

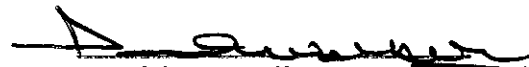
## I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellant hereby certifies that the following 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 judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. An Fei Luo, Southaven, Ms.
2. Donald Walter Henrichs, Senatobia, Ms.
3. David L. Walker, Southaven, Ms.
4. John T. Lamar, Jr., Senatobia, Ms.

Respectfully submitted,

This the 28<sup>th</sup> day of September 2008.

  
David L. Walker MBN [REDACTED]  
Counsel for Appellant

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#### **IV. STATEMENT OF THE ISSUES**

- I. Whether chancellor's division of the marital property of the parties is inequitable.
- II. Whether the chancellor erred in failing to award the Appellant any visitation with minor child of the parties.
- III. Whether he chancellor erred in failing to award the appellant any type of alimony.
- IV. Whether the chancellor erred in awarding paramount care, custody and control of the minor child of the parties to the Appellee.

## **V. STATEMENT OF THE CASE**

The Appellee, Donald Walter Henrichs, filed a complaint for divorce, child, custody etc. in the Chancery Court of Tate County, Mississippi on September 25<sup>th</sup>, 2006. R. at 9. The Appellant, An Fei Luo, did not file a response to the aforesaid complaint. Clerk's record 5-6. The parties were duly and lawfully married on April 11<sup>th</sup>, 2000 in Chengdu, Peoples Republic of China. R. at 9. That one child was born unto the parties, namely, Tai Long Henrichs, born on December 26<sup>th</sup>, 2000. R. at 10.

A trial was conducted on April 29<sup>th</sup>, 2008 at ex parte day in Montgomery County, Ms. R. at 73. A Decree of Divorce was executed by the Chancellor and filed with the clerk of the Tate County Chancery Court On April 29<sup>th</sup>, 2008. R. at 51. This decree of divorce cites that April 29<sup>th</sup>, 2008 was a day of Chancery Court of Tate County, Mississippi. Id.

The chancellor awarded the Appellee an absolute divorce from the Appellant based on the grounds of habitual cruel and inhuman treatment. Id. The permanent care, custody and control of the minor child was awarded to the Appellee. Absolutely no provision was made for any child visitation for the Appellee. R. at 54. The trial court also made a division of the marital property. R. at 52. The Appellant filed a notice of appeal of the decree of divorce on May 27<sup>th</sup>, 2008. R. at 60.

The chancellor divided the marital property of the parties as follows:

1. marital residence at 102 Temple Cove, Senatobia, Ms. to the Appellee;
2. penthouse in Kimning Yunnan Province, Peoples Republic of China to Appellant;
3. 1995 Toyota Tersell automobile, 1967 F-85 automobile and 1956 210 Chevrolet sedan automobile to the Appellee;
4. Remaining retirement funds with Northwest Airlines to Appellee;
5. All furniture and appliances at 102 Temple Cove, Senatobia, Ms. to Appellant.
6. The party receiving the real estate noted herein would be responsible for any debt on the aforesaid property.
7. The Appellant was ordered to be responsible for any and all personal bills that she incurred during the course of the parties' marriage, up to and after the date of separation either in her name, or in the Appellee's name without his knowledge or consent.

R. at 51-55.

The chancellor indicated that she applied the "Ferguson" factors in dividing the marital property. R. at 52. Neither party was awarded alimony

from the other party. R. at 54. No detailed findings of facts and conclusions of law were made in determining whether either party was entitled to an award of alimony from the other. R. at 51-55.

## **VI. SUMMARY OF ARGUMENT**

- I. The chancellor's division of the marital property of the parties is inequitable.
- II. The chancellor erred in failing to award the Appellant any visitation with minor child of the parties.
- III. The chancellor erred in failing to award the appellant any type of alimony.
- IV. The chancellor erred in awarding paramount care, custody and control of the minor child of the parties to the Appellee.



## VII. ARGUMENT

### ISSUE NUMBER ONE

#### WHETHER THE CHANCELLOR'S DIVISION OF THE MARITAL PROPERTY IS INEQUITABLE

Equity is the ultimate goal of the law. Hand, Mississippi Divorce, Alimony & Child Custody (6<sup>th</sup> ed.) section 12-1. The power of the chancery court to address the issue of property division is one of equity and is defined by the decisions of the Mississippi Supreme Court. *Id.* Section 93-5-23 MCA provides the chancery court with authority to divide marital property. For the chancellor to effect any level of equitable division of assets, at the time of the divorce between the husband and wife, she must first determine what “marital property” exists and is available for application of the rules of equitable division. Dunaway v. Dunaway, 749 So. 2d 112 (Miss. App. 1999). The chancellor apparently classified the property referred in the decree of divorce as marital property in that she made a division of the aforesaid property.

The standard of review in a domestic relations matter is limited. A reviewing court may not disturb a chancellor's findings unless they are manifestly wrong, clearly erroneous or if the chancellor has applied an erroneous legal standard. Jundoosing v. Jundoosing, 826 So. 2d 85, 88 (Miss. 2002).

The reversal of a chancellor's findings of fact may occur when there is no substantial credible evidence in the record to justify her findings.

**Henderson v. Henderson**, 757 So. 2d 285, 289 (Miss. 2000).

The chancellor in the decree of divorce indicated that she applied the "Ferguson Factors" in the division of the marital property of the parties. R. at 52. In **Ferguson v. Ferguson**, 639 So. 2d 921 (Miss 1994) the Mississippi Supreme Court established guidelines for the equitable division of marital property. The chancellor did not make any findings of fact and conclusions of law as to the application of the "Ferguson Factors" to the facts of this case. The Supreme Court has encouraged chancellors to enter the required findings of fact and conclusions of law in making a division of marital property so that a reviewing court may examine the same in the event that an appeal is filed of the decision of the chancellor. **Ferguson supra.** One of the principal rationales for this rule is to provide the appellate court with guidance as to what the trial court actually did, that is what facts it found and what law it applied. **Jackson, Mississippi Civil Procedure**, Section 13-51 (1997).

The Appellant would encourage the Court to direct the chancellor to make a supplement to the record of her findings of fact and conclusions

of law made in this case so that an adequate record can be made on review.

**Luse v. Luse**, No. 2007-CA-00171-COA, decided July 1, 2008.

Moreover, the failure of the chancellor to classify the Appellee's retirement benefits as either marital or non-marital is reversible error.

**Reddell v. Reddell**, 696 So. 2d 287, 288 ( Miss. 1997). As a general rule, an error in classification of property requires that the case be reversed and remanded for a division based on proper classification. **Redd v. Redd**, 774 So. 2d 492 (Miss. Ct. App. 2000). The chancellor awarded the Appellee the remaining retirement funds from his previous employer, Northwest Airlines, as his sole property and funds and awarded the Appellant no interest in these funds. R. at 53. However, she noted that the Appellant had received the benefit of the funds that were accumulated during the marriage, as well as others. Thus, the decision of the chancellor is unclear as to whether considered these funds to be marital or non-marital property.

Finally, the award of all of the marital assets to the Appellee, except for the penthouse in the Peoples Republic of China is clearly inequitable and constitutes manifest error on the part of the chancellor, especially when considered with the fact that she awarded no alimony to the Appellant.

**ISSUE NUMBER TWO**  
**WHETHER THE CHANCELLOR ERRED IN FAILING TO**  
**AWARD THE APPELLANT ANY VISITATION WITH THE**  
**MINOR CHILD OF THE PARTIES.**

The chancellor awarded paramount care, custody and control of the minor child of the parties to the Appellee. She indicated that she applied the “Albright Factors” in making this decision. R. at 54. However, she did not award the Appellant any visitation with the aforesaid child. A non-custodial parent is entitled to reasonable visitation rights with the child of the marriage. **Porter v. Porter**, 766 So. 2d 55 (Miss. App. 2000). The chancellor Committed manifest error in not awarding the Appellant any visitation rights With the aforesaid child and a reversal of her decision on this issue is mandated. Manifest errors by the trial court on the issue of child visitation should result in a reversal by a reviewing court. **Harrington v. Harrington**, 648 So. 2d 543 (Miss. 1994). The chancellor should be directed to set reasonable and appropriate times and places for the visitation of the Appellant with the aforesaid child. **Gatlin v. Gatlin**, 248 Miss. 868 (Miss. 1964). Parental visits with a child are to be encouraged as a means of establishing Positive relationships between the parent and the child. **Dunn v. Dunn**, 609 So. 2d 1277 (Miss. 1989). The only means to accomplish this goal is to permit the Appellant to have reasonable visitation with the minor child of the parties.

### ISSUE NUMBER THREE

#### **WHETHER THE CHANCELLOR ERRED IN FAILING TO AWARD THE APPELLANT ANY TYPE OF ALIMONY**

In the decree of divorce the chancellor found that neither party shall receive alimony from the other party. R. at 54. She made no findings of fact or conclusions of law on this issue. Detailed findings of fact and conclusions of law should be made in determining an award of alimony. Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994). She made no analysis in her decree of divorce of the factors listed in Armstrong v. Armstrong, 618 So. 2d 1278, 1280 (Miss. 1993) with respect to permanent alimony. The parties were married from April 11, 2000 until the filing of the decree of divorce on April 29<sup>th</sup>, 2008, which is obviously not a short-term marriage. The Appellee received retirement benefits, owned three vehicles and the parties owned a home in Senatobia, Ms. and a penthouse in the Peoples Republic of China as reflected in the decree of divorce. Thus, Appellee had access to funds to substantial assets.

The chancellor awarded the Appellee all of the marital assets except for the aforesaid penthouse. This division of property left a deficit for the Appellee. Thus, the chancellor should have awarded some type of alimony to the Appellant. Johnson v. Johnson, 650 So. 2d 1281, 1287 (Miss. 1994).

The chancellor committed manifest error on this issue by not supporting her decision to award the Appellant no type of alimony with findings of fact analyzing the

factors set out in Armstrong, supra. Henderson v. Henderson, 703 So. 2d 262, 266 Miss. 1997). The record made in this case is simply not sufficient for an independent Review and this case should be reversed for failure on the part of the chancellor to Make findings of fact. Godwin v. Godwin, 758 So. 2d 384, 387-88 (Miss. 1999).

## ISSUE NUMBER FOUR

### WHETHER THE CHANCELLOR ERRED IN AWARDING PARAMOUNT CUSTODY, CARE AND CONTROL OF THE MINOR CHILD OF THE PARTIES TO THE APPELLEE

The chancellor awarded paramount custody, care and control of the minor child of the parties to the Appellee. R. at 54. She indicated that after applying the “Albright Factors” that it is to and in the best interest of the parties’ minor child to be awarded to the Appellee. Id. She did not make any finding of fact with regard to each of the aforesaid factors. See Albright v. Albright, 437 So. 2d 1003, 1005 (Miss. 1983). An award of child custody with no Albright findings of fact may be reversed by a reviewing court. Powell v. Ayars, 792 So. 2d 240 (Miss. 2001). Specific findings of facts of each of the factors is the preferred method of analysis for a reviewing court. Murphy v. Murphy, 797 So. 2d 325, 329-330 (Miss. Ct. App. 2001). An application of the aforesaid factors without an on-the-record determination of the factors justifies a reversal of the decision of the chancellor. Ayars, supra.

## VIII. CONCLUSION

Based upon the foregoing analysis and case authorities the Appellant urges the court to reverse the decision of the chancellor in the division of the marital property, in failing to award the Appellant any child visitation with the minor

child of the parties, any failing to award the Appellant any alimony and in awarding the Appellee paramount care, custody and control of the minor child of the parties.

#### **IX. CERTIFICATE OF SERVICE**

I, David L. Walker, counsel for the Appellant, hereby certify that I have this day either mailed, postage prepaid, or hand-delivered a copy of the Appellant's brief to Hon. Vicki B. Cobb, chancellor, and John T. Lamar, Jr., counsel for the Appellee, at their usual business addresses.

This the 28<sup>th</sup> day of September 2008.

  
David L. Walker