

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CAUSE NUMBER - 2009-TS 0384**

**SCOTT DELK**

**APPELLANT**

**VERSUS**

**KAREN DELK**

**APPELLEE**

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**BRIEF FOR APPELLANT**

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**APPEAL FROM THE CHANCERY COURT OF HARRISON  
COUNTY, SECOND JUDICIAL DISTRICT**

**ORAL ARGUMENT NOT REQUESTED**

**GRISSOM'S  
DOMESTIC LAW FIRM**

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**ATTORNEY AT LAW**

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**CERTIFICATE OF INTERESTED PARTIES**

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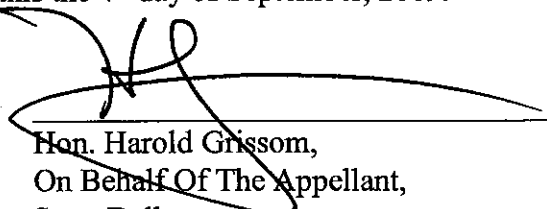
I Harold Grissom, attorney for the Appellant, Scott Delk, files this and certifies through his Certificate Of Interested Parties that the following individuals have an interest in the outcome of this case as follows, to-wit:

Hon. Carter Bise,  
Chancellor  
P.O. Box 1542  
Gulfport, MS 39502

Hon. Joseph R. Meadows  
On Behalf Of The Appellee, Karen Delk  
1902 21<sup>st</sup> Avenue  
Gulfport, MS 39501

Tracey G. Bertrand, CSR, RPR-CM  
P.O. Box 1542  
Gulfport, MS 39502

RESPECTFULLY SUBMITTED, this the 4<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Hon. Harold Grissom,  
On Behalf Of The Appellant,  
Scott Delk

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15	<i>Oswalt v. Oswalt</i> , 981 So.2d 993, 997 (Miss.2007).
14	<i>Parsons v. Parsons</i> , 741 So.2d 302, 308 (Miss.Ct.App.1999).
14	<i>Sanderson v. Sanderson</i> , 824 So.2d 623, 625-26 (Miss.2002).
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**STATEMENT OF ISSUES**

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The Appellant, Scott Delk, files this his Statement Of Issues for this Honorable Court's review in the above styled and numbered cause and would affirmatively assert the following issues:

1. Whether the Chancery Court applied the erroneous legal standard in the equitable distribution of the Windjammer condominium, insurance proceeds and MDA grant money associated with said condominium.
2. Whether the Chancery Court was manifestly wrong, or clearly erroneous in the equitable distribution of the Windjammer condominium, insurance proceeds and MDA grant money associated with said condominium.

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**STATEMENT OF THE CASE**

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This is a divorce case involving issues of equitable division of property. Prior to marriage the parties dated approximately two years. The parties were married to each other on March 4, 2000 and separated in Harrison County, Second Judicial District, Mississippi on May 12, 2005. There are no issues in regard to subject matter jurisdiction, personal jurisdiction or venue. Within five days of the separation (May 17, 2205), Karen Delk filed a Complaint For Divorce on the no-fault ground of Irreconcilable Differences. On June 14, 2005, Scott Delk filed his Answer To Karen Delk's Complaint For Divorce & Counter-Complaint For Divorce & For Partition Of Property based on the fault ground of Karen Delk's Adultery, or in the alternative, Irreconcilable Differences. Karen brought a Windjammer condominium into the marriage. There was substantial commingling of this property through direct and indirect contribution by Scott Delk. Just over a year into the marriage Karen quit claimed the condominium to Scott and they became joint tenants in common. The condominium was ultimately destroyed by Hurricane Katrina on August 29, 2005. As a result of the condominium being destroyed, the property was eventually sold, insurance proceeds and an MDA grant was provided to the parties. Scott asked for equitable distribution of condominium,

insurance proceeds and grant money. At no time has Karen Delk ever made any further requests other than her prayer that she be granted a divorce on the ground of Irreconcilable Differences and that the Court accept any property settlement agreement between the parties.

On March 1, 2007, the party's entered into a Consent Agreement, wherein the parties withdrew all fault grounds and agreed to a divorce on the ground of Irreconcilable Differences.

The issues to be tried by the lower Court were as follows:

1. Equitable Division of all marital property (real and personal); and
2. Award of alimony to the Husband; and
3. Partition of any property, if necessary; and
4. Award of attorney's fees and costs for Wife; and
5. Award of attorney's fees and costs for Husband; and
6. Equitable division of any and all commingled property (real and personal).

That this case was tried on March 8-9, 2007 and August 15-16, 2007. On July 18, 2008, the Court entered it's Judgment of divorce. On July 29, 2008, Karen Delk filed a Motion To Reconsider/New Trial. The timeliness of the motion was not objected to Scott. Karen's Motion To Reconsider/New Trial was heard on November 5, 2008 and as a result the Court on December 30, 2008, entered a Judgment granting the parties a divorce pending His Honor's ruling on Karen's motion. On February 5, 2009, the Court entered it's Order On Motion To Reconsider.

The Chancery Court found that Scott was only entitled to 26.2% of the equity in the condominium, insurance proceeds and grant money. The Court arrived at this figure by only considering the direct financial contribution Scott made to the condominium in comparison to Karen's direct financial contribution. Although the Chancery Court lists the Ferguson factors, the lower Court fails to apply those factors in its determination that equitable distribution is limited only to the pro-rata share each party directly paid toward the condominium. It is Scott's position that this is applying an erroneous legal standard. Alternatively, it is Scott's position that the Chancery Court failed to consider many factors which are relevant and necessary in an equitable distribution decision. Accordingly, the Court was manifestly wrong, or clearly erroneous.

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**SUMMARY OF THE ARGUMENT**

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This is a divorce case which was tried on limited issues. The party's entered into a Consent Agreement on March 1, 2007, wherein the parties withdrew all fault grounds and agreed to a divorce on the ground of Irreconcilable Differences. The issues to be tried by the lower Court were set out in the Consent, however the only significant issues are as follows:

1. Equitable Division of all marital property (real and personal); and
2. Equitable division of any and all commingled property (real and personal)

Karen Delk owned a Windjammer condominium prior to the marriage. That at the time of marriage Scott substantially contributed to the accumulation of the equity in the condominium. The condominium was destroyed by Hurricane Katrina which resulted in the parties receiving insurance proceeds and grant money. During the marriage there was substantial commingling wherein the Chancery Court found that due to the substantial commingling this property became marital property. There was substantial direct and indirect contribution that the Chancery Court failed to consider. This included the following:

1. Allowing the wife to move into his home while he paid the notes and she shared in some expenses. This allowed the condo to continue to earn equity through the renters which occupied same.

2. Selling his separate property (home) and investing the proceeds into the joint funds of the parties.
3. Being heavily involved in building the parties new home. Scott even acted as contractor in the building of this home.
4. The parties continued to share expenses throughout the marriage.
5. Making direct financial contributions to the condominium.
6. Making major renovations to the condominium.
7. Moving into the condominium and operating his appraisal business out of the condominium.
8. Being made a joint owner through quit claim deed of the condominium.
9. Allowing Karen to operate her main business (Cabinet Source) out of another office duplex that the parties equally owned. Karen was allowed to collect all rents, deduct all depreciation to the exclusion of Scott. Karen was also allowed to fully occupy said building.

The Chancery Court in it's decision on equitably dividing the condominium, insurance proceeds and grant money based the equitable distribution solely on each parties pro-rata share of their direct financial contribution to the condominium. This fails to apply the correct legal standard (*Ferguson*). Furthermore, by the Court failing to consider other factors of direct and indirect contribution the Court was manifestly wrong or clearly erroneous in it's decision to pro-rate based only strictly upon direct financial contribution of the parties.

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**ARGUMENT**

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**PROCEDURAL HISTORY**

This is a fault ground divorce case which was tried on limited issues. The Appellant, Scott Delk., (hereafter, "Husband" or "Scott Delk"), and Appellee, Karen Delk, (hereafter, "Wife" or "Karen Delk"), were dated approximately two years prior to marriage.<sup>1</sup> The parties were married to each other on March 4, 2000 and separated in Harrison County, Second Judicial District, Mississippi on May 12, 2005. There are no issues in regard to subject matter jurisdiction, personal jurisdiction or venue. Within five days of the separation (May 17, 2005), Karen Delk filed a Complaint For Divorce on the no-fault ground of Irreconcilable Differences. On June 14, 2005, Scott Delk filed his Answer To Karen Delk's Complaint For Divorce & Counter-Complaint For Divorce & For Partition Of Property based on the fault ground of Karen Delk's Adultery, or in the alternative, Irreconcilable Differences. Scott and Karen were joint tenants in common on a Windjammer condominium which was ultimately destroyed by Hurricane Katrina on August 29, 2005. Scott asked for equitable distribution of property in his Counter-Complaint. At no time has Karen Delk ever made any further requests other than her

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<sup>1</sup> See Court Reporter's Transcript, Page 350, Lines 4-6.

prayer that she be granted a divorce on the ground of Irreconcilable Differences and that the Court accept any property settlement agreement between the parties.

On March 1, 2007, the party's entered into a Consent Agreement, wherein the parties withdrew all fault grounds and agreed to a divorce on the ground of Irreconcilable Differences. The issues to be tried by the lower Court were as follows:

1. Equitable Division of all marital property (real and personal); and
2. Award of alimony to the Husband; and
3. Partition of any property, if necessary; and
4. Award of attorney's fees and costs for Wife; and
5. Award of attorney's fees and costs for Husband; and
6. Equitable division of any and all commingled property (real and personal).

That this case was tried on March 8-9, 2007 and August 15-16, 2007. On July 18, 2008, the Court entered it's Judgment of divorce. On July 29, 2008, Karen Delk filed a Motion To Reconsider/New Trial. The timeliness of the motion was not objected to Scott. Karen's Motion To Reconsider/New Trial was heard on November 5, 2008 and as a result the Court on December 30, 2008, entered a Judgment granting the parties a divorce pending His Honor's ruling on Karen's motion. On February 5, 2009, the Court entered it's Order On Motion To Reconsider.

#### FACTS REGARDING WINDJAMMER CONDOMINIUM, INSURANCE PROCEEDS AND MDA GRANT FUNDS

Karen purchased Windjammer condominium in approximately 1993.<sup>2</sup> The parties started dating two years prior to marriage in approximately 1998. The parties got married on March 4,

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<sup>2</sup> See Court Reporter's Transcript, Page 116, Lines 1-2.

2000 at which time Karen was living with her mother and father and Scott had his own residence at Five Oaks which he owned. Upon the marriage of the parties, Karen moved into Scott's residence at Five Oaks where he paid the mortgage and Karen contributed to some expenses. According to Scott the parties lived in his home at Five Oaks for about six to seven months (according to Karen it was for about a year), while they built a home at On The Green.<sup>3</sup> After the parties were married, they got a joint checking account. Scott sold his separate home located at Five Oaks and profited approximately \$14,000 which he put into the joint checking account with Karen. The parties lived at their new home located at On The Green until they moved into the Windjammer condominium.<sup>4</sup> Scott was heavily involved in the building of their house On The Green as he was the contractor in building the home.<sup>5</sup> The parties sold the home located at On The Green at the end of 2002 or early 2003.<sup>6</sup> The parties shared in the equity from On The Green.

During the time prior to the parties moving into the condominium, the parties continued to share expenses.<sup>7</sup> This is not denied by either party. While the parties were sharing expenses, the condominium continued to have renters which paid a portion of the note on the condo. Any deficiency was paid by the parties.<sup>8</sup> Was it not for Scott allowing Karen to move into his home

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<sup>3</sup> See Court Reporter's Transcript, Page 350, Line 1 through Page 352, Line 13. Also see, Page 154, Line 25 through Page 155, Line 12.

<sup>4</sup> See Court Reporter's Transcript, Page 352, Line 14 through 353, Line 19.

<sup>5</sup> See Court Reporter's Transcript, Page 351, Line 28 through Page 352, Line 1.

<sup>6</sup> See Court Reporter's Transcript, Page 358, Lines 17-23.

<sup>7</sup> See Court Reporter's Transcript, Page 226, Lines 4-12.

<sup>8</sup> See Court Reporter's Transcript, Page 78, Lines 6-19.

at the time of marriage, she would not have had the opportunity to apply rental income to the condo note. Was it not for Scott's efforts building their home On The Green, and him applying his equity from his separate property Karen would not have had the opportunity to apply rental income to the condo note. Furthermore, had it not been for the parties sharing expenses prior to moving into the condominium, Karen would not have had the opportunity to apply rental income to the condo note. Although this is not a direct payment to the condominium, it certainly is contribution of Scott Delk that can't be ignored.

Prior to the parties moving into the condominium, Karen provided Scott a quitclaim deed on May 25, 2001, giving him joint ownership in the condominium.<sup>9</sup> Interestingly, the Quit Claim deed states that the address of the grantor and grantee is both located at the condo address of 805 Beach Blvd. in Biloxi, Mississippi. Karen stated that she conveyed title to Scott because she was refinancing to get a better interest rate and she was able to lower her years of financing from thirty to fifteen years. She stated that she had to put Scott on the deed for this purpose. She admits that putting Scott on the deed was a benefit to her however.<sup>10</sup> The first refinancing to lower the amount of years owed on the condominium was done in 2001 (there was a second refinancing done in 2003).

At the end of 2002 or early 2003 when the parties moved into the condominium Scott moved his office into the condo. It is admitted by the parties that Scott had his office in the condominium. Scott has a fax machine, computer, desk, etc., in a room set up as his office.<sup>11</sup>

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<sup>9</sup> See Trial Exhibit Number 52.

<sup>10</sup> See Court Reporter's Transcript, Page 301, Lines 3-13.

<sup>11</sup> See Court Reporter's Transcript, Page 363, Line 21 through 364, Line 2.

Karen admits that “he made half the note from the time he moved in until the time he moved out.”<sup>12</sup> The parties did major renovations to the condominium. These renovations continued up until Hurricane Katrina destroyed the property and included such things as changing out flooring, put wood floors in, changed out carpet in the bedrooms, changed out cabinetry, put in new appliances, repainted on three occasions, etc. Scott was involved in the renovations, hiring subcontractors and paying for renovations.<sup>13</sup> It was during this 2003 time from that the condominium was refinanced for the second time. This time it was refinanced to take equity from the condominium. In February 20, 2003, the condominium was appraised at \$236,000 with \$108,171 being owed. Karen took \$73,699 of this equity and deposited and commingled it into her marital Delk Appraisal bank account. This left \$54,130 of equity in the condominium. Karen argues that this was all her separate equity despite the fact that Scott was a title owner (since May 25, 2001) and despite the fact of his direct and indirect contribution to the condominium accumulating equity since the date of their marriage.<sup>14</sup> It would not be equitable to allow Karen Delk to benefit from the marriage by keeping all equity that accumulated in the condominium as a result of joint direct and indirect efforts of the parties.

Scott moved out of the condominium in May, 2005.<sup>15</sup> After the separation, Scott continued to pay expenses toward the condominium. Karen started providing Scott a billing statement which provided amounts paid, to be paid, etc., documenting debts/expenses the parties

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<sup>12</sup> See Court Reporter’s Transcript, Page 116, Lines 21-25.

<sup>13</sup> See Court Reporter’s Transcript, Page 381, Line 10 through Page 382, Line 11.

<sup>14</sup> See Trial Exhibit Numbers 10 & 17.

<sup>15</sup> See Court Reporter’s Transcript, Page 144, Lines 12-20 and also see Page 149, Lines 13-15.

shared in.<sup>16</sup> Scott paid such items related to the condominium as maintenance fees, one-half the note, property taxes, telephone bills, cable bills, etc.<sup>17</sup> Scott had paid on the expenses associated with the condominium up until the time that he discovered that Karen had been stealing his checks for appraisal work he had done. At that point Scott quit paying on the condominium. It was on May 16, 2005 when he stopped payment on his check to the lien holder and quit paying on the note of the condominium.<sup>18</sup> Scott explained how Karen's stealing and converting his checks to her own use was making it difficult for him to live, therefore he had to discontinue paying on the note.<sup>19</sup> Karen's theft of Scott's money is not denied and interestingly with all the other specific accounting she claims to be able to calculate, she is yet to provide a true accounting of how much money she stole from Scott. While Karen states that she doesn't remember how much she took from Scott, she says it was less than \$2,000.<sup>20</sup> When looking just at the stolen checks Scott was able to recover from the bank, over \$2,000 was deposited by Karen.<sup>21</sup> There is no way to determine how many stolen checks Karen cashed. What Karen would do is receive Scott's checks being paid to him under his business name, Delk Appraisal Services. Since the checks were made out to Delk Appraisal Services, she could get the cashier

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<sup>16</sup> See Trial Exhibit Number 79.

<sup>17</sup> See Court Reporter's Transcript, Page 453, Line 1 through Page 454, Line 20. Also see Trial Exhibit Number 76.

<sup>18</sup> See Court Reporter's Transcript, Page 447, Lines 14-28. Also see Trial Exhibit Number 71.

<sup>19</sup> See Court Reporter's Transcript, Page 76, Line 25 through Page 77, Line 4.

<sup>20</sup> See Court Reporter's Transcript, Page 149, Lines 16-22.

<sup>21</sup> See Trial Exhibit Number 67.

at the bank to negotiate the checks. According to Karen, she would never deposit these checks yet when looking at some of the recovered stolen checks, they were “for deposit only” on the back of each check.<sup>22</sup> Karen only returned those checks made out to Scott Delk (as opposed to Delk Appraisal Services), that she could not negotiate (although it appears she did in fact attempt to deposit one of these “Scott Delk” checks as well). Karen admits that she knew these were Scott’s checks and she had no authority to take them, but she was taking them to pay expenses.<sup>23</sup> The problem is that Scott could not find out the exact amount of what Karen had stolen from him. He was concerned that if he approached his clients about lost or stolen checks it would adversely effect his future business. Scott had approximately \$10,000 - \$15,000 in accounts receivables that he could not account for.<sup>24</sup>

After Hurricane Katrina, the parties received \$74,000 in insurance money concerning damages to the condominium. Karen admits that Scott is entitled to a portion of this insurance money.<sup>25</sup> The Court initially awarded Scott fifty percent (50%) of these proceeds, however pro-rated his award of insurance proceeds to 26.2% in the Court’s February 5, 2009, Order On Motion To Reconsider.

After Hurricane Katrina, the parties were expected to receive a MDA Grant. At the time of the trial this grant money had not been received but it was expected to be received by the

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<sup>22</sup> See Trial Exhibit Number 67.

<sup>23</sup> See Court Reporter’s Transcript, Page 157, Line 20 through Page 162, Line 3. Also see Trial Exhibit Number 27.

<sup>24</sup> See Court Reporter’s Transcript, Page 387, Line 19 through Page 391, Line 25. Also see Trial Exhibit Number 67.

<sup>25</sup> See Court Reporter’s Transcript, Page 146, Line 27 through Page 147, Line 4.

parties. In the Court's February 5, 2009, Order On Motion To Reconsider the Court awarded Scott 26.2% of the expected grant money.

APPLICATION OF ERRONEOUS LEGAL STANDARD  
OR WAS MANIFESTLY WRONG, OR CLEARLY ERRONEOUS

Mississippi's Appellate Courts have firmly established that they will not disturb the findings of the Chancery Court unless, (1) the lower Court applied an erroneous legal standard, or (2) the lower Court was manifestly wrong, or clearly erroneous. *Sanderson v. Sanderson*, 824 So.2d 623, 625-26 (Miss.2002). In this particular case, the Chancery Court outlined the correct legal standard, however it **applied** the wrong legal standard. For instance, the condominium clearly started out as Karen's separate property.

ISSUE NO. 1: APPLICATION OF ERRONEOUS LEGAL STANDARD

The Chancery Court correctly considered the condominium's classification of whether this property was marital or non-marital. Equitable division of assets begins with the chancellor's classification of whether an asset is marital or non-marital. *Hemsley v. Hemsley*, 639 So.2nd 909, 914-15 (Miss.2004). Thereafter, the Court considered whether the property was commingled, thus became a marital asset. *Parsons v. Parsons*, 741 So.2nd 302, 308 (Miss.Ct.App.1999). The Court correctly found that the condominium had begun as separate property, however it became marital and thus was subject to equitable distribution. (Scott disagrees with the Chancery Court's determination of when the property was sufficiently commingled to become marital in nature however).

The first step in property distribution as a result of divorce is to classify the property as either marital property or non-marital property based on *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994), in which the supreme court defined marital property for divorce proceedings as any and all property

acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor. *Stewart v. Stewart*, 864 So.2d 934, 937(¶ 12) (Miss.2003). We assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise are of equal value. *Id.* Separate property that has been "commingled with the joint marital estate" also becomes marital property subject to equitable distribution. *Johnson v. Johnson*, 650 So.2d 1281, 1286 (Miss. 1994). "Assets which are classified as nonmarital, such as inheritances, may be converted into marital assets if they are commingled with marital property or utilized for domestic purposes, absent an agreement to the contrary." *Boutwell*, 829 So.2d at 1221(¶ 20) (citing *Heigle v. Heigle*, 654 So.2d 895, 897 (Miss.1995)).  
*Oswalt v. Oswalt*, 981 So2d. 993, 997 (Miss.2007)

Once the Chancery Court determined that the condominium was commingled and thus took on marital status, the Court correctly outlined the factors to be considered under *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994). The Chancery Court failed to "apply" the correct legal standard however in it's decision. In the Court's initial July 18, 2008, Judgment of divorce the Court in making it's findings states:

The Court finds that Windjammer was initially Karen's and that between the two of them, based upon a review of Exhibit 16, after the refinancing of the property, Karen made approximately three times the direct contribution to Windjammer than Scott made. She put approximately \$63,250.00 into the property while Scott (according to Karen's figures), \$22,457.00. Scott shows an additional \$3,090.90 that he put into the condominium by way of assessments and taxes after he moved out. The ratio of these figures shows that Scott directly put 26.2% of the expenses into the Windjammer, while Karen put in 73.8%.<sup>26</sup>

The lower Court likewise failed to apply the correct legal standard in it's February 5,

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<sup>26</sup> See July 18, 2008, Judgment of divorce, Page 21, Paragraph Number 64.

2009, Order On Motion To Reconsider regarding the condominium, but only added the insurance proceeds and expected MDA Grant money to the same direct financial contribution standard.<sup>27</sup> The Chancery Court clearly failed to apply the correct legal standard as set out by *Ferguson*. Instead of applying the *Ferguson* factors, the Chancery Court applied a strict direct financial contribution standard.

ISSUE NO. 2: ALTERNATIVELY THE LOWER COURT WAS MANIFESTLY WRONG,  
OR CLEARLY ERRONEOUS

That in the event this Honorable Court does not find that the wrong standard was applied by the lower Court, the Appellant would alternatively show that the Court was manifestly wrong, or clearly erroneous in it's findings that Scott is only entitled to 26.2% of the equity of the condominium, insurance proceeds and MDA grant money.

The Court states in it's July 18, 2008, Judgment of divorce that, "She [Karen] testified that her intentions was not to jointly own the property with Mr. Delk. Mississippi law requires that a spouse be on a deed, so when Mrs. Delk chose to refinance, she was required to add Mr. Delk to the deed."<sup>28</sup> Undersigned counsel can find no legal basis for the conclusion that a married owner of a piece of property is required by Mississippi law to divest themselves of any interest in said real property just to refinance that piece of property in their own name. It is the Appellant's position that this is simply incorrect.

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<sup>27</sup> See February 5, 2009, Order On Motion To Reconsider, Page 2.

<sup>28</sup> See July 18, 2008, Judgment of divorce, Page 4, Paragraph Number 12.

In review of the *Ferguson* factors the Court acknowledges that Scott provided the marital home (Five Oaks) at the beginning of the marriage.<sup>29</sup> The Court in it's decision failed to consider the fact that Scott was paying the notes on his separate home at Five Oaks and Karen was only helping with some of the expenses. This allowed Karen to keep renters in the condominium and thus increase any equity in the condo. Although this is not a direct contribution to the condominium, it is a contribution which should not have been ignored.

The Court acknowledges that when Scott sold his separate home (Five Oaks), that the equity of \$14,000 was put into their new home they had built On The Green.<sup>30</sup> The Court did not consider this in it's decision however. The Court also failed to consider that Scott was heavily involved in the building of their house On The Green as he was the contractor in building the of the home.

The Court acknowledges that Scott contributed to Karen's earning capabilities by supporting them while Karen was building appraisal hours to reach the next level of certification.<sup>31</sup> The Court failed to consider this however in it's equitable distribution of the condominium, insurance proceeds and grant money.

The Court pointed out that there were approximately \$10,000 in penalties and interest for late payments on the condominium mortgage. The Court acknowledged that Scott thought these fees were the result of Karen failing to pay the mortgage for several months. The Court stated,

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<sup>29</sup> See July 18, 2008, Judgment of divorce, Page 14, Paragraph Number 41.

<sup>30</sup> See July 18, 2008, Judgment of divorce, Page 14, Paragraph Number 41.

<sup>31</sup> See July 18, 2008, Judgment of divorce, Page 14, Paragraph Number 43.

“The Court notes, however, that Mr. Delk is claiming the Windjammer to be a marital asset. As such, he is equally responsible for seeing that the debt on the asset is paid, and in fact, he testified to having a stop payment put on the mortgage draft from his bank account.”<sup>32</sup> The Court failed to acknowledge however that the reason Scott had stopped payment on the mortgage to the condominium was because Karen had been stealing his checks and it was disrupting his ability to pay bills. As set out above, Karen would steal Scott’s checks being paid to him under his business name, Delk Appraisal Services. Karen openly acknowledged that she was aware that these were Scott’s checks and knew she could negotiate them due to them being under the name of Delk Appraisal Services. She stated that she was not depositing any of Scott’s checks yet there was over \$2,000 deposited into her account. Karen states she was cashing these checks, however there is no way to determine how many stolen checks Karen cashed. Karen only returned those checks that she could not cash due to the fact that they were made out to Scott Delk (as opposed to Delk Appraisal Services). Scott could not find out the exact amount of what Karen had stolen from him. He was concerned that if he approached his clients about lost or stolen checks it would adversely effect his future business. However Scott had approximately \$10,000 - \$15,000 in accounts receivables that he could not account for. It is not equitable for Karen to benefit from her theft of Scott’s checks, not to mention the fact that this was not considered in the equitable distribution of the condominium, insurance proceeds or grant money.

There were other matters that the Court failed to consider in the equitable distribution of the condominium, insurance proceeds and grant money. These items include:

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<sup>32</sup> See July 18, 2008, Judgment of divorce, Page 16, Paragraph Number 51.

1. That Scott moved his office into the condo. It is admitted by the parties that Scott had his office in the condominium. Scott has a fax machine, computer, desk, etc., in a room set up as his office.
2. During the time prior to the parties moving into the condominium, the parties continued to share expenses. This is not denied by either party. While the parties were sharing expenses, the condominium continued to have renters which paid a portion of the note on the condo. Any deficiency was paid by the parties.
3. The parties did major renovations to the condominium. These renovations continued up until Hurricane Katrina destroyed the property and included such things as changing out flooring, put wood floors in, changed out carpet in the bedrooms, changed out cabinetry, put in new appliances, repainted on three occasions, etc. Scott was involved in the renovations, hiring subcontractors and paying for renovations.
4. Although the martial property by the name of Executive Place (a duplex) was equally owned by the parties, Karen was allowed to collect the rent for the rented portion, Karen was allowed to run her largest business out of this building (Cabinet Source), she was allowed to claim all depreciation on her taxes, all to the exclusion of Scott Delk.<sup>33</sup>

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<sup>33</sup> See Court Reporter's Transcript, Page 284, Line 2 through Page 286, Line 14.

Based on the Chancery Court failing to apply the correct legal standard, this matter should be reversed. Rather than considering and applying the Ferguson factors, the Court solely relied on a strict direct financial contribution standard. Alternatively, based on the Chancery Court's failure to consider other facts of this case it is manifestly wrong or clearly erroneous and should likewise be reversed.

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CAUSE NUMBER - 2009-TS 0384**

**SCOTT DELK**

**APPELLANT**

**VERSUS**

**KAREN DELK**

**APPELLEE**

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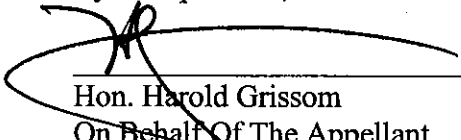
**CONCLUSION**

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Based on the parties' March 1, 2007, Consent Agreement the Chancery Court was to equitably divide the marital and commingled property of the parties. In doing so the Court failed to apply the correct legal standard. In doing so the Court only considered the direct financial contribution each party made to the condominium. Alternatively, the Court was manifestly wrong, or clearly erroneous in the application of facts to the equitable distribution of the condominium, insurance proceeds and grant money.

WHEREFORE, PREMISES CONSIDERED, the Appellant, Scott Delk prays that this Honorable Court reverse and render the equitable division of the equity in the condominium, insurance proceeds and grant money, thus awarding Scott 50% of each. Alternatively, the Appellant would request that this Honorable Court reverse and remand for the Chancery Court's inclusion of the correct legal standard and application of all Ferguson factors as opposed to the direct financial contribution standard applied by the Court. Finally, the Appellant, Scott Delk requests that all costs be taxed against the Appellee.

RESPECTFULLY SUBMITTED, this the 4<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Hon. Harold Grissom  
On Behalf Of The Appellant,  
SCOTT DELK

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CAUSE NUMBER - 2009-TS 0384**

**SCOTT DELK**

**APPELLANT**

**VERSUS**

**KAREN DELK**

**APPELLEE**

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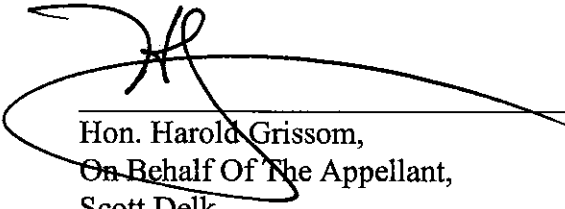
**CERTIFICATE OF SERVICE**

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I Harold Grissom, attorney for the Appellant, Scott Delk, do hereby certify that I have mailed by United States First Class Mail the Appellant, Scott Delk's Brief For Appellant and Record Excerpts For Appellant with all attachments to the following, to-wit:

Hon. Joseph R. Meadows  
On Behalf Of The Appellee, Karen Delk  
1902 21<sup>st</sup> Avenue  
Gulfport, MS 39501

RESPECTFULLY SUBMITTED, this the 4<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Hon. Harold Grissom,  
On Behalf Of The Appellant,  
Scott Delk

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CAUSE NUMBER - 2009-TS 0384**

**SCOTT DELK**

**APPELLANT**

**VERSUS**

**KAREN DELK**

**APPELLEE**

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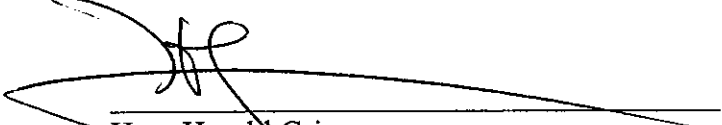
**CERTIFICATE OF SERVICE**

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I Harold Grissom, attorney for the Appellant, Scott Delk, do hereby certify that I have hand delivered on September 15, 2009 the Appellant, Scott Delk's Brief For Appellant to the following, to-wit:

Hon. Carter Bise, Chancellor  
Harrison County Courthouse  
18<sup>th</sup> Avenue  
Gulfport, MS 39501

RESPECTFULLY SUBMITTED, this the 15<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Hon. Harold Grissom,  
On Behalf Of The Appellant,  
Scott Delk