

IN THE SUPREME COURT OF MISSISSIPPI

JEFF DICKERSON

APPELLANT

v.

CAUSE NO. 2006-206-GN

BONNIE LYNN DICKERSON

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following 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. Jeff Dickerson, Appellant;
2. Bonnie Lynn Dickerson, Appellee;
3. James L. Penley, Jr., Attorney for Appellant;
4. Marcie T. Southerland, Attorney for Appellee.
5. Chancellor Vicki R. Barnes

SO CERTIFIED, this the 7 day of July, 2009.

  
MARCIE T. SOUTHERLAND  
MSB# 

## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	4
CONCLUSION .....	11

## **TABLE OF AUTHORITIES**

<b><i>Baldwin v. Baldwin</i>, 788 So.2d 800 (Miss.Ct.App. 2001) . . . . .</b>	<b>9</b>
<b><i>Larue v. Larue</i>, 969 So.2d 99 (Miss.Ct.App. 2007) . . . . .</b>	<b>7</b>
<b><i>Ortman v. Cain</i>, 811 So.2d 457 (Miss.Ct.App. 2002) . . . . .</b>	<b>7, 8</b>
<b><i>Robinson v. Powell</i>, 850 So.2d 91,98 (Miss.Ct.App. 2001) . . . . .</b>	<b>10</b>
<b><i>Rodriguez v. Rodriguez</i>, 2 So.3d 720 (Miss.Ct.App. 2009) . . . . .</b>	<b>4, 5, 7, 8, 9</b>
<b><i>Tilley v. Tilley</i>, 610 So.2d 348 (Miss. 1992) . . . . .</b>	<b>8</b>

### **STATEMENT OF ISSUES**

- I. The Chancellor correctly awarded a divorce to Appellee Lynn Dickerson on the ground of uncondoned adultery.
- II. The distribution of property and debt awarded by the Chancellor was equitable.
- III. The award of lump sum alimony was appropriate.
- IV. The Chancellor correctly awarded attorneys fees to Appellee Lynn Dickerson.

### **STATEMENT OF THE CASE**

Jeff Dickerson and Lynn Dickerson were married for the first time in 1999, with that marriage ending in divorce on November 2, 2002. Jeff and Lynn remarried in June, 2003. Until their separation in April, 2006, Jeff and Lynn lived with each other and operated Dickerson Tire Company.

During the marriage, Jeff carried on an adulterous affair with Debbie Snyder. Jeff also drank heavily, including drinking at Dickerson Tire during business hours. In addition, Jeff made it a habit to gamble heavily at the local casinos.

Lynn worked at Dickerson Tire for no salary. Testimony was clear that Lynn had put aside her real estate career to help in the day to day running of Dickerson Tire.

Lynn filed for divorce on May 22, 2006, seeking a divorce on the grounds of cruel and inhumane treatment or, in the alternative, irreconcilable differences. *C.P. at 9*. Jeff filed his answer and counterclaim on June 27, 2006, alleging cruel and inhumane treatment, and/or adultery, and/or, in the alternative, irreconcilable differences. *C.P. at 22*. On December 20, 2006, Lynn filed for leave to amend her complaint for divorce alleging uncondoned adultery on the part of Jeff. *C.P. 57*. The motion was granted on January 3, 2007. *C.P. at 59*. A temporary order was entered on January 12, 2007. *C.P. at 60*. The order granted Lynn use and possession of the Lexus and temporary

support in the amount of \$1,568.00. Jeff filed his answer to the amended complaint for divorce on January 16, 2007, denying the uncondoned adultery. *C.P. at 63.*

On April 24, 2007, Lynn filed a motion for contempt and motion to sell real property, and motion for other relief. *C.P. at 69.* Lynn alleged that Jeff had only paid her \$866.00 in January and \$866.00 in February as opposed to the \$1,568.00 per month that he had been ordered to pay. In addition, Lynn alleged that when the Lexus was returned to her, it had been destroyed by Jeff. Lynn had been offered \$148,000.00 for the Sweet Gum property, and she asked the Court to order the sale of the property. In response, Jeff filed his motion to modify temporary support payments on July 20, 2007, alleging that he was not able to pay the temporary support. This motion was denied on December 10, 2007. *C.P. at 97.* During the interim, Lynn was forced to file several motions to compel discovery. *C.P. at 65, 90.*

Once again Lynn was forced to file a motion for contempt on August 29, 2007. *C.P. at 77.* Jeff had arbitrarily decided that instead of following the Court's order of paying Lynn \$1,568.00 per month, he would pay the Lexus note himself and send Lynn \$866.00, leaving an outstanding balance owed to Lynn of \$134.00 each month. At the time of the filing of the motion, Jeff had failed to pay the Lexus note for July and August for a total of \$1,136.00. Jeff was also in arrears in his payments to Lynn in the amount of \$938.00. An agreed order was entered on September 14, 2007, ordering Jeff to pay Lynn the sum of \$7,802.00 from the proceeds of the sale of the Ross Lane property. *C.P. at 86.*

On December 21, 2007, Lynn filed for reinstatement of the temporary relief that was scheduled to end on December 31, 2007, per the Chancellor's order of September 14, 2007. *C.P. at 98.* Interestingly enough, a motion for intervention was filed by Kekoa Hunter on January 30, 2008, alleging that Jeff had entered into two contracts with Kekoa to remodel both houses. *C.P. at*

103. This motion was later denied when testimony revealed that Kekoa and Jeff admitted that this “bill” was manufactured to “help” out Jeff in his divorce from Lynn. *C.P. at 115*.

A second motion to modify temporary support payments was filed by Jeff on February 4, 2008. *C.P. at 108*. This second motion was essentially the same motion Jeff had filed earlier in the litigation. On February 7, 2008, Lynn filed her response and cross complaint for contempt alleging unclean hands and collateral estoppel. *C.P. at 110*.

On February 26, 2008, an agreed order was entered allowing funds to be released from the escrow account in order to pay attorney fees and the amounts Jeff owed to Lynn as temporary support. *C.P. at 116*. An order adjudicating Jeff guilty of contempt was filed on March 28, 2008. *C.P. at 118*. Pursuant to that order, Jeff was ordered to pay Lynn \$4,704.00 and attorney fees in the amount of \$1,093.75. In addition, Jeff was ordered to pay temporary support in the amount of \$908.00.

After numerous hearings in this matter and the trial on the merits, both parties submitted briefs to the Court. *C.P. at 119, 138*. The Chancellor filed the memorandum opinion and final judgment on May 23, 2008. *C.P. at 171*. Jeff and Lynn were divorced on May 23, 2008, with the Chancellor awarding Lynn a divorce on the grounds of uncondoned adultery. The Chancellor made the award of both marital property and nonmarital property. The Chancellor also awarded Lynn attorney fees.

### **SUMMARY OF THE ARGUMENT**

Jeff appeals from the judgment of divorce, division of marital property, award of alimony, and award of attorney’s fees. A chancellor enjoys wide discretion in matters regarding divorce, property division, alimony and attorney’s fees. Only if such discretion is abused will the Chancellor’s decision be overturned on appeal.

There was overwhelming evidence that Jeff committed uncondoned adultery during his marriage to Lynn. Jeff and his cohort, Debbie Snyder, both admitted to the employees at Dickerson Tire that they were involved in an extra-marital affair. In addition, Jeff admitted to Lynn that he was involved in an extra-marital affair with Debbie.

Jeff challenges the Chancellor's distribution of property and debt, with the majority of debt being "awarded" to Jeff. The Chancellor correctly applied the Ferguson factors in her well-thought out memorandum of law and opinion.

Lynn was awarded lump sum alimony in the form of the 2001 Lexus. The Chancellor correctly applied the factors found in Tilley to determine that Lynn was indeed entitled to lump sum alimony.

The Chancellor correctly awarded Lynn her attorney's fees. Throughout the divorce, Jeff willfully and obstinately refused to comply with court orders. Jeff filed for restraining orders against Lynn. Those requests for restraining orders required court appearances by Lynn. Every action Jeff took was purposely calculated to enact a hardship upon Lynn, and it did.

This Court should affirm the judgment of divorce and the award of property, debt, and attorney's fees.

### **ARGUMENT**

#### **I. THE CHANCELLOR CORRECTLY AWARDED A DIVORCE TO LYNN BASED UPON JEFF'S UNCONDONED ADULTERY.**

"A chancellor is required to make specific findings of fact when a party alleges adultery as a ground for divorce." *Rodriguez v. Rodriguez*, 2 So.3d 720, 724 (Miss.Ct.App. 2009)(citations omitted.) Findings will only be set aside if those findings are "manifestly wrong, clearly erroneous, or an erroneous legal standard" is applied. *Id.* Evidence or admissions may be used to prove

adultery. *Id.* In addition, because of the “inherently secretive nature of the acts involved,” adultery can be proven through circumstantial evidence. *Id.* “In order to grant a divorce based upon circumstantial evidence there must be clear and convincing evidence of (1) ‘an adulterous inclination’ and (2) a ‘reasonable opportunity to satisfy that inclination.’” *Id.* “Evidence of inclination and opportunity must ‘be inconsistent with a reasonable theory of innocence.’” *Id.* “Adultery can also be proven by direct proof in the form of the defendant’s own admissions.” *Id.*

An appellate court should be “reluctant to disturb the factual findings of a chancellor because of ‘[t]he credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation, are primarily for the chancellor as the trier of facts.’” *Rodriguez v. Rodriguez*, 2 So.3d 720, 724 (Miss.Ct.App. 2009)(citations omitted.) As long as a chancellor’s factual findings are “supported by substantial credible evidence,” those findings will not be disturbed on appeal. *Id.*

After a lengthy trial in this matter, the Chancellor found that Jeff had indeed committed adultery before the separation of the parties and that Lynn was entitled to a divorce on the grounds of adultery. The Chancellor stated:

Susan Brasfield, who was once employed at Dickerson Tire, offered testimony regarding Mr. Dickerson and Debbie Snyder’s adulterous relationship. She stated that while Mrs. Dickerson was out of town in early 2005, Mr. Dickerson and Debbie Snyder had dinner together one night and that the next day both admitted to her, and other employees of Dickerson Tire, that the two were in fact having a sexual relationship. Ms. Brasfield stated that after Mr. Dickerson and Debbie’s admission, they were openly intimate with one another at the shop. She stated that on one occasion she witnessed Debbie sitting in Mr. Dickerson’s lap. Mrs. Dickerson testified that Mr. Dickerson confessed to having an illicit relationship with Ms. Snyder during the marriage. Mr. Dickerson denied that he ever had sexual relations with Ms. Snyder prior to their separation.

Testimony at trial established that Jeff was having an extramarital affair with a woman named Debbie Snyder. Susan Brasfield testified that sometime around February of 2005, she was at the



shop, Dickerson Tire, when she and the employees of Dickerson Tire heard Jeff and Debbie Snyder discussing "that they had went out, got drunk, slept with each other." *Tr. at 394*. In fact, Susan heard them discussing how "they were going to just run off and get married." *Tr. at 394*. Susan also testified that when Lynn was not at the shop, Debbie would sit in Jeff's lap and kiss him. *Tr. at 394*. Susan testified that she observed that kind of behavior for approximately three months prior to Jeff and Lynn's separation in April 2006. *Tr. at 419*. Jeff denied this.

In his brief to the Chancellor, Jeff admitted that he had a sexual relationship with another woman while married to Lynn. *C.P. at 143*. In addition, Jeff admitted to Lynn about one week before their separation that he was having a sexual relationship with Debbie Snyder. Jeff has also admitted that he is the sole provider for Debbie Snyder. *Tr. at 225*.

No credible evidence was ever presented to show that Lynn committed adultery before the separation of the parties. The Chancellor, in her order, stated:

During the trial, Debbie Snyder testified that in August 2004, she and Mrs. Dickerson went to a bar in Louisiana where Mrs. Dickerson convinced a man to go home with them. She further testified that while Mr. Dickerson was asleep in his bedroom, Mrs. Dickerson went swimming with the man and took her shirt off in front of him. Debbie also stated that she believed the two (Mrs. Dickerson and the unidentified man) had sex that night. This testimony was contradicted by Mrs. Dickerson, who testified that she in fact went to bed with Mr. Dickerson that night and that it was Debbie who slept with the unidentified man. This was the only testimony presented regarding Mrs. Dickerson's alleged adulterous behavior prior to the parties separation.

*C.P. at 185*.

Debbie Snyder, Jeff's live-in girlfriend, offered the testimony that Lynn had picked up an man at a bar sometime in 2004, had taken him home, and had sex with him. This testimony was contradicted by Lynn who testified that it was Debbie who had sexual intercourse with the man. Debbie finally admitted that she was the one talking with the man at the bar and that she herself went skinny dipping with the man. *Tr. at 367-377*.

Testimony clearly established that Jeff was having an extramarital affair with Debbie Snyder during his marriage to Lynn. The Chancellor did not err in awarding Lynn a divorce on the grounds of uncondoned adultery.

## **II. THE DISTRIBUTION OF PROPERTY AND DEBT AWARDED BY THE CHANCELLOR WAS EQUITABLE.**

There is a limited standard of review employed by an appellate court in reviewing the Chancellor's property division and distribution in a divorce. *Rodriguez*, 2 So.3d at 725. As long as the Chancellor's property division and distribution is supported by substantial credible evidence, it will not be disturbed on appeal even if the appellate court disagrees with the Chancellor's findings. *Id.* The Chancellor is required to make certain findings in regards to the *Ferguson* factors. *Id.*

Jeff seems to be arguing that the Chancellor erred in distributing the debt of the parties: specifically the credit card debt. However, Jeff has failed to cite any law that would show the Chancellor erred in her distribution of the debt. Failure to cite case law to support an argument acts as a procedural bar. *Ortman v. Cain*, 811 So.2d 457, 462 (Miss.Ct.App. 2002). Without waiving the procedural bar, Lynn would reply as follows: As the Chancellor correctly found, all credit cards were in Jeff's name except for the Home Depot card which was in the name of Dickerson Tire. Lynn was never in possession of any of the cards. What little money Lynn spent on those cards was used to pay for purchases of clothing for Jeff and Lynn as well as to pay household bills, incurred to benefit the marriage. Debts incurred to benefit the marriage are marital debts. *Larue v. Larue*, 969 So.2d 99, 108 (Miss.Ct.App. 2007). The Chancellor was correct in assessing those credit card bills to Jeff. Jeff wants this Court to uphold the Chancellor's ruling that Dickerson Tire was not marital property. As such, the Home Depot credit card debt belongs to Dickerson Tire. Jeff wants

the business Dickerson Tire, but he doesn't want to pay the bills for Dickerson Tire. The Chancellor did not err in awarding all credit card debt to Jeff.

Jeff next argues that he should receive the proceeds of the sale of the home located at 950 Sweet Gum as well as the proceeds from the sale of Ross Lane. However, Jeff cites no case law to support that he should receive the proceeds from the sale of these homes. Failure to cite case law to support an argument acts as a procedural bar. *Ortman*, 811 So.2d at 462. Without waiving the procedural bar, Lynn would reply as follows: The Chancellor correctly found that both houses were marital property. Jeff and Lynn lived in both houses while married. While Jeff may have paid the note, Lynn contributed to the upkeep of the home. "In determining the contributions of each spouse, it is imperative to remember that a spouse working inside the home as a homemaker will be presumed to contribute equally as the wage-earning spouse." *Rodriguez*, 2 So.3d at 726. The Chancellor was correct in equitably dividing the proceeds from the sales of the marital homes.

### **III. THE AWARD OF LUMP SUM ALIMONY WAS APPROPRIATE.**

The Chancellor's award or amount of alimony awarded should not be disturbed unless there exists manifest error. *Rodriguez*, 2 So.3d at 730. When considering the award of lump sum alimony, the Chancellor correctly applied the factors set forth in *Tilley v. Tilley*, 610 So.2d 348, 352 (Miss. 1992).

Jeff argues that the Chancellor erred in awarding lump sum alimony, yet he cites the Armstrong factors are to be followed. The factors as set forth in *Tilley* should be weighed to determine lump sum alimony. Jeff cites no case law to show that the Chancellor incorrectly applied the *Tilley* factors. Failure to cite case law to support an argument acts as a procedural bar. *Ortman v. Cain*, 811 So.2d 457, 462 (Miss.Ct.App. 2002). Without waiving the procedural bar, Lynn would reply as follows: The Chancellor found that the first and second *Tilley* factors were neutrally

weighed. As to the third Tilley factor, the Chancellor found that Lynn made a very meager income as compared to that of Jeff. This factor weighed in favor of lump sum alimony. The Chancellor found that absent lump sum alimony, Lynn would be in a vulnerable financial position, the fourth *Tilley* factor. She was being supported at the whim of Larry Wade, which weighed in favor of lump sum alimony. As a result of this analysis, the Chancellor determined that the award of \$10,096.02 in lump sum alimony to satisfy the debt on the Lexus would be an appropriate amount. The Chancellor made no error in awarding lump sum alimony to Lynn.

#### **IV. THE CHANCELLOR CORRECTLY AWARDED ATTORNEYS FEES TO APPELLEE LYNN DICKERSON.**

The issue of attorneys fees in a divorce case is within the sound discretion of the Chancellor. *Baldwin v. Baldwin*, 788 So.2d 800, 807 (Miss.Ct.App. 2001). Absent an abuse of discretion, the Chancellor's award will be upheld. *Id.* "In order for this Court to say that the chancellor has abused his discretion, there must be insufficient evidence to support his conclusions." *Rodriguez*, 2 So.3d at 732. One who requests attorneys' fees must "prove an inability to pay." *Id.* The services rendered must be reasonably required and necessary. *Baldwin*, 788 So.2d at 807. Attorneys' fees depend upon the "... relative financial ability of the parties, the skill and standing of the attorney employed, the nature of the case and novelty and difficulty of the questions at issue, as well as the degree of responsibility involved in the management of the cause, the time and labor required, the usual and customary charge in the community, and the preclusion of other employment by the attorney due to the acceptance of the case." *Id.*

Jeff's trial attorney, Mr. Richard Johnson, stipulated on the record that the attorney's fees were reasonable. *Tr. at 1053*. Further, Mr. Johnson stipulated that the items were performed by Lynn's attorney, Marcie Southerland. *Tr. at 1053*. Because no objection was made at the trial of this matter, Jeff is procedurally barred from appealing this issue. *Robinson v. Lanford*, 850 So.2d

91, 97 (Miss.Ct.App. 2001). Without waiving the procedural bar, Lynn would respond as follows.

Throughout the time the divorce was pending in this matter, Lynn was forced to constantly defend herself against all manner of attack waged by Jeff. As the Chancellor so aptly phrased it,

“Mr. Dickerson has been less than cooperative, he has twice had restraining orders issued against Mrs. Dickerson under questionable circumstances. There is property, last known to be in Mr. Dickerson’s possession which remains unaccounted for. After the separation, Mr. Dickerson took the 2001 Lexus from a casino parking lot while Mrs. Dickerson was inside. She was left without a vehicle which she alleges caused a hindrance to her real estate career. When Mr. Dickerson returned the vehicle pursuant to a court order, the [t]ire[s] had been changed and allegedly there was damage to the upholstery.”

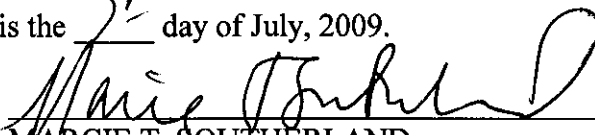
*C.P. at 220.* At the time of each of these incidents, Lynn was forced to contact her attorney, and in some cases, required to file pleadings and motions for the return of her property and for enforcement of previously entered court orders, and in other cases, have legal representation in court hearings. The Chancellor further noted that “Mrs. Dickerson has accumulated substantial attorney’s fees related to this divorce. This includes not only the amount usually incurred during a fault based divorce, but also additional fees associated with Mr. Dickerson’s refusal to cooperate with the discovery process.” *C.P. at 225.*

At every turn, Jeff has made this divorce intolerable. Jeff committed adultery. Jeff twice had restraining orders issued against Lynn for absolutely no reason. Jeff has willfully and obstinately refused to obey orders entered by the Chancellor in this matter. Jeff has been found guilty of contempt in this matter. In addition, Jeff and his “friend” Kekoa Hunter attempted to defraud the Chancery Court by concocting a promissory note from Jeff to Kekoa regarding \$8,800.00 that Jeff allegedly owed Kekoe. Lynn was forced to defend that motion in court. Lynn owes attorney’s fees because she had to defend herself against Jeff’s numerous attacks. The Chancellor did not err in making this award.

### CONCLUSION

The bottom line is this matter is that the Chancellor has discretion in the matters of divorce, property distribution, alimony, and attorney's fees. Absent an abuse of discretion, the Chancellor's decisions must stand. The Chancellor issued a thorough and complete memorandum opinion and order outlining all relevant factors and conclusions. This matter should be affirmed.

RESPECTFULLY SUBMITTED, this the 27<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
MARCIE T. SOUTHERLAND  
*Attorney for Lynn Dickerson*

OF COUNSEL:

MARCIE T. SOUTHERLAND  
MSB# [REDACTED]  
SOUTHERLAND & SOUTHERLAND, PLLC  
1120 Jackson Street  
Vicksburg, Mississippi 39183  
Telephone: 601-636-1930  
Facsimile: 601-636-1563

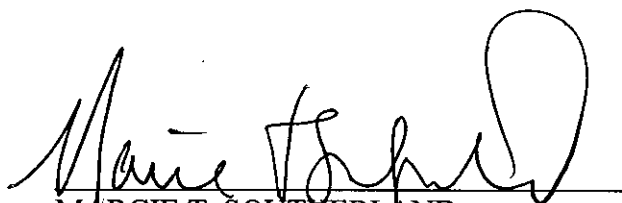
### CERTIFICATE OF SERVICE

I, Marcie T. Southerland, do hereby certify that I have this day mailed via United States mail, postage prepaid, and/or hand delivery, a true and correct copy of the above document to:

Chancellor Vicki R. Barnes  
Post Office Box 351  
Vicksburg, Mississippi 39181-0351

James L. Penley, Jr.  
Attorney for Jeff Dickerson  
914 Grove Street  
Post Office Box 430  
Vicksburg, Mississippi 39181-0430

This the 27<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
MARCIE T. SOUTHERLAND