

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2006-CA-01848**

**RILEY GHOSTON**

**APPELLANT**

**V.**

**DEBBIE A. GHOSTON**

**APPELLEE**

**BRIEF OF THE APPELLANT**

Appeal from the Decree of Divorce of the Chancery Court of Montgomery County,  
Mississippi, and the Order Denying the of the Motion of Appellant to Reconsider

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APPELLANT**

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**NO. 2006-CA-01848**

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**V.**

**DEBBIE A. GHOSTON**

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**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.

Debbie A. Ghoston

Appellee

Riley Ghoston

Appellant

Jim Arnold, Esq.


Former Attorney for the  
Appellant

A.E. (Rusty) Harlow, Jr., Esq.

Attorney for the  
Appellee

Alix H. Sanders, Esq.

Attorney for Appellant

  
\_\_\_\_\_  
ALIX H. SANDERS, ESQ., ATTORNEY  
OF RECORD FOR RILEY GHOSTON

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## STATEMENT OF THE ISSUES

I. WHETHER THE CHANCELLOR ABUSED HIS DISCRETION IN AWARDING ALIMONY TO DEBBIE A. GHOSTON.

II. WHETHER THE COURT COMMITTING ERROR IN HEARING THIS MATTER PRIOR TO RILEY GHOSTON BEING PROVIDED WITH A FINANCIAL DISCLOSURE STATEMENT BY DEBBIE A. GHOSTON.

## STATEMENT OF THE CASE

### I. Nature of the case and course of proceedings

This cause is before the Court on direct appeal from the August 4, 2006 order of the Chancery Court of Montgomery County, Mississippi, denying the Motion of Riley Ghoston ("Riley"), the Appellant, to Reconsider the Decree of Divorce entered in this matter on December 21, 2005. (Record excerpts (RE), p. 7). The Divorce Decree Granted Debbie A. Ghoston ("Debbie"), *inter alia*, child support of \$397.00 per month, periodic alimony of \$300.00 per month and use possession and ownership. (RE, p. 3-5).

On January 3, 2006, Riley filed his Motion to Reconsider, or in the Alternative to Alter or Amend the Final Decree. ( R. v. 1, p. 37-40). On August 4, 2006, the Court entered an Order denying the Motion to Reconsider. ( RE, p. 7).

On October 24, 2006, Riley filed his Notice of Appeal. ( R. v. 1, p. 47-48).

### ii. Statement of Facts

On July 1, 2006, Debbie filed her complaint for divorce against Riley. ( R. v.1, p. 6-9). The complaint alleged irreconcilable differences as the ground for divorce. Habitual cruel and inhumane treatment was pled as an alternative ground. ( R. v. 1, p. 7). Riley answered the complaint, denying any habitual cruel and/or inhumane treatment. ( R. v. 1, p. 11).

This cause was set for trial on December 8, 2006. ( R. v. 1, p. 28). On December 8, 2006, Riley and Debbie executed a "Consent to Divorce" in which they agreed to a divorce on the grounds of irreconcilable differences, with the Court to decide the issues of child support and income tax deductions, college education, alimony, attorney fees and court costs, division of personal and real property, and debts. ( R. v. 1, p. 29-31).

The Court issued a bench opinion after the conclusion of the presentation of evidence by the parties. The Court found, *inter alia*, “considering the expenses of the parties, the length of the marriage, as well as the difference in the incomes, ... an award of alimony under *Cheatam* and *Crowe* as periodic alimony is warranted, and accordingly, the Court orders that the sum \$300 per month in periodic alimony should be paid by the defendant to the wife....” (RE, p. 13-14).

## SUMMARY OF THE ARGUMENT

Uniform Chancery Court Rule 8.05 provides that unless excused by the Court, each party in a domestic case shall provide to opposite party or counsel certain financial disclosures. These disclosures are to provided by the Plaintiff not later than the time that the defendant's answer is due. Debbie not provide the disclosures required by Rule 8.05 until the date of the trial on December 8, 2006. She filed no certificate of compliance as required by Rule 8.05.

Riley did not have opportunity to review the disclosures to determine whether to challenge the accuracy of information. This placed him at an extreme disadvantage.

The Chancellor abused his discretion in awarding alimony to Debbie. The Chancellor failed to consider the reasonable needs of the Debbie and the right of Riley to lead as normal a life as possible with a decent standard of living. *Gray v. Gray*, 562 So.2d 79, 83 (Miss. 1990). The Chancellor further failed to sufficiently explain which of the factors he relied upon in *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993) in making the decision to award alimony.

The decision Court abused its discretion in awarding alimony to Debbie. This Court should reverse the decision of the trial court and remand to this matter for proceedings consistent with the mandate of the Court.



## ARGUMENT

### I. WHETHER THE CHANCELLOR ABUSED HIS DISCRETION IN AWARDING ALIMONY TO DEBBIE A. GHOSTON.

The Mississippi appellate courts employ a limited standard of review when reviewing a chancellor's decision. *Miss. Dept. Human Services v. Shelby*, 802 So.2d 89, 92 (Miss. 1992). The Supreme Court will not disturb an award of alimony unless the court was manifestly wrong, abused its discretion or applied an erroneous standard. *Sandlin v. Sandlin*, 699 So.2d 1198, 1203 (Miss. 1997).

In this case, the Chancellor made a decision to award alimony without considering the reasonable needs of Debbie and the right of Riley to lead as normal a life as possible with a descent standard of living. *Gray v. Gray*, 562 So.2d 79, 83 (Miss. 1990). The bench opinion of the Court is totally devoid of any evidence that the Chancellor considered this factor in awarding alimony.

"Alimony is not a bounty to which [the wife] became entitled to receive indefinitely simply by reason of the fact that at one time she had been married to [the husband]." *Beacham v. Beacham*, 383 So.2d 146, 148 (Miss. 1980). In the instant case, the Chancellor permanent periodic alimony. It terminates only upon the death of one of the parties, or the remarriage of Debbie.

The Chancellor, in his bench opinion did not explain how the *Armstrong* factors justified his award of alimony. Even when a party's expenses exceed their income, some explanation must be offered as the justification of the expenses. *Graham v. Graham*, 767 So.2d 277, 280 (Miss. App. 2000).

The Chancellor failed to adequately state the *Armstrong* factors upon which he relied in awarding alimony. He failed to inquire into the necessity of the expenses asserted by Debbie. He

further failed to consider the reasonable needs of Debbie and the right of Riley to lead as normal a life as possible with a descent standard of living. The Chancellor abused his discretion in awarding alimony to Debbie. His decision should be reversed.

## II. THE COURT COMMITTED ERROR IN NOT REQUIRING DEBBIE TO COMPLY WITH UNIFORM CHANCERY RULE 8.05.

Uniform Chancery Court Rule 8.05 provides that unless excused by the Court, each party in a domestic case shall provide to opposite party or counsel certain financial disclosures. These disclosures are to provided by the Plaintiff not later than the time that the defendant's answer is due. Debbie not provide the disclosures required by Rule 8.05 until the date of the trial on December 8, 2006. She filed no certificate of compliance as required by Rule 8.05.

The is no evidence in the Court file to establish that Debbie complied with Rule 8.05. No certificate of compliance was filed. The financial statement was introduced at the trial is undated and contains no reference as to when it was prepared.

Riley did not see copy of this statement until the day of the trial. Riley raised this issue in his motion to reconsider, when stated that the Plaintiff failed to comply with Rule 8.05. ( R. v.1, p. 37-40). The plain language of Rule 8.05 reveals that it is mandatory, "unless excused by order of the court." Failure to observe the rule, without just cause, constitutes contempt for which the Court shall impose appropriate sanctions. *Kalman v. Kalman*, 905 So.2d 760, 764 (Miss App. 2004).

Riley was placed in the position of being unable to challenge the 8.05 disclosures because it was timely filed. His first opportunity to address this issue was in his motion to reconsider after he retained present counsel, as his trial counsel would not raise the issue.

Where a Chancellor does enforce Rule 8.05, this Court will reverse the decision of the lower Court. *Id.* Riley requests that the Court reverse the decision of the trial court and remand this matter, with directions.

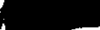
## CONCLUSION

The Chancellor abused his discretion in awarding alimony in this cause. Additionally, the failure of the Chancellor to require the timely filing of the Rule 8.05 disclosure statement by Debbie prevented Riley from examining her financial information and mounting a challenge.

This Court should reverse the decision of the Chancellor as it relates to the award of alimony and remand for proceedings consistent with existing law. Riley requests such other and further relief as is just.

Respectfully submitted,  
Riley Ghoston

By:   
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**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of this BRIEF OF THE APPELLANT to:

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HONORABLE PERCY L. LYNCHARD, JR.  
CHANCERY COURT JUDGE  
POST OFFICE BOX 340  
HERNANDO, MS 38901

This the 14<sup>th</sup> day of June, 2007.

  
ALIX H. SANDERS