

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SANDRA MELISSA HULTS

APPELLANT

VERSUS

NO. 2007-CA-02186

JAMES ALAN HULTS

APPELLEE

APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee, JAMES ALAN HULTS, hereby 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 this Court may evaluate possible disqualification or recusal.

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Respectfully submitted, on this the 9th day of October, 2008.



MARK H. WATTS

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STATEMENT OF THE ISSUES

- I. THE AMOUNT OF CHILD SUPPORT AWARDED WAS REASONABLE AND APPROPRIATE AND THEREFORE NOT MANIFEST ERROR.
- II. THE TRIAL COURT'S AWARD OF REHABILITATIVE ALIMONY IN LIEU OF PERIODIC ALIMONY WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND WAS THEREFORE NOT REVERSIBLE ERROR.
- III. THE TRIAL COURT MADE A FAIR AND EQUITABLE DISTRIBUTION OF THE PARTIES MARITAL ASSETS AND THEREFORE THE CHANCELLORS DECISION SHOULD NOT BE OVERTURNED.
- IV. THE CHANCELLOR PROPERLY DENIED MELISSA'S REQUEST FOR AN AWARD OF ATTORNEY FEES.

STATEMENT OF THE CASE

This cause of action began on August 3, 2006 with the Plaintiff, Alan Hults, filing a complaint for divorce on the grounds of uncondoned adultery, or habitual cruel and inhuman treatment, or in the alternative, irreconcilable differences. (CP 1-9).

The Defendant, Melissa Hults, initially filed an answer to Alan's complaint, (CP 13-17), and on that same day filed her counterclaim for divorce on the grounds of uncondoned adultery, or habitual cruel and inhuman treatment, or in the alternative, irreconcilable differences. (CP 18-26). Alan then filed his answer to Melissa's counterclaim. (CP 34-36).

A temporary order was entered on September 29, 2006 awarding Melissa temporary custody of the parties two minor children, child support in the amount of nine hundred dollars (\$900.00), per month, temporary alimony in the amount of one thousand dollars (\$1,000.00), per month, and exclusive use and possession of the parties marital home. In addition to those sums Alan was ordered to pay the monthly note on the marital home in the amount of one thousand thirteen dollars and twenty-nine cents (\$1,013.29). (CP 27-33).

This matter came on for trial on September 5, 2007. On the morning of trial the parties executed and filed a consent to adjudicate on irreconcilable differences pursuant to Section 93-5-(3) Mississippi Code Ann. (1972). (CP 39). The consent designated the issue to be decided by the Court as: Custody; Child Support; Healthcare; Life Insurance; Visitation; Division of Martial Assets and Liabilities; Alimony; and, Attorney Fees. At the conclusion of the trial, the Court entered its findings of fact and conclusions of law and ruling and judgment of the Court on June 19, 2007. (CP 40-55). The Court awarded Melissa the physical custody of the two minor children since the parties reached an agreement on this matter after the children stated their preference. Alan was ordered to pay child support in the amount of one thousand dollars (\$1,000.00), per month after the Court made the determination that the guidelines set out in Section 43-19-101

Miss. Code Ann. (1972) were not appropriate and reasonable in this cause. (CP 45). Then the Court went on to make a written finding in the record as to why the Court deviated from the guidelines. The Chancellor compared Alan's 8.05 Financial Declaration (Ex 3), Alan's direct deposit statements showing his year to date earnings for the year 2007 (Ex 2), Alan's 2005 income tax return (Ex 14), and Alan's 2006 income tax return (Ex 11), in an effort to set a reasonable child support amount. (CP 45-46). Since Alan's income fluctuates greatly depending on the amount of overtime that is available to him, the Chancellor found that it is difficult to predict with accuracy the amount of adjusted gross income he will receive in 2007 and therefore set the child support amount based on an adjusted gross income of sixty thousand dollars (\$60,000.00), per year. (CP 46). The Chancellor also ordered Alan to maintain health insurance on the children at a cost of three hundred sixty-eight dollars and fifty-one cents (\$368.51), per month. (Ex 3).

Based on the pleadings and testimony the Chancellor found that all of the parties assets were marital in nature and then proceeded to equitably divide the assets following the guidelines set forth in Hemsley v. Hemsley, 639 So. 2d 909 (Miss. 1994), and Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994). The Chancellor found that Alan had a vested balance of \$517,404.84 in the Chevron Employees Savings Investment Plan (ESIP). (Ex 1). That the parties marital home was valued at \$184,000.00, (Ex 4), with net equity in the amount of \$151,148.60. (CP 49). A 2006 Toyota Sequoia valued at \$35,500.00, Toyota Tundra truck valued at \$12,000.00, 1995 Ford valued at \$1,000.00, 1995 Avalon valued at \$1,000.00; red boat valued at \$7,500.00, white boat valued at 10,000.00, Express boat valued at \$3,500.00; furniture and décor in the marital home valued at \$45,000.00; mower and weed eater valued at \$750.00; stereo valued at \$600.00; two Sony Wega T.V.'s valued at \$4,000.00; two 20 inch T.V.'s valued at \$350.00; child's desk top computer valued at \$800.00; one laptop computer valued at \$1,400.00, one printer/scanner

valued at \$250.00; one stainless steel grill valued at \$300.00; jewelry valued at \$5,000.00 for a total of \$856,158.88. (CP 49-52).

The Chancellor then considered Melissa's alimony request and found that after consideration of the factors set forth in Brabham v. Brabham, 84 So. 2d 147, (Miss 1955) and Hemsley v. Hemsley, 84 So. 2d 909, (Miss. 1994), Melissa should receive the sum of \$750.00 per month Rehabilitative Alimony for a period of five (5) years. (CP 52-54). In response to Melissa's post trial Motion to Reconsider, the Chancellor increased the amount of Rehabilitative Alimony to \$ 900.00 per month for five (5) years making her total alimony amount \$53,250.00. (CP 61).

In regard to Melissa's request for attorney fees, the Chancellor found that based on her unemployment income, child support, alimony and her award of \$414,413.04 of marital assets that she was financially able to pay her own attorney fees.

FACTUAL HISTORY

The parties were married July 26, 1986. Two children were born during the marriage, namely, David Alan Hults, born November 29, 1989, age 18, and Dylan James Hults , born June 16, 1995, age 13.

The parties own a home at 516 Bayou Pierre in Gautier, Mississippi, which appraised for \$184,000.00 (EX 4, T 48). The parties equity in the home equals \$151,148.60. (T 53, CP 49).

That during the parties marriage Alan has primarily been employed at the Chevron Refinery in Pascagoula, Mississippi. (T 38). His base rate of pay is \$31.65 per hour with no guaranteed overtime. (T 40-44). That his 2006 income was unusually high due to the aftermath of Hurricane Katrina. (T 47). That Chevron has since decided to increase the size of his department which will reduce the amount of overtime available to him in the future. (T 47).

Alan testified that the parties credit card debt was zero at the time the parties separated (T 76-77). That even though he was paying all the household bills and \$900.00 per month child support, prior to and after the Temporary Order, Melissa ran up the credit card bills. (T 76-78). That the same was true during the marriage. That Alan would have to work overtime to earn extra money to bail her out of her credit card debt. (T-123).

Melissa has been employed on and off during the marriage, taking time off to have children, take care of the marital home, and to attend college. (T 202-2006). After completing their associates degree in Marketing Management Melissa was hired as the Marketing Manager at the LaFont Inn in Pascagoula, Mississippi earning a net income of \$860.00 every two weeks. (T 207-208). After that, Melissa was hired by Mississippi Media in Gulfport, Mississippi as a commissioned sales agent. (T 55-56, T 212). Meanwhile, Melissa does not want to work (T 79-80). Melissa testified that she might be considered for the position of communication generalist at Northrop Grumman earning \$30,000.00 to \$40,000.00 per year. (T 213). Meanwhile, she wants to go back to school. (266-267). Melissa only has two years left to acquire her Bachelors Degree. (T213-214). Melissa is in good health, in spite of her heart condition, she has no restrictions as to her activities, and she is able to work full time, is an avid tennis player and only has to see her doctor once a year. (T214-216). She is in good health and there is nothing preventing her from working. (T 287). Melissa testified that she hasn't gone back to work because of the divorce and that she plans to go to work when it is over. (T 290).

When asked about her recent accumulation of credit card debt, Melissa testified that she used the credit cards for buying clothes and shoes for herself, not for living expenses. (T254). She also acquired a Kirklands Credit Card, post Temporary Order, to purchase a new dining room cabinet. (T254-255).

Melissa testified on direct that she needed help from her family to make ends meet. (T 265). However, under cross-examination she admitted that her unemployment income, child support and alimony would cover all but \$34.00 of her monthly expenses, (T 279-281). including her membership to the Singing River Yacht Club, which she was financially able to join one week prior to the divorce trial. (T 279-282).

With the child support, alimony and unemployment income Melissa has been able to pay all of her bills, join the Yacht Club and still had \$2,500.00 in her checking account on the date of trial. (EX 13, T284).

SUMMARY OF THE ARGUMENT

In the case at bar the issue of child custody was settled between the parties. The parties agreed that Melissa would have physical custody with Alan enjoying visitation with the children and being responsible for the payment of child support. The Chancellor having reviewed the financial statements, tax returns and testimony of the parties found that Alan's adjusted gross income was in excess of \$50,000.00 per year. The Chancellor then made the required written finding in the record as to the reasonableness of the application of the guidelines, and found that based on the evidence before him that guideline support would not be reasonable under the circumstances.

The record clearly shows that the child support awarded Melissa has been sufficient to meet the children's basic necessary living expenses. In addition to the child support Alan is ordered to maintain life insurance for the benefit of the children and also health insurance.

The Chancellor awarded Melissa Rehabilitative Alimony for a period of five (5) years. That although Alan's income is larger than Melissa's this is partly because she put her career on hold to rear children and take care of the marital home until the children got older. Since she received her associates degree she has worked until shortly before the temporary hearing when

she quit working and has refused to go back to work until after the divorce. The parties children are of sufficient age that they do not require daycare. Melissa, by her own testimony, showed that she has been able to meet her financial obligations since the separation. Melissa is only forty (40) years old, is in good health and plans to obtain her bachelor's degree within the next two years. That upon her completion of her college education, her income should increase dramatically.

The Chancellor divided the marital estate in half, and ordered Alan to pay off the marital home. This puts Melissa in a home that is paid for, driving a 2006 automobile that is paid for and receiving alimony and child support from Alan, who is still living with his parents.

The Chancellor awarded Melissa \$414,412.34 of the marital estate, \$115,000.00 of which is from Alan's retirement and is therefore a liquid asset. Taking all factors into account Melissa was not left with a deficit. Therefore, the Chancellor did not abuse his discretion by denying Melissa's request for periodic alimony. Based on the evidence presented the Chancellor correctly awarded alimony in the form of rehabilitative alimony.

Awarding attorney fees is in the sound discretion of the Chancellor and where a party has the financial ability to pay their attorney fees, they should do so. The division of marital assets along with the award of Rehabilitative Alimony gives Melissa the financial ability to pay her own attorney fees also, the record is void of any proof that Melissa is financially unable to pay her own attorney fees.. Therefore, there was no error by the Chancellor in denying Melissa's request for attorney fees.

STANDARD OF REVIEW

When an Appellate Court reviews a Chancellors' decision in cases involving divorce and all related issues, the scope of the Appellate Court's review is limited by the substantial

evidence/manifest error rule. McNair v. Clark, 961 So.2d 73 (Miss. Ct. App. 2007). In other words, the Appellate Court will not reverse the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. Mizell v. Mizell, 708 So2d 55 (Miss. 1998) Leiden v. Leiden, 902 So2d 582 (Miss. St. App. 2004)' Nichols v. Tedden, 547, So.2d 766 (Miss 1989). Manifest error in a trial Court's decision is deemed to have occurred if, based upon the evidence, the reviewing Court is left with a definite and firm conviction that the trial Court made a mistake. McCoy v. McCoy, 611 So. 2d 957 (Miss. 1992); Carter v. Taylor, 611 So. 2d 874 (Miss. 1992); UHS-Qualicare v. Gulf Coast Community Hospital, 525 So.2d (Miss. 1995). Manifest, as in manifest error, means unmistakable, clear, plain or indisputable. Magee v. Magee, 661 So.2d 1117 (Miss. 1995); Bell v. Parker, 563 So.2d 594 (Miss. 1990).

Furthermore, following well-established precedent, this Court in Brooks v. Brooks, 652 So.2d 1113, 1124 (Miss. 1995), held that, in order to achieve equitable and fair results incident to a divorce, the award of alimony and the division of property must be considered together by a Chancellor. The Brooks Court, citing Ferguson v. Ferguson, 639 So.2d 929 (Miss. 1994) explained more fully that "...all property division, lump sum or periodic alimony payments, and mutual obligations for child support should be considered together ...", to ensure that they are equitable and fair.

ARGUMENT

I.

**THE AMOUNT OF CHILD SUPPORT AWARDED BY THE COURT
WAS REASONABLE AND APPROPRIATE BASED ON THE EVIDENCE
PRESENTED AND THEREFORE WAS NOT MANIFEST ERROR.**

The Chancellor reviewed the parties financial statement, the tax returns for 2005 and 2006 and the testimony of the parties before making the finding that the guidelines set forth in Section 43-19-101, Mississippi Code Ann. (1972, as amended) were not appropriate and reasonable in this case (CP 45). Alan's 8.05 Financial Declaration (Ex 3) showed his monthly gross income, without overtime, to be \$5,284.22 and an adjusted gross income of \$4,555.01. Alan produced recent pay stubs with year to date earnings that included his overtime pay for the current year (Ex 2).

Alan testified that he had worked a lot of overtime as a result of Hurricane Katrina but, that overtime was not guaranteed. (T 44-47). Alan further testified that he was forced to work overtime to keep up with Melissa's spending during the marriage. (T 123).

The Chancellor made an on the record finding that Alan's adjusted gross income exceeds \$50,000.00 (CP 45-46). The Chancellor then examined Alan's prior years tax returns and year to date earnings and set the child support amount at \$1,000.00 per month which would be what an obligor was required to pay under the guidelines with an adjusted gross income of \$60,000.00, per year (CP 46).

In context of child care and maintenance orders, regular child support refers to sums of money which the particular parent is ordered to pay for the child's basic, necessary living expenses, namely, food, clothing and shelter. Baldwin v. Baldwin, 788 So. 2nd 800 (Miss. Ct. App. 2001). In her testimony, Melissa admitted that her basic living expenses, including the house note in the amount of \$1,013.29, total \$2,678.27. (T 280-271). Since the Chancellor elected to require Alan to pay the remainder of the indebtedness on the marital home, Melissa's basic living expenses would only be \$1,664.98 per month. Only one of the children, Dylan, is participating in sports. He is playing baseball. (T 246-247). Dylan is also a trumpet player in the

band. However, the only major expense for that activity was the purchase of his trumpet in August 2006. (T 249).

There is no evidence in the record that the Hult's children have any extraordinary medical, psychological, educational or dental expenses. There was no testimony that the children's needs were not being met with the child support in the amount of \$900.00, per month assessed in the temporary hearing. The oldest child, David, has a car and a truck to drive and a boat and motor for fishing. (CP 50-51, T-252). David was also awarded a mutual fund in the amount of \$13,416.60 for his use and benefit (CP 51). The parties younger child, Dylan was awarded a mutual fund in the amount of \$21,081.78 for his use and benefit (CP 51).

Melissa's Financial Declaration listed expense for the children in the amount of \$1,900.00 per month. (EX 13). However, there is no proof in the record to substantiate or justify the claimed amount. (See Melissa's testimony in regard to the expenses listed on her Financial Declaration T-246-252).

The child support guidelines set forth in Miss. Code Ann. Sec. 43-19-101 are just that, guidance. The Chancellor is not to follow them mechanically. However, it is important for the guidelines to shape a decision, as they allow the needs of a child and the financial ability of a parent to be blended. Kilgore v. Fuller, 741 So.2d 351. (Miss. Ct. App. 1999).

The Supreme Court has stated that the support that is required is to be determined by a Chancellor "at a real time, on scene certain, and with a knowledge special to the actual circumstances and to the individual child or children". Smith v. Smith, 614 So. 2d 394 (Miss. 1993).

In the present case the Chancellor did find that because Alan's adjusted gross income exceeded \$50,000.00 that the guidelines did not apply. (CP 45). However, it is clear from the record that the Chancellor used the guidelines to shape his decision and the award of \$1,000.00

per month of child support is a reasonable amount sufficient to meet the needs of the children and is therefore not manifest error.

II.

THE AWARD OF REHABILITATIVE ALIMONY IN LIEU OF PERIODIC ALIMONY WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THEREFORE WAS NOT AN ABUSE OF THE CHANCELLORS DISCRETION.

The Statutory authority to award alimony in a divorce is found in Miss. Code Ann. Sec. 93-5-23 (1972 as amended), which provides in pertinent part that the Court may make all orders touching the maintenance and alimony of the wife or the husband, for any allowance to be made to her or to him. The award of alimony is largely within the discretion of the trial Court. The Court has at its disposal several ways in which to style alimony payments to best serve the parties needs. The Court may use one, several, or all forms in combination to provide for the material needs of spouses incident to divorce. Hubbard v. Hubbard, 656 So. 2nd 124 (Miss. 1995).

In Brabham v. Brabham, 84 So. 2d 147 (Miss 1955), and Hemsley v. Hemsley, 639 So. 2d 909 (Miss. 1994) the Court set forth the factors to be considered in determining the amount of alimony to be awarded. The factors to be considered in the determination of alimony are:

1) The income and expenses of the parties 2) the health and earning capacities of the parties 3) the needs of each party 4) obligations and assets of each party 5) length of the marriage 6) the presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care 7) age of the parties 8) the standard of living of the parties, both during the marriage and at the time of the support determination 9) tax consequences of the spousal support order 10) fault or misconduct 11) wasteful dissipation of assets by either party and 12) any other factor deemed by the Court to be "just and equitable" in connection with the setting of spousal support; see also Armstrong v. Armstrong, 618 So.2d 1278, 1280 (Miss. 1993).

In the case at bar the Chancellor properly considered each of the above factors before determining that periodic alimony was not appropriate. The Chancellor did however find, based on the evidence presented, that rehabilitative alimony was appropriate and awarded Melissa five (5) years of Rehabilitative Alimony in the amount of \$750.00 per month. (CP 53-54).

That on Melissa's post trial Motion to Reconsider the Chancellor awarded her another \$150.00 per month for a total rehabilitative alimony award of \$900.00 per month for five (5) years.

In Holley v. Holley, 892 So. 2d 183 (Miss. 2004), the Court once again described rehabilitative alimony and its purpose citing the case of Lauro v. Lauro, 847 So. 2d 843 (Miss. 2003). The Court held that rehabilitative alimony is awarded to parties who have put their career on hold while taking care of the marital home. Rehabilitative alimony allows the party to get back into the working world in order to become self-sufficient. Therefore, rehabilitative alimony is not considered during equitable distribution. "Rehabilitative periodic alimony" is an equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim.

An award of periodic alimony should only be considered if one party will suffer a deficit after the marital property has been equitably divided. Alimony and equitable distribution are distinct concepts, but together they command the entire field of financial settlement of divorce. Therefore, where one expands, the other must recede. Seymour v. Seymour, 960 So.2d 513 (Miss. 2006). In the more recent case of Consentino v. Consentino, 912 So.2d 1130 (Miss. Ct. App. 2008) the Court of Appeals reversed a Chancellor's award of periodic alimony where the division of the marital estate did not leave one of the parties in a deficit.

In this case, the parties marital assets totaled \$856,158.88. The Chancellor awarded Melissa assets in the amount of \$414,413.04 and awarded Alan assets in the amount of

\$441,745.84. The Court then ordered Alan to pay marital debt in the amount of \$32,851.40 thereby reducing his award to a net amount of \$408,894.44, which is \$5,518.60 less than Melissa's award. In Johnson vs. Johnson, 650 So. 2d 1287 (Miss 1994) the Supreme Court held that if there are sufficient marital assets which, when equitably divided will adequately provide for both parties, no more needs to be done.

In this case at bar, the parties had sufficient marital assets which, when equitably divided by the Chancellor will adequately provide for both parties and Melissa was not left with a deficit. Therefore, the Chancellor was correct in denying Melissa's request for periodic alimony.

In the case at bar, the record is abundantly clear that Melissa put her career on hold to stay at home, rear the children and take care of the marital home. That she only worked sporadically and attended college during the marriage. She testified that she was going to re-enter the work force as soon as the divorce was finalized. (T-290). That she has no health issues that would prevent her from working. (T-287). Therefore, the facts of the present case fit squarely into the realm of rehabilitative alimony. The Chancellor's award of rehabilitative alimony, for 5 years, will allow Melissa to get back into the working world and become self supporting without becoming destitute in the interim.

III.

THE TRIAL COURT MADE A FAIR AND EQUITABLE DIVISION OF THE MARITAL ESTATE AND THEREFORE THE CHANCELLOR'S DECISION SHOULD NOT BE OVERTURNED.

The division of marital assets is governed by the Supreme Court's decision in Hemsley v. Hemsley, 639 So.2d 909 (Miss. 1994) and Ferguson v. Ferguson, 639 So.2d 921 (Miss. 1994).

In this case, the Chancellor found, based on the pleadings and testimony of the parties that all property at issue was marital property and that there were sufficient marital assets that when equitably divided would adequately provide for both parties. (CP 47).

The value of the parties marital assets totaled \$856,158.88. The parties marital debt totaled \$32,851.40. (CP 49). The Chancellor awarded Melissa assets in the amount of \$414,413.04 and awarded Alan assets in the amount of \$441,745.84. Alan was ordered to pay the marital debt in the amount of \$32,851.40, leaving him with assets in the amount of \$408,561.64.

The above figures are substantiated by the evidence in the record. For instance, Melissa valued the Toyota Tundra awarded to Alan at \$12,000.00 and the Toyota Sequoia that was awarded to her at \$35,500.00. (EX 13). The Chancellor accepted her valuation as opposed to Alan's. (CP 50). Melissa offered no evidence to contradict Alan's valuation of the parties boats and therefore the Chancellor accepted those valuations. In regard to the boat that Alan won at a fishing tournament, Alan testified that he has not yet received the boat and that he will be issued an IRS form 1099 and have to pay income tax and sales tax based on the value of the boat. (T 73-75).

The Chancellor's decision that the Visa credit card was a non marital debt is support by the evidence in the record. Melissa testified that she used that credit care to buy shoes and clothes for herself, and a car tag. (T-254). That she amassed this \$10,000.00 credit card debt during the period from August 2006 until June 5, 2007. (T-253). She testified that Alan paid the credit card in full through August 2006. (T-254). Alan testified that he has always paid the house note, taxes and insurance and that he began paying Melissa \$950.00 per month child support, upon their separation and continued to do so through the date of divorce. (T 77-78). At the Temporary hearing in September 2006 Alan was ordered to pay the house, note, taxes and

insurance, automobile insurance for the parties vehicles, child support and alimony. Melissa admitted that with the child support, alimony and her unemployment income she was able to pay all of her bills, join the Yacht Club, buy some new furniture and still had \$2,500.00 in her checking account at the time of trial. (EX 13, T-284).

The end result is that Melissa was awarded a greater portion of the marital estate than Alan. There was no evidence presented by Melissa that would entitle her to a larger portion of the marital estate. Based on all of the evidence presented it is clear that the Chancellor made a fair and equitable division of the marital estate and therefore the chancellor's decision should not be overturned.

IV.

THE CHANCELLOR PROPERLY DENIED MELISSA'S REQUEST FOR AN AWARD OF ATTORNEY FEES.

The question of attorney fees in a divorce is a matter largely entrusted to the sound discretion of the trial Court. East v. East, 775 So. 2d 741 (Miss Ct. App. 2000). If a party is financially able to pay his or her own attorney an award of attorney fees is not appropriate. Martin v. Martin, 566 So. 2d 704 (Miss. 1990). The party requesting attorney fees has the burden of proving his or her inability to pay. Seymour v. Seymour, 960 So. 2d 513 (Miss. Ct. App. 2006). Deen v. Deen, 856 So. 2d 736 (Miss St. App. 2003).

In the present case, Melissa failed to prove her inability to pay her attorney fees. In fact, the record is void of any testimony by Melissa in regard to her attorney fees. The Chancellor found that given the division of marital assets along with the award of rehabilitative alimony Melissa has the ability to pay her attorney fees and properly denied her request.

CONCLUSION

The Chancery Court has broad discretion in the areas of divorce and child support and a Chancellor decision should not be overturned unless the findings of fact are manifestly wrong or are not supported by substantial credible evidence or an erroneous legal standard was applied. It is not for the Appellate Court to pass upon the credibility of witnesses. In a divorce trial the Chancellor is the sole judge of the credibility of witnesses and the weight and worth of their testimony. After hearing all of the testimony and considering all of the evidence presented, which resulted in Melissa receiving a larger portion than Alan, the Chancellor equitably divided the parties marital assets. Melissa was awarded rehabilitative alimony to help her reenter the working world or to pursue her bachelor's degree, which she indicated was an option she may want to explore. Melissa was awarded the marital home with no mortgage to pay, her car which is paid for and all of the household furnishings and appliances. Alan was left with a portion of his retirement, his personal property, a truck and his boats. He is ordered to pay child support, alimony and the remaining marital debt. The trial Court's findings of fact were supported by substantial credible evidence and therefore not manifestly wrong and no erroneous legal standard was applied.

Respectfully submitted,

JAMES ALAN HULTS

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CERTIFICATE OF SERVICE

I, MARK H. WATTS, do hereby certify that I have this day mailed by U. S. Mail, postage prepaid and properly addressed, a true and correct copy of the above and foregoing **Brief of Appellee** to Gary L. Roberts, Esq. and had delivered a copy of same to the Honorable Randy Pierce, Chancellor on this the 9th day of October, 2008.



MARK H. WATTS