IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DAVID HARDEN DOYLE. APPELLANT

VS.

KAREN PHYLLIS DOYLE APPELLEE

NUMBER 2007-CP-01925

BRIEF OF APPELLEE

APPEAL

CHANCERY COURT, DESOTO COUNTY

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IN THE SUPREME COURT, STATE OF MISSISSIPPI

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VS.

KAREN PHYLLIS DOYLE **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for KAREN PHYLISS DOYLE, Appellee herein 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.

Hon. Vicki Cobb
Chancery Judge
P. O. Box 1104
Batesville, MS 38606
(Trial Judge)

Hon. C. Gaines Baker
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(Appellant)

Karen Phyllis Mobley Doyle
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(Appellee)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

COURT RULES

TREATISES

STATEMENT OF THE ISSUES

1. Did the Chancellor err in relying upon Appellant's Financial Declaration in equitably dividing the equity in an automobile that was marital property?
2. Did the Chancellor err in awarding wife $7,300.00 for furniture damaged or destroyed by husband?
3. Did the Chancellor err in awarding the wife equity in a lawn mower found to be marital property?
4. Did the Chancellor err in the division of marital debt and the awarding of $15,000 to wife for credit card charges?
5. Did the Chancellor err in ordering that wife should received half of the refund on husband income tax return?
6. Did the Chancellor err in requiring that Appellant provide health insurance for wife for 12 months?
7. Did the Chancellor err in ordering the sale of the marital home?
8. Did the Chancellor err in not making an equitable distribution of the retirement account of Mrs. Doyle?

STATEMENT OF THE CASE

Appellant, David Harden Doyle, filed his complaint for divorce January 23, 2006 against his wife of only two plus years, Karen Phyllis Doyle. The complaint cited habitual cruelty and irreconcilable differences. After an order of continuance Mrs. Doyle filed her answer and counterclaim for divorce on February 27, 2006 citing the same grounds as her husband. This case was heard May 17, 2007 but proof was not concluded and it was continued to August 22, 2007. Appellant brings this case before the Court pro se, but has had three attorneys throughout the course of these proceedings. Appellee has new counsel for purposes of this appeal.

At the conclusion of the divorce proceeding the Chancellor granted a divorce to Mrs. Doyle and determined and divided marital property and debt in her oral opinion. On September 24, 2007 the final decree of divorce dated September 21, 2007 was entered (Appellee's Record Excerpts, page 28, hereinafter E. __). On October 24, 2007 a notice of appeal was filed by husband. The appeal filed by husband was dismissed by notice dated October 2, 2008 and mandate issued dated October 23, 2008 (E. 45, 54).

During the pendency of the appeal as originally filed without supersedes, wife filed a motion for contempt, January 23, 2008 (E. 29), since the husband did not comply with any of

the requirements of the decree of divorce. Hearings were held March 4 and 7, 2008 and a final hearing on contempt August 27, 2008 culminating in the trial Court's subsequent order filed October 21, 2008 (E. 46).

On November 18, 2008 Appellant, husband, filed yet another appeal relating to the contempt proceeding (E. 53). On December 12, 2008 a notice recalling mandate was filed (E. 57) and by notice dated March 30. 2009 the appeals for the divorce and contempt hearing were consolidated.

Appellant's present appeal recites eight alleged errors summarized as follows:

1. Error is assigning equity in an automobile tilted to husband.

2. Error is awarding wife $7,300 for destroyed family furniture without giving husband certain credits;

3. Failure to comply with Ferguson factors in awarding equity in a lawn mower.

4. Failure to comply with Rule 8.05 and Ferguson factors in apportioning marital credit card debt in the name of wife.

5.Failure to comply with Ferguson in awarding Wife one-half of husband's 2005 income tax refund;

6.The trial Court error in awarding wife 12 months health insurance;

7.Failure to comply with the Ferguson factors in order that the marital home be placed on the market; and

8. Error in the trial court in equitably dividing husbands retirement account.

There were no pleadings filed in the Chancery Court seeking reconsideration or clarification or delay in implementation of any of the rulings of the Court.

SUMMARY OF THE ARGUMENT

1. **Did the Chancellor err in relying upon Appellant's Financial Declaration in equitably dividing the equity in an automobile that was marital property?**

The Rule 8.05 declaration of the Appellant indicated $5,000 of equity in a vehicle found to be marital property. The Appellant at trial said this was error ant the equity was a minus $5,000. Wife testified that her share or equity in the vehicle was $2,500. No documentary evidence of value or unpaid balances was given to the Court. The Court ruled on the information before it and did not err.

2. **Did the Chancellor err in awarding wife $7,300.00 for furniture damaged or destroyed by husband?**

Certain property of the parties was damaged or destroyed by husband in his attempts to force wife to leave the marital abode. Finding that husband's action was an indication that he had no regard for the furniture, the Chancellor awarded damages to the Appellee for the full value of the destroyed furniture. Appellant's, David Doyle's claim of fraud that was not shown in the record is insufficient ground to set aside the decision of the Chancellor.

3. **Did the Chancellor err in awarding the wife equity in a lawn mower found to be marital property?**

The trial court awarded wife $1,000 of the value or equity in the marital lawn mower. Appellant asserts that he purchased and financed the purchase. In making the equitable distribution the Chancellor considered all of the Ferguson factors. It is proper to consider marital contributions in equitably distributing property.

4. **Did the Chancellor err in the division of marital debt and the awarding of $15,000 to wife for credit card charges?**

To the extent that the Court may have erred with reference to credit card debt, the error favored Appellant. The Wife testified to an increase of $98,000 plus in credit card prior to the divorce. She testified to making credit card advances to meet the monthly family budget. The Court only allowed Appellee $15,000 of this sum, which was less than one-half, and did not assess any interest until paid. This omission was the only error committed by the court in this regard.

5. **Did the Chancellor err in ordering that wife should received half of the refund on husband's income tax return?**

At trial the Court ordered that wife, Appellee, receive half of the 2005 tax refund received by the parties. The return, though filed was not produced prior to trial. At the contempt hearing the Appellant stated that he had received no refund and had to pay back taxes that had not been testified to at trial. Appellant asserts reasons not to pay as ordered by the court by reference to alleged evidence not in the record and testimony not borne out by the actual return.

6. **Did the Chancellor err in requiring that Appellant provide health insurance for wife for 12 months?**

At the time of the divorce hearing, Mrs. Doyle was having health problems. Mrs. Doyle was then covered under her husband's insurance at his place of employment. The Court was correct in considering the health of Mrs. Doyle to find that the Ferguson factors called for her insurance for a year to avoid her having to face an issue of a preexisting illness in applying for a new policy.

7. Did the Chancellor err in ordering the sale of the marital home?

The Chancellor was correct in ordering that the home be placed on the market. The parties disagreed on the value of the home. The husband argued that there was no equity in the home but failed to place it on the market as directed. Appellant reiterated this at the contempt hearing referring to the collapse in the housing market. However, Appellant comes to the Court with unclean hands having failed to place the home on the market which could have supported or disproved his argument. He cannot now show that the house would not have sold earlier. The parties have lost equity since the original order of the Court a fact that could be attributed to the actions of Appellant.

8. Did the Chancellor err in not making an equitable distribution of the retirement account of Mrs. Doyle?

This argument of the Appellant is totally without merit. The retirement fund referred is social security that was based upon Mrs. Doyle's work record and not that of Appellant. He was therefore not entitled to any credit.

ARGUMENT

Appellee relies largely upon the standard of review employed by the appellate courts of this state in domestic relations cases. "Chancellors are vested with broad discretion, and this Court will not disturb the chancellor's findings unless the court's actions were manifestly wrong, the court abused its discretion, or the court applied an erroneous legal standard, *Sandlin v. Sandlin, 699 So. 2d 1190, 203 (Miss. 1997)*. Appellant in his brief refers to the "Ferguson factors", *Ferguson v. Ferguson, 639 so. 2d 921, 928 (Miss. 1994)* and that the Chancellor below failed to apply them. For the convenience of the Court Appellee lists the factors as listed by Ferguson and the pages of the record wherein the court addressed these factors:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows: [T. p. 376, line 23 to p. 378, line 7]
   a. Direct or indirect economic contribution to the acquisition of the property;
   b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and
   c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or other wise. [T. 378 line 8 to p. 379, line 13]
3. The market value and the emotional value of the assets subject to distribution. [T. 379 lines 14-28]
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse; [T. 379 line 29 p. 380 line 12]
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution; [T. 380 line 13 to p. 381 line 2]
6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties; [T. 381 lines 3-24]
7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; [T. 381 line 25 to p.382 p. 5] and,
8. Any other factor which in equity should be considered.

Appellee addresses the arguments in the Appellant's brief in the order in which they were presented by him. *Armstrong* factors were also discussed by the Chancellor, *Armstrong v. State, 618 So.2d 1278 (Miss. 1993)*. These are discussed in points 7 and 8 below. Appellee notes that the appeal was taken

without supersedes and the contempt hearing was proper, *Vockroth v. Vockroth, 200 So. 2d 459,463 (Miss. 1967)*.

1.TRIAL COURT DID NOT ERR IN RELYING UPON APPELLANT'S FINANCIAL DECLARATION.

Appellant filed his Rule 8.05 Uniform Rules of Chancery Court Practice disclosure dated May 25, 2006 (E. 59). The disclosure indicates equity of Five Thousand Dollars ($5,000.00). Appellant testified that this was in error as there should have been a minus sign before the $5,000, Hearing of March 4, page 76 (hereinafter March 4 __) and August 27,2007, page 51,52 (Hereinafter T. p. __). Appellant referred to an amended disclosure but non appeared in the trial record, though one was submitted in the contempt hearings (E. 70). Appellee testified that her equity in the vehicle was Two Thousand Five Dollars ($2,500),[1] (T. 257, lines 6-11).

Appellant cites *Kalman v. Kalman, 905 So. 2d 760 (Miss App. 2004)*. While Appellee agrees that the purpose of Rule 8.05 is to give a complete financial picture. That is not the argument of Appellant here. Appellant is requesting that the Court consider his testimony without documentation and not his declaration. This argument runs contrary to *Kalman*. Indeed the trial court cannot be put in error for an amended disclosure

[1] While there is some discussion indicating an agreed equity of $2,5000 to Mrs. Doyle, this seems to be a matter of negotiation with no evidence being given to that effect, (T. p. 6).

that is filed in response to a contempt proceeding after the original judgment had become final.

The trial court made its determination upon the disclosure filed by Appellant and the testimony of Appellee. Appellee respectfully suggests that this court not substitute its judgment for that of the trial court especially when Appellant presented no documentation of the value of the vehicle and the balance owed thereon.

2 TRIAL COURT DID NOT ERR IN AWARDING WIFE $7,300 FOR FURNITURE DAMAGED OR DESTROYED BY HUSBAND.

Appellant damaged certain marital property by carving made with a knife (E 85). This was his attempt to have wife leave the marital home (T. 76, lines 8-p.77, line 27). The Court in its ruling found this to be marital property[2] (T. 374, lines 14-16) but awarded the full value of this furniture to wife (T. 392). The trial Court observed:

> . . . [O]ne of the reasons I'm awarding 100 percent of that to Mrs. Doyle is because obviously they had no value to you or you had no interest in maintaining the value because you totally destroyed them by taking your knife and cutting them up.
>
> So you will also pay Mrs. Doyle $7,000.00 for that furniture to replace that furniture, although I know, Mrs. Doyle that that does not replace the furniture by your calculations, but to offset that value you will also pay Mrs. Doyle $7,000.00 within 30 days.

[2] Actually the marital property was found to be worth $7,000. The additional $300 was for property of the grandchild of wife who was not the grandchild of husband (T. p. 392, lines 21-29).

And while I am on the subject of assets that you have destroyed it was also testified that you destroyed Mrs. Doyle's grandchild's baby furniture and items that she had to pay $300.00 to replace. (T. 392, line 7-26)

Appellant asserts that the amount awarded exceeded the value of the furniture citing testimony at pages 86-87 and 291 of the trial transcript. However, the wife testified that the receipt to which she referred at page 292 of the trial was only for "a Sectional, an ottoman, a chair and an ottoman." She testified to his cutting up "a whole house full of furniture" (T. 292, line 27, 28). Appellant's testimony at page 19 of the transcript does not support that the furniture was his separate property.

Appellant's claim of fraud of $7,298, Brief of Appellant page 7, being money taken from his non-marital assets by Appellee is not supported anywhere in the record. Even if somehow true Appellant would receive no relief as the appellate courts of this state do not consider matters that do not appear in the record, *Goolsby Trucking Co. Inc. v. Alexander, 982 So. 2d 1013, 1021 ¶24 (Miss. Ct App. 2008).*

Other claims made by Appellant seem not to be borne out by the record. Mr. Doyle would have the court believe that he purchased the home and furniture with his funds when the record shows that the house was purchased using funds of Mrs. Doyle which were, when rebated, used for furniture purchases

(T. 19, lines 14-26). Also Appellant moved in with Mrs. Doyle while he was still married to his former wife while not informing Mrs. Doyle of this fact (T. 41, line 14-18; T. 186, lines 20-29). He himself acknowledged that he gave up all of his furniture at that time (T. 43, lines 2-22), and that most of the furniture was hers (T. 105, line 15).

Appellant, at page 7 of his brief refers to alleged fraud by Mrs. Doyle relating to his inheritance from his mother, (T. P. 13, line 4-13). The problem with this claim of fraud is that contrary to his claim (T. 16, lines 21-25) the fully developed story is that the money was placed not in a "personal account" but in the account of a family business, "Adams Ant" (T. 288, line 23 to T. p. 289, line 3). In either case there is no testimony that Mrs. Doyle invaded that balance for her individual gain.

The award to Mrs. Doyle was consistent with the factors listed in *Ferguson* and in particular and in particular factor to relating to disposal of marital assets where the court below found that Appellant "purposefully destroyed marital assets" (T. p.379, line 13).

3. **TRIAL COURT DID NOT ERR IN AWARDING WIFE EQUITY IN THE MARITAL LAWN MOWER.**

Appellant complains of the award of $1,000 of the value of a lawn mower that was found to be marital property. Appellant alleges that the lawn mower was financed and purchased after the separation. In his brief, page 7 Appellant notes that his wife had a separate lawn mower. Mrs. Doyle would remind the Court that she maintained a separate house that was not marital property (T. 363, lines 12-14).

Whether the property was purchased without Ms. Doyle's presence is not determinative, "A spouse who has made a material contribution toward the acquisition of property which is filed in the name of the other may claim an equitable interest in such jointly accumulated property incident to a divorce proceeding", *Ferguson 639 So. 2d at 935.*

4. **THE TRIAL COURT DID NOT ERR IN THE DIVISION OF MARITAL DEBT AND THE AWARDING OF $15,000 TO APPELLEE.**

Appellant at page 8 of his brief argues that the credit card debt of his wife was not marital debt. He again refers to evidence not in the record, *Goolsby Trucking Co. Inc. v. Alexander.* The Appellant alleges unto the Court on appeal that records exist to support his argument and that they were given to his attorney. Appellant's argument could have possibly been supported by the record to the extent that his wife testified

that she had her credit card records with her when she testified. What Mrs. Doyle objects to here is that Appellant, though representing himself before this Court, had capable and experience counsel below who did not move to have these records introduced or to even question Mrs. Doyle about her credit card records. It is simply too late for the Appellant to now argue facts not in the record that were available at trial and could have been put into the record by him.

At trial Mrs. Doyle testified that approximately $40,000 in credit card bills were incurred by her during the marriage.

> QUESTION: well, tell us about your loans to pay back loans. Who made those debts?
>
> ANSWER: The original amount taken out was from our credit card debt that I had gotten while I was married to David right at $40,00.00. (T. 236, lines 20-24)
>
> QUESTION: And these were debts that you said he insisted - -
>
> ANSWER: That he would help pay back. David would get me to get money. David writes business plans. I noticed in his interrogatories that he has not mentioned his other job. David writes business plans. He charges $2,500.00 for business plans. A lot of these things including the home when we got them, David promised me that he would - - I will just write a few business plans a month. Don't worry about the household. Don't worry about the mortgage.
>
> QUESTION: Who caused those charges to be made?
>
> ANSWER: David.

QUESTION: Are these charges made during the course of the marriage?

ANSWER: Yes. And to support this I have a budget that David made up for our household.

QUESTION: That's been introduced into evidence?

ANSWER: that he knew that my Social Security was only $1, 400.00 a month but he wrote it - - he put it in his handwriting and he submitted it to me and it's been given to the Court that he expected me to pay over $4,000.0 a month . . . (T. 236 lines 29 to page 237, p. 23).

QUESTION: this debt that has come into existence is partially from based on your testimony $40,000.00 of it was gained during the marriage - -

ANSWER: Right.

QUESTION: - - at his insistence?

ANSWER: Right.

QUESTION: And then you paid off some of that debt, basically refinanced those credit cards?

ANSWER: I consolidated it after I left in June or July of 2006, because I could not meet the payments of the credit cards anymore. I couldn't meet them anymore so I consolidated them. (T. 236 lines 3-14)

...

ANSWER: . . ., but from those the payments that I made, I made a total of $46,700.00 in payments.

QUESTION: what are you asking the Court to do in regards to that?

Answer: I'm asking that David be made to pay half of those as well.

Question: and that totals - -

THE COURT: How much did she make in payments?

MR. BAKER: $46,700.00.

THE WITNESS: Yes, $46,700.00 in payments -

(BY MR. BAKER) And you are asking -

ANSWER: -- on all of these credit cards. I have the credit care statements right here.

QUESTION: You do have the statements?

ANSWER: Yes sir. I have them right here. Showing the final balances and stuff. (T. 238 lines 27 to page 239 line 15)

These lengthy quotations from the record show that whether Mrs. Doyle is truthful or not that she placed herself on the witness stand with records and could have been impeached by in the trial below by counsel for Appellant. While it is certainly true that Mrs. Doyle could have made the record by moving their introduction, it is also true that her assertions as to the records was not impeached in any way in the trial below. Mr. Doyle argues that some of the purchases went to Mrs. Doyle's house in Memphis but there is also testimony that this was a rental house (T. 202,203). Even more importantly, this testimony would tend to show that Mrs. Doyle did not have furniture in this home in December 2005 shortly before the separation when her son moved into the home that had "nothing" (T. 202). In fact her testimony was that there was not even a bed there (T 202, lines 25-27)

The record is clear that Mr. Doyle was only ordered to pay $15,000 toward am increase of $40,000 in credit card debt of Mrs. Doyle with no requirement of interest until the $15,000 was paid[3]. This Court has upheld the inclusion of separately held credit cards in equitable distribution of debt even when the spouse has not made regular payments, *Prescott v. Prescott, 736 So. 2d 409 (Miss. Ct App 1999)*. The delaying actions of Mr. Doyle continue to damage Mrs. Doyle by increasing interest payments.

5. **THE TRIAL COURT DID NOT ERR IN ORDERING THAT 50% OF THE 2005 INCOME TAX RETURN BE AWARDED TO MRS. DOYLE**

Appellant's argument regarding the 2005 income tax refund is totally without merit. Karen Doyle was not working and was receiving disability for the year in question. Appellant's argument that he made all the payment rings hollow when he received $20,000 per year running the company that Mrs. Doyle founded (T. 71, lines 14-23) though the sum was not listed on his income tax return. The home was purchased after the marriage of the couple and the payments were made with marital funds. It is stated that the daughter of Mr. Doyle was used as an exemption. This would not change the character of the

[3] The $46,700 in payments did not include interest. The total credit card debt owed by Mrs. Doyle at the time of hearing was $98,038.08 (T. 253, line 24).

property and additionally the return only indicates one exemption and that being for Mr. Doyle (Ex. 96).

Mr. Doyle refers to the "court ordered payments for tuition" at page 9 of his brief apparently to show that any deduction was due to his dependent child but these allegations find no support in the record:

> QUESTION: Okay. So you have $250.00 in donations that you don't have to make, do you?
>
> ANSWER: well, that's true, yes.
>
> QUESTION: You have $375 in monthly children's allowance that you don't have to make, do you?
>
> ANSWER: I do because I'm obligated to do that.
>
> QUESTION: Obligated morally or legally?
>
> ANSWER: She's my daughter.
>
> QUESTION: morally, but you're not legally obligated, are you?
>
> ANSWER: No. (T. 92, lines 6-16)

Mrs. Doyle humbly submits to the Court that Mr. Doyle is attempting to testify in his brief and to do so in a manner that is inconsistent with his testimony at trial given under oath.

Again Appellant's argument is based upon alleged evidence not in the record, *Goolsby Trucking Co. Inc. v. Alexander,* and the ruling of the learned chancellor should be upheld and Appellant estopped from making claims that should have been raised at trial. While it might be relevant if Mr. Doyle had

testified that he could not claim his wife because someone else had already claimed her, to raise that argument today is too late. Mr. Doyle testified to having both undergraduate and masters degrees in business (T. 40, lines 2,3) and the parties would know that her exemption would be worth more to them as husband and wife than some third person. If someone had improperly claimed Mrs. Doyle we would respectfully suggest that experienced counsel would have asked her who, if anyone, claimed her as exemption in the 2005 tax year. The record does not indicate that this was done. The appellate courts of this state have in the past considered tax returns in adjusting the equities between divorce litigants, *Fitzgerald v. Fitzgerald, 914 So. 2d 193, ¶198, 199 (Miss Ct. App. 2005).*

6.THE TRIAL COURT DID NOT ERR IN HAVING APPELLANT PROVIDE HEALTH INSURANCE FOR KAREN DOYLE FOR TWELVE (12) MONTHS.

The record reflects that Mrs. Doyle was covered by her husband's group insurance policy (T. 260). Mr. Doyle argues that his wife could receive insurance through Social security or TENNCARE, a health insurance plan in the state of Tennessee. However in the contempt hearing, Mrs. Doyle explained why she could not remain on that program. Included among the reasons was the illegality of such an action on her part since she has

another source of insurance (March 4th hearing, p. 68, lines 22-27). Mrs. Doyle was covered under her husband's group policy during the marriage and sought to be continued for one year:

> ANSWER: there are several issues. I have recently been to my doctor and they have found - this is a card that they sent me. They have found some abnormalities in my mammogram.
>
> QUESTION: Your breasts?
>
> ANSWER: My breasts.
>
> QUESTION: Okay. Is this the same breast that you have been struck in before, correct?
>
> ANSWER: Yes.
>
> QUESTION: Okay. And you are asking that the medical insurance be maintained on you for at least a year?
>
> ANSWER: Yes.
>
> QUESTION: Are you able to afford that yourself?
>
> ANSWER: No. (T. 260, lines 9-23)

Appellant alleges that the Court failed to apply the *Ferguson* factors at page 9 of his brief. Mrs. Doyle has already set forth the *Ferguson* factors and how they support her position. To the extent that Appellant is really arguing against any form of alimony, Mrs. Doyle would show unto the Court that the trial judge applied the factors as set forth in *Armstrong v. State, 618 So. 2d 1278 (Miss. 1993)*. The factors to be considered include:

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,

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; or

12. Any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

618 So. 2d at 1280.

The Court considered each of the *Armstrong* factors (T. 382, line 6 to 388, line 20. In applying these factors the court found:

> As I stated earlier because this is such a short marriage normally I would not be inclined to make any sort of alimony award; however, because there is such a disparity in your income, because Mrs. Doyle is having some health issues. (T. 393, line 28 to 394, line 4)
>
> ...
>
> However, I am going to require you to continue to provide her with a medical insurance policy - the same medical policy that she has now or one substantially similar to that.
>
> I don't know - most of the time once you get a divorce you are not allowed to keep your former spouse

> on the same medical insurance policy; however, COBRA is allowed and can be provided and for 12 months you are to provide her with health insurance (T. 394, lines 18-29).

The record clearly reflects that Mrs. Doyle was having health issues at the time of the divorce (T. 260). The record also clearly discloses that some of these issues could be attributable to the actions of Mr. Doyle in striking Mrs. Doyle as shown by a photo exhibit in the record (Ex. p. 101). Because any new insurance was likely to exclude pre-existing conditions, the Chancellor's decision showed wisdom. Such and award affirmed on appeal is common, *See i. e. Flechas v Fechas, 724 So. 2d 948, 950 ¶ 4 (Miss Ct. App. 1998).*

The Appellant has sought in his various arguments to question the individual pronouncements of the Court as they related to the automobile, lawn mower, retirement accounts and furniture. This analysis does not do justice to the reasoning of the Chancellor below in that she took tax all economic consequences into account in her decision. Stated differently, the Chancellor surveyed the whole forest, the Appellant now wants her decision reversed by viewing individual trees. Consequently, though Appellant may contest some ruling it is clear that Appellant paid less than half of the increase in his retirement accounts. And paid far less than half of the increase of Mrs. Doyle credit card accounts during the marriage. The

financial losses of the wife as referred to in note 3 above ($46,700) were more than triple the amounts actually awarded her by the court ($15,000).

7. THE COURT DID NOT ERR IN ORDERING THE SALE OF THE MARITAL HOME.

Appellant makes what appears to be a logical argument as these briefs are being prepared two years after the divorce. Mr. Doyle who has appealed this case without supersedes and has delayed in perfecting this appeal as shown by this Court's own records now invokes the crash of the housing market. His argument fails to note that he thumbed his nose at the order of the court, did not seek any reconsideration and refused to place the house on the market to see what it would bring. Assuming arguendo that Mr. Doyle is correct and the house is now worth $200.000 is he prepared to hold his ex-wife harmless for any loss? Although the parties did not introduce the deed or mortgage at trial the appraisal submitted by Appellant indicates that the property is in the name of both parties though the house was not listed on the 8.05 filed by Mrs. Doyle who did not live in that residence at the time of filing that document. Mrs. Doyle did testify to having "A-1 credit" and indicated that her husband's credit was substandard (T. 251)

The court below noted the inconsistency of the testimony of the parties below as a reason for its ruling (T.371, 372). Even the Appellant's 8.05 disclosure was at odds with the appraisal. The court in applying the *Ferguson* factors noted that the parties had not given her a reliable statement of the value of the home (T 371 lines 5-10).

The learned Chancellor below properly applied the *Ferguson* factors in the equitable distribution. The Appellant in complaining of the lower court's failure to do equity has ignore the court's order making no attempt to comply as shown in the contempt hearings of March 4, 2008. The Appellant's argument should be rejected because he comes to this Court requesting an equitable remedy when the current dilemma arises in part from his inaction in not placing the home on the market to determine if it would sell. This Court has rejected claims based upon the clean hands doctrine in domestic relations matters and should do so in this instance *Prine v. Prine, 723 So. 2d 1236, 1237 ¶9(Miss. Ct App. 1998); citing V A. GRIFFITH, MISSISSIPPI PRACTICE §32 (2d ed. 1950).*

8. THE TRIAL COURT DID NOT ERR IN NOT MAKING AN EQUITABLE DISTRIBUTION OF THE RETIREMENT ACCOUNT OF MR. DOYLE

The issue here, stripped of all of its trappings, is whether Mrs. Doyle should share in the retirement benefits of

Mr. Doyle accumulated during the marriage. Mr. Doyle appears not to contest the calculation by the court below that one of his accounts increased in the amount calculated by the court (T. 21, lines 17-19). The argument seems to be that Mrs. Doyle should not get any of his retirement and the estimation of the increase in value of other accounts (T. 55,56) to total $7,500. Mr. Doyle did not have figures to show the increase in the accounts but they were approximately $22,000 and $26,243.17 (T. 56)

Appellant cites *Kilpatrick v. Kilpatrick, 732 So. 2d 876 (Miss. 1999)* to support his argument that the distribution was not equitable and fair. The Court in *Kilpatrick* said that the "Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied", 732 So. 2d at 880 ¶ 13 citing *Herring Gas Co. v. Whiddon, 616 So.2d 892, 894 (Miss. 1993)*. The Court continued, "Under the standard of review utilized to review a chancery court's findings of fact, particularly in the areas of divorce, alimony and child support, the Court will not overturn the court on appeal unless its findings were manifestly wrong", 732 So. 2d at 880 ¶ 13 citing *Mizell v. Mizell, 708 So. 2d 55, 64 (Miss. 1998) (quoting Tilley v. Tilley, 610 So. 2d 348, 351 (Miss. 1992)*.

As stated earlier, the Court delineated and discussed both the *Ferguson* and *Armstrong* factors (T. 376-382 and 382-388). The case before the Court is distinguishable from *Kilpatrick* where the court observed, "In the present case, there are no specific findings in the record to show Special Chancellor Robertson considered the *Ferguson* guidelines and applied those guidelines to the evidence" *732 So. 2d at 880 ¶ 15.*

In this case Chancellor Cobb said in her ruling:

> Mrs. Doyle's income was Social Security income; however, I don't know--sometimes I think Mr. Doyle wants to have it both ways.
>
> Sometimes he wants to say Mrs. Doyle the only thing she contributed to the accumulation of assets during this marriage was her Social Security income; however, then on the other hand he wants to say that she did this Adam's Ant and Adam's Ant produced $20,000.00 a year or more income that contributed to the accumulation of marital assets.
>
> And I believe it's probably somewhere in between that. However, the testimony was Mrs. Doyle was a stay at home mother. She stayed at home and she took care of the home and the household needs.
>
> So she has a contribution to the accumulation of the marital assets, too, and I'm going to find basically that your contribution is equal. (T. 376, line 29 to 377, line 23)

Support for the lower court's reference to the income of Adam's Ant is found in the trial record at page 71:

> QUESTION: Okay. So you are holding out there in that document that you were an employee and receiving status of self employment und Adam's Ant, Incorporated, which is fragrance products, that your income, your personal income, was $20,000.00 a year?
>
> ANSWER: [Mr. Doyle] Well, our income, Mr. Baker, was $20,000.00 a year. (T. 71, lines 16-23)

Clearly the Chancellor considered the guidelines in making her decision.

Mr. Doyle refers to Mrs. Doyle's retirement plan in his brief at page 11. Appellee can find no reference to a retirement plan for Mrs. Doyle and treats this reference as one to Social Security as addressed also in his brief. The Court considered Social Security benefits in it opinion in *Seale v. Seale, 863 So. 2d 996, (Miss. Ct. App. 2004)*. The court there discussed *Spalding v. Spalding, 691 So. 2d 435 (Miss.1997)*, " The Spalding case, as this Court understands it, holds that Social Security payments received by the wife should be credited against alimony in the situation where the amount was 'derived from her husband's Social Security account....", *691 So. 2d at 438-39.* The Court in *Seale* concluded "Thus, *Spalding* would not support a contention that an alimony obligor would be entitled to credit if the obligee was receiving benefits based on the obligee's own earning history", *Seale, at 863 So.2d 998 ¶ 7.*

CONCLUSION

The Court below made no errors detrimental to Mr. Doyle. The individual arguments made by Mr. Dolye pale when compared to the reality that Mr. Doyle was ordered to repay Mrs. Dolye at best one-third of the marital debt incurred by her during the marriage. The Chancellor fully considered the *Ferguson* and *Armstrong* factors attempted to make an overall equitable distribution of the assets and liabilities of the parties. For the reasons previously listed in Appellants summary of the arguments Karen Dolye prays that this matter be remanded to the Chancery Court of Desoto County Mississippi for further proceedings not inconsistent with the court' initial order. She further requests that all costs of these proceedings be borne by appellant to include attorney fees and losses associated with his failure to comply with the Court's prior orders.

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CERTIFICATE OF SERVICE

I, James D. Minor, Sr., attorney for Appellee, Karen Phyllis Doyle certify that I have this day mailed a true and correct copy of Appellee's brief by United States mail, postage prepaid, to the following person at the addresses listed:

Hon. Vicki Cobb
Chancery Judge
P. O. Box 1104
Batesville, MS 38606

Mr. David Hardin Doyle
8667 Belmore Lakes Dr.
Olive Branch, MS 38654

This 14th day of October, 2009

James D. Minor, Sr.