

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2009-CA-00757-COA

RT

FRANK A. SEGREE, III

APPELLANT

VS

SUSAN B. SEGREE

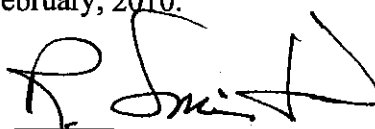
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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. R. Louis Field, Esq.
3. Susan B. Segree, Appellee
4. Mark W. Prewitt, Esq.
5. Chancellor Vicki R. Barnes, Chancery Court Judge, Vicksburg, Warren County, Mississippi.

SO CERTIFIED this the 8th day of February, 2010.



R. LOUIS FIELD
Attorney for Appellant
Frank A. Segree, III

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STATEMENT OF THE CASE

This litigation continues at the appellate level for two basic reasons. First, an objective review of the Chancellor's division and allocation of marital assets between Frank and Susan shows that division to be plainly inequitable. (See Page 8, Appellant's Brief). Second, the discretionary and subjective decision making process employed by the Chancellor was wholly without reference to the mandatory guidelines of *Ferguson* and *Armstrong*. *Ferguson v. Ferguson*, 639 So.2d 478 (Miss. 1994), *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993).

ARGUMENT

Division Of Marital Assets

Ferguson and its progeny require an evaluation and division of marital assets according to certain promulgated guidelines. A trial court's failure to make a point by point *Ferguson* analysis amounts to an abuse of discretion and reversal is required. *Baker v. Baker*, 807 So.2d 474 (Miss.App. 2001).

Susan reasons that her case somehow falls outside the *Ferguson* constraints because she and Frank stipulated as to marital assets and their value, and to an extrajudicial division of some portion of their personal property. She goes on to argue that these actions by the parties left the Chancellor with only minimum decision making and a *Ferguson* analysis is therefore not necessary. The authority cited by Susan for a *Ferguson* exemption is the Court of Appeals decision in *Parsons v. Parsons*, 741 So.2d 302 (Miss.App. 1999).

Before commenting on *Parsons*, a brief return to the facts is in order. Frank and Susan did stipulate to marital assets and their value. Likewise, there was an agreed division of several items of personal property whose total value amounted to about \$16,000.00. However, left for

adjudication by the lower court were issues of divorce, alimony, custody and support of children and their emancipation, disposition of marital assets including the marital home valued at \$100,000.00 and encumbered by an \$84,200.00 mortgage, Susan's 401k valued at \$20,800.00, Frank's 401k valued at \$138,000.00, and Frank's retirement, the value of which was never factually developed.

Parsons does not stand for the proposition that the *Ferguson* factors may be jettisoned for reasons like or even similar to those cited by Susan. In *Parsons*, the lower court litigation and the appeal from that litigation dealt with one issue and that issue was the status as marital property or not of a Mayer Street residence owned solely by the wife at the time of the divorce. The parties in *Parsons* had over the course of their marriage bought, sold and conveyed to each other their respective interests in five (5) separate homes, the last of which was the Mayer Street residence. It was necessary in *Parsons* that the chancellor wade through a complicated series of transfers and conveyances to finally arrive at a determination of the marital asset status of the Mayer Street property. Further, the parties in *Parsons* prior to the divorce action had divided all assets save the Mayer Street house. Not only does the appellate court's *Parsons* decision not absolve lower courts from implementing a *Ferguson* analysis, it specifically requires that lower courts evaluate division of marital assets using the *Ferguson* guidelines and to support their decisions with findings of fact and conclusions of law. Though chastened by the appellate court for its failure to fully comply with *Ferguson*, the decision was affirmed because the chancellor was not manifestly wrong in concluding that the Mayer Street property was a non-marital asset.

Permanent Alimony

The legal proposition that a chancellor has the authority to award alimony is unassailable. But, that authority is discretionary not unbridled, and is tempered by the "standards of justice and equity" set forth in *Armstrong, supra*.

Susan categorizes as “parsimonious” the lower court’s award to her of only \$500.00 a month as permanent alimony. Considered in isolation and taken only against the backdrop of the respective monthly incomes of the parties as Susan does in her argument, her point is perhaps well taken. However, *Armstrong* requires that other factors be brought to bear in the making of an award of alimony. The Chancellor failed to consider *Armstrong* at the hearing below and likewise Susan fails to consider *Armstrong* in her appeal to this Court. Further, by requiring Frank to continue to pay alimony unabated even at and during the time that Susan will be receiving one-half (½) of Frank’s retirement, the Chancellor completely ignores the concept of equity announced in *Ferguson* holding that all issues of divorce related to financial disposition including property division, alimony and child support should be considered together and that where one expands the other must recede.

Finally, living with Susan are her three (3) children. Waldon, an adult over the age of 21, Rebecca and Jacquelyn, twins age 19. All are gainfully employed, none are dependant upon Susan and not one contributes to the financial maintenance or upkeep of the household. Parents are entitled to the services and earnings of unemancipated children. *Marlar v. Smith*, 134 Miss. 76, 98 So. 338 (Miss. 1924). Equity demands a debit to Susan and a credit to Frank.

Child Support For Rebecca

Susan would have this Court affirm the award of child support to her for Rebecca because according to her the proof of Rebecca’s employment was “at best in sharp conflict”. (See Appellee’s Brief Page 7). Let’s look at the record. Let’s look at the proof.

(Direct Examination of Susan Segree, Page 22...)

- 5 Q. What is their plans, if you know, their
6 plans of completing their high school education?
7 A. I don't know at this time. I want them to
8 you know get their high school diploma, whether they
9 have to go back next year and finish and go take that

10 one class that they have to take. That's my
11 preference. Right now, Jacquelyn is working. She
12 works everyday. She works at least forty hours.
13 Q. Where does she work?
14 A. It's Sonny's Groceries down on 61 South.
15 Q. What's she do?
16 A. She's a clerk, does the cash-register,
17 waits on the customers. Rebecca, she just started
18 down at Klondykes and she works weekends at
19 the skating rink.
20 Q. So both of them full-time employed?
21 A. Jacquelyn is, but Rebecca, I don't know
22 what her hours are going to be. As of right now, she
23 is not full-time.
24 Q. As of today?
25 A. As of today.
26 Q. And what are her - - to the best of your
27 knowledge, what is her working schedule. If it's not
28 full-time, what is it?
29 A. I think - - from what she told me she don't

(continued at Page 23...)

1 know the exact days that she will be working. You
2 know, she does not have a schedule yet. And then on
3 weekends she just works at the skating rink.

(continued at Page 24...)

13 Q. You were telling us what your
14 understanding of your daughter's, that's not full-time
15 employed what your understanding of her hours of
16 employment would be. I believe that's where we were.
17 A. She just told me that right now that she
18 didn't have a schedule, a work schedule yet. And she
19 would be working as they called her, as she was
20 needed.
21 Q. Okay. Can you tell the Court - - You have
22 one daughter that is full-time employed and please
23 tell me her name?
24 A. Jacquelyn.
25 Q. And Jacquelyn, what is her hourly rate?
26 A. It's minimum wage.
27 Q. Minimum wage. All right. What about the
28 other daughter, Rebecca?
29 A. I don't know. I didn't ask her.

(continued at Page 25...)

- 1 Q. Would it be anything better, could we
2 expect anything better than minimum wage?
3 A. No.
4 Q. Okay. But you do report to the Court,
5 that it is your understanding that Rebecca will not be
6 full - time employed?
7 A. As far as I know she's not full - time.

On cross examination Susan responded thusly

(Page 86...)

- 15 Q. Okay. You have three children?
16 A. Correct.
17 Q. One of whom is an adult?
18 A. Correct.
19 Q. His name is Robert Waldon?
20 A. Correct.
21 Q. Waldon. And he lives with you?
22 A. That's right.
23 Q. And he works for whom, please, ma'am?
24 A. It's three initials. I don't know. CMI
25 or something like that.
26 Q. You don't know who he works for?
27 A. I know he works at this fabrication place
28 And he works for Brad Davidson.
29 Q. But you don't know who's his employer?

(continued at Page 87...)

- 1 A. Brad Davidson. I don't remember the name
2 of the company.
3 Q. Do you know what he makes?
4 A. No, I don't.
5 Q. You ever inquire?
6 A. No, that's his business, what he makes.
7 Q. Okay. Does he occupy a room in your home?
8 A. He does.
9 Q. Does he eat at your table?
10 A. At times, he does.
11 Q. Do you buy groceries for him?
12 A. I do.
13 Q. Does he contribute to the income of the
14 house?

15. A. No, he don't give me money, no.
 16. Q. Well, that's what I mean? Does he help?
 17. Does he pay his own way?
 18. A. He pays his bills and his stuff. But no,
 19. he does not give me money.
 20. Q. Well, he sleeps under your roof?
 21. A. Correct.
 22. Q. Does he pay for that?
 23. A. No, he doesn't.
 24. Q. He eats food at your table. Is he paying
 25. for that?
 26. A. No, he doesn't.
 27. Q. He uses your electricity. Does he pay for
 28. any of that?
 29. A. No.

(continued at Page 88...)

1. Q. He uses your bathroom. Does he pay for
 2. the water?
 3. A. No.
 4. Q. Does he pay any of the expenses - -
 5. A. No, he does not.
 6. Q. Okay. Do you know how much he adds to the
 7. expenses that you have at your home?
 8. A. No, I don't.
 9. Q. Don't have any idea? Have you ever
 10. considered asking him to help you pay some of these
 11. bills?
 12. A. No, I haven't.
 13. Q. Okay. Is there a reason for that?
 14. A. Well, he's my son and I treat him just
 15. like I treat my other two. I don't ask them; so, I
 16. don't ask him.
 17. Q. All right. In fact, your other two,
 18. Jacquelyn and the other child is Rebecca; is that
 19. correct?
 20. A. That's correct.
 21. Q. Okay. They're both 19 now?
 22. A. They are.
 23. Q. Neither of whom graduated from high
 24. school?
 25. A. Correct.
 26. Q. Neither of whom have the aptitude to go to
 27. college?
 28. A. No, that's not right. Jacquelyn wants to

29. go to culinary arts and Rebecca wants to go to some

(continued at Page 89...)

1. kind of beautician or nail. So, yes, they do want to
2. go.
3. Q. Well, that's not exactly the kind of
4. college I was talking about?
5. A. A four year college; no, they don't.
6. Q. Junior college, active duty. I'm talking
7. about them getting their degree over and above - -
8. A. No, as far as I know they don't.
9. Q. If you let me finish my question, then you
10. can answer to your heart's content?
11. A. Okay.
12. Q. So there is no prospect of that?
13. A. No.
14. Q. Their educational endeavors are over?
15. A. Well, as I know of, yes. But, you know,
16. they change their mind all the time.
17. Q. I understand. None of us knows the future.
18. A. Exactly.
19. Q. But based on past experiences you would
20. say that's probably - - -
21. A. That's probably it.
22. Q. Okay. So we've got two 19 year old
23. girls. Both of whom are working?
24. A. Yes.
25. Q. One of whom, according to your testimony,
26. is employed full - time?
27. A. She is.
28. Q. Do you know what she makes?
29. A. No, I don't. I know she makes minimum

(continued at Page 90...)

1. wage.
2. Q. Do you know or do you not know how much
3. she makes?
4. A. She makes minimum wage.
5. Q. Do you know how much that is?
6. A. It \$ 5.85 an hour.
7. Q. And she works at least a forty hour week?
8. A. Yes.
9. Q. Okay, and that's Jacquelyn.

10. A. That's Jacquelyn.
11. Q. And she lives at your home?
12. A. Yes.
13. Q. And does she contribute at all to the upkeep of home?
14. upkeep of home?
15. A. No.
16. Q. She doesn't pay anything for rent?
17. A. No, she pays none of the utilities. She
18. pays her insurance and her car and her gas and her
19. cell phone.
20. Q. And Rebecca? Same situation with her?
21. A. She lives at the house.
22. Q. And she works at Klondyke?
23. A. She started yesterday at Klondyke's.
24. Q. Full - time?
25. A. I don't know that it's full - time.
26. Q. What - -
27. A. She told me that she was going to work
28. when she was needed. I wouldn't call that full - time.
29. Q. I mean what do you know about these two

(continued at Page 91...)

1. girls. I mean, you don't know if she's working
2. full time?
3. A. She told me she was working when she was
4. needed.
5. Q. It sounds to me like, correct me if I'm
6. wrong, that both of these girls are more or less doing
7. what they want to do when they want. When they want
8. to work, they work.
9. A. No, that's not right. No.
10. Q. Are they beholdng to you in any way?
11. A. No.
12. Q. They do what they good and well please?
13. A. That's not right. They still live under
14. my roof and they go by my rules.
15. Q. And what are those rules?
16. A. That they go to school and they get a job.
17. Q. What school?
18. A. Well they were in high school. They just
19. got out in June.
20. Q. So they're not going to school. What are
21. they other rules?
22. A. That they work.

On direct examination Frank responded thusly:

(Page 144...)

21. Q. And the fact is that now that school is
22. over and their not in school now, they're both
23. working; is that right?
24. A. Yes, sir.
25. Q. Jacquelyn is working full - time?
26. A. Yes, sir.
27. Q. And Rebecca, it's my understanding, is
28. going to be working full - time or just started to work
29. full - time as well?

(continued at Page 145...)

5. Q. Where is Rebecca working, do you know?
6. A. She's at Klondyke's.
7. Q. Is it a full - time job to your knowledge?
8. A. To my knowledge, her work schedule will be
9. six days a week from 10:30 to 6:30 every evening for
10. fifty dollars a day. That's my understanding.
11. Q. Okay. And you got that from Rebecca?
12. A. Yes.

The proof in the record as it relates to Rebecca's employment is clear and certainly not in sharp conflict. At the time of this divorce she was working at Klondykes from 10 a.m. until 6 p.m. six (6) days a week being paid \$50.00 per day. All other aspects of Rebecca's lifestyle and dependancy status are addressed in Appellant's Brief. Rebecca, twin sister to Jacquelyn, is like Jacquelyn emancipated in fact and should be declared so in law.

CONCLUSION

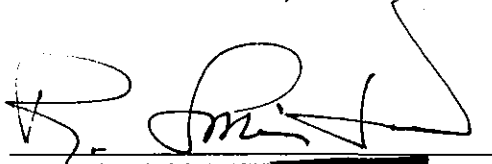
In her Brief, Susan makes an asset by asset analysis of marital asset division, alimony and child support in an effort to justify the Chancellor's Final Judgment. The trial court, is however, charged with determining whether the entire property division including child support and alimony was equitable. *Tillman v. Tillman*, 716 So.2d 1090 (Miss.App. 1998). Frank, like all other

litigants caught up in divorce and the judicial wranglings of related issues of child custody and support, alimony and division of assets is entitled to a decision which is grounded in equity and fair play. Our Supreme Court has determined that the desired end result will most often be obtained by the means application of the guidelines of *Ferguson* and *Armstrong*. The Trial Court's decision here is without reference to either *Ferguson* or *Armstrong* and should be reversed.

Respectfully submitted,

FRANK A. SEGREE, III

BY:

A handwritten signature in black ink, appearing to read 'R. Louis Field', is written over a horizontal line.

R. Louis Field, MSF [REDACTED]
Counsel for Appellant

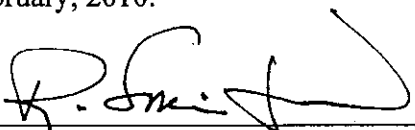
CERTIFICATE OF SERVICE

I, R. Louis Field, do hereby certify that I have this date sent by regular U.S. Mail, postage pre-paid, a true and correct copy of the above and foregoing Appellant's Reply Brief to:

Chancellor Vicki Barnes
P. O. Box 351
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Mark Prewitt, Esq.
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Vicksburg, MS 39181

SO CERTIFIED this the 8th day of February, 2010.



R. LOUIS FIELD