

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01150 COA

JERRY L. MORRISON

APPELLANT

v.

PEGGY MORRISON A/K/A

NELDA JEAN MORRISON

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. PAT H. WATTS, JR.

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

MARK V. KNIGHTEN

ATTORNEY FOR APPELLEE:

RICHARD W. HAMILTON

NATURE OF THE CASE: DOMESTIC - DIVORCE

TRIAL COURT DISPOSITION: DIVORCE GRANTED ON GROUND OF HABITUAL CRUEL
AND INHUMAN TREATMENT

MANDATE ISSUED: 6/10/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PER CURIAM:

Jerry and Peggy Morrison were granted a divorce by the Chancery Court of Jackson County on August 11, 1995. Jerry now appeals the Judgment of Divorce to this Court. Peggy has failed to file a brief with this Court. Because we find no error in the chancellor's actions, we affirm the judgment of divorce. We would like to discuss briefly, however, certain errors made by the parties to this action.

Jerry and Peggy Morrison were married on November 1, 1986. Peggy filed a Complaint for Divorce on February 22, 1995. Her Complaint alleged the following:

1. The Plaintiff is an adult resident citizen of Jackson County, Mississippi. The Defendant is an adult resident citizen of Jackson County, Mississippi, and may be served with process as made and provided by law at 1625 Timberlane Drive, Gautier, Mississippi.

Jerry's Answer admitted the above paragraph, and he alleged the following in his Counterclaim:

1. The Counter-Plaintiff is an adult resident citizen of Jackson County, Mississippi.

A trial was had on August 11, 1995, and final Judgment of Divorce was rendered on September 25, 1995. Jerry timely filed his notice of appeal and filed his brief with this Court. Peggy neglected to file a brief with this Court.

DISCUSSION OF LAW

We would first like to briefly discuss Peggy's failure to file a brief in this matter.

If an appellee fails to file the appellee's brief as required, such brief if later filed may be stricken from the record on motion of appellant or on the court's own motion. An appellee who fails to file a brief will not be heard at oral argument except by permission of the court.

M.R.A.P. 31(d). Although not addressed in Rule 31(d), the Mississippi Supreme Court has previously stated that "the failure of the appellee to file a brief is tantamount to a confession of error and will be accepted as such unless we can with confidence say, after considering the record and brief of appellant, that there was no error." *Snow Lake Shores Property Owners Corp. v. Smith*, 610 So. 2d 357, 360 (Miss. 1992); *see also Queen v. Queen*, 551 So. 2d 197, 199 (Miss. 1989); *Sparkman v. Sparkman*, 441 So. 2d 1361, 1362 (Miss. 1983); *Burt v. Duckworth*, 206 So. 2d 850, 853 (Miss. 1968). We will not reverse this case because we can with confidence say that our review of the record in this case reveals no error. We remain disturbed, however, at the Appellee's failure to argue her position in defense of the Judgment of Divorce.

It further appears that the Jackson County Chancery Court's jurisdiction over this matter was tenuous at best. Jurisdiction in this matter is derived pursuant to Section 93-5-5 of the Mississippi Code of 1972. Section 93-5-5 reads in pertinent part as follows:

93-5-5. Residence requirements for divorce.

The jurisdiction of the chancery court in suits for divorce shall be confined to the following cases:

(a) Where one (1) of the parties has been an actual bona fide resident with this state for six (6) months next preceding the commencement of the suit.

Our review of the pleadings and testimony in this case does not reveal any evidence that would explicitly satisfy this requirement. There was, however, testimony that Jerry had lived in 'this state' for an extended period of time. On cross examination, Jerry testified that he had lived in Mississippi since 1985. While this statement does deal with the time in this state, it does not specifically deal with the critical period of time 'next preceding the commencement of suit.' While a party is not required to mimic the wording of the statute, this Court will require some definite reference to the length of time immediately preceding a suit a party has resided in Mississippi. *See, Horton v. Horton*, 57 So. 2d 723, 725 (Miss. 1952). While this is a crucial error, we feel that when viewed as a whole, the testimony and the references to residence in the pleadings were sufficient to confer jurisdiction on the chancery court.

Jerry has not questioned this defect on appeal. This Court is entitled to take notice, *sua sponte*, of plain error such as this. Miss. R. App. Proc. 28 (a)(3). We will not, however, act on this error because the appellant has not complained about it, and because we find no error in the chancellor's decree. Accordingly, we affirm the judgment of the Jackson County Chancery Court.

**THE JUDGMENT OF THE JACKSON COUNTY CHANCERY COURT IS AFFIRMED.
ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**