

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2008-CA-02025

JOSEPH D. GREGG

APPELLANT

V.

PATRICIA M. GREGG

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

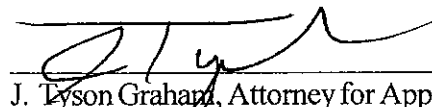
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Respectfully submitted,



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STATEMENT OF THE ISSUES

This case is an appeal by Joseph Gregg (hereafter "Joe") of a decision by Honorable Dorothy W. Colom, Chancellor. The issues on appeal are:

1. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-third (1/3) interest in the appreciated sum of Joe Gregg's premarital home without deducting one -third (1/3) of the marital debt.
2. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg a one-half (½) interest in Joe Gregg's retirement fund when all but one (1) year with the Post Office were contributions made prior to the marriage and the only increase were passive gains.
3. Whether the Chancellor committed manifest error and/or abused her discretion in awarding Pat Gregg the two (2) Starkville lots valued at \$50,000.00 and one-half (½) interest in the thirty (30) acres in Webster County valued at \$40,000.00.
4. Whether the Chancellor committed manifest error and/or abused her discretion in failing to appropriately consider Joe Greg's contribution to the marital estate.

STATEMENT OF THE CASE

Appellant (Joe Gregg) initiated a suit for divorce. The parties subsequently agreed to an irreconcilable differences divorce and submitted the following issues to the Court:

1. Designation of assets as either “marital assets”, “non-marital assets”, and “co-mingled assets”;
2. Equitable division of assets, real and personal;
3. Equitable division of “marital debts”; and,
4. Amount of alimony and legal fees to be awarded, if any. (R-42, RE-45)

The Chancellor heard testimony for two days on this matter. She observed the witnesses and judged their credibility.

The Court did determine what assets were “marital”, what assets were “non-marital” and what assets were “commingled”. Joe’s income from retirement is almost three (3) times the retirement income of Pat. (RE- 47, RE - 56) These parties had been married for over 14 years. Pat had spent most of her inheritance, which was over \$300,000.00, and the proceeds from the sale of her stores, approximately \$103,000.00 (R -158) on marital debt, and only had \$20,000.00 in savings, and \$2,000.00 in checking at the time of the divorce.

The Court classified the home, that the parties lived in after the marriage for 14 years, as marital property. Pat and Joe remodeled his home, which they both lived in, and paid for out of joint money, primarily with Pat’s money from her inheritance and the sale of her business. The home increased in value during the marriage as a result of the remodeling. The Court only gave Pat \$20,000.00, which the Court said represented one-third (1/3) of the **equity** (emphasis supplied) in the marital home. (R - 55, RE 11)

They traveled in a huge RV, which was bought with a \$10,000.00 down payment

from Pat's money. (R 32) Joe testified that the RV was worth \$125,000.00 at the time of the divorce (R- 42). Pat produced the estimate of the value of the RV from the manufacturer of the vehicle and showed a value of \$149, 855.00 (R - 137). Pat had a home in Starkville. The rent from the Starkville home (approximately \$1,250.00 per month) was deposited in their joint account. Since the divorce was taking place, Pat was moving back into the home and will lose that income but will have a home with no debt. (R - 157,158)

STANDARD OF REVIEW

Appellate Courts will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his or her discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard. *Sanderson v. Sanderson*, 824 So. 2d 623, 625-26 (¶8) (Miss. 2002).

"It is well-established . . . that the chancery court has the authority to order an equitable division of property that was accumulated through the joint efforts and contributions of the parties." *Christopher v. Christopher*, 766 So. 2d 119, 121 (¶7) (Miss. Ct. App. 2000) (citation omitted). The supreme court has set forth the following guidelines and instructed the chancery courts to support their decisions with findings of fact and conclusions of law for purposes of appellate review. *See Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994). The guidelines that the supreme court set forth for the chancellor to apply are as follows:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:
 - a. Direct or indirect economic contribution to the acquisition of the property;
 - b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and
 - c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.
2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

3. The market value and the emotional value of the assets subject to distribution.
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;
7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,
8. Any other factor which in equity should be considered.

This Court cannot contemplate every situation that may present itself in future cases; therefore, the Court will address other questions as they arise, taking into consideration that fairness is the prevailing guideline in marital division. For example, interspousal gifts are not a part of this factual situation. Chancellors will have to determine for this Court's review whether an interspousal gift is a highly personal one or whether some type of property, i.e., stocks and bonds, may require something beyond a gift analysis.

¶ 45. "The chancellor is not required to address each and every factor and may consider only the factors which he finds applicable to the marital property at issue." *Wells v. Wells*, 800 So. 2d 1239, 1244 (¶ 8) (Miss. Ct. App. 2001) (citation omitted). "It is well-settled law that the courts, when making an equitable distribution of marital property, are not required to divide the property equally." *McLaurin v. McLaurin*, 853 So. 2d 1279, 1283 (¶ 11) (Miss. Ct. App. 2003). When "reviewing a chancellor's judgment, [in property division], this Court does not conduct a *Ferguson* analysis anew, but reviews the judgment to ensure that the chancellor followed the appropriate standards and did not abuse his discretion." *Phillips v. Phillips*, 904 So. 2d 999, 1001 (¶ 8) (Miss. 2004). Unlike the recent case of *Rodriguez*, the case at bar does not reflect that the chancellor adopted verbatim one of the parties' proposed findings of fact and conclusions of law. Therefore, we find no need to evaluate each individual *Ferguson* factor. If the chancellor had not made an independent evaluation, "this Court [would] 'review the record de novo' . . . [to] ensure that the chancellor adequately performed his judicial function. . . ." *Rodriguez*, 2 So. 3d at (¶ 10) (internal citations omitted). Instead, we will consider the record and the lengthy discourse committed to the discussion of property division included in the chancellor's findings of fact and conclusions of law.(fn7)

ARGUMENT

The Chancellor looked at the source of the monies which paid for the remodeling of the Husband's home, the monies that the Wife contributed to the marriage (over \$300,000.00 from her father's estate and \$103,000.00 from the sale of her store.) (R - 158). She also looked at the fact that the Husband had almost three times the income of the Wife. The Court also determined the credibility of the witnesses. Rather than give the Wife alimony, the Court opted to give her assets of the marriage which would sever the ties of these people and roughly equalize the monies each would receive. In other words, the Court tried to equitably divide the assets of these parties and sever all ties between them.

The Court correctly found that the Wife's home, which she paid for, she had before marriage and which the parties never live in, was her separate property. It is true that the rents from the home were deposited in the joint account of the parties after marriage, but that only converted the rental payments into marital property subject to equitable division; it did not convert the home itself into marital property. Joe got the benefit of the rents being deposited into the joint account, as it was used for family purposes, including paying his home mortgage.

Joe also sold a boat, which was joint property, for \$6,500.00 and kept the proceeds. (TR. - 43).

At the time of the hearing, Wife only had \$22,000.00 from her inheritance and the sale of her business. The Court gave the Wife \$ 20,000.00, which represented a 1/3rd interest in the appreciation in value of the marital home (RE-11, TR-55)¹, one-half of the appreciation

¹The actual equity in the marital home was \$93,000.00 and one-third of that figure would be \$31,000.00 (RE-49,58) Joe and Pat paid from their joint account on the note on the house from 1994 until the divorce. (TR-55)

in the value of Joe's 401(k), the two lots in Starkville (which she paid for from inheritance), and ½ of the equity in the 30 acre tract they bought and paid for in Webster County after the marriage. As stated in *Sanderson, supra*, equitable division does not mean equal division. There were many reasons the Chancellor made the distribution of the property as she did. She looked at the contribution by Pat; the fact that Pat had spent almost all of her inheritance and the proceeds from the sale of the store, primarily on marital debt; Pat's income vs Joe's income; and the need to not have any more ties between these parties, when making her decision. As this Court has said, "Alimony and equitable distribution are distinct concepts, but together they command the entire field of financial settlement of divorce. Therefore, where one expands, the other must recede" *Ferguson v Ferguson*, 639 So. 2d 921,929 (Miss 1994). "In the final analysis, all awards should be considered together to determine that they are equitable and fair."

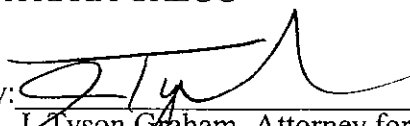
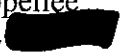
The Chancellor eliminated alimony completely (while recognizing that the Wife clearly was in need of financial security { RE -10, R - 54}) and took care of the failure to award alimony by giving the Wife sufficient property to offset that denial.

CONCLUSION

This Court should affirm the Chancellor. The Chancellor did not abuse her discretion, was not manifestly wrong, was not clearly erroneous, and did not apply an erroneous legal standard. In the final analysis, this decision was equitable and fair.

Respectfully submitted,

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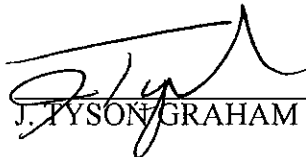
CERTIFICATE OF SERVICE

I, J. Tyson Graham, attorney for Defendant/Appellee, do hereby certify that I mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

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SO CERTIFIED, this the 27th day of August, 2009.


J. TYSON GRAHAM