IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

THERESIA WALLS JONES **APPELLANT**

VS. **CAUSE NO. 2009-CA-02015**

JOHNNY NEAL JONES **APPELLEE**

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 or Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Theresia Walls Jones, Appellant.
2. Johnny Neal. Jones, Appellee.
3. Joseph A. Fernald, Jr., counsel for Appellant at trial and on appeal.
4. David L. Brewer, counsel for Appellee at trial and on appeal.
5. Honorable Edward N. Patten, Jr., presiding Chancellor at trial.

THIS the 7th day of March, 2011.

David L. Brewer
Attorney of Record for Johnny Neal Jones

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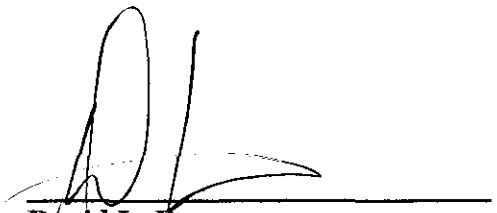
WAVIER OF ORAL ARGUMENT

The Appellee, Johnny Neal Jones, submits that oral argument would **not** be necessary or beneficial to the resolution of this case, and submits that the record and brief should be sufficient for the Appellate Court to determine the case.

THIS the 7th day of March 2011.



BY: David L. Brewer
Attorney for Appellee

STATEMENT OF ISSUES

1. MR. JONES CONTENDS THE TRIAL COURT DID NOT ERR IN ITS ANALYSIS OF EQUITIBLE DISTRIBUTION BY FAILING TO CONSIDER THE NATURE AND EFFECT OF THE DEBT ON THE 2007 ALTIMA AUTOMOBILE.

2. MR. JONES CONTENDS THE COURT WAS NOT IN ERROR AS A MATTER OF LAW OR FACT IN AWARDING THE TRAILER TO MR. JONES.

STATEMENT OF THE CASE

1. STANDARD OF REVIEW

The Court's scope of review in domestic relations cases is limited. The Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Ferguson v. Ferguson,* 639 So. 2d 921, 930 (Miss. 1994) (citing *Bell v. Parker,* 563 So. 2d 594, 596-97 (Miss. 1990)). Therefore, the Court should "not disturb a chancellor's findings unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Mizell v. Mizell,* 708 So.2d 55, 59 (Miss.1998) (citing *Stevison v. Woods,* 560 So.2d 176, 180 (Miss.1990)). Additionally, "[o]n appeal this Court is required to respect the findings of fact made by a chancellor supported by credible evidence and not manifestly wrong." *Newsom v. Newsom,* 557 So.2d 511, 514 (Miss.1990).

2. COURSE OF PROCEEDINGS

This appeal arises out of a divorce action which was filed by the respective parties in the Chancery Court of Lincoln County, Mississippi.

Johnny N. Jones filed his Complaint for Divorce against Theresia Walls Jones on May 1, 2008, alleging habitual cruel and inhuman treatment as grounds for the divorce and irreconcilable differences as the alternative ground. Mr. Jones further requesting attorney's fees, possession of one 2001 F-150 pickup truck and a 2003 Taurus, the marital home and all furnishings therein, that Ms. Jones be required to pay all of the parties' outstanding bills, one-half (½) of the fifteen thousand dollar ($15,000.00) gift from Ms. Jones father and one half (½) of the outstanding Federal Income Taxes for 2006. (DE: 3-7)

Mr. Jones executed a Certificate of Compliance with Uniform Chancery Court Rule 8.05 on June 25, 2009. (DE: 8) A waiver of process was entered by Ms. Jones on June 26,

2009. (DE: 9-10) The case was continued by agreement of the parties and order of the Court on June 29, 2009. (DE: 11-12) Both parties filed 8.05 Certificates on August 24, 2009. (DE: 13-14) On August 31, 2009 a Joint Motion to Withdraw Contested Pleadings and an Order granting said Motion were entered. (DE: 15-16).

The same day a Consent Agreement was filed with the clerk in which the parties agreed to a divorce on the grounds of irreconcilable differences and the restoration of Ms. Jones maiden name of Walls. The parties further submitted that the issues for trial would include equitable distribution of property, whether alimony or attorney fees should be awarded and which party should be responsible for the payment of marital debts. (DE: 17-20)

Trial was held on August 24 and August 31, 2009 with the Honorable Edward E. Patten, Jr., presiding, during which the court heard all testimony, reviewed all evidence and rendered a judgment making very detailed findings of fact on the issue of equitable distribution of the parties assets and liabilities. On October 9, 2009, Judge Patten entered a Final Decree granting a divorce on the ground of Irreconcilable Differences, restoring Ms. Jones maiden name and incorporating said detailed findings of fact as to equitable distribution in the case. (DE: 22-49)

No post-trial motions were filed by either party. On November 9, 2009, Theresia Walls Jones filed her notice of appeal with the trial Court. (DE: 50)

3. STATEMENT OF THE FACTS

The parties were married on April 9, 2004 and separated on February 24, 2008. There was no issue of this marriage; however, Ms. Jones had two teenage children by previous marriages. Johnny N. Jones filed for divorce on May 1, 2008 on contested grounds of habitual cruel and inhuman treatment and citing irreconcilable differences as an alternative. (DE: 3-7) The parties were in agreement that a divorce should be granted on the ground of

irreconcilable differences, that Ms. Jones maiden name should be restored and that the issue of equitable distribution of property and debts should be decided by the Chancellor. (See Consent Order, DE:17-20)

The case went to trial on the matter of equitable distribution and the court made detailed findings of fact as to all disputed property and awarded the respective parties all properties wherein no dispute as to classification or ownership were raised. (*See* Final Decree, DE: 22-49, RE: 2-29)

With regard to disputed property, the Chancellor ordered, *inter alia*, that a dual axle trailer be awarded to Mr. Jones and that Ms. Jones pay the sum of $5, 953.00 to fairly apportion all equities between the parties. The trailer was alleged to be marital property by Mr. Jones. Ms. Jones, on the other hand, testified that the trailer was her father's property. Ms. Jones, being of the opinion that the Chancellor was in error, filed a Notice of Appeal on November 9, 2009, questioning the award of the trailer to Mr. Jones and further asserting the Court was in error by finding that she should pay the $5,953.00 to Mr. Jones. (DE: 50) Her contentions are that the trailer is not marital property but rather, the property of her father and that the court failed to consider the nature and effect of the debt on the 2007 Nissan Altima automobile which she was awarded.

Mr. Jones now files his response to Ms. Jones appeal and submits to this Court that the Court did not err in his ruling(s) and the Chancellor's rulings should be affirmed.

SUMMARY OF ARGUMENT

Johnny Neal Jones contends that the Chancellor's adjudication of the equitable distribution of the parties' marital assets was not in error with regard to the 2007 Nissan Altima because Ms. Jones fails to cite any authority in support of her point of contention. The parties agreed to the value of the vehicle and the amount of equity in said vehicle in

Exhibit 21 to the trial (RE: 24-29) Ms. Jones received the equity in, ownership of and exclusive right to use the vehicle and was, therefore, authorized to keep or dispose of said vehicle as she deems fit. Moreover, Ms. Jones assertion that she did not want the vehicle is contradicted by the fact that she admits she executed all of the sale documents and she definitely wanted a new vehicle because she admitted that she wanted a van or a CRV. Her knowledge of the purchase is further substantiated by Mr. Jones statement that they had shopped for her new vehicle for three months. The Chancellor was well within its authority to award the vehicle to the owner of record, Ms. Jones and, she necessarily had to continue to honor her obligation to pay for the vehicle she purchased.

Mr. Jones further contends that the Chancellor was correct in awarding the 16 foot dual axle trailer to him. He acknowledged that Ms. Jones' father had once owned the trailer; however he asserts that the trailer was a gift to the couple. Ms. Jones' on the other hand, contends the trailer has always been and remains the property of her father. This, in the absence of any documentary evidence as to the ownership of the trailer, created a factual issue which resulted in the Chancellor's classification of the trailer as marital property. The Chancellor was well within his authority when he awarded said trailer to Mr. Jones to provide for balanced equities between the parties. Although Mr. Jones indicated he had no objection to Ms. Jones receiving the trailer, he submits that the Chancellor's sole function was to fairly divide property and no case law has been found or cited by either party which indicates the Court must appease the parties individual desires in the equitable distribution of property.

ARGUMENT

As to both assertions of error on behalf of the Appellant, Theresia Walls Jones, she acknowledges in her brief to this Court that the the only issue before the Chancellor at the trial of this case was "about the marital property and created an issue of equitable distribution

for the Court" (Appellant Brief: 2), that "the Court issued a detailed Finding of Facts and Conclusions of Law" (Appellant Brief: 2), and that she "does not challenge the Court's analysis of the 'Ferguson Factors'. . ." (Appellant Brief: 4). As such, this Court is limited to the two issues asserted by the Appellant, Theresia Walls Jones, for which no authority is cited.

1. MR. JONES CONTENDS THE TRIAL COURT DID NOT ERR IN ITS ANALYSIS OF EQUITIBLE DISTRIBUTION BY FAILING TO CONSIDER THE NATURE AND EFFECT OF THE DEBT ON THE 2007 ALTIMA AUTOMOBILE.

Appellant, Theresia Walls Jones, asserts that the Chancellor failed to consider the debt on the 2007 Nissan Altima which, according to her, would have mitigated some portion of her equity surplus which justified a single payment of $5,953.00 to Mr. Jones. Appellee, Johnny Neal Jones, submits that this claim is unjustified and that the Chancellor ruled correctly. In essence, Ms Jones would have the Appellee, Johnny Neal Jones, incur debt on property for which he receives no benefit, has no ownership interest and which is exclusively Appellant Theresia Walls Jones' property – to sell, trade-in or otherwise dispose of as she deems appropriate. Ms. Jones cites no case, statutory or other authority upon which she can justify such a contention and, as such, this assertion is without merit and should not even be considered by the Court because "[t]his Court has held that it will not consider an assertion of error for which there is no authority cited . . . " *Spalding v. Spalding* 691 So. 2D 435, 439 (Miss, 1997).

Should the Court find the foregoing unpersuasive, Mr. Jones further contends that "[o]n appeal this Court is required to respect the findings of fact made by a chancellor supported by credible evidence and not manifestly wrong." *Newsom v. Newsom,* 557 So.2d 511, 514 (Miss.1990). Ms. Jones asserts that while she "receives the value of the car, she has debt that she didn't create or want" and "that the Court erred when it did not apportion

part of the debt against Mr. Jones." (Appellant Brief: 5-6) This is the essence of her argument and she has neither cited, nor has the undersigned counsel located any authority supporting the proposition that in equitable distribution a party should receive any consideration with regard to debt on properties (awarded to them by the Court) which they arguably do not desire.

Additionally, Ms. Jones requests this court to assume the position of the trial court as the finder of fact. She submits that Mr. Jones is entirely at fault for the vehicle purchase and that her testimony in that regard is unrebutted (Appellant Brief: 5); however, who actually purchased the vehicle is a factual dispute as shown by Ms. Jones evasive nature and contradictions on her cross-examination:

> Q Okay. But you paid how much for your Altima?
> A I would have to look at the thing, because I wasn't there when it was bought.
> Q Well, what I'm asking you is – but you signed off on all the documents on the Altima?
> A It was given to me as a Mother's Day gift. I got home, the Altima was sitting in my driveway. He had sold my van. The people were waiting to pick up the van and the Altima was sitting there. I had told him I didn't want a car, that I wanted a CRV or a van, because I did not like sitting on the ground.
> (TR: 246–248, RE: 30-32)

The foregoing indicates that even if Ms. Jones did not want the Altima, that she desired a new vehicle, intended to purchase another vehicle and would necessarily, therefore, have voluntarily incurred debt. Moreover, Ms. Jones was clearly present when the vehicle was purchased and, in fact, signed all documents necessary to complete the purchase, which, contradicts the foregoing testimony:

> Q And you signed off on every document on the purchase or the sale of the car; didn't you?
> A Yes, under duress.
> Q Under duress. Did Mr. Jones put a gun to your head?
> A No. But he had sold my car. So I didn't have nothing else to drive.
> Q And you are an adult right?

A I am.
Q And you can make your own decisions?
A Yes.
Q And you voluntarily signed those papers?
A Yes.
(TR: 247-248, RE: 31-32)

Mr. Jones unrebutted testimony further supports the fact that Ms. Jones had the opportunity to sell the vehicle and thereby alleviate the existence of debt in her name on a vehicle she allegedly did not want in his cross-examination by stating:

> I've offered to take that car and – where she wouldn't have the note, but she wouldn't do that because she wanted me to take the car and pay it off and then give her the truck too, where she wouldn't have the debt. I offered to do that for her. Well, my son offered to buy it from her where she wouldn't have the note.
> (TR: 155-156, RE: 33-34)

Mr. Jones also addressed the vehicle on direct examination when asked about who initially wanted to purchase the Altima and responded by explaining that the decision to buy the car was "[both] our ideas. We shopped for that car for three months." (TR: 37-38, RE: 35-36)

The sum total of all testimony relating to the Altima vehicle presented an issue or question of fact as to whether Ms. Jones was present at the purchase and whether she wanted the vehicle. Additionally, the undisputed testimony by both parties reveals that: 1) Ms. Jones actually signed all the purchase documents for the vehicle; 2) that she intended to purchase a vehicle; and, 3) that she had an opportunity to avail herself of any debt on the vehicle but was unwilling to sell it to Mr. Jones' son unless he gave her a truck on which there was no debt. The Chancellor considered the evidence and made a factual determination that Ms. Jones should have the car as well as the associated debt. This factual determination should not be questioned because it is "not supported by credible evidence and not manifestly wrong." *Newsom v. Newsom,* 557 So.2d 511, 514 (Miss.1990). Additionally, since the Chancellor's analysis of the Ferguson Factors is not challenged by Ms. Jones (*See* Appellant Brief: 4), the

correct legal standard was clearly applied by the Chancellor.

Finally, despite the assertions of Appellant, Theresia Walls Jones, a review of Exhibit 21 (RE: 24-29) to the trial clearly indicates that the parties agreed on a value for the Altima of $19, 350 and that an average value (equity) existed in the vehicle of $4,850, which was considered by the Chancellor as an equity figure in making the equitable distribution at trial:

> Mr. Fernald: And she pays the Altima, the automobile.
> By the Court: That's right.
> Mr. Fernald: Okay.
> By the Court: Because you put that in the value as an equity figure.
> (TR: 325-326, RE: 22)

In view of the foregoing, the Chancellor did not err in its analysis of equitable distribution by failing to consider the nature and effect of the debt on the 2007 Altima automobile and the judgment of the Chancellor should be affirmed.

2. MR. JONES CONTENDS THE COURT WAS NOT IN ERROR AS A MATTER OF LAW OR FACT IN AWARDING THE TRAILER TO MR. JONES.

Appellant, Theresia Walls Jones' second assignment of error states "The Court erred when it awarded the trailer loaned to the parties by Mr. Walls to Johnny Jones." This argument is without merit for several reasons: 1) the issue of ownership of the trailer was a factual dispute for the Chancellor's resolution; 2) Ms. Jones assertion that Mr. Jones acknowledged her father's ownership is not supported by the record in this case; and, 3) That "[t]his Court has held that it will not consider an assertion of error for which there is no authority cited . . . " *Spalding v. Spalding,* 691 So. 2D 435, 439 (Miss, 1997). As such, Mr. Jones submits that the Chancellor's ruling was entirely within its discretion and appropriate.

Regarding Ms. Jones inability to cite authority in support of this assignment of error, Mr. Jones reiterates his foregoing objection to the Court considering said assignment of error pursuant to *Spalding* and submits the Court should not give this issue any consideration.

Should the Court deem the matter appropriate for consideration; however, ownership of the trailer is clearly disputed in the record. Appellant, Theresia Walls Jones, suggests that her husband acknowledged Mr. Wall's (Ms. Jones father) ownership of the trailer in question as a justification for it being awarded to her-rather than to Johnny Jones as the Chancellor ruled; however, this is false and is taken out of context in Ms. Jones brief. The Court must review the entire dialogue to ascertain Mr. Jones' position:

> Q Is there anything I have not included in your property?
> A A 16 foot flatbed trailer that was given to us by her daddy.
> Q What year was it given to you?
> A '07.
> Q 2007, did you ever use that trailer?
> A Yes sir.
> Q And single axle, dual axle?
> A Dual axle, 16 foot.
> Q 16 foot dual axle trailer. Was it new when he gave it to you are used?
> A No, sir. It was used.
> Q What value would you assign to the dual axle trailer?
> A About eight or $900. Say $900.
> Q And who has the trailer?
> A Ms. Jones or Theresia. That's where it was when I left.
> Q Do you have any objection to her keeping that, or did you just want the Court to be aware of the value of something that was in the marriage there?
> A I just – she can keep it. It **was** her dad's. I don't want anything that – I mean, he gave it to both of us, but, you know, it **was** her dad's trailer. I wouldn't want to take it from her. I wouldn't want her taking my dad's trailer. [Emphasis Added]
> Q It just had value and was used in the marriage?
> A Right.
> (TR: 88-89, RE: 37-38)

Mr. Jones was later recalled to the stand in rebuttal and added, "Mr. Walls gave us that trailer." (TR: 302, RE: 39) Most importantly, the Chancellor made a factual ruling regarding the trailer stating:

> The brown building has been used by both parties during the marriage, and under the familial use doctrine, it is likewise a marital asset, as is the disputed grill, the glass end table and the dual axle trailer.
>
> Now there is no credible evidence that the trailer was not a gift, and matter of fact, it just doesn't make sense that Mr. Walls would have left the trailer over there for four

years without it being some type of gift, (TR: 314, RE: 10)

Clearly, after hearing the testimony and reviewing all the evidence, the Chancellor agreed with Mr. Jones' position that at one time, Mr. Walls had been the owner of the trailer; however, the trailer was given to the parties as a gift and, therefore, was marital property subject to equitable distribution by the Chancellor as he determined pursuant to *Ferguson*. Mr. Jones also clearly wanted the value of the trailer considered by the Chancellor as well. Mr. Jones agrees with the ruling of the Chancellor in his findings of fact and conclusions of law issued in his Final Decree (DE: 22-49, RE: 2-29) and requests that the Court affirm the Chancellor's decisions .

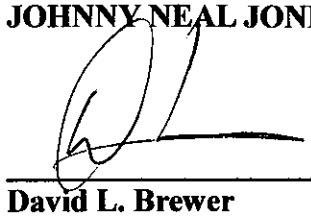
CONCLUSION

Appellee, Johnny Neal Jones contends, based the foregoing argument, that the Chancellor properly classified the property of the parties in this case and was well within its authority as fact finder to award the 2007 Altima, along with the equity in and debt on said vehicle to Ms. Jones. Mr. Jones agrees with the Chancellor's ruling that Ms. Jones' should receive said vehicle, equity and debt and that the Chancellor did not err in that decision.

Mr. Jones further contends that the dispute as to ownership of the 16 foot, dual axle trailer was an issue of fact for the Court's determination, that the Court properly determined the trailer was marital property pursuant to the familial use doctrine and that the award of said trailer was within his discretion for purposes of equitable distributing the parties' property. As such, Appellee submits this case should be affirmed.

RESPECTFULLY SUBMITTED, this the 7th day of March 2011.

JOHNNY NEAL JONES



BY: David L. Brewer
Attorney for Appellee

CERTIFICATE OF SERVICE

I, David L. Brewer, counsel for Appellee, Johnny Neal Jones, do hereby certify that I have this day served a true and correct copy of the foregoing brief to the following individuals by the following means:

FOUR COPIES VIA HAND-DELIVERY:

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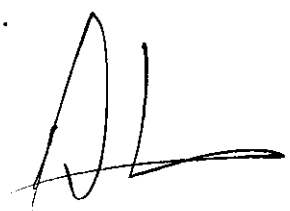
SO CERTIFIED, this the 7th day of March 2011.



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