IN THE SUPREME COURT OF MISSISSIPPI

Case No. 2010-CA-00129

SUSAN KRISTINE GREGORY JENKINS — APPELLANT

VERSUS

ROBERT WAYNE JENKINS, JR. — APPELLEE

APPEAL FROM THE CHANCERY COURT OF
THE SECOND JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI

APPELLEE'S BRIEF

ORAL ARGUMENT NOT REQUESTED

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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 this Court may evaluate possible disqualification or recusal:

1) Susan Kristine Gregory Jenkins, Appellant

2) Terry L. Caves, Esq. of CAVES & CAVES, PLLC (Laurel, MS), Attorney for Appellant

3) Robert Wayne Jenkins, Jr., Appellee

4) Thomas T. Buchanan, Esq. and John D. Smallwood, Esq. of TUCKER BUCHANAN, PA (Laurel, MS), Attorneys for Appellee

5) Honorable Frank McKenzie, Chancery Court Judge of Jones County, Mississippi

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RE-STATEMENT OF THE CASE

In her brief, Susan Kristine Jenkins ("Kris") outlines fairly accurately the Nature of the Case and the Course of Proceedings, however leaves out some pertinent information which will assist this Court in understanding this appeal. Likewise, in Kris' Statement of the Facts, she again leaves out pertinent information and provides her interpretation of certain facts. For brevity purposes, Robert Wayne Jenkins ("Bobby") will include here only those pertinent facts omitted and/or misinterpreted by Kris in her Statement of Facts.

A. Nature of the Case.

In the Joint Motion of Parties for Court to Grant Divorce on the Grounds of Irreconcilable Differences and for the Court to Decide Certain Issues [R. at 56; A^{E}'s R.E. – #5], the "certain issues" submitted to the trial Court were limited to (A) Identity and division of marital assets; and (B) Identity and division of marital debts.

B. Course of the Proceedings and Disposition Below.

The discovery conducted after the Agreed Temporary Order [R. at 15; A^{E}'s R.E. – #4] and before the trial of the matter included interrogatories and requests for production of documents. Additionally, Kris' conducted the deposition of Andrew E. Gay, Bobby's CPA which was taken on June 3, 2008, a full year prior to the trial on the merits.

Kris was represented throughout the trial court proceedings by learned counsel including the Honorable Billie Graham, Honorable Swayze Alford and the Honorable Judy Barnett. Additionally, prior to trial, the Honorable William J. Lutz mediated the matter.

C. Statement of the Facts.

Kris spends many pages giving this court her interpretation of what she considers pertinent facts. While Kris has certainly glossed over the reasons for her physical and medical problems, what is clear from her testimony given at trial on June 11, 2009, is that at the time of trial she had the ability to work [Tr. 109]. What is also clear is that her admitted addiction to pain killers and the illegal way she obtained them was a contributing factor to Bobby seeking a divorce. [Tr. 27-30, 98].

An Agreed Temporary Order [R. at 15; A^{E}'s R.E. – #4] was entered on June 11, 2007. Kris' recitation of facts during this period fails to point out that, while represented by counsel, she entered into the Agreed Temporary Order [A^{E}'s R.E. – #4]. What support and property was given or requested was based upon that Order.

Also omitted was that Bobby's daughter Michelle was 18 when she moved in with Bobby and Kris [Tr. at 63]. In addition to the money Bobby gave to Kris beginning in 2004 (Kris claims $1,000 and Bobby claims somewhere around $1,400), prior to 2004, Bobby gave Kris money to supplement the joint account [Tr. at 139-140]. Bobby also

paid out of his own account all of the farm and major household expenses such as auto insurance, home insurance and taxes [Tr. at 65].

Juxtaposed to assertion of Kris [A^T Brief at 4], Bobby did not testify to his net worth, however he did submit his MRE 1006 Summary of Marital Assets and Debt which, without objection, was admitted into evidence as Exhibit 3 [A^E R.E. – Tab #8][1]. Interestingly, Kris relies upon these figures in arguing that there was not an equitable division of assets while at the same time arguing that these figures are wrong because no expert was appointed by the Court.

On pages 5-8 of her Brief, Kris purports to provide this Court with an accurate itemization of marital assets, values and division. It is anything but. The trial court determined that the marital assets consisted of:

1. The home and 240 acres in Jones County
2. Kris' retirement ($105,835)
3. Certain Household furnishings
4. Farm Equipment
5. Livestock

[R. at 64-65].

1. The home, built and paid for by Bobby in 1996 (prior to marriage on 11-18-1999) was purchased with 175 acres [Tr. at 4]. The 175 acres was not considered marital property by the Court. The distinction is made for 2 reasons. Firstly, the $1,050,000 value stated in Exhibit 3 and used by Kris in her statement of facts, is based upon the

1 Appellee's R.E. - Tab#8 consists of the first page only of trial exhibit #3 which is the summary and which was what was used during the trial. Exhibit 3 on file with the Chancery Clerk actually includes the supporting documentation which is about an inch thick thus omitted for this appeal.

value of the home and the 175 acres [Tr. at 4]. The Court relied upon the evidence before it which clearly reflected that the value of the home had increased $100,000 since the time of marriage with the addition of outbuildings and a fence [Tr. at 4]. Secondly, the 240 acres which is adjacent to the home, was considered marital property solely because it was purchased during the marriage, albeit after separation and with separate funds of Bobby [R. at 62]. The Court awarded Kris one half of the increase in equity in the home, but no amount for the 240 acres as she did nothing to contribute to its purchase or otherwise obtain an interest therein.

2. As to Kris' retirement, it should be noted that as of the date of the Agreed Temporary Order [R. at 15], it was valued at $174,793.00.

3. "Certain" Household Furnishings – Kris claims that Bobby received $90,000 of marital household furnishings and Kris received $14,942.00. This is simply not true. Exhibit 3 was introduced to reflect the assets owned by Bobby and/or Kris for which the Court would classify as marital versus non-marital, determine a value and divide. Exhibit 3 was used extensively by the Court throughout the trial and both parties were questions about the origin of the properties and the values contained therein.

Bobby lived in what would become the marital residence for 3 years before the parties married. He furnished the home during that time. The Court certainly did not find that every piece of household furnishing was marital property, rather "certain household furnishings" were marital property. As to what was awarded to Kris' in way of marital household property, everything she asked for at the trial [Tr. at 132-137]. In

fact, the trial court on its own spent considerable care in determining what marital household furnishings she wanted. Kris' claim that there was $104,942 in marital household furnishings is not supported by any document presented by her at trial, since she did not submit any documents. That figure is what Bobby valued all household furnishings as of June 11, 2007, whether marital or non-marital.

4. Bobby was awarded the farm equipment which he valued to $34,620. Of course he was keeping the farm and Kris had no use for such.

5. The livestock (horses) were equally divided.

SUMMARY OF ARGUMENT

The trial court correctly classified all assets and debts as marital or separate, properly valued said assets and debts based upon proof before him, and equitably divided the marital property based upon the proof before him. The only issues before the trial court were the identity and division of marital assets and debts. Kris did not request alimony at any level in the trial court. Kris did not request at trial or before to have the Court appoint any expert to value any property owned by either of the parties.

The documentary evidence submitted by Bobby and admitted into evidence by the trial court was not objected to by Kris' and was not contradicted by any expert testimony nor documents submitted by Kris or her counsel. Kris was ably represented throughout the trial court proceedings and had her day in court to present any and all evidence she deemed necessary for the Court to consider.

ARGUMENT

STANDARD OF REVIEW

In *Lowrey v. Lowrey*, 25 So.3d 274, 285 (Miss. 2009), the Mississippi Supreme Court provided the appropriate standard of review for division of marital assets and debts:

> "'A chancellor's findings of fact will not be disturbed unless manifestly wrong or clearly erroneous.'" *Sanderson v. Sanderson*, 824 So.2d 623, 625 (Miss. 2002). "However, the Court will not hesitate to reverse if it finds the chancellor's decision is manifestly wrong, or that the court applied an erroneous legal standard." *Owen v. Owen*, 928 So.2d 156, 160 (Miss. 2006). A chancellor's conclusions of law are reviewed *de novo*. *Chesney v. Chesney*, 910 So.2d 1057, 1060 (Miss. 2005). The distribution of marital assets in a divorce will be affirmed if "'it is supported by substantial credible evidence.'" *Bowen v. Bowen*, 982 So.2d 385, 393-394 (Miss. 2008). A chancellor is required to make findings of fact regarding all applicable Ferguson factors. See *Kilpatrick v. Kilpatrick*, 732 So.2d 876, 881 (Miss. 1999); *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). "[A]n equitable division of property does not necessarily mean an equal division of property." *Chamblee v. Chamblee*, 637 So.2d 850, 863-64 (Miss. 1994). "Fairness is the prevailing guideline in marital division." *Ferguson* at 929 (Miss. 1994).

The guidelines for equitable distribution of property are: (1) classify the parties' assets as marital or separate, (2) value those assets, and (3) divide the marital assets equitably. *Ferguson* at 928 (Miss.1994). Marital property is "any and all property acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor." *Hemsley v. Hemsley,* 639 So.2d 909, 915 (Miss.1994). In contrast, separate property consists of property acquired before or outside of the marriage. *Faerber v. Faerber*, 13 So.3d 853, 858 (Miss.App. 2009);*MacDonald v. MacDonald,* 698 So.2d

1079, 1082-83 (Miss.1997).

1. Did the Chancellor commit reversible error in his division of marital assets and marital debts?

As is evident in the Opinion of the Court [R. at 65-66], Judge McKenzie followed the *Ferguson* guidelines by (1) classifying the parties' assets as marital or separate, (2) placing a value on those assets, and (3) equitably dividing the marital assets. Kris' arguments that Judge McKenzie failed to consider all of the *Ferguson* factors or that the percentages awarded to her are unfair are not supported by the record or by Mississippi law and are without merit.

In Mississippi, marital property continues to accumulate until the court enters a temporary support order. *Amacker v. Amacker*, 33 So.3d 493 (Miss.App. 2009) (*cert. denied* April 29, 2010); *Faerber v. Faerber*, 13 So.3d 853 (Miss.App. 2009); see also Deborah H. Bell, *Miss. Family Law* § 6.02[3][b] (2005). In the case at hand, the trial Court entered an Agreed Temporary Order [A^{E}'s R.E. – #4] on June 11, 2007. In said Order, Bobby was awarded use and possession of the former marital residence and was responsible for all expenses. As such, the trial Court's demarcation of June 11, 2007 was wholly proper, especially considering that Bobby was awarded use and possession and ordered to pay any expenses related to said property.

The premise to many of Kris' arguments in this appeal, is that Exhibit 3 was submitted by Bobby to identify only marital assets. This is mistaken. Though the document is title "MRE 1006 Summary of Marital Assets and Debts" [A^{E} R.E. – Tab #8],

the trial exhibit clearly identifies property Bobby gleaned as non-marital. Furthermore, the testimony of Bobby, the questions and discussions of the trial Court and the testimony of Kris clearly show that Exhibit 3 was a list of all known property, both marital and non-marital [see Tr. at 3] which the trial court used in determining marital and non-marital assets. It should also be noted that the same document was used during the mediation before Honorable William J. Lutz on June 8, 2009 for the same purpose.

Based upon Exhibit 3 and upon the testimony of the parties and the other documents submitted by Bobby (Kris failed to produce even one document at trial including failing to submit her 8.05 financial statement), the trial court determined that the marital assets consisted of:

1. The home and 240 acres in Jones County
2. Kris' retirement ($105,835)
3. Certain Household furnishings
4. Farm Equipment
5. Livestock

[R. at 73-74].

1.A. <u>Marital Value of Homestead Property</u>

Kris claims that the 175 acres of land purchased by Bobby in 1993 was "correctly classified this asset as marital" [A^T Brief at 13]. To be clear, Judge McKenzie <u>did not</u> classify the 175 acres of land as marital, rather "the home and 240 acres in Jones County" [R. at 64]. As discussed in his Opinion [R. at 62], the home and 175 acres of land are separate and distinct pieces of property.

Kris takes exception to the appreciation value of the home being placed at $100,000. She also argues on appeal that, since the home was put to family use after the date of marriage, that the entire marital asset is subject to equitable division. There is nothing in the record nor in the Opinion of the Court [R. at 61] which supports her claim that the entire house was not considered a marital asset. The uncontradicted evidence is as follows:

1. Bobby moved into the home in 1996;

2. Bobby paid for the house in full in 1996;

3. The parties did not marry until November 18, 1999 at which time the value of the home and the 175 acres was $950,000;

4. From November 18, 1999 through June 11, 2007, renovations and improvements to the home were made and paid for by Bobby;

5. The value of the home on June 11, 2007 had increased by $100,000 from the time of marriage.

[Tr. at 3-4]

The evidence is uncontradicted that Kris made no contributions, financial or otherwise, to the building nor purchase of the home. The evidence is uncontradicted that the value of the home and 175 acres was $950,000 in November 1999 [A^E R.E. – Tab #8]. As to the house and curtilage, Bobby's uncontradicted testimony was that it was worth "somewhere around $500,00" at the time of trial [Tr. at 37]. The evidence is uncontradicted that Bobby paid for any renovations and improvements to the home

during the marriage of the parties [Tr. at 4]. The evidence is uncontradicted that between November 18, 1999 and November 11, 2007, the home increased in value by $100,000 [A[E] R.E. – Tab #8]. It is uncontradicted that Kris offered no documentary or oral evidence to contradict the appreciated value of $100,000. It is likewise uncontradicted that Kris did not offer any appraisal of the property at trial.

In addition to the factual issues raised hereinabove, Mississippi law does not support Kris' apparent position that family use somehow entitles her to half of the $500,000 value of the marital residence. In *Curry v. Curry*, 2009-CA-00379-COA (October 12, 2010), the Court of Appeals affirmed an award of $50,000 to Mr. Curry from the marital residence valued at $250,000. In the *Curry* case, Mrs. Curry had previously owned the residence where upon marriage Mr. Curry moved in. The parties lived there for 16 years before separation (compared to 8 years here). An equitable division of property does not necessarily mean an equal division of property. *Chamblee v. Chamblee*, 637 So.2d 850, 863-64 (Miss. 1994). In the case at hand, considering all of the *Ferguson* factors, Judge McKenzie's award of $50,000 or one-half of the increased value of the marital home built and paid for by Bobby years before marriage, is an equitable division.

Prior to the trial of the matter, the MRE 1006 Summary [A[E] R.E. – Tab #8] was properly provided to Kris' trial counsel making available supporting documents (those supporting documents included volumes of tax returns and other valuation documents). Exhibit 3 was admitted into evidence and without any objection was used throughout the

trial and was used by the Court in determining marital and non-marital assets and values for each. Kris' objection to these values now is not proper on appeal.

"A failure to object is fatal for purposes of preserving error [for appeal]." *Banks v. State*, 36 So.3d 492, 493 (Miss.App. 2010); *Canadian National/Illinois Cent. R. Co. v. Hall*, 953 So.2d 1084 (Miss. 2007); *Fleming v. State,* 604 So.2d 280, 302 (Miss.1992). Further, " [q]uestions will not be decided on appeal which were not presented to the trial court and that court given an opportunity to rule on them. In other words, the trial court cannot be put in error, unless it has had an opportunity of committing error." *Banks* at 493; *Stringer v. State,* 279 So.2d 156, 158 (Miss.1973)

Kris states that "the Chancellor should have ordered an appraisal of the homestead property..." A^T Brief at 15]. Kris provides no authority to support this contention. First and foremost, Kris had over 2 years to obtain any appraisal she wanted for any property at issue in this case and she did not. Secondly, Mississippi law provides that if a party on appeal claims an error without any support of law, the issue is barred from consideration. Mississippi Rules of Appellate Procedure Rule 28(a)(6) provides that an argument advanced on appeal "shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on. *Williams v. Willis*, 2009-CA-00974-COA (September 21, 2010). This Court has held that the "[f]ailure to comply with M.R.A.P. 28(a)(6) renders an argument procedurally barred." *Birrages v. Ill. Cent. R.R.*, 950 So.2d 188, 194 (Miss. Ct. App. 2006).

1.B. Industrial Steel Company as Non-Marital Property

Assets that are "accumulated during [a] marriage are . . . marital property 'subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage.'" *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994); quoting *Hemsley*, 639 So.2d at 914-15. In contrast, separate property consists of property acquired before or outside of the marriage. *Faerber v. Faerber*, 13 So.3d 853, 858 (Miss.App. 2009); *MacDonald v. MacDonald,* 698 So.2d 1079, 1082-83 (Miss.1997).

The uncontradicted testimony in this case was that Bobby entered into this business in 1993 and acquired his 49% interest at that time. [Tr. 14-15]. Other than a seven month period from January to August 2002, Bobby was not an active participant in the business other than sitting on the board of directors. [Tr. at 15]. As a director, he did not receive any compensation. [Tr. at 16].

Kris' argument focuses on the value placed on this business based upon Bobby's MRE 1006 Summary. This is flawed for two reasons. First, the evidence presented at trial supports Judge McKenzie's valuation of this business. Kris' offered no evidence whatsoever to contradict the valuation placed in Bobby's MRE 1006 Summary which was duly admitted into evidence without objection. As shown hereinabove, on June 3, 2008, Kris did take the deposition of Andrew E. Gay, Bobby's CPA. Kris did not call him at trial nor did she even attempt to offer his deposition. Kris had her day in court and did not challenge said evidence. Secondly, Industrial Steel Company was properly

determined to be a non-marital asset.

It should also be noted that in contradiction to Kris' assertions otherwise, any increase in the value of Industrial Steel during the marriage was passive. "If the increase resulted from a spouse's efforts, the appreciation is 'active' or marital. Appreciation resulting from other causes – passive appreciation – remains separate." Deborah H. Bell, *Miss. Family Law* §6.03[4][a](1st ed. 2005). "Appreciation resulting from other causes - "passive" appreciation - remains separate. *Id.*

In the final two paragraphs contained within **1B**, Kris inexplicitly attacks Judge McKenzie's valuation given to Mid Mississippi. In her Statement of Issues, Kris failed to identify any claimed error in reference to Mid Mississippi. Again, she has failed to comply with Mississippi Rules of Appellate Procedure Rule 28(a)(6) which renders said argument procedurally barred." *Birrages v. Ill. Cent. R.R.*, 950 So.2d 188, 194 (Miss. App. 2006). This claim of error should also be barred because, as with her other claims of error for valuation of property, she provided no document or witness to contradict Bobby's MRE 1006 Summary.

1.C. 3.8 Acres as Non-Marital Property

Assets that are "accumulated during [a] marriage are . . . marital property 'subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage.'" *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994); quoting *Hemsley*, 639 So.2d at 914-15.

In contrast, separate property consists of property acquired before or outside of the marriage. *Faerber v. Faerber*, 13 So.3d 853, 858 (Miss.App. 2009); *MacDonald v. MacDonald,* 698 So.2d 1079, 1082-83 (Miss.1997).

It is uncontradicted that Bobby purchased the subject 3.8 acres in 1988, before the marriage [Tr. at 4]. It is uncontradicted that during the marriage Bobby put improvements on said property in the value of $35,000 from his separate estate [Tr. at 4-5]. Bobby testified that this property was used by Mid Mississippi for which he received rent. Kris' claim that Bobby "listed this property as a marital asset as he did the homestead property" [A^T Brief at 17] is again a fallacy. The MRE 1006 Summary was presented and used to determine all marital and non-marital property. Judge McKenzie properly considered all of the *Ferguson* and *Hemsley* factors for which there is not error.

1.D. Kris' health condition at trial

The pleadings before the trial court were clear at the time of trial. Kris' had not requested alimony in any of her properly filed pleadings. Furthermore, the filed Joint Motion of Parties for Court to Grant Divorce on the Grounds of Irreconcilable Differences and for the Court to Decide Certain Issues [R. at 56; A^E's Record Excerpts – Tab #5], clearly limited the issues before the trial court to (A) Identity and division of marital assets; and (B) Identity and division of marital debts. Pursuant to Miss. Code Ann. Section 93-5-2(3) (1972), the parties filed the Joint Motion and Consent with full advice of counsel. At trial, it was clearly established that alimony had not been requested

and was not before the Court [Tr. at 54].

Kris' post trial counsel brought this same issue up in her Amended Motion to Reconsider [R. at 86]. The argument is misplaced for two reasons. Firstly, Kris' request is based upon her perception of what should be classified as marital property. As discussed hereinabove, the trial Court has properly classified and valued the marital and non-marital property.

Secondly, her argument is truly a request for alimony. As no alimony was requested by Kris in the trial court, as Kris consented to the trial court deciding only the issues of the identity and division of marital assets and debts and as she first raised this alimony request in post-trial motions and appeal, her claim of error should be denied.

1.E. Alleged failure to divide all marital assets and debts

It is admitted that the Opinion of the Court [R. at 61] did not address the marital debts nor non-marital debts. However, the Court clearly considered all debts listed on the MRE 1006 Summary as non-marital and thus owed by the spouse who's name the accounts are in. Likewise, the 2002 Suburban is titled in Kris' name thus in the absence of any specific award Judge McKenzie, it was awarded to Kris. Additionally, this issue of claimed error is not supported by any authority and is barred. M.R.A.P. Rule 28(a)(6); *Birrages v. Ill. Cent. R.R.*, 950 So.2d 188, 194 (Miss. App. 2006).

2. Did the Chancellor commit reversible error in his determination of the fair market value of marital assets?

The *Mace* case cited by Kris is inapplicable. In addressing the trial court's valuation of Dr. Mace's medical practice, the appeals court reversed on the valuation not because of no expert, rather because it could not determine the trial court's basis for valuation. Justice Pittman wrote, "[i]t is unclear from the record the basis for the valuation of the practice. It cannot be determined exactly what the $144,000 included whether it included the practice as a whole, including the medical equipment, or whether it was without any physical assets.". *Mace v. Mace*, 818 So.2d 1130, 1134 (Miss. 2002).

In the case at hand, Bobby presented documents supporting valuation of all assets at issue at trial and which today are found in the Chancery Clerk's trial exhibits. Exhibit 3 was properly prepared and submitted to Kris' counsel prior to trial pursuant to MRE Rule 1006 and was introduced into evidence at trial without objection. Understanding that current appeal counsel was not trial counsel for Kris, her assertion that Bobby's valuations were without "basis" or "without explanation" is simply not correct. What is uncontradicted is that Kris failed to offer any evidence at trial related to Mid-Mississippi or Industrial Steel Company even though she did take the deposition of Andrew E. Gay, Bobby's CPA. Kris did not call him at trial. As to the values of other property, as the purchaser of that property, Bobby was certainly in a position to give the court a value.

As to the assertion that "Bobby's attorney recognized the need for an expert during the trial", the discussion of an expert was during an objection to Kris' counsel asking Bobby specific tax questions. Again, Kris failed to call any expert witness. At

trial, the Court had properly before it unchallenged evidence of the acquisition, appreciation and value of Mid-Mississippi and Industrial Steel Company. Kris had her day in court and did not challenge said evidence. She is not entitled to a second bite of the apple.

Kris' claim of error here is a leap unsupported by any authority and thus precluded. Kris argues that because a Chancery Court has "authority" to appoint independent experts and because Bobby could afford it, that Judge McKenzie should have done so in this case for which reversal is required. Once again, as Kris offers no authority for her contention, this assertion is precluded. M.R.A.P. Rule 28(a)(6); *Birrages v. Ill. Cent. R.R.*, 950 So.2d 188, 194 (Miss. App. 2006). Furthermore, Kris had 2 years to obtain any expert she wanted. She took the deposition of Bobby's CPA a year before trial. Kris had her day and court and failed to provide any testimony or document to contradict the values offered by Bobby.

3. June 11, 2007 - Valuation date for the division of marital assets and marital debts.

Kris' cited authority defeats her own argument, "the date of valuation is necessarily within the discretion of the Chancellor." *Hensarling v. Hensarling*, 824 So.2d 583, 591 (Miss. 2002). Marital property continues to accumulate until the court enters a temporary support order. *Amacker v. Amacker*, 33 So.3d 493 (Miss.App. 2009) (*cert. denied* April 29, 2010); *Faerber v. Faerber*, 13 So.3d 853 (Miss.App. 2009); see also Deborah H. Bell, *Miss. Family Law* § 6.02[3][b] (2005). In the case at hand, Judge

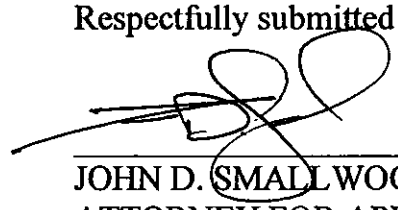
McKenzie entered an Agreed Temporary Order [A[E]'s R.E. – #4] on June 11, 2007. In said Order, Bobby was awarded use and possession of the former marital residence and was responsible for all expenses. Kris has no longer in the home and made no contributions, domestic or financial, after this time. As such, the trial Court's demarcation of June 11, 2007 was wholly proper.

Regardless of the date of demarcation, Kris did not offer the first piece of evidence at trial to establish what she believed the valuations should be. Whether valued on June 11, 2007 or on June 11, 2009 or some other time.

CONCLUSION

Kris had over 2 years to prepare for trial. She had 3 competent and skilled attorneys representing her during that time. She went through mediation. She failed to introduce any document at trial and likewise failed to object to Exhibit 3. Her claims of error are without merit for which the Judgment of Divorce and Opinion of the Court should be affirmed.

Respectfully submitted:



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CERTIFICATION OF SERVICE

I do hereby certify that I served a copy of the foregoing Appellee's Brief on all parties to this matter by first class mailing to the attorneys and on the date listed below:

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This the 28 day of October, 2010.

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