

IN THE COURT OF APPEALS 04/23/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-01010 COA

LARRY THOMAS LERAY

APPELLANT

v.

NANCY ANN ORTON LERAY

APPELLEE

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

TRIAL JUDGE: HON. R. B. REEVES, JR.

COURT FROM WHICH APPEALED: CHANCERY COURT OF PIKE COUNTY

ATTORNEY FOR APPELLANT:

JOE DALE WALKER

ATTORNEY FOR APPELLEE:

EDWIN L. BEAN, JR.

NATURE OF THE CASE: DOMESTIC RELATIONS-DIVORCE

TRIAL COURT DISPOSITION: DIVORCE GRANTED TO NANCY ANN ORTON LERAY ON
GROUNDS OF HABITUAL CRUEL AND INHUMAN TREATMENT

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

FRAISER, C.J., FOR THE COURT:

On October 27, 1993, Nancy Ann Orton LeRay (Nancy) filed for divorce from her husband, Larry Thomas LeRay (Larry). She alleged habitual cruel and inhuman treatment. The chancellor granted Nancy a divorce on those grounds and divided the marital property under principles of equitable distribution. Larry appeals the chancellor's decision and presents the following issues:

I. THE CHANCELLOR ERRED IN GRANTING NANCY ANN ORTON LERAY A DIVORCE ON THE GROUND OF HABITUAL CRUEL AND INHUMAN TREATMENT.

II. THE CHANCELLOR ERRED IN REQUIRING THE VENDING MACHINE BUSINESS OF THE APPELLANT TO BE LUMPED WITH THE REAL PROPERTY OF THE PARTIES, REQUIRING THE VENDING MACHINE BUSINESS TO BE APPRAISED AND IF THE PARTIES CANNOT RESOLVE THEIR EQUITIES, THEN REQUIRING THE VENDING MACHINE BUSINESS TO BE SOLD AND EQUALLY DIVIDING THE NET PROCEEDS FROM THE SALE OF THE APPELLANT'S BUSINESS, WHEN THE APPELLEE DID NOT REQUEST THIS RELIEF IN HER COMPLAINT FOR DIVORCE.

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

FACTS

Nancy and Larry were married on September 3, 1983, in Hahnville, Louisiana. After a ten year marriage, they separated on or about October 16, 1993, in Magnolia, Mississippi. While no children were born to the marriage, Larry adopted Nancy's two sons, Dennis Allen LeRay, born in 1972, and Gary Michael LeRay, born 1978. The family started out in Luling, Louisiana where Larry owned a house and some rental property. Not long after settling in Luling, they began a series of moves that eventually led them to Mississippi. In Luling, Larry worked at the Union Carbide plant and Nancy stayed home at Larry's insistence. After a few months, the family moved to Oklahoma and purchased a forty acre farm and residence. Aside from tending to the children and her normal household chores, Nancy contributed to the farm work. While living on the Oklahoma farm, Larry began to criticize Nancy and belittle her farm productivity abilities. Nancy testified that his constant comments made her feel "like I wasn't smart enough to really do anything. . . like I was dumb."

After living on the farm less than one year, Larry moved his family to Missouri to build a turkey farm. Again, Nancy tended to the boys and kept house as well as assisting Larry by performing farm duties.

Nancy was responsible for washing the hand-feeding equipment, helping set up bird houses and washing the jugs and the drinkers. The LeRays stayed on the Missouri turkey farm six and one half years. During that time, Larry spent most of his time on the farm while Nancy stayed with the children at their home in Jasper, Missouri, some twenty miles away. Larry was constantly griping about the farm and the problems it created. He began spending more and more time at the farm in the company of JoAnne, one of his employees. When Larry came home, he would verbally abuse Nancy and tell her she was worthless compared to JoAnne. When Nancy confronted Larry about his involvement with JoAnne, he hit her. Not long after the Missouri incident, Larry moved his family to Amite County, Mississippi.

Things quickly deteriorated for the family after the move to Mississippi. Larry's treatment of Nancy became more abusive and the effect on her mental health was apparent. Larry started a vending machine business. Nancy assisted. However, Larry was never satisfied with her help and Nancy testified about the effect it had on her and her family:

He made me feel like I was inadequate, worthless, like I couldn't think on my own, that only he was the one that. . . . Nobody could take and--he didn't want us to come up with ideas or try and find things that were easier or do it our way. It had to be Larry's way. He wanted--he made us feel like when he talked with us, he'd cut us down, make us feel like we were all under him, like he could squash us like a cockroach.

Larry's relationship with his youngest son, Gary, retrogressed to the point where Larry and Gary engaged in fist fights with each other. This behavior put additional strain on the marriage. On two occasions Larry told Nancy that she would have to choose between him and her sons. Eventually, Larry's verbal abuse and constant fighting with Gary affected Nancy so severely that she was hospitalized for attempted suicide. Nancy was released after three days because Larry refused to pay for further hospitalization. Nancy explained the desperation that led her to attempt suicide:

I wanted to take and have my family, my husband and my kids back the way we were. I wanted to be happy. I didn't want to take and be made to feel like I was used. I was tired of hearing Larry cut me and the kids down. And I just--I just didn't feel that I could go on with all the ugliness and the bitterness. When I was away from Larry I started to take and feel good about myself. I learned that I had a head and I could think, and then I made the mistake of calling Larry and telling him where I was at and listening to the things he told me--he loved me and that things would get better, he'd sell the business, he made a bunch of promises. But when I'd come back, he would start telling me that I had changed, that my clothes wasn't right, my hair wasn't right, too much makeup. It was just too much. It was always--he wanted me to dress the way he wanted and I wanted to take and feel like a person.

Two weeks after Nancy returned home from the hospital, Larry started hounding her about seeing

other men and expressing his jealousy. He made her dress more plain so that no one else would look at her. Nancy started seeing a counselor at the regional mental health facility. She saw her counselor, Larry Ray (Ray) once a week for three weeks by herself, and then her husband attended the next three sessions with her. Ray testified that the bulk of Nancy's depression was due to marital problems. Larry failed to see the benefit of the sessions and quit going after three appointments.

Finally, in October, 1993, Nancy separated from Larry. She moved into a small convenience-type store Larry owned called the "Cleveland Store." Larry told her she could move into the store with her belongings. However, once settled in the store, Larry constantly harassed her, put up trespassing signs around the property, and stole her clothes from the store. Larry testified that he did these things to get her to move back home with him. Nancy was instructed by the justice court judge that she had to vacate the store premises because it was in Larry's name. Nancy testified, "I'm scared to death of Larry." Nancy moved into a small two-bedroom apartment in Brookhaven with her son, Gary. Nancy related the time Larry came to her home unexpectedly and without permission:

When the kids started to resume after Thanksgiving vacation, Larry had been at the home. He had come into my home without permission. He had hit on Gary, and he'd hit on me. There was a lot of physical violence, a lot of verbal violence. Gary was upset, and Gary and I both were very afraid that Larry would come back to the house.

Other instances of abuse included Larry's constantly calling Nancy degrading names in front of her sons, mother and friends:

Q. Mr. LeRay, have you ever called your wife a slut?

A. I sure have.

Q. How many times did you call her a slut?

A. I didn't mark it down.

Q. You've done it on more than one occasion, haven't you?

A. I don't know if the word was "slut" or "whore".

....

Q. Have you ever called her a whore?

A. Yes.

Over ten years of marriage, Nancy Ann Orton LeRay endured constant verbal abuse, physical abuse and the incessant jealousy of a controlling husband. She fled the marriage because of her husband's mistreatment, in fear for her own health and safety as well as that of her son, Gary.

I. THE CHANCELLOR ERRED IN GRANTING NANCY ANN ORTON LERAY A DIVORCE ON THE GROUND OF HABITUAL CRUEL AND INHUMAN TREATMENT.

Larry claims that there was insufficient proof to grant a divorce on the ground of habitual cruel and inhuman treatment. Before examining the chancellor's decision, we must establish the standard of review to which we are bound. This Court's scope of review in domestic relations is limited. *Ferguson v. Ferguson*, 639 So. 2d 921, 930 (Miss. 1994). In order to disturb the findings of the chancellor, this Court must find that he or she was manifestly wrong or clearly erroneous. *Id.* "On appeal this Court is required to respect the findings of fact made by a chancellor supported by credible evidence." *Id.* quoting *Newsom v. Newsom*, 557 So. 2d 511, 514 (Miss. 1990). "This is particularly true 'in the areas of divorce and child support.'" *Ferguson*, 639 So. 2d at 930 quoting *Nichols v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989). In the case sub judice, the chancellor made the following findings of fact regarding the habitual cruel and inhuman treatment of Nancy Ann Orton LeRay:

Mr. LeRay. . . was angry frequently, irritable. He was pushing himself and his family, all those things we understand as a businessman. He accused however his wife of affairs in front of others, including Dennis. She of course denies that. The testimony reflects that he belittled her in his talking to her or she thought he did, that he talked down to her. He complained about her dressing. There was an accusation that she was stealing money from his vending machine business. Mr. LeRay wanted to be in control. He is a dominant person, critical, jealous and possessive.

. . . .

There's no doubt that the health of Mrs. LeRay has been affected. She became depressed, was suicidal, had emotional problems, was in St. Dominic's for two or three days and then attempted counseling.

. . . .

As the attorneys know, the court is reluctant to grant divorces where the testimony is marginal or unless it is established by strong testimony. However, in this case, the court is of the opinion that Mrs. LeRay has met her burden. She will be granted a divorce on the ground of habitual cruel and inhuman treatment under the totality of the circumstances

surrounding the parties.

The requirements for proving habitual cruel and inhuman treatment are well established. They were reiterated recently by the supreme court:

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.

Steen v. Steen, 641 So. 2d 1167, 1169 (Miss. 1994)(citations omitted). One need not be battered and bruised to prove herself the victim of relentless abuse. "There are many kinds of acts such as wilful failure to support, *verbal abuse, neglect, and the like* which, if taken alone will not constitute cruelty, *but when taken together will manifest a course of conduct as a whole which may amount to cruelty.* *Savell v. Savell*, 240 So. 2d 628, 629-30 (Miss. 1970) (emphasis added). *See also Chamblee v. Chamblee*, 637 So. 2d 850, 859 (Miss. 1994) ("habitual ill-founded accusations, threats and malicious sarcasm, insults and verbal abuse may cause such mental suffering as to destroy health and endanger the life of an innocent spouse.") (citations omitted).

Larry LeRay verbally and sometimes physically abused his wife over the course of their ten year marriage. His treatment of her was so cruel that her sanity literally disintegrated to the point of no return. Nancy Ann Orton LeRay tried to kill herself because of her husband's constant mental, emotional, verbal and from time to time, physical battering. This Court is satisfied that the chancellor's decision was undergirded by sufficient credible evidence of habitual cruel and inhuman treatment. We affirm.

II. THE CHANCELLOR ERRED IN REQUIRING THE VENDING MACHINE BUSINESS OF THE APPELLANT TO BE LUMPED WITH THE REAL PROPERTY OF THE PARTIES, REQUIRING THE VENDING MACHINE BUSINESS TO BE APPRAISED AND IF THE PARTIES CANNOT RESOLVE THEIR EQUITIES, THEN REQUIRING THE VENDING MACHINE BUSINESS TO BE SOLD AND EQUALLY DIVIDING THE NET PROCEEDS FROM THE SALE OF THE APPELLANT'S BUSINESS, WHEN THE APPELLEE DID NOT REQUEST THIS RELIEF IN HER COMPLAINT FOR DIVORCE.

The chancellor did not make a division of the property jointly owned by the parties in the State of Mississippi, including the marital domicile in Magnolia, Mississippi; the house in Amite County, Mississippi, being the home of the LeRay's eldest son; the real property in Amite County, Mississippi, known as the "Cleveland Store"; and the parties' vending machine business known as

"South Mississippi Vending Company." In addition to lump sum alimony in the amount of \$5,000.00, the chancellor ordered the foregoing real property appraised and granted the parties thirty days in which to resolve their equities in said property. In the event the parties could not come to an agreement as to the disposition of the property, the chancery clerk would be appointed as Special Commissioner to sell the property and divide the net proceeds equally between the parties. While Larry agrees that the chancellor had the authority to require the vending machine business be sold and the equity divided, he contends that the chancellor erred in so doing in this case because Nancy did not ask for such relief in her pleadings.

Rule 8(a)(1) of the Mississippi Rules of Civil Procedure states:

A pleading which sets forth a claim for relief. . . shall contain:

a short and plain statement of the claim showing that the pleader is entitled to relief.

M.R.C.P. 8(a)(1).

Rule 54(c) of the Mississippi Rules of Civil Procedure states:

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled by the proof and which is within the jurisdiction of the court to grant, *even if the party has not demanded such relief in his pleadings.* . . .

M.R.C.P. 54(c). In addition to alimony, the car and attorneys fees, Nancy prayed for "Any other relief, general or specific, which the court deems fit and proper in the premises."

Under the rules of procedure and the applicable case law, Nancy's pleadings were sufficient to warrant the relief granted by the chancellor. Larry puts misplaced reliance on the case of *Holleman v. Holleman*, 527 So. 2d 90, 93 (Miss. 1988), in which the supreme court held invalid a lien on Mr. Holleman's homestead. *Id.* The court stated that in divorce proceedings, liens imposed for the purpose of securing alimony and child support must be specifically plead so that the husband will not be surprised, but instead have an opportunity to prepare a defense. *Id.* at 292. *Holleman* has since been abrogated by *Smith v. Smith*, 607 So. 2d 122, 126 (Miss. 1992). In *Smith*, the supreme court noted that it "had failed to take cognizance of [the] changed pleading standards" in their earlier decision in *Holleman*. *Smith*, 607 So. 2d at 126. The supreme court explained rules 8(a) and 54(c) of the Mississippi Rules of Civil Procedure and held "[a]s there is no statutory procedure in conflict with these two rules [8(a) and 54(c)], they govern divorce proceedings." *Id.* Therefore, Nancy Ann Orton LeRay's pleadings were ample and sufficient under the rules of procedure and the law as stated by the Mississippi Supreme Court. After examining the relevant law and the record before us, we affirm the decision of the lower court.

THE JUDGMENT OF THE PIKE COUNTY CHANCERY COURT IS AFFIRMED. COSTS OF APPEAL ARE TAXED TO APPELLANT. INTEREST AND STATUTORY PENALTY

ON THE \$5,000.00 LUMP SUM ALIMONY AWARD ARE ASSESSED AGAINST APPELLANT.

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