

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
A. THE REQUIRED ANALYSIS OF FACTORS IS NOT PRESENT IN THE RECORD. 1	
B. THE CHANCELLORS DECISIONS ARE NOT SUPPORTED BY SUBSTANTIAL	
EVIDENCE	8
1. <i>Gregors Student Loans and Education</i>	8
2. <i>The Debt Associated With the Equinox Which Was Indisputably Martial Property</i>	12
3. <i>Equitable Distribution</i>	13
4. <i>Alimony</i>	16
CONCLUSION	22

TABLE OF AUTHORITIES

<i>Armstrong v. Armstrong</i> , 618 So. 2d 1278 (Miss. 1993).....	7, 19
<i>Carroll v. Carroll</i> , 976 So. 2d 880 (Miss. Ct. App. 2007)	19
<i>Cheatham v. Cheatham</i> , 537 So. 2d 435 (Miss. 1988).....	7
<i>Cosentino v. Cosentino</i> , 986 So. 2d 1065 (Miss. Ct. App. 2008) (<i>Cosentino II</i>)	3
<i>Daniels v. Daniels</i> , 950 So. 2d 1044 (Miss. Ct. App. 2007)	17, 18
<i>Ferguson v. Ferguson</i> , 639 So. 2d 921 (Miss. 1994)	3, 9, 12
<i>Guy v. Guy</i> , 736 So. 2d 1042 (Miss. 1999).....	9-11, 15
<i>Hammonds v. Hammonds</i> , 597 So. 2d 653 (Miss. 1992)	7
<i>Haney v. Haney</i> , 907 So. 2d 948 (Miss. 2005).....	7
<i>Hemsley v. Hemsley</i> , 639 So. 2d 909 (Miss. 1994)	7, 9, 12, 13
<i>Hensarling v. Hensarling</i> , 824 So. 2d 583 (Miss. 2002).....	13
<i>Johnson v. Johnson</i> , 823 So. 2d 1156 (Miss. 2002)	12
<i>Lauro v. Lauro</i> , 847 So. 2d 843 (Miss. 2003).....	7, 17
<i>Milligan v. Milligan</i> , 956 So. 2d 1066 (Miss. Ct. App. 2007).....	1, 2
<i>Ory v. Ory</i> , 936 So. 2d 405 (Miss. Ct. App. 2006).....	14
<i>Owen v. Owen</i> , 928 So. 2d 156 (Miss. 2006) (<i>Owen II</i>).....	2, 12
<i>Pearson v. Pearson</i> , 761 So. 2d 157 (Miss. 2000)	7, 13
<i>Singley v. Singley</i> , 846 So. 2d 1004, 1007 (Miss. 2002)	14
<i>Yelverton v. Yelverton</i> , 961 So. 2d 19 (Miss. 2007)	2

A. THE REQUIRED ANALYSIS OF FACTORS IS NOT PRESENT IN THE RECORD

Gregor, citing *Milligan v. Milligan*, 956 So. 2d 1066 (Miss. Ct. App. 2007), claims a Chancellor's decision on division of marital property and alimony must be upheld where the record contains evidence that could support the decision despite a Chancellor's failure to make specific findings on the relevant factors for equitable distribution and alimony or to explain his reasoning as to why the evidence on the factors support his decision unless the appellant requested specific findings and analysis in a motion for reconsideration. *Milligan* contains no such holding. It does not even mention a motion for reconsideration or requests for specific findings. Even if *Milligan* did say what Gregor claims, it would be inapplicable here because Laurin's attorney specifically referenced the *Armstrong* factors stating that Laurin met all of them, when she asked the Chancellor to reconsider his oral ruling. (T. 121, lines 6-9)

Milligan, which was decided prior to the controlling case law today, the Court of Appeals held that "[g]enerally, when there are no specific findings of fact, this Court will assume that the trial court made determinations of fact sufficient to support its judgment" and "[w]hen the chancellor does not provide specific findings of fact, appellate courts must 'look to the evidence and see what state of facts will justify' her ruling. These statements in *Milligan* are contrary to

decisions of the Mississippi Supreme Court and later decisions of the Court of Appeals.

Two months after *Milligan*, in *Yelverton v. Yelverton*, 961 So. 2d 19 (Miss. 2007), the Mississippi Supreme Court reversed and remanded a case for failure to make specific findings on the appropriate factors saying:

In its final judgment entered consistent with very thorough findings of fact and conclusions of law, the chancery court awarded lump sum alimony In doing so, the chancellor went to great lengths to explain James's misconduct. ... However, the trial court never set out or applied the Cheatham factors or the Ferguson factors. ... Therefore, since the chancellor in today's case failed to make adequate findings of fact and conclusions of law as to the Ferguson factors, we are constrained to reverse the chancellor on this issue and remand this case to the trial court to revisit this issue. Upon remand, the chancellor should properly apply the Ferguson factors to his findings of fact.

Id at ¶¶ 10-11.

Both the Mississippi Supreme Court and the Mississippi Court of Appeals have recognized that even detailed findings of fact are not sufficient absent an explanation of how the Chancellor analyzed those facts under the specific required factors as supporting his decision. In *Owen v. Owen*, 928 So. 2d 156, ¶¶ 18-26 (Miss. 2006) (*Owen II*), the Mississippi Supreme Court reversed and remanded a second time because although the Chancellor had listed each of the *Ferguson* factors and made specific factual findings as to each, he failed to draw conclusions of law and to explain how each of his factual findings and his analysis of the

factors supported his decision to divide the property on a 60/40 split. Similarly, in *Cosentino v. Cosentino*, 986 So. 2d 1065 (Miss. Ct. App. 2008) (*Cosentino II*), the Court of Appeals reversed a Chancellor for the second time around for failure to adequately consider and analyze two of the required factors on the record.¹

The requirements for specific findings of fact and analysis of specific factors are necessary in order for the appellate courts to be able to review the Chancellor's decision under the appropriate standard of review. *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994). It would defeat that purpose for an appellate court to engage in speculation as to the Chancellor's reasoning and analysis and whether there is evidence to support the Chancellor's decision in the absence of such findings as Gregor's brief suggests.

In this case, the Chancellor did engage in specific fact finding in regard to the *Albright* factors relevant to child custody. However, after addressing the Albright factors, the totality of his rulings, both from the bench and in written opinions and judgments, in regard to child support, equitable division of property and alimony, consists of the following:

As to support, I direct that child support be in the amount of \$650 a month, based on the testimony that I have heard as to the income

¹Although both parties were invited to supplement the record in regard to the specific factors on remand, both declined to do so. The Chancellor then reached the same decision as in *Cosentino I*. It follows from the second reversal in *Cosentino II* that a party is not required to jump through any specific procedural hoops with a motion to reconsider in order to preserve this issue for appeal.

flexibility of Mr. Kay -- \$650 a month to start the 1st of November, to be paid through the office of the Chancery Clerk of Lamar County.

Now as to the real property, I will direct that, based on the testimony that I have heard and the intent and request of the parties, that the homestead be sold and that of the sale proceeds, the first \$2,500 be applied to the attorneys fees of the Plaintiff. And the next \$2,000 be given to Plaintiff as a relocation fee, since she is the one that will have to find other housing and make other arrangements for someplace to live.

And the balance of those funds be applied to the debts on Exhibit 5 other than the Sally Mae account, which would be Bancorp south, Bancorp South ODL, and Bank of America Laurin and Bank of America Gregor and Chase credit card and the Discover credit card.

If there are any proceeds left after that, I will direct they be equally divided between the parties.

As to personal property, I am going to direct they keep the personal property they presently have in their possession with the exception that -- as I heard it, the table belongs to the parents. Is that right? That would be returned to them. And that Mr. Kay gets the guns and branding iron. I think that he can replace kitchen ware and a lawn mower a lot easier than Mrs. Kay can do without it, so I will let her keep those items.

The vehicles, each will keep the same vehicle they have presently.

The other major item that I have to deal with is the payment of debts. That leaves, I think, one major debt as I read Exhibit 5 and that is the Sally Mae. Is that right?

Right now I see there is a \$512 payment structured toward that. Is that on the basis so that if you continue to pay \$512 a month, you will pay it out in time?

MR. KAY: Yes Sir.

THE COURT: I think what I will do is let that continue to be paid at that rate and let Mrs. Kay contribute \$100 a month toward the payment of that, and let that be her portion of that to pay since most of that was your school loans. And there again, you have the flexibility and the most income to deal with that.

Let's see if there are any other issues that I have not covered. Is there anything else I have not covered?

MS. SMALLWOOD: Judge you did not address the issue of

alimony.

THE COURT: Since they are both working, I will give her the attorney fees and the relocation allowance. I don't think that I will grant alimony under the circumstances based on her income and ability to make income too since she is getting those amounts on top of that. ..

MS. SMALLWOOD: Judge, based on the financial information that he provided to us, the guidelines -- about \$840. I am confused as to how that figure of \$650 --

THE COURT: I am too, based on what I looked at. Let me take that under advisement since it is a late hour. The figure that I came up with is what I find based on the figures that were presented to me. I did that hastily. Let me review that, and I will get back with y'all.

T. 117-120. Next, on these issues, the original judgment said only

Defendant's net take home pay is calculated to be approximately \$3,200.00 including his nine month employment pay and summer wages. (Exhibit 6 at trial.) He shall pay child support of \$650.00 per month to Plaintiff beginning November 1, 2007, to be paid through the office of the Chancery Clerk of Lamar County, Mississippi, and keep the children covered with dental insurance. Plaintiff shall continue to keep them covered with medical insurance, the parties shall equally pay any uninsured medical or dental expenses of the children.

The marital home of the parties is to be sold with the first \$2,500 of the sale proceeds to be paid to Plaintiff as a contribution toward her attorney fees, the next \$2,000 to be paid to Plaintiff as a relocation allowance, the next portion to be paid on the joint marital bills of Bancorp South, Bancorp South ODL, Bank of America Laurin, and Bank of America Gregor debts of the parties with any remaining proceeds to be distributed equally between Plaintiff and Defendant. Plaintiff shall have the exclusive use and benefit of the home until it is sold, consistent with coordinating and cooperating in the arrangements necessary for the sale of the home as set forth above. Defendant shall assume responsibility for and pay the Sally Mae debt of the parties which currently has a reported balance due of approximately \$105,000.00, with Plaintiff contributing \$100.00 each month to Defendant to defray a portion of the debt as long as he

continues to pay the debt in monthly installments until paid in full. Otherwise Defendant shall pay 80 percent of the debt and Plaintiff shall pay 20 percent. Defendant shall hold Plaintiff harmless from any liability or adverse credit references for that debt. Each party shall keep the vehicle and the other personal marital property in his or her possession, however, Defendant shall have the return of his guns and branding iron.

With Defendant's support obligation deducted from his net income, he will have about \$2,550.00 monthly to live on, plus the bulk of the marital debt to pay as set forth herein. Plaintiff shows net monthly income of \$1,975.00, which together with the addition of support due from Defendant gives her \$2,625.00 each month to live, giving the Court pause to deny requests for alimony based on the criteria for awarding alimony. *Hubbard v. Hubbard*, 656 So.2d 124 (Miss 1995). Plaintiff shall, however have the tax exemption for the children of the parties since she has the major expense of their daily upkeep.

R. pp. 63-64. The judgment on reconsideration says even less on these subjects:

The COURT ... finds the Judgment of November 2, 2007 should be amended to provide that the mortgage payments which may become due on the home shall be divided equally between the parties pending the sale of the home. ...

If the debt to Regions Bank for Plaintiff's vehicle, the Chevy Equinox, is a joint marital debt it will be paid from the proceeds of the home sale; if in the name of Plaintiff alone, she shall underwrite payment thereof. ...

Reconsideration of the alimony request is denied.

From the evidence presented the Court did not deviate from the guideline child support but calculated support based on the amounts shown to be the income of the Defendant. ...

Evidence adduced showed some of the student loan proceeds were expended for family needs; the Court feels the allocation of the loan repayment between the parties correctly reflects their participation in repayment and further consideration is denied.

R. 82 - 83.

While there are many decisions in these rulings, there is no mention at all of the factors required to be considered in analyzing the marital/non-marital nature of assets and liabilities, equitable distribution, or alimony. With the exception of a brief reference to *Hammonds v. Hammonds*, 597 So. 2d 653, 655 (Miss. 1992) without mentioning any factors or reasoning, there isn't even any reference to any of the cases setting out these factors -- *Cheatham v. Cheatham*, 537 So. 2d 435, 438 (Miss. 1988) (lump sum alimony); *Hammonds v. Hammonds*, 597 So. 2d 653, 655 (Miss. 1992) (periodic alimony); *Armstrong v. Armstrong*, 618 So. 2d 1278, 1281-82 (Miss. 1993) (periodic alimony; lump sum alimony; division of jointly accumulated property; and, award of equitable interest in property); *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994) (equitable division of marital property); *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss. 1994) (definition of marital property for applying *Ferguson* factors); *Pearson v. Pearson*, 761 So. 2d 157, 165-66 (Miss. 2000) (minor language revisions of *Hammonds* factors); *Lauro v. Lauro*, 847 So. 2d 843, 846-50 (Miss. 2003) (application of *Hemsley* marital or non-marital assets factor in conjunction with *Ferguson* factors for equitably distributing marital assets, and application of *Armstrong-Hammonds* alimony factors in light of property distribution); *Haney v. Haney*, 907 So. 2d 948 (Miss. 2005) (integrating *Cheatum* and *Ferguson* factors). Clearly, the Chancellor's rulings do not come even close to setting forth the necessary analysis to support his

decisions to require Laurin to pay the entire debt on the Equinox which was marital property, to require Laurin to pay 20% or \$100 a month toward Gregor's student loans, or to deny Laurin alimony. (T. 117- 120; R. pp. 63-64, 82-83)

B. THE CHANCELLOR'S DECISIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

Contrary to Gregor's Brief, the Chancellor's decisions are not supported by substantial evidence in the record or by an analysis of the factors necessary to support the decisions under our appellate case law.

1. Gregor's Student Loans and Education

The Chancellor classified Gregor's Sally Mae student loan as marital debt with absolutely no analysis as to whether it was incurred in connection with the acquisition of marital assets or marital property, which Laurin would share in the distribution of. There was no analysis or even discussion of evidence that would support a determination that 20% of Gregor's student loan debt should be equitably allocated to Laurin. (T. 117- 120; R. pp. 63-64, 82-83) The totality of the testimony in regard to that debt was as follows:

MS. SMALLWOOD: Your student loan debt, is that a debt that's in your name alone?

GREGOR: It is in my name alone. It helped pay for us to survive when we were at the University of Georgia and while we were at Southern Miss., while I was working on my degrees from there.

MS. SMALLWOOD: Are you requesting that Laurin be responsible for some of that debt?

GREGOR: Yes.

MS. SMALLWOOD: What amount do you think would be fair for her to pay, if any?

GREGOR: Forty percent.

MS. SMALLWOOD: Did she work during the time period that you incurred these student loans?

GREGOR: She did.

(T. 37, line 27 to 38, line 12.) Trial Exhibit 5, the Hemsley Identification of Property Summary shows a Sallie Mae debt of \$114,980 being paid by Gregor. It was initially listed as nonmarital property. The letters “non” in front of “marital” are marked out with no explanation. Contrary to Gregor’s bare assertions, this is not substantial evidence supportive of a finding that it would be equitable to require Laurin to repay 20% or 1/5 of Gregor’s student loans.

The Chancellor engaged in no analysis along either the *Ferguson* or *Hemsley* lines in deciding that Gregor’s student loans were marital debt. He offered no analysis and there is no evidence to support an 80/20 allocation. (T. 117- 120; R. pp. 63-64, 82-83.) It is undisputed that in connection with these loans, Gregor obtained a Masters and then a PhD degree near the end of the marriage which substantially increased his future earning potential. Clearly, Gregor has and will continue to benefit from that education, but his degrees are not martial property a portion of which can be equitably allocated to Laurin. *Guy v. Guy*, 736 So. 2d 1042 (Miss. 1999) Although Gregor’s degrees are not marital property, it is equally clear that under our law, Laurin is to be compensated for the sacrifices she

made, including working while Gregor did not, in order for Gregor to earn these degrees.

This Court suggests the Chancery courts consider the following guidelines, where applicable, when attempting to effect an equitable division of marital property:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:

. . . .

- c. Contribution to education, training or other accomplishment bearing on the earning power of the spouse to accumulating the assets. . . .

Id. While Ferguson certainly did not list a professional degree as marital property to be equitably divided, it did list the contribution made by the supporting spouse to the attainment of that degree by the other spouse to be at least considered when equitably dividing the marital assets. Id. ... We join the majority of states and hold that professional degrees are not marital property. ... [They are] not ... chattel[s] which can be divided or assigned. ... We do not intend "property" in the sense of "marital property" to include intellectual or technical mental enhancement gained during the course of a marriage. However, the analysis does not end here because

There is . . . clear agreement that the contributing spouse should be entitled to some form of compensation for the financial efforts and support provided to the student spouse in the expectation that the marital unit would prosper in the future as a direct result of the couple's previous sacrifices. ...

Furthermore, it is realistic to recognize that . . . a supporting spouse has contributed more than mere earnings to her husband with the mutual expectation that both of them - she as well as he - will realize and enjoy material improvements in their marriage as a result of his increased earning capacity. Also, the wife has presumably made personal sacrifices, resulting in a reduced or lowered standard of living. Additionally, her husband, by pursuing preparations for a future career, has foregone gainful employment and financial contributions to the marriage that would have been forthcoming had

he been employed. He thereby has further reduced the level of support his wife might otherwise have received, as well as the standard of living both of them would have otherwise enjoyed. In effect, through her contributions, the supporting spouse has consented to live at a lower material level while her husband has prepared for another career. She has postponed, as it were, present consumption and a higher standard of living, for the future prospect of greater support and material benefits. The supporting spouse's sacrifices would have been rewarded had the marriage endured and mutual expectations of both of them been fulfilled. The unredressed sacrifices - loss of support and reduction of the standard of living - coupled with the unfairness attendant upon the defeat of the supporting spouse's shared expectation of future advantages, further justify a remedial reward. In this sense, an award that is referable to the spouse's monetary contribution to her partner's education significantly implicates basic considerations of marital support and standard of living - factors that are clearly relevant in the determination and award of conventional alimony. ... In the present case we adopt the majority approach in recognizing the need for equitable reimbursement of the supporting spouse.

Guy at ¶¶ 7-11.

It follows that ordering Laurin to pay 20% of the debt, which was incurred because Gregor chose to stop working and contributing his wages to the family support so he could earn these degrees while Laurin continued to work to support the family, is not an equitable result. It also follows that the brief and nonspecific self-serving testimony Gregor gave and now relies upon is not substantial evidence, which could support such a decision that it is equitable to require Laurin to repay any part of Gregor's student loans. At the very least, Laurin's continued work and other sacrifices so Gregor could go to school full time balance out the

use of any portion of the loan funds to substitute for a part of the wages Gregor was not contributing to the support of the family while he was in school.

Also, as in *Owen II*, the Chancellor's decision is clearly lacking in any connection between his decision to saddle Laurin with 20% of the cost of Gregor's education when she cannot be given a corresponding percentage of the asset associated with the debt and either the *Ferguson* or *Helmsley* analysis and factors. Gregor's testimony amounted to a wish list of how much he wanted Laurin to have to pay on his student loan. His wish list testimony was neither evidence that the debt was marital, that she had agreed to pay a portion of it or that it would be equitable to require her to pay a portion of it under our case law. See *Johnson v. Johnson*, 823 So. 2d 1156 (Miss. 2002) and cases cited in discussion of student debt in Laurin's principal brief. Thus, there is no substantial evidence in the record to support this part of the Chancellor's decision.

2. The Debt Associated With the Equinox Which Was Indisputably Marital Property

Similarly, there was no finding of the Chancellor supported by substantial evidence that the debt on the Chevy Equinox in Laurin's name was non-marital debt. The judgment on reconsideration stated "[i]f the debt ... for Plaintiff's vehicle, the Chevy Equinox, is a joint marital debt it will be paid from the proceeds of the home sale." It then went on to say that if the debt was in Laurin's name

alone, she would be solely responsible for it. Whose name an asset or debt is listed in is not determinative of whether it is marital or non-marital. *Pearson v. Pearson*, 761 So. 2d 157, 163 (Miss 2000) The Chancellor never even made a finding as to whose name the vehicle was in and whose name the debt was in, much less a determination of whether the debt associated with the Equinox was marital debt. What he did do was refuse to order the Equinox debt to be paid from the proceeds of the sale of the house along with the other marital debt as requested by Laurin and Gregor. The only evidence before the Court on this issue was the *Helmsley* summary which stated this vehicle was jointly titled to Gregor and Laurin and both it and the associated debt was marital.² There was no evidence to support a finding that either the Equinox or the purchase money debt secured by the Equinox was separate property or Laurin's separate debt. There was certainly no evidence, much less any *Helmsley/Ferguson* factor analysis to support finding the Equinox debt to be non-marital debt or to support an equitable allocation of that debt entirely to Laurin.

3. Equitable Distribution

It is well established that equitable distribution of property does not mean equal distribution of property. *Hensarling v. Hensarling*, 824 So. 2d 583, 590 (Miss. 2002). Marital misconduct is a proper factor for a chancellor to consider

²Ex. 5 at pp. 2 and 5.

when equitably distributing marital assets "when the misconduct places a burden on the stability and harmony of the marital and family relationship." *Ory v. Ory*, 936 So. 2d 405, 413 (Miss. Ct. App. 2006) (citing *Singley v. Singley*, 846 So. 2d 1004, 1007 (Miss. 2002)). It is very clear that Gregor's continuing conduct in returning to adulterous affairs after promising to reform his conduct, and engaging in the final adulterous affair while Laurin was pregnant with their second child, placed a substantial burden on the stability and harmony of the marital and family relationship. He did not dispute that point.

Yet Gregor testified that what he thought should happen was that the house should be sold to pay off all the debt except for his Sallie Mae student loan and that Laurin should be required to pay 40% of that loan. Although the Chancellor reduced that wish somewhat by assigning Laurin 20% of Gregor's student loan, he counterbalanced that reduction of Gregor's wish substantially by also assigning the remaining debt on the Equinox to Laurin. In the end, while Gregor was left with a net debt payment of \$412 a month for his student loan after the \$100 contribution assigned to Laurin, Laurin was saddled with monthly debt payments totaling \$550 a month (\$450 on the Equinox plus \$100 for Gregor's student loan), as well as greater expenses as the children would be living with her the vast majority of the time. (Appellee's R.E. Exhibit 2) When the house was sold, Laurin would also have to find new accommodations for herself and the children while Gregor

continued to live with his paramour who shared living expenses.

Gregor does his best to paint a picture implying that Laurin came out of the marriage in far better financial shape than he did, claiming that Laurin failed to explain what was inequitable about the Chancellor's decision. But Laurin's principal brief clearly points out that the inequity lies in the Chancellor saddling her with 20% of Gregor's student loan debt and all the Equinox debt when Gregor himself testified that all the debt except for his student loans should be paid from the proceeds of the sale of the house and she has already made sacrifices for Gregor to earn his degrees which increase his future income potential. This inequity is made all the worse because Gregor testified the equity in the house was sufficient to pay off all the debts except his student loan, Laurin's earning potential is lower than Gregor's, she worked full time while he was in school, and Gregor's repeated adulterous affairs placed such a strain on the marriage and family harmony. It is true that there was substantial debt and little equity at the end of this marriage but none of the equitable distribution factors justifies setting aside these factors weighing in Laurin's favor and disregarding Gregor's conduct or going against the law set out in *Guy* so that at the end of the marriage, Laurin not only does not benefit from the education which increased Gregor's earning potential, but she gets left holding the bag for a substantial part of it. To the contrary, the law clearly demonstrates that the equities should be in her favor. While there are

few assets to be equitably distributed to her, the least the Chancellor should have done in balancing the equities was to use what assets there were to relieve her of any continuing debt obligation and to hold Gregor responsible for all of his student loans since Laurin cannot be awarded a portion of the value of his degrees.

4. Alimony

Although Gregor argues that the Chancellor's opinion does show that he considered the factors relevant to alimony and that the evidence supports his decision not to award alimony, the record does not support his claims. The totality of the Chancellor's analysis on the issue of alimony in his ruling from the bench and the subsequent written judgments states:

Since they are both working, I will give her the attorney fees and the relocation allowance. I don't think that I will grant alimony under the circumstances based on her income and ability to make income too since she is getting those amounts on top of that. ... (T. 17)

With Defendant's support obligation deducted from his net income, he will have about \$2,550.00 monthly to live on, plus the bulk of the martial debt to pay as set forth herein. Plaintiff shows net monthly income of \$1,975.00, which together with the addition of support due from Defendant gives her \$2,625.00 each month to live, giving the Court pause to deny requests for alimony based on the criteria for awarding alimony. *Hubbard v. Hubbard*, 656 So.2d 124 (Miss 1995)

The factors for granting alimony have to be considered along with the factors for making equitable distribution decisions. Unless both are adequately discussed, both must be reversed and remanded. *Lauro v. Lauro*, 847 So.2d 843,

848-49 (Miss. 2003). See also *Daniels v. Daniels*, 950 So. 2d 1044 (Miss. Ct. App. 2007) In *Daniels*, the discussion and findings relating to the alimony factors were far more extensive than the Chancellor's discussion of whether an award of alimony was appropriate for Laurin, yet the Court of Appeals still found them inadequate, saying:

In making an equitable division of the marital property, the chancellor first determined which assets were properly addressed as marital property. After stating that he had considered the factors found in *Ferguson v. Ferguson*, 639 So.2d 921, 928-29 (Miss. 1994), the chancellor proceeded to divide the marital assets. No discussion of the factors is found in the record, and no explanation of how the chancellor found as to any factor, or how those factors impacted the chancellor's award of marital property, is included in the court's ruling. ... the chancellor stated in his order that he had addressed the relevant factors found in *Brabham v. Brabham*, 226 Miss. 165, 84 So.2d 147 (1955) and *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993).¹ Specifically, the chancellor noted that there was a demonstrated substantial disparity of Viola's earning capacity compared to that of Willie (\$ 8,000.00 for Viola in 1994, \$41,000.00 for Willie in 1994). Theirs has been a long marriage. Viola has contributed financially as well as bearing six children and assisting in the rearing of five of those children. Evidence shows Viola's inability to meet her reasonable living needs since the separation and the lack of any support contribution by Willie since that separation. The totality of the circumstances lead the Court to the conclusion that Viola is entitled to an award of alimony, both for rehabilitative purposes and periodic for supplemental support for the future. Accordingly, the Court awards unto Viola a lump sum award for rehabilitative purposes of \$ 12,000.00, which sum Willie may pay, at his election, by the sum of \$ 500.00 per month. Further, Viola is awarded periodic continuing alimony for support purposes in the amount of \$ 300.00 per month; and in the event Willie elects to pay the lump sum award in the stated

monthly installments then, in such event, the payment of monthly alimony for support purposes shall commence upon the payment in full of the lump sum award.

In *Lauro v. Lauro*, 847 So.2d 843, 848-49 (P13) (Miss. 2003), the Mississippi Supreme Court explained that "[a]ll property division, lump sum or periodic alimony payment, and mutual obligations for child support should be considered together." Therefore, because we are remanding to the chancery court for an analysis of the applicable Ferguson factors and how those factors affect equitable distribution, we also remand this issue. If, on remand, the court's analysis of the relevant Ferguson factors yields a different equitable division of the marital property, the court's rendering of alimony will also have to be reconsidered. "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." *Id.* at 849 (P13) (quoting *Ferguson*, 639 So.2d at 929). We also urge the chancellor to make more detailed findings regarding alimony on remand. As with the equitable division factors, the chancellor failed to thoroughly apply the relevant alimony factors in its findings of fact and conclusions of law. On remand, we urge the court to remedy this deficiency.

Id. at 1046-1047.

While an appellate court can affirm a Chancellor's decision on alimony where the written analysis of the factors to be considered in awarding alimony does not contain a complete detailed analysis of every factor, the analysis of the evidence, the findings of fact, and the relationship of the evidence and findings to the factors and how they support the Chancellor's decision must be sufficiently detailed for the reviewing court to be sure the Chancellor did review all the factors and applied the law properly in reaching a decision that is supported by substantial

evidence in the record. Mere reference to one of the cases listing the factors and brief reference to one or two points of evidence on one or two factors is not sufficient. See *Carroll v. Carroll*, 976 So. 2d 880, & 18 (Miss. Ct. App. 2007)

The relevant factors to be considered on the issue 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) the obligations and assets of each party, 5) the 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) the 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) the 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. *Id* at 887-888 citing *Armstrong v. Armstrong*, 618 So.2d 1278, 1280 (Miss. 1993). In his consideration of the alimony issue, the Chancellor in this case considered only two *Armstrong* factors -- the income of the parties and the debts each would be ordered to pay as a result of the divorce, which represented only a small portion of the relevant expenses in this case. Even within these two factors, the Chancellor made egregious errors in his findings.

Contrary to the Chancellor's findings, the ability to earn some income and

even a substantial amount of income does not bar an award of alimony. The proper focus on the income factor is a comparison of the parties' incomes as well as their expenses. In finding that the parties' income after adjustments for child support owed and received were roughly equal, the Chancellor failed to consider Laurin's legitimate expenses and the disparity those expenses created in comparing the income and expense factor. Specifically, while deducting the child support from Gregor's income and adding it to Laurin's, the Chancellor failed to acknowledge that Laurin would have far greater expenses because she would be responsible for the children's care the majority of the time and that she would have to obtain and pay for alternative housing for herself and the children while Gregor would not have these expenses. The Chancellor also failed to take into account that Laurin would be bearing the expense of a \$450.00/month car note because of the Chancellor's decision on the Equinox debt. He also failed to make adjustments in Laurin and Gregor's expense for the share of Gregor's student debt the Chancellor ordered Laurin to pay.

The table below demonstrates what little the Chancellor did take into account in denying alimony as well as showing the obvious disparity justifying an award of alimony when even the most basic factors not considered by the Chancellor on which there was little dispute in the evidence are taken into account.

	Chancellor	Chancellor	Evidence &	Evidence &
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	on Laurin's income and expenses	on Gregor's income and Expenses	Proper Analysis of Laurin's Income & Expenses	Proper Analysis of Gregor's Income & Expenses
before child support adjustment	\$1,975.00 ³	\$3200.00 ^{3, 4}	\$1975.00 ^{3, 4}	\$3200.00 ^{3, 4}
With Child support adjust	\$2625.00 ^{3, 4}	\$2,550.00 ^{3, 4}	\$2625.00 ^{3, 4}	\$2,550.00 ^{3, 4}
Student Loan		-412.00 ⁵	-100.00 ^{3, 5}	-\$412.00 ⁵
Equinox Debt			-450.00 ^{6, 7, 8}	
Child care cost			-\$455.00 ^{7, 8}	0
Remainder Subtotal	\$2625.00	\$2138.00	\$1620.00	\$2138.00
Housing Needs			-\$908.00 ^{7, 8} (includes children)	-\$455.00 ⁷ (self alone)
Children needs			-\$267.00 ⁸	\$0.00
2d Subtotal Remainder			\$445.00	\$1683.00
Additional Factors favoring alimony for Laurin		Gregor's fault; length of the marriage (15 yrs); Gregor's greater earning capacity		

³R. at 64

⁴R. at 63

⁵T. at 118-119

⁶Ex. 1 at p. 9

⁷Ex. 1 at p. 3

⁸Ex. 2 at p. 3

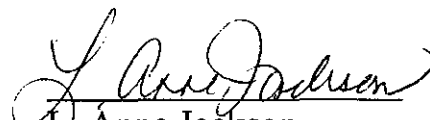
Both Laurin and Gregor testified that Laurin's earning capacity was less than Gregor's. Laurin testified that even if she could take time off to go back to school and earn a higher degree, it would not result in higher pay if she did go back to school now. (T. 44, 91) Clearly the Chancellor's decision not to award Laurin alimony left her bearing the lion's share of the cost of the children's care and support with a serious deficit of resources in comparison to Gregor which is exactly the purpose alimony is designed to remedy. When this is considered in conjunction with the fact that the only real positive result of the debt incurred during the marriage which survived is Gregor's degrees and increased earning capacity which cannot be assigned to Laurin as a marital asset, it is clear that this is a case where alimony is needed to adjust the equities even if the Chancellor's inequitable allocation of debt were corrected.

CONCLUSION

Contrary to the arguments in Gregor's brief, this appeal is not an attempt to punish him for his admittedly adulterous conduct. It is an effort to obtain justice and an equitable resolution to the dissolution of this marriage, without punishing Laurin by saddling her with part of Gregor's debt, the lion's share of the future living expenses for the family, and less child support than she is entitled to under the guidelines while Gregor receives a free subsidy for his student loans, his

degrees and increased earning capacity, the elimination of all his other debt, and reduced child support obligations despite his destruction of the harmony and marital relationship with his repeated adulterous conduct. Laurin should be able to exit this marriage free of debt with Gregor paying for his own education and contributing fairly to the support of his two children. Under our law, had it been properly applied by the Chancellor, she should have gotten a fresh start unencumbered by the cost of Gregor's education, with all the other debts paid off from the equity in the house as Gregor testified was possible and appropriate, and with the amount of child support provided for in the guidelines based on Gregor's actual income at the time of trial.

Respectfully submitted,


L. Anne Jackson
Attorney for Appellant

CERTIFICATE OF SERVICE

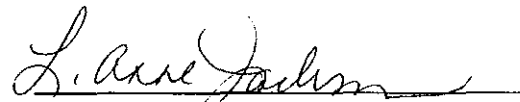
I, L. Anne Jackson, attorney for Appellant, Laurin Kay, hereby certify that I have this day caused to be delivered by United States Mail, postage pre-paid, a true and correct copy of the above and foregoing Reply Brief of Appellant, Laurin Kay to:

Honorable James H.C. Thomas, Jr.
Chancellor
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Ms. Laurin Kay
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CERTIFIED, this the 10th day of October, 2008.


L. Anne Jackson