Certificate of Interested Persons

The undersigned counsel of record certifies 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 Court of Appeals may evaluate possible disqualification or recusal.

1.	Riley Ghoston	Appellant
2.	Debbie A. Ghoston	Appellee
3.	Jim Arnold	Former Attorney for Appellant
4.	Alix H. Sanders	Attorney for Appellant
5.	A. E. (Rusty) Harlow, Jr.	Attorneys for Appellee
6.	Sabrina A. Davidson	Attorney for Appellee
7.	Honorable Percy L. Lynchard, Jr.	Chancellor

This the 25th day of June, 2007.

Respectfully submitted,
Debbie A. Ghoston

By: _____
A. E. (RUSTY) HARLOW, JR.,
SABRINA A. DAVIDSON
ATTORNEYS FOR APPELLEE

2006-CA-01848-SCT
Brief of Appellee

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SUMMARY OF THE ARGUMENT

The Appellant has presented no set of facts or rules of law that support his appeal. There is no way to conclude that the Chancellor's ruling was manifestly wrong, clearly erroneous, applied an erroneous legal standard, was against the overwhelming weight of the evidence, or was an abuse of discretion.

The Appellant has failed to show that the Chancellor was manifestly wrong in awarding the Appellant periodic alimony. Contrary to the Appellant's assertion, the Chancellor is not required to give a detailed analysis of each *Armstrong v. Armstrong* factor. The Appellant has made no showing that if the *Armstrong* factors were considered in depth that the Chancellor's findings would have been manifest error. In fact, the Appellant has not discussed the *Armstrong* factors at all, let alone how he asserts they should have been applied to the instant case.

The Appellant has not proven that he was disadvantaged, prejudiced, or otherwise harmed by the production of financial information by the Appellee pursuant to Uniform Chancery Court Rule 8.05. As it is within the Chancellor's discretion to excuse the production of the Rule 8.05 disclosures at all, it is certainly within his discretion not to enforce the deadlines imposed by the rule for their production. The Appellant also has failed to inform the Court that he did not produce Rule 8.05 disclosures himself until the day of trial. He cannot now claim to be prejudiced by the very procedure he employed. In addition, the Appellant failed to object at trial to the Appellee's production of Rule 8.05 disclosures on the date of trial and is, therefore, barred from objecting now.

LAW AND ARGUMENT

I. STANDARD OF REVIEW

In reviewing an award of alimony in a divorce proceeding, the Chancellor's findings of fact and conclusions of law will not be disturbed unless there is a finding that he "abused his discretion." *Graham v. Graham*, 767 So.2d 277 (Miss App.2000) citing *Ethridge v. Ethridge*, 648 So.2d 1143 (Miss.1995). The Court's review in domestic relations cases is limited with regard to the terms of an award of alimony. *Crowe v. Crowe* 641 So.2d 1100 (Miss.1994). "In such cases the award will not be altered on appeal unless it is found to be against the overwhelming weight of the evidence or manifestly in errorr." *Id.* at 1102 citing *Tilley v. Tilley*, 610 So.2d 348 (Miss.1992); *McNally v. McNally*, 516 So.2d 499 (Miss.1987); *Harrell v. Harrell*, 231 So.2d 793 (Miss.1970). "The chancellor's findings will not be disturbed unless he was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Bland v. Bland*, 629 So.2d 582, 587 (Miss.1993).

II. THE CHANCELLOR DID NOT ABUSE HIS DISCRETION IN AWARDING ALIMONY TO DEBBIE A. GHOSTON.

The Appellant makes much of the fact that the Chancellor must consider the factors enumerated in *Armstrong v. Armstrong* in awarding periodic alimony, such as that awarded to the Appellee but fails to identify or discuss any of those factors. Specifically, in awarding alimony the Chancellor is to consider (1) the parties' income and expenses; (2) the parties' health and earning capacity; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence or absence of minor children in the home, which may require child care; (7) the parties' ages; (8) the parties' standard of living during the marriage and at the time support is determined; (9) tax consequences of the spousal support order; (10) fault or misconduct;

(11) dissipation of assets by either party; and (12) any other factor deemed to be just and equitable. *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss.1993).

In reviewing the record, the Chancellor did, in fact, discuss that he had taken into consideration "the expenses of the parties, the length of the marriage, as well as the differences in incomes" in determining the award of alimony. R. at 13-14. There is no requirement that the Chancellor discuss each *Armstrong* factor in detail or at length and advise as to his findings on each individual element. *Gable v. Gable* 846 So.2d 296 (Miss. Ct. App. 2003). Clearly the Chancellor took into consideration the factors as required by *Armstrong* even if he did not itemize each factor.

The record also reveals that the Chancellor considered the Appellee's income, or lack thereof, along with her expenses in determining her inability to pay her attorney's fees. R. at 12. The Chancellor further considered the debts of party and that the Appellee would be the custodial parent to the minor child. R. at 8, 11. The Chancellor's acknowledgment of these additional factors is also adequate to support an award of alimony according to *Marsh v. Marsh*, in which the Court of Appeals found that even though the Chancellor did not enumerate the *Armstrong* factors individually, his award of alimony was upheld because he did discuss similar factors thoroughly in distributing the parties' assets.

The Appellant further argues, pursuant to *Gray v. Gray*, that the Chancellor did not consider "the reasonable needs of Debbie and the right of Riley to lead as normal a life as possible with a descent [sic.]standard of living." Appellant's Brief at 5. The record is clear that the Chancellor had before him both parties' Rule 8.05 financial disclosures as well as the testimony of each party to determine both Debbie's needs and Riley's potential standard of living. R. The Appellant has failed to point to any set of facts that support his contention that his standard of living has been so

thoroughly imposed upon that it is no longer decent nor has he shown an absence of need on behalf of the Appellant, let alone a showing that the Chancellor failed to consider them. On its face, an award of $300.00 per month in periodic alimony is not so unreasonable as to assume that it should be overturned. In fact, in *Gray v. Gray*, the case relied upon by the Appellant which was tried in 1988, the Court refused to say that an award of $400 per month in periodic alimony was an abuse of discretion when the husband's taxable income was only $10,674.00. 562 So.2d 79 (Miss.1990). In addition to that finding, *Gray* was decided before *Armstrong v. Armstrong* enumerated the factors for an award of alimony as set out herein, making the standard in *Gray,* the wife's needs versus the husband's standard of living, no longer the quintessential consideration.

III. THE COURT DID NOT COMMIT ERROR IN NOT REQUIRING DEBBIE TO COMPLY WITH UNIFORM CHANCERY COURT RULE 8.05.

There is no basis for any relief for the Appellant with regard to the Appellee's production of Rule 8.05 financial disclosures on the day of trial. Not only is it well within the Chancellor's discretion to not require the production of Rule 8.05 disclosures at all, the Appellant has wholly failed to evidence to the Court how he was prejudiced by the Appellee's production of the disclosures on the day of trial.

The case cited by the Appellant in support of his notion that the failure to produce Rule 8.05 financial disclosure in a timely manner is reversible error is *Kalman v. Kalman*, 905 So. 2d 760 (Miss. Ct. App. 2004), and lacks any similarities to the case at bar. In *Kalman*, the Court of Appeals reversed and required the ex-husband to produce a Rule 8.05 disclosure because he did not reveal during the divorce proceedings that he had won the lottery. *Id.* Neither of the parties in *Kalman* requested that the Court of Appeals address the Rule 8.05 issue specifically, rather the Court of

Appeals acknowledged that the ex-husband was, in essence, perpetrating a fraud upon the trial court, and that Rule 8.05 could be used to find him in contempt of court. *Id.* The Appellee has not defrauded the trial court, she has not failed to produce the required information, and her production of Rule 8.05 disclosures in no way prejudiced the Appellant.

In fact, the Appellant did not produce Rule 8.05 disclosures until the day of trial either. He now asks this Court to reverse the Chancellor's decision based on conduct of the Appellee that was identical to his own.

It is certainly within the Chancellor's discretion to waive the production of Rule 8.05 financial disclosures. UCCR 8.05. Furthermore, if there is no mention of a party's failure to provide a Rule 8.05 financial disclosure, the Court can assume that the trial court rightfully excused the production. *Bland v. Bland*, 629 So.2d 582 (Miss.1993). There is no evidence in the record that the Chancellor found the Appellee's production of Rule 8.05 disclosures on the day of trial to be noncompliance with the rule, therefore it can be assumed that he waived the production of the disclosures in the time prescribed by Rule 8.05 as is his discretion.

Finally, the Appellant did not object once during the trial to the Appellee's production of Rule 8.05 financial disclosures on the day of trial, presumably because that is the day he also provided his disclosures. He is now procedurally barred from asking for relief from this Court that he failed to bring to the attention of the trial court. *Curtiss v. Curtiss*, 781 So.2d 142 (Miss.Ct.App.2000).

CONCLUSION

The Appellee would respectfully suggest that the Appellant has provided neither facts nor rules of law that support any of his contentions for appeal. His assertion that the trial court failed to consider the *Armstrong* factors and therefore should not have awarded the Appellant periodic alimony is defeated by the record itself and the case law that points to the fact that the Chancellor was well within his discretion in awarding $300.00 in alimony per month to the Appellant.

The Appellant has likewise filed to present a credible basis for his argument that the Chancellor committed reversible error in allowing the Appellee to present her Rule 8.05 disclosures on the day of trial. It is well within the Chancellor's discretion to waive the time requirements for production in Rule 8.05 and in the absence of his discussion otherwise, it is assumed that he did so.

The Appellee respectfully requests that the Court uphold the trial court's ruling and assess the fees and costs of this appeal, including the Appellee's attorney's fees to the Appellant.

Respectfully submitted,
Debbie A. Ghoston

BY: _____

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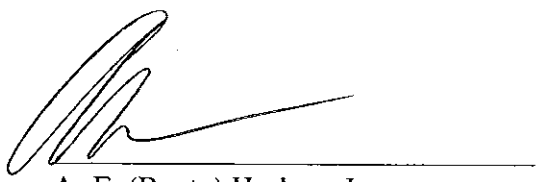
CERTIFICATE OF SERVICE

I, A. E. (Rusty) Harlow, Jr., attorney for the Appellee, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

Alix H. Sanders
Sanders & Sanders, P.A.
P.O. Box 1542
Greenwood, MS 38935-1542

Honorable Percy L. Lynchard, Jr.
Chancery Court Judge
P.O. Box 340
Hernando, MS 38632

Dated, this the 25th day of June, 2007.



A. E. (Rusty) Harlow, Jr.