

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2010 CA-00416**

**BRANDON L. BROOKS**

**APPELLANT**

**VERSUS**

**DAWN JACKSON BROOKS**

**APPELLEE**

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**BRIEF OF APPELLEE**

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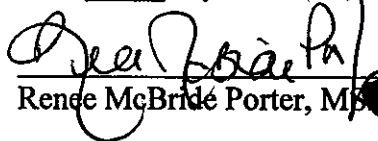
APPELLEE

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 the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible conflicts, disqualifications or recusal:

- |    |                             |                             |
|----|-----------------------------|-----------------------------|
| 1. | Brandon L. Brooks           | Appellant                   |
| 2. | Dawn Jackson Brooks         | Appellee                    |
| 3. | Renee McBride Porter        | Attorney for Appellee       |
| 4. | Matthew Thompson            | Attorney for Appellant      |
| 5. | Chris Farris                | Trial Counsel for Appellant |
| 6. | Honorable Lawrence Primeaux | Chancellor                  |

Respectfully submitted, on this the 7<sup>th</sup> day of March, A.D., 2011.

  
Renee McBride Porter, Ms. [REDACTED]

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## **STATEMENT OF THE CASE**

Brandon L. Brooks and Dawn Jackson Brooks were married in August of 2003. The couple lived together as husband and wife until their date of final separation in October of 2008. Of the marriage union, four (4) children were born, namely, Brandon, five years of age, Bailey, three years of age, Blair, two years of age, and Belle, one year of age. The couple began dating during college and married while Brandon was in law school and Dawn was finishing her Bachelor's Degree in Communications.

After graduation from law school Brandon originally got a job in Jackson. Both parties desired to return to Ellisville. Dawn did some groundwork making numerous phone calls and was instrumental in Brandon acquiring some contract work. Thus Brandon and Dawn returned to Jones County setting up residence there, and Brandon set up his law office. Dawn attended to the children and assisted Brandon in his law office. Dawn marketed the office, designed the letter head and even helped decorate the office including painting the office while pregnant. Dawn and Brandon both worked together to grow both their family and Brandon's business.

Dawn's first cousin, Ashley Friend, began working at the office part time while Dawn took care of the children.

Brandon began to have an affair with Ashley. The parties separated due to the adultery of Brandon, and before these parties were divorced Brandon had gotten Ashley pregnant.

During the parties marriage Brandon was just beginning his law practice, but the parties were able to live and support themselves. They purchased a home located at 679 Ovett Moselle Road, Ellisville, Mississippi, 39437. The parties were able to support the family and four children.

This Court entered an Agreed Temporary Order which was agreed in Court on June 18, 2009, which provided:

"That the Defendant is granted visitation with the minor children the first three (3) weekends a month as determined by Friday beginning at 5:00 p.m. through Sunday at 5:00 p.m. That the Defendant shall receive five (5) days additional time on the third weekend of the month for summer visitation provided the Defendant will be present and available to spend time with the children. This shall be for the months of June and July. Beginning in August, Defendant shall receive one night, either Tuesday or Thursday on the week the Defendant does not get the children, from 5:00 p.m. to 9:00 a.m. with the Defendant being responsible for getting the minor children to school, if they are enrolled.

That the Plaintiff should be granted the immediate temporary use and possession of the marital home of the parties for the use and benefit of herself and the minor children. That the Defendant will pay the house note and insurance on said home.

That the Defendant will pay the power bill.

That the Defendant will pay the car note of the Plaintiff and insurance on said car.

That the Defendant shall maintain a life insurance policy on himself as existed as of the date of filing of the complaint, with the minor children listed as beneficiaries.

That the Defendant will pay the water and garbage bill each month.

That the Defendant will pay Plaintiff's cell phone bill each month.

That the Plaintiff will place the children on CHIPS.

That the Defendant will take care of the Serv Pro bill.

That the Defendant, should be ordered to pay unto the Plaintiff, the sum of Two Hundred Fifty Dollars (\$250.00) per week, as child support, commencing June 22, 2009 and continuing on or before Monday of each week thereafter until further order of this Court.

That both parties should be enjoined by this Court from harassing, threatening, or intimidating the other, or from disposing of or encumbering any effects which are owned, either jointly or individually, until further order of this Court."

This matter came to trial on November 2, 2009 and concluded on January 25, 2010.

Brandon confessed adultery and proof was submitted to substantiate the same. The parties tried the following issues: Divorce, alimony, equitable division, payment of debts, child support, visitation, and attorney's fees.

This Court entered it's Memorandum Opinion which divorced the parties upon the grounds of adultery on Brandon's part and which provided :

"Dawn should have exclusive use, occupancy and possession of the former marital residence and the parties' equity in it until Belle reaches the age of eighteen years, at which the property shall be sold at or above the appraised value and the equity after payment of the

outstanding mortgage debt divided between the parties so that Brandon receives 60 percent and Dawn receives 40 percent.

Dawn should be responsible for the upkeep and maintenance of the property unless the repair is in excess of \$1,000.000 and it should be split equally between the parties.

Dawn should have exclusive use, ownership, and possession of the 2002 Chevrolet Suburban, with a value of \$8,100.00.

Brandon should have exclusive use, ownership, and possession of the 1999 Chevrolet Malibu with a value of \$1,727, the 1999 BMW 323i, with a value of \$5,500, and the 2003 Ford Expedition with a value of \$8,500.

Each Party should be responsible for the maintenance, debt, tag and other expenses associated with his or her own vehicle(s).

Each party should have exclusive use, ownership, and possession of the household furniture and jewelry that each has in his or her possession, with a value of \$5,000 each.

Brandon should have the larger share of the equitable distribution because he will be paying rehabilitative alimony and he will be bearing the lion's share of the family debt, which consists of medical bills incurred for the benefit of the children. He also will be paying the mortgage debt, taxes, and insurance on the former marital residence for around 16 years.

... The court finds that the amount of rehabilitative alimony payable by Brandon to Dawn should be \$325, commencing March 1, 2010, and continuing regularly on the first day of each succeeding month through December 31, 2013.

... The court finds that Brandon should pay child support to Dawn in the sum of \$958 per month commencing February 15, 2010, and continuing regularly on the fifteenth day of each month until the minor children are all emancipated, or until further order of the court.

Regarding attorney's fees, Brandon has the ability to pay the balance over time, and the court finds that he should pay Dawn the sum of \$150 per month until the sum \$3,948 is paid in full, for which Dawn should be granted a judgement with interest at the rate of six percent per annum from the date of entry of judgement corresponding with his Opinion. "

That Brandon received standard visitation as per the Schedule attached to the Opinion which included the first and third weekends of each month, alternating holidays (which include New Year's Day weekend, Memorial Day weekend, Thanksgiving during the time the children were out of school, Easter, fourth of July, and a week at Christmas), one-half of the months of June and July, and Spring Break.

That Dawn filed a Motion for a New Trial or for Reconsideration and upon a hearing the Court ruled as follows, to wit:

"That the Opinion provided that Defendant was to pay the mortgage note, taxes and insurance, however the Judgement did not make that provision and the Judgement should be corrected or supplemented to provide as set forth on page 23 of the Opinion that "Brandon



should tender to Dawn each month on or before the first day of the month, commencing February 1, 2010, a sum equal to the house note due for that month, plus a sum equal to one-twelfth of the hazard insurance premium and the property taxes on the property.

That the relief requested by Plaintiff as to the Chevrolet Malibu is denied, and the Judgement remains in full force and effect with regard to the provision on the Chevrolet Malibu.

That the Opinion discusses the foundation problem for the marital home and finds that Brandon had agreed to pay for the same. That Brandon was not ordered to pay for the problem. That the Opinion and Judgment should be amended to reflect that Brandon be ordered to pay for the foundation problem.

That accordingly the Judgement is modified as follows, to wit:

The former marital home has foundation/drainage issues that were testified about at the trial in this matter. The parties shall cooperate in seeking that the necessary repairs are made in a reasonable time period and workman like manner. Dawn Brooks is to submit up to three estimates to Brandon Brooks with regard to the needed repairs. Brandon is to select one of the three estimates so that work may begin. Brandon shall be responsible for the expense of having the repairs made. Each party may communicate with the contractor regarding the necessary repairs. The contractor selected shall advise Brandon immediately if any cost overruns are expected.

That no mention was made as to life insurance which Brandon has in force and effect and which he was ordered to maintain in force and effect for the benefit of the minor children as per the Temporary Order. That the Court finds that Brandon is to maintain the life insurance in the amount of \$1,000,000.00., with the children of this marriage as sole beneficiaries and within thirty days provide proof to Plaintiff that he has said coverage. That Brandon Brooks is to notify Plaintiff as to any change made on the policy. That Plaintiff has the right to request proof of coverage not more than once a year on the anniversary date of this final judgement."

That Brandon appealed the case.

### **SUMMARY OF THE ARGUMENT**

This Court heard the evidence and reviewed exhibits and rendered a detailed Opinion. This opinion is supported by the evidence and exhibits and must be upheld.

### **ARGUMENT**

**I. The Chancellor will not be overturned unless he made a decision that was in manifest error.**

In this case the Chancellor heard the testimony and observed the witnesses for over a day. The Chancellor's opinion should be upheld.

The law is clear that a Chancellor is vested with great authority to rule as he deems necessary in a domestic relations case, and that further his decision will not be overturned unless he is in manifest error. The court in Pearson v. Pearson, 761 So. 2d 157 (Miss. 2000) stated "Our scope of review in domestic relations matters is limited by our familiar substantial evidence/manifest error rule." Magee v. Magee, 661 So. 2d 1117, 1122 (Miss. 1995). "This Court will not disturb a Chancellor's findings unless manifestly wrong, clearly erroneous, or if the Chancellor applied an erroneous legal standard" See Johnson v. Johnson, 650 So. 2d 357 (Miss. 1994). See also McEwen v. McEwen, 631 So. 2d 821, 823 (Miss. 1994). The only way an appellate court can reverse a Chancellor's ruling of fact is when there is not "substantial, credible evidence" to justify his findings. The Court referenced Parsons v. Parsons, 678 So. 2d 701, 703 (Miss. 1996), saying the award on appeal will not be disturbed unless it is found to be against the overwhelming weight of the evidence or manifestly in error. The court in Carr v. Carr, 480 So. 2d 1120 (Miss. 1985) stated that "Findings of fact made by a Chancellor may not be set aside or disturbed on appeal unless manifestly wrong; this is not whether the finding relates to evidentiary fact questions, or to ultimate fact questions" Tucker v. Tucker, 453 So. 2d 1294 (Miss. 1984). The Court went on to conclude that if there is evidence in the record that support the Chancellor's finding of fact, then the finding should not be disturbed. "The Court is bound by the findings unless it can be said with a reasonable certainty that those findings were manifestly wrong and against the overwhelming weight of the evidence." Torrence v. Moore, 455 So. 2d 778 (Miss. 1984).

"An Appellate Court is not at liberty to overturn decisions of the Chancellor unless they

are manifestly in error.”Devereaux v. Devereaux, 493 So. 2d. 1310 (Miss. 1986). The Devereaux court stated again that they would not reverse the Chancellor’s finding of facts on contradictory testimony unless it is manifestly wrong. Again the law is that “[t]his Court will not disturb the factual findings of a Chancellor when supported by substantial evidence unless it can say with reasonable certainty that the Chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard.” Morgan v. West, 812 so.2d 987, 990 (Miss. 2002); Cummings v. Benderman, 681 So.2d 97, 100 (Miss. 1996). Further, in order to disturb the findings of a Chancellor this court must find that the Chancellor has abused his discretion, was manifestly wrong or has made a finding which was clearly erroneous. See Bank of Miss. V. Hollingsworth, 609 So.2d 422 (Miss. 1992). The Chancellor’s determination regarding the weight and credibility of witnesses is given deference when there is conflicting testimony. See. Scott Addison Constr., Inc. v. Lauderdale County Sch. Sys., 789 So.2d 771 (Miss. 2001); Murphy v. Murphy, 631 so.2d 812 (Miss. 1994); Culbreath v. Johnson, 427 so.2d. 705 (Miss. 1983).

In this case this matter was tried for over a day and the record is full of evidence to support the Court’s findings.

Before this court can disturb the findings of the Chancery Court it must find that the Chancellor has abused his discretion, was manifestly wrong or has made a finding which was clearly erroneous, none of which are present in the case at hand. It is clear from the ruling that the Chancellor looked at all the evidence presented in this matter and made his determination on the issues based upon said evidence.

## **II. The Ruling is supported by the evidence submitted at trial.**

This matter was tried and the ruling is supported by the evidence at trial. The

following witnesses testified:

**1. Brandon Brooks -** Brandon begins his testimony by stating where he lives and when he and Dawn separated. Brandon also points out that he has had an affair with Dawn's first cousin, Ashley Marie Friend (Tr. 10). Ashley is the expecting mother of Brandon's fifth child (Tr. 7). Ashley is also a current employee of Brandon, where she does secretarial work. Brandon is then questioned about Dawn and their life while he was in law school. Brandon stated that Dawn worked two jobs while he was in law school and she was also pregnant at the time (Tr.12). When Brandon finished law school, he got a job in Jackson but wanted to return back to Ellisville. Dawn was a key part of finding him a job back home as she made numerous phone calls and searched hours on in for him a job interview (Tr. 14). He then testified that Dawn played an important role when he opened his own practice. Brandon was then questioned about Dawn's employment history. He stated that Dawn hasn't worked full-time since 2005 so she could focus on raising the four children they have, all of which were under six years old. Brandon stated that raising those children is a full-time job in itself and that Dawn is a good mother (Tr. 16). Brandon is then questioned about Dawn's financial statement. He points out that the expenses listed seem to reflect normal expenses of their marital home (Tr. 20). Brandon is then questioned about some expenses reflected on his business account. He admits that some of the expenses are for personal use, especially those pertaining to eBay (Tr. 27). Brandon also admits that many times he has used his business account to purchase personal items but has tried to cut back (Tr. 28). Brandon also admitted that he hasn't kept a total of the money he receives from retainers brought into the office like he did in previous years (Tr. 29). Brandon is then questioned about his income for the year 2007. He admitted that in that year his income was \$101,000 (Tr. 30). The next issue was concerning Brandon going to the casino and gambling. Brandon admitted

he does take a trip there every few months (Tr. 35). He also admitted to making a trip to the Beau Rivage and treating everyone to dinner before a night of gambling (Tr. 61). Brandon also said that his brother had been gambling online through PokerStars and all of the purchases or amounts paid came from his business account using his business email address (Tr. 40,44). Brandon was then questioned about he and Ashley going on shopping trips together. He testified that they went to Foley, Alabama shopping and he bought her some clothes and a pair of shoes (Tr. 46). Brandon then admitted that he has threatened Dawn over text messaging. One of the texts he admitted to sending read, "You had our kids and get the fuck out of bed and raise them (Tr. 54)." Brandon was then questioned about leaving during visitation hours without the minor children. He admitted that he had done that three times. One time, he said he went to the coast on Valentine's Day. Another, he said he went to a Halloween party. The last time, he said he went to Mobile to bid on a foreclosed property for a client (Tr. 70). He also admitted to driving the minor children while his driver's license was suspended (Tr. 60). Brandon was also ordered by the Court to add his children as the sole beneficiaries of his life insurance policy, but instead added them as heirs to a trust (Tr. 64). Another topic under question was Brandon's ability to earn versus Dawn's. Brandon admitted that, as an attorney, he currently makes more and has a greater ability to earn over Dawn. Brandon was then asked about what he charges for a contested divorce. He said he usually charges between \$2,500 and \$3,500 and agrees that this is a contested divorce (Tr. 186). Brandon then said he has been able to meet the obligations ordered by him in the temporary order (Tr. 195). He also said if it was necessary he could get a second job, such as a night shift (Tr. 190). One of the last issues Brandon was questioned about was his visitation over Thanksgiving and Christmas of 2009. He admitted that he did not follow the Order and kept the children longer than he was supposed to (Tr. 207,208).

**2. Dawn Brooks:** Dawn began her testimony by recalling previous employment history. She then went on to talk about the day she told Brandon she planned to file for divorce. She said it was the beginning of May 2008. Brandon kicked the door in to their house and she told him that was all she could take and she planned on filing for divorce (Tr. 80). Dawn went on to say that Brandon kicked the door in at their home five different times, but the children only saw it happen once (Tr. 128). She then went on to discuss the different bills that Brandon was paying per the Temporary Order. She said she is having her house note, insurance, car insurance, utilities, and also receiving \$1,000.00 per month and is having a hard time meeting all of her expenses. She said that she even has to have her family buy diapers and wipes for her and also a couple from her church has purchased groceries for her on a few occasions (Tr. 86). Dawn then goes on to testify that she did many things to assist Brandon when he opened his law office. She said she designed the letterhead, she found the location, and she dealt with the man who owned the building (Tr. 89). The next issue Dawn testified about was their income in 2007. Dawn said she knows that Brandon made \$101,000 in 2007 and they tithed \$7,966.00 (Tr. 91, 93). She said that Brandon would make other charitable donations, so the tithe amount may not have been 10% of their income. Dawn also stated that they were on track, income wise, to do better in 2008 than 2007. Dawn then went through the different medical bills that Brandon owed her. She also presented a bill that she paid and Brandon never paid her back (Tr. 106). Dawn was then asked about alimony. Dawn testified that she gave up her dreams for Brandon and pleasing him eventually became her dream. She said that she worked at his law firm and was never compensated and she believes she deserves it (Tr. 114).

**3. Beverly Robinson:** Beverly testified that she helped out Dawn more than ten times with diapers and other necessities (Tr. 158). She also testified that she was present when

Brandon kicked in the door. She stated at this specific incidence he pulled a gun out of a holster and it was in his possession when authorities arrived (Tr. 162).

From the testimony we find:

1. Brandon admitted adultery.
2. Brandon admitted that he had increased his expenses by getting his girlfriend (who was Dawn's first cousin) pregnant.
3. Brandon admitted that Dawn worked hard (two jobs) while he was in law school and had played an important role in his opening his law practice.
4. Brandon admitted that raising four children was a full time job for Dawn.
5. Brandon admitted that he paid personal expenses through his business account. That he did not report all cash. Brandon admitted that in 2007 his income was \$101,000.00. Brandon admitted going to the casino and gambling and that he and his girlfriend had taken shopping trips.
6. Brandon admitted that he had said ugly things to Dawn over text and that he had gone out of town when he actually had visitation.
7. Brandon admitted he had a greater ability to earn than Dawn and that he usually charged \$2500.00..., to \$3500.00., for a divorce.
8. Brandon admitted he had been able to meet the obligations under the Temporary Order (which are less than the Divorce obligations).
9. Dawn stated that even under what she was receiving under the Temporary Order (which was more than she is receiving under the divorce) she was having a hard time meeting her obligations.
10. Dawn admitted to assisting Brandon with his law office.

11. Dawn admitted that Brandon made in excess of \$100,000.00, in 2007 and the parties tithed \$7,966.00 (to their church). Dawn testified that the tithe amount may not have been 10% of their bring home income. Dawn also stated that they were on track, income wise, to do better in 2008 than 2007.

12. Dawn testified that her dream of assisting Brandon with his law office and pleasing him was her dream and now she had lost the same.

The testimony reflects that Brandon has earned and has a capability to earn and pay his obligations as the Court has set forth. The testimony reflects that even with his paying the obligation as the Court has provided Dawn will have problems meeting her expenses. The testimony supports the findings by the Court.

#### **ISSUES RASIED BY APPELLANT**

I. The Chancellor committed manifest error in his consideration and application of Support Awards and Equitable Distribution.

- **1. The Chancellor erred in his award of child support which grossly exceeded statutory guidelines.**

First of all, there was testimony for Brandon that he did not report all income and that in 2007 his income was over \$100,000.00. In 2007 the parties tithed at least \$7,966.00. Therefore the Court finding that Brandon had income of \$101,000.00 is supported by the testimony.

"The process of weighing evidence and arriving at an award of child support is essentially an exercise in fact-finding, which customarily significantly restrains this Court's review." Clausel v. Clausel, 714 So.2d 265, 266-67 (Miss. 1998). This Court heard the



testimony and examined the exhibits and found what the child support obligation should be and this finding should be upheld.

In this case the child support is \$958.00., per month or \$239.50., per child. Brandon is a lawyer and to assess child support at \$239.50., per child is unbelievably low. For Brandon to say that the assessment on child support is error and should be reduced even lower shocks the conscience.

If this Court should find that the child support did exceed the guideline, our Court has found in Kilgore v Fuller, 741 So.2d 351 (Miss.App. 1999), that "The guidelines are just that — guidance. The Chancellor is not to follow them mechanically..."

Put another way, the Supreme Court has said that the support that is required is to be determined by a Chancellor "at a time real, on a scene certain, and with a knowledge special to the actual circumstances and to the individual child or children." Smith v. Smith, 614 So.2d 394, 397 (Miss. 1993).

In this case Brandon is a lawyer with four small children. Brandon is capable of paying the support ordered as he had done so under agreed Temporary Order.

Also, our Mississippi Supreme Court has approved departures from the statutory guidelines due to a party's lack of complete veracity regarding his financial statements. Grogan v. Grogan, 641 So.2d 734, 741 (Miss. 1994).

In this case Brandon admitted not accounting for all cash and paying personal expenses out of his business account.

Brandon admitted in his testimony that he did divorce work and that he charged \$2500.00., to \$3500.00., for a divorce retainer. The Court has charged Brandon with \$5,894.00 income per month. That amounts to roughly twenty divorces per year or less than two a month.

Surely Brandon can handle twenty divorces per year.

Brandon argues Pierce v. Pierce, 2009-CA-00161-COA (Miss.App. 2010)

42 So.3d 658 which is not on point. In that case the parties had no minor children, but the Court gave Star the use of the home until she remarried or her daughter Kayla graduated from high school. The court remanded this issue to the lower Court and the Pierce case is not on point as again the child in that case was not Mr. Pierce's child.

Brandon alleges that the order for him to pay the house note should be overturned.

The case of Stanford v. Stanford, 734 So. 2d 359 (1999), is one in which Mr. Stanford argued that the Chancellor's order requiring him to pay both the mortgage on the house and child support constituted a "double award" and was thus unreasonable. This Court found that "However, in cases such as this, the family is entitled to be maintained in the same manner as if the husband and wife were still cohabiting. Robinson v. Robinson, 554 So.2d at 305 (Miss. 1989).

Also, Brandon's income is expected to increase. The case of Hensarling v. Hensarling, 2000-CA-00252-SCT (Miss. 2002) 824 So.2d 583 was a case in which the husband was a physician. The Court in that case cited the Vaughn v. Vaughn, 798 So.2d 431 (Miss. 2001) (where findings were sufficient when the Chancellor explained the source of the husband's income, noted that the income was expected to continue, and found that the resulting child support award was necessary and reasonable to maintain a reasonable standard of living for the child) and provided that "Additionally, Ken's income is likely to increase as his career gets back on track."

In this case Brandon's income is expected to increase and the award is equitable.

- **2. The Chancellor erred in his award of equitable distribution as it did not divide the marital home for 16 years and division of the marital estate was**

- **one-sided against Brandon.**

Brandon quotes in his brief "The distribution of marital assets in a divorce will be affirmed if it is supported by substantial credible evidence." (Appellant's Brief page 4).

Brandon is correct and this distribution is supported by credible evidence.

This Court did divide the home when the youngest minor child turned 18 and then awarded the majority of the equity to Brandon. The Court could have awarded all equity to Dawn but actually awarded the bulk to Brandon.

The Court divided the assets with Brandon receiving \$35,248.00, in assets and Dawn receiving \$22,781.00. This award is unfair to Dawn if anyone, and Brandon should not complain.

As far as the argument that the division of debts is not included. By a quick review of the debts one can determine the bulk of the debts are old medical bills which are in part from the birth of the children.

Brandon argues that once the liabilities are assessed that his income becomes --- negative \$7,199.00. These are old debts and have not been paid by Brandon prior to the divorce. Brandon is expected to increase his wages and can pay these debts when his wages increase. To saddle Dawn with these debts from child birth is not equitable.

Regarding the equitable distribution of marital property, the Court in Ferguson outlined the following factors for consideration: [Ferguson v. Ferguson, 639 So. 2d 921 (Miss.1994)]

1. Substantial contribution to the accumulation of property (a) direct or indirect economic contribution (b) contribution to stability and harmony of the marital relationship measured by quality, quantity of time spent on family duties and duration of marriage. (c)

contribution to the education, training bearing on the earning capacity of spouse accumulating assets.

Dawn not only worked two jobs during Brandon's law school but helped him set up his law office. She worked part time even after having four children. She certainly made a substantial contribution to the property both in the forms of her assistance to Brandon in law school and in establishing his law career.

Also, Dawn made contribution to the stability and harmony of the marital relationship. Dawn assisted Brandon at his office and reared four young children. Brandon admitted Dawn was a good mother. Dawn did what she could do to make the marriage work and Brandon had an affair not only with another woman but a first cousin of Dawn. This marriage is dissolved because of Brandon's conduct, not Dawn's.

Dawn again contributed to Brandon's education (working two jobs) and the beginning of his law practice.

2. Degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of assets.

Dawn was not found by the Chancellor to waste money.

3. Market value and emotional value of assets subject to distribution.

The assets were appraised and divided by the Court. There were not a lot of assets in part due to the short term marriage. Brandon's assets are likely to greatly increase as he is an attorney while Dawn's ability to acquire other assets is limited.

4. Value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse.

5. Tax and other economic consequences, and contractual or legal consequences to third parties, or the proposed distribution.

Brandon will have a tax deduction for the marital home and also possibly for the alimony. Since Dawn's income is far less than Brandon's and always will be this is fair if he is paying the mortgage note. But the deduction for the interest will give him a tax benefit.

6. Extent to which property division may be utilized to eliminate periodic payments and other potential sources of friction.

The Court awarded very limited alimony. Brandon argues that the Court left him with insufficient funds to support himself. First of all, Brandon chose this action and yes, it is hard to support two families on the money that one was supported on, but his family must be supported. Secondly, Brandon had done so under the Temporary Order (which award was greater.).

7. Needs of the parties.

Certainly Dawn is in need of this Court's order. Brandon alleges that Dawn could return to work. As the Court found Dawn worked in Brandon's law office part time. The return to that job is not feasible. Further, with four young children the cost of day care would be prohibitively expensive. Brandon suggests his mother could baby sit which due to the fact that Brandon is now married to Dawn's first cousin would make this a very uncomfortable situation. Dawn is in need of this Court's order to be upheld.

Dawn can not live on \$1,283.00 per month much less support her and four children so she will have to work out side of the home which is unlike what she was doing when the parties divorced.

8. Any other factor which in equity should be considered. *Id.* at 928.

The Court should consider the fact that Dawn married Brandon and began her life and assisted with his career putting hers on hold to be a mother to their children. Then through no fault of hers Brandon's conduct ended the marriage.

- **3. The Chancellor erred in his award of alimony as it, along with other financial obligations and Equitable Distribution, exceeds Brandon's ability to pay, leaving him destitute.**

"The amount of the allowance, as in awarding permanent alimony, is within the sound discretion of the court, and will not be disturbed on appeal except in case of a clear abuse thereof. . . . Nor should it include any sum for the support of a child or children of the parties who may live with the wife because the duty of the father to support his children is separate and distinct from the duty of the husband to support his wife. 1 R.C.L. 921 section 70. In all cases due consideration should be given to the right of the husband to live as comfortably as his wife, but not more so, and also to his legal obligation to support his children. . . . The purpose should be to provide, as nearly as may be possible, the same sort of normal support and maintenance for the wife, all things considered, as she would have received in the home, if the parties had continued normal cohabitation, and the wife had helped in a reasonable way, in view of her health and physical condition, to earn her own support and that of the family." Robinson v. Robinson, 554 So.2d 300 (Miss. 1989).

In this Case, if Brandon had continued to live in the home, Dawn would have had the house note paid; Brandon would have paid the bills; and Dawn would be been able to work only part time. Now Dawn must work outside of the home and be very frugal with money. So the purpose of alimony in this case will allow Dawn some monies, but certainly not enough for her to provide "the same sort of normal support and maintenance for the wife."

The case of Armstrong v. Armstrong, 618 So.2d 1278 (Miss. 1993) provides for the alimony factors.

1. The income and expenses of the parties;

As aforesaid Dawn has a limited ability to earn income as her previous job is not feasible. Certainly her needs and those of her four children are great.

2. The health and earning capacities of the parties;

Dawn is in good health as Brandon, but Brandon has a law degree and admitted that his ability to earn exceeded Dawn's. Dawn's earning capacity is limited somewhat now due to the age of her children.

3. The needs of each party;

Dawn has needs that she must have this alimony to meet.

4. The obligations and assets of each party;

As aforesaid the parties had limited assets due to the short term marriage because of Brandon's adultery. The parties have limited obligations except for medical expenses, but those have to be paid and Dawn can not pay the same.

5. The length of the marriage;

This marriage is relatively short, due again to Brandon's adultery.

6. The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care;

Dawn has four very young children in the home which require full time devotion and care.

7. The age of the parties;

Dawn is thirty-three and Brandon is thirty-two. Again, Brandon's earning capacity

should increase as the years progress.

8. The standard of living of the parties, both during the marriage and at the time of the support determination;

The parties lived pretty much as they were living under the Temporary Order except that Dawn admitted that she was having a hard time financially under the Temporary Order. The Temporary Order provided that Brandon do more than he is now doing and Dawn was having to borrow money then. Now, Dawn is really struggling financially. For Brandon to say that this Court should reverse the award given is not proper and should not be well taken as the award does not even meet Dawn's obligations.

9. The tax consequences of the spousal support order;

Again, Brandon can deduct the interest on the home and possibly the alimony.

10. Fault or misconduct;

Brandon is solely at fault in this matter leaving a woman with four children under the age of five for another woman. Brandon's conduct is reprehensible.

11. Wasteful dissipation of assets by either party; or

Dawn did not waste funds, however, Brandon testified that he gambled, both by going to casinos and on his computer. There was not testimony about Dawn wasting money or funds.

12. Any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

Again, this Court should consider the situation Dawn is in. She assisted Brandon in setting up his career to earn good money and he left her with four children under the age of five. This factor should be considered.



Brandon argues in his brief that the Chancellor considered a handwritten sheet of paper from Brandon as to his income and did not consider the national economy. (Appellant's Brief page 12). First of all, there was not testimony about the economy. Brandon admitted that he made the money as listed on the Exhibit. Brandon further admitted that he did not report some cash and paid personal expenses out of the office. Dawn testified in 2008 that Brandon was on his way to a comparable year to 2007. This was not error. Again, there was no testimony about the economy, so this argument should be without merit.

Lastly Brandon argues that he pays \$650.00., in marital debts. The debts once again were medical debts and he had not been paying the same. His argument about paying \$650.00 is not in the record and should be stricken.

**4. The Chancellor erred in his award of Attorney Fees as it was intended to punish and, in light of equitable distribution and financial awards, was error.**

Brandon states in his brief on page 15 that "An award of attorney's fees in a divorce case is generally within the discretion of the Chancellor." McKee v. McKee, 418 So. 2d 764, (Miss., 1982.). This argument should be well taken. The Chancellor heard this case and ordered Brandon to pay limited fees. Dawn has no way to pay attorney's fees due to her having to support five people on \$1283.00., per month. That is \$256.60., per month per person to feed, diaper, clothe, pay electricity and utilities, provide birthday parties, gifts, and in general support. It is ridiculous to allege that Dawn could pay her attorney's fees.

Further Brandon admitted that he charged \$2500.00., to \$3500.00., for a divorce case. The fees assessed were not only reasonable, they were in fact less than charged.

This award should be upheld.

**II The Chancellor committed error and abused his discretion when ordering restricted**

**visitation as compared to the Temporary Order the parties had followed.**

Brandon argues that he received restricted visitation. Actually, Brandon received very liberal visitation. Brandon received standard visitation as per the Schedule attached to the Opinion which included the first and third weekends of each month, alternating holidays (which include New Year's Day weekend, Memorial Day weekend, Thanksgiving during the time the children were out of school, Easter, fourth of July, and a week at Christmas), one-half of the months of June and July, and Spring Break. Our Chancery Courts are vested with the responsibility of determining visitation schedules that are in the best interests of the children, and this Court gives great deference to the Chancellor's discretion in this regard. Chamblee v. Chamblee, 637 So.2d 850, 861 (Miss. 1994); Newsom v. Newsom, 557 So.2d 511, 517 (Miss. 1990).

"Where a Chancellor has made a factual finding on the matter of visitation, this Court will not disturb those findings unless there is no credible evidence, he has committed manifest error or he has applied an erroneous legal standard." Henderson v. Henderson, 952 So.2d 273, 279 (¶ 14) (Miss.Ct.App. 2006) (citing Bredemeier v. Jackson, 689 So.2d 770, 775 (Miss. 1997)).

There is no evidence that would support the fact that the Chancellor committed any error regarding visitation.

"Visitation should be set up with the best interests of the children as the paramount consideration, keeping in mind the rights of the non-custodial parent and the objective that parent and child should have as close and loving a relationship as possible, despite the fact that they may not live in the same house." Dunn v. Dunn, 609 So.2d 1277, 1286 (Miss. 1992); see Clark v. Myrick, 523 So.2d 79, 83 (Miss. 1988) (citations omitted). How best to accomplish this


goal is a matter in which the Chancellor is accorded great discretion. See Faris v. Jernigan, 939 So.2d 835, 839 (¶ 8) (Miss.Ct.App. 2006).

In this case Brandon was awarded substantial time with the children despite the fact that he had not previously exercised all of the visitation given to him, and despite the fact that he was engaged in an ongoing relationship with his paramour. As far as the argument that he will never have a Halloween unless it is on a weekend (Appellant's brief page 17), Halloween is not a recognized holiday by our state or federal government. Brandon, by his conduct, caused this divorce and he will miss time with his children, but there must be a schedule and the Court adopted a standard and liberal schedule.

### CONCLUSION

Dawn stood by Brandon during law school and at the beginning of his career assisting him in any way possible. Dawn had four children in less than five years and still assisted Brandon in his law career. Yet Brandon had an affair with Dawn's first cousin and the fairy tale world of Dawn came to an end. Now, Dawn is forced to try to support herself and four children on \$256.60., per person per month. Brandon wants the Court to actually reduce that amount. The award is based upon testimony and exhibits and is supported and must be upheld. Brandon's income will only go up and yet Dawn is unable to presently work. Further the Court should uphold the visitation schedule as it is liberal and generous and again supported by the evidence at trial. Dawn prays that this Court affirms the lower Court.

RESPECTFULLY SUBMITTED, this the 7<sup>th</sup> day of March, 2011.

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**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**NO. 2010 CA-00416**

**BRANDON L. BROOKS**

**APPELLANT**

**VERSUS**

**DAWN JACKSON BROOKS**

**APPELLEE**

**CERTIFICATE OF SERVICE**

This is to certify that I, Renee McBride Porter, on the 7<sup>th</sup> day of  
March A.D., 2011, furnished a true and correct copy of the above and foregoing

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by placing same in the United States Mail, postage prepaid.



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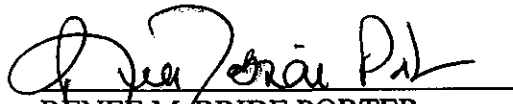
**APPELLEE**

**CERTIFICATE OF SERVICE AS TO FILING**

I, the undersigned, being the attorney of record for the Appellee in Docket No. 2010 CA-00416 in the Supreme Court of Mississippi, do hereby certify that I have, this day delivered for filing the original and three (3) copies of the foregoing brief of Appellee to:

Honorable Kathy Gillis  
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Jackson, Mississippi 39205-0249.

This the 7<sup>th</sup> day of March, A.D., 2011.

  
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