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DIVORCE, GENERAL LEGAL, OPINION

Mississippi Divorce: "A Change of Heart" on Cruelty.

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Last week a firestorm erupted when Representative Andy Gipson single-handedly killed two bills seeking to modify divorce law (<https://bowtielawyer.ms/2017/03/02/divorce-floodgates-why-mississippi-will-always-be-backwards-and-our-leaders-are-leading-the-way/>). The first sought to allow for an additional ground for divorce if a spouse committed domestic violence, and the second would have added a ground based on two years of actual separation. Both died in Gipson's committee without being considered. The ensuing firestorm placed Mississippi in the local, state and national spotlight for all of the wrong reasons.

However, it seems that Gipson has had a change of heart. This term, "change of heart," was quoted from an interview Gipson had with the Clarion

Ledger

(<http://www.clarionledger.com/story/news/politics/2017/03/06/gipson-divorce-amendment/98804362/>) shortly after he killed the original domestic violence as a ground Bill, "[I]f someone has committed violence or assault, they need to have their behavior corrected, they need to have a *change of heart*."



You may peruse the proposed amended Bill language here (http://billstatus.ls.state.ms.us/documents/2017/pdf/ham/SB2680_H_Amend_01_to_Amend_01.pdf). In summary it seeks to clarify existing law and specifically add that the following conduct and burden of proof is included in the Cruelty analysis:

(a) Abusive Physical Conduct. A divorce ...may be decreed to the injured party where one or more incidents of the following abusive physical conduct is established through the reliable testimony of one or more credible witnesses, any of whom may be the injured party: (i) that the injured party's spouse attempted to cause, or purposely, knowingly or recklessly caused bodily injury to the injured party; or (ii) that the injured party's spouse attempted by physical menace to put the injured party in fear of imminent serious bodily harm.

(b) Abusive Non-Physical Conduct. In addition to the foregoing subsection, a divorce ...may also be decreed to the injured party where a pattern of abusive non-physical conduct of any one or more of the following is established through the reliable testimony of one or more credible witnesses, any of whom may be the injured party:

that the injured party's spouse engaged in a pattern against the injured party of (i) threats and/or intimidation, (ii) emotional and/or verbal abuse, (iii) forced isolation, (iv) sexual extortion and/or sexual abuse, (v) stalking and/or aggravated stalking as defined in Section 97-3-107, and/or (vi) economic or financial abuse; provided that any such established pattern of the foregoing shall be shocking to the conscience of a reasonable person.

(2)Standard of Proof. For purposes of subsection (1) of this section, the standard of proof shall be: (a) Clear and convincing evidence when there is only the reliable testimony of a single credible witness, which may be the injured party presented to the court; or (b) Preponderance of the evidence when the reliable testimony of a single credible witness, which may be the injured party, is corroborated by other credible physical or forensic evidence presented to the court. – Senate Bill 2680 as amended by the House, March 6, 2017

This is a good change. It goes further than the original proposed bill. It addresses one of the biggest obstacles in obtaining a divorce on Cruelty, which is the corroboration requirement. Prior to this Bill the complaining party had to have a witness or such other corroboration of physical abuse, in addition to their own testimony. The problem with that is that in domestic violence situations it is routinely behind closed doors, in secret and it is all too common for the abused to not tell anyone. Routinely the abused does not seek help, either medical or otherwise, due to fear, shame, guilt and threats of it happening again.

This bill also defines forms of non-physical abuse to include threats, intimidation, emotional, verbal, economic and financial abuses. These are all forms of abuse and should be included and should provide for the means to end a marriage if the spouse is doing these things to harm the other spouse.

It is an interesting process watching law be made. Gipson, who last week was the goat is now all about the gloat, with him stating that the real problem all along was the Judges. The Judges that do not apply the law uniformly and what is a fault ground in one Court, is not in another. Perhaps, the ends justify the means in getting to the desired outcome. The above divorce language was added to a Bill that had previously passed the Senate that dealt with Abused and Neglected Children, clarifying relative care (<https://openstates.org/ms/bills/2017/SB2680/>).

Any change that seeks to make Mississippi divorce law more consistent and more common sense is a good thing. Complaining about the process may seem petty, but it was you, the concerned citizens, that got Gipson's attention and made this happen. I received one piece of "hatemail" due to my prior blog. He essentially took me to task for complaining, but not doing anything. However, it seems that the old adage may still be true. The squeaky wheel gets the grease.

Matthew Thompson is a Mississippi Divorce Attorney and is pleased when the Mississippi Legislature gets one right, regardless of how they got there. Here's to a Change in Hearts!



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