

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-CA-00353-COA

KIRK O. BARTUNEK

APPELLANT

v.

LISA P. BARTUNEK

APPELLEE

DATE OF JUDGMENT:	02/28/2025
TRIAL JUDGE:	HON. TROY FARRELL ODOM
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	JEFFREY BIRL RIMES
ATTORNEY FOR APPELLEE:	SHARON PATTERSON THIBODEAUX
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED - 09/29/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., WESTBROOKS AND EMFINGER, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. In 2022, Lisa Bartunek petitioned for a fault-based divorce from her husband Kirk Bartunek following forty-three years of marriage. Lisa argued that she was entitled to a divorce on the ground of constructive desertion, pointing in particular to her husband's long-continued refusal to have sexual relations with her. Kirk counterclaimed for divorce, arguing that he was entitled to a divorce on the ground of constructive desertion. The chancellor granted a divorce to Lisa. Finding no reversible error in the chancellor's judgment, we affirm.

FACTS

¶2. Kirk and Lisa married in Mississippi in 1980 and have three children, all of whom were emancipated at the time of the divorce proceedings. The couple lived in Colorado for

a large portion of the marriage. In 2020, Lisa moved back to Mississippi to be closer to the couple's children and grandchildren, with an apparent understanding that Kirk would also move to Mississippi in a few years' time when he became eligible to retire from his job as a Colorado State Trooper. The couple purchased a condo in Brandon. Kirk visited Mississippi multiple times, and Lisa visited Colorado multiple times to take care of Kirk after he had a series of surgeries. In early 2022, the couple made an offer on a property in Brandon located immediately next to the home of one of their daughters.

¶3. Lisa testified that she and Kirk had a relatively normal sex life from the time they were married in 1980 until 1997. However, in 1997, "we had had sexual issues for quite a while, but then it got to the point where he just flat refused. No matter how hard I tried, he refused to have sex at all." When Lisa demanded to know if he was having an affair, "because, you know, you're avoiding me every possible way that you can," Kirk admitted to having sex with someone else. Lisa testified, "What he said—I hate saying this. But he said it was just a blow job from a girl at a truck stop[.]" Lisa subsequently discovered a medical receipt for the removal of genital warts, and Kirk told Lisa that he had to be tested for HIV because "when the girl came up, she had blood on her lip."

¶4. Lisa testified, "I was furious that I had begged and begged for sex and he wouldn't do it, and that he went to some truck stop and had that done by some whore. I was – I was mad and I was hurt, and it destroyed every bit of confidence I ever had, which wasn't a lot." From 1997 until 2010, the couple attempted to renew sexual relations. Kirk refused to have sex without watching porn first and eventually refused to have sex at all. Lisa testified:

And he would stay up really late at night to avoid coming to bed with me. And if he came upstairs and I was still awake, he would go in the bathroom and sit in the bathroom for two hours. And I'm not exaggerating. It's like he was just avoiding me. And it continued like that. I was always the one that had to initiate it. Always. And I was rejected time after time after time for years and years.

According to Lisa, during this time she made a huge effort to make herself attractive to her husband, including keeping her weight down, getting breast implants, and never letting Kirk see her without makeup. Lisa submitted into evidence diary entries from the 1997 period forward in which she kept track of her attempted sex life with Kirk.

¶5. Lisa testified that the couple finally stopped having sexual relations in December 2010 and that this was “not by my choice.” Toward the end, she said, “I practically had to beg for it. And it was so humiliating to me that I said to myself, I will never, ever ask for it again. . . . And he certainly never tried.” Lisa decided to focus on “just being a mother and a grandmother to try to keep my mind off of it.” But, she said, “I’m also a woman and I just couldn’t take it any longer, going without sex for years.” Lisa acknowledged that neither she nor Kirk initiated sex from 2010 forward, saying, “He made me feel so bad about my body, I did not want him seeing me. When your husband doesn’t even want to have sex with you, no, you don’t want to parade around nude in front of him.”

¶6. Lisa testified that she asked Kirk repeatedly over the years if he was sexually interested in men, but Kirk denied it. However, Lisa became “suspicious” that Kirk was attracted to young boys because “there’s been certain young boys that I begged him to stay away from and to keep—quit bringing to our [Colorado] home, and he continued to bring them. And he would have them spend the night. Even when I wasn’t there, he would have

them spend the night for two or three nights at a time.”¹ She testified that Kirk would sit in the hot tub with one particular teenage boy named “John,” who would frequently come over.² Lisa said Kirk would ignore her objections when she told him this was not appropriate and that she wanted the teenager to stop coming over.³ While Lisa was in Mississippi, Kirk allegedly spent money on John, including paying a medical bill with cash following an injury that occurred on the marital property. When Lisa confronted Kirk about the incident, Kirk replied, “Don’t ask questions you don’t want the answer to.” When she asked Kirk, “So if I asked you to choose between [him] and me, who would you choose?” Kirk replied, “Why should I have to choose?” The couple’s argument over John’s continued frequent presence in the home precipitated Lisa’s decision to file for divorce.

¶7. Lisa’s sister Leslie testified, corroborating Lisa’s account of the couple’s marital sexual difficulties starting in 1997. Leslie said that Lisa would try to improve her appearance to make herself attractive to Kirk, including after Lisa moved to Mississippi in 2020. Leslie testified that “every time [Lisa] was going to go to Colorado or Kirk was going to be coming here, this woman starved herself for 30 days so that she could be as thin as possible so that maybe he would find her attractive. I’ve never seen anybody eat so little in my life.”

¹ Lisa acknowledged that she did not have any proof that Kirk had done anything sexually inappropriate or abusive toward a child.

² We use a pseudonym to protect the minor’s privacy.

³ According to Lisa, Kirk had first begun spending time with John when John was in elementary school. Kirk would take John to church and then not arrive home until 10:00 p.m. after driving John home. Lisa said Kirk would say that he and John “were talking,” and Lisa found it “very strange for an old man to be sitting in a car at night talking to a little boy. And especially when he continued it over and over after I asked him not to.”

According to Leslie, Kirk's withholding of intimate relations destroyed Lisa's self-esteem.

¶8. Kirk testified. He acknowledged that he "stepped out of his marriage vows" in 1997 and that he told Lisa about it. He acknowledged that he was tested multiple times for HIV. Kirk agreed that he and Lisa stopped having sex in 2010, but he characterized it as a "mutual" and "unspoken" agreement to quit having sex. He also stated that Lisa's frequent questions about whether he was sexually interested in men made him not want to have sex with her. He said that he had a long-time mentoring relationship with John and other young men but that the relationships are not sexual. He admitted that he has mentoring sessions with teenage boys in his hot tub with no one else around, and that he does not think this is inappropriate. He said that during "my conversations with the kids that I mentor . . . we talk about God, we talk about sex, we talk about parents, we talk about school issues." Kirk stated that he believed his spiritual gift was mentoring children and young men. At the time of the divorce hearing, in addition to John visiting frequently, an eighteen-year-old man was living full-time at the Colorado marital property.

¶9. The chancellor granted Lisa a divorce on the ground of constructive desertion. In a bench ruling, later incorporated by reference into the final judgment granting divorce, the chancellor stated:

The [c]ourt finds credible Lisa's testimony that she struggled mightily to resume marital relations with her husband but that he refused. The testimony is sufficiently corroborated, not only through the testimony of Leslie Ratcliff but also through Kirk himself and through Lisa's personal diary wherein she detailed her efforts and the resulting emotional toll that this refusal had upon her.

The [c]ourt believes [Lisa] when she states that this refusal of intimacy

destroyed her emotionally, killing her self confidence, and leading her to numerous counselors and therapists. The [c]ourt cannot find fault with Lisa for leaving the marital home and returning to Mississippi where her friends and family resided. The evidence clearly shows an obstinate and long continued refusal to engage in sexual relations here over 11 years prior to the filing of the complaint for divorce.^[4]

The chancellor further stated from the bench:

The court finds Kirk's refusal to engage in sexual relations not a mutual agreement but a one-sided decision and that Kirk's reasons for the refusal are insufficient. The grounds for constructive desertion are met and the [c]ourt awards Lisa a divorce^[5] on the ground of constructive desertion as a result.

In August 2023, the chancellor entered a written order on the docket granting Lisa a divorce and incorporating the reasoning of the bench order. The chancellor later entered an amended judgment in February 2024.

¶10. In December 2024, Kirk filed a motion for the chancellor to recuse based on events that transpired during the property-division trial, which had occurred in November 2024. When Lisa's sister Leslie, who was not a witness in the property-division trial, showed up to sit in the courtroom, the chancellor granted an ore tenus motion made by Kirk's attorney to seal the proceedings and have Leslie remain outside of the courtroom. Previously, during

⁴ The chancellor also stated:

Kirk of course denies having sexual relations with any young men. However, the evidence clearly shows that there was some behavior going on that was reasonable for Lisa to find to be inappropriate

⁵ The record reflects that at this point during the chancellor's delivery of his bench ruling, Kirk interrupted to say "bullshit" several times. Earlier in the proceedings, when the chancellor asked if it is "your client's testimony that he wants to remain married to Lisa Bartunek," Kirk interrupted and said, "No sir. I do not." However, when the chancellor suggested that the parties withdraw grounds and enter into an irreconcilable difference divorce, Kirk declined.

the fault portion of the divorce proceedings, Leslie and Kirk had charged interactions with each other while court was recessed and had to be separated by court staff before the altercation became physical. The chancellor desired the property-division hearing to proceed smoothly and determined it would “advance more efficiently” if Leslie was not in the courtroom, given that “her presence was an obvious antagonistic element to Kirk.”

¶11. During the sealed hearing, and while Kirk was under direct examination regarding funds Lisa had removed from a joint account, Kirk became increasingly agitated. As characterized by the chancellor, Kirk “then morphed his agitation into a tirade where he vented many of his frustrations with the divorce proceedings. His voice was raised.” Kirk’s voice carried to an adjacent witness room where Leslie was sitting. Leslie in turn texted her and Lisa’s sister, local attorney Sharon Thibodeaux, concerning Kirk’s behavior. Attorney Thibodeaux then texted a court staff attorney,⁶ “Why does Judge Odom keep letting Kirk Bartunek act like he is acting!! To my knowledge, he has never let anyone else act that way in the courtroom. I do not understand!”

¶12. Attorney Thibodeaux was unaware that the staff attorney she was texting was, at that moment, sitting within six feet of the chancellor during sealed proceedings. The staff attorney immediately showed the message to the chancellor, who in turn asked those present in the courtroom whether they were texting individuals from within the sealed proceeding.⁷ When

⁶ The staff attorney worked for multiple chancellors. Attorney Thibodeaux entered an appearance as co-counsel for Bartunek the following month and is counsel on appeal.

⁷ The content of the message was not read into the record during the property-division proceedings.

it was discovered that Leslie was sending texts about the proceedings, Leslie left the courthouse, and the proceedings continued.

¶13. At the hearing on the motion to recuse, Kirk’s attorney indicated that at the time they filed the motion to recuse, they were under the impression that the text message had been sent directly to the chancellor. While stating that the chancellor handled the aftermath of the text incident appropriately, Kirk argued that recusal was proper to avoid the appearance that the chancellor could not be impartial. The chancellor determined that recusal was not warranted, noting that “recusal is required only where the judge’s conduct would lead a reasonable person knowing all of the circumstances to conclude that the prejudice is of such a degree that it adversely affects the client.” The chancellor noted that he could have, but did not, hold either Kirk in criminal contempt for his behavior in the courtroom or Leslie in criminal contempt for ignoring the court’s order for a sealed proceeding. The chancellor stated that “attempts to influence this [c]ourt in its decisions will not be tolerated and they will not be effective. The [c]ourt handled its business and got these proceedings back to a position that they could conclude as efficiently as possible The [c]ourt does not believe for a second that any reasonable person knowing all of the circumstances would question this [c]ourt’s impartiality.”⁸

¶14. Kirk now appeals the grant of divorce to Lisa and the denial of his post-trial motion

⁸ Attorney Thibodeaux stated at the recusal hearing that it was never her intent for the chancellor to see or be aware of the text message she had sent. The chancellor stated that Thibodeaux “has never attempted to discuss this case with the Court or its employees” and that she “properly excluded herself from participation in these proceedings until that ill-advised text to the staff attorney.”

for the chancellor to recuse. Neither party challenges the chancellor’s division of marital property.⁹

STANDARD OF REVIEW

¶15. “This Court will not disturb the chancellor’s opinion when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. A chancellor’s conclusions of law are reviewed de novo.” *Hoffman v. Hoffman*, 270 So. 3d 1121, 1126 (¶20) (Miss. Ct. App. 2018) (citation omitted); *see also Mabus v. Mabus*, 847 So. 2d 815, 818 (¶8) (Miss. 2003).

DISCUSSION

I. Whether the chancellor erred in granting Lisa a divorce on the ground of constructive desertion.

¶16. “Willful, continued and obstinate desertion for the space of one (1) year” is a statutory ground for divorce pursuant to Mississippi Code Annotated section 93-5-1 (Rev. 2021).

Typically, constructive desertion consists of the following:

If either party, by reason of such conduct on the part of the other as would reasonably render the continuance of the marital relationship unendurable, or dangerous to life, health[,] or safety, is compelled to leave the home and seek safety, peace[,] and protection elsewhere, then the innocent one will ordinarily be justified in severing the marital relation and leaving the domicile of the other, so long as such conditions shall continue, and in such case the one so leaving will not be guilty of desertion. The one whose conduct caused the separation will be guilty of constructive desertion[,] and if the condition is persisted in for a period of one year, the other party will be entitled to a divorce.

⁹ Prior to the divorce hearing, Kirk had unsuccessfully moved to dismiss the case for lack of personal jurisdiction. The chancellor determined that Kirk had sufficient minimum contacts with Mississippi, and Kirk does not challenge this determination on appeal.

Watson v. Watson, 306 So. 3d 800, 803 (¶9) (Miss. Ct. App. 2020) (quoting *Benson v. Benson*, 608 So. 2d 709, 711 (Miss. 1992)). “Chancellors should grant a divorce on the ground of constructive desertion only in extreme cases.” *Id.* (quoting *Hoffman*, 270 So. 3d at 1127 (¶24)).

¶17. Our Supreme Court has long held that “inexcusable long-continued refusal of sexual relations warrants divorce, either on the ground of constructive desertion or habitual cruel and inhuman treatment.” *Tedford v. Tedford*, 856 So. 2d 753, 757 (¶17) (Miss. Ct. App. 2003) (citing *Sarphie v. Sarphie*, 180 Miss. 313, 177 So. 358 (1937)). The refusal must be “extreme,” and periods of four months and a year and a half have been found “not extreme enough.” *Id.* (citing *Shorter v. Shorter*, 740 So. 2d 352, 357 (¶29) (Miss. Ct. App. 1999)). Mere incompatibility is insufficient to warrant a fault-based divorce. *Roley v. Roley*, 329 So. 3d 473, 492 (¶51) (Miss. Ct. App. 2021); *see also Day v. Day*, 501 So. 2d 353, 355 (Miss. 1987). A finding of constructive desertion does not require that the couple no longer share a home. *Graves v. Graves*, 88 Miss. 667, 41 So. 384, 384 (1906). “Abandonment-desertion may be as complete under the same shelter as if oceans rolled between.” *Id.*¹⁰

¶18. In *Tedford*, this Court found insufficient evidence to support the grant of a divorce on the ground of withheld sexual relations when a couple had had sex three months prior to their separation; the testimony strongly conflicted regarding the couple’s sexual desire for each other; and the testimony conflicted on whether both spouses initiated sex during the decline

¹⁰ In his bench ruling, the chancellor here noted that “the handful of cases that discuss this rare and unfortunate type of desertion—that being the refusal of marital relations—did not fall under the typical definition of constructive desertion where the innocent spouse is compelled to leave the home because of . . . unendurable or dangerous behavior.”

of their intimate relationship. *Tedford*, 856 So. 2d at 757 (¶18). Similarly, in *Sarphie*, our Supreme Court determined that a chancellor did not manifestly err in deciding that four months of a newlywed wife’s avoidance of sexual relations was insufficient ground to grant a divorce. *Sarphie*, 177 So. at 359. This was despite the Court’s opinion that “[i]n the light of the evidence, it is very probable that these parties will not, in the future, live together as husband and wife, but we are bound by the rules of law.” *Id.*; see also *Crenshaw v. Crenshaw*, 767 So. 2d 272, 275 (¶13) (Miss. Ct. App. 2000) (concluding wife’s refusal to have sex for at most a month at a time was insufficient to constitute “inexcusable and long-continued refusal to permit coition”).

¶19. But in *Culver v. Culver*, 383 So. 2d 817 (Miss. 1980), the Mississippi Supreme Court held that the “uncontradicted evidence that [the wife] had for eight years refused her husband sexual relations” constituted a ground for divorce. *Id.* at 817. The wife argued that she refused sexual relations because of her husband’s drinking habits. *Id.* While the Court noted that “habitual drunkenness could doubtless operate as an excuse for long-continued refusal of sexual relations,” the evidence in the record did not support the contention that the husband “stayed pretty well soaked on beer practically all the time.” *Id.* at 818.

¶20. Similarly, in *Handshoe v. Handshoe*, 560 So. 2d 182, 183 (Miss. 1990), the Court affirmed a chancellor’s grant of a divorce to a husband “on the ground of willful, continued and obstinate desertion for the space of one year” when the parties agreed that they had “stopped normal conjugal relations at least” eight years prior to the divorce proceedings “upon the insistence of [the wife].” While agreeing on that point, both parties argued that

they were entitled to a divorce on the ground of constructive desertion or habitual cruel and inhuman treatment. *Id.* The wife argued that the husband was frequently absent from home and uninvolved with the family, while the husband argued that the wife moved him out of the master bedroom and gave all his clothes away to Goodwill. *Id.* Applying a deferential standard of review, the Court determined that “on the conflicting evidence of this case, we cannot say that the Chancellor’s findings are manifestly wrong in any respect.” *Id.*

¶21. Here, on review of the record, and in light of our deferential review over the chancellor’s determinations, we do not find that the chancellor was manifestly wrong in determining that Kirk’s long-continued refusal of Lisa’s request for sexual relations warrants a grant of a divorce. The circumstances of this case are strongly comparable to *Carver* and *Horseshoe* in the length of time involved and in that the evidence supports that the cessation of marital relations was at the insistence of one spouse despite the wishes of the other.

¶22. When asked why she felt entitled to a divorce from Kirk, Lisa replied that “the main thing I would say is because of the lack of sex.” She reiterated that she asked Kirk “over and over and over” to have sex with her, and she said that “he turned me down over and over and over.” She stated that she never cheated on Kirk during the forty-six years they had been a couple. She also referenced her extreme discomfort with Kirk’s interest in hanging out with boys, stating, “I asked him over and over and over to quit hanging out with young boys and he wouldn’t do it.” She also testified that if Kirk had made a good faith attempt to reconcile, “I would have stayed. I wanted to keep our family together.” While Kirk contests the ground for divorce, it is clear from the record that he no longer wants to be married to Lisa.

¶23. Kirk argues on appeal that Lisa failed to prove constructive desertion because she also stopped trying to initiate sex after 2010. However, he acknowledges that the marriage was contentious, that they were incompatible, and that “the issues that manifested themselves in this proceeding are primarily of a sexual nature.” On careful review of the record, we find that substantial evidence supports the chancellor’s finding that “[t]he evidence clearly shows an obstinate and long continued refusal to engage in sexual relations here over 11 years prior to the filing of the complaint for divorce,” and that “Kirk’s refusal to engage in sexual relations [was] not a mutual agreement but a one-sided decision.” The marital difficulties went beyond mere incompatibility and were sufficient to warrant a fault-based divorce consistent with the line of precedent including *Graves*, *Culver*, and *Handshoe*. We therefore affirm the chancellor’s grant of the divorce to Lisa.

II. Whether the chancellor erred in denying Kirk’s motion to recuse.

¶24. Kirk also appeals the denial of his motion for the chancellor to recuse. “A trial judge’s recusal decision is left to his ‘sound discretion’ provided that ‘he applies the correct legal standards and is consistent in the application.’” *Watson*, 306 So. 3d at 806 (¶24) (quoting *Latham v. Latham*, 261 So. 3d 1110, 1112 (¶7) (Miss. 2019)). “There is a presumption that ‘a judge, sworn to administer impartial justice, is qualified and unbiased.’” *May v. May*, 410 So. 3d 1087, 1094 (¶19) (Miss. Ct. App. 2025) (quoting *Watson*, 306 So. 3d at 806 (¶24)).

¶25. We do not find merit to Kirk’s post-trial motion that the chancellor should have recused to avoid the appearance of a lack of impartiality. While Kirk was extremely dissatisfied with the chancellor’s merits-based ruling in favor of Lisa, we note that Kirk does

not point to any statements or conduct by the chancellor himself indicating antagonism, lack of impartiality, or bias against Kirk. The record demonstrates continued measured patience by the chancellor in the face of Kirk's repeated emotional outbursts. Further, the chancellor directly and transparently handled the incident of the staff attorney receiving a text from Lisa's sister. Accordingly, we find no abuse of discretion.

CONCLUSION

¶26. On careful review of the record, we find no manifest error in the chancellor's determination to award Lisa a divorce on the ground of constructive desertion. The circumstances of this case are consistent with the line of precedent in which our appellate courts have upheld a chancellor's determination that inexcusable long-continued refusal of sexual relations warrants divorce.

¶27. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., McDONALD, LAWRENCE, McCARTY, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR.