

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**PERRIN H. LOWREY**

**APPELLANT**

**VS.**

**NO: 2007-CA-01988**

**CYNTHIA NELSON LOWREY**

**APPELLEE**

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On appeal from the Chancery Court of Lamar County, Mississippi  
Case No. 2002-0254-GN

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**REPLY BRIEF OF APPELLANT**

**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF THE FACTS

Perrin Lowrey incorporates herein by reference the Statement of Facts as contained in his Brief of Appellant, which cite to, and are supported by, the record on appeal. "This Court can act only on the basis of the contents of the official record . . . . It may not act upon statements in briefs or arguments of counsel which are not reflected by the record." *Porter v. State*, 749 So. 2d 250, 256 (Miss. Ct. App. 1999). Perrin respectfully requests that the reviewing Court disregard the numerous purported facts in the Brief of Appellee/Cross-Appellant which are based solely on the representations of Cynthia Lowrey's counsel and are not supported by the record, testimony and exhibits as admitted at trial.

Rather than referring to the substantive record and exhibits at trial, Cynthia, throughout her brief, refers to "facts" as set forth in *Lowrey I*. *Lowrey v. Lowrey*, 919 So.2d 1112 (Miss. Ct. App. 2005). In *Lowrey I* a purported "Proffer" which was signed and filed in this case by Cynthia's attorney, Mark Chinn, was the only available source of facts available to the reviewing Court. (CP 56-61) Based on the record as submitted at the subsequent trial on the merits, rather than the claims of Cynthia's counsel, which are not supported by the record, the facts in this case are starkly different than those furnished to the reviewing court in *Lowrey I*.

## **STANDARD OF REVIEW**

Findings of the Chancellor will not be disturbed or set aside on appeal unless the decision of the trial court is manifestly wrong and not supported by substantial credible evidence, abused its discretion, or unless an erroneous legal standard was applied. *Sarver v. Sarver*, 687 So.2d 749, 753 (Miss. 1997). Where there is a question of law, the standard of review is *de novo*. *Morreale v. Morreale*, 646 So.2d 1264, 1267 (Miss. 1994).

## **ARGUMENT IN RESPONSE TO CROSS APPEAL**

### **1. THE RECORD AND EXHIBITS AT TRIAL SUPPORT A FINDING OF FACT AND CONCLUSION OF LAW THAT THERE WAS SUBSTANTIAL MARITAL WASTE ON THE PART OF CYNTHIA LOWREY**

Cynthia is not entitled to a greater share of the marital assets because the evidence presented at trial showed that Cynthia has had a long term, costly and wasteful gambling habit which eviscerated the marital estate. This gambling habit has affected her relationship with her children and family and, pertinent to the discussion pursuant to the *Ferguson* criteria, has lead to a substantial waste and dissipation of the parties' joint marital assets. Cynthia attempts to lay this gambling problem at the feet of Perrin, who would visit a casino once, perhaps twice a year at work-related educational conferences. Cynthia testified that she gambled by herself and without the knowledge or presence of others between 1995 and 2002. The evidence and testimony at trial showed that Cynthia went to the coast over 300 times by herself in a 28

month period. (Ex. 5) (TR 490-491) (RE 110-112)

Prior to the divorce, and also unknown to the Mississippi Court of Appeals in *Lowrey I*, Perrin paid off \$42,000.00 worth of Cynthia's gambling debts (Tr. 224) which included an ATT credit card and home equity line of credit, as well as debt owed to Bancorp South (Tr. 225) Perrin inherited \$15,000.00 from the estate of his grandmother between 1995-1996. Perrin put \$2000.00 of this money into savings and used the remainder to defray debts that had been incurred by Cynthia. (Tr. 486) Perrin also paid debts off with a private loan at \$500.00 per month, the last note due in the year 2013, which Perrin alone is paying. (Tr. 224) (Ex. 1) (RE 52) Exhibit 6, as admitted into evidence, shows the withdrawals made by Cynthia on the home equity line of credit between August 15, 2001, through May 16, 2002, reflecting total withdrawals by Cynthia in the amount of \$34, 700.00. (Ex. 6) (RE 113) Perrin borrowed nothing on this credit line, he only paid it. (Tr. 486) A summary of Cynthia's checking account provides a two year snapshot of just how much money was dissipated and wasted by Cynthia to the likes of the Grand Casino, Treasure Bay Casino, Copa Casino, President Casino and Beau Rivage Casino. (Ex. 4) (RE 78-109) Exhibit 8, as admitted into evidence, reflects that during a 27 month period, Cynthia's checking account had deposits made in the amount of \$189,062.97. Of this amount, \$122, 440.00 were paid directly to casinos. \$8,760.00 of the funds were withdrawn as cash. \$29, 421.31 were payable for other payments. \$19, 521.00 were used to pay the house note, leaving a remaining balance of \$8,920.66. (Ex. 4) (RE 109) Though this summary had been furnished to Cynthia with a Request for Admissions, Cynthia

testified that she had not seen them until the day before trial. (Tr. 293) When questioned Cynthia could offer no credible explanation for the disposition of these funds. (Tr. 294) In addition, Cynthia frequently wrote checks on insufficient funds, which caused overdraft protection to pull money from the parties' joint savings account, in the amount of \$4,841.00 between May 2000 and June 2002. (Ex. 7) (RE 133) (Tr. 492) Exhibit 5, as admitted into evidence, shows that in the year 2000, Cynthia wrote checks to casinos on the gulf coast on over 80 days in the year 2000, over 200 days in the year 2001 and over 100 days in 2002, the year that the parties separated. (Ex. 5) (Re110-112) (Tr. 490-491) Cynthia also inherited money, \$10,000.00 from her mother's estate in 2002, which also went into the checking account and then out to the casinos. (Tr. 495-496) (Ex. 10) Perrin started out in the marriage with \$45,000.00 in separate assets, \$25,000.00 of which were inherited from his father, and \$20,000.00 of which were the proceeds of the sale of a small business prior to the marriage. At the time of the separation, all of these non-marital assets were gone. (Tr. 495) Again, none of these facts were provided to the Mississippi Court of Appeals in *Lowrey I*.

Cynthia's gambling habit also affected her employment. Cynthia had been employed by a florist. (Tr. 297) Mr. Claude Thrash, owner of the Petal Florist, was the employer who fired Cynthia. (Tr. 467-468) Mr. Thrash testified that Cynthia wrote checks out of his company business account to herself, but Cynthia denied being fired for misuse of funds. (Tr. 469) Mr. Thrash testified that "close to \$100,000.00" was taken by Cynthia for her own use. (Tr. 475) While employed at the florist, Cynthia would sign Perrin's name, without his

knowledge or consent, to credit card applications and would have the credit cards and statements mailed directly to the florist, rather than to hers and Perrin's house. Of these cards, the only card that Cynthia ever paid was an Amoco gas card. Perrin was left to deal with the rest. Perrin neither applied for, nor used, these credit cards and did not discover the National City, Fleet or Citibank credit cards until *after* the divorce in 2002. (Tr. 299) (Tr. 493) (Ex. 7) (RE 133) Perrin has incurred thousands of dollars in legal fees as a result of this litigation. (Tr. 498) (Ex. 11). Perrin has paid temporary spousal support in the amount of \$7, 500.00 but received no temporary child support. (Tr. 498) (CP 347-348) Perrin has provided for and paid for all of the basic needs of the minor children since the separation and divorce with no financial assistance from Cynthia and has paid all of the children's medical bills, including the cost of counseling for the children which was necessitated by Cynthia's own behavior. (Ex. 9) (RE 135)

Cynthia did all that she could to conceal her gambling habit from the rest of the family. Perrin first became aware of this problem in the summer of 1996. At that time Cynthia confessed that she had been gambling and had run up credit card debts. She also told Perrin that she was going to stop gambling. Cynthia and Perrin agreed to cut up the credit cards, and Perrin embarked on paying off between \$12,000 and \$14,000 in credit card debts. (Tr. 212) In the summer of 2001, Perrin and Cynthia took out a home equity line of credit, something that they had never done before. The reason was that Cynthia had said there were credit card debts that were bothering her, principally on an ATT credit card. (Tr. 211) At that time the



only gambling that Perrin was aware of was at an annual educational conference on the Mississippi gulf coast, which was attended by Perrin and the rest of the family where they would typically gamble between \$50.00 and \$100.00. (Tr. 213) Other than these trips, taken by Perrin to conferences resulting from him being employed by the public school district in Hattiesburg, Cynthia could not testify to any other times that she and Perrin had been at a casino together. (Tr. 291) At trial Cynthia denied gambling since 2005. (Tr. 312) This testimony was directly contradicted by the testimony of a credible rebuttal witness, Michael Slay, who testified that he personally observed Cynthia at the Imperial Palace Casino in Biloxi on Friday night, June 14, 2006, sitting in front of a slot machine. (Tr. 466)

Cynthia also admitted under oath that she alone gambled away the home equity line of credit, the savings, her inheritance and any other funds she could obtain. At the hearing on temporary features Cynthia testified, under oath, that she had not gambled in the last four years and had no desire to gamble. Cynthia also testified that it was her gambling addiction that had destroyed the marriage. (Tr. 6) At trial Cynthia appeared to be willing to take some responsibility for these problems, saying "It's very difficult for me to rid myself of the pain that I've caused the people I love." (Tr. 240) Cynthia further testified on direct examination that two years prior to the divorce, in the year 2000, she would secretly go to the coast to gamble at night, leaving after the children had gone to bed. (Tr. 272) Cynthia would have yard sales and would even sell items that belonged to her children, who would try and take them back, to raise extra cash. (Tr. 286) Cynthia asked her oldest daughter, Brittny, to help her hide her

bank statements, which showed the checks written to the casinos, by placing them on top of the refrigerator before Perrin could see them. (Tr. 368)

There was no testimony that Perrin induced Cynthia to gamble or was responsible for her gambling addiction. The evidence revealed only that Perrin, Cynthia and the family attended a summer conference once a year to the coast. There was no credible testimony, expert or otherwise, to link a recreational family trip once a year to a gambling habit that destroyed a family and a 19 year old marriage.

Cynthia frequently wrote checks on insufficient funds, which caused overdraft protection to pull money from the parties' joint savings account, in the amount of \$4,841.00 between May 2000 and June 2002. (Ex. 7) (RE133) (Tr. 492) Cynthia also inherited money during the marriage, \$10,000.00 from her mother's estate in 2002, which also went into the checking account but was paid out to the casinos. (Tr. 495-496) (Ex. 10) Perrin started out in the marriage with \$45,000.00 in separate assets. At the time of the separation all of these non-marital assets were gone. (Tr. 495) There were no other assets, other than Perrin's state retirement from working for the school system. Meanwhile, the parties owed \$76,000.00 on the mortgage on the former marital home and \$87,463.00 in additional unsecured debts. Total assets were \$163,178.04. Total liabilities were \$163,463.00. The value of the marital estate is identified and valued as existed on September 3, 2002, the date of the parties' divorce at negative \$284.96. (Ex. 2) (RE 63-68) The family was forced to fight the collection efforts of credit card companies, and Perrin was trying to hold onto the house and did not know if he

would be able to stop from going under. (Tr. 504-506) As of the date of the divorce, the remaining equity in the home was only \$19,000.00. (Ex. 2) (RE 63) (Ex. 3) (RE 69-77) The cars driven by the parties had a combined value of only \$5,000.00 and their personal property had a value of only \$2,600.00. There was \$600.00 left in the joint checking and savings accounts.

Perrin has been paying off Cynthia's gambling debt since 2002 and is not expected to complete the final payment until the year 2013. Cynthia has paid nothing towards these debts. Cynthia consumed all of the incoming funds from Perrin, her employment and elsewhere, and left only debts which will take Perrin over a decade to settle, without any assistance from Cynthia. Cynthia deposited and spent over \$189,000.00 in just twenty-eight (28) months, whereas Perrin was left with over one hundred thousand dollars worth of debts in 2002, in addition to the \$189,000.00 spent by Cynthia. Cynthia has paid nothing towards these debts. These figures were contained in the *Hemsley* report as admitted into evidence and were not controverted by Cynthia. (Ex. 2) (RE 63) Gambling has been specifically held to be a waste of marital assets to be taken into account during equitable distribution. *Craft v. Craft*, 825 So.2d 605, 611 (Miss. 2002) The dissipating spouse has been required to reimburse the other for one-half of the value of the dissipated funds. *Dunaway v. Dunaway*, 749 So.2d 1112, 1119 (Miss. Ct. App. 1999) The findings of the Chancery Court will actually leave Perrin with a deficit. Cynthia has gambled away her interest in the marital estate but has not been held accountable for the same.

One spouse's dissipation of marital assets is a factor that must be considered in the equitable distribution of assets and liabilities. *Childs v. Childs*, 806 So.2d 273 (Miss Ct. App. 2000); *Wolfe v. Wolfe*, 766 So.2d 123 (Miss Ct. App. 2000) At the time of the divorce, the marital estate was worth nothing, as a result of Cynthia's wasteful actions. (Ex. 2) (RE 63) There was no money for the future security of the family, no money to send the children to college or purchase them vehicles. There was no "windfall" received by Perrin. To the contrary he lost everything and had to start over and begin a second career in order that he could provide for his children. Perrin has the responsibility and obligation, and is obviously willing to continue to support the three (3) minor children of the parties, including their current and future costs of college. All of these responsibilities fell solely on the shoulders of Perrin, who had no financial support from Cynthia. Because Cynthia wasted the majority of the marital assets, as well as her's and Perrin's separate assets, she should not have been awarded any further equitable distribution from a marital estate which was emaciated as a result of her actions alone. See *King v. King*, 946 So.2d 395, 404 (Miss. Ct. App. 2006).

The post-divorce debt incurred by Cynthia referred to in her Brief is not part of the marital estate. *Aron v. Aron*, 832 So.2d 1257, 1259 (Miss. Ct. App. 2002) Perrin received no "windfall" and has not profited from the marriage. (Ex. 2) (RE 63) There were virtually no net assets to be divided between the parties. Under the current Judgment, if it is allowed to stand, Cynthia walks away from the marriage with no debt, whereas Perrin continues to be obliged to pay debts for many years to come.

**2. THERE IS NO BASIS IN THE RECORD FOR ANY AWARD OF ALIMONY TO CYNTHIA**

Perrin incorporates herein by reference his analysis of the Chancery Court's findings, rulings and judgment under the *Ferguson* discussion in the Brief of the Appellant already filed herein. There is no substantial and credible evidence in the record to support an award of any form of alimony to Cynthia.

Perrin would again respectfully submit to the appellate Court the following concerning the applicable *Armstrong* factors, based on the record as presented at trial and available to the reviewing Court on appeal:

**1. Income and Expenses of the Parties:**

There is a disparity in the income between Cynthia and Perrin, with Perrin earning more monthly income and having a greater capacity to generate income; however, although there are disparities in income, the respective expenses of the parties are also different. Cynthia has shown minimal expenses, because she lives on her own, does not have significant debts to pay off and does not have the financial responsibility of taking care of the parties' three (3) minor children. On the other hand, Perrin has the financial responsibility of taking care of all three (3) minor children and is still repaying the debts incurred during the marriage largely as a result of Cynthia's illicit gambling activities and is expected to pay the same until the year 2013 or beyond. (Ex. 1) (Tr. 224)

**2. Health and Earning Capacities of the Parties:**

Perrin has normal physical health for a man of his age. Though Cynthia did not produce

her medical records as ordered by the Chancery Court, Cynthia testified that she suffered from depression. Both parties are in good enough health to continue to work full time.

3. Needs of Each Party:

Perrin's needs, both for the minor children and to service the parties' marital debt incurred principally as a result of Cynthia's gambling activities, outweigh the needs of Cynthia. This factor would favor Perrin in an award of alimony, or the Court's decision not to award alimony to Cynthia.

4. Each Party's Obligations And Assets:

Perrin has a mortgage, a mortgage which is greater than it would have otherwise been, based on his being required to reconsolidate his mortgage to pay off marital debts incurred solely by Cynthia, including Cynthia's gambling debts. The record at trial did not show that Cynthia had any significant debts of her own. Perrin also has obligations to pay for the children's health, welfare, and education, an obligation ignored by Cynthia.

5. Length of The Marriage:

The parties were married August 19, 1983. The testimony at trial expressly revealed that from 1995 through 2002, the last seven years of the marriage, Cynthia did not contribute to the marriage as a mother or a wife. The parties have been separated since their divorce in 2002.

6. Presence or Absence of Minor Children in the Home, Which May Require that One or Both of the Parties Either Pay for, or Personally Provide, Child Care:

Perrin has been the sole bread winner for the minor children since the year 2002 and has

paid for all curricular and extra-curricular expenses for the minor children, as well as their clothing, food, entertainment and necessities. Cynthia has made no contributions, paid no temporary child support throughout these proceedings, and under the Chancery Court's child support ruling would not even contribute the statutory minimum amount for child support.

7. Age of the Parties:

Perrin is 54 years of age. Cynthia is 51 years of age.

8. Standard of Living of the Parties, Both During the Marriage and at the Time of the Support Determination:

During the marriage the parties had a conservative standard of living, were not extravagant, and invested and saved money - but for Cynthia's propensity to gamble they would have accumulated significant marital assets; however, an award of alimony is not necessary for each party to maintain the lifestyles to which they were accustomed during the marriage and to which they have now become accustomed.

9. Tax Consequences of the Spousal Support Order:

If the Court declines to award alimony there should be no significant tax consequences to either party.

10. Fault or misconduct by the parties:

The evidence and testimony at trial did not show any fault or misconduct on the part of Perrin, because there was none. There has been fault and misconduct established on the part of Cynthia, both in fraudulently obtaining lines of credit without Perrin's knowledge or permission in terms of her concealing and dissipating marital assets for her gambling activities

and embezzlement. Cynthia also perjured herself at trial on more than one occasion.

11. Wasteful Dissipation of Assets by Either Party:

Perrin has not dissipated or wasted any assets. Cynthia has dissipated hundreds of thousands of dollars of marital assets through gambling, some of which has been documented, much of which has not. The small slice of time that was possible to document revealed that Cynthia spent over \$189,000.00 in just twenty-eight (28) months, whereas Perrin was left with over one hundred thousand dollars worth of debts in 2002, *in addition* to the \$189,000.00 spent by Cynthia, and which does not account for the \$45,000.00 of Perrin's separate assets which also were wastefully dissipated as a result of Cynthia's actions. (Ex. 2) (RE 67) (Ex. 4) (RE 109) Neither Perrin or the children have received any credit or relief from Cynthia's waste and removal of marital assets.

12. Any Other Factor or Circumstances Bearing on the Subject That Might be Shown by the Evidence That the Court May Deem to be "Just and Equitable" in Connection With the Setting of Spousal Support:

In addition to recognizing that Cynthia has dissipated marital assets and Perrin has borne the financial burden for himself and the family since 2002, and will continue to bear this burden, the Court should also note that Cynthia was awarded temporary spousal support in the amount of Seven hundred fifty dollars (\$750.00) per month and that she has received the benefit of the same for a considerable amount of time pending trial finally being heard on the merits, without contributing any financial support to the three children. During this period of time, conversely, Perrin has received no child support, court ordered or otherwise, from



Cynthia. Any lump sum or rehabilitative alimony that may have been due to Cynthia should already have been satisfied.

For the foregoing reasons, based on the *Armstrong* criteria, Perrin again respectfully requests that the appellate Court reverse and render the Judgment of the Chancery Court and decline to award Cynthia periodic alimony based on the factors set forth herein and above, due to the extreme financial obligations of Perrin which have resulted from Cynthia's gambling losses and wasteful dissipation of marital assets and based on the documented and ongoing needs of the three minor children.

**3. THERE IS NO BASIS IN THE RECORD TO AWARD CYNTHIA  
PRIMARY OR JOINT PHYSICAL CUSTODY OF THE MINOR  
CHILDREN**

Cynthia's claims on appeal that she should be awarded physical custody of the minor children fly in the face of the evidence and testimony at trial, the recommendations of the Guardian Ad-Litem, as well as her own testimony. The polestar consideration in any custody award is the best interests of the children. *Albright v. Albright*, 437 So.2d 1003 (1985); *Touchstone v. Touchstone*, 682 So.2d 374 (Miss. 1996). Application of the *Albright* factors can lead to no other conclusion other than that it is in the best interests of the children for Perrin to have primary physical and legal custody of the minor children.

**1. Age, Health and Sex of the Children**

Though all three children are in good physical health, their emotional health has suffered as a result of Cynthia's actions, both toward herself and directly toward the children.

This factor favors Perrin. (See also discussion of factors 3 and 7 supra)

2. Continuity of Care

Perrin has had continuity of care throughout the latter stages of the marriage and since the parties separation and divorce. The visitation exercised by Cynthia since 2002 has been minimal. This was not the fault of Perrin. In addition, all of the children expressed to the Chancery Court, through their attorney and Guardian Ad Litem, that they did not wish to visit with Cynthia. The Guardian Ad Litem, as an independent attorney for the children, found that this estrangement has not been created or fostered by Perrin. (Tr. 519)

3. Parenting Skills

Cynthia kept her gambling habit a secret from her family and places gambling before the needs of her children. Perrin has shouldered the burden of attending to all of the children's daily needs. Cynthia consistently places her actual or perceived needs ahead of those of her children. The first thing that Cynthia did on news of the *Lowrey I* remand was to approach her daughter Emelie at church, the day after the Opinion was handed down and read it to her. (Tr. 242) Likewise Cynthia immediately called Erin, an already psychologically damaged child, to talk about the Opinion. (Tr. 244) On direct examination Brittny testified that Cynthia told her that it was her fault that Cynthia was depressed. Brittny stated that this accusation was the reason she stopped seeing her mother. (Tr. 399) Brittny testified that her mother said the same things to her younger sister, Erin, which had the same effect, and that one year later Erin's twin sister Emelie stopped seeing Cynthia as well. (Tr. 401) Brittny surmised "She hurt me in so

many ways I just have no need to talk to her anymore.” (Tr. 402) Cynthia also testified, contrary to the facts proffered on her behalf in *Lowrey I*, that she took responsibility for the divorce, that she “did not blame anyone but myself” and that she had gone to the children and told them she had wasted a lot of money. When asked if she still took responsibility for that she replied “I do, Sir.” (Tr. 367) These problems led Cynthia to become increasingly isolated from her three daughters and placed an immense psychological and financial toll on the family and upon Perrin. The Guardian Ad Litem appointed by the Chancellor in this case testified that there was no evidence whatsoever that Perrin was the source of discontent between Cynthia and the children. (Tr. 529)(Tr. 401) This factor favors Perrin.

4. Willingness and capacity to provide primary care

Perrin has provided primary care for ths children. Despite Cynthia having full-time employment Perrin has received no financial assistance while doing so. This factor favors Perrin.

5. Employment Responsibilities of the parties

Cynthia works full time at a grocery store. As a part-time teacher and independent contractor as an educational consultant Perrin has more flexibility of schedule to attend to the children’s daily needs and has a proven record of doing so. This factor favors Perrin.

6. Physical and mental health and age of each parent

Perrin is 54 years of age. Cynthia is 51 years of age. Perrin has normal physical health for a man of his age. Though Cynthia did not produce her medical records as ordered by the

Chancery Court, Cynthia testified that she suffered from depression. Cynthia has had limited, at best uncertain, success in fighting her gambling addiction. Contrary to the assertions in Cynthia's Brief, these problems existed during the marriage and there was no evidence whatsoever of any fault on the part of Perrin for these conditions. This factor favors Perrin.

7. Emotional Ties of Parents and Children

The evidence at trial and the recommendations of the Guardian Ad Litem clearly favor Perrin on this factor. (Tr. 518-524) All three children have been alienated and estranged from Cynthia by her own actions and choices, placing her needs to gamble ahead of the needs of her children and family. The health, especially the mental health of the children has been adversely affected by these actions. Cynthia failed to show the Court that she is a fit and proper person to exercise custody, and she should not have been awarded joint legal custody. The Guardian Ad Litem reported to the Court his findings and conclusions that the feelings and emotions experienced by the children are based on the actions and inactions of Cynthia; and he would be concerned that any forced interaction between Cynthia and the children would have a severe damaging affect on Erin, both emotionally and physically, and would ultimately increase the existing animosity between all of the girls and their mother. The Guardian Ad Litem also stated that all three (3) girls opposed further counseling with Cynthia and that Erin in particular strongly opposed it. (Tr. 518-524)

8. Moral Fitness of Parents

Cynthia acted in a deceitful and dishonest manner, in both the funding and concealment

of her gambling habit. Cynthia perjured herself with regard to her Rule 8.05 financial statement claimed expenses, perjured herself when she denied that her gambling continued, perjured herself concerning her living arrangements, perjured herself with regard to the proffer upon which the Court of Appeals remanded this case, committed acts of fraud with regard to credit card applications and embezzled funds from her former employer. Cynthia admitted to using the address of her former employer to hide bills and fraudulently opened credit cards from Perrin. (Tr. 469, 475) This factor favors Perrin.

9. Home, School and Community Record of the Children

Despite having only one parent able to take an active role in the lives of the three minor children, they have fared surprisingly well, are pursuing educational opportunities and are making the best of their gifts and talents. Perrin has been the sole source of stability and dependability in terms of his time, presence, and financial support for the three children which has had a positive effect on their home, school and community records. This factor favors Perrin.

10. Preferences of the Children at the Age to Express a Preference by Law

All three minor children are over the age of twelve and as such are permitted by law to expressed a preference as to a custodial parent to be considered by the Chancery Court. All three children elected to live with Perrin and expresses this preference to the Court, either directly or through their attorney. (CP 405-406, 468) (RE 47-49) This factor favors Perrin.

11. Stability of Home Environment and Employment of Each Parent

At various points in these proceedings and through trial, though her testimony was inconsistent, Cynthia testified that she does not have a permanent or stable home, that she often, by her own choosing, lives in her car, and that she is depressed and at times suicidal. Cynthia is clearly unstable, through no fault of Perrin, and should not be given the opportunity to inflict this instability on her children. Regardless of any differences between the parties, the Chancery Court has the primary role of protecting the best interests, health and welfare of the minor children and to award custody of the minor children to Cynthia under these circumstances would be against all of the substantial and credible evidence in the record.

**4. CYNTHIA SHOULD BE ORDERED TO PAY AT LEAST THE  
STATUTORY MINIMUM OF CHILD SUPPORT IN  
ACCORDANCE WITH THE MISSISSIPPI CHILD SUPPORT  
GUIDELINES**

Miss. Code Ann. § 43-19-101 (2004) provides guidelines for child support and further states that the Chancery Court is to provide written findings to support any deviation up or down from the child support guidelines. For a Chancery Court to deviate from the statutory presumption of 22% for three minor children, the deviation must be supported by written findings of fact to explain the deviation and to explain why the presumptively correct amount is not appropriate. *Thompson v. Thompson*, 894 So.2d 603 (Miss. Ct. App. 2004)

Perrin continues to be responsible for all expenses concerning the health, education and welfare of three children and the award should be set at a minimum at 22% of Cynthia's adjusted gross income for three children. The Chancery Court applied the percentage to the incorrect amount of Cynthia's income because the Chancery Court did not include the \$750.00

in temporary support and/or the \$900.00 awarded to Cynthia as alimony in the computation of Cynthia's income.

The fact that Cynthia has limited contact with her children, or that her oldest child is attending college, does not relieve her of her financial obligations as a non-custodial parent, because the limited contact was a product of her choices and is no fault of the children. The children should not be penalized financially for the actions and inactions of Cynthia and their effects on the family unit. Perrin again respectfully requests that the appellate Court reverse and render to award the statutory child support guideline amount of support, or in the alternative to reverse and remand this issue to the Chancery Court, with instructions to establish and apply the statutory child support guideline amount of support payable by Cynthia.


### **CONCLUSION**

Perrin proved marital waste on the part of Cynthia and received no "windfalls" as a result of her actions. Instead he received heartache and suffered near financial ruin. Perrin had to start again from scratch and raise his three daughters alone. Perrin again respectfully requests that the appellate Court reverse and render the decision of the Chancellor as to the award of further equitable distribution of marital assets to Cynthia and to reverse and render as to the award of any periodic alimony to Cynthia. Perrin further respectfully requests that the appellate Court reverse and render to award the statutory child support guideline amount of support, or in the alternative, to reverse and remand this issue to the Chancery Court, with instructions to establish and apply the statutory child support guideline amount of support

payable by Cynthia. Because there was no substantial evidence in the record to support vesting physical or legal custody of the minor children in Cynthia, Perrin also respectfully requests that the Court reverse and render the decision of the Chancellor to vest joint legal custody in both parties, and render judgment to grant Perrin sole legal custody, in addition to paramount physical custody, care and control of the minor children. Perrin had the right to request specific findings of fact and conclusions of law, and did so. Perrin respectfully requests that the Appellate Court make specific findings of fact and conclusions of law on the issues not addressed by the Chancery Court based on the record as submitted. Alternatively, Perrin requests that the appellate court reverse and remand this matter to the Chancery Court to make specific findings of fact and conclusions of law on the issues raised, but not addressed in its prior Findings of Fact, Conclusions of Law and Judgment.

RESPECTFULLY SUBMITTED this the 26<sup>th</sup> day of January, 2009

PERRIN H. LOWREY

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**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**PERRIN H. LOWREY**

**APPELLANT**

**VS.**

**NO: 2007-CA-01988**

**CYNTHIA NELSON LOWREY**

**APPELLEE**

**CERTIFICATE OF SERVICE AND FILING**

I, Thomas T. Buchanan, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant to the following persons at their usual mailing addresses:

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**Hon. James H. C. Thomas, Jr.**  
**Lamar County Chancery Judge**  
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Hattiesburg, Mississippi 39403-0807

I, Thomas T. Buchanan, Attorney for the Appellant , hereby certify that I have actually mailed this date the Original and three copies of the Reply Brief of the Appellant to the Mississippi Supreme Court.

THIS, the 26<sup>th</sup> day of January, 2009

  
Thomas T. Buchanan