

Carambat v. Carambat
72 So. 3d 505 (Miss. 2011)

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

¶ 1. The Hancock County Chancery Court granted Stacy Ruth Carambat a divorce from James Edward Carambat on the ground of habitual and excessive drug use. Aggrieved, James appeals, arguing that the chancellor erred by granting the divorce, because his marijuana use did not affect the marriage, was not excessive, and was not akin to using opium, morphine, or other, like drugs. We find no error and affirm the chancery court's judgment.

FACTS AND PROCEDURAL HISTORY

¶ 2. James and Stacy married on March 20, 1993, in Metairie, Louisiana. They eventually moved to Mississippi, where they resided throughout the marriage, finally settling in Diamondhead, Mississippi, in 2004. The couple had twin boys—James Eugene Carambat and Tyler William Carambat—who were born on January 9, 1999. James and Stacy separated in August 2008, and Stacy filed for divorce on September 17, 2008.

¶ 3. Stacy alleged three grounds for divorce: irreconcilable differences, habitual cruel and inhuman treatment, and habitual and excessive drug use. She requested custody of the twins, child support, equitable*507 distribution of the assets, alimony, and attorney's fees. James answered Stacy's complaint for divorce on July 20, 2009. In his answer, James denied Stacy's grounds for divorce, her claim that they had not cohabited since the separation, and her claim that she should have custody of the twins.

A. James's Drug Use

¶ 4. During the trial, Stacy, James, and Barbara Ruth (Stacy's mother) testified about the couple's marriage. Before the couple married, Stacy knew that James regularly smoked marijuana, and James admitted that he had been smoking marijuana since he was fourteen years old. James continued smoking marijuana throughout the marriage.

¶ 5. Although the couple had conversations about James's need to cease his marijuana use, James stated Stacy never asked him to quit. Stacy thought James would stop his drug use once the twins were born. According to Barbara, James called her after the twins were born, acknowledged his drug use as a problem, and told her he intended to quit. Because of James's marijuana use, Stacy was afraid that he would get into legal trouble, especially since he often picked her up from work with marijuana in the car. Several times during the marriage, James managed to go weeks without using marijuana. He said the longest period of time was one month. But he would always start using again.

¶ 6. Stacy testified that James had used other drugs. He once smoked cocaine at the beginning of their marriage, and he used [Xanax](#), which was not prescribed to him, to cope with sleep deprivation. James stated that the cocaine incident had happened one time in 1995 or 1996. He said he took Xanax for two years, but that was several years ago. James testified that he had not used marijuana since January 2009, and he was willing to take a drug test.

¶ 7. James was questioned about the frequency of his marijuana use. James testified that he would purchase one quarter-ounce bag of marijuana per month, which cost between thirty-five and fifty dollars. James could make six to seven cigarettes with this amount. Stacy said James smoked

marijuana multiple times a day, starting in the morning before work. Both parties stated that the children were never exposed to James's drug use because James smoked the marijuana in the garage.

B. James's Interaction with the Family

¶ 8. According to Stacy, James's drug use affected his interactions with the family, causing him to develop a routine:

[H]e would leave for work and smoke, and then go to work [sic] and then come home, and he would get undressed, go out to the garage and smoke again, and then he would come home, sit on the couch and wait for dinner to be fixed. And then eat dinner and then return back to the couch or to the computer room. He almost isolated himself from us totally.

Stacy often went to bed alone, and James would stay awake to use the computer or to watch television. Stacy stated that this took a toll on their marriage. Stacy also testified that, after the twins were born, she withdrew from James on an intimate level. James agreed and stated that Stacy's disinterest caused him to withdraw as well.

¶ 9. Stacy also testified that it was a chore to get James to participate in family activities. Most times, James would stay home instead of coming to family functions. *508 Barbara echoed Stacy's sentiments, stating that James had become disinterested in attending family functions three years ago.

¶ 10. James said that his marijuana use was casual, and that he was not dependent on it. According to James, marijuana had a calming effect on him. He explained that marijuana did not keep him from family functions; he just did not care to be around Stacy's family. James also stated that he was actively involved with the twins and their extracurricular activities—fishing, “bb” guns, and sports. James said he also helped the twins with their homework. Stacy agreed, but she said that James had come to only a few of the twins' school activities—such as parent-teacher conferences.

C. Financial Trouble

¶ 11. Stacy testified that James's marijuana use affected his work productivity. While employed with a printing company in Biloxi, Mississippi, James botched a printing job that cost several thousand dollars to reprint. ^{FN1} He was demoted as a result. ^{FN2} The demotion caused James to lose his bonus pay. According to Stacy, James told her that his drug use probably played a part in the incident. Stacy said that, afterwards, James tried to stop smoking marijuana. On cross examination, James's trial counsel impeached Stacy with her deposition testimony. In her deposition, Stacy was asked whether James's work incident was a mistake or a result of his drug use. Stacy responded that it was a mistake. She also agreed with trial counsel's statement that no one at James's job had linked the error to his marijuana use.

¶ 12. James denied telling Stacy that marijuana had caused his work error. He said he did not smoke marijuana before work, and his marijuana use never affected his job performance. James said the printing industry was stressful, and he smoked marijuana after work to relax. James also stated that he had never been fired from a job, but he had been laid off by at least two previous employers.

¶ 13. Stacy testified that James's drug use and mistake on the job affected the family's financial stability. James blamed their financial issues on Stacy's credit-card use. Stacy said they had borrowed \$3,000 to \$5,000 from her parents because they could not pay their bills, and James had

continued to purchase marijuana during their financial troubles. Barbara testified that she and her husband had loaned Stacy and James up to \$7,000. In addition, James said that he had borrowed at least \$25,000 from his brother after he was laid off. James said he had used the money to pay for a dental surgery, credit-card debt, and the family's living expenses after Hurricane Katrina.

D. James's Behavior

¶ 14. Barbara said Stacy always appeared nervous around James and cautioned others to censor themselves around him. Stacy stated James would make derogatory comments—sometimes in her family's presence—about her clothing, income potential, and propensity to flirt with other men. Barbara had witnessed one such argument four to five years previously at a wedding. According to Barbara, *509 James had yelled at Stacy about her clothing in front of other guests and eventually had stormed out of the wedding. James denied that the argument was about Stacy's clothing. Barbara also said James had argued with Stacy about other men at a family gathering three years before.

¶ 15. Stacy said James cursed at her after she had filed for divorce, and their arguments had increased from weekly to daily. She stated James called her derogatory names in front of the children. They also had a big argument in front of the children, after which she and the twins retreated to the bedroom to avoid confrontation. James stated that he and Stacy did not have any more problems than any other married couple. He stated that they often argued about finances, mainly outside the children's presence. He denied ever physically abusing Stacy, and Stacy testified that James never physically abused her.

...

¶ 18. When Stacy filed for divorce, James thought that they could work it out. According to James, Stacy complained only that they were no longer a family and that he was not helping out at home. James said Stacy never mentioned his marijuana use, and Stacy testified that she did not give James an ultimatum concerning his marijuana use. James had suggested that they seek counseling, but he stated that Stacy was not interested. They did seek counseling individually but not as a couple. James did not believe that his marijuana use contributed to the demise of the marriage. Instead, he believed that their arguments caused the separation.

...

***510 F. The Chancellor's Ruling**

¶ 20. Although this was a chancery court matter, James moved for a directed verdict.^{FN4} . . . James argued that Stacy had failed to provide evidence of habitual and excessive use of opium, morphine, or other like drugs. The chancellor found that the evidence regarding James's habitual and excessive drug use was more favorable to Stacy. . . . The chancellor stated that he could not grant a divorce to both parties and reminded James that he had failed to request a divorce on the ground of adultery. Accordingly, the chancellor denied James's motion.^{FN5}

...

¶ 21. The chancellor entered the “Judgment of Divorce” on September 24, 2009. The chancellor found James's own admission that he had regularly smoked marijuana from fourteen years of age to fifty-five years of age was evidence that his use was habitual and frequent. The chancellor found that James's drug use was excessive and uncontrollable because James smoked daily, he could not quit, and his drug use affected his work productivity and finances. Last, the chancellor found James's marijuana use met the definition of “other like drug” and caused his marriage to be repugnant to his spouse. Although not the same chemical make-up as opium and morphine, the

chancellor determined that marijuana had the same effect, impairing James's ability to perform his job and to support his family.

¶ 22. For those reasons, the chancellor granted Stacy's divorce on the ground of habitual and excessive use of drugs. . . .

ANALYSIS

[1] ¶ 24. In a divorce proceeding, the chancellor is the finder of fact, and the assessment of witness credibility lies within his sole province. *Sproles v. Sproles*, 782 So.2d 742, 746 (¶ 12) (Miss.2001). Thus, we will not disturb a chancellor's findings when supported by substantial evidence*511 unless the chancellor's judgment was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Id.* at 746 (¶¶ 12–13).

Whether the chancellor erred by granting Stacy a divorce on the ground of habitual and excessive use of opium, morphine, or other like drug.

¶ 25. James argues that the chancellor erred by granting Stacy a divorce because she did not prove that his drug use was excessive and an “other like drug” as required by the statute. James also maintains that Stacy condoned his marijuana use and that his marijuana use did not cause any family, marital, or work issues. Instead, James blames the marriage's demise on Stacy's extramarital affairs.

¶ 26. Conversely, Stacy asks the Court to affirm the chancellor's judgment. She argues that there is substantial evidence to support the chancellor's finding that James's drug use was habitual, excessive, and harmful to the family. Stacy also contends that the effect of marijuana is much like the effect of opium and morphine; thus, it is an “other like drug” for purposes of the statute. . . .

III. Habitual and Excessive Use of Opium, Morphine, or Other Like Drug

[4] [5] [6] ¶ 29. Mississippi Code Section 93–5–1 (Rev.2004) lists “habitual and excessive use of opium, morphine, or other like drug” as a ground for divorce. A grant of divorce on this ground requires the plaintiff to establish that the spouse's drug use was (1) habitual and frequent, (2) excessive and uncontrollable, and (3) that involved opium, morphine, or drugs with a similar effect as opium or morphine. *512 *Ladner v. Ladner*, 436 So.2d 1366, 1375 (Miss.1983).

A. Habitual & Frequent Use

[7] ¶ 30. Habitual use is established by showing that the spouse customarily and frequently used drugs. *Ladner*, 436 So.2d at 1373. Stacy presented evidence that James began smoking marijuana at the age of fourteen, and his use continued until the age of fifty-five. James concedes that his drug use was habitual and frequent, testifying that he had used marijuana almost daily. As a result, we find substantial evidence in the record to support the chancellor's finding that James's drug use was habitual and frequent.

B. Excessive & Uncontrollable Use

[8] ¶ 31. Excessive drug use requires a showing that the offending spouse abused drugs. *Ladner*, 436 So.2d at 1373–1374. The offending spouse “must be so addicted to the use of drugs that he cannot control his appetite for drugs whenever the opportunity to obtain drugs is present.” *Id.*

¶ 32. James argues that his drug use was casual, it relaxed him, and he was not dependent on it. The evidence shows the contrary. Stacy and James testified that James had attempted to stop smoking marijuana several times, quitting for weeks at a time. But, as James stated himself, he

always went back to it.

¶ 33. James argues that his drug use was not as serious as that of the spouses in *Ladner* and *Ashburn*. In *Ladner*, the spouse deceitfully obtained numerous prescription drugs from multiple doctors. *Ladner*, [436 So.2d at 1369](#). He abused the prescription drugs continuously for four years and exceeded the prescribed dosages. *Id.* The spouse's drug use negatively affected his attitude, actions, work habits, and family and social relationships. *Id.* The wife testified that her husband was hyperactive in the morning—having taken [Ritalin](#)—and practically immobile in the evening—after taking tranquilizers. *Id.* He worked only two days per week and spent the rest of the time in idleness and agitation. *Id.* He also ceased communicating with friends. *Id.* Because of his drug habit, the spouse had squandered his son's savings account, and had taken many valuable items from the home. *Id.*

¶ 34. Likewise, in *Ashburn*, the spouse's drug use was excessive and uncontrollable. In this case, the wife abused prescription drugs throughout the marriage, also deceitfully obtaining prescriptions and exceeding the prescribed dosages. *Ashburn*, [970 So.2d at 207 \(¶ 7\)](#). She once left home and did not return for weeks. *Id.* The husband testified that his wife would be yelling one day and drooling in a drug-induced state the next. *Id.* [at 208 \(¶ 8\)](#). She forged his name on checks and also stole someone else's written prescription. *Id.* [at 208 \(¶¶ 8–9\)](#). The wife's drug use increased to the point where she used a three-month supply of pills in one month and overdosed. *Id.* [at 208 \(¶ 7\)](#).

¶ 35. The extent of James's addiction may not be as drastic as that of the spouses in *Ladner* and *Ashburn*, but it is obvious that James had a problem. Quitting for weeks at a time but then always going back to achieve a high is the nature of addiction. Like the spouse in *Ladner*, James abused the drug almost daily for years—approximately forty years in James's case. This is evidence that, at the time, James could not control his appetite for marijuana. Also, the chancellor found that James's marijuana use negatively impacted his interaction with his family, work productivity, and the family's financial stability. There is substantial evidence in the record to support the chancellor's findings. Thus, we hold that the chancellor did not *513 err by finding that James's drug use was excessive and uncontrollable.

C. Opium, [Morphine](#), or Other Like Drug

[\[9\] \[10\]](#) ¶ 36. Next, James argues that Stacy failed to prove that marijuana is an “other like drug” similar to opium or [morphine](#). In [Section 93–5–1](#), the language “other like drug” does not mean a drug similar in chemical makeup to opium or [morphine](#). *Ladner*, [436 So.2d at 1374](#). Instead, it refers to drugs with similar adverse effects.^{FN8} *Id.* [at 1374–1375](#) (finding that spouse's abuse of prescription drugs produced similar effects as abuse of opium or morphine). In *Ladner*, the Court set forth factors to consider, along with other relevant circumstances, to determine whether a drug is an “other like drug” for purposes of [Section 93–5–1](#):

^{FN8}. In *Ladner*, the spouse abused barbiturates, amphetamines, Dalmane, Librium, Ativan, Nolundar, Mellaril, Sinequan, Vivactil, Talwin, and Tylenol No. 3 with Codeine.

[S]uch factors as the guilty spouse's inability to support his wife and family or to properly attend to business should be considered. Additionally, the guilty spouse's incapacity to perform other marital duties or his causing the marital relationship to be repugnant to the innocent spouse are equally important.

Id. [at 1375](#).

¶ 37. In this case, the chancellor determined that James's marijuana use had isolated him from the

family and had caused him to botch a costly printing job. Consequently, James was demoted, and the chancellor determined that this had negatively impacted the family's finances.

¶ 38. James points out that neither party cited a decision in which a divorce was granted based on marijuana use alone. We are not convinced that the absence of such a decision has any bearing on this case.

¶ 39. James argues that no credible evidence supported the chancellor's finding that his marijuana use interfered with his ability to support and interact with his family and that his marijuana use caused the marital relationship to be repugnant to Stacy. Instead, James maintains that the evidence shows that Stacy sexually withdrew from him, pursued her own activities, and engaged in extramarital affairs. But the chancellor is the finder of fact, and the assessment of witness credibility lies within his sole province. *Sproles*, 782 So.2d at 746 (¶ 12). The chancellor resolved any conflicts in the evidence in favor of Stacy, and the evidence supports his decision.

¶ 40. The evidence shows that the family's financial problems were due mainly to James's layoffs. But by smoking marijuana, James, at least once, affected his work productivity and lost his bonus pay. In addition, he continued to purchase marijuana during the family's economic troubles. James maintains that his marijuana expenditures were minimal and did not affect the family's income. But he cannot escape the fact that spending money on illegal drugs is wasteful, especially when the family is suffering financially. ^{FN9} According to Stacy, James's drug use created a routine in their marriage by which he would work, come home, use drugs and then sit on the couch or stay on the computer all night. Perhaps he did not isolate himself from his children, but he definitely isolated himself from Stacy. Stacy was worried that James would get arrested for possession of marijuana. And although Stacy did not give James an ultimatum, she was exasperated over his failed attempts *514 to remain clean, causing her to file for divorce.

¶ 41. The evidence supports the chancellor's finding that James's marijuana use had a like effect to the use of opium or morphine. James evidenced an inability to support his family and to properly attend to business. This made the marriage repugnant to Stacy. Accordingly, we hold that the chancellor did not err by finding that James's drug use involved opium, morphine, or a drug with a similar effect.

Dissent, Judge Carlson:

. . . .the effect of marihuana usage, which, this Court has held to be the key determinant in finding that a drug is sufficient for this ground for divorce. See *Lawson*, 821 So.2d at 145, *Ladner*, 436 So.2d at 1375. While the chemical content of the like drug is irrelevant, I would hold that the physical or physiological effect of the drug was meant to be considered in the *Ladner* effect test.

¶ 58. In *Ladner*, this Court found “a physical effect [on the husband] similar to morphine or opium.” *Ladner*, 436 So.2d at 1375. Furthermore, if “effect” and thus “like drug” mean no more than work productivity, marital duties, and repugnancy of the marriage, the term would become synonymous with the “excessive” standard already incorporated into the test. As a result, I have analyzed the physical effects of marihuana and find it to be unlike opium and morphine as a matter of law.

¶ 60. Marihuana, per this resource, is ingested to cause the user to feel a euphoria or “high” by stimulating brain cells to release the chemical [dopamine](#)—a phenomenon also associated with most drugs of abuse, as well as alcohol, tobacco, chocolate, and sexual activity. Acute dangers associated with marihuana intoxication include [short-term memory loss](#), impaired attention and

judgment, increased heart rate and blood pressure, decreased coordination and balance, and occasionally feelings of anxiety, distrust, or panic. Cumulative use may lead to addiction, though it is considered less addictive than “hard” drugs.

¶ 61. The following information is also gleaned from the Research Report Series of the National Institutes of Health's National Institute on Drug Abuse. The most commonly used opiate in the United States today is heroin. Heroin is severely addictive, and withdrawal can cause painful physical symptoms, including vomiting and bone pain. Since users are typically unaware of the amount and purity of the drug they are using, the drug can lead to nearly instantaneous death upon use. In the brain, the heroin converts to [morphine](#) and binds rapidly to opioid receptors, triggering a surge of pleasurable sensation called a “rush.” Several drug analogs to **518* opium have been produced, some by pharmaceutical companies for medical reasons, but others, known as “designer drugs,” by illegal laboratories. This latter category may be more dangerous than the original compound. Several of the most abused prescription drugs are also opioids, commonly prescribed because of their pain-relieving properties. These opioids, such as [OxyContin](#), also produce euphoria as a side effect. Withdrawal leads to the same physical symptoms caused by heroin withdrawal, and a large enough dose of these drugs may lead to death. *Id.*

¶ 62. The effect of marihuana is unlike the effect of opiates. The only real similarities between the drugs appear to be the euphoric rush or high associated with their use, and the addiction. Neither of these features is alike in degree. Marihuana, according to the Research Report Series of the National Institutes of Health's National Institute on Drug Abuse, never leads to immediate death, lacks physical withdrawal symptoms, and is much less addictive than opium. While this resource indicates that marihuana clearly leads to decreased activity in the abuser, holding that marihuana is like an opiate on these grounds is analogous to holding that caffeine is like cocaine.

¶ 63. Our state's caselaw on this issue, scant though it is, has been dominated by the abuse of prescription drugs including opiates, and without exception, a divorce has been granted only when individuals were much more severely incapacitated than James was in this case. With this caselaw in mind, in today's case, James was able to function on a relatively normal level while abusing marihuana, hardly a behavior associated with abusers of drugs as depicted in the cases cited in the preceding paragraph.

¶ 65. In addition, given the unfortunate prevalence of marihuana in American society, it is a dangerous precedent to allow divorce for marihuana use alone. As already revealed, marihuana is considered to be a relatively mild drug, and remains the least regulated of all illegal drugs in the State of Mississippi. Marihuana is less addictive, less immediately dangerous, and less incapacitating than the major opiates, and indeed than most other illegal drugs. Allowing a divorce based on [marihuana abuse](#) will effectively hold that divorce is available for the abuse of any drug—which is not a natural reading of “opium, morphine or other like drug.”

¶ 66. To be sure, [marihuana abuse](#), like alcohol abuse, has the propensity to destroy a marriage. However, the Legislature has not seen fit to provide for divorce on such grounds, and it is not this Court's **519* responsibility to create new grounds for divorce *ex nihilo*. In my opinion, the natural meaning of “opium, morphine or other like drug” is not so broad as to cover marihuana. Accordingly, I would find that the chancery court erred in granting a divorce on the ground of using “opium, marihuana or other like drug,” where the sole drug habitually and excessively used was marihuana.