

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SUSAN KRISTINE GREGORY JENKINS

APPELLANT

VERSUS

NO. 2010-CA-00129

ROBERT WAYNE JENKINS, JR.

APPELLEE

APPEAL FROM THE CHANCERY COURT OF THE
SECOND JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI
CAUSE NO. 2007-0269

THE HONORABLE FRANKLIN C. MCKENZIE, JR., CHANCELLOR, PRESIDING

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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STATEMENT OF FACTS

Bobby Jenkins has made many misstatements of facts and unsupported assertions in an attempt to defeat Kris' claim to an equitable division of marital assets. For example, Bobby attempts to persuade this Court that the Chancellor did not consider the 175 acres included in the homestead property as part of his valuation in equitable division. Bobby's assertion is contradicted by the Chancellor's own statement where he stated the following:

"Bobby estimates that during the marriage the value of the home and land that he owned prior to the marriage increased in value by \$100,000.00 during the marriage due to his expenditure of funds he had earned prior to his marriage to Kris." (CP 64)

In other words, the Chancellor found that Bobby testified that the home and 175 acres of land appreciated by \$100,000.00 during the marriage. Bobby attempts to segregate the 175 acres of land from the actual house. Just exactly how much land does Bobby contend goes with house? No one knows because he did not testify that the house was segregated from the 175 acres of land. Bobby's argument is absurd.

Bobby also makes a claim that Kris was able to work at the time of trial. This is untrue. Kris testified that at such time as she applied with her previous employer, that she would be eligible for rehire. However, at the time of the trial she was totally disabled due to a shoulder injury and was waiting on a ruling of her social security disability application. (T. 109) Bobby further states that he did not testify as to his net worth. However, he identified his 8.05 Financial Statement and Exhibit 3 which contained the marital property. Any person can take a calculator and subtract his assets from his liabilities to determine his net worth.

LEGAL ARGUMENT

1. The Chancellor incorrectly held that only appreciation of the homestead property was subject to equitable division.

Bobby cannot reasonably argue that the home and 175 acres of land and the additional 240 acres of land are not marital property. Kris never stated that she was entitled to one-half of the value of the homestead and the additional 240 acres. However, what Kris does contend is that she is entitled to a fair share based upon the principles set forth by this Court in *Ferguson* and *Hemsley*. Bobby makes a blatant misstatement when he says “The evidence is uncontradicted that Kris made no contributions, financial or otherwise, to the building nor purchase of the home. (Appellee’s Brief Page 10) First of all, Kris worked outside of the marriage and contributed financially to the marriage. This is undisputed. Secondly, Kris performed homemaker services which Bobby should know is presumed to be equal to that of a wage earner. *Lowrey v. Lowrey*, 25 So. 3d 274 (Miss. 2009) citing *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss. 1994)

Although Bobby owned the home and 175 acres prior to the marriage, Kris’ use of the homestead property, including the house, erecting fences on the 175 acres of land, and building a barn constitute family use converting the homestead property and 175 acres of land to the status of marital property. No, this does not mean that Kris is entitled to one-half of the value of the marital property, but she is entitled to an equitable or fair share of the value of the entire marital property. *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss. 1994) In her principle brief, Kris made it clear that equitable division of property does not mean an equal division of property.

Bobby’s statement that Kris provides no authority to support her contention that an appraisal of the homestead property should have been ordered by the Chancellor is incorrect.

This is untrue because *Ferguson* and *Hemsley* provide that marital assets of the parties are measured by their fair market value. *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994), *Drumwright v. Drumwright*, 812 So. 2d 1021 (Miss. Ct. App. 2001) Chancery Courts have inherent authority to order appraisals to determine fair market value and have authority pursuant to the Mississippi Rules of Civil Procedure to appoint expert witnesses.

Throughout his Brief, Bobby contends that Kris did not cite authority for her arguments. However, a cursory review of Kris' Brief reflects that she has cited authority under every assignment of error.

2. The Chancellor incorrectly classified Industrial Steel Company as a non-marital asset.

Bobby completely ignores the conflict between his guesstimate of the value of Industrial Steel at \$490,465.00 and the value placed upon the business by his accounting firm at \$1,692,482.40 as of December 31, 2008. (CP 99 – 100) He further fails to explain this conflict and does not dispute that the substantial difference in the value of Industrial Steel creates suspicion surrounding Bobby's uncorroborated value. Bobby was actively involved in the management of the business by serving on the Board of Directors and working for pay for a period of time.

The Chancellor erred by excluding from his consideration Kris' total disability and health condition at the time of the trial.

Bobby's argument that Kris' health condition should not be considered is nonsensical. Kris did not request alimony. The health condition of the parties is a factor for the Court to consider in equitable distribution. *Selman v. Selman*, 722 So. 2d 547, 552 (Miss. 1998)

3. The Chancellor erred in failing to divide all of the marital assets and all of the marital debt.

Bobby admits that all of the marital assets and all of the marital debts were not divided by the Chancellor. Bobby then attempts to assume what the Court would do had he divided the remaining marital assets and marital debts. Fortunately, Bobby is not the fact finder and this Court should remand this case for the Chancellor to equitably divide all marital assets and all marital debt.

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

Kris contended in her principle Brief that Bobby's guesstimation of values was not supported by any facts. Bobby, in his brief, states that this assertion is not correct. However, he does not go on to explain the basis for his guesstimations of value. Bobby diverts attention to Kris' failure to offer fair market values at the trial. Bobby also makes the untrue statement that Kris did not cite authority in support of her contention that the Chancellor erred in his determination of the fair market value of assets.

CONCLUSION

The Chancellor failed to make a fair division of the marital assets and marital debt as set forth in Kris' principle brief and this Reply Brief. Bobby, instead of citing the Court to facts that undergird the Court's valuation and division of assets, merely makes general unsupported assertions that she failed to produce documents at trial. Because all of the marital assets and marital debts were not addressed by the Chancellor and the valuations given by Bobby, were guesstimations at best, this Court should remand this case for the Chancellor to order appraisals of the marital assets and to conduct a hearing on the equitable division of marital assets and marital debts.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Terry L. Caves, Attorney for Susan Kristine Gregory Jenkins, do hereby certify that

I have this date mailed a true and correct copy of the above and foregoing Reply Brief of

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This the 5th day of November, 2010.


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