over with.

Ilona further testified that she felt unsafe married to Ralph and that she suffered from severe

headaches and depression as a result of Ralph's manipulative and controlling personality. She also testified that her headaches and depression disappeared after the couple separated. Finally, Ilona testified as to her loss of self-esteem and independence because of Ralph's abusive behavior.

David Johnson, Ilona's brother, testified on Ilona's behalf and corroborated much of her testimony. Johnson testified that Ilona's personality had changed over the course of her marriage to Ralph. He stated that Ilona had become withdrawn from her family, and she was no longer confident and independent. He also testified that he had observed an incident where Ralph became angry with Ilona and "jerked her head back" by pulling her hair and that when Ilona asked Ralph to let go of her hair, he refused to do so.

Johnson further stated that he Ilona was very upset and feared for her life after the separation. Johnson said that Ilona was scared of Ralph's casual attitude toward the many guns he kept in the family home and that Ilona was very afraid that the guns would injure someone. Johnson went on to testify that Ilona had once called him in the middle of the night in an hysterical state because Ralph was waving a gun at her and telling her that he could shoot her if he wanted to. Johnson stated that after the incident Ilona was in "real and imminent" fear of Ralph.

Ralph testified that he knew that Ilona was afraid of guns. He admitted that a gun discharged in their bathroom while he and Ilona were discussing gun safety; however he denied ever having touched a gun during an argument with Ilona. Ralph presented no other witnesses to contradict Ilona and Johnson's testimony concerning the physical and mental abuse allegedly suffered by Ilona.

## ANALYSIS

### I. STANDARD OF REVIEW

On appeal, a chancellor's findings should not be disturbed unless no substantial evidence exists to support those findings. *Brooks v. Brooks*, 652 So. 2d 1113, 1124 (Miss. 1995) (citations omitted). This Court will not disturb the findings of a chancellor except in cases where the chancellor was manifestly wrong or clearly erroneous, or if he applied an erroneous legal standard. *Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994) (citation omitted). Where the chancellor's findings of fact are supported by credible evidence, this Court is not at liberty to disturb those findings, particularly in divorce actions. *Steen*, 641 So.2d at 1169-70 (citations omitted); *Nichols v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989).

Further, the credibility of witnesses and the weight of their testimony, as well as the interpretation of the evidence where it is capable of more than one reasonable interpretation, are questions primarily for the chancellor as the trier of fact. *Polk v. Polk*, 559 So. 2d 1048, 1049 (Miss. 1990).

### II. WHETHER ILONA PROVED HABITUAL CRUEL AND INHUMAN TREATMENT BY A PREPONDERANCE OF THE EVIDENCE.

In order to obtain a divorce on the ground of habitual cruel and inhuman treatment, the complaining spouse must show systematic and continuous behavior beyond simple incompatibility on the part of the offending spouse. *Steen*, 641 So. 2d at 1170 (citation omitted). "While habitual cruel and

inhuman treatment may be established by a preponderance of the credible evidence, as opposed to clear and convincing evidence, the charge ‘means something more than unkindness or rudeness or mere incompatibility or want of affection.’” *Id.* (citation omitted).

The Mississippi Supreme Court has consistently stated:

[H]abitual cruel and inhuman treatment could be established only by a continuing course of conduct on the part of the offending spouse which was so unkind, unfeeling or brutal as to endanger, or put one in reasonable apprehension of danger to life, limb or health, and further, that such course of conduct must be habitual, that is, done so often, or continued so long that it may reasonably be said a permanent condition.

*Id.* (citations omitted); see also *Ferguson v. Ferguson*, 639 So. 2d 921, 931 (Miss. 1994); *Chamblee v. Chamblee*, 637 So. 2d 850, 859 (Miss. 1994); *Smith v. Smith*, 614 So. 2d 394, 396-97 (Miss. 1993). The risk of life, limb, or health must be real, rather than imaginary, and must be clearly established by proof. *McKee v. Flynt*, 630 So. 2d 44, 48 (Miss. 1993) (citations omitted).

However, "one incident of personal violence may be of such a violent nature as to endanger the life of the complainant spouse and be of sufficient gravity to establish the charge of habitual cruel and inhuman treatment." *Id.* (citation omitted). Further, habitual threats and accusations, insults, and verbal abuse may cause such a high degree of mental suffering that the health and life of the innocent spouse may be endangered. *Chamblee v. Chamblee*, 637 So. 2d 850, 859 (Miss. 1994).

Ralph contends that Ilona did not prove habitual cruel and inhuman treatment by a preponderance of the evidence because the chancellor considered events which happened after the separation but while the parties were still living together. Specifically, Ralph contends that the chancellor should not have considered the incident where Ralph threatened Ilona with a gun. In other words, Ralph asserts that since the abusive behavior did not occur until after the initial separation, it could not be the proximate cause of the separation, and therefore a divorce on the ground of habitual cruel and inhuman treatment cannot stand.

However, in *Bias v. Bias*, 493 So. 2d 342, 345 (Miss. 1986), our supreme court decided to limit the proximate cause rule. The court said:

If the requisite impact upon the plaintiff is proved, there is little reason why we should arbitrarily dismiss because of the proximate cause of separation rule which no legislature has mandated. As the ground can be established after separation, our continued enforcement of the proximate cause rule in such cases would in effect cause denial of divorces where proof has been made of grounds authorized by the legislature.

Clearly, abusive events which occur after the initial separation may still be considered in the chancellor's decision. Ilona need only establish that Ralph's cruel and inhuman treatment of her was the proximate cause of harm to her health and well being. *Faries v. Faries*, 607 So. 2d 1204, 1209

(Miss. 1992).

Under our limited standard of review, we conclude that the chancellor had sufficient evidence from which to determine that Ralph's behavior constituted habitual cruel and inhuman treatment. The testimony presented at trial by Ilona and her brother supports the chancellor's factual finding that Ralph physically and verbally abused Ilona and placed her in imminent fear for her life. Ralph threatened Ilona with a gun and ridiculed her fear of guns. He showed no concern for her feelings by continuing to keep the weapons in their home. Ilona's fear was further intensified when a gun which Ralph was holding discharged in their home. Additionally, the testimony showed that Ralph undermined her self-esteem by controlling her and emotionally abusing her. His actions caused her to withdraw from her family and friends, as well as suffer from headaches and depression.

After a review of the evidence in this case, and after giving the chancellor due deference as the trier of fact, we find that the chancellor did not err in granting the divorce to Ilona on the ground of habitual cruel and inhuman treatment.

**THE JUDGMENT OF THE DESOTO COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE,  
AND SOUTHWICK, JJ., CONCUR.**