IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CASE NO. 2010-CA-00646

HOWARD WILSON CARNEY, III — APPELLANT

VS.

ANDREA LEIGH BELL CARNEY — APPELLEE

APPEAL FROM THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI
Cause no. 2008-371 GN

BRIEF OF APPELLEE
ANDREA LEIGH BELL CARNEY

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VS.

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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 this Court may evaluate possible disqualifications or recusal.

1. Andrea Leigh Bell Carney
   Appellee
   380 Porters Chapel Road
   Vicksburg, MS 391830

2. Howard Wilson Carney, III
   Appellant
   819 West Bear Lake Road
   Tallulah, LA 71282

3. Travis T. Vance, Jr.
   914 Grove Street
   Vicksburg, MS 39183

4. J. Mack Varner, Esquire
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   Vicksburg, MS 39181

TRAVIS T. VANCE, JR., for Appellee
Andrea Leigh Bell Carney

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STATEMENT OF THE CASE

Andrea Leigh Bell Carney and Howard Wilson Carney, III, were married on the 20th day of March, 1998, as a result of the union by and between the parties, two (2) children were born of this union, namely, Amanda Leigh Carney, born June 25, 1997, and Katherine Beal Carney, born June 21, 2006; the parties separated on the 26th day of November, 2008, and remained separated until the date of the divorce. On December 1, 2008, Andrea Leigh Bell Carney filed her Complaint for Divorce in the Chancery Court of Warren County, Mississippi. (R. 8-13) The Complaint for Divorce was subsequently amended by Andrea Leigh Bell Carney and an Amended Complaint for Divorce was filed on the 9th day of September, 2008 (R. 28a) Howard Wilson Carney, III, filed a Counter-Complaint for Divorce. (R. 24) The lower Court Judge entered a Temporary Order on March 4, 2009 (R. 15) granting Andrea Carney custody of the two (2) minor children of the parties and ordering Howard Wilson Carney, III, to pay child support at the rate of $2,000.00 per month.

That voluminous discovery was done on behalf of both parties and just prior to the trial of this cause on its merits the parties executed a Consent to Divorce reserving certain issues to be determined by the lower Court. (R. 36) The parties also filed a Joint Motion to Withdraw Fault Grounds and to allow the Court to Decide Certain Issues. (R. 38) The Court entered an Agreed Order Dismissing the Fault Grounds. (R. 39) The issue of the divorce was tried on January 14, 2010, and January 22, 2010, with the Court deciding the unresolved issues. The lower Court entered a Memorandum Opinion and Final Judgment on the 19th day of March, 2010. (R. 41-102)

At the beginning of the marriage the parties resided in Tallulah, Louisiana. The sister of the Appellee, Patricia Barnes and her husband Jason Barnes, purchased a home and property adjacent to the father of the Appellee, John Bell. The property was known as the "Bell Property" and upon the death of Appellee's grandmother, her sister, Patricia and her husband, Jason, purchased the home that was later to become the subject of this appeal.

The sister of the Appellee, Patricia Barnes, met an untimely death and died on February 27, 2004, (R. 107) with the property adjacent to the father of Appellee and being known as the "Bell Property" the family wanted to purchase the property and keep the home known as the "Bell Property" in the Bell family. After the purchase of the Bell family home by Patricia and Jason Barnes, the Barnes did a complete renovation of the home which placed the home in the condition of such home at the time of the purchase of the home by Appellee. At the time of the purchase of the "Bell" family home by Patricia and Jason Barnes the house was appraised at $81,000.00. (R. 108) After the complete renovation of the home by Patricia and Jason Barnes the appraised value of the home was $281,100.00 as shown by the appraisal of the property on April 25, 2006. (R. 108)

After the untimely death of Appellee's sister, Patricia, the home known as the "Bell Property" was purchased by the brother-in-law and the sister of the Appellee, being Debra and Bob Baylor. (R. 108) The property known as the "Bell Property" was the home of Appellee's father, as well as, her grandparents from 1937 up and until the home was purchased by her sister, Patricia and Jason Barnes. (R. 104) Appellee stated without questions that the home located at 380 Porters Chapel Road, Vicksburg, Mississippi, was her home place. That is where her grandmother lived and where her father was raised and he was born there. Her father built a home adjacent to the property located at 380 Porters Chapel Road. (R. 103-104).

The home was completely renovated by Jason Barnes and Patricia Barnes, the sister and brother-in-law of the Appellee and remained the home of Jason and Patricia Barnes until the untimely death of Patricia on February 27, 2004. (R. 104) Jason Barnes, the husband of Patricia, placed the house on the market for sale as he wanted his money out of the house and as it was situated next to the home of Patricia's father, John Bell, the Bell family elected to purchase the home and keep the home in the Bell family. Patricia, the sister of Appellee, at the time of her death left the Appellee beneficiary of a life insurance policy from First Colony Life Insurance GE Financial in the amount of $175,000.00.

Appellee, as well as, the family members elected to purchase the property from Jason Barnes, the husband of the deceased sister of Appellee, and Appellee elected to use the $175,000.00 from the life insurance policy to make the down payment on the purchase of the home known as the "Bell Place". Appellee and the family recognized that the home was the **Bell family home** and none of the family members wanted the home sold to anyone outside the family. (R. 112)

Although Appellee had the insurance money in the amount of $175,000.00 to pay down on the Bell family home, the Appellee could not get the property financed because of prior bad credit of both she and the Appellant herein. (R. 112) In fact the Appellant had declared bankruptcy in 1999 and even with the down payment of $175,000.00 the Appellant and the Appellee could not get the financing to purchase the home known as the "Bell Property." (R. 102)

Debra Baylor, the sister of Appellee, came to Appellee and stated that they did not want anyone purchasing the home outside the Bell family and they wanted to purchase the home for the Appellee. (R. 112) Because of the bad credit of the Appellee and Appellant the Appellee agreed to place the down payment on the home from the life insurance proceeds inherited by Appellee and the brother-in-law and sister of Appellee obtained a loan after the down payment of $165,000.00 to purchase such home from Jason Barnes. Debra Baylor and Bob came to Appellee (Andrea Carney) and stated that they did not want anyone purchasing the home outside the Bell family. (R. 112) Debra and Bob Baylor were able to get the home financed with the reservation that Appellee would put the down payment on the purchase of the house. (R. 112) Appellee (Andrea) agreed and the sum of $165,000.00 was placed down on the home and the remaining purchase price was financed. The agreement between Appellee (Andrea) and her sister, Debra, and brother-in-law, Bob Baylor, was that Appellee would rent the home from Bob and Debra Baylor until the Appellee was able to get the home financed in her own name. (R. 112) Appellant (Howard) and Appellee (Andrea) moved into the home in May 2004 and paid rent to Bob and Debra Baylor, which was the monthly note on the amount financed over and

above the down payment. (R. 38) The home was purchased in May 2006 by Appellee (Andrea). The Appellee (Andrea) recognized the obligation to pay the note on the property, rented the property from Debra and Bob Baylor until such time as she was able to obtain a financial loan in order to finance the difference between the down payment of $165,000.00 and the purchase price of the home. Appellee was finally able to obtain financing for the loan and upon the loan the Appellee placed the Warranty Deed in the sole name of Andrea Bell Carney with the understanding that it would remain the "Bell Property" and in the Bell family. (R. 113) At the time of the execution of the documents transferring the property into the name of the Appellee (Andrea), the Appellant and Appellee had discussions about the Appellant's name being placed on the deed. (R. 113) Present for the discussion was Bob Baylor, Debra Baylor, Bill Bost, attorney, Andrea Carney (Appellee), Howard Carney (Appellant) and the banker, James Reeves. (R. 113) Howard Carney stated in the presence of all that he did have any problem placing the title to the property in the name of Andrea as he knew it was family land. (R. 113) Howard also knew because the statement was made by the Appellee, that there was family land all around the home I purchased. **The father and the mother of the Appellee live right next door, aunts and uncles live right up the street, the church adjacent to the subject property given to the church by her father is right next door.** It is all family land and at the loan closing Appellant (Howard) had no problem putting all the deeds in the name of Andrea (Appellee). (R. 114) There was never any issue as to whether or not Andrea would convey one-half (½) interest in the property to the Appellant, Howard, her husband herein. The purchase of the property was never the intention of the Bell family to allow Howard Carney to own any part of the home as it was "Bell Property" and Appellant knew full well that it was "Bell Property" and that he had no interest in the home. (R. 114)

Upon the financing of the home, Appellant had already paid $165,000.00 down on the prope and owed approximately $65,000.00 to $70,000.00 on the second mortgage of the property. T second mortgage was then placed in the name of Appellee (Andrea) and the Appellant (H

payment. At the time of the loan closing there were two (2) mortgages on the property, one called a first mortgage and one called a second mortgage. (R. 115) The first mortgage was $70,000.00 and the amount of the second mortgage was $10,000.00. (R. 115) At the time of the hearing of this cause on its merits in the lower Court, the house had been paid down to $67,000.00 on the first mortgage and the second mortgage had some reduction but not any great amount. (R. 115-116)

Appellant and Appellee never had any discussion about the purchase of the "Bell Property" home and the money paid down on the home by the Appellee was from the life insurance proceeds of her sister. (R. 117) Howard Carney did not pay any of the monies during the transaction to close the house. Not one penny did he contribute to the purchase of the house. (R. 117)

For the year 2008 Appellee (Andrea) paid the property taxes because Appellant (Howard) told Appellee (Andrea) that "she was the one living in the house therefore she could pay the taxes so why bother asking him for the money on this." (R. 120) Appellee (Andrea) paid the taxes for the year 2008 and 2009. Appellant (Howard) did nothing to enhance the value of the home by doing anything to the home. (R. 120) The subject property had been owned thirty-two (32) months by Appellee (Andrea) herein after the purchase of same and prior to the separation between she and the Appellant (Howard). The parties separated on or about November 26, 2008, and lived in the home approximately thirty-three (33) months from the date of the purchase until they separated on November 26, 2008. During that period of time of occupation of the house wherein the Appellee paid the taxes, she also paid the first mortgage and all the insurance. Appellee paid the second mortgage until May or June of 2009 when Howard took over the payment of the second mortgage. (R. 122)

Upon the Appellee obtaining financing for the marital home, which such financing was obtained on May 8, 2006, the parties executed a Settlement Agreement which is Plaintiff's Exhibit 12. The Warranty Deed conveyed the property to Andrea Bell Carney. Plaintiff's Exhibit 13 indicates that $70,000.00 was borrowed from Tensas State Bank. $54,102.13 was used to pay the purchase price and

the remaining difference between the $70,000.00 and the $54,102.13, which was in the amount of $14,925.87, was placed in the parties joint checking account. It was at this time that Appellant (Howard) stated that he was on the road working from June 1, 2007, through December 2008 and that he came home several times but he was unsure of the number of times that he came home after purchasing the home. Appellee herein (Andrea) stated that the Appellant (Howard) performed strictly maintenance on the home and that she paid the mortgage, insurance and taxes and that the money used to purchase supplies for the work on the home came from the money that she had remaining from the life insurance proceeds, which was $10,000.00.

The Court awarded physical possession of the home and all the marital furnishings to Andrea, the Appellee herein. Judgment at 35-56 (C. R. 41-98; R.E. 7) Appellant (Howard) was ordered to pay the second mortgage on the marital residence.

On this appeal the Appellant, Howard Carney, is requesting this Court to reverse the equitable distribution of the marital home for the reason that he is entitled to one-half (½) of the equity in and to such marital domicile. Howard Carney, the Appellant herein, did not contribute any sum or sums of money whatsoever to the purchase of the marital home as same was provided by the life insurance of the sister of the Appellee herein. Appellant contributed no funds to the purchase of the home and paid no taxes, insurance, notes on the marital home as stated by the Appellee herein that she paid all of such taxes, insurance and expenses for the home out of the proceeds of her salary.

This Court should uphold the equitable distribution of the marital home as announced by the trial Court and allow the Appellee herein to benefit from the proceeds of the life insurance policy of her sister's death.

ARGUMENT

The Court, in awarding the marital home to the Appellee herein, was correct in awarding such marital home to the Appellee because of the life insurance policy in the amount of $175,000.00 which was provided to the Appellee herein upon the death of her sister which provided for the down payment on the subject property. In the case of ***Sandlin v. Sandlin, 906 So.2d 39 (Miss. 2004)***, the Court stated as follows:

> The doctrine of equitable distribution necessitates, as the chancellor did in the case at bar, considering a variety of factors as set forth in Ferguson v. Ferguson, 639 So.2d 921, 928 (Miss.1994). In evaluating these factors, the chancellor found that equity demanded awarding Sandra the house, noting that Sandra "maintained the marital home" and that "Sandra is more emotionally attached to the marital home and property since it is near the homes of other family members and was once her grandparents' property and was given to the parties by her father." Ricky contends the chancellor's decision to award Sandra the marital home is an affront to basic principles of equity arguing that the aforementioned factors favoring such decision are offset by Sandra's admission of adultery. Sandra's adulterous relationship was detrimental to the stability and harmony of the their marriage and, ultimately, caused the divorce.
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> "[I]n making an equitable division of the marital property, the chancellor is not required to divide the property equally." Love v. Love, 687 So.2d 1229, 1232 (Miss.1997) (citations omitted). Regardless, our review of the record reveals that the chancellor did not fail to do so. Although Sandra was awarded the marital home, she was also ordered to pay any ****43*** indebtedness consistent with such ownership. Furthermore, any inequity possibly suffered by Ricky is clearly offset by the fact that he was awarded sole possession of his retirement benefits in addition to not being required to make alimony payments. As a result, we cannot hold the chancellor's judgment to be manifest error and, accordingly, find this issue to have no merit.

The evidence is abundant that Andrea Bell Carney, Appellee herein, decided to purchase the home of her deceased sister, Patricia Barnes, however, because of the financial conditions of the parties, both Appellee and the Appellant was unable to obtain independent financing for the purchase of the house

and therefore the house was purchased by the sister and brother-in-law of the Appellee so that the house would remain in the "Bell" family name and known as the "Bell Property." Andrea Leigh Bell Carney had a close attachment to the house as she stated it was her grandparents home, her father's home, relatives lived nearby and the Appellee had a close association to the property and love and admiration for the property as it was the property of her family.

The lower Court, in determining that the marital property was marital property and familial property, properly adjudicated that the "Bell" family home was marital property but because of the investment in the property by Appellee from inherited funds as a down payment and because of the close association of the Bell family with the property, the Court awarded the full value of the marital domicile to the Appellee herein. In the case of ***Allgood v. Allgood, 62 So.2d 443 (COA 2011),*** the Court stated as follows:

> Case law governs how chancellors approach property division in divorce cases. Before dividing the couple's assets, the chancellor should first classify the couple's assets as either marital or non-marital. Boutwell v. Boutwell, 829 So.2d 1216, 1221 (¶ 19) (Miss.2002). With respect to the classification of marital property, the Mississippi Supreme Court held in Hemsley v. Hemsley, 639 So.2d 909, 914 (Miss.1994) that "[a]ssets acquired or accumulated during the course of a marriage are subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage." Thus, the chancellor subjects only the marital property of the parties to equitable division. Messer v. Messer, 850 So.2d 161, 167 (¶ 24) (Miss.Ct.App.2003) (citing Hemsley, 639 So.2d at 914).
>
> After classifying the parties' assets as either marital or non-marital, the chancellor should then proceed with the equitable division of the property using the factors set forth by the supreme court in Ferguson v. Ferguson, 639 So.2d 921, 928 (Miss.1994). The record herein reflects that the chancellor complied with precedent in classifying the parties' assets prior to the equitable division of the property and also that he used the *Ferguson* factors in his equitable division of the assets. Messer, 850 So.2d at 167–68 (¶ 25).2 Finally, the chancellor should examine whether the equitable division of the marital property, considered in light of the non-marital assets, adequately provides for both parties. Id. at 168 (¶ 26). If the distribution of the parties' assets, including any separate property, fails to adequately provide ***447** for the parties, then the chancellor should consider whether to award alimony to one of the

parties. *Id.* The record shows that the chancellor considered whether the distribution of assets failed to provide adequately for Claudia, but he found no need for alimony existed.

On appeal, Claudia asserts that the chancellor erred in the classification and division of the marital home. She argues that the chancellor erred in classifying and dividing a portion of the marital home as separate property. She also asserts that the chancellor erred in finding that a campaign account was Forrest's separate property. To address Claudia's argument as to whether the chancellor erred in his division of the marital home, we must examine the family-use doctrine. We must also acknowledge that in his classification of the assets of the parties, the chancellor classified the marital home as marital property.

Mississippi courts recognize a general presumption that property acquired during a marriage constitutes marital property. Hemsley, 639 So.2d at 914 (adopting a presumption of marital property). However, *Hemsley* defined marital property as assets acquired or accumulated during the course of a marriage other than assets attributable to a spouse's separate estate either prior to the marriage or outside the marriage. Id. at 915. *Ferguson* clarifies that gifts and inheritances received during marriage constitute the separate property of a spouse. Ferguson, 639 So.2d at 928.

Because assets owned by a spouse are presumed to be marital property, the party seeking to classify property as separate, or non-marital, bears the burden of tracing the asset to a separate-property source. *See* Deborah H. Bell, Bell on Mississippi Family Law § 6.05[2] (2005). An inheritance or gift made to one spouse during the marriage remains the separate property of that spouse. Ferguson, 639 So.2d at 928. Spouses may convert separate property to marital property through actions of the owning spouse. *See* Bell, § 6.04. Spouses possessing separate ownership convert the property into marital property through the following actions: conversion by implied gift,3 family use, or commingling. *See* Yancey v. Yancey, 752 So.2d 1006, 1011 (¶ 20) (Miss.1999). Our supreme court allows a spouse asserting a separate ownership interest to maintain that separate interest in some cases by tracing the commingled separate funds, but the supreme court has generally refrained from allowing separate ownership to be established in this fashion as to certain assets such as the family home, where the family-use doctrine would apply. *However, the case law in this area has not always been consistent.*

Turning to precedent to guide us, we find the case of Singley v. Singley, 846 So.2d 1004, 1011–12 (¶¶ 19–21) (Miss.2002) presented a similar situation wherein the supreme court found that

a husband had commingled his $70,000 inheritance when he spent the money on a down payment for the home, and the court remanded for the chancellor to reconsider this amount in applying the *Ferguson *448* factors in equitable distribution. A chancellor possesses the discretion to adjust equitably the *Ferguson* distribution in recognition of a separate contribution of a spouse. Both the evidence in the record and the decision of the chancellor in the instant case reflect such consideration of the significant separate contribution by Forrest to the marital home and estate. *Cf.* Gutierrez v. Bucci, 827 So.2d 27, 39 (¶ 65) (Miss.2002) (finding no error in chancery court's award of $5,000 equity in property to husband in light of wife's dissipation of assets).

The record shows that the parties agreed that Forrest's inheritance from his mother's estate constituted Forrest's separate property. In 2003, Forrest deposited $92,000 into a joint savings account he held with Claudia. In January 2005, Forrest withdrew $60,000 from that account to make a lump-sum payment on the mortgage on the family home. According to Forrest, all of the funds used in the early payoff of the mortgage originated from his separate inherited funds, despite their being placed in a joint savings account. In Boutwell, 829 So.2d at 1221(¶ 20) (citing Heigle v. Heigle, 654 So.2d 895, 897 (Miss.1995)), the supreme court held that assets classified as non-marital, such as an inheritance, may be converted to marital assets if they are commingled with marital property or utilized for domestic purposes, absent an agreement to the contrary. The supreme court defined commingled property as a "combination of marital and non-marital property in which the non-marital property has lost its status as non-marital property by virtue of its being combined with the marital property." *Id.* (citing Maslowski v. Maslowski, 655 So.2d 18, 20 (Miss.1995)).

In this case, Forrest spent his separate money derived from inheritance for a family purpose of an early payoff of the family mortgage during the course of the marriage, and the record reflects no evidence of any reimbursement agreement or evidence of a loan of his separate money so spent. More specifically, the record reflects that Forrest deposited $60,000 of inherited funds into a jointly titled savings account and then transferred the funds into his personal checking account to pre-pay part of the balance owed on the mortgage on the family home. An additional $22,000 from the sale of Forrest's parents' house went directly to Forrest's individual checking account. He also applied those funds to the mortgage, and he fully satisfied the balance of the mortgage loan. The **Allgood** family continued living in the home after satisfying the debt of the mortgage. Based upon these facts, the chancellor found no dispute existed that Forrest had used his inherited funds to satisfy the mortgage on the home.

> The chancellor properly classified the family home as marital property in his initial classification of property, and the chancellor then properly exercised his discretion in considering Forrest's significant contribution to the marital estate from his separate funds. In explaining his equitable division of the marital property, the chancellor explained that he considered Forrest's significant contribution from his separate property made to satisfy the mortgage debt on the family home, and the chancellor further explained that the equitable division of the parties' property by the court credited Forrest for that significant separate contribution. We, therefore, find no abuse of discretion in the chancellor's award to Forrest of a larger share of the marital estate in recognition of his significant contribution from his separate property. Claudia's assertion that the chancellor improperly classified the martial home as partially separate property ***449*** is without merit. The evidence in the record supports the chancellor's equitable division of the property, and a reading of the chancellor's opinion as a whole shows the chancellor properly classified the family home as marital property. *See* Sanderson v. Sanderson, 824 So.2d 623, 625–26 (¶ 8) (Miss.2002).
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> We acknowledge that "[e]quitable distribution does not mean equal distribution." Seymour v. Seymour, 960 So.2d 513, 519 (¶ 15) (Miss.Ct.App.2006) (quoting Lauro v. Lauro, 924 So.2d 584, 590 (¶ 23) (Miss.Ct.App.2006)). No requirement exists dictating that Claudia receive half, or fifty-percent, of the equity in the marital home. As we noted in *Seymour*, the goal of equitable division is "a fair division of marital property based on the facts of each case...." Seymour, 960 So.2d at 519 (¶ 15) (citing Ferguson, 639 So.2d at 929). The chancellor appropriately exercised his discretion in considering Forrest's significant separate contribution in awarding him a larger share of the marital property. This Court can find no abuse of discretion in allowing Forrest credit for the inherited funds used to pay off the mortgage.

Appellant's claim to one-half (½) of the equity in the marital domicile is without merit. Equitable distribution in adding each of the ***Ferguson*** factors does not mean **equal distribution** under the laws of the State of Mississippi. The Court, in designating the home as **familial property**, properly weighed the ***Ferguson*** factors in the trial Court's opinion and determined that the property was marital property, however, because of the actions of the Appellee providing the down payment of $165,000.00 in purchasing the home, the Court properly awarded to the Appellee the full value of the marital domicile. In making an equitable distribution of the property of the parties it is to be pointed out that the parties resided in the home financed by them from May 2006 until November 2008, which was

approximately thirty-two (32) months. It is impossible for the Appellant to have placed any sum or sums of money to increase the equity in the marital domicile and, as such, the Appellee testified that she paid all of the house notes, the insurance, as well as, the taxes on the property from the time of the purchase up and until the parties separated in November 2008. The Court, upon making an equitable distribution of the assets of the parties, equally divided the assets of the parties wherein the Appellee was awarded an equity value of $13,998.00 and Appellant (Howard) was awarded $13,453.00. The Court found that since the major contributor to the purchase of the home was the Appellee herein in paying $165,000.00 on the home that she was entitled to receive the credit for the monies paid down on the marital property that she had inherited from her deceased sister as her own monies. The Court also looked at the amount of money borrowed on the second mortgage, which was $70,000.00 wherein approximately $54,000.00 was paid for the purchase of the home and the remaining $16,000.00 was used by the parties for other matters, including other bills, etc. The Court, in addressing the doctrine of equitable distribution as laid out in ***Ferguson v. Ferguson, 639 So.2d 921, 928 (Miss.1994)***, considered each of the ***Ferguson*** factors and guidelines in making an equitable distribution of the assets of the parties.

In the case of ***Bresnahan v. Bresnahan, 818 So.2d 1113, (Miss. 2002)***, the Court stated as follows:

> One must remember that an equitable division of property does not always mean an **equal division** of property. Mississippi is not a community property state. Chamblee v. Chamblee, 637 So.2d 850, 863-64 (Miss.1994); Dillon v. Dillon, 498 So.2d 328, 330 (Miss.1986); Rives v. Rives, 416 So.2d 653, 657 (Miss.1982). The community property system and Mississippi's system of equitable division are very dissimilar. In a community property state, the court may not look at the background of the marriage and/or the behavior of the married couple to decide what would constitute a just distribution of property. The law mandates an even division of all marital property and liability, ***1119** regardless of each parties' respective contributions.
>
> Under the system of equitable division, the courts in Mississippi are not so inhibited. "The matter rather is committed to the discretion and conscience of the Court, having in mind all of the equities and other relevant facts and circumstances." Chamblee, 637 So.2d at 864 (citing Brown v. Brown, 574 So.2d 688, 691 (Miss.1990)). These cases show that the findings of the chancellor

> in this area are quite liberally construed. The chancery court is authorized to call for an equitable division of jointly accumulated property and in doing so to look behind the formal state of title. *See, e.g.*, Jones v. Jones, 532 So.2d 574, 579-81 (Miss.1988); Regan v. Regan, 507 So.2d 54, 56 (Miss.1987) *overruled on other grounds*, Tramel v. Tramel, 740 So.2d 286 (Miss.1999); Watts v. Watts, 466 So.2d 889, 890-91 (Miss.1985). Ferguson, 639 So.2d at 928-29, set forth the factors to be weighed in determining an equitable division of marital property.
>
> A main consideration in a proper division of property is the economic contributions made by each party to the marriage, both in terms of actual money earned and in terms of service without compensation such as domestic duties. Regan, 507 So.2d at 56; Pickle v. Pickle, 476 So.2d 32, 34 (Miss.1985). The case at bar features a couple who have each, over their twenty plus years of marriage, donated money and/or non-compensated time to the marriage. Other than Gigi taking time off to raise the children, both had worked for the majority of the marriage. Admittedly, Bob contributed the most monitarily, but it is also apparent, though disputed, that both parties contributed various amounts of nonpaid services such as child care and domestic work to the marriage as well.
>
> In his opinion, the chancellor addressed each of the *Ferguson* factors in turn and found that based on the information before him, Bob was due a majority of the parties' assets.

In discussing the emotional value test there is no question that Appellee (Andrea) described the residence as the "Bell" home for which she had a very sentimental value as the majority of her family lived in close proximity to the home that was purchased by the parties. The father of the Appellee lived next door and the sister of the Appellee lived in close proximity to the "Bell" home and the Bell family donated the church property adjacent to the property acquired by the parties and other family members lived in close proximity to the property. There was a close association and sentimental value of the family with the subject property as the property had been the home of the grandparents of all the parties since 1937 that resided in and about the premises where the home was located. As stated by the witnesses in the case, family members had a close association with the family home of the "Bell" property and, as such, they did not want anyone to own any part of the "Bell" home as same was to be preserved for the Bell family.

Even though the home was modernized and transformed into a beautiful home the surrounding

properties and the original house remained included in the work that upgraded the home and, as such, the adjacent properties were Bell property for which the family had very close ties and a very sentimental factor. Appellant argues that sentimental factors weighed in Appellee's (Andrea's) favor satisfied the Court in awarding to her the physical possession of the home. Appellant points out that the emotional factor, "a family connection to a particular asset should not override the importance of an economically fair division." Bell *Mississippi Family Law* §6.08[2][g] at 189. Appellee states with regard to such statement made by Professor Bell that she did not consider such assets being used by the Appellee to purchase such home. A completely new set of guidelines applies to the emotional factor consideration when proceeds from a life insurance policy of the Appellee was used to purchase the home for which she was awarded by the lower Court.

Appellant claims that the Chancellor's findings regarding economic contribution factors were incorrect because of the testimony of Mrs. Carney regarding the purchase of the Bell home. Appellant states that Mrs. Carney testified that she wanted to purchase the home so that it would remain in the family. Appellant stated that the testimony indicated that both parties contributed monies to the joint account which was used to purchase materials and other items used on the home. That there was testimony that Mr. Carney and Mrs. Carney performed labor involving work on the home. Judgment at 33 (C.R. 41-98; R. E. 7) Appellant contends that after these findings how could the Chancellor then determine that the equitable thing was to give the entire $186,000.00 value of the home to Andrea, the Appellee herein? The Court, in weighing the ***Ferguson*** factors, found that Andrea (Appellee) was entitled to the entire value of the marital domicile for the reason that she had placed the life insurance proceeds of $165,000.00, plus $10,000.00, into the joint account for the purchase and upgrade of the property. The Appellee also stated that the second mortgage that was paid by Appellee to the Bank for the mortgage incurred by her sister and brother-in-law, Bob and Debra Baylor, was in the amount of approximately $54,000.00, however, $70,000.00 was obtained from the bank for a loan, which the difference between the $70,000.00 and the $54,000.00 was deposited into the joint account of the parties to pay bills as stated by both of the parties regarding the use of the funds obtained from such loan for the purchase of the marital domicile.

Appellant makes a big issue about the $423,000.00 of income that was received by him. The Appellant fails to advise the Court that the $423,000.00 was used to sustain himself while away from

the home for approximately two (2) years attempting to earn sufficient income for the family. Because of the Appellant not being home he did not contribute any sum or sums of money whatsoever to the purchase of the home, upkeep of the home, taxes, insurance, etc., but all was paid by Appellee out of the proceeds of her income. The Bell home did not need many improvements but were maintenance improvements for the home. The Appellant points out the case of ***Belding v. Belding, 736 So.2d 425,432 (Miss. App. 1999)***, for the proposition where the wife argued to get an additional disproportionate share of the marital home because she owned the home prior to the marriage and contributed to the marriage. Appellant stated that the Court of Appeals disagreed and affirmed the award of 50% of the equity in the home to the husband with the Court holding that Mrs. Belding purchased the home prior to the marriage, the mortgage payments were made from the couple's joint account, and Mr. Belding made improvements to the home. These set of facts in the ***Belding*** certainly are not applicable to the case at bar for the reason that in Mrs. Belding's case she did not pay $165,000.00 down on the marital property and did not continue to pay taxes, insurance, upkeep, etc., on the home. In the ***Belding*** case Mr. Belding took the position that he was entitled to 50% of the equity in the marital home. This is not the case in the case at bar. In the case of ***Berryman v. Berryman, 907 So.2d 944, (Miss. 2005)***, the Court stated as follows:

> The issue before the Court of Appeals was whether the chancellor erred in awarding commingled marital property and assets solely to the wife. We find that the Court of Appeals applied the correct legal analysis in rendering its decision. The Court of Appeals stated:
>
> When reviewing the decisions of a chancellor, this Court applies a limited abuse of discretion standard of review. McNeil v. Hester, 753 So.2d 1057(¶ 21) (Miss.2000). The findings of the chancellor will not be disturbed "unless the chancellor was manifestly wrong, clearly erroneous, or applied the wrong legal standard." *Id.* ...
>
> In his sole issue, Perry argues that the chancellor erred in awarding certain commingled marital property and marital assets solely to Katherine, resulting in an inequitable distribution of the assets. Specifically, Perry claims that the chancellor failed to make specific findings of fact concerning which property was separate and which was marital before distributing the assets. Equitable ***947** distribution in a divorce case is governed by the guidelines set out by our supreme court in Ferguson v. Ferguson, 639 So.2d

921 (Miss.1994). These guidelines include:

(1) economic and domestic contributions by each party to the marriage,
(2) expenditures and disposal of the marital assets by each party,
(3) the market value and emotional value of the marital assets,
(4) the value of the nonmarital property,
(5) tax, economic, contractual, and legal consequences of the distribution,
(6) elimination of alimony and other future frictional contact between the parties,
(7) the income and earning capacity of each party, and
(8) any other relevant factor that should be considered in making an equitable distribution.

Ferguson, 639 So.2d at 928. Assets acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor. Hemsley v. Hemsley, 639 So.2d 909, 915 (Miss.1994).

Perry's chief concern is the marital residence, which he claims should not have been awarded solely to Katherine. In his order the chancellor noted the various marital assets accumulated by the parties during the course of the marriage. Pursuant to the Ferguson factors, the chancellor divided the property as follows. Perry was to receive the tractor and accessories valued at $5,000; his 1994 Chevy Blazer; his entire retirement account, of which approximately $24,000 was accumulated during the marriage; the rental house, with equity of approximately $20,000; and his personal effects, including books, along with a bedroom suite from the marital residence. Perry was also ordered to pay the second mortgage on the tractor. Katherine was awarded the marital residence, with equity of approximately $148,000; the twenty-acre property, with equity of approximately $48,000; her car; and furniture. Katherine was also ordered to maintain the mortgage payments of approximately $900 per month on the marital residence and $740 per month on the twenty-acre property.
In awarding Katherine sole ownership of the marital residence, the chancellor stated as follows:

Based upon all these [Ferguson] factors especially # 1 'Substantial contributions to the accumulation of the property' and the uncontradicted fact that Mrs. **Berryman** contributed $145,000 to the acquisition of the marital residence (725 Walker Road) equity demands that she be entitled to the sole ownership of the residence or the proceeds from the sale thereof, (less 1st and 2nd mortgage).

> Although Perry feels that the property should have been divided equally, we cannot find that the chancellor abused his discretion in awarding Katherine sole ownership of the marital property. Berryman, 907 So.2d at 960, 2004 WL 1879029 * 1-2.
>
> The Court of Appeals' opinion focused on whether the chancellor's decision to award the wife the equity in the marital home was equitable. The Court of Appeals stated that the husband believed that the property was not divided equally. However, the Court of Appeals held that chancellor had not abused his discretion in awarding the wife the equity in the marital home. The "Chancery Court has authority, where equities so suggest, to order a fair division of property accumulated through the joint contributions and efforts of the parties," and the equitable division is left to the chancellor's discretion unless ***948*** there is an abuse of discretion. *See* Ferguson, 639 So.2d 921, 930, 934 (quoting Brown v. Brown, 574 So.2d 688, 690 (Miss.1990)). We find that the chancellor's division of the marital property and assets was equitable. The husband's assignment of error is without merit.

THE CHANCELLOR WAS CORRECT IN DETERMINING THAT HOWARD'S SHARE OF THE MARITAL ESTATED WAS IN PART SATISFIED BY UNVALUED SOCIAL SECURITY BENEFITS

Appellant argues that ***Ferguson*** requires that, prior to equitably distributing assets, the chancellor must value those assets, 639 So2d at 928. The failure to do so is reversible error. ***Scott v. Scott, 835 So.2d 82 ,87 (Miss. App. 2002)***. When the Court is faced with a situation wherein there is no value to the social security benefits there is no way the Court can arbitrarily place a value on the asset of the Social Security. Mr. Carney's social security statement was introduced into evidence (Plaintiff's Exhibit 27) and the social security statement provided for taxed social security earnings for the years 1981 through 2007. The Carneys were married in 1998. Mr. Carney's social security statement did not indicate tax earnings for 2008. The lower Court found that Mr. Carney testified that in 2008 his social security earnings were $100,250.75 (Plaintiff's Exhibit 17) and Mr. Carney also testified that his gross salary in 2009 was $71,371.95 and his net salary was $50,001.24. The lower Court found that the social security statement dated January 26, 2009, recited that Mr. Carney paid

6.2% in salary up to $106,800.00 and in social security tax his employer paid 6.2% in social security taxes for a combined total of 12.4%. (Plaintiff's Exhibit 27) The lower Court indicated that from the salary of Mr. Carney for the period of 1998 through 2008 that he earned $422,927.75 and computed his social security benefits which was $52,443.00. The lower Court, in looking at the evidence provided by either one or both parties regarding the social security of Mr. Carney, found that it did not have sufficient evidence to determine the value of Mr. Carney's eligibility. Appellant now wants to complain regarding the valuation of the social security benefits when the Appellant had the opportunity to produce all evidence available to him for such social security benefits to allow the Court to make an evaluation of such social security benefits. Since the lower Court did not value Appellant's social security retirement account Appellant retained the full value of such account in the equitable distribution determined by the Court.

CONCLUSION

The Chancellor, in following the equitable distribution factors of ***Ferguson*** and the applicable law regarding the assets of the parties was correct in awarding to Andrea Leigh Bell Carney, Appellee, the marital domicile. The evidence is abundant and the law is great in determining that Andrea Carney is entitled to the full value of the marital home in that she provided the principal amount of the down payment on the marital home which was in the amount of $165,000.00 and other monies that were received from the second mortgage were applied toward the purchase price of the house, which such second mortgage remains outstanding and to be paid by Howard Carney because he used such funds to pay many of his personal bills out of such money borrowed for the marital domicile. The trial Court's equitable distribution of the marital assets should be upheld by this Court.

RESPECTFULLY SUBMITTED,

ANDREA LEIGH BELL CARNEY

BY: _____

TRAVIS T. VANCE, JR.

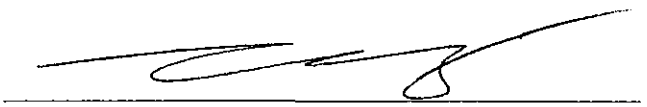
CERTIFICATE OF SERVICE

I, Travis T. Vance, Jr., Attorney for Appellee, do hereby certify that I have this day hand delivered a true and correct copy of the above and foregoing Brief of Appellee to the following:

Chancellor Vicki R. Barnes
PO Box 351
Vicksburg, MS 39181

J. Mack Varner, Esquire
Clifford C. Whitney, III, Esquire
1110 Jackson Street
Vicksburg, MS 39183

THIS the 20 day of July, 2011.



TRAVIS T. VANCE, JR.