

**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**THOMAS S. BEDDINGFIELD**

**APPELLANT**


**V.S.**

**NO. 2008-TS-00512**

**JENNIFER L.BEDDINGFIELD**

**APPELLEE**

**REPLY BRIEF OF APPELLANT**

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**SUMMARY OF THE ARGUMENT**

The EVIDENCE does not reveal how Thomas could pay any alimony. During the marriage the parties only broke even with assistance from Thomas' mother. Thomas does not complain that Jennifer received most of their personal property and he their debt. The disparities in the earning capacities of Thomas and Jennifer is not the important point; it is that the EVIDENCE does not demonstrate that Thomas ever had or will have the income to pay alimony in addition to maintaining any life at all.

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**ARGUMENT**

Thomas does not complain that Jennifer received the larger share of the marital property or that the property that he received had more debt. The values used are from the evidence. the only values available to the Court.

The Court in *Tritle v. Tritle*, 956 So. 2d 369 (Miss. Ct.App. 2007) faced similar questions but the Court had EVIDENCE of the income of the parties to consider. There the parties agreed on the property division and the record reflected that the Chancellor considered that division. The Chancellor in *Tritle* had evidence of the income of the parties. Thomas had no income ; the Chancellor surmised and found Thomas “a healthy person and he is physically and mentally able to work.”(RE-O-21) There is no analysis or mention of how Thomas can afford his expenses and pay alimony or on what amount of income the Chancellor was considering this finding. The Chancellor found that Rebecca Beddingfield does pay the plaintiff’s expenses. There is no evidence that Rebecca can continue so to do; or any jurisdiction of the Court over Rebecca to require that she pay Thomas’ expenses so that he may use all of his income to pay alimony to Jennifer so that she can remain idle.

Jennifer relies upon *Weeks v. Weeks*, 832 So. 2d 583(Miss 2002); which found:

¶¶ 6. Deborah was awarded the \$360,000 marital home (with the remaining \$18,000 debt), her \$40,000 BMW, \$40,000 in household furnishings, one-fourth of the 401 (k) valued at \$282,750, one-third of the defined benefit pension and retirement plan, including annual payments which had a cash value of \$2,000,000 and \$50,000 in cash. Deborah received approximately one third of the estate valued at \$5,219,567.

¶¶ 7. Roland was awarded the remaining marital property of approximately two thirds of the estate including his home valued at \$300,000, two planes and a hangar valued at \$180,000, \$40,000 in household goods, a limited partnership valued at \$300,000 (receiving \$30,000 in income per year), Knight Ridder and other stocks valued at \$261,000 and all remaining assets. Under the retirement plan, Roland has various options and may choose a lump sum payment of \$2,000,000 with \$75,000 per year or periodic payments at various rates ranging from \$228,000 to \$308,000.

This is evidence. the Chancellor had before him the facts with which to come to a decision.

As you can see the wife in *Weeks* got one-third of \$5,219,567. Not as indicated in Jennifer's

brief. The important difference here is that Roland Weeks had income in EVIDENCE that

allowed him the ability to pay alimony, regardless what the estate division presented.

In *Weeks* the Chancellor was reversed for failing to allow alimony where the wife had a considerable estate, by property division.

¶¶ 20. "The wife is entitled to support corresponding to her rank and condition in life, and the estate of her husband." *Tutor v. Tutor*, 494 So.2d 362 (Miss.1986) (citing *Jenkins v. Jenkins*, 278 So.2d 446, 449-50 (Miss.1973)). In accordance with *Tutor* and *Armstrong*, Deborah is entitled to continue living in the same standard of living as she has grown accustomed to during the course of her twenty-two year marriage. Deborah maintained the home during their marriage and after their separation for the benefit of their daughter until one year prior to the divorce hearing.

The difference is that Thomas has no estate from which to draw. There is no evidence of any standard of living.

The ability to work never helped Thomas or Jennifer before. The parties had filed bankruptcy and had always relied upon Rebecca Beddingfield to pay their bills. Rebecca Beddingfield is not a party to this action. Her contributions to her son are voluntary and cannot be

required to support Jennifer. It is Jennifer's burden of proof to show that Thomas has income or the ability to provide income in excess of the for him to maintain some standard of living. Jennifer has failed to show that Thomas ever made an income that would support her demand of alimony.

What amount of lump sum alimony was Thomas required to pay? That is a question that the EVIDENCE should reveal. It does not. Does Thomas have the funds to make this payment? This is a question that the EVIDENCE should reveal and that should have been addressed. Can anyone, from the record determine the amount of lump sum alimony required? No, it cannot be done.

Jennifer's case is nothing like *Grogan v. Grogan*, 641 So. 2d 734 (Miss. 1994) where the wife was involved in the business, invested and owed for the business, the husband had an income and there was evidence from which to calculate.

As Mississippi's law on lump sum alimony has developed, four factors have evolved. These four factors were listed in *Cheatham v. Cheatham*, 537 So.2d 435, 438 (Miss.1988):

1) Substantial contribution to accumulation of total wealth of the payor either by quitting a job to become a housewife, or by assisting in the spouse's business. *Tutor v. Tutor*, 494 So.2d 362 (Miss.1986); *Schilling v. Schilling*, 452 So.2d 834 (Miss.1984);

Thomas and Jennifer Beddingfield have no wealth.

2) A long marriage. *Jenkins v. Jenkins*, 278 So.2d 446, 449 (Miss.1973); *Tutor and Schilling, supra*;

*The Beddingfield marriage was not especially long.*

3) Where recipient spouse has no separate income or the separate estate is meager by comparison. *Jenkins, Tutor, and Schilling, supra*;

*By comparison, Thomas has no income and his estate is more debt than asset.*

4) Without the lump sum award the receiving spouse would lack any financial security. *Abshire v. Abshire*, 459 So.2d 802, 804 (Miss.1984).

There is no financial security for these people.

A closer analysis of these cases, however, reveal that the single most important factor undoubtedly is the disparity of the separate estates.

Thomas estate has no liquid value. There is no money or asset that can be liquidated to pay Jennifer. Is Thomas' estate comprised of his ability to work? If not then there is no estate for alimony to correct any disparity.

In, *Hammers v. Hammers*, **890 So.2d 944** (Miss. 2002) the Court made the point for Thomas;

Timothy asserts that Stephanie is not entitled to lump sum alimony because they did not have separate estates. At the time of the equitable division of property, everything they owned, including the business, was classified as marital property and divided equally. Therefore, Timothy asserts, each party was on equal footing. In *Johnson v. Johnson*, 650 So.2d 1281, 1287 (Miss. 1994), the court held that only when an equitable division of property, considered along with the separate assets of both parties, leaves a deficit for one party is an alimony award based upon the value of the non-marital assets proper.

¶¶. Timothy makes a valid argument, and he would be correct if the chancellor had awarded lump sum alimony. The chancellor's ruling says the alimony is payable in lump sum form. However, the reasoning and description of the purpose of the award clearly indicates that the award was not lump sum alimony but rather was rehabilitative alimony.

¶¶. In *Hubbard v. Hubbard*, 656 So.2d 124, 130 (Miss. 1995), the supreme court explained that rehabilitative alimony "is an equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim." Here, the chancellor clearly stated that the alimony award was designed to help Stephanie become self-supporting. The chancellor reasoned that "Mrs. Hammers needed the alimony in order to obtain training and/or education to obtain gainful employment."

There is no reasoning that the "lump sum"(RE-22) alimony awarded Jennifer is for any rehabilitation; nor is it paid in any but lump sum. Thomas should then have a valid argument; without the reasoning and description to go along and with periodic alimony awarded separately. The monthly installment on the mobile home (which has now been repossessed) is not described as any particular type of alimony. The difference in every case of alimony cited is that there is evidence in the record of the ability to pay and meet the expenses of the payor. There is no such evidence in this record. Ability to work and ability to pay over and above the necessities are not the same.



Jennifer ignores, because there is no answer, the "ability to pay" Brennan v. Brennan, 638 So.2d 1320,1324(Miss. 1994) and the" right of the husband to lead as normal a life as reasonably possible with a decent standard of living and; "Massey v Massey, 475 So. 2d 802. There is no way to avoid the lack of evidence that would support Thomas' ability to pay. Jennifer failed to present evidence to support the award of alimony. The Chancellor was manifestly in error to award alimony without evidence in the record to support the ability to pay and regard for Thomas' right to lead a normal life with a decent standard of living.

Respectfully submitted, this the 2nd day of December, 2008.

BY:

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**CERTIFICATE OF SERVICE**

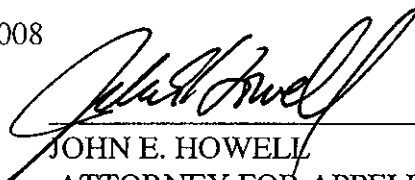
This is to certify that I, John E. Howell, Counsel for the Appellant, have caused to be mailed this date, via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing **Brief of Appellant** to the following:

Hon. C. Joy Harkness  
P.O. Box 1931  
Meridian, MS 39302

Supreme Court of Mississippi  
P.O. Box 249  
Jackson, Ms 39205

Hon. Jerry G. Mason  
Chancery Court Judge  
P.O. Box 5681  
Meridian, MS 39302

This the 2nd day of December, 2008

  
\_\_\_\_\_  
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