

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

NO. 2007-CA-02046

BRUCE H. PENTON

APPELLANT

VERSUS

CAROL ANNETTE PENTON

APPELLEE

APPEAL FROM THE CHANCERY COURT
PEARL RIVER COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

ATTORNEY FOR APPELLEE:

JAMES R. HAYDEN
ATTORNEY AT LAW
105 FORD DRIVE
PETAL, MS 39465
601-545-2322
FAX: 601-544-8146
MS STATE BAR NO [REDACTED]

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that all listed persons have an interest in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Bruce H. Penton, Appellant

Betsy Walker, Attorney for Appellant

Carol Annette Penton, Appellee

James R. Hayden, Attorney for Appellee

Honorable James H C Thomas, Jr., Chancellor

RESPECTFULLY SUBMITTED this the 22nd day of August, 2008.

CAROL ANNETTE PENTON

BY: James R. Hayden
JAMES R. HAYDEN

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TABLE OF AUTHORITIES
CASE

Anl, Inc. v. Grantham, 747 So. 2d, 832, 839 (Miss. 1999)

Brooks v. Brooks, 652 So. 2d, 113, 121 (Miss. 1995)

Davis v. Davis, 638 So. 2d, 1288 (Miss. 1994)

Department of Human Services v. Marshall, 859 So. 2d, 387, 389
(Miss. 2003)

Ferguson v. Ferguson, 639 So. 2d, at 928

Hemsley v. Hemsley, 639 So. 2d, 909, 915 (Miss. 1994)

Johnson v. Johnson, 650 So. 2d, 1289 (Miss. 1994)

Maslowski v. Maslowski, 655 So. 2d, 1820 (Miss. 1995)

Owen v. Owen, 798 So. 2d, 939

STATEMENT OF THE ISSUES

- I. The Chancellor did not err by not following the Ferguson Facts when he valued and distributed the marital property.
- II. The Chancellor did not err in the manner in which it valued and distributed the marital property when it did not consider the earning potential of Pine Haven Trail Park, and Crystal Clean Car Care, LLC.
- III. The Chancellor did not err in the manner and criteria it used to give credits to and deductions from the value of the parties marital interest in the properties and in the manner in which the Court determined what effect the above would have an ultimate distribution of the assets.
- IV. The Chancellor did not err in the manner in which it valued and distributed the marital property when it did not consider the lack of debt on Pine Haven Trail Park, and the debt on Crystal Clean Car Care, LLC.
- V. The Chancellor did not err when he awarded Mrs. Penton all of the personal property she set out in the exhibits for unlisted numbers, and did not awarded Mr. Penton all of the personal property that was used by him in B&B construction (the backhoe/dirt business).
- VI. The Chancellor did not err in allowing the marital property to be sold in the manner it was sold without any provisions to make sure the distribution of the proceeds from the sale were protected and debts on the property paid by the sale, and/or not giving the parties any other alternative to sale the residence other than on the "Courthouse steps".

STATEMENT OF THE CASE

Appellee adopts in its entirety the Appellants Statement of the Case.

ARGUMENT

The main area of appeal of the Appellant is that the lower Court did not follow Ferguson v. Ferguson, 639 So. 2d at 928, in dividing the marital assets. Nothing could be further from the truth. Careful reading of the Judgment of Divorce shows that the two cases used by the Chancellor was Hemsley v. Hemsley, 639 So. 2d 909, 915 (Miss. 1994) and Ferguson v. Ferguson, 639 So. 2d at 928. The parties agreed to proceed for divorce on irreconcilable differences. A Motion to Withdraw Fault Grounds and an Order to Withdraw Fault Grounds was filed. The Master's report was entered into evidence without objections on September 11, 2007. The lower Court rendered its Judgment on the September 27, 2007 Exhibit K (r-106). The appellants Notice of Appeal was not filed until November 16, 2007 beyond the deadline for filing an appeal. The Appellants appeal on the Judgment of Divorce should be dismissed. An Order of Clarification was filed October 18, 2007. If the Appellant is appealing the Order of Clarification then the filing of this appeal is timely, and should be limited only two issues raised by the Order of Clarification. The Order of Clarification directed the Chancery Clerk of Pearl River County, Mississippi pursuant to Section 13-31-620 (Miss. 1972, Annotated) to sale the marital

home and instructed the Clerk to transfer titles to certain vehicles to the respective parties.

Assets acquired during the marriage and marital property subject to equitable division, as can be shown by proof that such assets are not separate assets acquired prior to the marriage or outside the marriage Hemsley v. Hemsley, 639 So. 2d, 909, 915 (Miss. 1994), a marital presumptions attached to property acquired during the marriage Maslowski v. Maslowski, 655 So. 2d, 1820 (Miss. 1995).

Johnson v. Johnson, 650 So. 2d, 1289 (Miss. 1994) directs the lower Court to first classify the property and to determine property capable of equitable division.

Chancellor's in Mississippi have authority to Order equitable divisions of assets that are jointly owned and accumulated property regardless of the former title. Appellee submits that the lower Court followed the ruling of Brooks v. Brooks, 652 So. 2d, 113, 121 (Miss. 1995). The Appellee submits that the lower Court followed the eight guidelines in Ferguson v. Ferguson, 639 So. 2d at 928. The lower Court found as a matter of fact the evaluation of all the marital property introduced into evidence by the report of the Special Master was without objections, and

accurate. One of the basic principals underlining equitable distribution of assets is that if it is acquired by either spouse during the marriage it is considered marital property Anl, Inc. v. Grantham, 747 So. 2d, 832, 839 (Miss. 1999). The lower Court followed the existing laws in the State of Mississippi to the letter. In fact the lower Court went one step further and appointed a Special Master to accumulate, evaluate, itemize, and present to the Court all assets acquired during the marriage, how they were acquired, and the outstanding indebtedness, and the income produced by the assets. Including the parties separate businesses. The Master special report was introduced into evidence by agreement of the parties with no objections from the Appellant or the Appellee. In addition thereto, there were no objections by the Appellant to any of the findings, facts, and conclusion reached by the Special Master nor did the Appellant introduce or attempt to introduce any other evidence in regards to his position in the divorce. Now he complains. The way in which assets are to be divided is up to the discretion of the Chancellor Owen v. Owen, 798 So. 2d, 939 and Davis v. Davis, 638 So. 2d, 1288 (Miss. 1994), Holland v. Holland 784 So. 2d, 943, 946 (Miss. 2001), Department of Human Services v. Marshall, 859 So. 2d, 387, 389 (Miss. 2003) limit's the standard of review to be used in

determining whether the lower Court made a corrective decision or not.

The Court must find that the facts and findings by the Chancellor was manifestly wrong or clearly erroneous or the Chancellor abused his discretion. The lower Court did neither.

The Appellant did not appeal supersedes and so therefore the marital home has been sold and title to changed an innocent purchaser for value. Title to all other properties have already been vested in the parties to whom it had been awarded by the Chancellor. The title to all vehicles have been transferred pursuant to Court order. The issues raised by the Appellant is now moot. The lower Courts opinion has no reversible error and the Chancellor's decisions must be affirmed.

CONCLUSION

The lower Court ruling is without error. The Appellant did not appeal Supersedas, therefore title to sale property has been transferred pursuant to Court Order. Appellant issues are moot.

CERTIFICATE OF SERVICE


I, James R. Hayden, attorney for Appellee Carol Annette Penton, certify that I have this day served a copy of the Appellee's Brief via the United States Mail with postage prepaid on the following persons at these addresses:

James H C Thomas, Jr.
Chancellor
Post Office Box 807
Hattiesburg, MS 39403

Betsy Walker
Attorney at Law
1018 Howard Avenue
Biloxi, MS 39530

Betty W. Sephton
Mississippi Supreme Court Clerk
Post Office Box 249
Jackson, MS 39205

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


JAMES R. HAYDEN

Prepared by:

JAMES R. HAYDEN
Attorney at Law
105 Ford Drive
Petal, MS 39465
601-545-2322 (Telephone)
601-544-8146 (Fax)
MSB# [REDACTED]