

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

T. C. BROOME

APPELLANT

VERSUS

CAUSE NO. 2010-CA-00300

SHELIA BROOME

APPELLEE

APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

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. Oswald & Reed - Attorneys for Appellee.

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P.O. Box 1428
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4. Shelia Broome - Appellee.
5. Judge Jaye A. Bradley - Chancellor, 19th District.
P.O. Box 998
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TABLE OF CONTENTS

	<u>PAGE</u>
CERTIFICATE OF INTERESTED PARTIES.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES (alphabetical).....	iii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2-8
SUMMARY OF THE ARGUMENT.....	8-12
ARGUMENT.....	12-19
CONCLUSION.....	19-20
CERTIFICATE OF SERVICE	21

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>Austin v. Austin</u> , 766 So.2d 86, 90 (Miss. Ct. App. 2000)	13
<u>Armstrong v. Armstrong</u> , 618 So.2d 1278 (Miss. 1993)	13
<u>Bell v. Parker</u> , 563 So.2d 594 (Miss. 1990)	8
<u>Brendel v. Brendel</u> , 566 So.2d 1269 (Miss.1990)	14
<u>Carter v. Carter</u> , 611 So.2d 874 (Miss.1992)	8
<u>Clower v. Clower</u> , 998 So.2d 441 (Miss. Ct. App. 2000)	13
<u>Hammonds v. Hammonds</u> , 597 So.2d 653,655 (Miss.1992)	13
<u>Horton v. Horton</u> , 301 So.2d 305 (Miss. 1974)	16
<u>Magee v. Magee</u> , 661 So.2d 1117 (Miss 1995)	8
<u>Massey v. Massey</u> , 475 So.2d 802 (Miss. 1985)	14
<u>McCoy v. McCoy</u> , 611 So. 2d 957 (Miss.1992)	8
<u>Mizell v. Mizell</u> , 708 So.2d 55 (Miss. 1998)	8
<u>Perkins v. Perkins</u> , 787 So.2d 1256, 1260 (Miss. 2001	13
<u>R.K. v. J.K.</u> , 946 So.2d 764 (Miss. 2007)	8
<u>Stigler v. Stigler</u> , 48 So.3d 547 (Miss. Ct. App.2009)	18
<u>Wolfe v. Wolfe</u> , 766 So.2d 123, 129 (Miss. Ct. App. 2000)	13
<u>Wood v. Wood</u> , 495 So. 2d 503 (Miss. 1986)	14
 <u>STATUTES</u>	
Mississippi Code Ann. Sec. 93-5-23	14

STATEMENT OF THE ISSUES

- I. WHETHER THE CHANCELLOR ERRED IN DENYING APPELLANTS REQUEST TO TERMINATE ALIMONY OR TO REDUCE THE ALIMONY CONSISTENT WITH HIS ABILITY TO PAY.
- II. WHETHER THE CHANCELLOR ERRED IN BY REFUSING TO FOLLOW THE TERMS OF THE MANDATE OF THE COURT OF APPEALS.
- III. WHETHER THE COURT ERRED BY NOT GIVING CREDIT FOR PAYMENTS MADE ON JUDGMENTS AND ALIMONY.

STATEMENT OF THE CASE

A. Nature of the Case

The parties herein, Thomas C. Broome (hereinafter "T.C.") and Shelia Broome (hereinafter "Shelia") were divorced by order of the Chancery Court of Jackson County on December 30, 1993. The Judgment in regard to the division of marital assets, child custody, support and alimony was not entered until June 16, 1995. (CP 1, RE 22-28) At the time of the divorce the parties has two minor children: Jessica Broome, born August 29, 1980 and Patrick Broome, born August 20, 1984. Subsequent to the divorce there has been continuous litigation over the division of marital assets. The case at bar involves Shelia's complaint for contempt filed February 1, 2001 (document not available) for alleged violation of the June 30, 2000 Order and T.C.'s answer and counter claim for termination of permanent alimony filed February 28, 2001. (document not available) T.C.'s Counter Claim was denied in the Courts Order of June 18, 2001. (document not available) However, he filed a second Motion for Modification of Alimony on March 13, 2002. (CP 68) Due to various circumstances the trial of this matter was not finally concluded until the Court's Ruling entered October 12, 2009 (CP 128, RE 77-78) and it is from that Ruling that T.C. appeals.

B. FACTS

The parties hereto were divorced by order of this Court on December 30, 1993, the Judgment in regard to the division of marital assets, child custody, support and alimony was not entered until June 16, 1995. (CP 1, RE 22-28) In that Order the Court divided the parties marital assets and made provisions for child support and custody. The financial provisions of the Judgment were as follows: Child support in the amount of \$1,000.00 per month, (\$500.00, per month per child); T.C. to pay off the mortgage on the marital home in the amount of \$70,000.00 and

quitclaim the home to Shelia, the value of the marital at the time was \$250,000.00; Shelia awarded all home furnishings valued at \$60,000.00; Shelia was awarded her car valued at \$10,000.00; Shelia was awarded the proceeds from the sale of some land in the amount of \$24,000.00; Shelia awarded Prudential Securities in the amount of \$10,000.00; In Paragraph 10 of the Judgment Shelia was awarded 30% of T.C.'s 60% interest in T.C. Broome Construction Company, 30% of Merrill Lynch, valued at \$154,000.00, 30% of M and W lawsuit proceeds. The total amount of the parties marital assets at the time of the divorce was approximately \$1,000,000.00. The total distribution to Shelia was \$554,140.00. Shelia was not awarded periodic alimony in the Judgment of Divorce.

In paragraph 11 of the Judgment of Divorce the Court granted T.C. 18 months from the date of the Judgment to purchase the 30% interest awarded Shelia at the present fair market value. In Paragraph 12 of the Judgment T.C. was ordered to transfer 30% of his stock in the Company to Shelia within 30 days of the date of the Judgment, and T.C. was given the option of paying Shelia her 30% interest over a period of 8 years, during which time she would have an equitable lien against the assets of the Company. In Paragraph 13 of the Judgment the Court stated that "Until such time as the financial aspects and provisions of Paragraphs 10, 11, and 12 hereinabove have all been completed, the Court orders and directs the Plaintiff to pay alimony to the Defendant in the amount of \$3,000.00, per month, commencing June 1, 1995".(CP 5-6, RE 22-28) In the Judgment, the chancellor did not establish a specific dollar amount for the "fair market value" of Shelia's 30% interest, nor did it specify how or by whom such valuation was to be made. So, T.C. had the accountant for T. C. Broome Construction Company, John C. Trussell, calculate the value of the company so that T.C. could pay Shelia her 30% right away as opposed to exercising the option of paying \$3,000.00, per month alimony and paying her the 30% interest in the Company over a period of eight years as allowed in Paragraph 12 of the Judgment.

Mr. Trussell calculated the value of T. C. Broome Construction company as of the date of the Judgment, June 16, 1995, to be \$764,333.33. On June 20, 1995 T.C. paid Shelia the sum of \$165,140.00. Which represented her 30% share of his 60% share of T.C. Broome Construction Company; Her share of the Chancery Court settlement with M and W; and her 30% share of the Merrill Lynch account. Shelia's personal accountant, Mr. Kelly Singleton also performed an evaluation of the Company and his findings were within \$1,776.00 of Mr. Trussells. Therefore, at that time, in June 1995, T.C. had complied with the provisions of Paragraphs 10, 11 and 12 of the Judgment and therefore he was not required to pay alimony to Shelia.

Shelia filed an appeal to the Supreme Court and in May of 1997 the Court of Appeals Reversed the Chancellor and Remanded the Case to the Chancery Court. (CP 22, RE 29-32)

On page 5 of the Mandate from the Court of Appeals of the State of Mississippi the Court stated, in part,

"In light of the significant factual disputes surrounding this issue and the absence of factual findings concerning the valuation of Shelia's interest, on remand the Chancellor shall fashion such relief as he deems necessary to insure that the fair market value of Shelia's interest is conclusively established. Of course, such valuation may result in a finding that Thomas must tender additional sums to Shelia, that Shelia must return a portion of the \$165,140.00 to Thomas, or that the \$165,140 did in fact represent the fair market value of the portion of T.C. Broome Construction Co. to which Shelia is entitled. We Strongly suggest that the Chancery court employ financial experts to assist the court in valuating Shelia's interest in T.C. Broome Construction Co."

In Foot note 2, the Court ordered interest payments based on the final valuation of the company and clearly stated the following:

"The Fair market value of Shelia's interest in T.C. Broome Construction Co. shall be calculated as of the date of the divorce decree, December 30, 1993. Shelia shall be compensated with interest on this amount, at the judgment rate, from December 30, 1993 until the final resolution of this issue. Thomas shall be credited with the \$165,400 previously tendered to Shelia, plus interest at the judgment rate from the date of her presentment of the check until the final resolution of this issue"

The Court first appointed Mr. Paul Newton as special master to prepare the valuation report of T.C. Broome Construction Co. His services were eventually terminated and the Court appointed the Honorable Haidee Sheffield to prepare the valuation report.

In the Court's Order of June 30, 2000, the Court accepted Haidee Sheffield's valuation of T.C. Broome Construction Company, as of December 1993, in the amount of \$962,000.00. (CP 44, RE 37-38) The Court of Appeals decision to use the date of December 30, 1993 instead of the Chancellors valuation date of June 16, 1995 resulted in Shelia's 30% interest being worth \$173,160.00, instead of \$137,580.00 an increase in the amount of \$35,580.00.

It was also in this Order that the Court finally addressed the mandate of the Court of Appeals regarding alimony. The Court awarded Shelia permanent alimony in the amount of \$3,000.00, per month, made it retroactive to June 1, 1995, which created an instant alimony arrearage in the amount of \$180,000.00, and then ordered T.C. to pay it current within 10 days of the date of the Order. (CP 45, RE 37-39) By its orders the Court placed T.C. in an impossible situation. He did not have the financial ability to satisfy this outrageous amount of alimony. His Federal Income Tax return for the year 2000 shows wages, salaries etc. total \$93,540.00. (RE110-117) His return for 2001 shows wages, salaries etc. total \$70,965.00 (RE 92-109) This alimony award was in addition to his child support obligation of \$1,000.00 per month, making his monthly obligation to Sheila a total of \$4,000.00 per month. In addition to the \$4,000.00 per month that he was ordered to pay, T.C. was paying all of Jessica's college expenses including tuition, labs, books, apartment rent, car maintenance, food, clothing and he purchased her an automobile for her to attend North Texas State University and at the University of Southern Mississippi, until such time as she graduated in 2006 with a masters in Child Psychology and Speech Pathology.

In 2001 this Court held a review hearing in regard to the Court's previous Orders dated June 30, 2000 and December 5, 2000, for which garnishments were issued on January 17, 2001 and reissued February 7, 2001. At that hearing, this Court established that the amount due and owing on the various awards contained in the June 30, 2000, and the December 5, 2000 Court Orders, excluding alimony, was \$119,629.33. As a result of the garnishments \$93,290.27, was paid into the registry of the Court and then disbursed to the Clerk, Oswald and Reed and Shelia. This Court entered an Order on February 14, 2001, establishing that the remaining balance on these various judgments, after the above disbursement was \$26,339.06, as of the date of the Order. (CP 64, RE44-45)

On February 28, 2001, T.C. filed a counterclaim requesting relief from the Court ordered alimony payments based on his inability to pay. At that time T.C.'s 2001 tax return showed that his salary was \$63,765.00, and his adjusted gross income was a negative one million six hundred sixty-four thousand seven hundred sixty-five dollars, (-\$1,664,738.00). (RE 92-109) On June 18, 2001 this Court dismissed his counterclaim for relief based on the Doctrine of Unclean Hands. (Order not available)

On January 15, 2002, Mark Watts, Attorney for T.C., sent a settlement proposal to Bill Reed, the attorney for Sheila, in an attempt to settle all arrearages and judgments with a payment of \$313,339.06 (CP 180, RE 48-49) Bill Reed responded on January 18, 2002, wherein he agreed to accept the sum of \$313,339.06 for all past arrearages. (CP 184, RE 50-51) On March 2, 2002, T.C.'s construction company assets were sold to Louisiana Steam Equipment Co. for \$400,000.00. (RE 52) The sale was in part due to T.C.'s inability to bid on contracts due to the Court's order of June 30, 2000, (CP 44-46 RE 37-39), which required him to place his Company stock in the registry of the Court. With his stock in the registry of the Court he was then unable

to bid jobs with his normal customers who require that his stock be unencumbered and that there be no liens against his assets.

On March 13, 2002, T.C. paid the sum of \$319,339.06 into the registry of the court for satisfaction of all Judgments entered in this cause including all alimony owed up to March 2002. (CP 71, 180-181, 184-185, 186-187 RE 56-57) At the same time, T.C. filed a Motion to Modify the alimony award based on his deteriorating health and his inability to pay. (CP 68, RE 53-55)

On March 14, 2002 this Court entered an Order to place the above funds into the registry of the Court, cancelling all garnishments and or liens against T.C. Broome Construction Company, inc. and/or CAMCO and set a hearing for March 20, 2002 to decide the issue of releasing T.C.'s stock in T.C. Broome Construction Company, inc., from the registry of the Court. (CP 73, RE 73-74) On March 20, 2002 this Court entered an Order releasing T.C.'s stock and directing the Chancery Clerk to pay the sum of \$319,339.06 to Shelia and her attorney. (CP 75, RE 118)

On August 7, 2002 this Court entered an Order finding that T.C. suffers from severe medical problems and should be allowed to proceed with his Motion to Modify the alimony award. (CP 77, RE 60-61)

On June 22, 2006 this Court entered an Order cancelling any and all garnishments and or liens filed against T.C. Broome in regard to this cause since the judgments on which the garnishment was based had been satisfied by T.C.'s payment of \$319,339.06.

On June 17, 2009, the parties came before the Chancery Court to conclude the trial on Shelia's request for sanctions and T.C.'s request for modification of alimony from 2002.

The Chancellors Findings of Facts and Conclusions of Law was entered on October 12, 2009. (CP 128-163) The Court Granted T.C. a reduction in the amount of his alimony obligation to Shelia. In regard to Shelia's motion for sanctions the court denied her relief. The Court did

however, order T.C. to pay the sum of \$275,831.35 into the registry of the court. (CP 128-163) On October 12, 2009 T.C. filed his Motion for New Trial, to Alter or Amend Judgment and for Reconsideration. (CP 188 RE 77-78) On October 21, 2009, Shelia filed her post trial Motions.(CP 192, RE 79-81) On December 28, 2009, the Court denied both parties post trial Motions and T.C. being aggrieved at the Court's decision appealed.(CP 195-196, RE 82) On May 14, 2010 the Court heard T.C.'s Motion for Approval of Supersedeas bond and entered an Order on May 19, 2010 finding that an imposition of a supersedeas bond in the amount of 125% of the judgment appealed from would substantially threaten his future financial viability. (RE141-142) The reason the Court granted T.C.'s Motion was that \$275,831.35 was all of the money that he had.

SUMMARY OF THE ARGUMENT

1. STANDARD OF REVIEW.

When an Appellate Court reviews a Chancellor's decision in cases involving modification of divorce and all related issues, the scope of the Appellate Court's review is limited by the substantial evidence/manifest error rule. R.K v. J.K., 946 So. 2d 764, 772 (Miss. 2007); (citing Mizell v. Mizell, 708 So. 2d 55, 59 (Miss. 1998). The Appellate Court will not reverse the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. Id. Manifest error in a trial Court's decision is deemed to have occurred if, based upon the evidence, the reviewing Court is left with a definite and firm conviction that the trial Court made a mistake. McCoy v. McCoy, 611, So. 2d 957 (Miss. 1992); Carter v. Taylor, 611 So. 2d 874 (Miss. 1992). Manifest error means error that is unmistakable, clear, plain or indisputable. Magee v. Magee, 661 So. 2d 1117 (Miss. 1995); Bell v. Parker, 563 So. 2d 594 (Miss. 1990).

I. WHETHER THE CHANCELLOR ERRED IN DENYING APPELLANTS REQUEST TO TERMINATE ALIMONY OR TO REDUCE THE ALIMONY CONSISTENT WITH HIS ABILITY TO PAY.

The Chancellor correctly found that T.C.'s health and his ability to earn income has significantly decreased since he was originally ordered to pay alimony. At the time of this trial his only sources of income were his social security disability payments and some small payments from some annuities that were almost at an end. T.C.'s financial declaration showed a net monthly income of \$2,852.40, which included payments from two annuities in the amount of \$1,000.00, that he no longer receives. His only source of income at the time of this filing is his social security payments in the amount of \$2,018.00 per month. Out of that amount he pays for supplemental health insurance to cover what medicare does not. This supplemental insurance costs \$165.60 per month, which leaves T.C. with a monthly adjusted gross income of \$1,852.40. The Chancellor refused to terminate his alimony obligation and instead reduced it to \$1,500.00 per month. Although, T.C. is grateful for at least some reduction, he is left with an alimony obligation that amounts to 80% of his adjusted gross income. It was error for the Chancellor to order T.C. to pay 80% of his income as alimony.

II. WHETHER THE CHANCELLOR ERRED BY REFUSING TO FOLLOW THE TERMS OF THE MANDATE OF THE COURT OF APPEALS.

When the original trial Judge awarded Shelia 30% of T.C.'s 60% share of T.C. Broome Construction Co. he gave T.C. the option of paying her the fair market value immediately or stretching it out over a period of eight years. T.C. exercised the option to pay her immediately instead of stretching it out over a period of eight years during which time he would have had to

pay alimony. In the original Divorce order Shelia was only awarded alimony in the event that T.C. did not pay her those amounts awarded in the divorce.

In the first appeal Shelia complained that the \$165,140.00 payment that T.C. made for her share of the company was not an accurate valuation. T.C. contended that he allowed Shelia's accountant, Kelly Singleton to examine all financial documents of the company. This argument became moot when the Court of Appeals changed the date for the valuation of the company from the date of the Chancellors division of martial assets, June 16, 1995, to the date of the actual divorce which was December 30, 1993. That decision did two things, it wiped out all of the efforts that had been made to value the company so far and it ordered a valuation for the biggest year the company had ever had. However, since T.C. had, in good faith, paid Shelia what he believed to be her share of the company, the Court of Appeals awarded him interest on the payment at the judgment rate from June 1995 until June 30, 2000 when the Court accepted Haidee Sheffield's valuation of the company. The amount of interest that accumulated during that time period equals \$77,858.65. This award of interest to T.C. is clearly and precisely spelled out in the Court of Appeals opinion decided May 20, 1997. It was error for the Chancellor to ignore this Court of Appeals mandate and to refuse to credit this interest towards any of the outstanding judgments.

III. WHETHER THE COURT ERRED BY NOT GIVING CREDIT FOR PAYMENTS MADE ON JUDGMENTS AND ALIMONY.

At the trial of this matter T.C. attempted to get credit for all of the payments that he had made over the years towards the alimony and other judgments. Although the Chancellor gave him credit for most of the payments, some were not credited. For example, as a result of a

garnishment the Court released funds in the amount of \$10,827.63 from T.C.'s South Trust account by order entered August 13, 1997. (CP 28, RE 35-36) T.C. was not given credit for that payment. On August 19, 1997 the Court entered an order for release of funds from T.C.'s merrill Lynch account in the amount of \$2,222.37. (CP 29, RE35-36 T.C. was not given credit for that payment. T.C. should have been given for these combined sums in the amount of \$13,050.00, against the outstanding arrearages.

There was a lot of discussion concerning the settlement proposal and the payment of \$319,339.06 in March 2002. Shelia argues that the payment of \$319,339.06 did not catch up the alimony arrearage. However, a close examination of the record reveals that it did in fact catch up the alimony arrearage and pay off all outstanding judgments that existed at that time. In Shelia's 2002 Federal Tax Return she claimed \$249,000.00 worth of alimony received. (RE 118)

The alimony payments were ordered to start retroactively on June 1, 1995. (CP 45, RE 37-39) From June 1, 1995 until March 13, 2002 T.C. would owe \$243,000.00 in alimony if he never made a payment. (81 months @ \$3,000.00 equals \$243,000.00). The balance on the total amount of all the other judgments was, according the Court's Order entered February 14, 2001, \$26,339.06 which when added to the alimony arrearage of \$243,000.00, plus interest of \$50,000.00 equals \$319,339.06. Which is why Shelia, through her attorney, agreed to that amount on January 18, 2002. (CP 180-181, 184-185 RE 50-51)

In the Chancellor's Findings of Fact she found that T.C. had not made any alimony payments from February 2001 to March 2002 resulting in an arrearage of \$39,000.00. (CP 152-153 RE138-139) This is contradicted by Shelia's 2002 tax return where she claimed \$249,000.00 in alimony. (RE 83-84) The payment of \$319,339.06 covered the period of time from February 2001 to March 2002. The Chancellor's findings of fact in regard to this alimony arrearage are in error.

Of course that agreement and subsequent payment did not relieve T.C. of the \$3,000.00 per month alimony obligation. However, as these events were unfolding, the parties daughter Jessica attained the age of 21 years on August 20, 2001. In an effort to pay towards the alimony obligation, T.C. continued to pay child support to Shelia, for Jessica, in the amount of \$500.00 per month, even after Jessica's twenty-first birthday. He paid that amount until Patrick attained the age of 21 years on August 29, 2005. That was a period of 48 months at \$500.00 per month for a total of \$24,000.00 T.C. also continued to pay \$500.00 per month to Shelia after their son Patrick attained the age of 18, discontinued full time enrollment in school and entered the work force. Patrick quit college after one semester. T.C. continued to pay Shelia \$500.00 per month from January 2003 until Patrick turned 21 in August 2005, which was a total of \$16,000.00. Shelia acknowledged these payments in her 8.05 Financial Declaration of 2005. (RE 85-91) These combined sums total \$40,000.00. (CP 184, RE 50-51) This \$40,000.00 should have been credited to T.C. and subtracted from any alimony arrearage.

The trial Court in its Ruling of October 12, 2009 did retroactively reduce T.C.'s alimony obligation from \$3,000.00 per month to \$1,500.00 per month retroactive to March 2002, due to his deteriorating health, involuntary unemployment and loss of earning capacity.

It was error for the Court not to credit T.C. with the payments that the record shows were paid and it was error for the Court to deny T.C. credit for the payments made to Shelia after the parties daughter attained the age of 21 years and after the parties son attained the age of 18 and discontinued full time enrollment in college after one semester.

ARGUMENT

1. STANDARD OF REVIEW

The standard of review for all appeals involving domestic relations matters is limited. The Appellate Court will not disturb the findings of a Chancellor unless the Chancellor was “manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” Perkins v. Perkins, 787 So. 2d 1256, 1260 (Miss.2001)

I. WHETHER THE CHANCELLOR ERRED IN DENYING APPELLANTS REQUEST TO TERMINATE ALIMONY OR TO REDUCE THE ALIMONY CONSISTENT WITH HIS ABILITY TO PAY.

Periodic alimony can be modified by increasing, decreasing, or terminating the award due to a material change in circumstances. The material change must be one that was not reasonably anticipated at the time of the original divorce decree. Clower v. Clower, 998 So. 2d 441 (Miss. Ct. App. 2008). The material change must be one that was not reasonably anticipated at the time of the original decree. *Id.* One of the factors utilized in initially calculating periodic alimony is the income and expenses of both parties. Wolfe v. Wolfe, 766 So. 2d 123, 129 (Miss. Ct. App. 2000) (quoting Hammonds v. Hammonds, 597 So. 2d 653, 655 (Miss. 1992)). A material change in this factor should be considered in determining any modification of periodic alimony. Austin v. Austin, 766 So. 2d 86, 90 (Miss. Ct. App. 2000) (citing Armstrong, 618 So. 2d at 1280).

T.C. put on proof at the modification hearing on July 3, 2002, and on June 17, 2009 that there has been a substantial and material change in circumstances since the date of the Judgment of Divorce in that his health has deteriorated and he is no longer able to work. (T40-45, RE 119-125); His business, T.C. Broome Construction Company, Inc. is now defunct; He no longer receives any income from CAMCO. His only income is from disability payments and draws he has been making on some investments to make ends meet.(T 114-116 RE 128-130) His adjusted gross income at the time of trial was \$2,852.40, per month, with combined monthly expenses of

\$3,614.00 per month(T 127-131 RE 131-135) as stated in T.C.'s 8.05 Financial Declaration. (CP 172-178, RE 70-76) T.C. testified further that he will no longer be receiving payments from his investments which will reduce his income to \$2,018.00 per month, less his health insurance premium of \$165.60 leaving him with an adjusted gross income of \$1,852.40. (T 130-131, RE 131-135)

Shelia's financial declaration, shows that she has a net monthly income of \$1,244.00 and expenses of \$2,772.06. (CP 164-170, RE 62-69) However, a close examination of her expenses reveals that she voluntarily contributes \$147.00 per month to church and charitable organizations. She also pays the credit card bill for the parties son, Patrick, age 25, in the amount of \$195.78 per month. (CP 167, RE 62-69) Neither of the parties is responsible for Patrick's credit card expenses and the Chancellor should not have considered that as an expense for Shelia or as an obligation for T.C. See Brendel v. Brendel, 566 So. 2d 1269 (Miss. 1990)

The Chancellor found that T.C.'s health has deteriorated since the divorce and that he has retired due to his health problems. The Court found that his only income is social security benefits. Therefore, the Chancellor was correct in awarding a downward modification of the alimony award. However, the Chancellors ruling still obligates T.C. to pay 80% of his adjusted gross income to Shelia as alimony.

Alimony, if allowed, should be reasonable in amount, first deducting the resources of the wife and then finding an amount commensurate with the wife's accustomed standard of living, and considering the ability of the husband to pay. As long as the chancellor follows this general standard, the amount of the award is largely within his discretion. Wood v. Wood, 495 So. 2d 503, 506 (Miss. 1986); Miss. Code Ann. § 93-5-23 (Supp. 1989). The chancellor should consider the reasonable needs of the wife and the right of the husband to lead as normal a life as possible with a decent standard of living. Massey v. Massey, 475 So. 2d 802, 803 (Miss. 1985).

It goes without saying that if the husband is ordered to pay 80% of his income as alimony that his right to lead as normal a life as possible with a decent standard of living has been violated.

The Chancellor's decision to require T.C. to pay 80% of his adjusted gross income as alimony is so oppressive and unjust that it should be considered an abuse of discretion and therefore overturned by this Court.

II. WHETHER THE CHANCELLOR ERRED IN BY REFUSING TO FOLLOW THE TERMS OF THE MANDATE OF THE COURT OF APPEALS.

On May 20, 1997 the Court of Appeals issued a Mandate Reversing and Remanding the Judgment of the Chancery Court of Jackson County. (CP 22, RE 29-34)

On page 5 of the Court of Appeals Opinion the Court stated, in part,

"In light of the significant factual disputes surrounding this issue and the absence of factual findings concerning the valuation of Shelia's interest, on remand the Chancellor shall fashion such relief as he deems necessary to insure that the fair market value of Shelia's interest is conclusively established. Of course, such valuation may result in a finding that Thomas must tender additional sums to Shelia, that Shelia must return a portion of the \$165,140.00 to Thomas, or that the \$165,140 did in fact represent the fair market value of the portion of T.C. Broome Construction Co. to which Shelia is entitled. We Strongly suggest that the Chancery court employ financial experts to assist the court in valuating Shelia's interest in T.C. Broome Construction Co."

In Foot note 2, the Court ordered interest payments based on the final valuation of the company and clearly stated the following:

"The Fair market value of Shelia's interest in T.C. Broome Construction Co. shall be calculated as of the date of the divorce decree, December 30, 1993. Shelia shall be compensated with interest on this amount, at the judgment rate, from December 30, 1993 until the final resolution of this issue. Thomas shall be credited with the \$165,400 previously tendered to Shelia, plus interest at the judgment rate from the date of her presentment of the check until the final resolution of this issue" (CP 26, RE 29-34)

T.C. paid Shelia \$165,140.00 in June 1995. It wasn't until June 30, 2000 that the Court accepted Haidee Sheffield's valuation of the company. The amount of interest that accumulated during that five year time period equals \$77,858.65. This award of interest to T.C. is clearly and

precisely spelled out in the Court of Appeals opinion of May 20, 1997. T.C. never asked for the money he simply asked that he be given credit in the amount of \$77,858.65 towards any arrearages that he may owe.

It was error for the Chancellor to ignore this Court of Appeals mandate and to refuse to credit this interest towards any of the outstanding arrearages.

In Horton v. Horton, 301 So. 2d 305 (Miss 1974), The Mississippi Supreme Court held that where the trial court failed to follow the mandate of the Supreme Court on remand that it became the duty of the Supreme Court to carry out its own mandate. T.C. is asking this Court to carry out its own mandate.

III. WHETHER THE COURT ERRED BY NOT GIVING CREDIT FOR PAYMENTS MADE ON JUDGMENTS AND ALIMONY.

At the trial of this matter T.C. attempted to get credit for all of the payments that he had made over the years towards the alimony and other judgments. Although the Chancellor gave him credit for most of the payments, some were not credited. For example, as a result of a garnishment the Court released funds in the amount of \$10,827.63 from T.C.'s South Trust account by order entered August 13, 1997.(CP 28-29, RE 35-36) T.C. was not given credit for that payment. On August 19, 1997 the Court entered an order for release of funds from T.C.'s merrill Lynch account in the amount of \$2,222.37. (CP 30, RE 140 T.C. was not given credit for that payment. T.C. should have been given for these combined sums in the amount of \$13,050.00, against the outstanding arrearages.

There was a lot of discussion concerning the settlement proposal and the payment of \$319,339.06 in March 2002. On January 15, 2002, Mark Watts, Attorney for T.C., sent a

settlement proposal to Bill Reed, the attorney for Sheila, in an attempt to settle all arrearages and judgments with a payment of \$313,339.06 (CP 180, RE 48-49) Bill Reed responded on January 18, 2002, wherein he agreed to accept the sum of \$313,339.06 for all past arrearages. (CP 184, RE 50-51) The difference in that sum and the sum that T.C. Paid, \$319,339.06, is \$6,000.00, which represented the alimony payments for the months of February and March 2002, since the agreement was reached in January and the payment was not until March after T.C. received the funds from the sale of the Company assets.

At trial Shelia argued that the payment of \$319,339.06 did not catch up the alimony arrearage. However, a close examination of the record reveals that it did in fact catch up the alimony arrearage and pay off all outstanding judgments that existed at that time. (CP 180-181, 186-187, RE48-49, 136-137) Shelia claimed \$249,000.00 in alimony received in her 2002 tax return. (RE 83-84)

The alimony payments were ordered to start retroactively on June 1, 1995. From June 1, 1995 until March 13, 2002 T.C. would owe \$243,000.00 in alimony if he never made a payment. (81 months @ \$3,000.00 equals \$243,000.00). The balance on the total amount of all the other judgments was, according the Court's Order entered February 14, 2001, \$26,339.06 which when added to the alimony arrearage of \$243,000.00, plus interest of \$50,000.00 equals \$319,339.06. Which is why Shelia, through her attorney, agreed to that amount on January 18, 2002. (CP 184, RE 50-51) The Chancellors findings of fact in regard to the alimony owed from February 2001 to March 2002 was in error.

As these events were unfolding, the parties daughter Jessica attained the age of 21 years on August 20, 2001. In an effort to pay towards the alimony obligation, T.C. continued to pay child support to Shelia, for Jessica, in the amount of \$500.00 per month, even after Jessica's twenty-first birthday. (T 58-59, CP 184, RE 50-51) He paid that amount until Patrick attained the

age of 21 years on August 29, 2005. That was a period of 48 months at \$500.00 per month for at total of \$24,000.00. T.C. also continued to pay \$500.00 per month to Shelia after their son Patrick attained the age of 18, discontinued full time enrollment in school and entered the work force. Patrick quit college after one semester. T.C. continued to pay Shelia \$500.00 per month from January 2003 until Patrick turned 21 in August 2005, which was a total of \$16,000.00. Shelia acknowledged these payments in her 8.05 Financial Declaration of 2005. (RE 85-91) These combined sums total \$40,000.00. (CP 184, RE 50-51) This \$40,000.00 should have been credited to T.C. and subtracted from any alimony arrearage.

Had the Chancellor given him credit, it would have reduced T.C.'s alimony arrearage to \$2,500.00 per month from August 20, 2001 to March 2002, and to \$1,000.00 per month from March 2002 until August 29, 2005. In addition to reducing the amount of the alimony obligations it would have also lessened the amount of interest owed on the arrearage. In Stigler v. Stigler, 48 So. 3d 547 (Miss App. 2009), the Court of Appeals held that if credit is given for payments that were made then interest should not be calculated on those payments.

The trial Court in its Ruling of October 12, 2009 retroactively reduced T.C.'s alimony obligation from \$3,000.00 per month to \$1,500.00 per month retroactive to March 2002.

In March 2002 all arrearages had been paid in full. Pursuant to the Court's retroactive downward modification of T.C.'s alimony obligation, the only money owed was the \$1,500.00 per month alimony payments. From March 2002 until November 2009 is 92 months at \$1,500.00 per month that equals an arrearage of \$138,000.00. If the Chancellor had given T.C. credit for the \$40,000.00 he paid after Jessica reached the age of 21 and Patrick attained the age of 18 and discontinued full time enrollment in school, the \$13,050.00 he paid by garnishment and the \$77,858.66 in interest he was awarded by the Court of Appeals this arrearage would only be \$7,091.34.

It was error for the Court not to credit T.C. with the payments that the record shows were paid. It was error for the Court not to credit T.C. with the interest that he was awarded by the Court of Appeals and it was error for the Court to deny T.C. credit for the payments made to Shelia after the parties daughter attained the age of 21 years and after Patrick attained the age of 18 and discontinued full time enrollment in school and joined the work force.

CONCLUSION

Although Chancellors are give broad discretion in deciding domestic cases such discretion is not unfettered and is subject to appellate review.

An alimony award in the amount of 80% of the payor's adjusted gross income is so oppressive and unjust that it rises to the level of an abuse of discretion. Surely this Court will correct this error.

The Court of Appeals used clear and unambiguous language in its Opinion and Mandate issued in May 1997. T.C. was awarded interest on the payment that he made to Shelia in the amount of \$165,140.00 from June 1995 until final resolution of the valuation of the Company which took place in June 2000. The Chancellor erred by not following the Mandate and giving T.C. credit for the interest he was awarded against any arrearages that he owed. When the trial Court fails to follow a Mandate of the Court of Appeals, it is duty of the Appellate Court to carry out its own Mandate.

The record is clear that T.C. continued to pay \$500.00 per month to Shelia after their daughter attained the age of 21 years and after Patrick attained the age of 18 and discontinued full time enrollment in school. These payments were made as alimony payments and therefore should have been credited against the alimony arrearage. The Chancellor erred in her alimony calculations. In her findings of fact she assessed alimony for the period of February 2001 to March 2002 when in fact T.C. paid for that time period when he tendered the payment for all

CERTIFICATE OF SERVICE

I, Mark H. Watts, Attorney for the Appellant, T.C. BROOME, do hereby certify that I have this day mailed, via First Class, U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing Appellants Brief, to the following: Honorable William T. Reed, Attorney for the Appellee, at his usual business address of P. O. Box 1428, Pascagoula, Mississippi 39568-1428; Ms. Kathy Gillis, Supreme Court Clerk, at P.O. Box 249, Jackson, Mississippi 39205-0249, and Chancellor Jaye Bradley, at Jackson County Chancery Court, P.O. Box 998, Pascagoula, Mississippi 39568.

THIS, the 27th day of JANUARY, 2011.



MARK H. WATTS, ATTORNEY
FOR T.C. BROOME