

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE #2008-CA-01858

JOSEPH F. TATUM, III

APPELLANT

VERSUS

LAUREN D. TATUM

APPELLEE

Appeal from the
Chancery Court of Forrest County, Mississippi
CAUSE NO. 2007-0394-GN-W

BRIEF OF APPELLEE, LAUREN D. TATUM

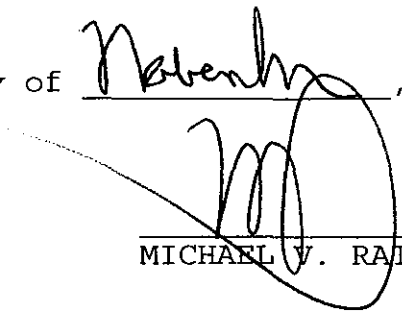
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee 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 disqualification or recusal.

1. Joseph F. Tatum, III, Appellant
2. Lauren D. Tatum, Appellee
3. Erik M. Lowrey, Attorney for Appellant
4. David A. Pumford, Attorney for Appellant
5. H. H. Klein, III, Attorney for Appellee
6. Michael V. Ratliff, Attorney for Appellee
7. Honorable Johnny H. Williams, Forrest County
Chancellor

This, the 16th day of November, 2009.



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STATEMENT OF THE ISSUES

Lauren D. Tatum ("Lauren") did not appeal or cross-appeal any of the findings of the Chancellor, as she accepted his findings as being supported by the evidence and correct under the law and therefore has no issues on appeal. She addresses the Statement of the Issues submitted by Joseph F. Tatum, III ("Joseph") as follows:

1. THE CHANCERY COURT RELIED ON EVIDENCE PRESENTED IN THE ACTION AND FOLLOWED THE *FERGUSON* FACTORS IN ITS EQUITABLE DISTRIBUTION OF THE MARITAL ASSETS.
2. THE CHANCERY COURT CORRECTLY AWARDED LAUREN TEMPORARY, REHABILITATIVE ALIMONY.
3. THE COURT AWARDED AN APPROPRIATE AMOUNT OF CHILD SUPPORT, AS JOSEPH'S ADJUSTED GROSS INCOME EXCEEDED FIFTY THOUSAND DOLLARS (\$50,000.00) ANNUALLY AND THE NEEDS OF THE CHILDREN JUSTIFIED THE AMOUNT AWARDED.
4. THE COURT CLEARLY INTENDED THAT LAUREN WOULD MANAGE THE CHILDREN'S SAVINGS ACCOUNTS AND DID NOT ERR IN PUTTING THOSE ACCOUNTS IN LAUREN'S NAME.
5. THE COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEYS' FEES TO LAUREN, AS JOSEPH COMMITTED ADULTERY AND LAUREN DOES NOT HAVE THE FINANCIAL ABILITY TO PAY ATTORNEYS' FEES.

STATEMENT OF THE CASE

In addition to the Statement of the Case made by Joseph, Lauren points out to the Court that Joseph filed his appeal supersedeas. (RE 27) (CP 67-89) With the exception of transferring title to the marital home to Lauren, Joseph has not paid rehabilitative alimony nor has she received the cash assets the Court awarded her, in essence starving her financially during this appeal.

Lauren contests Joseph's Statement of the Facts concerning the Court's award on the distribution of assets. As Judge Williams said, he divided the marital assets equally. He made a detailed, on the record analysis of the marital and non-marital assets as required under *Ferguson*.

Although Joseph claims he "gave" Lauren \$4,500 to pay attorneys, he made no showing that those funds came from anywhere other than a marital account. So, both parties paid their first attorney fees from a marital bank account.

Joseph claims his 8.05 Financial Statement showed his net monthly to be Four Thousand Two Hundred Eighty-three dollars (\$4,283.00). In fact, the parties' tax returns for the three years prior to the trial show his income to be One Hundred Sixty-one Thousand Eight Hundred Ninety-two dollars (\$161,892.00) for 2005, One Hundred Forty-six Thousand One Hundred Fifty-seven dollars (\$146,157.00) for 2006, and One

Hundred Thirty-one Thousand Nine Hundred Thirty dollars (\$131,930.00) for 2007. (EX 3,4,5) Lauren had no income during those years, as she stayed at home to run the household and care for the children as the parties had agreed. (TR) On the other hand, Joseph is an officer, employee, and heir apparent of his family's business. The Court heard the evidence, considered Joseph's adultery, and made a well-reasoned, fair and equitable distribution of the marital estate.

Joseph describes his net monthly pay as Four Thousand Two Hundred Eighty-three dollars (\$4,283.00). However, he bases that strictly on his monthly salary from Loresco, the family business. As stated above, his annual income exceeded \$160,000 less than two years prior to Lauren's filing the divorce due to Joseph's adultery. Throughout his Brief, Joseph mischaracterizes his actual income, which is at least two and a half times what he claims on his 8.05. (EX 1) The proof showed that Joseph asked his father, who controlled Loresco, not to pay him bonuses or dividends while the divorce was pending. (TR-96-97)

In her complaint, Lauren requested attorneys fees. She showed that she had no ability to pay them, as her income was zero. And Lauren initially paid Four Thousand Five Hundred dollars (\$4,500.00) in attorneys fees, and Joseph introduced absolutely no proof that he provided those funds from a non-

SUMMARY OF THE ARGUMENT

The Chancellor carefully and intently listened to four days of testimony in this action. He awarded Lauren a divorce on the basis of Joseph's adultery. (CP 34-35) The remaining days of testimony went to the issues of custody, visitation, division of property, child support, and alimony. He properly applied the factors this Court requires under *Ferguson* and *Hemsley*.

In his bench opinion, the Chancellor made an on the record finding as to which assets were marital and which were non-marital. He specifically found that gifts from Joseph's father and mother directly to him were non-marital property and excluded them from equitable distribution. He determined that property which both parties brought into the marriage was non-marital and that various gifts were non-marital. The Court considered the issue of various trusts in which Joseph has an interest, including mineral interests, and determined that their value were unknown. (TR 281) (RE 53)

The Court found, and the parties agreed, that Lauren stayed home to raise the children, that she did all the things that a stay-at-home mother should do, and that Joseph was the primary bread winner. (TR 282,293) (RE 54,65) Joseph introduced evidence that the value of the marital estate was Nine Hundred Seventy-one Thousand dollars (\$971,000.00) and

Lauren valued the marital estate at One Million Forty-four Thousand dollars (\$1,044,000.00). As the Court considered the issue of equitable distribution, the Court chose to divide the marital equally, or "just split the assets down the middle." (TR 285) (RE 57)

Joseph agreed for Lauren to have the home and the contents of the home, other than certain specific items he requested, such as his guns and various gifts. The Court made detailed findings concerning the property of the parties including IRA's, hunting and fishing equipment, vehicles, furniture, and real estate. (TR 278-308) (RE 50-80) As the Court found, Joseph is in a better financial position than Lauren, as Joseph worked outside the home and had the opportunity to generate income while Lauren cared for the children. Under the doctrine of equitable distribution set forth by this Court in *Ferguson, Hemsley*, and the cases that follow, the Court recognized Lauren's contribution toward the property jointly accumulated by the parties. And that division of the property is left to the discretion of the Court. *Brown v. Brown*, 574 So.2d, 688, 691 (Miss. 1990)

The well-established law in Mississippi is that an appellate court will not disturb the findings of a Chancellor regarding division and distribution of marital property in a divorce unless the Chancellor was manifestly wrong, clearly erroneous, or applied an erroneous legal standard. *Studdard*

v. Studdard, 894 So.2d 615 (Miss. App. Ct. 2004) The equitable distribution of assets is committed to the Chancellor and is not disturbed clear error or application of an erroneous legal standard. *Harbit v. Harbit*, 3 So.3d 156 (Miss. App. Ct. 2009) Joseph acknowledges that standard, yet proceeds to ask this Court to do just that.

Lauren had no income as reflected on her 8.05 Financial Disclosure. (EX 10) (RE 11) The Court awarded her rehabilitative alimony, which is appropriate for a party who is trying to become self-supporting and prevents that party from becoming destitute while searching for a means of income and to give her the opportunity to enter the work force. *McCarrell v. McCarrell*, 209 WL 3260541 (Miss. App. Ct. 2009) The purpose of alimony is not punitive, but instead, is designed to assist the spouse in meeting his or her reasonable needs while transiting into a new life. *Holley v. Holley*, 892 So.2d 183, 185 (Miss. 2004)

Joseph mischaracterizes the Courts findings on child support. Lauren's 8.05 showed the reasonable monthly expenses of the children themselves to be One Thousand Five Hundred Thirty-one dollars and twenty-four cents (\$1,531.24), exclusive of household expenses such as electricity, food, water, and other necessary living expenses. Joseph's reading of 41-19-101 et. seq. would limit the father's responsibility

for two children to be Eight Hundred (\$800.00). That does not comport with the decisions of this Court. Joseph testified that he wanted this children to have the things that he had and to be able to live a comfortable lifestyle. (TR 207-208) The Chancellor did that with his award of child support At no time during the Court's dictation to the record of his opinion did Joseph object to the payment of child support. And, One Thousand Five Hundred dollars (\$1,500.00) per month in child support for two children does not make Joseph unable to provide for himself, as his reported income for 2005 was One Hundred Sixty-one Thousand dollars (\$161,000.00), he worked for a family owned business, his father sets his salary, and bonuses, and Lauren proved the needs of the children exceed the statutory guidelines.

Lauren had no income so her inability to pay attorney fees justify the Court's requiring Joseph to pay attorney fees under *McKee* and any other applicable law. Lauren testified that her attorney fees exceed the Four Thousand Five Hundred (\$4,500.00) she had already paid, Joseph committed adultery, and the Court in its discretion determined that she was entitled to an additional Fifteen Thousand Five Hundred dollars (\$15,500.00). The awarding of attorney's fees is within the discretion of the Chancellor, and he properly exercised his discretion in this case.

STANDARD OF REVIEW

Joseph correctly states the standard of review employed by this Court in reviewing the decision of a Chancellor, that is the findings of the Chancellor will not be disturbed or set aside on appeal unless the decision of the trial court is manifestly wrong and not supported by substantial credible evidence, abused its discretion, or unless an erroneous legal standard was applied. *Sarver v. Sarver*, 697 So.2d 749, 753 (Miss. 1997); *Southerland v. Southerland*, 875 So.2d 204, 206 (Miss. 2004) None of those rationales applies here, and this Court should uphold the decision of the Chancellor in this case.

ARGUMENT

1. THE CHANCERY COURT RELIED ON EVIDENCE PRESENTED IN THE ACTION AND FOLLOWED THE *FERGUSON* FACTORS IN ITS EQUITABLE DISTRIBUTION OF THE MARITAL ASSETS.

Joseph correctly sites *Ferguson v. Ferguson*, 637 So.2d 921 (Miss. 1994), and *Hemsley v. Hemsley* 639 So.2d 909 (Miss. 1994) concerning the requirement that the Court classify assets as marital or non-marital and make equitable distribution of those assets. Joseph disagrees with the Court's finding in an attempt to characterize the Court as having violated the *Ferguson* rules. In his Brief, Joseph claims that the Court "went outside of the record and evidence" in pointing out that Joseph comes from a financially substantial family. The Court followed *Ferguson* and classified substantial property as belonging to Joseph and being non-marital.

Under *Ferguson*, the Chancellor must consider the following factors in its equitable distribution of marital property:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:
 - a. Direct or indirect economic contribution to the acquisition of the property;
 - b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage;

and

- c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets;
2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise;
3. The market value and the emotional value of the assets subject to distribution;
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
6. The extent to which party division may, with equity to both parties, be utilized to eliminate periodic payments or other potential sources of future friction between the parties;
7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,
8. Any other factor which in equity should be considered.

The Chancellor followed exactly the requirements of *Ferguson* set down by this Court. In the record, the Chancellor pointed out that he would address the property issues "that would afford some input from the parties or their lawyers as I address them, and I want to make sure the I cover everything, but I am going to begin first of all in talking

about *Hemsley* in determining what is a marital asset and what is not a marital asset." (TR 280) (RE 52) The Court made the following determinations:

1. Certain real property belonged to Joseph alone and was non-marital;
2. Joseph had an IRA that was non-marital;
3. A four-wheeler from Joseph's mother was a gift which was non-marital;
4. Tools listed on Joseph's *Hemsley* was non-marital;
5. The gun safe was non-marital; and
6. Joseph had other non-marital property in the form of trusts and other investments.

The Court found that Joseph was the primary bread winner and that Lauren was a stay-at-home mom, that she raised the children, she made the home a household for the family, she did all the things that a stay-at-home mom would do. Joseph admitted that Lauren never worked outside the home after the parties had children. (TR 205) Following the separation of the parties, Joseph lived rent-free in a house owned by his father. (EX 1) The Court also pointed out that most of the assets of the marriage came through Joseph as gifts through his family, but also noted that it would not diminish Lauren's contributions as the mother. (TR 281-282) (RE 52-53)

Joseph argues that the Court looked outside the record in stating "that Joseph comes from one of the most well to do

families in our community." At no time did the Chancellor use that fact to make an unfair distribution of marital assets. He received bonuses in 2005 and 2006, as well as payment of dividends in 2007 in addition to his monthly salary. (EX 3,4,5) His father decides Joseph's salary and bonuses. (TR 224) He went on vacation to Key West for about a week and spent time on his father's yacht. (TR 206-211) He testified that the parties used Lauren's inheritance to pay marital expenses. (TR 206)

He further testified that there are only a few pieces of property that were non-marital. According to him "everything else has co-mingled, either in an LLC - in fact, that was the only way it was co-mingled in the LLC or actually Lauren and I purchased the property. When I used money out of our marital savings account, it was used to pay marital taxes, everything that was either co-mingled or purchased by Lauren and I [sic]." (TR 203)

The Court properly weighed the contributions of both parties to the marital estate, determined what property was marital, and made what it considered to be an equitable distribution of those assets. Joseph may have wished the Court had been less equitable in its distribution of assets to Lauren, but wholly fails to show that the Court was manifestly wrong or applied an erroneous legal standard. In fact, substantial creditable evidence exists to support the division

by the Chancellor, who is given considerable latitude in adjusting his awards to achieve an equitable result. *Messer v. Messer*, 850 So.2d 161 (Miss. App. Ct. 2002); *Johnson v. Johnson*, 650 So.2d 1281 (Miss. 1994).

The Court found the marital estate to be \$1,000,000 in value. In its division of property, the Court granted Lauren the home, certain household items, certain bank accounts, a vehicle, her own IRA, a cash payment from Joseph, and one-half of the stimulus check. He granted Joseph the rest of the marital estate. The Chancellor exercised his discretion and made an equitable division of the marital estate.

In his Brief, Joseph includes the attorney fees and rehabilitative alimony awarded by the Court as part of the division of marital property. The issues of alimony and attorneys fees are discussed later in this Brief. Joseph sites no law and in fact no law exists that categorizes alimony and attorneys fees in the division of the marital estate.

At the time the Chancellor issued his ruling from the bench, Joseph expressed no objection to this division of property. As the Court was awarding Lauren certain cash assets, counsel for Joseph stated "we will borrow \$50,000" and with regard to another asset, "...we will pay her \$45,000." (TR 289) (RE 61) The Court found value of Lauren's automobile to be \$30,000, in fact she applied the value of another

vehicle they own.

Joseph leaps to the conclusion that the previously mentioned comments by the Court about his family background improperly influenced the Court in the division of property. The Court simply pointed out a well known fact in the community. The Court also listened to the audio tape played into the record which supports Lauren's allegation that Joseph and his father agree for him not to receive a bonus during the time the divorce was pending. (TR 198-199) Joseph did not remember telling his father he was going to ask for a decrease in income for the year 2007 and admitted that the Board of Directors consisted of his father, mother, and grandfather made the decision concerning bonuses. In fact, his father testified that he, Joseph F. Tatum, Jr. determined the amount of Joseph's salary and bonuses.

The Chancellor listened to the evidence, carefully considered it, properly applied the *Ferguson* factors, and made an equitable distribution of the marital property. In his opinion, the Chancellor made extensive findings in the record under the *Ferguson* factors and looked at *Hemsley* in making his decision. (RE 293-295) (RE 65-67)

Whenever the Chancellor's decision is based on creditable evidence, the appellate court will affirm that decision. *C.A.M.F. v. J.B.M.*, 656 (Miss. App. Ct. 2007). "Or differently stated, this Court may reverse a Chancellor's

findings of fact only when there is 'no substantial evidence in the record' justifies his findings." *Id.* Here, the Chancellor did a masterful job of sorting out marital assets from non-marital assets and dividing the marital estate equitably.

This argument is without merit.

**2. THE CHANCERY COURT CORRECTLY AWARDED LAUREN
TEMPORARY, REHABILITATIVE ALIMONY.**

Alimony awards are within the discretion of the Chancellor and his discretion will not be reversed on appeal unless the Chancellor was manifestly in error in his finding of fact and abused his discretion. *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993) The purpose of rehabilitative alimony is to assist a person who is trying to become self-supporting from becoming destitute while searching for a means of income and to give her the opportunity to enter the work force. *McCarrell, supra.* The purpose of alimony is not punitive, but is designed to assist the spouse in meeting his or her reasonable needs while transitioning into a new life. *Holley, supra.*

Under *Armstrong*, the Chancellor must consider the following factors in deciding whether to award alimony:

1. The income and expenses of the parties;
2. The health and earning capacities of the parties;
3. The needs of each party;

4. The obligations and assets of each party;
5. The length of the marriage;
6. 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;
7. The age of the parties;
8. The standard of living of the parties, both during the marriage and at the time of the support determination;
9. The tax consequences of the spousal support order;
10. Fault or misconduct;
11. Wasteful dissipation of assets by either party; or
12. Any other factor deemed by the court to be just and equitable in connection with the setting of spousal support.

The Court carefully considered each of those factors in deciding to award Lauren rehabilitative alimony. (TR 295-297) (RE 67-69) She had no income, had not worked since the birth of the second child, and requires time to transition back into the work force.

Joseph argues that based on the division marital assets awarded by the Court, alimony is not appropriate. However, Joseph has appealed with supersedeas. (CP 66-89) The effect of this is to deny Lauren access to any of the cash assets with which she could have supported herself.

As one of the cases cited by Joseph states, the Chancellor has the discretion to award the wife alimony even

though she was awarded substantial property. *Knutson v. Knutson*, 704 So.2d 1331 (Miss. 1997) Joseph also fails to point out that *Ferguson*, *Knutson*, and the other Mississippi cases dealing with alimony require a Court to consider a party's non-marital assets in determining whether alimony is appropriate.

The case that Joseph cites requiring a reversal of a grant of alimony based on equitable division of the marital estate, *Cosentino v. Cosentino*, 986 So.2d 1065 (Miss. App. Ct. 2008) has no application in this case. In *Cosentino*, the Court failed to address the *Ferguson* factors on the record. In this case, the Court did so. Furthermore, in that case the wife received her portion of the marital estate totaling Two Million dollars (\$2,000,000.00).

In this case, the Chancellor considered the *Armstrong* factors, including Joseph's adultery, Lauren's lack of work experience since the birth of their children, her duties as a stay-at-home mother, and awarded her rehabilitative alimony. The Court did not intend for Lauren never to have to return to work, as he limited Joseph's obligation to pay alimony to twenty-four months.

Joseph once again argues that the "financial hardship created for Joseph as a result of this award" justifies reversing the award of alimony. Again, Joseph seeks to

mislead this Court concerning his true income. Where he represents his net monthly pay to be approximately Forth-three Hundred dollars (\$4,300.00), he fails to include all of his income which, in addition to wages and salary, include "income from investments, including dividends, interest income, and income on any trust account or property." This argument for appeal is without merit.

3. THE COURT AWARDED AN APPROPRIATE AMOUNT OF CHILD SUPPORT AS JOSEPH'S ADJUSTED GROSS INCOME EXCEEDED \$50,000 ANNUALLY AND THE NEEDS OF THE CHILDREN JUSTIFIED THE AMOUNT AWARDED.

Joseph complains that the Court did not make an on the record analysis concerning alleged deviation from the child support guidelines under §43-19-101 of the Mississippi Code of 1972, as amended. First of all, under Lauren's 8.05 Financial Statement, she identified her total monthly living expenses to be Six Thousand One Hundred twelve dollars and sixty-seven cents (\$6,112.67), with the children's monthly expenses to be One Thousand Five Hundred Thirty-one dollars and twenty-four cents (\$1,531.24). She included in her statement of expenses real estate taxes, insurance, maintenance, food, water, electricity, gas, telephone, laundry and cleaning, insurance, medical, dental, child care, gasoline and oil, auto insurance, cable t.v., and yard expenses, all of which partially inured to the benefits of the children. (EX 10) Additionally, one of

the children of the parties has a medical condition which requires speech therapy. (TR 97-102)

The Chancellor stated on the record that he looked at the 8.05 of each party. (TR 295) (RE 67) Joseph testified that he wanted the children to have the same opportunities that he did, he wanted them to live the same way he was able to grow up, to have the same experiences he had, and to experience a good education. He did not want his children to have any less than what he had. (TR 207-208) The Eight Hundred Fifty-seven dollars and seventy-seven cents (\$857.77) he claims the Court should have awarded does not give his children that opportunity.

Furthermore, as noted elsewhere in this Brief, Joseph has misstated his income and has asked his father not to pay bonuses during the pendency of the divorce.

The Chancellor found that Joseph can afford to provide for the children to the extent of the child support and other expenses of the children he ordered Joseph to pay. This argument is without merit.

**4. THE COURT CLEARLY INDICATED THAT LAUREN WOULD
MANAGE THE CHILDREN'S SAVINGS ACCOUNT AND DID
NOT ERR IN PUTTING THOSE ACCOUNTS IN LAUREN'S
NAME.**

Joseph offers no authority for the proposition that the Court erred in placing the saving account in the children's name. Rule 28(a)(6) of the Mississippi Rules of Appellate

Procedure requires the appellant to cite authority for the contentions raised in his brief and the parts of the record relied upon. Failure to cite authority requires this Court to reject that issue. *Varvaris v. Berreault*, 813 So.2d 750 (Miss. App. Ct. 2001); *Jacobs v. Jacobs*, 918 So.2d 795 (Miss. App. Ct. 2005)

Lauren has primary physical custody of the children. She is the logical person to manage the children's accounts, as the Chancellor so found.

This argument is without merit.

**5. THE COURT DID NOT ABUSE ITS DISCRETION IN
AWARDING ATTORNEYS' FEES TO LAUREN, AS JOSEPH
COMMITTED ADULTERY AND LAUREN DOES NOT HAVE
THE FINANCIAL ABILITY TO PAY ATTORNEYS' FEES.**

Joseph complains that the Court awarded Lauren attorney's fees in addition to those that she had paid. This argument is without merit. The long standing and well known rule in Mississippi is that the matter for determining attorneys fees in a divorce case is largely entrusted to the sound discretion of the trial court. *McKee v. McKee*, 418 So.2d 764 (Miss. 1982)

First of all, the assertion that Joseph "gave" Lauren Four Thousand Five Hundred dollars (\$4,500) for attorneys' fees is quite misleading. Joseph offered no proof that he furnished those funds from any separate account or that they came any other than from a marital asset or bank account. In

her testimony, Lauren testified that her fees had exceeded the amount that she had originally paid.

Lauren incurred attorney fees as a result of Joseph's continued denial of his adulterous relationship. In her Complaint filed on September 18, 2007, Lauren cites adultery as a ground. (CP 8-12) (RE 1-5) In his Answer filed October 8, 2007, Joseph denied having committed adultery (CP 17-20) (RE 6-9), yet in the Judgment of Divorce granted March 20, 2008, Joseph himself was the corroborating witness as to his own adultery. Lauren was required to spend funds unnecessarily in establishing adultery, when Joseph knew all along he had given her grounds.

Joseph claims that elsewhere the attorney fees are appropriate only when one party shows an inability to pay those fees. *Doe v. Doe*, 644 So.2d 1199 (Miss. 1994) Lauren's 8.05 showed that she had no income, which clearly establishes her inability to pay the fees. (EX 10) (RE 11-21) Joseph appealed the Chancellor's ruling with supersedeas, thereby blocking her from access to funds with which she might have been able to pay those fees. (CP 67-89) (RE 27-39)

The record shows that Lauren's attorneys faced numerous substantial legal issues in this case, including sorting what of the parties substantial assets were marital and non-marital, the existence of certain trusts by Joseph, the denial of the ground itself of which Joseph was very much aware when

he filed a sworn Answer denying adultery as a ground. The Chancellor exercised his discretion and properly awarded Lauren attorneys fees.

Joseph complains of the Chancellor's failure to cite *McKee* factors. This is not grounds for reversal unless that failure constitutes a manifest error. *Poole v. Poole* 989 So.2d 920 (Miss. App. Ct. 2008) In that case, the Court of Appeals pointed out that the wife incurred fees defending herself against multiple grounds for divorce which the husband subsequently withdrew. Here, Lauren had to combat Joseph's denial of her legitimate grounds for divorce. As this Court can see, Joseph fought her tooth and toenail on every issue, including support of the children.

The Chancellor properly exercised his discretion in awarding Lauren attorneys' fees and did not commit manifest error. This ground is without merit.

CONCLUSION

The Chancellor heard the evidence, carefully applied the law, and made an equitable division of marital property, property awarded rehabilitative alimony, granted an appropriate amount of child support, properly provided for the children's accounts, and awarded a reasonable amount of attorney's fees to Lauren. He exercised his discretion as the law requires him to do, and did not commit manifest error or apply an erroneous legal standard to the facts of the case.


For the reasons stated in this Brief of Appellee, Lauren respectfully asks this Court to uphold the ruling of the Chancellor on all issues disputed by Joseph.

Respectfully submitted on this 16th day of November, 2009.

LAUREN D. TATUM

By: 

MICHAEL V. RATLIFF

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SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE #2008-CA-01858

JOSEPH F. TATUM, III

APPELLANT

VERSUS

LAUREN D. TATUM

APPELLEE

CERTIFICATE OF SERVICE AND FILING

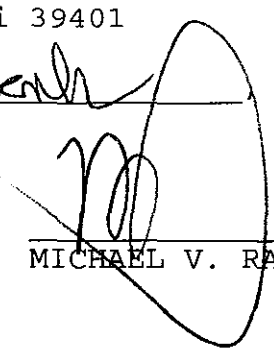
I, Michael V. Ratliff, have this day served a true and correct copy of the above and foregoing Appellee's Brief to the following at their usual business addresses, by placing same in the United States mail, postage prepaid:

Honorable Johnny L. Williams
Forrest County Chancellor
Post Office Box 1664
Hattiesburg, Mississippi 39403-1664

Erik M. Lowrey, Esquire
525 Corrine Street
Hattiesburg, Mississippi 39401

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525 Corrine Street
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This 16th day of November 2009.



MICHAEL V. RATLIFF