

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES STRONG

APPELLANT-DEFENDANT

V

NO.: 2006-CA-01987

GRETCHEN STRONG

APPELLEE-PLAINTIFF

BRIEF OF THE APPELLEE

Presented to the Court by:

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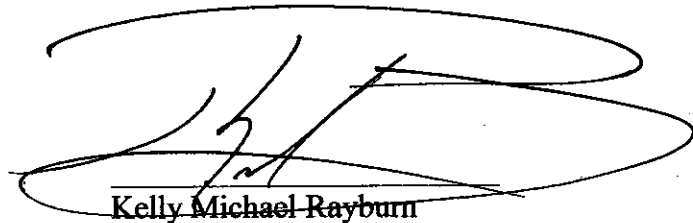
APPELLEE-PLAINTIFF

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.

- 1) James Strong, Appellant
Waveland, MS
- 2) Clement S. Benvenuti
Counsel of Record for Appellant
- 3) Gretchen Strong, Appellee
Waveland, MS
- 4) Kelly Michael Rayburn
Counsel of Record for Appellee
- 5) Hon. Margaret Alfonso
Chancellor

This the 23rd day of July 2007.



Kelly Michael Rayburn

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STATEMENT OF THE ISSUES

I.

JIMMY STRONG'S CONTENTION OF FAULTY NOTICE PURSUANT TO RULE 81 OF MISS. RULE CIV. PRO. IS SPECIOUS

II.

THE CHANCELLOR'S AWARD TO JIMMY STRONG OF THE BENEFIT OF A LARGE PORTION OF THE INSURANCE PROCEEDS AND APPROXIMATELY HALF OF THE VALUE OF THE INSURANCE PROCEEDS AND THE MARITAL ESTATE DOES NOT NEGATE HIS OBLIGATION TO PAY HIS CHILD SUPPORT ARREARAGE

III.

JIMMY STRONG IS MISTAKEN IN HIS ASSERTION THAT THE EQUITIES REQUIRE THAT HE SHOULD BE ENTITLED TO HALF OF CERTAIN PROCEEDS FROM THE HOME OWNER'S INSURANCE RECEIVED BY GRETCHEN AND HER MOTHER, WHICH WERE, AT ALL RELEVANT TIMES, HELD BY GRETCHEN'S MOTHER IN A C.D., IN GRETCHEN'S MOTHER'S NAME ONLY

STATEMENT OF THE CASE
AND STATEMENT OF THE FACTS

I.

STATEMENT OF THE CASE

The Appellee adopts and incorporates by reference herein as her statement of the case the Statement of the Case contained in Appellant's brief. (Appellant's Brief pp. 6-12).

II.

STATEMENT OF THE FACTS

Gretchen and James Strong were married on or about June 8, 1996 in Bay St. Louis, Hancock County, MS. (Rec. Ex 4, ¶ 1)¹. The parties separated for a time in July of 2004, but reconciled, separating again permanently May 19, 2005. (Rec. Ex 4, ¶ 1).

Three children were born to Jimmy and Gretchen Strong: Trevor Allen Strong, a male, born February 16, 1995; Abrey Leigh Strong, a female, born August 2, 1998; and Tyler James Strong, a male, born May 21, 2000. (Rec. Ex 4, ¶ 2 and 5).

At the time of the first separation in July 2004, Gretchen Strong initiated the instant action with the filing of her "Complaint for Divorce and Motion for Temporary Relief" on July 19. (Clerk's Papers pp.1-6). Also filed that day was a "Petition for Protection from Abuse and Other Relief". (Clerk's Papers pp. 7-15). Jimmy Strong answered these pleadings by filing of August 10, 2004. (Clerk's Papers pp. 16-25).

Subsequent to these filings, the parties reconciled for a time, until their final separation on May 19, 2005. (R. p. 11). On June 29, 2005, Gretchen filed a second "Petition for Protection from Abuse and Other Relief" in this same action. (Clerk's Papers pp. 27-33). A Temporary Restraining Order was issued the same day with an

¹ All references to the record excerpts are to the record excerpts as filed by the Appellant to avoid duplicity.

accompanying order setting a hearing on July 22, 2005. (Clerk's Papers pp. 34-37). Apparently, no hearing occurred that date as there is no indication in the record that one was held.

At all relevant times since the May 2005 separation, all three children were in Gretchen's continuous care. (R. p. 15). When Katrina threatened the coast, Gretchen went to Alabama with the children where they remained for several weeks. (R. pp. 15-18 & 119-136). Jimmy went to Houston, TX for about two weeks (R. p. 136), then moved to Jacksonville, FL with his married, unemployed girlfriend, Mary Mitchell, and her three children, to continue his welding/pipe-fitting employment with CSX. (R. pp. 19, 35-36, 136, 170, 181 (Mary unemployed), pp. 188-89 (Mary's children are twelve, eleven, and four), p. 196 (Mary is married), p. 198 (Jimmy acknowledges Mary went with him)². From August until November 2005, Jimmy remained working in Florida. On one occasion he took his oldest son, Trevor, with him back to Jacksonville for a two-week visit. (R. p. 19). Other than this, he had only very brief contact with the children while continuing to reside with Mary and her children in Florida. (R. p. 19).

On or about November 14, 2005, Jimmy returned to the Bay St. Louis area. (R. p. 20). Two days later, on the 16th, he called his children to speak with them and make arrangements to see them. (R. pp. 20, 37-38). The children stayed overnight with Jimmy on November 18th and 19th, he kept his youngest son, Tyler, a half day on the 21st because

²Also, at the end of July 2005, Jimmy's girlfriend, Mary Mitchell assaulted Gretchen when Gretchen was in her vehicle in the driveway at her friend Shelly Loftin's house. (R. p. 38). Gretchen testified "[Mary] came running up the driveway. I was in my van. She slung open my door and began punching me in the face." (R. p. 38). Gretchen testified Mary had followed her there. (Id.) Gretchen called the police, Mary was charged and plead guilty to both assault and telephone harassment. (R. pp. 39-42, R. Ex. 2).

he was sick and could not go to school. (R. p. 20). The children visited November 23rd and 24th as well. (Id.)

After Jimmy's visitation in November, Gretchen and the children were under the impression that he had returned to Florida; however, approximately a week later they learned that Jimmy had remained in town. (R. pp. 20-23). After learning Jimmy was still in town, the children stayed with him the night of December 3, 2005. (R. p. 23). Jimmy visited them the day of December 10th and 21st. (R. pp 24-25). Jimmy did not regularly see the children otherwise. Jimmy did, however, coach Trevor's baseball team, and during baseball season, saw him regularly on Wednesdays for practice. (R. pp. 26-27). Gretchen testified that, other than one occasion when Jimmy attempted to take the children in his truck when there were two adults and five children and not enough seatbelts or child seats, she never refused that Jimmy have the children. (R. p. 31). Gretchen testified that she did not, however, want the children to spend Christmas Eve and the night before Easter with Jimmy because the two youngest still believed in Santa Claus and the Easter Bunny and she did not want to disrupt their established traditions in these respects. (R. pp. 32-33).

With the above noted exceptions, during the year of the parties' separation, Jimmy did not visit the children regularly or frequently despite living in the same town the majority of the time. (R. pp. 25, 134). Jimmy's financial support was, unfortunately, even more sporadic and infrequent than his visitation. Despite earning approximately \$37,200.00 gross, annually, Jimmy paid only \$760.00 towards the support of his three children during the entire year of his separation. (R. pp. 14-15). (Jimmy claims he paid only \$300 to Gretchen for their support during this time. (R. p. 190).). Despite his failure to support

his own children, Mr. Strong contributed to the support of Mary Mitchell and her children. According to Jimmy, Mary "sometimes" received child support from her husband, and Mary's father helped support her. (R. pp.186, 189-190). Jimmy testified that he paid some [household] bills, including electric and cable for Mary and her family. Moreover, by admission, Jimmy contributed \$1,100.00 for a *four-wheeler* for Mary's three children during the time of his separation (R. p. 194), more support than he supplied for his own children in an entire *fourteen-month* period.

At the time of and prior to their separation, the Strong's had suffered financial difficulties, even considering filing for bankruptcy. (R. p.186). When the Strong's first married, Gretchen had worked full time while obtaining her degree (in 1998). (She has a Bachelor of Science in Business Administration with an emphasis in Accounting from the University of Southern Miss, Gulf Park. (R. p. 88) while Jimmy has only a high school diploma (R. p. 170)). She worked at Hancock Bank until May, 1999, then at Atlas International temporarily until obtaining a permanent position at Lockheed Martin at Stennis Space Center where she stayed until April 2001. (R. p. 90). After this, she did not work for two years so she could stay home with the children. (R. p. 92). During the time Gretchen was unemployed, her father contributed \$500.00 monthly to help support their household. (R. p. 93). Beginning in 2003, Gretchen worked at a nursery school, making approximately \$700.00 a month. (R. 94). Gretchen Strong was employed continuously after the storm, from her return to the Bay St. Louis area to the date of the hearing. (R. pp. 89-90). After the storm she worked for Coast Management Systems, LLC as an accountant. (R. Exhibit 1). Her monthly gross pay was \$2,236.00. Jimmy's employment yielded a monthly gross of \$3,098.21 during the relevant time period. (R. Exhibit 12).

In or about 1997, Gretchen's mother deeded the family home, which had been built by Gretchen's father, to Gretchen solely. (R Ex 5, R. p. 15). This home was located on land that had been owned by her grandmother at least since Hurricane Camille. (R. Ex. 5 (Warranty Deed) R. pp. 58-59). The idea behind this transfer was that Gretchen's mother would deed the property (which had been rented but was in bad shape) to Gretchen who would pay off approximately \$11,000.00 of debt on the property; then, Gretchen, who would borrow against the property, could establish a good credit history by repaying the loan. (R. p. 159). However, when Gretchen no longer needed use of the house, the intent was that it would be returned to her mother. (R. pp. 74, 158-159). Upon the initial transfer, Gretchen and Jimmy borrowed \$15,000.00, used approximately \$11,000.00 to pay off the existing liens and put the other approximate \$4,000.00 toward improvements on the property. (R. pp. 59-60). No other monies or consideration were paid to Gretchen's mother. (R. p. 61, Ex. 6 (HUD-1)). Subsequently, in 1999 or 2000, Gretchen and Jimmy refinanced, borrowing approximately \$51,000.00 against the property. (R. p. 63). (The balance of the \$15,000.00 they had initially borrowed was folded into this new loan. (R. p. 65)). In addition, an equity line of credit was later established. (R. p. 63). After April 2005, for the full year preceding the hearing, Jimmy paid nothing toward satisfaction of any of these debts. (R. pp. 14-15, 78-79), leaving Gretchen fully responsible for all of it as well as the total support of their three children. (R. p. 66).

Katrina seriously damaged the home securing these debts, rendering it uninhabitable and leaving Gretchen and the children homeless. Insurance had been obtained long ago by Gretchen's mother, who, after the transfer, added Gretchen's name to the policies, with the exception of flood insurance, which remained in Gretchen's mother's name only.

(R. p. 172 (Jimmy testified about the “old” policies), R. pp. 64-65 (flood insurance in Gretchen’s mother’s name, other insurance in both Gretchen and mother’s name)).

After the storm, Gretchen and her mother filed claims with their flood, contents, and wind and hail carriers. (R. p. 65). On or about November 8, 2005, Southern Farm Bureau (Flood Insurer), issued a check to Gretchen’s mother, Patricia Fielder, in the amount of \$51,000.00 for structure (R. Ex. 7) and in the amount of \$9,400.00 for contents. (Southern Farm Bureau had already cut a check to Mrs. Fielder for \$12,000.00 for contents on September 23; thus paying a total of \$21,400.00 for contents.) (R. Ex. 7, R. pp. 64-65). On or about November 9, 2005, Mississippi Farm Bureau Mutual Insurance Co. paid \$14,696.30 on the wind loss to “Patricia Fielder, Gretchen Strong and Hancock Bank Hancock Mortgage Corporation.” (Id.).

Upon receiving these monies, Gretchen’s mother “went and paid the [outstanding home] loan [of \$48,000.00] off for [Gretchen]”. (R. p. 80, R. Ex. 10). Gretchen’s mother then endorsed the remainder of the checks over to Gretchen who proceeded to pay off the \$10,028.35 line of credit on the home and other significant debts she and Jimmy had incurred during the marriage. (R. pp. 80-82). Gretchen and Jimmy also had an outstanding credit card balance of \$13,975.58. (R. pp.81-83). On December 29, 2005, Gretchen had received a collection letter from Gary D. Thrash, Esq. relative to this debt. (R. Ex. 9). Ultimately, Gretchen was able to negotiate settlement of this approximately \$14,000.00 joint debt for \$5,000.00. She paid the card off on behalf of Jimmy and herself with these insurance proceeds. (R. p. 83).

At the trial, Gretchen produced a full listing of other debts she paid with the insurance proceeds, all of which, with the exception of certain child-related or basic living

expenses, went to satisfy creditors on debt owed by both Jimmy and Gretchen. (R. Ex. 11, R. pp.67-71). Her expenditures were as follows: She paid the balance of a \$1,000.00 car repair bill (R. p. 67); the Coast Electric balance which had begun accruing prior to the storm and had been turned off during the summer of 2005 for non-payment; the Gap card used by the entire family (including Jimmy) in the amount of \$845.16; the bank overdraft protection penalty of \$500.00; soccer registration for the children of \$120.00; past DirecTV bill of \$98.00; after-school child care of \$1,265.00 (R. Ex. 4); a loan she and Jimmy had taken out from her step-father several years earlier of \$1,000.00; tires for her van, \$200.00; evacuation money borrowed from her father, \$300.00; purchase of a used washer and dryer, \$100.00; dance registration and costumes, \$370.00; baseball registration of \$100.00; attorney's fees in the instant action, \$2,500.00; Christmas monies for the entire family, \$1,000.00; replacement of children's clothing and shoes subsequent to storm, \$1,500.00; dresses, suits and other expenses for all three children and herself incurred relative to Gretchen's sister's wedding, \$1,000.00; pay-off of a title loan taken out by Gretchen and Jimmy, \$700.00; and repayment to Gretchen's father and to Alltel for Jimmy's cell phone bill which was under Gretchen's name (but Jimmy continued using to the tune of \$700.00 – without paying). (R. pp. 67-70)(Gretchen's father paid Jimmy's April and May 2005 telephone bills, the rest was still owed to Alltel).

The balance of insurance proceeds remaining after paying these debts and expenses was \$9,696.00. (R. Ex. 11). This sum was placed in a C.D. by Gretchen's mother, Patricia Fielder, in her name only. (R. pp. 103-104).

SUMMARY OF THE ARGUMENT

I.

JIMMY STRONG'S CONTENTION OF FAULTY NOTICE PURSUANT TO RULE 81 OF MISS. RULE CIV. P. IS SPECIOUS

Among numerous other reasons noted below, Jimmy Strong signed an order the date of the trial of this matter expressly submitting the issue of temporary child support arrearage to the Chancellor. (See discussion infra p. 3). He can hardly now complain about lack of proper notice. This argument is simply not advanced by Mr. Strong in good faith and bears little attention due his express acquiescence to the court's jurisdiction over this matter.

II.

THE CHANCELLOR'S AWARD TO JIMMY STRONG OF THE BENEFIT OF A LARGE PORTION OF THE INSURANCE PROCEEDS AND APPROXIMATELY HALF OF THE VALUE OF THE INSURANCE PROCEEDS AND THE MARITAL ESTATE DOES NOT NEGATE HIS OBLIGATION TO PAY HIS CHILD SUPPORT ARREARAGE

Jimmy Strong argues that a substantial portion of the insurance proceeds should count as his back child support since they were, according to him, half his. He argues that since Gretchen had access to these funds and spent them in support of his children and paying off his debt – both without his permission – that his obligation of child support arrearage should be erased. Given the egregious nature of Mr. Strong's neglect of his duty to support his wife and children after Hurricane Katrina, for over a year, while supporting his married girlfriend and her three children it would seem exceedingly generous that the Chancellor awarded him not only approximately half of the value of the marital home but also a very large portion of the insurance proceeds so responsibly stewarded by Gretchen (by virtue of her having paid off large portions of his debt). To now claim that he should

be able to negate his duty to pay his child support arrearage due to having already received the benefit of almost half of the total insurance proceeds and half the value of the marital home is overreaching to say the least.

He was generously awarded half the value of the marital home and, he benefited greatly from the insurance proceeds. He is not entitled to have his cake and eat it too.

III.

JIMMY STRONG IS MISTAKEN IN HIS ASSERTION THAT THE EQUITIES REQUIRE THAT HE SHOULD BE ENTITLED TO HALF OF CERTAIN PROCEEDS FROM THE HOME OWNER'S INSURANCE RECEIVED BY GRETCHEN AND HER MOTHER, WHICH WERE, AT ALL RELEVANT TIMES, HELD BY GRETCHEN'S MOTHER IN A C.D., IN GRETCHEN'S MOTHER'S NAME ONLY

After Gretchen Strong paid off huge amounts of his debt with the insurance proceeds she and her mother received after Hurricane Katrina and after the Chancellor awarded him a one-half interest in the sale proceeds of the home, Jimmy Strong is bold enough to contend that Gretchen's share of the home sale should be offset by half of the \$9,696.30 insurance proceeds which her mother had placed in a C.D. in her name – solely.

Again, the Chancellor was exceedingly generous with Mr. Strong in the face of his own grievous behavior. She certainly did not implement an inappropriate legal standard. If anything, in view of the equities, she was overly generous with Mr. Strong.

Finally, had Mr. Strong wished to contest the placement of these monies outside the reach of the court by Gretchen's mother, he acknowledged being well aware of the fact that Gretchen's mother could have been joined in the subject action. He, however, chose not to do so. (R. p. 217).

ARGUMENT

I.

JIMMY STRONG'S CONTENTION OF FAULTY NOTICE PURSUANT TO RULE 81 OF MISS. RULE CIV. P. IS SPECIOUS

In sum, Miss. Rule Civ. P. 81 requires 7-day notice, prior to the entry of an order for temporary relief, of date, time and place of the hearing. For Jimmy to assert the failure of notice with respect to his ability to respond to Gretchen's claim for temporary support strains the bounds of credulity.

First, temporary relief had been requested in the initial pleading filed in July 19, 2004 and was answered by Jimmy on August 10, 2004. Temporary relief was also reasserted in the Amended Complaint filed December 2, 2005. And, *in this action* Jimmy concedes that he attended *two* properly noticed hearings on temporary support (January 17, 2006 and March 24, 2006) (see Jimmy's brief p. 14 ¶ 1 & 2). But, as if all of these varied forms of notice were not adequate, Jimmy entered an *Agreed Order* dated May 1, 2006, the date of the trial of this matter (Clerk's Papers pp. 53-54) expressly submitting the issue of *temporary support arrearage* to the Chancellor.

Said Order, *signed by Jimmy*, states as follows:

the parties submit all other issues relating to... child support, *the existence of temporary child support arrearage*, health insurance coverage for the children, payment of medical expenses not covered by insurance, life insurance with the children as beneficiaries, claiming the children as dependents for tax purposes, payment of college expenses, and all other related child visitation and support issues to the court for adjudication

(Clerk's Papers p. 54)(emphasis added). And Jimmy, in addition to having expressly waived any objection by signing this order, allowed the issue of arrearage be fully tried at the hearing of this matter with no objection. (R. pp. 190-191, 197).

Deborah H. Bell, in *Bell on Mississippi Family Law* states the following: §19.02 [1].

“A request for an award of property, alimony, or child support must be included in the pleadings unless the issue is tried by the parties without objection.” Professor Bell goes on to state:

A court may not exercise jurisdiction over a defendant who has not been properly served with process. However, the defense is waived if defendant appears in an action without waiving the objection in the initial pleadings or attached motions. Objections may be made in a Rule 12[b] motion to dismiss prior to filing an answer or by raising the defense in the answer. Although a Rule 81 action need not file a responsive pleading a general appearance without objecting to jurisdiction is a waiver of that objection.

§19.03[4].

As a result of the hearing, Judge Alfonso ordered Jimmy to pay \$516.00 a month dating back twelve months to June of 2005. “Mr. Strong shall pay Mrs. Strong the temporary child support arrearage of \$5,432.00... The amount was derived by multiplying the twelve months since the separation by \$516.00 a month minus the \$160.00 and \$600.00 paid by Mr. Strong during the separation.” (Order, Clerk’s Papers p. 73).

Given his overt acquiescence to the court’s jurisdiction, Jimmy clearly waived any possible claim of a defect of notice pursuant to Miss. R. Civ. P. 81 with respect to an award of prior temporary relief. Yet, even had he not so clearly stated his submission to the court’s jurisdiction and its ability to adjudicate the temporary relief issue, he would have waived any objection in light of the fact that the issue was wholly tried in the May 1, 2006, hearing with no objection from him. (Sec, e.g. R. pp. 190-191, 197).

Perplexingly, Jimmy argues with respect to the issue of temporary support arrearage

that there is no legal authority undergirding this award. Yet, Jimmy quotes Miss. Code Ann §93-11-65 and 93-9-11, which provide the trial court full authority to grant temporary relief for up to “one (1) year prior to the commencement of an action.” (Jimmy’s Brief pp. 15-16).³ Here, the Chancellor did not even reach back beyond the initial date of the filing of the complaint, staying well within the express grant of statutory authority; yet, inexplicably, Jimmy takes the position that the Chancellor had no authority to grant such temporary relief .

Given the above noted facts and authority, the Chancellor’s grant of temporary relief was wholly appropriate and justified while Jimmy’s position is wholly unfounded and without merit.

II.

THE CHANCELLOR’S AWARD TO JIMMY STRONG OF THE BENEFIT OF A LARGE PORTION OF THE INSURANCE PROCEEDS AND APPROXIMATELY HALF OF THE VALUE OF THE INSURANCE PROCEEDS AND THE MARITAL ESTATE DOES NOT NEGATE HIS OBLIGATION TO PAY HIS CHILD SUPPORT ARREARAGE

First, Jimmy confuses the notions of property division and child support, contending that some of Gretchen’s portion of the marital property value should count toward his debt of child support. Jimmy first claims that because the Chancellor ordered that the marital domicile be sold and the proceeds equally divided that, necessarily, the Chancellor intended a finding that the marital domicile was equally owned by Gretchen and Jimmy, “and [he posits] a further presumption [thus arises] that the insurance.

³ See Burnett v. Burnett No. 2000-CP-00841-COA (August 28, 2001) (generally recognizing Court’s authority to grant back child support for year prior to filing of action); Hill ex rel. Hill v. Brinkley ex rel. Brinkley, No. 2001-CA-01643-COA (March 18, 2003) (if past support is determined to be due by Chancellor, amount limited to period of one year preceding commencement of action).

proceeds were also a marital asset equally owned by the parties.” (Jimmy’s Brief at 10 and 21).

Such conclusory assertion, culminating in Jimmy’s pronouncement that “[t]herefore, *Jimmy’s share* of the marital assets to [sic] the amount of \$38,700.00 were utilized by Gretchen for herself and her children and to pay off joint marital debt” (Jimmy’s Brief at 21) (emphasis added) is both presumptive and erroneous. The Chancellor simply did not make any such determination. He was never determined to be entitled to half of the value of the house or the insurance proceeds, although, quite generously, given his behavior, the Chancellor did award him close to it. And, this determination certainly does not entitle him to negate his duty of paying his child support arrearage as determined by the Chancellor.

Division of the insurance proceeds was part of the *property settlement* in this case not *child support*. Even had the Chancellor determined that Jimmy were due half the insurance proceeds (or some other percentage along with both Gretchen and her mother), he clearly received more than his ample value of the property given the extant equities and given Gretchen’s responsible stewardship of the funds. (See pp. x, xi *infra*. and R. p. 83). Gretchen could easily have squandered the funds or at least paid off her own \$10-12,000.00 student loan, which was in her name only; however, she did not. (R. p. 110). Instead she paid off joint debt and supported their three children during an incredibly trying time – all on her own.

In addition, Gretchen maintained CHIPS insurance on the children (R. p. 44), paying all co-pays, saw to housing, clothing and feeding them with no assistance, monetary or otherwise, from Jimmy during and after the worst natural disaster in the history of the

United States. (See pp. vi, vii-viii *infra*.) Meanwhile, Jimmy moved with his married girlfriend and her three children to Jacksonville, FL and then back to the Bay St. Louis area – “paying some bills” for that household and paying some \$1,100.00 for a four-wheeler for Mary’s children. (See *infra* pp. viii).

Also, Jimmy testified to a \$464.00 Sears card balance and a \$12,751.00 Chase card balance, neither of which had he made *any* payments toward since their separation because he “couldn’t afford it.” (R. p. 183). His dire financial straits are curious given his full-time employment during the subject period (R. pp. 169-178), and the fact that he wasn’t paying child support or rent. (R. pp. 189-190). (He *was*, however, paying a note on an automobile in his father’s name, which he was driving. (R. pp. 181-184). Despite this paucity of outgoing cash each month, Jimmy could not seem to make payments on any outstanding debt.

Given the obvious disparity in the fiscal and general responsibility of the parties, the Chancellor was well within her discretion to find as she did as to property disbursement based on these equitable factors. Although Chancellor Alfonso did not cite these equitable considerations as a part of her Ferguson analysis (Clerk’s Papers p. 73), she notes them fully in her thorough opinion (Clerk’s Papers pp. 63-70). She even goes so far as to point out “Mr. Strong did not adequately support the children after the parties’ separation. He has paid expenses for his girlfriend.” (Clerk’s Papers p. 76).

Gretchen, also *brought* the asset of the property to the marriage, which was once valued at \$77,000.00 (Clerk’s Papers p. 72) and which Jimmy estimated to be worth \$60,000.00. (R. p. 191). According to the Ferguson factors noted by the court in its order, this could certainly justify Gretchen receiving a larger share of property. (Clerk’s Papers

p. 71). "A spouse's contribution to marital asset accumulation is probably the single most important factor guiding property division." Bell on Family Law §6.08[2][a]. See also Franks v. Franks, 759 So. 2d 1164, 1669 (Miss. 1999).

Financial contribution may also include a contribution of separate property. In Mississippi, separate property is frequently converted into marital property through application of the family use and commingling rules. In the division stage of equitable distribution, a court may consider the extent to which a spouse's separate property increased the marital estate. If the separate contribution benefited or improved a particular asset, the court may award a greater percentage of that asset to the contributing spouse.

Bell on Family Law §6.08 [2] [a] [ii]. See also Maslowski v. Maslowski 655 So. 2d 18, 24 (Miss. 1995). Although the Chancellor denied relying upon this factor in her opinion (Clerk's Papers p. 73) due to the fact that the home was deemed marital property, the law *does* allow such consideration and certainly mitigates in Gretchen's favor in this regard.

III.

JIMMY STRONG IS MISTAKEN IN HIS ASSERTION THAT THE EQUITIES REQUIRE THAT HE SHOULD BE ENTITLED TO HALF OF CERTAIN PROCEEDS FROM THE HOME OWNER'S INSURANCE RECEIVED BY GRETCHEN AND HER MOTHER, WHICH WERE, AT ALL RELEVANT TIMES, HELD BY GRETCHEN'S MOTHER IN A C.D., IN GRETCHEN'S MOTHER'S NAME ONLY

Finally, Jimmy argues that Gretchen intentionally placed funds outside the reach of the Court and that her share of the proceeds from the Court-ordered sale of the home should be offset by the amount of a C.D. which was purchased with the remaining insurance proceeds by her mother, Patricia Fielder. (\$9,696.00 plus interest). (Jimmy's Brief p. 22). This assertion is without merit.

As plainly noted in the record, these funds were made payable, in the large majority,

to Gretchen's mother. The parties had used Gretchen's mother's property for over eight years with no consideration to her, other than paying off a relatively small pre-existing mortgage. (See p. ix, *infra*). Contrary to Jimmy's assertion, Mrs. Fielder received no monies directly for allowing Gretchen and Jimmy to use this property all these years. (Jimmy's Brief at p. 20).

Considering that Mrs. Fielder had procured and maintained the insurance, in anticipation of a future return of the residence to her, many years prior to the transfer to Gretchen, and that all the parties anticipated, it is hardly "sneaky" that Mrs. Fielder placed the remaining sum in a C.D.

Notably, this money was placed in the C.D. *prior* to any instruction by the court to do otherwise. (R. p. 104) (see also discussion with Court pp. 212-217). And, Jimmy and Counsel were well aware of these circumstances prior to the May 2006 hearing and were free to join Mrs. Fielder in order to adjudicate disbursement of those funds had they wished. (See R. pp. 217).

Again, given the overwhelming balance of the equities in Gretchen's favor and the legal reality that the funds were legitimately held by a non-party, the Chancellor did not err in refusing to charge half of this sum against Gretchen's future share of any home sale proceeds.

IV.

CONCLUSION

Jimmy Strong has no occasion for complaint. After financially abandoning his wife and children for over a year, after their home was destroyed in Hurricane Katrina, his

audacity in finding fault in the Chancellor's very generous treatment of him is highly demonstrative of his marked lack of judgment.

The equities more than justify the Chancellor's decision, giving Jimmy right at half of the value of the family property. Additionally, the award of child support arrearage is wholly supported by the law. For these reasons, the Chancellor's decision should be affirmed.

RESPECTFULLY SUBMITTED, on this 23rd day of July 2007.

GRETCHEN STRONG

BY:

Kelly Michael Rayburn

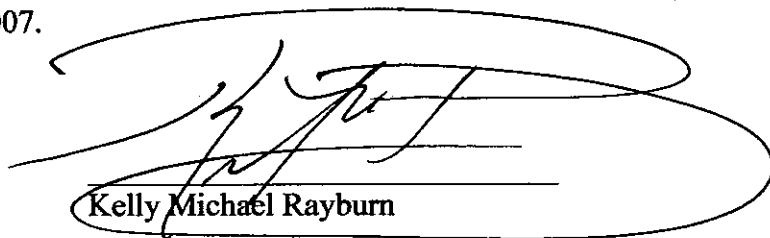
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CERTIFICATE OF SERVICE

I, Kelly Michael Rayburn, counsel of record for the Appellee herein, do certify that I have this day mailed by United States Mail true and correct copies of the above and foregoing Brief of Appellee to the following persons at their regular business mailing addresses:

- 1) Hon. Margaret Alfonso, Chancellor
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So certified on this 23rd day of July 2007.


Kelly Michael Rayburn