

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CAUSE NO. 2010-CA-01013

STEPHEN D. REFFALT, JR.

APPELLANT

V.

GLORIA F. REFFALT

APPELLEE

**APPEAL FROM THE CHANCERY COURT OF
HANCOCK COUNTY, MISSISSIPPI**

BRIEF OF APPELLEE GLORIA F. REFFALT

ORAL ARGUMENT NOT REQUESTED

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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 disqualifications or recusal.

1. Honorable Sanford R. Steckler, Chancellor;
2. Stephen D. Reffalt, Jr., Appellant;
3. Glora F. Reffalt, Appellee;
4. Jimmy McGuire, Attorney for Appellee;
5. M. Channing Powell, Attorney for Appellant;

RESPECTULLY SUBMITTED, this 14th day of March, 2011.

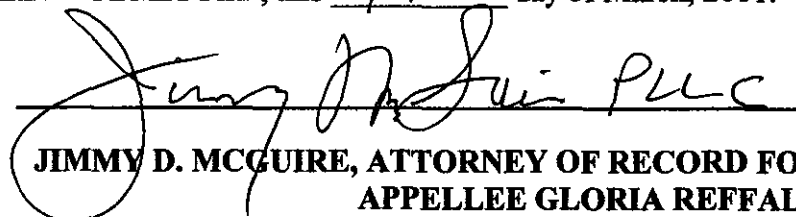

**JIMMY D. MCGUIRE, ATTORNEY OF RECORD FOR
APPELLEE GLORIA REFFALT**

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SUMMARY OF THE ARGUMENT

Appellant Stephen Reffalt, Jr. (“Appellant” or “Stephen”) contends that the chancery court committed manifest error by admitting parol evidence to show the intent of the parties regarding the provision of their property settlement agreement (the “Agreement”) dividing Stephen’s Martin Marietta Retirement (“MM Retirement”). Appellant is wrong.

The Court rendered its ruling from the bench on February 12, 2009. (T. 84-89, RE. 89-94). It is patently untrue, as Appellant asserts, that “the Court never found an ambiguity in the contract” (Appellant’s Brief, at 12). In its ruling, the Court stated that the Agreement was subject to differing interpretations. The Agreement was ambiguous with respect to whether the proportion of Stephen’s MM Retirement paid to Gloria would increase after Stephen started receiving social security and a smaller monthly MM Retirement amount. After the Court determined as a matter of law that the Agreement was ambiguous, the Court then properly applied Mississippi’s three-tiered approach to contract interpretation. As part of its analysis, the Court properly considered extrinsic evidence regarding the intentions of the parties. The Chancellor heard testimony from both Stephen and Gloria Reffalt regarding their discussions at the time they entered into the Agreement, and what each of them believed the Agreement meant.

After hearing testimony of the parties’ intent, witnessing the parties’ demeanor, and applying the canons of contract construction, the Court made a fair and reasonable interpretation of the Agreement, and rendered its May 7, 2009 Judgment accordingly. The Court interpreted the Agreement such that Gloria would

continue to receive the same amount monthly for MM Retirement money that she had been receiving. The Court's interpretation of the Agreement is based upon substantial evidence, including the fact that Stephen had been paying that amount for years. The Court determined that Gloria would continue to receive an amount that equals fifty percent of Stephen's retirement at the time he first retired, rather than fifty percent of the reduced amount that Stephen currently receives due to his Social Security benefits. The Court also saw it as the most equitable way to interpret the Agreement. (T. 108, RE. 96). The Court found that, even if the contract itself had been less than artfully drafted in making the parties' intentions clear, the parties' intent was that Stephen's Social Security would supplement the MM Retirement due to Gloria, so that Gloria would have a level income throughout Stephen's retirement years . (T. 110, RE. 97).

At an April 16, 2010 hearing on Appellant's Motion to Reconsider the May 7, 2009 Judgment, the Court properly used its discretion in determining what evidence should be considered. On June 4, 2010, the Court rendered a fair and reasonable Order on the Motion to Reconsider, granting the portion of the motion regarding the Performance Sharing Plan, and denying any reconsideration of the amount of MM Retirement to be paid to Gloria.

Appellant can point to no manifest error or errors made by the Court in rendering either the Judgment or the Order on Motion to Reconsider. Appellant's appeal should be denied, and the decrees of the Chancery Court affirmed.

ARGUMENT

I. STANDARD OF REVIEW

The Mississippi Supreme Court has long held that it "will not disturb the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Harris v. Harris*, 988 So. 2d 376, 378 (Miss. 2008); *Bell v. Parker*, 563 So. 2d 594, 596-97 (Miss. 1990). If a chancellor's findings are supported by substantial credible evidence in the record, the courts of appeal will not reverse. *Harris*, 988 So. 2d at 378; *Huggins v. Wright*, 774 So. 2d 408, 410 (Miss. 2000). However, a property settlement agreement is a contractual obligation. *Harris*, 988 So. 2d at 378; *East v. East*, 493 So. 2d 927, 931-32 (Miss. 1986). Contract interpretation, as a question of law, is reviewed *de novo*. *Id.*

Where terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner. We held that it is a question of law for the court to determine whether a contract is ambiguous. In the event of an ambiguity, the subsequent interpretation presents a question of fact for the trier of fact which we review under a substantial evidence/manifest error standard. *Tupelo Redevelopment Agency v. Abernathy*, 913 So. 2d 278, 283 (Miss. 2005) also sets out this Court's three-tiered approach to contract interpretation: First, the "four corners" test is applied, wherein the reviewing court looks to the language that the parties used in expressing their agreement. Second, if the court is unable to translate a clear understanding of the parties' intent, the court should apply the discretionary canons of contract construction. Finally, if the contract continues to evade clarity as to the parties' intent, the court should consider extrinsic or parol evidence. It is only when the review of a contract reaches this point that prior negotiations, agreements and conversations might be considered in determining the parties' intentions in the construction of the contract.

Harris, 988 So. 2d at 378-379; see also *Wood v. Wood*, 35 So. 3d 507, 513 (Miss. 2010) ("This Court historically has recognized that a property settlement agreement

is no different from any other contract, and the mere fact that it is between a divorcing husband and wife, and incorporated in a divorce decree, does not change its character"). *See also Wesley M. Breland, Realtor, Inc. v. Amanatidis*, 996 So. 2d 176, 179 (Miss. Ct. App. 2008) ("if a contract is determined to be ambiguous, it is reviewed on appeal under a substantial evidence/manifest error standard").

Moreover, a limited standard of review is employed in cases involving domestic relations, and the findings of a chancellor will not be disturbed, when supported by substantial evidence, unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Duncan v. Duncan*, 774 So. 2d 418, 419 (Miss. 2000).

When [an appellate court] reviews a chancellor's decision in a case involving divorce and all related issues, our scope of review is limited by the substantial evidence/manifest error rule." Therefore, we will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or a clearly erroneous standard was applied. With regard to matters dealing with divorce, custody, and child support, we will respect a chancellor's findings of fact which are supported by credible evidence and not manifestly wrong. Further, with regard to the standard of review used when looking at a chancellor's division of property and assets, a chancellor's division and distribution will be upheld if it is supported by substantial credible evidence.

Dorsey v. Dorsey, 972 So. 2d 48, 50-51 (Miss. Ct. App. 2008) (internal citations omitted). *See also Stribling v. Stribling*, 906 So. 2d 863, 867-868 (Miss. Ct. App. 2005) ("This Court will only reverse a chancery court's findings of fact when there is no substantial credible evidence to support its findings"); *Peters v. Peters*, 906 So. 2d 64, 72 (Miss. Ct. App. 2004) ("Our standard of review of the division and distribution of property in a divorce is limited, and we will affirm the chancellor's decision if it was supported by substantial credible evidence"); *McLaurin v.*

McLaurin, 853 So. 2d 1279, 1283 (Miss. Ct. App. 2003) (“This Court will not substitute its judgment for that of the chancellor even if this Court disagrees with the lower court on the finding of fact and might . . . [arrive] at a different conclusion”); *Markofski v. Holzhauer*, 799 So. 2d 162, 165 (Miss. Ct. App. 2001) (“When a domestic relations case is on appellate review, a chancellor's factual findings will not be disturbed unless the court's actions were manifestly wrong, the court abused its discretion, or applied an erroneous legal standard”).

II. THERE WAS NO MANIFEST ERROR BY THE COURT

A. Because The Court Found As A Matter Of Law That The Property Settlement Agreement Was Ambiguous, The Chancellor Properly Considered Parol Evidence Of The Parties' Intent

In the case at bar, the Court found that the Agreement was ambiguous, and then proceeded to properly apply the three-tier approach to contract construction under Mississippi law, as set forth in Section I, *supra*. The Appellant's argument that the Chancellor did not properly apply the legal standard simply because he did not specifically use the word “ambiguous” in his bench ruling is a fallacy. The Chancellor in his bench ruling stated that he could “draw several different interpretations” from the Agreement (T.86, RE. 91) – and “having more than one possible interpretation or meaning” is the very definition of the word “ambiguous.”¹

Moreover, the May 7, 2009 Judgment states that the Agreement was:

. . . subject to more than one interpretation. By reviewing the history of between 16 and 17 years it appears that both parties were under the belief that the payments were due in the amount of \$1,594.63 was due to be paid by Stephen to Gloria each and every

¹ See, e.g., Oxford English Dictionary Online, 2011, http://oxforddictionaries.com/view/entry/m_en_us1221320#m_en_us1221320: “(1) open to more than one interpretation, having a double meaning (2) unclear or inexact because a choice between alternatives has not been made.”

month under the terms on the documents for which they agreed and signed. This is the interpretation this Court finds and directs to be followed.

RE. 37 (emphasis added). Indeed, Appellant's statement that "the Court never found that there was an ambiguity in the contract" is patently absurd. (Appellant's Brief, at 16).

Because the Court did find the Agreement ambiguous, it properly allowed parol evidence to assist it in interpreting Paragraph 10 of the Agreement and the Agreement as a whole. The rule of parol evidence is subject to many exceptions and is said to be very flexible. *Valley Mills, Div. of Merchants Company v. Southeastern Hatcheries of Mississippi, Inc.*, 245 Miss. 71, 145 So.2d 698, 701-2 (1962). The parol evidence rule provides that "parol or extrinsic evidence is not admissible to add to, subtract from, vary or contradict . . . written instruments which . . . are contractual in nature and which are valid, complete, unambiguous and unaffected by accident or mistake." *Id.* Mississippi recognizes three exceptions to the parol evidence rule: (1) extrinsic evidence will be admitted to show the intent of the parties if the contract is ambiguous or indefinite; (2) parol evidence of a distinct, valid, contemporaneous agreement between the parties, not reduced to writing is admissible if the evidence is not in conflict with the written agreement; and (3) if the written agreement by its own terms refers to discussions between the parties, those discussions are generally admissible. *Valley Mills, supra*, 245 Miss. at 79-82, 145 So.2d at 702-3.

Here, at least one of the exceptions to the parol evidence rule clearly applies: the Chancellor found that the Agreement was ambiguous and indefinite. Furthermore, the parol evidence he considered (testimony about the parties' discussions and understanding) is not in conflict with the written Agreement.

Parol evidence of the intention of the parties may be received to clear up an ambiguity by reason of which such intention is not definitely expressed. *Byrd v. Rees*, 251 Miss. 876, 882-884 (Miss. 1965) (affirming decree of trial court after it admitted parol evidence to interpret an ambiguous contract). “[T]he object of all rules of interpretation is to arrive at the intention of the parties as it is expressed in the contract.” *Id.* at 884. The Chancellor properly considered parol or extrinsic evidence in determining the intent of the parties.

The Court also properly applied the discretionary canons of contract construction, finding, for example, that the Agreement “was drawn by Gloria Reffalt who was not an attorney and this document was poorly drafted, however the amendment was drawn by an attorney and both parties signed the documents which are subject to more than one interpretation.” RE. 38.

B. The Chancellor’s Interpretation Of The Property Settlement Agreement Was Reasonable and Based On Substantial Evidence, And Was Founded Upon Concerns For Justice and Equity

The Chancellor’s interpretation of the Agreement was reasonable and was based upon substantial evidence, including the testimony of the witnesses and their demeanor, the pattern and practice between the parties (Stephen had actually paid that amount for 16 or 17 years, indicating that Stephen too believed that he owed that amount of money), and the fact that Stephen had claimed that amount on his income tax as the amount he owed. (T. 86, RE. 91.) It was also founded upon concerns for justice and equity.

Harris v. Harris, 988 So. 2d 376 (Miss. 2008) is a case on point. There, the parties had entered into a property settlement agreement in their divorce proceedings, with the husband agreeing to pay reasonable maintenance associated with the marital

home. On review of the chancery court's contempt order against the husband, the court held that the chancery court had properly resolved the ambiguity in the parties' property settlement agreement, under which the wife assumed liability for all debts on the home. The term "debt" was undefined and ambiguous. Because the property settlement did not directly address property taxes, the chancellor turned to the temporary order, which stated that the husband was responsible for taxes on the marital home. Based upon this language, the chancellor determined that the husband bore the responsibility for taxes up until the divorce was finalized.

Appellant argues that, because the Agreement does not expressly refer on its face to the parties' Social Security, the Court is not permitted to construe or interpret any term of the Agreement that relates to Social Security. The argument has no merit. In *Harris*, just like in the case at hand, the husband had argued that the chancellor did not interpret or enforce the property settlement agreement as a contract. He had also argued, unsuccessfully, that nothing in the plain language of the property settlement, as incorporated into the final divorce decree, could be viewed as agreeing to assume a prorated share of any debt. (The husband had contended that the language "Wife agrees to assume liability for all debts on the aforesaid properties," was completely unambiguous, or if seen as ambiguous, then should be construed against the wife, as she had drafted it.) Nevertheless, the Court of Appeals in *Harris* affirmed the chancery court's finding that the property settlement agreement was ambiguous, and found that the chancery court had properly applied the canons of contract construction to interpret the contract in the wife's favor. The same result should follow here.

Stephen Reffalt's argument that the parties were dividing their current assets in half, valued at the time of the Agreement, without regard to the value of said assets after retirement,² is misplaced. Here, Stephen and Gloria had agreed that the Martin Marietta Retirement would be divided in half, and that the amount of the Retirement would be reduced when Stephen first became eligible for Social Security.

In *Wood v. Wood*, 35 So. 3d 507 (Miss. 2010), the interpretation of a property settlement agreement and the time of valuation of the assets was at issue. The wife in that case argued that: (1) the property settlement agreement was a valid, unambiguous contract which was not subject to modification or clarification by the chancery court; (2) even if the agreement was subject to contract interpretation, the evidence showed that the parties intended to divide the retirement savings account according to specific dollar amounts; and (3) even if the parties intended to divide the account according to percentages, those percentages should have been calculated as of the date of divorce. The *Wood* court affirmed the chancellor's conclusion that the husband was to receive 46% of the subject account, and that the account should be valued at a date one year after the divorce, because the choice of that date for the valuation was reasonable and was founded upon concerns for justice and equity. "[The parties' agreement] did not clearly specify the parties' intentions with respect to the distribution of the account, so it was ambiguous. Hence, the chancellor was free to apply the canons of contract construction and consider parol evidence to determine the meaning of [the agreement]." *Wood*, 35 So. 3d at 513.

² See arguments in Appellants Brief, at 11 (emphasis added). "When you take the Property Settlement Agreement and the Amendment as one agreement, which is what it is, it is easy to see that the parties divided *their current assets* by one-half. The assets they had *at the time they were divorcing* they divided by one-half. There is no reference to any assets the parties would have *after retirement*. There is no reference to Social Security. The parties were dividing *their current assets* and that is what they did."

"When equitably dividing marital property upon divorce, the date of valuation is necessarily within the discretion of the chancellor." *Hensarling v. Hensarling*, 824 So. 2d 583, 591 (Miss. 2002). And "the chancellor's discretion in the area of equitable distribution is exceedingly broad and he has the flexibility to do what equity and justice requires." *Id.* at 590. Therefore, "the chancellor enjoys broad discretion to value property as of any date that, in the chancellor's view, equity and justice may require." *Wood v. Wood*, 35 So. 3d at 516.

It is a reasonable conclusion that the parties both desired and intended that Gloria's monthly MM Retirement would be supplemented by Stephen's Social Security after his MM Retirement was reduced, so that she would receive a continuous payment of the same amount of money. The Court reached this conclusion based on testimony of the parties, other evidence presented, and concerns for fairness. In particular, the Court found it of import that Stephen had actually paid that amount for 16 or 17 years, indicating that Stephen too believed that he owed that amount of money, and that Stephen had claimed that amount on his income tax as the amount he owed. (T. 86, RE. 91.)

The case *Dilling v. Dilling*, 734 So. 2d 327, 335-37 (Miss. Ct. App. 1999), is also on point. In that case, the chancellor found substantial evidence to support a finding that there was a mistake in the divorce agreement, and he reformed the parties' property settlement agreement. His finding was based on the appellant's inability to explain why the appellee would have agreed to such a disproportionate division, if the appellant were not paying the payments on the home after the divorce. The *Dilling* court affirmed the reformation of the agreement, finding that *even if the mistake made was only that of the wife, made through her attorney's error*

of omission in drafting the agreement, and even if the mistake was not mutual, reformation was warranted because of the husband's willingness to accept a disproportionate share of the home's equity. *Dilling*, 734 So. 2d at 336. The very same thing has happened in the instant case – Stephen is inequitably attempting to take advantage of his wife's attorney's poor drafting of the contract provision – and the same result should follow.

In Mississippi, equity will prevent an intolerable injustice such as where a party has gained an unconscionable advantage by mistake and the mistaken party is not grossly negligent. *Rotenberry v. Hooker*, 864 So. 2d 266, 271 (Miss. 2003) (affirming chancellor's judgment, where the chancellor had recognized the fundamental injustice of holding a party to an obligation where she must have made a unilateral mistake).

In the case at hand, the Chancellor's conclusion was not only based upon substantial evidence, but was also based upon principles of fairness and justice. There was no manifest error, and the Court's judgment should be affirmed.

C. The Court Did Not Err In Its Reconsideration Of The Evidence

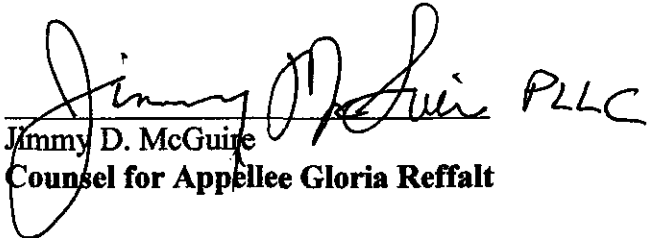
At an April 26, 2010 hearing on Appellant's Motion to Reconsider the May 7, 2009 Judgment, the Court properly used its discretion in reconsidering the evidence. On June 4, 2010, the Court rendered a fair and reasonable Order on the Motion to Reconsider, granting the portion of the motion regarding the Performance Sharing Plan, and denying any reconsideration of the amount of Martin Marietta Retirement to be paid to Gloria.

Courts have broad discretion with respect to the exclusion of evidence. Appellant can point to no facts indicating manifest error on the part of the Chancellor in disallowing certain evidence.

CONCLUSION

Appellant cannot demonstrate that the Chancellor was manifestly wrong, clearly erroneous or that an erroneous legal standard was applied. The Court's findings were supported by substantial credible evidence. Accordingly, Appellee Gloria Reffalt respectfully requests that this Court affirm the judgment of the Chancery Court.

RESPECTFULLY SUBMITTED this the 14th day of March, 2011.


Jimmy D. McGuire PLLC
Counsel for Appellee Gloria Reffalt

CERTIFICATE OF SERVICE

I, Jimmy D. McGuire, do hereby certify that I have this day caused to be mailed via United States mail, first class postage prepaid, a true and correct copy of the foregoing Brief of the Appellee Gloria Reffalt to the interested parties to the foregoing action at the following addresses:

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SO CERTIFIED this the 14th day of March, 2011.


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