

CERTIFICATE OF INTERESTED PARTIES

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

Deborah Ann Meador, Appellant

Willie Meador, Appellee

Hon. Brad Thompson, Attorney for Appellee

Hon. S. Christopher Farris, Attorney for Appellant

Respectfully submitted this the 4th day of December, A.D. 2009.


S. CHRISTOPHER FARRIS

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STATEMENT OF THE ISSUES

ISSUE NO. 1:

THE CHANCELLOR ERRED IN NOT CONSIDERING THE SUBSTANTIAL ACTIVITIES OF THE DEFENDANT IN THE MANAGEMENT OF GEORGE'S LIQUOR STORE

ISSUE NO. 2

THE CHANCELLOR ERRED IN NOT AWARDING TO THE PLAINTIFF REHABILITATIVE OR PERIODIC ALIMONY

ISSUE NO. 3

THE CHANCELLOR ERRED IN NOT AWARDING TO THE PLAINTIFF ATTORNEY FEES

STATEMENT OF THE CASE

This matter is before the Court for review of the Chancellor's failure to consider the mutual support and benefits the Defendant received from his alleged "non-compensated work" for George's liquor store. The Chancellor further erred in failing to award to the Plaintiff rehabilitative alimony and/or periodic alimony as well as attorney fees. This case

was presented to the Chancellor upon the plaintiff's complaint for a divorce on the grounds of adultery and the Defendant's Answer of denial and cross complaint for divorce on the grounds of habitual cruel and inhuman treatment or in the alternative irreconcilable differences. (C.P. 8-12; 18-23; R.E.5-15). The trial of all issues was held on January 16, 2009. After the trial, the Chancellor entered an opinion. (C. P. 52-81, R.E.22-51)

A final judgment incorporating the opinion of the Chancellor was entered on April 13, 2009. (C.P. 82-83, R.E.52) Mrs. Meador filed her notice of appeal on May 13, 2009. (C.P. 84; R.E. 54).

STATEMENT OF THE FACTS

Deborah Ann Meador ("Debbie") and Willie W. Meador, Jr. ("Willie") married on August 16, 1970 and separated in Jones County a little over twenty five [25] years later in October of 2005. In May of 2007, a year and a half after they separated, Debbie brought her suit for divorce against Willie. Willie is manager of the local Coca-Cola plant and has worked for Coca-Cola since high school. Debbie is an educator who has spent all of her adult life involved in the education of Mississippi children. She was working for the State of Mississippi Department of Education at the time of the divorce trial.

Willie has been involved with other women throughout their marriage, with his first affair occurring shortly after they married. Debbie caught him then, and again in the 80's, when she caught him with the mother of one of her students. The student recognized her when she burst into the residence of the mother. The child was present along with Willie, to her great embarrassment. According to Debbie, Willie's relationship with Amber began shortly after Amber graduated from high school and was discovered by Debbie after a call from Amber's boyfriend. Amber's mother was one of Debbie's co-workers at the school, and

her children went to the school where Debbie taught. She was humiliated then, and further humiliated later when Debbie's 75 year old mother saw Willie in a Casino kissing a girlfriend, presumably Amber. (R. 83, 84 R.E. 73, 74)

Mr. Meador acknowledged on cross-examination to numerous affairs. He also acknowledged his current relationship with Amber Herrington a young girl who worked for "Willie" at Coca Cola and is now working for "George's Liquor Store." (R.16-18; R.E.60, 61). He admitted to having sexual relations with Amber in the marital home.

SUMMARY OF THE ARGUMENT

After being married for over 25 years to Willie Meador, the Court granted Debbie a divorce on the grounds of uncondoned adultery. Plaintiff would submit that the Chancellor did not sufficiently review the terms of the "operating agreement" and did not give exhibits 1, 2, 3, 5, 6, 7, 8, and 9) sufficient weight in his analysis of Willie's interest in George's Liquor Store. The Chancellor also did not request from Defendant his W-2 for 2008 from Coca-Cola as previously ordered to do so prior to reviewing and deciding the financial issues of the parties. (R. 20, 21; R.E.62, 63).

Debbie left the marital home with the clothes on her back, the clothes she was able to put in her car, a car note and monthly living expenses in an apartment in Jackson, Mississippi. She also testified that her current employer has budget cuts and hiring freeze in place with no chance of raises. (R.89, R.E. 76). On the other hand, Willie makes \$3,000.00 a month more than Debbie and according to him is only job with Coca Cola is to make sure John Frank Clark keeps his business with Coca Cola. He also has time to manage a liquor store without compensation. A review of Debbie's income and expenses clearly revealed a deficit.

An award of periodic alimony flows from the obligations of the husband to support his wife in the manner to which she has become accustomed to the extent he is able to do so. *Watson v. Watson*, 724 So.2d 350, 355 (P 17) (Miss. 1998). A review of the Armstrong factors clearly favored Debbie and the Chancellor erred in not awarding to her alimony in the form of either rehabilitative or periodic.

The Chancellor erred in not awarding any contribution from Willie for the payment of her attorney fees. Mrs. Meador's counsel submitted a detailed statement in compliance with the requirements of *McKee v McKee*, 418 So.2d 764 (Miss. 1982); The Chancellor even acknowledge such compliance in his opinion. Once the charges are shown to be reasonable, proven and undisputed, the failure to award attorney fees is an abuse of discretion. *Armstrong v. Armstrong*, 618 So.2d 1278, 1282 (Miss. 1993). Mrs. Meador testified that she was unable to pay the balance of the attorney fees. A party's means and ability to pay must include awards of alimony and distribution of marital property. . *Brooks v. Brooks*, 652 So.2d 1113, 1122 (Miss. 1995). This was an abuse of discretion by the Chancellor.

ARGUMENT

ISSUE NO. 1:

THE CHANCELLOR ERRED IN NOT CONSIDERING THE INTEREST OF THE DEFENDANT IN THE MANAGEMENT OF GEORGE'S LIQUOR STORE NOR THE DEFENDANT'S 2008 W-2

The testimony of Debbie was that during the marriage Willie acknowledged to her that he and John Frank had bought "George's Liquor Store". In his opinion, the Chancellor completely ignored the compelling circumstantial evidence of "Willie's ownership or financial interest in George's liquor store. The chancellor noted the following :

"It was his [Willie] negotiations on behalf of Jon Frank which got the Liquor Store from its owner, George Harrison, a crusty veteran pilot of World War II, a former County Supervisor, and someone who changed his mind weekly on whether or not the sale would take place and at what price if it did. Harrison got along with Willie pretty well, but did not trust or like Jon Frank very much." (C. P. 66, R.E.36)

This statement is in direct contradiction of Willie's testimony as an adverse witness. He testified:

"That was Jon Frank's agreement with—that was negotiated between him [Jon Frank] and George Harrison, that is correct." (R. 24, R.E.64).

Willie met with Attorney David Ratliff, who drew up an agreement where in Willie was originally going to be buying the business solely and then the next draft, he and John Frank were going to be partners and owners of the business. (Exhibit #1, R.E.83-97) Ironically, "Willie" has not advised his current employer Coca Cola of his "management duties" with George's Liquor Store. Coca Cola has a stringent policy against such arrangement by their employees. (R. 25, Exhibit # 2, R.E.65, 98-107). This would explain all of the efforts of "Willie" to hide his ownership interest in this business.

"Willie" submitted a personal financial statement listing as a contingent liability on the JF& W, LLC loan. (Exhibit #9, R.E. 230). In fact he checked the box marked *"as endorser, co-maker, or guarantor"* . A copy of the note for the store lists Willie W. Meador as a *"borrower"* along with Jon Frank Clark. (Exhibit # 7, R.E. 138-141) The evidence is undisputed that he signed all of the checks for the store and was for all intents and purposes was the manager/part owner. (Exhibit #8; R.E.142-229). Out of all 75 managers Mr. Clark employs in his various businesses, Willie is the only one working without compensation and is a cosigner on a \$500,000.00 loan. (R.67, R. E.72)

George's Liquor Store at the time of trial had been operating under the new owners

“Willie” and Jon Frank for a year and eight months and had already paid back almost \$ 200,000 of the original \$500,000.00 loan to Bank of Jones County. (R. 34; R.E.) Yet, Jon Frank tried to characterize it as a losing investment that he paid too much for. (R. 50, R.E. 70).

There was also an option to purchase the companion business next door to the liquor store. (Exhibit # 1, R.E.83-97). Even though both Willie and Jon Frank denied ownership in the business 30 days after the purchase of the liquor store a check in the amount of \$100,556.97 was paid to George Harrison the owner of the companion business.(Exhibit 8, p. 9 of May 2007 statement; R.E. 153) This was consistent with the terms of the option, giving Willie and Jon Frank the option of purchasing the companion “George’s discount Tobacco and Beer.”

Willie denied in discovery responses any ownership interest in any of the businesses as well as his adulterous actions during the marriage. (R. 16, 22; R.E. 60) Willie fought access to the above records by Debbie.(C.P. 30; R.E. 16, 18) Hon. David Ratliff attorney who handled the transaction between George Harrison and his wife, Willie and Jon Frank also fought the disclosure of the documents. (C.P. 38; R.E.20).

The only bill of sale offered into evidence was Exhibit # 1. Willie denied he ever saw the operating agreement nor is it dated. (R 36, R.E. 68) A review of the terms of that “operating agreement” listed Jon Frank Clark and his wife as members and Willie as Manager.

A review of *section 6.1, management ; 8.3 Authority to bind the Company; 8.4 actions of the manager* clearly does not give Mr. Clark and his wife control over the company. (Exhibit #6, R.E. 120, 122, 123). Believe it or not, all of the control is vested in

allegedly non-compensated manager “Willie”. *Section 8.6 compensation of manager* entitles “Willie” to “compensation in an amount to be determined by a majority vote of the Members.” Why is this a part of the agreement if Willie is not to be compensated?

Willie at the time of trial had not supplemented his 8.05 to reflect current financial information as required by rule 8.05 of the Uniform Chancery Court Rules. Willie was to supplement the record with a copy of his W-2 for 2008 which was not done prior to the Chancellor issuing his opinion.(R. 45; R.E. 69)

Jon Frank who is a shrewd businessman and quite successful could not explain why the purchase price of the store on the check from David Ratliff was identical to the terms of the bill of sale to Willie and Jon Frank. (R. 50, R.E. 70). This same shrewd and successful businessman had no explanation for the additional \$ 100,556.97 check made payable to George Harrison 30 days after the closing on the sale of the liquor store. Mr. Clark testified that “ to be honest with you , I did not know until this morning that Willie was still signing checks” (R 66, R.E.71) The documents and the course of conduct of Jon Frank and Willie is contradictory to their sworn testimony.

For analysis purposes, in *Schwartz v. Schwartz*, 702 So.2d 1210, 1211 paragraph 7 (*Miss. 1997*), the Court stated

“... This rationale, along with the facts of this case, accurately reflects the difficulty a providing spouse faces in presenting direct evidence of mutual financial support between cohabiting parties. The parties who live in cohabitation can easily and purposely keep their condition of mutual financial support concealed from the paying spouse, as well as from the courts...”

The same is true for divorcing spouses, especially when the offending spouse’s “best friend”

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).

It is the Chancellor’s analysis of the facts and his reasoning that are not supported by the evidence and his own analysis.

The Chancellor in his review of the first Armstrong factor, ***the income and expenses of the parties*** stated :

“ Willie makes \$3000.00 more a month both gross and net, than Debbie. He get his transportation subsidizes by his employer.”(C.P.74; R.E. 44) The chancellor based his analysis upon Willie’s 2007 8.05 with out the benefit of the 2008 W-2 that was to be supplemented in the record. This also assumes that Willie is not lying about his financial income and interest from George’s Liquor Store. This factor clearly favored Debbie.

As to the second Armstrong factor, ***health and earning capacity of the parties*** the Chancellor places entirely too much emphasize on the work life of Willie versus Debbie and Willie’s alleged “peak” in his work ability. His statement that “ Debbie may actually work longer than Willie... is nothing more than conjecture. Willie was 58 and Debbie was 56 at the time of trial. Further, this is in direct conflict with Debbie’s testimony regarding budget cuts, hiring freeze and the lack of raise and advancement.(R. 89, R.E. 76) One need only consider the Governor’s recent call to consolidate colleges, reduce athletic programs and to cut administration in education as clear evidence of the limitations of one working in state education.

As to the third Armstrong factor, ***the needs of each party***, the chancellor found that Willie’s need for a vehicle is less than that of Debbie. In her complaint for a divorce she

specifically asked that Willie be responsible for the payment of all indebtedness during the marriage including any and all expenses associated with her automobile.(C.P. 9; R. E.6). The vehicle she had during the marriage Willie sold without her knowledge and she was forced to purchase another vehicle. (R.97; R.E. 79) This factor should have favor Debbie.

As to the fourth, Armstrong factor, *the obligations an assets of each party*, the chancellor state Debbie has significant short term, high interest debt, Willie has significant long term low interest debt and about two thirds the amount of short term debt that Debbie has. The Chancellor found that because Debbie had more retirement than Willie she could produce more income in addition to Social Security. What has retirement assets got to do with two individuals who are not near retirement age and the monthly debt obligations are due and payable now, not when she retires. This analysis is in direct contradiction to another area of his opinion where the chancellor states "It could be argued that the \$35,000.00 short term debt Debbie incurred after her voluntary removal from the marital home might be considered her's and not part of the mix to be divided in context of considerations of alimony. Since factors 6 and 7 hereafter have received recent significant emphasis by the Courts, such debt will, however, **be considered** in both the division of property and the **consideration of alimony** in one form or the other." (C.P. 72; R. E. 42)

The fifth Armstrong factor, *length of marriage* also favored Debbie. These parties were married for 25 years before separation. The sixth Armstrong factor, *presence of minor child in the home, ...* was not applicable since all of the children were grown and emancipated. The seventh Armstrong factor, *age of the parties* did not favor either party. As stated above Willie was 58 at time of divorce and Debbie was 56. The eight Armstrong factor, *the standard of living of the parties both during marriage and at the time of the*

support determination was also suspect. The chancellor found that the parties enjoyed a standard of living above average. However he found that at the trial, “ with their agreed division of tangible personal property and her purchases (reflected in her short term debt), her current lifestyle reflects that which existed at the time she left Willie. This is in direct conflict with Mrs. Meador’s testimony, the photographs of her apartment and her 8.05 financial affidavit.

The ninth Armstrong factor, *the tax consequences of the spousal support order*, would favor Willie with a deduction and Debbie with additional income. The tenth Armstrong factor, *Fault or misconduct*, the Chancellor found that Willie’s admitted conduct and affairs during the marriage warrants favor under this factor to Debbie. The eleventh Armstrong factor, Wasteful Dissipation of Assets favored neither party. The twelveth Armstrong factor, *Any other factor...* did not favor either party. Therefore a review of the Armstrong factors and the analysis applied by the Chancellor, Debbie was clearly favored in the majority of the factors yet no award of alimony in any form.

The Chancellor then applied the Cheatham factors to determine the applicability of a lump sum alimony award which 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. 1988).

As to the Cheatham factors, one, two, and three are equal. They have also been addressed during the Armstrong analysis. As to factor 4, the Court again relies upon Mrs. Meador's retirement assets as a basis for not allowing an award of lump sum alimony.

Her testimony and all supporting documents clearly reveal a women who left a 25 year marriage because of her husband's admitted adulterous affairs the latest being with a woman 30 plus years his junior. She left with the clothes on her back, the clothes she was able to put in her car, a car note and monthly living expenses in an apartment in Jackson, Mississippi. On the other hand, Willie makes \$3,000.00 a month more than Debbie. He also has time to manage a liquor store without compensation. A review of Debbie's income and expenses clearly reveal a deficit. An award of periodic alimony flows from the obligations of the husband to support his wife in the manner to which she has become accustomed to the extent he is able to do so. *Watson v. Watson*, 724 So.2d 350, 355 (P 17) (Miss. 1998). Thus it is appropriate to examine the Armstrong factors, balancing what the wife reasonably needs to as closely maintain her standard of living with her former husband's ability to pay and his right to maintain a decent standard of living. *Brooks v. Brooks*, 652 So.2d 1113, 1122 (Miss. 1995). A review of those factors above clearly supported an award of alimony in the form of either rehabilitative or periodic.

In the case of a claimed inadequacy or outright denial of alimony, 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. *Armstrong v. Armstrong*, 618 So.2d 1278, 1280 (Miss. 1993); citing *McNally v. McNally*, 516 So.2d 499, 501 (Miss. 1987)

The Chancellor could have easily awarded to her the payment of the car note until

paid off or an amount of \$1,000.00 or less to offset her living expenses in Jackson, Mississippi. However, to award to her nothing is unjust, grossly inadequate and a clear abuse of discretion.

ISSUE NO. 3

THE CHANCELLOR ERRED IN NOT AWARDING TO THE PLAINTIFF ATTORNEY FEES

The Chancellor erred in not awarding any contribution from Willie for the payment of her attorney fees. Mrs. Meador testified that she borrowed the funds from her mother and did not have the current ability to pay the outstanding balance. The separation was directly as the result of Willie's continuing affair with a young girl who use to work for him at Coca Cola. Her counsel submitted a detailed statement in compliance with the requirements of *McKee v McKee*, 418 So.2d 764 (Miss. 1982)(Exhibit 20, R.E. 232-236); The Chancellor even acknowledge such compliance in his opinion. Once the charges are shown to be reasonable, proven and undisputed, the failure to award attorney fees is an abuse of discretion. *Armstrong*, 618 So.2d 1278, 1282 (Miss. 1993). A party's means and ability to pay must include awards of alimony and distribution of marital property. . *Brooks v. Brooks*, 652 So.2d 1113, 1122 (Miss. 1995). This was an abuse of discretion by the Chancellor.

CONCLUSION

Appellant, Debbie Meador would request that this Court reverse and remand the decision of the Chancellor as to the failure to consider Willie's obvious interest in George's liquor store, the failure of him to provide his 2008 W-2 as ordered, the failure to award to Debbie rehabilitative or periodic alimony and attorney fees.

Respectfully submitted,
DEBBIE MEADOR, Appellant

BY:


S. CHRISTOPHER FARRIS

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 Appellant, Debbie Meador to the Mississippi Supreme Court Clerk, Ms. Betty Sephton, Post Office Box 249, Jackson, MS 39205; Honorable Brad R. Thompson, P. O. Box 45, Laurel, MS 39441; Hon. Gene Fair, Chancery Court Judge, P. O. Box 872, Hattiesburg, MS 39403 by regular United States mail, postage prepaid.

DATED this the 4th day of December, A.D., 2009.


S. CHRISTOPHER FARRIS