

**IN THE SUPREME COURT OF MISSISSIPPI**

**CYNTHIA G. OWEN**

**APPELLANT**

**VS.**

**CAUSE NO. 2008-TS-00734**

**WILLIAM SHURDEN OWEN**

**APPELLEE**

**BRIEF OF APPELLANT**

**FROM THE CHANCERY COURT OF SUNFLOWER COUNTY**

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## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PARTIES .....	i
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES .....	iv
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE .....	2
SUMMARY OF THE ARGUMENT .....	6
ARGUMENT .....	8
FACTS .....	8
LAW .....	21
THE LOWER COURT ERRED IN NOT AWARDING ALIMONY .....	21
THE COURT ERRED IN ITS AWARD OF EQUITABLE DISTRIBUTION .....	24
THE DENIAL OF ATTORNEYS FEES .....	27
CHILD SUPPORT .....	29
CONCLUSION .....	32
CERTIFICATE OF SERVICE .....	34

## **TABLE OF CASES AND AUTHORITIES**

1. Armstrong v Armstrong, 618 So. 2d 1278 (1993)
2. Hemsley v Hemsley, 639 So. 2d 909 (Miss 1994)
3. Monroe v. Monroe, 745 So. 2d 249 (Miss. 1999)
4. Box v. Box, 622 So. 2d 284 (Miss. 1993)
5. Johnson v. Johnson, 877 So. 2d 485 (Miss. App. 2003)
6. Henderson v. Henderson, 757 So. 2d 285 (Miss. 2000)
7. Garriga v. Garriga, 777 So. 2d 978 (Miss App. 2000)
8. Langdon v. Langdon, 854 So. 2d 485 (Miss. App. 2003)
9. Haney v. Haney, 907 So. 2d 948 (Miss. 2005)
10. Fisher v. Fisher, 771 So. 2d 364 (Miss. 2000)
11. Spahn v. Spahn, 959 So. 2d 8, (Miss. App. 2006)
12. Southerland v. Southerland, 875 So. 2d 204 (Miss 2004)

### **STATEMENT OF THE ISSUES**

1. The Chancellor erred in not awarding alimony to Cindy Owen.
2. The Chancellor erred in not making a greater award or distribution of the marital assets of the marriage to Cindy Owen.
3. The Chancellor erred in not requiring Shurden Owen to pay Cindy Owen's reasonable attorneys fees and costs.
4. The Chancellor erred in setting child support too low.

## **STATEMENT OF THE CASE**

Cynthia G. Owen (hereinafter “Cindy”) and William Shurden Owen (hereinafter “Shurden”) were married on October 5, 1989, in Drew, Mississippi and are the parents of one (1) child, Meredith Kristen Owen (hereinafter “Meredith”) born March 16, 1995.

During the marriage of the parties Shurden, and Cindy to a less physical degree, engaged in farming operations in Sunflower County, Mississippi. After the birth of Meredith, Cindy worked at various jobs outside of the marriage while still assisting with the farming operations. On February 27, 2006, Cindy filed her Complaint for Divorce and Other Relief against Shurden on the ground of habitual cruel and inhuman treatment, addiction to alcohol, adultery or claimed that in the alternative the marriage of the parties had met with irreconcilable differences. (R1, Pg 8)

On April 27, 2006, Shurden filed his Answer and Counter-Complaint for Divorce denying the allegations of Cindy’s complaint and charging Cindy with habitual cruel and inhuman treatment, adultery, and addiction to drugs and alcohol. (R1, Pg 27)

On May 23, 2007, the parties filed their Joint Motion to Bifurcate and requested the Court to proceed to entry of a Final Judgment of Divorce between the parties on the grounds of irreconcilable differences and to award custody of Meredith to Cindy with reasonable rights of visitation to Shurden and reserved all other issues between the parties for further evidentiary proceedings and testimony. (R1, Pg 59)

On May 23, 2007, the Court entered its Final Judgment of Divorce granting the parties a divorce from each other on the grounds of irreconcilable differences and awarding the care of Meredith to Cindy with reasonable rights of visitation to Shurden and reserved all other matters arising out of or relating to the marriage for trial scheduled for June 21-22, 2007. (R1, Pg 63)

The matter was tried before the Chancellor on June 22, 2007, and after taking evidence and exhibits from the parties and having heard testimony the Court entered its Findings of Fact and Conclusions of Law on January 25, 2008. (R1, Pg 69-82)

The Court identified the marital assets of the parties as certain items of personal property, 80 acres of farm land purchased solely in Shurden's name during the course of the marriage, two shares of stock purchased by Shurden in a hunting camp self valued by Shurden at \$90,000.00, a 2005 Ford F250 valued at \$20,000.00, a 2005 Ford Excursion with equity of \$15,000.00, Cindy's retirement account with the State of Mississippi with a balance of \$15,000.00, and a whole life insurance policy with a value of \$6,000.00 to \$7,000.00, a one million dollar term life policy on Shurden, with Cindy as the beneficiary, and the Court found that the parties had approximately \$93,000.00 in marital debt. (R1, Pg 76)

The Court found that Shurden had a 19.13 % interest in Shurden Land Partnership, including the land and structures owned by the partnership, but that same was a non-marital asset and found that Cindy's collection of jewelry gifted to her by Shurden had an approximate value of \$50,000.00 and was a non-marital asset. (R1, Pg 77)

The Court found that both parties had contributed to the accumulation of the items found by the Court to be marital property and that both parties had expended assets during the course of the marriage. (R1, Pg 78)

The Court also found that Shurden's interest in the Shurden Land Partnership had value to Shurden because he had the use and benefit of the residences and structures owned by the partnership. (R1, Pg 78)

The Court proceeded to divide the marital assets as follows:

1. That Shurden would take steps to sell or transfer his shares of the hunting stock with an approximate value according to him of \$90,000.00, with the proceeds to go to Cindy, and that in the event Shurden was unable to liquidate his shares of stock within six (6) months he would be required to make payments of \$15,000.00 every six (6) months for three (3) years. (R1, Pgs 78-79)
2. That Shurden would resume responsibility of all the marital credit card debt in the approximate sum of \$93,000.00. (R1, Pg 79)
3. That Shurden would continue to own the 80 acres of farm land owned solely in his name.
4. That Shurden would have no rights to Cindy's retirement account.
5. That Cindy would be allowed to cash in the life insurance policy with a cash value between \$6,000.00 and \$7,000.00.
6. That each party would be entitled to the vehicle then driven by them with Shurden remaining responsible for the note of Cindy's vehicle and the insurance on same until it was paid off.
7. That Cindy would execute any and all documentation necessary to transfer her interest in W & C Owen Partnership to Shurden and be relieved of any and all liability associated therewith.
8. Made a division of personal property between the parties. (R1, Pg 79)

The Court reasoned that under this distribution Cindy would have approximately \$100,000.00 in cash or cash equivalence and would be debt free reasoning that this decision essentially awarded all the parties liquid and unencumbered marital assets to Cindy and transferred all the marital credit



card debt to Shurden and that this was equitable given the trust income Shurden enjoyed ( guaranteed \$50,000.00 annually) and Shurden's continued use and benefits of the assets of Shurden Land Partnership. (R1, Pg 79)

In addressing Cindy's alimony request the Court observed that Shurden, even if he stopped farming and had no farming income, would continue by his own admission to make \$50,000.00 annually from trust income while Cindy made approximately \$30,000.00 from her job with the State of Mississippi and found on this basis that the needs of each party did not dictate an award of alimony. (R1, Pg 80)

The Court found that Shurden's adjusted gross income could be "characterized as less than \$9,000.00 per year" (R1, Pg 81) [yet found he could pay \$15,000.00 twice a year for three years; R1, Pgs. 78-79] and acknowledged that if he received nothing from farming he would still earn approximately \$50,000.00 in trust income each year. On this reasoning the Court found that Shurden would have an adjusted gross income of \$4,166.67 per month ( $\$50,000.00 \div 12$ ) and used this figure to set child support payable by Shurden to Cindy at \$583.83 per month. (R1, Pgs 81-82) Where the \$15,000.00 twice a year would come from was not clear.

Finally, the Court found that Cindy did not have an inability to pay her attorneys fees and costs and that there was no disparity in the relative financial positions of the parties and on this basis declined Cindy's request for an award of attorneys fees and costs. (R1, Pg 82) (Plaintiff's Exhibit #3 in evidence is \$9,704.00)

On February 5, 2008, Cindy filed her Motion to Reconsider requesting the Court to modify its ruling regarding alimony and assets of the marriage of the parties as well as Cindy's request for attorneys fees (R1 Pg 86). On March 31, 2008, the Chancellor entered her Order denying Cindy's

Motion to Reconsider in all respects. (R1, Pg 110)

In April 28, 2008, Cindy filed her Notice of Appeal from the Final Judgment of January 25, 2008, and the Court's Order denying her Motion for Reconsideration dated March 31, 2008. (R1, Pg 111)

In her Designation of the Record Cindy designated, "all clerks papers, trial transcripts, and exhibits filed, taken or offered" in the case. (R1, Pg 113)

### **SUMMARY OF THE ARGUMENT**

Shurden's own CPA expert witness conservatively estimated Shurden's interest in the W & C Owen Partnership at \$359,260.00 and that Cindy's interest in this partnership was also \$359,260.00. (R3, Pg. 192) The lower court erred in awarding Cindy \$100,000.00 in equitable distribution.

The Court erred in finding that Shurden only had a 19.13 % interest in the Shurden Land Partnership. Shurden's actual beneficial ownership in the Shurden Land Partnership is 50.7% due to his various ownership in the other entities which in turn own interests in the Shurden Land Partnership.

The Shurden Land Partnership owns and farms 2,904 acres of land while Shurden himself individually owns 80 acres solely in his name. All of the assets of the Shurden Land Partnership, Shurden's individual ownership of the 80 acres of land, as well as all of the parties' interests in W&C Owen Partnership, Owen Planing Company Partnership, S&T Farms, Inc., S&H Farms, Inc. were awarded to Shurden. In contrast, Cindy was awarded her jewelry, some furniture, \$7,000.00 in the cash value of a life insurance policy on Shurden and \$90,000.00 in the form of Shurden's liquidation of his shares of the hunting camp stock. Shurden has the former marital home, the

acreage, all of the farming equipment and enjoyed \$50,000.00 in income each year from a trust fund.

The Court was in error in rejecting the evidence from Cindy's expert that, contrary to what was shown on the couple's tax returns, the couple had available income for the year 2000 of \$299,885.00, for 2001 the sum of \$431,273.00, for 2002 the sum of \$296,498.00, for 2003 the sum of \$221,223.00, for 2004 the sum of \$239,487.00 and for the last year for which returns were available, 2005 the sum of \$256,389.00.

The Court further erred in accepting the absurdly incredible testimony of Lewis Jackson, Shurden's CPA, that in the seven years prior to trial Shurden earned less than minimum wage. Also, the lower court erred in accepting this expert's testimony at trial that Shurden's net worth was a mere \$30,854.00.

In contrast, the Court also erred in rejecting the testimony of Cindy's expert looking at the actual income, assets and liabilities of the parties, rather than self serving tax returns, Shurden had a net worth of \$1,995,656.00.

The Court was plainly in error in awarding Cindy only \$100,000.00 in equitable distribution.

Even though Shurden admittedly has a guaranteed \$50,000.00 income each year from his trust, or rather because of it, the Court erred in using this figure, and this figure only, in setting child support at \$588.33 a month based on 14% of an adjusted gross income of \$4,166.67 per month ( $\$50,000.00 \div 12$ ).

Cindy made \$28,639.20 a year before taxes working for the Mississippi State Public Service Commission for a monthly income of \$2,386.60 a month. In contrast Shurden has a guaranteed \$4,166.66 per month in trust income alone. This also ignores the fact that he controls the trust and therefore the amount of income he receives from the trust. Cindy testified that it cost \$6,894.00 a

month to run her household obviously leaving a short fall of \$3,090.72. The lower court erred in denying Cindy's request for alimony.

The lower court erred in denying Cindy's request for payment of attorneys fees which at trial totaled \$9,704.00. (Plaintiff's Exhibit "3")

Even assuming that Shurden sells his two shares in the hunting camp and raises the \$90,000.00 referenced by the Chancellor's order, he has not done so leaving Cindy only her net monthly income and the \$7,000.00 cash value of the life insurance policy as her sole means with which to pay her attorney's fees and obviously the Court's decision denying her request for payment of attorneys fees and costs is error.

Cindy Owen and Shurden Owen were married in August, 1989, and have been married eighteen years. They are the parents of one child, Meredith Owen born in March, 1995. (R2, Pg. 14)

At the time of their marriage both parties had just left Mississippi State University without either of them receiving a degree and moved to the only marital domicile ever known by the parties located at 383 Lumbardy Road, Drew, Mississippi. (R2, Pg. 12) At the time of the hearing Cindy Owen was forty-two years of age (R2, Pg. 8) and working for the State of Mississippi while Shurden Owen was forty years of age farming almost 3,000 acres.

The health of both parties is good while Meredith suffers from asthma and takes regular periodic medication to control same. (R2, Pg. 58) Meredith attended private school prior to the separation of the parties but since the separation of the parties in July, 2006, when Cindy moved out of the marital domicile, Meredith has attended public school in Madison, Mississippi where she resides with Cindy. (R2, Pgs. 14-15)

During the course of the marriage and prior to separation the parties enjoyed an above

resides with Cindy. (R2, Pgs. 14-15)

During the course of the marriage and prior to separation the parties enjoyed an above average standard living, living in a modern three bedroom home with an adjacent swimming pool and pool house. (R2, Pgs. 17-18) The parties were able to take vacations to such places as the Bahamas, Argentina, Orange Beach, Jackson Hole, Wyoming; Colorado and California and took numerous weekend trips to closer destinations. (R2, Pgs. 20-22) During the marriage of the parties, employees of the couple performed lawn maintenance services and household cleaning services all of which were paid for out of the farm income. (R2, Pg. 33)

At the time of the divorce Cindy drove a 2003 Lexus and Mr. Owen drove a 2004 Lexus and the parties also had a 2005 Ford Excursion. (R 2, Pg. 23) The lease payment on Cindy's Lexus alone was \$1,200.00 per month. (R 2, Pg. 23) The Ford Excursion was used for travel by the couple. (R2, Pg. 23)

During the course of the marriage Cindy was unemployed for a one-half year period following Meredith's birth, but thereafter worked for such places as the Family Medicine Clinic, the Doctors and Nurses Weight Loss Clinic, the Bethesda Cancer Treatment Center, (R2, Pgs 12-13) and beginning in 1997 began working for the Mississippi State Public Service Commission (R2, Pgs. 18-19) where she remains employed to date making a gross base salary of \$2,386.60 per month prior to deductions. (R2, Pg. 52) She testified to monthly expenses of \$6,894.00. (R2, Pg. 64).

The evidence establishes that during the course of the marriage Cindy kept the books for the couples' farming operation for the period from January 1996 through the year 2001 (R2, Pg 31) while at the same time continuing her full time employment with the State Public Service Commission. When Shurden took over his cousin's farming operation in the year 2000, Cindy ceased

keeping the books and Nell Jackson, the cousin's former book-keeper, took over the bookkeeping operations.(R2, Pg. 32)

Prior to the separation the couple had three personal vehicles, two trucks and Cindy's Lexus automobile which was leased at the rate of \$1,200.00 per month. The evidence at trial established that both parties had had brief affairs in 1997 but that after full knowledge of the affair of the other each was forgiven by the other and the marital relationship resumed until the separation of the parties in 2006. However, Shurden admitted to another affair in April, 2006, which was not condoned by Cindy. (R2, Pg 26) Both parties admitted to periodic consumption of alcohol with Shurden stating that during the period leading up to the separation of the parties that he consumed large quantities of alcohol to the point that he would go to sleep or, as he admitted on cross examination, "pass out."

In addition to her employment duties and responsibilities Cindy was the one that attended to Meredith's schooling, did the grocery shopping, purchased household supplies, cooked the family's meals, washed and dried the clothes, changed the sheets and kept up with the upkeep and repair of the marital domicile. (R2, Pgs. 35-36)

Shurden Land Partnership was set up in 1997 right after Shurden's mother died in July 1997 (R2, Pg. 37). Being acquired during the marriage of the parties it is obviously a marital asset and the Chancellor erred in finding otherwise. Shurden Land Partnership owns 2,449 acres of land (R2, Pg 39)and 80 acres of land is owned solely in Shurden's name which was purchased after the parties marriage in 1989. (R2, Pg 39-40)

In addition to the acreage farmed by Shurden Land Partnership that partnership also owns a cabin located in Gore Spring located in Grenada County, Mississippi. (R2, Pg 40) This cabin was remodeled with money funneled through Owen Planting Company. (R2, Pg 41) After the parties

separated Shurden bought new furniture for the cabin. (R2, Pg 43)

When the marital residence of the couple burned in 1990 Cindy's parents gave them \$10,000.00 in cash to buy furniture and Cindy's parents also put some \$75,000.00 into renovation of the inside of Shurden's mother's home located on Highway 49 in Sunflower County, Mississippi. (R2, Pg 42-45)

Cindy's mother also gave the couple \$36,000.00 to put in the swimming pool and pool house at the former marital domicile. (R2, pg 46)

Shurden Land Partnership is "owned" by Shurden and his sister Traci Crossland who used to own an equal interest with Shurden. However, when Traci needs money she sells a portion of her interest in Shurden Land Partnership to Shurden for cash and this has occurred on five different occasions. (R2, Pg 47-48)

During the parties marriage their electricity bill, water bill and gas bill were paid out of the farming operation. (R2, Pg 49) After Meredith was born Shurden would give Cindy \$1,500.00 per month (R2, Pg 49) and she would use credit cards when the \$1,500.00 was not enough. (R2, Pg 49)

During the marriage of the parties they acquired a pontoon boat, two jet skis, and various 4-wheelers. (R2, Pg 50)

Cindy testified that it took \$4,000.00 to \$5,000.00 per month to pay the monthly bills. (R2, Pg 51)

During the parties separation Shurden demonstrated his ability to pay more than ordered in the final judgment by paying Cindy \$2,100.00 per month. (R2, Pg 53)

Since the parties separation Cindy was the one paying on all the credit card debt and she started making payments on the credit card debt beginning in February 2006. (R2, Pg 65-66)

During the course of the marriage Shurden gave Cindy an "allowance" of \$1,500.00 per month and if the couples needed any further items Cindy would either charge them to local merchants or charge them on credit cards with full knowledge and approval of Shurden.

A considerable portion of the family's normal living expenses were charged off to the farming operation and Cindy testified, without contradiction by Shurden, that it took approximately \$5,000.00 per month to run the family household. A considerable amount of credit card debt has been accumulated by the parties during the marriage but this was done with full knowledge and consent, or indifference, by Shurden. An example is the purchase of \$14,000.00 in elk horn furniture (R2, Pg. 68), which is still in the marital domicile, and the value of the furniture in the domicile is estimated to be \$50,000.00.(R2, Pg. 68)

Beginning in late 2000 and continuing through the year 2006 and to date of trial Cindy had individually made arrangements to pay on the credit card debt of the parties, initially paying monthly payments of \$1,400.00 which was subsequently reduced to \$690.00 per month but is scheduled to go up to \$1,500.00 per month, Cindy stated without contradiction that she had individually paid \$14,000.00 in the credit card debt of the parties. (R2, Pgs. 65-68) Of the \$2,100.00 Shurden paid in temporary support \$600.00 per month went to insurance for Shurden and Meredith.

In order to take advantage of government subsidiary programs several corporations were set up during the course of the marriage consisting of W&C Owen Partnership, (with Cindy and Shurden each owning a fifty percent ownership of this corporation), Owen Planting Company Partnership, (with Shurden owning a twenty percent interest in said partnership), S&T Farms Inc and S&H Farms Inc (with Shurden owning a fifty percent ownership in said partnerships) and the Shurden Land Partnership (of which Shurden owns an individual 19.13 percent and in which Shurden's sister Tracy



Crossland owns a 17.73 percent interest) and the William Shurden Owen Gift Trust, (in which Shurden receives one hundred percent beneficial interest and owns a 15.38 percent interest) and the Helen Ray Trust, in which Shurden owns a 16.9 percent interest. This all creates a beneficial ownership by Shurden of 50.7 percent of the Shurden Land Partnership.

The Shurden Land Partnership owns and farms 2,904 acres of land while Shurden individually owns outright 80 acres of land purchased solely in his name during the year 2000.

E. A. Buckner, III is a certified public accountant practicing in Vicksburg, Mississippi who received his degree in accounting from the University of Mississippi and has been a licensed CPA in 1980. (R2, Pg 93-94) Mr. Buckner's work includes audit work, tax work, write up work, management advisory services, and "just about any services" accountants offer. At the time of his testimony he was performing audit work for Washington County, Warren County, Sunflower County, Humphreys County, had performed audit services for the City of Vicksburg, as well as Twin County Electric Power Association, Yazoo Valley Electric Power Associations and in the course of his practice had performed accounting work for numerous farmers with acreage ranging from 100 to 10,000 acres. (R2, Pg 94-95)

Mr. Buckner testified that he had reviewed all of the defendant's exhibits except Exhibits 1, 17 and 18 and specifically had reviewed the tax returns of Shurden and the various corporations. (R2, Pg 95-96)

Mr. Buckner testified that he was familiar with setting up various farming type entities and explained that to get maximum government payments "you set up different shell corporations" which corporations or entities usually consist of several partners explaining, "Usually there are several partners and you make partners - - corporations out of different partners. You can't have any repeats

or that would be illegal, but if you had - - partner A get with partner B then partner A would get with partner C and partner A would get with partner D, and on down the line just to create different corporations” which is quite legal. (R2, Pg 96)

Mr. Buckner had reviewed the returns of W&C Owen Partnership to Owen Planting Partnership to Shurden Land Partnership and there was nothing wrong with how Mr. Owen had set up his farming operation. He stated that the opinions he was giving to the Court were based on sound and accepting accounting principles and that he had applied these principles to his examination of the Owen’s finances. (R2, Pg 96-97)

Mr. Buckner explained that most farmers try to keep their profit on tax returns down and that there are several ways that this can be accomplished such as paying future year expenses early, and rolling the sale of their crops over to the next year. (R2, Pg 97) Mr. Buckner stated that this was obviously what was being done in Shurden’s farming operations.

Mr. Buckner looked at the tax returns provided to him by Louis Jackson, Shurden’s expert, and looked at adjusted gross income and explained that the first thing you do is add back depreciation because it is a non cash expense and this is what is done when talking about cash flow. (R2, Pg 98-99)

According to Mr. Buckner, the Owen’s had adjusted gross income in 2000 of \$131,942.00 and depreciation of \$167,934.00 for a total cash flow of \$299,885.00. (R2, Pg 99)

Adjusted gross income for 2001 was \$238,000.00 with depreciation of \$192,976.00 for a total cash flow of \$431,271.00. (R2, Pg 99)

For 2002 there was \$121,310.00 for adjusted gross income with depreciation of \$175,188.00 for a total cash flow of \$296,498.00. (R2, Pg 99)

In 2003 there was \$30,891.00 adjusted gross income and depreciation of \$195,332.00 for a total cash flow of \$226,233.00. (R2, Pg 100)

In 2004 adjusted gross income was \$63,698.00 and depreciation of \$175,789.00 for a total cash flow of \$239,487.00. (R2, Pg 100)

In 2005 adjusted gross income was \$49,441.00 and depreciation of \$206,948.00 for a total cash flow of \$256,389.00. (R2, Pg 100)

From the tax returns Mr. Buckner calculated that Shurden's average adjusted gross income was \$105,850.00 per year and his depreciation when added back into this created average annual cash flow of \$291,126.00. (R2, Pg 100)

From his examination of the W&C Owen Partnership returns Mr. Buckner confirmed that William Shurden Owen owned fifty percent of the corporation and that Cynthia G. Owen owed fifty percent of that corporation. (R2, Pg 100)

On the entity known as S&H Planting, Inc. Shurden owned fifty percent and Cindy did not own any interest in that company. (R2, Pg 100-101) Shurden owns fifty percent of S&T Planting, Inc. while Cindy also does not have any interest in this corporation. (R2, Pg 101)

Mr. Buckner testified that he had reviewed the document called the "William S. Owen Gift Trust" which is owned one hundred percent (100%) by Shurden and another trust called the "Estate of Helen S. Ray" of which Shurden owns fifty percent (50%) with Cindy owning zero percent. (R2, Pg 101)

Mr. Buckner also testified that Shurden Land Partnership on the face of it owned 19.13 % by Shurden Owens and that in Owen Planting Company Partnership Shurden owns 20%. (R2, Pg 101)

Significantly, Mr. Buckner testified that taking into account all of the various ownership interests and percentages owned by Shurden that Shurden Owen's beneficial interest and percentages in Shurden Land Partnership is 50.7 %. (R2, Pg 102).

Mr. Buckner testified that he reviewed the appraisal performed by Anita Griffith (the land appraiser) dated March 16, 2006 and the equipment appraisal and for purposes of his calculations accepted the values in those appraisals as true. (R2, Pg 102) Mr. Buckner accepted that the 2,994 acres owned by Shurden Land Partnership had a value of \$4,622,310.00 and he took this into consideration in calculating Shurden's beneficial interest in the land partnership as well as in calculating Shurden's net worth. (R2, Pg 101-102)

To reach Shurden's net worth Mr. Buckner took the documents provided by Louis Jackson and accepted the appraised values of the land and real estate and multiplied same by Mr. Owens' interest percentage and assumed that Shurden's financial statement was correct regarding Shurden's debts. (R2, Pg 104)

To get a value for W&C Owen Partnership Mr. Buckner used the appraised value of \$1.6 million and subtracted from that the notes of \$795,000.00 and then multiplied that by 50% because each party owned a 50% interest in the company in order to come up with a value of W&C Owen Partnership of \$421,815.00. (R2, Pg 104)

Using the documents provided by Shurden's expert, Louis Jackson, Mr. Buckner came up with total assets of \$2,659,991.00 offset against liabilities of \$669,335.00 for a net worth to Shurden Owen of \$1,990,656.00. (R2, Pg 106-107)

Mr. Buckner explained that the major difference between how he reached his opinion as to values and how Mr. Louis Jackson reached his opinion as to values was that Mr. Jackson used book

value for the land and Mr. Buckner used actual appraised value for the value of the land. (R2, Pg 107)

Mr. Jackson's figure of valuing the farm acreage at \$233.00 per acre would be the value of "swamp land" according to Mr. Buckner. (R2, Pg 107-108)

Mr. Buckner stated that his fees for serves rendered in this divorce matter were \$1,800.00. (R2, Pg 110)

In contrast to Mr. Buckner's testimony, Mr. Louis Jackson admitted that the difference between earnings and contributions was "cash" and that the figures on the tax returns were numbers that were reported for income tax but were not a true reflection of actual cash available. (R3, Pg 187)

Incredibly, Jackson testified that for the seven year period prior to trial that Shurden had averaged about \$9,000.00 per year in reportable income and expenses and that this would be very much less than minimum wage. (R3, Pg 187-188) Although, Mr. Jackson also agreed that the Shurden Land Partnership owns 2,994 acres and that Shurden owned 19.13 % of Shurden Land Partnership. (R3, Pg 189-190)

Jackson testified that Shurden's sister owns 17.73 % of the Shurden Land Partnership and that the William Shurden Owen Gift Trust owns 15.38 % (and that Shurden is the 100% income beneficiary of that). (R3, Pg 191)

Jackson agreed that Shurden's interest in Shurden Land Partnership was an outright individual ownership of 19.13%, 15.38 % in the gift trust, and 16.19 in the real estate trust (these percentage interests total 50.7 %). (R3, Pg 192)

Jackson also admitted that the W&C Owen Partnership was owned fifty percent each by Cindy and Shurden and that Cindy's interest in the W&C Owen Partnership was worth \$359,526.00.

(R3, Pg 192)

Mr. Jackson's information about cash on hand of \$13,200.00 came from Shurden. (R3, Pg 194)

Curiously, Louis Jackson was completely unaware of the Cohoma County Hunting Club stock (R3, Pg 194) which Shurden himself valued at \$90,000.00.

When examining the balance sheet of W&C Owen Partnership (owned 50/50 between Shurden and Cindy) dated December 31, 2005, Jackson admitted this showed a net worth of \$938,515.00 and Cindy's half of this was \$469,257.00. (R3, Pg 194-195)

Jackson also admitted that W&C Owen Partnership owns equipment which is in turn leased to Owen Planting Company creating a situation where one company that Shurden owns is renting from another company that Shurden owns (R3, Pg 196-197) and that this explained the book keeping which showed Shurden making an average of \$9,000.00 in income. (R3, Pg 197)

Although not shown by Shurden's 8.05, Shurden testified that in 2003, after his farming operation had supposedly been devastated by hurricanes in 2001, he purchased a share in Cohoma County Conservation Hunting Club for \$28,500.00 cash and then purchased yet another share in the same hunting club the next year for \$30,000.00 cash. Shurden paid \$58,500.00 in cash during a period Shurden claimed the farming operation was doing terrible. At trial Shurden's expert Louis Jackson, professed complete ignorance of these \$58,500.00 cash purchases. By Shurden's own admission these shares were worth \$90,000.00 at the time of hearing and are unencumbered by any debt. Cohoma County Hunting Club owns 6,900 acres and has approximately 215 shareholders (which if true would make it one of the largest hunting clubs ever imagined!).

According to Shurden's expert witness, Lewis Jackson, during the past seven years Shurden

has only earned approximately \$9,000.00 in income (which ridiculously is less than minimum wage) and had a net worth at trial of \$30,854.00, although Shurden's lifestyle has not changed one iota. Such testimony is so extreme as to not be worthy of belief. This testimony is also curious in light of the Chancellor ordering Shurden to pay Cindy \$15,000.00 every six (6) months for three (3) years if the hunting camp stock was not sold (See Vol. 2, Pgs 78-79) The Court found Shurden had the ability to pay \$30,000.00 cash per year for three (3) years.

E. A. Buckner accepted the amounts shown on the couples tax returns, both individual and corporate, for purposes of his evaluation, and also accepted the appraisals of the real property performed by Anita Griffith (Exhibit D-10) and considered the equipment appraisal dated November 22, 2005 (Exhibit D-11) performed on Plaintiff's equipment company.

However, Mr. Buckner went further than the admittedly ignorant Mr. Jackson and considered the beneficial interest that Shurden owns, in toto, in Shurden Land Company, Shurden's interest in the William Owen Will Trust, his interest in W&C Owen Partnership, Owen Planting Company and calculated that Shurden's actual interest in Shurden Land Partnership was 50.7%. This was not contradicted by Shurden's expert, Louis Jackson.

Based on his assessment of Shurden's true interest in the 2,994 acres Mr. Buckner calculated total assets of \$2,664,991.00 contrasted against liabilities of \$669,335.00 yielding Shurden's net worth at \$1,995,656.00.

Although some assets are "held in trust" Shurden has direct access to both the income and assets of same as will be shown below.

For example, The William Otha Shurden Irrevocable Trust (dated June 1, 1998) (Exhibit D-8 in evidence) set up by Shurden's grandfather, William Otha Shurden "for the benefit of his daughter

and grandchildren..." provides;

"(B) The trustee may also in its discretion **distribute** to Helen Shurden Owen, or use for her benefit part or all of the principal of the trust....(Exhibit D-8, Page 2)

This trust also provides that the trustee, in addition to powers granted under the Uniform Trustees Powers Law, may:

"Exchange, pledge, hypothecate, lease or **otherwise dispose** of any property, real or personal, originally or subsequently upon such terms and conditions as subsequent." (Exhibit D-8 Item C (5) at Page 4)

And in an item (5)(G) the trustee may also:

"Make division, allotment and **distribution of principle** or corpus to legatees, beneficiaries, distributes and remainder, wholly or partly in kind by ways of undivided interests or otherwise (D-8 at Page 5)

Finally, this trust provides in Item (5)(P) on Page 6 that the trustee may:

"Apply any sums that are payable to or for the benefit of any infant or any person who in the judgment of my Trustee is incapable of making disposition thereof by payment **in discharge of the beneficiary's bills** or to anyone with whom the beneficiary resides or has the care and custody of the beneficiary temporarily or permanently, all without intervention of any guardian, committee or like fiduciary."

In short, the assets of this trust are quite within the easy reach of Shurden Owen and are in fact controlled by him as he chooses.

The Last Will and Testament of Shurden's mother, Helen Shurden Owen Ray, dated May 7, 1997, (Exhibit D-9 in evidence) leaves one-half of that estate to Shurden and provides that:

"Throughout Shurden's lifetime, the trustee may in their discretion distribute so much of the income and **principal** to Shurden as needed for his health, support, and maintenance and his **accustomed manner of living**." (D-9, Article 2, Item (3)(B)(1) Page 3)

Again, while these assets may be protected from Shurden's creditors they are readily available to him. Given that according to Mr. Jackson, Shurden supposedly has made less than



minimum wage for over seven (7) years it is obvious that Shurden is accessing other income and assets to support his lifestyle consisting of pools and pool houses, big game hunting trips, \$90,000.00 hunting membership and luxury vehicles.

## LAW

### THE LOWER COURT ERRED IN NOT AWARDING ALIMONY

Matters to be considered in making alimony awards are (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 childcare (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 of the factors deemed by the Court to be “just and equitable” in connection with the setting of spousal support. Armstrong v Armstrong, 618 So. 2d 1278 (1993).

The Court in Hemsley v Hemsley, 639 So. 2d 909 (Miss 1994) also enumerated the following factors to be considered in determining a reasonable award for alimony to wit: (1) the health of the husband and his earning capacity (2) the health of the wife and her earning capacity (3) the entire sources of income of both parties (4) the reasonable needs of the wife (5) the reasonable needs of the child (6) the necessary living expenses of the husband (7) the estimated amount of income taxes the respective parties must pay on their incomes (8) the fact that the wife has the free use of the home furnishings and automobile and (9) such of the facts and circumstances bearing on the subject that might be shown by the evidence.

In this case Cindy is working for the Mississippi State Public Service Commission making a gross base salary of \$28,639.20 per year. At the time of the hearing her finances were stretched to the point that Cindy was receiving only the local Jackson television stations and was not able to afford the "luxury of cable." Shurden in contrast continues to have free use of the marital home, swimming pool and pool house as well as the cabin in Gore Springs and continues to receive over \$50,000.00 in guaranteed income from the Helen S. Ray Trust and the William Shurden Owen Gift Trust, each having respective conservatively estimated values of \$309,098.00 (for the Helen S. Ray Trust) and \$559,044.00 (for the Williams Shurden Owen Gift Trust).

Louis Jackson conservatively estimated that Shurden's interest in the W&C Owen Partnership was \$359,526.00 and that Cindy's personal interest in the W&C Owen Partnership was also in the sum of \$359,526.00. Yet the Chancellor did not award Cindy the \$359,526.00 admitted by Shurden's own "expert."

In Monroe v. Monroe, 745 So. 2d 249 (Miss. 1999) the Supreme Court held that an award of \$450.00 per month in periodic alimony was inadequate in a situation where the husband's income ranged between \$130,000.00 to \$158,000.00 annually and the wife's monthly expenses were approximately \$2,700.00 per month contrasted against the wife's earning capacity of about \$20,000.00 annually.

In the present matter Cindy Owen makes \$2,386.00 per month and has expenses ranging between \$5,000.00 and \$6,000.00 per month. The \$100,000.00 in equitable distribution awarded to her by the Chancellor essentially amounts to the \$7,000.00 cash value of the life insurance policy and two (2) shares of hunting stock owned exclusively by Shurden which he valued at \$90,000.00 and has yet to liquidate. Cindy simply can not make ends meet and the lower court erred in denying

her any alimony at all based upon a an eighteen (18) year marriage and her financial needs contrasted against Shurden's financial ability.

In Box v. Box, 622 So. 2d 284 (Miss. 1993) the Supreme Court held that an award of \$2,400.00 per month in periodic alimony to the wife was an abuse of discretion finding that the husband's standard of living surpassed a permissible "decent standard of living," and that the award to the wife was inadequate to maintain her in accordance with her station and condition in life, and in harmony with her husband's estate, and that the \$2,400.00 per month was inadequate to allow her to lead the life corresponding to the life she had led during the marriage and to which she was entitled.

In the instant case Cindy Owen can not even afford the "luxury" of cable television and is scraping by on \$2,386.00 per month from her job with the State of Mississippi. In contrast Shurden continues to enjoy living in the same modern former marital residence of the parties, complete with pool and adjacent pool house (paid for by Cindy's mother), farms over 3000 acres and according to the Chancellor's ruling has the ability to pay \$15,000.00 twice a year for three (3) years (ie: \$90,000.00) if he can not or elects not to liquidate his hunting camp stock. He continues to enjoy use and possession of the cabin located at Gore Springs which he has recently expanded and for which he has bought new furniture and which continues to be paid for through one of his shell corporations.

In contrast to Cindy struggling to pay the rent in an apartment in Madison, Mississippi, Shurden continues to sit on and enjoy the 3000 acres, also receives \$50,000.00 per year in guaranteed trust fund income, has an average cash flow in excess of \$290,000.00 each year, continues to own his hunting camp stock in a camp which itself owns over 6000 acres. In short he continues to enjoy the same life style enjoyed by both of the parties prior to their marriage while

Cindy is living from paycheck to paycheck and not making ends meet. The lower court's refusal to deny her any alimony at all constitutes an abuse of discretion.

In a case factually similar to the present matter, Johnson v. Johnson, 877 So. 2d 485 (Miss. App. 2003) the Court found that a permanent periodic alimony award to the wife of \$750.00 per month was not commensurate with the standard of living she had enjoyed during the marriage in light of the husband's monthly income in excess of \$12,000.00 per month (the wife was also unemployed) and the wife's only projected income was approximately \$13,000.00 per year and especially where the husband had been granted sole and complete ownership of all his businesses together with the exclusive use of the parties \$700,000.00 marital home.

Cindy no longer enjoys living in her former marital domicile, no longer enjoys the pool and pool house, no longer enjoys trips to Argentina, Orange Beach etc. does not have her Lexus and is living without cable at a rented apartment in Madison, Mississippi.

Under no conceivable view of the facts and circumstances of this case can it be said that the Chancellor's refusing to award alimony was not an abuse of discretion as it was clear error to deny alimony to Cindy Owen.

#### **THE COURT ERRED IN ITS AWARD OF EQUITABLE DISTRIBUTION**

It is well settled law that in dividing marital assets the property must be categorized first as either marital or non-marital and that the marital property is then equitably divided in light of each party's non-marital property. If there are sufficient marital assets, which when equitably divided and considered with each spouses' non-marital assets, are adequate to provide for both parties then no more need be done. However, if the situation presented is such that an equitable division of marital property, considered in conjunction with each party's non-marital assets, leaves a deficit for one

party then alimony based on the value of the non-marital assets should be considered. Henderson v. Henderson, 757 So. 2d 285 (Miss. 2000) Of course, Cindy was not awarded any alimony.

In making an equitable distribution the lower court is afforded broad discretion but is still required to consider the following factors: (1) the economic and domestic contributions by each party to the marriage, (2) the expenditures and disposal of marital assets by each party, (3) the market value and emotional value of the marital assets, (4) the value of the non-marital property, (5) tax, economic, contractual and legal consequences of the distribution, (6) the elimination of alimony and other future frictional contact between the parties, (7) the income and earning capacity of each party and (8) any other relevant factor that should be considered in making a fair and equitable distribution. Henderson v. Henderson, supra.

In this matter Shurden and Cindy started out together at an early age, neither having received a degree from Mississippi State University. After the birth of Meredith, the only child of the marriage, Cindy steadily and faithfully worked at a variety of low paying jobs and additionally worked in the farming operations and also personally kept the books of the farming operations until it expanded to the point where Shurden hired his cousin's former book-keeper to handle the books of the various corporations.

In this case this testimony stands uncontradicted that when the parties, both of them, wanted something they went out and got it, including \$14,000.00 in "elk horn" furniture, took trips to foreign countries for hunting and pleasure, each drove luxury vehicles and had a third vehicle in reserve for trips, enjoyed a modern and spacious marital residence with adjoining pool and pool house. All expenditures made by Cindy were with the complete approval, or acquiescence, of Shurden and he at no time ever voiced any concerns or objections over same.

As far as the market value and emotional value of the marital assets, Shurden has been left by the lower court's decree in complete possession of all the marital assets except he has to divest himself of two (2) shares of hunting camp stock (which his accountant supposedly did not know about) and Cindy gets \$7,000.00 in cash value of a life insurance policy. Shurden remains in sole possession of over 3,000 acres of prime farm land, continues to enjoy the former marital domicile, has average cash flow each year of \$291,126.00 (R2, Pg. 100) and remains in possession of all the farming equipment of the parties.

Even if Shurden Land Partnership, which was acquired during the marriage of the parties but solely in Shurden's name, is considered a non-marital asset, the value of Shurden Land Partnership vastly exceeds the two (2) shares of hunting campo stock and the cash surrender value of the life insurance policy awarded to Cindy.

No tax, economic, contractual or legal consequences have changed for Shurden, unless, of course, one considers giving up two (2) shares of hunting club stock and \$7,000.00 is a big change. He will still have the same tax consequences and contractual obligations and nothing is changed by Cindy's absence.

The award of two (2) shares of hunting camp stock and \$7,000.00 in cash surrender value of the life insurance policy has not eliminated the need for an award of alimony and no award of alimony was made.

As far as income and earning capacity, Shurden receives a guaranteed \$50,000.00 a year in trust fund revenue and then, according to his accountant, makes somewhere less than minimum wage farming over 3,000 acres. The believability of that testimony is left up to the reader. However, it is undisputed that Cindy continues to work at her job with the State of Mississippi making \$2,385.00

a month but we should not forget that now she receives the handsome sum of \$583.00 in child support. It remains uncontradicted that the financial needs of her and Meredith exceed \$5,000.00 per month.

Under any view of the above factors the award of the equitable division of the assets of the parties constitutes an abuse of discretion and gross error.

During the course of the marriage of the parties Cindy's parents contributed \$75,000.00 to the repair of Shurden's mother's home, contributed \$10,000.00 toward replacing furniture when the couples' marital home burned, spent \$38,000.00 in installing the pool and pool house Shurden now enjoys. Under the lower court's order Shurden continues to enjoy the benefit of Cindy's parents efforts and contributions with no corresponding benefit to Cindy.

Even though alimony and equitable distribution are different concepts, in a divorce matter they should be considered together so that when one expands the other recedes. Garriga v. Garriga, 777 So. 2d 978 (Miss App. 2000). In this case Shurden has received the vast bulk of the marital assets but conversely Cindy has received no alimony and almost no distribution. On this basis alone it can not in good conscience be argued that the Chancellor's award of equitable distribution was not an abuse of discretion.

### **THE DENIAL OF ATTORNEYS FEES**

The lower court denied Cindy's request for payment of attorneys fees. Cindy was awarded no alimony. Cindy makes \$2,385.00 per month. Cindy's attorneys fees were \$9,704.00. (Plaintiff's Exhibit 3) Cindy was awarded \$90,000.00 consisting of two (2) shares of hunting camp stock and \$7,000.00 in the form of the cash value of a life insurance policy.

It is a general rule that if a party is financially able to pay their own attorneys fees they should

do so and this is a matter which traditionally is entrusted to the discretion of the lower court. Langdon v. Langdon, 854 So. 2d 485 (Miss. App. 2003).

Cindy might possibly pay her attorneys fees in this matter if she liquidates the cash value of the life insurance policy but even this sum will not cover all her attorneys fees. She can not use the two shares of hunting camp stock as Shurden still has these. She has no other assets awarded to her by the Court from which to pay her attorneys fees.

It is also the rule in divorce proceedings that an award of attorneys fees is justified where the equities of the situation suggest that one party should assist the other party who is unable to pay. Haney v. Haney, 907 So. 2d 948 (Miss. 2005).

Stated differently, ordinarily an award of attorneys fees should not be made in divorce actions unless the party requesting such fees can establish their inability to pay the fees, Fisher v. Fisher, 771 So. 2d 364 (Miss. 2000). In this case Cindy has established a complete inability to pay her attorneys fees.

She can not pay her monthly bills as they come due so she can not her attorneys fees from her salary. She has no savings, no stocks, no assets. She was awarded two (2) shares of hunting camp stock which, taking Shurden's word for it, are valued at \$90,000.00 and \$7,000.00 in cash value of a life insurance policy.

Stated yet another way, in deciding whether to award attorneys fees in a divorce action the lower court should consider each party's financial ability. Spahn v. Spahn, 959 So. 2d 8, (Miss. App. 2006). Quite simply, Cindy has no financial ability at all and the lower court's refusal to award her any attorneys fees at all is clear error.



## **CHILD SUPPORT**

§ 43-19-101 (1) Miss. Code Ann. (1972, as amended) provides guidelines forming a rebuttable presumption in all judicial proceedings regarding the award of child support and provides in instances of one child due support that the percentage of adjusted gross income should be 14% of adjusted gross income. This is the exact percent the Chancellor used in this matter, in this case applying it solely to the \$50,000.00 in guaranteed trust account income Shurden receives each year. (\$50,000.00 ÷ 12 months = \$583.83 per month)

This award, of course, ignores the “less than minimum wage” income Shurden receives annually from his farming income, according to his CPA, Louis Jackson.

Conversely the testimony of Mr. Buckner shows that Shurden’s average annual cash flow is \$291,126.00. (R2, Pg. 100)

§ 43-19-101 (3) provides that adjusted gross income, as that term is used, means gross income from “all potential sources” that may “reasonably may be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self employment; income from commissions; income from investments, including dividends, interest income and income from any trust account or property . . .”. As previously set forth above Shurden has total access to and control over two (2) trust accounts having assets of \$309,098.00 (Helen S. Ray Trust) and \$559,044.00 (William Shurden Owens Gift Trust) (Total of \$868,142.00).

§ 43-19-101(4), *supra* provides that in cases where the adjusted gross income is more than \$50,000.00 that the court shall make a written finding in the record as to whether or not the application of the guidelines established in § 49-19-101 et seq. is reasonable. In this particular matter the court gave no reason why child support was set at 14% of Shurden’s \$50,000.00 guaranteed trust

## Supreme Court Briefs

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It is first error to assume that Shurden made only made \$50,000.00 per year. Secondly, it was error to not include Shurden's additional farming income. Third, it is error to ignore the effect of Shurden's access to and control over his trust account assets. Forth, it was error to ignore \$291,000.00 in average cash flow.

This also stands in contrast to the lower court's finding that Shurden had the ability to make \$30,000.00 in cash payments for three (3) consecutive years (\$15,000.00 twice a year for three (3) years) in the event he did not or could not sell his two (2) shares of Cohoma County Hunting Club stock.

Meredith previously attended private school in Sunflower County, Mississippi and is now attending public schools in Madison County, Mississippi, which is fine. However, the Chancellor made no determinations as to why support shall be only \$583.83 a month, or erroneously found that Shurden only earned \$50,000.00 per year, and erred in setting child support at exactly 14% of \$50,000.00. This is especially so in light of the lower court's failure to make any findings at all as to why the guidelines were either applicable or not applicable and in totally failing to address Meredith's actual needs and expenses.

In Southerland v. Southerland, 875 So. 2d 204 (Miss 2004) the lower court made a \$50,000.00 lump sum award of alimony and ordered same to be paid in periodic monthly installments and further awarded child support of \$1,000.00 per month with attorneys fees of \$7,050.00 to the wife. (See Southerland v. Southerland, 816 So. 2d 104 (Miss. 2002)) Because the original award of \$1,000.00 per month in child support was in excess of the guideline amount provided in § 43-19-101, supra, the initial appellate court reversed and remanded on the issue of child support finding that the Chancery Court had failed to make written findings as required by §

child support finding that the Chancery Court had failed to make written findings as required by § 43-19-101(2) and (4). On remand the Chancery Court made special findings regarding the guidelines and found that an application of the guidelines would be unjust and awarded more than the guidelines on the basis that the husband/father's income was in excess of \$50,000.00. Affirming the second appeal the Supreme Court confirmed that a chancery court may make an award which exceeds guidelines but must do so with a written finding of why the guidelines would be unjust or inappropriate as determined by the following factors (1) extraordinary medical, psychological, educational or dental expenses, (2) independent income of the child, (3) payment of both child support and spousal support to the obligee, (4) seasonal variations of one or both parent's incomes or expenses, (5) the age of the child, taking into account the greater needs of older children, (6) special needs which have been traditionally met within the family budget, (7) the particular shared parental arrangements, (8) total available assets of the obligee, obligor and the child, and (9) any other adjustment which is needed to achieve an equitable result. Southerland v. Southerland, 875 So. 2d at 206-207.

In the present case Meredith has asthma and dental expenses and is approaching the age of what might be termed an older child and all her provisions have been met in the family budget from the various shell corporations and farming operations of Shurden and she has enjoyed a higher standard of living and, further, Cindy's income from the State of Mississippi is totally insufficient to meet the needs of the family while Shurden's assets vastly exceed those of Cindy and Shurden is paying no spousal support to Cindy.

The lower court erred in finding that Shurden's income was within the statutory guidelines and limited to \$50,000.00 and applying only a 14% multiplier to same and, conversely, because

why the guidelines would be unjust or inappropriate in this particular case as determined by the foregoing criteria.

### CONCLUSION

The refusal of the Chancellor to award even one dime in alimony is surprising when Shurden's \$291,000.00 average annual cash flow is contrasted against Cindy's \$2,300.00 a month salary and the \$583.00 in child support awarded by the lower court. Cindy has gone from living on 3,000 acres in a modern home with adjoining pool and pool-house and being able to enjoy a get away cabin on Gore Springs on weekends, as well as traveling to various states and even foreign countries, to living in an apartment and not being able to afford cable television. While the constant reference by the undersigned to cable television may seem to trivialize life as we know it in America today, it has in fact become the norm rather than the exception and Cindy's inability to afford even this small expense demonstrates her urgent need for alimony and the magnitude of the lower court's denial of same.

Shurden is sitting on two (2) trust accounts having a combined total value of \$868,142.00, continues in possession of the land owned by Shurden Partnership having a market value (as opposed to Mr. Louis Jackson's book value) of over \$4,000,000.00 and is enjoying the pool and pool-house paid for by Cindy's parents. In contrast Cindy has her vehicle, two (2) shares of hunting camp stock and \$7,000.00 in cash surrender value of a life insurance policy. This is not an equitable distribution.

Cindy had attorneys fees approaching \$10,000.00, excluding Mr. Buckner's fee of \$1,800.00 (R2, Pgs. 109-110) and a pay check each month of \$2,300.00 plus dollars to pay for same. Shurden has an average annual cash flow of \$291,000.00. The Chancellor found that Shurden could pay \$30,000.00 in cash for three (3) straight years if he did not liquidate his two (2) share of Cohoma

County Hunting Camp Stock. Where in the world is this \$30,000.00 a year coming from? It was error to deny an award of attorneys fees and costs to Cindy.

Finally, Shurden makes more than the \$50,000.00 guaranteed income he gets from the trust accounts each year. It was error for the lower court to assume otherwise and setting child support at exactly 14% of \$50,000.00.

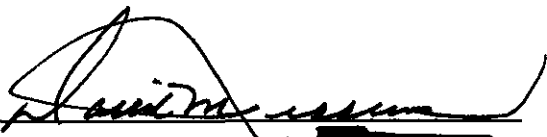

Cindy is holding on by her fingernails and raising Meredith in an apartment complex in Madison, Mississippi. Shurden still has everything that he has during the marriage and the effect of the lower court's order is as if Cindy and Meredith have been cast into the wasteland with no hope in sight.

Reversal is required.

Respectively submitted,

CYNTHIA G. OWEN

By:

  
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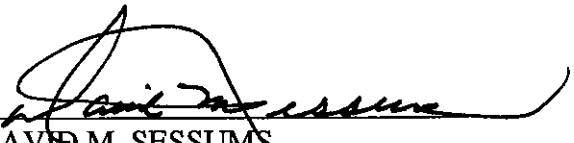
CERTIFICATE OF SERVICE

I, DAVID M. SESSUMS, attorney for Plaintiff, do hereby certify that I have this day delivered and cause to be served via United States Mail, a true and correct copy of the above and foregoing Appellants Brief to the following:

Todd S. Jefferys, Esquire  
P.O. Drawer 1199  
Cleveland, MS 38732

Hon. Jane R. Weathersby  
at [jweathersby@co.sunflower.ms.us](mailto:jweathersby@co.sunflower.ms.us).

This the 21st day of November, 2008.

  
DAVID M. SESSUMS