

IN THE SUPREME COURT OF MISSISSIPPI

RICHARD BRODERICK JONES

APPELLANT

VS.

CAUSE NO. 2006-CA-00974

NEVADA RAE BARR JONES

APPELLEE

APPEAL FROM THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BRIEF FOR THE APPELLEE
NEVADA RAE BARR JONES

ORAL ARGUMENT REQUESTED

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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 justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal:

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RESPECTFULLY SUBMITTED

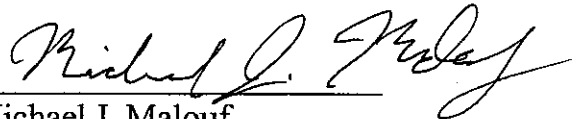
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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
REQUEST FOR ORAL ARGUMENT.....	iv
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	3
SUMMARY OF THE ARGUMENT.....	8
ARGUMENT:	
I. The Chancellor was Correct in Denying the Motion to Strike and for Sanctions	10
II. The Chancellor did not rely on perjurious statements and destruction of evidence	15
III. The Chancellor properly considered and applied the factors of equitable distribution	16
IV. The Chancellor was Correct in Denying Alimony	28
V. The Chancellor was Correct in Denying Attorney Fees.....	29
CONCLUSION.....	30
CERTIFICATE OF SERVICE.....	31

TABLE OF AUTHORITIES

TABLE OF CASES

<i>Bullock v. Bullock</i> , 699 So.2d 1205, 1211 (Miss.1997).....	27
<i>Cheatham v. Cheatham</i> , 537 So.2d (Miss. 1988).....	29
<i>City of Jackson vs. Ainsworth</i> , 462 So.2d 325 (Miss. 1984).....	16
<i>Cork v. Cork</i> , 811 So.2d 427 (Miss. 2001).....	22
<i>Ferguson v. Ferguson</i> , 639 So.2d 921 (Miss. 1994).....	2, 9, 17, 23, 24, 25
<i>Franklin v. Franklin</i> , 864 So.2d 970 (Miss. App. 203).....	29
<i>Goodyear Yellow Pine Co. vs Lumpkin</i> , 130 So. 745 (Miss. 1930).....	16
<i>Hemsley v. Hemsley</i> , 639 So.2d 909 (1994).....	9, 27, 29
<i>Knutson v. Knutson</i> , 704 So.2d 1331, 1333 (Miss. 1997).....	29
<i>McKee v. McKee</i> , 418 So.2d 764 (Miss. 1982).....	9, 30
<i>Trovato v. Trovato</i> , 649 So.2d 815, 818 (Miss. 1995).....	24
<i>Wideman v. Wideman</i> , 909 So.2d 140 (Miss. App. 2005).....	12
<i>Yannas v. Frondistou-Yannas</i> , 481 N.E.2d 1153 (1985).....	23

TABLE OF OTHER AUTHORITIES:

Miss. Code. Ann. 93-5-2(3).....	2, 8, 11, 12, 13, 15
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REQUEST FOR ORAL ARGUMENT

Nevada respectfully submits that oral argument will be of valuable assistance to this Court. Oral argument will ensure a thorough and effective presentation of this appeal to help bring a final conclusion to this matter.

STATEMENT OF THE ISSUES

- I. The Chancellor was Correct in Denying the Motion to Strike and for Sanctions**
- II. The Chancellor did not rely on perjurious statements and destruction of evidence**
- III. The Chancellor properly considered and applied the factors of equitable distribution**
- IV. The Chancellor was Correct in Denying Alimony**
- V. The Chancellor was Correct in Denying Attorney Fees**

STATEMENT OF THE CASE

Nevada Barr (hereinafter “Nevada”) and Richard Jones (hereinafter “Richard”) were married on June 29, 1996, and finally separated on November 30, 2004. Nevada filed for divorce on December 23, 2004 on the ground of habitual cruel and inhuman treatment, and alternatively, irreconcilable differences. On March 16, 2005, Richard filed his Counterclaim for Divorce on the ground of adultery, and alternatively, irreconcilable differences. On June 29, 2005, the parties filed a **Joint Motion And Consent To Trial And Divorce On The Ground Of Irreconcilable Differences** which was prepared by Richard’s attorney. The joint motion was filed pursuant to *Miss. Code Ann. §93-5-2 (3)* wherein the parties voluntarily consented to permit the court to enter a divorce on irreconcilable differences and to decide those financial issues which they could not agree upon. On August 10, 2005, the Chancellor signed and entered the **Order Granting Trial For Divorce On The Ground Of Irreconcilable Differences**, wherein those financial issues which the court was asked to decide were specifically listed. On October 26, 2005, Richard filed a **Motion To Strike And For Sanctions**, and filed a **Second Motion To Strike And For Sanctions** on October 31, 2005. On November 7, 2005, the morning of trial, the Chancellor, over strenuous objections by Nevada, allowed Richard to call witnesses and present testimony in support of said motions. The Chancellor reserved his ruling on the motions until the conclusion of the trial.

At the conclusion of all testimony, the parties submitted findings of fact and conclusions of law, and the Chancellor, after considering each of the *Ferguson* factors

and finding that the factors favored Nevada, entered an order awarding Richard the marital residence and furnishings, three (3) motor vehicles, his retirement and savings accounts, and other assets totaling in excess of \$650,000, in addition to his full federal pension.

Feeling aggrieved, Richard has appealed the Chancellor's ruling.

STATEMENT OF THE FACTS

Richard and Nevada first met when they both worked at the National Park Service. Richard states in his brief that at the time of the marriage, both Nevada and Richard worked for the National Park Service. (T. 78, 80) In fact, neither of them worked for the NPS at the time of their marriage. (T. 78) In the year prior to the marriage Richard had been fired from the National Park Service and as a result of his termination, filed litigation against the Service. (T. 38, 81) By way of settlement, Richard was awarded a \$15,000 a year pension for life, together with health insurance. (T. 93, 237-238) At the time of the marriage Richard was working at the Mississippi Department of Corrections. (T. 78) Prior to the marriage, Nevada had enjoyed substantial success writing mysteries based upon the fictional character, Anna Pigeon, a park ranger who solved murder mysteries. (T. 187) Nevada resigned from the Park Service before the marriage to dedicate full time to writing. Prior to the marriage, Nevada gave Richard \$8,000 to pay off his personal debts. (T. 171) Subsequently, Richard conveyed one-half (½) of his

personal residence to Nevada, the sale of which yielded a net equity of approximately \$10,000 which was paid toward the purchase of the marital residence. (T. 171-173) Nevada paid an additional \$20,000 from her personal funds toward the marital residence. (T. 173)

Nevada and Richard were married in Clinton, Mississippi on June 29, 1996. (T. 36-37, 81) In the spring of 1997, Nevada separated from Richard, and filed a divorce against him on the ground of habitual cruel and inhuman treatment resulting from his incessant lying and addiction to pornography. (T. 104, 107) During this period of separation, Nevada paid approximately \$21,000 for Richard to be treated for addiction to pornography and other sexually aberrant behaviors at the Meadows facility located in Arizona. (T. 158-159) The parties reconciled in 1998 after an eight (8) month separation, and Nevada dismissed her complaint for divorce. (T. 106, 169)

In 2000 Richard, over Nevada's objection, quit work to pursue a life of leisure which included fencing, traveling, etc. Richard's refusal to work was the source of much marital discord and numerous marital battles. (T. 137, 360) Richard also continued his lying and deceptive ways, as well as his excessive use of pornography. (T. 108-112, 116, 154, 169) Nevada also became aware of Richard's exchanging sexually explicit e-mails with a woman he had met at the Meadows in Arizona, as well as other sexual escapades. (T. 105-107, 160) Nevada and Richard also fought often over Richard's excessive spending habits, particularly large financial contributions to his adult children. (T. 231) Though Richard and Nevada had no children, Richard had three (3) adult children by his

two previous marriages. (T. 79, 209-210, 224, 234, 367) Testimony at trial showed that Richard had paid between \$49,000 and \$60,000 for his daughter April to start a business in Norway, only for her to relocate to California. (T. 79, 233-234) Richard also through the use of Nevada's earnings funded three (3) years of out-of-state college expenses for his daughter Ryan to attend the University of Washington, only for her to transfer to the University of Wyoming, where she was still seeking an undergraduate degree at age twenty-five (25). (T. 224-226)

Testimony further showed that at the time of the marriage, though Richard had no assets, Nevada had established herself as a successful writer, and had approximately \$155,000 in savings. (T. 187) Also during the course of the marriage, Nevada received payments of \$691,000 for books she had written prior to the marriage. (T. 208) Documents introduced by Nevada during the trial showed that she had produced approximately ninety-six percent (96%) of the income earned by the parties during the marriage, while Richard had contributed little more than his \$15,000 annual pension. (RE. 5, 6, Exh. 22, 23, T. 344-345) Nevada further introduced evidence that showed that other than ordinary living expenses of the parties, Richard had spent approximately eighty percent (80%) of the remaining expenditures. (RE. 7, Exh. 24, T. 345-346) There was further substantial testimony that Richard "managed the marital funds" by depositing them in out-of-state banks and making an inordinate number of unexplained transfers between financial institutions. (T. 125-127) A witness (Michael Piazza) testified that Richard told him this was intentional so Nevada would not be able to track her earnings.

(T. 281) In August 2004, three (3) months prior to the separation, after a heated argument over Richard's reckless spending and control of Nevada's earnings, Richard and Nevada jointly transferred \$500,000 from a joint account to a separate account in Nevada's name, leaving approximately \$50,000 in the joint account. (T. 133-135) From January 2004 to November 2004, when the parties finally separated, Richard had spent more than ninety (90) days away from the home for personal travel. (RE. 4, Exh. 15, T. 146-149, 166-169, 215-216, 221-223)

Though Richard now claims that he was in shock and disbelief over Nevada's departure, he wasted little time in adjusting to single life. On December 1, 2004, less than twenty-four (24) hours after Nevada left, Richard paid attorney Mark Chinn a \$15,000 retainer. (RE. 3, Exh. 14, T. 212), and shortly thereafter created a web page on *Match.com* wherein he stated he was divorced and earning \$150,000 annually. (RE. 2, Exh. 9, T. 142-145) In January 2005, he began a personal relationship with a female companion that he had met through his web site. (T. 164) During the eleven (11) months between the separation and the divorce trial, Richard had depleted the \$45,000 remaining in the joint account and had run up considerable debt on credit cards, some of which were in Nevada's name. (RE. 1, Exh. 8, T. 134-135, 138-141) During that same period, Richard had made no attempt to seek gainful employment, but continued his life of leisure and world travel, including a two (2) week vacation in Peru, three (3) nights in New York City with his new female companion, ten (10) days in London, England with the same companion, two (2) weeks in the Czech Republic, several weeks in Yellowstone

National Park, and various other vacation destinations. (RE. Exh. 15, T. 146-149, 166-169, 215-216, 221-223) He also bought himself a silver Honda convertible. (T. 177)

After hearing all the testimony and observing the witnesses and their demeanor, the Chancellor issued a ruling favoring Nevada, but granted Richard substantial assets. Fearing that he may have to work or reduce his luxurious lifestyle, Richard has perfected his appeal of the Chancellor's ruling.

SUMMARY OF THE ARGUMENT

I. The Chancellor Was Correct in Denying the Motion to Strike and for Sanctions

The Chancellor was correct in denying Richard the relief he requested in his two (2) motions to strike, inasmuch as said motions were not listed as contested issues in the agreed order allowing a divorce on irreconcilable differences, as required by *Miss. Code Ann* §93-5-2 (3). Alternatively, the relief sought by Richard was moot inasmuch as the parties had agreed on an irreconcilable differences, and fault was no longer an issue.

II. The Chancellor Did Not Rely on Perjurious Statements or Destroyed Evidence

The relief Richard seeks under this assignment was rendered moot when the parties entered an agreed order allowing a divorce on irreconcilable differences pursuant to *Miss. Code Ann.* §93-5-2 (3). There was no fault ground or cause of action the Chancellor could have dismissed inasmuch as both parties voluntarily dismissed their fault grounds and entered an agreed order asking the Chancellor to decide only financial issues.

III. The Chancellor Properly Considered and Applied the Factors of Equitable Distribution

The Chancellor was correct in his application of equitable distribution. After receiving two (2) days of testimony and exhibits and having considered the proposed findings of fact and conclusions of law submitted by both parties the Chancellor,

following the dictates of the Supreme Court in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) and subsequent cases, wrote a detailed thirteen (13) page order in which he made findings under each of the *Ferguson* factors. The Chancellor, sitting as finder of fact, was able to personally observe the testimony and demeanor of each of the witnesses in making his findings. Richard has failed to show that the Chancellor manifestly abused his discretion.

IV. The Chancellor Was Correct in Denying Alimony

After making an equitable distribution of the marital assets, the Chancellor found that each spouse had sufficient assets to adequately provide for himself. The Chancellor found that Richard would possess a debt-free home, multiple automobiles, sufficient funds, and a federal pension for life. The Chancellor further found that Richard was physically and mentally capable of pursuing gainful employment, if he so desired, and that further consideration of the factors set out in *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994) was not necessary.

5. The Chancellor Was Correct in Denying Attorney Fees

The Chancellor was correct in denying Richard's request for attorney fees inasmuch as each party was financially able to pay his own attorney fees. The Chancellor's ruling was further appropriate inasmuch as there was no showing that said fees were reasonable or necessary as required by *McKee v. McKee*, 418 So.2d 764 (Miss. 1982).

ARGUMENT

The Chancery Court Judge, Stuart Robinson, correctly found that after a relatively short marriage Richard was entitled to a fair division of assets and denied his request for alimony and attorney fees.

I. The Chancellor was Correct in Denying the Motion to Strike and for Sanctions

Though the parties had filed fault grounds against each other, on June 29, 2005 they executed a **Joint Motion And Consent To Trial And Divorce On The Ground Of Irreconcilable Differences** which was prepared by Richard's legal counsel. (R. 108) The **Order Granting Trial For Divorce On The Ground Of Irreconcilable Differences** was signed by the Chancellor and filed of record on August 10, 2005. (R. 114) Subsequent to the filing of that order, Richard, on October 24, 2005, filed his **Motion To Strike And For Sanctions**, and on October 31, 2005, filed his **Second Motion To Strike And For Sanctions**. (R. 134, 149) Both motions alleged that Nevada had testified untruthfully in her deposition of March 8, 2005. The first motion asked the court to:

1. Strike any reference to or proof offered by Nevada at the trial of this matter concerning her allegations of fault against Richard
2. Award to Richard reasonable attorney fees, costs, and expenses incurred in pursuing this matter

The second motion asked the Court for an order:

1. Presuming that the “Dear John” letter at issue was written by Nevada in its entirety
2. Striking and prohibiting Nevada from referring to allegations of fault against Richard
3. Awarding Richard reasonable attorney fees, costs, and expenses incurred for having to bring this motion.

Prior to the start of the trial testimony, the Chancellor, over strenuous objections by Nevada, allowed Richard to put on testimony in support of those motions.

(T. 22-33)

The Order Granting Trial For Divorce On The Ground Of Irreconcilable Differences was filed pursuant to *Miss. Code Ann. §93-5-2 (3)*, and in accordance with that statute stated specifically what the parties had agreed the court could decide. (R. 114)

Paragraph 7 of that order lists those contested issues:

7. That the parties agree to permit the Court to decide the following issues upon which they cannot agree:
 - a. **Property rights** between the parties.
 - b. **Alimony**
 - c. **Equitable distribution**
 - d. **Valuations of assets**

- e. Determination of and equitable distribution of all **debts** of the marriage.
- f. Distribution of the **real and personal property** of the marriage.
- g. Resolution of issues pertaining to income tax deductions, sharing of income tax refunds or liabilities, etc.
- h. Determination of assessment of court costs, expert fees and **attorney's fees**.
- i. Determination as to what, if any, **marital waste** has taken place and assessment for such waste.
- j. Legal interest on any Judgments rendered by the court.
- k. Any and all financial issues
(emphasis not added) (R. 115)

The relief Richard sought in his motions were not listed in the Agreed Order, and

therefore barred by statute. As held in *Wideman v. Wideman*, 909 So.2d 140 (Miss. App. 2005):

A review of the pleadings shows that the parties did not include the issue of attorney fees in the joint complaint for divorce, or the written consent to have the *146 chancellor resolve the contested issues. Under these circumstances, the chancellor was correct that he lacked the authority to address the matter of attorney fees. The language of Section 93-5-2(3) is clear. A chancellor may decide contested issues in a divorce based upon irreconcilable differences. **However, he is limited to the resolution of those issues specifically identified and personally agreed to in writing by the parties.** The question of attorney fees does not meet that standard. (emphasis added)

The motions filed by Richard more than two (2) months after the Agreed Order was entered were not contained in the Agreed Order, and such contested motions were not

agreed to by Nevada. Though the Chancellor allowed testimony by Richard concerning those motions, he reserved his ruling until hearing the case in chief.

Richard's appeal of this issue is without merit, and is further specifically prohibited by *Miss. Code Ann §93-5-2 (3)*:

Appeals from any orders and judgments rendered pursuant to this subsection may be had as in other cases in chancery court **only insofar as such orders and judgments relate to issues that the parties consented to have decided by the Court.** (emphasis added)

Inasmuch as the Agreed Order did not include either of the motions to strike, Richard is prohibited from appealing the denial of the requested relief.

Though Richard's appeal of this issue is prohibited by statute, ironically the relief sought, other than attorney fees which is discussed hereafter, was agreed to by Nevada or otherwise rendered moot. In Richard's first **Motion To Strike And For Sanctions**, he asked the court to:

1. Strike any reference to or proof offered by Nevada at the trial of this matter concerning her allegations of fault against Richard (R 134)

Inasmuch as the parties had agreed to a divorce on irreconcilable differences and fault was no longer an issue, Nevada voluntarily dismissed her fault grounds and made no attempt to prove her allegations of fault against Richard.

In Richard's **Second Motion To Strike And For Sanctions**, he asked the Court for an order:

1. Presuming that the "Dear John" letter at issue was written by Nevada in its entirety
2. Striking and prohibiting Nevada from referring to allegations of fault against Richard

The "Dear John" letter referenced by Richard was admitted to by Nevada and introduced by agreement of the parties as Exhibit "1". (T. 128-129) Richard never made further mention of the letter, and other than its introduction, was never discussed by either party nor cited by the Chancellor in his order. Richard's second request to prohibit Nevada from referring to allegations of fault against him was a moot issue inasmuch as the parties had dismissed their fault grounds and agreed to an irreconcilable differences divorce.

Richard's request for attorney fees for filing these motions is disingenuous inasmuch as it becomes readily apparent that his sole purpose in filing the motions was to seek attorney fees from Nevada, since the relief sought was agreed to or rendered moot by the agreed order entered two (2) months prior to the filing of the motions. Had Richard wanted to pursue those contested motions, he had a right to do so by withdrawing his consent to a divorce on irreconcilable differences, prior to the court's commencing any proceeding pursuant to the agreed order. Richard chose however not to withdraw his consent, and was therefore barred from litigating any issue not specifically listed in the agreed order.

II. The Chancellor did not rely on perjurious statements or destroyed evidence

With all due respect, Nevada and her counsel are at a loss as to what relief Richard is seeking in this assignment of error. Richard appears to argue that Nevada's defenses should be stricken since she failed to produce a computer that she admitted she had destroyed prior to the request for production. (T. 32) Such request is difficult to understand inasmuch as the parties through their agreed order prepared by Richard's counsel and signed by the Chancellor on August 10, 2005, specifically provided that:

All adversarial grounds for divorce in the complaint for divorce filed by Plaintiff and all contest or denials filed by the Defendant are hereby withdrawn; the parties are allowed to proceed with the divorce on the ground of irreconcilable differences.

There was no defense filed by Nevada that the Chancellor could have stricken which had not already been withdrawn by Nevada.

Richard quotes substantial law that authorizes a chancellor to dismiss a cause of action for discovery abuses. Nevada does not disagree with such statement of law, but is confused as to what action Richard wants dismissed. The parties had already dismissed all fault grounds and defenses, and agreed to a divorce on irreconcilable differences, two (2) months prior to Richard's filing his motions. (R. 108, 114) Richard could have withdrawn that consent prior to the commencement of the proceeding, as provided by *Miss. Code Ann §93-5-2(3)*, but chose not to do so.

Richard alleges that Nevada destroyed her computer to conceal that she wrote the

“Dear John” letter. Such argument however is without merit inasmuch as Nevada stipulated and agreed that she was the author of such letter. (T. 128-129) By agreement of the parties, that letter was introduced as Exhibit “1”, but was never referred to again by either party, and was not referenced in the **Order Of The Court**. (Id., R. 203, Appellant’s RE. 13, Exh. 1)

Richard in his brief requests that the appellate court:

.....forward the evidence of Nevada’s perjury and destruction of evidence to the appropriate law enforcement authorities for prosecution, as well as the Mississippi Bar Association.
(Brief of Appellant, pg. 21)

Since Richard cites no authority for such unprecedented request, Nevada asks that said request be denied. *City of Jackson v. Ainsworth*, 462 So.2d 325 (Miss. 1984), *Goodyear Yellow Pine Co. v. Lumpkin*, 130 So. 745 (Miss. 1930).

III. The Chancellor was Correct in his Application of Equitable Distribution

The Chancellor was correct in his consideration and application of equitable distribution.

Richard argues that a survey of reported cases since 1995 reflects no decision where a spouse was awarded less than one-third (1/3) of the marital estate. Such survey is not appended to his brief and no such litany of cases is cited. While Richard complains that he only received twenty-one percent (21%) of the marital estate, such calculation is based upon a misstatement of the marital assets, and differs from the court’s finding. The

court in its order found that of the \$480,000, Nevada was to receive as future payments, not only was fifteen percent (15%) commission due to her agent, an additional thirty-two percent (32%) would have to be paid in taxes. (R 205-206) The court determined that Nevada would receive approximately \$254,400 instead of the \$408,000 listed in Richard's brief. (R. 206) The Court also found that Nevada had \$155,235 in savings prior to the marriage, and received \$691,000 during the marriage from books written prior to the marriage. Also, the investment account owned by the parties included a payment of \$360,000 received by Nevada for books she was obligated to write in the future. (R 205) Nevada's agent, Dominic Able, and Nevada both testified that if a satisfactory manuscript was not submitted, she would be obligated to refund the \$360,000. (T. 185-187) Nevada and Dominic also testified that her first two manuscripts were unacceptable and that she was given a third and final chance to produce a work satisfactory to the publishing company. (T. 186, 198-199, 310-311) Richard also neglected to state in his brief that after the separation he spent \$45,000 left in a joint checking account. (T. 134-135, 138) When these additional calculations are considered, it becomes apparent that Richard received substantially more than 21% of the marital assets, even though such amount was still much greater than what he was entitled.

In determining equitable distribution, the Chancellor considered and discussed those factors outlined in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) (R 203) and subsequent cases, and made specific findings in his **Order Of The Court**. A discussion

of the Chancellor's findings follows:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:

a. Direct or indirect economic contribution to the acquisition of the property.

The Chancellor in his order stated:

It is undisputed that approximately ninety-six percent (96%) of the income earned by the parties during the marriage were a direct result of Nevada's efforts. In fact, Richard testified that he quit working because Nevada was earning a substantial income, even though his refusal to work caused constant arguments. (R. 206)

The testimony was undisputed that prior to the marriage Nevada enjoyed a successful writing career, and that her character, Anna Pigeon, a park ranger who solved murders, was an integral part of her life, long before Richard was. (T. 187) Anna remained the central theme of subsequent books penned during the marriage. (T. 188) The Chancellor further found that:

Although Richard testified that he contributed to Nevada's success by answering e-mails, scheduling travel arrangements and traveling with Nevada, there was no evidence that such contribution actually had a direct or indirect economic contribution to Nevada's success or the acquisition of marital property. The duties performed by Richard were similar to those of an assistant and do not rise to the level of direct or indirect economic contribution. In fact, Richard himself testified that his main contribution to Nevada was to leave her alone. (R. 206-207)

Richard in his brief takes Nevada's testimony out of context by stating that she could not

“minimize the value he (Richard) was”. As explained by Nevada:

He did things, and those things have been noted and explained. Because something cannot be minimized doesn't mean that its large, it just means you choose not to make it smaller than it actually was and I've chosen to do that, to not make it smaller. (T. 74)

Though Richard and Nevada both testified that Richard did various home projects including cooking, carpenter work, yard work, etc., such contributions constitute nothing more than usual and ordinary duties expected of a spouse, particularly one not otherwise employed. Testimony by Dominic Able, Nevada's agent, clearly established that any alleged contribution by Richard was nothing more than minimum ministerial duties. (T. 194, 258) Such testimony becomes further apparent in that since the separation, Nevada has not hired anyone to replace Richard.

b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage.

The Chancellor in his order found:

The marriage was one of relatively short duration that began on June 29, 1996, and ended in final separation on November 30, 2004. Additionally, the parties were separated and living apart for approximately eight (8) months during 1997 and 1998. Throughout the marriage, Richard had an addiction to pornography and exchanged sexually explicit e-mails with other women. The parties fought often about these problems. (R. 207)

The record is replete with testimony concerning Richard's addiction to pornography. (T.

103-112, 227, 249) In fact, the eight month separation early in the marriage was a result of Richard's addiction to pornography. (T. 104, 106, 107) In an attempt to assist him in that problem, Nevada paid over \$21,000 to send Richard to The Meadows, a well-know addiction facility located in Arizona. (T. 159) Nevada testified however that after he returned from The Meadows not only did his pornography continue, but he exchanged sexually explicit e-mails with a female companion that he had met there. (T. 105, 160)

Though Richard initially denied it, he later reluctantly admitted that he belonged to a pornographic website "Barely Legal High School Girls". (T. 108-109, 112) He also reluctantly admitted to viewing pornography during office hours while employed at the Mississippi Department of Corrections. (T. 110-111, 116) There was further evidence that there were numerous marital fights due to Richard's refusal to work and his excessive spending on his children. (T. 137, 231, 360) The Chancellor further found that during 2004 prior to the parties' separation in November, Richard was gone more than ninety (90) days for personal travels. (R. 208, RE. 4, Exh. 15)

c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

Though Richard accompanied Nevada on several of her research trips, such trips were merely a vacation for Richard. As testified to by Nevada, they would go to parks, ride horses, camp, go caving, snorkeling, and so forth while Nevada did the research. (T. 70) The Chancellor was correct in his finding:

The record is void of any contribution either party made to the other's education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets. Nevada enjoyed great success as an author before the marriage and the minor "assistance" provided by Richard throughout their marriage does not rise to the level of a contribution. (R. 207-208)

Nevada enjoyed substantial success as an author before the marriage, and her career continued to blossom after the marriage without any input or contribution from Richard. (T. 187,191)

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.

The Chancellor correctly found that there was considerable testimony that the parties fought often over Richard's excessive spending on his adult children. (R. 208) Though Nevada testified she had no objection to paying for his children's reasonable college expenses, Richard often expended considerable sums for his children, while denying and concealing it from Nevada. Some of these expenditures included approximately \$49,000 to \$60,000 for April, age 29, to start a business in Norway, only for her to relocate to California; three (3) years of out-of-state college costs for Ryan to attend the University of Washington in Seattle, only for her to enroll at the University of Wyoming where she was still seeking an undergraduate degree at age 25. (R. 208, T. 79, 224-226, 233-234)

Richard wrongly suggests that the money given to his daughter, Ryan, for college

was a gift because it was Nevada's idea. A correct reading of the transcript clearly shows that Nevada did not want Ryan to have to borrow student loans and urged Richard to get a job so that he could keep his promise to his daughter to pay for her college expenses. When he refused to get work and would have had his daughter take out the crippling loans, Nevada agreed to pay for Ryan's college so Richard would not be shamed in front of his daughter. (T. 359- 361)

Richard's argument that his excessive spending on his children does not constitute wasteful dissipation of marital assets is misguided. In *Cork v. Cork*, 811 So.2d 427 (Miss. 2001), the Court of Appeals affirmed the chancellor's granting a larger share of the marital estate to the husband because he had supported the wife's child by a former marriage throughout the marriage.

3. The market value and the emotional value of the assets subject to distribution.

The Chancellor properly concluded that Nevada is more emotionally attached to the books that she wrote during the marriage. (R. 209) Nevada enjoyed great success in developing her Anna Pigeon series prior to the marriage, and continued it during the marriage, in spite of great marital conflict and stress. (T. 187) Though Nevada is childless, these works are her offspring, reflecting a life-long commitment. Consequently, she has a great emotional attachment to them.

Richard argues that the Chancellor erred in not granting him any future income from Nevada's books. However, the testimony from Dominic Abel, Nevada's agent since

1996, revealed that Nevada's chances of receiving future royalties was "fairly slim, slim to none" since her advances were so high. (T. 183-184) Thus there were no future royalties to share with Richard. As in *Yannas v. Frondistou-Yannas*, 481 N.E.2d 1153, (1985) the Massachusetts Supreme Court upheld the Chancellor's decision to not grant a spouse a portion of royalties by stating that such was too speculative.

More importantly, after carefully considering the factors determining equitable distribution, the Chancellor was more than generous to Richard by awarding him more than his fair share of the known marital assets without Richard's having to rely on any speculative income. Further, the Chancellor was apparently following the dictates of *Ferguson* in trying to eliminate future contacts or conflicts between the parties, particularly since there were no children to further bond them.

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.

In discussing this factor, the Chancellor found that prior to the marriage Nevada had given Richard \$8,000 to pay off his personal debts, and had paid an additional \$20,000 from her personal funds toward the marital home. (R. 209, T. 171, 173, 228) He also found that books written by Nevada prior to the marriage produced an income of \$691,000, which was received during the marriage and used as marital funds. (R. 209) In making these findings, the Chancellor did not say that these sums would be excluded from the marital estate, but simply acknowledged their source. Richard in his brief seems

to imply that “**equitable**” distribution means “**even**”, when the courts have repeatedly stated that it means “**fair**”. *Trovato v. Trovato*, 649 So.2d 815, 818 (Miss. 1995) In an effort to follow the dictates of *Ferguson* and subsequent cases, the Chancellor rightly considered this factor in making a **fair** distribution of the marital assets.

5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distributions

Richard’s brief incorrectly states that there was no testimony regarding “other economic consequences.” Dominic Abel testified that even though Nevada received the sum of \$360,000 at the time of separation for a book to be written in the future, her contract with Random House required a refund of that amount if she did not submit a satisfactory manuscript. (T. 185-187) Nevada and Dominic both testified that her first two manuscripts had been rejected, and she had been given a third and final chance to produce a satisfactory one. (T. 186, 198-199) The Chancellor’s findings relative to this factor were supported by credible testimony. (R. 209)

With regard to taxes, the Chancellor found that the two additional payments of \$240,000 that Nevada was to receive would have to be reduced by her agent’s fee of fifteen percent (15%) and taxes of approximately thirty-two percent (32%), and that from such payments Nevada would receive \$254,400. (R. 205-206)

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

The Chancellor correctly found that a current distribution of marital assets would

eliminate the need for periodic payments. (R. 210)

One of the intents of *Ferguson* is to divide the marital assets in an equitable fashion in hopes of avoiding future payments or friction between the parties. This was a marriage of relatively short duration wherein the parties cohabited for less than eight (8) years. There were no children born of the marriage, and Richard's three children from his two previous marriages were all grown and over the age of twenty-five (25). (T. 37, 79, 209-210, 224, 367) With Richard being granted the marital residence valued at \$190,000, it provided him a comfortable and secure home debt free. (T. 94, 176) Richard was also to receive additional sums from the sale of the lot in the Virgin Islands, which occurred during the marriage. (T. 223) Richard also had various retirement plans in his individual name, in addition to his lifetime federal pension of \$15,000 annually, as well as health insurance. (T. 93, 175, 237-238)

At the time of separation Richard was debt free, owned three (3) motor vehicles, had \$56,400 in cash, and over \$26,000 in IRAs. (R. 210) Additionally, the Chancellor awarded Richard two (2) accounts in Nevada's name worth approximately \$392,761. (R. 213) More importantly, Richard was well educated and physically able to return to work and eligible for re-employment with the federal government. (T. 226) With all of the assets awarded Richard, he was left with sufficient funds to support himself, and there clearly was no need for any future payments. Richard's argument that he was too young to withdraw retirement funds without penalty should perhaps serve as his wake-up call to

get a job.

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity

The Chancellor in discussing this factor stated:

Richard is 55 years old and is in good health. He has a Bachelors degree in business and finance. As presented at trial, Richard has many and varied talent and experience, including working for the National Park Service. He has a federal employee rating of GS11 and is eligible for re-employment with the federal government. Further, Richard has an annual retirement pension of \$15,000 for life, as well as health insurance. At the time of the separation, Richard was debt free, living in a fine home, owned three (3) motor vehicles and sufficient home furnishings, had approximately \$56,000 in cash, and over \$26,000 in IRAs. Richard has the capacity to earn a substantial income and has shown no need for additional income from Nevada. (R. 210)

At trial, Richard admitted that he was the breadwinner during his two (2) previous marriages and that he was “capable of making a living”. (T. 226) Richard also testified that “he could get along without his wife’s money”, and that he would “support himself”. (T. 252) Nevada on the other hand has no guarantee of future success as a writer, and has already had two manuscripts rejected which could require the repayment of the \$360,000 advance she had received. (T. 185-187)

Though Richard had retired or been fired from the National Park Service prior to the marriage, he was employed with the State of Mississippi at the time of the marriage. (T. 78) At age 50, Richard chose to quit work so that he could live off his wife’s earnings, even though his refusal to work was a source of much marital discord. (T. 137)

As the Chancellor pointed out, Richard is in good health, and fully capable of working if he so desires. (R. 210, 211)

As the Chancellor further found:

She (Nevada) currently has no available pension. Her home in New Orleans was heavily damaged by Hurricane Katrina and was purchased with advance money. At the termination of this marriage, Nevada will lose her access to Richard's medical insurance. As a self-employed individual with some history of medical problems, Nevada will pay a high premium for medical insurance. (R. 210)

The Chancellor was eminently correct in his assessment of this factor.

8. Any other factor which in equity should be considered.

Though Richard, through this Appeal, seeks an **equal** division of marital assets, the Chancellor saw it differently:

The Mississippi Supreme Court has held that in making an equitable division of marital property chancellors are not required to divide the property equally. The goal of equitably distributing marital property is "not only a fair division based upon the facts of the case, but also an attempt to finalize the division of assets and conclude the parties' legal relationship, leaving them each in a self sufficient state, where the facts and circumstances permit total dissolution." *Bullock v. Bullock*, 699 So.2d 1205, 1211 (Miss. 1997) This Court has a unique opportunity to judge the credibility of each witness and determine the weight to be given to all trial testimony. The Court can observe the witnesses first hand and note demeanor, attitude, and all other indications of truthfulness and credibility. After two days of such observation, the Court has duly considered the matter and finds the following division of property to be that which will meet the goals of

distribution as presented by the Mississippi Supreme Court.

The Court finds that an equal division of property in this case would be neither necessary nor equitable. The evidence presented at trial clearly showed that Richard contributed very little to the accumulation of assets, spent large amounts of money solely for his entertainment and pleasure, refused to seek gainful employment even after the parties' separation, and had an addiction which led to a strain on the marital relationship. The evidence clearly supports a division of marital assets which significantly favors Nevada. The Court is well aware that Nevada does not come to the Court with clean hands; however, in considering the *Ferguson* factors, it is clear that Nevada should receive a much larger amount of the marital assets. (R. 212)

At the motion for rehearing Richard again asked for additional compensation. The Chancellor was succinct, but firm, in his ruling:

When this Opinion was written, I had some misgivings about actually your client (Richard) getting what he did get. I felt that I was probably overcompensating him, but after boiling it all down and trying to the best that I could, I concluded that that would be as close to fair as I could be, but I did feel that he was overcompensated. (T. 405)

IV. The Chancellor was Correct in Denying Alimony

The Chancellor, after hearing testimony from the parties and their witnesses and considering the various exhibits introduced into evidence, made a detailed finding with regard to Richard's request for alimony. Though that ruling was not to Richard's liking, the evidence supported the Chancellor's ruling:

The above division of marital assets is fair based upon the facts of the case, and is an equitable manner in which to leave each of the parties in a self sufficient state. Our Mississippi Supreme Court has held that once the marital property has been equitably divided the chancellor shall do no more “[i]f there are sufficient marital assets which, when equitably divided and considered with each spouse’s non-marital assets, will adequately provide for both parties....” *Knutson v. Knutson*, 704 So.2d 1331, 1333 (Miss. 1997) (citations omitted). The Court has reviewed this matter and finds that after distribution both parties will possess a debt free home, multiple automobiles, and sufficient funds to more than adequately provide for both parties. Both parties are capable of pursuing employment and this Court will not burden Nevada with alimony for the mere purpose of allowing Richard to continue his life of leisure. Therefore, the Court finds that no alimony is proper and no further consideration of the factors set forth in *Hemsley v. Hemsley*, 639 So.2d 909 (1994) is necessary.

V. The Chancellor was Correct in Denying Attorney Fees

The Chancellor was correct in denying Richard’s request for attorney fees. The Chancellor in deciding this issue considered the evidence in the law regarding attorney fees:

Similarly, the Court has considered the factors in *Cheatham v. Cheatham*, 537 So.2d 435 (Miss. 1998) and finds that neither party has proven that they are unable to pay their respective attorney fees. Mississippi law is clear that each party is responsible for his respective attorneys fees if he is financially able to pay such. *Franklin v. Franklin*, 864 So.2d 970 (Miss. App. 2003). In this case, the evidence is clear that each party is fully capable of paying the attorneys fees incurred on their behalf. (R. 214-215)

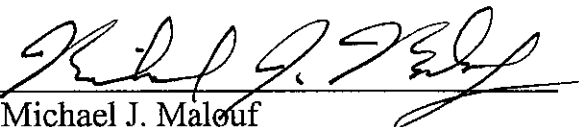
Additionally, there was no testimony presented by Richard that such fees were reasonable or necessary as required by *McKee v. McKee*, 418 So.2d 764 (Miss. 1982). In fact, the attorney fees he introduced into evidence appeared excessive in light of an irreconcilable differences divorce of a marriage of relatively short duration bearing no children. Nor was there a showing that additional fees were incurred because of Nevada's alleged perjury or other misconduct. Richard sought and retained an attorney of his choosing within twenty-four (24) hours of the separation. He alone should be held accountable for the cost of those services he engaged. The Chancellor was manifestly correct in deciding the issue of attorney fees.

CONCLUSION

For the above and foregoing reasons, Nevada respectfully requests that the judgment of the lower court be affirmed.

RESPECTFULLY SUBMITTED this the 8th day of February, 2007.

NEVADA RAE BARR JONES, Appellee

BY: 
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CERTIFICATE OF SERVICE

I, Michael J. Malouf, Attorney for Appellee, do hereby certify that I have this day mailed, by U. S. Mail, first-class postage prepaid, a true and correct copy of the above and foregoing BRIEF OF APPELLEE to the following:

Honorable Stuart Robinson
Hinds County Chancellor
P. O. Box 686
Jackson, MS 39205-0686

Mark A. Chinn, Esq.
P. O. Box 13483
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DATED this the 8th day of February, 2007.

NEVADA RAE BARR JONES, Appellee

BY: 
Michael J. Malouf