

IN THE SUPREME COURT OF MISSISSIPPI

R. L. WALKER

APPELLANT

VERSUS

CAUSE NO. 2007-CA-01074

GEORGIA M. WALKER

APPELLEE

BRIEF OF APPELLANT

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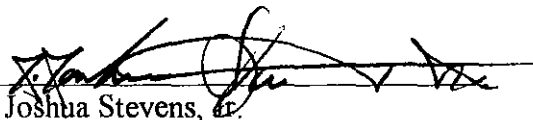
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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. R. L. Walker- Appellant
2. Georgia M. Walker- Appellee
3. Judge Dorothy W. Colom, Chancellor
4. J. Joshua Stevens, Jr. - Attorney for Appellant
5. Carrie A. Jourdan-Attorney for Appellee

Respectfully submitted,



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STATEMENT OF THE ISSUES

1. WHETHER OR NOT THE CHANCELLOR MADE AN EQUITABLE DIVISION OF THE MARITAL ASSETS IN THIS CAUSE.
2. WHETHER OR NOT THE CHANCELLOR FAIRLY APPORTIONED THE INDEBTEDNESS OF THE PARTIES.
3. WHETHER OR NOT THE CHANCELLOR ERRED IN ORDERING MR. WALKER TO PAY MRS. WALKER PERIODIC ALIMONY IN THE AMOUNT OF \$200.00 PER MONTH UNDER THE FACTS OF THE CASE.

STATEMENT OF THE CASE

R. L. Walker and Georgia M. Walker were married on January 1, 1969, (R.E. 8) and lived together as husband and wife until their separation in 2004 (R.E. 22). Their only child was emancipated at the time of the trial. (R.E. 22).

It was undisputed that all property that the parties owned at the time of the divorce fell within the definition of "marital property" and was thus subject to an equitable division.

The parties entered into a consent for a divorce on the grounds of irreconcilable differences and agreed for the Chancellor to adjudicate all economic issues between the parties, including the division of marital property and whether or not alimony was appropriate in this cause. (R.E. 22).

Mrs. Walker was an employee of the West Point Municipal Separate School District with a monthly income from the school of \$1,388.00. She also received \$689.00 per month in Social Security retirement benefits. She also had a vested PERS retirement account. (R.E. 23). The Chancellor found that her health was fair and she did not take any medication. (R.E. 23).

Mr. Walker, on the other hand, has had three heart attacks and has a pacemaker. He was required to take ten different medications each day. (R.E. 23).

At the conclusion of the trial, the Chancellor rendered her opinion in which she made certain findings of fact and conclusions of law. (R.E. 22 sequa)

The Chancellor then undertook to divide the marital property and, in addition thereto, ordered Mr. Walker to pay Mrs. Walker \$200.00 per month in alimony.

Being aggrieved of the Chancellor's proposed adjudication of the issues, Mr. Walker then filed a Motion for Reconsideration of the Court's Opinion (R.E. 30).

The Chancellor entered an order on December 27, 2006, ruling on Mr. Walker's Motion for

Reconsideration. (R.E. 85) A Final Judgment for Divorce was then entered on May 28, 2007. (R.E. 88).

Mr. Walker has appealed that Final Judgment for Divorce, contending that the Court failed to make an equitable division of the marital assets and erred in ordering him to pay alimony in the amount of \$200.00 per month under the facts of the case.

STATEMENT OF THE FACTS

The parties were married on January 1, 1969 and separated in 2004. They had one child who was emancipated by the time of the trial. Both parties worked throughout the marriage.

There is no dispute that all of their property was marital property and subject to an equitable division by the trial court.

At the conclusion of the evidentiary hearing, Mrs. Walker agreed to promptly file, as an exhibit in the record, documentary evidence of the vested balance of her Public Employees Retirement System Account (PERS). She failed to do this as agreed prior to the court rendering its opinion in the case.

At the hearing on the Motion to Reconsider, this proof was adduced showing a balance of \$18,399.29. However, the trial court simply awarded her this asset rather than making any adjustments to the awards of property she had previously made in the opinion. The Chancellor did reduce the alimony award from \$400.00 per month to \$200.00 per month.

To establish their respective incomes and property, the parties each introduced their respective income tax returns and Rule 8.05 Financial Disclosure Statements in forms customarily used in the local chancery court practice. There was no significant disagreement as to valuations of assets.

This was a long marriage and the husband accepted and agrees with the Chancellor's conclusion that "...the contributions of both parties were of equal value."

The parties agreed to present this case on a no-fault basis and the appellate courts have repeatedly held that economic issues are not to be adjudicated to administer punishment.

The decision of the Mississippi Supreme Court also suggest that in a case of a long marriage

where the contributions of the parties are of equal value, a 50-50 division is normally appropriate.

Appellant submits that the division of properties made by the Chancellor is a long way from being equal and clearly does not meet the test of being "equitable" under the precedents now available for guidance for attorneys and trial judges.

The award of alimony was likewise not appropriate under the proof in this case. Mrs. Walker had no indebtedness under the court's ruling. She had a nice house, fully furnished. She had an automobile debt free. Her health was good and she had an adequate monthly income and a retirement account.

Mr. Walker's health was bad and his trucking business was only modestly profitable. The Chancellor correctly found that Mr. Walker had suffered three heart attacks and had a pacemaker. At the time of the trial he was taking ten medications daily.

The Court's ruling apportioned all of the couple's debts to him, totaling \$258,281.00. He was left with a negative net worth of (\$88,431.00)!

Surely, the Court erred in ordering him to pay alimony in the amount of \$200.00 per month under these facts.

ARGUMENT
**POINT ONE: AN ANALYSIS OF THE COURT'S DIVISION
OF ASSETS AND APPORTIONMENT OF DEBT INDICATES
THE PROPERTY WAS NOT EQUITABLY DIVIDED**

Under the Chancellor's division of property, here is the end result:

NET WORTH OF GEORGIA M. WALKER UNDER COURT'S RULING

ASSETS AWARDED TO WIFE

<u>ITEM</u>	<u>VALUE</u>
(a) Marital home	\$65,000.00
(b) Vacant lot	\$8,500.00
(c) Dodge Dually Pick-up	\$4,000.00
(d) 1992 Cadillac	\$5,000.00
(e) PERS Account(as of 1/1/06)	\$18,399.29
(f) Household goods and appliances	<u>\$15,000.00</u>
 Total Assets	 \$115,899.29

<u>LIABILITIES APPORTIONED TO WIFE</u>	0
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RESULTING NET WORTH OF WIFE	\$115,899.29
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NET WORTH OF R. L. WALKER UNDER COURT'S RULING

ASSETS AWARDED TO HUSBAND

<u>ITEM</u>	<u>VALUE</u>
(a) 2000 Freightliner	\$45,000.00
(b) 1989 GMC Silverado	\$1,500.00
(c) 2004 Denali	\$50,000.00
(d) Guns	\$1,200.00
(e) Duplex (rental property)	\$37,290.00
(f) Rental home (Morgan Street)	\$34,210.00
(g) IRA	\$650.00
(h) John Deere Haycutter (awarded on Motion To Reconsider)	\$2,000.00
(i) Gooseneck trailer (awarded on Motion To Reconsider)	\$3,000.00
(j) Front End loader (awarded on Motion To Reconsider)	<u>\$2,500.00</u>
Total Assets	\$177,350.00

LIABILITIES APPORTIONED TO HUSBAND

<u>ITEM</u>	<u>DEBT</u>
(a) Rental home (Morgan Street)	\$28,414.00

(b)	Duplex (rental property)	\$50,000.00
(c)	Freightliner (Secured by home)	\$57,000.00
(e)	Dodge auto	\$867.00
(f)	Denali	\$58,000.00
(g)	Chrysler	\$14,000.00
(h)	North MS Medical Center	
	(medical bills for R.L. Walker)	\$50,000.00
Total Liabilities		\$258,281.00

RESULTING NEGATIVE NET WORTH OF HUSBAND (\$80,931.00)

How can this be an equitable division when the Wife receives a positive net worth of \$115,899.29 and the Husband is left with a negative net worth of (\$80,931.00)! This results in a disparity of \$196,830.29 ! The Chancellor simply missed it in this case. When the Chancellor revisited the issue in the Order Granting In Part Motion For Reconsideration filed December 27, 2006 (R.E. 85) the Court stated there was no credible evidence that Mr. Walker had the \$50,000.00 medical bill. Appellant challenges this finding.

Mr. Walker's sworn Rule 8.05 Financial Disclosure (D-1) discloses this obligation. It was in no way disputed by Mrs. Walker. Mr. Walker had been treated for three heart attacks and had a pacemaker installed. At the trial he testified under oath that his Rule 8.05 Financial Disclosure Statement was accurate. Why is his undisputed testimony not credible in this respect? It is uncontroverted!

The lower Court's analysis indicates confusion about what a balance sheet and a calculation therefrom of net worth is all about. It discloses the difference between assets and liabilities at a certain time. The division of net worth in this case should have been approximately equal. The fact that Mr. Walker may be able to pay the debt from his business in the future does not mean the Court should not divide the net worth the parties accumulated during the marriage substantially equal.

The proof is uncontroverted that Mr. and Mrs Walker's combined net worth at the time of the trial was \$34,968.29. If the division were equal, each would come out of the marriage with a positive net worth of \$17,488.14.

Considering Mr. Walker's health, he cannot expect to continue driving an eighteen wheeler much longer. He needs his future income to live on as does Mrs. Walker. She gets the marital home, debt free. Mr Walker must rent or buy another home in which to reside.

Mr Walker worked hard for many years to accumulate the net worth the parties had at the time of the divorce. He was the primary breadwinner during the marriage. His health now limits his ability to come back financially from this divorce. He accepts the proposition that the net worth he and his wife accumulated should be divided equally but does not feel that he should receive less than ½ of net marital estate.

This division by the lower Court was a miscarriage of justice.

"In recent years, this court has been moving away from using divorce proceedings as a means of punishing the party adjudged to be at fault towards creating a more fair and equitable jurisprudence of divorce law."
Chamblee v. Chamblee, 637 So. 2d 850 (Ms., 1994)

"It is difficult to adjust conventional values of morality when weighing marital misconduct for purposes of a just division

of marital property.” Carrow v. Carrow, 642 So. 2d 901 (Ms., 1994)

Although the lower court indicated it was attempting to apply the factors set forth in Ferguson v. Ferguson, 639 So. 2d, 921 (Ms., 1994) Appellant submits that some of the conclusions were “manifestly wrong, and clearly erroneous.” Sullivan v. Sullivan, 2007-CA-00771-COA - Ms., 2008) If this is apparent, the appellate court should grant relief.

Specifically, the court’s decision does not consider the following Ferguson factors, viz.

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.”

During their marriage, Mr. and Mrs. Walker had accumulated a modest net worth. Together, they had a combined net worth of \$34,968.29. They were entitled to a division of their assets and liabilities to give each a fair share of net marital assets of this value.

Probably no division of these marital assets can assure either party of complete financial security.

But this division clearly fails to pass muster as to fairness to Mr. Walker. Instead of receiving a share with any positive net worth, he only was awarded a negative net worth of \$80,931.00. Then he was ordered to pay alimony of \$200.00 in addition to that share. This meets the acid test of being manifestly wrong and clearly erroneous. There is no proof in this record to support such a result.

**POINT TWO: THE INCOME OF THE HUSBAND WAS NOT
SUFFICIENT TO JUSTIFY ALIMONY OF \$200.00 PER MONTH**

It is uncontroverted that the health of Mr. Walker is tenuous to say the least. He has serious heart and vascular disease requiring him to take ten prescription drugs daily. He has had three heart attacks and had a pacemaker installed.

Mrs. Walker is left a nice home and a car debt free. No debt was apportioned to her. She earns a salary of \$1,388.30 and receives \$689.00 per month in Social Security benefits. When she retires, she will receive her PERS retirement.

Mr. Walker has only \$650.14 in a 401K account. He is left with a negative net worth of (\$80,931.00). In its opinion, the trial Court had obvious questions about the credibility of his financial disclosure.

Specifically, the Court was concerned about the difference between his original Rule 8.05 Financial Disclosure Statement indicating a gross monthly income of \$9,000.00 and the revised Rule 8.05 Financial Disclosure Statement dated January 19, 2006 reflecting a gross monthly income of \$2,000.00.

This was partly the fault of Mr. Walker's counsel. The Rule 8.05 form promulgated by the Court is designed for a wage earner, not a self-employed person.

Mr. Walker originally correctly stated the gross monthly income from his trucking business at \$9,000.00. However, what the Court needs from a self-employed person is his net income, not his gross income or revenue.

To try to clear this up, Mr. Walker called his tax return preparer, Ms. Brenda Wofford, as

an expert witness. She analyzed his 2004 and 2005 IRS 1040 Federal Income Tax Returns for the Court. (R.E. 51)

His trucking business was reflected in Schedule C and his real estate income was reported in Schedule E.

All of his trucking income came from one company and was reported on an IRS Form 1099. So his gross was certainly reliable. Ms. Wofford testified he operated his business with good business records and had cancelled checks to support his expenditures. She considered the data reliable.

In 2004 his total adjusted gross income from all sources was \$18,940.00. His taxable income was \$10,990.00.

In 2005 his total adjusted gross income was a negative (\$2,190.00). His taxable income was zero!

There is no proof from which the Court could conclude these figures were not credible or a misrepresentation to the Court. Just because his trucking business grosses \$150,000.00 it should not be the basis of an alimony award or division of property.

His estimated monthly income on his Rule 8.05 was honestly stated and his net income for the past two years has in fact been less!

The original "gross" income reported of \$9,000.00 was in fact gross income or revenue from his business but it was unfortunate in that it was misleading to the Court.

Ms. Wofford did a good job of clarifying his situation to the Court and her testimony, along with the tax returns for 2004 and 2005 should be the basis for this Court's decision.

It is apparent to the undersigned counsel for Mr. Walker that the Court believed Mr.

Walker had resources beyond his actual means. Mrs. Walker has a furnished home debt free. Mr. Walker must rent a home and furnish the same. He cannot pay \$200.00 per month in alimony and have enough for bare subsistence for himself.

“Alimony is not a punishment and should not be so used.”
Tilley v. Tilley, 610 So.2d 348 (Ms., 1992)

“...case law mandates that her award of alimony be considered together with the equitable distribution of marital property.”
Lauro v. Lauro, 847 So. 2d 843 (Ms., 2003)

In her opinion, the Chancellor indicated that Mr. Walker’s “testimony of monthly gross income of \$2000.00 is not credible” (R.S. 25).

This finding is simply not supported by this record. Mr. Walker duly filed his Rule 8.05 to that effect. He also filed his income tax returns to corroborate his testimony with respect to his estimated monthly net income from his business. He had his accountant, Brenda Wofford, testify as to the accuracy of his tax returns and records. There was absolutely no proof to contradict his sworn representation to the court. Mrs. Walker did not dispute this. There was no proof of a high lifestyle, etc., to cause one to question his income. His accumulated net worth through the years did not indicate a higher income.

There must be proof to justify a different conclusion and there was none. This finding further calls into question what the court did with this case.

**POINT THREE: THIS COURT SHOULD AWARD THE DODGE
DUALY TO MR. WALKER AS WELL AS THE VACANT LOT**

As discussed in Point One, the lower Court failed to make an equitable distribution of the

marital assets. The trial Court awarded the Dodge Dually pick-up truck to Mrs. Walker, debt-free. This is an oversized pick-up truck with double rear wheels and is used to pull the gooseneck trailer which was awarded to Mr. Walker. She has no need for this vehicle.

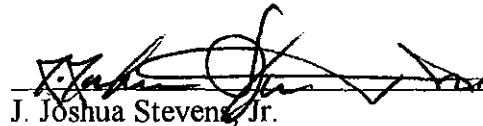
Likewise, the vacant lot should have been awarded to Mr. Walker as part of the comprehensive division of marital assets. In its opinion, the trial Court noted that "their son," Lamar, was deeded part of the vacant lot land across the street from the marital home upon which said son built his home.

However, Lamar is Mrs. Walker's son and is not the son of R.L. Walker. Mr. Walker feels that this gift should in effect be charged against the share of Mrs. Walker and the remaining vacant land should be awarded to him.

CONCLUSION

Mr. Walker comes to this Court seeking a just result. A divorce is painful enough at the best. He asks for economic justice. He asks that he be granted something to show for his decades of labor while married to Mrs. Walker. Under this record, neither deserves to come out of the marriage with nothing. Mr. Walker got less than nothing. He got saddled with a large negative net worth. 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.

Respectfully submitted,



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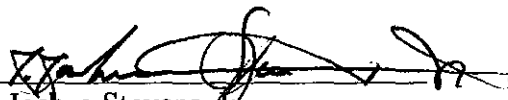
CERTIFICATE OF SERVICE

I, J. Joshua, Stevens, Jr., attorney for Appellant, R. L. Walker certify that I have this day filed the above and foregoing *Brief of Appellant* with the Clerk of this Court and have served a copy of this document by U.S. Mail, postage prepaid, on the following interested persons of record:

Honorable Carrie A. Jourdan
P.O. Box 1108
Columbus, MS 39703-1108

Judge Dorothy W. Colom
Chancery Court Judge
District 14
P.O. Box 684
Columbus, MS 39703-0708

THIS, the 7th day of May, 2009.


J. Joshua Stevens, Jr.