

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

**FRANK A. SEGREE, III**

**APPELLANT**

**VS**

**NO. 2009-CA-00757**

**SUSAN B. SEGREE**

**APPELLEE**

**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court 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 9 day of October, 2009.



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

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### STATEMENT OF THE ISSUES

1. The Court erred in its allocation and division of marital assets and its award of permanent alimony and child support.
2. The Court erred in requiring Frank to pay child support, maintain medical insurance and pay medical bills for Rebecca.
3. The Court erred in requiring Frank to provide Rebecca and Jacqueline with credit cards.
4. The Court erred in awarding Susan periodic alimony.
5. The Court erred in awarding Susan attorney's fees.

## STATEMENT OF THE CASE

The parties to this divorce litigation are Susan B. Segree, Plaintiff/Appellee, hereinafter referred to as "Susan" and Frank A. Segree, III, Defendant/Appellant, hereinafter referred as "Frank".

This action was commenced on July 19, 2007 when Susan filed a Complaint for Divorce in the Chancery Court of Warren County. (CP 5). Frank responded by Answer filed on August 31, 2007. (CP 12). Thereafter, on June 16, 2008 with Court approval, Susan filed an Amended Complaint for Divorce and/or Separate Maintenance and Support. (CP 26). Frank answered the Amended Complaint on June 26, 2008. (CP 34). This cause came to trial on July 1, 2008 before the Honorable Vicki Roach Barnes. Preliminarily, Susan in open court withdrew her claim for separate maintenance and support and the matter came on for hearing as a divorce action. (T 4). The issues presented to the Chancellor for adjudication included divorce, custody of two minor children, support of those children, including payment of medical and dental insurance and other medical expenses and cost of extra-curricular activities in which the children might participate, equitable distribution of all joint marital assets and debt, alimony and attorney's fees.

The court entered its Final Judgment on September 15, 2008 granting Susan a divorce from Frank on grounds of adultery; awarding Susan the permanent care and custody of the minor children Rebecca and Jacqueline and giving Frank reasonable rights of visitation; granting Susan the right to claim both children as dependants for federal and state income tax purposes; requiring Frank to pay Susan \$825.00 per month as child support for the minor child Rebecca; requiring Frank to provide each minor child, Rebecca and Jacqueline, with credit cards for their individual use; awarding Frank ownership of certain items of personal property with the requirement that

all debt for such items be paid by Frank; awarding Susan certain items of personal property with the requirement that all debt for such items be paid by Susan; awarding Susan use and ownership of certain cemetery lots; awarding Susan one hundred per-cent (100%) of her retirement account; awarding Susan one-half ( $\frac{1}{2}$ ) of Frank's retirement account; awarding Susan exclusive use, possession and ownership of the marital domicile located at 80 Lawland Road, Vicksburg; and requiring Frank to convey his interest in the real property to Susan; requiring Frank to immediately pay the 80 Lawland Road mortgage debt in full out of his Thrift Savings account and to pay the monthly accruing mortgage on the marital home until such time as the mortgage is paid in full; awarding Susan one-half ( $\frac{1}{2}$ ) of the funds remaining in Frank's Thrift Savings account after payment of the mortgage debt and charging all penalties and interest for early withdrawal of Frank's Thrift Savings account to Frank; requiring Frank to pay Susan \$500.00 per month as permanent periodic alimony beginning the first day of the month immediately following the cessation of child support payments to Rebecca; and finally requiring Frank to pay to Susan \$4,500.00 in attorney's fees. (CP 43, RE 2).

Following the entry of the Final Decree, Susan on September 17, 2008 filed a Motion For Reconsideration to Amend, Correct and/or Clarify Final Judgment and on September 18, 2008 filed an Amended Motion For Reconsideration to Amend, Correct and Clarify Final Judgment. (CP 37, 39). Frank on September 24, 2008 filed a Motion For Reconsideration suggesting that the court should reconsider its Final Judgment in toto. (CP 41, RE 3). The Court on its own Motion entered an Amended Final Judgment correcting an error due to oversight on the part of the Court and in the Amended Final Judgment required Frank to provide medical insurance and pay medical costs for Rebecca, awarded Frank the ownership of a portable generator which had



been erroneously awarded to Susan, and awarded Susan ownership of certain tractor tires. (CP 48, RE 4). The Court on May 1, 2009 entered an Order overruling all Motions For Reconsideration. (CP 50, RE 5). It is from the Court's Final Judgment, Amended Final Judgment and Order overruling Frank's Motion For Reconsideration that this appeal is taken.

### STATEMENT OF FACTS

Susan and Frank were married on June 4, 1983 in Franklin County, Florida. Three children were born of the marriage, Robert Waldon Segree, age 23, and twins Rebecca May Segree and Jacqueline Marie Segree both age 19. Frank and Susan separated for the final time on June 12, 2007. (T 20-21). Susan is 45 years old, in good health and is a high school graduate. (T 35). Frank is 41 years old and earned his G.E.D. (T 64).

Frank and Susan were married for some 24 years. However, the last ten (10) years were anything but tranquil and fulfilling. Each had in the past commenced and filed a formal divorce action against the other. Neither action ended in divorce. (T 86). The last six or seven years of the marriage were characterized by ill will, indifference, and lack of communication and affection of one toward the other. (T 141). Frank testified that he stuck with the marriage for the sake of his children. (T 140).

Waldon Segree at the time of the divorce was 24 years of age. He lived with his parents at 80 Lawland Road prior to their separation and continued to reside there with Susan following the separation. (T 21, 86). Waldon is employed full time and earns about \$3,800.00 per month. (T 143). He is the beneficiary of free room and board at 80 Lawland Road. He contributes nothing for utilities, food or lodging. Susan describes her relationship with Waldon and the two girls similarly. That is, she doesn't ask any of them to contribute or pay any part of their living

expenses. She asks only that they go to school or work. (T 88).

Two minor children, Rebecca and Jacqueline, each nineteen years of age, live with their mother at the Lawland Road home. Both were poor students. Neither graduated from high school. Neither has aspirations for further matriculation. (T 21-22, 88). Jacqueline is employed full time and earns about \$1,000.00 per month. (T 90). Rebecca works full time and earns about \$1,200.00 per month. (T 145). Neither makes any financial contribution toward their living expenses and both are for all practical purposes independent and self-reliant. The only rule imposed by Susan is either "go to school or work". Neither goes to school nor intends to and both work. Each has her own automobile, her own bank account, and each pays her own expenses with no assistance from Susan. (T 91-93). Frank on the other hand provides each girl with a credit card and pays that bill each month. Credit card expense is about \$250.00 monthly. Frank also provides health insurance coverage for the two girls and pays all other medical bills. (T 152).

Susan is a full-time employee of CitiFinancial and has been for six (6) years. She is an assistant manager with an annual salary of \$32,034.38. (RE 6, T 25, 26). Her 8.05 indicates monthly disposable income of \$2,202.99. Her monthly living expenses of \$3,218.08 include a \$762.00 mortgage payment which she does not pay, \$600.00 for food and household expenses which include cost of food for Waldon, Rebecca and Jacqueline, and \$145.78 for telephone expenses also for Rebecca and Jacqueline. (RE 7). She has almost \$21,000.00 in her CitiGroup 401k plan. (RE 8, T 101-103).

Frank has worked as a mariner all of his adult life. He was a first mate, then a pilot, and finally a master pilot. At the time of this hearing he was captain of the motor vessel Hurley, home port Memphis, Tennessee. When working Frank lives on the vessel. (T 126). Frank's gross

monthly salary is \$6,870.00. His monthly disposable income is \$5,175.00. (T 133, 134). Monthly living expenses approach \$5,000.00. (RE 9). Frank's Thrift Savings Plan (TSP) administered by his employer had a value of \$138,000.00 as of the day of the divorce. (RE 10). There was no credible evidence concerning Frank's retirement plan. Susan made no contribution to either Frank's TSP or retirement. Frank pays the mortgage debt, provides health insurance and medical coverage and care for Rebecca and Jacqueline and to the extent that they need additional financial assistance he generally provides that too. (T 106).

### SUMMARY OF THE ARGUMENT

In cases like this, that is litigation of divorce and related issues of custody, support, alimony and property division, the Court's scope of review is limited under the now familiar rule that Appellate Courts will not disturb a Chancellor's findings unless manifestly wrong, clearly erroneous, or decided by application of an erroneous legal standard. *Mabus v. Mabus*, 890 So.2d 806 (Miss. 2003).

Frank and Susan's story is not exactly like but not completely unlike other stories of marriage, children, failed marriage and resort to litigation to terminate the union, determine the best interest of the children and fairly distribute accumulated assets. Frank and Susan were married for twenty years or so. They have three children, two of whom are under twenty-one. Susan is 45. Frank is 41. Susan is working and has worked for the past six (6) years. Frank is a boat pilot on the Mississippi River and is the principal bread winner. His income is the means by which substantially all assets were acquired and paid for. It is the method and manner of the Chancellor's disposition of assets and other related issues that prolongs this litigation.

The Chancellor first granted Susan a divorce and then by the numbers proceeded to

“redistribute the wealth”. She essentially divested Frank of all ownership of marital assets and piled on by imposing unnecessary child support and unjustified alimony. The asset vesting of Susan and the asset divesting of Frank was all said and done by the Chancellor without even a reference to the *Ferguson* guidelines. Likewise, alimony was thereafter tacked on with no mention of *Armstrong* or its required factor by factor analysis of relevant facts relating to permanent or lump sum alimony. Absent the essential, careful preliminary consideration of *Ferguson* and *Armstrong* guidelines, the Chancellor has by definition abused her discretion. This case should be reversed and remanded.

#### STANDARD OF REVIEW

The Appellate Court’s scope of review in domestic relations matters is limited. *Montgomery v. Montgomery*, 759 So.2d 1238 (Miss. 2000). In a domestic relations case, the Court will not disturb a Chancellor’s findings unless manifestly wrong, clearly erroneous, or unless the Chancellor applied an erroneous legal standard. *Johnson v. Johnson*, 650 So.2d 1281 (Miss. 1994). 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

##### **ISSUE 1. THE COURT ERRED IN ITS ALLOCATION AND DIVISION OF MARITAL ASSETS AND ITS AWARD OF PERMANENT ALIMONY AND CHILD SUPPORT.**

Chancellors are required to evaluate the division of marital assets between divorcees according to certain guidelines and to support their decision with on the record findings of fact and conclusions of law. Those guidelines were first promulgated in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994). A trial court’s failure to make a point by point *Ferguson* analysis is, of

itself, an abuse of discretion that requires reversal and remand. *Baker v. Baker*, 807 So.2d 474 (Miss.App. 2001). The required on the record *Ferguson* analysis is absent in the case at bar.

If for purposes of this appeal and argument, one grapples with the merits of the Chancellor's Final Judgment, inequity pokes Frank in the eye. The test of justice and equity in any award of marital assets and alimony must include not only the benefit to the wife, but also the resulting burden to the husband. Once it is determined that the amount of the award is of sufficient benefit to the wife, there remains the duty of testing the extent of the corresponding burden upon the husband. *Nichols v. Nichols*, 254 So.2d 726 (Miss. 1971). All property division, periodic alimony, and obligations for child support should be considered together. Child support, alimony and equitable distribution of assets are distinct legal concepts but together they command the entire field of financial settlement of divorce. Therefore, when one expands, the other must recede. In the final analysis, all awards should be considered together to determine that they are equitable and fair.<sup>1</sup>

The Trial Court's order in this case is patently unfair, exhibiting a disregard for the meaning of equity. Except for a Kubota tractor and its accessories which have the combined value of \$6,000.00, the division of all other household and related items was agreed to by Frank and Susan. (T 14-18). There remained for allocation by the Court the following properties, real and personal.

(1)	Jointly owned marital home	
	value	\$100,000.00
	mortgage debt	\$ 84,200.00
	equity	\$ 15,800.00

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<sup>1</sup> See *LaRue v. LaRue*, 172 W.Va. 158, 304 S.E.2d 334 cited by the *Ferguson* Court.

- |     |                                 |               |
|-----|---------------------------------|---------------|
| (2) | Susan's 401k                    | \$ 20,800.00  |
| (3) | Frank's 401k                    | \$138,000.00  |
| (4) | Frank's "retirement"<br>account | Value Unknown |

The Court ordered Frank to do the following:

- (1) Pay Susan \$825.00 per month as child support for Rebecca.
- (2) Provide Rebecca and Jacqueline with credit cards in the amounts and manner he previously provided.
- (3) Awarded Susan the exclusive use, possession and ownership of the Kubota tractor bush hog and accessories valued at \$6,000.00.
- (4) Awarded Susan her retirement account (\$20,800 CitiGroup 401k).
- (5) Awarded Susan one-half (½) of Frank's "retirement account".
- (6) Awarded Susan the use, possession and ownership of the marital home at 80 Lawland Road, Vicksburg, Mississippi, and ordered Frank to convey his interest in said home to Susan.
- (7) Ordered Frank to pay the marital home mortgage of \$84,200.00 from his Thrift Savings Plan.
- (8) Ordered Frank to pay the monthly mortgage payment of \$760.00 on the marital home until the mortgage is paid in full.
- (9) Awarded Susan one-half (½) of the balance of Frank's Thrift Savings Plan after payment of the marital home mortgage and required that Frank be responsible for all penalties and interest associated with early withdrawal of the Thrift Savings Plan.
- (10) Ordered Frank to pay Susan \$500.00 per month as permanent periodic alimony beginning the first day of the month immediately following the month the child Rebecca is no longer receiving child support.
- (11) Ordered Frank to pay Susan's attorney's fees in the amount of \$4,500.00.

The inequity of the asset apportionment, alimony and support obligation is plain. Susan

after entry of the Final Judgment is the owner of a debt free marital residence having a value of \$100,000.00. Frank has been divested of his interest in the property. Susan retains ownership of her "retirement account", the CitiGroup 401k in the amount of \$21,000.00. She is awarded an additional \$27,000.00 from Frank's Thrift Savings Plan. She will receive child support for Rebecca in the amount of \$825.00 for about 2 years at the end of which time she will begin to receive permanent alimony in the amount of \$500.00 per month. At Frank's retirement she will receive fifty per-cent (50%) of his benefits and continue to be paid \$500.00 per month alimony. Further, at about the same time she receives a portion of Frank's retirement, she will also be a Social Security recipient. Frank is required to maintain medical insurance and pay all medical bills for both Rebecca and Jacqueline and provide them with credit cards. Consider further, that Susan as the custodial parent spends nothing on her children and likely benefits from their earnings. Finally, Waldon the adult child of Frank and Susan earns almost \$4,000.00 per month, continues to live with Susan at the marital domicile and pays nothing toward his living expenses. Surely, Frank is entitled to "equitable credit" for this.

Frank, however, post Final Judgment finds himself divested of his interest in the marital residence and spends most of his nights on the MV Hurley. The Chancellor practically eliminated Frank's Thrift Savings Account by reducing it from \$138,000.00 to \$54,000.00 (\$138,000.00 - \$84,200.00 mortgage payment) to \$27,000.00 (one half (½) of \$54,000.00 to Susan) to near zero because he also bears the cost of tax and penalty for early withdrawal. Frank will be paying child support, medical bills and other every day expenses for a child nineteen years of age no longer attending school and employed full time. Frank will pay periodic alimony to Susan without cessation even after she begins to receive fifty per-cent (50%) of his retirement. The award to

Susan by the Chancellor exhibits a total disregard of the standards which a Chancellor is obligated to follow. It shows an abuse of discretion resulting in an inequitable result. *Johnson v. Johnson*, 650 So.2d 1281 (Miss. 1994).

**ISSUE 2. THE COURT ERRED IN REQUIRING FRANK TO  
PAY CHILD SUPPORT, MAINTAIN MEDICAL  
INSURANCE AND PAY MEDICAL BILLS FOR REBECCA.**

The uncontradicted greater weight of the evidence shows that Jacqueline, nineteen years of age, dropped out of high school, has no aptitude or intention of further education and is working full time. (T 22, 88-91). Though the Chancellor makes no on the record finding of the emancipation of Jacqueline, it appears that she found this to be so. The Final Judgment does not require Frank to pay support for Jacqueline. (RE 2).

On the other hand, the Chancellor does require Frank to pay support, medical insurance and medical expenses for Rebecca. The uncontradicted greater weight of the evidence is that Rebecca is as independent as Jacqueline. She, like Jacqueline, is a nineteen year old high school dropout, with no aptitude or intention of further education. She works full time. She has her own car, she has own bank account, she pays her own way, receives little or no support from her mother, is answerable only to herself. (T 144-146).

Section 93-5-23 of the 1972 Mississippi Code sets out the authority of the Chancery Court in a divorce proceeding to make and enter orders touching the care and support of children of the marriage. The last sentence of that Section is as follows:

*"The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred pursuant to Section 93-11-65".*

The relevant portion of § 93-11-65 states that:



*(8)(a) The duty of support of a child terminates upon the emancipation of the child. Unless otherwise provided for in the underlying child support judgment, emancipation shall occur when the child:*

- (i) Attains the age of twenty-one (21) years, or*
- (ii) Marries, or*
- (iii) Joins the military and serves on a full-time basis, or*
- (iv) Is convicted of a felony and is sentenced to incarceration of two (2) or more years for committing such felony; or*

*(b) Unless otherwise provided for in the underlying child support judgment, the court may determine that emancipation has occurred and no other support obligation exists when the child:*

- (i) Discontinues full-time enrollment in school having attained the age of eighteen (18) years, unless the child is disabled, or*
- (ii) Voluntarily moves from the home of the custodial parent or guardian, establishes independent living arrangements, obtains full-time employment and discontinues educational endeavors prior to attaining the age of twenty-one (21) years, or*
- (iii) Cohabits with another person without the approval of the parent obligated to pay support; and*

Until amended on July 1, 2008 § 93-5-23 in its relevant part stated that:

*The court may determine that emancipation has occurred and no other support obligation exists when the child:*

- (I) attains the age of twenty-one (21) years; or*
- (ii) marries; or*
- (iii) discontinues full-time enrollment in school and obtains full time employment prior to attaining twenty-one (21) years; or*
- (iv) voluntarily moves from the home of a custodial parent or guardian and established independent living arrangement and obtains full-time employment prior to attaining the age of twenty-one (21) years.*

See also *Ward v. Ward*, 825 So.2d 713, 719 (Miss. 2002).

The recently amended, now effective statute has less stringent standards for emancipation than before the amendment. The Court may now declare as emancipated an eighteen year old who has simply discontinued full time school enrollment. The former additional statutory requirement of full-time employment has been deleted. Rebecca is emancipated in fact and in law and Frank should not be required to support her. If Jacqueline is emancipated as the trial Court seems to have decided, Rebecca is too.

**ISSUE 3. THE COURT ERRED IN REQUIRING FRANK TO PROVIDE REBECCA AND JACQUELINE WITH CREDIT CARDS.**

Frank submits that the greater weight of the evidence is that both Rebecca and Jacqueline are emancipated. If so, then Frank may not be required by the Chancellor to provide them with credit cards.

**ISSUE 4. THE COURT ERRED IN AWARDING SUSAN PERIODIC ALIMONY.**

Everything Frank and Susan own, both real and personal property, was acquired during their marriage. Although, Frank's income was the means by which substantially all property was accumulated and acquired, all property individually or severally owned is by definition marital property. *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994). In a divorce setting marital assets are to be equitably divided, employing the *Ferguson* factors as guidelines. If there are sufficient marital assets which when equitably divided and considered with each spouse's non-marital assets, will adequately provide for both parties no more need be done. *Johnson v. Johnson*, 650 So.2d 1281 (Miss. 1994). The Chancellor's division of assets between Frank and Susan leaves Susan substantially better off than Frank. Susan, post divorce, is the owner of a debt-free home valued at \$100,000.00. Susan has cash assets of almost \$50,000.00. Susan is receiving child support in the amount of \$835.00 per month for a child who needs no support. Susan's monthly disposable income now exceeds her monthly expenses by almost \$1,000.00. Frank on the other hand has been divested of his interest in the marital home. His only cash holding, his TSP account, is depleted because of the Court's requirement to use that fund to satisfy the residential mortgage, share equally with Susan and pay all penalties, interest and cost for early withdrawal. Frank now has disposable income of about \$5,100.00 out of which he must pay monthly living expenses of

\$4,000.00, which said expenses do not include the cost of a habitable place to live.

As a final comment on the issue of alimony, Frank directs the Court's attention to the case of *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993). The *Armstrong* Court established guidelines for awarding alimony, lump sum or permanent. The Appellate Court stated that it is incumbent upon the trial court to utilize certain guidelines when alimony is at issue. There is nothing in the record to indicate that the Chancellor made an *Armstrong* analysis with respect to alimony. The alimony award to Susan should be set aside as inappropriate and/or excessive under the facts or set aside as unreliable because the Court failed to implement as part of its decision making process an *Armstrong* analysis of the factors. *Thompson v. Thompson*, 816 So.2d 417 (Miss.App. 2002), *Lazarus v. Lazarus*, 841 So.2d 181 (Miss.App. 2003).

#### **ISSUE 5. THE COURT ERRED IN AWARDING SUSAN ATTORNEY'S FEES.**

An award of attorney's fees in divorce cases is left to the sound discretion of the Chancellor, assuming the Chancellor follows the appropriate standard. When a party is able to pay her attorney, requiring the other party to pay is inappropriate. The record must reflect that the requesting party is unable to pay her lawyer. *Bates v. Bates*, 755 So.2d 478 (Miss.App. 1999).

In this case, the record does not show that Susan is financially unable to pay her legal fees. Further, there is no finding by the Court of an inability to pay. The record, in fact, indicates that Susan's cash position post divorce is much better than Frank's. The award of attorney's fees was error. *Tynes v. Tynes*, 860 So.2d 325 (Miss.App. 2003), *Johnson*, *supra*.

## CONCLUSION

Financial settlements and dispositions in the context of divorce involve distinct but correlative concepts of marital property division, alimony, lump sum or periodic, and obligations for child support. Settlements and dispositions by judicial fiat are bound to be fair and equitable. To best do fairness and equity for both husband and wife Mississippi jurisprudence requires a careful on the record analysis of all relevant facts pursuant to legal guidelines and standards developed by *Ferguson* and its progeny.

In this case the Trial Court failed to consider separately and make findings of fact as to each of the relevant *Ferguson* and *Armstrong* factors as a prelude to her decision. That failure amounts to an abuse of discretion that requires this case to be reversed and remanded. *Baker v. Baker*, 807 So.2d 476 (Miss.App. 2001).

Respectfully submitted,

FRANK A. SEGREE, III

By:

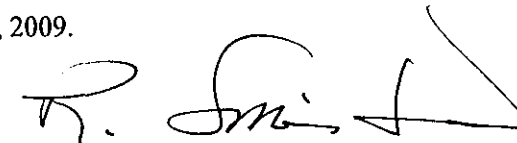
  
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CERTIFICATE OF SERVICE

I, R. Louis Field, attorney for Appellant Frank A. Segree, III, certify that I have this day served a copy of this Appellant's Brief by United States Mail with postage pre-paid on the following persons at these addresses: Mark W. Prewitt, attorney for Appellee, P. O. Box 750, Vicksburg, MS 39181, Chancellor Vicki R. Barnes, P. O. Box 351, Vicksburg, MS 39181.

So certified this the 9<sup>th</sup> day of October, 2009.

  
R. LOUIS FIELD