

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**BRYAN KENT HAWKINS**

**APPELLANT**

**VERSUS**

**FILED**

**NO.2008-CA-01774**

**SUZANNE A. HAWKINS**

**JUN 26 2009  
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SUPREME COURT  
COURT OF APPEALS**

**APPELLEE**

**APPEAL FROM THE CHANCERY COURT  
LAMAR COUNTY, MISSISSIPPI**

**REPLY BRIEF OF APPELLANT BRYAN KENT HAWKINS**

**ORAL ARGUMENT IS 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 have been made in order that the Justices of the Supreme Court and/or Judges of the Mississippi Court of Appeal may evaluate possible disqualification or recusal.

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Appellee

Honorable Sebe Dale Jr.  
Chancery Judge  
Tenth Judicial District  
P.O. Box 1248  
Columbia, Mississippi 39429-1248

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**REPLY BRIEF OF APPELLANT BRYAN KENT HAWKINS**

COMES NOW Bryan Kent Hawkins, Appellant (hereinafter referred to as "Brewer"), and files his Appeal Brief, and in support thereof would show the following:

- A. Appellee states that the court did not err in its ruling that the agreement is clear and unambiguous but is incorrect in stating that Bryan Kent Hawkins had contracted away any rights to partite the former marital residence.**

The Chancellor correctly ruled as a matter of law in interpreting paragraph X of the agreement as follows:

*"2. Specifically, and with clarity, paragraph X of the Agreement provided to the following:*

*"That Suzanne A. Hawkins shall be awarded the use and occupancy of the homestead of the parties, together with the furniture, furnishings and appliances contained therein, with the exception of the personal belongings of Bryan Kent Hawkins, and Bryan Kent Hawkins agrees to satisfy and pay the monthly mortgage installments on the homestead it being understood that taxes and insurance on the homestead are included in the monthly mortgage payment."*

*The Court notes and determines that there is nothing ambiguous as to the terms of the award and absolutely no language of limitation.*

The finding of no language of limitation speaks volumes to the law in the State Mississippi in regard to contract interpretation. As previously stated in Appellants Brief the chancellor attempted to rewrite the contract by ruling that an "agreement not to partition is implied." (R. E. 50 Vol.1). Clearly, this ruling ignores settled case law. As previously stated, "if the contract is unambiguous, this Court must accept the plain meaning of a contract as the intent of the parties *Ferrara v. Walters*, 919 So. 2d 876,882. (Miss.2005). The Chancellor correctly found that the contract was unambiguous and should have found that without language limiting the right of partition that Bryan Kent Hawkins could partite said property. Appellee fails to rebut the argument of Appellant supported by the record and relevant case law presented in Appellant's brief. Furthermore, Appellee attempts to argue that the court was not implying a contract when in fact the court stated specifically that the "agreement to partition is implied". If you have to imply a provision of the contract then the contract must be ambiguous. If not ambiguous then the plain language must control and if no limiting language to the contract then the right of partition was not limited by the parties and therefore Bryan Kent Hawkins is entitled to partition of the jointly held property as a matter of law.

**A. Appellee completely failed to address Appellant's argument as stated below:**

**In the event this court believes the Chancellor was correct in finding that Appellant Bryan Kent Hawkins did contract to limit his right of partition then the Chancellor erred in not finding that the grant of use and occupancy of the homestead of the parties and the implied restriction of partition was unreasonable under the facts and circumstances of this case.**

As previously stated in Appellants brief "In the case of Weiner v. Pierce, 203 So.2d 598, 603 (Miss.1967), we expressly stated:

Although the statute gives joint owners the right to have their property partitioned, the right is not one that cannot be restricted or limited for a **reasonable length of time** by contract, will, or deed. It is a well settled general rule that the right of partition may be limited by the provisions of the deed under which the parties claim and that **joint owners may contract that their property will not be partitioned for a reasonable length of time.**


Appellee's brief is lacking of any explanation, argument, rebuttal or authority disputing the reasonable length of time standard set out by this court in the case cited above. As previously stated it has been 20 years since the final judgment and property settlement was filed of record and it has been 13 years and 10 months since the last child was under the age of 21. Appellee has failed to address the authority or argument and this court should order that the property be partited and any equity split between the parties after all cost of sale.

Respectfully Submitted,

BRYAN KENT HAWKINS  
APPELLANT

BY: 

TIMOTHY M. FARRIS  
ATTORNEY FOR APPELLANT

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V.

**CERTIFICATE OF SERVICE**

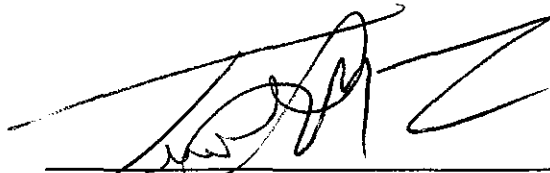
I, Timothy Farris, attorney for Appellant, Bryan Kent Hawkins, do hereby certify that I have this date served a true and correct copy of the above and foregoing document by United States Mail, with postage prepaid to the following persons at their regular business address:

Ms. Betty Sephton  
Supreme Court Clerk  
P.O. Box 249  
Jackson, Mississippi 39205-0249

Hon. Ray T. Price  
P.O. Box 1546  
Hattiesburg, Mississippi 39403-1546

Honorable Sebe Dale Jr.  
Chancery Judge  
Tenth Judicial District  
P.O. Box 1248  
Columbia, Mississippi 39429-1248

This 26<sup>th</sup> day of June 2009.

  
\_\_\_\_\_  
TIMOTHY FARRIS