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STATEMENT OF THE ISSUE

I. Whether the Chancellor committed error in not granting Helen Rogillio permanent periodic alimony.

Whether the Chancellor committed error in not granting Helen Rogillio permanent periodic alimony.

It is not the position of Helen Rogillio ("Helen") that the Chancellor erred in awarding lump sum alimony (albeit parsimonious in comparison to David's wealth), rather it is her position that due to the disparity in income and lifestyle between she and David, that the Chancellor committed error by not awarding her permanent periodic alimony. ***Henley v. Jones*** held, "[o]n appeal, [the Court] is required to affirm a chancellor's findings of fact that are supported by credible evidence and are not manifestly wrong." ***Henley v. Jones,*** 880 So. 2d 382, 383-84 (Miss. Ct. App. 2004). Helen respectfully submits the ***Armstrong*** factors, as analyzed by the Chancellor, favor an award of permanent periodic alimony, and error was committed by the Chancellor in only awarding lump sum alimony. ***Armstrong v. Armstrong,*** 618 So. 2d 1278, 1280 (Miss. 1993).

In his brief to the Court, Appellee, David Rogillio ("David"), simply reiterates the facts of ***Armstrong, Driste*** and ***Monroe.*** *See* ***Driste v. Driste,*** 738 So. 2d 763 (Miss. Ct. App. 1998); ***Armstrong v. Armstrong,*** 618 So. 2d 1278 (Miss. 1993); ***Monroe v. Monroe,*** 612 So. 2d 353 (Miss. 1992). While David admits that "the [f]acts and circumstances of individual cases are dynamic and unique," he suggests to the Court that Helen is misguided in her reliance on the decisions in ***Armstrong, Driste*** and ***Monroe,*** because the facts in the instant case are not identical to the facts outlined in the cases above. (Appellee's Brief, pg. 4). Helen simply pointed to the analogous facts in the foregoing cases as persuasive authority to show that where one spouse's financial resources pale in comparison to that of the other spouse, courts have equitably awarded permanent periodic alimony.

David's brief ignores the fact that he earns a steady and substantial income while Helen will be reduced to living on $770.00 a month and residing in a dilapidated mobile home so that David and their son, Morgan, can live in the marital home. (T. 57). David also ignores that "[t]he supreme court has recognized on numerous occasions that the general rule under which the amount of alimony is to be calculated provides that the recipient should be entitled to a reasonable allowance that is commensurate with the standard of living to which they had become accustomed measured against the ability to pay on the part of the party subjected to the payment order." ***Johnson v. Johnson,*** 877 So. 2d 485, 495-96 (Miss. Ct. App. 2003). *See* ***Gray v. Gray,*** 562 So. 2d 79, 83 (Miss. 1990); ***Rainer v. Rainer,*** 393 So.2d 475 (Miss.1981); ***Jenkins v. Jenkins,*** 278 So.2d 446 (Miss.1973); ***Shows v. Shows,*** 241 Miss. 716, 133 So.2d 294 (1961).

Additionally, instead of addressing those facts which were addressed by the Chancellor in her opinion, David devotes a substantial portion of his argument to hurling unfounded accusations at Helen regarding his theories on why their marriage ended. David states that Helen "claims" to be physically disabled and that he was able to discern by her "appearance in court" that she is not physically incapacitated. (Appellee's Brief, pg. 6). Helen testified under oath that she is in constant pain, and that her disease has necessitated over ten surgeries for the removal of tumors from her body. (T. 81). Helen has been adjudicated physically disabled by the Social Security Administration and receives from it a check every month because she is not able to work as does David for child maintenance due to her disability. (T. 85). In her opinion, the Chancellor recognized Helen's illness, stating that "since Helen's diagnosis of neurofibramatosis, she has been unable to work; the likelihood that she will obtain gainful employment in the future is

very slim." (C.P. 66; R.E. 9). It is obvious Helen's rare, genetic illness weighed on the Chancellor's decision. It is not up to David to issue an opinion on whether *he* believes Helen is ill.

David further states their marriage ended due to "Helen's malevolence" and "drug use" and that there was "circumstantial evidence that Helen drinks in the home." (Appellee's Brief, pg. 6). Helen admitted to receiving treatment for a dependence on pain medication in 2002, but stated to the trial court that she is no longer dependent. (R.E. 3-4). Additionally, as to the alcohol bottles in her home, Helen explained to the trial court she was simply using the empty bottles for a "glass garden." In her opinion, the Chancellor recognized David's argument that Helen is a drug addict and perhaps an alcoholic, but found the "evidence presented was insufficient to support David's allegations of an existing drug usage problem. This factor neither favors nor disfavors an award of alimony." (C.P. 71; R.E. 14). It is Helen's position that since receiving treatment, she is no longer dependent on drugs or alcohol. In ***Sellers v. Sellers,*** a natural father admitted to past marijuana use, but stated he had overcome that problem and the Court found that there was insufficient evidence that he was unfit to have custody of his child. ***Sellers v. Sellers,*** 638 So. 2d 481, 487 (Miss. 1994). *See also* ***J.P.M. v. T.D.M.,*** 932 So. 2d760, 775 (Miss. 2006) (the Court found the Chancellor was within his discretion to favor custody for a father who attended drug and alcohol treatment). The facts of the case sub judice clearly support the Chancellor's ***Armstrong*** analysis wherein she did not regard Helen's prior problems with prescription drug abuse as fault.

CONCLUSION

Helen is not before this Court in order to re-hash any details of the breakup of her marriage. There is a substantial disparity in the resources and lifestyles of Helen and David, which leave Helen at a severe financial disadvantage. Helen respectfully submits that the Chancellor's analysis of the ***Armstrong*** factors should have lead to an award of permanent periodic alimony, but that the Chancellor erred when she found Helen to only be entitled to lump sum alimony.

MOTION FOR ATTORNEY'S FEES

"Where *assignments of error* are unsupported by argument and authority, the court does not, as a general rule, consider them." ***Harris v. State,*** 386 So. 2d 393, 396 (Miss. 1980) (citing ***Ramseur v. State,*** 368 So. 2d 842, 844 (Miss. 1979)). Helen is not making an assignment of error on the part of the Chancellor regarding attorney's fees, Helen is simply making a motion and request for relief. Additionally, if David insists upon making an argument of this nature, Helen submits David's brief does not comply with Mississippi Appellate Rule 28(b), as it lacking a summary of the argument and table of authorities. *See* M.R.A.P. 28(b); 28(a)(2); 28(a)(5).

Respectfully Submitted,
HELEN ROGILLIO

BY: _____
MARK W. PREWITT
Attorney for Appellant

MB#[redacted]
914 GROVE STREET
VICKSBURG, MS 39181
(601) 636-5921 (TELEPHONE)
(601) 631-8076 (FACSIMILE)

CERTIFICATE OF SERVICE

I, Mark W. Prewitt, attorney for Appellant, do hereby certify that I this day mailed, via U.S. mail, postage pre-paid, a true and correct copy of the above and foregoing Reply Brief of Appellant to the following:

R. Lewis Field, Esquire
Way, Field and Bodron
Post Office Box 1113
Vicksburg, MS 39180-1113

Honorable Marie Wilson, Chancellor
Post Office Box 1762
Greenville, MS 38702-1762

DATED this the 15th day of September, 2009.

MARK W. PREWITT