

IN THE SUPREME COURT OF MISSISSIPPI

ALFRED RANDOLPH SMITH, JR.

APPELLANT

VS.

CAUSE NUMBER: 2007-CA-01356

BRENNA D. SMITH

APPELLEE

APPELLEE'S BRIEF

On Appeal from the Final Judgment of the Chancery Court of the  
Second Judicial District of Hinds County, Mississippi June 18, 2007

HONORABLE DENISE OWENS, -CHANCELLOR

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BRENN A D. SMITH

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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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

Alfred Randolph Smith, Jr.

Appellant herein

Brenna D. Smith

Appellee herein

Honorable Denise Owens

Presiding Chancellor at trial

Honorable John D. Fike

Attorney for Appellant

Honorable Harry J. Rosenthal

Attorney for Appellee



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HARRY J. ROSENTHAL  
ATTORNEY FOR BRENN A D. SMITH-APPELLEE

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### STATEMENT OF THE ISSUES

I. Whether the trial court erred as a matter of law by awarding an equitable distribution of non-marital property to the Appellee.

II. Whether the trial court erred in failing to make specific findings of fact and conclusion of law relating to the distribution of the assets of the parties.

III. Whether the trial court erred as a matter of law in awarding appellee an equal share in marital property after finding that appellant was entitled to a divorce on the ground of habitual cruel and inhuman treatment at the hands of appellee.

I.

STANDARD OF REVIEW

The Mississippi Supreme Court has long held that a Chancellor will not be reversed "when supported by substantial evidence unless the Chancellor abused his or her discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was used." Kilpatrick vs. Kilpatrick, 732 So2d 876,880 (Miss. 1999). A Chancellor's findings of fact will not be disturbed if substantial evidence supports those factual findings or unless the Chancellor was manifestly wrong or clearly erroneous. Turnpin vs. Turnpin, 699 So2d 560, 564 (Miss. 1997). The Court's scope of review in domestic relations cases is limited. The Court will not disturb the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. Ferguson vs. Ferguson, 639 So2d. 921, 930 (Miss. 1994) citing Bell v. Parker, 563 So2d 594, 596-97 (Miss. 1990). Therefore, the Court "is required to respect the findings of fact made by a Chancellor supported by credible evidence and not manifestly wrong", Ferguson vs. Ferguson, 639 So2d 930, (citing Newsom vs. Newsom, 557 So2d 511, 514 (Miss. 1990)).

II.

COURSE OF PROCEEDING AND DISPOSITION OF THE COURT BELOW

The Plaintiff (Appellant), Alfred Randolph Smith, Jr. filed a Complaint For Divorce and Other Relief on December 29, 2005 against the Defendant (Appellee) Brenn D, Smith on the statutory ground of habitual

cruel and inhuman treatment, habitual drunkenness and alternative Irreconcilable Differences in the Chancery Court of the Second Judicial District of Hinds County, Mississippi being Cause Number G-2005-151 (0)(3). On January 6, 2006 without having notice of the prior case filing, Brenna D. Smith filed s separate Complaint For Divorce against the Defendant, Alfred Randolph Smith, Jr. in the Chancery Court of the Second Judicial District of Hinds County, Mississippi being cause number G-2006-1 (S)(2), wherein she sought a divorce on the statutory ground of habitual cruel and inhuman treatment and habitual drunkenness.

On January 19, 2006 an Order was entered by the Court to consolidate case number G-2006-1(S)(2) with case number G-2005-151 (0)(3) for all purposes (R-22).

A Temporary Order was entered in cause number G-2005-151 (0)(3) on February 1, 2006 (R-32) whereby among many things "both parties are prohibited from coming within 500 feet of the other party, from telephoning each other, from harassing each other in any manner whatsoever, and to restrain from any and all forms of violence, threats, or intimidation toward the other." (R-36); Alfred Randolph Smith, Jr. was awarded the temporary use and possession of the marital home (R-32), and Bre-na D. Smith was awarded temporary support in the amount of \$700.00. (R-33).



Following a bifurcated trial on June 18, 2007, the Court entered a Final Judgment of Divorce (R-64) wherein the Appellant, Alfred Randolph Smith, Jr. was awarded a Final Judgment of Divorce on the statutory ground of habitual cruel and inhuman treatment under Section 93-5-1 Mississippi Code of 1972 as amended. After hearing the testimony of the witnesses and their expert witnesses and considering the facts and having considered the Ferguson factors as well as the Henly factors; the Court made a classification of the marital assets and the separate assets and proceeded to divide the marital properties between the parties. The Chancellor noted in her ruling the fact that she had complied with the mandate of the Supreme Court regarding the division of the marital assets. The Chancellor stated the following in her ruling:

"The second part of the case dealt with the division of marital assets, and after hearing the evidence, the Court finds in the state of Mississippi we define marital property for the purpose of divorce as being any and all property 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, and those contributions can be economic, domestic or otherwise in kind contribution."

"The Court also recognizes that there is property that is considered to be separate property. That property is normally brought into the marriage by way of inheritance, gift, and is considered to be separate property, and it's not to be considered as a marital assets unless it is normally what we consider to be commingled property."

"Once the Court determines what is a marital asset, then the Court goes through the process set forth in the case law, specifically the well-known case of Ferguson vs. Ferguson, which provides the Court guidelines for evaluating the division of marital assets. And the Court has reviewed the assets, (emphasis added)

and I thank Mr. Rosenthal for his guide here, because it helped me a bit identify and address those particular marital assets..." (RT-176, 177)

The Appellant, Alfred Randolph Smith, Jr. being aggrieved by the Court's ruling regarding the division of the parties' marital assets filed his appeal now pending before this Court.

#### STATEMENT OF FACTS

The parties lived together for approximately one and one-half year prior to the time the parties were married (Tr-140); that the parties married to each other on February 14, 1999 at which time the parties entered into a prenuptial agreement (RT-117); the parties thereafter lived together as husband and wife in a harmonious situation and after enjoying a happy marriage of five (5) years, they celebrated their marriage, and as a part of their celebration the prenuptial agreement was destroyed by burning it. (TR-117)

Several months thereafter on or about June 22, 2005, the Appellant, Alfred Randolph Smith, Jr. had a deed prepared whereby he decided to convey a one-half interest in the marital home to the Appellee, Mrs. Brenna D. Smith (TR-83). The parties continued to live together in the marital home, they made improvements on the structure increasing the size from 1531 sq. feet to approximately 1845 sq. feet (Tr-77) and increased the value of the marital home from \$100,000.00 to a value of \$147,000.00 (TR-81).

In addition to the marital home, the Appellant, Randolph Smith, also owned another house located at 163 Prassel Street, Raymond, Mississippi; this property had belonged to him prior to his marriage to the Appellee; however, during the course of the parties' marriage, the parties decided to make improvements on this property, which the parties used as rental property; (TR-141); Mrs. Smith handled the business affairs concerning the rental property, she supervised work that was performed on the property as well as she did a portion of the work herself and spent a portion of her own funds on the improvements to the rental property (TR-144); that as a result of the work performed and the improvements made to the rental property, the parties were able to increase the monthly rental income from \$500.00 to \$700.00 per month. (TR-142) The work consisted on cleaning the house, putting new sink, new toilet, new carpet and etc. (TR-142); Mr. Smith stated that that, " I told her that she could do what she did; that's all" (TR-143) that the money used for these repairs was taken from the parties' joint bank account." (TR-144).

The testimony of the Appellant, Alfred Randolph Smith, was that on or about December 25, 2005, that he was not feeling well on that morning and decided to stay home, and the Appellee, Mrs. Brenna D. Smith decided to go visit her family for Christmas; that later in the day, Mr. Smith began to feel better, so he left the marital home and went to visit his mother; that he afterward returned home and was in bed watching television when Mrs. Brenna Smith returned home. That Mrs. Smith found a gift that Mrs. Smith's mother had sent to her and began to argue with

Mr. Smith because of him not going to her family's Christmas and because of the fact that Mr. Smith had been drinking to such an extent that she didn't want him to sleep in the bed with her. (TR-25) The parties began to push and shove each other, and at one point Mr. Smith tore the gown from Mrs. Smith, the altercation began to get worst and some point one of the parties obtained a gun and one of the parties had a knife; the fighting went from the bed room of the parties' home to the kitchen; and in the kitchen Mrs. Brenna Smith had a knife in her hand and during the pushing and shoving he realized that he had been stabbed in the chest (TR-6); that thereafter Mr. Smith called 911 and a sheriff deputy arrived and eventually he was transported to the hospital; He was treated at the hospital, and released that same day, was then arrested at the hospital and placed in the Hinds County Jail and was charged with assault on Mrs. Smith (TR-16), Mrs. Brenna D. Smith was charged with aggravated assault the following day. (TR-8). Mrs. Brenna D. Smith was afterward indicted and afterward entered a guilty plea to simple assault. (TR-8), Mr. Smith was never indicted. Mrs. Brenna D. Smith was given a sentence of six (6) months in the custody of the Hinds County Sheriff Department with six (6) months suspended and placed on unsupervised probation for six (6) months with no contact with Mr. Smith.

From this incident, the Appellant, Alfred Randolph Smith, filed his action for divorce in the Chancery Court of the Second Judicial District of Hinds County, Mississippi on December 29, 2005.

## ARGUMENT

### I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY AWARDING AN EQUITABLE DISTRIBUTION OF A NON-MARITAL PROPERTY TO APPELLANT.

The Appellant's argument on this issue is unfounded and simply is without merit. The record of this case clearly reflects in the court's ruling (TR-176); that the Chancellor had followed the guideline mandated by this Court in Ferguson and Hemsley in the division of the marital assets (TR-176- TR-177); the Chancellor also in her ruling address "That property is normally brought into the marriage by way of inheritance, gift, and is not considered a marital asset unless it is normally what we considered to be commingled property." (TR-177). And the Court further stated:

"And the Court has reviewed the assets, and I thank Mr. Rosenthal for his guide here. because it has helped me a bit identify and address those particular marital assets.." (emphasis added- TR-177).

Under Ferguson the Court stated the steps to be followed in making an equitable distribution of properties, which includes marital properties acquired during the marriage, and those properties which were brought into the marriage and commingled during the marriage as well as those properties or assets which were separate properties or assets of the parties; the Court's outlined the steps as follows:

- (1) Classify assets as marital or separate.
- (2) Value assets, using expert testimony if necessary;
- (3) divide marital property equitable, based on factor set out in the decision.

Ferguson vs. Ferguson, 639 So2d. 930.

We submit that the Chancellor did in fact meet the requirements and followed the guideline as set forth in Ferguson; the Chancellor heard the testimony of the parties, their witnesses including expert witnesses as to each and every asset of the parties to be considered by the court. The Court considered the origin of each asset and how it was obtained; by whom and if it was improved upon during the marriage; whether or not the asset was commingled during the marriage and having heard and considered all of the evidence then made a equitable distribution of each assets based upon the evidence and her discretion to make a fair division based upon the guidelines set forth in FERGUSON; stating that a Chancellor has the discretion to make a fair division based on the following factors:

- (1) Substantial contribution to property accumulated, including direct or indirect economic contribution, contribution to marital and family stability, and contribution to the education or training of the wage earning spouse;
- (2) Spousal use or disposition of assets and distribution by agreement;
- (3) the market and emotional value of assets;
- (4) the value of each spouse's separate estate;
- (5) tax consequences and legal consequences to third parties;
- (6) the extent to which property division can eliminate the need for alimony;
- (7) the needs of each spouse; and
- (8) other factors which should be considered in equity.

The Chancellor was not only guided by the Ferguson factors, but was also guided by those factors set forth in Hemsley v. Hemsley 639 So2d 909, 915 (Miss. 1994), wherein this Court set forth the general rule, "that the presumption adopted by the Mississippi Supreme Court "that a homemaker's contribution to accumulation of assets equal those of the wage-earner." (emphasis added).

The Appellant in his argument no. 1 brought before this Court, reflects that the appellant was dissatisfied with the division of several of the assets, those being:

1. The Prassel Street rental property;
2. The Chrysler van;
3. a 1984 Chevrolet pickup truck.

The Chancellor in making her decision based upon the guideline and the testimony presented found as follows concerning each of these assets:

Concerning the property located at 163 Prassel Street, Raymond, Mississippi (TR-179) the Court stated:

"The next item is the house on Prassel Street, 163 Prassel Street. This property was and is solely in the name of Mr. Smith. This property was obtained as a result of his. well, he owned it with his, as I understand it, previous wife. There is no deed of transfer for this property to Mrs. Smith, although there was some testimony that that was the intent, that he would transfer the property to her. There is nothing in the record that this property was transferred to Mrs. Smith as a gift or otherwise. ...."

"The testimony, the repairs---in fact, Mr. Smith testified that he sort of left it to her to handle the rental and day to day operation of this property....;"

" I know there's a document here showing a \$30,000.00 appreciation, but there's no evidence there to show that that is actually what it is. So as a matter of trying to reach a equitable figure, I consider that Mrs Smith came into the marriage and then started working to maintain it, helped with the renters, suggested that he raise the rent, and based upon that work, I think an equitable amount for the work done on that property would be \$5,000.." (TR-180).

At the trial of this case, Mrs Smith, the Appellee, testified that she had an agreement with Mr. Smith, "that if I supervised the cleanup from Katrina, that he would change his deed on that house to represent to me and to his two son as one-third ownership. That was his agreement with me before I started the cleanup on Katrina." (TR-100). Other testimony from the Appellee reflected as follows:

Q. "Did you put any of your money.. can you show me anything.."

A. "The Prassel Street repairs was charged on my credit card. The credit cards were paid out of marital funds".

Q. "Can you show that to me?"

A. "These are simply the ones that were charged on the.. there were several from the Wal-Mart, I have a \$3,000 credit card bill. All of it didn't go to this; some of it went to things for the home we lived in, but there are many in here from Home Depot..."

Q. "Can you show the bills, please?"

A. " Yes, Sir, That repairs, all of these are repairs, everything that's written Prassel on it, paint, landscaping." (TR-101).

Mrs. Smith testimony was that she had brought approximately \$35,000.00 into the marriage from the sale of her own home (TR-103)



that she had taken approximately \$12,000.00 from her retirement account at Legg Mason Account; her funds that she received from her social security monthly benefits and other funds which she received and used these funds to make repairs to both the Prassel Street property but also the repairs to the marital home of the parties. (RT-102)

The testimony and evidence considered by the Chancellor was overwhelming, that the Appellee, Mrs. Smith contributed to the Prassel Street property, both a direct contribution-- her labor and supervision in making repairs; her financial contribution to the increase in the value of the property as well as the increase in the rental income through her work and efforts. (TR-180)

In Thompson vs. Thompson, 815 So2d 466, 468 (Miss. Ct App. 2002) the Court adopted a standard of review- stating:

" An appellate's court's review of a chancellor's actual division of marital assets is extremely deferential. A court's division of assets will not be reversed "unless the Chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied" As a result of this deferential standard, a chancellor's division of assets will be overturned only if manifestly wrong."

In Mississippi, separate property is frequently converted into marital property through applications of the family use doctrine and commingling rule. In most states, separate property becomes marital when it is so commingled with marital property that the owner cannot

Likewise, the Mississippi Supreme Court has held in several cases that if the separate contribution benefitted or improved a particular asset, the court may award a percentage of that asset to the contributing spouse. James vs. James 736 So2d 492, 494-95 (Miss Ct. App. 1999) Welch vs. Welch, 755 So2d 6, 10 (Miss Ct App 1999) Bates vs. Bates, 755 So2d 478, 482 (Miss. Ct App. 1999).

In the case of Johnson vs. Johnson 823 So2d 1156, 1160 (Miss 2002) stated "The Ferguson listing is not exclusive; a Chancellor may consider other factors."

Further addressing the other two assets, the Chrysler and the 1984 pickup truck; the Chancellor was correct in her ruling; the Chancellor was the finder of facts in the entirety of this case; she based her ruling upon the Ferguson factors as well ss "other factors" and the Mississippi has afforded the Chancellor the "discretion" to divide the assets of the marriage under one or all of the guide line factors as set forth of Ferguson as well as other factors as set forth in Johnson; for those reasons the Appellant's argument is void.

II. WHETHER THE TRIAL COURT ERRED IN FAILING TO MAKE SPECIFIC FINDING OF FACT AND CONCLUSION OF LAW RELATING TO THE DISTRIBUTION OF THE ASSETS OF THE PARTIES

Appellee reiterate the same facts as heretofore stated in Argument No. I of this Appellee's brief and to repeat the same would be redundant. The law is heretofore stated in Argument I of this brief.

III. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW AWARDING APPELLEE AN EQUAL SHARE IN MARITAL PROPERTY AFTER FINDING THAT APPELLANT WAS ENTITLED TO A DIVORCE ON THE GROUND OF HABITUAL CRUEL AND INHUMAN TREATMENT AT THE HANDS OF APPELLEE

This Court in 1994 had a case come before it Carrow vs. Carrow, 642 So2d 901, 904 (Miss. 1994); and in that case this Court held, "that fault remains a factor for consideration but that division should not be made to punish a party at fault."

In the same year, this Court begin the trend as set forth in Ferguson vs. Ferguson, 639 So2d 921 (Miss. 1994) and Hemsley vs. Hemsley, 639 So2d 909 (Miss. 1994); "that regardless of fault the parties' marital assets will be divided equally."

The Appellant cites Singley vs. Singley, 846 So2d 1004 as his authority, to back up his argument that the Chancellor was manifestly wrong in awarding an equal share of the marital assets to both parties because of the fact that the Appellant had been granted a divorce on the ground of Habitual Cruel and Inhuman Treatment. Looking at Singley this Court stated " that while fault is only one factor to be considered." The Court also considered the Ferguson factors and the Hemsley factors and "other" factors, and after having done so; the Chancellor in her discretion made a proper ruling as to the division of the marital assets.

In Mississippi there are two type of divorce; one being a "fault" ground divorce as set forth in Section 93-5-1 Mississippi Code of 1972, and the other type being a divorce pursuant to Section 93-5-2 Mississippi Code on the ground of Irreconcilable Differences. In the divorce on the

ground of Irreconcilable Differences, the parties themselves makes the division of their marital assets without the Chancellor having to do the same, and the Chancellor job is to then find from the written document present whether or not the parties Agreement makes sufficient provisions for the settlement of the division of all property between them including both real and personal. Miss. Code Ann. 93-5-2 (2004); Ash vs. Ash, 877 So2d 458 (Miss Ct App 2003).

On the otherhand, a "fault ground" divorce under Section 95-3-1 deals with "fault" of one of the parties to the marriage; Section 93-5-1 list twelve separate grounds, which the Appelle does not need to list here other than to point out that under each of the grounds; one of the parties to the marriage is at fault.

Under the new trend of "equitable division" regardless of fault primarily the Court has never in any case before it set a set of guide lines for the lower court to follow as a mandatory requirement. This Court as previously stated in Stingley vs. Stingley 846 So2d 1004 (Miss. 2002) that marital misconduct is a viable factor to be considered, "but that this is only one factor to be considered."

The Appellant's argument is without merit due to the fact, that there would always be a "faulting" party, and therefore there would never be a "equal division of the marital assets" and the Court found that the satisfactorily remedy to this was the "equitable division" and established the factors set forth in Ferguson vs. Ferguson and in that same case allowed the Chancellor "discretion to make a fair division".

In the case now before this Court, the Appellant sought his divorce on the ground of Habitual Cruel and Inhuman Treatment because of the incident of assault on December 25, 2005 which was a one time incident; further, there was no proof that the Appellee's conduct was habitual. However, the Chancellor nevertheless found that the Appellant was entitled to a divorce because of this single incident. The facts shows that was taken to the hospital and treated for his wound, and that a short time thereafter, he was released and taken to the Hinds County Jail. (TR-16)

There was no other evidence as to any cruel or inhuman treatment having occurred between the parties; the Appellant was asked the following question: (TR-16)

Q. And you're telling this Court that you never had any physical altercations before?

A. I have never struck her.

Q. Has she ever struck you before?

A. Yes.

Q. And what was the occasion of that?

A. I don't remember. She slapped me one time.

That was the extent of the proof concerning habitual cruel and inhuman treatment shown at the trial of this cause.

So by what degree of fault does the Court deviate from the presumption 50-50 division?

The answer is simple, the Court allows the Chancellor the discretion to make this decision based on all of the facts of the case.

In this case the Chancellor did exactly what she was supposed to do and this Court should affirm her ruling.

The Chancellor correctly found that the Appellant had deeded a one-half interest in the marital home to the Appellee as a "gift" (TR-178), .."and also that she contributed to the home. The testimony has been through her and through her husband that she did help to maintain the home, she did help with improvements to the home. Some of the improvements were prior to their official marriage, although it's unclear whether it occurred while they were living together or after they got married, but it's clear that yard work, painting, some improvements were also made to the home. So because, number one, it was transferred to her voluntarily by Mr. Smith, and also because she did contribute to the maintenance of the home, the Court finds that an equitable distribution of the house and five acres on Highway 18 is one-half of the value of the home. (TR-179)

Common law states have long employed a presumption that any owner who retitles property jointly with another intends to give the transferee a one-half interest in the property. Oldham Tracing, Commingling and Transmutation, 23 Family Law Quarterly 219,220(1989) Johnson vs Johnson 550 So2d 416, 420 (Miss 1989) the Appellant did not introduce any evidence to the contrary in support of his position that he didn't intend to transfer a one-half ownership interest to the Appellee.

Next the Appellee in his argument that the Chancellor was in error when she awarded one-half interest in the insurance policies to the Appellee.

The Chancellor did find that the John Hancock insurance policy had a cash value of \$14,628.00 and that the premiums was being paid from the policy itself. and that this policy was the property of the Appellant, (Mr. Smith), and that the Appellee (Mrs. Smith) was not entitled to any of these funds. (TR-184). The Court based her ruling on the fact that Mrs. Smith had not contributed to the payment of the premiums on this policy so it was the separate property of the Appellant. (TR-184)

However, the Court did review the other policies with Farm Bureau life insurance and found that Mr. Smith transferred or signed these policies over to Mrs. Smith. (TR-113) and that the premiums on these policies were paid from the marital funds.(Tr-113)

The Court found from the evidence presented that the Farm Bureau Life insurance policies was an asset accumulated during the marriage, it was paid for by Mr. Smith, it was a gift from Mr. Smith (TR-113) to Mrs. Smith and therefore the Chancellor equitable distributed one-half to each of the parties (TR-185).

We submit to the Court, that the Appellant's argument on all three points of error alleged in his Appellant's brief as issues before this court are all without merit and are not based upon the findings of law and heretofore decided by the Mississippi Supreme Court and the Mississippi Court of Appeals, and therefore the Chancellor's rulings should be affirmed.

### CONCLUSION

The Mississippi Supreme Court has repeatedly held that a Chancellor will not be reversed when supported by substantial evidence unless the Chancellor abused his/her discretion, was manifestly wrong, clearly erroneous or erroneous legal standard was used. Kilpatrick vs. Kilpatrick, 732 So2d 876, 880 (Miss. 1999). A Chancellor's finding of fact will not be disturbed if substantial evidence supports those factual findings or unless the Chancellor was manifestly wrong or clearly erroneous. Turnpin v. Turnpin, 699 So2d 560, 564 (Miss. 1997). Further this Court reviews all of the evidence in a light most favorable to the appellee. Rawson vs. Buta, 609 So2d 426,429 (Miss 1992).


For all these reasons, Appellant's appeal must fail and the Final Judgment and entered by the Chancellor in the lower court must be affirmed.

WHEREFORE, PREMISES CONSIDERED, Appellee, respectfully request that this Honorable Court affirms the findings of the Chancery Court of the Second Judicial District of Hinds County, Mississippi in this matter and assess all attorney's fees and costs of the appeal to the Appellant.

Respectfully submitted on this the 6<sup>th</sup> day of March, 2008.

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FOR BRENN D. SMITH



CERTIFICATE OF SERVICE

I, Harry J. Rosenthal, attorney for the Appellant, Brenna D. Smith, do hereby certify that I have this date, filed the Brief of Appellee, Brenna D. Smith, with the Clerk of the Mississippi Supreme Court and has served a copy of this Brief by United States Mail, postage prepaid to Hon. John D. Fike, attorney for Appellant at his business address Post Office ~~D~~rawer 89 Raymond, Mississippi 39154 and a copy of the Brief to Hon. Denise Owens, Chancellor of the Hinds County Chancery Court at her mailing address Post Office Box 686, Jackson, Mississippi 39205-0686.

So certified on this the 6<sup>th</sup> day of March, 2008.

  
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