

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

NO. 2008-CA-00254

DANIEL ALAN BRADY

APPELLANT

versus

DEBORAH C. BRADY

APPELLEE

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

Daniel Alan Brady, Appellant

Deborah C. Brady (Lapeyrouse), Appellee

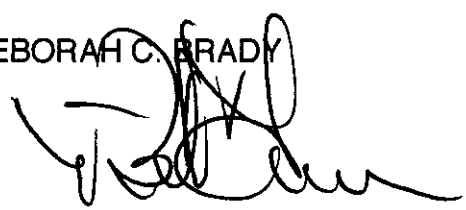
Frank P. Wittmann III, Attorney of the Appellant

Blewett William Thomas, Attorney for the Appellee

Honorable James B. Persons, Chancellor

Submitted this the 15th day of November, 2008.

DEBORAH C. BRADY

By:   
BLEWETT WILLIAM THOMAS  
ATTORNEY FOR APPELLANT

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**versus**

**DEBORAH C. BRADY**

**APPELLEE**

**APPEAL FROM THE CHANCERY COURT  
FIRST JUDICIAL DISTRICT  
HARRISON COUNTY, MISSISSIPPI**

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**BRIEF OF THE APPELLEE**

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**ORAL AGRUMENT NOT REQUESTED**

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Honorable James B. Persons, Chancellor

Submitted this the \_\_\_\_\_ day of October, 2008.

DEBORAH C. BRADY

By: \_\_\_\_\_  
BLEWETT WILLIAM THOMAS  
ATTORNEY FOR APPELLANT

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## STATEMENT OF THE ISSUES

An alimony award should not be reserved when the chancellor applies the *Armstrong* factors to the applicable facts of the case and determines that rehabilitative alimony is warranted until the spouse becomes self-sufficient.

## STATEMENT OF THE CASE

Deborah Lapeyrouse and Daniel Brady were married on July 24, 2004, in Hattiesburg, Mississippi. On or about February 28, 2005, Daniel Brady moved out of the marital home. On March 24, 2005, Deborah Brady filed her complaint for divorce alleging adultery or, in the alternative, irreconcilable differences. On April 11, 2005, Dan filed his answer and counter-claim, which alleged habitual cruel and inhuman treatment.

On October 26, 2007, a Judgment of Divorce was entered by the Harrison County Chancery Court, whereby Deborah Brady was granted a divorce from Daniel Brady on the statutory grounds of adultery. Insurance proceeds in the amount of ~~\$95,120~~, which was compensation for hurricane damages to the marital residence, was ordered to be applied to the outstanding mortgage on this property, with the property to be sold and the mortgage paid off. Any remaining proceeds from the sale of this property were to be paid to Deborah Brady. Due to the fact that Deborah Brady had owned the marital property prior to the marriage, and further considering that this property had been used immediately after the marriage as security for 2 mortgages in excess of \$175,000, the chancellor awarded Deborah Brady rehabilitative alimony of \$1500 per month, beginning in November 1, 2007 and terminating 36 months after the month that the residence was sold, with the chancery court reserving the right to review the rehabilitative alimony award after the house is sold. Additionally, Deborah Brady was awarded \$3950 in attorney's fees.

On November 5, 2007, Daniel Brady sought reconsideration of the Judgment of Divorce. His motion for reconsideration was denied on March 27, 2008.

Subsequent to the entry of the Judgment of Divorce on October 26, 2007, Daniel Brady filed a timely notice of appeal.

### STATEMENT OF THE FACTS

Deborah Lapeyrouse and Daniel Brady were married on July 24, 2004, in Hattiesburg, Mississippi. After the marriage, they established Debbie's residence in Saucier, Mississippi, as the marital home. On or about February 28, 2005, Dan moved out of the marital home. On March 24, 2005, Debbie filed her complaint for divorce alleging adultery or, in the alternative, irreconcilable differences. On April 11, 2005, Dan filed his answer and counter-claim, which alleged habitual cruel and inhuman treatment. Subsequently, the Harrison County Chancery Court awarded Debbie exclusive use of the marital residence in Saucier, Mississippi, pending the adjudication of the respective divorce complaints.

Prior to her marriage to Dan, Debbie was working full-time for the Sun-Herald newspaper in Biloxi. She left this job shortly before her marriage to Dan. The testimony confirms that Dan encouraged Debbie to leave her job and remain at home. During her employment with the Sun-Herald, she had accumulated \$4,000 in a 401(k) retirement plan. The trial testimony further shows that it was





necessary for Debbie to use these retirement funds for the purchase of the couple's wedding rings because Dan had "maxed out" his personal credit cards.

The marital home in Saucier sustained substantial wind damage during Hurricane Katrina, which rendered the residence uninhabitable although not destroyed or irreparable. There was no flood damage, and the damage was compensable under the existing insurance coverage. Dan had not resided at the residence since February 2005, and he took with him all his possessions at the time he vacated the residence in Saucier.

As a result of the damage to the Saucier residence during Hurricane Katrina, it was necessary for Debbie to relocate and return to the work force. As she had family in Texas, she relocated to San Antonio, Texas, and commenced working for the major San Antonio newspaper selling classified ads. She subsequently obtained employment with UPS as an account representative. Debbie has less than one year of college, and at the time of the trial, she was earning \$2000 per month before taxes and other mandatory deductions, with a resulting net monthly wage of \$1556.<sup>1</sup> Her prospects for employment at a higher wage are unlikely. She has no specialized marketable skill, she has one year of general college education, and she will be 60 years of age on January 6, 2009. She has no chronic health problems at this time and is in generally good health. Although she previously had benefit of her residence in Saucier, Mississippi, which was unencumbered by any mortgage at the time of her marriage to Dan, she now pays \$550 per month in rent. She has monthly living expenses of \$2941.

in Texas. Further, she is required to pay \$307.99 per month in taxes and insurance on the property in Saucier, although the need for extensive repairs renders the residence uninhabitable at this time.

Dan's monthly income is considerably larger and more stable than Debbie's income. Dan works for the federal government as a safety engineer. He earns a gross annual salary of \$83,949 from his employment at Stennis National Aeronautics and Space Administration, and he has a GS 13, step 5 rating. His net income from this job (after taxes and deductions) is approximately \$5135 per month. He also receives approximately \$30,000 from a military pension that provides income of an additional \$2251 per month after taxes. At the time of trial, Dan's monthly income was roughly \$7386. Dan was born on May 6, 1947, and has not physical ailments that preclude him from maintaining his current job with his employer.

Prior to the marriage in July of 2004, Debbie owned a house on four acres of cleared land, which appraised for \$225,000 in September 2004. She had lived in this house since 1995, and there was no mortgage or other encumbrance on her residence at the time of her marriage to Dan. She did owe \$2200 in unpaid property taxes for the preceding 2 years. Contrary to Dan's representations in his brief, the house was not in need of repairs or any extensive improvements, and the value established by the September 2004 appraisal confirms that the residence was in good structural condition. In addition to real property valued at

\$225,000, Debbie brought into the marriage 2 vehicles, a horse, a riding mower, a shop full of tools, and most of the household furnishings.

Dan did not bring an immense estate into this marriage. The household furnishings he contributed consisted of a recliner, a television, a bed frame, and his personal belongings. He did bring another horse, a horse trailer, a vehicle, a bench vise and a grinder. Dan did not bring any real estate into the marriage.

However, Dan did bring considerable debt with him into this marriage. Among those debts Dan brought with him was an obligation to pay \$1595 per month in permanent alimony to a previous wife. In spite of having a substantial net monthly income, at the time of the marriage Dan was essentially living off pay-day loans, with Dan spending over \$1200 during the first month of marriage in payments to pay-day lenders for his prior loans. Further, during the first month of marriage Dan was spending money he had, as he incurred \$384 in overdraft charges alone during this month. The testimony at trial shows that Dan continued to make payments to pay-day lenders after the marriage and repeatedly incurred overdraft charges during the entirety of the 8 months he lived with Debbie.

Prior to the marriage, Dan came to believe there was a simple solution to his financial woes: place a mortgage on Debbie's home. On August 3, 2004, roughly 2 weeks after their marriage, Debbie executed a warranty deed conveying to Dan joint tenancy in the residence and property situated in Saucier, Mississippi. A month later, Dan and Debbie took out a \$100,000 30-year home equity loan using Debbie's home as security. The net proceeds from the loan

were \$91,74856, which was deposited into Dan's Hancock Bank account. The testimony at trial showed that Debbie rarely wrote checks on this Hancock Bank account and that she rarely, if ever, used the debit card for this account. During the month immediately after the loan was disbursed and deposited into Dan's account, over \$83,000 from the proceeds had been spent. The testimony at trial also showed that only a portion of the funds from this initial disbursement was spent on home repair. Due to the fact that only a marginal amount of these funds were used for home repair, within months Debbie and Dan sought an additional loan for further repairs to the property. The second loan (which was a refinancing of the first loan obtained in September 2004) netted the sum of \$35,947.50, however the second loan was obtained at a cost of \$22,654.58 in up front fees and other related costs. The new monthly mortgage payment on Debbie's home was now \$1191.53 per month, with the first payment due on February 1, 2005. At the time of Debbie's marriage, she did not have a mortgage on her home. Within 2 days of depositing the \$35,947.92 received from the refinancing of the first mortgage, the loan proceeds were gone. By the end of February 2005, Dan was gone, too.

Of the \$158,602.50 in proceeds received from the two mortgages on Debbie's home, only about \$5000 was put into Debbie's checking account at Kessler Federal Credit Union, which she had maintained prior to the marriage. Debbie spent this money on a few household items and on gifts for Dan's children and grandchildren. The remainder of the proceeds was put in Dan's

account at Hancock Bank, which was his primary account. Dan also used this account to deposit his paychecks during the first months of the marriage. The chancellor was able to discern that from the total proceeds of \$159,602.50, Dan paid prior personal obligations totaling \$30,289, which included \$15,000 for the payment of Dan's personal credit card debts, \$11,165 for Dan's past due alimony payments from a prior marriage, \$4000 for rental expense obligations, and \$124 for the payment of Dan's on-line dating service expenses.

Debbie didn't enjoy such extensive benefits from the loan proceeds. She was able to pay \$3500 in her personal credit card and medical debts, and additionally \$2340 was used to pay past due real estate taxes that accrued before her marriage to Dan. The bank records indicate that out of the \$158,602.50 received from the two mortgages, \$30,300 was spent on home repairs (specifically a patio deck and a roof replacement) and \$14,000 for the replacement of a central heating unit. The remainder of these loan proceeds was frivolously squandered.

Not only did Dan squander Debbie's assets immediately after the marriage, he also abandoned his new wife for a former girlfriend after, figuratively speaking, the well had been pumped dry. Prior to abandoning Debbie a few months into the marriage, Dan told her that he was in love with another woman. Debbie attempted to save the marriage, but it was futile. Dan moved into the guest bedroom, but he moved out of the house around February 28, 2005, and rented a house in Diamondhead, Mississippi. Dan testified at trial that he

commenced having sexual relations with his new love and that she frequently stays at his house. Shortly after the separation with Dan, Debbie filed for divorce.

As if the financial havoc created by Dan was not destructive enough, Hurricane Katrina did extensive wind damage to the residence in Saucier. Ultimately, the insurer determined that there had been roughly \$95,000 in covered losses to the residence. These funds were ultimately applied to the mortgage balance pursuant to the chancellor's Judgment of Divorce. Debbie was also eligible for living expense benefits due to her displacement from the house and losses of her individual personalty at the residence. Subsequently, Dan claimed that Debbie engaged in fraud by obtaining this insurance benefits to his exclusion. The chancellor saw no merit in Dan's claim to these insurance payments.

Ultimately, Debbie was granted a divorce from Dan on the statutory grounds of adultery. After considering all factors relevant to Debbie's personal and financial condition at the time of divorce, the chancellor ordered Dan to pay rehabilitative alimony in the amount of \$1500 for 3 years after the sale of the Saucier property.

The chancellor's Judgment of Divorce<sup>1</sup> succinctly addressed all of the *Alexander* factors in his determining that Debbie was entitled to rehabilitative alimony. This determination was based on facts that were contained in the trial record. The chancellor's reasoning and application of these factors will be discussed in further detail in the Argument.

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<sup>1</sup> Judgment of Divorce, pp. 22-23.

## SUMMARY OF THE ARGUMENT

Dan's appeal alleges that the award of rehabilitative alimony was in error for the asserted reason that Debbie was self-sufficient after the divorce. Dan's argument ignores the fact that Debbie has no specialized work skills and that she has extremely limited possibilities to advance beyond her current employment, which pays gross wages of roughly \$2000 per month. Further, Debbie is now required to rent her living accommodations (whereas she owned a debt-free house appraised at \$225,000 before she married Dan) and in all probability, Debbie will not be able to maintain employment in a competitive work force for more than 5 years from this date.

The chancellor made a detailed analysis of the *Alexander* factors in the Judgment of Divorce, and then he applied the facts and record in this case to the *Alexander* factors. On the basis of these findings, the chancellor determined that rehabilitative alimony was proper in view of the loss of her residence through Dan's financial intrigues and other relevant facts.

For those reasons set forth in more detail in the Argument, the chancellor's determination that Debbie was entitled to rehabilitative alimony was reasoned, appropriate and necessary under the facts of this case. Accordingly, the chancellor did not commit error in his award of rehabilitative alimony.

## ARGUMENT

1. AN ALIMONY AWARD WILL NOT BE RESERVED WHEN THE CHANCELLOR APPLIES THE *ARMSTRONG* FACTORS TO THE APPLICABLE FACTS OF THE CASE AND DETERMINES THAT REHABILITATIVE ALIMONY IS WARRANTED UNTIL THE SPOUSE BECOMES SELF-SUFFICIENT.

The financial indiscretions committed by Dan during the marriage supports the propriety of granting rehabilitative alimony. The record shows that Dan came into this marriage with excessive debts, and once the marriage was formalized, he promptly proceeded to mortgage Debbie unencumbered residence. Although Dan asserts that Debbie home was desperately in need of repairs, this was not the case. Dan had shopped by lenders and he actually submitted the application for the initial mortgage on Debbie's home prior to the marriage. Over \$170,000 was obtained through two mortgages that were placed on this property immediately after the marriage.

The record shows roughly \$50,000 of the mortgage proceeds was used for property repair. The bulk of it was squandered on frivolous purchases or the payment of Dan's personal debts. Hurricane Katrina rendered the residential renovations worthless. In fact, the storm winds were so strong that it rendered the house uninhabitable. What had been appraised as a \$225,000 residence prior to the marriage to Dan now had \$95,000 in storm damage and was encumbered with a \$170,000 mortgage. Dan placed Debbie, who had negligible financial obligations before the marriage, deeply in debt within only a few months after

the marriage. The award of rehabilitative alimony was only a token of the debt he had placed on Debbie through the mortgages on her home.

The rehabilitative alimony awarded in this case has a time limitation attached and it was awarded for the specific purpose of rehabilitating Debbie by allowing her to become self-supporting. The chancellor, in his judgment of divorce, stated that Dan is to pay rehabilitative alimony as compensation for the loss Debbie suffered through his acts of encumbering her residence. This validates the award, which will enable Debbie to rehabilitate herself in order to maintain the standard of living she was accustomed to prior to her marriage to Dan.

In reviewing domestic relations matters, the factual findings of a chancellor that are supported by credible evidence will not be disturbed, unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Ferguson v. Ferguson*, 639 So.2d 921, 930 (Miss. 1994). Alimony awards are within the discretion of the chancellor, and a chancellor's award of alimony will not be reversed on appeal absent manifest error or abuse of discretion. *McEachern v. McEachern*, 605 So.2d 809, 815 (Miss.1992); *Cherry v. Cherry*, 593 So.2d 13, 19 (Miss.1991); *Powers v. Powers*, 568 So.2d 255, 257-58 (Miss.1990). The word "manifest", as defined in this context, means "unmistakable, clear, plain, or indisputable." *Magee v. Magee*, 661 So.2d 1117, 1122 (Miss.1995).

On appeal, the entire record be reviewed and considered. *Culbreath v. Johnson*, 427 So.2d 705, 707 (Miss.1983); *Blakeney v. Blakeney*, 244 So.2d 3 (Miss.1971). Evidence that supports or reasonably tends to support the findings of fact below, together with all reasonable inferences that may be drawn from the evidence and that favor the lower court's finding of fact, must be accepted. *Blakeney*, 244 So.2d at 4. As to issues of fact where no specific findings have been articulated by the chancellor, this Court proceeds upon the assumption that the chancellor resolved all such fact issues in favor of the appellee. *Love v. Barnett*, 611 So.2d 205, 207 (Miss.1992); *Tedford v. Dempsey*, 437 So.2d 410, 417 (Miss.1983).

The Mississippi Supreme Court has defined rehabilitative periodic alimony as "an equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim." *Hubbard v. Hubbard*, 656 So.2d 124, 130 (Miss. 1995). Rehabilitative alimony focuses upon providing interim assistance to allow a party a fresh start and not judicially redistribute assets. *Carnathan v. Carnathan*, 722 So.2d 1248, 1252 (Miss. 1998). "Rehabilitative periodic alimony" is not intended as an equalizer between the parties but is for the purpose of allowing the less able party to start anew without being destitute in the interim." *Hubbard*, 656 So.2d at 130. A chancellor has the discretion to have the payment of rehabilitative alimony to terminate upon the occurrence of a specific event. *Waldron v. Waldron*, 743 So 2d 1064, 1066 (Miss. Ct. App. 1999).

In considering the purpose for the grant of rehabilitative alimony, the inquiry must be whether rehabilitative alimony is warranted. An appellate court will overrule a chancellor's decision only if it finds the evidence lacked credibility or that the chancellor manifestly erred. *See Ferguson*, 639 So.2d at 930. Supportive evidence will be accepted and reasonable inferences from that evidence will be used to support the finding below. *See Anderson v. Anderson*, 692 So.2d 65, 72 (Miss. 1997). To determine whether the rehabilitative alimony is reasonable, an appellate court is required to utilize the factors elicited in *Hemsley v. Hemsley*, 639 So.2d 909, 912-13 (Miss. 1994).

In determining the proper amount of alimony, the chancellor should consider the following factors:

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.

*Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss.1993).

Addressing these factors individually, the chancellor determined first that Dan currently earns more than five times as much as Debbie, and that she left her former position after the marriage and at Dan's request. Had she not been requested by Dan to leave the work force, she could have been earning more at the time of trial.

As to the second factor, the chancellor determined that both Dan and Debbie were in fair to good health, but Dan has a far greater earning capacity.

Concerning the needs of each party, the chancellor determined that Dan had some health issues, but he also has adequate insurance coverage through the federal government.

Concerning the respective assets of Dan and Debbie, the chancellor determined that there was no evidence presented that either party had assets at the time of trial other than vehicles and personal property. The chancellor determined that Dan had both a salary from his federal employer, which would ultimately provide him with retirement benefits, and that he was receiving a military pension. The chancellor also considered that Dan has alimony payments due a former spouse. As to Debbie's net worth and retirement benefits, the chancellor found that Debbie had a small retirement plan prior to her marriage to

Dan, which was spent during the marriage. There were no other net assets held by Debbie.

As the marriage was for a short duration, the chancellor weighed this factor against an award of alimony, and the absence of minor children in the home was also a factor weighing against the award of alimony. The parties were of a similar age, and the chancellor considered that they would both be eligible for retirement in a few years.

As for the parties' standard of living during the marriage and at the time of the support determination, the chancellor found that the parties had spent lavishly on travel and unnecessary purchases during the course of this brief marriage, and that this opulent lifestyle (which was funded through mortgaging Debbie's residence) was responsible for the fact that Debbie no longer had her own residence. Specifically, the chancellor found that Debbie had been forced into living in a low-rent apartment because of these expenditures. For these reasons, the chancellor found that Dan's standard of living had not changed since the marriage, but that Debbie's standard of living had decreased since the marriage and that it had also decreased relative to her standard of living before the marriage.

The chancellor found that Dan was at fault in the dissolution of the marriage.

As for the dissipation of assets by the parties, the chancellor determined that they both had been wasteful, however Dan was found to have been much

more guilty of the wasteful dissipation of the marital assets obtained through the mortgages.

Addressing other factors that could be considered just and equitable in connection with the setting of spousal support, the chancellor found that Debbie had owned a house and property worth \$225,000 and not encumbered by any mortgages prior to marrying Dan. The chancellor further considered that Dan brought in no assets to the marriage, but rather he brought considerable debt with him to the marriage. Within months of the marriage, Deborah's meager retirement fund had been wasted, in large part by Dan's spending. Further, Dan benefited from the mortgages placed on Debbie property through the payment of his personal pre-marriage debts, and in fact Dan was in a far better financial position after the marriage. On the other hand, Debbie lost her home in the marriage as a result of approximately \$170,000 in mortgages placed on this property immediately after the couple married.

In this instance, Debbie was not only required to find new work in a new city, but she was also required to establish a new domicile as a result of both the oppressive debt placed on her home immediately after the marriage and the extensive damage done to her home by Hurricane Katrina.

The chancellor was not manifestly wrong in awarding rehabilitative alimony to Debbie. The reasonableness of an award of rehabilitative alimony goes to the issue of the fairness of the equitable distribution of the marital property. Due to the fact that Dan personally profited through the mortgages

placed on Debbie's previously unencumbered residence, it was just, equitable and necessary that the chancellor award Debbie monthly rehabilitative alimony in the amount of \$1500. The chancellor specifically stated in the Judgment of Divorce that he retained the right to review this award after this was an adequate safeguard to insure that Dan was not burden with rehabilitative alimony should Debbie become self-sufficient in less than the 3-year period set forth in the Judgment.


The limitation placed on an appellate court is to determine whether the chancellor's decision concerning rehabilitative alimony was within the range of discretion permitted by the evidence and the applicable law. *Hoggart v. Hoggart*, 766 So.2d 9 (Miss. Ct. App. 2000) (sustaining rehabilitative alimony for 36 months based upon the wife's circumstances at the conclusion of the marriage).

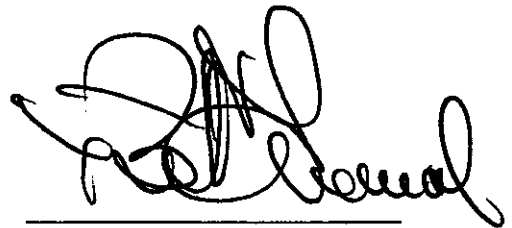
A review of the entire record provides sufficient evidence to raise a reasonable inference that supports the finding that Debbie was entitled to an award of rehabilitative alimony. *Anderson v. Anderson*, 692 So.2d 65, 71-72 (Miss. 1997). The chancellor examined and applied all of the *Armstrong* factors in making his determination that rehabilitative alimony of Fifteen Hundred Dollars (\$1500) per month was appropriate. The evidence presented in this case supports his findings. Therefore, it was not manifestly erroneous to award rehabilitative alimony.

## CONCLUSION

The circumstances of this case show that Deborah Brady came into this marriage with a residence and adjoining land appraised at \$225,000 and free from any mortgages or debt. Within a month of her marriage to Daniel Brady, this property had been pledged as security for a \$100,000 home equity loan. This money was promptly squandered and relatively little was spend from these funds to improve the property. A refinancing of the initial mortgage was sought soon thereafter, and this property now was encumbered with a mortgage of more the \$170,000. After the proceeds from the second mortgage had been depleted, Dan Brady abandoned his new wife and left her to satisfy this debt. All of these events occurred during the coarse of a brief eight-month marriage.

In considering those factors set forth in *Armstrong v. Armstrong*, the chancellor determined that rehabilitative alimony was appropriate. The chancellor's findings particularly considered that Deborah Brady came into the marriage with an unencumbered house appraised at \$225,000, and at the end of this 8-month marriage, her house had been used as security for roughly \$175,000 in loan equity loans. The chancellor made a reasoned application of the *Armstrong* factors to the evidence submitted in this case. He awarded of rehabilitative alimony to Deborah Brady was neither manifest error nor abuse of discretion.

This the  day of November, 2008.



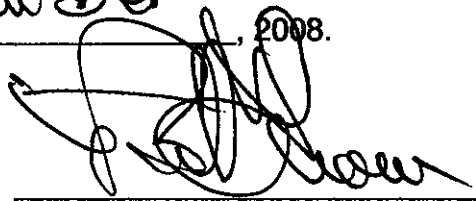
BLEWETT W. THOMAS

CERTIFICATE OF SERVICE

I, BLEWETT W. THOMAS, do hereby certify that I have mailed this day  
true and correct copies of the foregoing pleadings to the following persons:

Frank P. Wittmann, III, Esq.  
Wittmann & Wittmann  
PO Box 1648  
Gulfport, MS 39502

This the 13th day of November, 2008.

A handwritten signature in black ink, appearing to read "Blewett W. Thomas", written over a horizontal line.

BLEWETT W. THOMAS

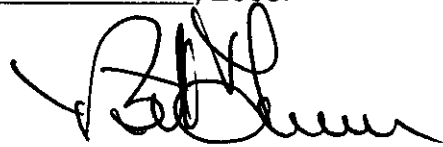
CERTIFICATE OF SERVICE

I, BLEWETT W. THOMAS, do hereby certify that I have mailed this day  
true and correct copies of the foregoing pleadings to the following persons:

Frank P. Wittmann, III, Esq.  
Wittmann & Wittmann  
PO Box 1648  
Gulfport, MS 39502

Honorable James B. Persons  
Harrison County Chancery Court Judge  
PO Box 457  
Gulfport, MS 39502

This the 12<sup>th</sup> day of November, 2008.

A handwritten signature in black ink, appearing to read 'Blewett W. Thomas', written over a horizontal line.

BLEWETT W. THOMAS