

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2005-<sup>CP</sup>18-02096**

**ANGELA HANCOCK WILSON**

**APPELLANT**

**V.**

**WILLIAM FRANKLIN WILSON**

**FILED**

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SUPREME COURT  
COURT OF APPEALS**

**APPELLEE**

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

**BRIEF OF APPELLANT**

**ORAL ARGUMENT REQUESTED**

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**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2005-TS-02096**

**ANGELA HANCOCK WILSON**

**APPELLANT**

**VS.**

**WILLIAM FRANKLIN WILSON**

**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Angela Hancock Wilson, Appellant;
2. Mary Lynn Damaré, Attorney for Appellant;
3. John S. Farese, Attorney for Appellee;
4. William Franklin Wilson, Appellee; and
5. Honorable Percy Lynchard, Chancery Court Judge, Trial Judge.



Mary Lynn Damaré  
Attorney for Appellant

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**CERTIFICATE OF COMPLIANCE**

COMES NOW, **Mary Lynn Damaré**, attorney of record for Appellant and certifies that this brief contains 6,310 words as determined by the word count of the word processing system.

SO CERTIFIED this the 3<sup>rd</sup> day of November, 2006.

A handwritten signature in cursive script, appearing to read "ML Damaré", written over a horizontal line.

Mary Lynn Damaré  
Attorney for Appellant

### **STATEMENT OF ISSUES**

The issues are: (1) Whether the court erred in finding the parties' business, Tri-State Underground, Inc., to be the sole property of the defendant William Franklin Wilson, erred in accepting business valuation evidence which was clearly erroneous, and thereby erred in ordering an inequitable distribution of marital property. (2) Whether the court erred in awarding alimony based upon Mr. Wilson's financial statement alone when the evidence at trial showed that he enjoyed substantial financial benefit from the Tri-State Underground, Inc. business account.

### **STATEMENT OF THE CASE**

Appellant Angela Wilson filed an *Amended Complaint For Divorce* on grounds of uncondoned adultery against Mr. Wilson on May 11, 2004. Mr. Wilson answered and counter-claimed for divorce on grounds of habitual cruel and inhuman treatment and in the alternative, irreconcilable differences. An *Order* was entered by this Court on May 18, 2004, restraining both parties from disposing of any and all assets in their possession which could be considered marital property, specifically including the income of Tri-State Underground, Inc., as well as ordering a full and complete accounting of the income and disbursements of said businesses and the household. R.E., p.25. On August 24, 2004, the Court approved an *Agreed Temporary Order* that temporary support would be paid by Mr. Wilson to Angela Wilson in the amount of \$10,000.00 per month beginning on September 15, 2004, and that Angela Wilson would be responsible for paying all bills associated with the marital home. R.E., p.27. Angela Wilson filed a *Motion For Joinder of Party Business Defendant* and a *Memorandum In Support Of Joinder*, which was denied by the Court in its *Order* dated May 9, 2005. R.E., p.29.

Trial was held on May 24, 2005, and the chancellor found by clear and convincing evidence that the defendant entered into an adulterous relationship during the marriage and granted Mrs. Wilson a divorce on the grounds of uncondoned adultery. The Court awarded Mrs. Wilson periodic alimony in the amount of \$4,000.00 per month, the purchase option available on the leased marital home, the household furnishings, her personal vehicle or one substantially similar free of all liens, and one-half interest in a house in Senatobia, Mississippi. R.E., pp.12,13. The Court found Mr. Wilson to be the sole owner of Tri-State Underground, Inc. R.E., p.13. A *Motion For New Trial* was filed timely by the Plaintiff Mrs. Wilson, who argued that Tri-State Underground should have been designated as marital property, that the business valuation was erroneous, that she received an inequitable distribution of the marital property as she should have received a lump sum for her share of the business, and that the amount of alimony awarded was insufficient based on Mr. Wilson's total income and earning capacity. R.E., pp.38, 39. An *Order Denying Motion For New Trial* was entered in this cause by the Chancellor on September 2, 2005. R.E., p.10. It is this *Order Denying Motion For New Trial* from which appellant appeals.

### **SUMMARY OF THE ARGUMENT**

Angela Wilson argues that Tri-State Underground, Inc. was marital property and that she was entitled to an equitable share of the business. The Court's determination that Tri-State Underground, Inc. was solely the property of Mr. Wilson ignored the contribution that Mrs. Wilson had made to the two family cable businesses preceding Tri-State Underground, Inc. which led to the creation of Tri-State Underground, Inc. Angela also argues that the amount of her alimony should be increased because the Court failed to recognize Mr. Wilson's entire income which should be

adjusted to reflect that most, if not all, of his personal bills were paid from Tri-State Underground, Inc.'s business account. The amount of alimony awarded to Angela did not account for Mr. Wilson's agreement to pay Angela the sum of \$10,000.00 in temporary alimony monthly as reflecting Mr. Wilson's acknowledgment of the actual household expenses and standard of living at the time Mr. Wilson left the marital home, as well as his ability to pay and sources of income.

### **ARGUMENT**

In *A & F Properties, LLC v. Lake Caroline, Inc.*, 775 So.2d 1276, 1282 (Miss. Ct. App. 2000), the court found that "Evidence which is not contradicted by positive testimony or circumstances, and is not inherently improbable, incredible, or unreasonable, cannot be arbitrarily or capriciously disregarded or rejected, . . . and unless shown to be untrustworthy, is to be taken as conclusive, and binding on the triers of fact." The defendant Frank Wilson put on no testimony at trial whatsoever, and presented through his attorney only his financial statement and Angela's pharmacy bill into evidence. R., p. 200. Therefore the undisputed evidence is as follows.

Frank and Angela Wilson were married on October 12, 1987. Frank Wilson worked for a cable company for three years as a subcontractor. Both parties worked in the business, with Angie helping to pull cable and conducting paperwork from their kitchen table in Senatobia, Mississippi. R., pp. 91-92. Frank and Angie incorporated a service business burying cable called Jacob-Jean, Inc. Mr. Wilson encumbered Jacob-Jean, Inc. by factoring his receipts, a process which creates immediate cash flow. Because he double factored his receipts to two entities, Mr. Wilson had to enter a pre-trial diversion program in federal court after he could not pay both. R., p. 99. In April 1997, Jacob-Jean, Inc. was dissolved and the remaining company assets and personnel became



Custom Plowing and Trenching (Custom Plowing). Custom Plowing and Trenching was Frank Wilson doing business as (DBA) Custom Plowing, and was not incorporated. Custom Plowing performed cable laying services as a subcontractor for a larger company known as Winsett Simmonds which had a contract with Time-Warner Cable. Custom Plowing prospered and the couple paid all their living expenses from the business account, including house note, utilities, Angela's health insurance, personal vehicle notes, and even food. R., p.111. Frank and Angela Wilson drove vehicles registered to Custom Plowing and Angela continues to do so until this day. R., p.109. Frank Wilson applied for and received his own contract directly with Time-Warner Cable in December 2003. Custom Plowing was never dissolved but Frank Wilson incorporated Tri-State Underground, Inc. in January 2004. All of the assets of Custom Plowing including the parties' personal vehicles, company service vehicles, heavy equipment, personnel, office equipment, phones, computers, etc. were immediately the property of Tri-State Underground, Inc. R., p. 104. Frank Wilson left Angela in April 2004 and moved in with his lover, Flora Lonette Henderson, providing Ms. Henderson a down payment for a new house and paying his and Ms. Henderson's household bills, including her mortgage, from the Tri- State Underground, Inc. business account. R., pp.122, 133,134,137, 140. Frank Wilson continued to use the Tri-State Underground, Inc. account to fund his personal life, despite the court's order to the contrary, paying his divorce attorney and even his temporary alimony from the business account. Trial Exhibit 5; R.E. pp. 44, 45.

**I. The Court Erred in Classification of Tri-State Underground, Inc. as Separate Property, Erred in Acceptance of Erroneous Business Valuation Evidence, and Ordered Inequitable Distribution of Marital Property.**

The first step a Chancellor must take before making a division of assets in a divorce action is to characterize the parties' assets as marital or non-marital. *Hemsley v. Hemsley*, 639 So.2d 909,

915 (Miss.1994). Second, the Chancellor must value and equitably divide the marital property, in light of each party's non-marital property, employing the guidelines of *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994). Third, if the marital assets after equitable division and in light of the parties' non-marital assets, will adequately provide for both parties, no more is required. If equitable division of marital property leaves a deficit for one party, then alimony should be considered.

*Kilpatrick v. Kilpatrick*, 732 So.2d 876 (Miss.1999). A chancellor's error in classification requires that the case be reversed and remanded for division based on proper classification. *Redd v. Redd*, 774 So.2d 492, 496 (Miss. Ct. Appeals 2000).

This Court has ruled that assets accumulated during the marriage are marital assets and are subject to equitable division unless it can be proven that such assets are attributable to one of the parties' separate estates either prior to the marriage or outside of the marriage. *Hemsley v. Hemsley*, 639 So.2d 909, 915 (Miss. 1994). Additionally, the Supreme Court has stated that any appreciation in value attributable to an owner's efforts is a marital asset. *Craft v. Craft*, 825 So.2d 605, 609 (Miss. 2002).

**A. The Court Erred In Finding Tri-State Underground, Inc. To Be The Separate Property Of Mr. Wilson.**

Clearly Tri-State Underground, Inc., established in 2004, was the result of Mr. Wilson's labor during the marriage. In fact, Tri-State Underground, Inc. was the third in a series of three cable burying businesses which Frank and Angela Wilson worked during their seventeen year marriage. R., pp.94,104. Angela Wilson testified that she had helped in the beginning with daily business activities by installing cable/lock box sets in apartments, contacting customers, routing installers to and from jobs, picking up supplies and any other tasks asked of her by Frank Wilson. R., pp.94, 95. The early

family cable businesses led up to the formation of Tri-State Underground, Inc. R., pp.100,104. The couple paid most of their personal expenses from each one of their successive business accounts, further indicating the marital nature of their endeavors and not Frank Wilson's sole effort. R., p.111. The fact that the earlier businesses were ultimately unsuccessful makes it even more compelling that Angela Wilson share in the success of Tri-State Underground, Inc. She was a part of a team effort in the beginning and in the hard times as experience was gained in running a cable business. Now she is being denied the benefits of the success of Tri-State Underground, Inc.

The Court determined pre-trial that Frank Wilson, as purported sole stockholder in Tri-State Underground, Inc. could be ordered by the court to divest himself of corporate assets for equitable distribution if the facts at trial so required, and therefore declined to join the corporate entity into the suit, refusing to find it an indispensable party. R.E., p.29.

An asset acquired during marriage through a spouse's efforts is marital. In *MacDonald v. MacDonald*, 698 So.2d 1079, 1083 (Miss.1997), a husband's pawn shop business built through his labors during the marriage was deemed a marital asset. In *Flechas v. Flechas*, 791 So.2d 295, 304 (Miss.Ct. Appeals 2001), the court found that any company assets acquired through the husband's monetary investment should have been classified as marital. A separate business may be converted to a marital asset if business and marital funds are commingled. In *A & L, Inc. v. Grantham*, 747 So.2d 832, 838 (Miss.1999), a husband's corporation was found to be marital property, in part because of extensive commingling of business and marital funds. Throughout the marriage, the parties had used corporate funds from accounts of their companies to pay for personal expenses, even though the corporate funds were sometimes deposited into the couple's joint bank account. *Id.* at p.

839. The courts have found that the burden is upon the party claiming assets to be non-marital to demonstrate their non-marital character to the court. *Hemsley*, 639 So.2d at p. 915.

Mrs. Wilson testified that the house lease note, the furnishings for the marital home, the couple's food and utilities, all were paid from the company account. The vehicles they drove were registered to either their prior company, Custom Plowing or to Tri-State Underground, Inc. R. pp.109, 111. At trial Mrs. Wilson presented checks from the Tri-State Underground, Inc. account which were written for Mr. Wilson's divorce attorney and for payment of temporary alimony for Angela Wilson. Trial Exhibit 5, R.E., p. 44, 45. Mr. Wilson paid his new lover, Lonette Henderson's mortgage, in the amount of \$5,177.96, and credit cards from the Tri-State Underground, Inc. account. Trial Exhibit 16, pp.7-10. Mr. Wilson offered no testimony at trial, no rebuttal of the facts presented, and therefore the facts presented by Mrs. Wilson are unrefuted. R., p. 200. Based upon the foregoing facts, Tri-State Underground, Inc. should have been classified a marital asset by the trial court and therefore this case must be remanded.

**B. The Valuation of Tri-State Underground, Inc. was not Supported by Credible Evidence and is Clearly Erroneous.**

In *West v. West*, 891 So.2d 203, 218 (Miss. 2004), the parties were before the court on the issue of whether their property settlement agreement was conscionable as to the wife. Scant information was available to the wife to prove her assertions regarding the husband's financial dealings, and she was left by the trial court rulings to rely on the testimony of the husband and his witnesses. The Court commented on the trial court's limiting of discovery in that case to depositions and its refusal to issue subpoenas, stating, "in contentious proceedings involving complex finances of such great magnitude, it is not sufficient to simply tell one party to rely on the self-interested assertions of their opponent and his witnesses. Doing so eviscerates the aggrieved party of the ability

to make a substantive showing of its case.” *Id.* at p. 218 , 219. Trial court decisions regarding discovery are subject to review for abuse of discretion. *DeBlanc v. Stancil*, 814 So.2d 796, 798 (Miss. 2002).

Mr. Wilson failed to produce valid financial records for Tri-State Underground, Inc. which could be used to value the business, despite an initial Order, signed May 19, 2004, that “a full and complete accounting of the income and disbursements of said businesses and the household, the history of all stocks bought sold and/or transferred, and a full and complete accounting of bank activity for each entity will be due and presented to the opposite party for their inspection at least two weeks prior to the next scheduled hearing in this matter, for the time period beginning one month prior to the filing of this cause.” R.E., p. 25. In response to a motion to compel the business financial records, Frank Wilson produced a data pen purported to hold his business financial record. R. p.128.

Mr. Danny Williams, CPA, of Williams, Pitts & Beard, PLLC, an accounting firm located in Hernando, Mississippi, testified at trial that he had reviewed the QuickBooks accounting program provided by Tri-State Underground, Inc. which covered a period of months. R., pp. 8, 9. Mr. Williams also reviewed bank statements, either supplied by Mr. Wilson or produced by subpoena, for Tri-State Underground, Inc. for a period of nine months. R., pp.10, 11. Mr. Williams testified that all of the QuickBooks information provided was useless, as the entries did not make sense and the reports, such as Profit and Loss, within the QuickBooks program reported no assets and actually listed one asset as a loan from Frank Wilson to the company. R., pp.10, 11. He further testified that he discovered when examining the audit functions within the QuickBooks program that approximately 400 pages of prior entries had been deleted within a three-day period in March 2005. R., p. 12. Mr. Williams further testified that the bank statements he reviewed for the nine month

period revealed more than One Million Nine-Hundred Thousand Dollars (\$1,900,000.00) was deposited into the Tri-State Underground, Inc. bank account, mostly from Time Warner Cable, Inc. R., pp.16-17. Mr. Williams testified that without income tax returns for a period of years and proof of expenses he could not value the business. R., pp.13, 14. Mr. Williams further testified that if the IRS conducted an audit of a business they would look to the lifestyle and possession of the parties to determine who had benefitted from use of the corporate funds, as well as requiring proof of expenses. R., p.19.

The trial court stated that it based the value of Tri-State Underground, Inc. on the unrefuted Profit-Loss Statement, valuing the business in the *Opinion* at \$10,000.00. R.E. p.18. The Profit-Loss Statement was entered into evidence by Angela Wilson to show that Mr. Wilson had provided inadequate information for valuation and she called CPA Danny Williams, to testify regarding the document. R.,p.14. Mr. Williams testified that the Profit-Loss Statement showed no fixed assets, in fact no assets at all, and showed no liabilities. R.,p.14-18. On cross-examination he stated that if the business was sustaining the losses as shown on the Profit-Loss Statement, it would not be around very long. Mr. Williams further testified that there was a tremendous amount of deletion activity in the Quick Books program on one day in March 2005. R., pp.21, 24. The obvious efforts of Mr. Wilson to manipulate the business financial records in order to falsely portray severe losses, seriously conflicts with his agreement to pay Angela \$10,000.00 monthly in temporary alimony, to make those payments for five months before slowing his payments, and to finance his lover's new home with the Tri-State Underground, Inc. account. R.E., pp. 27, 28 ; R., p.148.

Mr. Tyler Wells of Network South Computer Service, Hernando, Mississippi, testified at the divorce trial that he had been a computer systems administrator for a period of years before opening

his current business installing and servicing computer systems. R., p.25. He testified that he was asked by Angela Wilson to review a data pen which contained only one program, QuickBooks, which he was able to open and to print the data. Mr. Wells further testified that he checked the audit program of QuickBooks and discovered that a great number of register entries had been deleted in a three-day period in March 2005, including deposits. R., p. 27. He testified that he printed out the first fifty pages of the deletions, although the complete print-out of the deletions would have exceeded 400 pages. R., p. 27. Exhibit 3 was presented to Mr. Wells and he identified that he printed the data contained therein from the data pen.

In *Mace v. Mace*, 818 So.2d 1130, 1134 (Miss. 2002), a doctor's valuation of his own medical practice was called into question by his wife. The *Mace* court found it abundantly clear from the testimony that the valuation of the practice was unreliable. *Id.* As in the case subjudice, neither party offered expert testimony as to the value of the business. *Id.* The Mace Court acknowledged that, "... *expert testimony may be essential* to establish valuation sufficient to equitably divide property, particularly when assets are as diverse as those in the instant case." (Emphasis in original) The court further advised that the chancery court may appoint an independent expert if absolutely necessary to prove valuation. *Id.* Certainly the testimony in the Wilsons' trial established that there was no way to accurately value Tri-State Underground, Inc. with the documents provided. Angela Wilson appeals to this court to remand the case and to order an independent accounting to prove valuation.

The Plaintiff filed a Motion to Compel which was heard on March 23, 2005, when Angela requested the appointment of an independent auditor to provide the Court with an accounting of the status of Tri-State Underground, Inc. R.E., p. 33. An Order denying this motion was entered. R.E., p.

30. When it became apparent that Mr. Wilson had provided records which had been altered as detailed in CPA Williams' trial testimony, Angela filed a *Motion To Suspend Trial Date Setting*, outlining for the Court that the data pen provided by Mr. Wilson at the hearing on her *Motion To Compel Discovery*, revealed that hundred of entries in the QuickBooks program had been deleted and requesting additional time to allow Angela to hire someone to analyze the information. R.E., pp. 35, 36. This motion was also denied and the *Order Setting Cause For Trial* does not bear the signature of Angela's attorney. R.E. p. 31. Prior to trial, Angela served over twenty subpoenas duces tecum to obtain financial records of Mr. Wilson and/or Tri-State Underground, Inc. at the series of banks he used. R.E. pp.2-7. Additionally Angela filed motions repeatedly seeking the court's help in obtaining valid information on the true status of Tri-State Underground, Inc. to no avail. Angela took all possible action available to force Mr. Wilson to provide records, but Mr. Wilson **intentionally refused to provide an accounting of Tri-State Underground, Inc.'s financial status** in defiance of the Court's order of May 18, 2004. R.E., p. 10. Mr. Wilson intentionally misled the Court by providing inadequate financial records for Tri-State Underground, Inc. CPA Williams testified it would be impossible to determine the profit and loss or valuation for the business from the records provided. R., p.18. Angela Wilson asserts that Frank Wilson intentionally ignored the Court's Order from May 2004 to provide adequate accounting of the business. She appeals to this Court to reverse the case based on the abuse of discretion by the trial court and to order an independent accounting of Tri-State Underground, Inc. for the years 2004 - August 2005.

**C. The Court Ordered An Inequitable Distribution Of Marital Property.**



Chancery courts consider the guidelines of *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss.1994), when attempting to effect an equitable division of marital property: (1) substantial contribution to the accumulation of the property; (2) the degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise; (3) the market value and the emotional value of the assets subject to distribution; (4) the value of assets not ordinarily, absent equitable factors to the contrary subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse; (5) tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution; (6) the extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties; (7) the needs of the parties for financial security with due regard to the combination of assets income and earning capacity; and (8) any other factor which in equity should be considered. In *White v. White*, 557 So.2d 480, 483 (Miss. 1989), several factors were listed by the court to be considered in determining whether to award lump sum alimony and the amount: 1) Substantial contribution to accumulation of total wealth of the payor either by quitting a job to become a housewife, or by assisting in the spouse's business; 2) A long marriage; 3) Where the recipient spouse has no separate income or the separate estate is meager by comparison; and 4) Without the lump sum award the receiving spouse would lack any financial security. The courts have found that the single most important factor in determining whether to award lump sum alimony is the disparity of the separate estates. *Cheatham v. Cheatham*, 537 So.2d 435, 438 (Miss.1988).

Angela Wilson asserts that the court ordered an inequitable distribution of the existing marital property, in that it did not divide assets of Tri-State Underground, Inc. Although the Chancellor awarded Frank Wilson sole ownership of the business Tri-State Underground, Inc., Angela Wilson asserts that her contribution to building the business was substantial and that the Chancellor should have awarded her a lump sum from the business. Tri-State Underground, Inc. was the alter ego of Frank Wilson and he wrote checks indiscriminately from the business account for his own and his wife's personal living expenses and debts. There is nothing in the record suggesting that Angela Wilson was at fault for the divorce, necessitating an inequitable distribution. In fact, the award is directly contrary to the Ferguson guideline, "(7) the needs of the parties for financial security with due regard to the combination of assets income and earning capacity;". *Johnson v. Johnson*, 823 So.2d 1156, 1158 (Miss. 2002).

Angela Wilson asks this Court to remand this cause for reclassification of Tri-State Underground, Inc. as a marital asset, for an equitable distribution of the marital property, specifically an additional award of lump sum alimony to compensate for her contribution to and share in Tri-State Underground, Inc. Angela Wilson asserts that she was married for seventeen years, helped to manage two cable businesses with her husband prior to the formation of Tri-State Underground, Inc., those being Jacob-Jean, Inc. and Custom Plowing. The equipment and personnel from one business always transferred to the next business. The business account paid their marital expenses. Tri-State Underground, Inc. was no different, except that shortly after its formation in January 2004, Frank Wilson left Angela for another woman. He continued to pay Angela Wilson's temporary support from the Tri-State Underground, Inc. business account. Trial Exhibit 5. R.E., p.44. Mr. Wilson even used the Tri-State Underground, Inc. account to pay the new lover, Lonette Henderson's mortgage.

R., pp.137,140; Trial Exhibit 16, pp.7-10. The Court noted that in this case alimony clearly must be ordered, noting Angela's lack of education and job experience, and that Mr. Wilson's earning capacity is much greater than Angela's. R.E., p.21, 22. The Court even awarded Angela the lease option to purchase the marital home but failed to award her a lump sum from the business to enable her to make that purchase and thereby secure her home. Frank Wilson's worth increased during this seventeen year marriage and Angela Wilson's services as a spouse and partner contributed to that. She asserts that she is entitled to a fair and equitable award of lump sum alimony.

## **II. The Court Erred in Awarding Inadequate Alimony.**

The Court states that it "looked to the guidelines in the case of *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994), for guidance in the division of these parties' marital assets." R.E., p. 24. The Court has stated, "if there are sufficient marital assets which, when equitably divided and considered with each spouse's marital assets, will adequately provide for both parties, no more need be done." *Johnson v. Johnson*, 650 So.2d 1281, 1287 (Miss. 1994). When one of the parties has a deficit, "then alimony based on the value of non-marital property should be considered." *Id.* In setting amounts of alimony the court has consistently pointed lower courts first to the elements outlined in *Brabham v. Brabham*, 84 So.2d 147, 153 (Miss.1955), which include (1) the health of the husband and his earning capacity; (2) the health of the wife and her earning capacity; (3) the entire sources of income for the parties; (4) the reasonable needs of the wife; (5) the necessary living expense of the husband; (6) the estimated amount of income taxes the respective parties must pay on their incomes; (8) the fact that the wife has free use of the home furnishings and automobile; and (9) such other facts and circumstances bearing on the subject that might be shown in evidence.

**A. The Amount of Periodic Alimony Awarded to Angela Wilson was Manifestly Inadequate as it was not based on Frank Wilson's Actual Income from Tri-State Underground, Inc., Failed to Adequately Compensate Angela, and Constituted Abuse of Discretion.**

Alimony awards are made at the discretion of the Chancellor and will not be reversed on appeal unless the chancellor was manifestly in error in his finding of fact and abused his discretion. *Powers v. Powers*, 568 So.2d 255,257 (Miss. 1990). An evaluation of the facts as presented at trial will demand remand for an increase in Angela's periodic alimony.

Frank Wilson's financial declaration as of May 2005 reflected that his total monthly income was \$9,000.00. Trial Exhibit 21; R.E., p.70. Mr. Wilson listed his monthly deductions as \$1,294.00 for federal income tax and \$513.00 for social security taxes although no pay stub or proof of payment of taxes was offered. With the tax deductions, his income was \$7,193.00. The Trial Court found that Mr. Wilson was presumed to be the sole stockholder of Tri-State Underground, Inc. and found that he could transfer corporate assets as necessary. R.E., p.29; Trial Exhibit 21; R.E., p.71.

Mr. Wilson's living expenses on his Financial Statement include an alimony payment of \$10,000.00 per month to Angie Wilson. Trial Exhibit 21; R.E., p.72. The temporary alimony payment was accepted by Mr. Wilson in May 2004, yet he states that his gross monthly income was \$9,000.00. R.E., p.27, 28. In fact Mr. Wilson's alimony payments were being paid through the Tri-State Underground, Inc. business account, as reflected by the company's checks, account #172264044, First Tennessee Bank. Exhibit 5; R.E., p.44; Exhibit 16; R.E., p.52. His Financial Statement reflected a mortgage payment of \$1,275.00 per month. Exhibit 21; R.E., p.71. Yet he was living with his mistress, Lonette Henderson, in a home deeded to Ms. Henderson located in Olive Branch, MS. Ms. Henderson's mortgage payments in the amount of \$5,177.96, were being paid by Tri-State Underground, Inc. as confirmed through the company's checking account #172264044,

First Tennessee Bank. Exhibit 16; R.E., p.56. Therefore Mr. Wilson was receiving the value of living in a home with a mortgage of \$5,177.96, and received the benefit of the company's payment of his temporary alimony of \$10,000.00 monthly. Mr. Wilson's monthly income should be increased to account for the amount of the mortgage paid by his company, or \$5,177.96, plus the \$10,000, for a monthly income increase of **\$15,177.96**.

The Financial Statement also reveals that Tri-State Underground, Inc. also paid Mr. Wilson's two vehicle notes in the amount of \$1,070 monthly. Exhibit 21; R.E., p.74. Mr. Wilson's miscellaneous living expenses such as food, clothing, and cleaning supplies were purchased at Sam's Wholesale Club through the Tri-State Underground account, as reflected on the company's Sam's Club Membership Purchases account #81247223, although said invoices had been charged as gasoline. Trial Exhibit 17; R.E. pp.60, 61, 62, 64, 65, 66, 67; R. p.140. Taking one month of Sam's Club purchases only, (April 2005, one month prior to trial), Mr. Wilson's monthly income should be increased again by an additional \$790.68, for those household expenses paid by Tri-State Underground, Inc., and \$1,070 for his vehicle notes also paid by Tri-State Underground, Inc.. Trial Exhibit 17, R.E., p.62, 63, 66; Trial Exhibit 21, R.E. p.74. Mr. Wilson's purported salary as reflected on the sworn Financial Statement of \$7,193.00 after taxes, plus \$17,038.64, which has been shown to be the payments by Tri-State Underground, Inc. which benefitted Mr. Wilson, he should actually reflect a monthly income of at least **\$24,231.64**. This amount reflects the value of his mortgage, his vehicle notes, his alimony payment, and his household expenses, all paid by Tri-State Underground, Inc. His Financial Statement lists no payment for auto insurance, gasoline, or auto repair. Presumably these costs are also absorbed by Tri-State Underground, Inc.

In its discussion of an appropriate amount of alimony to award Angela, the trial court in its *Opinion*, allowed Mr. Wilson the living expenses reflected in his Financial Statement of \$4,287. Trial Exhibit 21, R.E. p.72; R.E., p.20. Subtracting the court allowed expenses, leaves Mr. Wilson with at least **\$19,944.64** of actual monthly income.

Tri-State Underground, Inc. also paid for Mr. Wilson's mistress, Lonette Henderson's credit card from Bank of America as reflected in the company's account activity log, confirmed through the company's checking account #172264044, First Tennessee Bank. Exhibit 16; R.E. pp. 54, 55.

Tri-State Underground paid Mr. Wilson's divorce attorney's fees as reflected on the company's checking account #172264044, First Tennessee Bank. Exhibit 5; R.E. p.45.

Mr. Wilson has the unfettered use of his company's business account and takes full advantage of those funds. His monthly income is limited only by the income received at Tri-State Underground, Inc. The amount of temporary alimony, \$10,000.00 monthly, was accepted by Mr. Wilson because he can easily pay that amount monthly and because he knew the expenses of the household in Hernando. Mr. Wilson has the earning capacity and the sources of income to support Angela Wilson in the manner in which she lived before he chose to leave her for Lonette Henderson. Angela had no other source of income than her husband and their business. She is entitled to an increase in the amount of periodic alimony to at least the amount agreed in the Temporary Agreed Order of \$10,000.00 monthly. The amount of periodic alimony awarded to Angela Wilson by the trial court, \$4,000.00, was grossly inadequate. It was not based on Frank Wilson's actual income from Tri-State Underground, Inc., it failed to compensate Angela, and constituted abuse of discretion.

Mr. Wilson will have achieved a windfall through deceit if he is allowed to pay Angela only \$4,000.00 monthly. His standard of living will be substantially higher, at Angela's expense. Mr. Wilson's misrepresentations led the court to award inadequate alimony to Angela and require a remand of this case to the trial court.


### **CONCLUSION**

The case law now well established in the state of Mississippi requires the remand of the case to the Chancery Court and the entry of an order for rehearing on the classification of the parties' business, Tri-State Underground, Inc., a valuation of the business based on credible evidence by an independent accounting, the equitable division of the marital property including Tri-State Underground, Inc., and the recalculation of alimony at least to the amount agreed in the Temporary Order of \$10,000.00 monthly, as discussed above. Angela Wilson asks this Court to reverse and remand this cause for rehearing on these issues.

**Respectfully Submitted,**

**ANGELA HANCOCK WILSON**

By:

  
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**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 via First Class Mail, postage pre-paid 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 BRIEF**.

SO CERTIFIED this the 3<sup>rd</sup> day of November, 2006.



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Mary Lynn Damaré  
Attorney for Appellant