

IN THE SUPREME COURT OF MISSISSIPPI

GEORGIA M. WALKER

APPELLANT

VERSUS

CASE NO. 2007-CA-01074

R.L. WALKER

APPELLEE

APPEAL FROM

THE CHANCERY COURT OF CLAY COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

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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 disqualifications or recusal.

Georgia M. Walker, Appellee

Carrie A. Jourdan, Attorney for Appellee

Honorable Dorothy W. Colom, Chancery Court Judge

R.L. Walker, Appellant

J. Joshua Stevens, Attorney for Appellant




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STATEMENT OF THE ISSUES

- I. WHETHER THE CHANCELLOR ABUSED HER DISCRETION IN THE DIVISION OF THE MARITAL PROPERTY AND RELATED DEBTS BETWEEN THE HUSBAND AND WIFE?
- II. WHETHER THE CHANCELLOR ABUSED HER DISCRETION IN THE AWARDING PERIODIC ALIMONY TO THE WIFE?

STATEMENT OF THE CASE

Georgia M. Walker, hereinafter referred to as "Wife", married R.L. Walker, hereinafter referred to as "Husband", in Clay County, Mississippi on January 1, 1969. Husband and Wife remained in Clay County, Mississippi, until they separated in the year 2004. The only child of the marriage, though a minor at time of the Wife's Complaint for Divorce, was emancipated by the time of the trial.

The Wife filed a fault-based divorce on August 4, 2004, in the Chancery Court of Clay County, Mississippi. At the commencement of the trial, the Chancellor noted for the record the agreement of the parties, with specific acknowledgement of both parties, of the agreement of the parties to the withdrawal of the fault-based divorce, and agreement as the granting of an irreconcilable differences divorce. The only matters submitted to the court were the questions of (1) Determination of what is the marital estate and an equitable division and distribution of same, including, but not limited to, the marital residence, rental property(ies), retirement and pension accounts, household goods and furnishings, and automobiles; (2) alimony and (3) attorney fees. The Chancellor's findings, opinion, and Judgments as to the first two issues are being appealed to this Court. The Chancellor's denial of attorney's fees is not before this court.

Trial was held January 19, 2006. After receiving exhibits and testimony, the Court requested supplementation by the Wife of certain information concerning her PERS account. The Chancellor issued her opinion on March 9, 2006. The Husband moved to reconsider the opinion on April 7, 2006. The Chancellor ordered on June 2, 2006, a reopening of the case for submission of certain financial information. Based on the June 2, 2006, order, the Chancellor held a hearing on August 15, 2006, to allow the parties to raise any objections or ask any questions concerning the new material the Chancellor ordered submitted.

After the hearing, the Chancellor partially granted the Husband's Motion to Reconsider its opinion on December 27, 2006. The Chancellor's initial opinion remained in effect except to the extent modified by the December 27, 2006, order. A Final Judgment of Divorce was entered May 29, 2007, consistent with the Chancellor's March 9, 2006 order, as modified by its December 27, 2006, order. This order issued concerned the division and transfer of certain assets between the Husband and Wife, and awarded periodic alimony of \$200.00 per month to be paid by the Husband to the Wife. On June 25, 2007, the Husband appealed the Final Judgment to this Court.

STATEMENT OF THE FACTS

Georgia M. Walker, hereinafter referred to as "Wife", married R.L. Walker, hereinafter referred to as "Husband", married in Clay County, Mississippi on January 1, 1969. Husband and Wife remained in Clay County, Mississippi until they separated in the year 2004. The only child of the marriage, though a minor at time of the Wife's Complaint for Divorce, was emancipated by the time of the trial.

The Chancellor in this case conducted extensive hearings as to the marriage and the property. All property was agreed to be property of the marriage. In her opinion of March 9, 2006, the Chancellor found that there was a marital home, a duplex, a rental home, and a vacant lot acquired during the marriage (R.E. 23). As to personal property, the Chancellor found household furnishings, a 2000 freightliner truck, a Gooseneck trailer, a 270 John Deere Haycutter, a 1994 Dodge, a 1989 GMC Silverado, a 1992 Cadillac, and a 2004 Denali. In its amended opinion entered December 27, 2006, the Chancellor also found that the Wife had a retirement account labeled a 401(k) account; but, from trial testimony and counsel discussion it was a Mississippi PERS account obtained from her employment incorrectly labeled in the final opinion (R.E. 86, T. 65, R.E. 84). The final Judgment, as amended, awarded the PERS account valued at \$18,399.29 to the Wife, as well as the marital home, the vacant lot, the 1992 Cadillac, 1994 Dodge and all household goods not inherited by the Husband from his mother. The Husband received the duplex, the rental home, the 2000 Freightliner, the gooseneck trailer, the 270 John Deere Haycutter, the frontend loader, the 1989 GMC Silverado, the 2004 Denali, his IRA, guns and household goods inherited from his mother. The Husband was ordered to pay the as when due the unpaid balance on the deed of trust on the marital home and to attempt to seek refinancing and eliminate the Deed of Trust on the marital home (i.e. pay the intermediate obligations under the deed of trust as scheduled until he could obtain a way to satisfy the deed of

trust in full) ; and to pay the balance of any indebtedness on the 1994 Dodge. (R.E. 90-91). The Court found that after this equitable division, that pursuant to *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993), the Wife should be paid by the Husband \$200.00 per month in periodic alimony. (R.E. 26, 87, 91).

SUMMARY OF THE ARGUMENT

I. The Husband/Appellant seeks to overturn the Chancellor's finding of facts and final judgment as to the division of marital property between he and his Wife. The Husband alleges that the Chancellor failed to note his breadwinning role in the family and that the division of property was not equal, and therefore not equitable. The Wife responds that, based on the testimony and submissions, the Chancellor made all required detailed findings to support her equitable division of the marital property and that sufficient evidence existed in the record to support those findings.

II. The Husband/Appellant alleges that the Chancellor did not make a proper equitable division for her to be able to make a periodic alimony determination, or in the alternative, if the marital property division was equitable, improperly decided the amount of the award of periodic alimony. The Wife responds that the Chancellor found that the marital property division did not fully make the Wife whole to the extent she was entitled, made detailed finding of the facts and made all the necessary conclusions supporting an award of periodic alimony.

ARGUMENT

I. WHETHER THE CHANCELLOR ABUSED HER DISCRETION IN THE DIVISION OF THE MARITAL PROPERTY AND RELATED DEBTS BETWEEN THE HUSBAND AND WIFE?

As the Mississippi Court of Appeals reiterated in *Sullivan v. Sullivan*, 990 So.2d 783, 785(¶ 12) (Miss. 2008), when equitably distributing marital property, a chancellor should consider the well-known factors set forth in *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). Those factors are the following:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:
 - a. Direct or indirect economic contribution to the acquisition of the property;
 - b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and
 - c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.
2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.
3. The market value and the emotional value of the assets subject to distribution.
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,

8. Any other factor which in equity should be considered.

The Chancellor in this case conducted extensive hearings as to the property. All property was agreed to be property of the marriage. In her opinion of March 9, 2006, the Chancellor found that there was a marital home, a duplex, a rental home and a vacant acquired during the marriage. (R.E. 23). As to personal property, the Chancellor found household furnishings, a 2000 freightliner truck, a Gooseneck trailer, a 270 John Deere Haycutter, a 1994 Dodge, a 1989 GMC Silverado, a 1992 Cadillac and a 2004 Denali. In its amended opinion entered December 27, 2006, the Chancellor also found that the Wife had a retirement account labeled a 401(k) account, but, from trial testimony and discussion of counsel was, in fact, a Mississippi PERS account obtained from her employment (R.E. 86, T. 65, R.E. 84). The final Judgment, as amended, awarded the PERS account valued at \$18,399.29 to the Wife, as well as the marital home, the vacant lot, the 1992 Cadillac, 1994 Dodge and all household goods not inherited by the Husband from his mother. The Husband received the duplex, the rental home, the 2000 Freightliner, the gooseneck trailer, the 270 John Deere Haycutter, the frontend loader, the 1989 GMC Silverado, the 2004 Denali, his IRA, guns and household goods inherited from his mother. The Husband was ordered to pay the regular payments on the deed of trust on the marital home; to attempt to seek refinancing and eliminate the deed of Trust on the marital home; and to pay the balance of any indebtedness on the 1994 Dodge. (R.E. 90-91). The Court found that after this equitable division, that pursuant to *Armstrong v. Armstrong*, 618 So.2d. 1278 (Miss. 1993), the Wife should be paid by the Husband \$200.00 per month in periodic alimony. (R.E. 26, 87, 91).

From this award, the Husband appeals. In his principal brief at page 13, the Husband states, “Mr. Walker worked hard for many years to accumulate the net worth the parties at the time of the divorce. He was the primary breadwinner during the marriage. ... He accepts the proposition the net worth he and his wife accumulated should be divided equally but does not feel that he should receive less than ½ of the net marital estate.” The Husband’s invocation of the “primary breadwinner” language is an attempt to deflect from the *Helmsley* Court which stated that, “Mississippi courts assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise are of equal value” *Helmsley v. Helmsley*, 639 So.2d 909, 915 (Miss. 1994). This is an attempt to imply manifest unfairness occurred to the Husband because he was the primary breadwinner and that the marital property was not divided 50/50. Unfortunately for him, equal division is not the same as equitable division.

As stated in *Sullivan*, at 787, “[I]t is well established that an equitable distribution of property does not have to be an equal distribution of property. *Hensarling v. Hensarling*, 824 So.2d 583, 590(¶ 20) (Miss.2002). “[T]here is no automatic right to an equal division of jointly-accumulated property, but rather, the division is left to the discretion of the court. . . .” *Parsons v. Parsons*, 741 So.2d 302, 306(¶ 23) (Miss.Ct.App.1999). *Sullivan*, at 784, like the present case before the Court, dealt with an irrevocable difference divorce but that the Chancellor considered the misconduct of the parties in the property division. More specifically, the *Sullivan* Court stated, “[m]arital misconduct is a proper factor for a chancellor to consider when equitably distributing marital assets” “when the misconduct places a burden on the stability and harmony of the marital and family relationship.” See *Ory v. Ory*, 936 So.2d 405, 413(¶ 23) (Miss. Ct. App. 2006) (citing *Singley v. Singley*, 846 So.2d 1004, 1007(¶ 8) (Miss. 2002)).”

The Chancellor in this case heard the Husband admit that he had fathered more than one child outside the marriage (R.E. 58). The Husband further admitted he was cohabitating with another woman (R.E. 29, 57). Also, the 2004 Dodge Denali was being driven by the other woman with the Husband paying the indebtedness (R.E. 58). The Wife continued to prepare meals, tend to the Husband's clothes and obtain his medicine despite his behavior (R.E. 29). Though the Wife filed for divorce first, the Husband attempted to browbeat the Wife into a divorce agreement he had prepared (R.E. 28). The Husband refused to contribute to the household expenses (R.E. 28). The failure to support his Wife necessitated the filing of the divorce action (R.E. 31). No such bad conduct on the part of the Wife was adduced at trial. While financially contributing to another household, the Husband refused to maintain the household of his marriage. These facts provided the Chancellor ample evidence of misconduct of by the Husband which justified an equitable but less than equal property division.

The Husband in his principal brief restates arguments about the alleged net economic injustice of the Chancellor's decision which he likewise made in his Motion to Reconsider. The Chancellor responded in Paragraph 3 of her December 26, 2006, order (R.E. 86):

Having adjusted the marital distribution (after the finding of the correct balance of the Wife's PERS account), [The Wife's] net worth is now \$115,897.29. She has no liabilities. [The Husband's] net worth is now \$177,350.00. While he argues he has liabilities of \$258,281.00, there was no credible evidence that he has a \$50,000 medical bill. Further he testified that the debt on the additional real property acquired during the marriage (which was all awarded to him), was serviced by the monthly rental payments [T. 57] Therefore, he should not have any monthly payments out of his income for this property. The \$57,000 debt on the marital home (which was awarded to the [Wife]) was acquired to purchase the Freightliner. The Freightliner was needed for [Husband]'s business and since the marital home was debt-free, the parties agreed to secure an equity loan to purchase the truck. The Freightliner was awarded to the [Husband] and as it is used solely in his business, the debt can be paid by the business. The remaining liabilities are for three vehicles solely by the [Husband]. [Husband]'s liabilities must be put in perspective.

The Wife cannot better refute the Husband's arguments herself. However, given the invocation of God to describe the extent of unfairness the Husband claims to have been heaped upon him ("One is reminded of the Biblical passage in that he asked for bread, and got a stone. He asked for a fish and got a serpent." Page 18 of Husband's principal brief), a further response is briefly warranted. Though the Wife could argue whose side the angels are on in this case, she will stick to the more earthly and ancient maxim, "those who seek equity must do equity."

The principal unhappiness of the Husband appears to be with regard to his being required to satisfy the obligation on the marital home in the amount of \$57,000.00. The Husband was awarded the Freightliner worth \$45,000 and the 2004 Denali worth \$50,000, subject to a \$58,000 lien. The parties owned their marital home free and clear. In order to the aid the Husband in his business, the Wife agreed to allow a deed of trust to be placed on the marital home in order to finance the Freightliner purchase in 2001. From the evidence, it appears the Husband was able to generate substantial income from the business of his operating the Freightliner. Instead of using the proceeds from operation of the business to reduce the outstanding obligation on the marital home, the Husband purchased a luxury automobile which created an indebtedness equal to the indebtedness amount on the equity line on the marital home. The Husband serviced the automobile indebtedness instead of using the money to reduce the equity line. It is clear that it was more important to the Husband that his mistress drive around West Point, Mississippi in a new luxury 2004 Denali automobile than to reduce the obligations on the marital home he created with his Wife of thirty-five years. To invoke the Bible at his supposedly inequitable treatment, considering his actual conduct, is simply a demonstration of the height of gall of the Husband. However, there is a long and storied tradition of selective spirituality amongst adulterers.

II. WHETHER THE CHANCELLOR ABUSED HER DISCRETION IN THE
AWARDING PERIODIC ALIMONY TO THE WIFE?

The Husband challenges the award of periodic alimony on numerous grounds.

As to the issue of alimony, the Supreme Court in *Lauro v. Lauro*, 847 So.2d 843, 848 (¶
13) (Miss. 2003):

Alimony is considered only after the marital property has been equitably divided and the chancellor determines one spouse has suffered a deficit.

Division of marital assets is now governed under the law as stated in *Helmsley* [*Helmsley v. Helmsley*, 639 So.2d 909 (Miss. 1994)] and *Ferguson*. First, the character of the parties' assets, i.e., marital or nonmarital, must be determined pursuant to *Helmsley*. The marital property is then equitably divided, employing the *Ferguson* factors as guidelines, in light of each parties' non-marital property. *Ferguson*, 639 So.2d at 928. If there are sufficient marital assets which, when equitably divided and considered with each spouse's non-marital assets, will adequately provide for both parties, no more need be done. *If the situation is such that an equitable division of marital property, considered with each party's non-marital assets, leaves a deficit for one party, then alimony based on the value of non-marital assets should be considered.*

Johnson v. Johnson, 650 So.2d 1281,1287 (Miss.1994) (emphasis added).

The Chancellor found that in the next to last paragraph of its initial opinion that (R.E. 26):

The Court finds that the equitable division of the marital assets does not adequately provide for the future income needs of Wife. In accordance with *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993), the Court has considered the aforementioned facts and more specifically, the health and age of the parties, the income and earning capacity and the needs of each party, the obligations and assets of each part, the length of the marriage, the standard of living of the parties, both during the marriage and at the time of separation, fault or misconduct, as well as the equitable division of marital assets set forth, and the Court awards the Wife the sum of \$400.00 per month as periodic alimony.

The amount was modified to \$200.00 per month after the submission of the Wife's PERS statement (R.E. 87). The Court made detailed factual findings as to each of these factors in its initial opinion (R.E. 22-26). The Wife cannot find any fact stated in the Chancellor's opinion not in the record or transcript nor any illogical or defective reasoning in the opinion. In particular the Court used the figure of \$2,000 per month as the Husband's gross income as disclosed in his

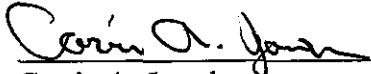

8.05 Form (R.E. 22). The Husband simply does not agree with the Chancellor's conclusions. As such, his demands for relief from this Court should be denied. This Court is not conducting a *de novo* review therefore it would be improper for this Court to substitute its opinion for that of the Chancellor's.

CONCLUSION

The Appellee, Georgia M. Walker, submits to this Court that the Chancery Court of Clay County did not commit error in the equitable property division or the award of periodic from her Husband, R.L. Walker. Specifically, the Court correctly applied *Ferguson* and *Armstrong* factors properly. Therefore, this Court should affirm the opinion and findings of the Chancellor.

Dated: 10/15, 2009.

Respectfully Submitted,
Georgia M. Walker


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CERTIFICATE OF SERVICE

I, Carrie A. Jourdan, attorney for the Appellee, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Appellant's Brief to the following:

J. Joshua Stevens, Jr.
Counsel for Appellant
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Hon. Dorothy W. Colom
Chancery Court Judge
P.O. Box 708
Columbus, MS 39703-0708

This the 15th day of October, 2009.



CARRIE A. JOURDAN

CERTIFICATE OF MAILING

I, Carrie A. Jourdan, attorney for the Appellee, do hereby certify in accordance with M.R.A.P. 25 (a), that I am this day depositing in the United States Mail, first class, postage-prepaid, one original and three copies of the Brief in the matter of *R.L. Walker (Appellant) v. Georgia M. Walker (Appellee)*, case number 2007-CA-01074, for filing with the Clerk of the Supreme Court/Court of Appeals.

This the 15th day of October, 2009

Carrie A. Jourdan
CARRIE A. JOURDAN