

IN THE SUPREME COURT OF MISSISSIPPI

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2007-13-00771

DONNA SULLIVAN

FILED

APPELLANT

MAR 27 2008

VS.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STEPHEN D. SULLIVAN

APPELLEE

BRIEF OF APPELLEE

APPEAL FROM THE CHANCERY COURT OF
RANKIN COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

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DONNA SULLIVAN

APPELLANT

VS.

STEPHEN D. SULLIVAN

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 presentations are made in order that the Justices of this Court may evaluate possible disqualification or recusal:

1. Donna Sullivan, Appellant herein and Defendant below.
2. Stephen D. Sullivan, Appellee herein and Plaintiff below.
3. Hon. Dan H. Fairly, Chancellor.
4. Hon. Melissa L. Gardner-Warren, attorney for Donna Sullivan in this Court.
5. Hon. Prentiss Grant, attorney for Donna Sullivan in the trial Court.
6. Hon. Anselm J. McLaurin, attorney for Stephen D. Sullivan.

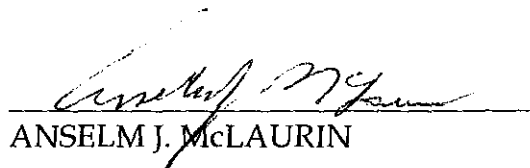

ANSELM J. McLAURIN

TABLE OF CASES AND AUTHORITIES

<i>Bell v. Parker</i> , 563 So. 2d 594 (Miss. 1990).....	6
<i>Bullock v. Bullock</i> , 699 So. 2d 1205 (Miss. 1997).....	9
<i>Ezell v. Williams</i> , 724 So. 2d 396 (Miss.).....	8
<i>Ferguson v. Ferguson</i> , 639 So. 2d 921 (Miss. 1994).....	4, 6, 7
<i>Hammett v. Woods</i> , 602 So. 2d 825 (Miss. 1992)	6
<i>Singley v. Singley</i> , 846 So. 2d 1004 (Miss. 2002).....	8

Donna then perfected her appeal to this Court, setting forth as her only issue on appeal that the Court erred in determining its division of marital assets. (Appellant's Brief P. 1)

Statement of Facts

Steve and Donna were married June 4, 1976. Of their marriage, three children were born. At the time of trial, the oldest child was emancipated, leaving two minor children, Brittany, age 17, and Christian, age 15. (T. 18, 19)

Their marriage began to deteriorate when Donna met one Brandon Roberts at a bar in Jackson known as the Hunt Club. (T. 40) In 2004, her relationship with Roberts began to flourish. (T. 41)

Steve was not happy about her relationship with Roberts. He found out about him due to love letters found in their home. (T. 21, 55) In fact, Roberts had written to Donna to tell her how much he missed her while Steve and Donna had taken a ski trip costing thousands of dollars. (T. 213) He also spent thousands of dollars to take her on a trip to Key West right before she left in 2004. (T. 213 - 214)

In spite of her relationship with Roberts which was disruptive of their marriage, Steve tried to save the marriage. He attempted to reconcile with her. Steve implored Donna to stay at home for the sake of family harmony. (T. 55 - 57)

Donna would stay out until all hours of the night with Roberts. Finally, in the fall of 2004, she was going to leave the house to spend time with Roberts. Steve told

her no, that she was going to stay at home and spend time with their children. She refused and left to see Roberts anyway. She left the home at that time never to return. (T. 55 - 57)

Steve had felt that the marriage was worth saving because they had been married for a long time. He even continued to try and get her to come back after she left. He tried to work things out on several occasions, even asking Roberts to leave her alone. They had served on church boards together. Steve attempted to save the marriage for two months after she left and moved in with Roberts (T. 110 - 114)

Notwithstanding his efforts, she lived with Roberts at two separate residences and eventually moved him into the marital domicile with her after she got possession of it through the Temporary Order. They shared expenses together. Needless to say, Donna's relationship with Roberts was a sexual relationship. (T. 20 - 24, 44)

Sometime before he finally filed for divorce in September, 2005, it finally became obvious to Steve that the marriage was over. (T. 56)

In June, 2005, long after Donna had destroyed the family harmony through her "open and shameless" affair with Roberts, Steve met and became reacquainted with Sharlette Wilson. They met at their childrens' baseball game. (T. 58, 115, 325) Within a couple of months, he developed a deeper relationship with her. This was long after Donna had moved in with Roberts, and long after Steve had exhausted his efforts to reconcile. (T. 58) Although Donna had no plans to marry Roberts (T. 34), Steve had every intention of marriage to Sharlette. (T. 59)

It should be pointed out that Steve had an undefined relationship with a woman named Penny Hopkins. She never moved into his house, but did spend a few nights there. He told her she could not do that anymore, and this was also after Donna had left and moved in with Roberts. (T. 115)

After hearing all of the testimony, the Court found that the value of the parties' marital estate was \$300,326.14. (T. 317) This consisted of the following:

Marital domicile	\$60,000.00
Eagle Lake lot	10,000.00
2 cemetery lots	2,600.00
U.S. Savings bonds	3,300.00
Bonneville automobile	4,000.00
Expedition vehicle	4,000.00
Fen-phen settlement	5,500.00
Life insurance cash value	4,279.00
Steve's 401(k) with Entergy	206,647.14 (T. 317, 318)

The 401(k) account was valued as of the time of separation. Although at the time of trial, it was worth some \$320,000.00, less a \$19,000.00 loan Steve had taken from it. This was due to passive gain in stock price which took place after entry of the Temporary Order. Donna made no contribution to this increase. (T. 318, 319)

The Court, after full analysis of the *Ferguson* factors, awarded Donna the home,

Eagle Lake lot, cemetery lots, one-half of the savings bonds, the Bonneville, the Fenphen settlement, \$20,000.00 from the 401(k) plan, and \$500.00 the parties had in her attorney's escrow account. This totaled \$104,250.00, or roughly one-third of the marital estate. (T. 326)

In addition, Steve was required to provide health insurance for her through COBRA for 36 months and to pay her \$7,300.00 in attorney's fees. (T. 333-334)

SUMMARY OF ARGUMENT

The Chancellor's finding of fact in this case is that Donna Sullivan's adultery had more of a deleterious effect on the marriage of the parties than did Steve's post separation adultery. This finding of fact was supported by credible, substantial evidence in the record and thus may not be disturbed on appeal.

Finding that Donna's conduct destroyed the harmony of the marriage and family, he divided the marital estate by essentially giving Donna one-third and Steve two-thirds. In addition, he awarded Donna three years of health insurance benefits paid by Steve and some \$7,300.00 in attorney's fees. This further evened the effective distribution as it increased her award and decreased his.

The term equitable distribution does not necessarily mean equal distribution. The Court looks at a number of factors in making the decision, and having done so correctly here, the decision must be affirmed.

ARGUMENT

Donna's argument is that the Court has misapplied the law in determining

distribution of the marital estate. Although she argues that this appeal raises issues of law and is therefore to be considered by the Court *do novo*, this is incorrect. She does not argue that the Court applied the wrong legal standard in deciding the case, only that an improper finding of fact was applied.

In deciding matters of equitable distribution, this Court has a limited power of review. Chancery Courts are afforded wide latitude and discretion in deciding such matters, and their findings are not to be disturbed if there is substantial credible evidence in the record to support the decision.

The Chancellor's ruling is not to be reversed unless it is clearly erroneous or manifestly wrong. *Hammett v. Woods*, 602 So. 2d 825 (Miss. 1992); *Bell v. Parker*, 563 So. 2d 594 (Miss. 1990).

Here, the Chancellor applied the correct legal standard relying upon the bell weather case of *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994). The Court, in its bench opinion, went through a thorough analysis of the factors established in that case to determine the division of assets between the parties. (T. 316 – 329)

Donna's argument to this Court can be summed up in a simple nutshell. She complains that since, at the time of trial, that both parties had been living in an extramarital relationship, that the Court should have treated them equally and thus distributed the marital estate equally. She does not take issue with the Court's analysis or findings on any of the other *Ferguson* factors.

The operative *Ferguson* factor in this case is “the contribution to the stability and harmony of the marital and family relationships as measured by the quality, quantity of time spent on family duties and duration of the marriage.” 639 So. 2d at 928. Here, it is abundantly clear that Donna’s conduct destroyed, rather than contributed to, the stability and harmony of the marital and family relationships. Conversely, Steve did all he could to restore and repair such stability and harmony.

Donna would stay out until all hours of the night, or not come home at all, in order to spend time with her boyfriend. She and Roberts refused to leave each other alone despite Steve’s pleas to the contrary. In fact, on the very day she abandoned the family for good, Steve told her not to go see him, but rather to stay home and spend time with her children. Steve continued to attempt reconciliation months after she left.

He continued to raise, care for, and nurture the children in her absence. Indeed, he had a good relationship with Brittany and Christian, which had gotten stronger in the time since the separation. (T. 225) The Court made a finding of fact that the marital and family stability factor weighed heavily in this case. The Court further found that her conduct substantially impacted the harmony and stability of the marriage. (T. 324, 326) In fact, the Court could not “possibly avoid making that conclusion.” (T. 325) Further, regarding the issue of the parties’ separation and Steve’s attempts at reconciliation, he found Steve to be more credible than Donna on this issue. (T. 325)

As stated previously, Chancellor’s findings of fact are not to be disturbed where such findings are supported by credible evidence in the record, and such findings are

not clearly erroneous. These are matters of fact, supported in the record, and are not to be disturbed. This Court must review the record and accept the evidence which tends to support the findings of fact made below. *Ezell v. Williams*, 724 So. 2d 396, 397 (Miss. 1998).

The lower Court certainly committed no error in considering adulterous conduct in deciding matters of equitable distribution. Indeed, the facts of this case are very similar to those in *Singley v. Singley*, 846 So. 2d 1004 (Miss. 2002), where the wife was absent from her family for extended periods in order to carry on her adulterous affairs. There, the lower court was directed to consider the marital fault of the wife when making an award of equitable distribution.

In her brief, Donna maintains that the parties' mutual errors contributed to the decay of the marriage. However, the Court found otherwise. There is substantial evidence in the record to support that it was Donna's misconduct, not Steve's, which caused the breakdown of the marriage.

Donna also maintains that the Court ignored that Steve was involved with Penny Hopkins and Sharlette Wilson during the time he claims to have been attempting reconciliation with Donna. However, the record does not support this assertion. Donna moved out in October, 2004. Steve had tried to get her to come back for about two months (T. 14)

Steve did not see Sharlette during this time until June, 2005. It was then a couple

of months before their relationship began to develop. (T. 58) The relationship with Penny Hopkins was only shortly before meeting Sharlette. (T. 115) This was obviously long after Donna had deserted the family.

As to Donna's claim of Steve having had another affair during their marriage, the un rebutted testimony was that both had had an affair years ago, prior to even Brittany, now 17, being born, but that they had overcome that. (T. 112, 113)

Finally, Donna argues that the award to her by the Court was "paltry". She maintains that the Chancellor should have made an equal division of the property. In effecting an equitable division, however, the Court "is not required to divide the property equally." *Bullock v. Bullock*, 699 So. 2d 1205, 1210 (Miss. 1997)

Donna's award of one-third of the marital estate valued at over \$100,000.00 can hardly be said to be paltry. She also complains of the tax consequence of "cashing in" her award. This applies even more so to Steve, as approximately \$180,000.00 of the \$200,000.00 he was awarded was in the tax deferred 401(k) plan.

We must also remember that in addition to her award of more than \$100,000.00, Donna was also awarded, and Steve ordered to pay, her health insurance for three years and \$7,294.78 in attorney's fees. This has the real effect of increasing her estate and decreasing his.

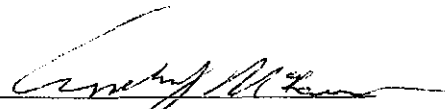
CONCLUSION

The Court made a careful analysis of the rules concerning equitable distribution,

including Donna Sullivan's behavior which was destructive of the marriage. His ruling was supported by credible evidence. This ruling is not clearly erroneous, and must be affirmed by this Court.

Respectfully submitted,

STEPHEN D. SULLIVAN

By: 
Anselm J. McLaurin,
His Attorney

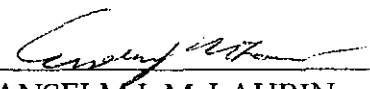
CERTIFICATE

I, Anselm J. McLaurin, attorney for Stephen D. Sullivan, Appellee herein, do hereby certify that I have this day hand-delivered a true and correct copy of the above and foregoing Brief of Appellee to:

Honorable Dan H. Fairly
Chancellor, Twentieth Chancery Court District
Rankin County Chancery Court Building
Brandon, MS 39042

Honorable Melissa L. Gardner-Warren
106 Town Square
Brandon, MS 39042

THIS the 22 day of March, 2008.


ANSELM J. McLAURIN