

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHRISTOPHER PAUL SEGHINI

APPELLANT

VS.

NO. 2009-CA-00833

KRISTY LEE SULLIVAN SEGHINI

APPELLEE

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BRIEF OF APPELLEE  
KRISTY LEE SULLIVAN SEGHINI

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ON APPEAL FOR THE CHANCERY COURT  
OF SIMPSON COUNTY, MISSISSIPPI

Oral Argument Not Requested

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TERRELL STUBBS  
Attorney at Law  
THE STUBBS LAW FIRM  
120 W. Court Avenue  
P.O. Box 157  
Mendenhall, MS 39114  
601-847-4811  
MB   
[www.thestubbslawfirm.com](http://www.thestubbslawfirm.com)

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CERTIFICATE OF INTERESTED PERSONS

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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 Justices of the Supreme Court or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

- (1) Kristy Lee Sullivan Seghini, Appellee  
334 Old Gravel 49  
Mendenhall, MS 39114
- (2) Christopher Paul Seghini, Appellant  
Braxton, MS 39044
- (3) W. Terrell Stubbs  
Attorney at Law  
The Stubbs Law Firm  
P.O. Box 157  
Mendenhall, MS 39114  
COUNSEL FOR APPELLEE

- (4) Chris D. Hennis  
Attorney at Law  
Tullos Law Firm  
MB #101481  
P.O. Box 505  
Raleigh, MS 39153  
COUNSEL FOR APPELLANT
- (5) Mark K. Tullos  
Attorney at Law  
Tullos Law Firm  
MB #9897  
P.O. Box 505  
Raleigh, MS 39153  
COUNSEL FOR APPELLANT
- (6) Judge, Joe Dale Walker  
13<sup>th</sup> District Chancellor  
P.O. Box 909  
Monticello, MS 39654

Respectfully submitted,



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TERRELL STUBBS, Attorney for  
Kristy Lee Sullivan Seghini, Appellee

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## STATEMENT OF THE ISSUES

1. Chancery Court of Simpson County, Mississippi was correct in its division of marital property, debts, award of child support and alimony.
2. Trial Court was not in error in not conducting an on the record analysis of the factors set forth in *Ferguson* since the parties owned limited personal property, there was no dispute as to whether the property was marital or non-marital and there was substantial evidence to support the Chancellor's decision.
3. Chancery Court of Simpson County, Mississippi was correct in its award of permanent periodic alimony to Appellee and properly considered the *Armstrong* factors.
4. Chancellor did not err in providing for an increase in child support to be paid by Appellant once he had completed paying the debt on Appellee's vehicle.
5. Chancery Court of Simpson County, Mississippi was correct in denying Appellant's request for relief under Rule 60(b)(1).
6. Trial Court was not in error in holding Appellant in contempt and ordering him incarcerated for failure to pay child support, alimony and other expenses as provided in the lower court's Final Judgment of Divorce.

## STATEMENT OF THE CASE

This appeal arises out of a divorce case filed in Simpson County, Mississippi. Appellant, Husband, Christopher Paul Seghini, hereinafter referred to as "Christopher" and Appellee, Wife, Kristy Lee Sullivan Seghini, hereinafter referred to as "Kristy", were married February 19<sup>th</sup>, 2000 and both resided in Simpson County, Mississippi. They separated on May 31<sup>st</sup>, 2007 in Simpson County.

Two children were born of their marriage, Alexander Mayson Seghini, a male child, born May 23<sup>rd</sup>, 2001 and Emerson Chandler Seghini, a male child, born November 21<sup>st</sup>, 2006.

Kristy filed divorce from Christopher on the grounds of habitual cruel and inhuman treatment, uncondoned adultery or in the alternative irreconcilable differences. At trial the Court granted Kristy a divorce from Christopher on the basis of uncondoned adultery and that ruling has not been appealed by Christopher (T. 109)

An Agreed Temporary Order was filed on January 28<sup>th</sup>, 2008, which awarded Kristy temporary custody of the parties' children, gave Christopher certain visitation rights, ordered Christopher to pay unto Kristy \$484.00 per month temporary child support, gave Kristy exclusive use and possession of the marital



home and required Christopher to pay \$516.00 for the monthly mortgage note, one-half (½) of doctor, dentist, optical, hospital and drug expenses of the parties' children not covered by insurance, Kristy's Tahoe note and other bills.(R.E. 31-35)

Trial was held on August 27<sup>th</sup>, 2008 in Raleigh, Mississippi. Christopher testified he did trim carpenter work and worked as a police officer. He stated he quit work at the Mendenhall Police Department.(T.14) Christopher testified his 2005 tax returns showed income of \$75,000.00 and that probably did not include all of his income.(T.16) Christopher testified he did not know what he earned each month.(T.18) Christopher admitted he listed additional expenses on his 8.05, which he was not actually paying, in an attempt to get the Court to believe he had more expenses than he really had.(T.25, 26) Christopher further admitted he had been paying Kristy approximately \$1,900.00 a month under the temporary order and still was able to pay all his monthly bills.(T.18, 41) Later in the day, Christopher confessed he had produced no 1099's to verify his income and he made a lot more money. (T.54) At the conclusion of Christopher's testimony, he stated he was staying at his parents' home and his paramour's home.(T.59)

Kristy testified following her Husband, Christopher. Kristy stated her Husband brought home anywhere from \$1,000.00 to \$2,500.00 per week. Kristy

remembered the income taxes she had done and the income was \$86,000.00 to \$96,000.00 per year.(T.61) She stated her gross income as a LPN was now approximately \$24,437.48.(T.75). Her net income was \$1,536.00.(T.80) Kristy also stated she moved out of the parties' home because she had two (2) small children, she was alone, her Husband had left her for another woman and she was upset and needed help.(T.86)

On cross examination she further stated Christopher earned between \$52,000.00 a year and \$100,000.00 a year and sometimes he received cash money which he did not deposit.(T.91, 92) On redirect examination Kristy testified she had to file her own separate tax return for 2006, but she had given all the information to Christopher so he could file his own tax return for 2006.(T.100, 101)

She testified she had been done very wrong by Christopher. She found out he had been cheating on her when she was about five months pregnant with their second son, Emerson.(T.70)

Following Kristy's testimony the issue came up about the parties' former marital dwelling. The Court took a recess and requested the attorneys meet with him in chambers.(T.107) In chambers an agreement was reached that the house had been foreclosed. The Court came back out and supplemented the record

showing there had been a Trustee's Deed executed to the lien holder on the marital home and it was no longer the property of the parties herein. The Quitclaim Deed, the Land Deed of Trust and the Trustee's Deed, which was provided to the Judge in chambers was made a composite "Exhibit 5". When the Chancellor supplemented the record, no objection was made by the attorney for Christopher.(T.107, 108)

The Trial Court rendered its decision granting Kristy a divorce on the grounds of adultery.(T.109) Kristy was awarded complete care, custody and control of the parties' two minor children and Christopher was granted visitation.(T.109) The Chancellor set child support at \$500.00 per month beginning September 1<sup>st</sup>, 2008 and required that Kristy place the children on CHIPS and required Christopher to maintain medical insurance on the children once they became eligible for CHIPS. Christopher was also ordered to pay two-thirds of what was not covered by CHIPS or medical insurance on the parties' children and Kristy the remaining one-third.(T.109, 110)

Christopher was allowed to claim their son, Alexander, as dependent for income tax purposes and Kristy was allowed to claim Emerson. Both parties were required to maintain life insurance on each other with \$300,000.00 on the life of Christopher and \$200,000.00 on the life of Kristy.(T. 110, 111)

Kristy was given exclusive use, possession and title to the Tahoe vehicle and Christopher was ordered to pay the indebtedness on said Tahoe and once it was paid for, his child support was to increase from \$500.00 per month to \$650.00 per month.(T. 111) She was also given the 4wheeler and the personal property she had in her possession.(T.112) Christopher was awarded his Ford pickup, the Bronco and 4Runner and all other personal property in his possession. <sup>1</sup> (T.111, 112)

The Chancellor reviewed the *Armstrong* factors and went on to state what he had looked at concerning each parties' expenses, Kristy's health, the length of marriage, additional expenses concerning the parties' children, Kristy's full-time work, and no misconduct on Kristy's part. Based on the above the Trial Judge required Christopher to pay Kristy \$500.00 per month as periodic alimony beginning September 15<sup>th</sup>, 2008.(T. 112, 113).

Christopher's attorney filed a Motion for Reconsideration, New Trial, Or in the Alternative, Rule 60(b)(1) Motion for Relief from Judgment.(R.E. 52-54) During argument on this post trial Motion on April 13<sup>th</sup>, 2009, Christopher's attorney stated there was no mention of the house being foreclosed on at trial.(T. 117) However, the Court with consent of both attorneys at the trial in Raleigh, Mississippi entered the Trustee's Deed, Quitclaim Deed and Land Deed of Trust as

1. The parties had been separated for some time and had basically separated most of the personal property except those items mentioned in the Final Judgment of Divorce.

Composite "Exhibit 5" at the conclusion of the trial. (T. 107, 108) The Chancellor stated if there was a wrongful foreclosure then Christopher should have done something about it, but he had not.(T. 118, 119) Christopher's attorney even stated in argument that he could not say the foreclosure was handled improperly.(T. 121, 122, 127) Further Mr. Hennis admitted his client had lied about his income at the hearing on August 27<sup>th</sup>, 2008 in Raleigh, Mississippi.(T.134) Finally at the hearing on April 13<sup>th</sup>, 2009, the attorney for Christopher asked for a continuance in order to provide additional information in defense of Kristy's Petition for Citation for Contempt. The hearing on Kristy's Petition for Citation for Contempt was delayed until April 30<sup>th</sup>, 2009.

At the hearing on Kristy's Petition for Citation for Contempt, Christopher testified he was having a hard time since he had cheated on his Wife so he had to admit himself into Pine Grove. His girlfriend paid \$3,000.00 for his treatment there and he still owed Pine Grove \$4,000.00.(T. 192, 193) Christopher stated he had been on a Smokey Mountain trip with his girlfriend and her family since the divorce hearing.(T. 205-207) Christopher further admitted he had not paid Kristy under the terms of the Final Judgment of Divorce and he owed her \$13,353.24.(T.196) Christopher was even allowed to produce a copy of an alleged "amended" tax return for 2008 at the hearing on Kristy's Petition for Citation for

Contempt, but he admitted on cross-examination this “amended” return was not even complete.(T.200-205)

The trial court found Christopher in contempt for failure to pay. (T.214-223) Christopher was given twenty-four (24) hours to pay or go to jail. He paid nothing. He surrendered to the Sheriff and was later released on bond without having paid Kristy anything.

### STANDARD OF REVIEW

When substantial evidence exists in the record to support a Chancellor’s findings of fact, those facts must be affirmed. *Denson v. George*, 642 So.2d 909, 913 (Miss. 1994) and *Estate of Thomas v. Thomas*, 833 So.2d 1173 (Miss. 2004). “The Chancellor by his presence in the courtroom, is best equipped to listen to the witnesses, observe their demeanor and to determine the credibility of the witnesses and what weight ought to be ascribed to the evidence given by those witnesses”. *Howard v. Fulcher*, 806 So.2d 328, 332 (Miss. Ct. App. 2002). This Court should further not overturn the trial court’s ruling unless it finds that it is manifestly wrong, clearly erroneous or that an improper legal standard was applied. *Messer v. Messer*, 850 So.2d 161, 167 (Miss. 2003).

## SUMMARY OF ARGUMENT

The Trial Court had sufficient facts before it to decide all issues. Further the trial court was correct in that Christopher was never truthful about his income at any time not even at the post trial motion hearings on April 13<sup>th</sup>, 2009 and April 30<sup>th</sup>, 2009. Christopher did not in his post trial motion or at any other time raise the issue with the Trial Judge that the Chancellor should have made a findings of fact on the record.

Since the parties only possessed a few items of personal property, there was no necessity for the trial judge to conduct a *Ferguson* analysis. All personal property was marital and this was never disputed by either party. Further at no time did Christopher raise the issue of the Court failing to conduct a *Ferguson* analysis at trial or during his Motion for Reconsideration, New Trial, Or in the Alternative, Rule 60(b)(1) Motion for Relief from Judgment.

The Chancellor considered the *Armstrong* factors even stating in his opinion that he had done so and there were more than enough facts in the record to support the Judge's ruling in awarding Kristy periodic alimony of \$500.00 per month.

The trial court's order directed child support be increased from \$500.00 per month to \$650.00 per month upon payment in full of the note on Kristy's Tahoe vehicle. Child support on Christopher's minimum adjusted gross income, as

provided by Kristy, of \$52,000.00 a year would have been, based on the statutory guidelines, 20% of \$50,000.00, or \$833.33 per month. Kristy did not receive full child support and it was not and in no way could be considered an anticipatory modification or an improper escalation clause. This simply was a benefit given to Christopher.

Christopher offered virtually no evidence to support his Rule 60(b)(1) Motion for Relief from the Final Judgment of the trial court and the trial judge was correct in denying his motion.(R.E. 55)

At the contempt hearing held on April 30<sup>th</sup>, 2009 Christopher admitted he was in contempt of court for failing to pay virtually any of the amounts provided under the Final Judgment of Divorce to Kristy and the trial court was therefore correct in holding him in contempt. The court even gave Christopher another opportunity to correct this problem by allowing Christopher until 5:00 p.m. the following day on May 1<sup>st</sup>, 2009 to pay. He paid nothing and was properly incarcerated, but later released on bond.(R.E. 60, 61)

### ARGUMENT

- I. The Chancery Court was correct in its division of marital property, debts and its award of child support and alimony.**



Christopher contends Section 43-19-101 (3)(a)(b) requires the trial court to first determine Christopher's adjusted gross income before awarding child support and that the trial judge failed to do this. The Chancellor did not fail to set Christopher's adjusted gross income. Kristy testified specifically that Christopher brought home from \$1,000.00 to \$2,500.00 per week and that she had completed tax returns and the income in previous years had been \$86,000.00 to \$96,000.00 per year.(T.61) The record, however, is certainly void of any accurate or truthful information from Christopher as to what his adjusted gross income was, but that is no one's fault but Christopher's.

Christopher cites *Lee v. Stewart ex rel. Summerville*, 724 So.2d 1093, 1097(Miss. Ct. App 1998) in support of this part of his argument. In *Lee* the Chancellor failed to deduct certain mandatory deductions from the non-custodial parent's gross income. This simply is not the case here. There was more than adequate testimony and facts in the record to clearly show what Christopher's adjusted gross income was. It just was not provided by Christopher at any time.

Further in support of this part of Christopher's argument he cites *Gray v. Gray*, 745 So.2d 234, 237 (Miss. 1999) contending that since there were no findings of fact it cannot be determined if the Chancellor followed the statutory guidelines. There was sufficient evidence in the record for the Trial Judge to set

child support and alimony. More on point is the case of *Tedford v. Dempsey*, which is cited later in Christopher's brief, wherein the Supreme Court of Mississippi stated as follows:

To the extent we are called upon to review findings of fact made by the Chancellor we are constrained by familiar rules. If we find substantial evidence supporting the Chancellor's fact findings, they are beyond our power to disturb. And with respect to issues of fact where the Chancellor made no specific finding, we proceed on the assumption that the Chancellor resolved all such fact issues in favor of Appellee or at least in a manner consistent with the Decree. Again if there is substantial evidence undergirding such a presumed finding we will not disturb it. *Tedford v. Dempsey*, 437 So.2d 410, 417 (Miss. 1983)

Any problems with Christopher's income in this matter was no one's fault but Christopher's. He failed to provide truthful income information at the divorce hearing and he failed when allowed a second chance to provide truthful or accurate income information at the post trial motion hearings.

**II. The Chancery Court of Simpson County, Mississippi was not in error in not conducting an on the record analysis of factors set forth in *Ferguson* since the parties owned very limited personal property and there was virtually no dispute as to whether the**

**property was marital or non-marital and there were no funds derived from the foreclosure sale of the former marital dwelling.**

There was absolutely no dispute as to what property was marital or non-marital. It was never even discussed at the trial or during post trial motion hearings by Christopher's counsel or Kristy's counsel. Christopher in support of his argument that the court erred in this regard cites *Henderson v. Henderson*, 703 So.2d 262 (Miss. 1997). This case is simply not on point. If there are sufficient facts in the record to support the Chancellor's decision then the Chancellor's decision will be upheld. *Dorsey v. Dorsey*, 972 So.2d 48 (Miss. Ct. App. 2008)

There was never any dispute as to division of assets and this court can clearly see that from the transcript. The trial judge gave the parties that personal property which they already had in their possession. A case more on point is the case of *Tritle v. Tritle*, 956 So.2d 369, 379, 380 (Miss. Ct. App. 2007). In *Tritle* the court found the Chancellor did consider, as shown by the record, equitable distribution prior to an award of alimony.

Christopher continues to argue that there was some equity paid on the former marital dwelling at foreclosure. This is a disingenuous argument at best since all of this was admitted into the record at the conclusion of the divorce trial and no objection was made by Christopher or his attorney. It is a moot point.

**III. The trial court was correct in its award of permanent periodic alimony to Appellee and properly considered the *Armstrong* factors.**

Christopher cites *Armstrong v. Armstrong* in support of his argument that the court failed to apply the *Armstrong* factors in setting alimony. *Armstrong v. Armstrong*, 618 So.2d 1278 (Miss. 1993)

The Trial Judge stated he had reviewed the *Armstrong* factors concerning alimony. After that, the Chancellor stated he looked at the income and expenses of the parties and other factors as stated in the record.(T. 112)

Also Christopher admitted adultery and even admitted he was living with his girlfriend at the time of divorce. All of this had an adverse impact on the harmony and stability of the marriage. *Sullivan v. Sullivan*, 990 So.2d 783 (Miss. Ct. App. 2008)

Most of the cases this court has reversed on a Chancellor's lack of findings of fact on award of alimony have been where the record was virtually void of any facts or evidence to support the Chancellor's decision. There were more than sufficient facts in the record and little dispute as to those facts to support an award of alimony. Under *Ferguson* this court has stated the Chancellor has considerable latitude in adjusting his awards to do equity. *Ferguson v. Ferguson*, 639 So.2d 927 (Miss. 1994); and *Jones v. Jones*, 532 So.2d 574, 580 (Miss. 1988)

The obligation of the Chancellor is not to follow some precise formula as to each individual component of asset distribution, alimony and other support but to divide equitably between the spouses. *Welch v. Welch*, 755 So.2d 6, 10 (Miss. Ct. App. 1999) This was what was done in the case at hand. Also see *Trittle v. Trittle*, 956 So.2d 369, 379, 380 (Miss. Ct. App. 2007)

**IV. The Chancery Court of Simpson County, Mississippi did not err in providing for an increase in child support to be paid by Apellant once he had completed paying the debt on Appellee's vehicle.**

Christopher argues the trial court's decision concerning the child support increase was some type of modification or improper escalation clause. It certainly was not. Based on the testimony and evidence at the trial court level, child support should have been at least \$833.33 per month, which would represent 20% of Christopher's adjusted gross income of \$50,000.00 per year. If anyone got a break in payment of child support it was Christopher.

The increase in child support required in the Final Judgment of Divorce was clear, definite and without doubt. The Chancellor instead of awarding \$833.33 in child support to Kristy allowed Christopher to pay only \$500.00 per month in child support until the debt on Kristy's Tahoe had been paid and then his child support increased to \$650.00 per month. However the court in setting child support

looked at the totality of the circumstances and considered all the other obligations of Christopher to Kristy. It promoted judicial economy and expediency for the court to make this provision. Otherwise the parties would have had to hire lawyers and come back to court to make adjustment to child support after the debt on the Tahoe was paid.

Under *Anderson v. Watkins*, 208 So.2d 573, 575 (Miss. 1968) when substantial evidence supporting the Chancellor's fact findings are present, they are beyond the power of the Appellate Court to disturb. Also it should be pointed out that none of this was argued at the post trial motion of Christopher.

Christopher cites *Tedford v. Dempsey*, 437 So.2d 410 (Miss. 1983) in support of his argument that the child support increase was an improper escalation clause. This is not an escalation clause. For sake of argument, if it should be construed as an escalation clause, there is no doubt it is tied to a certain event and is definite as is required in *Gillespie v. Gillespie*, 594 So.2d 620.

As is stated in *Tedford v. Dempsey* where the Chancellor made no specific findings of fact, the Appellant Court proceeds on the assumption the trial judge settled all factual issues in favor of Appellee and in a manner consistent with the Final Judgment of Divorce. *Tedford v. Dempsey*, 437 So.2d 410, 417 (Miss. 1983)

**V. The Chancery Court of Simpson County, Mississippi was correct in denying Appellant's request for relief under Rule 60(B)(1).**

Again Christopher attempts to deflect any blame in his appeal to Kristy by saying what Kristy said about the former marital home was a misrepresentation. Nothing could be further from the truth.

At the divorce hearing in Raleigh, Mississippi on August 27<sup>th</sup>, 2008, the Chancellor came back to the bench, after having a conference in chambers with the attorney for Christopher and the attorney for Kristy, and dictated into the record that the home had been foreclosed on and made a composite exhibit of the Quitclaim Deed, Trustee's Deed, and Deed of Trust.(T. 107, 108). Apparently counsel for Christopher just refuses to recollect what happened at trial.

Christopher cites *Williamson v. Williamson*, 964 So.2d 524, 528 (Miss. Ct. App. 2007) and *Stringfellow v. Stringfellow*, 451 So.2d 219, 221, 222 (Miss. 1984) in support of this phase of his argument. Even if it were true Kristy misrepresented some fact in order to influence the decision of the fact finder, which is denied by Kristy, it must be shown that the finder of fact relied on such misrepresentation in its decision. Clearly this did not happen. The Chancellor as well as the parties and the attorneys' knew exactly what had happened to the marital dwelling and Christopher never filed any proceeding to contest that foreclosure.(T. 119)

Also Christopher contends there must have been some excess money Kristy received after the foreclosure. This is just inconceivable. No one who had a valid mortgage on the house would pay the home owner \$27,907.00 to foreclose if there was still existing unpaid debt.

Rule 60 (b) motions are left to the sound discretion of the trial court as long as such discretion is not abused. *Clarke .v Burke*, 570 F.2d 824 (5<sup>th</sup> Circuit 1978). Christopher's Rule 60 (b)(1) was nothing more than a futile attempt by Christopher to relitigate the case. *Mastini v. Amerian Telephone and Telegraph Co.*, 369 F.2d 378 (2<sup>nd</sup> Circuit 1966)

**VI. The Chancery Court of Simpson County, Mississippi was not in error in holding Appellant in contempt and ordering that if he failed to pay within approximately twenty-four (24) hours, he would be incarcerated.**

At the hearing on Kristy's Petition for Contempt Christopher was given the opportunity to amend his Answer and he added defenses he had not filed originally.

Basically Christopher argues here that he should not be held in contempt because he had an inability to pay any of the obligations under the Final Judgment of Divorce. The burden was on Christopher to prove his inability to pay. There was absolutely no fraud or misrepresentation by Kristy.



Christopher presented at this hearing an amended tax return that was still incomplete.(T.200-205) Christopher did not even come close to meeting his burden of proof.

Christopher should not be rewarded for failing again to be forthcoming and truthful with the trial court. The Chancellor after finding Christopher in contempt, gave him twenty-four (24) hours to pay, but he refused to make any payment whatsoever and turned himself in to the Sheriff to be incarcerated.(T. 220, 223) He was later released on bond without having paid one cent to Kristy.(R.E. 60, 61)

### CONCLUSION

Christopher would have this court turn a blind eye to what was entered into the record, without objection, concerning the parties' former marital home.

Further, Christopher has apparently deluded himself into believing any problem in determining his income and ultimately child support was Kristy's fault or the Chancellor's fault, but certainly not Christopher's fault.

Throughout his brief Christopher, on most of his issues, complains the Trial Court failed to make an on the record findings of fact. But at no time did Christopher ask for an on the record findings of fact. There was more than

sufficient evidence in the record for the Chancellor to decide issues even without much assistance at all from Christopher.

When it comes to Christopher's 60(b)(1) Motion, he falls flat on his face. Christopher's attorney even admitted Christopher had lied at trial about his income and other matters.

At the hearing on Kristy's Petition for Citation for Contempt the proof was clear that Christopher had failed to pay Kristy any amounts whatsoever that were due under Final Judgment of Divorce. Finally Christopher admitted even the copy of his alleged amended tax return was not accurate.

In light of all the above, Christopher certainly should not expect this court to grant him any relief. This court should affirm the Chancellor's decision in this case.

CERTIFICATE OF SERVICE

I, Terrell Stubbs, attorney of record for Appellee, Kristy Lee Sullivan Seghini, do hereby certify that I have this day mailed postage prepaid a true and correct copy of the forgoing Appellee's Brief to the following:

Honorable Joe Dale Walker  
13<sup>th</sup> District Chancellor  
P.O. Box 909  
Monticello, MS 39654

Honorable Chris D. Hennis  
Tullos Law Firm  
Attorney at Law  
P.O. Box 505  
Raleigh, MS 39153

Honorable Mark K. Tullos  
Tullos Law Firm  
Attorney at Law  
P.O. Box 505  
Raleigh, MS 39153

THIS the 3<sup>rd</sup> day of Feb, 2010.

  
TERRELL STUBBS  
Attorney at Law  
THE STUBBS LAW FIRM  
120 W. Court Avenue  
P.O. Box 157  
Mendenhall, MS 39114  
601-847-4811  
MB [REDACTED]  
[www.thestubbslawfirm.com](http://www.thestubbslawfirm.com)