

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROBERT EDGAR ATKINSON

APPELLANT

VS.

CAUSE NO. 2007-TS-01965

BETTY RICHARDSON ATKINSON

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Bettye Richardson Atkinson  
112 Mays Cove  
Clinton, Mississippi 39056
2. M. Judith Barnett  
M. Judith Barnett, P.A.  
1764 Lelia Drive  
Jackson, Mississippi 39216
3. Robert Edgar Atkinson, Jr.  
3175 Richardson Road  
Bolton, Mississippi 39041
4. Carolyn B. Mills  
Jerry L. Mills  
Pyle, Mills, Dye & Pittman  
800 Avery Boulevard North, Suite 101  
Ridgeland, Mississippi 39157
5. Honorable Chancellor William Singletary  
Hinds County Chancery Court  
Post Office Box 686  
Jackson, Mississippi 39205-0686

SO CERTIFIED, this the 28<sup>th</sup> day of July, 2008.

  
M. JUDITH BARNETT (MSB# [REDACTED])

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## STATEMENT OF THE CASE

Bettye Richardson Atkinson (hereinafter referred to as "Bettye") and Robert Edgar Atkinson, Jr. (hereinafter referred to as "Bob") were united in marriage on May 24, 1975, in Bolton, Second Judicial District of Hinds County, Mississippi where they lived together as husband and wife in Greenville, Mississippi until August 1992. In August of 1992, they moved to Lauderdale County, Mississippi where they lived for four months before moving on to Newton County, Mississippi. In June 1998, the couple moved to Jackson, Mississippi. In the meantime, in 1988, Bettye's mother and father deeded 110 acres along with a family home to Bettye and her three sisters. This land had been in Bettye's family for more than 130 years. In October 1994, Bettye and her three sisters divided the property which was located on Richardson Road, Bolton, Second District of Hinds County, Mississippi along with a house which their mother was currently living in on 112 Marys Cove, Clinton, Mississippi. The home located at 112 Marys Cove, Clinton, Mississippi had been deeded directly from Bettye's mother to Bettye and two of Bettye's reserving unto herself a life estate. At Bettye's mother's passing the house belonged to Bettye and Bettye's sisters.

The property located at Richardson Road was divided equally amongst Bettye and her three sisters as well. They each received an equal amount of property. At the time of the conveyance of the deeds, Bettye's three sisters put their husband's names on the deeds of the property which they received. Bettye did not. Bettye and Bob had been having marital problems for a number of years and despite their attempts to work out their marriage, it was still extremely volatile. Bettye thought it was in her best interest not to put Bob's name on the deed to the parcel of property located on Richardson Road.

While Bettye and Bob were living in Jackson, they lived at 1224 Zepher Road, Jackson,

Mississippi 39209. Bob received \$20,000.00 from an annuity from his father's death in 1997 along with 50% of the family home located on Zepher Road. In August of 2003, Bob paid his brother \$20,000.00 for his brother's one-half of the house located on Zepher Road which gave Bob a 100% ownership.

In approximately 1996, Bob found out that Bettye had not put his name on the deed on the property in the country and therefore he adamantly refused to do anything to the work on the property on Richardson Road. After Bettye added his name to the deed after a great deal of duress, Bob began to go to the Richardson Road property. In August 2003, Bob and Bettye bought a double-wide trailer and placed it on the property on Richardson Road and cohabitated there until they finally separated on or about September 2004, in Bolton, Second Judicial District of Hinds County, Mississippi and the parties have lived separate ever since.

During the marriage of the parties, they had two children, namely Melanie Aileen Atkinson, a female child born on January 7, 1980 and Robert Kyle Atkinson, a male child born on January 2, 1983. Both children of the marital union are fully emancipated.

On or about July 16, 2005, Bettye learned the Bob had a girlfriend and that he was living with her in Clinton. He had abandoned the marital domicile on or about May 2005, and was living with a woman named Linda Roby at her home.

At the trial of the matter, the couples' oldest child, Melanie Atkinson, testified as to her fathers habitual cruel and inhuman treatment towards herself, her brother, Kyle, and her mother. Melanie described from her early years, witnessing her father subjecting her mother, herself and her younger brother in acts of rage and violence. Melanie gave a lengthy testimony, during which she often cried, that was gut wrenching and heartfelt. She looked her father straight in the face and told him that he had never been there for her, her mother or her brother and that he was

cruel and hateful.

Bettye took the stand after Melanie Atkinson took the stand and she testified as to the cruel and inhuman treatment that she suffered at the hands of Bob. She described in detail his tirades and failure to be medication compliant with his mental illness with bipolar as well as his controlling behavior and anger. Bettye stated on the stand that she was frightened of Bob and that so were her children. She explicitly detailed his cruelty to her with his verbal outburst and enormous demands upon her along with the cruel treatment he inflicted upon the children which only gave her anguish.

Bettye found out that Bob had a girlfriend and had moved out of the marital domicile and was cohabitation with her in Clinton. He continued to cohabitated with her up and until the time of the trial. Bob took the stand and admitted to his adultery and that he was in fact involved in a sexual relationship with this woman and he also testified that he had indeed, been guilty of habitual cruel and inhuman treatment.

During the course of the marriage the parties accumulated certain assets. They are as follows:

1. An IRA with Reliance Trust Company, 3384 Peach Tree Street Northeast, Suit 900, Atlanta, Georgia 30326. There are two IRAs one is titled to Robert E. Atkinson, Jr. account number 160035705 at an approximated amount of \$71,705.00 as of December 31, 2004. There is a second IRA in the name of Bettye Atkinson account number 160314654 in the approximated amount of \$12,464.09 as of January 1, 2007.

2. Bob has a retirement through Tenneco Retirement Plan (Deferred Vested Benefit) which is a single life annuity. Bob has choice to begin taking down his vested benefits at the age of 55 on June 1, 2008, for the amount of \$703.00 per month or on June 1, 2018, at the age of 65

in the amount of \$1,099.95 per month. The Tenneco Retirement Plan is administered through the benefit center, 100 Halfday Road, Lincolnshire, Illinois 60069-1489.

3. Bob has a 401(k) through El Paso Corporation. He has a RSP select plan (stock). This corporation is traded on the New York Stock Exchange and it's estimated value as of the time of the separation was between \$65,000.00 to \$70,000.00. It is administrated through El Paso Corporation, Post Office Box 2511, Houston, Texas 77252.

4. Bettye has accumulated a retirement account through PERS through working with the Mississippi Employment Security Commission. In the event Bettye works until she is age 63, she will have twenty-five years of service at full retirement. Her estimated monthly retirement benefit will be \$1,250.00. This plan is administered through the Public Employees Retirement System of Mississippi, 429 Mississippi Street, Jackson, Mississippi 39201-1005.

5. Social Security Benefits for Robert would be estimated benefits as of 2004. If Bob works until he is 62 years old, it would be \$1,339.00 per month. Bettye's benefits, provided she works until she is 62 years old at the time of the separation in 2004, her monthly benefits would be \$664.00 per month. The Social Security Administration administers these benefit plans at the office of Earnings Operations, Post Office Box 33026, Baltimore, MA 21290.

6. Church Bonds. Both Bettye and Bob have accumulated Church Bonds jointly as a part of their retirement plan. These are barer bonds and redeemable upon presentation. The bonds are through Rives and Livel & Company. The bonds are as follows:

- a. Bond Number B2006-\$1500.00 compounded interest with a maturity date of July 20, 2016. The approximate value at this time is \$4,980.37.
- b. Bond Number B2005-\$3,500.00 with compounded interest with a maturity date of June 20, 2015. The approximate value at this time is \$10,718.27.

- c. Bond Number B236-\$18,500.00 with simple interest with a maturity date February 10, 2014. According to the 1099 of 2004, the approximate value was \$1,313.00.

The bonds are held by Reliance Trust Company, 3384 Peachtree Street Northeast, Suit 900, Atlanta, Georgia 30326.

7. Bob has a checking account with Merchants and Farmer's Bank, checking account number 230008699 with an average balance of \$3,500.00 for each month for serval months just prior to the time of the separation.

8. Bettye and Bob had a joint checking account with Trustmark bearing account number 870-224-8268, this being the family checking account. This account had an average deposit of approximately \$3,800.00 per month.

9. Bettye did not open her own checking account until after the separation.

10. In the year 2004, which is the year of separation, Bettye Atkinson had a total earned income according to her W-2 form of \$27,151.80. The Mississippi Employment Security Commission is the only employment Bettye has.

11. Currently, Bob is employed by Universal Compression, Post Office Box 5382206, Engineers Road, Belle Chase, Louisiana 70037. Bob's gross earnings for the year ending 2004, which was the year the parties separated was \$39,310.71. It is important to note that Bob had shoulder surgery November 2003, and was off work until approximately April 1, 2005. Therefore, the time off from work would have been deducted from his gross annual pay. His gross annual earnings as of March 19, 2005, was \$11,759.74 for an average monthly wage of \$4,703.90. Bettye's average income is \$2,262.65.

12. The parties own a manufactured home located on the property on Richardson



Road in Bolton, Mississippi. The home is a 2003 Pinnacle manufactured home valued at \$80,000.00. The home is paid for and there is no debt own on either the property it sits upon or the manufactured home itself.

13. The parties accumulated the following personal property which has a marital asset value:

- a. 1997 Grand Marquis, this vehicle is currently in the possession of Bettye Atkinson and is in very poor condition. The Kelly Blue Book Value is less than \$2,550.00. It is 158,000 miles.
- b. 1994 Dodge Ram currently in the possession of Bob Atkinson. Upon information and belief the vehicle was totaled on May 2005, and was replaced with another Dodge pickup. No information has been provided from counsel opposite as to the value of this pickup.
- c. A 1999 Trail Harbor 31 foot RV purchased November 2000 for \$14,999.00. It is currently in the possession of the Defendant. The current value is unknown.
- d. A 2002 ATV 400 4x4 purchased in 2002, for \$4,200.00. The 4-wheeler is presently inoperable because the motor needs to be replaced. The current value is \$200.00.
- e. A 4-wheel drive vehicle, 1963 Jeep CJ-5. It is worth approximately \$500.00 and the wench that is attached thereto is worth approximately \$200.00.

14. The parties agreed verbally to pay the debts of Melanie's college loans.

Bettye has been paying all of Melanie's college loans and has also been carrying the cost of all of the other indebtedness of maintaining the property and the lifestyle that a double income family

would have been able to easily afford had Bob and Bettye been able to maintain their marriage. Melanie graduated from University Southern Mississippi May 2004, she has two loans. One of the loans is a Carlday Trust Fund totaling \$7,000.00 and the other loan is held by American Education Services (AES, this combines a Stffrd and Unstfd loans which total \$17,359.07) . The total amount of the loans is \$24,359.07. Since October 2004, Bettye has paid \$100.00 per month to the Carlday Trust (a promissory note which was executed by both Bob and Bettye to repay) and \$120.00 per month to the American Education Services. Bettye has continued to pay these loans each and every month despite the financial burden it has caused her. The total amount of the loans owed by Melanie is \$24,359.07. Bob's one-half would be \$12,179.53. As of the filing of this Petition, Bettye has already paid \$3,100.00 towards the Carlday Trust and \$2,880.00 to the AES for a total amount of \$5,980.00.

15. During the time that Bob has been vacant from the marital domicile, and has failed to help to support his wife and their assets, Bettye has incurred monetary debt over the course of the past thirty (30) months. Bettye was totally responsible for helping her daughter move to Florida in August 2005 and moving her back to the Jackson area in April 2006; she required two surgical procedures herself; she incurred back taxes as a result of Bob and in January 2005, their son had to be hospitalized for twenty-one (21) days and had no insurance. Bettye has had to pay a substantial amount towards these bills including borrowing \$5,000.00 from the credit union in order to assist with the children of their marriage. Bob contributed nothing.

## **SUMMARY OF THE ARGUMENT**

The trial court's granting to Bettye Atkinson of a divorce based on the statutory grounds of adultery and of habitual, cruel, and inhuman treatment, as found in Section 93-5-1 of the Mississippi Code Annotated, as amended, was supported by the evidence in this case.

The Chancellor's *Opinion of the Court* which painstakingly detailed out his division of marital assets and his application of the Ferguson factors provides for an equitable distribution of the marital assets herein and should be affirmed.

## STANDARD OF REVIEW

“In domestic relations cases, this Court must employ a limited standard of review.”

*Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss. 2004) (citing *Carrow v. Carrow*, 741 So.2d 200, 202 (Miss.1999)). “The reviewing court employs a limited standard of review for the division and distribution of property in a divorce proceeding.” *Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss. 2004) (citing *Reddell v. Reddell*, 696 So.2d 287, 288 (Miss.1997)). “This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss. 2004) (citing *Owen v. Owen*, 798 So.2d 394, 398 (Miss.2001); *Turpin v. Turpin*, 699 So.2d 560, 564 (Miss.1997)). “This Court will look to the chancellor's application of the *Ferguson* factors when reviewing questions of equitable distribution.” *Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss. 2004) (citing *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994); *Wells v. Wells*, 800 So.2d 1239, 1242 (Miss.Ct.App.2001)). “In reviewing a chancellor's judgment, this Court does not conduct a *Ferguson* analysis anew, but reviews the judgment to ensure that the chancellor followed the appropriate standards and did not abuse his discretion.” *Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss. 2004).

## ARGUMENT:

### **I. THE TRIAL COURT DID NOT ERR IN GRANTING BETTYE ATKINSON A DIVORCE ON THE GROUNDS OF ADULTERY AND HABITUAL CRUEL AND INHUMAN TREATMENT.**

The trial court granted Bettye Atkinson a divorce based on the statutory grounds of adultery and of habitual, cruel, and inhuman treatment, as found in Section 93-5-1 of the Mississippi Code Annotated, as amended. Specifically, in the Opinion of the Court, the Chancellor found as follows:

The Court finds that Bettye is entitled to a divorce from Bob on more than one ground. In his own testimony at trial, Bob acknowledged that he had moved from the marital domicile in 2004 and set up house-keeping with his paramour in Clinton. On Bob's own admission of adultery, the Court finds that Bettye is entitled to a divorce on the ground of uncondoned adultery. The Court would be remiss if it did not also find, for other purposes, that Bettye amply proved her entitlement to a divorce on the ground of habitual cruel and inhuman treatment of her. The testimony shows that in the course of this 32-year marriage Bob was overbearing, domineering, and cruel to Bettye, as well as to his own children. The parties' grown daughter, Melanie, testified about many of the details of his cruelty, essentially portraying Bob as a monster whom she hated. The effect in court proceedings of a man's adult daughter so thoroughly discrediting him and blaming him almost solely for the failure of the marriage and the deep fissure in the familial relationships was devastating.

Opinion of the Court (R. 111-112).

"Habitual, cruel, and inhuman treatment requires the non-offending spouse to show that the conduct either (1) endangers his or her life, limb, or health, or that the conduct creates a reasonable apprehension of such danger, making the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous that it makes the marriage revolting and impossible for the spouse to perform his or her marital duties, thus destroying the basis for the marriage to continue." *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (citing *Cochran v. Cochran*, 912 So.2d 1086, 1089 (Miss.Ct.App.2005) (citing *Daigle v. Daigle*, 626 So.2d 140, 144 (Miss.1993))). "The conduct must be habitual, meaning the conduct is so frequent, or continued so long, that one can reasonably conclude the condition is permanent." *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (citing *Holladay v. Holladay*, 776 So.2d 662, 677 (Miss.2000)).

"Divorces granted on this ground are based on conduct that rises to a level above "mere unkindness, rudeness, or incompatibility." *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (quoting *Brooks v. Brooks*, 652 So.2d 1113, 1124 (Miss.1995)). "Conduct that

includes habitual, false accusations, threats and malicious sarcasm, insults and verbal abuse may establish mental suffering such that the environment destroys the health and endangers the life of the non-offending spouse.” *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (citing *Robison v. Robison*, 722 So.2d 601, 603 (Miss.1998)).

“This Court reviews the factual findings of a chancellor under a manifest error standard.” *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (citing *Chalk v. Lentz*, 744 So.2d 789, 791-92(¶ 7) (Miss.Ct.App.1999)). “We will not disturb a chancellor's factual findings when supported by substantial evidence, unless we find, with reasonable certainty, that the chancellor abused his discretion, the findings were manifestly wrong, clearly erroneous, or because the chancellor applied an erroneous legal standard.” *Cassell v. Cassell*, 970 So.2d 267, 270 (Miss. Ct. App. 2007) (citing *Saunders v. Saunders*, 724 So.2d 1132, 1135(¶ 11) (Miss.Ct.App.1998)).

The evidence of habitual cruel and inhuman treatment in this case is often shocking and is overwhelming.

At trial, when asked what type of behavior her father, Robert Edgar Atkinson, exhibited toward her while she was growing up, Melanie Aileen Atkinson testified to “being very scared as a child, feeling very alienated and threatened, and there was a lot of intentionally having us walking on eggshells for no reason.” (R. 3).

When asked how her father, Robert Edgar Atkinson, treated her mother, Bettye Atkinson, Melanie stated that “he was very mean to her, and every time she would be there to work with him, she was always cussed at and fussed at for not doing things quickly enough or not doing things just the way he wanted.” (R. 4).

Melanie testified that she has been in therapy since she was 19 for depression and anxiety and that it was “hard growing up not really having a father to put his arms around you and tell

you how much he loves you.” (R. 5).

Melanie testified that she didn’t spend a lot of time with her father because she was scared of him and didn’t want him to hurt her anymore. (R. 6.)

Melanie also testified that her father’s behavior had been that way as long as she could remember. (R. 6).

Melanie testified that her mother added her father’s name to the deed to the property she inherited out of fear and intimidation. (R. 7). She stated that the family was “terrorized” until her mother finally put her father’s name on the deed. (R. 17).

Melanie testified that her mother was very weak and that her father took advantage of her mother and cast a “huge shadow of fear and terror” over his Wife. (R. 7).

Melanie testified that they never knew when her father was going to “come home drunk or go off drunk, mad, and then come back in and we were going to get it.” (R. 7). She further stated that what she meant by “going to get it” was being hollered and screamed at and that her father was “terrible.” (R. 7-8).

Melanie gave examples of her father “cussing them out like a dog” while her mother and young brother were forced to work in the middle of the night spreading concrete at the orders of her father. (R. 9).

Melanie testified to an incident wherein the back yard caught fire and her father picked up a rake and held it up to her mom at which her younger brother jumped in front of his mother and stated “if you hit her, I will kill you.” (R. 11). She went on to say that “He could have killed her. He could have killed her right then. He was very angry. He was so angry.” (R. 11.)

Patricia Hughes, the sister of Bettye Atkinson, testified that Robert Edgar Atkinson “made it very uncomfortable for anyone to be around them together.” (R. 27).

Patricia testified to an incident when her sister left her husband and fled with the children to Patricia's home driving at night from Little Rock, Mississippi to Clinton, Mississippi in a truck with lights that did not work properly showing a "real act of desperation." (R. 29).

Patricia testified about a Thanksgiving holiday at her parent's home where Robert Edgar Atkinson got angry, drunk, and left the house "in a tear" in a car he crashed up the road. (R. 31). She further testified that the family was so afraid of him that they locked the door to the house to prevent him from coming back in but he proceeded to knock the door off of the hinges. (R. 31). From the broken doorway, Robert Edgar Atkinson proceeded into the bedroom where Patricia and Bettye were and he proceeded to push Bettye on the bed, pull the phone away from her, and jerk it out of the wall, causing Bettye's elderly father to step in between Bettye and Robert Edgar Atkinson and ask him to leave. (R. 32). Robert Edgar Atkinson left, but did so laughing and proceeded to steal his in-laws car in the process. (R. 32).

Patricia testified that Robert Edgar Atkinson "terrified our family" and was "unstable." (R. 32).

Bettye Atkinson testified to a horrific incident on September 15, 2005 during which Robert Edgar Atkinson asked his Wife (who the previous evening had told him she wanted a divorce) for sex, to which she refused. (R. 108). Robert Edgar Atkinson stomped out of the house, spun the wheels of his vehicle while leaving the property, but then returned to the home, to a terrified Bettye. (R. 108-109). Robert Edgar Atkinson then told Bettye he was not leaving and that she was the one that was leaving. (109). Robert Edgar Atkinson proceeded to tell Bettye that "if you stay here, I'm going to rape you." (R. 109). Robert Edgar Atkinson then grabbed Bettye up by her arms and then around her neck and dragged her toward the front door of their mobile home with the intent to throw her from the elevated home onto the ground beneath. (R.



110). Bettye was understandably scared and in fear of imminent bodily harm. (R. 110). Then, Robert Edgar Atkinson changed his direction and dragged Bettye to the bedroom and began removing her clothes. (R. 110-111). Bettye was able to diffuse the situation by saying she could remove her own clothes and he let her go. (R. 111). Bettye introduced pictures of the bruises caused by Robert Edgar Atkinson's terrible actions. (Exhibit 9).

Bettye testified that in there were numerous incidents of maliciousness, hatefulness and meanness throughout the marriage. (R. 112). She testified that she often begged Robert Edgar Atkinson to be nicer to her and the kids, but he wouldn't. (R. 112).

Bettye testified that Robert Edgar Atkinson had choked her while she was pregnant (R. 114). She also testified to an incident where Robert Edgar Atkinson actually put a knife up to her breast and pushed it in. (R. 114, 116).

Bettye talked about the incident where the back yard caught fire and her husband picked up a rake and prepared to hit her with it at which time her young son jumped in front of her and stated to his father "if you hit her, I'll kill you." (R. 119).

All of these acts more than adequately support the Chancellor's finding that Bettye Atkinson was entitled to a divorce on the ground of habitual cruel and inhuman treatment.

As to the adultery, the Chancellor found that Bob acknowledged that he had moved from the marital domicile in 2004 and set up house-keeping with his paramour in Clinton thus amounting to Bob's own admission of adultery. (R. 111-112). Melanie Atkinson testified that her father was living with another woman. (R. 12). Robert Edgar Atkinson admitted he was living with another woman. (R. 46).

This Court should affirm the grant of divorce, finding that this uncontradicted testimony provided substantial, credible evidence upon which the chancellor could have granted Bettye

Atkinson a divorce upon the grounds of adultery and cruel and inhuman treatment.

## **II. THE TRIAL COURT PROPERLY APPLIED THE FERGUSON FACTORS FOR AN EQUITABLE DISTRIBUTION OF THE MARITAL ASSETS.**

In its *Opinion of the Court*, the Chancellor painstakingly detailed out his division of marital assets and his application of the Ferguson factors as follows:

3. *Equitable considerations in the division of the marital estate.* The Mississippi Supreme Court has delineated certain factors in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994), for consideration by the Court in determining what is an equitable division of the parties' marital estate. A discussion of such factors and the proof as related to each follows:

a. *Substantial contribution to the accumulation of the property.*

(1) *Direct or indirect economic contribution to the acquisition of the property.* Exhibit 11 shows that Bettye was in the work force for all but seven of the thirty-two years of this marriage; six of those seven coincide with the period when the parties' children were small. Though Bob was the primary income earner during most of the marriage, the testimony shows that Bettye largely reared the children and made the parties' home. In fact, the evidence is very clear that she and the children did almost all the work around the household. Bettye, then, has made a significant direct and indirect contribution to the acquisition of this marital estate.

(2) *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.* Through the testimony of Bettye herself, the parties' eldest child, Melanie, and Bettye's sister, it is very apparent to the Court that there was very little stability or harmony in this marriage or in the relationships between Bob and other family members. Bettye's sister, Patricia Hughes, testified that Bob was constantly putting Bettye down and berating her in front of others; Melanie, the parties' daughter, testified that the family's life together with Bob was one of complete terror, physically, mentally and emotionally. Ms. Hughes, who obviously knew the parties during the entire course of their marriage and for the past several years were next door neighbors, testified that Bettye was the primary caretaker of the parties' property and the children. Bettye and the children even had to come stay with Ms. Hughes and her family temporarily at one point in the marriage. Especially considering that the marriage has been a long one, it is apparent that Bettye has had to suffer through an unreasonable amount of abuse and degradation. This factor weighs heavily in Bettye's favor as the Court considers how to arrive at an equitable division of the estate Bob and Bettye accumulated during their marriage.

(3) *Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.* There was essentially no evidence offered to indicate that either party contributed to the other's education, training, or other accomplishment bearing on his or her earning capacity. This factor, then, has little bearing on Bob and Bettye's circumstances in the division of their marital estate.

b. *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 otherwise.* The evidence does not show that either party unreasonably expended marital resources or wasted the marital estate. To the contrary, the one thing that Bob and Bettye seem to have done a good job of is in having lived within their means and in having accumulated a reasonable estate on their income. Of course, a good portion of the marital estate exists as a result of Bettye's inheritance of land. That property was converted to a marital estate by Bettye when she titled it to herself and Bob, although it seems clear through the testimony that this prior distribution to him was not entirely voluntary. Both Melanie, the parties daughter, and Patricia Hughes testified that Bob browbeat Bettye for years until she finally relented and put his name on the title, as Patricia said, "to keep peace in the family."

c. *The market value and the emotional value of the assets subject to distribution.* Bettye clearly has a far greater emotional attachment to the land, and thus the mobile home on the land, than does Bob. The Court will fashion a division of the marital estate which accommodates Bettye's strong preference that she be awarded that property.

d. *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.* For reasons previously discussed, the land inherited by Bettye does not, unfortunately, fall into the category of this type property any longer.

e. *Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distributions.* Of necessity the Court will include in the award to Bettye some portion of funds set aside by Bob for retirement, with the potential of a tax or other penalty in said distribution. It will be the Court's intention in making such award that Bettye not bear the expense or penalty associated with any transfer of such funds or accounts.

f. *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.* The intent of Ferguson is to divide the marital assets in an equitable fashion and, if possible, in such manner as to avoid future payments, necessity of future contact, and thereby friction, between the parties. This is a marriage of long duration, but there is also a very volatile relationship between Bob and Bettye. The award made hereinbelow is designed to eliminate any need for future contact between the parties.

g. *The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity.* Both Bob and Bettye have done well in providing for their future support and their retirement years and still have some years to further prepare. With the division of their marital estate made hereinbelow, the Court believes that they will each respectively have sufficient means to support themselves.

4. *Equitable distribution of the marital estate.* The analysis of the Ferguson factors outlined hereinabove leads this Court to find that after a long marriage in which Bettye worked and contributed to the actual family income for most of the time and in which she primarily cared for the parties' children and made a home for the family, she contributed at least as significantly as did Bob to the accumulation of the marital estate and more than he did to meeting the needs of the family itself. Therefore, the Court finds that the parties should more or less equally divide the marital estate. Since the modest debt, exclusive of the student loan debt, is Bettye's, the Court makes her responsible for its repayment. However, with regard to the student loan debt, the Court finds that from Bob's own admission he promised to share that expense with Bettye for either child who graduated from college, and he should be required to honor that commitment. His promise in that regard is found by the Court to be no different from a commitment made by a party at the time of the dissolution of a marriage to contribute to the post-secondary education of children, and Bob's commitment should not be withdrawn by him, especially after the expenses therefor have already been incurred, simply because of a change of heart brought about by the parties' divorce. Bettye is charged with continuing to pay the loans on whatever basis she might arrange, and the Court will adjust the distribution of the marital estate below in the amount of \$11,250 for Bob's one-half contribution.

The Court finds that an equal division of the marital estate will be achieved, and one that is equitable to the parties respectively in light of the factors and evidence discussed above, and adjusting for Bob's portion of the student loan obligation, with the following distributions and awards:

- a. Bettye is awarded the exclusive use, possession, and ownership of the 32.5 acres at 3175 Richardson Road, Bolton, Mississippi, together with the mobile home situated thereon and all furnishings, fixtures, and appurtenances thereof, except those specifically awarded Bob below, and her personal affects, all valued at \$200,250;
- b. Bettye is awarded the exclusive use, possession, and ownership of the 1997 Mercury Grand Marque automobile which she presently drives, valued at \$2,500;
- c. Bettye is awarded her separate checking account;
- d. Bettye is awarded the entirety of the Reliance Trust Company IRA account in her name, Account No. 0160314654, which reflected on Exhibit 12 an approximate value of \$12,464.09, together with any accumulations;
- e. Bettye is awarded the entirety of the Rives Leavell & Company account, which reflected on exhibit 5 an approximate value of \$24,537.82, together with any accumulations;
- f. Bettye is awarded the entirety of Reliance Trust Company Account No. 0160035705, which reflected on Exhibit 6 an approximate value of \$80,596.54, together with any accumulations;
- g. Bettye is awarded from Bob the sum of \$30,000 cash, payable within sixty days of the entry of the judgment on this opinion;
- h. Bob is awarded the exclusive use, possession and ownership of the 3 acres and house located at 1224 Zepher Road, Jackson, Mississippi, together with all furnishings, fixtures and appurtenances thereto, valued at \$59,200;
- I. Bob is awarded the 1994 Dodge truck, valued at \$3,000;
- j. Bob is awarded the late model Dodge truck that he presently drives, valued at \$9,000;
- k. Bob is awarded the 1963 Jeep, valued at \$700;
- l. Bob is awarded the 1999 recreational vehicle, valued at \$12,000;

- m. Bob is awarded that certain ATV which needs a motor, valued at \$300;
- n. Bob is awarded the lawn mower valued at \$4,000; the tractor and front-end loader valued at \$7,700; and the bulldozer valued at \$4,400;
- o. Bob is awarded his separate checking account, valued at trial at \$20,963;
- p. Bob is awarded his personal affects and all other personal property from the marital domicile of which he has already taken possession; and
- q. Bob is awarded the entirety of his El Paso Corporation retirement account, which reflected on Exhibit 14 an approximate value of \$237,387.35, together with any accumulations.

The parties are required to bear the expense of their own counsel, respectively.

Opinion of the Court (R. 111-124).

Appellant's argument that equitable distribution in this, or any case, should be 50-50 is without merit and without support of law.

"Mississippi is not a community property state." *Savelle v. Savelle*, 650 So.2d 476, 478 (Miss. 1995). "This Court, by judicial decision, has adopted equitable distribution." *Savelle v. Savelle*, 650 So.2d 476, 478 (Miss. 1995) (citing *Hemsley v. Hemsley*, 639 So.2d 909 (Miss.1994) and *Ferguson v. Ferguson*, 639 So.2d 921 (Miss.1994)).

As to the trial Court's assessment of the Ferguson factors complained of by Appellant, there is no factual basis for a challenge thereto.

Appellant conceded that "both parties contributed to the accumulation of marital assets" but takes the unsupported position that he contributed to the stability and harmony of the marital and family relationship. The facts of Robert Edgar Atkinson's violent temper, violent behavior, terrorizing acts, meanness, and other acts as outlined by the Chancellor in his analysis certainly

do not favor Robert Edgar Atkinson in any way, shape, form or fashion. He terrorized his own family, and especially his Wife, for 32 years, in threats of harm and rape among others, and should not benefit therefrom.

Robert Edgar Atkinson cites fault with the Chancellor's analysis regarding emotional value of the assets subject to distribution and says he had an "equally strong attachment to the property." This position is untenable. First of all, Bettye and her three sisters inherited this property, which was in her family for over 100 years, from their parents in 1987. (R. 128-129). She and her sisters sub-divided the property into parcels in 1993. In 1998, Bettye was browbeat and terrorized by Robert Edgar Atkinson into putting his name on the deed to this property. (R. 130). The parties separated approximately six (6) years later. Bettye and her sisters inherited this property from their parents and nobody can reasonable say that Bettye would not have a sentimental attachment to the family homestead which was in the family for over a century. To Robert Edgar Atkinson, this property is no more than a patch of dirt with a dollar sign attached thereto.

Appellant's statement that "Husband paid \$100,000 plus cash for the home - he should be allowed to live there and enjoy his life" is faulty in that the money spent was not "Husband's" but rather was marital assets which were equitable divided by the Chancellor herein.

Appellant's blanket assertion that a 50-50 split of all marital assets will accomplish the factor concerning the needs for financial security with due regard to the combination of assets and earning capacity is merely a blanket statement with no factual basis or argument.

The Chancellor's *Opinion of the Court* which painstakingly detailed out his division of marital assets and his application of the Ferguson factors provides for an equitable distribution of the marital assets herein and should be affirmed.

**CONCLUSION**

For all of the above and foregoing reasons, Appellee requests that this Honorable Court affirm the decision of the Chancery Court of the First Judicial District of Hinds County, Mississippi.

Respectfully submitted, this the 28<sup>th</sup> day of July, 2008.

BETTYE RICHARDSON ATKINSON

BY: 

M. Judith Barnett (MSB # )

M. Judith Barnett (MSB #99766)  
M. Judith Barnett, P.A.  
1764 Lelia Drive  
Jackson, Mississippi 39216  
Tel: (601) 981-4450  
Fax: (601) 981-4717  
**mjbarnettpa@comcast.net**



**CERTIFICATE OF SERVICE**

I, M. Judith Barnett, do hereby certify that I have this day caused one (1) true and correct copy of the Brief for the Appellee to be forwarded, via United States Mail, postage prepaid, and addressed as indicated below to the following:

Carolyn B. Mills  
Jerry L. Mills  
Pyle, Mills, Dye & Pittman  
800 Avery Boulevard North, Suite 101  
Ridgeland, Mississippi 39157

Honorable Chancellor William Singletary  
Hinds County Chancery Court  
Post Office Box 686  
Jackson, Mississippi 39205-0686

This service effective this, the 20<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
M. Judith Barnett (MSB #99766)