

2009-CA-021502015 T

BRIEF OF APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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 this Court may evaluate possible disqualification or refusal:

1. The parties listed in the title of this case.
2. Joseph A. Fernald, Jr., counsel for Appellee at trial and on appeal.
3. David Brewer, counsel for Appellant at trial and on appeal.
4. Honorable Edward E. Patten, Jr., Chancery Court Judge.

This the 2nd day of ^{December}~~November~~, 2010.

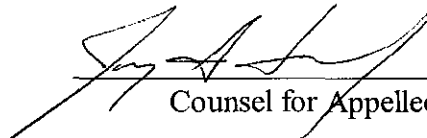

Counsel for Appellee

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TABLE OF AUTHORITIES

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BRIEF OF APPELLANT

STATEMENT OF ISSUES:

- 1. THERESIA WALLS JONES CONTENDS THAT THE COURT'S ANALYSIS OF EQUITABLE DISTRIBUTION IS IN ERROR BECAUSE THE COURT DID NOT TAKE INTO CONSIDERATION THE NATURE AND EFFECT OF THE DEBT ON THE 2007 NISSAN ALTIMA AUTOMOBILE.**
- 2. THE COURT ERRED WHEN IT AWARDED THE TRAILER LOANED TO THE PARTIES BY MR. WALLS TO JOHNNY JONES.**

STATEMENT OF THE CASE:

On May 1, 2008, Johnny N. Jones filed his Petition For Divorce in the Lincoln County Chancery Court alleging habitual cruel and inhuman treatment against his wife Janice Theresia Jones. He also alleged irreconcilable differences as an alternative ground. According to his Petition, Mr. Jones requested the divorce, attorney fees, ownership and possession of one 2001 F-150 pickup truck and a 2003 Ford Taurus, ownership and possession of the marital home and furnishings, payment of all outstanding bills, return of one half of a fifteen thousand dollar gift (\$15,000.00) from Mrs. Jones father and payment of one half (1/2) of the outstanding Federal Income taxes for 2006

Theresia Jones executed her waiver of process on June 26, 2009. The matter was continued by order of the Court on June 29, 2009. (DE:11-12) Mr. Jones executed his Certificate of Compliance pursuant to Rule 8.05 for the Uniform Chancery Court Rules. (DE: 8) Mrs. Jones submitted her 8.05 Certificate on August 24, 2009 (DE: 13) and Mr. Jones submitted another Certificate of Compliance on the 24th of August. (DE: 14)

The parties agreed to proceed to trial on the merits on August 24, 2009 pursuant to Section 93-5-2(3), Mississippi Code of 1972 as amended. (DE: 17-20) In addition to the executing and filing their Consent, the parties also filed their Joint Motion To Withdraw

Contested Pleadings and the Court executed the order withdrawing said pleadings on August 24, 2009. (DE: 15-16)

The Trial was held on August 24, 2009 in the Lincoln County Chancery Court, the Honorable Chancery Court Judge Edward E. Patten, Jr. presiding.

The parties were married on April 9, 2004 and they separated on February 24, 2008. This was not the first marriage for either party and they brought a good amount of assets into the marriage for joint use. There were no children born to the parties but Mrs. Jones had two teenage children by previous marriages, which was a source of friction in the marriage.

In essence, despite the contested allegations of Mr. Jones, the parties recognized that this case was about the marital property and created an issue of equitable distribution for the Court which was better suited to a Consent Trial. Through the work of Counsel for the parties, a four page Property List and Valuation Schedule was prepared for the use at trial to determine the equitable distribution of the marital assets. There were seventy-three items on the List (DE: 44-49, RE: 24-29) for a total value of \$138,314.50 in assets. By agreement, Mr. Jones received \$36,344.50 of the assets went to Mr. Jones and \$11,855.00 went to Mrs. Jones. The remaining Assets listed on the Schedule were subject to determination by the Court for purposes of equitable distribution.

At the conclusion of the presentation of evidence by the parties, the Court issued a detailed Findings of Fact and Conclusions of Law thereby granting the divorce and adjudicating those issues presented to the Chancellor under the Consent. The Final Decree was entered on October 9, 2009. (DE: 22-49, RE: 2-29)

Pursuant to the Court's ruling, the Final Decree adjudicated those issues that the parties agreed upon and granted an irreconcilable differences divorce and name restoration for Mrs. Jones. As to those items submitted to the Court for adjudication, the Court rendered as follows:

1. Mrs. Jones received ownership and possession of the marital home.
2. Mrs. Jones received all the items listed in Exhibit 21 as hers.
3. Mr. Jones received all the items listed in Exhibit 21 as his.
4. Mr. Jones received all the items designated as disputed in Exhibit 21.
5. Mrs. Jones shall pay \$5,953.00 to Mr. Jones to satisfy her remaining obligations under equitable distribution.
6. Mrs. Jones is responsible for the payment of the bills at Sears, Belk, University Hospital and Radiology.
7. Mr. Jones shall pay the remaining bills of the marriage.
8. The request for alimony and attorney fees are denied.

It is from this Final Decree that Mrs. Jones appeals.

Mrs. Jones elected to appeal and advised Counsel on the first week of November of both her intention to appeal and her ability to fund said appeal. This delay precluded a Motion to Reconsider the Judgment and placed Mrs. Jones where her duty was to comply with the rules and Perfect her appeal within thirty days of the Final Decree.

On November 9, 2009 Mrs. Jones Filed her Notice of Appeal (DE: 50-51) The Designation of Record, Certificate of Compliance with Rule11(b)(1) and payment for the record were filed on January 19, 2010. (DE: 55-57)

SUMMARY OF ARGUMENT:

Theresia Walls Jones contends that the Court's adjudication of the equitable distribution of the parties' marital assets was in error because the Court failed to apportion certain debts

between the parties fairly. Further, she contends that the Court's application of principles of equitable distribution was not supported by the facts and conflicting testimony of the parties. Mrs. Jones asserts that the Court's award of \$5,953.00 is incorrect and should be subject to reversal.

Specifically Mrs. Jones contends that the Court's failure to apportion the debt on the 2007 Altima constitutes error. She asserts that Mr. Jones should bear an equitable share of the value of the debt he created without her permission or knowledge and that value would eliminate any payment by Theresia Jones to Mr. Jones for a deficiency or equitable distribution.

Mrs. Jones also contends that the Court's award of the flatbed trailer listed on the property valuation schedule to Mr. Jones was error. The evidence and testimony at trial clearly indicates that Mr. Jones recognized the proprietary interest of Mrs. Jones father Mr. Walls. He clearly states she should have the trailer and it is the contention of Appellant Jones that the Court should have awarded the trailer to her.

ARGUMENT:

1. THERESIA WALLS JONES CONTENDS THAT THE COURT'S ANALYSIS OF EQUITABLE DISTRIBUTION IS IN ERROR BECAUSE THE COURT DID NOT TAKE INTO CONSIDERATION THE NATURE AND EFFECT OF THE DEBT ON THE 2007 NISSAN ALTIMA AUTOMOBILE.

The Court, in this case, issued detailed Findings of Fact and Conclusion of Law concerning the evidence presented at trial in an effort to distribute the property fairly. The Appellant does not challenge the Court's analysis of the "Ferguson Factors", *Ferguson v. Ferguson*, 639So 2d 921 (Ms 1994) (DE: 33-40, RE: 5-23) as stated in the opinion but Appellant does challenge the Court's analysis of the debt as related to the \$14,500.00 debt on the 2007 Nissan Altima. Without citation to the numerous case law in Mississippi it is clear that a Chancellor sitting in equity is vested with broad discretion in their decisions. Theresia Jones contends that in this case, the Chancellor's discretion was adversely affected by his

misinterpretation of the information concerning the loan on the Altima and is therefore subject to scrutiny under appeal.

Mrs. Jones testimony at trial asserted that the purchase of the 2007 Nissan Altima was a secret purchase by Mr. Jones for Mrs. Jones (TR: 173, 246-248) described as a “gift”. Her un rebutted testimony was that Mr. Jones sold her van and purchased the car without consulting her and on the day of the “gift” the people who purchased the van were at her house waiting for the van. Once again her un rebutted testimony was that she wanted another van but signed the documents as a “fait d’compli.” Mr. Jones words: “You’re going to have to keep it or you ain’t going to have nothing to drive.” (TR: 247, RE: 91) The fact that the transaction went through is further evidence of the haphazard way that Mr. Jones approached his financial obligations. A gift given under “duress” (TR: 247-248, RE: 91) is not a gift. In effect, Mr. Jones by his unilateral conduct created the very debt at issue by selling a debt free vehicle, the van, which was operating well and buying a sport sedan thereby incurring the debt which he has, based on the Court’s Findings, walked away from scott free.

The Court, when asked by Counsel for Mrs. Jones about the apportionment of the Altima loan between the parties advised that she would be liable “because you put that in the value as an equity figure.” (DE: 42, RE: 18) This is clearly erroneous when one reviews the Rule 8.05 Financial Declaration of Mrs. Jones and the valuation schedule. (RE: 24-37) On Mrs. Jones Rule 8.05 Financial Declaration, Page 5-Section B. (1.), she lists a loan balance of \$14,400.00, which she is paying despite the fact she didn’t want the car. On the Valuation Schedule, the value of the car is listed as \$19,350.00, a figure both parties agree upon. However, the debt of \$14,500.00 is clearly listed on the sheet and there is no equity figure listed. If the Parties used the average value to determine the value in distribution, that still leaves the debt. The amount of \$4,850.00 listed represents the difference between the purchase price and the debt. While Mrs.

Jones receives the value of the car, she has a debt that she didn't create or want. She is entitled to relief on this debt by apportioning an equitable amount of the debt against Mr. Jones.

It is the contention of Theresia Walls Jones that the Court erred when it did not apportion part of the debt against Mr. Jones. In fact, it rewarded Mr. Jones despite the fact that the un rebutted testimony of Mrs. Jones was that she didn't want the car to begin with. It is her contention that the Court should upon remand apportion the debt balance on the 2007 Altima and erase the \$5,953.00 payment the Court awarded Mr. Jones as the residue in equitable distribution. (DE: 40, RE: 20) Mrs. Jones contends that if the debt is viewed as a joint obligation she would be entitled to a maximum \$7,250.00 credit against Mr. Jones for his one half share of the debt. However, she would agree that liquidation of the \$5,593.00 payment to Mr. Jones would be fair.

2. THE COURT ERRED WHEN IT AWARDED THE TRAILER LOANED TO THE PARTIES BY MR. WALLS TO JOHNNY JONES.

One of the items found on the Valuation Schedule was a trailer left at the Jones home by Mrs. Jones Father, Mr. Walls. The corroborated evidence of the length of time it was at the house and the proof of transfer of ownership from Mr. Walls to the Jones is non-existent. However, the record is clear as to the intention of the parties.

Johnny Jones, on direct examination, states that he doesn't want the trailer and recognizes that it was her father's trailer. He clearly states he wants her to have it. (TR: 88-89, RE: 93-94) Mrs. Jones in her testimony states that the trailer is her father's and he never gave up ownership to the trailer. (TR: 213-214, RE 96-97) The Court in its ruling awarded all the disputed items with the exception of the house to Mr. Jones.

Theresia Jones asserts that the Court erred in its awarding the trailer to Mr. Jones when it was clear that he did not want the trailer and recognized Mr. Walls proprietary interest. There

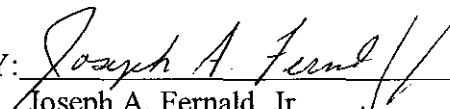
was not one scintilla of evidence to support the transfer of ownership or abandonment of the trailer at the Jones residence by Mr. Walls and said item should be awarded to Mrs. Jones based on the specific testimony of Mr. Jones.

CONCLUSION:

Appellant Theresia Walls Jones contends, based on her argument in her Appeal to this Honorable Court, that the lower Court was in error when it did not consider the debt on the 2007 Nissan Altima into consideration when apportioning the debts of the parties. She asserts that she is entitled to a credit for value of an equitable share of the debt from Mr. Jones.

Mrs. Jones further asserts that, in light of the testimony of the parties at trial and the clear renunciation of ownership interest of the flatbed trailer by Mr. Jones, that the Courts award of the flatbed to Mr. Jones is error and should be reversed.

Respectfully submitted,
Theresia Walls Jones

BY: 

Joseph A. Fernald, Jr.
Attorney for Appellant

CERTIFICATE OF SERVICE

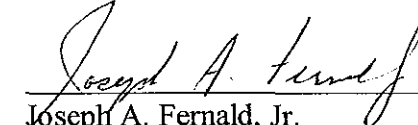
I, Joseph A. Fernald, Jr., attorney for Appellant, Theresia Walls Jones, certify that I have
this day served a copy of the Brief of Appellant via Hand Delivery, to the following:

Kathy Gillis, Supreme Court Clerk
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Jackson, Mississippi 39205

Honorable Edward E. Patten, Jr.
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David Brewer, Esquire
249 Louisiana Avenue
McComb, Mississippi 39648

This the 2nd day of December 2010.



Joseph A. Fernald, Jr.
Attorney for Appellant