

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RICHARD BRODERICK JONES

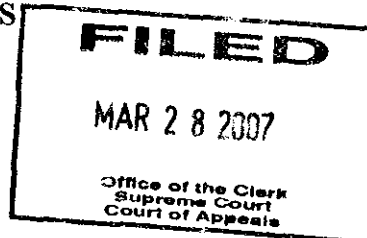
APPELLANT

VS.

NO. 2006-CA-00974

NEVADA RAE BARR JONES

APPELLEE



REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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

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ARGUMENT

I. Clarification of Facts.

There are multiple factual inaccuracies, as well as inconsistencies in Nevada Barr's ("Nevada") brief that should be clarified. For example, in her brief Nevada emphasizes the fact that her perjury is irrelevant, that it is deemed moot because the parties consented to irreconcilable differences divorce. However, Richard Jones ("Richard") did not consent to be prejudiced by Nevada's continued and obstinate perjury, which he was. Richard did not consent to Nevada unnecessarily, yet blatantly and willingly increasing the legal expenses incurred by Richard by Nevada's own perjury and chicanery. And while Nevada is saying marital fault and her illegal deeds are irrelevant, she is all the while disparaging and denigrating Richard, so much so, that the Chancellor punished Richard in the Court's Judgment of Divorce.

Nevada states that she "had enjoyed substantial success writing mysteries" prior to the marriage. She cites the trial transcript to support this claim. However, a careful review of the testimony reveals no mention of "substantial success." Instead Nevada's agent, Dominic Able testified "Yes." when asked if Nevada was a "well-established author." (Tr. 187). Able went on to state that specifically he was referring to one book, *Track of the Cat*, and that "it did not make the most money," but "established the right protagonist." (Tr. 187). Nevada's "substantial success" did not come until well into her marriage to Richard.

Nevada states that prior to the marriage she gave Richard \$8,000.00 to pay down some debt. (Brief of Appellee, pg. 3). However, Richard then refinanced his home he owned prior to the marriage, placing her name on the property. This property was sold in order to purchase the marital home. An estimated \$10,000.00 contribution from the equity went into purchasing a new marital home for Nevada. (Tr. 173).

Nevada includes a laundry list of items that Richard got to keep pursuant to the divorce judgment. Nevada lists that Richard receives a “full federal pension.” However, this is not accurate as Richard receives an amount reduced by 20% of “full federal pension.” (Ex. 11).

Nevada states that they first met when they both worked at the National Parks Service. (Brief of Appellee, pg. 3). However, they first met when Richard hired her for her first full-time, permanent federal job. Nevada states that “Anna Pigeon, a park ranger who solved murders, was an integral part of her life, long before Richard was,” however, Anna Pigeon’s debut in *Track of the Cat* was at the same time that she met Richard, and Richard hired her as a park ranger. (Brief of Appellee, pg. 18).

Nevada also attempts to minimize the efforts and contributions Richard made to her career after stating under oath she could not. Nevada stated under oath that she cannot “minimize the value [Richard] was.” (Tr. 74-75). She attempted to minimize his efforts and contributions towards her writing and the marriage in her testimony at trial, as well as in her brief. This was contrary to her deposition testimony where she did not qualify her answer on Richard’s contributions. (Tr. 74-75). Nevada admitted that when Richard accompanied her on book tours, he “eased the way for her.” (Ex. 2, No. 12, p. 178) She also admitted that Richard would arrange for the tickets and transportation for research trips that her publisher did not arrange. (Tr. 71-72). In her brief Nevada attempts to mislead this Court by solely citing her testimony at trial which had conveniently changed since her deposition.

Nevada states in her brief that she received \$360,000.00 for a future manuscript. In her brief she recites how she will be obligated to return that amount. (Brief of Appellee, pg. 17). Nevada states how even if she were to retain the monies it would be reduced by 15% for her agents fee as well as taxes. However, testimony at trial revealed the amount was \$375,000.00. (Tr. 187.) Further,

her agent testified that he charges 12.5%. (Tr. 183). What she does not state is that by contract, upon providing any manuscript regardless if its accepted or not she will, at most she will possibly have to return 50%. Further, she admits she has already provided two manuscripts insuring that she will retain, at minimum, 50% of the forwarded funds.

II. Perjury is Not Rendered Moot.

There was significant evidence presented at trial of Nevada's perjury, cover-up, intentions to lie, feigned confession that she was "telling the truth" and spoliation of evidence. (Ex.3-4). Nevada's perjury and chicanery were discovered after the parties consented to irreconcilable differences. Nevada makes much that since the parties agreed assertions as to what the issues were did not include her numerous attempts to mislead Richard, his counsel, and the Court, that Richard has no recourse . (Brief of Appellee, pg. 8). Nevada relies on case law concerning attorneys fees which was left out of an Agreed Order. *Wideman v. Wideman*, 90 So.2d 140 (Miss.App.2005). However, Nevada's reliance on this case in misguided in as much as attorneys fees is an issue which should have been and could have been included in the Agreed Order. Nevada's constant, blatant perjury and destruction of relevant evidence could not have reasonably been anticipated. Nevada lied in her deposition. Nevada stated that she intended to lie. Nevada was caught lying and stated she was telling the truth. Nevada continued to lie, although it was not discovered until months later. (Ex. 3- 4). Nevada, nor her counsel, ever corrected or attempted to correct her deposition testimony. Nevada destroyed her computer after a discovery request and motion to compel seeking its production. Nevada smashed it with a hammer and a cold chisel. She burned it, and drowned the charred remnants of the computer.

Nevada has blatantly disrespected the Court, the legal process and truth and veracity which should be inviolate in the Court. Nevada attempts to argue her perjury is moot because Richard did not anticipate the depths of her debauchery. Chancery court is a court of equity. Fairness shall carry the day and form does not reign over substance. Nevada may not use perjury and destruction of evidence contrary to the most basic rules of civil procedure as a sword against Richard and then use the statutory code as a shield to protect her own misdeeds.

Prior to trial, Richard presented proof of Nevada's repeated perjuries on the relevant issue of adultery and her lies about her computer and her ultimate destruction of that piece of evidence. (Tr. 2-34). Even though the Chancellor found Nevada guilty of perjury at the hearing and said she would be punished, this evidence was completely ignored by the trial judge in the final opinion, ignored with regard to sanctions and ignored as a factor in the credibility of Nevada. At trial, Richard, relying upon precedent from not only Mississippi, but all other states that have addressed the issue of intellectual property as a marital asset, contended he was entitled to a fifty percent share of all earnings during the marriage and a suitable proportion of residuals which would passively flow to Nevada in the future from books written during the marriage. Richard—who is nearing retirement age and had been unemployed for years during the marriage—asked for alimony. In what is an unprecedented award in reported decisions, the Chancellor gave Richard only 21% of the assets, no interest in residuals and no alimony.

Nevada's disdain for the Court is even evident in her brief. Nevada challenges the fact that her perjury and destruction of evidence are even crimes. (Brief of Appellee, pg. 16). She makes this argument despite her own deposition testimony stating that she knew perjury was a crime and intended to commit it such crime, as well as her admission in her brief that "Richard quotes

substantial law that authorizes [sanctions] for discovery abuses.” (Brief of Appellee, pg. 15). Perjury is a crime. *Mississippi Code Annotated* § 97-9-59. Perjury should not be tolerated by this Court, nor allowed to remain unpunished.

III. Equitable Distribution was anything but Equitable.

In determining what an equitable share of the marital assets is, one must first determine what are “marital assets” or “marital property.” *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994). In *Hemsley v. Hemsley*, 639 So.2d 915 (Miss. 1994), the Mississippi Supreme Court defined marital property as any and all property acquired or accumulated during the marriage. Furthermore, any asset owned by a spouse is presumed to be marital. *Yancy v. Yancy*, 752 So.2d 1006, 1011-1012 (Miss. 1999). Accordingly, all income received by Richard or Nevada, and all assets acquired by either of them during the course of the marriage shall be considered when determining equitable distribution.

For the purposes of calculating whether or not assets are marital or non-marital, the “course of the marriage” runs until the date of the divorce judgment, unless a separate maintenance order is entered. *McIlwain v. McIlwain*, 815 So.2d 476 (Miss. Ct. App. 2002), citing *Godwin v. Godwin*, 758 So.2d 384 (Miss. 1999).

The Chancellor, and Nevada in her brief, misapprehended Richard’s contributions to Nevada’s writing career and his contributions to the marriage. Both parties testified that Richard accompanied Nevada on most of her book tours. (Tr. 66). Nevada admitted that she asked him to go on these trips and wanted his company. (Tr. 67). Nevada also admitted that Richard responded to fan emails on her behalf, and would read books for her and let her know whether he believed she

should read the book and give a quote for the jacket. (Tr. 73). Emails evidencing Richard's involvement with Nevada's fan base were admitted into evidence. (Ex. 2, No. 14). Nevada stated under oath that she cannot "minimize the value he [Richard] was." (Tr. 74-75). Nevada admitted that when Richard accompanied her on book tours, he "eased the way for her." (Ex. 2, No. 12, p. 178) She also admitted that Richard would arrange for the tickets and transportation for research trips that her publisher did not arrange. (Tr. 71-72).

Nevada testified that during the marriage Richard cooked most of the evening meals because he was a better cook than she, and during the last eight months before Nevada left the marriage Richard cooked all of the meals. (Tr. 46-47). At trial, Nevada admitted that there had been good, wonderful things in the marriage. She specifically admitted that Richard was good to animals and children, was not unfaithful with other women, and did not curse her. (Tr. 46). Nevada admitted Richard was affectionate, that he would put his arms around her and tell her he loved her. (Tr. 49). She testified that he was a good lover, was "tremendously skilled, tremendously interested in whether his partner has a good time," traits which Nevada admitted were very important to her. (Tr. 49-50).

Richard recognized and remembered Nevada's birthday and anniversary each year. (Tr. 51). He remembered special occasions and gave her cards for each, usually more than one. He gave her gifts on Valentine's Day and would bring her flowers and chocolate. He would also bring her stuffed animals, even on non-occasions, because she liked that, and because he liked to make her happy. (Tr. 51-52).

Nevada testified that Richard nursed her when she was sick, stating that "when it came to colds and headaches or surgeries or any of those things, you could not ask for a better nurse than

Richard Jones.” (Tr. 52). Nevada testified that Richard treated her like a queen. (Tr. 52-53, Ex. 2, Subpart 12, pg. 180).

Nevada testified that in her book *Seeking Enlightenment - Hat by Hat*, she wrote, “not only did I find God in Mississippi, I also found a man.” (Tr. 59). That man was Richard.

It is apparent that Richard’s efforts contributed to the harmony of the marriage. These efforts, however, were erroneously discounted by the Chancellor. The testimony and evidence adduced at trial demonstrates more than enough to show reversible, manifest error in the Chancellor’s considerations of equitable distribution.

IV. An award of Alimony is supported by the facts and case law.

The Supreme Court has held that once the marital property has been equitably divided the chancellor shall do no more **only** “[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).

There is only one reason that the Chancellor could have had for denying Richard alimony: he’s a man. Such gender based discrimination must be removed from judicial decision making. Richard was approaching retirement age and had not worked in years, whereas, Nevada was in full bloom as a writer and was earning almost a million dollars per year.

In *Driste v. Driste*, 738 So.2d 763 (Miss. Ct. App. 1999), the Chancellor awarded the wife of an 8 year marriage (with no children born of the marriage) rehabilitative alimony of \$750 per month for 18 months, lump sum alimony of \$20,000, nearly \$5,000 in attorney fees, 1/3 of the tax refund, and a near 50/50 division of the remaining property. The Mississippi Court of Appeals reversed and remanded this decision, however, stating that the overall alimony award was

inadequate. At the time of divorce the husband was making over \$96,000 per year, and the wife was working part time, and the husband's earning capacity substantially exceeded that of the wife. The Appellate Court stated that, although "[e]ight years is not a particularly long marriage [t]he disparity of gross income, however, is large, and the chancellor made specific note of that fact."

Driste at 767. The *Driste* court specifically noted:

Applying the *Armstrong* factors for determining alimony, we are especially concerned about the great disparity in income and earning capacity of the parties, the standard of living and resulting expenses that Mrs. Driste had acquired, and the general equity owed to both parties in a divorce. *Armstrong*, 618 So.2d at 1280. Considering all these factors, the chancellor's award of \$20,000 in lump sum alimony, \$750 for 18 months in rehabilitative alimony, and no periodic alimony is grossly inadequate. Jeanne Driste's total alimony award comes to only \$33,500, paid over 22 months. During that period Mr. Driste is projected to have earned a gross income of close to \$200,000. That income will continue well past 22 months, while the contribution to Mrs. Driste ends.... We find this inadequate substitution for meaningful support of Mrs. Driste and reverse all the alimony determinations for further proceedings.

Driste at 768.

In the instant case, Nevada wrongfully ended this marriage through adultery, Richard was earning nothing at the time of the divorce and Nevada was earning an exceptional amount of money. An award of a reasonable amount of alimony to Richard would have had negligible impact on Nevada, but the failure to award it has placed Richard in financial jeopardy.

V. An Award of Attorneys Fees is Necessary

Much of the attorneys fees were incurred because of Nevada's perjury and discovery violations.

Richard should have been awarded attorney fees. An award of attorney's fees in a divorce case is generally within the discretion of the chancellor. *Holleman v. Holleman*, 527 So.2d 90 (Miss. 1988); *Carpenter v. Carpenter*, 519 So.2d 891, 895 (Miss.1988); *Devereaux v. Devereaux*, 493

So.2d 1310 (Miss.1986); *McKee v. McKee*, 418 So.2d 764, 767 (Miss.1982). In determining whether to award attorney fees the Chancellor should consider the factors outlined in *McKee v. McKee*:

The fee depends on consideration of, in addition to the relative financial ability of the parties, the skill and standing of the attorney employed, **the nature of the case and novelty and difficulty of the questions at issue, as well as the degree of responsibility involved in the management of the cause, the time and labor required**, the usual and customary charge in the community, and the preclusion of other employment by the attorney due to the acceptance of the case.

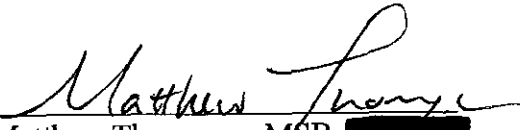

McKee v. McKee, 418 So.2d 764, 767 (Miss.1982)(emphasis added).

Richard presented his attorney fee bill and testified that he does not have the ability to pay the fees. (Ex. 6, Tr. 99). The criteria for awarding fees is clearly present. Moreover, Nevada was guilty of wrongdoing in committing perjury and destroying evidence. Nevada's illegal acts increased the attorneys fees incurred and she has yet to face any consequences due to her actions. Under such circumstances and award of fees was appropriate.

CONCLUSION

The facts of this case fairly presented and carefully scrutinized supports a reversal, remand, or render awarding Richard an equitable share of the marital property, acknowledging his contributions to the marriage, as well as an award of alimony to fulfill the obligations of equitable distribution. Most certainly were the gender roles reversed in this instance, the outcome would have been vastly different. Gender bias in the law shall not stand. Likewise, perjury shall not go unpunished. This Court should not allow a litigant to perjure herself, increasing legal expenses, and destroy relevant evidence and suffer no consequences of this most egregious, illegal action. Matters of Chancery are about equity. This ruling is not fair on its face and must be reversed, remanded or rendered.

Respectfully Submitted,
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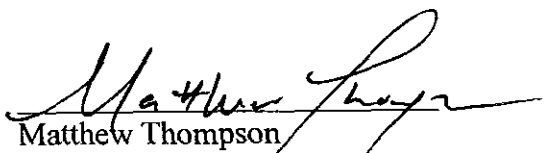
CERTIFICATE OF SERVICE

I, Matthew Thompson, one of the Attorneys for Appellant, Richard Broderick Jones, hereby certify that I have this day caused to be served by first class mail, postage prepaid a true and correct copy of the above foregoing instrument on the following persons:

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Judge Stuart Robinson
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SO CERTIFIED, this the 28th day of March, 2007.


Matthew Thompson