

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**  
**NO. 2005-~~TS~~-02096**  
*CA*

**ANGELA RUTH WILSON**

**APPELLANT**

**V.**

**WILLIAM FRANKLIN WILSON**

**FILED**

**JAN 16 2007**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**APPELLEE**

**ON APPEAL FROM THE CHANCERY COURT OF  
DESOTO COUNTY, MISSISSIPPI**

**REPLY BRIEF OF APPELLANT**

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## **REBUTTAL OF APPELLEE'S ARGUMENT**

Appellant Angela Wilson reasserts all of her previously cited assignments of error addressed at length in her Appellant's Brief and below specifically responds to Appellee's arguments as follows.

### **RESPONSE TO ISSUE I OF APPELLEE**

**Issue I: ( A ) Did the trial court err in finding Tri-State Underground, Inc. to be the sole property of Frank Wilson, ( B ) Was the valuation of Tri-State Underground, Inc. utilized by the Court clearly erroneous, and ( C ) Was the distribution of property equitable.**

The Court, previous to trial, denied a motion to join the corporation by the plaintiff and found that Tri-State Underground, Inc. was not a necessary and indispensable party to the litigation, stating if the Defendant is the sole stockholder that the Court, " would have the authority to divest the Defendant of corporate assets and equitably distribute same to the Plaintiff if the facts should call for same." R.E., p. 29. In its opinion, the court found that the corporation was not a party to the action. R.E., p. 18.

At trial Mr. Kenneth Hudson testified that he was the president of Tri-State Underground, Inc., yet he was unable to identify whether the company was a partnership, corporation or limited liability company. T.T., p. 52. Mr. Hudson had no idea how much money he had invested in the company, no idea what amount of money Frank Wilson received from the company, and had no interaction with the company's main contract, Time Warner Cable. T.T., pp 54-56. In other words, Mr. Hudson was given a title by Frank Wilson, but other than that, he knew nothing of the business of the corporation. T.T., p.66. Angela Wilson contends, in accordance with *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994), that Frank Wilson was the alter ego of the corporation, that the business was acquired during the marriage, and that her marital contributions over the

years should be compensated. Although the court chose to use the documents which Mr. Wilson produced in discovery to Angela Wilson, the trial testimony reflects that actually no true value for Tri-State Underground, Inc. was established or could be established.

At trial, Mr. Danny Williams, the CPA expert called by Mrs. Wilson, first testified regarding the documents necessary to evaluate a business. T.T. pp. 13-16. Then Mr. Williams concluded **not** that he did not have time to evaluate the documents as Mr. Wilson alleges, but that the documents necessary to review in order to value the business simply **were not provided**. T.T., p.18. Mr. Williams did testify that an examination of lifestyle such as the Internal Revenue Service would conduct to determine income was time consuming and cost prohibitive for his accounting firm. T.T., p.19. The trial court used the documents produced by Mr. Wilson in discovery, which he created himself on his laptop computer, in spite of the fact that Mrs. Wilson showed the documents to be erroneous. A computer expert testified regarding a grossly large number of deletions in the accounting. In fact, Angela showed the evidence to be untrustworthy, incredible, contradictory, and improbable through the experts' combined testimony. The court's error was in using the evidence and in not refusing to accept it.

Contrary to the appellee's assertion, Mrs. Wilson does understand that a business has expenses. She had issued fifteen subpoenas duces tecum dated from August 18, 2004 to May 20, 2005, in an attempt to determine exactly what the banking and expenses of Tri-State Underground, Inc. were, as well as filing a *Motion to Compel* in March 2005, which was denied by the court. R.E. pp. 4-7.

Angela Wilson, via the subpoenaed evidence, produced bank records reflecting that Tri-State Underground, Inc. paid Mr. Wilson's lover, Lonette Henderson's mortgage and various credit card bills by automatic draft from the Tri-State Underground, Inc. bank account. R.E., p.

53-56. Angela Wilson's success in obtaining these records flies in the face of Mr. Wilson's assertion that Angela failed to exercise due diligence.

Mr. Wilson states that the failure to provide the court with an accounting of Tri-State Underground, Inc.'s business activities rests firmly on Angela Wilson's shoulders. Appellee's Brief, p.7. Apparently the Defendant Frank Wilson, alleged alter ego of Tri-State Underground, Inc. is above the law. Angela Wilson asked the trial court two months before trial to compel discovery of the financial records of Tri-State Underground, Inc. which was denied, then one month before trial to grant a continuance and order an independent accounting, which was denied. Mr. Wilson has to this day never provided a full accounting for Tri-State Underground, Inc. despite the efforts of Angela Wilson. Without the aid of the appellate court, Mr. Wilson will be allowed to produce blatantly invalid and incomplete records for his business and enjoy the fact that he has not been ordered to produce records to validate his business activity.

Mr. Wilson cites the court to *Frye v. Southern Farm Bureau Cas. Ins. Co.*, 915 So.2d 486 (Miss.Ct.App.2005). In *Frye*, the appellants argued that although the court granted their first two motions for continuance, their **third** motion for a continuance prevented complete discovery that was vital to their claims. *Id.*, p.490, 491. The appellate court upheld the trial court's denial because the information the appellants asserted was "vital" from the appellees was not clearly identified. *Id.* In the case sub judice, the court refused to compel the production of expense and billing records to substantiate the profit and loss statement submitted by Mr. Wilson for Tri-State Underground, Inc. This was no fishing expedition. Yet, when Angela Wilson requested her first and only continuance, explaining the exact records necessary which were vital to establish the financial status of the marital business, she was denied.

Further contrary to appellee's assertions, Angela Wilson did seek the Court's aid in attaining a valuation of the business. The *Mace* case cited by Mr. Wilson is precisely on point, as Angela Wilson provided expert testimony to the court that the values presented were clearly erroneous. *Mace v. Mace*, 818 So.2d 1130 (Miss. 2002). It is true that Angela Wilson requested a continuance to obtain true value for the business, and it is a fact that the chancellor denied a Motion to Suspend Trial Setting filed in April 2005. R.E., p. 35-37.

Mrs. Wilson seeks payment for her contribution, both monetary and non-monetary, to the success of Tri-State Underground, Inc. Mr. Wilson was married to Angela him for seventeen years. Mrs. Wilson testified, undisputed, that she invested time and physical efforts to the cable laying businesses which she and her husband founded throughout their marriage. Frank Wilson's interest in Tri-State Underground, Inc. should have been classified as marital and equitably Angela Wilson should be compensated with a lump sum representing her share.

## **RESPONSE TO ISSUE II OF APPELLEE**

### **Issue II: Did the Chancellor err in the amount of alimony awarded to the plaintiff.**

Angela Wilson argues that an inequitable distribution of the marital property was made and that she is entitled to a substantial increase in alimony. In the Final Decree, Angela received the option to purchase the leased marital home in Hernando, but she, who had little formal work history beyond the family cable business, and no current job, was left to obtain financing for the home. The court ordered that Angela's vehicle, still titled to the couple's former cable laying business, was to be paid off and titled to Angela Wilson. The court ordered the Senatobia home, saddled with tax liens from prior years, be sold and any proceeds divided equally between the parties. Then, alimony was awarded to Angela because of the disparity between the parties' estates, in accordance with *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993). In essence,

Angela was awarded an option to try to purchase her home and Mr. Wilson was awarded the entire interest in Tri-State Underground, Inc. the value of which he has effectively hidden. Angela argues that a lack of factual information from Mr. Wilson and a false financial statement prevented the court from determining the appropriate amount of alimony.

In *Gray v. Gray*, 562 So.2d 79, 83 (Miss.1990), the Court found that alimony, “should be reasonable in an amount commensurate with [the payee’s] accustomed standard of living minus [the payee’s] own resources, and considering the ability of [the payor] to pay.” Angela Wilson testified as to the lifestyle she enjoyed prior to her husband leaving her for another woman, and the evidence showed that Mr. Wilson did not dispute this, either at trial or when he signed the Temporary Order to pay Angela \$10,000.00 monthly in temporary alimony. Mr. Wilson paid her that amount until just before the final hearing. Angela testified and it was undisputed that she has no resources of her own.

With a court award consisting of no lump sum from the business, the option to finance the purchase of the leased marital home, a one-half share of a home burdened by federal and state tax liens, and the award of a vehicle under lien titled to her husband’s former business, Angela Wilson’s estate is lacking. She is entitled to an award of monthly alimony which might enable her to regain a semblance of her former lifestyle. Mr. Wilson obviously routed many marital household expenses through his business and it was shown at trial that he continued to do this with his new lover’s household expenses. Mr. Wilson has demonstrated his capability to pay. The court was provided evidence of his use of the corporate account for personal expenses as the corporation’s alter ego. An increase in alimony to \$10,000.00 monthly to Angela would allow her to establish the credit necessary to finance a lease purchase of the home she and her husband had been living in before he left and then, allow her to continue to live in it. The subpoenaed




bank statements from Tri-State Underground, Inc.'s account proved that Mr. Wilson used the corporate account for his own and his lover's monthly expenses - which then proved that his financial statement, listing income of \$8,257 was a total farce. The chancellor used a financial statement to calculate alimony which Angela proved to be just plain wrong.

### CONCLUSION

Appellant Angela Wilson respectfully requests this Court to reconsider the issues outlined in her Appellant's Brief and to reverse and remand this cause for an equitable distribution of Tri-State Underground, Inc. via a lump sum distribution of alimony and for an increase in alimony to \$10,000.00 monthly, in accordance with the law in the state of Mississippi.

Respectfully Submitted,


ANGELA WILSON

BY:   
Mary Lynn Damaré  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, **MARY LYNN DAMARÉ**, Attorney for Appellant, do hereby certify that I have this day mailed, via Federal Express Overnight Mail to the Supreme Court of Mississippi, Carroll Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201, and by first class mail, postage prepaid to: John S. Farese, Esq., Farese, Farese & Farese, P.O. Box 98, Ashland, MS 38603-0098 and to Honorable Percy Lynchard, P.O. Box 340, Hernando, Mississippi 38632, a true and correct copy, along with electronic disk to the Court of the above and foregoing **APPELLANT'S REPLY BRIEF**.

SO CERTIFIED this the 16<sup>th</sup> day of January, 2007.

  
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Mary Lynn Damaré  
Attorney for Appellant