

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

WILLIAM R. STRIEBECK

APPELLANT

VERSUS

NO. 2007-TS-01185

RUTH ANN BRENT PROVENZA STRIEBECK

APPELLEE

(CONSOLIDATED WITH 2004-CA-00507-COA)

**APPEAL FROM THE CHANCERY COURT
OF WASHINGTON COUNTY, MISSISSIPPI
CAUSE NO. 200425**

BRIEF OF THE 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 disqualification or recusal.

1. Honorable Dorothy W. Colom
Chancellor
2. William R. Striebeck
Appellant
3. Willard L. McIlwain, Jr., Esq.
Attorney for Appellant
4. Ruth Ann Brent Provenza Striebeck
Appellee
5. Luther P. Crull, Jr.
Attorney for Appellee

THIS THE 22nd day of January, 2008.



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TABLE OF CONTENTS

	<u>PAGE</u>
1. STATEMENT OF FACTS	1-7
2. SUMMARY OF THE ARGUMENT	8
3. ARGUMENT	
Standard of Review	9-10
Response to Bills's Three Issues	
Issues I and II:	11-16
Issue III:	17-22
4. CONCLUSION	23
5. CERTIFICATE OF SERVICE	24

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>FERGUSON V. FERGUSON</u> 639 So. 2d 921 (Miss. 1994) No. 92-CA-00058 (July 7, 1994)	15, 17
<u>GODWIN V. GODWIN</u> 758 So. 2d 384 (¶6) (Miss. 1999) No. 97-CA-00380-SCT (June 10, 1999)	12
<u>HEMSLEY V. HEMSLEY</u> 639 So. 2d 909 (Miss. 1994) No. 92-CA-00423 (July 7, 1994)	12
<u>LABELLA V. LABELLA</u> 722 So. 2d 472, 474 (Miss.1998)	9
<u>M.W.F. VS. D.D.F.</u> 2005 So. 2d No. 2003-CA-02642-COA (July 26, 2005)	9
<u>McILWAIN V. McILWAIN</u> 815 So. 2d 476 (Miss. App. 2002) No. 2000-CA-02062-COA (April 30, 2002)	11, 12
<u>PITTMAN V. PITTMAN</u> 791 So. 2d 857 (Miss. App. 2001) No. 1999-CA-00147-COA (June 5, 2001)	12
<u>SELMAN V. SELMAN</u> 752 So. 2d 547 (Miss. 1998)	13
<u>SMITH V. SMITH</u> 928 So.2d 298 (Ala.Civ.App.2005)	18
<u>STRIEBECK V. STRIEBECK</u> 911 So. 2d 628 (Miss. App. 2005)	17
<u>WATSON V. WATSON</u> 882 So. 2d 95, 98 (¶14) (Miss. 2004)	10

REFERENCES IN BRIEF TO PARTIES

Appellant William R. Striebeck shall be hereinafter referred to as "Bill". Appellee Ruth Ann Brent Provenza Striebeck shall be hereinafter referred to as "Ruth Ann".

REFERENCES IN BRIEF TO TRIAL TRANSCRIPT, RECORD EXCERPTS, TRIAL EXHIBITS AND REMAND TRIAL EXCERPTS

References herein to the original trial transcript shall be designated by page as [T-__]; reference herein to Appellee's original record excerpts shall be designated by page as [R-__]; and reference to original trial exhibits shall be designated by page as [Exhibit-__].

References herein to the remand trial transcript shall be designated by page as [RT-__]; references herein to appellee's remand record excerpts shall be designated by pages as [RRE-__]; and reference to remand trial exhibits shall be designated as [R Exhibit-__].

STATEMENT OF FACTS

Ruth Ann and Bill are wife and husband having been married on August 14, 1992. **[T-69] [R-223]** The parties separated on or about April 24, 2000 within Washington County, Mississippi. **[T-69] [R-223]** One child was born to this union of marriage, namely, Ann Klein Striebeck, a daughter, born on October 14, 1995. **[T-70] [R-224]** Bill was licensed to practice law in 1989. **[T-12] [R-204]** Prior to the marriage, Bill practiced law in two law firms for approximately three (3) years. **[T-13] [R-205]** A month after the marriage in September, 1992, Bill began his solo law practice. **[T-14] [R-206]** When Bill began his solo law practice he purchased a one-half ($\frac{1}{2}$) interest in a building in Greenville, Mississippi owned by a Hannon Miller to be used for his law office. **[T-42 & 43] [R-212 & 213]** Ruth Ann contributed \$15,000.00 for the purchase of Bill's one-half ($\frac{1}{2}$) interest in the law office building. **[T-44 & 77] [R-214 & 226]** Ten Thousand Dollars (\$10,000.00) of the \$15,000.00 was received by Ruth Ann when she sold a residence in Greenville which she owned prior to the marriage. Ruth Ann received the remaining \$5,000.00 from her pre-marital investments. **[T-80] [R-229]**

Except for maternity leave taken by Ruth Ann in connection with the birth of the parties' child on October 14, 1995, Ruth Ann worked as a teacher in the Greenville public school system during the entire course of the marriage. **[T-76] [R-225]**

At the time of trial, Ruth Ann was a teacher in the Greenville public school system and part-time at Mississippi Delta Community College and earned a monthly gross salary of \$3,810.50. **[T-76] [R-225 & 65]**

The first mortgage and household expenses were paid out of a joint account maintained by the parties, **[T-77 & 78] [R-226 & 227]** except for the period of February through May, 1998 when the first mortgage was not paid out of the joint account. **[T-66] [R-221]** Ruth Ann deposited her monthly salary into the joint checking account. **[T-77] [R-226]** Ruth Ann contributed 79% and Bill contributed 21% to the funds deposited into the joint checking account which was used to pay the first mortgage and household expenses of the parties. **[T-78] [R-227]**

As Bill was building his law practice and in the lean years when Bill was not making much money, Ruth Ann supported Bill and the family by her salary; and occasionally by her dividend checks and pre-marital investment funds. **[T-79] [R-228]**

In the first part of the marriage when Bill was building his law practice, the parties had a fairly normal marriage and relationship. **[T-84] [R-231]** As Bill's law practice became more successful and his dependancy upon Ruth Ann became less, Bill's conduct towards Ruth Ann became cold and detached. **[T-84] [R-231]** Virginia "Ann" Weathers Swain, the godparent of Ann Klein, testified that after the birth of Ann Klein in October, 1995, she

saw a dramatic change in Bill and that he appeared to lose interest in Ann Klein and Ruth Ann and seemed to be indifferent. **[T-291] [R-251]** Bill quit participating in family functions. **[T-86] [R-233]** During the hunting season, Bill would spend more time at the hunting camp than at his home in Washington County. Questioned as to whether or not he spent more time at hunting camp than at home during hunting season, Bill testified as follows: "Sure, I always do". **[T-56] [R-219]**

The marriage began to deteriorate after Bill began making good money. **[T-84] [R-231]**

Bill admitted engaging in sexual intercourse and adultery with three (3) former clients. Bill engaged in sexual intercourse with one former client prior to the separation and two other former clients subsequent to the separation. **[T-11 & 31] [R-203 & 209]** At the time of the original trial Bill had an ongoing relationship with one of his former female clients. **[T-7 & 12] [R-202 & 204]**

On a Mississippi Trial Lawyer's trip to Jamaica, Bill drank ten (10) tequila shooters for breakfast. **[T-265] [R-247]** On another MTLA trip to the Silver Star Casino in Philadelphia, Bill became so intoxicated that he ate a rose at the dinner table in the presence of other lawyers and their wives and had to be escorted to his room. **[T-266, 267 & 289] [R-248, 249 & 250]** Bill passed out at the dinner table at the marital residence on one occasion with his head laying in his plate of food. **[T-85] [R-232]**

Bill's taxable income for the periods of 2000-2003 was as follows: Year 2000, \$304,044; year 2001, \$81,701; year 2002, \$79,917; and year 2003, \$584,483. **[RRE-34]**

The remand judge, Chancellor Dorothy W. Colom, in her opinion made a finding that the parties' contribution to the accumulation of marital assets were equal and further made the following specific findings, to-wit:

Both parties contributed to the accumulation of marital assets. Both husband and wife worked. In fact, wife worked two jobs and attended to the care of the minor child. Although the parties were married for eleven years, they separated in 2000 and by the time the trial was held they had only lived together eight years. Notwithstanding the two-year separation, the parties were a family unit for the majority of the marriage. While husband paid some marital debts from his law business and put his salary into the parties' joint account, wife placed proceeds from her separate accounts as well as her income into the parties' joint accounts. The Court recognizes that the fees from the *Bridge* litigation were received after wife separated from husband. However, considering the credible testimony that wife did assist husband while they were living together, i.e., she worked two jobs, gave \$15,000.00 to husband for his law practice building, and in the early years of the marriage would go into the office and assist in answering the phones as well as contributing her separate funds, to support the family in the lean years of husband's law practice, wife played a significant part in the growth of husband's firm. **[RRE-4]**

For the period from December, 2000 until June, 2002, Bill did not see his daughter Ann Klein, talk to his daughter nor ask to see his daughter except on one occasion at a 2001 Christmas program

when Ruth Ann took Ann Klein up to Bill as Bill was leaving. **[T-92, 93 & 94] [R-234, 235 & 236]**

In June, 1993, Bill and Ruth Ann took a second mortgage on the marital residence which included, among other things, the balance of Bill's student loan. **[T-49] [R-216]** In January, 1998, the marital residence was again refinanced and this included, among other things, Bill's student loan. **[T-64] [R-220]** The original mortgage, second mortgage and refinanced mortgage were paid during the marriage of the parties. **[T-78 & 79] [R-227 & 228]**

Bill was one of the plaintiff lawyers representing plaintiffs in a bridge accident case. Bill testified at the original trial that Bill had a fee coming in from the bridge case for the year 2003 in the amount of \$350,000.00. **[T-37 & 256] [R-211 & 246]** On August 29, 2003, Ruth Ann filed a Motion to Reopen Hearing pertaining to the fees to be received by Bill in the bridge case litigation based upon information that Bill's fees in the bridge case litigation were more than the \$350,000.00. **[R-186-188]** In response to the Motion to Reopen, Bill filed an affidavit setting forth therein that the total fees to be received by Bill's law firm pertaining to the bridge case litigation would be approximately \$548,000.00. **[R-189-190]**, \$198,000.00 more than he initially testified.

In said affidavit, Bill approximated taxes on the \$548,000.00 fee to be \$224,680.00, leaving a net after tax fee of \$323,320.00.

[R-189-190]

At the remand trial, Bill testified that he received total fees from the *Bridge* case in the amount of \$360,616.41 prior to entry of the divorce decree on December 2, 2003. **[RT-20]**

All employment contracts on the *Bridge* cases were executed prior to entry of the divorce decree. **[RRE-3]**

Ruth Ann filed her Motion for Setting of Hearing on her Petition for Temporary Relief. **[R-191]** Bill filed his response to Ruth Ann's Motion denying, among other things, that Ruth Ann's situation was urgent and necessitous. **[R-198]** Based on Bill's objection, no temporary hearing was held and no temporary order was entered by the original Chancellor.

At the time of the original trial, Ruth Ann was receiving \$800.00 per month as child support for a son from a prior marriage. **[RRE-2]** Ruth Ann was not receiving said child support at the time of the remand trial. **[RRE-36]**

Subsequent to the original trial and prior to the remand trial, Ruth Ann had to use approximately \$48,000 from a separate property investment account to make ends meet for her and Ann Klein. **[RT-31]**

The parties child Ann Klein is a special needs child suffering from Triple X Syndrome. **[RT-25]**

As a result of Ann Klein's condition, subsequent to the original trial Ann Klein's expenses increased substantially. Ann

Klein is required to attend a special class for an additional \$350.00 per semester and undergo periodic testing. Ann Klein has had problems with her eyes which resulted in bi-focal glasses, required braces, and sustained acne for which a dermatologist is required. Symptoms of the Triple X Chromosome Syndrome include learning disability and early puberty. **[RT-25, 26, 27, 28, 29]**

The remand court adjudicated that the *Bridge* case fees in the amount of \$360,616.14 received prior to December 2, 2003, the date of the entry of the Divorce Decree, was a marital asset. **[RRE-3]**

The conclusion and adjudication of the remand court was as follows:

Considering all the evidence and the referenced factors applied to said evidence, the Court finds, with regard to the referenced marital assets, that, by way of equitable distribution, that in addition to the \$34,055.00 husband paid wife for her equity in the marital home, husband shall pay wife the sum of \$75,000.00 as equitable distribution of the marital estate.

Further, the Court finds that after the equitable distribution of the marital estate and considering the separate estate of wife, an award of alimony³ is not warranted.

³Husband is to be given credit for any alimony already paid to wife.

[RRE-7]

SUMMARY OF THE ARGUMENT

The standard of review of a domestic relations appeal is limited by the substantial evidence/manifest error rule. The findings of the Chancellor should not be disturbed unless the Chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. Further, the Appellant Court views the facts in a light most favorable to the appellee and will take appellee's testimony and evidence at its best.

The Remand Chancellor was not manifestly wrong; her opinion was not clearly erroneous; the Chancellor did not abuse her discretion; and the Chancellor did not apply an erroneous legal standard. To the contrary, the Chancellor's opinion was supported by substantial evidence at the original and remand trials, particularly when viewed in a light most favorable to appellee.

For the reasons stated in appellee's argument, appellant's three issues on appeal are all without merit. Therefore, the Remand Chancellor's decision should be affirmed in its entirety.

ARGUMENT

STANDARD OF REVIEW

The standard of review for this Court on this domestic relations appeal is set forth as follows, to-wit:

The scope of review by this Court in domestic relations appeals is limited by the substantial evidence/manifest error rule. *Magee v. Magee*, 661 So.2d 1117, 1122 (Miss.1995). "This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Id.* (quoting *Bell v. Parker*, 563 So.2d 594, 596-97 (Miss.1990)). Additionally, this Court views the facts in a light most favorable to the appellee, Ms. Labella. See *Rawson v. Buta*, 609 So.2d 426, 429 (Miss.1992). This Court will take her testimony and evidence at its best. *Jones v. Jones*, 532 So.2d 574, 578 (Miss.1988).

Labella v. Labella, 722 So.2d 472, 474 (Miss.1998)

As trier of fact, the chancellor "evaluate(s) the sufficiency of the proof based upon his assessment of the credibility of the witnesses and the weight he thinks properly ascribed to their testimony." *Rakestraw v. Rakestraw*, 717 So.2d 1284, 1287 (¶9) (Miss.Ct.App. 1998). Our scope of review is "limited." *Rakestraw*, 171 So.2d at 1287 (¶9). The Mississippi Supreme Court has reiterated that in reviewing a divorce decree: "we view the facts of [the] decree in a light most favorable to the appellee and may not disturb the chancellor's decision unless we find that decision to be manifestly wrong or unsupported by substantial evidence." *Boutwell v. Boutwell*, 829 So.2d 1216, 1220 (¶13) (Miss.2002).

M.W.F. v. D.D.F., 2005 So.2d (2003-CA-02642-COA) (July 26, 2005)

This Court employs a limited standard of review when reviewing a chancellor's decision.

Miss. Dept Human Servs v. Shelby, 802 So.2d 89, 92 (Miss. 2001). We will not disturb a chancellor's award of alimony and division of marital assets unless the court was manifestly wrong, abused its discretion or applied an erroneous legal standard. *Sandlin v. Sandlin*, 699 So.2d 1198, 1203 (Miss. 1997).

Watson v. Watson, 882 So.2d 95, 98, (¶14) (Miss.2004)

RUTH ANN'S RESPONSE TO BILL'S THREE ISSUES

BILL'S ISSUE NUMBER I: The Chancellor erred in awarding Ruth Ann \$75,000.00 from the attorney's fees Bill earned in the Bridge case three and one-half (3 ½) years after the parties' actual separation, three and one-half (3 ½) years after the divorce proceedings began in this matter, and since Ruth Ann did not offer any proof of the Ferguson factors as to the acquisition of these fees.

BILL'S ISSUE NUMBER II: The Chancellor erred when, as a successor judge, she changed the original chancellor's finding that Ruth Ann "Rendered little assistance to [Bill] in his law practice."

Bill argues these two issues together and, therefore, Ruth Ann shall submit her response jointly to issues I and II.

The remand court incorporated into the remand record all evidence, testimony and exhibits from the original trial. The original trial record, exhibits and testimony were consolidated with the remand trial record by order entered by this Court dated August 28, 2007.

It appears that Bill does not take issue with the finding of the remand court that fees received by Bill from the bridge case in the amount of \$360,616.41 are a marital asset. However, in a footnote at page 15 of his brief Bill makes somewhat of a parenthetical argument that the bridge case fees are possibly not marital assets and therefore this matter will be briefly addressed.

In defining marital property for the purpose of divorce the Court in McIlwain v. McIlwain, 815 So.2d 476 (Miss. App. 2002), No. 2000-CA-02062-COA (April 30, 2002) stated in part as follows:

"We define marital property for the purpose of divorce as being any and all property acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor." Flechas v. Flechas, 791 So.2d 295 (8) (Miss.Ct.App. 2001), No. 2000-CA-00223-COA (July 24, 2001). The "course of the marriage" runs until the date of the divorce judgment, for purposes of calculating whether or not assets are marital or non-marital, and an otherwise marital asset may be classified as separate if an order for separate maintenance is entered. See Godwin v. Godwin, 758 So.2d 384(¶6) (Miss. 1999), No. 97-CA-00380-SCT (June 10, 1999)..... We find that the key factor is that funds were acquired during the marriage, thus rendering them marital assets. Emphasis added

See also Hemsley v. Hemsley, 639 So.2d 909 (Miss. 1994), No. 92-CA-00423 (July 7, 1994)

Under Godwin v. Godwin 758 So.2d 384 (Miss. 1999), No. 97-CA-00380-SCT (June 10, 1999), the argument could be made that if a temporary order or separate maintenance order had been entered by the Court that this would toll the accumulation of the marital assets. However, in this case Ruth Ann made a motion to call up for hearing her Petition for Temporary Relief and Bill filed his objection to the hearing on the Petition for Temporary Relief. No temporary order was entered in this case.

Therefore, under McIlwain, all property and assets acquired or accumulated during the course of the marriage until entry of the divorce judgment are considered marital assets, except for non-marital assets agreed to by the parties.

See also Pittman v. Pittman, 791 So.2d 857 (Miss. App. 2001), No. 1999-CA-00147-COA (June 5, 2001) which holds that the accumulation of marital property is tolled upon entry of a

temporary support order in a divorce proceeding. As aforesaid, there was no temporary order entered in this case.

Bill objected to the temporary hearing and as a result of Bill's objection no temporary order was entered.

Because of Bills own objection he can not now argue a tolling of the date for accumulation of marital assets under *Godwin* or otherwise.

Bill's footnote refers to the Supreme Court's decision of *Selman vs. Selman*, 752 So.2d 547 (Miss. 1998). Under *Selman*, there was no issue that retirement proceeds gained prior to the divorce were marital assets, although meager in amount. In the case subjudice, there is an accumulation of substantial fees in an amount of at least \$360,616.41, if not more.

The amount of the bridge case fees Bill received is unquestionably a moving target. Bill testified initially at the first trial that the fees coming in for 2003 were \$350,000.00. On Ruth Ann's motion to reopen proof of the bridge fee issue, Bill filed an affidavit stating under oath that his fees would be approximately \$548,000.00. Coincidentally, Bill just happened to receive \$122,500.00 in fees on December 1, 2003, after the divorce decree was signed by Judge Patterson on November 29, 2003, but prior to entry of divorce decree on December 2, 2003.

Bill erroneously contends that the remand judge changed the original chancellor's finding. Bill cites the original chancellor as saying that Ruth Ann "rendered little assistance to [Bill] in

his law practice".

What Bill did not tell this Court was that the original chancellor was discussing the issue of lump sum alimony in his opinion when he made that statement and not the issue of equitable division of marital assets.

That portion of the original chancellor's opinion at page 12 thereof is setforth as follows:

Factors to be considered in awarding lump sum alimony (Cheatham v. Cheatham, 537 So.2d 435 (Miss. 1988)) and as they apply to the case at bar are: (1) substantial contribution to accumulation of total wealth of the payor, either by quitting a job to become a housewife, or by assisting in the spouse's business. Plaintiff continued her job as a school teacher and rendered little assistance to defendant in his law practice;

[RRE-29]

The asset issue in this case is whether the remand chancellor committed error by awarding Ruth Ann \$75,000.00 as her equitable division of the bridge case fee.

Ruth Ann freely acknowledges and agrees that her substantial contribution to the marriage and accumulation of assets was not her actual work in Bill's law office and actual work on the bridge cases.

What Bill would have this Court rule is that because Ruth Ann did not work in his law office and did not actually work on the bridge cases that she did not contribute to the accumulation of the bridge fee asset. This argument is beyond preposterous. If that is the law (which it is not) then for example a teacher wife of a

business owner in Mississippi who has substantial business assets had better quit her teaching job and work in husband's business as a clerk, stocker or something in order to share in the accumulated business assets in the event of divorce. Forget that Ruth Ann worked the entire marriage as a school teacher and later at a second job with a community college. Forget that Ruth Ann deposited her pay check into the joint checking account and that the mortgage debt, including Bill's student loan and household expenses were paid therefrom. Forget that Ruth Ann primarily raised the parties special needs child Ann Klein and maintained the household in addition to working two jobs. Forget that Ruth Ann contributed \$15,000.00 to the purchase of Bill's law office. Forget that Ruth Ann supported the family and Bill through his lean years while Bill was building his law practice.

The remand judge did not forget Ruth Ann's contributions when she made the equitable award to Ruth Ann and when she found that Ruth Ann "played a significant part in the growth of [Bill's] firm".

As required, the remand chancellor specifically analyzed all factors set forth in Ferguson v. Ferguson, 639 So.2d 921 (Miss. 1994). The award of only \$75,000.00 to Ruth Ann as her equitable distribution of the bridge fee marital asset was very generous to Bill, particularly in view of the finding of the remand chancellor "that the contributions of both parties are of equal value" and that Bill pursuant to his affidavit in fact received \$548,000.00 in

bridge case fees.

It is respectfully submitted that the Remand Chancellor did not commit error by awarding Ruth Ann an additional \$75,000.00 as her equitable division of the marital assets and the Remand Chancellor's order should be affirmed by this Court.

BILL'S ISSUE NUMBER III: The Chancellor erred by not granting Bill's Motion for Reimbursement of alimony after the Court of Appeals reversed an erroneous grant of alimony by the original trial Court.

The Appellant Court reversed and remanded for a consideration of alimony, if necessary, after dividing the parties assets in a manner consistent with the Court's opinion. Striebeck v. Striebeck, 911 So.2d 628 (Miss. App. 2005)

The Appellant Court ruled that the original Chancellor committed error by not including certain fees Bill received from the bridge case as a marital asset and then by not applying the Ferguson factors to the equitable division of the fees.

Following the Appellant Court's instructions, the remand Court after considering all of the evidence and exhibits introduced at the original and remand trial found that \$360,616.41 of the fees from the bridge case was a marital asset and awarded to Ruth Ann an additional \$75,000 as her equitable distribution of the attorney fee marital asset.

While analyzing the Ferguson factors, the remand Court in its opinion stated as follows:

"During trial, the animosity between the parties was evident. Therefore, the marital property needs to be divided to eliminate periodic payments and to avoid friction between the parties." [RRE-6]

In addition to the \$34,055.00 Bill paid to Ruth Ann for her equity in the marital home, the remand Court ordered Bill to pay

Ruth Ann the sum of \$75,000.00 as equitable distribution of the attorney fee marital estate. The remand Court further ordered that after the equitable distribution of the marital estate and considering the separate estate of Ruth Ann, an award of alimony is not warranted. **[RRE-7]**

Pursuant to the Remand Court's order, Bill owes Ruth Ann alimony at the rate of \$750.00 per month until after the equitable distribution of the marital estate is made (payment by Bill to Ruth Ann of \$75,000.00).

After payment of the \$75,000.00 and the equitable distribution is complete, alimony at that time will not be warranted.

The remand Court in a footnote ordered that Bill be given credit for any alimony already paid to wife. Therefore, as of the remand hearing date only, Bill was current in his obligation to pay alimony to Ruth Ann.

The remand court did not find that the alimony accrued to Ruth Ann was not warranted. The court found it was not warranted only after payment of the equitable distribution (\$75,000.00).

The remand Court did not order reimbursement to Bill of the alimony previously paid to Ruth Ann.

Bill cites Smith v. Smith, 928 So.2d 287 (Ala.Civ.App.2005) in his motion for reimbursement of alimony. Smith cites the Restatement of Restitution. In summary, Smith and the Restatement of Restitution provides that restitution should not be required in the event it is inequitable and that inequities would result due to

the restitution under the facts of the case.

The trial court awarded Ruth Ann \$550.00 per month child support which included \$180.00 per month for one-half ($\frac{1}{2}$) of private school tuition and \$44.00 per month for one-half ($\frac{1}{2}$) of the health insurance premium for the child Ann Klein. Excluding tuition and insurance premium, the child support is \$326.00 per month or \$3,912.00 annually.

The record of the remand trial proceedings proved that Bill's taxable income for the years 2000-2003 was as follows: 2000 - \$204,044.00; 2001 - \$81,701.00; 2002 - \$79,917.00; and 2003 - \$584,483.00.

On the other hand, Ruth Ann's taxable income pursuant to her 8.05 financial statement submitted to the trial court was \$3,810.50 per month or \$45,726.00 annually.

Ann Klein is a special needs child suffering from Triple X Chromosome Syndrome. As a result of Ann Klein's condition, subsequent to the first trial Ann Klein's expenses substantially increased. Ann Klein is required to attend a special class for an additional \$350.00 per semester and undergo periodic testing. Ann Klein has had problems with her eyes which resulted in bi-focal glasses, required braces, and sustained acne for which a dermatologist is required. Symptoms of the Triple X Chromosome Syndrome include learning disability and early puberty.

Ruth Ann is now and has been for years employed by the Greenville Public School System. She is presently an academic

coach-school improvement facilitator which requires her to work until 4:30 - 5:00 P.M. As a result of her employment, Ann Klein has to attend after school care at a cost of \$103.20 per month. In addition to her Greenville Public School employment, Ruth Ann works a second job as a math teacher at Mississippi Delta Community College.

At the time of the divorce, Ruth Ann owned and operated a 1999 Tahoe vehicle and she presently drives the same vehicle with over 130,000 miles on the odometer. **[RT-29 & 30]**

At the time of the divorce, Ruth Ann was receiving child support for her son Stephen in the amount of \$800.00 per month. Stephen is now emancipated and that child support is not now received by Ruth Ann.

As established by the testimony before the trial court, Ruth Ann is a 1/6 interest partner in a partnership created through her father. **[T-175 & 178] [R-241]** Ruth Ann receives no monthly income from the partnership and no income is guaranteed to her by the partnership. **[T-119] [R-241]**

Subsequent to the trial, Ruth Ann has withdrawn from her Stern, Leach Agee account approximately \$48,000.00 to make ends meet.

In discussing the issue of alimony-equitable distribution, the trial court did make findings of the value of Ruth Ann's separate assets. The trial Court did set forth Ruth Ann's interest in the partnership assets. A substantial portion of the partnership

assets consisted of 19 life insurance policies insuring Ruth Ann's father's life. In considering the alimony issue, the original Court's specifically found that she received no monthly income and nothing was guaranteed to her from the partnership. The Court further found that due to the ultimate increase in Ruth Ann's partnership interest upon the death of her father that no lump sum alimony would be required. However, the original Court found on page 14 of its opinion that presently Ruth Ann was in need of monthly alimony from Bill to assist her in her "present circumstances" and to maintain her standard of living until the partnership was fully funded upon her father's death. Ruth Ann had a house at the time of the marriage and sold that house and moved into Bill's house. At the time of the divorce Ruth Ann was living with her mother or other relatives and the Court found that Ruth Ann needed the \$750.00 per month alimony in order to purchase a house for her and Ann Klein. Subsequent to the divorce Ruth Ann did in fact purchase a modest home in Greenville with a monthly mortgage payment of \$835.00.

Based upon the totality of the circumstances; the increased educational, medical and care expenses for Ann Klein; Ruth Ann's income from two (2) jobs; Bill's income from his law practice; Ruth Ann's dissipation of her separate account; Ruth Ann's lack of income from the partnership; and the clear intent of the trial court to allow Ruth Ann to have funds sufficient to purchase a new home, it is respectfully submitted that it would be inequitable for

the Court to order Ruth Ann to reimburse the amount of alimony previously paid to her by Bill.

CONCLUSION

The Remand Chancellor's opinion was supported by substantial evidence, particularly when viewed in a light most favorable and at its best to appellee. The Remand Chancellor did not abuse her discretion, was not manifestly wrong and did not apply an erroneous legal standard.

Therefore, it is respectfully submitted that this Court should grant to Ruth Ann the following relief:

1. Affirm in its entirety the decision and opinion entered by the remand lower Court;
2. Tax all cost of appeal to appellant; and
3. Award to Ruth Ann attorney fees.

This the 22nd day of January, A.D., 2008.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I, LUTHER P. CRULL, JR., attorney for the appellee herein, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a true and correct copy of the above and foregoing BRIEF OF THE APPELLEE to the following persons:

1. Chancellor Dorothy W. Colom
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This the 22nd day of January, A.D., 2008.


LUTHER P. CRULL, JR.