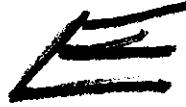


IN THE SUPREME COURT OF MISSISSIPPI

NO. 2009-TS-01914



KATHRYN MARTELLO JENKINS

APPELLANT

v.

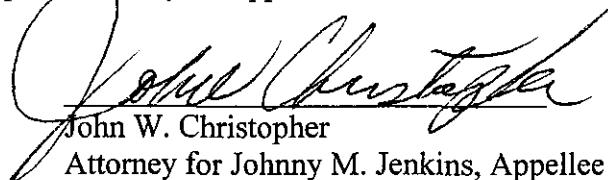
JOHNNY M. JENKINS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges on the Court of Appeals may evaluate possible disqualification or recusal:

1. Kathryn Martello Jenkins, Appellant
2. Johnny M. Jenkins, Appellee
3. Honorable Cynthia Brewer, Madison County Chancellor
4. Mark W. Prewitt, Esquire, attorney for appellant
5. John W. Christopher, Esquire, attorney for appellee



John W. Christopher
Attorney for Johnny M. Jenkins, Appellee

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<i>Shoffner v. Shoffner</i> , 909 So.2d 1245 (Miss.App. 2005)	6
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STATEMENT OF THE CASE

Johnny Jenkins finds that the statement of the case properly frames the issues presented by Kathryn in her brief and therefore Johnny will not expand on Kathryn 's statement of the case or statement of the issues.

SUMMARY OF THE ARGUMENT

The Chancellor heard all of the evidence and considered all the documents offered by the parties at trial after which she took the case under advisement and prepared and filed a written opinion in which she determined the equitable division of the marital assets, taking into account those assets the parties had disposed of by agreement. The Chancellor stated on page 7 of her opinion that in making the division of marital assets she was applying the *Ferguson* factors, “***using fairness as a polestar consideration”. The Chancellor then proceeded in her opinion to discuss the marital assets and Kathryn's dissipation of assets through gambling. After weighing the *Ferguson* factors the Chancellor determined that Kathryn's interest in the family business, reduced by the amount the Chancellor found that Kathryn had dissipated through gambling, was the sum of \$115,000. However the Chancellor also believed Johnny when he testified that the business was unable to buy out Kathryn's interest for a cash payment. On Kathryn's motion to amend the judgment the Chancellor amended the judgment to provide that if Johnny was delinquent on any monthly installment Kathryn would free collect the judgment by any legal means. The Chancellor then granted Kathryn a judgment against Johnny for the sum of \$115,000, accruing interest at the rate of 6% per annum and directed Johnny to pay Kathryn a minimum of \$500 per month until the debt was paid.

The Chancellor also determined that a Trustmark credit card should be paid by Kathryn as a part of the division of marital assets and debts. Likewise, Johnny was required to pay the remaining mortgage balance on the family residence.

It is respectfully submitted that the Chancellor properly evaluated the division of the marital assets by following the *Ferguson* factors as is evidenced by the fact that Kathryn does not dispute the asset evaluation but is dissatisfied with the Chancellor's decision to permit Johnny to pay her \$500 per month toward the indebtedness of \$115,000 which the Chancellor determined was the equitable value of Kathryn's interest in the family business. It is further submitted that having weighed and balanced the respective interests of the parties in the equitable division of the marital assets the Chancellor performed her duties as directed by the Supreme Court in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994).

The opinion of the Chancellor should be affirmed.

STANDARD OF REVIEW

In her brief Kathryn accurately states the standard of review and therefore Johnny will not cite any additional authorities.

ARGUMENT

- I. Whether the Chancellor committed error in ordering Kathryn to be solely responsible for credit card debt accumulated during the marriage?
- II. Whether the Chancellor abused her discretion in deferring the payment of the \$115,000 judgment awarded Kathryn against Johnny by the payment of installments of \$500 per month, at 6% interest.

Even though Kathryn briefed these arguments separately it is submitted that they

should be considered together, since they both arise out of the Chancellor's determination of the division of the marital assets.

The Chancellor correctly applied the *Ferguson* factors on both of these issues. In her brief Kathryn treats the credit card issue in isolation rather than as a part of the whole question of the marital assets and liabilities. Kathryn takes the position that since it is a "marital debt" the Chancellor was limited to requiring that each party pay one half of the debt, which ignores the fact that the Chancellor took into account the Trustmark visa card debt in allocating assets. On page 10 of her opinion (R.E. 13-14) the Chancellor discussed the credit card debt as a part of her overall disposition of the marital assets. The authorities cited by Kathryn in her brief are inapplicable for the proposition that each party is required to pay some portion of marital debts. In *Shoffner v. Shoffner*, 909 So.2d 1245, 1251, ¶17 (Miss.App.2005) the Court of Appeals in discussing marital debts has stated:

*****The courts in this state have consistently held that expenses incurred for the family, or due to the actions of a family member, are marital debts and should be treated as such upon dissolution of the marriage.***** (Emphasis added)

The Chancellor by her determination that the credit card debt was a marital debt was not bound to require Johnny to pay any part of it but she was required to take it into consideration in balancing the equities in making the distribution of marital assets and debts. The Chancellor could very well have determined that Johnny would be required to pay some of the credit card debt and then reduce the amount that Kathryn was entitled to receive for her interest in the business since equitable distribution does not mean equal distribution. *Wells v. Wells*. 800 So.2d 1239, 1243 ¶7 (Miss.App. 2001).

Kathryn also argues that the Chancellor abused her discretion in ordering Johnny to pay her \$500 per month at 6% interest to pay the \$115,000 judgment which represented Kathryn's

equitable division of the family business. The cases cited by Kathryn to support her proposition are child-support cases with one case involving lump-sum alimony and none of which involved the equitable distribution of marital assets and therefore it is submitted those cases are inapplicable to this case. In fact, the lump-sum alimony case, *Abshire* was decided in 1984 and predates the decision of the Mississippi Supreme Court's *Ferguson* decision which was decided in 1994 and which represented a significant departure in the law of the state for the division of assets upon the dissolution of marriage.

It appears to Johnny that the question is whether or not the Chancellor in adjudicating an equitable division of the marital assets can make provision for Johnny to pay Kathryn for her interest in the former family business in the form of monthly payments as opposed to being required to pay her in a lump sum. It is submitted that there are no cases decided by either the Mississippi Supreme Court or Court of Appeals which prevents the Chancellor from weighing the equities as she did and permitting Johnny to make monthly payments to Kathryn rather than requiring a lump-sum cash payment which could require the sale of the business and the loss of the stream of income for Johnny and their children. As the Mississippi Court of Appeals has said:

"In our review of the chancellor's judgment, we are not to conduct a *Ferguson* analysis anew, but are to review the judgment to ensure that the chancellor followed the appropriate standards and did not abuse his discretion. In his judgment, the chancellor described his reasons for the equitable division he made.***We find that the chancellor's analysis was sufficient and, thus, we find no clear error in his division of the marital property in question.***"

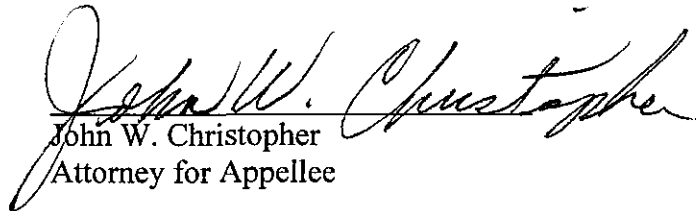
Wells v. Wells, 800 So.2d 1239, 1243-1244 ¶ 8 (Miss.App.2001)

CONCLUSION

The Chancellor followed the standards contained in *Ferguson* and therefore she should be affirmed in both her allocation of the Trustmark debt to Kathryn and in providing that Johnny could pay Kathryn monthly installments to purchase her interest in the former marital business. The Chancellor was not manifestly wrong, clearly erroneous and she did not apply the wrong legal standard and the findings contained in the court's opinion are supported in the record. The Chancellor followed the proper standard and the opinion and judgment entered in this case should be affirmed.

Respectfully Submitted,

Johnny M. Jenkins, Appellee


John W. Christopher
Attorney for Appellee

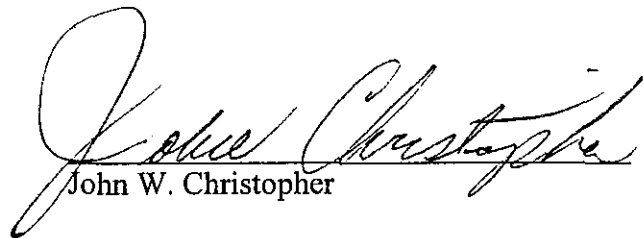
CERTIFICATE OF SERVICE

I, John W. Christopher, attorney for Johnny M. Jenkins, Appellee, hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Cynthia Brewer, Chancellor
P.O. Box 404
Canton MS 39046

Mark W. Prewitt, Esquire
914 Grove St.
Vicksburg, MS 39183

This the 26th day of July, 2010.



John W. Christopher