

IN THE SUPREME COURT OF MISSISSIPPI

DAVID C. MORRIS

APPELLANT

VERSUS

CASE NO. 2006-CA-1488

TAMMY INMAN MORRIS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Honorable Johnny L. Williams, Forrest County Chancellor  
M. Craig Robertson, Esq.  
M. Chadwick Smith, Esq.  
M. Craig Robertson, PLLC  
Renee Porter, Esq.  
Porter Law Firm  
David C. Morris

*ATTORNEYS OF RECORD FOR THE APPELLEE*

M. CRAIG ROBERTSON, ESQ. [REDACTED]  
M. CHADWICK SMITH, ESQ. [REDACTED]  
m. craig robertson, pllc  
Post Office Box 1645  
Ridgeland, Mississippi 39158  
Telephone: 601.956.7077; Facsimile: 601.983.2730  
ATTORNEYS FOR APPELLEE

## TABLE OF CONTENTS

	<u>Page</u>
Certificate of Interested Persons	ii
Table of Contents	iii
Table of Cases, Statutes and Other Authorities	iv
Statement of the Issues	1
Statement of the Case	2
Summary of the Argument	5
Argument	7
1. Whether the Chancellor committed manifest error in awarding custody of the minor children to appellee.	7
2. Whether the Chancellor committed manifest error in his property division analysis, including his application of the <i>Ferguson</i> factors.	13
3. Whether the Chancellor committed manifest error in finding appellant in contempt of Court.	18
4. Whether the Chancellor committed manifest error in setting appellant's child support amount.	20
Conclusion	22
Certificate of Service	24

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

CASES

	<u>Page</u>
<i>A&amp;L, Inc. v. Grantham</i> , 747 So. 2d 832, 939 (Miss. 1999)	13
<i>Albright v. Albright</i> , 437 So. 2d 1003, 1005 (Miss. 1983)	5,7
<i>Belding v. Belding</i> , 736 So. 2d 425, 429-30 (Miss. Ct. App. 1999)	10, 13
<i>Boutwell v. Boutwell</i> , 829 So. 2d 1216, 1220 (Miss. 2002)	13
<i>Burnham-Steptoe v. Steptoe</i> , 755 So. 2d 1225 (Miss. Ct. App. 1999)	13
<i>Caldwell v. Caldwell</i> , 579 So. 2d 543, 545 (Miss. 1991)	19
<i>Chamblee v. Chamblee</i> , 637 So. 2d 850, 860 (Miss. 1994)	7
<i>Daniels v. Daniels</i> , 950 So. 2d 1044, 1046 (Miss. Ct. App. 2007)	15,16
<i>Denson v. George</i> , 642 So. 2d 909, 919 (Miss. 1994)	7
<i>Divers v. Divers</i> , 856 So. 2d 370 (Miss. Ct. App. 2003)	9
<i>Evans v. City of Aberdeen</i> , 926 So. 2d 181, 185 (Miss. 2006)	18
<i>Ferguson v. Ferguson</i> , 637 So. 2d 921, 927 (Miss. 1994)	1,14,16
<i>Gebetsberger v. East</i> , 627 So. 2d 823, 825 (Miss. 1993)	19
<i>Hemsley v. Hemsley</i> , 639 So. 2d 909, 915 (Miss. 1994)	13,14,16
<i>Hensarling v. Hensarling</i> , 824 So. 2d 583, 590 (Miss. 2002)	15
<i>Johnson v. Johnson</i> , 650 So. 2d 1281, 1287 (Miss. 1985)	13
<i>Mallard v. State</i> , 798 So. 2d 539 (Miss. 2001)	18
<i>Matter of Estate of Hollaway</i> , 631 So. 2d 127, 132 (Miss. 1993)	19
<i>McIntosh v. Dept. of Human Services</i> , 886 So. 2d 721 (Miss. 2004)	19
<i>Moak v. Moak</i> , 631 So. 2d 196, 198 (Miss. 1994)	10, 13
<i>Owen v. Owen</i> , 928 So. 2d 156 (Miss. 2006)	16
<i>Owen v. Owen</i> , 798 So. 2d 394, 400 (Miss. 2001)	16
<i>Parsons v. Parsons</i> , 741 So. 2d 302, 307 (Miss. Ct. App. 1999)	15

<i>Peters v. Peters</i> , 906 So. 2d 64 (Miss. Ct. App. 2004)	20, 21
<i>Pucylowski v. Pucylowski</i> , 741 So. 2d 998, 1001 (Miss. Ct. App. 1999)	15
<i>Rushing v. Rushing</i> , 909 So. 2d 155, 157 (Miss. Ct. App. 2005)	7
<i>Sellers v. Sellers</i> , 638 So. 2d 481, 485 (Miss. 1994)	7
<i>Smith v. State</i> , 530 So. 2d 155, 161-62 (Miss. 1998)	18
<i>Stanford v. Stanford</i> , 734 So. 2d 359, 362 (Miss. Ct. App. 1999)	21

## **STATUTES**

	<b><u>Page</u></b>
Miss. Code Ann. § 43-19-101(4)	6

## **RULES AND OTHER AUTHORITIES**

	<b><u>Page</u></b>
U.C.C.R. 8.05	3

### STATEMENT OF THE CASE

Appellant (hereinafter "David") and Appellee (hereinafter "Tammy") were married on December 17, 1988, in Clinton, Mississippi. (*RE-12*). Two children were born of their marriage: Victoria E. Morris, age 9 at the time of trial, having been born June 26, 1996, and Courtney M. Morris, age 8 at the time of trial, having been born November 28, 1997. *Id.* David, age 45 at the time of trial, works for the Army National Guard and the Hattiesburg Police Department. *Id.* Tammy, age 39 at the time of trial, is the Business and Finance Assistant in the Institute for Disability Studies at the University of Southern Mississippi in Hattiesburg. *Id.*

Tammy filed her Complaint for Divorce on September 17, 2003, seeking equitable distribution and alimony and alleging cruelty and adultery. *Id.* She also filed a Motion for Temporary Relief within said Complaint, which resulted in a Temporary Decree wherein the parties agreed to a joint legal and physical custodial arrangement which entailed the children being with each parent on an alternating weekly basis. *Id.* However, on December 30, 2003, an Amended Temporary Decree was entered after David was activated to full-time military duty and sent to Iraq, awarding temporary custody to Tammy. (*RE-13*). David was also required to pay \$750.00 per month in child support and to maintain medical insurance for the children. *Id.*

Tammy filed a Complaint for Citation for Contempt on June 8, 2005, because David was two months delinquent in his child support obligation. *Id.* David responded simultaneously and moved the Court to alter the Decree to reduce his child support amount. *Id.* Consequently, an Amended Temporary Order was entered on the same day reducing the child support amount from \$750.00 to \$500.00 per month beginning May 1, 2005. *Id.* However, the Chancellor

delayed ruling until trial on the issue of whether or not David would be required to pay the \$250.00 difference for May, June, and July, 2005. *Id.*

The Amended Temporary Decree also ordered David to furnish financial information, as required by U.C.C.R. 8.05, to Tammy with by July 1, 2005, which would indicate all income received by him during his active duty. David did not provide the financial information and became more delinquent in the child support. Consequently, Tammy filed another Complaint for Citation for Contempt on July 19, 2005, praying for \$2,750.00 and the court-ordered financial information. *Id.* Tammy also filed a Motion for Entry and Inspection requesting entry and inspection of David's home for the purpose of obtaining appraisals of all guns and collectible coins David acquired during their marriage. *Id.* David responded with a Motion for Continuance on July 22, 2005, claiming that his military duty prevented him from participating in the trial proceedings<sup>1</sup> or completing the guns and coins appraisals. *Id.* An Order was entered on July 25, 2005 that required David to provide a financial declaration along with his 2004 Tax Return and proof of his current income, as well as the earning statements from all sums received by him while on active duty. (*RE-14*). The Order reserved the issues of contempt and attorney fees for a later hearing date to be set by the Court. *Id.* Eventually, after a continuance, the case was set for final hearing on November 15, 2005. *Id.* On November 5, 2005, the parties executed and entered their Joint Motion and Consent to Divorce on the Ground of Irreconcilable Differences, reserving designated issues to be heard by the Chancellor. *Id.* However, because the Order setting the hearing was not placed on the Court administrator's calendar, the trial was again postponed. *Id.*

On June 5, 2006, an Order was filed and backdated *nunc pro tunc* to November 10, 2005, setting the case for trial on February 8-9, 2006. *Id.* According to this Order, David's

---

<sup>1</sup> This matter was originally set for trial on July 28, 2005.

contempt issues were to be heard at trial and the Court would make a final determination as to what unpaid child support David owed Tammy. *Id.* Finally, David was ordered to increase his child support obligation to \$1,110.00 per month, beginning November, 2005. *Id.* David was also ordered for the third time to provide Tammy the financial information necessary to prepare for trial, which he finally submitted only days before trial. *Id.*

The trial was held on February 8-9, 2006, with the Court's Findings of Fact and Conclusions of Law filed on May 31, 2006. (*RE-5*). The Final Judgment of Divorce was entered on June 12, 2006 and David's Motion for Reconsideration and to Set Aside Judgment was denied by Order on August 16, 2006. This appeal ensued. (*RE-6,7*).

## SUMMARY OF THE ARGUMENT

Tammy was awarded physical custody of the children, in part, because David's active military status subjects him to deployment at any time to any place, as he testified at trial. She was also awarded custody because she is an able and willing mother who has constantly strived to better herself and her life for the sake of her children. If David was awarded custody with an active military status, his mother (hereinafter "B. J.") would take custody of the children if deployment occurred. B. J. has a lawsuit pending against David and Tammy<sup>2</sup>. It would be a travesty to allow a situation in which an adverse party could have custody of these children while the caring and loving mother lived powerless in the same town.

David argues that the *Albright* factors were incorrectly applied to the custody issue. He contends that he was penalized by the trial court due to his active military status. This is a self serving interpretation of the lower court's holding on the issue. David should, at the very least, want his children with their mother if he was deployed. It is clear that the court was considering the best interests of the children on this issue. Consequently, the Chancellor's holding is without error and must be affirmed.

The property at issue in this matter was equitably distributed. David argues that B. J.'s house, retitled in his name after his mother declared bankruptcy in 1998, was erroneously tagged by the Chancellor as marital property. However, this property was obtained during the marriage, and Tammy and David paid the mortgage on the home. The house is therefore marital property, as a matter of law, and the Chancellor's holding on this issue must be affirmed. Additionally,

---

<sup>2</sup> B. J. sued her son, David, and Tammy for \$35,000, an amount she allegedly "loaned" the couple. The lawsuit is pending in Forrest County.



David contends that the Chancellor erred when the "monetary assets" of the marriage were distributed. According to David, Tammy received a much larger amount of the monetary assets than he did. To the contrary, a quick review of the financial statements submitted in this matter reveals that David, in fact, received most of the monetary assets. Simple math confirms that the Chancellor did not err in Tammy's favor on this issue. Consequently, the lower court's holding on this issue must be affirmed.

David next argues that the Chancellor's finding that he was in contempt of court was error because there was no specific order referred to by the Court in its holding, and because the contempt issue was not addressed until trial. The record is replete with Court Orders requiring David to pay delinquent child support and stating that the contempt issue would be addressed at trial.

Finally, David argues that the Chancellor did not make a "written finding" pursuant to Miss. Code § 43-19-101(4) when David's child support obligation was set. This contention is David's sole reason that the Court's child support holding should be reversed as error. To the contrary, the Chancellor stated in the Findings of Fact and Law that the statutory guidelines and the needs of the children were considered in setting the amount for David to pay in child support, which ironically was **lower** than the statute suggests. This is a frivolous argument, and the Chancellor's holding on this issue must be affirmed.

## ARGUMENT

### **A. STANDARD OF REVIEW**

The scope of review in domestic cases is limited. *Rushing v. Rushing*, 909 So. 2d 155, 157 (Miss. Ct. App. 2005). It is for the chancellor to determine the credibility and weight of the evidence. *Chamblee v. Chamblee*, 637 So. 2d 850, 860 (Miss. 1994). A chancellor's ruling on findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. *Denson v. George*, 642 So. 2d 909, 913 (Miss. 1994).

### **B. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN AWARDING CUSTODY OF THE MINOR CHILDREN TO APPELLEE.**

The polestar consideration in a child custody case is the best interest and welfare of the child. *Sellers v. Sellers*, 638 So. 2d 481, 485 (Miss. 1994); *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983). The Supreme Court has identified ten factors that are to be considered in custody decisions. *Albright*, 437 So. 2d at 1005. The factors to be considered are:

- (1) age, health, and sex of the child;
- (2) a determination of the parent that has had the continuity of care prior to the separation;
- (3) which has the best parenting skills and which has the willingness and capacity to provide primary child care;
- (4) the employment of the parent and responsibilities of that employment;
- (5) physical and mental health and age of the parents;
- (6) emotional ties of parent and child;
- (7) moral fitness of parents;

- (8) the home, school and community record of the child;
- (9) the preference of the child at the age sufficient to express a preference by law;
- (10) stability of home environment and employment of each parent, and other factors relevant to the parent-child relationship.

*Id.* Of the ten *Albright* factors considered by the trial court, David takes issue with the three discussed below.

**1. The Best Parenting Skills and Willingness and Capacity to provide primary child care factor.**

The Chancellor held that this factor favored Tammy, in part, because David's active military status subjected him to deployment to any location at any time. (*RE-27*) The gist of David's argument on this factor is that the trial court penalized him for his military employment and erred when it determined Tammy was the favored parent due to his active military status. *David's Brief*, p. 12.

Regarding his military employment, David argues that he "worked in Camp Shelby in basically a day job." *Id.* He states further that "the military would work with him and make sure he could care for his children. *Id.* at 13. It remains undisputed, however, that David is subject to deployment due to his military status. David testified at trial that he is on call 24 hours per day 7 days a week at Camp Shelby. (*Appellee's ORE-1;2*) He also conceded that he could be deployed to any destination at any time. *Id.* at 3. Moreover, David has been deployed three times since his children were born. *Id.* at 3,4.

Logic would dictate that given the current volatile foreign relations the United States has with many countries abroad, the chance that David could be deployed again is good. If such a deployment occurs, David's plan is to leave the children with his mother while Tammy's

involvement is limited to visitation only. *Id.* at 5. David's mother, however, has questionable capacity at best. She is currently living with either David or her boyfriend although she is still married to David's father. *Id.* at 6,7. Leaving these small girls with David's mother is far from ideal should the situation present itself. Additionally, the mere fact that David may need assistance from others in caring for his daughters renders Tammy as the favorable parent to take custody.

Finally, the lower court did not punish David for his military status as he contends. To the contrary, his active military status must be considered by the trial court according to *Albright* as it is a vital part of his employment and aids in determining his capacity to care for his children. In support of his argument on this issue, David discusses the *Divers* holding. This case is distinguishable. In *Divers*, the Court of Appeals addressed whether or not the lower court erred in analyzing the *Albright* factors in awarding custody of the child to the mother. *Divers v. Divers*, 856 So. 2d 370 (Miss. Ct. App. 2003). The father was in the military and stationed at Edwards Air Force Base. *Id.* at 374. In its analysis of the "employment" factor under *Albright*, the trial court favored the mother because "daycare would be provided where [the mother] works and that no testimony was presented that daycare would be provided at Edwards Air Force Base." *Id.* at 374-75. The Court of Appeals disagreed. In reversing and rendering the trial court's decision, the Court opined that the record included testimony that the Air Force base did, in fact, have daycare. *Id.* at 375. In support of its conclusion, the Court noted - as David quotes - that the military is well-known for providing appropriate facilities for servicemen. *Id.* This comment was made in the context of daycare facilities and is therefore inapplicable to the case at bar. Additionally, the Court of Appeals noted in its findings that the husband worked at the base

in “a regular office job which is not a deployment position.”<sup>3</sup> *Id.* In contrast, David holds a deployment position with the military. Also, daycare facilities at Camp Shelby are not at issue in this case. *Divers* therefore is not on point and the distinction is made.

The Chancellor correctly considered David’s military status and responsibilities of his employment in determining that Tammy has a greater capacity to care for their children. *See also Belding v. Belding*, 736 So.2d 425, 429-30 (Miss. Ct. App. 1999)(no error in awarding custody to mother where father’s military duty consisted of deployments); *Moak v. Moak*, 631 So.2d 196, 198 (Miss. 1994)(chancellor justified in awarding custody based in part on one parent’s work schedule). Consequently, the Chancellor did not err and the decision awarding Tammy custody should be affirmed.

## **2. The Employment of the Parent and the Responsibilities of employment factor<sup>4</sup>**

David argues this factor should have favored him due to Tammy’s unstable work history. *David’s Brief*, p. 13. Tammy testified, however, that any change in jobs she made was to further career advancement in order to make more money to provide for her family. In fact, many of Tammy’s job changes occurred through no fault of her own. (*Appellee’s ORE- 8*) For example, the job she left at Forrest General Hospital in Hattiesburg was because of the financial effects the hospital suffered due to Hurricane Katrina, and because everyone above her was about her age and happy so no advancement opportunities existed. *Id at 9*.

Tammy has a Masters degree, which she acquired while raising two children. *Id. at 10*. This is a commendable feat in and of itself, and brings with it increased earning potential.

---

<sup>3</sup> In this comment the Court of Appeals seems to indicate that if the father in *Divers* did hold a deployment position it would not have reversed the trial court on the custody issue.

<sup>4</sup> For the sake of brevity, Tammy reasserts and incorporates here her argument set forth in section B.1. above.

Consequently, Tammy should not be confused with someone who is neither dedicated nor motivated, as David would have this Court believe. To be sure, Tammy is motivated. For example, when David was deployed to Bosnia, she worked a full-time job, had a child less than two years old in diapers, went to college at night after work, managed the household, and was pregnant with her last child. *Id. at 4.*

Tammy currently works in a stable position with the University of Southern Mississippi that entails normal work hours. *Id. at 9,12.* Her position is a great job with great benefits. Additionally, her current supervisor allows her a flexible work schedule so that she may adequately care for her children. *Id. at 13-14.* In contrast, David is on call around the clock with his job, which could pose major problems if he had custody of the children.

Again, the Chancellor correctly weighed the employment of each parent and did not err in holding that the children's best interests were served in awarding Tammy with custody. Consequently, this holding must be affirmed.

### **3. The Moral Fitness of the Parents Factor.**

David admitted that he had an adulterous relationship during his marriage to Tammy. *Id. at 11.* Tammy also suspected that David was having yet another affair with one of his female friends at the Hattiesburg Police Department at the end of their marriage. *Id. at 15-18.* Tammy wanted David to participate with her in marriage counseling, but he refused. Tammy admits that she started dating another man six months after she and David separated and she moved out of the marital residence. Based on these facts, the Chancellor held that this *Albright* factor favored neither party.

David, however, asserts that Tammy left him while he was at work and that "any indiscretion by David happened years ago and was forgiven as per Tammy's testimony." *David's*

*Brief*, p. 13. It will pain David to know, however, that indiscretions are not governed by a statute of limitations.

Tammy moved out of the home and separated from David in August, 2003. (*Appellee's ORE-15,19*). It was not until six months later, in February, 2004, that Tammy started seeing another man. *Id.* It is true that Tammy is a forgiving person with a big heart, but she forgave David for his earlier indiscretion because it was in the best interests of the children. As stated, David was having an affair at the time of the separation. Conversely, Tammy was completely loyal to David until many months after the couple separated.

In concluding his custody argument, David attempts to paint a picture of instability by arguing that Tammy has moved four times in the pendency of the divorce and had just started new employment at the time of trial. *David's Brief*, p. 14. Tammy has moved on occasion for two main reasons: 1) to put the children in the best school district possible, and 2) due to Hurricane Katrina. (*Appellee's ORE-19,20*). This Court will surely agree that a single working mother with two small children who has suddenly been involuntarily ousted from her home will incur difficulty reestablishing herself when it has been years since she was on her own. The facts that Tammy strived for better employment and better living arrangements for her family after the separation exemplifies effort, not instability.

Finally, David requests this Court to "adopt a specific rule here that military service will not be held against a parent and not be considered in the award of custody." *David's Brief*, p. 15. In support of this request, David can only cite two Louisiana cases. *Id.* at 14. If this request was granted and such a rule was adopted, the decision would turn upside down years of well-settled law and abolish the polestar consideration in the *Albright* analysis. As mentioned earlier, David is not being penalized for his military service, but it must be considered nonetheless in a proper

analysis of the *Albright* factors. *Belding v. Belding*, 736 So. 2d 425, 429-30 (Miss. Ct. App. 1999); *Moak v. Moak*, 631 So. 2d 196, 198 (Miss. 1994). Consequently, the Chancellor was not in error and the decision awarding Tammy custody should be affirmed.

**C. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN HIS PROPERTY DIVISION ANALYSIS, INCLUDING HIS APPLICATION OF THE *FERGUSON* FACTORS.**

David argues that the Chancellor did not properly consider the *Ferguson* factors in determining marital property division, and that he did not get credit for properties solely titled in his name. *David's Brief*, p. 15.

In dividing a divorcing couple's assets and liabilities, a chancellor must first determine which assets are marital and which assets are non-marital. *Johnson v. Johnson*, 650 So. 2d 1281, 1287 (Miss. 1985). Marital property is any and all property acquired during the marriage. *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss. 1994). Marital assets are subject to equitable distribution by the chancellor. *Id.* The chancellor may divide the marital assets as equity requires. *Burnham-Steptoe v. Steptoe*, 755 So. 2d 1225 (Miss. Ct. App. 1999).

The Mississippi Supreme Court has stated that non-marital assets, such as inheritances or property brought into a marriage, may be converted into marital assets if they are commingled with marital property or utilized for domestic purposes. *Boutwell v. Boutwell*, 829 So. 2d 1216, 1220 (Miss. 2002). Assets accumulated during the marriage are subject to equitable distribution, unless it can be shown that the assets are attributable to the separate estate prior to the marriage or outside the marriage. *Hemsley*, 639 So. 2d 909, 914 (Miss. 1994). The burden of proof is on the person claiming the assets to be non-marital to demonstrate their non-marital character. *A&L, Inc. v. Grantham*, 747 So. 2d 832, 839 (Miss. 1999).



Once the Chancellor has identified the marital and non-marital assets, he or she must divide the marital assets equitably by applying factors set forth by the Mississippi Supreme Court in *Ferguson v. Ferguson*, 637 So. 2d 921, 928 (Miss.1994). These factors include: (1) economic and domestic contributions by each party to the marriage, (2) expenditures and disposal of the marital assets by each party, (3) the market value and emotional value of the marital assets, (4) the value of the non-marital property, (5) tax, economic, contractual, and legal consequences of the distribution, (6) elimination of alimony and other future frictional contact between the parties, (7) the income and earning capacity of each party, and (8) any other relevant factor that should be considered in making an equitable distribution. *Id.* The Court presumes that the efforts of each make the contributions of the other possible. The contributions are to be considered equal. *Hemsley*, 639 So. 2d at 915.

#### **1. The Real Property Division.**

Tammy and David had an interest in three parcels of real estate<sup>5</sup>. David asserts in his brief that only one parcel was jointly titled to Tammy and David. *David's Brief*, p. 15. However, all of these parcels were purchased as investments by Tammy and David during the marriage and paid for from a joint bank account which both parties' contributed to. (*Appellee's ORE-21,22*) Both of these parcels are undeniably marital property subject to division.

The third parcel at issue is B.J.'s home which is located at 1646 Old Hwy 49 in Hattiesburg, Mississippi. This property was formerly owned by B.J., but was titled solely in David's name when she filed for bankruptcy in 1998. (*RE-17*). David argues that the Chancellor incorrectly labeled this parcel as marital property because it was titled solely in his name and

---

<sup>5</sup> David purchased the home at 213 Sunset Drive in Petal, Mississippi after the separation. This home is non-marital property having been purchased after the entry of the Temporary Order in this matter.

*Id.* Unlike the *Daniels* chancellor, who considered **none** of the *Ferguson* factors, the trial court in this case considered all of the applicable *Ferguson* factors. These factors included contributions made by each party, the market value of the assets, and the parties' earning capacity. *Daniels*, therefore, is clearly distinguishable.

David also argues that the trial court erred when it did not consider that he was the primary financial contributor in the marriage. *David's Brief*, p. 16. To the contrary, as the quote above indicates, financial contributions and incomes by both parties were considered. In support of his argument, he quotes *Owen v. Owen*, 928 So.2d 156 (Miss. 2006). David's specific quote from *Owen* reads "as a matter of fact that Kenneth . . . [had] been the primary financial contributor to the assets of the marriage and that he should receive a greater percentage of any distribution of the marital assets." *Id.* David misinterprets *Owen*, however. In fact, this quote was not that of the Supreme Court, but instead were the words of the *Owen* chancellor, and were the exact words that caused the chancellor to be reversed and the case remanded **twice**, as this decision is *Owen II*. The Supreme Court in *Owen II* remanded the case again because "on [the first] remand the chancellor still focused primarily on Kenneth's financial contribution in dividing the marital property with Kenneth receiving 60% of the marital property and Margaret receiving 40% . . ." *Id.* As stated in *Owens I*, "[t]his Court has consistently followed the approach set out in *Hemsley* and *Ferguson*, instructing chancellors to 'assume' that one spouse's domestic contributions 'are equally as valuable as the contributions' of the wage earning spouse." 798 So.2d 394, 400 (Miss. 2001)(citations omitted). As such, David's contention that

*Gebetsberger v. East*, 627 So. 2d 823,825 (Miss. 1993); *Caldwell v. Caldwell*, 579 So. 2d 543, 545 (Miss. 1991). Whether a party is in contempt for unpaid child support is left to the chancellor's substantial discretion, and the decision should be affirmed unless manifest error is present and apparent. *McIntosh v. Dept. of Human Services*, 886 So. 2d 721 (Miss. 2004).

Tammy filed a Complaint for Citation for Contempt on June 8, 2005, because David was two months delinquent in his child support obligation. (*RE-13*). In response, David moved the Court to alter the Decree to reduce his child support amount. *Id.* The Chancellor obliged and reduced the amount, via Amended Temporary Order, from \$750.00 to \$500.00 per month beginning May 1, 2005. However, the Chancellor delayed ruling until trial on the issue of whether or not David would be required to pay the \$250.00 difference for May, June, and July, 2005. *Id.*

Tammy filed another contempt complaint on July 19, 2005, praying for \$2,750.00 in delinquent child support. David responded with a Motion for Continuance on July 22, 2005, claiming that his military duty prevented him from participating in the trial proceedings<sup>8</sup>. *Id. at 14.* An Order was entered on July 25, 2005 granting the continuance and reserving the contempt issue for a later hearing date to be determined. Eventually, after a continuance, the case was set for final hearing on November 15, 2005. Finally, on June 5, 2006, an Order was filed and backdated *nunc pro tunc* to November 10, 2005, setting this cause for trial on February 8-9, 2006. According to this Order, David's contempt issue was to be heard at trial and his child support obligation was increased to \$1,110.00 per month, beginning November, 2005. *Id.*

At trial, Tammy offered testimony regarding the delinquent child support payments. (*Appellee's ORE-23-25*) Additionally, a ledger of the support collections was entered into

---

<sup>8</sup> This matter was originally set for trial on July 28, 2005.

IN THE SUPREME COURT OF MISSISSIPPI

DAVID C. MORRIS

APPELLANT

VERSUS


CASE NO. 2006-CA-1488

TAMMY INMAN MORRIS

APPELLEE

CERTIFICATE OF SERVICE

This is to certify that I, M. Chadwick Smith, on the 16<sup>th</sup> day of October, 2007, furnished a true and correct copy of the above and foregoing, Brief of Appellee, Tammy Inman Morris, to the Supreme Court Clerk, via hand delivery, and have furnished a true and correct copy of the above and foregoing Brief of Appellee, Tammy Inman Morris, to Renee McBride Porter, Post Office Box 982, Columbia, Mississippi 39429, via United States Mail.

  
M. CRAIG ROBERTSON, ESQ. (REDACTED)  
M. CHADWICK SMITH, ESQ. (REDACTED)  
m. c r a i g r o b e r t s o n p l l c  
Post Office Box 1645  
Ridgeland, Mississippi 39158  
Telephone: 601.956.7077; Facsimile: 601.983.2730  
ATTORNEYS FOR APPELLEE

**IN THE SUPREME COURT OF MISSISSIPPI**

**DAVID C. MORRIS**

**APPELLANT**

**VERSUS**




**CASE NO. 2006-CA-1488**

**TAMMY INMAN MORRIS**

**APPELLEE**

**CERTIFICATE OF SERVICE**

This is to certify that I, M. Chadwick Smith, on the 16<sup>th</sup> day of October, 2007, furnished a true and correct copy of the above and foregoing, Brief of Appellee, Tammy Inman Morris, to the Honorable Johnny L. Williams, Forrest County Chancellor, Post Office Box 1164, Hattiesburg, Mississippi 39403-1664, via United States Mail.

  
\_\_\_\_\_  
M. CRAIG ROBERTSON, ESQ.   
M. CHADWICK SMITH, ESQ.   
m. c r a i g r o b e r t s o n p l l c  
Post Office Box 1645  
Ridgeland, Mississippi 39158  
Telephone: 601.956.7077; Facsimile: 601.983.2730  
ATTORNEYS FOR APPELLEE