

IN THE SUPREME COURT OF MISSISSIPPI

2009-CA-00379

LINDA CURRY

APPELLANT

V.

CHARLES CURRY

APPELLEE

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

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

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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.

1. Linda Curry, Appellant
2. Charles Curry, Appellee
3. Harris-Leech & Harris, PLLC, and its attorneys, Christie' Harris-Leech and Amy S. Harris, Attorneys for Appellant Linda Curry
4. J. Mark Shelton, Esq., Counsel for Appellee Charles Curry
5. Judge Talmadge D. Littlejohn, 1st Chancery District
6. Paul Moore, Jr., Counsel for Linda Curry at trial

This the 13th day of October, 2009.



AMY S. HARRIS, MSB NO. [REDACTED]
CHRISTIE' HARRIS-LEECH, MSB NO. [REDACTED]
ATTORNEYS FOR APPELLANT

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STATEMENT OF THE ISSUES

COMES NOW, Appellant Linda Curry, by and through counsel, and requests the Court to review the following issues:

Did the trial court err when it performed the mathematical calculation of twenty percent (20%) of the equity in the marital home which was established at trial as \$150,000.00? Did the trial court err in evaluating the reduction in retirement payments made to Charles Curry and in setting an arbitrary amount of \$75,000.00 as the value of that reduction despite the lack of mathematical calculation to establish same?

STATEMENT OF THE CASE

(I) Course of the proceedings and disposition in the Court below:

Linda and Charles Curry were married on October 26, 1990. On September 5, 2006, Charles Curry filed his Complaint for Divorce and Other Relief which was answered by Linda Curry with a Counter-Complaint for Divorce on September 25, 2006. (RE 5-11, 12-15; CP 6-12, 37-40). Subsequently, Charles Curry filed an Amended Complaint for Divorce on September 27, 2007, and the response to same was filed by Linda Curry on October 9, 2007. (RE 16-27, 28-32; CP 148-159, 161-165). Then on October 9, 2008, an agreed Order Allowing the Withdrawal of Fault Grounds was entered by the lower court. (RE 33; CP 207) After a divorce trial was conducted on October 9, 2008, November 5, 2008 and continued on December 12, 2008, the Chancery Court of Pontotoc County, Mississippi entered a Final Decree of Divorce on January 14, 2009, nunc pro tunc to the final date of trial, December 12, 2008. This Order was filed with the Chancery Clerk on January 16, 2009. (RE 39-41; CP 230-232). It is from the Final Decree that the Appellant, Linda Curry, appeals. (RE 42-43; CP 236-237).

(II) Statement of the Facts:

The parties were married to each other on October 26, 1990. No children were born to the marriage, although both parties had been married previously with the prior marriages resulting in children who were emancipated at the time of their marriage in 1990.

On September 5, 2006, Charles Curry filed his Complaint for Divorce and Other Relief alleging grounds of Habitual Drunkenness and Habitual Cruel and Inhuman Treatment, with alternative grounds of Irreconcilable Differences. (RE 5-11, CP 6-12) Linda Curry answered and counter-claimed for divorce based upon Habitual Cruel and Inhuman Treatment, with alternative

grounds of Irreconcilable Differences. (RE 12-15, CP 37-40). On September 27, 2007, Charles Curry filed an amended Complaint that included the additional ground of Desertion. (RE 16-27, CP 148-159). On October 9, 2007, Linda Curry responded and denied the allegation that she had deserted Charles Curry, but that Charles Curry had deserted her instead. (RE 28-32; CP 161-165).

Discovery was conducted with written interrogatories being propounded and responded to by both parties. Linda Curry gave sworn deposition testimony on December 5, 2006, and Charles Curry gave sworn deposition testimony on March 1, 2007. Then on October 9, 2008, the parties agreed to withdraw their opposing fault based grounds for divorce and consented to an irreconcilable differences divorce. (RE 33, CP 207) Because they could not fully agree on how to divide all of their property, they requested that the Pontotoc County Chancery Court make an equitable division of their marital estate. (RE 34-38; CP 208-212). Specifically, there were two parcels of real property upon which the parties were unable to agree on whether the parcels should be characterized as marital or non-marital assets and the equitable division of said property should it be characterized as marital property. (RE 34-38, CP 208-212).

A trial was conducted on three separate dates, October 9, 2008, November 5, 2008, and December 12, 2008, where the parties, as well as three other individuals, gave testimony related to the marital assets of Linda and Charles Curry, including the two parcels specifically in dispute. One of the parcels in dispute was approximately 48 acres on South Pontotoc Road in Pontotoc County, Mississippi which was adjacent to the property on which the marital residence was situated. The other parcel in dispute was approximately 6 acres at 588 South Pontotoc Road, Pontotoc, Mississippi which was titled solely in the name of Linda Curry but was the marital residence for the couple during their marriage.

Ultimately, the Chancery Court of Pontotoc County, Mississippi entered a Final Decree of Divorce on January 14, 2009, *nunc pro tunc* to the final date of trial, December 12, 2008. This Order was filed with the Chancery Clerk on January 16, 2009. (RE 39-41; CP 230-232). It is from the Final Decree that the Appellant, Linda Curry, appeals¹. (RE 42-43; CP 236-237).

¹ It should be noted that on January 27, 2009, Linda Curry filed a Motion to Reconsider the final judgment entered by the Chancellor on January 14, 2009 which was filed with the Clerk on January 16, 2009. (RE 1-4, CP 1-4). However, because the Motion was filed after the ten-day time limitation provided by MRCP 59(e), counsel for Linda Curry proceeded with a Notice of Appeal from the Final Decree of Divorce and same was filed with the lower court within the thirty-day time limitation for appealing a final judgment on February 13, 2009. (RE 1-4, CP 1-4).

SUMMARY OF THE ARGUMENT

In the Final Decree, in addition to other efforts toward equitable division made by the Chancellor, Charles Curry was awarded \$50,000.00 equity out of the marital residence, the 588 South Pontotoc Road property. The Chancellor stated from the bench on the final day of trial held on December 12, 2008, that the property was worth \$250,000.00, that Linda Curry had taken out loans totaling \$100,000.00 against the property and that Charles was entitled to 20% of the equity in the home. (RE 93-94, TR 226-227). In the Final Decree of Divorce entered on January 14, 2009, the Chancellor calculated 20% of the equity in the home as \$50,000.00. (RE 39-41, CP 230-232). Appellant Linda Curry respectfully submits that the equity in the home is calculated by deducting the liens against the property, \$100,000.00, from the value of the property, \$250,000.00, which equals \$150,000.00 and that 20% of \$150,000.00 is \$30,000.00 and not \$50,000.00 as the Chancellor stated. This mathematical miscalculation resulted in a clearly erroneous award to Charles Curry of \$20,000.00 more than the chancellor had intended to award him.

The Chancellor additionally awarded a 3 acre parcel of rental property on Highway 9 in Pontotoc County to Charles Curry. Admittedly, the parties consented to having the chancellor make an equitable distribution of this property, however, the chancellor's determination that this property should be awarded to Charles Curry to offset the reduction in his monthly pension payments was wholly without basis in fact and was clearly erroneous. At trial, the property's value was established as \$75,000.00. (RE 100, TR 233). The Chancellor explained that he based his award of the Highway 9 rental property to Charles Curry on the Mississippi Court of Appeals decision of November 4, 2008, *Hayes v. Hayes*, 994 So.2d 246 (Miss. Ct. App. 2008). (RE 102-104, TR 235-237). Specifically, in recognizing the fact that Linda Curry's interest in Charles Curry's retirement account was personal property vested in her prior to the divorce, it appears

that the Chancellor used the value of the Highway 9 rental property, \$75,000.00, as a comparable value to Linda Curry's vested interest in Charles Curry's retirement account added to the amount of reduction to Charles monthly pension payment that was applied due to his election that Linda receive surviving spouse benefits. Essentially, Linda was to receive her portion of the retirement account and Charles was to receive the Highway 9 rental property to further the equitable division of the marital estate. Appellant Linda Curry respectfully submits that there was insufficient proof offered at trial to establish that the sum of the value of her interest in the retirement account plus the amount that Charles Curry's interest in the account was reduced by his election to have Linda Curry receive survivor's benefits was \$75,000.00. In fact, Linda Curry respectfully submits that \$75,000.00 is far greater than the value of the entire retirement account if paid solely to Charles Curry over his lifetime without any payment to Linda Curry. Thus, the chancellor made a manifest error in awarding a piece of property valued at \$75,000.00 to Charles Curry for the purpose of offsetting the reduction of his retirement account payments and the amount that Linda would receive.

Therefore, based upon these two errors, one of purely mathematical miscalculation and the other completely arbitrary and manifestly unfair, Appellant Linda Curry respectfully requests this Court to reverse the Final Decree of Divorce entered by the Pontotoc Chancery Court as to these two issues related to the equitable division of the marital property.

ARGUMENT

I. THE TRIAL COURT ERRED IN PERFORMING THE MATHEMATICAL CALCULATION OF TWENTY PERCENT OF THE EQUITY IN THE MARITAL RESIDENCE.

The lower court made the determination that Charles Curry was entitled to twenty percent (20%) of the equity in the marital residence, the 588 South Pontotoc Road property that was

solely titled in Linda Curry's name. The market value of the property was accepted as \$250,000.00, and it was acknowledged by the court that Linda Curry had taken out loans totaling \$100,000.00 against the property which remain outstanding. (RE 94, TR 227). Since the calculation of *equity* in real property is derived by subtracting the outstanding liens from the market value of the property, the equity in this instance would be \$150,000.00. (market value- outstanding liens= equity; \$250,000.00- \$100,000.00 = \$150,000.00) Thus, twenty percent of the equity, or 20% of \$150,000.00, equals \$30,000.00. The Chancellor calculated 20% of the equity in the home as \$50,000.00. Appellant Linda Curry submits that this was merely a miscalculation on the part of the lower court and that this matter can be corrected quite simply by the recalculation of the mathematical figures as stated above.

The case at bar bears comparison to the 2006 case decided by the Court of Appeals of Mississippi styled *Ory v. Ory*, 936 So.2d 405 (Miss. Ct. App. 2006), where a similar miscalculation by the chancellor resulted in a reversal and remand for additional computation of the property division. In *Ory*, the husband testified that he sold his share of an oil change franchise for \$500,000.00 and that he "paid out" \$296,000.00 in expenses. 936 So.2d 405, 412 (¶ 20). The chancellor mistakenly used the \$296,000.00 figure as the amount the husband made in profit from the sale. *Id.* Thus, the case was remanded to the chancery court so that "it might revisit the valuation of the Speedee Oil franchise, and the corresponding appreciation in value of the franchise during the Orys' marriage." *Id.*, at 413 (¶ 22).

Recently, the Mississippi Court of Appeals reversed a chancellor's decision regarding child support payments due to the miscalculation of figures related to income and expenses claimed by the non-custodial parent. In *Sellers v. Sellers*, No. 2007-CA-01459-COA, decided June 23, 2009, the Mississippi Court of Appeals reviewed the chancellor's adjustments to income listed by the husband on his 8.05 disclosure statement, specifically, the disallowance

of certain deductions and the manner in which the chancellor “rounded up” some of the figures. *Sellers*, (¶¶ 23- 31.) The Court determined that the chancellor manifestly erred in his computation of the husband’s gross income as well as the husband’s reasonable living expenses. The Court went on to find that since the appropriate amount of child support is based on a party’s properly calculated adjusted gross income, the chancellor manifestly erred in ordering the husband to pay a certain monthly sum in child support based upon an erroneous calculation of the husband’s adjusted gross income. *Id.* While all of the miscalculations made by the chancellor in *Sellers* were not recomputed within the text of the Court of Appeals’ decision to determine the net effect of the errors regarding the husband’s child support payments, it should be noted that the Court did re-calculate the husband’s adjusted gross income to reveal a difference of \$229.75 between the chancellor’s miscalculation and the amount the Court of Appeals determined was accurate. *Id.*, (¶¶ 25, 27.) Appellant Linda Curry would respectfully submit that the net effect of the miscalculation by the chancellor in the case at hand, \$20,000.00, appears to be greater than the net effect of the miscalculation in *Sellers* and therefore warrants a reversal of the chancellor’s decision as was done in *Sellers*.

As this Court stated the well-settled standard of review of a chancellor’s decision in the recent case of *Stewart v. Stewart*, 2 So.3d 770, 772-773 (¶ 7) (Miss. Ct. App. 2009), the standard for reviewing a chancellor’s decision is one of abuse of discretion and the chancellor’s findings of fact will not be disturbed unless they are “manifestly wrong or clearly erroneous.” Citing *Mosby v. Mosby*, 962 So.2d 119, 121 (¶ 6) (Miss. Ct. App. 2007). Appellant Linda Curry respectfully submits that in this instance, the chancellor’s findings of fact related to the calculation of twenty percent equity in the marital home was clearly erroneous and should be reversed.

II. THE TRIAL COURT ERRED IN FINDING THAT \$75,000.00 WAS THE SUM OF THE REDUCTION IN RETIREMENT PAYMENTS MADE TO CHARLES CURRY ADDED TO THE VALUE OF THE RETIREMENT ACCOUNT TO BE PAID TO LINDA CURRY.

Charles Curry had a retirement or pension plan from his former employer and he was given options regarding the amount of monthly payments he would receive compared to the amount Linda Curry would receive at this death, as the surviving spouse. Just prior to his retirement in 2001, Charles Curry selected the option that would allow Linda Curry, if she survived him, to receive 66 2/3% of the monthly payment that Charles would have received up until his death. Due to this election, the amount that Charles Curry received each month was less than the amount he would have received if he had not made the election to allow Linda to receive 66 2/3 % of his monthly payment upon his death. These facts are not in dispute. The disputed issue is the amount of the reduction to Charles' monthly pension payment. Appellant Linda Curry asserts that the chancellor's determination of the amount was clearly erroneous and based upon proof insufficient to establish the amount. Appellant further asserts that the chancellor arbitrarily assigned \$75,000.00 as the amount necessary to offset Charles' monthly reduction to his pension payments and Linda's potential income in the event she survives Charles.

Specifically addressing the lack of proof provided to the chancellor regarding the reduction in monthly pension payments to Charles, his direct testimony given at trial should be noted:

Q What effect did that have on your monthly benefit?

A I had to take – I get less money by retiring that way per month. I would get more if I took the 50/50 option.

Q How much less did you get by electing that option?

A I really don't know. I didn't talk to anybody at the local. All I know is what the people that's got less time in than I had draw.

(RE 49, TR 65). Over objection, the chancellor did allow Charles Curry to give his “best estimate” of how much his pension payments were reduced each month and he stated, “*Near as I can tell, about \$700*”. (RE 50, TR 66). Then, during cross-examination, Charles Curry testified:

Q So the election you took is what’s called a pop up collection [sic]; is that correct, as I understand?

A I don’t understand the question.

Q In other words, you get so much money during your lifetime?

A Right.

Q And if she dies prior to you, then it pops back up?

A Well, I can go back and draw what I would have been drawing if we’d have took the 50/50 retirement.

Q But you took the 66 2/3 retirement, did you not?

A We took a less rate, less amount where she could draw the same thing I’m drawing right now for the rest of her life if I die before she does.

(RE 55-56, TR 117-118). Then, later in cross-examination, Charles Curry again testified that he really did not know the amount of the monthly reduction to his pension payments:

Q Mr. Curry, you testified last time about you thought that a certain amount of money would be reduced, but you don’t know that, do you?

A Do what now?

Q You thought that your retirement was reduced by a certain amount of money. You don’t know what that figure is, do you?

A No. I can give you an example though.

(RE 59, TR 121). Charles Curry did go on to give an example of a co-worker who had two and a half years less with the company than Charles did, but he draws \$500 more a month than Charles does and the co-worker chose the 50/50 option. Of course, none of that was substantiated in any manner, nor did Charles provide specific details as to the co-worker’s base salary or percentage

placed in the pension account or any other of a myriad of factors that could have affected the alleged \$500 difference in their pension payments. The bottom line is that Charles had no idea how much his monthly pension payments are reduced due to his election to provide the surviving spouse payments to Linda. He admitted that he never contacted the company to request documentation of the amount the pension payments were reduced. (RE 60, TR 122.) However, Appellant's attorney did submit into evidence a lengthy written document from National Automatic Sprinkler Industry Pension Fund which included correspondence to Charles Curry explaining the different options available to him as well as the amount of the reduction to his monthly payment. (RE 119-135, TE 29-45).

During her cross-examination on the first day of trial in October, 2008, Linda Curry's testimony was that she had no information as to the amount of the deduction, if any, to Charles Curry's pension payments as a result of the option that he selected which provided her with survivor's benefits upon his death. (RE 47-48, TR 12-13). Then, on direct examination which was conducted during the second day of trial on November 5, 2008, Linda Curry testified that after she heard Charles Curry's testimony on the first day of trial in October where he stated that his best estimate was that his pension payments were reduced each month by \$700, she contacted the "pension place" and was told that the reduction was \$258.30 each month. (RE 62, TR 167). Certainly, Linda Curry's testimony regarding what she was told by someone at the "pension place" was merely hearsay and was not allowed by the chancellor, however Appellant does not offer this testimony now as proof of the matter asserted but rather to show that the calculation of the reduction to Charles' monthly pension payments could have been obtained². The chancellor

² Counsel for Charles Curry objected to Linda's testimony and while the chancellor did not specifically state for the record that he was granting the objection on the grounds of hearsay, he did instruct the court reporter to "Strike that, please" and then instructed Linda that she couldn't "testify to what somebody else has told you." (RE 62, TR 167, 168). As this Court is well aware, hearsay is an out-of-court statement offered to prove the truth of the matter asserted. M.R.E. 801(c). It is always inadmissible except as provided by law. M.R.E. 802.

should have reviewed the information admitted into evidence at trial that was actually from the National Automatic Sprinkler Industry Pension Fund, but there is no indication that the chancellor used this information in his equitable division. Obviously, just because neither Linda nor Charles knew the amount first-hand did not mean that the information regarding the amount of the actual deduction was unknowable or unattainable. The chancellor's attempt to assign an arbitrary amount was clearly erroneous, especially in light of the Calculation Worksheet included in Trial Exhibit 4. (RE 119-135, TE 29-45). The Calculation Worksheet clearly set forth that Charles' pension amount is \$2,562.82 and that based upon his election of the "66 2/3 % Joint and Survivor Pop-Up Option", his pension amount is reduced to \$2,314.23. (RE 125, TE 35). Charles Curry's 8.05 disclosure stated that his income from the pension was \$2,404.52 per month. (RE 106, TE 13).

The simple mathematical calculation of subtracting \$2,314.23 from \$2,562.82 gives the sum of \$248.59, while the result of subtracting \$2,404.52, the amount Charles actually receives, from \$2,562.82, the amount that the Calculation Worksheet stated would be his base monthly pension amount, the result is even less- \$158.30. Therefore, Appellant Linda Curry submits that if the chancellor used an amount between \$248.59 and \$158.30 to calculate an amount used to "offset" and make an equitable division of the property, that \$75,000.00 is not a proper amount. In fact, depending upon the amount the chancellor established as the monthly reduction, \$75,000.00 represents between 301 and 474 months or 25 to 39 years of payment reductions to Charles Curry. Charles Curry testified on October 9, 2008, that he was 62 years old. (RE 49, TR 61). In other words, he would have to survive at least until age 87 and more likely until age 101 to realize a \$75,000.00 reduction in his pension payments.

However, instead of using the information from the Pension Fund, it appears that the chancellor arbitrarily awarded a 3-acre parcel of property on Highway 9 in Pontotoc County

valued at \$75,000.00 to Charles Curry in an effort to offset the amount Charles' pension payments were reduced each month. As a basis for awarding the Highway 9 property to Charles, the chancellor discussed quite extensively the Mississippi Court of Appeals decision of November 4, 2008 in *Hayes v. Hayes*, 994 So.2d 246 (Miss. Ct. App. 2008). (RE 102-104, TR 235-237).

The *Hayes* case was somewhat similar to the case at bar in that during the Hayes' marriage the husband had elected to provide the wife a "Joint and 50% Surviving Spouse Option" in his employer's pension plan and this election resulted in a reduction to his pension payments. 994 So. 2d 246, 248 (§ 2). In the present case, Charles Curry retired in 2001 and was given options regarding the amount of pension payments he would receive and the amount, if any, that Linda Curry would receive upon his death. Charles Curry selected the option that would pay Linda Curry 66 2/3% of the benefits he currently receives for her lifetime in the event that Charles Curry predeceases her³. This option reduced the amount of monthly benefit paid to Charles Curry for the remainder of his lifetime unless Linda Curry dies first at which time his payments would no longer be reduced. (RE 50-51, 55-56, TR 65-66, 117-118).

As the primary issue in the *Hayes* case was establishing the wife's interest in the husband's pension plan as personal property vested in her prior to the divorce, the *Hayes* case provides little or no real guidance here. That is because the primary issue here was not *whether* Linda Curry had a vested property interest in Charles Curry's pension plan, but rather the extent that this option selected by Charles caused his pension payments to be reduced. Since the payments to Linda will only occur if Charles predeceases her, the amount that she has an interest in receiving can not be computed based upon a straight percentage and it is uncertain whether

³ This is an important factor because it would be entirely possible for Linda Curry to predecease Charles Curry, thereby stopping the monthly reduction realized by Charles and preventing Linda from realizing any income at all.

that is what the chancellor attempted to do. However, the chancellor did attempt to assign an arbitrary amount, \$75,000.00, as the amount necessary to offset the reduction in pension payments made to Charles and the amount that Linda could receive if she survived Charles. Appellant Linda Curry submits that the \$75,000.00 amount was arbitrary and therefore erroneous for two reasons. First, the chancellor apparently did not use the information submitted into evidence from the Pension Fund to compute a monthly reduction in pension payments to Charles Curry. Second, even if the chancellor had used the information from the Pension Fund to compute a monthly reduction in pension payments to Charles Curry, if Charles lives longer than Linda, she receives nothing and all of the computations were for naught.

The chancellor did not explain any computation he made with regard to the pension payments. The Final Decree of Divorce merely stated that the Highway 9 rental property would be awarded to Charles Curry, while the chancellor's opinion given from the bench on December 12, 2008, discussed the applicability of the *Hayes* case as to the pension fund and that the court 'tried to compensate' for Linda's interest in Charles' pension fund by awarding Charles the Highway 9 rental property. Appellant Linda Curry submits that this lack of calculation was manifestly wrong and clearly erroneous and should be reversed. *Stewart*, 2 So.3d at 773 (¶ 7).

Finally, even if the chancellor had accurately calculated the amount of the reduction in Charles' monthly pension payments, in the event that Linda predeceases Charles, she receives nothing and his monthly benefits are increased back to the amount that he would have received if he had not elected the surviving spouse option in the first place. In light of this possibility, it is increasingly hard to imagine the chancellor assigning \$75,000 as the amount Charles should receive, in the form of the Highway 9 rental property, in order to compensate him for Linda's interest in his pension plan. Appellant Linda Curry urges this Court to reverse the decision of the lower court as to this issue on the basis that equitable distribution does not require Charles Curry

to receive something of value in order to offset Linda Curry's potential to receive pension benefits *in the event she outlives Charles* because she might very well **not** outlive Charles and then she would receive nothing.

Since the key goal for a chancellor in a divorce proceeding is to make certain that equity is accomplished, which requires fairness to both parties, it is overwhelmingly unfair to Appellant Linda Curry to have to give up property worth \$75,000.00 based upon the possibility that she might live long enough to collect a pension payment from Charles Curry's pension plan after his death. *Clark v. Clark*, 754 So.2d 450, 461 (¶ 62) (Miss.1999). Moreover, the unfairness is compounded by the completely arbitrary and unsubstantiated value that the chancellor assigned to the reduction in Charles Curry's pension benefits. Appellant Linda Curry asserts that her potential interest in Charles Curry's pension is only a contingent interest and as such, she should not be forced to give up a present day interest in real property worth \$75,000.00 based upon an erroneous attempt at equitable division.

CONCLUSION

Therefore, based upon these two errors, one completely based upon incorrect mathematical functions and the other apparently based upon the desire of the lower court to follow a recent decision that really does not provide direction, Appellant Linda Curry respectfully requests this Court to reverse the Final Decree of Divorce entered by the Pontotoc County Chancery Court as to these two issues related to the equitable division of the marital property and to reduce the amount of Charles Curry's award of equity in the marital residence to \$30,000.00 and to award her possession of the Highway 9 rental property. For the foregoing reasons and authorities, and based upon the record, the decision of the Pontotoc County Chancery Court should be reversed. Appellant Linda Curry also respectfully requests any other such relief as she may be entitled.

RESPECTFULLY SUBMITTED, on this the 13th day of October, 2009,

By: _____

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CERTIFICATE OF SERVICE

I, AMY S. HARRIS, do hereby certify that I have this day served by United States mail,
postage prepaid, a true and correct copy of this document to the following:

J. Mark Shelton, Esq.
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Tupelo, Mississippi 38801

Chancery Court Judge Talmadge D. Littlejohn
Post Office Box 869
New Albany, Mississippi 38652

This the 13th day of October, 2009.



AMY S. HARRIS