2008-CA-01443

IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

PARIS ANTHONY WOODFIN, APPELLANT

VS.

MARY LEE WOODFIN, APPELLEE

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

BRIEF OF APPELLANT

JOHN ROBERT WHITE
MS. BAR N[redacted]
PAMELA GUREN BACH
MS. BAR N[redacted]
POST OFFICE BOX 824
RIDGELAND, MS 39158-0824
TELEPHONE: (601) 605-9811
FACSIMILE: (601) 605-9836
E-MAIL: jrw@jrwlaw.com
ATTORNEYS FOR APPELLANT

ORAL ARGUMENT NOT REQUESTED

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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 representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. John Robert White; Attorney for Appellant
2. Pamela Guren Bach; Attorney for Appellant
3. Paris Anthony Woodfin; Appellant
4. Thomas Wright Teel; Attorney for Appellee
5. Mary Lee Woodfin; Appellee
6. Hon. James B. Persons; Trial Court Judge

THIS 30th day of December, 2008.

John Robert White
JOHN ROBERT WHITE

Pamela Guren Bach
PAMELA GUREN BACH

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STATEMENT OF THE CASE

This appeal arises from a July 21, 2008 Judgment of the Chancery Court of the First Judicial District of Harrison County, Mississippi, granting Paris Anthony Woodfin (hereafter "Paris") and Mary Lee Woodfin (hereafter "Mary") a divorce on grounds of Irreconcilable Differences. (R. at 25; R.E. at 13).[1] Paris now seeks review by this Court of the chancellor's ruling, which was entered some eight months after a November 27, 2007 hearing on Mary's July 25, 2007 Motion for Citation for Contempt, as well as on matters incident to Paris' June 27, 2005 Complaint for Divorce and Mary's counterclaim thereto which had not been resolved by the parties.

Paris and Mary stipulated to a divorce on grounds of Irreconcilable Differences and consented to adjudication of the issues of alimony, contempt and attorneys fees. Paris appeared *pro se* at the hearing at which Mary's attorney represented to the court and read into the record a panoply of stipulations to which the parties had acquiesced. The July 21, 2008 Judgment, however, is randomly inconsistent with the parties' Consent to Adjudication and their stipulations. In addition to abusing his discretion in finding Paris in contempt of the parties' previous Agreed Temporary Order, the chancellor's rulings with regard to the division of certain marital assets and the awards of permanent periodic alimony and child support are overreaching, and contrary to the law and facts. Taken together, they are *per se* unreasonable and must be reversed.

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[1] Citations to the Record are designated as "R. ____," and citations to the Transcript of Trial Testimony are designated as "Tr. ____." Citations to the Record Excerpts are designated as "R.E. at _____."

STATEMENT OF THE FACTS

Paris Anthony Woodfin (hereinafter "Paris") and Mary Lee Woodfin (hereinafter "Mary") were married on August 10, 1985 in Opelika, Alabama. (R. at 1). Four children were born during the marriage, namely Dameon Woodfin, born on January 1, 1984, who is now twenty-four years old; Paris Woodfin II, born April 30, 1987, who is now twenty-one years old; Aundrea Woodfin, born November 27, 1990, who is now eighteen years old; and Dijon Woodfin, born December 31, 1994, who is now fourteen years old. (R. at 7).

The actual date of the parties' separation is disputed, with Paris asserting that they separated on or about February 1, 2005 and Mary placing the date of separation at June 24, 2005. (R. at 1, 7). Paris filed for divorce in the Chancery Court of the First Judicial District of Harrison County, Mississippi on June 27, 2005. (R. at 1). Mary filed her "Answer and Counter-claim for Divorce," seeking separate maintenance and asserting that she did not want a divorce, on August 16, 2005. (R. at 8-9). Paris responded on August 22, 2005 with his Answer to Counterclaim. (R. at 12).

Paris attempted on numerous occasions to schedule a hearing date.[2] (R.E. at 27-29). Finally, an Agreed Temporary Order was signed on January 26, 2007 and entered on March 15, 2007, giving the parties joint legal and physical custody of the three minor children, and requiring Paris to pay temporary child support in the amount of $1166.00 per month and temporary spousal support in the amount of $634.00 per month. (R. at 18; R.E. at 9). Paris was ordered to pay medical and dental insurance for the minor children,

[2] Hurricane Katrina struck the Mississippi Gulf Coast on August 29, 2005. (T. at 99).

with each party responsible for one-half of the medical bills not covered by insurance (R. at 18; R.E. at 9).

Mary filed her Motion for Citation of Contempt on July 25, 2007, alleging that Paris was in arrears in the amount of $3,900.00 and had not "paid medicals." (R. at 20). The Chancery Court docket indicates that a Rule 81 summons was served on Paris and a contempt hearing was set for November 26, 2007. (R.E. at 4). From representations made to the chancellor by Mary's attorney, Thomas Teel, it appears that although Paris was not represented by counsel at the time the contempt hearing was set, the decision was made to move forward with the divorce proceedings as well, which had been pending for more than two years. The hearing was continued until the following day, November 27, 2007. (T. at 6).

Paris was represented from the initiation of these proceedings until sometime after Mary's Motion for Contempt was filed by Dustin Thomas, who filed a Motion to Withdraw on August 7, 2007. (R.E. at 4). Nothing in the Case History Record provided by the chancery court clerk, however, indicates that the chancellor ruled on that motion. (R.E. at 1-5). Paris apparently retained another attorney, Jane Perry, but the scope of her representation is unclear from the record and no Entry of Appearance was filed despite Paris' testimony he paid her approximately $2,200.00 to review his case prior to the contempt proceeding. (T. at 25). Although Ms. Perry apparently indicated to Mr. Teel that she was not representing Paris, Mr. Teel advised the court that she had "authorized" negotiations between the parties. (T. at 6). Paris acknowledged that Mr. Teel's statement was accurate and that at the time of the hearing, he was representing himself. (T. at 6).

Nowhere in the record does it appear that Paris received any advice of counsel acting on his behalf during the negotiations or the November 27, 2007 hearing.

It appears that the parties met with Mr. Teel on November 26, 2007, the date on which the contempt hearing was set and resolved a number of issues incident to the divorce. A typed stipulation, dated November 27, 2007, was signed by the parties, wherein they agreed to a divorce on grounds of irreconcilable differences and joint legal custody of the minor children, with Mary to have primary physical custody. (R. at 23; R.E. at 11; Exh. 1). The Stipulation further provided:

> "The parties agree that all other matters of relief specifically asked for in either parties' pleadings must be tried before the judge, who must make those decision[s]; further, the parties agree that they may make oral stipulations at court."

(R. at 23; R.E. at 11; Exh.1). In addition, the parties signed a hand-written "Consent to Adjudicate," dated August 27, 2007, wherein they "agreed to certain terms read into the record and those in the Stipulation" and "to submit to the court for litigation: 1) periodic alimony; 2) contempt as to temporary support and medicals; 3) attorney fees as to contempt and divorce." (R. at 24; R.E. at 12; Exh. 7).

At the beginning of the November 27, 2007 hearing, Mr. Teel read into the record several pages of stipulations relating to child custody, visitation and support, spousal support and the division of assets, including considerable boilerplate language unrelated to the particular facts and circumstances of the case. (T. at 7-14). He made several references to his notes from the previous day's meeting with Paris and Mary, which were not entered into evidence. (R. at 25; R.E. at 13).

Eight months later, the Judgment was entered. (R. at 25; R.E. at 13). Based on "proof at court," the chancellor found that Paris was in contempt of the Agreed

Temporary Order for his arrearages in the amount of $3,900 and "for not paying the medical bills on the children which were submitted into evidence." (R. at 35; R.E. at 23). He was ordered to pay Mary's attorney's fees in the amount of $2,500.00 for the contempt matter. (R. at 35; R.E. at 23).

The chancellor found that by their Consent to Adjudicate, Stipulation and oral stipulations that the parties had agreed to "the withdrawal of fault grounds by both parties, a divorce on grounds of Irreconcilable Differences, joint legal custody of the children with Mary having primary physical custody, the payment of alimony to Mary, but not the amount." The chancellor further found that parties had agreed to adjudication of the issues of contempt, the amount of alimony, equitable division and attorney fees. (R. at 26; R.E. at 14). In the very next paragraph, however, he found that "in sum, the agreements of the parties limits the issues to be decided by the Court to the equitable division of the parties' marital property and debts, the amount of spousal support and issues related to the children such as college expenses." (R. at 26; R.E. at 14).

Reviewing the factors set out in *Ferguson v. Ferguson,* 639 So. 2d 921 (Miss. 1994), the chancellor divided the parties' few assets and substantial debt, giving Mary the home in Opelika, Alabama which Paris helped her purchase subsequent to the parties' separation; the paid-for 1998 Ford Expedition; her personal property in Opelika as well as the parties' personal property stored in Mississippi and one-half of Paris' retirement funds. Paris was awarded his 1999 Dodge Ram, the personal property in his apartment in Mississippi and responsibility for the marital debts. (R. at 29-30; R.E. at 17-18).

Following his division of the parties' assets and liabilities, the chancellor applied the factors articulated by the Mississippi Supreme Court in *Armstrong v. Armstrong*, 618

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Following his division of the parties' assets and liabilities, the chancellor applied the factors articulated by the Mississippi Supreme Court in *Armstrong v. Armstrong*, 618

So. 2d 1278 (Miss. 1993), which he considered relevant to the case and made the award of alimony based on the disparity of the parties' current incomes and "the likelihood that Mary's prospect for any substantial increases are poor because of her limited work experience, education and responsibilities for the parties' children." (R. at 30; R.E. at 18). He ordered Paris to pay permanent periodic alimony to Mary in the amount of $700.00 per month "until she dies, remarries or until further order of the Court" and in addition, to provide health insurance for her under COBRA for as long as provided by his employer's plan. (R. at 30-31; R.E. at 18-19).

Finally, "based on the proof at court," Paris was ordered to pay to Mary child support in the amount of $1,200.00 per month "until all children reach the age of majority become self support[ing] or until further order of this Court. In addition to direct support, Paris was ordered to pay the premiums for medical insurance coverage for the minor children, pay one-half of their college education and maintain his current life insurance policies in the amount of $400,000.00, with Mary and the minor children as equal beneficiaries. (R. at 34-35; R.E. at 22-23).

Aggrieved by the chancellor's rulings, Paris perfected his appeal to this Court on August 15, 2008. (R. at 37).

SUMMARY OF THE ARGUMENT

Paris Woodfin seeks review by this Court of the chancellor's July 21, 2008 Judgment entered three years after he filed for divorce from Mary Woodfin. The chancellor's provisions for the support of Mary and the two children who had not yet reached the age of majority at the time the Judgment was entered are unsupported by the evidence and the applicable law. Moreover, when considered together, they are inequitable and unfair, totally disregarding Paris' right "to lead as normal a life as possible with a decent standard of living." *Yelverton v. Yelverton*, 961 So. 2d 19, 29 (Miss. 2007)

Paris first asserts that the chancellor abused his discretion in finding him in contempt of the March 15, 2007 Agreed Temporary Order and ordering him to pay Mary's attorney's fees for the contempt matter. Although Paris acknowledged that he was in arrears in his payment of child support and spousal support at the time Mary filed her motion for contempt, there is nothing in the record to show that he willfully and deliberately disobeyed the order. The chancellor further abused his discretion in finding that Paris was in contempt of the Agreed Temporary Order for non-payment of the minor children's medical bills which accrued prior to the entry of the order and thus were *res judicata* because they could have been raised at that time but were not.

In his second assignment of error, Paris contends that the chancellor's redistribution of his retirement assets inconsistent with the agreement reached by the parties and read into the record, as well as the allocation of all marital debt to Paris, was overreaching and an abuse of discretion.

Although Paris acknowledges that some alimony for Mary was appropriate, he next asserts that the amount and duration of the support he was ordered to pay to Mary is excessive and that the chancellor failed to properly consider the factors set forth in *Armstrong v. Armstrong,* 618 So. 2d 1278 (Miss. 1993), in ordering Paris to pay permanent periodic alimony in the amount of $700.00 per month. Reviewing the *Armstrong* factors, he then asserts in his fourth assignment of error that the chancellor's failure to award rehabilitative alimony rather than permanent periodic alimony was an abuse of discretion.

The chancellor further ordered Paris to provide COBRA insurance coverage for Mary under his employer's insurance plan for as long as allowed by law. No evidence of the cost or potential duration of such coverage was introduced at trial. In his fifth assignment of error, Paris thus asserts that the requirement that he provide health insurance under terms where the costs and terms of coverage were not known and could not be assessed as to reasonableness is an abuse of discretion.

Paris next asserts that the chancellor erred in ordering him to pay child support in the amount of $1200.00 for the two children who had not yet reached the age of twenty-one at the time the Judgment was entered. That amount exceeds the statutory guidelines and the chancellor's findings neither reference the guidelines nor contain any written explanation as to whether he found the guidelines applicable or in the alternative, his reasons for deviating from them.

In his final assignment of error, Paris contends that the combined awards of child support and spousal support ordered by the chancellor are *per se* unreasonable because he is left without sufficient income to maintain a decent standard of living. The chancellor

abused his discretion in winding up the parties' financial matters so that the awards of support for Mary and the two minor children, coupled with Paris' financial obligations and the complete absence of any assets which might provide any financial cushion for him, leave him destitute and potentially in "hopeless, continuous contempt" of court.

ARGUMENTS AND DISCUSSION OF THE LAW

I. THE CHANCELLOR ABUSED HIS DISCRETION IN FINDING PARIS IN CONTEMPT OF THE AGREED TEMPORARY ORDER

The Agreed Temporary Order, signed on January 26, 2007 and filed on March 15, 2007, required Paris to pay child support in the amount of $1166.00 and spousal support in the amount of $634.00, totaling $1,800.00 per month. (R. at 15; R.E. at 6). In the July 21, 2008 order, the chancellor found that Paris was in arrears in the amount of $3,900.00 for past due child and spousal support and thus in contempt of the support provisions of the Agreed Temporary Order. (R. at 35; R.E. at 23). He further found that Paris was in contempt "for not paying the medical bills on the children which were submitted into evidence." (R. at 35; R.E. at 23). Based on the findings of contempt, Paris was ordered to pay Mary's attorney's fees in the amount of $2,500. (R. at 35; R.E. at 23). Paris asserts that the chancellor abused his discretion in finding him in contempt of the Agreed Temporary Order.

The Mississippi Supreme Court has held that "contempt can only be willful." *Mizell v. Mizell,* 708 So. 2d 55, 64 (¶ 52) (Miss. 1998). "A contempt citation is proper only when the contemnor has willfully and deliberately ignored the order of the court." *Riddick v. Riddick,* 906 So. 2d 813, 826 (¶ 42) (Miss. Ct. App. 2004); *Cooper v. Keyes,* 510 So. 2d 518, 519 (Miss. 1987). "A chancellor has substantial discretion in deciding whether a party is in contempt." *R.K. v. J.K.,* 946 So. 2d 764, 777 (¶ 39) (Miss. 2007). Although Paris acknowledged that he had fallen behind in his monthly support payments, there is nothing in the record to indicate that he willfully and deliberately ignored his obligation to pay support or one-half of the minor children's medical expenses as required of him by the Agreed Temporary Order.

A. Support

In her Motion for Citation for Contempt, signed on July 19, 2007 and filed on July 25, 2007, Mary alleged that Paris had failed and refused to abide by the Temporary Order and was in arrears in the amount of $3,900.00, $1,800.00 of which represented support due for the month of July. (R. at 20-21). Paris admitted the arrearage and paid $2,500.00 of the past due amount to Mary prior to the hearing after obtaining a loan against his Lockheed Martin 401(k) plan. (T. at 23-24). When questioned why Paris did not totally satisfy the arrearage due Mary, leaving some $1,400.00 unpaid, he testified that he had reserved part of the money he was able to borrow from his 401(k) in order to retain counsel and pay off marital debt. (T. at 24).

There is no evidence in the record to suggest that Paris willfully or deliberately refused to meet his support obligations. (T. at 25). To the contrary, he testified that he was unable to pay the full amount because he was trying to pay other bills incurred by his family, including the Expedition Mary was driving as well as cell phone and bills incurred by Mary and the parties' daughter. (T. at 25-29, 35-36). Even prior to the entry of the Temporary Order, Paris had struggled to pay voluntary support in addition to paying the family bills. (R.E. at 32). Once the Agreed Temporary Order was entered, he also continued to pay the obligations of the family that would otherwise have fallen upon Mary to pay out of her support check. He testified:

> It was because there were other debts I had to pay. I had other debts incurred by my daughter and her. I had a $1900 cell phone bill that had to be paid off. I had a truck payment -- the Expedition that she drives, I had to pay that. I paid $800, $850 on that. Okay. I didn't even have – The reason I wasn't able to pay it prior to was because I took out a loan on my 401(k) the year before, and I wasn't eligible to take out another loan until September of this year.

(T. at 25). In addition, Paris testified that he was providing assistance to the parties' minor son for college tuition and expenses. (T. at 31). There further was conflicting testimony from the parties as to Mary's use of FEMA funds received by the parties as a result of losses sustained by Hurricane Katrina. (T. at 77, 93-94, 97-99).

Paris proved his inability to keep up with his support obligations with the requisite particularity. *Varner v. Varner,* 666 So. 2d 493, 496 (Miss. 1995). Indeed, there was nothing in the record to indicate that he was living beyond his means or using his income and savings for any purpose other than to meet his obligations to his family and pay the family debts not enumerated in the Agreed Temporary Order.

B. Children's Medical Bills

Pursuant to the Agreed Temporary Order, Paris was required to provide medical insurance for the minor children and the parties were "equally responsible for all medical expenses not covered by insurance with each party paying one-half of the uncovered expense." (R. at 18; R.E. at 9). Mary merely alleged in her Motion for Citation for Contempt that "[p]laintiff has not paid medicals" and that she should be granted a judgment for all medical bill arrearages. There was no itemization of the outstanding bills or Paris' share of any such bills in her pleadings. (R. at 21). In the July 21, 2008 Judgment, however, the chancellor found that Paris was in contempt for not paying the medical bills on the children which were submitted into evidence at trial and gave him sixty days from the entry of the judgment to pay the bills or make arrangements with providers. (R. at 35; R.E. at 23). The chancellor abused his discretion in so finding as well as in apparently requiring Paris to pay those bills in full, not just the one-half of the uncovered medical expenses as set out in the Agreed Temporary Order.

The first medical "bill" submitted into evidence at the November, 2007 hearing was a statement clearly marked "THIS IS NOT A BILL" from the East Alabama Medical Center for $265.23, showing a cash credit of $45.00 for services provided to the minor child, Dameon Woodfin, on August 2, 2006. (Exh. 3). There was no evidence presented regarding how much of the emergency room visit was covered by insurance or the final amount owed. Services were provided more than six months before the entry of the Temporary Order and therefore, should have been addressed at that time. There further was no explanation as to why the bill was not produced or addressed at the time of the Agreed Temporary Order. In *Clements v. Young,* 481 So. 2d 263, 270 (Miss. 1985), the Mississippi Supreme Court reduced an award of medical expenses that could have been addressed at an earlier proceeding. The court held that "[i]f there was a problem about medical or dental bills prior to [the earlier contempt proceeding], the matter could have and should have been litigated then. The decree . . . is *res judicata* with respect to all claims that were presented or may reasonably have been presented at that time." *Id.* There likewise is no reason why the responsibility for payment of any outstanding medical bills could not have been addressed at the time the Agreed Temporary Order was prepared and Mary's claim that Paris was in contempt for failure to pay the bill is *res judicata.* See also, *Russell v. Russell,* 724 So. 2d 1061, 1063 (¶ 18-19) (Miss. Ct. App. 1998) (chancellor abused his discretion by requiring husband to pay past-due medical expenses that could have been presented at earlier contempt proceeding; wife had simply claimed that husband "refused to pay the medical expenses" and like Mary, did not itemize the past due expenses alleged).

Mary further submitted bills for herself and each of the parties' four children, including twenty-three-year-old Dameon Woodfin, for services rendered by a psychologist, Bridget F. Smith, Ph.D., at some time subsequent to the time Paris filed for divorce in 2005, but prior to June 26, 2007. (Exh. 3). The Temporary Order required only that Paris pay one-half of the minor children's *medical* bills not covered by insurance. It made no provision for psychological consultations or other non-medical services. Mary further provided no evidence of whether the bills had been submitted to the insurance company, what, if any, part of the $430.50 incurred on behalf of each of the three *minor* children was covered by insurance, and whether she had made any payment on the bills. In questioning Mary at trial, her attorney adroitly avoided the issue of *when* the counseling services were provided; she intimated, however, that she and the children had problems around the time of the parties' separation, which was in 2005. (T. at 58-59). Absent some proof that the bills were incurred subsequent to the Agreed Temporary Order in March, 2007, Paris cannot be held in contempt of that order. *Clements,* 481 So. 2d at 270; *Russell,* 724 So. 2d at 1063 (¶ 18-19).

Mary further submitted a bill for services rendered to Paris Woodfin by the East Alabama Medical Center on August 23, 2007, more than a month *after* the Motion for Contempt was filed. (Exh. 3). Not only had the bill not been incurred at the time the Motion was filed, but there is no evidence as whether any part of the bill was covered by insurance and whether Mary had paid her half of the obligation. Paris testified that because of Mary's move to Alabama, the physicians she used were out-of-network and that he was working with the insurance company to have these and other bills re-submitted. (T. at 42-44).

Based on the evidence in the record, Paris cannot be said to have willfully or deliberately violated the provisions of the Agreed Temporary Order requiring that he pay one-half of the minor children's medical bills not covered by insurance nor can he be held in contempt for his alleged failure to pay bills incurred prior to the entry of the order. The chancellor abused his discretion in so finding and the judgment of contempt should be reversed.

II. THE CHANCELLOR IMPROPERLY PLACED AN UNDUE BURDEN OF MARITAL DEBT ON PARIS AND REDISTRIBUTED THE AGREED DIVISION OF PARIS' RETIREMENT ASSETS BETWEEN THE PARTIES.

The parties accumulated few assets and many debts during the marriage. During the two years between the time that Paris filed for divorce and the November, 2007 hearing, much of their personal property was destroyed or damaged by Hurricane Katrina and that which remained already had been divided between them. Paris thus asserts that the chancellor erred in finding that the parties agreed to the court's adjudication of a division of their marital assets and debts and in particular, in placing responsibility for the remaining marital debt on Paris and re-allocating Paris' retirement assets between the parties.

The parties did not address the issue of property division in their Consent to Adjudicate. (R. at 24; R.E. at 12; Exh. 7). The chancellor, however, found that "in sum, the agreements of the parties limits [sic] the issues to be decided by the Court to *the equitable division of the parties' marital property and debts*, the amount of spousal support and issues related to the children such as college expenses." (R. at 26; R.E. at 14) (emphasis added). The chancellor clearly erred in so finding. Moreover, property settlement agreements between the parties should not be modified by the chancellor in

the absence of fraud, duress or unconscionability. *Barton v. Barton*, 790 So. 2d 169, 172 (Miss. 2001). Given the absence of any such findings by the chancellor with regard to agreements made by the parties regarding their debts and liabilities, the chancellor's rulings inconsistent with those agreements were overreaching and should be reversed.

At the hearing, limited evidence was introduced but not developed regarding Paris' pension assets, the disposition of FEMA funds and personal property of the parties that had been damaged by Hurricane Katrina but kept in a storage building as well as about a HUD house in Opelika, Alabama, for which Paris helped arrange financing. However, what little evidence there was as to the valuation of any assets or the amount of the outstanding debt of the parties came from the undated, unsigned Rule 8.05 financial disclosure forms entered into evidence. (Exhs. 4 and 8). Nevertheless, the chancellor embarked upon a thorough *Ferguson* analysis apropos to a full adjudication of the parties' marital assets and liabilities. *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994). In his allocation of marital debt, however, it appears that the chancellor merely interpolated debt information from the parties' Rule 8.05 financial declaration forms and incorporated it into the Judgment without regard to the amount of debt outstanding or reference to his *Ferguson* analysis. To do so, especially in light of the fact that issue of division of assets and liabilities was *not* included in the parties' Consent to Adjudicate, was overreaching and an abuse of discretion. The chancellor's allocation of the remaining marital debt wholly to Paris should be reversed and remanded.

As to the parties' assets, Paris testified that he had retirement plans with Boeing DRS and Lockheed Martin, his employer at the time of these proceedings, but did not testify as to the value of these assets. (T. at 45-46). A Lockheed Martin Salaried Savings

Plan statement for January, 2007, showing a balance of $18, 241.63, is attached to his Rule 8.05 financial disclosure form. (Exh. 8). Although it is not clear that the Lockheed plan about which Paris testified is the same as that referenced in his 8.05, it appears to be the same savings plan against which he obtained a loan to pay part of the arrearage due to Mary and ultimately, her court-ordered attorney's fees for the contempt proceeding and not his own. (T. at 23-24). It was Paris' understanding that Mary was to receive one-half of his Lockheed Martin 401(k) plan, based on its value prior to taking out the loan. At trial, however, Mr. Teel represented the parties' agreement as follows:

> Next would be retirement. And Mrs. Woodfin will be entitled to one-half of Mr. Woodfin's Boeing DRS retirement/ 401 (k). She shall be entitled to 15 percent of his Lockheed retirement to date, and that's computed on six years over the life of the marriage and work divided by one-half, and entitled to one-half of the savings accounts, stocks and bonds. As to that, those will be computed without any deductions or withdrawals during the disputed.

(T. at 11). In the Judgment, however, the chancellor provided for the division of Paris' retirement savings as follows:

> Mary is also awarded one-half (1/2) of Paris's retirement accounts, valued as of the date of this judgment, at Boeing/DRS and Lockheed Martin. Paris shall provide Mary with the necessary qualified domestic relations orders for these two retirement accounts through her attorney. Mary is also awarded one-half (1/2) of Paris [sic] ESP or savings plans which had a value of $18,000 so that Mary is entitled to the sum of $9,000. All of the above transfers shall be accomplished no later than 30 days from the date hereof.

(R. at 29; R.E. at 17). To the extent this Court views the provisions read into the record at trial by Mary's attorney as a settlement agreement between the parties, the chancellor erred in his expression of the allocation of Paris' retirement assets as set forth in the Judgment. *Barton*, 790 So. 2d at 172. See also *McNair v. Clark*, 961 So. 2d 73, 78-79 (Miss. Ct. App. 2007)(oral stipulations may be binding on the parties). Admittedly, Mr.

Teel's articulation of the parties' agreement no more reflects the evidence in the record than does the Judgment. However, the chancellor made no determination of fraud, duress or unconscionability so as to warrant any modification of the parties' agreement and except for correctly stating the value of the account, the Judgment does nothing to clarify the allocation of the account for purposes of determining the amount of alimony to which Mary might be entitled or preparing the requisite QDROs ordered by the court. At the very least, the chancellor mistakenly changed the allocation figures read into the record; at most, his re-allocation of Paris' retirement assets was overreaching and should be reversed and remanded for clarification and correction.

III. THE ALIMONY AWARDED TO MARY IS EXCESSIVE AND NOT BASED ON THE CORRECT LEGAL STANDARD

Paris acknowledged at trial that Mary was entitled to receive some alimony. (T. at 105). Indeed, the parties consented to adjudication of the issue of alimony. (R. at 24; R.E. at 12; Exh.7). Paris, however, asserts that the alimony he was ordered to pay to Mary is excessive and was based on an improper reading of the factors set forth in *Armstrong v. Armstrong,* 618 So. 2d 1278 (Miss. 1993). The chancellor ordered Paris to pay permanent periodic alimony to Mary in the amount of $700.00 per month and in addition, to provide health insurance for her under COBRA for as long as provided by his employer's plan.[3] (R. at 30-31; R.E. at 18-19). The chancellor arrived at this award after an extensive analysis of the *Ferguson* factors, where after dividing the parties' few assets and many debts, he found that the division of assets did not eliminate the need for periodic payments and that there was a substantial disparity in the parties' respective incomes. (R. at 28; R.E at 16).

[3] The record contains no evidence regarding the cost of COBRA insurance for Mary Woodfin.

Following his extensive analysis of the *Ferguson* factors, the chancellor applied what he considered to be the only relevant *Armstrong* factors and made the award of alimony solely on the basis of the disparity of the parties' current incomes and "the likelihood that Mary's prospect for any substantial increases are poor because of her limited work experience, education and responsibilities for the parties' children." (R. at 30; R.E. at 18). That finding is unsupported by the evidence. Moreover, the amount awarded is excessive, especially in light of the requirement that Paris must also provide COBRA insurance for Mary at an unspecified cost and for an unspecified period of time and is responsible for all of the marital debt accumulated by the parties. The chancellor's application of the *Armstrong* factors was manifestly wrong and he abused his discretion in awarding Mary permanent periodic alimony in the amount of $700.00 per month.

The parties agreed to adjudication of the issue of alimony, and indeed, alimony is warranted where after the division of assets, there remains a deficit for one spouse. *Lauro v. Lauro,* 847 So. 2d 843, 848 (¶ 13) (Miss. 2003). However, the following factors are to be considered by the chancellor in arriving at findings and entering a judgment for alimony: the income and expenses of the parties; the health and earning capacities of the parties; the needs of each party; the obligations and assets of each party; the length of the marriage; the presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care; the age of the parties; the standard of living of the parties, both during the marriage and at the time of the support determination; the tax consequences of the spousal support order; fault or misconduct; wasteful dissipation of assets by either party; or any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

Armstrong, 618 So. 2d at 1280-81; *Hammonds v. Hammonds*, 597 So. 2d 653, 655 (Miss. 1992).

Under better circumstances, testimony regarding each of the *Armstrong* factors would have been developed at trial. It was not. Evidence supporting that testimony would have been introduced. It was not. Signed, dated and complete financial disclosure information *by both parties* together with supporting documentation would have been introduced at trial or made available for the chancellor's review. It was not. Nevertheless, the chancellor's findings are contrary to the evidence that *was* introduced. There simply is no basis for the chancellor's findings that Mary's prospects for any increase in earnings are precluded by her limited education and experience and her responsibilities for taking care of the minor children. Moreover, as a review of the *Armstrong* factors show, those findings failed to take into consideration much of the relevant evidence introduced at trial.

1. Income and Expenses of the Parties

It is undisputed that there is a disparity in the parties' incomes. However, in simply basing the amount and duration of an award of alimony on the fact of a disparity in current incomes, the chancellor failed to take into consideration the *expenses* of the parties and that the disproportionate share of the family's debt and expenses which were to be assumed by Paris, both by agreement of the parties and pursuant to the July 21, 2008 Judgment. Based on the statement of debt set out in Paris' 8.05, the chancellor required Paris to assume the payment of marital and individual debt well in excess of $500.00 per month. (Exh. 8). In addition, he was ordered to pay $1,200.00 per month in child support, provide medical insurance for the children and COBRA coverage for

Mary. (R. at 30-31, 34-35; R.E. at 18-19; 22-23). Based on the evidence presented at trial, Paris also was contributing to the college expenses of the parties' son, Paris II, who turned twenty-one prior to the entry of the Judgment. (T. at 31). Mary's expenses were not clearly set out in her Rule 8.05 financial disclosure nor was any evidence of her expenses or those of the minor children introduced at trial. (Exh. 4).

2. Health and Earning Capacities of the Parties

The chancellor disregarded the undisputed evidence that Paris is in poor health and already receives military disability benefits. He suffers from asthma, chronic pulmonary obstructive disease (COPD), diabetes, high blood pressure, high cholesterol and a service-related knee injury. (T. at 88, 106). Although Paris was earning $5146.00 per month as a field engineer for Lockheed Martin at the time of the hearing, he testified that his life-earnings capacity was shortened because of these conditions. (T. at 106; Exh. 8).

Mary was working in a dress shop twenty to thirty hours a week at minimum wage, earning approximately $800.00 per month. (T. at 66). There is nothing in the record to support the chancellor's finding that Mary was unlikely to earn any more than minimum wage because of her limited education and work experience or her responsibilities for the minor children. Wage earning capacity cannot be presumed. *Johnson v. Johnson,* 877 So. 2d 485, 498 (Miss. Ct. App. 2003). The record indicates that Mary had one year of college and worked throughout much of the marriage, including a stint with the federal government when Paris was stationed in Germany. (T. at 63). The foot condition of which she complained, if anything, should mitigate against her employment in the low-paying retail sales position in which she worked, and instead,

motivate her to seek more lucrative employment in keeping with her education and experience. See *Carroll v. Carroll,* 976 So. 2d 880, 887-88 (Miss. Ct. App. 2007) (chancellor was "astounded" by wife's testimony that she only earned $250.00 to $270.00 every two weeks in take home pay).

3. Needs of Each Party

Neither party demonstrated any special needs. Mary introduced no evidence beyond a partially completed Rule 8.05 financial disclosure form of her actual expenses or those of the minor children. However, the sum total of obligations imposed upon Paris by the Judgment indicate that the chancellor failed to recognize that Paris as well as Mary was entitled to "lead as normal a life as possible with a decent standard of living." *Yelverton*, 961 So. 2d at 29.

4. Obligations and Assets of Each Party

The record clearly indicates that this is a case where the parties have no individual assets and the few marital assets are insufficient to provide an adequate financial cushion for either party or their children. Mary was awarded the only tangible assets of the marriage – the unencumbered half of Paris' Lockheed Martin 401(k) plan and a house in Alabama, for which Paris helped her obtain financing subsequent to the parties' separation and she is paying the mortgage, the amount of which was not introduced at trial. Although the two minor children live with Mary, Paris was responsible for their support as set out *supra* in the discussion of the income and obligations of the parties.

5. Length of the Marriage

At the time Paris filed for divorce in 2005, the parties had been married for twenty years.

6. Presence or Absence of Minor Children Requiring One or Both of the Parties to Either Pay for, or Personally Provide, Child Care

There is no evidence in the record to support the chancellor's finding that Mary's potential for increasing her income is hampered by her responsibilities for the minor children. The two children still living at home were born on November, 27, 1990 and December 31, 1994. (R. at 7). No evidence was introduced to show that Mary was personally required to provide childcare for either of the children or to pay for child care. Given the ages of the two minor children, who were thirteen and seventeen at the time the Judgment was entered, the chancellor's finding that Mary's ability to increase her earnings was limited by her responsibilities for the minor children was contrary to the evidence and clearly erroneous.

7. Ages of the parties

Paris was born on June 24, 1964; he was forty-one years old at the time he filed for divorce and forty-four years old when the judgment finally was entered in July, 2008. (Exh. 8). Mary was born on October 13, 1964; she, too, was forty-one years old when the divorce was filed and forty-three years old when the judgment was entered. (Exh. 4).

8. Standard of Living of the Parties

The record indicates that the parties had a very modest standard of living both during the marriage and at the time of the support determination. They moved frequently while Paris was in the military and acquired few assets. The Long Beach, Mississippi home in which they lived prior to the separation was damaged by Hurricane Katrina. (T. at 102). At the time of the support determination, Mary and the children lived in a HUD house in Opelika, Alabama, where they relocated subsequent to the hurricane. (T. at 91). Paris lived in an apartment in Gulfport, Mississippi. At the time of the hearing, hurricane-

damaged items of personal property salvaged from the former marital home were still housed in a storage unit. (T. at 39-40).

9. The tax consequences of the spousal support order;

As the chancellor found in his analysis of the *Ferguson* factors, no evidence of the tax consequences of the support order was presented by the parties. (R. at 28; R.E. at 16).

10. Fault or misconduct;

It is undisputed that both parties committed adultery during the marriage. (T. at 70-71). Paris contends, however, that it was Mary's infidelity some seventeen years prior to the hearing that led to the breakdown of their marriage. Paris attempted to question Mary with regard to whether he was the father of all four children and the chancellor sustained her attorney's objection to the question as irrelevant. (T. at 100). "The relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused. Unless the trial judge's discretion is so abused as to be prejudicial to a party, this Court will not reverse his ruling." *Copeland v. Copeland*, 904 So. 2d 1066, 1073 (¶ 23) (Miss. 2004) (quoting *Stewart v. Stewart,* 645 So.2d 1319, 1320 (Miss. 1994)). Although the parties had agreed to a divorce on grounds of Irreconcilable Differences, evidence of whether Paris was the father of all of the children born during the marriage was relevant to the issue of marital fault or misconduct as it relates to the award of alimony. Paris was prejudiced by his inability to go forward with this line of questioning and the chancellor abused his discretion in not allowing him to proceed. (R.E. at 31).

11. Wasteful Dissipation of Assets by Either Party

There was disputed testimony regarding the disposition of FEMA funds and the disposition of damaged household goods following Hurricane Katrina. (T. at 77, 93-94, 97-99). However, the evidence in the record indicates that all monies realized from hurricane losses ultimately were used for their intended purposes and there is nothing to suggest the wasteful dissipation of assets by either party.

The chancellor's finding that Mary's earnings potential was hampered because of her lack of education and work experience as well as her responsibilities for the minor children is contrary to the evidence in the record. The evidence in the record did show that despite the length of the marriage, insufficient assets were accumulated to adequately provide for either party or their children. The family had lived modestly and the combined ravages of Hurricane Katrina and the parties' separation and ultimately, their divorce, served only to reduce their standard of living. Paris was already in poor health; despite his relative youth, he already received VA disability and his continued employment prospects were not certain. Mary, too, is relatively young, has a year of college and a variety of work experience. It is undisputed that there is a disparity in the their incomes at the time of the hearing; there is nothing in the record, however, to suggest that Mary is incapable moving forward with her life and working to narrow the income disparity.

Although an award of alimony may be affirmed without a complete recitation of the *Armstrong* factors, the award must be reversed "if it is clear that no such analysis occurred or if the information in the record does not support the chancery court's findings." *Godwin v. Godwin,* 758 So. 2d 384, 387 (¶ 10-11) (Miss. 1999). Because the record does not support the few *Armstrong* factors which the chancellor found to be

relevant, his award to Mary of permanent periodic alimony in the amount of $700.00 per month therefore was an abuse of discretion and should be reversed.

V. THE CHANCELLOR ABUSED HIS DISCRETION IN NOT AWARDING REHABILITATIVE ALIMONY.

Paris agreed at trial that alimony was appropriate and does not dispute the chancellor's finding that Mary is entitled to alimony. (T. at 106). He asserts only that based on the particular facts of this case, which a more complete analysis of the *Armstrong* factors would have brought to light, the chancellor's award of permanent periodic alimony instead of rehabilitative alimony or a hybrid thereof was an abuse of discretion.

"'Rehabilitative periodic alimony' is 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). It is appropriate for women like Mary who have "'put their career on hold while taking care of the marital home. Rehabilitative alimony allows the party to get back into the working world in order to become self-sufficient.'" *McIntosh v. McIntosh,* 977 So. 2d 1257, 1270-1272 (Miss. Ct. App. 2008) (quoting *Lauro,* 847 So. 2d at 849).

Despite a twenty year marriage, the parties accumulated few assets. The division of Paris' pension plan provides little, if any, financial security for either party. Any financial disparity between the parties can be credited to Paris' current income and not to the allocation of assets. Although Paris' income at the time of the hearing, including his disability pay, was not unsubstantial, he testified that his long-term earnings potential was limited because of his military-related physical disabilities and extensive health

problems. (T. at 88, 106). That factor, in and of itself, favors an award of rehabilitative alimony rather than periodic alimony. *Wesson v. Wesson,* 818 So. 2d 1272, 1275 (Miss. Ct. App. 2002) (wife awarded rehabilitative alimony instead of permanent periodic alimony because of husband's disability).

Contrary to the chancellor's findings that Mary's income is limited by her lack of education and work experience, as well as her responsibilities in caring for the parties' two minor children, Mary is young, she has one year of college and worked during much of the marriage despite the family's many service-related moves and her responsibilities at home when the children were young. (R. at 63). Only two children are still at home; one is now fourteen, the other, eighteen. Mary is certainly capable of working more than part-time and for more than minimum wage. There further is nothing in the record to indicate that she cannot continue her education. The award of permanent periodic alimony rather than rehabilitative alimony does a disservice to Mary and denies her the opportunity to get a fresh start and improve her prospects for more lucrative employment, especially in light of the limitations presented by Paris' health.

VI. THE CHANCELLOR ABUSED HIS DISCRETION IN REQUIRING PARIS TO PROVIDE COBRA INSURANCE FOR MARY WITHOUT REFERENCE TO THE COST OR SPECIFIC DURATION OF SUCH COVERAGE.

In addition to the payment of permanent periodic alimony in the amount of $700.00 per month, the chancellor required Paris to "keep Mary on his employer's medical insurance plan through COBRA as long as permitted by applicable law and or regulation." (R. at 30-31). Although Mary's attorney represented to the court that the parties had agreed that Paris would provide COBRA coverage under his employer's

insurance plan for Mary, no evidence was introduced regarding his employer's medical insurance plan or the cost of providing COBRA coverage. (T. at 10).

It is within the chancellor's discretion to require one spouse to provide health insurance for the other. *Tillman v. Tillman*, 791 So. 2d 285, 288 (¶ 10) (Miss. Ct. App. 2001). However, "any provision regarding any provision of health care extending beyond the creation of an obligation to provide health insurance under terms where the costs of coverage are known and can, therefore, be assessed as to reasonableness is an abuse of discretion." *Duncan v. Duncan,* 815 So. 2d 480, 484 (¶ 14) (Miss. Ct. App. 2002). Paris thus asserts that the chancellor abused his discretion in ordering him to provide COBRA coverage for Mary without any specific cost or duration.

In *Duncan,* the Court of Appeals found that a general provision for health insurance such as the chancellor made for Mary amounts to "an attempt to provide for future automatic modifications of the level of support without regard to the necessary factors that must support a bid to modify alimony." *Id.* at 484 (¶ 14); *Tillman*, 791 So. 2d at 288 (¶ 10). On the other hand, the Court of Appeals found that a chancellor's order requiring a divorcing spouse to pay the specific sum of $290.00 per month for twenty-four months for the other's health insurance under COBRA was reasonable and not an abuse of discretion. *Bumpous v. Bumpous,* 770 So. 2d 558, 561 (¶ 16) (Miss. App. 2000).

The chancellor's decision to require Paris to provide COBRA insurance for Mary without any evidence of the cost of such insurance and a determination of its reasonableness and without placing any more specific time limit on such requirement was an abuse of discretion and should be reversed and remanded.

VI. THE AMOUNT OF CHILD SUPPORT AWARDED IS UNSUPPORTED BY THE RECORD AND THE CHANCELLOR ABUSED HIS DISCRETION BY SETTING THE AWARD WITHOUT REFERENCE TO THE CHILD SUPPORT GUIDELINES.

Mary's attorney read into the record the following provision for support of the parties' minor children:

> Now, as far as child support, it will be $1200 a month. Mr. Woodfin will provide medical insurance for the children, and then one-half of the non[-]covered costs will be paid by each of them.
>
> * * * * * *
>
> And then, I left out one thing on the child support, Your Honor. On my handwritten notes, it says that, because we have three children, the child support can be reevaluated each time a child reaches the age of 21 or becomes emancipated, and that will be reviewed upon all of the financial information necessary to make that determination. And I've also told them that that, of course, is the law, anyway, that along with having a withholding order on that.

(R. at 9-10). The chancellor, however, in the June, 2008 Judgment, found that "in sum, the agreements of the parties limits [sic] the issues to be decided by the Court to the equitable division of the parties' marital property and debts, the amount of spousal support and *issues related to the children such as college expenses*." (R. at 26, R.E. at 14) (emphasis added). In the Judgment, the chancellor, without any reference to the oral stipulations, ordered and adjudged, "*based on the proof at court*, that the father shall pay the mother the sum of $1200 per month as child support beginning August 1, 2008, and continuing until all children reach the age of majority, become self-support[ing] or until further order of this Court." (T. at 34) (emphasis added). In addition, he was required to provide medical insurance for the children and pay one-half of their medical expenses not covered by insurance and one-half of any college expenses until they reached the age of twenty-one. (R. at 34-35; R.E. at 22-23). The support award is excessive and the

chancellor abused his discretion in determining the amount of child support without reference to the statutory guidelines.

The amount of child support awarded is controlled by the child support guidelines set forth in Miss. Code Ann. § 43-19-101 (Rev. 2004) et seq., with some discretion left to the chancellor. *McGehee v. Upchurch,* 733 So. 2d 364, 371 (¶ 37) (Miss. Ct. App. 1999). Pursuant to those guidelines, a parent with two children, who makes less than $50,000.00 per year, should pay child support in the amount of twenty percent of his or her adjusted gross income. § 43-19-101(1). Section 43-19-101(2) further provides that the chancellor shall "make a 'written finding' or specific finding on the record that the application of the guidelines would be unjust or inappropriate . . . as determined under the criteria specified in [section] 43-19-103' in order to effectively overcome the statutory presumption." *McGehee,* 733 So.2d at 371 (¶ 37). "Similarly, [section] 43-19-101(4) reads in part, 'the court shall make a written finding in the record as to whether or not the application of the guidelines established' is reasonable." *Id.; Chesney v. Chesney,* 910 So. 2d 1057, 1061 (Miss. 2005). The Mississippi Supreme Court has held that "these provisions, operating in conjunction, at a minimum require some written reference to the guidelines being bypassed and some explanation as to why." *Id.* (citing *Knutson v. Knutson,* 704 So. 2d 1331, 1334-35 (¶ 23) (Miss. 1997)).

Neither the purported agreement of the parties read into the record nor the Judgment reference whether or not the child support guidelines were found to be applicable in determining the amount of support. The "proof at court" upon which the chancellor predicated the award is not clear either from the record or the Judgment. The only "proof" presented at the hearing was Paris' inability to keep up with the child

support provisions of the Agreed Temporary Order in addition to his other obligations to provide for his family. [4] Moreover, Mary presented no evidence of the minor children's reasonable needs or their actual expenses.

The Judgment references only the two minor children, Aundrea Woodfin, born November 27, 1991 and Dijon Woodfin, born December 31, 1994. R. at 26; R.E.at 14). In his articulation of the Ferguson factors, the chancellor found that Paris earned $5146.00 per month as a field engineer for Lockheed Martin. (R. at 28). Factoring in the $1600.00 per month in military disability pay Paris receives, as well as allowable deductions, Paris' Rule 8.05 financial declaration shows a net monthly income of $5300.00. (Exh. 8). Pursuant to the Child Support Guidelines set forth in Miss. Code Ann. § 43-19-101(1) (Rev. 2004), a parent with two children should pay child support in the amount of twenty percent of his or her adjusted gross income. Based on the application of the statutory percentage to his monthly income, Paris would pay child support at the rate of approximately $1060.00 per month.

Paris, however, was earning in excess of $50,000.00 per year at the time of these proceedings. Thus, the chancellor should have made specific, written findings supporting its award pursuant to § 43-19-101(4). "When a chancellor makes a ruling without specific findings of fact and a party raises the issue of the amount of child support awarded, this Court will send the issue back to the lower court for the mandatory specific findings of fact as to why the chancellor deviated from the guidelines." *McGehee,* 733 So.2d at 371 (¶ 37). In this case, where the chancellor made a universal support award and Paris will have to seek modification of that award when the minor child, Aundrea, turns twenty-one

[4] Under the terms of the Agreed Temporary Agreement, Paris had been paying support in the amount of $1166.00 for three minor children. (R. at 18; R.E. at 9).

or is otherwise emancipated, written findings for the basis for the chancellor's award are particularly important. The chancellor's award of child support should be reversed and remanded and proper written findings made for the basis of the amount of support awarded with reference to the child support guidelines.

VII. THE COMBINED AWARDS OF SPOUSAL SUPPORT AND CHILD SUPPORT ARE *PER SE* UNREASONABLE BECAUSE THEY FAIL TO ALLOW PARIS TO MAINTAIN A DECENT STANDARD OF LIVING.

Looking at the Judgment as a whole, Paris contends that the combined awards of child support and spousal support coupled with the division of property and debt ordered by the chancellor are *per se* unreasonable because he is left without sufficient income or assets to maintain a decent standard of living. Paris was ordered to pay child support in the amount of $1,200.00 per month, spousal support in the amount of $700.00 per month, to provide health insurance for the minor children, which based on the evidence in the record is approximately $400.00 per month, and an unspecified amount per month for COBRA coverage for Mary. In addition, he is required to pay the bulk of the marital debt, payment of which he approximated at $510.00 per month. (Exh. 8). Based on the information provided in his Rule 8.05 financial declaration, Paris' expenses exceeded his income during the parties' separation when he was required to pay spousal and child support totaling $1,800.00. (Exh. 8).

The chancery court abuses its discretion if it places a party in "hopeless, continuous contempt" of court. *Yelverton v. Yelverton*, 961 So. 2d 19, 28 (Miss. 2007) (holding that where the husband's income was $12,000 per month, leaving him with $2,000 per month on which to live after paying his alimony and child support was *per se* unreasonable, inequitable, unfair, and leaves the husband destitute). In *Yelverton*, the

Mississippi Supreme Court found that when calculating support awards, the chancellor "should consider the reasonable needs of the husband to lead as normal a life as possible with a decent standard of living." *Id.* at 29; *Brooks v. Brooks*, 652 So. 2d 1113, 1122 (Miss. 1995); *Massey v. Massey*, 475 So. 2d 802, 803 (Miss. 1985).

Paris was required to borrow against his retirement fund to meet his past-due child support obligations and pay attorney's fees, all but depleting his share of the retirement assets not awarded to Mary, which will obviously not afford him the "reasonably financially-secure circumstance" that Mississippi law long has recognized as an important public policy. *Id.* See also, *Hopton v. Hopton*, 342 So. 2d 1298, 1301 (Miss. 1977). Paris has been saddled with the bulk of the marital debt and an excessive proportion of his income being awarded to Mary and the minor children, leaving him without the means to live in reasonable financial security. Paris is not in good health and testified that his long-term earnings capacity is diminished as a result of his service-related medical concerns. (T. at 88, 106). He will be fifty-one years old when the parties' youngest child is emancipated, and until such time, he will be responsible for child support and college expenses. Moreover, the award of permanent periodic alimony provides no incentive for Mary to complete her education and increase her earning capacity.

In fashioning the awards of support for Mary and the two minor children, the chancellor failed to take into consideration Paris' ability to meet his court-ordered obligations as well as to provide for himself, thus unfairly, inequitably and unreasonably setting him up to be in "hopeless, continuous contempt" of the July, 2008 Judgment, much as he had been in his attempts to comply with the March, 2007 Agreed Temporary

Order. The chancellor abused his discretion in so doing and the relief awarded to Mary herein should be reversed and remanded for reconsideration consistent with the application of the correct legal standards and the principles of equity and fairness.

CONCLUSION

In providing for Mary Woodfin and the parties' minor children as set forth in the July 21, 2008, Judgment, the chancellor failed to consider all of the financial aspects of the divorce together - property settlement, alimony and child support. As a result, the Judgment fails to reasonably provide for Paris Woodfin's own future reasonable living expenses and, thus, amounts to an abuse of discretion. *Duncan,* 815 So. 2d at 480; *Tilley v. Tilley,* 610 So. 2d 348, 353-54 (Miss. 1992). Moreover, the chancellor's findings regarding the support issues are unsupported by the facts and the law. The chancellor further abused his discretion in finding that Paris was in contempt of the support provisions of the March, 2007, Agreed Temporary Order, as well as for the payment of the minor children's medical expenses.

WHEREFORE, Paris Woodfin prays that upon consideration of this appeal, the court will reverse and remand the chancellor's rulings in the July 21, 2008 Judgment for reconsideration of the issues raised herein. Paris Woodfin also prays for an award of attorney's fees and any other relief to which he is entitled in the premises.

Respectfully submitted,
PARIS ANTHONY WOODFIN

By: John Robert White
JOHN ROBERT WHITE

By: Pamela Gurin Bach
PAMELA GUREN BACH

JOHN ROBERT WHITE, PA
Attorneys at Law
Post Office Box 824
Ridgeland, MS 39158
Telephone: (601) 605-9811
Facsimile: (601) 605-9836
email: jrw@jrwlaw.com
John Robert White
[redacted]
Pamela Guren Bach
[redacted]
Attorneys for Paris Woodfin

CERTIFICATE OF SERVICE

I, Pamela Guren Bach, Attorney for the Appellant, Paris Woodfin, hereby certify that I have this day caused to be served by first class mail, postage prepaid, a true and correct copy of the above Brief of Appellant on the following persons:

Chancellor James B. Persons
First Judicial District
Harrison County Chancery Court
Post Office Box 457
Gulfport, Mississippi MS 39502
Trial Court Judge

Hon. Thomas Wright Teel
Perry Murr Teel and Koenenn
625 16th Street
Gulfport, Mississippi 39507
Attorney for Mary Lee Woodfin

SO CERTIFIED, this the 30th day of December, 2008.

Pamela Guren Bach
PAMELA GUREN BACH