

FILED  
DEC 28 2007  
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SUPREME COURT

COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
CASE NO.: 2007-SC-000105-DG

DONALD C. CAMERON

APPELLANT

VS.

**APPEAL FROM  
NICHOLAS CIRCUIT COURT  
CASE NO. 02-CI-00092  
AND  
KENTUCKY COURT OF APPEALS  
ACTION NO. 2005-CA-001998-MR**

S. LYNEA CAMERON

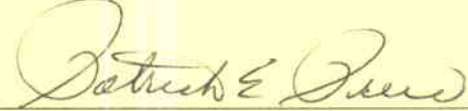
APPELLEE

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**REPLY BRIEF FOR APPELLANT**

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Respectfully Submitted,

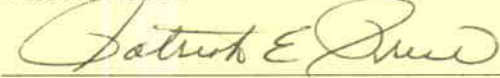


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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of December, 2007, a true and accurate copy of the foregoing Reply Brief for Appellant was sent by overnight mail to Clerk, Supreme Court of Kentucky, 700 Capital Avenue, Room 235, Frankfort, KY 40601-3415; and by regular U.S. mail, postage prepaid, to Judge David Melcher, Nicholas Family Court, 7 Justice Center, 115 Court Street, Cynthiana, KY 41031; and Hon. Raymond S. Bogucki and Stacy Sanning at 218 Stanley Reed Court, P.O. Box 277, Maysville, KY 41056. I hereby certify that a copy of the record was not withdrawn from the Nicholas Circuit Court.



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Patrick E. Price  
Counsel for Appellant

## REPLY BRIEF OF THE APPELLANT

Comes the Appellant, Donald C. Cameron, by and through counsel, and for his reply to the Appellee's brief filed December 13, 2007, states as follows:

The main issue in this case has been well defined: Did the parties to this action intend to reconcile their marriage? The most important fact in this case is that the Appellee filed a new dissolution action in the Mason Circuit Court in August 2003, because she knew she had reconciled with her husband from December 2002 through May 2003, and she thought the case in the Nicholas Circuit Court had been dismissed. Before filing the new dissolution action in Mason County, Appellee discussed the facts with her attorney and showed him a copy of the separation agreement, which is now in dispute. Both the Appellee and her attorney decided to file a new action in Mason County. The Appellant argues that it should not matter what the Appellee now states about the reconciliation. She had a couple of years to think about explanations, but she played her hand when she filed the new action in Mason County. She knew at the time that the Nicholas County case was over because she and her husband had been reconciled for four (4) months in the spring of 2003. There is no other reasonable explanation. The Appellee's rambling testimony cannot overcome this clear compelling fact. Although the wife now states she only attempted reconciliation, all her actions from December 2002 to May 2003 clearly show her true intentions were to reconcile with her husband.

The law in Kentucky concerning reconciliation is clearly set out in the case of Peterson v. Peterson, 583 S.W.2d 707, Ky. App. (1979), the Court said at page 709, "where the provisions of a settlement agreement are executory, however, 'the rule followed in this jurisdiction is that a reconciliation of the spouses and [a] resumption of

cohabitation by the parties to the separation agreement nullifies the agreement.”” Kentucky’s enactment of the so-called no-fault statutes did not change this longstanding legal doctrine. In Peterson, supra, at page 710, the Court said, “In fact, by promoting the use of settlement agreements to resolve marital disputes, KRS 403.110, the doctrine may have even more validity under the no-fault divorce statutes.”

Kentucky law concerning separation agreements and reconciliation will have different outcomes depending on whether the separation agreement was fully executed, or merely executory. The law in Kentucky is very clear: If the separation agreement has not been fully executed, then a subsequent reconciliation of the parties nullifies the agreement. In our case, the separation agreement was an executory agreement. Nothing was ever done to carry out the terms. No deeds were executed; in fact, the separation was not even filed with the court.

The Appellee has since tried to say it was her intention to only attempt reconciliation, but it is her actions for the almost five (5) month period that clearly show her true intention was to reconcile with her husband.

1. She went on not one, but two, separate vacation trips to Mexico with her husband, and the last one was a family vacation, including the daughter.

2. The parties held themselves out to the public as a family; they went on several shopping trips together.

3. Appellee put up a Christmas tree in the parties’ Nicholas County home (Tape 10/25/04; 12:39:40).

4. The parties listed the Nicholas County home for sale with a real estate agent, so they could purchase a home in Mason County (Tape 10/25/04; 1:50:10). The

parties, in fact, looked at homes in Mason County to buy, but could not buy because the Nicholas County home had not yet sold.

5. Appellee said she did not know until April that things were not going to work out, but it was the last of May before she knew for sure (Tape 10/25/04; 1:58:10).

6. Appellee testified she thought she had signed a prenuptial agreement (Tape 10/25/04; 2:02:00).

7. The most important thing Appellee did as far as this case is concerned is filing the new dissolution action in Mason Circuit Court in August 2003. Also very important is the fact that the Appellee and her attorney vigorously prosecuted this new case in the Mason Circuit Court for almost a year, both thinking the Nicholas County case had been dismissed. The only reasonable explanation for the new action is that Appellee thought she had reconciled and the Nicholas County case was in the past.

Both parties in our case intended to reconcile; that is what distinguishes our case from the facts in Peterson. In Peterson, the husband was the only party that intended to reconcile; he was the only person to testify in that case.

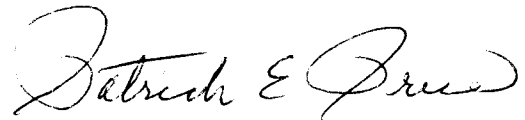
Appellee's testimony in the Court hearing rambles on with her trying to unsuccessfully explain why she filed the new case in Mason County. She said (Tape 10/25/04; 2:04:30) that she did not understand why the case was not dismissed, then almost in the next sentence she says she thought the case was dismissed. She stated that when the agreement was signed on December 20, 2002, she thought this was the way things would be if they separated. Thus, she thought it was a prenuptial agreement, which she also testified is what she thought the separation agreement was. She thought they were reconciled at the time (Tape 10/25/04; 1:02:10). She had to believe she had

reconciled; otherwise, why would she have testified she thought this is the way things would be if they later separated?

The Appellee said lots of different things in her testimony, but what she actually did during the four (4) to five (5) month period is what the Court should look to and determine her true intention was to reconcile. In Kentucky, this reconciliation of the parties would render the December 20, 2002 agreement null and void.

Appellee, in her Statement Concerning Oral Arguments, states she does not believe that oral arguments would assist the court in this case. However, the facts in this case and the issues raised are important matters in the field of domestic relations law. It has been many years since these issues have been fully litigated and Appellant feels that oral arguments would be a great help and assistance for the Court in its decision making process. The Appellant urges the Court to have oral arguments in this case.

Respectfully submitted,



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<r/Divorces/Brief (Reply) -Cameron, Donald & S. Lynea (12-26-07)>