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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JEFF DICKERSON

APPELLANT

VS.

NO.: 2008-CA-01100

BONNIE LYNN DICKERSON

APPELLEE

FILED

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COURT OF APPEALS

BRIEF OF APPELLANT

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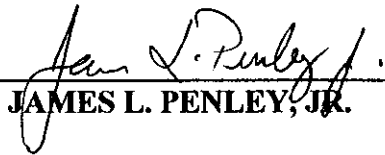
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications of recusal:

- | | | |
|----|-----------------------|------------------------|
| 1. | Jeff Dickerson | Appellant |
| 2. | Bonnie Lynn Dickerson | Appellee |
| 3. | James L. Penley, Jr. | Attorney for Appellant |
| 4. | Marcie Southerland | Attorney for Appellee |

RESPECTFULLY SUBMITTED:

BY: 
JAMES L. PENLEY, JR.

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STATEMENT OF THE ISSUES

1. Whether the distribution of property and debt addressed by the Court was equitable.
2. Whether the award of lump sum alimony was appropriate.
3. Whether the Appellee's unfaithfulness constituted grounds for divorce on behalf of Appellant.
4. Whether the award of attorney fees by the Court, was in accordance with the applicable law.

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STATEMENT OF THE CASE

This matter was initially filed by Appellee on May 22, 2006, on the grounds of habitual cruel and inhuman treatment or in the alternative irreconcilable differences. Appellee was represented by Honorable Mark Prewitt at that time. Appellant was represented by Honorable Travis T. Vance, Jr. Both attorneys withdrew from the case and each party retained new counsel.

An amended complaint was filed by Appellee, and Appellant filed an answer and counter claim in response. Appellee set forth a new ground, uncondoned adultery pursuant to a January 3, 2007, order of the Court.

A temporary hearing was held with the Court awarding Appellee the majority of what she requested. After numerous pre trial hearings for contempt and modification the matter came to trial on December 5, 6, 7, 2007, and January 14, 2008, after which the Court entered its order granting Appellee a divorce on grounds of uncondoned adultery with a distribution of property and an award of attorney's fees.

Appellant and Appellee were previously married, divorced and then remarried within three (3) months of the divorce. The current marriage lasted less than three (3) years. Appellant ran a tire business which he owned and operated since 1993. Appellee had a real estate license but claimed she worked for the tire business.

Feeling aggrieved and claiming the Court misapplied the facts, evidence and law,

Appellant appeals to this Court seeking a reversal of the Court's Final Judgment requesting he be granted a divorce on the grounds he set forth, that the property be divided equitably and that the award of attorney's fees to Appellee be reversed or in alternative significantly reduced.

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SUMMARY OF THE ARGUMENT

1. Appellant had two (2) homes that he had purchased during the first and second marriages to Appellee. At the first divorce, Appellee would have received about Four Thousand and No/100 (\$4,000.00) Dollars from the sale. Once they reunited, Appellant put work into the house and the value increased. The selling price went up significantly. Appellant at all times paid the mortgage on both properties from funds derived from Dickerson Tire Company.

Both properties were sold with the remaining funds after payment of all liens being held pending the divorce. Appellant was responsible for the debt on both properties. Upon reuniting the parties had not sold the Ross Lane property but purchased another property on Sweetgum. Appellant obtained financing from a local bank and continued to pay for both houses.

The debt of the parties did not significantly change at the time of the second separation. Appellant was paying for two (2) houses and was later ordered to pay temporary support to Appellee. This with the continual drain of his business expenses and with Appellee making no contributions. The credit card debt grew as Appellee was an internet shopper, and she was not required to pay any of the credit card debt.

The Court, in its Final Judgment, awarded the lions share of the proceeds from those houses to Appellee, after a two and one-half (2 1/2) year marriage. This is not an equitable conclusion and was, and continues to be unfair to Appellant, as Appellant received no

proceeds from the sale of two (2) houses he owned.

2. Appellee failed to work, though she was in possession of a professional license, either during the marriage or after the separation. Further, the parties were only married two and one-half (2 1/2) years prior to separation.

Appellee was totally provided with a home, payment of all bills and a credit card by Larry Wade. She was in the real estate trade but just as she had with Appellant she allowed someone else to take care of her. She did nothing to support herself. Appellee had no estate to speak of, because she choose it to be that way. Appellee had the same financial security during the marriage as well as the period of separation, somebody else would provide for her needs. She never pursued a career as a real estate agent and has not done so to this day. It was her intention and desire not to work. Reward for idleness should not be granted. Lump sum alimony should not have been awarded.

3. Appellee admitted, after repeated hearings and questions, to living with a male during the period of separation. The male in question, Larry Wade, provided Appellee, a home, free of charge, paid bills for her and granted her use of a credit card. Obviously, an adulterous situation during the marriage of the parties. Appellee also admitted to bar hopping and bringing home a male. Appellee placed blamed on another female, that she brought into her house with the male subject.

Appellee, when initial divorce pleadings, did not even allege adultery, as a divorce ground. Only after hiring new counsel, did she file an amended complaint listing said ground. Testimony, elicited from Appellee, at pre-divorce hearings only concerned drinking and being mean as grounds for divorce.

4. The Court failed to set forth proper grounds for an award of attorney fees in this matter. The issues present in this case were not complicated and no special skill was required to present matters to the Court. There were an excessive number of exhibits entered into evidence on behalf of Appellee, a number of these as the basis for an award of attorney's fees.

The case was tried over several days, however, the issues had been presented at temporary hearings with testimony and facts hardly changing. A great deal of repetition was at play, seemingly designed to pad the attorney's bill. Appellant was deluged with temporary and contempt motions, with awards of fees at the time of hearing, again, padding the bill.

Appellant was stripped on any proceeds of the home sales as it all went to pay Appellee's attorney's fees plus another Two Thousand Thirteen and 41/100 (\$2,013.41) Dollars out of his pocket. Yet, Appellant is still saddled with marital debt of credit cards used jointly by the parties.

There is no equity for Appellant in the award of attorney's fees.

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ARGUMENT

Whether the distribution of property and debt was equitable.

Appellant received not one dime from the sale of two (2) houses he owned during the marriages to Appellee (RE 55-61) He owes a balance on the awarded attorney's fees, (RE 58) years of hard work to build a business and a home should not be dashed by a divorce trial.

"The Chancery Court has authority, where equity demands, to order a fair division of property accumulated through the joint contributions and efforts of the parties." Owen v. Owen 928 So2d 156 (Miss 2006). In this case the majority of the property accumulated was due to Appellants efforts, especially from the financial side of the fence. Both parties agreed they lived out of Dickerson Tire Company, Appellant solely owned business since 1993. (T. 451) The distribution set forth by the Court granted most assets to Appellee with Appellant receiving all the debt. (RE 55-61) Appellee held realtors license but only received Eight Thousand and No/100 (\$8,000.00) Dollars in income during the year prior to the separation. (TR 106) She made no contribution to the marriage but did continue to gamble. Appellant was to work to build her real estate job to assist Appellant in paying bills. (T. 208) This was never done. Appellant received all the credit card debt run up during the marriage. (RE 59) Testimony revealed Appellee had access to the cards and was a prodigious internet purchaser. (T. 51, 213, 509, 511)

She faced no consequences for her action to the detriment of Appellant.

The Mississippi Supreme Court has repeatedly stated that “Chancellors division and distribution will be upheld if it is supported by substantial credible evidence.” Bowen v. Bowen 982 So 2d 385, 394 (Miss 2008) In the case before the Court, Appellant is of the opinion the Chancellors division was not based on credible evidence but on the self serving testimony of Appellee. Appellee continually stated facts which were flatly disputed by Appellant in relation to assets of the business and marriage. She went as far as giving the Court an evaluation of Dickerson Tire Company with no authority to form the basis of her statements. (T. 85, 86, 151) She attributed large sums of money to Appellant with no proof or corroboration. (T. 88)

The assets of the union before this Court came down to personal property which was divided by agreement. (T. 310-339) and vehicles owned by the parties being a 2001 Lexus RS 300 and a 2004 Dodge Ram 1500. (T. 342) Possession of the Lexus was with Appellee by agreement of the parties with Appellant receiving the Dodge 1500. (T. 343) The biggest issue as to assets were the proceeds of the sale of two (2) houses owned by Appellant. (T. 346-348) The funds held in escrow from sales of the Ross Lane and Sweetgum properties constituted the vast percentage of the ultimate assets awarded by the Court. These funds were used to pay attorney’s fees and alimony with Appellee being on the receiving end.

In a lengthy opinion the Court reviewed the factors set forth in Ferguson v. Ferguson, 639 So 2d 921 (Miss. 1994), concerning the equitable division of marital property. (RE 30-37) The factors show that the assets acquired by the parties hereto was due mainly to the efforts of Appellant. His income was the only resource of the marriage, since Appellee refused to work in what was at that time period, a very lucrative real estate market. It was easier to gamble and shop

on the computer then sell houses.

For Appellant to receive no money from the sale of two (2) houses he purchased and worked on to increase their value is certainly not equitable. Likewise, to be granted the rights to pay all the attorney's fees as well as the mutually generated credit card debt is not in line with the case law set forth by this Court.

Whether the Award of Lump Sum Alimony was Appropriate

Armstrong v. Armstrong, 618 So 2d 1278(Miss. 1993), which lists factors as weighed by the Court tended to be in favor of not awarding alimony, or were neutral. (RE 38-43) Yet, the Court awarded lump sum alimony in the form of the payoff of the debt owed on the 2001 Lexus. (RE 59) Once again, Appellant received debt while Appellee, with no obligations, plus being supported in full by Mr. Wade, faced no consequences. When one chooses to follow the path of least resistance should that individual be rewarded?

Appellee never worked to make a decent income from her realtor's license. Only earning Eight Thousand and No/100 (\$8, 000.00) Dollars the year before the separation (T. 106) This, during a marriage that lasted less than three (3) years.

Even after receiving the vehicle she required, real estate was only a part time employment. (T. 225) She continued to allow Mr. Wade to provide for her needs. The Court appeared to applaud her efforts in its ruling. She was granted temporary assistance of One Thousand Five Hundred Sixty-eight and No/100 (\$1,568.00) Dollars per month. (T. 255) She received such assistance for a year during which time she moved in with Larry Wade. At the time of the final divorce she had no debts and was awarded proceeds from the house sales, lump sum alimony, a vehicle and attorney's fees. (RE 58-61) Mr. Wade continues to support her to this day as far as

anyone knows. Due to her indiscretion this factor should not be held against Appellant.

“Alimony awards are within the discretion of the chancellor.” Armstrong at 1280.

Appellant contends that the chancellor abused her discretion in this case. Lump sum alimony unjustly enriched Appellee to the misfortune of Appellant. She was dependent on Appellant during the marriage and the Court continued that dependency. (T. 476)

“If we find the chancellor’s decision manifestly wrong, or that the Court applied an erroneous legal standard, we will not hesitate to reverse.” Armstrong at 1280. The legal standards applied in the present case are sound. It is in the decision in light of the facts and evidence that Appellant takes issue with the chancellor. Appellee presented testimony that she needed the 2001 Lexus for a non-existent real estate business. (T. 114) After receiving exclusive use and possession of the vehicle, in January 2007, her business was no better than during the marriage. (T. 255) Appellee had a very marketable license but did nothing to rectify her situation. She expected the Court to assist her as Appellant before, and Larry Wade after the separation.

The award of alimony was excessive taken in light of the totality of the circumstances. There was no need to give Appellee a 2001 Lexus and a vintage Corvette, both paid for out of Dickerson Tire Company.

Whether Appellee Unfaithfulness Constituted Grounds for Divorce on Behalf of Appellant

Evidence was presented that Appellee was living and being supported by Larry Wade. (T-418-429) Appellee also picked up a man in Louisiana and brought him to the marital home. (T. 367-374) She even swam in the lake with this man, unclothed. Appellee lived with a man during the previous divorce of the first marriage of the parties hereto. (T 454)

It is clear that Appellee desires the company of a male who will support her and indulge

her as well as her needs, without requiring much in the way of contribution from her. “Marital misconduct is a viable factor entitled to be given weight by the chancellor when the misconduct places a burden on the stability and harmony of the marital and family relationship.” Rodriguez v. Rodriguez, 2009-MS-01211 (Miss. 2009), citing, Carrow v. Carrow, 741 So 2d 200, 203 (Miss. 1999). No burden was placed in the stability and harmony of the marriage before this Court. Appellee initially filed for divorce on grounds other than adultery, later awarded to include that ground. Whatever affairs, either party may have had during the marriage did not ultimately destroy the marriage. Appellee ended the relationship when she walked out the door, April 21, 2006. (T. 211)

Admissions by Appellee and her paramour, Larry Wade establish adultery on the part of Appellee. Both parties engaged in affairs during the separation, although neither was the cause of the separation.

Whether the Award of Attorney’s Fees was in Accordance with the Applicable Law

In McKee v. McKee, 418 So 2d 764 (Miss. 1982) the Supreme Court stated the award of attorney’s fees must be reasonable and supported by the evidence.

The fee depends on consideration of, in addition to 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.

McKee at 767.

Financial ability was at issue in this matter as Appellant was the only party employed during the

marriage as well as prior to the divorce. Appellee continually pleaded she could not work as a realtor due to one reason or another. (T. 225) During the pendency of the divorce she was totally supported by Larry Wade and the temporary support of One Thousand Five Hundred Sixty-eight and No/100 (\$1,568.00) Dollars she received for at least one (1) year. (T. 254-255) Why would she want to work given those circumstances?

Appellant testified his business was in a slump, especially having to pay monthly support to an idle spouse. (T. 262-269)

Both attorneys were good representatives for their respective parties and presented the issues to the best of their abilities. They remain in good standing.

There was no novelty or difficulty in the issues that needed to be presented to the Court. The assets were limited and generally finite, being the funds generated from the sale of the two (2) houses of the parties and the debts. Appellee seemed intent on raising the issue that Dickerson Tire Company should be a piece of the pie and she went to great lengths in providing self serving evidence on this point. The chancellor, looking past the rhetoric, calculated the parties estates and divided then accordingly, with Appellee seeing the assets and Appellant receiving the debt. (RE 58-61)

Further, this case was tried several time on motions and contempts prior to actual trial. (T.13, 68, 260) The divorce case was repetitious of the temporary hearings with the same questions and witnesses. But for exhibits introduced, the chancellor heard this matter at least twice maybe more.

Management of the case appeared to be rather simple and straight forward. Again, the issues were not complex, as the most telling testimony as usual, came from the litigants. There

were no experts, that required special handling as all the witnesses were factual.

Time was the biggest matter due to motions and the repetitive nature of the case. As stated previously, the divorce hearing was just a continuation of the temporary motion. The litigants were questioned adversely, as well as in the normal presentation of the case. The case dragged after the second day, with repeated efforts on behalf of Appellee to obtain a piece of Dickerson Tire Company. The hourly rate was within the usual customary charge in the community. Appellant has no issues with the rate, just the time that was presented.

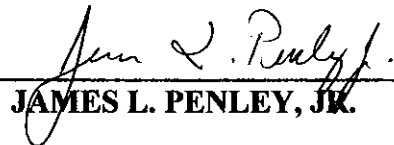
Since the case was broken up over a period of time, there was no loss of business for Appellee's attorney.

Regardless, of the motions filed which were not all heard by the Court, this matter was not complex and the continue rehashing of the same points only served to generate attorney's fees. The Court only stated Appellant's refusal to cooperate were the major issues. The McKee factors should have been considered by this Court in order to properly assess an award of attorney's fees.

CONCLUSION

Appellant, Jeff Dickerson, requests of this Court an equitable and fair distribution of the assets of the parties hereto a reversal of the lump sum alimony award granted to Appellee. Also, he requests this Court to reverse the award of attorney's fee which were no determined according to McKee v. McKee.

RESPECTFULLY SUBMITTED
JEFF DICKERSON

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CERTIFICATE OF SERVICE

I, James L. Penley, Jr., do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant to the following:

Honorable Vickie Barnes
Chancellor
Post Office Box 351
Vicksburg, MS 39181

Honorable Marcie Southerland
Attorney at Law
1120 Jackson Street
Vicksburg, MS 39183

DATED this the 14th day of April, 2009.



JAMES L. PENLEY, JR.