IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DOCKET NO. 2010-CA-00300

T.C. BROOME — APPELLANT

VERSUS

SHELIA BROOME — APPELLEE

APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI
CAUSE NO. 61,522(JB)

APPELLEE'S BRIEF

Oral Argument is Not Requested

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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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. T.C. Broome (Appellant)
2. Mark H. Watts (Attorney for Appellant)
3. Shelia Broome (Appellee)
4. William T. Reed (Attorney for Appellee)
5. Former Chancellor Kenneth Robertson (Initial Trial Chancellor, Retired)
6. Mississippi Court of Appeals Presiding Judge William H. Myers (Former Trial Chancellor Replacing Chancellor Kenneth Robertson)
7. Chancellor Jaye A. Bradley (Chancellor Replacing Honorable William H. Myers and Currently Residing Over Lower Court Case)

TABLE OF CONTENTS

TABLE OF CASES

ADDITIONAL STATEMENT OF THE CASE
REGARDING APPELLEE'S RESPONSE TO APPELLANT'S BRIEF

Statement of Facts:

Included in the Chancellor's Findings of Fact and Conclusions of Law is a detailed history of the divorce and subsequent litigation between these parties. The Chancellor analyzed the prior litigation and examined, in detail, the pleadings before the Court and the transcripts; and based upon this 36-page Findings of Fact and Conclusions of Law, the Chancellor, over strenuous objections of Shelia Broome, modified the alimony due and owing from T.C. Broome. The Chancellor states "However, before T.C.'s alimony modification can go into effect, he must rectify this $71,134.66 Judgment that is owing" [CP 614] [RE 43], and did not find him in contempt nor sanction him for his recalcitrant refusal to comply with the Court's Orders, produce discovery in a timely fashion, and otherwise cooperate so that this matter could be resolved.

Shelia Broome strenuously argued for the Court to summarily refuse T.C Broome's modification based upon the doctrine of unclean hands. In fact, the Court found that T.C. Broome was not paying alimony as it accrued when he had the financial ability to do so [CP 604-618] [RE 33-47]. In spite of Shelia's objections, the Court ultimately allowed T.C. Broome to proceed with his modification complaint and allowed the modification once the sums due and owing are paid [CP 613-614] [RE 42-43].

T.C.'s assertion (T.C. Brief, p.4) that he paid $165,140.00 on

June 20, 1995 and that this amount represented the total of Shelia's share of the T.C. Broome Construction Company award, the M&W settlement, and the Merrill-Lynch account is incorrect. T.C.'s calculations in his Brief disprove his assertions:

a) Using Trussell's (T.C.'s accountant) calculation of the Company's value of $764,333.33 [T.C. Brief, p.3-4], would have made Shelia's 30% of T.C.'s 60% equal $137,580.00, excluding interest; plus

b) Merrill-Lynch Account valued at $154,000.00, which made Shelia's 30% share equal $46,200.00, excluding interest [T.C. Brief, p.3-4; CP 585] [RE 14];

c) M&W Settlement of $89,400.00, which made Shelia's 30% share equal $26,820.00, excluding interest [T.C. Brief, p.3-4; CP 585] [RE 14].

Shelia's portion of these awards total $210,600.00. T.C., at the time he made the $165,140.00 payment was $45,460.00 short of the amount <u>his</u> calculations showed as being due. More importantly, the value of the Company and the failure to award alimony were both modified in Shelia's favor on appeal.

In his Brief, T.C. argues that the attempted settlement negotiations provide relief for him. At the time T.C. initiated these settlement negotiations on January 15, 2002, his appeal brief was due in the appeal proceeding on February 8, 2002 [CP 637] [RE 66]. The Court record and exhibits clearly show no agreement was reached.

T.C. states (T.C. Brief, p.6) that there was an "agreement to accept the sum of $313,339.06 for all past arrearages". This

erroneous assertion is based on a partial sentence out of two pages of settlement terms on January 18, 2002. On January 23, 2002, Shelia's attorney again responded to Watts, again setting out the conditions upon which a settlement might be reached, which included receipt of a cashier's check from T.C. on or before February 5, 2002; receipt of the Warranty Deed from T.C. to Shelia on or before February 5, 2002; permanent alimony of $3,000.00/month continuing through the end of the year Patrick turned 21 years of age; reducing alimony to $1,500.00/month beginning in January of the following year; with T.C. continuing to pay all of the children's college expenses [CP 643-644] [RE 72-73].

Settlement negotiations ended in January, 2002, without any agreement being reached between the parties, and the hearings and trial proceeded.

Since settlement was not reached, the sum of $319,229.06 was not tendered to Shelia but, instead, was paid into the registry of the Court by T.C. Broome on March 13, 2002, while T.C. Broome (T.C. Brief, p.7) continues to misstate that this amount was "satisfaction in full" of all judgments.

The Court entered its Orders on March 14, 2002 and March 20, 2002, specifically stating that the Plaintiff had "tendered payment toward the outstanding judgments" [CP 514-516] [RE 11-12] - not in full satisfaction of the judgments [CP 607] [RE 36]. In fact, the Chancellor, in her Findings of Fact and Conclusions of Law, found that the total amount owing at that time was $390,473.72, which, after payment of the $319,339.06, left a remaining balance due from T.C. to Shelia in the amount of $71,134.66 at the time of T.C.'s

filing for modification in 2002 [CP 610] [RE 39].

The Chancellor found that all arrearages had not been satisfied. The Chancellor's hand written changes to the March 14, 2002 Order, specifically modified the Order from reading "That the Plaintiff has tendered payment for the outstanding judgments" to read "That the Plaintiff has tendered payment toward the outstanding judgments" [CP 514] [RE 11], and reiterated the same finding in her March 20, 2002 Order releasing the funds [CP 516] [RE 13], and, again, in the October 12, 2009 Findings of Fact and Conclusions of Law [CP 607] [RE 36].

T.C. states (T.C. Brief, p. 7) that the Court, in her Findings of Fact and Conclusions of Law, granted T.C. a reduction in the amount of his alimony obligation to Shelia. On October 12, 2009, in the Findings of Fact and Conclusions of Law, the Judge granted a reduction in alimony, finding that:

> However, the amount of alimony still owing, as well as interest and Judgments are not forgiven; they are still due and owing. The Court merely finds that T.C. has substantially complied with the Court Order requiring him to show that his alimony arrearages have been paid in order to allow him to proceed with the modification action. However, before T.C.'s alimony modification can go into effect, he must rectify this $71,134.66 Judgment that is owing. [CP 613-614] [RE 42-43].

T.C. Broome, to date, has not paid this amount. He deposited the sum of $275,831.35 into the registry of the Court on June 1, 2010, after the conclusion of the trial and all post-trial hearings, in lieu of a supersedeas bond but none of those funds are available to Shelia.

As to T.C.'s last sentence in his statement of facts, he argues that the reason the Court granted his supersedeas bond in

the amount of $275,831.35 (which represented 100% of the judgment instead of 125% of the judgment) was because "that was all of the money that he had". In actuality, the May 19, 2010 Order states "That the Plaintiff shall be allowed to post a Supersedeas bond in the amount of 100% of the Judgment, by depositing the sum of $275,831.35 into the registry of the Court."

Based upon the appropriate standard of review, T.C. Broome has not produced any legal or factual proof that the Chancellor's decision was manifestly wrong, clearly erroneous, nor applied an erroneous legal standard.

APPELLEE'S SUMMARY OF THE RESPONSE TO APPELLANT'S ARGUMENT

In addition to the substantial evidence / manifest error rule cited by the Appellant, that standard is even more strongly applied when the Chancellor has made findings of fact.

Wolfe v. Wolfe, 766 So.2d 123, 128 (Miss. 2000) reiterated the standard of review on appeals when a Chancellor has made findings of fact:

> In other words, "on appeal [we are] 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) See also Dillon v. Dillon, 498 So.2d 328, 329 (Miss. 1986). This is particularly true in the areas of divorce, alimony and child support. Tilley v. Tilley, 610 So.2d 348, 351 (Miss. 1992), Nichols v. Todder, 547 So.2d 766, 781 (Miss. 1989), Magee v. Magee, 661 So.2d 1117, 1122 (Miss. 1995). Furthermore, great deference is given to the chancellor because he is in a better position to determine what action would be fair and equitable in the situation than the appeals court. Tilley, 610 So.2d at 351.

and in Austin v. Austin, 766 So.2d 86, 88 (Miss. 2000).

I. RESPONSE REGARDING WHETHER THE CHANCELLOR ERRED IN DENYING TERMINATION OF ALIMONY OR REDUCING ALIMONY

The Chancellor specifically examined this issue in detail and determined that T.C. was entitled to have alimony modified and reduced. T.C.'s assertion of inability to pay was fully explored and rejected. The Chancellor did not err in reducing the permanent alimony to an amount not less than $1,500.00/month based on the

record as a whole.

II. RESPONSE REGARDING WHETHER THE CHANCELLOR ERRED REGARDING THE MANDATE OF THE COURT OF APPEALS

As set out in detail in Shelia's argument, the June 30, 2000 Order specifically shows and states that the Court credited T.C. Broome for the $137,580.00 amount he had initially paid to Shelia for her interest in the business, leaving a remaining balance due Shelia of $35,580.00, plus interest at the rate of 8%. The Chancellor did not ignore nor refuse to show this credit to T.C. Broome in accordance with the Court of Appeals Mandate and, therefore, T.C. Broome is not entitled to receive a $77,858.65 credit for interest on an amount for which he had already been credited. T.C. cannot raise this issue on appeal after entering an Agreed Order regarding this issue.

III. RESPONSE REGARDING WHETHER THE COURT ERRED BY NOT CREDITING PAYMENTS MADE

In her argument, Shelia sets out in detail why the specific payments set forth by T.C. Broome should not be shown as credits. Her summary is as follows:

The $40,000.00 "Child Support" Payments: The Chancellor, in her Findings of Facts and Conclusions of Law, specifically found that T.C. presented no evidence of these payments, nor, if paid, that Shelia agreed to accept them as partial alimony payments. This conclusion is supported by the record and not manifestly wrong.

The $77,858.66 interest regarding the Court of Appeals mandate: This alleged credit is not proper for appeal since T.C. Broome, in fact, received credit for the amounts paid as found by the Chancellor.

The $10,827.00 and $2,222.37 equaling $13,049.37: This ~$13,050.00 payment was made in 1997, before the contempt petitions filed by Shelia Broome in 2000, and represented attorney's fees and appeal costs regarding the initial trial and initial appeal, as awarded by the Lower Court and upheld and mandated by the Appellate Court. This issue was never presented to the trial court and, therefore, is not appropriate on appeal.

APPELLEE'S RESPONSE TO APPELLANT'S ARGUMENTS

Shelia Broome's Response to Appellant's Standard of Review Argument No. I (Whether the Chancellor Erred in Denying Appellants Request to Terminate Alimony or to Reduce the Alimony Consistent with his Ability to Pay):

Transcripts of the hearings held before Chancellor Bradley on December 11, 2000, January 10, 2001, July 3, 2002, and September 13-14, 2001, were made a part of the record and were made a part of the transcript. Chancellor Bradley, after her lengthy involvement as the Judge in this cause, was in the best position to evaluate the testimony, documentary evidence, and credibility of the witnesses, and, ultimately, to reach a decision based upon those facts and the law.

T.C. Broome simply is not credible when it comes to financial disclosure and his ability to pay alimony. As of June 30, 2000, the trial court, on remand from the Mississippi Supreme Court, determined that Shelia Broome's interest in T.C. Broome Construction Company, Inc., was $173,160.00, as valued by Special Master Haidee Sheffield. T.C.'s interest was determined to be $788,840.00, or the total value of $962,000.00 less $173,160.00 equaling $788,840.00. [CP 362-363; 435-437] [RE 4-8].

T.C. Broome testified that his tax returns showed annual incomes of $233,000.00 for 1997 [T. 48]; $429,000.00 for 1998 [T. 48]; and, at the December 11, 2000 hearing, T.C. testified that

he had withdrawn at least $1,600.00 per week from T.C. Broome Construction Company, Inc. [T. 33]. T.C. also testified at the July 3, 2002 hearing that his taxable income from the company was between $63,000.00 and $91,000.00 per year [T. 168-171], and that T.C. Broome Construction Company, Inc., had a carryover loss of approximately three million dollars ($3,000,000.00) going back to the year of Hurricane Georges in 1998 [T. 165]. This loss was reported to the IRS and, as of December 22, 2009, after using this carryover loss to offset income since Hurricane George, had approximately $300,000.00 left [T. 315]. Over this ten year period, T.C. had enough income and gains to absorb 2.7 Million Dollars in carryover losses.

T.C. Broome testified on June 17, 2009, that he sold the company in March of 2002 for two million four hundred thousand dollars ($2,400,000.00) [T. 237], and that the first payment he received from the sale was $400,000.00. However, T.C. Broome later testified that from the first sale proceeds, he paid Shelia Broome $319,000.00 and he retained $320,000.00 [T. 240-241], which would have made the total first payment at least $639,000.00 (not $400,000.00 as previously alleged). T.C. never produced the contract, checks, or any other documentation to supplement his fluid testimony.

The balance of the two million four hundred thousand dollars ($2,400,000.00) allegedly was not paid; T.C. Broome filed suit against D'Amico and T.C. Broome Construction Company, LLC, in 2005; and, in March or April of 2009, he received an additional $225,000.00 for settlement of that lawsuit. The settlement

documents relating to this lawsuit were not produced until a few weeks before trial, in camera; and the actual amount was not disclosed until the trial. [Ex. K; RE. 74-92].

T.C. Broome also sold a parcel of property for $85,000.00 to Doug Holden [T. 306]. His 2004 tax return included $177,000.00 in adjusted gross income [T. 314] and also included capital gains of $201,000.00 [T. 313], all of which were offset by the carryover loss previously discussed.

T.C. Broome had also owned an interest in CAMCO since prior to the divorce. According to his testimony and the disclosures filed in Court, as of December 11, 2000, CAMCO owed T.C. Broome $94,009.82 [T. 17]. CAMCO allegedly paid nothing to T.C. Broome, although it did pay his current wife, Vicki, who supposedly was employed there. The Chancellor found:

> T.C. has remarried, and many of the assets are titled solely in his current wife's name. It does not appear that he has a mortgage." [CP 603][RE 32]; [T. 34, 37]

At the June 17, 2009 hearing, T.C. Broome testified that, after Hurricane Katrina in 2005, he signed a $400,000.00 promissory note (reflecting monthly payments due of $2,800.00), together with his equal partner, for CAMCO's benefit, even though he alleges that that company had only paid him $10,000.00 since the year 2000 [T. 303].

According to T.C. Broome, by the time of the June, 2009 hearing, CAMCO was defunct; had sold off all its assets; and he and the partner would be paying $2,800.00 per month, alternating every four months, to pay off the bank [T. 242]. When questioned, T.C. Broome could not explain why he obligated himself on an unsecured

$400,000.00 note for use by a company that already owed him almost $100,000.00 [T. 17] since the year 2000 and had paid nothing toward the debt [T. 303].

> The law is well-settled that, if an obligor, acting in bad faith, voluntarily worsens his financial position so that he cannot meet his obligations, he cannot obtain a modification of support." Clower v. Clower, 988 So.2d 441, 444 (Miss. 2008)

In other words, T.C. Broome has always handled large sums of "reportable taxable income" which he dutifully reported to the IRS. The Chancellor's finding that "at the time of the divorce and later award of permanent alimony, T.C. was in a financial position to make the payments..." [CP 604][RE 33] is fully supported by the record.

T.C. Broome, from the beginning, has refused to pay alimony: "I have not paid any alimony at all" [T. 49]; "I don't owe any back alimony" [T. 64]; "I couldn't pay $3,000.00 worth of alimony if I wanted to" [T. 64]. T.C. Broome never paid an alimony payment as it became due regardless of Mississippi Supreme Court Order, Mississippi Court of Appeals Order, or Chancery Court Order [T. 340]. In fact, the first monthly installment received by Shelia Broome as it became due was in early 2010 as a result of the late-2009 Chancery Court Order which led to the automatic deduction from T.C. Broome's social security benefits.

Chancellor Bradley, in her December 12, 2009 36-page Findings of Fact and Conclusions of Law, dissected the previous litigation between the parties and the circumstances leading to that decision:

> There is no evidence that T.C. has paid anything further on the Judgments or alimony to Shelia since the March 13, 2002 deposit into the registry. There is also no

> evidence to show that T.C. has paid any of the alimony payments that he has been ordered to pay. [CP 607-608]

The Court then addressed Shelia's needs. Shelia Broome, at the June 2009 hearing, filed the required financial form [CP 621-628] [RE 50-57] and testified that she was now working as a clerk for the Jackson County, Mississippi, Justice Court, earning $18,230.00 per year, and that she had been working there for two years [T. 338-339]. At that time, she was 56 years of age, had a high school education, had no assets other than the family home which had been awarded to her in the divorce; and her house insurance and property taxes ran approximately $7,000.00 per year [T. 344].

The Trial Court addressed the factors set forth by Armstrong v. Armstrong, 618 So.2d 1278 (Miss. 1993), and concluded that T.C. was entitled to have his alimony obligation modified, and reduced the amount of permanent alimony from $3,000.00 per month to $1,500.00 per month conditioned upon T.C. paying the outstanding arrearage before the modification would take place. T.C., to date, has paid nothing toward the arrearage.

Wolfe v. Wolfe, 766 So.2d 123, 128 (Miss. 2000) reiterated the standard of review on appeals when a Chancellor has made findings of fact:

> In other words, "on appeal [we are] 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) See also Dillon v. Dillon, 498 So.2d 328, 329 (Miss. 1986). This is particularly true in the areas of divorce, alimony and child support. Tilley v. Tilley, 610 So.2d 348, 351 (Miss. 1992), Nichols v. Todder, 547 So.2d 766, 781 (Miss. 1989), Magee v. Magee, 661 So.2d 1117, 1122 (Miss. 1995). Furthermore, great deference is given to the

> chancellor because he is in a better position to determine what action would be fair and equitable in the situation than the appeals court. Tilley, 610 So.2d at 351.

and in Austin v. Austin, 766 So.2d 86, 88 (Miss. 2000).

When viewed in light of the complete record, T.C. Broome has not produced argument, evidence nor law that the Chancellor's findings were manifestly wrong, clearly erroneous, nor applied an erroneous legal standard. Perkins v. Perkins, 787 So.2d 1256, 1260 (Miss. 2001).

Shelia Broome's Response to Appellant's Standard of Review Argument No. II (Whether the Chancellor Erred in Refusing to Follow the Terms of the Mandate of the Court of Appeals):

At the time of the divorce, Shelia Broome was awarded 30% of T.C. Broome's 60% interest of T.C. Broome Construction Company, Inc. T.C. refused to produce the books and records necessary to make an accurate valuation of that ownership percentage. The Court of Appeals, on remand, suggested the Lower Court utilize financial experts to value the company and Shelia's percentage economic interest. As a result of that valuation, Shelia Broome's 30% interest increased in value from $137,580.00 (previously and unilaterally determined by T.C. Broome) to $173,160.00, an increase of some $35,000.00 (not including interest).

Chancellor Bradley, at page 6 of her Findings of Fact and Conclusions of Law, specifically found:

> On June 30, 2000, the Special Master Sheffield submitted her report giving the valuation of Broome Construction as of December 30, 1993, pursuant to this Court's July 28, 1999 Order. On June 30, 2000, this Court accepted the Special Master's Valuation of $962,000.00 with Shelia's 30% being $173,160.00 The Court **credited** T.C. with the $137,580.00 that he paid her following the divorce settlement, leaving a remaining balance of $35,580.00. The Court also calculated interest on the balance at 8% from July 1, 1995. [Emphasis added.]

Exhibit I of the June 2009 hearing is an Agreed Order signed by counsel for both parties and submitted on December 6, 2000 [CP 445-446]. The Chancellor's Findings of Fact and Conclusions of Law, at CP 592, determined:

> On December 6, 2000, the parties submitted an agreed order stating that upon payment of the $35,580.00 by T.C. to Shelia would resolve all issues surrounding her share of the interest in Broome Construction Co. This agreed order did not represent any interest that had accrued or would accrue, thereby eliminating interest from this Judgment by agreement between the parties.

T.C. cannot now change his mind and re-litigate this issue. Davis v. Davis, 983 So.2d 358, 362-363 (Miss Court of Appeals 2008):

> ...when parties in a divorce proceeding have reached an agreement that a chancery court has approved, we will enforce it, absent fraud or overreaching, and we take a dim view of efforts to modify it just as we do when persons seek relief from improvident contracts"....
>
> Once the chancellor and both parties signed the agreement, the parties became bound by the terms of the agreed order.

The Chancellor ruled in full accord with the Appellate Court, ruling that T.C. Broome received credit for the monies initially paid. However, T.C. Broome now attempts to assert on appeal that he is entitled to a $77,858.65 credit for the interest on the amount he initially paid.

Utilizing simple grade school addition and subtraction to

check one's work, if T.C. has only paid a total of $173,160.00, as found by the Chancellor, and if he were again given this credit which he now seeks of $77,858.65, Shelia Broome would only have received $95,301.35 for her interest in T.C. Broome Construction Company rather than the $173,160.00 as determined by the Master and adopted by the Chancellor.

This argument of T.C. Broome simply is based upon a foolish misreading/misinterpretation of the appellate court opinion and should be summarily dismissed - (1) The Chancellor found that T.C. Broome was credited for the sums paid and (2) T.C. Broome has come forward with no factual or legal argument that the Chancellor's decision was manifestly wrong, clearly erroneous, nor applied an erroneous legal standard.

Shelia Broome's Response to Appellant's Standard of Review Argument No. III (Whether the Court Erred By Not Giving Credit For Payments Made on Judgments and Alimony):

T.C. Broome, in his argument for credit for payments, essentially disagrees with the Chancellor's Findings of Fact and Conclusions of Law.

The communications between the lawyers concerning the $319,000.00 payment made in March of 2002 were admitted, over Shelia's objections as being settlement discussions, and are contained in the record [CP 639-644]. Of course, the Chancellor, being both the trier of fact and the arbiter of law, has wide

discretion as to the admission of evidence and the weight to place upon such evidence.

It is important to note and distinguish that these settlement discussions, on their face, contained conditions precedent to which T.C. Broome did not agree. In fact, all of the settlement discussions required him to continue paying alimony. T.C. Broome seeks this Court's assistance in allowing him to ignore all other conditions and stipulations and accept only a settlement offer amount. His allegation of settlement resolution is further contradicted by his failure to pay the funds directly to Shelia. Shelia Broome had not agreed to accept that amount without all other conditions being met. Instead, T.C. deposited the money into the registry of the Court. T.C. Broome's registry deposit was only an attempt to induce the Court to allow him to retrieve the company stock and records from the Court's registry so that he could sell the company and keep the funds. If settlement had been reached, T.C. Broome would have been required to pay those funds directly to Shelia, in trust, not into the Court's registry.

As the Chancellor pointed out in her opinion, it was clear from March of 2002 - forward, that Shelia's position was that the $319,000.00 was nothing more than a payment towards amounts owed, as directly set out by the Court in Paragraph 2 of its March 14, 2002 Order [CP 514][RE 11]; and, after the full trial ending in 2009, that was the conclusion again reached by the Chancellor.

In his Brief, T.C. seeks credit for four specific perceived errors:

(1) The first is $40,000.00 for child support that T.C.

contends he was entitled to deduct from the amounts owing, allegedly because he paid this sum after the children were, in his opinion, emancipated. Shelia Broome, in her testimony, specifically denied that T.C. paid anything other than child support [T. 341]. Chancellor Bradley, on pages 23-24 of her opinion, addressed this issue; and, further, went on to find that:

> T.C. asserts that he has paid child support to Shelia after the children became emancipated and should be credited for those amounts. However, he has presented no evidence of this. It is also unclear that if paid that Shelia had agreed to accept these payments as partial payment of her alimony." [CP 607-608] [RE 36-37].

T.C. Broome comes forward with no additional factual proof or legal argument to reverse this finding.

(2) T.C. next seeks credit for $77,858.66 in interest that he was allegedly awarded by the Court of Appeals. This specific issue was addressed in T.C.'s second assignment of error in his Brief, but he comes forward with no additional factual proof or legal argument to justify his self-serving determination that he is entitled to an additional $78,000.00 credit. Judge Bradley specifically addressed this issue in the second paragraph on page 25 of her Findings of Fact and Conclusions of Law:

> T.C. argues that the Court of Appeals in June 2000 awarded him $165,140.00 for the amount he paid Shelia for the business when her share was found to be worth $200,270.00. However, the Court *credited* him with the amount that he paid Shelia, therefore Shelia did not owe him the $165,140.00 and no interest accrued on this amount. Interest accrued on the $35,580.00 difference between the amount he paid and the amount he was found to owe. [CP 609] [RE 38].

T.C. Broome comes forward with no additional factual proof or legal argument to reverse this finding.

(3&4) In the first paragraph of his third assignment of errors, T.C. seeks additional credits of $10,827.00 and $2,222.37, totaling $13,049.37, going back to two 1997 Orders which Mr. Broome has incorporated in his Record Excerpts, pages 35-36 and 140. The reason the Chancellor did not address these disbursements, as plainly set out on the face of these two Orders, is because these monies were for payment of attorney's fees and appeal costs relating to the initial trial and Shelia's appeal of that first trial. Therefore, the $13,050.00 paid in 1997 was not raised in Shelia's contempt petition filed over three years later, in 2000. Therefore, the Chancellor did not need to give a $13,049.37 credit since that amount was never shown as a debit in the first place. (So as not to confuse the record, the attorney's fees awarded by the Court in the amount of $8,060.69 - which the Chancellor showed as a credit included in the $93,290.27 payment from the Merrill-Lynch garnishment - was for additional separate attorney's fees relating to various contempt actions Shelia was forced to file due to T.C.'s actions in 2000 and thereafter.) [CP 175-176, 177, 482-483, 595, 605] [RE 1-2, 3, 9-10, 24, 34].

Additionally, there have been three appeals since 1997 and these two amounts, totaling approximately $13,050.00, were never raised until the filing of this Brief.

In the present circumstances where much of the record was destroyed by Hurricane Katrina, Chancellor Bradley, in her 36-page opinion, attempts to address every payment made and credit given to Mr. Broome regarding Shelia Broome's contempt petitions. Both parties presented detailed analyses of what they contended was owed

and what had been paid.

In his third assignment of error, the only legal authority cited by T.C. Broome has to do with the crediting of interest on payments made if credit is granted, which has no relevance to any of the issues addressed in this assignment of error. Therefore, the only argument made in his third assignment of error is factual. Mississippi law is clear, as so acknowledged by the Appellant, that once a Chancellor has rendered a written opinion based upon a Findings of Fact and Conclusions of Law, the only basis for disturbing that factual finding is proof that the Chancellor "was manifestly wrong, clearly erroneous or applied an erroneous legal standard." Perkins v. Perkins, 787 So.2d 1256, 1260 (Miss. 2001).

T.C. makes no attempt to assert that his disagreement with the findings of the Chancellor rises to what he acknowledges is the appropriate legal standard.

CONCLUSION

The Trial Court, over Shelia's strenuous objections, allowed T.C. Broome to proceed with his modification, notwithstanding that the Court found that T.C., for much of the time during which the alimony arrearage accrued, had the financial ability to pay the alimony. T.C. had repeatedly stated that he was not going to pay alimony, and T.C. was repeatedly found not to be in compliance with the Court's numerous Orders.

In spite of these findings, the Chancellor allowed T.C. to modify the amount of alimony due and owing, based upon his health

and earning capacity, from the date of the filing of his motion on March 13, 2002, specifically conditioned upon his rectifying the $71,134.66 judgment (exclusive of interest) that is owing. To date, T.C. has paid nothing toward this judgment; the arrearage has never been brought current; and T.C. should not be allowed the benefit of a modification when he stubbornly refuses to comply with the Court's Orders.

T.C. now tries to convince this Court that the Chancellor's decision is wrong, but he fails to point out any factual determination that was incorrect, any legal determination that was incorrect, and, other than his self-determined opinion, fails to set forth any specific determination that he alleges was manifestly wrong. The decision of the Trial Court, as is often the case, gave T.C. Broome some of the relief he requested over the strenuous objections of Shelia Broome.

There is no factual or legal basis to reverse that decision, and it should be affirmed and remanded to the Chancellor to allow the modification once T.C. Broome complies with the Court's finding to "bring the arrearage current". Of course, interest continues to accrue; but, once again, T.C. chose not to follow the Chancellor's specific instructions and, instead, paid the funds into the registry of the Court rather than settling the arrearage.

Likewise, T.C. is not entitled to any of the credit to which he contends he is entitled. He has, in fact, previously been credited for the amount he alleges, or the Chancellor specifically determined that he was not entitled to the credit.

This matter should be affirmed and remanded to the Chancellor

CERTIFICATE OF SERVICE

I, WILLIAM T. REED, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing APPELLEE'S BRIEF to:

MARK H. WATTS, ESQ.
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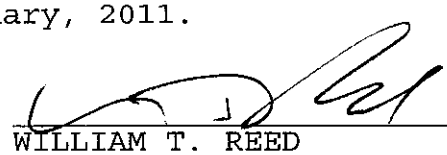
Pascagoula, MS 39568-1499

CHANCELLOR JAYE BRADLEY
Chancery Court Judge
Jackson County Courthouse
P. O. Box 998
Pascagoula, MS 39568-0998

THIS the 25th day of February, 2011.



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