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 this Court may evaluate possible disqualifications or recusal.

Danny L. Holley	Appellant
Wanda S. Holley	Appellee
Mark G. Williamson	Attorney of Record for Appellant
John W. Crowell	Attorney of Record for Appellee
Kristen Wood Williams	Attorney of Record for Appellee

Respectfully submitted, this the 22nd day of June, 2007.

JOHN W. CROWELL

2006-CA-01230-COA

Brief of Appellee

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STATEMENT OF THE CASE

A. Introduction and Procedural History

Dan has never paid any alimony to Wanda during the five (5) years since the entry of the divorce decree. This is the second appeal by Dan of an award of alimony, and the facts have been stated and restated in the prior briefs which comprise the bulk of the record in this appeal. The same is largely true of Dan's brief here. Every effort will be made to succinctly state Wanda's position.

On February 15, 2002, over 5 years ago, the Lowndes County Chancery Court granted Wanda S. Holley ("Wanda") a divorce from Dan L. Holley ("Dan") on the grounds of uncondoned adultery. Record ("R.") 746, Appellee's Record Excerpts ("REW")REW 0013.[1] Wanda was awarded custody of the three minor children. R. 747, REW 0014. Dan was ordered to pay Wanda child support in the amount of $400.00 per month per child. R. 748, REW 0015. The Court also ordered Dan to pay "rehabilitative alimony" to Wanda in the amount of $2,000.00 per month for a period of sixty (60) months beginning on March 1, 2002. R. 752-53, REW 0019-0020.

Dan appealed the amount of child support and alimony; there was no appeal of property division. *Holley v. Holley*, 892 So. 2d 240 (Miss. Ct. App. 2003). On August 12, 2003, this Court affirmed as to child support but reversed and rendered as to alimony. *Holley*, 892 So. 2d at 246. In *Holley v. Holley*, 892 So. 2d 183 (Miss. 2004), the Supreme Court reversed the finding of this Court and remanded to the Chancellor for a determination of the appropriate type and amount of alimony. The Supreme Court found this Court should have remanded the case to the Chancellor "for findings of fact and application of the *Armstrong*[2] guidelines on the issue of alimony, with instructions that he

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1 For the Court's convenience, Appellee's Record Excerpts are paginated consecutively in the lower right hand corner, and are referred to as REW 0001, et seq.

2 *Armstrong v. Armstrong*, 618 So. 2d 1278 (Miss. 1993).

examine in detail Dan's financial ability or lack thereof to pay a reasonable determined amount of alimony." *Holley*, 892 So. 2d at 186. The Chancellor has now done so. R. 10-14, REW 0001-0005.

On remand, the parties and the Chancellor agreed not to reopen the evidence and to have the Chancellor reconsider the evidence presented during the original trial. In his evaluation of the issue of alimony, consistent with the Supreme Court's direction, the Chancellor made findings on the record as to each of the *Armstrong* factors. R. 11-13, REW 0002-0004. The Court ordered Dan to pay $750.00 per month to Wanda in periodic alimony, awarding Wanda a judgment against Dan for accrued alimony through July 1, 2006 in the amount of $39,750.00, R. 14, REW 0005, allowing Dan to pay $500 per month on the arrearage and directing Dan to begin monthly alimony payments on July 1, 2006, until the death of either party or until Wanda's remarriage.

B. Application of the *Armstrong* factors

In the original judgment, Judge Gore made findings on the record based upon the *Ferguson*[3] factors and divided the marital assets. R. 749-51, REW 0016-0018. Judge Burns relied on this division of assets, which was never appealed. R. 10, REW 0001. Wanda was awarded $525,523.00 in marital assets and was to assume debts of $101,780.00, leaving a net marital distribution to Wanda of $423,446.00. *Id.* The bulk of Wanda's distribution was in non liquid assets which could not be spent. *Id.* The amount of debt she was directed to assume ($101,780.00) exceeded the liquid assets she received ($91,501.00) REW 0029. Dan was awarded marital assets totaling $382,238.00 with 0 debt and therefore received a net marital distribution of $382,238.00. R. 10, REW 0001. As had Judge Gore in the original Judgment and the Supreme Court on appeal, Judge Burns on remand determined there was a deficiency as to Wanda. R. 11, REW 0002. As directed, Judge Burns

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3 *Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994)*

conducted an on-the-record analysis of the *Armstrong* factors on remand. R. 11-13, REW 0002-0004.

As to the factor regarding Income and Expenses of the Parties, Judge Burns made the following observations:

> Wanda is a certified public accountant and partner in the accounting firm of Watkins, Ward and Stafford. Her gross monthly income was $6,112.00 and net was $3,245.00 including bonuses and her second job income as an organist at her church. Wanda's monthly living expenses are $4,176.00 and the children's $4,183.00. Wanda's list of monthly expenses anticipates expenses she will incur after the divorce.
>
> Dan's gross earnings for 2001 are $136,010.69. Dan's average gross earnings were $147,788.00 for six years preceding the trial of this case. He paid $44,443.87 in mandated taxes in 2001. He claims monthly expenses are $3,365.00 which includes a $1,000.00 projected increase after the divorce and $888.00 for school, dental and automobile expenses for his children.

R. 11, REW 0002. The Court found that Dan had $3,065.00 per month to pay alimony based upon the following calculations:

> $136,000 average income
> 44,463 taxes
> $ 91,567 divided by 12 = $7,630
>
> $ 7,630 net income
> 3,365 projected expenses
> 1,200 child support
> $ 3,065

Id. The average income of $136,010.59 for 2001 was based upon Dan's AG Edwards' Earning Statement for 2001, which reflected a production bonus in the amount of $13,497.00 and a manager's bonus in the amount of $33,630.00. R. 41, REW 0007. Without bonuses, Dan's regular earnings for 2001 were $89,318. *Id.*

As to the health and earning capacity of the party's, Judge Burns noted the following:

> Both parties enjoy good health except that Dan, shortly before the trial, was treated for alcohol addiction. Both parties apparently enjoy an excellent earning capacity. Dan is a financial consultant and Wanda is a partner in a regional CPA firm.

R. 12, REW 0003. Although Dan claims his 2001 income was unrealistically high, it was actually unrealistically low because he did not work for nearly six weeks in 2001 due to time he spent in a rehabilitation facility for alcohol addiction. R. 139. As a result, the 2001 income shown in Exhibit D-3, showing of $136,010.59, was only for a 9 ½ month period. R. 41, REW 0007. The record shows that his average earnings for the past 6 years was $150,408, and for the past 3 years was $177,564. R. 1044, REW 0035. In the 14 years, prior to the divorce, Dan had never earned as little as he suggested in his 8.05 statement. R. 139. It is no surprise that the Court discounted his testimony on earning and earning capacity.

SUMMARY OF THE ARGUMENT

On appeal, much deference is given to the chancellor's findings, and an appellate court will only reverse if the chancellor's findings are manifestly wrong or clearly erroneous. There must be substantial and credible evidence in the record to support the chancellor's findings. In the case of alimony and child support, the ultimate goal in such cases being to determine whether equity has been done.

Here, the Supreme Court held the issue to be addressed was simply Dan's financial ability to pay. The Supreme Court did not question or reverse Judge Gore's original finding that Wanda was suffering a deficiency after the division of property, and that is the law of the case which cannot be questioned by Dan in this appeal. The record contains substantial and credible evidence to support

Chancery Court had before it evidence of (1) Dan's earnings for 2001, including the 6 weeks in which he did not work; (2) Dan's earning averages for the 6 years prior to the trial of the case; and (3) Dan's earnings for 2001 less any bonuses received during that year. Regardless of which figures were considered by the Chancellor, the evidence clearly shows Dan's ability to pay alimony.

The Supreme Court discussed the Chancery Court's award of rehabilitative alimony and examined the distinctions between rehabilitative and periodic alimony and variations of the two. The Court found the Chancellor erred in awarding rehabilitative alimony based on Wanda's professional and stable career as well as the fact that Wanda did not put her career on hold at any time during the marriage. On remand, the Chancellor correctly determined that periodic alimony was appropriate.

ARGUMENT

Dan identified 4 issues on appeal for this Court. Because the first 2 issues both relate to the Chancellor's determination of periodic alimony, they are considered together in this brief.

I. THE LOWER COURT DID NOT ERR IN ITS AWARD OF ALIMONY.

A. The Chancellor's findings, unless manifestly wrong, will not be disturbed on appeal.

Perhaps the most often repeated equitable principle is that a Chancellor's findings, unless manifestly wrong, will not be disturbed on appeal. That bare statement is clear, but the rationale for the rule is even more compelling, as noted by Justice Griffith, as follows:

> ...and when two or more reasonable inferences are deducible from the facts is proof, the ***inference drawn and adopted by the Chancellor will control on appeal.*** [citations omitted]. This rule has its foundation not only in the imperative operation of the constitutional ordinances mentioned; it has a further controlling reason in this: the opportunities afforded to the trial court are far better for arriving at correct conclusions and findings upon the questions of fact. Of this matter, our Supreme Court has said: "Here we have nothing but the naked record before us; there, in most cases, the parties themselves are in the presence of the court in testifying. The

> manner of testifying, and their appearance upon the witness stand, and many other things, are influential in determining the triers of fact;" or as said in another case: the decision of the Chancellor where the evidence is conflicting will not be disturbed on appeal, since he is better able to determine the truth of the matter than the appellate court.

Griffith, Miss. Chancery Practice, 2 Ed., 1950, Sec. 674 at 741-43. (***emphasis added***). These principles have been regularly reiterated by the Courts in this state, which have noted that the scope of review of a Chancellor's decision on alimony and child support issues is limited. *See e.g., McNeil v. Hester*, 753 So. 2d 1057, 1063 (Miss. 2000). Substantial deference is afforded the Chancellor's determinations so long as there is ***substantial evidence*** to support those determinations. *McEwen v. McEwen*, 631 So. 2d 821, 823 (Miss. 1994) (***emphasis added***). The Supreme Court stated the abuse of discretion standard of review as follows:

> This Court's standard of review defers much to the Chancellor's final judgment. As a reviewing court, we are not to merely substitute our own judgment for that of the chancellor's. We may reverse the Chancellor's findings only if we find that they are manifestly wrong or clearly erroneous when examining the record before us. *Sanderson v. Sanderson*, 824 So. 2d 623, 626 (Miss. 2002).

Holley, 892 So. 2d at 184.

For the foregoing reasons, the Chancellor's findings should not be disturbed on appeal unless manifestly wrong and based on a lack of substantial and credible evidence to support such findings.

B. There is substantial and credible evidence which establishes Dan's ability to pay alimony.

With these equitable principles in mind, the Supreme Court stated that "our ultimate goal in divorce is to do equity." *Holley*, 892 at 185. Specifically, the Supreme Court's holding directed the chancellor on remand to make findings of fact and application of the *Armstrong* factors "with

instructions that he ***examine in detail Danny's financial ability*** or lack thereof to pay a reasonable determined amount of alimony." *Id.* at 186 (***emphasis added***).

Dan raises three issues on appeal related to the determination of the amount of alimony:

1. Whether the Chancellor's decision to award alimony was manifest error, an abuse of discretion and was against the overwhelming weight of the evidence when considered with the equitable distribution, award of child support, other support awards and the entirety of the record;

2. Whether the Chancery Court was manifestly wrong and clearly erroneous in calculating the income of the appellant which served as the major basis for the award of alimony; and

3. Whether the Chancery Court was manifestly wrong and clearly erroneous in calculating the expenses and needs of the Appellee which served as a basis for the award of alimony.

The foregoing briefing and decisions notwithstanding, the examination here must simply focus on whether there is substantial, credible evidence in the record to support the Chancellor's findings regarding Dan's ability to pay alimony.

In his opinion, Judge Burns referred to Dan's average earnings for 2001, a year in which Dan had six weeks of no earnings due to the time he spent in a rehabilitation center, and clearly relied on these figures when calculating the amount per month from which Dan could pay alimony:

$136,000 average income
44,463 taxes
$ 91,567 divided by 12 = $7,630

$ 7,630 net income
3,365 projected expenses
1,200 child support
$ 3,065

REW 0002. Judge Burns also referred to Wanda's income and expenses in reaching his decision:

> Her gross monthly income was $6,112.00 and net was $3,245.00 including bonuses and her second job income as an organist at her church. Wanda's monthly living expenses are $4,176.00 and the children's $4,183.00.

Id. The figures related to Wanda's income and expenses were virtually uncontested at trial, and as noted above, the Supreme Court did not dispute Judge Gore's specific finding of Wanda's expenses of $8359 or that Wanda was suffering a deficiency in her need. Judge Gore specifically found that the assets could not be divided in a way to avoid the need for alimony. Dan did not appeal the division of assets. REW 0044.

In his latest brief, Dan places repeated emphasis on the unfairness of considering his income average over the five years preceding trial, arguing his income as a stock broker depends on fluctuations in the market. Thus, Dan reasons, it would be unfair to consider averages. Logically, the reverse is true. When income fluctuates, the best measure of earning capacity is a reasonable average. And here, the Chancellor had both Dan's income average for a 3 and 5 year period, as well as Dan's 2001 income. As noted, Dan admitted that in the 14 years prior to the divorce, when the market was fluctuating, Dan had never earned as little as he suggested to the Chancellor.

However, one chart is particularly telling. Cutting through all of Dan's testimony, it is only necessary to look at the year prior to the trial in order to determine Dan's ability to pay. His primary argument is that the market was down and he "probably" won't be receiving any bonuses. That doesn't matter. His 2001 earnings through November, in a year when he was out for 6 weeks, belies his contention that he is unable to pay. Disregarding his past earnings and assuming, arguendo, that Dan will not receive any bonuses, the best earnings to consider are the actual regular earnings received in the 11 months prior to the trial. Exhibit D-3 is the actual earnings statement issued by his

employer on November 27, 2001, only a few weeks prior to the trial. That statement, disregarding bonuses, showed regular earnings for 11 months of $89,319. Because Dan did not work for 6 weeks in early 2001, those regular earnings were generated in 9 ½ months. There is no reason to speculate about Dan's earnings when a trial exhibit is a definitive statement. Exhibit D-3 (REW 00007) is shown as follows:

[THIS SPACE INTENTIONALLY LEFT BLANK]

A.G. Edwards & Sons, Inc.
INVESTMENTS SINCE 1887

Earnings Statement

Period Beginning: 10/27/2001
Period Ending: 11/09/2001
Pay Date: 12/10/2001

Social Security Number: 427-17-7144
Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
State:

DANNY L HOLLEY
310 GREENBRIAR
COLOMBUS MS 39705

Earnings	rate	hours	this period	year to date
Regular			4,791.43	89,810.65
R Misc Earn			70.00	969.00
H Prod Bonus				13,497.00
M Br Mgr Bon				33,630.00
Z Loss Paybck				-1,404.14
Gross Pay			4,861.43	136,010.69

Deductions	Statutory		
	Federal Income Tax	-846.15	30,023.73
	Medicare Tax	-67.37	1,934.72
	MS State Income Tax	-180.96	5,578.22
	Social Security Tax		4,984.80
	Other		
	C Retirmnt-401K	-79.97*	10,600.00
	H Life Ins-Empl	-50.00	600.00
	L Ltd-After Tax	-60.86	730.32
	10 Life Ins-Dep	-1.20	14.40
	33 Health Care	-60.00*	720.00
	55 Life Ins-Sp	-10.00	120.00
	6 Medical Ins	-160.20*	1,922.40
	77 Accident Ins	-5.20	62.40
	Z Earning Offst		129.00
	Net Pay	[illegible]	

EXHIBIT NO. D-3
For I.D. Only
Rec'd Into Evidence

With no bonuses, this exhibit shows the following.

Regular Earnings	Actual (9 ½ months)	
2001	$89,319	
Average per month	$9,402	

For comparison purposes to show Dan's earning capacity, Dan's six year average was $12,534 per month and his three year average was $14,797 per month. Dan's ability to pay alimony is directly supported by his actual earnings record, regardless of whether the Court considers Dan's earnings for the five years prior to 2001, the three years prior to 2001 or his actual earnings for 9 ½ months in 2001, as follows:

6 Year Average	3 Year Average	2001 9 ½ Months	
12,534	14,797	$9,402	

Dan's "regular" earnings for 2001 for the 9 ½ months on Exhibit D-3, are revealing.

Dan's 2001 income was lower than the preceding five years due to the time he spent in rehabilitation. Therefore, Dan's arguments of unfairness are without merit. Assuming, arguendo, that, due to the fluctuations in the market, the amounts and existence of a bonus cannot be precisely measured, Dan's *regular* earnings without bonuses for 2001 demonstrate a clear ability to pay alimony:

	Without Alimony	**With Alimony**
Regular Earnings	$89,319.00	$89,319.00
Monthly Earnings	$9,402.00	$9,402.00
Deductions Alimony Taxable Income	 $0.00 $9,402.00	 ($750.00) $8,652.00

Tax Withholding Deductions		
Federal Tax (.221)	$2,078.00	$1,912.00
Medicare (.014)	$132.00	$121.00
Social Security (.062)	$583.00	$536.00
State Income Tax (.04)	$376.00	$346.00
Other Payroll Deductions	$347.00	$347.00
Child Support	$1,200	$1,200
Net Pay	$4,686.00	$4,190.00

Looking *only* at Dan's earnings numbers for 2001, taking into account the 9 ½ months of income shown ability to pay alimony is obvious.

Dan's net income (without any bonus) after paying the $750 award of alimony, is $4,190 per month, $625 more than he claimed he needed, R. 743, REW 0010, and $125 more than he needs after Judge Burns' direction that he pay $500 a month in arrearage. Actually, his own proof showed that he only needed $2,677.[4]

Dan's gross monthly income for 2001 was $9,402, without bonuses. That is contrasted with Wanda's gross monthly income of $6,112, R. 743, REW 0010, and she bears most of the expense for rearing the children. The hard, unspeculative information shown above is conclusive evidence of Dan's ability to pay.

In summary, the Chancery Court carefully considered Dan's ability to pay reasonable alimony as directed by the Supreme Court. The Chancery Court had before it substantial and credible evidence on which it based its findings in reaching the $750.00 per month alimony award to Wanda. For the foregoing reasons, the Chancellor did not abuse his discretion, and his findings should be affirmed.

4 His expense figure of $3,565 has been reduced by $888 because it was for expenses which Wanda is now required to pay under the terms of the decree. (Divorce Decree)

II. THE LOWER COURT DID NOT ERR IN CALCULATING WANDA'S NEEDS AND EXPENSES.

Although there is substantial evidence to support the finding of need by the Chancellor, that was not an issue before the Chancellor below and cannot be an issue before this Court. In his judgment, Judge Burns merely repeated, at REW 00002, the findings of Judge Gore, REW 00010, in the original judgment, as to Wanda's needs of $8359. That issue was raised by Dan in his first appeal and in his arguments against rehearing and in opposition to Wanda's petition for certiorari, but the finding of Wanda's need was not disturbed by the Court of Appeals or by the Supreme Court, which limited the issue on remand strictly to "...Danny's financial ability or lack thereof to pay..." REW 0028. Judge Gore's findings of Wanda's needs, undisturbed by the Supreme Court, and now reaffirmed by Judge Burns, constitute the law of the case, REW 0002, and are binding on Dan.

In any event, both the findings of Judge Gore and Judge Burns are supported by substantial evidence.

Dan's basic contention is that because he only gave Wanda $4,000 for support – of all kinds – during the 6 months prior to trial, and because she only incurred about $6,600 in debt during that time, that she made no showing of substantial need. Of course, he ignores the fact that, during that time, she simply had to defer the purchase of many items and the payment of other expenses. She made interest only payments on the house and deferred the property taxes of $3,500. R. 166. Wanda made the conscious decision to "not spend" as much as before, for example, no back to school clothes and the like. R. 202. Two children took jobs in an effort to reduce net expenditures because

Dan was providing so little support. *Id.* The Chancellor found that some of the bills were not going to be fixed until the final divorce was entered.

The reality is that Wanda's living expenses were set forth in Exhibit 13 (R. 494) as $8359, and clearly constitute substantial evidence of the living expenses of Wanda and her children. These expenses were accepted, to the penny, by Judge Gore, Judge Burns and the Supreme Court, and there is no basis now to disturb them.

III. THE LOWER COURT DID NOT ERR IN ITS AWARD OF PERIODIC ALIMONY RATHER THAN LUMP SUM ALIMONY.

On appeal, the Mississippi Supreme Court discussed Judge Gore's award of rehabilitative rather than periodic alimony, addressing the differences between the two types:

> In *Lauro v. Lauro*, 847 So. 2d 843, 849 (Miss. 2003), we described rehabilitative alimony and its purposes: "Rehabilitative alimony" is awarded to parties who have put their career on hold while taking care of the marital home. Rehabilitative alimony allows the party to get back into the working world in order to become self-sufficient. Therefore, rehabilitative alimony is not considered during equitable distribution. "Rehabilitative periodic alimony is an equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim. "Periodic alimony" is for an indefinite period vesting as it comes due and is modifiable. "Rehabilitative periodic alimony" is modifiable as well, but is for a fixed period of time vesting as it accrues.

Holley, 892 So. 2d at 186. The Court noted that, because of Wanda's professional, stable career and because she did not put her career on hold at any time during the marriage, rehabilitative alimony was not the appropriate type of alimony to be awarded. *Holley* at 186. In its discussion of types of alimony, the Court only referred to rehabilitative alimony, periodic alimony, and variations of the same, making no mention of lump sum alimony. *Id.* Based on these directives of the Court and the

examination of applicable case law, the Chancery Court determined periodic alimony to be the appropriate type of alimony award in the instant case. REW 0004.

Dan argues that if the Supreme Court intended for the Chancery Court to consider periodic alimony, it would have vacated all aspects of the chancellor's original judgment relating to financial matters. Apparently, Dan is now arguing that the Supreme Court erred by failing to remand the issue of property division to the Chancellor. Undoubtedly, the Supreme Court's decision is also the law of the case. If that was an issue for appeal, Dan could and should have raised that issue five years ago, but not now.

For this proposition, Dan relies on several cases including *Duncan v. Duncan*, 815 So. 2d 480 (Miss. Ct. App. 2002), *Mace v. Mace*, 818 So. 2d 1130 (Miss. 2002), and *Long v. Long*, 928 So. 2d 1001 (Miss. Ct. App. 2006), all of which include the consideration on appeal of all financial issues. Each involved some financial issue on appeal in addition to the issue of alimony. For example, *Duncan* involved various financial issues in addition to the basic alimony award in that the husband was ordered to pay expenses associated with the former marital residence and obligated by the support award to cover the wife's future health needs. *Duncan*, 815 So. 2d at 483. Although the Court found the Chancellor's division to be reasonable, it did conclude that on remand, the Chancellor should be permitted to revisit all of those issues. *Duncan* at 484. Of course, *Duncan*, and the other cases cited, were remanded for further consideration on appeal of that and other issues. It would be impractical and unfair, five years after the fact, and especially where Dan did not appeal the division issue before, for the Court to attempt to unwind a division of property on which both parties have been relying for five years. Moreover, Judge Gore's specific finding that the assets

could not be divided in such a way as to prevent the need for alimony was not questioned by Dan before, or disturbed on appeal.

Mace involved issues related to whether the husband's medical practice was appropriately determined to be a marital asset and whether the chancellor's valuation of the same was correct. *Mace*, 818 So. 2d at 1131-32. In *Long*, the Court also addressed whether the marital assets were properly distributed. *Long*, 928 So. 2d at 1004. As noted by the Supreme Court on appeal in the instant case, " . . . neither custody nor the distribution of marital assets are contested." *Holley* at 185. The only financial matter at issue on this appeal is alimony.

CONCLUSION

This has been a long, and expensive, process for Wanda who, according to the findings of both Chancellors, has needed additional support since 2002, and has received *none*. Dan has stubbornly refused to provide any support. Dan's contention that he cannot pay is belied by the significant legal expenses he must be incurring through this appellate process. Moreover, the dark market conditions which Dan relied on in 2002 have dissipated, as they always do, and the stock markets are surging ahead, as Dan's income has undoubtedly done. His strategy all along has been clear: self limit his income for the divorce trial to limit any support obligations, and then return to the successes of the prior years with no ongoing obligation to his former wife.

Two Chancellors have now considered the facts in this case and confirmed an award of alimony which is consistent with the opinion of the Court, and their findings should not be disturbed.

For the reasons set forth above, the Chancellor's ruling as to the *amount* and *type* of alimony awarded to Wanda should be affirmed, and, in addition to costs the Court should impose the statutory penalty of 15%, and interest, to the judgment entered by the Court below.

Respectfully submitted,

WANDA S. HOLLEY

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CERTIFICATE OF SERVICE

I, the undersigned, John W. Crowell, attorney of record for the Appellee, do hereby certify that I have this day mailed, via United States first class mail, postage prepaid, a true and correct copy of the foregoing Appellee's Brief to the following:

Hon. Kenneth M. Burns
Chancellor
Drawer 110
Okolona, MS 38860

Mark G. Williamson, Esq.
P.O. Box 1545
Starkville, MS 39760

SO CERTIFIED, this the 22nd day of June, 2007.

JOHN W. CROWELL

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DANNY L. HOLLEY	**APPELLANT**
VERSUS	**CAUSE NO. 2006-CA-10230**
WANDA S. HOLLEY	**APPELLEE**

CERTIFICATE OF MAILING

I, Marcy Hinton, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 22nd day of June, 2007, I mailed, via regular U.S. Mail, to the Mississippi Supreme Court Clerk the original and four (4) copies of the Appellee's Brief.

SO CERTIFIED, this the 22nd day of June, 2007.

Marcy M. Hinton