

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GLEN PICARD

APPELLANT

VS.

NO. 2009-CA-01557

PAULA PICARD

APPELLEE

BRIEF OF APPELLEE

APPEAL FROM THE CHANCERY COURT OF  
JACKSON COUNTY, MISSISSIPPI

HONORABLE RANDALL PIERCE CHANCELLOR - TRIAL CHANCELLOR  
HONORABLE G. CHARLES BORDIS IV - POST TRIAL CHANCELLOR

ORAL ARGUMENT IS NOT REQUESTED

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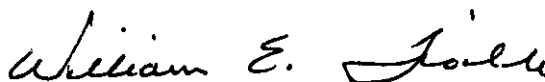
PAULA PICARD


APPELLEE

CERTIFICATE OF INTERESTED PERSONS

1. Glen Picard ..... Appellant
2. Paula Picard ..... Appellee
3. Calvin Taylor ..... Attorney for Appellant
4. William E. Tisdale,  
    Sekul, Hornsby & Tisdale, P. A. .... Attorney for Appellee
5. Honorable Randall Pierce..... Trial Chancellor
6. Honorable G. Charles Bordis IV.....Post Trial Chancellor
7. Kathy Williams Wilkinson ..... Court Reporter

Respectfully Submitted, this the 24th day of June, 2011.



WILLIAM E. TISDALE -   
ATTORNEY FOR APPELLEE

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## STATEMENT OF ISSUES

The trial Chancellor correctly followed *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) in his Ruling of the Court filed April 24, 2008, and Judgment of Divorce filed August 8, 2008.

## STATEMENT OF THE CASE

Glen Picard (Glen) filed his Complaint for Divorce on February 16, 2007, seeking a divorce on fault grounds, custody of the children, child support, alimony, an equitable division of assets and other relief. (CP-1)

Paula Picard (Paula) filed her Answer and Counter-Complaint seeking a divorce on fault grounds, custody of the children, child support, alimony, and other relief. (CP-9)

Subsequently the parties executed and filed a Consent to Adjudicate on Irreconcilable Differences on February 4, 2008. (CP-53)

The parties further stipulated and agreed with Paula having custody of the four (4) children; visitation for Glen; child support to be paid; distribution of retirements and thrift savings; health insurance coverage for the children; and division of certain personal property. (T-4 to 10).

The trial Court issued its Ruling of the Court filed April 24, 2008. (CP-55).

Judgment of Divorce was filed August 8, 2008. (CP-77)

Glen filed a Rule 59 Motion on August 8, 2008. (CP-89) A hearing on same was had and an Order denying same filed August 20, 2008. (CP-94).

#### FACTUAL STATEMENT OF THE CASE

Glen and Paula were married on November 23, 2991, in Louisiana, and separated on or about December 16, 2006, in Jackson County, Mississippi. They have four (4) daughters, Rachael, born April 9, 1992; Sandra, born August 6, 1996; Julie, born September 10, 1997; and Annabelle, born August 30, 2002. (CP-55-56) At the time of the marriage Glen was in the Air Force and was subsequently transferred to Keesler Air Force Base in 2000.

Prior to trial Glen had retired from the Air Force reserve, was employed as a civilian at Keesler Air Force Base and Paula was the housekeeper and was self employed in a part time house cleaning business.

The family residence suffered severe damage in hurricane Katrina and resulted in the family residing on a FEMA trailer at the family home.

The parties finances were strained and combined with other problems resulted in the filing of divorce by both parties.

## SUMMARY OF THE ARGUMENT

The trial Chancellor had full access to the stipulation and agreement of the parties as concerning Paula having custody of the four (4) children; visitation for Glen; child support to be paid; distribution of retirements and thrift savings; health insurance coverage for the children; and division of certain personal property.

The trial Chancellor correctly states the eight (8) issues listed by the parties on the Consent To Adjudicate; the case law concerning various factors to be used in determination of each contested issue; and a detailed analysis as to how he arrived at a conclusion for each contested issue. (CP-63-71)

## ARGUMENT AND CITATION OF AUTHORITIES

The trial Chancellor correctly followed *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) and other case law requirements in determination of all contested issues in his Ruling of the Court filed April 24, 2008, and Judgment of Divorce filed August 8, 2008.

## STANDARD OF REVIEW

“In domestic relations cases, this Court must employ a limited standard of review. *Carrow v. Carrow*, 741 So.2d 200, 202 (Miss.1999).



The reviewing court employs a limited standard of review for the division and distribution of property in a divorce proceeding. *Reddell v. Reddell*, 696 So.2d 287, 288 (Miss.1997). This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Owen v. Owen*, 798 So.2d 394, 398 (Miss.2001); *Turpin v. Turpin*, 699 So.2d 560, 564 (Miss.1997). This Court will look to the chancellor's application of the Ferguson factors when reviewing questions of equitable distribution. *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994); *Wells v. Wells*, 800 So.2d 1239, 1242 (Miss.Ct.App.2001). In reviewing a chancellor's judgment, this Court does not conduct a Ferguson analysis anew, but reviews the judgment to ensure that the chancellor followed the appropriate standards and did not abuse his discretion." *Phillips v. Phillips*, 904 So.2d 999 (Miss 2004).

"This Court reviews the facts of a divorce decree in the light most favorable to the appellee. *Fisher v. Fisher*, 771 So.2d 364, 367(¶ 8) (Miss.2000). In domestic relations matters, this Court will not reverse the findings of a chancellor unless the findings are manifestly wrong, clearly erroneous, or if the chancellor applied an incorrect legal standard. *Henderson v. Henderson*, 757 So.2d 285, 289-90 (¶ 19) (Miss.2000). We may reverse a chancellor's findings of fact only where there is no

“substantial, credible evidence in the record” to justify the findings. *Id.* The law of this state requires equitable, not equal, distribution of the marital estate. *Peterson v. Peterson*, 797 So.2d 876, 880 (¶ 17) (Miss. 2001). Equitable division is the fair determination of the division of marital property based on both spouses’ contributions during the marriage. *Traxler v. Traxler*, 730 So.2d 1098, 1102 (¶ 21) (Miss.1998). “The chancellor’s decision on alimony will not be disturbed on appeal unless it is found to be against the overwhelming weight of the evidence or manifestly in error.” *Tilley v. Tilley*, 610 So.2d 348, 351 (Miss.1992). Additionally, all awards to a spouse must be considered together when deciding whether they are equitable and fair. *Hubbard v. Hubbard*, 656 So.2d 124, 130 (Miss.1995) (citing *Ferguson*, 639 So.2d at 929).” *Ferro v. Ferro*, 871 So.2d 753 (Miss.App.2004)

#### LEGAL PRINCIPLES

The written consent requirement addressed in the statute requires that a court have the written consent in the original irreconcilable divorce action before deciding property rights between the couple. Miss.Code Ann. § 93-5-2(3) (Rev.2003).

“Mississippi is an equitable distribution state, not a community property one. *Owen v. Owen*, 798 So.2d 394, 399 (¶ 14) (Miss.2001). “Equitable” does not mean “equal.” *Id.* The division of marital assets is a

matter of discretion for the chancellor, bearing in mind the equities of the circumstances and the relevant facts and considerations. *Davis v. Davis*, 638 So.2d 1288, 1293 (Miss.1994). The factors that must be considered, the Ferguson factors, are familiar and well-known to the courts of this State. *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). Failure to consider these factors and make specific findings on the record may result in reversible error. *Owen*, 798 So.2d at 399 (¶ 13).” *Franklin v. Franklin* 864 So.2d 970 (Miss.App. 2003).

When equitable distribution of property acquired during the marriage is accomplished, the result of the division of assets and liabilities must be factored into the determination of other financial matters such as child support and alimony. *Gambrell v. Gambrell*, 650 So.2d 517 (Miss. 1995).

The trial Chancellor made on the record findings as to the factors required by *Ferguson* and *Hemsley v. Hemsley*, 639 So.2d 909 (Miss. 1994), for the determination and division of marital assets and he made specific findings as to alimony factors as stated in *Brabham v. Brabham*, 84 So.2d 147 (Miss. 1955), having considered all financial aspects of the parties. Such findings by the Court having been incorporated into the Judgment of Divorce filed August 8, 2008.

## CONCLUSION

The trial Chancellor correctly followed *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) and other case law requirements in determination of all contested issues in his Ruling of the Court filed April 24, 2008, and Judgment of Divorce filed August 8, 2008. There is "substantial, credible evidence in the record" to justify the findings. The trial Court's ruling should be affirmed.

Respectfully Submitted,

PAULA PICARD, Appellee



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## CERTIFICATE OF SERVICE


I, the undersigned, do hereby certify that I have this date, filed the original and four (4) true and correct copies of the foregoing Brief of Appellee with the Honorable Kathy Gillis, Clerk of the Supreme Court and Court of Appeals of Mississippi at Jackson, Mississippi.

I further certify that I have this day delivered a true and correct copy of the above and foregoing to the following listed persons:

The Honorable G. Charles Bordis, IV  
Chancellor  
Post Office Box 998  
Pascagoula, MS 39568-0998

The Honorable Calvin Taylor  
Post Office Box 0006  
Pascagoula, MS 39568-0006

THIS, the 24th day of June, 2011.

  
\_\_\_\_\_  
WILLIAM E. TISDALE