IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00789 COA

BOBBIE DIXON

APPELLANT

v.

CHRISTINE DIXON

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. DONALD B. PATTERSON

COURT FROM WHICH APPEALED: COPIAH COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

M.E. MCLEOD

ATTORNEY FOR APPELLEE:

JEFFREY A. VARAS

NATURE OF THE CASE: CIVIL: DOMESTIC RELATIONS

TRIAL COURT DISPOSITION: CHRISTINE DIXON'S CLAIM FOR SEPARATE MAINTENANCE DENIED; BOBBIE DIXON'S CROSS-CLAIM FOR DIVORCE DENIED

BEFORE FRAISER, C.J., KING, AND SOUTHWICK, JJ.

PER CURIAM:

Bobbie Dixon appeals from a decision of the Copiah County Chancery Court which denied both the separate maintenance claim of his wife, Christine Dixon, and his claim for divorce. Bobbie argues on appeal that the court erred in failing to grant him a divorce on the grounds of desertion. We disagree and affirm.

Bobbie and Christine were married on July 17, 1976. The testimony indicates that they were experiencing extreme incompatibility and irreconcilable differences, and that they separated numerous times prior to their final separation on July 17, 1986. The parties lived separate and apart from the time of their final separation to the time of their trial, approximately seven and a half years. The triggering cause of the final separation was continuous, mutual verbal and physical fighting.

A chancellor's decree will not be reversed unless it is manifestly wrong as to law or fact. *Benson v. Benson*, 608 So. 2d 709, 710-11 (Miss. 1992). To consider Bobbie's appeal, our analysis is twofold. First, we consider what legally constitutes desertion. Second, we consider whether the evidence demonstrates that Christine deserted Bobbie.

To receive a divorce based on desertion, Bobbie must show that he was not at fault in causing Christine's absence from the home, and that his wife wilfully abandoned him. *King v. King*, 246 Miss. 798, 803, 152 So. 2d 889, 891-92 (1963) (citation omitted) (considering issue in context of separate maintenance award). A wife is at fault for a prolonged separation if she refuses to return to her husband despite good faith efforts at reconciliation. However, "[t]hese efforts at reconciliation [may be] so hedged about and conditional" as to be spurious. *See Criswell v. Criswell*, 254 Miss. 746, 749, 182 So. 2d 587, 589 (1966). Our review of the record reveals sufficient evidence for the chancellor to conclude there were no legitimate efforts at reconciliation, and that the husband was partially at fault for causing the separation.

In view of the chancellor's role in evaluating credibility and considering the weight of the evidence supporting his decision, we affirm the denial of a divorce to the husband.

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

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