

IN THE SUPREME COURT OF MISSISSIPPI

Case No. 2010-CA-1041

SHERIDA (CAUDLE) POWELL

APPELLANT

VERSUS

JAMES SAMUEL POWELL

APPELLEE

APPEAL FROM THE CHANCERY COURT OF
THE SECOND JUDICIAL DISTRICT OF
JONES COUNTY, MISSISSIPPI

APPELLANT'S BRIEF

ORAL ARGUMENT NOT REQUESTED

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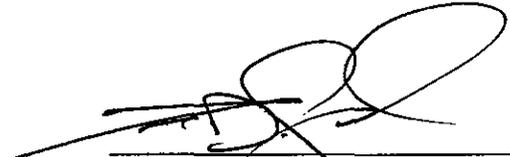
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CERTIFICATE OF INTERESTED PERSONS

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 this Court may evaluate possible disqualification or recusal:

1. Sherida “Sheri” (Caudle) Powell, Appellant
2. Thomas T. Buchanan, Esq. and John D. Smallwood, Esq. of TUCKER BUCHANAN, PA (Laurel, MS), Attorneys for Appellant
3. James Samuel “Sammy” Powell, Appellee
4. Terry L. Caves, Esq. of CAVES & CAVES (Laurel, MS) Attorney for Appellee
5. Honorable Frank McKenzie, Chancery Court Judge of Jones County, Mississippi



JOHN D. SMALLWOOD
Attorney for Appellant

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STATEMENT OF ISSUES

- I. THE CHANCERY COURT ERRED IN DETERMINING THE OWNERSHIP AND CLASSIFICATION OF MARITAL ASSETS

- II. THE CHANCERY COURT ERRED IN THE DIVISION OF MARITAL PROPERTY.

STATEMENT OF THE CASE

This is a civil action stemming from a Complaint for Divorce [RE - 6] filed by James Samuel Powell ("Sammy") on September 23, 2008 alleging desertion, habitual cruel and inhuman treatment and irreconcilable differences as grounds for divorce. On October 6, 2008, the parties entered into a Temporary Order [R. 23] which entitled Sammy to use and possession of the marital residence and allowed Sheri to obtain certain personal property from the marital residence. Thereafter, on October 29, 2008, Sherida C. Powell ("Sheri") filed her Answer and Counter-Complaint for Divorce [RE -7] alleging desertion, habitual cruel and inhuman treatment and irreconcilable differences as grounds for divorce. By agreement and permission from the trial court, on March 12, 2009, Sammy filed his Amended Complaint for divorce adding adultery as a ground for divorce [R. 83].

After extensive discovery, the case went to trial on March 4, 10 and 16, 2010. By Judgment of Divorce entered March 18, 2010 [RE - 8], the trial court granted a divorce to Sammy on the grounds of adultery and took under advisement all other issues. On May 12, 2010, the trial court entered a Findings of Fact and Conclusions of Law [RE-9] resolving all remaining issues which was followed by a Final Judgment entered on May 28, 2010 [RE-10].

Aggrieved, Sheri timely filed her Notice of Appeal on June 25, 2010 [RE-11] and Appeal Bond with Supersedeas [RE-12]. Sammy did not file a cross-appeal.

STATEMENT OF THE FACTS

The parties, James Samuel "Sammy" Powell and Sherida "Sheri" Caudle Powell were married on February 19, 1993, in Gatlinburg, Tennessee, and continued to live together as man and wife until their final separation on July 7, 2007 [Tr. 7] after Sammy repeatedly told Sheri "if she didn't like it, she could pack her s*%t and hit the road" [Tr. 310-311]. There were no children born of the marriage. Both are residents of Laurel, Jones County, Mississippi [Tr. 7].

At the time of their marriage, Sammy was employed as a firefighter for the City of Laurel and worked part-time for South Central Regional Medical Center's ambulance service in Laurel [Tr. 8]. At the time of trial, Sammy was a retired sixty-two (62) year old male who had been previously married on two (2) occasions and who resided in the former marital abode of the parties at 27 Mockingbird Lane, Laurel, Mississippi [Tr. 7]. He has a high school diploma, has had fire service training and was qualified as an EMT, Basic [Tr. 7-9]. He was disabled due to a knee injury and retired from the Fire Department in 2003 having worked there from 1985 through 2003 [Tr. 8-9]. Sammy testified to a multitude of health issues, including degenerative arthritis in knee and hip, back surgery, shoulder and thoracic problems, anxiety and restless leg syndrome [Tr. 13-14]. He received PERS and Social Security Disability income grossing \$2,929.50 per month¹ for permanent disability [Tr. 14]. Sammy testified that PERS could not separate

¹ As reflected on his November 24, 2008 8.05 financial statement [Tr. Ex. 24] and his December 8, 2009 amended 8.05 financial statement [Tr. Ex. 3].

his monthly payment to delineate how much was disability income and how much was retirement income [Tr. 18].

At the time of their marriage, Sheri was employed at Masonite where she worked from 1981 until 1997 to go work for ASAP (A Superior Ambulance Provider) [Tr. 31, 217]. At the time of trial, Sheri was a fifty-three (53) year old female who had been previously married on two occasions and was then living in a rented apartment. Sheri has a bachelor's in business administration with an emphasis in accounting from Delta State University [Tr. 306]. At the time of trial, Sheri was working full-time at ASAP as the bookkeeper and in good health. Her gross monthly income was \$4,158.00² [Tr. 226, Tr. Ex. 4].

At the time of marriage, Sammy had an existing PERS which he started funding in 1985 [Tr. 18] and which he funded until his retirement in 2003. Sammy funded his PERS for ten (10) years during the marriage. At the time of marriage, Sheri had an existing 401K with Masonite which she started funding in 1981 [Tr. 219, 346]. During the marriage, Sheri wiped out her 401K for use in ASAP, taxes and various other expenses [Tr. 261-66]. Neither party produced any evidence of the value of either retirement accounts as of the date of their marriage.

Sammy testified that he bought the marital residence in 1973 for "about eighty thousand" [Tr. 19]. Sammy provided no evidence of this value other than his speculative testimony. He purchased the home with his first wife "Ms. Poole" and lived there with

2 The trial court listed Sheri's gross income as \$4,170.00 per month rather than the \$4,158.00 listed in her 8.05 in its Findings of Fact and Conclusions of Law [R. 150].

her until their divorce. After their divorce Ms. Poole lived in the house “a year or two” until she remarried and moved out. For approximately six years after that, the home was either vacant or used a rental property (rented at \$120-150 per month) while Sammy was living with his second wife “Ms. Price” [Tr. 131-32]. He testified that he borrowed \$59,200 from Deposit Guaranty Bank for remodeling which was done before the parties married in 1993 [Tr. 19] but while they were dating [Tr. 133]. During this time, he lived in a camper in the yard of the house using the house only for bathing and storage [Tr. 133]. The Deposit Guaranty Bank loan was satisfied and cancelled shortly before the Complaint for Divorce was filed [Tr. 221, 318]. Sammy testified that during the time the parties were married, there were improvements made to part of the house (no dollar amount was given) to make an office for Sheri for the business ASAP [Tr. 19-20]. Sheri maintained housekeeping during the marriage though admitted that she did not cook much and had maid service 2 times a month [Tr. 352]. At the time of trial, the marital residence appraised for \$120,000.00 [Tr. 28; Tr. Ex. 1]. Neither of Sammy’s sworn 8.05 financial statements submitted into evidence reflected any lien on the marital residence [Tr. 136-37, Tr. Ex. 3 & 24].

During the marriage, Sheri obtained a loan to purchase property located at 116 Mason Street consisting of 1 acre. This note was paid in full by ASAP [Tr. 245]. The Mason Street property appraised for \$78,500.00 [Tr. 30; Tr. Ex. 2]. Also during the marriage, the parties purchased a ½ acre lot on Indian Springs Road titled in both parties’ names and which Sammy estimated a value of \$3,200 [Tr. 110].

In or about 1993, Sammy started a business called Safety on Site “SOS” in which Sammy taught industrial fire brigades as an independent contractor [Tr. 9-10]. SOS was created as a sole proprietorship [Tr. 10]. In 1996 Sammy started ASAP as an LLC and SOS was shut down [Tr. 23]. Sheri assisted Sammy in drafting a business plan for ASAP. [Tr. 180]. As part of the original financing for ASAP, Sammy borrowed \$208,000³ from Trustmark Bank [Tr. at 244]. Sheri also took out a loan with Trustmark for approximately \$20,000 for the office building for ASAP [Tr. 187]. Over the years, ASAP paid off both notes to Trustmark Bank [Tr. 187].

Sammy also obtained \$98,000 from Southern Mississippi Planning and Development District (“SMPDD”) by entering into a Loan Agreement executed May 28, 1997 [Tr. 138-39, Tr. Ex. 32]. At the beginning of trial, Sammy claimed that the Loan Agreement with SMPDD was still owed and that there was litigation involving the loan⁴ [Tr. 139-40]. Sammy admitted that no payment toward the SMPDD loan had ever been made [Tr. 139-40]. At the final day of trial, a 1099 Cancellation of Debt was admitted into evidence which cancelled the SMPDD debt, however created a total tax liability of \$32,421⁵ [Tr. 257, Tr. Ex. 38].

From the beginning of ASAP, Sheri was the “accountant” for the business, “in

3 The trial court listed the debt as \$200,000 not \$208,000 in its Findings of Fact and Conclusions of Law [R. 152].

4 At the time of trial, there had not been any lawsuit filed against Sammy nor ASAP for collection of the SMPDD loan [Tr. 140].

5 The trial court listed the tax liability as \$32,461 rather than \$32,421 in its Findings of Fact and Conclusions of Law [R. 155].

charge of handling all of the money and handling the – the billing.” [Tr. 33, 188-89]. ASAP was sold on September 27, 2006 for \$490,000 (\$200,000 at closing and \$290,000 financed over 12 years beginning February 27, 2007) [Tr. 52, 142, Tr. Ex. 26].

The trial court found that during the marriage, “Sheri had an account at Community Bank in her name only; Sammy had an account at Trustmark Bank in his name only; and they maintained a joint account at The First Bank.” [R. 151]. Sammy testified otherwise stating “[t]he correct thing is she had her personal account and then she – we had two other joint accounts.” [Tr. 163]. Sheri confirmed Sammy’s testimony when questioned by Sammy’s counsel [Tr. 237]. As such, all money earned by the parties during the marriage, whether through income, retirement or sale of assets, was put into either joint marital accounts or into Sheri’s personal account. During the marriage, Sheri reconciled all three of their personal accounts in addition to all ASAP accounts [Tr. 323]. Sheri paid all household expenses from her account with the only marital expense paid by Sammy being the monthly mortgage [Tr. 276]. During the marriage, including but not limited to all the years Sammy and Sheri operated ASAP, they filed joint tax returns [Tr. 158].

Since the sale of ASAP and through the time of trial, Sheri received rent payment of \$600 from ASAP for use of the Mason Street Property totaling \$14,400. Since the sale of ASAP and through the time of trial, Sammy received \$98,473.90 from the sale installment payments from ASAP [Tr. Ex. 29].

Sheri admitted to having a relationship with James Niss which began after the

parties' separation [Tr. 211-12]. Likewise, Sammy admitted to sleeping in the same hotel room in Las Vegas with his friend Rachel Bishop and her spending the night at his house within 6-8 months of the trial [Tr. 205-06].

The trial court determined the marital assets [R. 157] as follows:

- I. Home and lot at 27 Hummingbird Lane valued at \$123,200, \$43,200.00 of which value accrued during the marriage.
- II. Property at 116 Mason Street valued at \$78,500.00
- III. Note receivable from sale of ASAP which calls for scheduled payments of \$3,265.05 per month until January 2019
- IV. A Met Life Account in Sheri's name with a balance of \$61,672.29 as of December 31, 2009
- V. Certain personal property described in Exhibit 34.
- VI. 2009 tax liability of \$32,461.00 as marital debt.

In the Findings of Fact and Conclusions of Law [R. 162-63], the trial court divided

these marital assets as follows:

SHERI

ASAP proceeds put into
Met Life (\$83,755)

Mason Street rent proceeds
Already received (\$14,400)

½ Mason Street property
(\$39,250) [and income/debt]

Household property agreed upon
(no value)

\$137,405

SAMMY

Marital home/lot (\$123,200)

ASAP sale installments already
received (\$98,473.90)

½ Mason Street property
(\$39,250) [and income/debt]

Household property agreed upon
(no value)

All future ASAP sale installments
(\$191,526.10 plus interest)

- \$32,421 (tax liability for SMPDD)
\$420,029

SUMMARY OF ARGUMENT

The Chancery Court committed reversible error in its Final Judgment and Findings of Fact and Conclusions of Law. The trial court failed to make a proper determination of ownership and classification of assets accumulated during the marriage. The trial court failed to make an equitable distribution of marital assets and to further make a finding which supports its distribution.

ARGUMENT

STANDARD OF REVIEW

In *Lowrey v. Lowrey*, 25 So.3d 274, 285 (Miss. 2009), the Mississippi Supreme Court provided the appropriate standard of review for division of marital assets and debts:

"A chancellor's findings of fact will not be disturbed unless manifestly wrong or clearly erroneous." *Sanderson v. Sanderson*, 824 So.2d 623, 625 (Miss. 2002). "However, the Court will not hesitate to reverse if it finds the chancellor's decision is manifestly wrong, or that the court applied an erroneous legal standard." *Owen v. Owen*, 928 So.2d 156, 160 (Miss. 2006). A chancellor's conclusions of law are reviewed *de novo*. *Chesney v. Chesney*, 910 So.2d 1057, 1060 (Miss. 2005). The distribution of marital assets in a divorce will be affirmed if "it is supported by substantial credible evidence." *Bowen v. Bowen*, 982 So.2d 385, 393-394 (Miss. 2008). A chancellor is required to make findings of fact regarding all applicable Ferguson factors. See *Kilpatrick v. Kilpatrick*, 732 So.2d 876, 881 (Miss. 1999); *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss. 1994). "[A]n equitable division of property does not necessarily mean an equal division of property." *Chamblee v. Chamblee*, 637 So.2d 850, 863-64 (Miss. 1994). "Fairness is the prevailing guideline in marital division." *Ferguson* at 929 (Miss. 1994).

"Nonetheless, if manifest error is present or a legal standard is misapplied, this Court will not hesitate to reverse." *Flechas v. Flechas*, 791 So.2d 295, 299 (Miss. COA 2001); *Tilley v. Tilley*, 610 So.2d 348, 351 (Miss. 1992). Where there is a question of law, the standard of review is *de novo*. *Morreale v. Morreale*, 646 So.2d 1264, 1267 (Miss. 1994).

I. THE CHANCERY COURT ERRED IN DETERMINING THE OWNERSHIP AND CLASSIFICATION OF MARITAL ASSETS

“In matters of equitable division of marital assets, the first determination is which assets are marital assets versus non-marital assets.” *Flechas v. Flechas*, 791 So.2d 295, 299 (Miss. COA 2001); *Burnham-Steptoe v. Steptoe*, 755 So.2d 1225 (Miss. COA 1999). “Assets acquired during the course of marriage are marital assets and subject to equitable distribution unless it can be proven that such assets belonged to one of the separate estates prior to marriage.” *Flechas* at 299; *Hemsley v. Hemsley*, 639 So.2d 909, 914 (Miss. 1994). This Court further stated,

We define marital property for the purpose of divorce as being any and all property acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor. We assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise are of equal value.

Flechas at 299; *Hemsley* at 914.

In the case at hand, Sheri agrees that the marital assets and debts identified by the trial court are in properly classified as marital assets and debts. However, the trial court committed error in the values assigned with particular items as addressed below. Furthermore, the trial court did commit error in failing to find that Sammy’s PERS was a marital asset.

In equitably distributing property, “[t]he chancellor must: (1) classify the parties’ assets as marital or separate; (2) value those assets; and (3) equitably divide the marital assets pursuant to the Ferguson factors.” *Faerber v. Faerber*, 13

So.3d 853, 858 (Miss. COA 2009); citing, *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994). The *Ferguson* factors include the following:

1. A spouse's substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:

a. Direct or indirect economic contribution to the acquisition of the property;

b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family, duties and duration of the marriage; and

c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

3. The market value and emotional value of assets subject to distribution.

4. The 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, of the proposed distribution.

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties.

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity.

8. Any other factor which in equity should be considered.

Ferguson at 928 (Miss.1994).

Marital Residence & Lot

"[T]he foundational step to make an equitable distribution of marital assets is to determine the value of those assets based on competent proof." *Fleishhacker v. Fleishhacker*, 39 So.3d 904, 914 (Miss. COA 2009); *Dunaway v. Dunaway*, 749 So.2d 1112, 1118 (Miss. COA 1999) (citing *Ferguson*, 639 So.2d at 929).

The trial court committed error two-fold in the valuation of the marital residence and lot at 27 Hummingbird Lane. First, the only evidence offered as to the value of the home as of the date of the marriage of the parties was Sammy's self-serving guess of \$80,000, nothing more. The parties obtained present day appraisals [Tr. Ex. 1], but Sammy provided no documentary evidence to support his guesswork. Tax records could have been provided, they were not. The original deed of trust could have been provided, it was not. The mortgage paperwork from Deposit Guaranty for the remodeling could have been provided, it was not. Furthermore, Sammy's guesswork was shown to be suspect in cross-examination. Sammy testified that he charged rent of \$120-150 per month on the property "just enough to pay the note" [Tr. 133-34]. Also, during the 3-4 years Sheri and Sammy dated before marriage, Sammy lived in a travel trailer in the yard of the house [Tr. 134]. As discussed with the Court during Sammy's cross-examination, how could such a house be worth \$80,000? The Court was without "competent proof" to determine the pre-marital value of this asset.

Second, regardless of the value at the time of the parties' marriage, the

entire \$123,200 should have been determined to be the marital asset to be equitably divided. “[T]he family-use doctrine will almost always convert a separately owned "marital" home to marital property.” *Faerber v. Faerber*, 13 So.3d 853, 861 (Miss. COA 2009); see *Stewart v. Stewart*, 864 So.2d 934, 938-39 (Miss.2003).

During the Powell’s marriage, Sheri paid all of the “household expenses” on the marital residence. She quit her job at Masonite and worked in the home for ten (10) years. She cleaned the home. She maintained the home for the fourteen (14) years she lived there. Not only did she provide homemaker contributions and financially support the marital residence, she also had sweat equity in the residence. As Sammy provided no credible basis for the value of the home of \$80,000 and based upon Sheri’s considerable contributions to the home during the marriage, the trial court should have included the full appraised value of this marital asset rather than the guestimated increase in value.

ASAP – Future Installment payments

“In general, a spouse's business interest is marital property if the interest was acquired through the spouse's efforts during the marriage or purchased with marital funds.” *Meador v. Meador*, 44 So.3d 411, 417 (Miss. COA 2010); See *Pittman v. Pittman*, 791 So.2d 857, 866-67 (Miss. COA 2001). Assets that are "accumulated during [a] marriage are . . . marital property '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.'" *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994) (quoting *Hemsley*, 639 So.2d at 914-15). "If the interest is properly characterized as marital property, it is subject to an equitable distribution by the chancellor under the guidelines set forth in *Ferguson*, 639 So.2d at 928. *Id.*

While the trial court correctly determined that the future installments (note receivable) from the sale of ASAP was a marital asset [R. 157] , the trial court erred in failing to calculate the value of that asset. Based upon the Sales Agreement, Promissory Note and Amortization of the Sale of ASAP [Tr. Ex. 26], as of the date of trial of this matter, the future payments will be \$191,526.10 plus 8.237% interest. As shown hereinabove when calculating this amount into the assets divided by the trial court, Sammy Powell received 75% of the marital assets. Equity is not served with such a disproportionate division.

Sammy's PERS Retirement Account

Assets that are "accumulated during [a] marriage are . . . marital property '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.'" *Johnson v. Johnson*, 650 So.2d 1281, 1285 (Miss. 1994) (quoting *Hemsley*, 639 So.2d at 914-15). Retirement accounts, including PERS accounts,

funded during a marriage are marital assets. *Gregg v. Gregg*, 31 So.3d 1277, 1281 (Miss. COA 2010); *Phillips v. Phillips*, 904 So.2d 999, 1001 (Miss.2004). " [T]he established precedent requires that all marital assets must be considered to reach an equitable division of those assets." *Fleishhacker v. Fleishhacker*, 39 So.3d 904, 914 (Miss. COA 2009); *Hopkins v. Hopkins*, 703 So.2d 849, 850 (Miss.1997).

The evidence was uncontradicted that Sammy contributed to his PERS from 1985 through 2003, which included eleven (11) years (1993-2003) of the Powell's marriage. In fairness to the trial court, Sammy did not provide the trial court with enough information with which to make a calculation. However, Sheri did provide the trial court with a MRE 1006 Summary of Sammy's PERS account which did provide the trial court with enough information to calculate Sammy's in-marriage PERS contributions [Tr. Ex. 31]. Nonetheless, the trial court dismissed Sheri's request for said calculation opining that it was a "back-door" alimony claim [R. 157] and discussing only the disability portion of Sammy's PERS income.

The evidence was clear that portions of Sammy's PERS (retirement not disability) and portions of Sheri's 401K were funded during the marriage of these parties. At the time of trial, Sheri had exhausted her 401K [Tr. 264-65]. Sammy will continue to receive a monthly payment from his PERS (retirement not disability) which was funded for eleven (11) years while the parties were married. The trial court's failure to calculate Sammy's contributions and include some

portion of his PERS retirement as a marital asset subject to equitable division was error.

II. THE CHANCERY COURT ERRED IN THE DIVISION OF MARITAL PROPERTY

“The Chancellor is vested with the duty to equitably distribute the marital estate in a divorce action.” *Hemsley v. Hemsley*, 639 So.2d 909, 914-15 (Miss. 1994). “All awards should be considered together to determine that they are equitable and fair.” *Ferguson v. Ferguson*, 639 So.2d 921, 929 (Miss. 1994). The Supreme Court has held that each party has to be adequately provided for. “In *Johnson*, this Court stated that ‘[i]f there are sufficient marital assets which, when equitably divided and considered with each spouse’s marital assets, will adequately provide for both parties, no more need be done.’ “ *Craft v. Craft*, 825 So.2d 605, 609 (Miss. 2002), citing, *Johnson v. Johnson*, 650 So.2d 1281 (Miss. 1994).

Awarding Sammy 75% of the marital assets to Sheri’s 25% is not supported by the facts, but it also flies in the face of Mississippi case law. It is well established that when addressing distribution of marital assets, the parties begin with a presumed 50% interest. The trial court must then adjust the award based upon the facts of each case by using the *Ferguson* factors. This is supported by the *Craft* court in the following discussion;

Equitable distribution of marital property begins with the assumption that the contribution of the spouses is equal. From that starting point, the chancellor can adjust the award in the favor of one of the spouses, after making findings of fact and conclusions of law, if the application of *Ferguson* factors so warrants doing so. In applying the factors of this case,

it is clear that the relevant factors favor adjusting the awarded beyond the 50% starting point in Lorraine's favor.

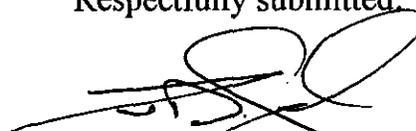
Craft at ¶11, (Miss. 2002)

In the case at hand, the facts do nothing to support the trial court's award of 75% of the marital assets to Sammy and only 25% of the marital assets to Sheri. The chancellor also provides nothing to support his adjustment of the marital assets in favor of Sammy. As a result, the Findings of Fact and Conclusions of Law should be reversed and this Court should render an equitable division of marital assets and debts, or in the alternative, remand this case for further hearings.

CONCLUSION

Based upon the foregoing, this Court should reverse and remand the Chancellor's Findings of Fact and Conclusions of Law and Final Judgment for a new determination of marital assets and equitable division of marital assets . The trial court failed to make an equitable division of marital assets and likewise failed to properly consider attorney fees.

Respectfully submitted:



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JOHN D. SMALLWOOD, MSB# [REDACTED]
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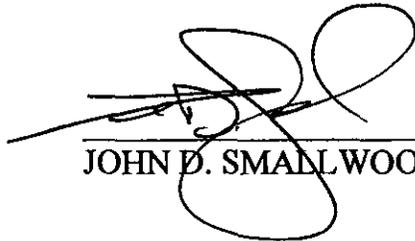
CERTIFICATION OF SERVICE

I do hereby certify that I served a copy of the foregoing Appellant's Brief on all parties to this matter by HAND DELIVER to the attorneys and on the date listed below:

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This the 24th day of January, 2011.



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