

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO.: NO. 2008-CP-00332

**CYNTHIA AMACKER
APPELLANT**

VS.

**PATRICK AMACKER
APPELLEE**

APPELLANT'S SUPPLEMENTAL BRIEF

**APPEAL FROM THE CHANCERY COURT OF
PEARL RIVER COUNTY, MISSISSIPPI**

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CERTIFICATE OF INTERESTED PARTIES

CIVIL CAUSE NO.: 2008-CP-00332

**CYNTHIA AMACKER
APPELLANT**


VS.

**PATRICK AMACKER
APPELLEE**

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Cynthia Amacker, Appellant
2. Patrick Amacker, Appellee
3. Bob Waller, Attorney for Appellant
4. Amy D. Saling, Attorney for Appellant
5. Jack Parsons, Attorney for Appellee
6. Richard V. Dymond, Former Attorney for the Appellant
7. Walter W. Teel, Former Attorney for the Appellant
8. Samuel E. Farris, Former Attorney for the Appellant
9. Honorable Johnny L. Williams, Chancellor, Pearl River County

This the 22nd day of December, 2008.


BOB WALLER (MSB NO. [REDACTED])
AMY D. SALING (MSB NO. [REDACTED])

Attorneys of Record for Appellant,
Cynthia Amacker

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I. STATEMENT OF ISSUES

1. The Chancery Court erred in its analysis of the facts and failed to consider pertinent information regarding the equitable distribution of the marital assets and awarding relief when making its ruling on same.
 - A. The Court erred in not awarding Cynthia Amacker credit for negotiations, time and monetary funds expended for improvements and renovations of the marital home and the secondary dwelling house, or “camp” as it is referred to by the Court, as evidenced by the final ruling of the Court regarding the equitable division of the parties real property.
 - B. The Court erred in not awarding Cynthia Amacker alimony or an interest in Patrick Amacker’s retirement.

II. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

On August 11, 2005, Appellant, Cynthia Amacker, filed her Complaint for Divorce and Motion for Temporary Relief on the grounds of Habitual, Cruel and Inhuman Treatment as set forth in Miss. Code of 1972 as Ann., and amended, Sect 93-5-1 et seq.; or in the alternative on the statutory ground of Irreconcilable Differences as set forth in Miss. Code of 1972 as Ann., and amended, Sect. 93-5-2 et seq. (R. 4, R.E. 18). On that same day, a Rule 4 Summons was issued for Patrick Amacker, 226 A Wheatfield Road, Poplarville, MS 39470. (R. 10, R.E. 24). Additional Summons were issued on August 17, 2005, September 29, 2005 and October 11, 2005. (R. 11-13, R.E. 25-27). The Complaint for Divorce was served on October 22, 2006 and return process was filed on November 4, 2005. (R. 14, R.E. 28). A temporary Hearing was set for November 29, 2005. (R. 13, R.E.27).

On November 28, 2005, Appellee, Patrick Amacker, filed his Answer to Complaint for Divorce and Other Relief which included a Counter-Complaint for Divorce (R. 15, R.E. 29).

On November 29, 2005 an Agreed Order was entered to continue the matter and the trial was set for March 1, 2006 at 9:00 a.m. (R. 49, R.E. 47).

On December 9, 2005 Cynthia Amacker filed her Answer to Counter-Claim for Divorce previously filed by Patrick Amacker on November 28, 2005. (R. 47, R.E. 45).

On January 23, 2006 another Agreed Order was signed and entered setting the case for trial on March 2, 2006 at 9:30 a.m. (R.52, R.E. 48).

On March 10, 2006 Richard V. Dymond, Attorney for Cynthia Amacker filed a Motion to Withdraw as attorney for the Plaintiff. (R. 54, R.E. 49). An Order allowing Mr. Dymond to

withdraw as Attorney for the Plaintiff was signed on March 10, 2006 and filed on March 15, 2006.

On March 21, 2006 an Order Granting Plaintiff's Motion for Additional Time recognized Walter Teel, Esq. as new counsel of record for Cynthia Amacker. (R. 62, R.E. 51).

In an Order dated March 7, 2008 and filed March 15, 2006, this case was reset for trial on June 6, 2006. A partial hearing took place on June 6, 2006 but was not concluded due to the fact that an earlier trial lasted longer than expected. An Agreed Order was signed and filed on September 7, 2006 rescheduling the hearing for September 26, 2006. (R. 105, R.E. 62).

On September 20, 2006, Walter Teel, Attorney for the Plaintiff, filed his Motion to Withdraw as Counsel. (R. 107, R.E. 64).

On October 6, 2006 a Notice of Court Setting was filed by the Court resetting the hearing in this matter for November 27, 2006. (R. 109, R.E. 66).

On December 7, 2006 an Agreed Order was signed and entered again resetting the hearing for February 22, 2007. (R. 110, R.E. 67). Cynthia Amacker's new attorney, Samuel E. Farris signed off on this Order; however, there is not an Entry of Appearance in the record.

On April 25, 2007, a Judgment of Divorce was entered granting Cynthia Amacker a divorce on the grounds of habitual cruel and inhuman treatment. All other issues regarding this matter were reserved for a final hearing to be heard by the Court after which time the Court would render a Judgment on the remaining issues. The matter was set for hearing on all remaining issues on June 7, 2007. (R. 113, R.E. 68).

On June 15, 2007 an Order of Continuance was entered resetting the hearing for October 16, 2007. (R. 116, R.E. 71).

On October 30, 2007, a final Agreed Order of Continuance was entered resetting the hearing for January 9, 2008 and a settlement conference was set for November 8, 2008.

A final hearing took place in this matter on January 9, 2008 and an Order was entered on January 22, 2008. The Court found as follows:

1. Each party will bear their own court costs, attorney fees and other expenses and no relief will be granted against the other for any of these expenses.
2. The Court finds that neither party will be awarded and alimony or benefits from the other other than the property settlement as hereinafter provided.
3. Each party will be awarded the use and title to personal property that they presently have in their possession at this time. Neither party will take any other personal property from the other.
4. The Court finds the camp that was purchased by Patrick Amacker is hereby awarded to him with all indebtednesses thereon including the Deed of Trust of First Bank of Wiggins, Wiggins, Mississippi and the \$5,000.00 borrowed from the Credit Union and \$5,000.00 from Hancock bank and he will hold Mrs. Amacker harmless thereon. Since the title is specifically vested in Mr. Amacker only there will be no need for a Deed from Mrs. Amacker to Mr. Amacker.
5. Mrs. Amacker is awarded the home and the contents and will pay to Mr. Amacker the sum of \$60,000.00 within sixty (60) days from and after January 9, 2008 and said funds will be sent to the attorney for Mr. Amacker who shall secure a Deed from Mr. Amacker to Mrs. Amacker within ten (10) days from and after receipt of said funds and said Deed shall be delivered to the attorney for Mrs. Amacker at that time. The Court specifically finds no interest will accrue on the \$60,000.00 during the sixty (60) day period.
6. Mrs. Amacker is now on Workman's Compensation and Mr. Amacker will not be entitled to any of these benefits or any other benefits she may receive as a result of the injury that she sustained as a result of her employment or on her job. Mr. Amacker will take nothing of and from Mrs. Amacker from any benefits from this injury.
7. Mrs. Amacker will pay to Mr. Amacker the \$60,000.00 above set out and she will take nothing from Mr. Amacker including the disability social security benefits or the payment for injuries he received at his employment since both of these occurred prior to being married to Mrs. Amacker.

It is from the above Judgment that Cynthia Amacker is appealing. (R. 168, R.E. 9).

On January 31, 2008, Cynthia Amacker filed a Motion for a New Trial, Open the Judgment for Additional Testimony, Amend Finding of Facts and Conclusions of Law, Make New Findings and Conclusions, Direct the Entry of a New Judgment. (R. 182, R.E. 13). Patrick filed an Answer to said Motion on February 8, 2008. (R. 185, R.E. 72). A Notice of Hearing was filed on February 13, 2008, setting this Motion for hearing on February 20, 2008. (R. 189, R.E. 76). A Judgment was entered on February 28, 2008 overruling said Motion. (R. 201, R.E. 16).

On February 28, 2008, Samuel E. Farris filed his Motion to Withdraw as Counsel for Cynthia Amacker and an Agreed Order Withdrawing as Counsel was filed on March 19, 2008. (R. 197, 213, R.E. 80,85).

Cynthia Amacker, Pro Se filed her Notice of Appeal, on February 21, 2008 and her Appearance form with the Supreme Court of Mississippi on March 12, 2008. (R. 191, 208, R.E. 78, 82). A Brief was filed on October 29, 2008 by Cynthia Amacker, Pro Se.

Bob Waller and Amy D. Saling of Waller and Waller Attorneys filed their Appearance Form and Motion for Enlargement of Time to File Appellant's Supplemental Brief on November 26, 2008. Said request was granted per an Order dated November 26, 2008 granting enlargement of time.

2. STATEMENT OF THE FACTS

Cynthia Amacker and Patrick Amacker are both adult resident citizens of Pearl River County, Mississippi. They were married on February 14, 1993 in Pearl River County and were separated on or about August 9, 2005 in Pearl River County. There were no children born of said union. (R. 4, R.E. 18).

On April 25, 2007, a Judgment of Divorce was entered granting Cynthia Amacker a divorce on the grounds of habitual cruel and inhuman treatment. All other issues regarding this matter were reserved for a final hearing to be heard by the Court after which time the Court would render a Judgment on the remaining issues. (R. 113, R.E. 68).

On June 6, 2006 and again on January 9, 2008, the Court heard testimony and received evidence regarding several issues and pieces of real property concerning equitable distribution of the same. Those issues included but are not limited to the equitable distribution of two pieces of real property, namely 32 Benton Seal Road, Poplarville, Mississippi, also referred to as the marital home, and 236-A, Wheatfield Road, Poplarville, Mississippi, also referred to as the "camp". (Ex. 1, R.E. 100). Another issue determined by the Court was the interest of either party in the other's retirement and/or alimony. (TR. 196, 197, R.E. 98,99).

The property on Benton Seal Road was Patrick Amacker's home at the time Cynthia Amacker and Patrick Amacker were married and a subsequent deed was executed by Mr. Amacker deeding said property to himself and his wife, Mrs. Amacker. The "camp" property on Wheatfield Road was not purchased by Mr. Amacker until after he and Mrs. Amacker were separated, however, they had both been living at said property and making renovations prior to separation as part of a negotiation and agreement between the prior owner of the "camp" property and Mrs. Amacker to purchase said "camp" property.

Cynthia Amacker presented testimony and evidence of the time expended and financial expenditures for the primary marital home and the "camp". Along with her testimony, Cynthia Amacker produced a summary of checks used for home improvements as well as a printout of check copies, receipts and bank receipts from Citizens Bank. (Ex. P-9, P10, P12, R.E. 102, 133, 137). She

also provided testimony that she had initiated the negotiations for the purchase of the "camp" property prior to its purchase by Patrick Amacker. (TR. 65, R.E. 89).

After all the evidence was presented the Court ruled on the real property as follows:

"4. The Court finds the camp that was purchased by Patrick Amacker is hereby awarded to him with all indebtednesses thereon including the Deed of Trust of First Bank of Wiggins, Wiggins, Mississippi and the \$5,000.00 borrowed from the Credit Union and \$5,000.00 from Hancock bank and he will hold Mrs. Amacker harmless thereon. Since the title is specifically vested in Mr. Amacker only there will be no need for a Deed from Mrs. Amacker to Mr. Amacker.

5. Mrs. Amacker is awarded the home and the contents and will pay to Mr. Amacker the sum of \$60,000.00 within sixty (60) days from and after January 9, 2008 and said funds will be sent to the attorney for Mr. Amacker who shall secure a Deed from Mr. Amacker to Mrs. Amacker within ten (10) days from and after receipt of said funds and said Deed shall be delivered to the attorney for Mrs. Amacker at that time. The Court specifically finds no interest will accrue on the \$60,000.00 during the sixty (60) day period."

Despite all the testimony and evidence presented to the Court and the Court's own statement that Mrs. Amacker did have some interest in the "camp" property, the Court awarded the "camp" property to Mr. Amacker and gave Mrs. Amacker no credit for any interest that she had in said property. (TR. 197, R.E. 99).

As previously stated, on April 25, 2007, a Judgment of Divorce was entered granting Cynthia Amacker a divorce on the grounds of habitual cruel and inhuman treatment. (R. 113, R.E. 68). At the subsequent hearing to resolve all other issues in this matter, Mr. and Mrs. Amacker both testified and produced evidence of their monthly income. (R. 36, 94, R.E. 35, 52). Despite the fact that Mr. Amacker has a higher income than Mrs. Amacker, the length of the marriage, the inability of Mrs. Amacker to work, and despite the fact that she received a Judgment of Divorce against Mr. Amacker on the grounds of habitual cruel and inhuman treatment, the Court denied Ms. Amacker alimony or

any interest in his retirement and stated as follows:

“1. The Court finds that neither party will be awarded and alimony or benefits from the other other than the property settlement as hereinafter provided.

2. Mrs. Amacker is now on Workman's Compensation and Mr. Amacker will not be entitled to any of these benefits or any other benefits she may receive as a result of the injury that she sustained as a result of her employment or on her job. Mr. Amacker will take nothing of and from Mrs. Amacker from any benefits from this injury.

3. Mrs. Amacker will pay to Mr. Amacker the \$60,000.00 above set out and she will take nothing from Mr. Amacker including the disability social security benefits or the payment for injuries he received at his employment since both of these occurred prior to being married to Mrs. Amacker.”

It is based on the above facts that Mrs. Amacker appeals the decision of the Pearl River Chancery Court regarding the equitable distribution of the marital assets and more specifically the division of real properties and interest in alimony and/or retirement plans.

III. SUMMARY OF THE ARGUMENT

Beginning on June 6, 2006 and ending on January 9, 2008, the Pearl River Chancery Court was charged with the task of making a decision regarding attorneys' fees, alimony, distribution of personal and real property and awarding interest in retirement and other benefits in the divorce matter of Cynthia Amacker and Patrick Amacker.

Despite all the testimony and evidence presented to the Court and the Court's own statement that Mrs. Amacker did have some interest in the "camp" property, the Court awarded the "camp" property to Mr. Amacker and gave Mrs. Amacker no credit for any interest that she had in said property.

Also, after considering the fact that Mr. Amacker has a higher income than Mrs. Amacker, the length of the marriage and despite the fact that she received a Judgment of Divorce against Mr. Amacker on the grounds of habitual cruel and inhuman treatment, the Court denied Mrs. Amacker alimony or any interest in Mr. Amacker's retirement.

The Chancery Court erred in its analysis of the facts and failed to consider pertinent information regarding the equitable distribution of the marital assets and awarding relief when making its ruling on same. The Court erred in not awarding Cynthia Amacker credit for negotiations, time and monetary funds expended for improvements and renovations of the marital home and the secondary dwelling house, or "camp" as it is referred to by the Court, as evidenced by the final ruling of the Court regarding the equitable division of the parties real property and the Court erred in not awarding Cynthia Amacker alimony or an interest in Patrick Amacker's retirement. It is based on the above facts that Mrs. Amacker appeals the decision of the Pearl River Chancery Court regarding the equitable distribution of the marital assets and more specifically the division of real properties and interest in alimony and/or retirement plans.

IV. ARGUMENT

The Chancery Court erred in its analysis of the facts and failed to consider pertinent information regarding the equitable distribution of the marital assets and awarding relief when making its ruling on same.

On January 22, 2008, after having heard oral and documentary evidence, the Court entered an Order regarding the remaining issues in the divorce matter of Cynthia Amacker and Patrick Amacker, namely attorneys' fees, alimony, retirement/benefits, and division of personal and real property. (R. 168 R.E. 9). Said Order reflected the detailed opinion dictated into the record by the Court when the parties were present in open court on January 9, 2008. In the dictated opinion, the Court discussed each factor set out in the *Ferguson*, *Hemsley* and *Armstrong* cases. *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994), *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994), *Armstrong v. Armstrong*, 618 So.2d 1278, 1281 (Miss. 1993). However, despite all of the evidence and testimony presented, the Order entered by the Court was in direct contradiction of said evidence and testimony and its application of the standards set forth by the governing case law was misapplied. The Court erred in not awarding Cynthia Amacker credit for negotiations, time and monetary funds expended for improvements and renovations of the marital home and the secondary dwelling house, or "camp" as it is referred to by the Court, as evidenced by the final ruling of the Court regarding the equitable division of the parties real property. The Court also erred in not awarding Cynthia Amacker alimony or an interest in Patrick Amacker's retirement in that the Court failed to recognize or consider the fact that Mrs. Amacker had already been granted a divorce from Mr. Amacker on the grounds of habitual cruel and inhuman treatment and consider several other evidentiary facts relevant in the analysis of the *Armstrong* factors. *Armstrong v. Armstrong*, 618 So.2d 1278, 1281 (Miss. 1993).

A. The Court erred in not awarding Cynthia Amacker credit for negotiations, time and monetary funds expended for improvements and renovations of the marital home and the secondary dwelling house, or “camp” as it is referred to by the Court, as evidenced by the final ruling of the Court regarding the equitable division of the parties real property.

The first hearing in this matter began on June 6, 2006 and testimony and documentary evidence given by Cynthia Amacker began on this day. (TR. 2, R.E. 86). Her testimony as well as all other witness testimony in this matter continued and concluded on January 9, 2008 at which time an Order by the Court was dictated into the record. (TR. 191, R.E. 94). The testimony given on these dates was given to assist the Court in determining all issues left unresolved in the matter of the Divorce of Cynthia Amacker and Patrick Amacker. Between these two hearing dates, a Judgement of Divorce was entered on April 25, 2007 granting Cynthia Amacker a divorce against Patrick Amacker on the grounds of habitual cruel and inhuman treatment. (R. 113, R.E. 68).

In her testimony and through the documentary evidence that she presented at trial, Cynthia Amacker contended that she had an undeniable interest in the marital home as well as an interest in the secondary home, or “camp” that Mr. Amacker purchased after the date of separation, and that said property should be subject to equitable distribution.

Mr. and Mrs. Amacker’s marriage which is the subject of this litigation was their second marriage to each other. Mrs. Amacker testified that from the time that they remarried, they agreed to keep their money and accounts separate. (TR. 34, R.E. 88). One of the exhibits provided by Mrs. Amacker to substantiate her claim for her interest in the parties’ real property included a summary of checks and copies of checks written for the benefit of both the marital home and the “camp”. (Ex. P-9, R.E. 102). Mrs. Amacker provided testimony throughout the

entire trial that she spent in excess of \$100,000.00 for renovations and improvements to the marital home and "camp" combined and that these monies came from her individual checking account. Mrs. Amacker also provided a receipt from Citizens Savings noting that she cashed in a \$10,000.00 CD. (Ex. P-12, R.E. 137). She presented testimony at the trial stating that she put this money in her account for stuff for the "camp".

Not only did Mrs. Amacker testify that she made monetary contributions to the "camp" but she also contributed her time and labor. Mrs. Amacker testified that she did a lot of cleaning and labor intensive work in the "camp" such as scrubbing, cleaning, putting new paper in and cleaning the cabinets and replacing the stove and air conditioning unit with the old stove and air conditioning unit from the marital domicile. (TR. 68, R.E. 91). Mrs. Amacker made all of these improvements and invested her time and labor prior to the parties' separation in 2005, during the time that she and Mr. Amacker were living at the "camp". In fact, the only reason that the couple found the "camp" property and were living at the "camp" was a product of Mrs. Amacker's negotiations with the prior owner of the "camp", Dr. Norman McSwain. Mrs. Amacker found the camp property and contacted Dr. McSwain regarding the purchase of said property. Mrs. Amacker testified to her negotiations with Dr. McSwain in which he agreed to sell her the "camp" property at a reduced price discounted for the work that she was willing to put into the property to make it livable. (TR. 66, R.E. 90). Dr. McSwain gave Mrs. Amacker a key to the property and she and Mrs. Amacker were living at the "camp" and she was in the process of making improvements to the "camp" on the date of separation from Mr. Amacker. Mr. Amacker subsequently kicked Mrs. Amacker out of the "camp" and went behind her back and purchased the camp in his name only from Dr. McSwain. (TR. 161, R.E. 93). At the hearing on January 9,

2008, Mrs. Amacker presented a witness, Sheila Harris, to testify on her behalf. (TR. 120, R.E. 92). Mrs. Harris testified to the fact that it was Cynthia Amacker who initiated contact and had first negotiations with Dr. McSwain regarding the “camp” property. She also testified that she witnessed Cynthia Amacker giving Patrick Amacker checks to buy materials and pay laborers for renovations done to the “camp” on several occasions. (TR. 120, R.E. 92).

In open court on January 9, 2008, the Court dictated on the record its analysis of the facts of the case regarding the real property as they apply to the factors in *Ferguson*, *Hemsley* and *Armstrong* cases. *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994), *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994), *Armstrong v. Armstrong*, 618 So.2d 1278, 1281 (Miss. 1993). (TR. 191, R.E. 94). The Court outlined the Ferguson factors as follows:

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 property division may, with equity to both parties, be utilized to eliminate periodic payments and 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. *Ferguson v. Ferguson*, 639

So.2d 921 (Miss. 1994). However, in the Court's analysis of the above factors and the facts of the issue regarding real property, the Court failed to analyze the "camp" property. The Court states: "(1) The first factor is the substantial contribution to the accumulation of the property. That certainly would apply to Patrick because he brought it into the marriage." (TR. 193, R.E. 96). The Court makes no mention of Cynthia's contribution to the accumulation of the "camp" and throughout the rest of the analysis of the factors the Court does not mention its consideration or her contribution to the real property marital assets. Before the factors are read into the record the Court made the following statement regarding the "camp" property: "The Court just has to weigh her testimony and give any weight or credit to it that the Court deems correct or equitable. Also, Patrick denies that she made any contribution. We do know that certain appliances were taken out of that home and placed in the camp. That right there alone gives her some type of interest, and the Court is just struggling in trying to come up with the best way to decide this case." (TR. 192, R.E. 95). In this statement alone made by the Court, it is undeniable that the Court did see that Cynthia Amacker did have some interest in the "camp" but this interest was not acknowledged in the final ruling. The Court merely stated in its ruling regarding the "camp" and the marital home that "the Court is going to award Patrick the camp and going to award him \$60,000 of interest in the home." (TR. 197, R.E. 99). The Court also ruled that "Cynthia will keep the home. She will owe Patrick \$60,000 for his interest in it." (TR. 196, 197, R.E. 98, 99).

It is Cynthia Amacker's position that the Court heard testimony, received evidence and acknowledged her interest in the marital home and "camp" property and despite all of that evidence, she received no credit for her interest in the "camp" property resulting in a misapplication of the facts to the case law precedent and misappropriation of assets.

B. The Court erred in not awarding Cynthia Amacker alimony or an interest in Patrick Amacker's retirement.

In the Court's decision which was dictated into the record on January 9, 2008, the Court did not award Cynthia Amacker alimony or any interest in Patrick Amacker's retirement benefits. (TR. 196, 197, R.E. 98, 99). In its analysis of the facts in determining equitable division of the assets, alimony, and retirement interests, the Court referenced case law precedent and more specifically in regard to alimony and monetary awards, it referred to the Armstrong factors set forth in *Armstrong v. Armstrong*, 618 So.2d 1278, 1281 (Miss. 1993). These factors are as follows:

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. *Armstrong v. Armstrong*, 618 So.2d 1278, 1281 (Miss. 1993).

The Court went through these factors noting its consideration of each; however, when it came to number 10, or “fault or misconduct of the parties”, the Court stated “I don’t think there is fault that the Court can go to. They got I.D. They agreed to it on I.D. There’s been allegations that each one of them has a boyfriend or girlfriend.” This fact asserted by the Court regarding an I.D. divorce and its use of this misinformation in its analysis of whether it would award monetary support was incorrect and in fact, Cynthia Amacker was granted a Judgment of Divorce on the grounds of habitual cruel and inhuman treatment on April 25, 2007. (R. 113, R.E. 68). This misstatement of fact is an egregious error on the part of the Court and a different outcome regarding a monetary award on behalf of Cynthia Amacker is highly probable.

When analyzing number 5, or “length of the marriage”, the Court classified the marriage as “bordering long term. They got married back in ‘94, so it would be closer to a long-term marriage”. (TR. 195, R.E. 97). Mrs. Amacker also testified that this was the parties’ second marriage. They were first married in 1987, divorced in 1990, remarried in 1994 and separated in 2005. (TR. 7, R.E. 87). The Court erred in not giving more weight to this factor in determining alimony.

The Court also noted the fact that Cynthia is disabled and was unsure when if ever she would be able to work again. (TR. 195, R.E. 97). The Court however goes on to say that “She is an RN, and if she goes back to work, her income can be substantial and perhaps double what

Patrick's is at this time, but at the present time she's drawing this disability income or workers' comp insurance." (TR. 195, R.E. 97). The Court seems to give the possibility that Cynthia may be able to go back to work more weight than should be given for a mere speculation.

Considering the fact that there was a misstatement of no fault regarding the divorce, and a misappropriation of weight given to the length of the marriage and Cynthia Amacker's inability to work, it is Cynthia Amacker's position that the Court erred in denying her a monetary award either through alimony or an interest in Patrick Amacker's retirement benefits.

V. CONCLUSION

Beginning on June 6, 2006 and ending on January 9, 2008, the Pearl River Chancery Court was charged with the task of making a decision regarding attorneys' fees, alimony, distribution of personal and real property and awarding interest in retirement and other benefits in the divorce matter of Cynthia Amacker and Patrick Amacker. On these dates the Court heard testimony and received evidence regarding the same.

Despite all the testimony and evidence presented to the Court and the Court's own statement that Mrs. Amacker did have some interest in the "camp" property, the Court awarded the "camp" property to Mr. Amacker and gave Mrs. Amacker no credit for any interest that she had in said property.

Also, after considering the fact that Mr. Amacker has a higher income than Mrs. Amacker and her inability to work, the length of the marriage and despite the fact that she received a Judgment of Divorce against Mr. Amacker on the grounds of habitual cruel and inhuman treatment, the Court denied Mrs. Amacker alimony or any interest in Mr. Amacker's retirement.

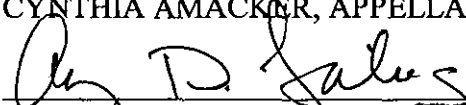
The Chancery Court erred in its analysis of the facts and failed to consider pertinent information regarding the equitable distribution of the marital assets and awarding relief when making its ruling on same. The Court erred in not awarding Cynthia Amacker credit for negotiations, time and monetary funds expended for improvements and renovations of the marital home and the secondary dwelling house, or "camp" as it is referred to by the Court, as evidenced by the final ruling of the Court regarding the equitable division of the parties real property and

the Court erred in not awarding Cynthia Amacker alimony or an interest in Patrick Amacker's retirement. This error resulted from a misapplication of the facts to the case law precedent and resulted in a misappropriation of assets.

RESPECTFULLY SUBMITTED, this the 22nd day of December, 2008.

CYNTHIA AMACKER, APPELLANT

BY:


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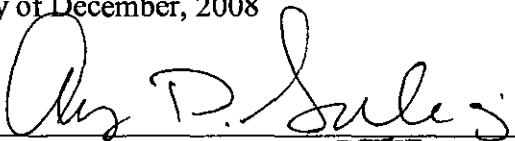
CERTIFICATE OF SERVICE

I, Amy D. Saling, the undersigned counsel of record for the Appellant, do hereby certify that I have this date mailed, postage prepaid, by United States mail a true and correct copy of the foregoing Brief of Appellant upon the following:

Jack Parsons, Esq.
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Hon. Johnny L. Williams
Pearl River County Chancery Court
P.O. Box 1664
Hattiesburg 39403

SO CERTIFIED, this the 22nd day of December, 2008



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