IN THE SUPREME COURT OF MISSISSIPPI

DEBORAH ANN MEADOR — APPELLANT

VERSUS — CAUSE NO. 2009-CA-00776

WILLIE W. MEADOR, JR. — APPELLEE

APPEAL FROM THE CHANCERY COURT SECOND
JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

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ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

I, the undersigned counsel for the Appellee, do hereby certify that the following persons have an interest in the outcome of the this case. These representatives are made in order that the Justices of this Court may evaluate possible disqualifications or recusals.

Willie Meador, Appellee

Deborah Ann Meador, Appellant

Hon. S. Christopher Farris, Attorney for Appellant

Hon. Brad R. Thompson, Attorney for Appellee

Respectfully submitted this the 16th day of February, A.D. 2010.

BRAD R. THOMPSON

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STATEMENT OF ISSUES ON APPEAL

ISSUE NO. 1:
THE EVIDENCE CLEARLY SUPPORTS THE CHANCELLOR'S OPINION REGARDING THE DEFENDANT'S ACTIVITIES IN THE MANAGEMENT OF GEORGE'S LIQUOR STORE AND THE CHANCELLOR DID CONSIDER THE DEFENDANT'S 2008 W-2.

ISSUE NO. 2:
THE CHANCELLOR WAS CORRECT IN NOT AWARDING REHABILITATIVE OR PERIODIC ALIMONY TO THE PLAINTIFF, DEBORAH ANN MEADOR.

ISSUE NO. 3:
THE CHANCELLOR WAS CORRECT IN NOT AWARDING ATTORNEY FEES TO THE PLAINTIFF.

STATEMENT OF THE CASE

This is a civil action stemming from a Complaint for Divorce. (R.8, R.E. 4-7). filed May 25, 2007, by the Appellant (hereinafter Deborah) On July 5, 2007, the Appellee(hereinafter Willie) filed his Answer to Complaint and Cross-Complaint(R. 18, R.E. 8-12). The trial of all issues was held on January 16, 2009, and after the trial, the Chancellor entered an Opinion.(R. 52, R.E. 15-39). A final judgement incorporating the opinion of the Chancellor was entered April 13, 2009. (R.82, R.E. 40-41). Deborah filed her Notice of Appeal on May 13, 2009. (R. 84, R.E. 42)

STATEMENT OF THE FACTS

Willie and Deborah married on August 16, 1970 and separated in Jones County approximately twenty-five(25) years later on or about October 2005. The parties had two children during their marriage: namely, Wesley Neal Meador and William Ray Meador both of whom are emancipated. Both children received degrees at very expensive private colleges when both had received considerable if not full academic scholarships to public universities in Mississippi. The costs of private college education forced Willie to almost deplete his entire Coca-Cola retirement account while Deborah's retirement account was left intact.(R.E. 48). Willie dropped out of college and began a career with Coca-Cola upon marrying Deborah. Early in the marriage, Willie was the sole income earner while Deborah completed her education and obtained a B.S degree in education, her masters degree and completed her class work for her Doctorate of Education. With all of her credentials, Deborah has a very bright future in education as noted by the Chancellor in his opinion with a much greater earning capacity than

Willie.(R.52, R.E.14-39). Willie admitted his extra-marital affairs; however, at each juncture during the marriage Deborah condoned his activities and chose to stay in the marriage.

SUMMARY OF THE ARGUMENT

The evidence at trial clearly showed that Willie does not have an ownership interest in George's Liquor Store(hereinafter Geroges) and that he is simply a manager and serves in this capacity two-fold, (1) to secure Jon Frank Clark's business with Coca-Cola for all Mr. Clark's numerous businesses and (2) because Willie and Mr. Clark are friends, and as he stated at trial, Willie's predecessor at Coca-Cola lost his job after losing Coca-Cola's contract with Mr. Clark. (R.E. 49-50).

Deborah took a lesser paying job in Jackson, Mississippi in hopes of securing a higher paying job in the future.(R.E. 54). After leaving the marital home Deborah repeatedly refused to return to the home and obtain possession of her personal belongings at Willie's insistence; whereby, her claims of a meager existence in Jackson, Mississippi were of her doing.

Willie does make approximately $3,000.00 more than Deborah only after she took a lesser paying job by choice and Willie has gladly taken on the burden of expiring over $100,000.00 in debt for their kid's college education. Deborah presented no evidence at trial that her station in life that she was accustomed to while married to Willie has changed except for her 8.05 financial statement. The Chancellor clearly analyzed all of the Armstrong factors in deciding not to award Deborah alimony in the form of either rehabilitative or periodic.

The learned Chancellor was correct in not awarding Deborah attorney fees and finding that Deborah had the ability to pay her attorney fees. Although Deborah's counsel submitted a detailed statement in compliance with the requirements of **McKee v. McKee, 418 So.2d 764(Miss. 1982)**; Deborah failed to show an inability to pay her attorney's fees. Given her earning capacity, her significant retirement account balance, her annuity, of which she withdrew money to help pay for her son's wedding, and the money she is set to receive from the sale of the marital home she clearly has adequate means to pay her attorney's fees. The Chancellor's findings in this matter were supported by the Evidence presented at the trial of this case and by the laws of this State and clearly shows no abuse of discretion by the Chancellor.

ARGUMENT

STANDARD OF REVIEW

"This Court's scope of review in domestic relations matters is limited." **Perkins v. Perkins, 787 So.2d 1256, 1260-1261 (Miss. 2001); quoting Montgomery v. Montgomery, 759 So.2d 1238, 1240 (Miss. 2000).** Findings of the Chancellor will not be disturbed nor set aside on appeal "when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." **Flechas v. Flechas, 791 So.2d 295, 299 (Miss. App. 2001), Sandlin v. Sandlin, 699 So.2d 1198, 1203 (Miss. 1997). Denson v. George, 642 So.2d 909, 913 (Miss. 1994).** This Court may reverse a Chancellor's findings of fact only when there is "no substantial evidence in the record justifying his findings."

Mccarrell v. Mccarrell, 2008-CA-00580-COA; citing C.A.M.F. v. J.B.M, 972 So.2d 656, 667, paragraph 44(Miss. Ct. App. 2007). Where there is a question of law, the standard of review is de novo **Morreale v. Morreale, 646 So.2d 1264, 1267(Miss. 1994).**

Issue No. 1:

THE EVIDENCE CLEARLY SUPPORTS THE CHANCELLOR'S OPINION REGARDING THE DEFENDANT'S ACTIVITIES IN THE MANAGEMENT OF GEORGE'S LIQUOR STORE AND THE CHANCELLOR DID CONSIDER THE DEFENDANT'S 2008 W-2.

Willie and Jon Frank Clark both testified that Willie does not have an ownership interest in George's Liquor Store. In his opinion, the Chancellor acknowledged that "the status of George's Liquor Store" occupied the great majority of the testimony presented and the exhibits introduced by agreement." (R.52, R.E.14-39). Willie nor Jon Frank Clark have ever denied that Willie was a very instrumental in negotiating the purchase of George's for Jon Frank Clark. At the onset, Willie was going to have an ownership interest in George's until he was not able to obtain financing for his share of George's. (R.E.62). Exhibit 1 is merely a draft and contains no signatures by any person reflecting who or who does not have an ownership interest in Georges. (Exhibit 1, R.E.71). Further, Exhibit 1 was drafted prior to Willie learning that he would not be able to obtain the necessary financing to have an ownership interest in Georges. Willie submitted a personal financial statement listing as a contingent liability on the JF&W, LLC loan.(Exhibit 9, R.E.86). Debbie believes Exhibit 9 is proof of Willie's ownership in Georges; however, page two of Exhibit 9 clearly explains to the applicant, Willie, that the information provide is given in an effort for said person, Willie, to obtain credit for financing. After submitting Exhibit 9 to the Bank of Jones

County, Willie was not able to obtain financing to purchase an interest in Georges. A copy of the note for the store lists Willie as a "borrower" along with Jon Frank Clark. (Exhibit #7; R.E.88). Exhibit 7 was not completed and executed at the Bank of Jones County as it lacked signatures by Willie and Jon Frank Clark on page 4 of 4 and said document was prepared prior to Willie learning that he could not obtain financing to remain an owner in Georges. Willie does not dispute that he has signed the checks on behalf of Georges while serving in his capacity as manager. Willie chooses to serve as manager of Georges and receives no compensation because Jon Frank Clark's business with Coca-Cola, which is Willies employer, is vital to Coke. Willie's sole job with Coca-Cola is to keep Jon Frank Clark happy and keep his business. Willie's predecessor at Coca-Cola lost his job because he lost Jon Frank Clark's business to Pepsi and Willie was ordered by Coca-Cola to get it back. Because Willie spends a lot of time at George's and signs checks in his capacity as manager, Debbie believes Willie has an ownership interest in George's and receives income from George's. However, none of the documents presented by Debbie provides even a scilanta of evidence that Willie owns a part of George's but the documents do show that he attempted to have an interest. "Exhibit 6", the Limited Liability Operating Agreement on page 30 clearly shows that Willie does not have an ownership interest. (Exhibit 6, R.E.92). Further, Jon Frank Clark testified he is the owner of George's along with his wife and that George's is a registered LLC with the Mississippi Secretary of State's Office under the name JF & W, LLC. Jon Frank Clark testified at trial that JR & W stands for Jon Frank and Wife. (R.E.63). Also, Jon Frank Clark testified that Willie has never be issued a K-1 from George's. (R.E.64). Jon Frank Clark testified that he felt like George's was a losing investment for him.(R.E.65).

Jon Frank Clark is a very successful and wealthy businessman and is able to diminish the debt on

Georges by infusing income from other successful endeavors into Georges.

At the beginning of negotiations between Willie and George Harrison, who was the owner of Georges, there was an option purchase the companion business next door to the liquor store. (Exhibit #1, R.E.71). Again, the documents presented at trial by Debbie are for the most part unsigned or were never executed because Willie was not able to obtain financing and the fact that Mr. Harrison kept changing the terms of the sale, almost daily. Prior to the sale of George's, an audit was conducted by an independent audit service. (Exhibit A, R.E.75). There was no such audit for the companion business next door because ownership never changed hands and it is safe to say Mr. Harrison's wife is there today selling tobacco.

The Honorable David Ratliff was the attorney for Jon Frank Clark and handled the transactions between George Harrison and his wife, and Jon Frank Clark. Willie was used primarily as a go between by the two parties because they did not know each other. Jon Frank Clark fought the disclosure of documents pertaining to the financial information regarding George's because he and his wife are the owners not Willie. (R. 38, R.E.66).

A review of section 6.1, management; 8.3 Authority to bind the Company; 8.4 actions of the manager simply gives the manager the ability to bind the company. (Exhibit #6, R.E.92). Section 8.6 Compensation of managers entitles "Willie" to "compensation in an amount to be determined from time to time by the affirmative vote of a majority of the members." Debbie in her brief asks "Why is this in the agreement if Willie is not to be compensated?" This provision is there to allow a manager to be compensated; however, to date neither member has voted to

compensate Willie other than the fact that Jon Frank Clark keeps using Coca-Cola products in his

numerous businesses.

Willie at the time of the trial was required by the Court to produce unto the Court a copy of his W-2 for 2008. (R.E.68). Willie did in fact provide unto the Court and the Honorable S. Christopher Farris his W-2 for 2008 as requested by the Court. (R.E.127-128).

Defendant would submit that the Chancellor gave great consideration to the "Operating Agreement" as well as each and every document entered as evidence at trial in completing his analysis. The fact is that Willie wanted to and tried to obtain an ownership interest in George's but he could not obtain financing and has served as manager without compensation mainly in an effort to keep Jon Frank Clark's business for Coca-Cola.

Issue No. 2. The Chancellor was correct in not awarding to the Plaintiff Rehabilitative or Periodic Alimony.

The Chancellor correctly applied the necessary factors in reaching his conclusion on the property division and the non-award of alimony. The factors listed in *Armstrong* are as follows:

1. The income and expenses of the parties;
2. The health and earnings capacity of the parties;
3. The needs of each party;
4. The obligations and assets of each party;
5. The length of the marriage;
6. The presence or absence of minor children in the home, which may require that

one or both parties pay, or personally provide child care;

7. The age of the parties;

8. The standard of living of the parties, both during the marriage and at the time of the support determination;

9. The tax consequences of the spousal support order;

10. Fault of misconduct;

11. Wasteful dissipation of assets by either party; or

12. Any other factor deemed by the Court to be "just and equitable" in connection with the setting of spousal support.

Armstrong v. Armstrong, 618 So.2d 1278 (Miss. 1993).

As evidenced in his opinion, the Chancellor thoroughly analyzed all the facts presented at trial by both parties and his determination that Debbie should not receive any type alimony is supported by the evidence.

The Chancellor in his opinion analyzed each Armstrong factor and gave his opinion as follows:

As to the first Armstrong factor, **the income and expenses of the parties** the Chancellor recognized that Willie makes about $3,000.00 more a month, both gross and net, than Debbie. However, Debbie testified that her income at the time of trial was lower than it had been in the past because she took a job with the State Department of Education in hopes of obtaining a more prestigious and lucrative job in the future. Given her education and certifications, Debbie clearly has the ability to earn an income equal to or above that of Willie.

As to the second Armstrong factor, **health and earning capacity of parties**, the

Chancellor correctly points out in his opinion that Willie's earning capacity is maxed out with Coca-Cola and that Deborah admitted at trial that the opportunity to advance and earn more income than she currently receives is available to her.(R.E.31). Deborah is highly educated with unlimited options in the education field and should this Court remand this matter to the trial Court, Willie will be prepared to show evidence that has only taken place since the trial that Deborah has taken her retirement from the State of Mississippi and is now teaching privately at William Carey College.

As to the third Armstrong factor, **the needs of each party**, the Chancellor was correct in his opinion that outside of a car this factor was equal between the parties. Also, once Willie retires from Coca-Cola, which is near, he will incur the expense of purchasing his on vehicle.

As to the fourth Armstrong factor, **obligations and assets of each party**, the retirement accounts of both parties were accumulated during the marriage; therefore, subject to equitable distribution among the parties. The chancellor's determination that Deborah's retirement assets capable of producing income in addition to Social Security are significant and sorely lacking for Willie. Willie has depleted his retirement account with Coca-Cola to educate their children while Deborah's account continues to grow. As evidence by the balance in Willie and Deborah's retirement accounts as presented at trial, Deborah clearly has a greater earning capacity and the ability to maintain her station in life should she take retirement or be forced to retire; whereas, Willie clearly does not.(R.E.29).

The fifth, sixth and seventh Armstrong factors do not favor either parties. As to the eight

Armstrong factor, **the standard of living of the parties both during and at the time of the**

support determination, neither parties standard of living changed even though Deborah at trial portrayed her lifestyle since separation as that of a Spartan existence. Willie's income prior to the separation, and since separation has been relatively the same. Although Deborah's income decreased some as previously noted, she testified that her reduction in pay was of her own doing in order to advance in her career. Willie repeatedly asked Deborah to come and get her personal belongings from the marital home after separation, which she would not do; therefore, her testimony of being forced into a Spartan lifestyle as far as personal belongings was of her own doing as well. Willie depleted his retirement to educate his two children leaving his retirement assets capable of producing income sorely lacking as compared to Deborah's. (R.E.33).

The ninth Armstrong factor does not favor either party. As to the tenth Armstrong factor, **Fault of misconduct of the parties**, Willie admitted to his extra-marital affairs; however, Deborah condoned many of the affairs throughout the marriage.

The eleventh and twelve Armstrong factors do not favor either party.

The Chancellor's analysis and application of the Armstrong factors was correct in that neither party clearly outweighed the other. Because of Deborah's significant retirement account as compared to Willies', who depleted his for their children's education, and Deborah's greater earning capacity in the future, the Chancellor did not show any abuse of discretion by not awarding Deborah alimony of any form.

After applying the Armstrong factors, the learned Chancellor correctly applied the *Cheatam* factors to determine the applicability of a lump sum alimony award. The four *Cheatam*

factors are:

1. Substantial contribution to the accumulation of the payor's total wealth by quitting work to become a homemaker or assisting in the spouse's business;

2. A long marriage;

3. The recipient spouse has no separate income, or the separate estate is meager by comparison;

4. The recipient spouse would lack financial security without the lump-sum award.

Cheatham v. Cheatham, 537 So.2d 435(Miss. 1998).

As to the *Cheatham* factors, one, two, and three are equal. As to the fourth factor, the Chancellor correctly made use of all the evidence presented at trial, including the incorporation of Deborah's significant retirement account balances as compared to Willies depleted retirement account. The balance alone in Willie and Deborah's retirement account(s) speaks volumes as to which party has a better future as far as financial security. Neither party denies that Willie withdrew approximately $100,000.00 from his Coca-Cola retirement account to educate their children. Plainly stated, Willie has no "financial security" unlike Deborah. Willie is 59 years of age and his ability to replenish his retirement account is impossible at his age.

With only one of the four *Cheatham* factors being an issue and that factor clearly weighing in Willie's favor, the Court was correct in not awarding alimony of any form to Deborah. Deborah wants one to believe she was forced to leave home with the clothes on her back and not much else when she moved to Jackson, Mississippi. Deborah chose to move to Jackson for career advancement opportunities, and she was asked repeatedly by Willie to come and get her belongings

and she refused to retrieve them. At the time of the trial Willie's income was approximately

$3,000.00 more than Deborah; however, this difference in income was only because Deborah took a pay cut to pursue career advancement opportunities. Should this Court remand this matter to the trial court on the issue of Alimony, Willie will be prepared to show evidence that has only taken place since the trial that Deborah has taken her retirement from the State of Mississippi and is now teaching privately at William Carey College.

In **Armstrong v. Armstrong, 618 So.2d 1278, (Miss. 1993); citing McNally v. McNally, 516 So.2d 499, 501 (Miss. 1987),** this Court's standard of review is " we will only interfere where the decision is seen as so oppressive, unjust or grossly inadequate as to evidence and abuse of discretion." In **Owen v. Owen, 2008-CA-00734-COA, citing Cherry v. Cherry, 593 So.2d 13, 19 (Miss. 1991)**, this Court held: "whether to award alimony and the amount to be awarded, are largely within the discretion of the chancellor." Further, in *Owens*, citing **Tynes v. Tynes, 860 So.2d 325, 328, paragraph 6, (Miss. Ct. App. 2003)(quoting Johnson v. Johnson, 650 So.2d 1281, 1287 (Miss. 1994)),** "if there are sufficient marital assets, which when equitably divided and considered with each spouse's nonmarital assets, will adequately provide for both parties, no more need be done." The Chancellor's review of all the appropriated factors in determining whether or not to award alimony to Deborah was correct and clearly shows that his decision was not oppressive, unjust, or grossly inadequate and that Deborah's ability to maintain her station in life is intact and viable.

ISSUE NO. 3

THE CHANCELLOR WAS CORRECT IN NOT AWARDING ATTORNEY FEES TO DEBORAH.

The Mississippi Supreme Court has historically given great deference to a Chancellor in the award of attorney fees in divorce actions. However, the Court has found, "We follow the general rule that where "a party is financially able to pay her attorney, an award of attorney's fees is not appropriate." **Crowe v. Crowe, 641 So.2d 1100, 1105 (Miss. 1994), citing Martin v. Martin, 566 So.2d 704, 707 (Miss. 1990); Carpenter v. Carpenter, 519 So.2d 891 (Miss. 1988).** "It is the function of the Chancellor to weigh all of the facts and assess the circumstances and to award attorney fees accordingly." **O'neill v. O'neill 501 So.2d 1117, 1119 (Miss. 1987).** An award of attorney's fees in a divorce action is entrusted to the sound discretion of the chancellor. **Stigler v. Stigler, 2008CA-00813-COA, citing R.K. v. J.K., 946 So.2d 764, 778, paragraph 43, (Miss. 2007).**

In the case at hand, Deborah is highly educated, has a significant income through the State of Mississippi Department of Education and has a considerable retirement as opposed to Willie, whose only retirement account with Coca-Cola, has been depleted to educate their children. Deborah's counsel submitted a detailed statement in compliance with the requirements of **Mckee v. Mckee, 418 So.2d 764 (Miss. 1982)** and such was noted by the Chancellor in his opinion. However, the paramount issue is Deborah's "ability to pay" and not her wishes or desires that Willie pay her attorney's fees. In *Monroe,* the Supreme Court held that Attorney fees are appropriate only where a party is financially unable to pay them. **Monroe v. Monroe, 745 So.2d**

249, 253, paragraph 18, (Miss. 1999). Deborah did not present any supporting evidence showing a great disparity in income at trial that she couldn't pay her attorney's fees and considering her present income, significant retirement account, future earning capacity and the proceeds from the sale of the marital home she will receive, the Chancellor was correct in not awarding attorney's fees.

CONCLUSION

Willie was forthright regarding his involvement with George's. Deborah's claims for alimony and attorney fees are meritless. Therefore, Willie would show that the trial court's ruling was and is supported by the laws of the State of Mississippi and the facts of this case. Appellee, Willie Meador, would request that this Court affirm the trial court's ruling in that Willie has no ownership interest whatsoever in George's Liquor Store, and that Deborah should not be awarded rehabilitative or periodic alimony and that Deborah has the ability to pay her attorney fees. The Chancellor clearly did not abuse his discretion and as stated in *Humphries*, "the Chancellor's goal is to achieve equity", which he did. **Humphries v. Humphries, 904 So.2d 192, 199, paragraph 24, (Miss. Ct. App. 2005).**

Respectfully submitted,
WILLIE MEADOR, Appellee

BY: _____
BRAD R. THOMPSON

CERTIFICATE OF SERVICE

I, the undersigned do hereby certify that I have this date mailed a true and correct copy of the foregoing Brief of Appellee, Willie Meador to the Mississippi Supreme Court Clerk, Ms. Kathy Gillis, Post Office Box 249, Jackson, MS 39205; Honorable S. Christopher Farris , 6645 U.S. Hwy. 98W Suite #3, Hattiesburg, MS 39402; Hon. Gene Fair, Chancery Court Judge, P.O. Box 872, Hattiesburg, MS 39403 by regular United States Mail, postage prepaid.

Dated this the 16th day of February, A.D. 2010.

BRAD R. THOMPSON