

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NO. 2009-CA-01557-COA

GLEN PICARD

APPELLANT

VERSUS

PAULA PICARD

APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

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 and the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

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STATEMENT OF THE ISSUE

Whether the Trial Chancellor correctly followed the *Ferguson* guidelines in his Opinion and the final Judgement of Divorce in this case.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW

The case of Picard vs Picard was an exhaustive litigation and end of a relatively long-term (15 years) marriage. Glen Picard ("Glen") filed his Complaint for Divorce and for other relief (CP-1) on February 16, 2007 in the Jackson County Chancery Court. On March 12, 2007, Paula Picard ("Paula") timely filed her Answer and Counter-Complaint for Divorce and other relief (CP-9), fully joining this matter. On the same date Paula also filed her Petition for Temporary Custody, Support and Other Relief (CP-18), throughout the pendency of this action. There were no questions as to the standing, jurisdiction and venue between the parties.

Glen timely filed his Answer to Paula's Counter-Claim, (CP-23) and Petition for Temporary Custody, etc., (CP-27) on April 3, 2007, and a Temporary Order, (CP-33) was entered on May 25, 2007, as to the parties' separate property, possession and use of the marital domicile, custody of the four daughters of the union between Glen and Paula, and the amount of \$600.00 per month in temporary child support to be paid by Glenn.

The parties traveled under the temporary terms until November 19, 2007, when Glen filed his Complaint for Citation of Contempt and Modification of the Temporary Order, primarily as to the child support amount. Following this filing, on February 4, 2008, the parties entered into a consent to adjudicate the case on the grounds of irrecon-

cilable differences and then executed a formal Consent (CP-53), that also included a listing of the issues to be considered at trial by the Chancellor. Though not part of the record, after the parties respective financial disclosures were filed, the parties entered into certain stipulations on many areas as to joint custody, with Paula having physical custody of the four daughters, and a thorough visitation schedule for Glen, the child support amount, the distribution of certain retirement benefits, health insurance benefits and certain personal property items. (T-4 to 10 at Line 6). The parties then went to trial on the various issues as set out in the earlier Consent. (CP-53 and 54).

Trial then commenced on February 4, 2008, lasting two days. It is to be noted both parties went extensively into one another's financial basis as they affected the eight contested issues in this matter. Rachel Picard, the eldest child of the parties, almost 17 years old at trial, was also examined in the testimony during the trial. (T-58 to 72) At the conclusion of the trial, the Chancellor then discussed the Contempt Motion of Glenn ,(CP-37), and the Chancellor denied same. (T-235, Lines 12 to 28).

The Chancellor then issued his extensive Ruling of the Court, (CP-55) on April 24, 2008. The Judgement of Divorce, (CP-77) was entered on August 8, 2008. Though closely following the rulings of the Chancellor, this Judgement was not approved by Glen. (CP-88)

Glen then filed his Rule 59 Motion to Alter or Amend Judgement or for New Trial, (CP-89) on August 8, 2009. Though demanding a hearing on his Motion, it was summarily denied by the then Chancellor on August 20, 2009. (CP-94) Glen then filed his Notice of Appeal, (CP-95) on September 17, 2009, along with his Designation of

the Record, (CP-98) on the same day. After filing his Pauper's Oath, (CP-100), also filed his Motion for Leave to Proceed In Forma Pauperis, CP-101), on the same date. This Motion was again summarily denied by the Chancellor on February 9, 2010. (CP-108) Upon filing his Certificate of Compliance, (CP-111) on March 24, 2010, this action was ripe for this Court's consideration.

FACTUAL STATEMENT OF THE CASE

In 1991, Glen Picard was a police officer in New Orleans, Louisiana and had previously begun his career as an Air Force reservist. (T-12, Line 16) Paula was working in the New Orleans area, the two met, and on November 23, 1991, were married in New Orleans. The couple's first daughter, Rachel was born on April 9, 1992, the second daughter, Sandra, was born on August 6, 1996, and the third daughter, Julie, was born September 10, 1997. At this time, Glen was a full-time Air Force officer and Paula was working as a legal secretary in Metairie, an Eastern suburb of New Orleans.

In 2000, Glen was transferred to Kessler Air Force Base in Biloxi, the family moving to Mississippi shortly afterwards, and finding a nice home in Ocean Springs. (T-12, Line 26) Then, on August 30, 2002, Annabelle, the fourth daughter in the family, was born. Glen was completing his 30 plus year with the Air Force, and Paula, working part-time at First Baptist Church Day School in Biloxi, and had begun establishing her housecleaning business. An earlier attempt by Paula to establish a DirecTV franchise in the St. Martin area shortly after the move to Ocean Springs had failed. (T-138, Lines 10 to 25) business. Glen, after retiring from his Air Force career, began his career as a

computer specialist at the Kessler Base. In short, it was, though strained at times, a good and comfortable life style for the Picard family. (T-136, Line 21)

Then, in August, 2005, Katrina hit the Coast. The Picard home and its contents took severe damage, to the extent its interior required a total renovation. There was also a two month separation of the family when Glen remained on the coast at a military facility, and the family resided at a similar facility in Louisiana until adequate substitute housing could be acquired for their return. This was accomplished when a large FEMA trailer was set up on the Picard's property, and was still in use at the time of the trial.

It was also during this recovery period the "strained" part of the Picard's marriage took over the relationship. As this will be discussed on specific points in the argument herein, the transcript in this case has approximately 180 pages of testimony on how the Picards attempted to resolve these issues, graphically showing the shortcomings and disagreements between Glen and Paula, and the life style both desired without considering the adjustments that the aftermath of Katrina required.

In short, the Chancellor was faced with sorting out "a mess". Glen and Paula separated on or about December 16, 2006, (T-87), and this cause commenced.

SUMMARY OF THE ARGUMENT

Glen Picard vs Paula Picard was, at best, a highly difficult case. The straightening out of their convoluted financial affairs required some effort on the part of the Picards and the Chancellor. At the end of the litigation, though on its surface, the Court's Judgment looked reasonable, but a close review would show the burden in same fell largely on Glen Picard as opposed to Paula Picard. Though fault fell equally on Glen and Paula, the final property division was far less than equitable.

In the argument to follow, Glen will show as to long-term financial issues, the stipulations reached by the parties were equitable and proper, and in the best interests of the couples' four daughters. This would include Paula's sharing in Glen's retirement funds beginning at his 60th birthday. He will argue that the short term effects of the decision would require him to largely fund Paula and the children, leaving but a pittance for his own expenses. In addition to not being fair, it is far from equitable distribution.

Glen Picard requests this Court's reversal of the Judgement of the lower court, and its remand for further consideration.

ARGUMENT AND CITATION OF AUTHORITIES

Whether the Trial Chancellor correctly followed the *Ferguson* guidelines in his Opinion and the final Judgement of Divorce in this case.

The ultimate decision in this case may have been established early in the testimony when in response to Glen's counsel question of how her husband was to finance the tentative agreement between the couple, and Glen's obvious lack of income to do such, Paula said, "he is capable of taking a part-time job" (T-49, Line 26 to T-50, Line 13) to make up the difference.

Once again, though at times strained, the Picards had a comfortable life prior to Katrina, and Paula continued to work under the presumption that this would continue without any effort on her part. As Paula, during the whole of the marriage to Glen, had never made a meaningful contribution to the total income of the family from her earnings, (T-101, Lines 7 to 23), she felt this could just continue. She never accepted the changes that were about to occur.

STANDARD OF REVIEW

In reviewing a case such as the Picards' the appellate court will not conduct a *Ferguson* analysis anew, but will review the Chancellor's 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) However, if in this limited review, if the court finds a manifestly wrong or an incorrect application of a legal standard, the court will reverse a Chancellor's decision. *Owen v. Owen*, 928 So.2d 156 (Miss. 2006)

The overriding standard as to equitable distribution in a divorce action is the fair determination of marital property based upon both spouses' contributions during the marriage. *Ferro v. Ferro*, 871 So.2d 753 (Miss.App. 2004)

LEGAL PRINCIPLES

It is fortunate that the Picards prior to trial agreed to and stipulated to issues in filing of their joint Consent to Divorce on Irreconcilable Differences on February 4, 2008. (CP-40) In getting the questions of child custody, support, visitation, distribution of certain retirement income assets and mutual savings accounts determined, the complex situation of the Picards' financial situation was somewhat simplified, and should not be disturbed. *West v. West*, 891 So.2d 203 (Miss. 2004); *Massingill v. Massingill*, 594 So.2d 1173 (Miss. 1992); **Miss. Code 1972, Ann., Sec. 93-5-2(3)**.

Though taking care of long-term planning in several areas, the eight (8) areas of determination by the court requires a determination by the Chancellor of a financial quandary. When Paula breached the couple's tacit agreement to live on Glen's earnings after the move to Mississippi in 1991 by her DirecTV venture, (T-93, Lines 19 to 23), a "slippery slope" began that ended in this divorce.

Though perhaps not as strictly followed as *Albright* factors in a divorce proceedings, (*Albright v. Albright*, 437 So.2d 1003 (Miss. 1983), the *Ferguson* standards do carry an established set of guidelines for a court to consider. *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) In this respect, Mississippi is an equitable distribution state, not a community property one: "equitable" does not mean equal. *Franklin v.*

Franklin, 864 So.2d 970 (Miss.App. 2003).

When one cuts through the massive testimony about filling out tax returns, etc., Glen submits that in the substantive testimony adduced at trial, after the move to Mississippi, Paula contributed very little to the support of the entire family and was intent to working only at her convenience for her to spend the income earned on her own. Glen was responsible for the overwhelming financial support of the family, and she intended this to continue even after the marriage was dissolved. Or, what's mine is mine, and what's yours is negotiable. This is not equitable and does not even approach fairness. **Garriga v. Garriga**, 770 So.2d 978 (Miss.App. 2000)

The mere fact that Paula obviously refuses to work full time post-divorce, T-50, Line 5 to T-51, Line 26), to contribute a fair amount to her and her children's support and home should not be held as a factor in her behalf. It merely shows her continuing desire for a "good" life with little effort on her part. As equitable division of marital property does not necessarily mean equal division, Paula must understand that she must also do her part after termination of the marriage. **Brabham v. Brabham**, 950 So.2d 1098 (Miss.App. 2007)

Glenn at this point respectfully suggests the allocation of the equity in the Ocean Springs home, the alimony and the allocation of the tax refunds for the years 2005 to 2007 inclusive should be reexamined, including casualty losses. This is due to the fact of Glen's overwhelming contributions to same. This would then more accurately reflect this Court's determination in **Ferro v. Ferro**, 871 So.2d 753 (Miss.App. 2004). It would also give a more equitable division of current assets and ease

the transfer of responsibilities and benefits to both parties now that they are apart. It would also bring the final decision in this matter closer to true equity.

CONCLUSION


The ultimate fact that comes from this litigation is that Glen and Paula have an equal responsibility to get their financial affairs in order. At its onset, Glenn Picard submits the present Judgment limits his capability to do such. He respectfully submits in the above and foregoing Brief he has furnished abundant reasons, authorities and facts to support a reversal of this Judgment, and the Chancellor's re-determination of certain portions of same. He therefore respectfully requests a reversal and remand of the Judgment rendered herein for such examination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, HON. Calvin Taylor, Attorney of Record for the Appellant, Glenn Picard, do hereby certify I have this day filed the original and four (4) true and correct copies of the foregoing Brief of Appellant 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 thereof to the following listed persons:

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CERTIFIED this, the 22 day of February, 2011


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