


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.

1. Douglas G. Cosentino, Appellant.
2. Joseph R. Meadows, Esq., P.O. Box 1076, Gulfport, Mississippi 39502, attorney for Appellant.
3. Phyllis L. Cosentino, Appellee.
4. Earl L. Denham, Esq., P.O. Box 580, Ocean Springs, MS 39566-0580, attorney for Appellee.
5. Honorable Jaye Bradley, Chancery Court Judge, P.O. Box 998, Pascagoula, MS 39568-0998.

RESPECTFULLY SUBMITTED, this the 18th day of June, 2007.



JOSEPH R. MEADOWS
BAR NUMBER 2826

JOSEPH R. MEADOWS, ESQ.
MEADOWS RILEY LAW FIRM
P.O. BOX 1076 OR 550
GULFPORT, MS 39502
Phone: (228)864-4511
Fax: (228)868-2178
Email: jmeadows@datasync.com

TABLE OF CONTENTS

| | |
|--|-----|
| Certificate of Interested Persons | i |
| Table of Contents | ii |
| Table of Citations | iii |
| Statement Regarding Oral Argument | iv |
| Statement of Issues | 1 |
| Statement of the Case | 2 |
| Background | 4 |
| The Appeal - <u>Cosentino I</u> | 6 |
| Statement of the Facts | 6 |
| The Current Appeal - <u>Cosentino II</u> | 14 |
| Summary of the Argument | 15 |
| The Argument | 17 |
| Conclusion | 23 |
| Certificate of Service | 25 |

TABLE OF CITATIONS

| | |
|---|---------------------------------|
| <u>Armstrong</u> , 618 So.2d 1278 (Miss. 1993) | 1,6,14,17 |
| <u>Bell v. Parker</u> , 563 So. 2d 594,596-97 (Miss.1990) | 17 |
| <u>Carpenter v. Carpenter</u> , 519 So. 2d 475 (Miss.1981) | 21 |
| <u>Carrow v. Carrow</u> , 642 So. 2d 904 | 17 |
| <u>Cosentino v. Cosentino</u> , 912 So. 2d 1130 (Miss.Ct.App.2005) . . | 3,6 |
| <u>Davis v. Davis</u> , 832 So. 2d 492 | 21,22 |
| <u>Ferguson v. Ferguson</u> , 639 So. 2d 921,929 (Miss.1994) | 1,2,3,6,14,15,17,18,19,22,23,24 |
| <u>Johnson v. Johnson</u> , 650 So. 2d 1281,1287 (Miss.1994) | 2,18 |
| <u>Owen v. Owen</u> , 2006 So. 2d (2005-CA-00866-COA) | 17,18 |
| <u>Pratt v. Pratt</u> , 623 So. 2d 258 (Miss. 1993) | 21 |
| <u>Raynor v. Raynor</u> , 373 So. 2d 475 (Miss.1981) | 21 |
| <u>Sandlin v. Sandlin</u> , 699 So. 2d 1198,1203 (Miss.1997) | 17 |
| <u>Mississippi Divorce, Alimony, and Child Custody</u> , Fifth Edition, Section 11.1, Ep 262 | 21 |

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not believe that oral argument is necessary.

STATEMENT OF ISSUES

The issue presented to the Court on this Appeal is as follows:

The Trial Court erred in its ruling on the Court of Appeals Mandate for an appropriate analysis of Ferguson factors (6) and (7), and if justified, the Armstrong factors, in awarding periodic alimony to Appellee in the amount of Seven Thousand Dollars (\$7,000) per month, or in any sum whatsoever.

STATEMENT OF THE CASE

This cause was first heard on a Consent to Adjudicate before the Chancery Court of Jackson County, (the "Trial Court") on March 11, 2003, with a reconvened hearing on June 19, 2003. At this hearing, the only issue presented to the Court was whether or not there should be an award of periodic alimony, if any.

The Trial Court issued its Findings of Fact and Conclusions of Law on August 18, 2003. In its opinion, the Trial Court only addressed the Armstrong factors and awarded Appellee periodic alimony in the amount of \$7,000 per month, Cosentino I.

Being aggrieved by the Court's ruling, an Appeal was taken by Appellant ("Doug") assigning as error the Trial Court's award of periodic alimony to Appellee ("Phyllis") in the amount of Seven Thousand Dollars (\$7,000) per month, or in any sum whatsoever.

Doug contended the Trial Court failed to follow the teachings of Ferguson v. Ferguson, 639 So. 2d 921,929 (Miss.1994), which held, among other things, that "If after the equitable distribution of the marital property, both parties had been adequately provided for, then an award of alimony is not appropriate." Citing Johnson v. Johnson, 650 So. 2d 1281,1287 (Miss.1994).

On December 18, 2005, the Court of Appeals remanded the case to the Trial Court and in so doing, held the following:

"In the present case, Ferguson factors (6) and (7) are relevant, and therefore should have been addressed by the Chancellor. While a full and appropriate analysis may well have indicated a need for alimony, no such full and appropriate analysis was conducted. Accordingly, we reverse the award of alimony and remand for an appropriate analysis of the Ferguson factors, and if justified, an analysis of the Armstrong factors by the Chancellor." Cosentino v. Cosentino, 912 So. 2d 1130 (Miss.Ct.App.2005) (R-9)

On February 6, 2006, the Trial Court entered its "Ruling After Remand for Further Findings". (R-16)

The Trial Court ruled, among other things, the following:

"Out of an abundance of caution, the Trial Court will address each of the Ferguson factors. Ferguson sets out eight factors for the Trial Court's consideration and matters of equitable distribution."

The Trial Court then proceeded to address each of the Ferguson factors, and after so doing ruled as follows: (R-23)

"After addressing each of the Ferguson factors in this supplemental ruling, this Court's analysis of the Armstrong factors set out in its original Findings of Fact and Conclusions of Law remain the same. After considering and weighing each of the Ferguson and Armstrong factors, together with the testimony of evidence presented at trial, the Court finds there is a justifiable basis for the alimony award and exercises its discretion in finding \$7,000 per month to be appropriate."

Being aggrieved of this ruling, Doug has perfected his Appeal to this Court.

BACKGROUND

Phyllis and Doug filed their Joint Petition to dissolve their marriage on the grounds of Irreconcilable Differences.

They had agreed on the division of all marital assets. Phyllis would receive 50.5% or \$2,615,815, and Doug would receive 49.5% or \$2,560,390. The parties executed a Consent to Adjudicate, with the sole issue presented to the Trial Court as follows:

"All questions concerning alimony to Plaintiff (wife)"

The parties graduated from undergraduate school and were married on July 2, 1970. Obviously, this is a long term marriage.

Two children were born to the union of the marriage, both of whom are adults and not the subject of this litigation.

Phyllis worked outside the home for the first six (6) years of the marriage, while Doug pursued his medical degree and subsequent residency in Radiology. Phyllis worked as a housewife since that time.

At the time of the trial, Phyllis was 55 years of age and Doug was 54 years of age. Both are in good health.

Phyllis' Financial Declaration indicated she had no income and needed \$3,415.81 per month to meet her financial needs.

Shortly, this would be reduced to \$3,093.14.

Doug works in his practice of Radiology. His Financial Declaration indicated his monthly income is \$29,890 pre-taxes; (excluding Mississippi taxes) his take home is \$15,200; less his expenses of \$5,015, he has \$10,185 per month; less \$7,000 in periodic alimony payments.

Doug also receives an annual bonus. In 2002 it was \$200,000 due to his extra work after the loss of doctors in the practice. In 2000 it was \$85,000, and in 2001, it was \$85,000. So, his average bonus is more like \$85,000.

Essentially, the parties are debt free.

At the conclusion of the trial, the Trial Court awarded Phyllis the sum of \$7,000 per month in permanent periodic alimony.

In Doug's opinion, the division of the marital assets was not only fair, but would more than meet the financial needs of Phyllis. Therefore, no alimony was appropriate, much less an award of \$7,000 per month, which was at least \$3,600 per month **above** her then stated financial needs.

Being aggrieved with the Trial Court's award of permanent periodic alimony to Phyllis, Doug perfected his appeal.

THE APPEAL

The Court of Appeals reversed and remanded the case to the Trial Court "for an appropriate analysis Ferguson factors (6) and (7), and if justified, an analysis of the Armstrong factors..." Cosentino v. Cosentino, supra.

Thereafter, the Trial Court entered its "Ruling After Remand for Further Findings." In so doing, the Court addressed each of the Ferguson factors and found there was a justifiable basis for an award of alimony, and exercised its discretion in finding that \$7,000 per month to be appropriate, the same amount as was granted in the Trial Court's original ruling in Cosentino I.

Being aggrieved of the Court's decision, Doug has perfected his appeal of the Trial Court's "Ruling After Remand for Further Findings."

STATEMENT OF THE FACTS

In considering whether or not the Trial Court properly analyzed Ferguson factors (6) and (7), it is necessary to again review all of the relevant facts in this case.

The following is a Statement of Facts relevant to the issue presented for review, with appropriate references to the record.

Phyllis and Doug filed their Joint Petition to dissolve their marriage in the Trial Court on October 18, 2001.

Thereafter, on March 11, 2003, Phyllis and Doug filed their Consent to Adjudicate, stating that all issues had been satisfactory resolved, save one, that being the issue of Phyllis' claim for an award of permanent periodic alimony. (R-4-7)

Thus, the sole issue presented to the Trial Court for its consideration in Cosentino I, was the following:

"All questions concerning alimony to Plaintiff (Wife)."
(Exhibit A) (R-4-7)

On March 11, 2003, the case was before the Trial Court to hear and decide the referenced issue regarding alimony. Due to the Court Reporter's illness, the hearing was recessed and resumed on June 19, 2003. (R-43-44)

The following facts and evidence were presented to the Trial Court for its consideration.

PARTIES:

Appellee, the wife ("Phyllis")

Appellant, the husband ("Doug")

AGE:

Phyllis - 55 (R-64)

Doug - 54 (R-122)

STATE OF HEALTH:

Phyllis - Good (R-97)

Doug - Good (R-122)

DATE OF MARRIAGE:

July 2, 1970 (R-8)

PLACE OF MARRIAGE:

Jefferson Parish, Louisiana (R-8)

EDUCATION OF PARTIES PRIOR TO MARRIAGE:

Phyllis - Undergraduate Degree

Doug - Undergraduate Degree (R-8)

EDUCATION OF PARTIES AFTER THE MARRIAGE:

Phyllis - None

Doug - MD and Residency in Radiology (R-16-17)

PAYMENT FOR EDUCATION:

The parents of the parties paid for their undergraduate degrees. (R-8)

With regard to Doug's medical school and residency, the source of their income was as follows:

- (1) Doug's parents paid for one year of medical school;
- (2) Doug's part-time salary;
- (3) Phyllis' full-time employment; and
- (4) A student loan paid for the rest. (R-11-12)

CHILDREN OF THE MARRIAGE:

At the time of the hearing, the parties' first born, Gina, was 26 years of age. Gina had received a Degree in Physics at Millsaps College and was then taking courses in Biology in preparation of taking the MCAT to get into medical school. (R-14)

Bobby, the second born child, was 23 years of age. He received his Degree in Geology and had been employed for approximately one month. (R-16-17)

WORK HISTORY UNTIL DOUG COMPLETED HIS RESIDENCY IN RADIOLOGY:

The parties were married after they received their respective undergraduate degrees. Phyllis worked as a Medical Technologist during Doug's time in medical school. Doug worked part-time during the medical school year and during the summer break. After Doug graduated from medical school, he began his residency in Radiology. They moved to Memphis where Phyllis continued to work for two years until the birth of their first child. (R-15)

Phyllis claimed she was the primary support for the family during medical school. However, during the summer, Doug worked in the urinalysis lab and he worked for another physician distributing methadone to re-hab drug users. (R-11) When they moved to Memphis to begin Doug's residency in Radiology, Phyllis testified that Doug worked overnight and weekends as E-R physician in emergency rooms throughout Arkansas, Mississippi and Tennessee. (R-10-13)

After the birth of the parties' first child, approximately six years into the marriage, it was agreed that Phyllis would stay at home and take care of the child. (R-18) (R-127)

In June 1978, Doug and Phyllis moved to Ocean Springs, Mississippi, where Doug began his practice in Radiology. (R-16)

CURRENT WORK HISTORY:

PHYLLIS

Since the birth of the parties' first child, approximately 26 years ago, Phyllis has not worked outside the home. (R-15-16) She did not assist Doug in his practice of Radiology. (R-33)

Phyllis testified that she volunteers at St. Vincent dePaul Pharmacy as a Pharmacy Tech, where she stocks shelves on Tuesdays and counts pills on Thursday. She has instituted a financial computer program so they can have their opinions on computer.

She attends Yoga class on Tuesday night, and she leads a Yoga class on Thursday night. Additionally, she visits friends on Monday and Wednesday night and watches educational series video by the teaching company. She also has a garden and is renovating a home for herself. (R-25)

Phyllis testified that technology has changed so drastically between 1976 and 2003, that she could not walk into the lab and pick up where she left off. She would have to be totally retrained and did not know any job for which she was qualified today. (R-64)

She did testify that since 1995 she had taken classes at the community college in color design, drawing, painting, and oil painting. She had sold two pieces for approximately \$250. She did not believe she would be able to support herself as an artist. (R-64-66)

Finally, she was in good health and there was nothing to prevent her from working if she wanted to do so. (R-97)

DOUG

Doug continues to practice radiology. He testified that he had a practice with three physicians and one retired in 2002. The work stayed the same, however, with two physicians working a three man practice.

At the time Cosentino I was heard, though it was a three person practice, Doug was the only full-time radiologist. Doug had to hire people to assist him on a temporary basis, having thus far failed to find even one full-time doctor.

He had worked every day, including weekends, for about two and one-half months. He was trying to recruit someone to alleviate the situation. (R-113-114)

Doug testified that in his opinion, based upon the marital assets Phyllis received in the settlement, he had adequately provided for her and that the settlement was fair. (R-123)

DIVISION OF MARITAL ASSETS:

At the time of the March 11, 2003 hearing, the value of the parties' marital assets, and the agreed division of same, was as follows: (Exhibit 1(A))

Phyllis

\$2,380,478

Doug

\$2,378,917

At the time of the June 19, 2003 hearing, approximately three (3) months after the first hearing, the value of the parties' marital assets had increased as follows: (Exhibit 6)

| <u>Phyllis</u> | <u>Doug</u> |
|----------------------|----------------------|
| \$2,615,815 | \$2,560,390 |
| (Increase \$235,337) | (Increase \$181,473) |

DOUG AND PHYLLIS' FINANCIAL DECLARATIONS:

PHYLLIS

Phyllis' Financial Declaration indicated she had no income and that her monthly expenses totaled \$3,415.81. (Exhibit 4) (R-47)

On cross-examination, Phyllis testified that with regard to her Financial Declaration, when the homestead is sold, Item 6, in the amount of \$53 would end; within the next year, Item 16, in the amount of \$175, representing payment to her psychologist would end; Items 26 and 27, would be eliminated in the amount of \$62.67; and Item 38, in the amount of \$32 for pest control at the former homestead would end. This totals \$322.67, which would reduce her stated monthly expenses to the sum of \$3,093.14. (R-84-88)

DOUG

Doug's Declaration indicated that he had a total monthly income of \$29,890, less deductions of \$12,880, which gave him a net of \$15,200, less monthly expenses of \$5,015. From the remaining \$10,185, there will now be an additional deduction of \$7,000 per

month by way of permanent periodic alimony to Phyllis, leaving Doug \$3,185. (Exhibit 9) (R-169)

With his bonus of \$200,000, Doug's gross income, as reflected on his W-2 for 2002, was \$510,000, less Federal income tax withheld of \$189,038.76, and Social Security and Medicaid withheld of \$13,662, left him with \$307,299.24. (Exhibit 8)

With regard to his annual bonus, Doug testified that in the year 2000, he had a bonus of \$85,000; and in the year 2001, he had a bonus of \$85,000.

The spike in the 2002 bonus to the sum of \$200,000, reflected the loss of a doctor in his office. This loss resulted in Doug doing much more work to take up the slack, and that this would be reduced with the employment of additional doctors.

Finally, he testified that his bonus depended on how much money is left at year's end; which would depend on the help he could hire; how much time he could take off; and the availability of help. (R-167-168)

THE TRIAL COURT'S ORIGINAL RULING - - COSENTINO I:

At the conclusion of the hearing, and the submission of Proposed Findings of Fact and Conclusions of Law, the Trial Court awarded Phyllis \$7,000 per month in periodic alimony. The Court denied Doug's Motion for New Trial/Reconsideration, and entered its

final judgment awarding Phyllis \$7,000 per month by way of permanent periodic alimony. (RE-23)

THE APPEAL:

Being aggrieved by the Trial Court's award of permanent periodic alimony to Phyllis in the sum of \$7,000 per month, or any amount whatsoever, Doug perfected his appeal.

THE TRIAL COURT'S RULING REVERSED AND REMANDED:

On October 18, 2005, the Court of Appeals reversed and remanded the case to the Trial Court, finding that Ferguson factors (6) and (7) were relevant and should have been addressed by the Chancellor, and if justified, then an analysis for the Armstrong factors.

THE TRIAL COURT'S SECOND RULING - - COSENTINO II:

On February 6, 2006, the Trial Court entered its "Ruling After Remand for Further Findings." The Court chose to address all Ferguson factors, and including the Armstrong factors reviewed in its original ruling, and found there was a justifiable basis for the award of alimony and in so doing exercised its discretion in finding that \$7,000 per month of permanent periodic alimony was appropriate.

THE CURRENT APPEAL - COSENTINO II:

Being aggrieved by the Trial Court's "Ruling After Remand for Further Findings," wherein the Trial Court again awarded Phyllis permanent periodic alimony in the amount of \$7,000 per month, Doug has perfected his second appeal of the Trial Court's ruling in Cosentino II.

SUMMARY OF THE ARGUMENT

The Chancellor's ruling was manifestly wrong, clearly erroneous, an abuse of discretion, and the Court misapprehended and/or misapplied the legal standard provided in Ferguson v. Ferguson, 639 So. 2d 921, 929 (Miss. 1994), and in particular, factor (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; and factor (7), "The needs of the parties for financial security with due regard to the combination of assets, income and capacity;..."

Phyllis received a share more than one-half ($\frac{1}{2}$) of the marital estate, which amounted to \$2,615,815 or 50.5%. Additionally, she had no debt.

Doug contended in Cosentino I, and again in Cosentino II, that the receipt of this portion of the marital estate eliminated the need for periodic alimony.

Further, Phyllis' portion of the marital estate would more than provide for her future financial security.

Beyond this, the award of \$7,000 per month in periodic alimony was approximately \$3,600 in excess of Phyllis' stated monthly needs, as set forth in her Financial Declaration. Within one (1) year, it would exceed her stated needs by almost \$4,000 per month.

Finally, if by some logic or reason it could be determined that an award of permanent periodic alimony was appropriate, the award of Seven Thousand Dollars (\$7,000) was excessive and an abuse of discretion.

THE ARGUMENT

The award of periodic alimony to Appellee in the amount of seven thousand dollars (\$7,000) per month, or in any sum whatsoever was error.

The standard of review of a ruling of the Trial Court is well settled in this jurisdiction.

In Owen v. Owen, 928 So. 2d 156(Miss.2005), our court held that:

"In Carrow, 642 So. 2d 904, citing Bell v. Parker, 563 So. 2d 594,596-97(Miss.1990), this court stated that the Chancellor's findings will be upheld unless those findings are clearly erroneous or an erroneous legal standard was applied. However, this court will not hesitate to reverse if it finds the Chancellor's decision is manifestly wrong, or that the court applied an erroneous legal standard. See Sandlin v. Sandlin, 699 So. 2d 1198,1203(Miss.1997); see also Carrow, 642 So. 2d 904; Bell, 563 So. 2d 596-97."

The Court of Appeals reversed the award of alimony in Cosentino I and remanded the case for an appropriate analysis of Ferguson factors (6) and (7), and if justified, an analysis of the Armstrong factors.

Ferguson factor (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;"

In all deference, the Trial Court wholly failed to analyze or even address Ferguson factor (6), simply holding the following:

"The marital property has been divided, by agreement, in equal parts to both husband and the wife. The portion received by each spouse was in excess of \$2 million."
(RE-6 of Opinion)

The Trial Court made no findings nor did it analyze factor (6) to determine whether or not the \$2,615,815 property settlement to Phyllis was sufficient to eliminate periodic alimony payments.

The Trial Court's failure to properly address Ferguson factor (6) goes to the very heart of Doug's argument against the Trial Court's award of permanent periodic alimony to Phyllis in any amount. (RE-0017-18)

Johnson v. Johnson, 650 So. 2d 1281, 1287 (Miss. 1994), held that "If there are sufficient marital assets which, when equitably divided and considered with each spouse's non-marital assets, will adequately provide for both parties, no more need be done." (emphasis provided)

Moreover, not only did the Trial Court fail to factually analyze Ferguson factor (6), no conclusion of law was made to determine whether or not the award of marital property to Phyllis was sufficient to eliminate the award of permanent periodic alimony. Owen, supra.

Finally, can it be seriously argued that Phyllis' portion of the marital estate - - - \$2,615,815 - - - would not adequately provide for all of her financial needs?

In all deference, the Trial Court made no such finding that it would not have done so.

Ferguson factor (7):

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

The Trial Court found, among other things, "...that the award of periodic alimony is modifiable in the future should Dr. Cosentino's financial situation change..." "This is certainly not a justification for the award of periodic alimony."

The Trial Court then engaged in pure speculation when it found, "Phyllis could easily outlive her share of the financial settlement received from the division of marital property considering her age (55 years at the time of the trial), her health insurance expense for the duration of her life, health problems that come with age, and her lack of earning capacity."

This speculation by the Trial Court continued when it held that, "....both are entering the threshold of their older years where their health will begin to decline as is inevitable with all human beings. This will pose an expense to Phyllis for which she will need income to preserve her financial security."

During the trial Phyllis testified her health was good.

Nowhere in the Trial Court's Opinion did it address the obvious fact that Phyllis would receive "income" from her share of the marital estate and how this would impact her need for periodic alimony. The Court simply found that "Absent alimony income,

Phyllis' only means of income would be that generated from the management of funds she received from the equitable distribution of marital property she equally split with her husband."

The Court's attention is called to the fact that Phyllis received "liquid assets" in the amount of \$1,373,478 (Ex. 6), which included \$200,000 cash in the bank (R-92).

Therefore, holding that "...There is a justifiable basis for the alimony award and exercises its discretion in finding \$7,000 per month to be appropriate." was an abuse of discretion and it was error.

A justifiable basis for the award? The facts clearly indicate otherwise.

As per her Financial Declaration, Phyllis' total expenses/needs came to \$3,415.81 per month.

Phyllis testified that immediately, or within one year, her total expenses/needs would be reduced to \$3,093.14. (R-84-88)

Even if there could be some sort of justification for an award of periodic alimony, in light of the property settlement Phyllis received, the Trial Court's ruling was manifestly wrong and in error in awarding Phyllis \$7,000 per month in periodic alimony, which was \$3,600 in excess of Phyllis' stated needs.

In Professor Hand's Treatise, Mississippi Divorce, Alimony, and Child Custody, Fifth Edition, Section 11.1, Ep.262, he writes:

"Alimony, where determined to be appropriate, to effect and reflect the policy of this state, is to be awarded to either spouse in accordance with the 'needs' of the receiving spouse with consideration being given to the ability of the other spouse to make payments. Raynor v. Raynor, 373 So. 2d 475 (Miss.1981); Carpenter v. Carpenter, 519 So. 2d 891 (Miss.1988); Pratt v. Pratt, 623 So. 2d 258 (Miss.1993) ."

In making the \$7,000 award, the Trial Court ignored the stated needs of Phyllis and simply chose an arbitrary number.

The facts in the case of Davis v. Davis, 832 So. 2d 492 are analogous to the facts in Cosentino II now before the Court.

The Chancellor found, and this court affirmed, the following, to-wit:

- (1) The Doctor husband's adjusted gross monthly income was \$34,418 or \$413,016 annually. Wife being a stay at home mother had no income; and
- (2) Wife was 44 years of age and husband was 48. Husband was in good health. Wife was in poor health due to an automobile accident and also had a history of depression requiring medication; and
- (3) She was a trained nurse, but having stayed at home to raise the children since 1982, she could not return to this full-time without taking 1,000 credit hours of training; and
- (4) Wife's estimated monthly needs were \$10,138.33 with monthly support needs for the children of \$8,740; and
- (5) The court divided the marital estate, valued at \$2,444,078.90 50/50 with each party receiving \$1,222,039.45; and
- (6) Wife was granted \$50,000 in lump sum alimony; and

- (7) Wife was granted \$4,000 per month in permanent periodic alimony; and
- (8) Wife was granted \$4,500 per month in child support."

Thought the facts in Davis, and the case now before the Court are very similar, the results in Cosentino II are startling when compared to the results in Davis.

In Cosentino II, Phyllis' share of the marital estate was larger than the entire marital estate in Davis. Phyllis was in good health versus wife being essentially disabled in Davis. Further, in Davis, wife's estimated monthly needs were in excess of \$10,000, plus \$8,000 for three (3) children. Beyond this, wife was living in a relative's home in Baltimore, Maryland.

The Davis Court approved an award of \$4,000 per month in permanent periodic alimony and \$4,500 per month in child support. The total award in Davis for a disabled wife and three children was only \$1,500 per month more than Phyllis received.

Though very similar factually, the Trial Court's ruling in Cosentino II is so far removed from Davis as to be manifestly wrong, an abuse of discretion and a failure to apply the proper legal standards to Ferguson factors (6) and (7).

The Trial Court's ruling should be reversed and rendered with regard to the Court's award of permanent periodic alimony.

CONCLUSION

Doug's position in this Appeal of the Chancellor's "Ruling After Remand After Further Proceedings" has not changed from that in the original Appeal in Cosentino I.

The award of permanent periodic alimony in any amount to Phyllis was manifest error and was an abuse of discretion by the Trial Court, given Phyllis' share of the marital estate and her stated financial needs.

Furthermore, this Court directed the Trial Court to analyze Ferguson factors (6) and (7). With regard to Ferguson factor (6), the Trial Court simply observed that the marital property had been divided by agreement in equal portions, and that the portion received by each spouse was in excess of \$2 Million.

In no way did this address the requirement in factor (6) for the Trial Court to determine whether or not Phyllis received sufficient property to eliminate the award for and of periodic alimony.

In Ferguson factor (7), the Trial Court is directed to address "the needs of the parties for financial security with due regard to the combination of assets, income and earning capacity."

In attempting to address this factor, the Trial Court engaged in speculation as follows: (1) possible future needs with regard to health insurance for Phyllis; (2) that Phyllis could easily outlive her share of the marital estate; and (3) that her health will begin

to decline, which will pose an expense for Phyllis for which she will need income to preserve her financial security.

The Trial Court further observed, "...that the award of periodic alimony is modifiable in the future should Dr. Cosentino's financial situation change..."

Finally, assuming the Trial Court could have found some appropriate justification for an award of permanent periodic alimony in the first instance, it completely ignored one of the basic principles of Ferguson, with regard to the amount of the award of alimony and equitable distribution, to-wit:


"Therefore, when one expands, the other must recede."

RESPECTFULLY SUBMITTED, this the 18th day of June, 2007.

APPELLANT, DOUGLAS G. COSENTINO

BY AND THROUGH MEADOWS RILEY
HIS ATTORNEY OF RECORD

BY:

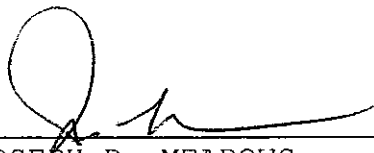

JOSEPH R. MEADOWS

JOSEPH R. MEADOWS, ESQ.
MS BAR NO. [REDACTED]
MEADOWS RILEY LAW FIRM
P.O. BOX 1076 OR 550
GULFPORT, MS 39502
Phone: (228) 864-4511
Fax: (228) 868-2178
Email: jmeadows@datasync.com

CERTIFICATE OF SERVICE

I, Joseph R. Meadows, of Meadows Riley Law Firm, do hereby certify that a true and correct copy of the foregoing Appellant's Brief was mailed, postage prepaid, via United States mail, to: Earl L. Denham, Esq., P.O. Box 580, Ocean Springs, MS 39566-0580; and Honorable Jaye A. Bradley, P.O. Box 998, Pascagoula, MS 39568-0998.

SO CERTIFIED this the 18th day of June, 2007.



JOSEPH R. MEADOWS

JOSEPH R. MEADOWS, ESQ., MS BAR NO. [REDACTED]
MEADOWS RILEY LAW FIRM
P. O. DRAWER 550
GULFPORT, MS 39502
Phone: (228) 864-4511
Fax: (228) 868-2178
Email: jmeadows@datasync.com