

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MONTE STUART MORRIS

APPELLANT

VERSUS

NO: 2007-CA-00-00816

LOU ANN JAMES MORRIS

APPELLEE

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On appeal from the Chancery Court of Lamar County, Mississippi  
Case No. 2001-0195-GN-W

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**BRIEF OF APPELLEE**

**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned attorney of record for Lou Ann James Morris certifies that the following listed persons have an interest in the outcome of this case. These representations are made for the purpose that the Justices of this Court may evaluate possible disqualification or recusal:

1. Appellant, Monte Stuart Morris
2. Appellee, Lou Ann James Morris
3. James K. Dukes, Sr., former attorney for Monte Stuart Morris
4. Herman M. Hollensed, and the law firm of Bryan Nelson, P.A.
5. All below listed counsel of the law firm of Erik M. Lowrey, P.A.
6. Hon. Johnny L. Williams, Chancellor

This the 28<sup>th</sup> day of May, 2008

  
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## **TABLE OF CONTENTS**

Certificate of Interested Persons .....	ii
Table of Contents .....	iii
Waiver of Oral Argument .....	iv
Table of Authorities .....	v
Statement of the Issues .....	1
Statement of the Case and Relevant Procedural History .....	2
Statement of the Facts .....	4
Summary of the Argument .....	10
Standard of Review .....	11
Argument .....	12
Conclusion .....	18
Certificate of Service and Filing .....	19

### **WAIVER OF ORAL ARGUMENT**

The Appellee, Lou Ann James Morris, submits that oral argument would **not** be necessary or beneficial to the resolution of this case, and submits that the record and brief should be sufficient for the Appellate Court to determine that the decision of the Chancellor should be affirmed.

## **TABLE OF AUTHORITIES**

### **MISSISSIPPI CASES**

<i>Armstrong v. Armstrong</i> , 692 So.2d 65 (Miss. 1997) .....	12
<i>Austin v. Austin</i> , 557 So.2d 509 (Miss. 1990) .....	17
<i>Brendel v. Brendel</i> , 566 So.2d 1269 (Miss. 1990) .....	15
<i>Brennan v. Ebel</i> , 880 So.2d 1058 (Miss. App. 2002) .....	15
<i>Brooks v. Brooks</i> , 566 So.2d 1113 (Miss. 1995) .....	15
<i>Gregg v. Montgomery</i> , 587 So.2d 928 (Miss.1991) .....	12
<i>Hockaday v. Hockaday</i> , 644 So.2d 446 Miss. 1994) .....	16
<i>Holcombe v. Holcombe</i> , 813 So.2d 700 (Miss. 2002) .....	15
<i>Hollon v. Hollon</i> , 784 So.2d 943 (Miss. 2001) .....	11
<i>Mckee v. McKee</i> , 382 So.2d 287 (Miss. 1980). ....	12
<i>Mizell v. Mizell</i> , 708 So.2d 55 (Miss. 1998) .....	11
<i>Montgomery v. Montgomery</i> , 759 So.2d 1238 (Miss. 2000) .....	11
<i>Morreale v. Morreale</i> , 646 So.2d 1264 (Miss. 1994) .....	11
<i>Myers v. Miss. Farm Bureau Mut. Ins. Co.</i> , 749 So.2d 1172 (Miss. App. 1999) .....	11
<i>Sarver v. Sarver</i> , 687 So.2d 749 (Miss. 1997) .....	11
<i>Spradling v. Spradling</i> , 362 So.2d 620 (Miss. 1978) .....	16
<i>Thurman v. Thurman</i> , 559 So.2d 1014 (Miss.1990) .....	12
<i>Tingle v. Tingle</i> , 573 So.2d 1389 (Miss. 1990) .....	12

### **MISSISSIPPI RULES**

Uniform Chancery Court Rule 8.05 .....	2,5,6,7,13,14,17
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## **STATEMENT OF THE ISSUES**

1. **WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN DECLINING TO TERMINATE OR REDUCE THE PERIODIC ALIMONY OBLIGATION OF MONTE STUART MORRIS**

**STATEMENT OF THE CASE**  
**AND RELEVANT PROCEDURAL HISTORY**

This case began as a divorce and separate maintenance action filed by Lou Ann James Morris (Lou Ann) on or about June 14, 2001, alleging adultery as the fault based ground for divorce and irreconcilable differences in the alternative. (CP 6-13) A Temporary Order, the only substantive Court order not agreed to between the parties, other than the judgment subject to the instant appeal, was entered on August 2, 2001. (CP 44) On August 31, 2001 Monte Stuart Morris (Monte) filed his Answer to Complaint for Divorce in which he neither admitted nor denied the charge of adultery (CP 50). After discovery, depositions and the exchange of financial statements as required by Uniform Chancery Court Rule 8.05, the matter was set for trial on October 23, 2001. In lieu of a trial the parties filed a Joint Motion to Dismiss Fault Grounds on November 6, 2001, and a corresponding Order was entered. (CP 57-58). On that same date the Court entered a Final Judgment of Divorce which incorporated an attached Property Settlement Agreement, a signed agreement between the parties which disposed of all contested issues, including alimony, equitable distribution of marital assets, child custody and support. (CP 59-70) (RE 3)

On or about June 27, 2006, Monte filed a Motion for Modification seeking an adjustment to his child support obligations, alimony obligations, as well as other obligations as set forth in the Property Settlement Agreement entered between the parties. (CP 75-70) An Answer and Counterclaim for Contempt and Modification was filed by Lou Ann on or

about July 27, 2006, seeking increased contributions for child support and child-related expenses, and an order finding Monte in contempt for failing to pay the children's cellular phone bills and an award of attorney fees. (CP 94-97) After discovery and the exchange of financial statements as required by Uniform Chancery Court Rule 8.05 the matter was set for trial on February 13, 2007. (CP 132)

After a trial on the merits the Court rendered a Bench Opinion which was incorporated into the Final Judgment of Divorce entered on March 15, 2007. (CP 138-140) (RE 16-18) In this opinion the Court granted Monte's motion to reduce his child support obligation and denied Monte's requests to reduce or eliminate his alimony obligation and his obligations to pay taxes and insurance on the former marital home. The Court also denied Lou Ann's Counterclaim for Contempt and denied both parties an award of attorney fees. (TR 100-104) (RE 13-15) It is from this Judgment that Monte has appealed.

The sole issue on appeal is whether the Chancery Court abused its discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard in declining to modify the Final Judgment of Divorce and Property Settlement Agreement of the parties to terminate or reduce Monte's periodic alimony obligations.



## STATEMENT OF THE FACTS

On or about June 27, 2006, Monte filed a "Motion for Modification" seeking an adjustment to his child support obligations, alimony obligations, as well as other obligations as set forth in the Property Settlement Agreement entered between the parties. (CP 75-70) The Motion for Modification sought modification of the Final Judgment of Divorce and corresponding attached Property Settlement Agreement, entered on November 6, 2001. (CP 57-58). This is therefore a matter of a request to modify an agreement entered into between the parties, not to modify a Judgment ordered by the Chancellor after a trial on the merits.

The Property Settlement Agreement disposed of all contested issues, including alimony, equitable distribution of marital assets, child custody and support. Both parties were represented by counsel at the time that they entered into their agreement.

With regard to the single issue presented to the reviewing Court in this appeal, the Property Settlement Agreement stated as follows as to the award of periodic alimony:

IX. ALIMONY. Husband shall pay to Wife the amount of \$1,500.00 per month as permanent alimony, with \$750.00 being due and payable on the first (1<sup>st</sup>) of each month and the remaining \$750.00 being due and payable on the fifteenth (15<sup>th</sup>) day of each month. This requirement of permanent alimony shall cease upon the death or remarriage of Wife.

(CP 66) (RE 8)

Paragraph III of the Property Settlement Agreement reflects that the parties anticipated that Lou Ann would receive disability benefits which would result in a reduction in Monte's obligations for medical insurance premiums for Lou Ann and the children of the parties. (CP

62) (RE 4)

In his "Motion for Modification" Monte cites in his pleadings that the substantial and material changes in circumstances since the entry of the Divorce and Property Settlement Agreement were a "substantial reduction" of his income and net worth and a "substantial increase" in the income and net worth of Lou Ann. Whether this was in fact the case was one of the factual issues to be determined by the Chancery Court.

A trial on the merits of Monte's "Motion for Modification" took place on February 13, 2007. Thirteen exhibits were marked and admitted into evidence, including the tax returns for both parties between 2001 and 2005 and the Uniform Chancery Court Rule 8.05 financial declarations of both parties. (Tr. II) Only the two parties testified at trial and there were no other lay witnesses or expert witnesses called by Monte. (Tr. 102-104)

The evidence and testimony at trial showed that Monte was still a co-owner of a closely held family business called Credit Bureau Central in which Monte has a 45% ownership. Credit Bureau Central employs 11 people, including Monte and his sister. Monte is Vice-President of the business. (Tr. 4-5). Five months after his divorce Monte chose to marry his current wife, Christina, who also has two children of her own. Monte purchased some land and built a house. (Tr. 32). According to his current Rule 8.05 Financial Statement (Exhibit 1) Monte's current gross monthly income is \$11,507.27 and his claimed monthly net income is \$8,789.78. (RE 22) However, under cross examination, Monte admitted that he receives additional benefits from his company not listed on his Rule 8.05 financial statement, including \$100.00 per month payable for gas. (Tr. 41) Neither did he list

his annual membership in the "Eagle Club" (a collegiate athletics support club through the University of Southern Mississippi) for himself and other officers in the Company which Monte estimates to cost \$1,500.00 per year and is paid by the business. (Tr. 50) Under the expenses that Monte did list on his Rule 8.05 financial statement are \$750.00 per month for entertainment, which included \$600.00 per month alone for Country Club dues. (Tr. 43) Monte also lives in a house valued by him at \$300,000.00, owns two Cadillac automobiles and two Sea Doo jet skis. Again according to his Rule 8.05 financial statement Monte has cash on hand in checking accounts in the amount of \$26,200.00 as well as various investments totaling \$464,100.00. Monte lists total assets as \$928,300.00 and total liabilities of \$375,313.64, the majority of which are mortgages on his and his current wife's home. (Exhibit 1) (RE 22) (Tr. 45).

Lou Ann Morris was the only other witness to testify. Lou Ann and Monte had been married 20 years before their divorce and had two children. Her son is a Junior at Mississippi State, and her daughter, a Junior in High School. Lou Ann helps support her son by paying his car note, which Monte refused to contribute to, and paying for the maintenance and insurance. (Tr. 72-72) Likewise, Lou Ann is making all of the payments on her daughter's automobile and pays the maintenance, insurance and taxes. She does so voluntarily and not as the result of any Court order.

Lou Ann is disabled and has a condition called Cushing's Disease. This condition began about three years prior to the divorce. Lou Ann has had three surgeries. After the third surgery she developed meningitis and entered into a coma and experiences ongoing

health problems as a result. Lou Ann is also on various medications which she will take for the rest of her life. Though disabled Lou Ann works part time on a limited basis and has raised her two children. (Tr. 76-77) Lou Ann has continued to live an ordinary rather than extravagant lifestyle and has not re-married. (Tr. 79)

At the conclusion of trial the Court issued a bench ruling on the issues set forth in the pleadings, having considered the testimony of the two witnesses and the evidence as admitted at trial. The Court noted that there was both evidence and proof that Monte's income had been reduced since the time of the divorce. However, the Court further found as a factual matter that it was unable to determine whether or not Monte's reduction in reported income had affected his lifestyle or left him at a disadvantage in any way and that it was also unable to determine that Monte was entitled to relief because he is unable to meet his obligation. (Tr. 100-101) (RE 16-17) Looking to Monte's assets the Court noted that Monte still has anywhere from \$400, 000 to \$500,000 in assets and that he has the ability, as owner of his business, to make adjustments in how he receives his income. The Court further found that Monte even increased his income in a way that produces an increase of \$20,000 for the year 2006 and that Monte is also going to get profits from the business which at the time of trial had yet to be determined. (Tr. 101) (RE 17)

On the other hand, when the Court considered Lou Ann's current situation, the Court noted that she is in a somewhat manageable, but controlled situation, with far less freedom and less opportunity to make the kind of decisions to alter her income as Monte does. (CP 140) (Tr. 100-102) (RE 16-18) The Court found, as a matter of fact, that to decrease Lou

Ann's income would put her in a less secure situation and that to take money away from her, where she has no ability to go out on her own to go out and increase her income, would tip the scales in a way that would be disadvantageous to her and advantageous to Monte. (Tr. 101) (RE 16) The Court further noted that it was of the opinion that it should not make adjustments that would be disadvantageous to one party or another when the Court is asked to modify an agreement that the parties themselves entered into. (Tr. 102) (RE 17)

The Chancery Court was well aware, and noted in its ruling, that alimony is always subject to modification. The Court noted that though there may have been a small cushion between Lou Ann's income and stated needs, this amount was not an unreasonable one. Indeed the Court noted that every household needs some cushion for emergencies or unforeseen events. The Court also observed that Lou Ann still helps her children, even her child in college. With regard to any increase in Lou Ann's income, the Court could not find the fact that she receives disability income to replace that which she received from employment as a circumstance that could not have been anticipated at the time of the parties' Property Settlement Agreement. The Court further noted that due to Lou Ann's medical conditions she is not going to be able to work or hold full-time employment in the near future or in the distant future. (Tr. 102) (RE 18)

Finally the Court granted Monte's request that his child support be reduced based upon the emancipation of one of the minor children. The Court reduced Monte's child support obligation for the remaining child to 14% of \$50,000.00, based on the Mississippi child support guidelines, reducing his obligation from \$1000.00 per month to \$583.73 per

month, (Tr. 102-103) (RE) (CP 138-140) The Court denied any remaining claims of either party and declined an award of attorney fees to either party. (CP 138-140) (RE 13-15 )

### **SUMMARY OF THE ARGUMENT**

Monte Stuart Morris did not meet his burden of proof in proving, by a preponderance of the evidence, that there had been a substantial and material change in circumstances since the last judgment or decree, that could not have been anticipated at the time of the entry of the last order or decree, which would warrant the Court to modify his permanent periodic alimony obligations, as set forth in the Final Judgment of Divorce and corresponding attached Property Settlement Agreement, entered with the Court on November 6, 2001, (CP 57-58) (RE 1-2).

### STANDARD OF REVIEW

“This Court's scope of review in domestic relations matters is limited.” *Montgomery v. Montgomery*, 759 So.2d 1238, 1240 (Miss. 2000). The findings of a Chancellor will not be disturbed by the reviewing Court unless the Chancellor was “manifestly wrong, clearly erroneous or an erroneous legal standard was applied.” *Id.* “Our familiar standard holds that, absent an abuse of discretion, we will uphold the decision of the Chancellor. To disturb the factual findings of the Chancellor, this Court must determine that the factual findings are manifestly wrong, clearly erroneous or the Chancellor abused his discretion.” *Hollon v. Hollon*, 784 So.2d 943, 946 (Miss. 2001). Findings of the Chancellor will not be disturbed or set aside on appeal unless the decision of the trial court is manifestly wrong and not supported by substantial credible evidence, or unless an erroneous legal standard was applied. *Sarver v. Sarver*, 687 So.2d 749, 753 (Miss. 1997). Where there is a question of law the standard of review is *de novo*. *Morreale v. Morreale*, 646 So.2d 1264, 1267 (Miss. 1994). The trial court is presumed to be correct unless the record shows otherwise. *Myers v. Miss. Farm Bureau Mut. Ins. Co.*, 749 So.2d 1172 (Miss. App. 1999) Particularly in the areas of divorce and child support, the reviewing Court must respect a chancellor's findings of fact which are supported by credible evidence and not manifestly wrong. *Mizell v. Mizell*, 708 So.2d 55, 59 (Miss. 1998).



## ARGUMENT

### 1. WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION, WAS MANIFESTLY WRONG, CLEARLY ERRONEOUS, OR APPLIED AN ERRONEOUS LEGAL STANDARD IN DECLINING TO TERMINATE OR REDUCE THE PERIODIC ALIMONY OBLIGATION OF MONTE STUART MORRIS

Support agreements for divorces granted on the ground of irreconcilable differences are indeed subject to modification, as noted by the Chancery Court opinion. (Tr. 102) (RE) *Thurman v. Thurman*, 559 So.2d 1014, 1017 (Miss.1990). The modification can occur only if there has been a material change in the circumstances with one or more of the parties. *Id.*; *See also, Gregg v. Montgomery*, 587 So.2d 928, 932 (Miss.1991). The change must occur as a result of after-arising circumstances of the parties not reasonably anticipated at the time of the agreement. *Tingle v. Tingle*, 573 So.2d 1389, 1391 (Miss. 1990). Modification must be based on events occurring since the Order awarding alimony and cannot be used to correct a perceived error in an earlier decree and the change must be clear and substantial. *McKee v. McKee*, 382 So.2d 287, 288 (Miss. 1980).

In his brief before the appellate court Monte leaps into an *Armstrong* analysis, assigning error to the findings of the Chancellor, without first addressing the fundamental issue of whether there has been a substantial and material change in circumstances, since the entry of the last judgment or decree, which could not have been anticipated at the time of entry of the last judgment or decree. *Armstrong v. Armstrong*, 692 So.2d 65 (Miss. 1997)

The test that must be met for the petitioner seeking to modify alimony is that he must prove a material change in circumstances that was not foreseeable at the time of the decree. In addition, the petitioner must show that the change has affected the disparities between the parties financial conditions. The appellate Court's scope of review in domestic relations matters is limited by the familiar substantial evidence/manifest error rule. Monte has produced no evidence to warrant disturbing the findings of a chancellor. The chancellor was not manifestly wrong, clearly erroneous, nor was an erroneous legal standard applied. The chancellor's findings of fact are supported by credible evidence contained in the record and exhibits and are not manifestly wrong.

Monte's lifestyle has not suffered to any noticeable degree since the entry of the Final Judgment of Divorce and Property Settlement Agreement. The evidence and testimony at trial showed that Monte was still a 45% owner of Credit Bureau Central. Five months after his divorce Monte chose to re-marry. Monte purchased some land and built a new house which he values at \$300,000.00. (Tr. 32) According to his most recent Rule 8.05 Financial Statement (Exhibit 1) Monte's current gross monthly income is \$11, 507.27 and his claimed monthly net income is \$8,789.78. (RE 22) This net figure will now increase by almost \$500.00 per month due to the Chancery Court's ordered reduction in his child support obligation. Under the expenses that Monte listed on his Rule 8.05 financial statement were \$750.00 per month for entertainment, including \$600.00 per month for Country Club dues. (Tr. 43) Monte also owns two Cadillac automobiles and two Sea Doo jet skis. Monte has cash on hand in checking accounts in the amount of \$26,200.00, as well as various

investments totaling \$464,100.00. Monte lists total assets as \$928,300.00 and total liabilities of \$375,313.64. (Exhibit 1) (Tr. 45) (RE 22). No credible evidence was produced to support any contention that Monte could not meet his alimony obligations to Lou Ann, and no evidence exists in the record to reverse the Chancellor's finding of fact on this issue.

Monte claims in his brief that his income has "substantially declined" and that Lou Ann's has "practically doubled" since the time of the divorce, chiefly because she receives disability benefits. Monte made the same these same arguments to the Chancellor as trier of fact, but the Chancellor was not convinced by them. The record also supports the Chancellor's findings of fact on this issue. Paragraph III of the parties' Property Settlement Agreement reflects that the parties anticipated that Lou Ann would receive disability benefits which would result in a reduction in Monte's obligations for medical insurance premiums for Lou Ann and the children of the parties and become an additional source of income for Lou Ann. (CP 62) (RE 4) Therefore it was no surprise, and no change in circumstances which could not have been anticipated at the time of the divorce, that Lou Ann would receive disability income.

Monte claims that he has suffered a loss of business income from his business and that this loss has impacted his ability to pay his alimony obligation. If there has been a reduction in Monte's business income it has not apparently affected his lifestyle or spending habits, as noted herein, and by the Chancery Court's opinion. Even in reported cases where the payor's business suffered a sudden and dramatic loss of income, and the payor also had deteriorating health, which continued to deteriorate with increasing age, the Mississippi Supreme Court

affirmed the Chancellor's decision to deny any modification of a prior alimony decree where the husband's lifestyle and spending habits indicate that these factors had no impact on his lifestyle, purchasing decisions or ability to pay. *Holcombe v. Holcombe*, 813 So.2d 700, 706 (Miss. 2002). See also *Brennan v. Ebel*, 880 So.2d 1058, 1063 (Miss. App. 2002). Monte owns a closely held business with a number of employees. In the year 2006 his business income was actually increased by \$20,000.00 as a result of actions he himself took, which supports the finding of the Chancellor that Monte was able to exercise some control over his business income. (Tr. 101)

The so called "touchstone rule" referred to by Monte in his brief simply re-states the well established law in this State that alimony, if allowed, should be reasonable in amount, considering both the wife's accustomed standard of living as well as the ability of the husband to pay is. See *Brooks v. Brooks*, 566 So.2d 1113, 1122 (Miss. 1995) citing *Brendel v. Brendel*, 566 So.2d 1269, 1272 (Miss. 1990). In *Brooks*, a case involving a contested divorce, not an irreconcilable differences divorce and agreed property settlement agreement, the issue before the Court was whether the husband should be required to pay such expenses as follows: "\$1,115.00/month for clubs, social obligations, travel, recreation," \$258.00/month for lawn care, \$600.00/month for donations, \$191.00/month for hair care, \$350.00/month for vacation, \$250.00/month for dining out, and \$420.00/month for entertaining friends. *Id.* at 1121. Unlike *Brooks* this is a case where there was an irreconcilable differences divorce, a mutual agreement which included periodic alimony, and a recipient who lives anything but

an extravagant lifestyle, who is legally disabled, yet supports both her emancipated and un-emancipated children. No evidence was presented to show that Monte cannot afford his alimony obligation or that the amount of alimony Monte pays is unreasonable and the Chancery Court was not manifestly wrong and did not abuse its discretion in making this finding of fact.

Monte argues that Lou Ann's investment income has increased every year since the divorce and that this should be a basis for the elimination or reduction of his alimony obligation. One would certainly hope that Lou Ann's investment income would increase since 2001. That is the purpose of the existence of such investments in the first place, to keep pace with, or ahead of, the rate of inflation. This is especially important in the case of people, like Lou Ann, who are on fixed incomes. Any increase in the value of assets which were awarded in the Final Judgment of Divorce, or any increase in income therefrom, are entirely normal and foreseeable, are irrelevant to the case at bar and to Monte's alimony obligations. See *Spradling v. Spradling*, 362 So.2d 620, 624 (Miss. 1978). Where one party is industrious and prudent in their endeavors, and the payor is still in a much better financial position than the recipient, the recipient is not to be punished for these traits by the Courts. *Hockaday v. Hockaday*, 644 So.2d 446, 450 (Miss. 1994).

Monte claims that his reasonable needs and living expenses cannot be met with his current income. However, as set forth above, Monte's expenses and lifestyle are of his own choosing and by any standards quite extravagant. Monte's current gross monthly income is

\$11, 507.27 and his claimed monthly net income is \$8,789.78. (RE 22) These figures are before the \$500.00 reduction in his child support obligation as ordered by the Chancellor in the case at bar. Under cross examination Monte admitted that he receives additional benefits from his company not listed on his Rule 8.05 financial statement, including \$100.00 per month payable for gas. (Tr. 41) and "Eagle Club" membership which Monte estimates to cost \$1,500.00 per year. (Tr. 50) The Mississippi Supreme Court has previously reversed a Chancellor's termination of the payor's alimony obligations where it was obvious that the husband was affluent, maintained a high standard of living and was well able to afford his expenses. *Austin v. Austin*, 557 So.2d 509, 510 (Miss. 1990). The record simply does not support Monte's contention that his "reasonable needs and living expenses" can no longer be met with his current income. The record supports the findings of the Chancellor that Monte has sufficient income to meet the alimony obligation that he agreed to pay to Lou Ann.

### CONCLUSION

Monte Stuart Morris did not meet his burden of proof in proving, by a preponderance of the evidence, that there had been a substantial and material change in circumstances since the last judgment or decree, that could not have been anticipated at the time of the entry of the last order or decree, which would warrant the Court to modify his permanent periodic alimony obligations, as set forth in the Final Judgment of Divorce and corresponding attached Property Settlement Agreement. The Chancery Court did not abuse its discretion, was not manifestly wrong, clearly erroneous and did not apply an erroneous legal standard in denying Mr. Morris' request for a modification of his alimony obligations.

RESPECTFULLY SUBMITTED this the 28<sup>th</sup> day of May, 2008.

Lou Ann James Morris

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MONTE STUART MORRIS

APPELLANT

VERSUS

NO: 2007-CA-00-00816

LOU ANN JAMES MORRIS

APPELLEE

**CERTIFICATE OF SERVICE AND FILING**

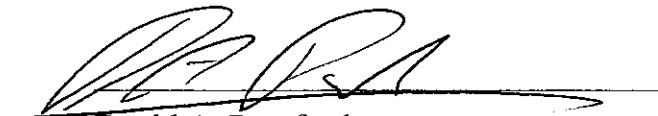
I, David A. Pumford, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following persons at their usual mailing addresses:

Herman M. Hollensed, Jr.  
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Hon. Johnny L. Williams  
Chancery Court Judge, Forrest County  
P.O. Box 1664  
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I, David A. Pumford, Attorney for the Appellee, hereby certify that I have actually mailed this date the Original and three copies of the Brief of the Appellee to the Mississippi Supreme Court.

THIS, the 28<sup>th</sup> day of May, 2008.



David A. Pumford