

IN THE COURT OF APPEALS 02/27/96
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-01239 COA

BOBBY RAY SPEARMAN

APPELLANT

v.

JOYCE ELLEN SPEARMAN

APPELLEE

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

TRIAL JUDGE: HON. JOHN C. ROSS, JR.

COURT FROM WHICH APPEALED: ITAWAMBA COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

DUNCAN LOTT

ATTORNEY FOR APPELLEE:

CAROLYN R. BENSON

NATURE OF THE CASE: CIVIL/DOMESTIC RELATIONS

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

BEFORE BRIDGES, P.J., KING AND PAYNE, JJ.

BRIDGES, P.J., FOR THE COURT:

This appeal is before this Court because of a divorce action brought by Joyce Ellen Spearman against her husband, Bobby Ray Spearman, on the ground of habitual cruel and inhuman treatment. The chancellor granted the divorce, and Bobby Ray Spearman appeals the judgment claiming that the chancellor acted erroneously in granting a divorce on this ground. Finding that the chancellor did not err, we affirm the judgment of the lower court.

FACTS

Joyce Ellen Spearman (Joyce) and Bobby Ray Spearman (Bobby) were married on December 6, 1963. The couple separated on September 25, 1993, and Joyce filed for divorce a few months later on the ground of habitual cruel and inhuman treatment.

At trial, Joyce and other witnesses testified as to Bobby's behavior during the course of the marriage. The testimony showed that about two years after the couple's marriage, Bobby began throwing "temper tantrums" and exhibiting the symptoms of severe jealousy, which continued over the next twenty-eight years, becoming worse after 1992, when Joyce began working at the Itawamba County Welcome Center.

Joyce's testimony described various incidences of abuse. She testified to an incident where Bobby pulled her from a bed and dragged her across the floor, and attempted to force her to have sex with him when she left the couple's bed to sleep in another room because Bobby was throwing a tantrum. She also testified that once she began her new job at the welcome center, the nocturnal tantrums became more frequent. When Joyce would try to leave the couple's bedroom to obtain much needed rest, Bobby would physically restrain her and refuse to release her. During one such occurrence, he gripped her arms so hard that he left black and blue bruises on her arms. In addition, Bobby would frequently appear at the welcome center in attempts to get her fired from her job. When asked to leave, he would refuse to do so. According to Joyce's testimony, Bobby hated every job she ever had. He would harass her at work and attempt to deprive her of sleep in an effort to keep her from working outside the home. Finally, and most important, Joyce testified that Bobby told her that he would rather see her "up yonder in the cemetery dead" if she did not do what he wanted. Because of this statement, she began to fear for her own safety.

Joyce's attorney called a number of witnesses who corroborated Joyce's testimony. These witnesses, Joyce's friends, co-workers, and family members testified that they had personally witnessed Bobby's temper tantrums. They also testified that Bobby would frequently keep Joyce awake at night and then physically restrain her when she tried to leave. A number of witnesses testified that they had actually heard Bobby say that he would rather see Joyce dead if she refused to do what he wanted her to do. Joyce's co-workers testified that they saw bruises on Joyce's arm and after they inquired about the cause of the bruising, Joyce told them that Bobby had hurt her. These witnesses testified that Joyce's job at the welcome center was in jeopardy because of Bobby's frequent visits and calls to the center. Many witnesses testified that Joyce's emotional state and mental health were in jeopardy because of sleep deprivation and anxiety caused by Bobby's behavior.

Bobby's argument at trial and on appeal is that his treatment of Joyce did not rise to the level of habitual cruel and inhuman treatment, and therefore, the chancellor should not have awarded Joyce a

divorce on this ground. Specifically, he claims that Joyce failed to produce any testimony of conduct that would endanger her life, limb, or health or that his actions created a reasonable apprehension of danger on her part.

LAW

Our supreme court has set forth a standard of review to be applied by appellate courts in cases such as the case at bar. 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. In *Polk v. Polk*, 559 So. 2d 1048, 1049 (Miss. 1990), the Mississippi Supreme Court said that 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 primarily for the chancellor as the trier of facts. Where the matters on appeal concern divorce and child support, this Court must give even greater deference to the chancellor's decisions in factual matters. *Steen*, 641 So. 2d at 1169-70 (citations omitted).

In order for a divorce to be granted on the ground of habitual cruel and inhuman treatment, the supreme court has stated the following about cases where this ground for divorce is alleged:

In years gone by, this Court consistently held that habitual 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. at 1170 (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). "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.'" *Steen*, 641 So. 2d at 1170 (quoting *Wires v. Wires*, 297 So. 2d 900, 902 (Miss. 1974)). The complaining spouse must show systematic and continuous behavior beyond simple incompatibility on the part of the offending spouse. *Id.* (citing *Parker v. Parker*, 519 So. 2d 1232, 1234 (Miss. 1988)). 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." *McKee v. Flynt*, 630 So. 2d 44, 48 (Miss. 1993) (citing *Ellzey v. Ellzey*, 253 So. 2d 249, 250 (Miss. 1971)). The risk of life, limb, or health must be real, rather than imaginary, and must be clearly established by proof. *Id.* (citation omitted). Finally, the court has held:

Evidence sufficient to establish habitual, cruel and inhuman treatment should

prove conduct that:

either endanger[s] life, limb or health, or create[s] a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief or, in the alternative, be so unnatural and infamous as to make the marriage revolting to the offending spouse and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its continuance.

Gardner v. Gardner, 618 So. 2d 108, 113-14 (Miss. 1993) (alterations in original) (quoting *Rawson v. Buta*, 609 So. 2d 426, 431 (Miss. 1992)). However, the supreme court has also held that 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). The party alleging habitual cruel and inhuman treatment must generally corroborate the testimony. *Id.*

In the case before us, it is clear that the chancellor had a plethora of evidence from which to conclude that Bobby's behavior constituted habitual cruel and inhuman treatment. Joyce's testimony of Bobby's abusive behavior was corroborated by the testimony of co-workers, her son, and family members. The record is replete with evidence that throughout the marriage, Bobby abused her both mentally and physically, and also deprived her of sleep so frequently that her job was threatened. The record also shows that Bobby made it clear to Joyce and others that he would rather see Joyce dead than have her act against his wishes. Co-workers testified that they saw bruises on Joyce's arm, and although Bobby claimed he was acting in self-defense, he admitted to causing the bruising. Other witnesses testified that Bobby frequently physically kept Joyce from leaving their bedroom and prevented her from sleeping because of his temper tantrums. Many witnesses testified as to Joyce's deteriorating emotional health because of the sleep deprivation and anxiety caused by Bobby's behavior.

Considering the evidence in the record, this Court believes that the chancellor did not err in finding that Bobby's frequent and systematic conduct over the course of the marriage, which included dragging his wife from the bed and across the floor, physically restraining her with such force that Joyce's arms bruised, trying to get her fired from her previous and present jobs, and finally and most important, threatening her life if she did not do as he asked, constituted habitual cruel and inhuman treatment.

Bobby engaged in a continuing course of conduct over a period of twenty-two years in which he endangered the health and well-being of his wife and stated to her in the presence of other people that he would rather see her dead than not conduct herself according to his wishes.

Based on the facts above, we believe that the chancellor did not err in finding that Bobby's actions justified granting a divorce on the ground of habitual cruel and inhuman treatment.

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

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