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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2007-CA-01925

DAVID H. DOYLE APPELLANT

Vs.

KAREN P. DOYLE APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF DESOTO COUNTY

Certificate of Interested Parties

Atty. James D. Minor, B[REDACTED] P.O. Box 1670, Oxford, MS 38655-1670, F: (662) 236-4000, Karen Mobley, Appellate, 4843 Harvest Knoll Lane, Memphis, TN 38125 P: (901) 859-9020, David H. Doyle, 8667 Belmor Lakes Drive, Olive Branch, MS 38654, F: (901) 333-5698, pro se.

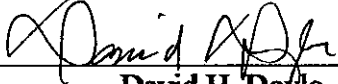

David H. Doyle
Pro se

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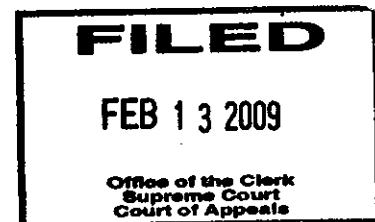


Table of Authorities

- Dobson v. Dobson, no.'s S – 7386, S – 7416, 902 (AK 1998) p. 8
- Ferguson V. Ferguson, no. 92 - CA – 00058 921, 927 – 28 (Miss. 1994) p. 7, 9 - 11
- Huguelet v. Huguelet, no. 113 N.C. App. 533, 439 S.E.2d 208 (1994) p. 8
- Kalman v. Kalman, no. 2003 - CA – 01024 760, (COA 2004) p. 6
- Kilpatrick v. Kilpatrick, no. 97 – CA – 00550 876, 880 – 81 (Miss. 1999) p. 11
- Owen v. Owen, no. 1999 – CA - 01024 394 (Miss 2001) p. 11
- Thompson v. Thompson, no. 200J OK CIV APP2, 605 P3d 346 (DIV.3 2004) p. 9

Appellant Submits the Following Issues for Review:

1. The trial court erred in requiring David to pay to Karen Twenty Five Hundred Dollars (\$2500) in equity in the Infinity automobile.
2. The trial court erred in requiring David to pay Karen Seventy Three Hundred Dollars (\$7,300) for marital furniture and not taking into consideration the Seven Thousand Two Hundred and Ninety Eight Dollars (\$7298) that Karen defrauded from David's non marital asset bank account to purchase furniture and the Forty Five Thousand (\$45,000) in business inventory accumulated during the marriage.
3. The trial court failed to comply with the Ferguson factors by awarding Karen One Thousand Dollars (\$1,000) in equity in David's lawn mower.
4. The trial court failed to require compliance with Rule 8.05 and adhere to the Ferguson factors by not requiring a detailed statement of actual expenses and liabilities reflecting Karen and additional card holder family member's credit card

charges that David was required to pay. Payment by David of the credit card debt therefore constituted a form of alimony since there was no evidence to show marital credit card debt.

5. The trial court failed to comply with Ferguson factor's by ruling that David pay Karen fifty (50) percent of the proceeds from David's 2005 federal tax return.
6. The trial court erred in having David to provide health insurance for Karen for twelve (12) months.
7. The trial court failed to comply with the Ferguson factors by ruling that the marital residence be sold and the proceeds be divided equally between David and Karen.
8. The trial court erred in not making an equitable distribution of David's retirement account.

Statement of the Case

The Chancery Court of Desoto County on August 22, 2007 signed the written Decree granting a divorce to the parties on the grounds of cruel and inhumane treatment on September 21st, being later filed for record on September 24, 2007. David Doyle, the Plaintiff and Karen Doyle, the Defendant, were married November 1, 2003 and lived the first twelve (12) months of the marriage in Karen's residence in Memphis, TN. David and Karen subsequently purchased a home in Olive Branch, MS and moved in on November 24, 2004 and lived together there until January 2006 (thirteen (13) months) in Desoto County, MS then separated and Defendant moved back into her home in

Memphis, TN. During the marriage David worked as a counselor for the Tennessee Small Business Development Center at Southwest TN Community College in Memphis and Karen ran a business out of the home. There were no children as a result of this union. The order of the court, in addition to the divorce ordered division of the marital assets and debts of the parties, the court found specifically that:

1. David was to pay, within thirty (30) days of signing of Decree, Two Thousand Five-Hundred Dollars (\$2500) ordered to be paid as the equity of Karen in the Infiniti owned by the parties, Sub-Paragraph C of the Division of Marital Assets;
2. David was to pay, within thirty (30) days, Seven Thousand Dollars (\$7000) ordered paid as the equity of Karen in the marital furnishings and Three Hundred Dollars (\$300) for destroyed furniture of the grandchild of Karen, Sub-Paragraph D of the Division of Marital Assets;
3. David was to pay, within thirty (30) days, one Thousand Dollars (\$1000) ordered paid as the equity of Karen in the marital lawn mower owned by the parties, Sub-Paragraph F of the Division of Marital Assets;
4. David was to pay at the rate of fifteen hundred dollars a month for ten (10) months, Fifteen Thousand Dollars (\$15000) ordered paid as reimbursement for marital debt that was charged to credit cards of Karen, the Division of Marital Debt. First payment was due in thirty (30) days of signing of decree.
5. David was to pay fifty percent (50%) of the 2005 federal tax return refund, to Karen, Sub-Paragraph E of the Division of Marital Assets.

6. David shall provide Karen with continued coverage of health insurance, by virtue of the policy currently in place, or through COBRA, for a period of one (1) year subsequent to the entry of the order, Division of Marital Debt.
7. David was to sell the marital residence located at 8667 Belmor Lakes Drive, Olive Branch, MS and pay Karen one half (1/2) the equity from the sale, Sub-Paragraph A of the Division of Marital Assets.
8. David was to pay in a lump sum within thirty (30) days or by QUADRO Karen Seventy-Five Hundred Dollars (\$7500) as her individual share of the retirement account owned by David attributable to his employment at Southwest TN Community College, Memphis TN, Sub-Paragraph B of the Division of Marital Assets.

Summary of the Argument

David hereby makes the following arguments relating to the Divorce Decree of the Chancery Court of Desoto County. In regards to:

1. Sub-Paragraph C of the division of Marital Assets the payment of Twenty-Five Hundred Dollars (\$2500) to Karen her equity in the Infiniti. Court based its decision on David's financial statement dated May 25, 2006, when an updated financial report dated August 10, 2007 had been submitted to Karen's attorney and the court. The May 25th statement declared that there was Five Thousand Dollars (\$5000) equity in the Infiniti but this was a clerical error (p 51 -2)*. The

* (p.) refers to page number of trial transcript

attorney's typist failed to add the minus sign to the equity calculation on the financial statement. The financial statement clearly showed that the value of the vehicle at the time was estimated to be Twenty-Three Thousand Dollars (\$23,000) and the loan balance on the vehicle was Twenty-Eight Thousand Dollars (\$28,000) resulting in a negative Five Thousand Dollars (\$5000) in equity (p 22). The updated financial statement had corrected this clerical error and eliminated the confusion over the concept of negative equity. Therefore, there was no equity in the car and the court erred in awarding the Twenty Five Hundred Dollars (\$2,500) to Karen. The purpose of Uniform Chancery Rule 8.05 and compliance therewith is to give the trial court a complete financial picture of each party, *Kalman V. Kalman*, 905 So.2d 760, (COA 2004). The Trial Court failed to use the current financial statement or equity as outlined in the Ferguson factors in making its decision.

2. Sub-Paragraph D of the Division of Marital Assets ordered David to pay Seven Thousand Three Hundred Dollars (\$7300) to Karen for furniture damaged by David. The court placed a total value of Seven Thousand Dollars (\$7,000) on the damaged property and Three Hundred Dollars on Karen's grandchild's furniture. There is a receipt in the file, Exhibit 15, showing that only Two Thousand Eight Hundred Dollars (\$2,800) was paid for the household furniture (p 86 -7, 291). The record shows no evidence other than her testimony, of the destruction of Karen's grandchild's furniture (p 27) and the only other property damaged was property bought by David with non-marital assets or was financed in David's name alone. Court gave no consideration to David's testimony (p 19) to these

facts. In addition, Karen defrauded Seven Thousand Two Hundred and Ninety-Eight Dollars (\$7,298) from David's non-marital asset account. This information was provided Karen's attorney during discovery and there is a subpoena in the file but the deposition of the owner of the Furniture Gallery where the furniture was purchased was never taken. This new furniture was delivered directly to Karen's home in Memphis. David testified that throughout the marriage Karen demonstrated a pattern of greed participating in various frauds against the government and subsequently attempting to defraud David of his inheritance upon the death of his mother (p 13). The court took none of this activity in consideration in making its ruling. The court erred by not applying the Ferguson factors and awarding Karen Seven Thousand Three Hundred Dollars (\$7300) for the damaged furniture and not taking into consideration the defrauded funds. The result of this error was that David paid for the furniture three times; 1) Initial purchase using non-marital assets and financing that he pays and is not in Karen's name, (p 19, 20) the Trial Court award and 3) the monies defrauded from David's personal non-marital bank account. The court erred by not applying the Ferguson factors in this ruling.

3. In the Division of Marital Debt, David was ordered to pay One Thousand Dollars (\$1000) as Karen's equity in the marital lawn mower. The marital lawn mower (equipment) was financed and is the sole property of David (p 87) as noted on David's financial statement dated May 25, 2006 and August 10, 2007. Karen's lawn mower, as noted on her financial statement dated May 16, 2007, was valued at \$350.00. The lawn mower was clearly not a marital asset and the Trial Court

erred by not applying the Ferguson factors, treating it as such and making the \$1000 award to Karen.

4. In the Division of Marital Debt, David was ordered to pay Fifteen Thousand Dollars (\$15,000) to Karen for charges to credit cards of Karen, financial statement dated May 16, 2007. The court ordered copies of Karen's credit card debt but the records, subpoena dated August 6, 2007, were not entered into evidence even though my attorney was in receipt of the documents. Karen's attorney introduced as Exhibit 12 a credit report dated June 24, 2003; we were married on November 1, 2003, showing that Karen had no credit card debt prior to the marriage. This evidence and Karen's subsequent testimony was misleading since all of her credit card debt was in the name of the business. One month after our marriage Karen transferred this debt to her personal name (p 121). Karen's credit records were subpoenaed, a copy of said subpoena is in the file, and which under Rule 401 would have provided relevant evidence that there was no marital credit card debt. In any event, there were no receipts or other evidence presented to the court showing the types of purchases made on the account. Many of her credit cards were in both Karen and other family member's names (p 331). David should not have had to pay this debt without the court determining if this was in fact debts resulting from needs of the marriage. The Trial Court erred in declaring the credit card debt as marital debt without complete documentation of the charges and card ownerships. *Dobson v. Dobson*, 955 P.2d 902 (March 1998) and *Huguelet v. Huguelet*, 113 N.C. App. 533, 439 S.E.2d 208 (1994)

5. Sub-Paragraph E of the Division of Marital Assets ordered David to pay fifty percent (50%) of his 2005 Federal Tax return to Karen. The 2005 Federal Tax Return was filed Married Filing Single and no deductions were taken for Karen or on any of her assets. A deduction was taken for the mortgage deduction on the marital residence but the mortgage is in David's name only and David made all the payments on the mortgage (p 20). Consideration should have been given to the fact that David's daughter was used as an exemption and there were deductions for court ordered payments for tuition. Karen typically sells both her and her son's exemptions. If this were done in 2005 these would be illegally obtained funds that David would like the court to exclude him from liability in the future. *Thompson v. Thompson*, 200J OK CIV APP2, 605 P3d 346 (DIV.3 2004). The court erred by not applying the Ferguson factors to this ruling.
6. In the Division of Marital Debt, David was ordered to provide Karen with health insurance for one (1) year. Karen stated in court that she was in receipt of social security benefits and as such was eligible for TENNCARE medical benefits (p 230). TENNCARE provides better or equal coverage as other programs that the court ordered David to provide. If Karen already was entitled to health care benefits as a result of receiving social security benefits having David to pay for the same benefit was punitive, redundant and amounted to a redistribution of non-marital assets and in making the judgment the Trial Court erred by failing to equitably apply the Ferguson factors.
7. In the Division of Marital Property, David was ordered to sell the marital residence and pay half the equity to Karen. In the proceedings, David presented

an updated appraisal to the court, Exhibit 18, showing that in line with declining real estate market conditions that the value of the marital residence had declined below the purchase price of Three Hundred Ninety-Nine Thousand Nine Hundred Dollars (\$399,900) to Three Hundred Ninety-Five Thousand Dollars (\$395,000). The mortgage balance is Three Hundred and Ninety-Eight Thousand Dollar (\$398,000). Even if the marital residence sold at appraised value the real estate commission of Five percent (5%) would be nearly \$20,000 which means both parties would have to come to the table with a check for Twenty Three Thousand Dollars (\$23,000) or Eleven Thousand Dollars (\$11,500) each to sell the house. In addition, this amount doesn't include other closing costs including transfer taxes. There is no equity in the property and Karen is not on the mortgage (see Karen's financial statement dated May 16, 2007). This ruling created the dilemma of David not being able, due to market conditions, to sell or refinance the property without causing additional friction with Karen and trips back and forth to court. The Trial Court ruled that David did not get to share in the equity of Karen's residence even though David made significant improvements to the house in the year he lived there (p 327) nor did David get to benefit from the value of the inventory accumulated during the marriage of Forty Five Thousand Dollars (\$45,000)(p 334). The Ferguson factors were not applied equitably and the court erred in not awarding the marital residence to David.

Ferguson v. Ferguson, 639 So2d 921, 927-28

8. In Sub-Paragraph B of the Division of Marital Assets, David was to pay Karen Seven Thousand Five Hundred Dollars (\$7500) as equity in David's Southwest

TN Community College retirement account. Calculations during the trial estimated the value of Karen's equity in David's retirement account at Six Thousand Five Hundred Dollars (\$6,500 (p 21, 55)). The court awarded Karen \$7500 because it did not know the value of the increase in David's other retirement account that was a non marital asset. David was married to Karen for only two years and argues that she is not entitled to share in his retirement savings especially since she is a recipient of her own retirement benefits through the social security administration and during the marriage David didn't benefit from these funds because Karen used them to make payments on her house in which the court ruled that any increase in equity was a non marital asset (p376). In addition, a lump sum award gives no consideration to the vagueness and uncertainties of the economy as recent activities have evidenced. This ruling was punitive, unfair and the ruling cannot be supported with findings of fact and conclusions. If there is to be a distribution to Karen then it should be accurate, mathematically specific and equitable to be fair**. *Kilpatrick v. Kilpatrick*, 732 So2d 876, 880 – 81. Karen has her own retirement plan that David did not and does not get to benefit from and therefore Karen should not be entitled to a distribution from David's plan. *Owen v. Owen* 798 So.2d 394 (Miss 2001). Trial court failed to equitably apply the Ferguson factors in ruling that Karen was entitled to a distribution from David's retirement account when she was already receiving retirement benefits from the social security administration.

** Retirement Distribution Calculation: Balance at Distribution – 31 Oct 2003 Balance divided by 25/Total Months since 31 Oct 2003 X .5 = Karen's Distribution

Conclusion

The Trial Court rulings were not based on all the factors of Ferguson v. Ferguson, replete with errors and inequities so the rulings had the effect of unjustly enriching Karen and constitute a form of alimony. I therefore beg the court's reversal on:

1. in the Division of Marital Assets subparagraphs B, C, D, E;
2. and sale of the marital residence and award said residence to Appellant;
3. In the Division of Marital Debt the equity payment in the lawnmower and the provision by Appellant of health insurance for Karen.

In regards to the credit card marital debt I ask that this matter be remanded back to the trial court for further findings.

David H. Doyle, Appellant, v. Karen P. Doyle, Appellee.

2007-ca-01925 (Miss.) (Appellate Brief)

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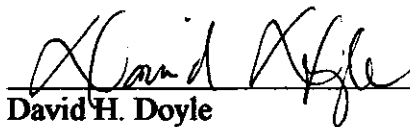
CERTIFICATE OF SERVICE

I, David H. Doyle, pro se, do hereby certify that I have this day mailed a copy of this brief via United States mail with postage prepaid to the following persons:

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So certified, this 13th day of February, A.D. 2009.



David H. Doyle