

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2009-CA-00006**

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**JERE LEE DIEHL**

**APPELLANT**

**VERSUS**

**CAROLYN LEE DIEHL**

**APPELLEE**

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**BRIEF OF APPELLANT, JERE LEE DIEHL**

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**APPEAL FROM THE CHANCERY COURT  
OF LOWNDES COUNTY, MISSISSIPPI**

**HONORABLE DOROTHY W. COLOM**

**NO ORAL ARGUMENT REQUESTED**

**OF COUNSEL:**

**Curtis H. Austin**  


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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons have an of the Supreme and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

Honorable Dorothy W. Colom  
Chancery Court Judge  
Post Office Box 708  
Columbus, MS 39703-0708

Respectfully submitted,



Curtis H. Austin  
Attorney for the Appellant

  
P. O. Box 364  
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**STATEMENT OF ISSUES**

This case is on appeal by Jere Lee Diehl, base on a decision by the Honorable Dorothy W. Colom, Chancellor. The sole issue on appeal by the Appellant is that the extent, if any, this court should take into consideration the assets inherited by the Appellee.

**STATEMENT OF CASE**

Jere Lee Diehl and Carolyn Lee Diehl were married April 10, 1986 in Columbus, Mississippi, until their final separation in and about May 26, 2006. Subsequently, Carolyn Lee Diehl filed a Petition for Separate Maintenance. After trial, the Court ordered Jere Lee Diehl to pay Carolyn Lee Diehl the sum of One Thousand Eight Hundred Dollars (\$1,800.00) a month in separate maintenance. The Court essentially ignored the Appellee's windfall she had inherited as a source of income, which she used to subsidize her daughter and in effect, caused Jere Lee Diehl to subsidize her child's from a previous marriage. T(20), T(30))

**FACTS**

The Court found that Jere Lee Diehl had deserted the marriage. That in

determining the ability of Jere Lee Diehl to pay and the needs of Carolyn Diehl, the Court looked at the financial statement, obligations of each party, to determine what would be adequate compensation to insure that Carolyn Diehl would be able to maintain a life-style commensurate with that which she was accustomed to. The Court completely ignored that Carolyn Lee Diehl has assets totaling some \$310,000.00 in liquidated assets, unencumbered.

### **SUMMARY OF ARGUMENT**

Given the primary issues, the Appellant questions to what extent should a spouse's assets in a separate maintenance case be considered in the award of separate maintenance. Should said spouse be deemed needy before the Court determines a need for separate maintenance, in order to make his or her life what the party had become accustomed to.

### **SUMMARY OF THE ARGUMENT**

Facts in the case are not in dispute. Jere Lee Diehl receives approximately \$5,500.00 in VA disability benefits per month. Carolyn Lee Diehl receives monthly social security payments. The wife's primary income is through her employment with the State of Mississippi. Carolyn Lee Diehl admits that she inherited the condominium worth \$165,000.00. She allows her daughter who appears in good health to reside in the residence, rent free and at no cost. T(18), T (19)

Even in assuming that the wife requires separate maintenance, she has inherited \$360,000.00 in assets. By requiring the husband to pay separate maintenance, the Court

is, in effect, forcing the husband to not only subsidizes the wife, but by flow through, he is theoretically, financially subsidizing her daughter. The central question is, to what extent, if any, should the parties' assets be used to determine if the need for separate maintenance lies. Should the court completely ignore the same. What if the spouse had inherited \$500,000.000? Should the spouse be able to come to Court and claim a need for separate maintenance? T(20), T(30)

### **ARGUMENT**

The Court should have taken into consideration the assets of both parties in determining the need for separate maintenance. Otherwise, one party, by developing a source of income would reap a bonanza not intended by the Court.

### **STANDARD OF REVIEW**

The Court is limited in its scope of review and should only overturn a Chancellor's finding of fact and conclusion of law, if it was manifestly wrong or clearly erroneous or a legal standard was applied. (*Bell v. Parker* 563 So.2<sup>d</sup> 594, 596-97 (Miss, 1990)). In other words, in an appeal we are required to report the finding of fact made by the Chancellor and supported by creditable evidence and not manifestly wrong. (*Newson v. Newson* 557 So.2<sup>d</sup> 511, 514 (Miss, 1990)). Nevertheless, the Chancery Court is a court of equity and such equitable release is a cornerstone of the Chancery Court.

### **ARGUMENT**

The Court should have taken into consideration the monies inherited by Appellee and determining her needs for separate maintenance. And, if so, to what extent and amount.

## CONCLUSION

The Court should reverse and remand the Chancellor's order for determination as to the extent of Applee's assets. Assets are sufficient to support her life-style

Respectfully submitted,

**JERE LEE DIEHL**

BY: 

**CURTIS H. AUSTIN**

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## CERTIFICATE OF SERVICE

I, **CURTIS H. AUSTIN**, Attorney for the Appellant, Jere Lee Diehl, do certify that I have this day served by First Class Mail, postage pre-paid, a true and correct copy of the above and foregoing **BRIEF OF APPELLANT** to the following, to-wit:

Honorable Dorothy W. Colom  
Chancery Court Judge  
Post Office Box 708  
Columbus, MS 39703-0708

SO CERTIFIED this the 13<sup>th</sup> day of July, A. D., 2009

  
\_\_\_\_\_  
**CURTIS H. AUSTIN**, [REDACTED]  
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