

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [Lawton v. Lawton](#), Miss.App., November 16, 2004

711 So.2d 884
Supreme Court of Mississippi.

Deborah A. RICHARD
v.
Everett Clyde RICHARD.

No. 95-CT-01149-SCT.
|
May 14, 1998.

Husband sought divorce. The Jackson County Chancery Court, [William H. Myers, J.](#), granted divorce on ground of habitual cruel and inhuman treatment and awarded husband custody of the couple's three daughters. The Court of Appeals reversed and rendered. Husband petitioned for writ of certiorari. The Supreme Court, [Smith, J.](#), held that wife subjected husband to cruel and inhuman treatment.

Court of Appeals reversed; Chancery Court judgment reinstated.

West Headnotes (13)

[1] **Divorce**

 [False Charges of Conjugal Misconduct](#)

Divorce

 [Acts, declarations, and conduct conjunctively constituting cruelty](#)

Wife subjected husband to “habitual cruel and inhuman treatment” by

sitting in front of the television all day, spending husband's paycheck on items from home shopping station instead of paying bills, refusing to answer doorbell or go anywhere or do anything except sit in front of the television set, running up excessive telephone bill to psychic hotline, and constantly accusing husband of infidelity and incestuous relationship with parties' daughter, thereby causing husband to seek medical treatment for anxiety and depression.

[3 Cases that cite this headnote](#)

[2] **Divorce**

 [Findings of court or chancellor](#)

Supreme Court views facts of divorce decree in light most favorable to appellee and will not disturb chancery decision unless it finds decision manifestly wrong or unsupported by substantial evidence.

[11 Cases that cite this headnote](#)

[3] **Divorce**

 [Cruelty or other ill treatment](#)

Habitual cruel and inhuman treatment may be established, in divorce action, by a preponderance of the evidence, rather than by clear and convincing evidence.

[3 Cases that cite this headnote](#)

[4] **Divorce**

🔑 [Elements of cruelty in general](#)

“Habitual cruel and inhuman treatment” means something more than unkindness or rudeness or mere incompatibility or want of affection.

[7 Cases that cite this headnote](#)

[5] **Divorce**

🔑 [Necessity of actual physical violence, danger to health, or fear thereof](#)

Divorce

🔑 [Conduct rendering cohabitation unsafe](#)

Divorce

🔑 [Conduct making condition intolerable or life burdensome](#)

“Habitual cruel and inhuman treatment” is conduct that endangers life, limb or health or creates a reasonable apprehension of such danger, thereby rendering the relationship unsafe for the party seeking relief or, in the alternative, is conduct so unnatural and infamous as to make the marriage revolting, thereby making it impossible for other spouse to discharge marital duties and destroying the basis for continuing the marriage.

[14 Cases that cite this headnote](#)

[6] **Divorce**

🔑 [Elements of cruelty in general](#)

Causal connection must exist between habitual cruel and inhuman treatment and spouses' separation,

but no specific act need be the proximate cause of a separation; it is, instead, habitual or continuous behavior over a period of time, close in proximity to the separation, or continuing after a separation occurs, that may provide the grounds for divorce.

[6 Cases that cite this headnote](#)

[7] **Divorce**

🔑 [Acts, declarations, and conduct conjunctively constituting cruelty](#)

Constantly accusing husband of infidelity and incest, spending husband's paycheck to buy items from home shopping station instead of paying the household bills, and causing telephone bill to be so excessive that it was finally disconnected for nonpayment amounted to actions that were so “unnatural and infamous” as to make the marriage revolting to husband and render it impossible for him to discharge the duties of marriage.

[4 Cases that cite this headnote](#)

[8] **Divorce**

🔑 [False Charges of Conjugal Misconduct](#)

False accusations of infidelity, made habitually over a long period of time without reasonable cause, can be “cruel and inhuman treatment”.

[4 Cases that cite this headnote](#)

[9] Divorce

🔑 Necessity of actual physical violence, danger to health, or fear thereof

Requirement of physical violence or threats of such for a claim of cruel and inhuman treatment to lie does not apply unless those are the acts of habitual cruel and inhuman treatment alleged in divorce complaint.

[3 Cases that cite this headnote](#)

[10] Divorce

🔑 False Charges of Conjugal Misconduct

Wife's constant accusations that husband raped and molested daughter were extreme enough, by themselves, to be "cruel and inhuman treatment."

[Cases that cite this headnote](#)

[11] Divorce

🔑 Multiple factors

Wife was not entitled to alimony despite her contention that pinched nerve kept her from working, where husband was ordered to pay marital debts, to provide home for himself and parties' children, to support and insure children, and to provide medical insurance for wife, wife was awarded automobile and household goods necessary for living in a place of her own, and wife had refused to see a doctor or return to work.

[Cases that cite this headnote](#)

[12] Divorce

🔑 Personal and household goods

Divorce

🔑 Vehicles, vessels, and other forms of transport

Divorce

🔑 Other particular and multiple debts

Property division whereby wife was awarded automobile and household goods necessary for living in a place of her own and husband was ordered to pay marital debts, to provide home for himself and parties' children, to support and insure children, and to provide medical insurance for wife was within trial court's discretion.

[Cases that cite this headnote](#)

[13] Divorce

🔑 Spousal Support

Divorce

🔑 Spousal Support

Alimony award, or lack thereof, is reviewed for abuse of discretion and should not be reversed unless the chancellor was manifestly in error.

[3 Cases that cite this headnote](#)

***886 TRIAL JUDGE: HON. WILLIAM H. MYERS COURT FROM WHICH**

APPEALED: JACKSON COUNTY
CHANCERY COURT.

Attorneys and Law Firms

[William E. Tisdale](#), Sekul Hornsby Teel & Tisdale, Biloxi, for Appellant.

[Brent M. Bickham](#), Pascagoula, for Appellee.

En Banc.

**ON PETITION FOR
WRIT OF CERTIORARI**

[SMITH](#), Justice, for the Court:

¶ 1. This case comes to the Court on Petition for Writ of Certiorari filed by Everett Clyde Richard. The Jackson County Chancery Court granted Everett Richard a divorce from Deborah A. Richard on the ground of habitual cruel and inhuman treatment and awarded him custody of the couple's three minor daughters. The Court of Appeals denied the divorce finding that none of the acts complained of by Everett constituted grounds of habitual cruel and inhuman treatment and reversed and rendered. The Court of Appeals did not reach any other assignments of error on appeal. The petition for writ of certiorari was filed with this Court on November 19, 1997, and granted on January 22, 1998. The issue presented for certiorari review is whether the judgment of the Court of Appeals is contrary to *stare decisis* and a departure from the case law promulgated by this Court defining cruel and inhuman treatment. We find that the crux of Everett's complaint of cruelty lies more in the habitual, wrongful accusations of infidelity and

incest rather than in physical abuse or fear of such. These accusations and proof thereof alone are extreme enough to constitute cruel and inhuman treatment. Further, when all the things complained of are viewed as a whole, keeping in mind the habitual nature of the acts, they amount to habitual cruel and inhuman treatment. We therefore find that the judgment of the Chancery Court of Jackson County, granting Everett a divorce on the ground of habitual cruel and inhuman treatment should be affirmed.

FACTS

[1] ¶ 2. Everett and Deborah Richard were married for the first time in August of 1978 and divorced in March of 1984. The couple remarried in December of 1986, and separated again in October of 1994. The couple has three minor daughters who were ages fourteen, twelve and ten at the time of the divorce hearing. The two older daughters both testified at the hearing and stated that they wished to live with their father.

¶ 3. At the time of the trial, Everett was employed with the U.S. Post Office and had a gross salary of approximately \$35,000 per year. He has completed two years of college. After Deborah forced Everett to leave the house in 1994, he worked at an additional job so that he could support Deborah and the three children. He testified that he worked from 8:30 a.m. until 11:00 p.m. Deborah is not employed. She worked for a time as a rural mail carrier, but was involved in an accident. Following the accident, Deborah refused to be examined by the postal services' doctor,

as required by the statute, and eventually was terminated. An attorney was hired, who got Deborah reinstated, but she refused to return to her job.

¶ 4. Deborah did not appear in court for the trial in this matter, although the chancellor ascertained that Deborah was well aware of the hearing. The hearing went forward before the chancellor. Deborah's attorney was present, and cross-examined Everett and the two older daughters, both of whom testified at length. Documents and financial data were admitted into evidence.

¶ 5. The testimony and evidence showed that Deborah sat in front of the television set all day long watching QVC, the "home shopping" network, and purchased many items. She ran up large telephone bills, including *887 one call to the "psychic friends" network for \$500 for a single call. The telephone company eventually disconnected the telephone. In an effort to keep up with the bills, Everett worked two jobs, paid Deborah \$500 every two weeks, made the second mortgage payment on the house of \$350, paid Deborah's car note, and paid off a signature loan at the credit union made to Deborah, yet Deborah's expenses far exceeded Everett's ability to provide. Deborah did not make the first mortgage payment on the house during the separation, and at the time of the divorce hearing, the house had been foreclosed. The purchaser was in the process of beginning eviction proceedings.

¶ 6. Testimony was presented to the chancellor that physical violence took place in front of the children. Deborah hit Everett, and Everett hit Deborah. The children corroborated

this as well as Everett. Further, Deborah, during the marriage, constantly accused Everett of adultery, and accused him of sexually molesting the two older daughters. Deborah asked Everett how it felt to have sexual intercourse with the oldest daughter in her presence. Both children testified at the hearing that their father had never touched them in an inappropriate manner, that he took them to church, and took them shopping for school clothes, etc. The girls and Everett testified that after the washing machine developed problems, Deborah stopped washing clothes, and the carport floor was covered with dirty clothes. Everett took clothes to the laundromat when he visited, but Deborah would not allow him to visit often, and he was allowed to visit for only a short period of time. The girls testified that when Everett attempted to visit, and before the separation, their mother cursed their father with unprintable epithets. The girls testified that Deborah did not cook, but sometimes took them to a fast food drive-through to purchase food. Testimony was that the kitchen was "disgusting." The girls stated they each had an alarm, set the alarm, and got themselves off to school either by walking or riding bicycles.

¶ 7. Everett visited a psychiatrist who prescribed an antidepressant. He testified that Deborah's actions caused him to lose his temper, and he went to the psychiatrist to get this problem under control. Everett did not have a problem with his temper under any other circumstances or with other people.

¶ 8. Everett testified that when the children were ill, Deborah would not take them to a regular doctor, despite the fact that his insurance would have covered such a visit, but

instead, took them to the nearest emergency room, even if the girls had only a cold. The chancellor in his ruling of the court stated that if Deborah continued this practice following the divorce, she would have to pay for such emergency room visits.

¶ 9. The chancellor, in the ruling of the court, found that Everett had proved the grounds for a divorce based on habitual cruel and inhuman treatment, and that the interests of the children would best be served by awarding physical custody of them to their father. He awarded the normal visitation rights to Deborah. The chancellor emphasized that the children should not be subjected to any more violence, and if the visitation exchange could not be peaceably made, the exchange would be set up at the police station.

¶ 10. The marital home was foreclosed, and the chancellor made note that Everett was going to have to provide a home and all expenses for himself and three daughters who were at an age where many expenses are incurred. He ordered Everett to provide medical insurance for Deborah for eighteen months and to finish paying for her automobile, which was awarded to her. The chancellor made a division of the household goods, and held Everett responsible for all the marital debts that had been incurred. He did not award alimony to Deborah, and noted that there was no evidence or indication that she could not be gainfully employed. There was testimony that her father lived in Biloxi, and could provide living quarters for Deborah, if the father chose to do so.

¶ 11. In summary, Deborah sat in front of the television set all day watching QVC. She

did not answer the doorbell, no longer had a telephone, and refused to go anywhere or do anything except sit in front of the television set. She did not cook, clean, or attempt to *888 care for her children. She spent all the money in her possession to purchase QVC items, rather than pay household expenses. Deborah shouted and cursed continuously at Everett when he was present, accusing him of adultery and incestuous child molestation in front of the children. Physical confrontations and violence took place in front of the children repeatedly. The children testified that they would prefer to live with their father. Despite the fact that Everett worked at two jobs while separated, and provided sufficient monies to Deborah, she failed to make the first mortgage payment on the house, which was foreclosed. Everett saw a psychiatrist and was prescribed antidepressants. He asserts that he was treated for medical anxiety as a direct result of Deborah's behavior.

¶ 12. The Court of Appeals in reversing and rendering held that:

Most certainly, the Richard's marriage was turbulent, but the conduct cited by Mr. Richard does not sustain the ground of habitual cruel and inhuman treatment. Therefore, this Court reverses the trial court and denies the divorce on the ground of habitual cruel and inhuman treatment.

ISSUE RAISED FOR CERTIORARI REVIEW

credibility of witnesses and the weight of their testimony.”).

I.

WHETHER THE HOLDING BY THE COURT OF APPEALS IS CONTRARY TO *STARE DECISIS* AND IS A DEPARTURE FROM THE CASE LAW REGARDING HABITUAL CRUEL AND INHUMAN TREATMENT AS DEFINED IN THE PAST.

HABITUAL CRUEL AND INHUMAN TREATMENT

STANDARD OF REVIEW

[2] ¶ 13. In *Rawson v. Buta*, 609 So.2d 426, 429 (Miss.1992), we held:

This Court views the facts of a divorce decree in a light most favorable to the appellee, and may not disturb the chancery decision unless this Court finds it manifestly wrong or unsupported by substantial evidence. *Mullins v. Ratcliff*, 515 So.2d 1183, 1193 (Miss.1987); *Devereaux v. Devereaux*, 493 So.2d 1310, 1312 (Miss.1986); *Fournet v. Fournet*, 481 So.2d 326, 328 (Miss.1985).

See also *Chaffin v. Chaffin*, 437 So.2d 384, 386 (Miss.1983) (“This Court will not reverse a chancellor's decree of divorce unless it is manifestly wrong as to law or fact.”); *Rawson v. Buta*, 609 So.2d 426, 431 (Miss.1992) (“The chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the

[3] [4] ¶ 14. In *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss.1993) this Court held:

The ground of habitual cruel and inhuman treatment may be established by a preponderance of the evidence, rather than clear and convincing evidence, and the charge “means something more than unkindness or rudeness or mere incompatibility or want of affection.” *Smith v. Smith*, 614 So.2d 394, 396 (Miss.1993)(quoting *Wires v. Wires*, 297 So.2d 900, 902 (Miss.1974)).

[5] ¶ 15. We further held in *Rawson v. Buta*, 609 So.2d 426 (Miss.1992) that:

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[ed] spouse and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its continuance.

S. Hand, Mississippi Divorce, Alimony and Child Custody § 4-12 (2d ed. Supp.1991)

(citations); see e.g., *Parker v. Parker*, 519 So.2d 1232, 1234 (Miss.1988); accord *Kergosien v. Kergosien*, 471 So.2d 1206 (Miss.1985); *Marble v. Marble*, 457 So.2d 1342 (Miss.1984).

Id. at 431.

[6] ¶ 16. Further, “A causal connection between the treatment and separation must *889 exist.” *Gardner v. Gardner*, 618 So.2d 108, 114 (Miss.1993)(citing *Fournet v. Fournet*, 481 So.2d 326, 328 (Miss.1985)).

[7] ¶ 17. Contrary to the Court of Appeals' majority opinion, the circumstances, taken as a whole show that the chancellor did not err when he granted Everett a divorce from Deborah on the grounds of habitual cruel and inhuman treatment.¹ The facts in this case are un rebutted. Deborah did not appear for trial to contradict any of the accusations made against her by her husband. The un rebutted facts are that Deborah constantly accused her husband of having an affair, spent Everett's paycheck on items from QVC instead of paying the household bills, and caused the telephone bill to be excessive in amount, until it was finally disconnected because of inability to pay the bill. Deborah also repeatedly accused Everett of having an incestuous relationship with their fourteen-year-old daughter. As a result of Deborah's behavior, Everett sought help from a psychiatrist who prescribed for him *Zoloft*, an anti-depressant.

[8] ¶ 18. This Court has held that although divorce granted on the grounds of cruel and inhuman treatment is usually due to acts of physical violence or such acts that result

in apprehension thereof, false accusations of infidelity, made habitually over a long period of time without reasonable cause also constitute cruel and inhuman treatment. *Hibner v. Hibner*, 217 Miss. 611, 613, 64 So.2d 756, 757 (1953).

[9] ¶ 19. The requirement of physical violence or threats of such for a claim of cruel and inhuman treatment to lie apply only when those are the acts alleged in the complaint. *Id.* In the case at hand, there was physical violence, yet both parties were guilty of it, and it was not the major complaint.

[10] ¶ 20. The crux of Everett's complaint of cruelty lies more in the habitual, wrongful accusations of infidelity and incest rather than in physical abuse or fear of such. There is no mention in the COA opinion of the children's testimony [which took place with their father outside the courtroom], nor of the detrimental effect this marriage is having and would continue to have on these three minor children. Constant physical violence goes far beyond “turbulence.” Additionally, there is a traumatic and detrimental effect on a fourteen year old girl from hearing her father accused on a continuing basis of raping and molesting her. The child testified as to these accusations and stated that the accusations were made upon no basis in fact. The father and the other minor child corroborated her testimony.

¶ 21. We hold that these accusations and proof thereof standing alone are extreme enough to constitute cruel and inhuman treatment. *Id.* Further, when all the things complained of are viewed as a whole, keeping in mind the habitual nature of the acts, they certainly amount to habitual cruel and inhuman treatment.

¶ 22. Additionally, we note that the COA stated, “Mr. Richard did not leave home because of any fear or concern for his physical or mental health, but because Mrs. Richard asked him to go.” The divorce grounds of habitual cruel and inhuman treatment may be established by a showing of conduct that either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the non-offending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance. *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss.1993). In the case sub judice, we also find that, it is rather obvious, why Everett left home, considering all things complained of as a whole. Deborah's actions were “so unnatural and infamous as to make the marriage revolting to [Everett] and thus rendered it impossible to discharge the duties of marriage, thus destroying the basis for its continuance.” *Id.* Neither Everett, nor his children could continue to live in this *890 deplorable situation. In *Faries v. Faries*, 607 So.2d 1204 (Miss.1992), where this Court reversed the chancellor's denial of a divorce “solely on the basis of an absence of evidence suggesting that cruelty proximately caused the separation,” we explained:

Further elucidation of the issue presently before the Court comes from *Fournet v. Fournet*, 481 So.2d 326 (Miss.1985), wherein it was held that a spouse seeking divorce on the ground of habitual cruel and inhuman treatment must offer proof as to causal connection between cruel treatment complained of and spouse's separation from

household. *Id.* at 329. The proximate cause rule of *Fournet* was limited a year later in *Bias v. Bias*, 493 So.2d 342 (Miss.1986). There the Court recognized that the conduct of one separated from her spouse may constitute habitual cruel and inhuman treatment.

Absence of proof of proximate cause does not in logic negate the reality of habitual cruel and inhuman treatment, which may indeed have been a proximate cause of harm to the health and physical well being of the plaintiff (as distinguished from the actual cause of the separation). The chancellor's primary inquiry must in justice be into the ground for divorce. That inquiry requires a dual focus: upon the conduct of the offending spouse and the impact of that conduct upon the plaintiff. If the requisite impact upon plaintiff is proved, there is little reason why we should arbitrarily dismiss because of the proximate cause of separation rule which no legislature has mandated.

Faries, 607 So.2d at 1209 (quoting *Bias*, 493 So.2d at 345). See also *McKee v. Flynt*, 630 So.2d 44, 48 (Miss.1993)(same); *Hyer v. Hyer*, 636 So.2d 381, 384 (Miss.1994)(recognizing limits on “proximate cause of separation” requirement and finding that where both parties are guilty of cruel and inhuman treatment, chancellor must look to whose conduct was “the proximate cause of the deterioration of the marital relationship and the divorce itself.”).

¶ 23. We no longer require that a specific act must be the proximate cause of a separation before a divorce may be granted on grounds of habitual cruel and inhuman treatment. It

is, instead, habitual or continuous behavior over a period of time, close in proximity to the separation, or continuing after a separation occurs, that may satisfy the grounds for divorce. In this case, Deborah Richard's unfounded accusations against her husband and other behavior before she asked him to leave as well as after the separation satisfied the requirements for a divorce on grounds of habitual cruel and inhuman treatment.

II.

THE ISSUES OF ALIMONY AND DIVISION OF MARITAL PROPERTY, NOT ADDRESSED BY THE COA, BUT RAISED ON APPEAL BY DEBORAH.

[11] ¶ 24. Deborah complained on appeal that the chancellor erred in failing to award her alimony, and erred in the division of marital property. Although the Court of Appeals did not address these issues, it would be appropriate to review these matters.

[12] ¶ 25. In this case, the husband must provide a home, medical care, and child support for a family of four-himself and three children. He is responsible for their medical insurance. The family home was foreclosed, so there was no division to be made of that domicile. The chancellor awarded to the husband family furniture which the husband had inherited from his family, the children's bedroom furniture, and household goods required to provide a household for the children. The husband is to maintain medical insurance on the wife for eighteen months, to make the wife's automobile payments, and to pay off all the marital debts incurred while the couple was still

married. This did not include extraordinary expenses incurred by Deborah alone after the separation which had no relation to the children, household, or Deborah's well being. Deborah had been employed as a rural mail carrier until an accident occurred, and when reinstated at her job, simply refused to go back to work. The chancellor felt that she was capable of being gainfully employed.

*891 [13] ¶ 26. The standard of review of an alimony award, or lack thereof, is that it is within the discretion of the chancellor and should not be reversed unless the chancellor was manifestly in error. *Ethridge v. Ethridge*, 648 So.2d 1143, 1145-46 (Miss.1995).

¶ 27. The car note on Deborah's car totaled \$9,200, and the marital debts were consolidated through Everett's credit union, and he must pay the monthly amount of \$655.75. He must also maintain medical insurance on her for eighteen months, and she was given a share of the household goods, including the bedroom furniture, necessary for living in a place of her own. The wife, following her work related injury received workers' compensation benefits, but these were discontinued because she refused to have an independent medical examination. Although Everett states that Deborah complained of a "pinched nerve," there is no medical verification of this fact, as she refuses to see a doctor. Pursuant to *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss.1993), the relevant facts support the finding of the chancellor. Additionally, a review of the factors set out in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss.1994) would show that the chancellor was well within his discretion and correctly applied prevailing law

in his division of marital assets. This issue is without merit.

CONCLUSION

¶ 28. This Court is to reverse the chancellor's ruling only where there was manifest error and a lack of substantial evidence to support the judgment. *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss.1993). In the instant case, there is an abundance of uncontroverted substantial evidence to support the judgment, and we find no manifest error on the part of the chancellor. We have held that the chancellor's “[i]nquiry requires a dual focus: upon the conduct of the offending spouse and the impact of that conduct upon the plaintiff.” *Faries*, 607 So.2d at 1209 (quoting *Bias v. Bias*, 493 So.2d 342, 345 (Miss.1986)). Here, it is obvious from the evidence that Deborah's conduct in

the marriage was so revolting to Everett and affected the children to “render it impossible for [Everett] to discharge the duties for its continuance.” *Daigle v. Daigle*, 626 So.2d at 144. The chancellor's grant to Everett of a divorce on the grounds of habitual cruel and inhuman treatment is affirmed.

¶ 29. THE JUDGMENT OF THE COURT OF APPEALS IS REVERSED. THE JUDGMENT OF THE CHANCERY COURT IS REINSTATED.

PRATHER, C.J., SULLIVAN and PITTMAN, P.JJ., and BANKS, McRAE, JAMES L. ROBERTS, Jr., MILLS and WALLER, JJ., concur.

All Citations

711 So.2d 884

Footnotes

1 Diaz, J., dissenting in separate opinion, joined by Thomas, P.J., and Payne, J. correctly analyzed the case *sub judice*.