

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-01648

GEORGE E. TRIM

APPELLANT

VERSES


LISA MOSLEY TRIM

APPELLEE

BRIEF OF APPELLEE, LISA MOSLEY TRIM

***APPEAL FROM THE CHANCERY COURT OF THE FIRST JUDICIAL
DISTRICT OF HINDS COUNTY, MISSISSIPPI***

ORAL ARGUMENT REQUESTED

KIMBERLY P. TURNER, ESQ
KIMBERLY P. TURNER, PLLC
774 Avery Blvd. North
P.O. Box 4681 (Jackson, 
Ridgeland, Mississippi 39157
Telephone: 601.991.2231
Facsimile: 662.796.0255

M. DEVIN WHITT, ESQ.
M. DEVIN WHITT, PLLC
774 Avery Blvd North
Ridgeland, Mississippi 39157
Telephone: 601.956.7077
Facsimile: 601.983.2730

ATTORNEYS FOR 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. George Trim, Appellant;
2. Lisa Trim, Appellee;
3. William L. Colbert, Jr., Attorney for Appellant;
4. A. Randall Harris, Esq.;
5. Kimberly P. Turner, Attorney for Appellee;
6. M. Devin Whitt, Attorney for Appellee.

Respectfully Submitted,

LISA TRIM


By: 
KIMBERLY P. TURNER
Attorney of Record for the Appellee

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STATEMENT OF THE ISSUES

- I. **THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR IN FINDING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE DEFENDANT HAD WILFULLY, KNOWINGLY AND FRAUDULENTLY MISREPRESENTED THE VALUE OF HIS BUSINESS STOCK TO LISA TRIM AND THE COURT.**
- II. **THE APPELLANT'S FRAUD WAS SO EGREGIOUS THAT THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR IN FINDING THAT MISSISSIPPI LAW AND PRINCIPALS OF EQUITY DEMAND THAT APPELLANT BE CITED FOR CONTEMPT AND THAT THE FINAL JUDGMENT OF DIVORCE BE MODIFIED.**

STATEMENT OF THE CASE

This Appeal arises from a blatant and egregious scheme of fraud committed by George Trim (hereinafter "George") upon both Lisa Trim (hereinafter "Lisa") and the court below in a divorce action. In that matter, Lisa attempted to settle the parties' divorce in good-faith by entering into a Property Settlement Agreement with George which Lisa believed provided for the equitable distribution of all marital assets acquired during their marriage. The parties exchanged financial information with the each other and, relying upon these disclosures to form an agreement as to the distribution of marital assets, submitted a proposed Final Judgment of Divorce, Property Settlement Agreement and Uniform Chancery Court Rule 8.05 Financial Disclosures to the court for review and approval.

The marital assets of the parties included a forty-nine (49%) business interest in Business Communications, Inc., ("BCI"), a Mississippi corporation co-founded by George during the parties' marriage. On his Rule 8.05 Financial Disclosure submitted to Lisa and the court below, George certified that the value of his interest in BCI was \$100,000. However, unbeknownst to both Lisa and the court, George had fraudulently undervalued his interest in BCI on the disclosure by over One

Million Dollars (\$1,000,000.00) in a blatant attempt to avoid the equitable distribution of the parties' most valuable marital asset. Relying on the accuracy of the financial disclosures made by the parties and their consent to the terms of the Property Settlement Agreement, the court approved the terms of the divorce, including the distribution of marital assets, and a Final Judgment of Divorce was entered on June 14, 2000.

Approximately eight (8) months later in February of 2001, George sued Tony Bailey, his business partner in BCI, in the Madison County Chancery Court seeking, *inter alia*, judicial dissolution of their business relationship. Upon the commencement of the case, Mr. Bailey exercised his statutory buy-out election pursuant to Miss. Code Ann. § 79-4-14, resulting in the need for a business valuation. George then retained Mr. James Korber to conduct this valuation, who subsequently reached an opinion that the fair value of George's interest in BCI, as of August 14, 2001, was \$1,186,000. After protracted litigation, the Madison County Chancery Court adopted Mr. Korber's assessment of the value of George's interest in BCI, and ordered BCI to pay \$1,186,000 in exchange for his equity interest.

Upon learning of George's blatantly fraudulent conduct, Lisa filed her Petition to Set Aside the Final Judgment of Divorce and Property Settlement Agreement ("Petition") on November 19, 2004 in the Hinds County Chancery Court. In her Petition, Lisa asked the court below to set aside the June 14, 2000 Final Judgment of Divorce and to find George in contempt of court based upon the fact that George committed a knowing and intentional fraud on Lisa and the court below when he purposely undervalued his interest in BCI on his financial statement in an attempt to avoid equitable distribution of this marital asset. After a lengthy discovery process, the designation of Mr. Raleigh Cutrer as an expert valuation witness by Lisa, and after denying a Motion for Summary Judgment filed by George, the court below held a full trial on the merits on March 1, 2007.

In its July 3, 2007 *Order and Opinion of the Court*, the court specifically found in favor of Lisa, finding that George had committed fraud upon both Lisa and the court by misrepresenting the value of his interest in BCI. The trial court noted that, based upon the limited definition of “fraud upon the court” as defined by the Mississippi Court of Appeals in Tirounda v. State of Mississippi, 919 So.2d 211, 213 (Miss. App. 2005), it was unable to find that George’s deceit rose to the level of the current definition of “fraud upon the court,” because theoretically only one witness offered perjured testimony in this matter. However, the court further noted that it was “unwilling to allow Mr. Trim to profit from his ability to deceive and conceal the truth from Lisa Trim and the Court for longer than six months” and that, as a court of equity, it was required to use the “means and methods available to achieve justice and an equitable resolution to this matter.”

Based on its desire to reach a just result, the court exercised its grand reservoir of equitable power and treated Lisa’s Petition to Set Aside a Final Judgment of Divorce and/or Property Settlement Agreement as a Motion to Modify the Final Judgment of Divorce and/or Property Settlement Agreement. In doing so, the court found that principals of equity and justice demanded the Final Judgment and Property Settlement Agreement be modified and further adopted Mr. Curter’s valuation of the BCI stock which applied the accepted “minority discount” and lack of marketability in determining the value of the stock as of June, 2000. Based on Mr. Cutrer’s valuation, the Court found the value of George’s BCI stock to be \$694,000, and awarded Lisa \$148,500 based on the factors outlined in Ferguson v. Ferguson, 639 So.2d 921 (Miss. 1994). The Court below further found that George’s fraudulent conduct constituted contempt of Court, and on this finding further awarded Lisa costs of court, expert fees and attorney’s fees totaling approximately \$20,500.00. This appeal ensued.

STATEMENT OF THE FACTS

George and Lisa were lawfully married to each other on November 16, 1990 in Hinds County, Mississippi. (R1. at 00130.) No children were born of the marriage. Id. The parties lived together as husband and wife until their separation on or about September, 1999. Id. During the course of their marriage, Lisa worked full-time as a sales representative for the Berry Company, selling yellow page advertising. (R1. at 000131.) George was self-employed in a computer networking and cabling business. Id. In or around 1993, George joined with Tony Bailey, a friend with knowledge of computer systems, to form BCI. Id. George was the minority shareholder with a forty-nine percent (49%) interest in BCI, while Mr. Bailey owned 51% of the company. Id. BCI was registered in the state of Mississippi as a sub-chapter S Corporation. Id. In her time away from the Berry Company, Lisa would assist George with duties related to BCI and she provided direct and indirect financial support to the company. (R3. at pp. 121-26.) Lisa would also act as a surety for BCI, because George was unable to complete these documents due to his status as a convicted felon. Id.

In September of 1999, George and Lisa separated. (R3. at 124.) Around the time of their separation, the parties had a sit-down meeting regarding their financial status. (R3. at pp. 35-37; 121-28.) During this meeting, George verbally represented to Lisa that BCI was on the verge of bankruptcy and that his share of the company was only worth \$100,000.00. (R3. at p. 121-29.) He further represented to Lisa during this meeting that the value of the equity in the marital residence was \$30,000.00.¹ (R3. at pp. 121-28.) At this meeting, George proposed that, since Lisa had

¹ Interestingly, George listed the parties' equity in the marital residence on his Rule 8.05 Financial Disclosure at \$56,747.00 (R. at pp. 127-28; Exhibit 3, 8.05 Financial Statement of George Trim).

\$120,000 in her 401k retirement savings account, that George would keep BCI and the equity in the home and, in return, would write Lisa a check for \$5,000.00 to make-up the difference. (R3. at p. 112-29; R4. at 231.) After making these representations regarding the values of the marital assets, George presented Lisa with a Property Settlement Agreement that, based upon his representations during the meeting, she executed on September 24, 1999. (R1 at 000025-34; R3. at p. 112-29.)

Less than two (2) months later, on or about December 22, 1999, and unbeknownst to Lisa, George submitted a personal Net Worth Report to State Bank and Trust. (R3. at 25-35; R4. at 204-06; Exhibit 11 “1999 Net Worth Report of George Trim.”) On this December 1999 Net Worth Report, George indicated that the value of his shares of BCI were worth \$1,100,000.00. Id. George ratified this document by executing the same and, during his deposition and at trial, testified that he knew this document listed \$1,100,000.00 as the value of his BCI shares at the time the document was submitted to State Bank and Trust. (R3. at 21-24; R4. at 233, Exhibit 15-A Dep. of George Trim at p.77.)

On April 10, 2000, the parties filed their Joint Complaint and Consent to Divorce based upon Irreconcilable Differences. (R1. at 000041.) Less than (6) six months after George executed his 1999 Net Worth Report, on or about June 12, 2000, George executed and served his Financial Disclosure required by Uniform Chancery Court Rule 8.05. (R1. at 000058-65.) No other written discovery was conducted in this matter. In his Rule 8.05 Financial Disclosure, George represented to Lisa and the Hinds County Chancery Court that the value of his interest in BCI was only \$100,000.00. (R1. at 000064; R3. at 28-30.) George signed an “Acknowledgment of Truthfulness” at the end of the financial statement representing that the information contained in the declaration was true and correct. Id. Two days later, on June 14, 2000, George submitted his Rule 8.05 Financial Disclosure and proposed Final Judgment with attached Property Settlement Agreement

to the Hinds County Chancery Court, Honorable Stuart Robinson presiding and, relying on the accuracy of the information contained in the parties' financial disclosures and their consent to the terms of the Property Settlement Agreement, the court ratified the Final Judgment of Divorce -- Irreconcilable Differences ("Final Judgment") and attached Property Settlement Agreement on the same day. (R1. at 000047-65.)

In 2000, Tony Bailey offered George over \$1,000,000 for his BCI interest, which he refused to accept. (R3. at p. 61-62; Exhibit 8, Valuation Report of James Koerber at p. 6.) Moreover, by late 2000, Jack Pruitt, a member of the BCI Board of Directors, offered George approximately \$1,500,000.00 for his minority interest in BCI. (R. at p. 37; Exhibit 8, Valuation Report of James Koerber at p. 6). George also refused the offer of Jack Pruitt.

Incredibly, once the parties were granted a divorce, George's representations regarding the value of his interest in BCI again fluctuated, increasing now by over eighteen (18) fold. For example, approximately six (6) months after the Final Judgment of Divorce Irreconcilable Differences was entered, on or around December 31, 2000, George submitted another personal Net Worth Report to State Bank and Trust. (R3. at 21-27; Exhibit 12, 2000 Net Worth Report of George Trim; Exhibit 15-A, Dep. of George Trim at p.72-77). On this December 2000 Net Worth Report, George indicated that the value of his shares of BCI were worth \$1,837,500. Id. George ratified this document by executing the same on January 5, 2001 and, during his deposition and at trial, testified that he knew this document listed \$1,837,500.00, as the value of his BCI shares at the time the document was submitted to State Bank and Trust. Id.

In 2001, serious disagreements arose between George and Tony Bailey concerning management, control and authority of each shareholder in BCI. (R1. at 000131.) As Tony Bailey was the majority shareholder of BCI, he could elect two of the three members of the Board of

Directors, thereby retaining control of the major decisions of the company. (R1. at 000132.) In a Board of Directors meeting called by Mr. Bailey in July of 2001, Mr. Bailey and the third director voted to fire George as president of the company. Id. In August of 2001, George filed a breach of fiduciary duty and wrongful breach of minority rights suit against Mr. Bailey and BCI in the Madison County Chancery Court. Id. In this proceeding, Mr. Bailey and BCI exercised their statutory option to purchase George's stock at a value to be determined by the Court under Miss. Code Ann § 79-4-14.34. Id.

Pursuant to the statutory requirements, the Madison County Chancery Court scheduled a hearing to determine the value of George's forty-nine percent (49 %) stock interest. Id. George's own valuation expert, Mr. James Koerber, testified that the fair value of BCI as of August 14, 2001 was \$1,186,000. Id. BCI's retained valuation expert, Dr. Hugh Parker, using a different valuation method testified that the fair market value of George's BCI stock was \$184,730. After receiving and carefully considering the written reports and testimony of the opposing experts, the Madison County Chancery Court found that the report and testimony of James Koerber was the "more credible" and "much more reasonable" approach to valuing BCI. (R. at Exhibit 7, Memorandum Opinion of the Chancery Court of Madison County, pp. 5-6). Accordingly the Madison County Chancery Court adopted the report of James Koerber as its own, and valued George's forty-nine (49%) percent equity interest in BCI at \$1,186,000.00. (Id. at 5-6; Exhibit 6, Amended Final Judgment at p. 2.)

Lisa first learned of George's lawsuit and the BCI valuation between 2002 and 2003. At this point, she immediately began searching for legal counsel.² In November of 2004, Lisa filed her

² After Lisa discovered George's misrepresentation relating to the value of BCI, she immediately retained one attorney who failed to perform any work on her case for approximately six (6) to eight (8) months. She then went to another attorney, who investigated the facts for a couple of months and then declined to take the case. (R. at

Petition to Set Aside the Final Judgment of Divorce and Property Settlement Agreement (“Petition”) in the Hinds County Chancery Court. (R1. at 000083.) In her Petition, Lisa asked the court below to find George in contempt and to set aside the June 14, 2000 Final Judgment based on the fact the George committed fraud on Lisa and the court when he intentionally misrepresented the value of his interest in BCI in an attempt to avoid equitable distribution of the marital asset. (R1. at 000083-88, 000122-29.) Lisa designated Mr. Raleigh Cutrer as an expert witness and, after a lengthy discovery process and after denying a Motion for Summary Judgment filed by George³, the court below held a full trial on the merits on March 1, 2007. (R1. at 000130-44.)

In its July 3, 2007 *Order and Opinion of the Court*, the court specifically found for Lisa, finding with disdain that:

The evidence at trial showed that this [George’s conduct] was no error in valuation, but instead was *a systematic and calculated attempt* to defraud Mrs. Trim and this Court as to the value of the parties’ most valuable marital asset. After perpetuating this fraud, Mr. Trim now smugly asserts that this Court is without recourse as the six month period in Rule 60(b)(1) has expired. This Court cannot reward Mr. Trim for successfully deceiving the Court and Mrs. Trim as to the actual value of his BCI stock.

(R1. at 000134.) The Court noted that, the based upon the limited definition of “fraud upon the court” as defined by the Mississippi Court of Appeals in Tirounda v. State of Mississippi, 919 So.2d 211, 213 (Miss. App. 2005), it was unable to find that George’s deceit met the current definition of “fraud upon the court” because theoretically only one witness offered perjured testimony in this

Exhibit 13, p.7-8).

³ The hearing on George’s Motion for Summary Judgment occurred before Judge Stuart Robinson, Sr. who, after years of distinguished service, retired from the bench and was succeeded by the Honorable Dwayne Thomas. After hearing the arguments of counsel in this case relating to the allegations of fraud and George’s Motion for Summary Judgment, Judge Robinson found that George’s egregious conduct, if proven, rose to the level of a fraud upon the court due to the Court’s reliance on the Rule 8.05 Financial Statement when determining whether a property settlement is equitable. (R. at Exhibit 13, pp. 19-26.)

matter. (R1. at 000135.) However, the court further noted that it was “unwilling to allow Mr. Trim to profit from his ability to deceive and conceal the truth from Lisa and the court for longer than six months” and that, as a court of equity, it was required to use the “means and methods available to achieve justice and an equitable resolution to this matter.” (R1. at 000135-36.)

Accordingly, the court exercised its grand reservoir of equitable power and treated Lisa’s Petition to Set Aside a Final Judgment of Divorce and/or Property Settlement Agreement as a Motion to Modify the Final Judgment of Divorce and/or Property Settlement Agreement. In doing so, the Court found that, under the Mississippi Court of Appeals decision in Kalman v. Kalman, 905 So.2d 760, 764 (Miss. Ct. App. 2004), George was in contempt for fraudulently misrepresenting the value of his interest in BCI to the court, that principals of equity and justice demanded the Final Judgment and Property Settlement Agreement be modified. (R1. at 000135-36.) and adopted Mr. Curter’s valuation of the BCI stock which applied the accepted “minority discount” and lack of marketability in determining the value of the stock as of June, 2000. (R1. at 000136-38.) Based on Mr. Cutrer’s valuation, the court found the correct value of George’s BCI interest to be \$694,000, and awarded Lisa \$148,500 based on the factors outlined in Ferguson, 639 So.2d 921. (R1. at 000136-44.)

SUMMARY OF THE ARGUMENT

The court below did not abuse its discretion when it found, by clear and convincing evidence that George had perpetrated a knowing and intentional fraud upon Lisa and the court when he fraudulently undervalued his interest in BCI in an attempt to avoid the equitable distribution of this marital asset. The record is replete with evidence that George engaged in a systematic scheme to deceive both Lisa and the court into believing that BCI was on the verge of bankruptcy and that his interest in the company could be worth no more than \$100,000, while the true value of his interest was in excess of \$1,100,000.00.

Moreover, the court below did not err as a matter of law when it found that George was in contempt of court for failing to provide truthful and accurate disclosures as required by Rule 8.05 of the Uniform Rules of Chancery Court and that he should be sanctioned and the Property Settlement Agreement modified to equitably distribute the remaining value of BCI stock which George retained as a result of his fraudulent conduct. First, the Mississippi Court of Appeals' decision in Kalman, 905 So.2d 760 (Miss. Ct. App. 2004), clearly supports such a ruling from a court of equity. Moreover, George's systematic and calculated scheme constituted a "fraud upon the court" entitling Lisa to relief from the Final Judgment of Divorce and Property Settlement Agreement pursuant to Rule 60(b)(6) of the Mississippi Rules of Civil Procedure.

George's conduct meets all of the elements of common law fraud and the court did not abuse its discretion when it found that George had committed fraud by clear and convincing evidence. In addition, the court did not err as a matter of law when it found that George should be sanctioned for contempt and that the Final Judgment of Divorce and Property Settlement Agreement should be modified to equitably distribute the marital interest in BCI George kept as a result of his fraud. Lisa respectfully prays that the decision of the Hinds County Chancery Court should be affirmed.

ARGUMENT

I. STANDARD OF REVIEW

The scope of review in domestic cases is limited. De St. Germain v. De St. Germain, 977 So. 2d 412, 415-16 (Miss. Ct. App. 2008). It is for the chancellor to determine the credibility and weight of the evidence. Chamblee v. Chamblee, 637 So. 2d 850, 860 (Miss. 1994). In the absence of manifest abuse of discretion, coupled with the presence of substantial credible evidence, the decision of a learned chancellor should not be disturbed. Mabus v. Mabus, 910 So.2d 486 (Miss. 2005). Stated differently, a chancellor's ruling on findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. Denson v. George, 642 So. 2d 909, 913 (Miss. 1994). "The word 'manifest,' as defined in this context, means 'unmistakable, clear, plain, or indisputable.'" Mosley v. Atterberry, 819 So.2d 1268, 1272 (Miss.2002) (quoting Mosley v. Mosley, 784 So.2d 901(Miss.2001) (internal citations omitted)). This standard of review holds true for contempt matters also. A citation for contempt is determined upon the facts of each case and is a matter for the trier of fact. Milam v. Milam, 509 So.2d 864, 866 (Miss.1987). Contempt matters are committed to the sound discretion of the trial court, and an appellant court will not reverse where the chancellor's findings are supported by substantial credible evidence. Ligon v. Ligon, 743 So.2d 404 (Miss. Ct. App. 1999).

II. THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR IN FINDING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE DEFENDANT HAD WILFULLY, KNOWINGLY AND FRAUDULENTLY MISREPRESENTED THE VALUE OF HIS BUSINESS STOCK TO LISA TRIM AND THE COURT.

The court below properly found, by clear and convincing evidence, that George had committed fraud in his dealings with Lisa and the court when he misrepresented the value of his shares in BCI. At trial, the court relied on numerous documents admitted into evidence and the

testimony of George and Lisa Trim, Raleigh Cutrer and Shirley Wilson to find that George had committed common law fraud. The crux of George's argument at trial and now on appeal is that the court below abused its discretion when it found the elements of fraud had been satisfied because an opposing expert in a breach of fiduciary duty action filed after the divorce could not agree with George's expert on the value of his interest in BCI. (Appellant's Brief at p.18-21.) However, George's argument is a proverbial red-herring and conveniently ignores the abundant evidence of fraud before the Court.

In Mississippi, the elements of fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that the representation be acted upon by the hearer and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on the representation's truth; (8) the hearer's right to rely thereon; and, (9) the hearer's consequent and proximate damages. Gamble v. Dollar Gen. Corp., 852 So.2d 5, 10 (Miss. 2003). In the case at hand, there is abundant evidence in the record that each of these elements is satisfied.

The record reflects that in September of 1999 George represented to Lisa that the value of his BCI stock was \$100,000. (R3. at 35-37, 124-30; R4. at 230-32.) Thereafter, George represented to Lisa and the Court below on his sworn Rule 8.05 Financial Disclosure that the value of his interest in BCI was \$100,000. (R1. at 000020; R3. at 22-29; R4. at 230-31.) At the time the representation was made, George knew the representations were false because, immediately before and after his representations to Lisa and the Court, he submitted signed personal Net Worth Reports to State Bank reflecting a value of his interest in BCI that exceeded the statements made to Lisa and the Court by eleven (11) to eighteen (18) times. (R3. at 22-29; Exhibit 11, December 1999 Net Worth Report; Exhibit 12, December 2000 Net Worth Report.) Over the course of six (6) months,

George was offered between \$1,000,000 and \$1,500,000 for his BCI stock on two different occasions (R3. at 37-38; Exhibit 8, Valuation of James Koerber at p.6.) In late 2001, George retained a valuation expert, James Koerber, in a lawsuit against his business partner and BCI, and thereafter advocated his expert's opinion that the fair value of his interest in BCI as of August 14, 2001 was \$1,186,000. (R. at 32-33; Exhibit 8, Valuation of James Koerber.). In 2002, the Madison County Chancery Court awarded \$1,186,000 to George, after finding Koerber's valuation to be the "more credible" and the "much more reasonable" valuation of George's interest in BCI. (R. at Exhibit 7, Memorandum Opinion of the Chancery Court of Madison County, pp. 5-6; Exhibit 6, Amended Final Judgment at p. 2.)

The representations made by George relating to the false value of his interest in BCI were made in an attempt to secure Lisa's consent to the distribution of marital property contained in the Property Settlement Agreement, her consent to the Divorce and the Court's ratification of both. (R3. at 28-40, 125-31; R4. at 230-32.) George never advised Lisa or the court below that his stock in BCI may be worth significantly more than he stated in his Rule 8.05 Financial Statement and never told Lisa or the Court that he had valued his interest in BCI up to eighteen (18) times higher in certified documents submitted to financial institutions. (R3. at 28-40, 125-31; R4. at 230-32.) Lisa was never made privy to George's Net Worth Reports and never worked in a position with BCI where she would have had access to the true value of George's shares of BCI. (R3. at 129-31.) In fact, George wanted Lisa and the court to rely on the \$100,000 value for BCI contained in his Rule 8.05 Financial Disclosure. (R3. at 125-31, R4. at 230-32.)

Both Lisa and the court had the right to rely on the George's representation relating to the value of his BCI stock contained in his Rule 8.05 Financial Disclosure. Rule 8.05 of the Uniform Chancery Court Rules reads, *in toto*, that:

Unless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures:

1. (A) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the forms attached hereto as Exhibit "A" and "B."
- (B) Copies of the preceding year's Federal and State Income Tax returns, in full form as filed, or copies of W-2s if the return has not yet been filed.
- (C) A general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of divorce, whichever is applicable.

The party providing the required written statement shall immediately file a Certificate of Compliance with the Chancery Clerk for filing in the court file. The Certificate of Compliance shall be in the form of the attached Exhibit "C."

The foregoing disclosures shall be made by the plaintiff not later than the time that the defendant's Answer is due, and by the defendant at the time that the defendant's Answer is due, but not later than 45 days from the date of the filing of the commencing pleading. The Court may extend or shorten the required time for disclosure upon written motion of one of the parties and upon good cause shown. When offered in a trial or a conference, the party offering the disclosure statement shall provide a copy of the disclosure statement to the Court, the witness and opposing counsel.

This rule shall not preclude any litigant from exercising the right of discovery, but duplicate effort shall be avoided.

The failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties. [Amended effective July 1, 1996.]

Rule 8.05, Uniform Chancery Court Rules. In Mississippi, it is clear that Uniform Chancery Court Rule 8.05 requires each party to a domestic case involving economic issues to provide a detailed and truthful financial statement to the court. Shaw v. Shaw, 2007 WL 2917180 at* 2-3 (Miss. Ct. App. 2007); Kalman v. Kalman, 905 So.2d 760, 764 (Miss. Ct. App. 2004). The Rule 8.05 Financial Disclosure is filed for the benefit of the court and the opposing party in the marital dissolution. Decisions on whether and how to settle a case depend on full, honest financial disclosure. The Rule 8.05 Financial Disclosure is essential to the domestic litigation process because it serves the specific purpose of providing the court with accurate financial information of the parties to assist in its disposition of litigation. Kalman, 905 So.2d at 764 (Miss. Ct. App. 2004).

Finally, Lisa and the court did rely of the false information provided by George relating to the value of his interest in BCI, because Lisa executed the Property Settlement Agreement and consented to the divorce based on the false financial information provided by George. (R3. at 125-31.) Moreover, the court below ratified the Final Judgment of Divorce and Property Settlement Agreement in this matter upon review of the Rule 8.05 Financial Disclosures submitted by the parties and under the assumption that these disclosures were truthful and accurate. (R1. at 000022-34; R. at Exhibit 13, Trans. of Sept. 12, 2005 Hearing Before the Hon. Stuart Robinson, pp. 18-27.) As a result of George's fraudulent misrepresentation relating to the value of his BCI shares, Lisa was tricked into settling for much less than her equitable share of the marital property acquired over the course of the parties' marriage.

The court below did not abuse its discretion when it found by clear and convincing evidence that George had committed fraud on both Lisa and the court when he fraudulently undervalued the value of his interest in BCI. Specifically, the court noted that "the evidence at trial showed that this was no error in valuation, but instead was a systematic and calculated attempt to defraud Mrs. Trim and the court as to the value of the parties' most valuable asset." (R2. at 000146, ¶ 4.) Simply stated, justice would not be served by allowing George to outright lie on the Rule 8.05 Financial Declaration, then subsequently attempt to justify and/or excuse his conduct by pointing to an unrealistic and unreasonable valuation of an opposing party's expert two (2) years after the divorce and the conduct of others when it suits him.⁴ Based on the above, Lisa respectfully prays that this

⁴ The Appellant takes inconsistent factual positions throughout his brief. For example, George attempts to justify his fraud by constantly referring to the valuation of BCI's compensated expert in the Madison County Chancery Court litigation, (Appellant's Brief at p.18), a valuation that he adamantly opposed and impeached in that litigation and that was given little weight in the proceeding due to its use of an improper valuation technique, strain on credibility, and lack of reasonableness. (See R. at Exhibit 7 pp. 3-6.) The thrust of his argument here is that if experts can disagree as to the value of his BCI interest, then he did not commit fraud by placing an amount that was below even the opposing expert's value. (Appellant's Brief at 18-20.) Amazingly, George then changes his

Honorable Court affirm the decision of the trial court below on the issue of fraud.

III. THE APPELLANT'S FRAUD WAS SO EGREGIOUS THAT THE CHANCELLOR DID NOT COMMIT MANIFEST ERROR IN FINDING THAT MISSISSIPPI LAW AND PRINCIPALS OF EQUITY DEMAND THAT GEORGE TRIM BE CITED FOR CONTEMPT AND THAT THE FINAL JUDGMENT OF DIVORCE BE MODIFIED.

Based on the finding that George had intentionally engaged in a systematic scheme to intentionally misrepresent the value of his BCI shares to Lisa and the court below, the trial court cited George with contempt of court and awarded Lisa costs of court, attorney's fees and expert fees for the filing of her action. (R2. at 000148-49, ¶ 11.) Based on this finding of contempt and after noting the asset was marital property, the court then modified the Final Judgment of Divorce and Property Settlement Agreement to equitably distribute George's interest in BCI based on the Ferguson factors. (R1. at 000135-44; R2. at 000146-49.) During litigation of this case and now on appeal, George boldly indicates that, even if the court does find that he had committed fraud, the court below committed error and must be reversed because Lisa did not bring this action within six (6) months of the entry of the Final Judgment of Divorce. (Appellant's Brief at pp. 10-17.) However, George's argument misconstrues current Mississippi law and ignores the fundamental purpose of the Courts and the Rules of Civil Procedure.⁵

argument by attempting to shift the blame for his fraudulent scheme to others, including his support staff at BCI, for placing the fraudulent amount on his certified Rule 8.05 Financial Declaration. (Id. at 20-21.) Clearly, George's argument, in and of itself, casts a strain on his credibility and lends support to the finding of the Honorable Court below.

⁵ As discussed in the Mississippi Supreme Court's decision in Accredited Sur. & Cas. Co. v. Bolles, 535 So.2d 56, 58 (Miss.1988) and by the Mississippi Court of Appeals in Tirouda v. State, 919 So.2d 211, 214 (Miss. Ct. App. 2005), we are reminded that Mississippi courts and attorneys alike must "keep in mind the equitable purpose of Rule 60 as well as the spirit by which procedural rules must be interpreted." These high Courts have noted that "[t]he 'primary purpose' of our Rules of Civil Procedure is to 'secure the just ... determination of every action' and 'promote the ends of justice.'" Accredited Surety, 535 So.2d at 59; Tirouda, 919 So. 2d at 215.

Notably, the Kalman Court specifically found that Mrs. Kalman had a colorable argument entitling her to equitable distribution of the winnings under the Ferguson factors. Id. at 763-64. Because the chancellor failed to utilize either Hemsley or Ferguson in determining her entitlement to part of the lottery winnings, the Kalman Court reversed the judgment of the trial court and remanded the cause for a determination under the applicable case law as to whether the lottery ticket, which was acquired during the marriage, constituted marital property under Hemsley and was therefore subject to equitable distribution. Id. The Court further instructed the trial court to consider the Ferguson factors when dividing the lottery winnings should the chancellor conclude that the winnings are, in fact, marital property. Id.

Although neither party addressed it in their briefs, the Kalman Court also found that it was necessary to review both parties' "obligations to the court" under Uniform Chancery Rule 8.05. Here, the Kalman Court noted that:

Although neither Patricia nor Zoltan have urged this Court to consider the contempt issue under Uniform Chancery Court Rule 8.05, this Court feels that a review of both parties' obligations to the court is appropriate. Uniform Chancery Court Rule 8.05 requires a detailed and truthful disclosure of both parties' finances. Under the plain language of this rule, the 8.05 disclosure is mandatory unless "excused by Order of the Court for good cause." The rule dictates that "each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known [enumerated financial disclosures.]" This rule provides that "[t]he failure to observe this rule, without just cause, *shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties.*" Neither Zoltan nor Patricia complied with this rule.

Zoltan seeks to persuade this Court that he should not be found in contempt because he "never appeared in [c]ourt nor was he ever ordered by the [c]ourt to produce any financial information." *Zoltan's argument effectively attempts to justify perpetuating a fraud on the court by failing to disclose accurate financial information.* The fact that Zoltan elected not to secure representation in the divorce is of little import, for rule 8.05 does not except pro se litigants from compliance. Likewise, Patricia failed to file a disclosure under rule 8.05 as well. Although this Court is aware that chancellors commonly do not require these disclosures, *the rule serves the specific purpose of providing the court with accurate information to assist in its disposition*

Court Rules. Id. Mrs. Shaw filed interrogatories and a request for production of documents to her husband, Mr. Shaw, on October 29, 1996. Id. Mr. Shaw did not list his 401K account in his interrogatory responses or under the "Pensions and Retirement" portion of his financial statement. Id. Mr. Shaw did, however, list a monthly deduction of \$209.15 on his financial disclosure under "Mandatory Insurance" with a handwritten notation "401 retirement (my option)." Id. The divorce was granted on February 5, 1998. Id.

Realizing thereafter that Mr. Shaw had a retirement account at the time of the divorce, Mrs. Shaw filed a motion for contempt and modification on March 15, 2005, requesting that (1) the property settlement agreement entered into on February 5, 1998 be set aside, (2) Mr. Shaw be required to file a complete and accurate financial statement, and (3) Mrs. Shaw be awarded an equitable division of the 401K account. Id. On July 26, 2006, the chancellor ruled in favor of Mr. Shaw on all counts, finding that Mr. Shaw did not commit fraud against either the court or Mrs. Shaw, the statute of limitations had expired with regards to Mrs. Shaw's claim for modification of the property settlement agreement, and that Mrs. Shaw's request for modification of the agreed division of property and assets could not be granted as the agreement was not modifiable. Id. Mrs. Shaw filed a timely appeal from the chancellor's ruling. Id.

The Shaw Court affirmed the decision of the Court below. Id. at *3-*5. First the Court discussed the parties obligation under Rule 8.05 and the difference between "fraud against a party" and "fraud upon the court" as those terms relate to Rule 60 (b) of the Mississippi Rules of Civil Procedure. Id. at *2. The Court then noted that "it does not appear that Mr. Shaw spoke falsely about his 401K or intentionally attempted to conceal the asset from Mrs. Shaw. The existence of a 401K account was mentioned in the financial statement provided to Mrs. Shaw, even though it was not in the manner preferred." Id.

Immediately after finding that the trial court was not manifestly wrong in holding that Mr. Shaw was not guilty of fraud, the Court discussed the Kalman ruling, stating that:

Mrs. Shaw also claims that since Mr. Shaw failed to disclose his 401K asset, under Kalman v. Kalman, 905 So. 2d 760 (Miss. Ct. App. 2004), he violated Rule 8.05, which requires a detailed and truthful disclosure, and he should be sanctioned for contempt. In Kalman, the husband won \$2.6 million in the Ohio state lottery which he failed to disclose, and the Court reversed and remanded for determination of contempt in light of Rule 8.05. [FN2]

We did not, however, state that every failure to file an 8.05 or inaccuracies in an 8.05 financial statement would always justify a citation for contempt. *"A citation for contempt is determined upon the facts of each case and is a matter for the trier of fact."* Kalman, 905 So. 2d at 762. *A citation is proper when "the contemnor has willfully and deliberately ignored the order of the court."* Id. at 762. (citation omitted). *As we have upheld the chancellor's finding that Mr. Shaw did not commit fraud either upon the court or upon Mrs. Shaw, we similarly find that the chancellor did not err in determining that a contempt citation against Mr. Shaw was not warranted.*

Based on the terms of the agreement, entered into in 1998, and the fact that Mr. Shaw did not fraudulently conceal his 401K account, the marital property settlement terms were not modifiable, and Mrs. Shaw has no further claim to the assets of Mr. Shaw.

Id. at 3-5 (emphasis added).

Another decision which directly supports the ruling of the court below is the recent decision of the Court of Appeals in de St. Germain, 977 So. 2d 412. In the de St. Germain case, Robert and Brenda de St. Germain filed a joint bill for divorce. Id. at 414. Approximately three months later, they executed a property settlement agreement. Id. at 415. According to that agreement, Robert was to receive all real property except for a convenience store. Id. The Lawrence County Chancery Court later entered a final decree of divorce. Id. Simultaneously, Robert and Brenda executed an amended property settlement agreement. Id. According to the amended agreement, Robert received the convenience store, as well as all the other real property. Id. All other provisions of the original