

IN THE SUPREME COURT OF MISSISSIPPI

JOSEPH D. GREGG

APPELLANT

VS.

CASE NO.: 2008-TS-02025

PATRICIA M. GREGG

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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

1. Joseph D. Gregg, Plaintiff/Appellant and Husband, Webster County, MS;
2. Patricia M. Gregg, Defendant/Appellee and Wife, Oktibbeha County, MS;
3. Honorable Dorothy W. Colom, Chancellor, Columbus, MS 39703;
4. Paul M. Moore, Jr., Attorney for Plaintiff/Appellant, Calhoun City, MS 38916;
5. Tina M. Scott, Attorney for Plaintiff/Appellant, Houston, MS 38851;
6. J. Tyson Graham, Attorney for Defendant/Appellee, Columbus, MS 39703.

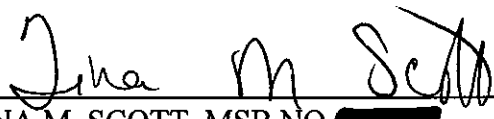

TINA M. SCOTT, MSB NO. [REDACTED]
OF COUNSEL FOR JOSEPH D. GREGG
FOX LAW FIRM
POST OFFICE BOX 167
HOUSTON, MISSISSIPPI 38851
(662) 456-4201

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STATEMENT OF THE ISSUES

1. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-third ($\frac{1}{3}$) interest in the appreciated sum of Joe Gregg's pre-marital home without deducting a corresponding proportion of the remaining debt?
2. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-half ($\frac{1}{2}$) interest in the increase of Joe Gregg's retirement fund when all of his contributions but one (1) year with the Post Office were made prior to the marriage and the only increase was passive gain?
3. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg the two (2) Starkville lots valued at \$50,000 AND a one-half ($\frac{1}{2}$) interest in thirty (30) acres in Webster County valued at \$40,000?
4. Whether the Chancellor committed manifest error and/or abused her discretion in failing to appropriately consider Joe Gregg's contribution to the marriage and marital estate?

STATEMENT OF THE CASE

Joe Gregg (the Appellant herein) initiated the underlying divorce action when he filed his Complaint for Divorce, Equitable Distribution of Property and Other Relief on April 4, 2007. (R1-5; RE29-33) Joe sought a divorce from Pat (the Appellant herein) on the grounds of habitual cruel and inhuman treatment, or alternatively on irreconcilable differences.

Pat filed her Answer to Joe's Complaint on April 30, 2007, conceding a divorce on the grounds of irreconcilable differences, and pleading affirmatively that she was entitled to the increased value of a number of assets owned solely by Joe prior to the marriage, specifically and particularly Joe's home. (R9-13; RE34-38)

On May 7, 2007, Joe filed a Response to Affirmative Matters Pled by Pat. (R14-15; RE39-40)

On May 16, 2008, Pat and Joe filed their Consent to Divorce on Grounds of Irreconcilable Differences and the Chancery Court entered its Order Canceling Fault Grounds. (R38-42; RE41-45)

By way of their consent to an irreconcilable differences divorce, the parties submitted the following issues to the Court for disposition:

1. Designation of assets as either "marital assets," "non-marital assets," or "commingled assets."
2. Equitable division of assets, real and personal.
3. Equitable division of "marital debt;" and
4. Amount of alimony and legal fees to be awarded, if any. (R38-39; RE41-42)

Hearings were held on May 16, 2008, and June 2, 2008. From those hearings, the learned Chancellor entered her Opinion with the Clerk on August 8, 2008. (R48-56; RE4-12)

Following the Chancellor's Opinion, both parties caused to be filed their respective Motions to Reconsider and Responses. (R58-65; RE14-21). The Court entered its Order denying both Motions to Reconsider on September 24, 2008, the same being filed with the Clerk of September 29, 2009. (R66-67; RE22-23)

Pursuant to the Court's Opinion, the Final Decree of Divorce was prepared and presented to the Chancellor, the same being filed with the Clerk on November 3, 2008. (R69-72; RE25-28)

Pursuant to the Opinion of the Court and subsequent Final Decree of Divorce, the learned Chancellor ordered the following distribution of property:

- (1) Joe was to pay Pat \$20,000.00, representing one-third ($\frac{1}{3}$) of the increased value of Joe's premarital home in Webster County; there remained an outstanding lien of approximately \$17,000 on Joe's home;
- (2) Pat was awarded in full the two (2) lots in Starkville, Mississippi, bought during the marriage with commingled funds and titled in both parties' names; there was no lien on these lots;
- (3) Pat was awarded a one-half ($\frac{1}{2}$) interest in the thirty (30) acres in Webster County, purchased during the marriage with commingled funds and titled in both names; Joe was given the option of buying Pat's one-half ($\frac{1}{2}$) interest for \$20,000 or selling the property and equally dividing the proceeds; there was no lien on this property;
- (4) Pat was awarded a one-half ($\frac{1}{2}$) interest in the increased value of Joe's retirement funds; said funds were earned and/or acquired prior to the marriage (excluding one year that he worked for the post office following the marriage), were never commingled and had only passive increase in value, i.e., interest and earnings;

- (5) Pat's home in Starkville owned prior to the marriage was found to be her separate property, not subject to equitable division; at the time of the marriage in 1994, Pat's home was estimated to be valued at approximately \$80,000.00, and at the time of the divorce the home was appraised at \$169,000.00, prior to the renovations she was having done at the time of the divorce and on which there was no debt. (T29; RE79; Exhibit D-1; RE55);
- (6) Pat was awarded the full amount of \$20,000.00 of her investment fund;
- (7) Each party was awarded their respective vehicles;
- (8) Pat was awarded beads and/or merchandise from the parties' jewelry business valued at about \$5,000;
- (9) Joe was awarded the RV valued at approximately \$149,000.00, with an outstanding lien of approximately \$165,000; and
- (10) Each party was awarded the funds in their respective checking accounts. (R48-56, 69-72; RE4-12; 25-28)

It is from this Opinion and Final Decree that Joe Gregg has perfected this appeal, specifically relative to the division by the Court in paragraphs (1); (2); (3); (4) and(5) above.

STATEMENT OF FACTS

Joe and Pat were married March 19, 1994. They both had grown children from previous marriages. Both were in their sixties (60's) at the time of their divorce in 2007.

Prior to the marriage, each party lived financially independent. Pat owned a home and furnishings in Starkville and Joe owned a home and furnishings in Webster County.

Joe was retired from the military and continued working for the Post Office for one (1) year following the marriage. After which, he retired from his postal service job. His retirement income was deposited into the parties' joint account.

Pat owned a retail business in Starkville known as "Occasions." Pat had owned the business for eight (8) years prior to the marriage. (T142, ll.29 - T143, ll. 1-2; RE96-97) Pat continued to maintain the Starkville "Occasions" until it was sold in 2004. Pat's income from the Starkville "Occasions" was deposited into the parties' joint account.

Prior to the marriage, Joe also had a separate retirement fund valued at approximately \$38,000. (T13-14; T36, ll. 22-26; RE72-73; 81) At the time of the divorce, it was valued at about \$86,087.37. (Exhibit P-1; RE46-54)

Following the marriage, the parties resided in Joe's Webster County home. There was an addition built to the home in 2001. About 1996, the kitchen was also improved. All improvements were paid from the parties' joint account. (T65, ll. 3-4; T66, ll. 20-29)

Following the marriage, Pat rented her home in Starkville and the rent money was deposited into the parties joint account. The most recent monthly rent received prior to the divorce of the parties was \$1,250. (T93, ll. 3-8; T147, ll. 28; RE94; 98)

During the marriage from about 1998 until 2001, Joe and Pat opened a second "Occasions" in Oxford. Joe primarily operated and managed that store. (T18, ll. 4-7; T151, ll.

29 - 152, ll. 9)

When the Oxford store was sold in 2002, the proceeds were placed in the parties' joint account.

When the parties' investment with Pat's son-in-law was paid out, checks were made to each of them and the funds commingled in the parties' joint account. (T26, ll. 20 - T27, ll. 25; RE77-78)

During the marriage, Pat's and Joe's names were added to the bank account of Pat's father, Mr. Dow Moore.

By way of summary, during the marriage, Joe and Pat built an addition onto his Webster County home; purchased two (2) lots in Starkville; purchased thirty (30) acres adjacent to property Joe previously inherited; purchased automobiles; purchased a luxury RV; purchased a boat; and purchased a couple of investments, including namely an investment with Pat's son-in-law on which there was a substantial return and Pat's \$20,000 investment.

There were also various other items of personal property purchased, e.g., backhoe, tractor, mower, 4-wheeler, etc.

SUMMARY OF THE ARGUMENT

LAW ON MARITAL PROPERTY AND COMMINGLING

Mississippi law has long held that “[a]ssets acquired during the course of marriage are marital assets and subject to equitable distribution unless it can be proven that such assets belonged to one of the estates prior to the marriage.” Flechas v. Flechas, 791 So.2d 295, 299 (Miss. 2001) (citing Hemsley v. Hemsley, 639 So.2d 909, 914 (Miss. 1994)).

The Flechas court went on to quote Hemsley, as follows:

We define marital property for the purpose of divorce as being any and all property acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor. We assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise are of equal value.

Flechas at 299 (quoting Hemsley at 915).

Regarding premarital assets and commingling the Flechas court further stated:

[N]on-marital assets maybe converted into marital assets if they are commingled with marital assets or used for familial purposes, absent an agreement to the contrary. Commingled property is a combination of marital property and non-marital property which loses its status as non-marital property as a result.

Flechas at 302 (quoting A & L, Inc. v. Grantham, 747 So.2d 832 (Miss. 1999) (citations omitted)).

In reversing and remanding the case, Flechas further explicitly stated that “[t]he court should also keep in mind the rule that commingling of funds changes the character of non-marital property.” Id. at 304.

“Property brought into the marriage by one partner and used by the family becomes a marital asset.” Boutwell v. Bouthell, 829 So.2d 1216, 1221 (Miss. 2002) (citing Johnson v.

Johnson, 650 So.2d 1281, 1286 (Miss. 1994)).

“Assets which are classified as non-marital, such as inheritances, may be converted into marital assets if they are commingled with marital property or utilized for domestic purposes, absent an agreement to the contrary.” Boutwell at 1221 (citing Heigle v. Heigle, 654 So.2d 895, 897 (Miss. 1995); Johnson v. Johnson, 650 So.2d 1281, 1286 (Miss. 1994)).

In further support of the proposition that commingled funds lose their separate property identity, relative to personal injury funds received by the wife, this Honorable Court related:

“There was undisputed proof that Ms. Myrick, in the past, had added Mr. Myrick as a co-owner of these various accounts, and the chancellor concluded that this action resulted in those funds losing their character as a separate asset not subject to equitable distribution. We do not find this conclusion so manifestly wrong as to require us to intercede. Ms. Myrick notes that she subsequently removed Mr. Myrick’s name from the accounts, claiming this caused the funds to resume the status of a separate asset not property subject to distribution. There is authority that the parties, by mutual consent, may cause commingled property to revert to its earlier status as the separate estate of one spouse. Heigle v. Heigle, 654 So.2d 895, 897-98 (Miss. 1995). However, there is no evidence in the record that Mr. Myrick was either aware of or consented to this modification in the status of these accounts. Absent such proof, we do not think Mr. Myrick’s unilateral action could serve to accomplish this purpose.”

Myrick v. Myrick, 739 So.2d 432, 434 (Miss. App. 1999).

Basically, Joe Gregg submits that by effecting a division of property resulting in a value difference of about \$166,588.00, excluding cash sums Pat was expending in having her \$169,700 Starkville home renovated was manifest error and/or abuse of discretion.

Pat was awarded a one-third (1/3) interest in the increased value of Joe’s home without a corresponding proportionate reduction reflective of the outstanding mortgage.

Additionally, Pat was awarded one-half (1/2) of the increased value of Joe’s retirement funds. The increase in Joe’s retirement funds were completely passive. That is, there were no

additional contributions by Joe out of marital or other funds. Therefore, neither did Pat contribute at all to the increase in value. See Franks v. Franks, *infra*.

Also, Joe asserts that an inequitable division was made when Pat solely received two (2) Starkville lots valued at \$50,000, AND a one-half ($\frac{1}{2}$) interest in the thirty (30) acres valued at \$40,000.

In reaching her decision as to the division of property, Joe would assert that the Chancellor failed to appropriately consider Joe's contributions to the marriage and marital estate, seeming to focus disproportionately on commingled funds from Pat's father and his estate.

ARGUMENT

Issue No. 1: Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-third (1/3) interest in the appreciated sum of Joe Gregg's premarital home without deducting an appropriate proportionate amount of the outstanding debt?

While Joe does not disagree with the classification of the increased value of his premarital home as a "marital asset," he would affirmatively assert that any interest awarded to Pat should have been offset by a corresponding percentage of the lien on the home.

Joe would accordingly assert that the learned Chancellor failed to factor in the current outstanding lien on his home, particularly since the deed of trust had been executed by both parties. That is, Joe contends that "[t]he liabilities as well as the assets of the parties must be taken into consideration when the Chancellor effects an equitable distribution of marital and any other relief that may be appropriate[.]" Collins v. Collins, 722 So.2d 596, 599 (Miss. 1998) (citing Bullock v. Bullock, 699 So.2d 1205, 1212 (Miss. 1997) (citing Gambrell v. Gambrell, 650 So.2d 517, 522 (Miss. 1995))).

When Joe and Pat married, Joe's home was valued at approximately \$50,000. At the time of the divorce, with the addition and cosmetic improvements, the home appraised for \$110,000.00, thus increasing and appreciating in value about \$60,000. However, in March of 2001, the parties secured a home equity loan on Joe's home for \$88,764.43. (Exhibit D-7; RE63-68)

The proceeds from this home equity loan were used as follows: (a) to make the first payment of \$13,453.33 towards the purchase of the thirty (30) acres acquired by the parties; (b) to purchase Pat's investment note at a cost of \$23,877.64; and (c) to purchase the two (2)

lots in Starkville in the Highland Plantation Subdivision at a cost of \$51,433.46. (Exhibit D-7)

Obviously, payments on the note on Joe's home were made from the parties joint account.

Had that been the end of the financing and payments, no one would argue that "purchases" with the equity loan were marital property.

However, in 2004, Pat sold her Starkville "Occasions," depositing the funds in the parties' joint account. From these proceeds immediately received, Pat paid the mortgage balance significantly down, but leaving a balance of about \$17,000 due on Joe's home. (Exhibit P-1; RE46-54)

Although Pat implicitly contends that "Occasions" remained her separate property throughout the marriage, and the Court appears to have treated it as her separate property, the Court failed to factor in Joe's contributions to the business, as well as the increased value of the business from the date of the marriage until it was sold in 2004. Both Joe and Pat confirm that Joe operated the Oxford "Occasions." (T18, ll. 4-10; RE75) Further, both Joe and Pat concede that Joe did work in the Starkville store from time to time and that he had done a great deal of carpentry work for the building when the store moved to downtown Starkville. (T18, ll. 23-24; T35, ll. 23-27; T151, ll. 5-26; RE75; 80; 100)

Along with funds from "Occasions" being placed in the parties' joint account, clearly any such funds were commingled funds or marital assets. Therefore, any sums paid on the mortgage balance were commingled funds, thus rendering any and all equity subject to the remaining debt.

Joe would additionally contend that in awarding Pat a one-third (1/3) interest in the increased value of his home, especially without an offset of corresponding proportion of the debt, fails to factor in his time and labor related to the addition and improvements. (T64, ll. 15 - T65,

ll. 13; T66, ll. 20 - T67, ll. 10; T71, ll. 28 - T72, ll. 20; RE88-89; 90-91; 92-93)

Joe's skills and labor on his home, as well as on the facilities of "Occasions," and also on the home owned by Pat prior to the marriage, are due appropriate consideration in a determination and equitable distribution of marital property.

Joe would assert that his contributed skills and labor are comparable to what this Honorable Court and the Mississippi Supreme Court refer to as contributions "domestic in nature." And it is well settled law in Mississippi that:

[I]n making equitable divisions of marital property upon divorce, chancellors are not limited to considering only the earning and cash contributions of each party to the accumulation of the property, but rather '[i]t is sufficient contribution if one party renders services generally regarded as domestic in nature.'

Flechas v. Flechas, 791 So.2d 295 (Miss. 2001) (citing MacDonald v. MacDonald, 698 So.2d 1079, 1083 (Miss. 1997) (quoting Draper v. Draper, 627 So.2d 302, 306 (Miss. 1993))).

The Flechas court went on to state that "[u]nder the doctrine of equitable distribution, marriage is considered a partnership with both spouses contributing to the marital estate in the manner in which they have chosen." Flechas at 301 (citing Hemsley v Hemsley, 639 So.2d 909, 921 (Miss.1994)).

Therefore, Joe would submit that the learned Chancellor below erred in awarding Pat a one-third (1/3) interest in the increased value of his home without providing for an offset of a corresponding portion of the debt.

Ferguson factors:

1. Substantial contribution to the accumulation of property
 - a. direct or indirect economic contribution
 - b. contribution to stability and harmony of the marital relationship measured

- by quality, quantity of time on family duties and duration of marriage
- c. contribution to the education, training bearing on the earning capacity of spouse accumulating assets.
2. Degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of assets.
 3. Market value and emotional value of assets subject to distribution.
 4. Value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such a 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. Extent to which property division may be utilized to eliminate periodic payments and other potential sources of friction.
 7. Needs of the parties.
 8. Any other factor which in equity should be considered.

Issue No. 2: Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-half (½) interest in Joe Gregg's retirement fund when all but one (1) year with the Post Office were contributions made prior to the marriage and the only increase were passive gains?

Prior to the marriage, Joe had retirement funds/investments valued at approximately \$38,000. (R49; RE85) During the marriage, Joe withdrew \$13,000 from this IRA to make a payment on the thirty (30) acres purchased by the parties. (Exhibit D-8; RE69) At the time of the divorce, his retirement funds/investments were worth approximately \$86,087.37. (Exhibit P-

1; RE46-54; T36-37; RE81-82) Pat conceded that except for the one year Joe worked at the post office, all of his retirement was accumulated prior to the marriage. (T22-23; RE75-76)

Prior to the marriage, Pat owned a home in Starkville valued at approximately \$80,000. At the time of the divorce, the house was appraised at \$169,740. (T29; RE79; Exhibit D-1; RE55-62) Joe Gregg would note that the appraisal was done prior to the renovations Pat was having done at the time of the hearings. (T9-10; T125, ll. 14-22; T147, ll. 28 - T148, ll. 1; RE70-71; 95; 98-99)

Joe concedes that the withdrawal of just over \$13,000 from his IRA to pay on the thirty (30) acres purchased by the parties lost its separate property identity. However, he maintains that all monies in the account never bearing Pat's name or in any other manner overtly converted to marital property is and should remain his separate property.

Joe would assert that the interest and passive increase of his retirement funds is comparable to Pat's premarital home that more than doubled in value during the marriage from about \$80,000 to \$169,740. That is, the home merely appreciated. In fact, Joe would assert that his IRA is even more clearly separate property than Pat's home, as his IRA required no maintenance, while, of course, the home did require regular maintenance, e.g., painting, new roof, etc. (T40, ll. 8-26; RE83)

Regarding increased value of non-marital property, the Mississippi Supreme Court has said:

Appreciation of the value of any non-marital asset may be taken into account to arrive at a fair division to the extent that the non-titled spouse had made a contribution toward that appreciation of value. See, e.g., Smith v. Smith, 111 NC App. 460, 433 S.E.2d 196, 204 (1993). Therefore, [the non-titled] spouse should not be automatically entitled to a one-half share, but it does appear that she should be entitled to some portion of the couple's appreciated value of the separate property where the appreciation resulted

from the joined efforts, skills or funds of both spouses. (emphasis in original).

Franks v. Franks, 759 So.2d 1164, 1167 (Miss. 1999) (citing Carrow v. Carrow, 642 So.2d 901, 907 (Miss. 1994)).

As in Franks, Pat did not “offer any proof that she contributed either directly or indirectly to the appreciation or income generated from [Joe’s IRA] investments.” Franks at 1168.

Also, as in Franks, “[t]he only investments made by [Joe to his IRA] during the marriage was the income generated by the original investments which were” made by Joe prior to his marriage to Pat, excluding, of course, Joe’s one (1) remaining year with the Post Office during the first year of the marriage. Id.

Joe did, however, contribute at least some to the maintenance of Pat’s premarital home by performing work such as painting and minor repairs, as well as by paying for the new roof from their joint account. (T40, ll. 8-26; RE83)

Issue No. 3: Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg the two (2) Starkville lots valued at \$5,000 AND one-half (½) interest in the thirty (30) acres in Webster County valued at \$40,000?

Inasmuch as the Starkville plots were bought by Joe and Pat together with clearly commingled funds, they would certainly be considered marital assets. It is likewise relative to the thirty (30) acres purchased.

The Starkville lots were valued at \$50,000 compared to the thirty (30) acres being valued at \$40,000. (Represented in various sources in the record as well as in the Court’s Opinion, R48-56; RE4-12)

Joe does not necessarily contest the awarding of the Starkville lots to Pat, but submits that it was inequitable to award her the lots valued at \$50,000 AND a one-half (½) interest in the

thirty (30) acres valued at \$40,000.

Although Pat contends that \$20,000 is all she has left from her inheritance, by her own testimony, she was calculating that AFTER the cost of the renovations she was having done.
(T125; RE95)

Prior to the parties' separation, Pat's Starkville home was being rented for \$1,250 per month. (T93, ll. 3-8; T147, ll. 28; RE94; 98)

Clearly, therefore, the home was more than sufficiently habitable. There was no testimony or offering of proof as to how much Pat's renovations were costing, but no doubt they were substantial.

Joe would respectfully submit that the learned Chancellor erred in awarding solely to Pat the Starkville lots valued at \$50,000 AND one-half ($\frac{1}{2}$) interest in the thirty (30) acres valued at \$40,000. That is, Joe would submit that he should have been solely awarded the thirty (30) acres.

Issue No. 4: Whether the Chancellor committed manifest error and/or abused her discretion in failing to appropriately consider Joe Gregg's contribution to the marital estate?

The Opinion of the learned Chancellor below opined a number of times about Pat's inheritance and her business "Occasions" and financial contributions therefrom. However, the contributions of Joe to the marriage partnership were lacking in recognition.

It is undisputed that Joe's retirement income and one year's postal service income was deposited into the parties' joint account (T51, ll. 12-18; RE86); as was the money he received from a timber cutting on previously inherited property (T59, ll. 13-15; RE87); Joe withdrew a portion of his IRA to pay on the thirty (30) acres purchased by the parties (Exhibit D-8; RE69); Joe ran the Oxford "Occasions" during its tenure from 1996-2001 (T15, ll. 29 - T152, ll. 12;

RE74 - 101); Joe did carpentry work on the new location of the Starkville "Occasions" (T18; T35, ll. 23-27; T15, ll. 5-26; RE75; 80; 74); Joe did at least some maintenance work on Pat's Starkville home, including paying for repairs out of the joint account (T40, ll. 8-26; RE83); Joe expended labor and other assistance in getting a mobile home set up for Pat's father to be near them (T48, ll. 26 - T49, ll. 6; RE84-49); Joe performed the yard work and other labor on his premarital home shared by the parties during the marriage (T64, ll. 15 - T65, ll. 13; T66, ll. 20 - T67, ll.10; T71, ll. 28 - T72, ll. 20; RE88-89; 90-91; 92).

Joe would respectfully submit that the learned Chancellor below failed to give due consideration to Joe's marital contributions.

Joe would refer the Court to Flechas, supra, wherein the Mississippi Supreme Court explicitly stated that: [u]nder the doctrine of equitable distribution, marriage is considered a partnership with both spouses contributing to the marital estate in the manner in which they have chosen." Flechas at 301 (citations omitted).

CONCLUSION

Joe respectfully submits the following itemization of the division/classification of the premarital and marital property, excluding the personal property to be divided by agreement or each party selecting single items until all property has been chosen.

AWARDED TO PAT

	Value
Her Starkville home (non-marital property)	\$169,780.00 (prior to renovation)
Her investment fund purchased with funds from her father's estate that had been commingled	\$20,000.00
Starkville lots purchased with commingled funds	\$50,000.00

Remainder of beads, etc., from business of both parties	\$5,000.00
One-half (1/2) equity in thirty (30) acres purchased with commingled funds	\$20,000.00
One-half (1/2) increased value of Joe's IRA/Retirement funds, all invested/purchased prior to the marriage except for one year of employment with the Post Office	\$24,043.00
Her Toyota automobile	\$18,450.00
One-third (1/3) interest in the increased value in Joe's home - with no proportionate deduction for the outstanding mortgage	\$20,000.00
Note on sale of store building, payable to Pat	\$50,000.00
Undisclosed value of sums expended for Starkville home renovations	\$ _____
Total to Pat (excluding division of personal property by alternating choices)	\$377,273.00

AWARDED TO JOE

His Webster County Home	Value	110,000.00	
	Mortgage Balance -	<u>17,000.00</u>	
		93,000.00	
	Portion to Pat -	<u>20,000.00</u>	
		73,000.00	\$73,000.00
IRA	Value	86,087.37	
	Portion to Pat -	<u>24,043.00</u>	
		62,044.37	\$62,044.37
Thirty (30) Acres	Value	40,000.00	
	Portion to Pat -	<u>20,000.00</u>	
		20,000.00	\$20,000.00
His Truck	Value	24,200.00	
	Balance due on note -	<u>3,414.00</u>	
		20,786.00	\$20,786.00
RV	Value	149,855.00	
Approx. Balance due on note at time of divorce -		<u>165,000.00</u>	

-15,145.00 (\$15,145.00)

Total to Joe (excluding personal property to be
divided via alternating choices)

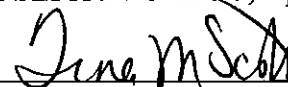
\$160,685.37

On dividing and awarding the premarital and marital property, Joe respectfully submits that the learned Chancellor below committed manifest error and/or abused her discretion in awarding Pat property valued at \$377,273 and Joe property valued at \$160,685.37. Joe would respectfully submit that his retirement funds should have been found to be his separate property in whole, thereby, reducing Pat's property value by \$24,043, for a total of \$353,230. Also, Joe would submit that inasmuch as Pat was solely awarded the lots in Starkville valued at \$50,000, the equitable award of the thirty (30) acres should have been solely to Joe, thereby, reducing Pat's award by \$20,000, for a total property value of \$333,230. This, of course, would result in an increase of Joe's award by \$24,043 and \$20,000, for an increase of \$44,043, bringing Joe's total award value to \$204,728. Joe also submits that it would be equitable to reduce Pat's award of \$20,000 reflecting one-third (1/3) of the increase in Joe's premarital home by a fair proportionate amount of the outstanding mortgage.

Even should the Court refuse to reduce Pat's award of the increase value in Joe's premarital home, Pat's property award remains \$128,502 more than Joe's, excluding sums she spent in cash renovating her Starkville home.

Respectfully submitted,
JOSEPH D. GREGG, Appellant

BY:


TINA M. SCOTT, MSB NO. [REDACTED]
ATTORNEY FOR APPELLANT
FOX LAW FIRM
330 EAST MADISON STREET
POST OFFICE BOX 167
HOUSTON, MS 38851
(662) 456-4201

IN THE SUPREME COURT OF MISSISSIPPI

JOSEPH D. GREGG

APPELLANT

VS.

CASE NO.: 2008-TS-02025

PATRICIA M. GREGG

APPELLEE

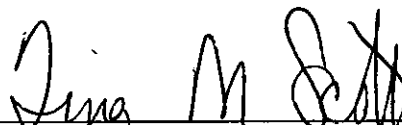
CERTIFICATE OF SERVICE

I, Tina M. Scott, attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following parties:

Honorable Dorothy W. Colom
Chancellor, Fourteenth District
P.O. Box 684
Columbus, MS 39703-0684

J. Tyson Graham, Esq.
Attorney at Law
P.O. Box 1442
Columbus, MS 39703-1442

So certified on this the 26th day of June, 2009.


TINA M. SCOTT

TINA M. SCOTT
ATTORNEY FOR APPELLANT
P.O. BOX 167
330 EAST MADISON STREET
HOUSTON, MS 38851
(662) 456-4201

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CERTIFICATE OF MAILING

I, Carmen O. Both, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 26th day of June, 2009, I shipped with Federal Express, cost prepaid, to the Mississippi Supreme Court Clerk the original and three copies of the Brief of Appellant.

SO CERTIFIED, this the 26th day of June, 2009.

Carmen O. Both