SUPREME COURT OF MISSISSIPPI
Case # 2007-CA-01942

PATRICIA FLEISHHACKER — APPELLANT

VS.

WALTER FLEISHHACKER — APPELLEE

APPEALED FROM THE
CHANCERY COURT OF
LEE COUNTY, MISSISSIPPI
CAUSE NUMBER 04-0395-41-L

BRIEF OF APPELLEE

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SUPREME COURT OF MISSISSIPPI
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellee, Walter Fleishhacker, certified 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:

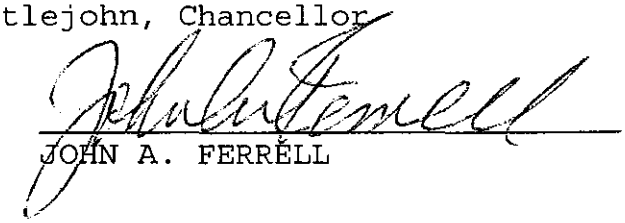
1) Patricia Fleishhacker, Appellant

2) Walter Fleishhacker, Appellee

3) R. Shane McLaughlin and
Nicole H. McLaughlin, Attorneys for Appellant,
Tupelo, Mississippi

4) John A. Ferrell and
J. Deborah Martin, Attorneys for Appellee,
FERRELL & MARTIN, P.A.
Booneville, Mississippi

5) Honorable Talmadge D. Littlejohn, Chancellor



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RESPONSE TO STATEMENT OF FACTS

In her brief, Appellant, Patricia Fleishhacker, (hereinafter referred to as "Patricia"), sets forth certain facts which she contends are relevant to this appeal. In this his brief, Appellee, Walter Fleishhacker, (hereinafter referred to as "Walter"), will not respond specifically to each set of facts at this time but will note facts which he contends are pertinent throughout the course of his argument in this brief. While certain of the facts as stated by Patricia are contained in the record, (primarily in her testimony), their significance or insignificance, as the case may be, will be further discussed herein.

The listing of assets and their value as determined by the Court set forth on page eight of Patricia's brief is an accurate statement of the assets and values thereof as determined by the Court. However, Patricia failed to mention the additional benefits that the Court awarded to her. She got the use, possession and ownership of her vehicle, the Twenty-Five Thousand Dollars ($25,000.00) that the Court previously awarded to her in the Order

of August, 2005, which the Court had indicated it would take into consideration at the time of the final award, was not credited to Walter and Walter was ordered to provide and maintain for Patricia's benefit a health insurance policy comparable to the health insurance policy currently in force at the time of the bench ruling. (Tr. 452)

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SUMMARY OF THE ARGUMENT

Walter denies that the Lower Court committed any reversible error on the six issues that Patricia raises in the appeal. Walter was clearly the owner of twenty-five percent (25%) in NMP prior to the marriage and while the Court held that the other seventy-five percent (75%) of NMP acquired during the marriage was a marital asset, does not make Walter's twenty-five percent (25%) separate property marital property under the doctrine of commingling. The Court properly valued Walter's twenty-five percent (25%) interest in NMP as part of his separate estate and the failing to determine its value at the time of the marriage versus at the time of the Temporary Order was not reversible error.

Under applicable law, the Court further correctly held that the time to value NMP was as of June 30, 2004, about the time that a Temporary Support Order was entered. There is nothing in the record to reflect that an exception to the Godwin doctrine was appropriate in this case and pursuant to that decision and the Pittman case, the appropriate valuation of NMP was as of June 30, 2004.

The record is certainly clear from the testimony of the two expert witnesses who valued NMP that NMP is what it is because of Walter. Both experts noted that the business was a high risk business, a very specialized business and due to the fact that it had only three main customers, Walter's personal relationship with these costumers was of the utmost importance. Without Walter there would be no business. Even with their strong statement of Walter's "goodwill", the Lower Court adopted the valuation of Patricia's expert over Walter's expert which resulted in Patricia's portion of the assets being several hundred thousand dollars higher.

The non-inclusion of the advances in the valuation was also warranted as both parties enjoyed the benefit of those advances throughout the marriage and it would have been improper to include them in the valuation. Neither expert had any problem with that procedure.

The last two points raised by Patricia are of little importance as to the overall value of the marital estate. As to her jewelry, the Court also included Walter's jewelry as a marital asset. The inclusion of jewelry is in the discretion of the Court according to the facts of each case. As to the Old Waverly Golf Club stock and the Cameron's Membership, there was absolutely no value presented to the Court on either of those items and without some proof, the Court was powerless to determine a value of those items of property which, frankly, would have to be insignificant

compared to the overall value of the marital estate as determined by the Court.

The Court's decision was fair, equitable and proper under the facts and law of this case and should be affirmed.

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ARGUMENT

I. Introduction and Standard of Review

The Standard of Review in a domestic relations case is stated in Foster v. Foster, 788 So.2nd 779, ¶4 (Miss. App. 2000) as follows: "The standard of review employed by this Court in domestic relations cases is abundantly clear. Chancellors are vested with broad discretion and this Court will not disturb the Chancellor's findings unless the Court was manifestly wrong, the Court abused its discretion or the Court applied an erroneous legal standard."

The Appellate Court is required to respect the findings of fact by the Chancellor which are supported by substantial credible evidence and not manifestly wrong. Steiner v. Steiner, 788 So.2nd 771, ¶7 (Miss. 2001)

In her brief, Patricia contends that the Lower Court committed reversible error on six issues. Walter submits that the Lower Court committed no error on these six issues and in a comprehensive

bench opinion, clearly set forth a proper analysis of the facts and applied the appropriate law to those facts in rendering his decision which should be affirmed by this Court.

II. The Trial Court did not err in determining that twenty-five percent (25%) of NMP was Walter's separate property.

As to the business NMP, it is uncontradicted that at the time of the marriage of these parties on January 3, 1981, Walter already owned twenty-five percent (25%) of the stock in NMP, having acquired it in 1974. (Tr. 385-386) Sometime in 1993, Walter purchased the remaining seventy-five percent (75%) of stock in NMP from its owners and financed that purchase of stock through a bank loan. (Tr. 414)

In her brief, Patricia complains of the Trial Court's failure to hold that one hundred percent of NMP was a marital asset as of the operative date June 30, 2004, and in holding that Walter owned twenty-five (25%) percent of NMP prior to the marriage which remained his separate property. Patricia contends that the doctrine of commingling requires one hundred percent of the stock of NMP to be deemed a marital asset subject to division.

This Court has ruled that assets accumulated during the marriage are marital assets and are subject to equitable division unless it can be proven that such assets are attributed to one of the parties separate estates either prior to the marriage or outside of the marriage. Hemsley v. Hemsley 639 So.2nd 909, 915, (Miss. 1994). It has also been generally held that property owned by one spouse prior to the marriage is separate property. Bunyard v. Bunyard 828 So. 2nd 775, ¶8 (Miss. 2002). Patricia seeks to

invoke the doctrine of commingling as a basis for claiming that Walter's twenty-five percent (25%) ownership of NMP obtained prior to the marriage lost its character as his separate property because the remaining seventy-five percent (75%) was acquired during the marriage and thus the shares of stock were "commingled".

It is clear that there was never any intent to commingle Walter's already acquired interest in NMP with the newly acquired interest during the marriage. In fact, the agreement (Exhibit 41, Tr. 322, 324)that Patricia seeks to use as proof that one hundred percent (100%) of the stock was a marital asset actually proves just the opposite. The agreement executed by Patricia provides that she would reconvey the stock to Walter at any time that he requested it and that the transfer would not enhance her rights to the stock in the event of a divorce. This clearly shows an intent on the part of Walter and an acquiescence therein by Patricia that she had no interest in NMP other than what might be imposed by a Court in a divorce case.

Although commingling of separate assets with marital assets can transform the separate asset to a marital asset, such a rule is not absolute. In Oliver v. Oliver 812 So. 2nd 1128 ¶23, (Miss. App. 2002), the Court held that the depositing of inherited money into a family checking account alone did not result in the doctrine of commingling as there was no showing of an intent to convert the funds to marital funds. In this case, the Court clearly held that

the seventy-five percent (75%) acquired during the marriage was a marital asset. However, the Court also found that Walter's twenty-five percent (25%) prior ownership of stock in NMP for some eight years prior to the marriage continued to be his separate estate. This finding is supported by substantial evidence and the Court's ruling is in accordance with the law.

One theme throughout this appeal is the alleged non-economic contributions of Patricia to NMP. Patricia testified that she, on occasion, helped entertain the customers of NMP and kept notes for Walter on certain of the customers family activities. (Tr. 248) However, she also admitted that after 1999, she no longer held a Christmas party and after February 2001, she did nothing to entertain any of the customers of NMP. (Tr. 316-317) She also admitted that the events that she was involved in were catered. (Tr. 318) She admitted, however, that she never had any involvement with the day to day business of NMP throughout their entire marriage. (Tr. 317)

Walter, on the other hand, is and always has been the driving force of NMP. It is through his efforts that the business was acquired, twenty-five percent (25%) in 1974 and the balance sometime in 1993 and any success that the business has realized in the last several years has been through a combination of the efforts of Walter (Tr. 189-190) and the fact that the price of

scrap metal was at some of the highest levels ever in 2004 and 2005. (Tr. 230, 231)

In the case of Craft v. Craft 825 So. 2nd 605 ¶12, (Miss. 2002) the Supreme Court held that a chancellor was correct in determining that the husband's partnership interest in an auto sales business was not a marital asset. The business had existed for several years prior to the marriage and it remained outside the marriage and any contributions to the business of the wife were found to be negligible. She was never a significant contributor to the business, took no active part in the business, did not participate in business decisions and did not invest or contribute money to its ongoing operations. In Craft, the party certainly utilized funds from the business for familial reasons, but that in and of itself did not result in a commingling of the partnership money with personal money. In A & L, Inc. vs. Grantham, 747 So.2nd 832, (Miss. 1999), relied upon by Patricia, there was a piercing of the corporate veil which was an element of the Court's findings which is not present in this case.

The Craft decision is in line with prior decisions of this Court which have held that any increase in the non-marital asset acquired subsequent to the marriage may be a marital asset but that does not make the non-marital portion of the asset marital under the doctrine of commingling. If Patricia's rational is correct, this Court's rulings in several cases, Waring v. Waring 722 So. 2nd

723, (Miss. App. 1998), (involving a family business that increases in value with only the increase constituting a potentially marital asset) and Barnett v. Barnett 908 So. 2nd 833, ¶11, (Miss. App. 2005) (where the Court found that only that portion of the husband's IRA acquired after the marriage to be a marital asset with his accumulation prior to the marriage being his separate property) would have to be overruled. The doctrine of commingling has no application to Walter's twenty-five percent (25%) of stock that he owned before the marriage and the chancellor did not commit any error in so finding.

III. The Court properly valued the separate interest of Walter as of the date of the Temporary Order rather than the date of the parties' marriage.

On June 22, 2004, the Court entered an Agreed Temporary Support Order in this case. (CP 31, 32) The Court used this date as a "line of demarcation" pursuant to the decisions in Godwin v. Godwin, 758 So. 2nd 384 (Miss. 1999) and Pittman v. Pittman, 791 So. 2nd 857 (Miss. App. 2001) which held that assets acquired after the entry of a Temporary Order are separate property of the party acquiring them and thus the valuation of NMP was proper as of June 30, 2004. This issue will be further discussed in this brief but on this point, Patricia objects to the value of Walter's twenty-five percent (25%) interest being as of June 30, 2004, instead of at the time of their marriage.

Patricia against cites the Grantham case for the proposition that the valuation date of Walter's twenty-five percent (25%) was improper and should have been done as of the date of their marriage. As noted in the Craft case at ¶15, at most, any increase in the value of Walter's twenty-five percent (25%) of NMP acquired before the marriage would be all that would be a marital asset.

Both experts testified that one significant variable in the value of the company was dependant upon the scrap metal market. (Tr.166,350) Apparently that business had not changed significantly since its inception and therefore, some of the

increase in the value of his twenty-five percent (25%) was related to the market. This would also be true of the other seventy-five percent (75%) of NMP but no consideration was given for this fact in awarding to Patricia an award based in part on the value of seventy-five percent (75%) of NMP. As noted in the Craft case, even if neither party had established with any degree of accuracy what the value of the business had increased from the date of the marriage up to the time of the separation (in that case), it is clear that the chancellor considered the overall equitable division of property in making his award and the failure to specifically note what, if any, there was in the increase of the value of the property does not negate his overall award being fair under Ferguson.

Further, in Craft, at ¶13, citing Brown v. Brown 574 So. 2nd 688, 691 (Miss. 1990), it was noted that it is well established that a spouse is not automatically entitled to an equal share of property accumulated even if in part through the contributions of both parties. The case of Carrow v. Carrow, 642 So. 2nd 901, 907, (Miss. 1994), held that "the appreciation of the value of any non-marital asset may be taken into account to arrive at a fair division to the extent the non-titled spouse has made a contribution toward the appreciation of value." In this case, there is no proof whatsoever that Patricia made a contribution toward the appreciation of the value of Walter's twenty-five

percent (25%). There is no obligation under these cases to award any in-kind interest to a non-titled spouse in the increase of a non-marital asset, when the Court has taken into consideration the overall facts of the case and made an award that is clearly just and fair.

IV. The Court did not err in valuing NMP as of the date of the Temporary Order as this was the appropriate date pursuant to applicable law.

During the course of the trial and while Patricia's expert was on the stand, the chancellor below ruled that the appropriate date of valuation of NMP was June 30, 2004, based upon the fact that a Temporary Support Order had been entered by the Court on that date. The Court's ruling was based upon the decisions in the cases of Pittman v. Pittman 791 So. 2nd 857, (Miss. App. 2001) and Godwin v. Godwin 758 So. 2nd 384, (Miss. 1999). (Tr. 152-155) Patricia contends that the proper date for valuing NMP should be October 31, 2006, near the time of trial.

Godwin at ¶7, provides that assets acquired after an Order for Separate Maintenance should be considered the separate property of the party acquiring it absent a showing of a contribution to the acquisition of the asset by the other spouse under Ferguson, or the acquisition of the asset was through the use of marital property. The Pittman case at ¶16 provides that income earned by a spouse after a Separate Maintenance Order is also separate property. The Court in Pittman at ¶17 further held that the Godwin doctrine applies to the entry of an Order for temporary support.

Patricia contends that there is no case specifically addressing the issue of appreciation or depreciation of a going

concern and the effect that the Godwin doctrine has upon that situation. Suffice it to say that her reliance on Justice Bank's separate opinion in Heigle v. Heigle 771 So. 2nd 341, ¶48 (Miss. 2000) is misplaced. Justice Banks does not address the Godwin doctrine per se but merely makes reference to Godwin as being one of the time frames that the Courts have utilized in valuing marital property. However, a close reading of the Pittman case at ¶17 answers the question before the Court on this issue. In Pittman, the Court held:

> "It is also argued that this elaboration on the Godwin doctrine creates a dilemma for the non-income earning spouse. Seeking support could end the right to share in subsequent increases in the marital estate while eschewing support could lead to financial struggles. Certainly the latter is true and should be avoided. The existence of the former is not a dilemma but a Godwin "line of demarcation". The divorce itself ends the creation of new marital property. Godwin states that a Separate Maintenance agreement at least interrupts it as well. What joins the concept of a Separate Maintenance Agreement to that of temporary support is that both are practical recognitions that the spouses are no longer living together as husband and wife and support for separate households must exist. Both are formal but tentative steps to an uncertain destination, perhaps back to a successful marriage or in a different direction to a divorce."

It is clear under Pittman and Godwin that the proper date to value NMP is the date of the entry of the Temporary Support Order.

Patricia attempts to negate this ultimate conclusion by contending that the second of two exceptions to the Godwin doctrine applies, that is, that Walter used marital property, NMP, to acquire the increase in the assets of NMP. As noted in Godwin at

footnote one (1), however, this is not the type of "use" that the second Godwin exception envisions. The footnote states "Here we are referring to the use of marital property, such as cash or some other like asset, to purchase property or the use of marital property as collateral or security for the purchase of property". There is no proof in the record that this happened in this case.

In the case at bar, the increase in the value of NMP subsequent to the entry of the Temporary Order is covered by the Godwin and Pittman cases as it is uncontradicted that Walter owns one hundred percent (100%) of the stock. So, too, would be any income such as dividends that Walter might have acquired from NMP or other sources subsequent to the entry of the temporary Order. Neither Pittman nor Godwin differentiate between active and passive appreciation and therefore Patricia's arguments to the contrary are not substantiated by those cases.

V. The Lower Court did not err in excluding the amount of debt Walter owed to NMP in determining the value of that company.

Patricia next complains about the Court's not including in the value of NMP the amount that Walter owed to the company as of June 30, 2004. (Tr. 444) Contrary to the statements in her brief, the Lower Court did not ignore the existence of that debt but merely held that the debt was not to be considered in the overall value of the company as it was basically a debt to himself (Walter) as he owned the company and without him there would be no company.

Further, the Court rightfully observed that the advances that were taken which resulted in the debt were utilized to fund the comfortable lifestyle that both of the parties owned. (Tr. 448) The Court's position on this second point is born out by the uncontradicted facts of the case including the testimony of Patricia herself. Walter testified that some of the advances that he took were utilized to make improvements to the marital dwelling located in Beldon, MS, (Tr. 60) and to improve the duplex at Old Waverly in West Point, MS. (Tr. 46) Both of these assets were marital assets. Walter further testified that both he and Patricia enjoyed gambling at the casinos in and out of the State of Mississippi and that part of the advances were used to pay some of her gambling debts, at one time Twenty-Five Thousand Dollars ($25,000.00). (Tr. 60) Walter also used the advances to help take care of his ailing mother during the time the parties were together

and to a lesser extent assist his brother with financial problems. (Tr. 46) There was ample testimony that marital assets were utilized in a business that Patricia started known as What A Mitt which turned out to be a failed venture. (Tr. 261, 264) The considerable debt that was incurred by Patricia in that endeavor resulted in certain debts to various financial institutions including Trustmark Bank. One Hundred Forty Thousand Dollars ($140,000.00) of those advances went to pay on Patricia's note in July, 2003. (Tr. 60, 307, 319) Just like other monies that were utilized by them to sustain this good lifestyle, so too were these advances used by them in that endeavor.

Had the Court included these advances in the valuation of the business, that would have allowed Patricia to have enjoyed the benefit of these advances during the term of the marriage just as Walter did and then require a portion of them to be paid again to her once her share of the business had been established. This would amount to a "double dipping" on the part of Patricia and clearly the chancellor made the right decision in not allowing that.

When asked about the propriety of including or excluding the advances in the valuation, Patricia's own expert acknowledged that he computed the value with and without the advances because it really did not matter if they were in there or not as long as you looked at it consistently. If the money was actually owed to the

company then it was somewhat a debt of the shareholder and asset of the company and if it was never going to be paid back then it was neither an asset of the company nor a debt of the shareholder. (Tr. 174-175) This was consistent with what Robert Alexander, expert for Walter, stated when he noted that it "all washes out". (Tr. 362)

The most important point on this, however, is the realization by the Lower Court from the uncontradicted proof that these advances were taken throughout the marriage and both parties benefitted from them during the marriage. Patricia does not deny that the advances were taken out during the whole marriage nor does she deny that she received the benefits as above stated for the payment of her gambling debts (Tr. 308-309), the One Hundred Forty Thousand Dollars ($140,000.00) paid on her private note (Tr. 307), and for whatever name they are called, the contributions to the whole marriage. (Tr. 319)

Again, the Court's ruling on this point is certainly supported by substantial evidence and reflects what is fair to both parties. It is also important to note that the chancellor below adopted the opinion of Patricia's expert over Walter's expert in valuing NMP which increases her share of the marital estate by several hundred thousand dollars, though the only real difference in the expert's opinions pertained to a difference of opinion as to what Walter's salary should be, the improper utilization by Patricia's expert of

the actual figures for the last quarter of 2004 instead of utilizing projections under the appropriate standards for appraising businesses and her expert's failing to include travel as a reasonable expense as it relates to business.

Again, the lower court properly considered all aspects of these "advances", what they were used for during the marriage and determined that it was not proper to include these advances in the valuation of NMP.

VI. The Lower Court did not err in determining that Patricia's jewelry was marital property.

In his ruling, the chancellor included as marital assets the furniture and jewelry of Walter and Patricia. (Tr. 432, 433) Patricia was less than candid with the Court as to the value of her jewelry. She stated the value on her 8.05 as being One Hundred Thousand Dollars and she testified that the value was only $35,000.00. (Tr. 432-433) She did not have any specific list of her jewelry. (Tr. 297) In addition, she indicated that she sold one of her rings for Thirty Thousand Dollars ($30,000.00) and gave all of the money to her parents though she initially denied having done so until confronted with a deposit slip showing that to be the case. (Tr. 299) Therefore, there is nothing in the record to show the type of jewelry that she had or the nature of it such that would bring it within the provisions of the Oswalt 2006-CA-01254 COA case cited by Patricia in her brief. Further, as noted, the Court included both parties' jewelry as marital assets. Including the jewelry as a marital is consistent with other decisions of the Court including the Ferguson case and the case of Bresnahan v. Bresnahan 818 So. 2nd 1113, ¶30 (Miss. 2002).

Based upon the inconsistent testimony of Patricia on the issue of her jewelry and the disposition of certain items thereof, and the inclusion of both parties' jewelry as marital assets, the Lower

Court again did not err on this point and no reversal therefor is warranted.

VII. The Court did not err in failing to dispose of the Old Waverly Golf Club and the Cameron Club Memberships.

The final point raised by Patricia pertains to the failure of the Court to dispose of the Old Waverly Golf Club and the Cameron Club Memberships. There was no evidence presented to the Court from which the Court could make a determination as to whether or not these memberships had any value. The fact that the parties had paid money for these memberships does not in and of itself indicate that they have any real value and absent some proof of value, the failure to designate as marital or non-marital is a moot point. The Court cannot blindly and arbitrarily assign a value to an asset.

Neither party presented any proof as to the value of the Old Waverly membership or of the Cameron's membership and though they were listed on Patricia's 8.05, there was no value assigned to them. (Exh. 9) It is incumbent upon the parties to place a value on the property before the Court can make a finding thereon. Watson v. Watson 882 So. 2nd 95 ¶53 (Miss. 2004)

Further, the Court asked both parties at the close of the bench opinion if they had any questions and neither party had any. It is not the responsibility of the Court to assign a value to an asset when the parties offered no proof thereon.

The value of these "assets", when considering all of the other assets that have been divided, are relatively insignificant and

since Walter was awarded the Old Waverly property it would seem it would be appropriate for him to maintain those assets. At any rate, this certainly does not skew to the point of being an inequity the division of property and financial provisions made for Patricia in this case.

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CONCLUSION

In conclusion, Patricia received assets and money which, along with the lump sum alimony, exceeded the value of one half of the marital assets. In addition to the award made to her of property and money ($1,855,903.00 - of which $1,078,225.00 was in cash), she received her automobile, the Twenty-Five Thousand Dollars ($25,000.00) paid by Walter under a prior Court Order for which he was to be given credit, was not credited to him and Walter is required to maintain health insurance for Patricia until further Orders of the Court, certainly a valuable provision for Patricia.

At the present time, Walter is seventy-four (74) and Patricia is fifty-eight (58). The Court's determination and division of marital assets and the awarding of lump sum alimony in this case was supported by substantial evidence and none of the issues raised by Patricia in this appeal indicate any reversible error by the Trial Court. The Trial Court's decision evidences a thorough and comprehensive review of all of the facts presented by both parties and the Trial Court's application of the law to those facts was correct. The findings of the Chancellor were not manifestly wrong,

the Court did not abuse his discretion on any of the issues in the case nor did the Court apply an erroneous legal standard. The Trial Court exercised his broad discretion in matters dealing with a division of marital property under the Ferguson factors and the ruling of the Court, in the final analysis, was fair, equitable and just and should be upheld.

Appellee, Walter Fleishhacker, respectfully submits that there was no error committed by the Lower Court on any of the issues raised by the Appellant, Patricia Fleishhacker, and respectfully requests that the Court affirm the decision.

Respectfully submitted,

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John A. Ferrell

SUPREME COURT OF MISSISSIPPI
Case # 2007-CA-01942

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CERTIFICATE OF MAILING

This is to certify that I, John A. Ferrell, attorney for Appellee, have this day mailed by United States mail, postage prepaid, the original and three (3) copies of the Brief of Appellee to Betty W. Sephton, Clerk, Supreme Court of Mississippi at the address of said Court, P. O. Box 249, Jackson, Mississippi, 39205-0249.

This the 4th day of September, 2008.

JOHN A. FERRELL

CERTIFICATE OF SERVICE

This is to certify that I, John A. Ferrell, attorney for Appellee, have this day mailed by United States mail, postage prepaid, a true and exact copy of the foregoing Brief of Appellee to the following:

1) Honorable Talmadge D. Littlejohn
Chancellor
P. O. Box 869
New Albany, MS 38652

2) Honorable R. Shane McLaughlin
P.O. Box 200
Tupelo, MS 38802

This the 4th day of September, 2008.

JOHN A. FERRELL