

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-CA-00757

**E**

FRANK A. SEGREE, III

APPELLANT

v.

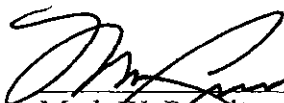
SUSAN B. SEGREE

APPELLEE

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following 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. Frank A. Segree, III, Appellant
2. Susan B. Segree, Appellee
3. Honorable Vicki R. Barnes, Warren County Chancellor
4. Mark W. Prewitt, Esquire
5. R. Louis Field, Esquire



Mark W. Prewitt  
Attorney for Appellee, Susan B. Segree

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## **STATEMENT OF FACTS**

Susan and Frank Segree were married on June 3, 1983, in Franklin County, Florida, and from this marriage three children were born, Robert W. Segree, born October 25, 1985, Rebecca M. Segree and Jacquelyn M. Segree both born June 9, 1989. At the time of the divorce proceedings Robert was over 21 years of age and Rebecca and Jacquelyn, twins, were 19 years of age. (T. 20-21)

Frank is employed at the Navigation section of the U.S. Corps of Engineers as a Master Pilot in Memphis, Tennessee, earning \$59.64 per hour. (T. 123-126) Frank had been employed with the federal government for about 16 years at the time of the hearing (T. 64)

Susan was employed at a title abstract company at the time of her marriage to Frank and when their first child was born, she became a stay-at-home- mom from 1987 to 1994. Susan then went to work driving a school bus in the mornings and afternoons for about 8 years when she took a job with Citi Financial earning a little over \$15.00 per hour. (T. 63-66)

Susan also took on a small part time job at the local skating rink on the weekends that pays her \$25.00 a session earning approximately \$150.00 a month at most. (T. 97)

The parties 2007 tax returns reflected that Frank had an income of \$99,461.00 and Susan had an income of \$33,599.00. (T. 72) Frank and Susan's combined gross income amounted to \$132,760.00.

In March of 2007, the balance owed on the parties home was \$49,271.00. In the same month, Frank told Susan that his financial advisor suggested they refinance their home for tax advantages. Consequently, on March 9, 2007, Frank secured a \$90,000.00

home loan as sole obligor with Susan signing the deed of trust. (T. 38) The \$90,000.00 note had a balance of \$84,284.00 by the time the divorce was tried in July of 2008 leaving in equity \$15,716.00. (T. 14) Frank had paid all house notes from the original purchase of the home to the date of trial. (T. 131)

The parties stipulated as to all marital assets and their value. In addition to the marital home, which the parties agreed had a value of \$100,000.00, the parties owned a 2005 Mercury GM with no equity; a 2007 Dodge Ram with no equity; a 2006 Harley Davidson having an equity of \$12,500.00; a travel trailer having \$187.00 equity; and, boat and motor with \$3,000.00 equity. These items were to remain in Frank's possession. (T. 14-16, 18) By agreement, Susan received a lawn mower valued at \$400.00 and the household furnishings having a debt thereon that is equal to the value.

Next, the assets in contrast were a tractor and accessories having an equity of \$6,000.00; a Yamaha 4-wheeler sold by Frank prior to trial with an equity of \$3,000.00; a Honda 4-wheeler with equity of \$2,000.00; Frank's 401k values at \$138,171.00; and, Susan's 401k valued at \$20,868.00.

At issue for the Court to decide was the marital home, the tractor and its accessories, a Yamaha 4-wheeler sold for \$3,000.00, a Honda 4-wheeler, Frank's 401k (Thrift Savings Plan) and Susan's 401k. (T. 14-19)

Regarding disposition of the marital home, the Court heard testimony from Frank and Susan. This testimony revealed that the parties had been living in the marital home with their three children for about 16 years and until March 9, 2007, had a debt of \$49,271.00. (T. 38) That on March 9, 2007, Frank borrowed \$90,000.00 against the home and paid off the existing house note of \$49,271.00, paid the balance owed on the

oldest son's Yamaha motorcycle of \$4,795.89, paid off his own Harley motorcycle of \$14,298.39, paid off his Yamaha 4-wheeler of \$2,296.82, paid off the Kubota tractor of \$4,481.11, his Citi Card of \$1,964.37, and his Home Depot card of \$433.60, leaving extra cash of \$12,452.91, which Susan could not account for. (T. 55-57)

On June 12, 2007, in less than three months after encumbering the marital home for \$90,000.00, Frank left home for good. Frank told Susan he was leaving because he was unhappy, (T. 29) according to Frank, he left because he did not love Susan anymore. (T. 118)

At trial, Frank confessed his infidelity and adultery which, according Frank, began the same month, June of 2007, when he left home, and less than three months after paying off all his personal debts with the \$90,000.00 home loan. (T. 116)

According to the record, Frank's 2006 W-2 reflects an income of \$125,124.00 in gross earnings and an adjusted gross income of \$95,197.00. Frank's 2007 gross income was \$113,888.00 and an adjusted gross income of \$87,614.00. Susan's 2006 gross income was \$32,209.00 and an adjusted gross income of \$27,445.00. Susan's 2007 gross income was \$36,296.00 and an adjusted gross income of \$30,381.00. (Appellee's R.E. 7-27)

Susan's monthly adjusted gross income is \$2,202.99 and her monthly living expenses are \$3,218.03, (T. 58, R.E. 7) leaving a monthly shortfall of \$1,015.04.

Jacqueline, one of the two minor children residing with Susan, was considered by the Judge to be fulltime employed and for whom no child support was provided. Rebecca, on the other hand, was not employed fulltime. (T. 22) Frank was unsure as to Rebecca's status as a fulltime employee. (T. 144) Frank testified that he had no problem

continuing to pay the medical bills for the two minor children. (T. 152) Frank further testified that he would provide for the two girls financial needs every month and that the children are in need of support. (T. 167) Frank gave the minor girls a credit card each and paid the bill each month never citing any objection to the Court for so doing. (T. 152)

At the conclusion of the trial and after having received and considered the oral testimony and other documentary evidence, the Chancellor awarded Susan a divorce from Frank on the ground of adultery. Awarded Susan the present custody of Rebecca, subject to visitation rights granted Frank, and directed Frank to pay \$825.00 per month in child support. The Chancellor authorized Susan to claim the minor children as dependents for federal and state income tax purposes, and directed that Frank continue to provide the minor children with credit cards as he had previously provided. Susan was awarded permanent alimony from Frank in the amount of \$500.00 per month to commence on the month after the child support to Rebecca ceases. Susan was further awarded attorney's fees in the amount of \$4,500.00.

Regarding division of marital assets, Frank was awarded his bank accounts, two pistols, the 2007 Dodge, 2005 Mercury, 2006 Harley Davidson, Dutchman Travel trailer and boat and motor. Susan was awarded her vehicle, bank accounts, Honda 4-wheeler, Kabota tractor and accessories, lawn mower, jewelry, laptop computer and household furnishings and other contents. Each were to be responsible for any debts regarding these items. Susan was awarded the ownership of the cemetery lots and her retirement account. Susan was awarded one-half of Frank's retirement and one-half of Frank's Thrift Savings Plan. Frank was directed to convey his interest in the marital home to Susan and pay the

balance of the mortgage on the marital home in full with his Thrift Savings Plan and continue to pay the monthly note on the home until fully paid. (R.E. 2)

That due to an error contained in the Final Judgment, the Court entered an Amended Final Judgment directing Frank to maintain medical insurance on Rebecca and pay all medical bills not covered by insurance, awarded Frank the portable generator and awarded Susan the tires that Frank earlier removed from the Kabota tractor. (R.E. 4)

During the course of the marriage Susan was primarily a caregiver and homemaker. When the children were older she began working odd jobs and having a present job in the shaky loan industry as Frank advanced in the workplace. The parties acquired a modest home and a few marital assets, and after twenty-five years when Frank reached the apex of his career earning a substantial income, he unilaterally decided to end the marriage and enjoy the total fruits of his labors caring less about Susan's drained emotions and financial plight.

### **SUMMARY OF THE ARGUMENT**

In cases where the parties agree to divide a large part of joint marital assets prior to trial leaving in contest only a few for the Chancellor's consideration, the application of the factors announced in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) are of limited value leaving the Chancellor to rely on the principals of equity and fairness in reaching a decision. Here, the parties agreed as to ownership of a large part of their joint assets and submitted to the Chancellor a division of the marital home, tractor with accessories and retirement accounts accumulated by the parties during the course of the marriage. (T. 14-19)



Faced with somewhat a similar situation to the case *sub judice*, the Court of Appeals in *Parsons v. Parsons*, 741 So.2d 302 (Miss. Ct. App. 1999) stated that the “chancery court’s authority to divide marital assets is born from principles of fairness which are rooted in the court’s inherent powers of equity.” “Chancellor’s are empowered to address realty assets and to divide title, including that of the marital home.” Citing the Supreme Court the opinion continued to read: “[I]t is well-established by this court 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. However, there is no automatic right to an equal division of jointly-accumulated property, but rather, the division is left to the discretion of the court... This court, therefore, holds that the chancery court is within its authority and power to equitably divide marital assets at divorce.”

As stated in *Ferguson*, *supra*, the Court is to consider several factors among which is “[T]he 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.*” *Parsons*, *Id.* at 307 (¶24). Not unlike the present case, the chancellor in *Parsons*, *supra*, “found that the parties had distributed principal marital assets prior to instituting the divorce proceedings.”

The Chancellor’s award of the marital home to Susan and divesting title from Frank is not only consistent with our Court’s prior rulings, but consistent with the proof. In awarding Susan the marital home, the record reflects that the parties had lived there for approximately sixteen years as husband and wife, raised three children, two of which are minors, and that in June of 2007 Frank abandoned the home and took up residence with

another woman. (R.E. 2; T. 80, 115-116) *Dobbs v. Dobbs*, 912 So.2d 491, 492 (¶5) (Miss. Ct. App. 2005). Susan had an emotional and needed attachment to the marital home where Frank did not. (T. 80) *Consentino v. Consentino*, 912 So.2d 1130, 1132 (¶11) (Miss. Ct. App. 2005).

The parties having agreed that all assets were joint marital assets, the Court awarded Susan one-half of Frank's retirement account through the Federal Employees' Retirement System and one-half of Frank's Thrift Savings Plan accumulated through his employment with the federal government. (R.E. 2) *Phillips v. Phillips*, 904 So.2d 999 (Miss. 2004).

In awarding Susan the tractor and accessories, the record reflects that such an award was necessary based on maintaining the grounds at the marital home. (R.E. 2; T. 98) Frank made no showing of need of the tractor nor did he give any explanation for its use. (T. 169)

The award of \$500.00 per month in permanent alimony to Susan was supported by the record reflecting a tremendous disparity between Frank and Susan's income. In any event, Frank's payment of alimony is not scheduled to become payable until the award of child support terminates. An award of permanent alimony is within the sound discretion of the Chancellor and the amount awarded in this case is minuscule when compared to Frank's earnings. (R.E. 2) *Ward v. Ward*, 825 So.2d 713, 718 (¶17) (Miss. Ct. App. 2002).

The testimony regarding the minor child, Rebecca, being employed full time or part time was in sharp conflict and the Chancellor, in ordering Frank to pay child support with diametrically opposing testimony before her, chose to err on the side of the best

interest of the minor child and directed the payment of child support. (T. 22, 144-147) *Miss. Code Ann.*, §49-19-101 (Rev. 2004).

Although Frank complains on appeal that he should not have been ordered to maintain medical insurance on Rebecca, pay her medical bills not covered by insurance and provide credit cards for both minor children, the record readily reveals that Frank not only agreed to this situation but submitted to the Chancellor that he would continue to do so. (R.E. 4; T. 145, 152, 158)

Based upon the testimony provided by Susan that she was unable to pay her attorney's fees and had in fact borrowed that which she had paid from her father, (T. 82-83) and considering again the disparity in income, coupled with Frank's marital misconduct, thus prompting legal action on her behalf, the Chancellor elected to exercise the discretion allowed by law in awarding attorney's fees. (Appellee's R.E. 7-27) *Monroe v. Monroe*, 745 So.2d 249 (¶18) (Miss. 1999).

Susan requests that the Chancellor's Final Judgment be affirmed.

### **STANDARD OF REVIEW**

This Court's scope of review in domestic relations matters is limited. *Montgomery v. Montgomery*, 759 So.2d 1239 (¶ 5) (Miss. 2000). The findings of a chancellor will not be disturbed by this Court unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Id.* The Court will accept the Chancellor's findings of fact as long as the evidence in the record reasonably supports those findings. *Norton v. Norton*, 742 So.2d 126 (Miss. 1999).

## ARGUMENT

### **I. Division of Marital Assets**

Frank argues that the Chancellor failed to apply the analysis announced in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) and for this reason the Chancellor's decision should be reversed. Susan asserts that Frank's argument is without merit because the parties, at the outset of the hearing, stipulated as to all marital assets and their value. Furthermore, Frank and Susan, through their respective counsel, announced to the Chancellor that an agreement had been reached to settle ownership and possession of the lions share of marital assets. This left the marital home, Kabota tractor and accessories, Frank's Thrift Savings Plan and Susan's 401K unresolved for disposition by the Chancellor. With just a few remaining assets for the Chancellor's consideration, a *Ferguson*, supra, analysis was negated by the parties substantial agreement.

The impetus of *Ferguson*, supra, is for the Chancellor to seek an equitable division of all marital assets, not a piecemeal division. An agreement to divide marital assets by parties in a divorce removes those items from the Chancellor's consideration unless the Chancellor should have some reason to disagree therewith, and, in the case at bar, the Chancellor merely went along and accepted the parties agreement to divide assets.

In the event this Court should agree that the requirements of *Ferguson* have no application in cases where Chancellors are to decide division of limited marital assets submitted by agreement by the parties for resolution, thus removing the burden from the Chancellor from considering the marital estate as a whole, then the bare principles of equity apply in conformity with the persuading evidence and proof.

The Court of Appeals in *Parsons v. Parsons*, 741 So.2d 302 (Miss. Ct. App. 1999) stated that the “chancery court’s authority to divide marital assets is born from principles of fairness which are rooted in the court’s inherent powers of equity.” “Chancellor’s are empowered to address realty assets and to divide title, including that of the marital home.” Citing the Supreme Court the opinion continued to read: “[I]t is well-established by this court 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. However, there is no automatic right to an equal division of jointly-accumulated property, but rather, the division is left to the discretion of the court... This court, therefore, holds that the chancery court is within its authority and power to equitably divide marital assets at divorce.”

As stated in *Ferguson*, supra, the Court is to consider several factors among which is “[T]he degree to which each spouse has expended, withdraw or otherwise disposed of marital assets and *any prior distribution of such assets by agreement*, decree or otherwise.” *Parsons*, Id. at 307 (¶24). Not unlike the present case, the chancellor in *Parsons*, supra, “found that the parties had distributed principal marital assets prior to instituting the divorce proceedings.”

In this regard, the lower court in accepting the parties prior agreement to divide the majority of joint marital assets, leaving merely a few marital assets for consideration, cannot be held in error for abuse of discretion in reaching a just and equitable decision. Here, as support by *Dobbs*, infra, Frank left the marital domicile leaving his wife of twenty-five years and two minor children choosing to live with another woman. Frank also worked in Memphis, Tennessee, and spent most of his time there. (T. 115) Aside

from the huge disparity in income earnings between Frank and Susan which will be more fully discussed hereafter, these are just a few of the facts that the Chancellor rested the decision to dispose of the case in the manner done and further to make an effort, under the atrocious circumstances, to allow Susan and the children to continue to lead somewhat of a normal life in Frank's permanent absence.

Turning now to the limited assets under consideration by the Chancellor, Susan will start with the marital home.

**a. Marital Home**

Based on a Complaint filed by Susan against Frank for divorce on the ground of adultery, seeking child custody, child support, alimony and division of marital assets, the Chancellor at trial below heard sworn testimony during the trial held on July 1, 2008, and from this hearing entered a Final Judgment on September 15, 2008. (R.E. 2)

Frank assigns five errors for review by this Court regarding division of marital assets, permanent alimony, child support, medical insurance and payment of medical bills, credit cards for the minor children and an award of attorney fees. Frank does not complain of the Chancellor's entry of a divorce against him on account of his adulterous conduct.

It is contended that the Chancellor erred by failing to follow the analysis announced in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) in making a division of marital assets. In looking to the *Ferguson* analysis, the record must be viewed as a whole for proof to support the Chancellor's decision. *Studdard v. Studdard*, 894 So.2d 615 (Miss. Ct. App. 2005).

At the outset of the trial the Chancellor made a careful review of the parties assets, their value and equity, if any, therein. (T. 14-19) Further considered by the Chancellor was the agreement of the parties as to possession and ownership, without contest, of certain assets. No determination was required to be made of the Chancellor regarding non-marital assets as all assets were considered marital in nature. Since the parties submitted their agreement to the Chancellor regarding possession and ownership of certain marital assets, no *Ferguson* analysis was required of the Court in this respect, leaving only distribution of the marital assets in contest by the lower court.

The record reveals that the marital home, Kabota tractor with accessories and the parties respective 401K accounts and Frank's retirement account with the federal government were at issue for distribution by the Court. According to the Final Judgment entered in this action, the Chancellor gave deference to the parties agreement of all other items of marital personal property. (R.E. 2)

The marital home had an agreed stipulated value of \$100,000.00 with a mortgage of \$84,284.00 and an equity of \$15,716.00. (T. 14) The Kabota tractor had an agreed stipulated value of \$6,000.00 with no debt. (T. 16) Frank's Thrift Savings Plan with the federal government was valued at \$138,171.00 and Susan's 401K was valued at \$20,868.00. (T. 19) The marital home had a lien against it in the form of a deed of trust dated March 9, 2007, in the amount of \$90,000.00 and a note of \$762.00 per month for fifteen years. The final payment on the home would be March 20, 2022. (Appellee's R.E. 1-6)

As did the Chancellor below in awarding Susan ownership of the marital home, this Court must consider the relevant and motivating circumstances revealed by the

record. After twenty-five years of marriage and some periods of separation, Frank finally and forever left the marital home, his wife and two remaining minor children on June 12, 2007. However, prior to leaving, Frank convinced Susan to allow him to refinance the existing debt against the home in the amount of \$49,271.91 and borrow \$90,000.00 on March 9, 2007. (T. 38-39) After receiving the \$90,000.00 loan proceeds and paying the existing first mortgage in full, Frank proceeded to pay most of his own personal debts in full and had a remaining balance of \$12,500.00 which, at the time of trial, could not be accounted for. (T. 55-57) Again, the marital home was refinanced on March 9, 2007, and Frank, after paying his debts, abandoned the household on June 12, 2007.<sup>1</sup> (T. 118)

Frank made the personal choice to destroy the stability and harmony of the marriage by electing to make a new life for himself with another woman, yet he contested Susan's right to remain in the marital home with the two remaining minor children, and, although Frank haughtily admitted to his adulterous conduct, he denied any occurrence of infidelity prior to the separation from Susan. (T. 115-116) However, the circumstances indicate otherwise. After securing the loan and paying down his debt, Frank left home two and one-half months later having sexual relations with his paramour the same month of his departure. (T. 120) As a matter of fact he gave his paramour's address as his residence during trial. (T. 115)

In considering an award of the marital domicile, as well as an award of any other marital asset, the Chancellor is to rely on the parties emotional attachment to such asset as provided by the proof. In exploring the record for Frank's reasoning for an award of the marital home, he gave no viable and articulated basis establishing any emotional

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<sup>1</sup>Susan did not sign the promissory note and was never liable for either the first mortgage or refinance. Frank is the solely obligated for the loans on the marital home. Susan only signed the deed of trust.



attachment. When asked if Frank had an objection to Susan keeping the marital home, he responded: "Mr. Prewitt, my honest opinion is, I come here for a divorce and that is why I'm sitting here. That's what the Judge is for. That's the reason we couldn't settle it. I have no problem with Susan having a home and I have no problem with myself having a home. But we couldn't come to terms. So, that's why we're sitting here today." Frank went on to say: "I have no objection of what the Court has down. I'll abide by it." (T. 134-135) Frank resides in Memphis where he is employed four days a week and lives with his paramour on the weekends in Vicksburg. (T. 115) Other than the above and foregoing, Frank expressed no real reason for the Court to award him the marital home either by emotional attachment or otherwise.

On the other hand, Susan testified that this had been her home for sixteen years, each of the two minor children had their own bedrooms, she stayed in the home raising the children as well as taking care of the house while Frank was away working. (T. 37) Coupled with Susan's emotional attachment and obvious lack of means to reside comfortably elsewhere with the two minor children, the Chancellor apparently considered that an award of the marital home to Susan was not only fair and equitable, but justified under the circumstances. In *Love v. Love*, 687 So.2d 1229, 1232, (Miss. 1997) the Supreme Court stated:

We have repeatedly held that in making an equitable division of the marital property, the chancellor is not required to divide the property equally. *Trovato v. Trovato*, 649 So.2d 815, 817-18 (Miss. 1995); *Davis v. Davis*, 638 So.2d 1288, 1292 (Miss. 1994); *Dudley v. Light*, 586 So.2d 155, 161 (Miss. 1991); *Brown v. Brown*, 574 So.2d 688, 691 (Miss. 1990).

In *Davis v. Davis*, 638 So.2d 1288, 1292 (Miss. 1994), the Supreme Court stated:

A spouse is not automatically entitled to an equal division of jointly accumulated property. *Brown v. Brown*, 574 So.2d at 691; *Dillon v. Dillon*, 498 So.2d 328, 330 (Miss. 1986). The matter is committed to the discretion and conscience of the chancellor, having in mind all the equities and other relevant facts and circumstances.

*Dobbs v. Dobbs*, 912 So.2d 491, 492 (¶5) (Miss. Ct. App. 2005) commented further on an award of the marital home to the wife by stating:

Additionally, Don left the marital home in order to live with the woman with whom he had been having an affair since 2001. At the time of their separation, Don and Pat had lived in the home as a married couple for approximately 22 years.

Again, the Court is reminded that Frank and Susan lived in the marital home for approximately 16 years where she raised the family. Accordingly, the reasoning of *Dobbs*, supra, applies *sub judice*. See also *Sandlin v. Sandlin*, 906 So.2d 39, 42 (¶12) (Miss. Ct. App. 2004).

In *Consentino v. Consentino*, 912 So.2d 1130, 1132 (¶11) (Miss. Ct. App. 2005), the Court therein commented on an award of the marital home to the wife by stating:

...Mrs. Jackson's emotional ties to the marital home were much stronger than Mr. Jackson's, as Mrs. Jackson continuously lived in the home and raised her family there while Mr. Jackson did not.

Susan emphasizes and the record reflects that Frank was away from the home over the course of the marriage for extended periods of time in connection with his work while she maintained the home and raised the children. (T. 80)

The Chancellor's award of possession and ownership of the marital home was a proper exercise of sound discretion in light of all relevant facts and circumstances.

Finally, contrary to Frank's assertion, the marital home is not debt free as above shown.

**b. Retirement Accounts**

Frank's retirement account is two tiered consisting of the Federal Employees' Retirement System and Thrift Savings Plan. Susan's sole retirement plan consisted of a 401k with CitiFinancial, Inc., her present place of employment. (R.E. 2, 8, 10)

Consistent throughout the proceedings was Frank's blatant admission of adultery which the Chancellor is allowed to take into consideration in distribution of marital assets, especially when it affects the stability and harmony of the marriage. *Ory v. Ory*, 936 So.2d 405, 412 ¶23, (Miss. Ct. App. 2006).

Our Courts have routinely held that retirement accounts are marital property subject to division. *Phillips v. Phillips*, 904 So.2d 999 (Miss. 2004). In *Phillips*, the chancellor determined that Mr. Phillips' retirement account was joint marital property and made an equal division thereof. On appeal the court, in reviewing the facts from the record as a whole, concluded that Mr. Phillips had asserted no claim against Mrs. Phillips' retirement account for the chancellor's consideration and, as a result, found no merit to his argument and no error committed by the chancellor. Further, the Appellate Court stated, "a chancellor may consider only the factors applicable to the property placed before the chancery court's consideration." *Id.*, at 1003 (¶14).

A review of the record reveals that Frank made no claim to Susan's retirement accounts where Susan made such a claim to Frank's retirement accounts, i.e., FERS and Thrift Savings Plan. Accordingly, Frank's request for review on this issue is without merit. In any event, the Chancellor's order directing Frank "to immediately pay off the

mortgage on the marital home by using his Thrift Savings Plan” cannot be accomplished as written.<sup>2</sup>

### **c. Division of Personal Property**

As determined by the Chancellor and agreed by the parties, all assets are joint marital property. As stated, the parties agreed to a division of most articles of personal property at the outset of trial, thus removing them from the Chancellor’s consideration. *Phillips*, supra.

The only complaint Frank asserts on appeal with regard to personalty is the \$6,000.00 Kabota tractor, bush hog and finishing mower. (R.E. 2) In Frank’s contention of inequities, he fails to recognize that which the Chancellor inevitably took into consideration. Susan testified that she needed the tractor to cut the grass on the land upon which the martial home was situated and that it was impossible to use a conventional lawn mower. (T. 98) Frank on the other hand made no assertion as to the purpose for the tractor to be awarded to him other than being fearful that someone may get hurt in its use. (T.169) The award of the tractor and accessories to Susan was correct and should be affirmed under the totality of circumstances.

## **II. Permanent Alimony**

“The decision to award alimony and the amount thereof is a matter of discretion for the chancellor.” *Ward v. Ward*, 825 So.2d 713, 718 (¶17) (Miss. Ct. App. 2002), citing *Pearson v. Pearson*, 761 So.2d 157 (¶25) (Miss. 2000).

The most distinguishing factor that stands out in the record justifying the Chancellor’s consideration in awarding Susan permanent alimony is the extreme disparity

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<sup>2</sup>The language in the Chancellor’s Judgment fails to meet federal guidelines and will not be honored as written. An award of this nature must be a fixed dollar amount, percentage or fraction of the account.

in income between Frank and Susan. Frank's gross income according to the 2006 W-2 of the parties joint return was \$125,194.00 (adjusted gross income of \$95,197.00) and Susan's gross income was \$32,209.00 (adjusted gross income of \$27,445.00). In 2007 Frank's gross income was \$113,888.00 (adjusted gross income of \$87,614.00) and Susan's gross income was \$36,296.00 (adjusted gross income of \$30,381.00). According to these figures, the family enjoyed a combined gross income of \$157,403.00 (adjusted gross income of \$122,642.00) in 2006 and a combined gross income of \$150,184.00 (adjusted gross income of \$117,995.00) in 2007. The disparity between Frank and Susan's income is glaringly obvious. Subtracting Susan's gross and adjusted gross income from Frank's gross and adjusted gross income reveals a difference of \$92,985.00 in gross income (adjusted gross income of \$67,752.00) in 2006, and \$77,592.00 (adjusted gross income of \$57,233.00) in 2007. (Appellee's R.E. 7-27, T. 131-132) In other words, Frank's income, in both gross and adjusted gross figures, exceeds Susan's gross and adjusted gross income by greater than 70% per year.

In considering an award of permanent alimony the Chancellor considered the sworn testimony and documentary evidence as well as the extreme disparity in income. Also, for consideration, was a marriage of twenty-five (25) years. Frank and Susan had accumulated a few marital assets, the greatest of which was a modest marital home. All other assets were of a personal nature and would deteriorate and require replacement over a relatively short period of time. Thus and although most of these personal assets were removed from the Chancellor's consideration by agreement of division by the parties, the values of the remaining personal articles when weighed against the security of Susan and

the minor children and coupled with destruction of the marital harmony by Frank's conduct, rendered values for the purposes of equitable distribution virtually meaningless.

In considering the award of alimony and equitable distribution of marital property, Frank argues that where one expands, the other must recede. *Nichols v. Nichols*, 254 So.2d 726 (Miss. 1971). While our Supreme Court and Court of Appeals have made the foregoing announcement, upon which Frank relies in seeking reversal of the Chancellor's award of parsimonious permanent alimony, Frank has failed to mention that the award of \$500.00 per month in alimony to Susan is not scheduled to begin until the month following cessation of his payments of child support. (R.E. 2) Consequently, Frank is not paying alimony to Susan anytime soon.

As stated by the Supreme Court in *In Re Estate of Alexander*, 445 So.2d 836, 841 (Miss. 1984), "it is more than a trite phrase that a court of equity is a court of conscience..." and the Chancellor below, in the exercise of good conscience, determined that alimony should be awarded, although small in amount when compared to Frank's earnings, it should not be disturbed on review by this Court. *A fortiori*, a total review of the record indicates that the factors contained in *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993) were considered by the Chancellor in reaching the decision to award permanent alimony.

### **III. Child Support, Medical Insurance, Payment of Medical Bills and Credit Cards**

The testimony regarding Rebecca's employment versus unemployment was at best in sharp conflict. Although Rebecca herself did not testify, Susan, with whom Rebecca was living at the time of trial, testified that Rebecca was employed part time. (T. 22) Frank, on the other hand, was of the opinion that Rebecca was employed full

time. (T. 144-145) This conflict and confusion in testimony and without any other solid evidence, the Chancellor had no other choice than to award child support. *Miss. Code Ann.*, §49-19-101 (Rev. 2004). Moreover, Frank further testified that he would provide for the two girls financial needs every month and that the children are in need of support. (T. 167) Obviously, the Chancellor chose not to ignore Frank's statements in awarding child support for Rebecca.

Frank also contends on appeal that the Chancellor committed error in ordering him to maintain medical insurance on Rebecca and pay all the medical bills not covered by insurance when, in fact, Frank testified that he had no problem continuing to pay the medical bills for the two minor children. (R.E. 4; T. 152) Regarding medical insurance and payment of medical bills, the following exchange occurred on cross-examination of Frank:

Cross-examination of Frank Segree

By Mr. Prewitt:

"Q. And you're paying the medical bills on your children?"

By Frank Segree:

"A. Yes."

By Mr. Prewitt:

"Q. Okay. Do you have a problem doing that?"

By Frank Segree:

"A. No." (T. 152)

Frank's testimony continued.

By Mr. Prewitt:

“Q. You intend to maintain the two girls on your medical insurance?”

By Frank Segree:

“A. Absolutely.”

By Mr. Prewitt:

“Q. And you’ll pay the medical bills that are not covered? You need to answer aloud?”

By Frank Segree:

“A. Yes.” (T. 158)

Based on this testimony, this assignment of error has no merit.

Regarding the award of credit cards, Frank gave the minor girls a credit card each and paid the bill each month never citing any objection to the Court for so doing. (T. 145, 152) The Chancellor merely continued, by Order, that which Frank had volunteered in giving the two minor girls a credit card each and which he obviously was going to continue to do anyway. Therefore and accordingly, the Chancellor cannot be held in error in making this ruling.

#### **IV. Attorney’s fees**

*Whether to award attorney’s fees rests entirely within the discretion of the trial court. Ward v. Ward, 825 So.2d 713, 720 (Miss. Ct. App. 2002), citing, USF & G Co. v. Conservatorship of Melson, 809 So.2d 647 (¶69) (Miss. 2002) An award of attorney’s fees is appropriate when the evidence shows that a party is financially unable to pay them. Id., at 720, citing, Monroe v. Monroe, 745 So.2d 249 (¶18) (Miss. 1999).*

As above shown, there is a huge disparity between Frank and Susan’s income warranting the Chancellor’s consideration of an award of attorney’s fees. The



uncontradicted testimony from Susan regarding attorney's fees clearly showed her inability to pay her legal expenses as the following discourse between her and her attorney revealed, viz:

Direct examination of Susan Segree

By Mr. Prewitt:

"Q. Now, as a result of your husband separating from you, did you retain the services of an attorney?"

By Susan Segree:

"A. Yes, I did."

By Mr. Prewitt:

"Q. And in the course of that, did you incur costs fees and expenses?"

By Susan Segree:

"A. Yes, I did."

By Mr. Prewitt:

"Q. I'm going to hand you this bill. Is that an itemization of the legal expenses that you have incurred in the course of this divorce proceeding?"

By Susan Segree:

"A. Yes, it is."

By Mr. Prewitt:

"Q. Have you been able to pay that bill?"

By Susan Segree:

"A. No, I have not."

By Mr. Prewitt:

"Q. Have any reason?"

By Susan Segree:

"A. I don't have the money."

By Mr. Prewitt:

"Q. And it reflects some payments on there?"

By Susan Segree:

"A. Yes."

By Mr. Prewitt:

"Q. How were those payments made?"

By Susan Segree:

"A. The initial fifteen hundred I borrowed from my dad. And then he's given me about five hundred more to pay."

By Mr. Prewitt:

"Q. So, loans from your father?"

By Susan Segree:

"A. Yes."

By Mr. Prewitt:

"Q. And does he expect those loans to be paid?"

By Susan Segree:

"A. Yes, he does."

By Mr. Prewitt:

"Q. And what about the other money that's shown here?"

By Susan Segree:

“A. It’s just money that I would get extra that I would bring to you.”

By Mr. Prewitt:

“Q. And are you asking the Court to award you attorney’s fees?”

By Susan Segree:

“A. Yes, I am.”

By Mr. Prewitt:

“Q. Is your current income that you receive enable you at all to pay these fees?”

By Susan Segree:

“A. No.”

By Mr. Prewitt:

“Q. And maintain your household and take care of your other financial responsibilities?”

By Susan Segree:

“A. No, it hasn’t.” (T. 82-83)

Under the circumstances and pursuant to the sworn uncontradicted testimony, there is no abuse of discretion in awarding Susan attorney’s fees in this case.

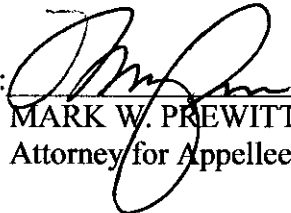
### **CONCLUSION**


As stated in *Carrow v. Carrow*, 642 So.2d 901, 904-05 (Miss. Ct. App. 1994), “it is difficult to adjust conventional values of morality when weighing marital misconduct for purposes of just division of marital property. However, marital misconduct is a viable factor entitled to be given weight by the chancellor when the misconduct places a burden on the stability and harmony of the marital and family relationship.”

Considering Frank's marital misconduct, longevity of marriage, financial needs of Susan and the two minors residing in her home, disparity in income and all other relevant factors, the Chancellor reached the right conclusion in all respects when the record reflects a just and equitable solution to rather simplistic issues. Quoting from *Studdard v. Studdard*, 894 So.2d 615, 619 (¶10) (Miss. Ct. App. 2004), which probably stated it best in cases of this nature, the Court citing *Ward*, 825 So.2d at 719 (¶21) said, "when a chancellor makes a valuation judgment based on proof that is less than ideal, it will be upheld as long as there is some evidence to support [the chancellor's] conclusion." "The record indicates that the chancellor appears to have fully explored the available proof and arrived at the best possible conclusion considering the evidence submitted by the parties."

The Chancellor's ruling should be affirmed.

Respectfully Submitted,  
SUSAN SEGREE

BY:   
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The Chancellor's ruling should be affirmed.


**MOTION FOR ATTORNEY'S FEES**

Appellee moves the Court for an award of a reasonable attorney's fee in following this appeal through the appellate process and preparation of the Brief of Appellee, pursuant to the Court's general rule and law in such cases and Susan's limited income.

Respectfully Submitted,  
SUSAN SEGREE

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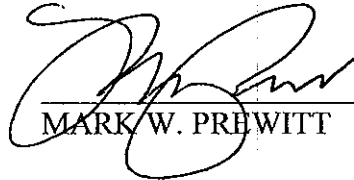
**CERTIFICATE OF SERVICE**

I, Mark W. Prewitt, attorney for Appellee, do hereby certify that I this day mailed, via U.S. mail, postage pre-paid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

R. Lewis Field, Esquire  
Way, Field and Bodron  
Post Office Box 1113  
Vicksburg, MS 39180-1113

Honorable Vicki R. Barnes, Chancellor  
Post Office Box 351  
Vicksburg, MS 39181

DATED this the 23<sup>rd</sup> day of December, 2009.

  
\_\_\_\_\_  
MARK W. PREWITT