

**IN THE SUPREME COURT OF MISSISSIPPI**

**WILLIAM ANTHONY CARTER**

**APPELLANT**

**VS.**

**CAUSE NO. 2011-CA-00463** **5**

**LINDA McCLURE CARTER**

**APPELLEE**

**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Rule 28(b) of the Mississippi Rules of Appellate Procedure, 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 Mississippi Supreme Court and/or the judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable E. Vincent Davis, Chancellor
2. William Anthony Carter, Appellant
3. Linda McClure Carter, Appellee
4. Marcie T. Southerland Esq., Attorney for Appellee
5. M. Craig Robertson, Esq., Attorney for the Appellant
6. Jeremy P. McNich, Esq., Attorney for the Appellant
7. Matthew S. Easterling, Esq., Attorney for the Appellant

  
\_\_\_\_\_  
MARCIE T. SOUTHERLAND, ESQ. (MSBN )

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## **STATEMENT OF THE ISSUES**

- I. The trial court did not commit manifest and mathematical error in awarding the appellee an \$11,000.00 credit by considering the sale of the appellee's separate property in its distribution of the marital estate.
  
- II. The trial court equitably divided the parties' marital estate.
  - a. The trial court equitably distributed to the appellant and the appellee one-half of the one marital debt of \$49,000.00 on the jointly owned mobile home.
  
  - b. The trial court was equitable in its award to the appellee of an \$11,000.00 credit against the appellee's debt of \$24,500.00 due to the appellee's contribution of her separate property, a mobile home owned prior to the marriage valued at the undisputed value of \$15,000.00.

## **STATEMENT OF THE CASE**

The Final Judgment of Divorce granting the Appellee, Linda McClure Carter, a divorce on the ground of Habitual Cruel and Inhumane Treatment was entered by the Chancery Court of Claiborne County, Mississippi on September 14, 2010. Upon hearing on Appellant's Motion for Re-Consideration, the Chancellor entered an Order Amending Final Judgment of Divorce on March 2, 2011.

William Carter (hereinafter William) and Linda Carter (hereinafter Linda) were married on June 21, 1997. *Tr. 34 at 10; R.E.22*. The parties had been married for almost thirteen years at the time they were divorced in March, 2010. During the course of the marriage, William and Linda lived together in a mobile home on one acre of land along with Linda and William's one daughter, D'Erra, born on March 15, 1995. *Tr. 8 at 16-29*. Linda's twenty year old daughter from a previous relationship, Audrey Thompson also lived in the home with Linda, William and

D'Erra. *Tr. 8 at 21- 24.* The mobile home and land on which they lived was Linda's separate property according to the prenuptial agreement signed before the marriage.

William was diagnosed with manic depression and schizophrenia by Dr. Ross of Jackson, Mississippi in 1997 or 1998, shortly after the marriage. *Tr. 66 at 3, 5.* William had served six years in the Armed Services and subsequent to that service, he worked at Entergy. *Tr. 107 at 16; R.E. 38.* At some point in 2002 or 2003, he quit working at Entergy due to his mental illness disability and he began receiving social security disability in the amount of \$2195.40. *Tr. 107; R.E.3,69.* D'Erra receives \$1097.00 each month due to her father's disability. *Tr. 75 at 10, 13; R.E. 3.*

Linda, who has a certificate in social work and an A.A. Degree in General Studies does not work full-time, but has her own business selling jewelry, clothes, and purses. Linda's income from that business is approximately \$400 each month. *Tr. 46; R.E.24,25.* In addition, Linda has a church ministry which provides her with another \$400.00 each month in income. *Tr. 75; R.E. 25.*

Prior to the the marriage, on June 9, 1997, William and Linda entered into and signed a Premarital Agreement which the trial court found valid and binding. *R.E. 4, 51.* Pursuant to such agreement, the separate property of each party would remain separate and could not be considered marital property. *R.E. 9, 51, 52.* Prior to the marriage, Linda was the sole owner of an acre of land valued at \$9,500.00 and a mobile home valued at \$15,000.00. *Tr. 43 at 5,7; R.E. 11,12,65.* Linda's land was situated next door to family land where her mother, nieces and nephews lived. *Tr. 35 at 4,8.* During the trial, there was no dispute as to the values of Linda's land and mobile home.

At the behest of William, Linda sold her mobile home for \$4,000.00 and purchased a

new mobile home for \$54,000.00 jointly owned with William. *Tr. 72 at 16*. William later asked Linda to use her acre of land for “to get a lower rate, that he was going to try to pay the mobile home on out quicker”. *Tr.43 at 25; 44 at 1*. The \$4000.00 received from the sale of Linda's original mobile home was used to get a light pole and all the stuff needed for the new mobile home. *Tr. 43 at 19*.

Because William wanted her to, Linda sold her \$15,000.00 mobile home for \$4,000.00. The \$4,000.00 was used to purchase necessary items for the family. William also talked Linda into conveying an interest in the one acre of land valued at \$9,500.00 to him so that he could get a better refinance rate on the new mobile home. *Tr. 43 at 7; R.E. 23*.

The trial court found that Linda legitimately lived in fear and Linda was awarded a divorce on the ground of habitual cruel and inhumane treatment. *R.E. 4*. Linda and her children had lived with William, a person suffering from a severe mental disorder, for many years. *Tr.9 at 16*. At the beginning of the marriage, Linda owned a mobile home and one acre of land. *R.E. 65*. The Chancellor awarded Linda a mobile home with a debt of \$49,000.00 and the one acre of land located next to her family that she had owned prior to the marriage. The trial court equitably divided the one marital asset and the one marital debt, the \$49,000.00 owed on the mobile home purchased during the marriage. The trial court gave Linda credit for \$11,000.00 on the indebtedness she owed on the jointly owned mobile home because Linda had lost that separate asset when she sold her previously owned mobile home.

### **SUMMARY OF THE ARGUMENT**

The Chancellor determined the prenuptial agreement to be a valid and binding agreement and also, that “fairness is the prevailing guideline in marital property division.” *R.E. 4, 11*.

Linda had given up her \$15,000.00 mobile home, took the \$4,000.00 she received from the sale

of the mobile home and purchased items for the new mobile home. *Tr. 43 at 20.*

The Chancellor correctly applied the factors set forth in *Hemsley* and *Ferguson* to determine that Linda is entitled to the ownership of the mobile home purchased during the marriage, the one acre of land that she had owned prior to the marriage, and in making Linda and William each one-half responsible for the debt owed on the mobile home in the amount of \$49,000.00. *Hemsley vs. Hemsley*, 639 So.2d 909 (Miss. 1994), *Ferguson v. Ferguson* 639 So.2d 921 (Miss. 1994).

Linda was given credit for the loss of \$11,000.00 she incurred because she had to quickly sell her mobile home that she had owned prior to the marriage. In its analysis, the Chancellor considered the disproportionate income of the parties, that is, William receiving \$2195.00 per month in social security benefits when, on the other hand, Linda had an approximate income of only \$800.00 per month. *Tr. 48 at 5; R.E.3.*

In its analysis, the Chancellor further considered William's separate property of approximately 50 acres located in Rankin County, William's savings plan at Entergy valued at \$108,000.00 and the \$10,000.00 in William's checking account. *R.E.9-13.* Linda was not awarded alimony. *R.E.14.* Last but not least, the trial court considered that the land and mobile home awarded to Linda is located in a community where Linda's relatives live. *R.E.12.* William's family and real estate of his own is located in Rankin County, Mississippi. *R.E.12.*

The Chancellor awarded Linda the jointly owned mobile home that had zero equity to replace Linda's mobile home that William had her sell and to give Linda and D'erra a place to live. The trial court did not commit manifest and/or mathematical error in giving Linda an \$11,000.00 credit against the one and only marital debt of \$49,000.00 owed on the mobile home. The trial court equitably divided the marital debt by requiring William to pay \$35,500.00 of the

indebtedness owed and requiring Linda to pay \$13,500.00 of that debt.

## **ARGUMENT**

### **I. THE TRIAL COURT DID NOT COMMIT MANIFEST AND MATHEMATICAL ERROR IN AWARDING THE APPELLEE AN \$11,000.00 CREDIT BY CONSIDERING THE SALE OF THE APPELLEE'S SEPARATE PROPERTY IN ITS DISTRIBUTION OF THE MARITAL ESTATE.**

Mississippi is an equitable distribution state as opposed to a community property state. The concept is that at the conclusion of the divorce proceedings, there will be an equitable division of all marital property so that the parties may continue their lives in a manner as close to that before the divorce. It does not mean that there will be a 50/50 split of the marital assets. In order to award an equitable settlement, the court must determine which assets are marital and which are separate.

As William recited *King v. King*, 760 So.2d 830, 836 (Miss. App. 2000), in his brief, it is worth repeating in Linda's response brief. Property acquired "prior to the marriage is the separate property of the owning spouse, unless it has been so extensively used for family purposes that it loses its identity as separate property and becomes marital property." *Id.*

The fact that Linda and William sold Linda's separate property, the mobile home valued at \$15,000.00 and Linda took the proceeds from that sale to buy items for the new home caused the Chancellor to rule that Linda should be given credit for the loss of her \$11,000.00. By making that fair and equitable ruling, the Chancellor was putting Linda in the same position she was in at the beginning of the marriage. Otherwise, William would be unjustly enriched had Linda's contribution to the marriage not been considered. *Rodriguez v. Rodriguez*, 2 So.3d 720, 726 (Miss App. 2009).

The process of determining an equitable distribution of marital property must be fair. "This Court employs a limited standard of review of property division and distribution in divorce cases." *Owen v. Owen*, 928 So.2d 156, 160 (Miss.2006) (quoting *Reddell v. Reddell*, 696 So.2d 287, 288 (Miss.1997)). "This Court has repeatedly stated that the chancellor's division and distribution will be upheld if it is supported by substantial credible evidence." *Id.* (quoting *Carrow v. Carrow*, 642 So.2d 901, 904 (Miss.1994)); see *Owen I*, 798 So.2d at 397-98. "The 'chancery court has authority, where equity demands, to order a fair division of property accumulated through the joint contributions and efforts of the parties.' " (quoting *Savelle v. Savelle*, 650 So.2d 476, 479 (Miss.1995); see also *Hemsley v. Hemsley*, 639 So.2d 909, 914 (Miss.1994). "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.' " *Id.* (quoting *Owen I*, 798 So.2d at 397-98; *Richardson v. Riley*, 355 So.2d 667, 668 (Miss.1978)). ¶ 33. "In *Carrow*, 642 So.2d at 904, citing *Bell v. Parker*, 563 So.2d 594, 596-97 (Miss.1990), this Court stated that the chancellor's findings will be upheld unless those findings are clearly erroneous or an erroneous legal standard was applied."

*Bowen v. Bowen*, 982 So.2d 385, 393 (Miss. 2008)

In the instant case, the Chancellor studied and reviewed all the financial documentation presented to him. The Chancellor heard testimony from the parties as to their separate and marital assets. The Chancellor clearly took into account the parties' premarital agreement that flies in the face of many public policy measures used in this State. *R.E.4, 9*. The premarital agreement provided that earnings and investments of the parties were their own separate property. *R.E.51,52*. The Chancellor was faced with attempting an equitable distribution of marital assets, limited by the terms of the premarital agreement and the fact that the one acre of land and mobile home were the only marital asset to distribute.

At the time the premarital agreement was executed, Linda owned as her separate property, a mobile home valued at \$15,000.00 and the one acre of land worth approximately \$9500. *R.E. 65*. During the marriage, Linda sold the mobile home she owned outright for \$4000.00 and agreed to the purchase of another mobile home jointly owned with William.

William wanted her to get a bigger home. *Tr. 43 at 15*. The Chancellor rightly found that Linda

traded her mobile home valued at \$15,000.00 for significant marital debt, thereby reducing her separate property asset to a \$49,000.00 debt. Linda also deeded her separate one acre lot to William. *Tr. 43 at 25.*

When findings of fact "have been made, this Court will only set them aside if they are " manifestly wrong, clearly erroneous, or an erroneous legal standard was applied."\_

*Brooks v. Brooks*, 652 So.2d 1113, 1117 (Miss.1995).

This Court is reluctant to disturb the factual findings of a chancellor because of " [t]he credibility of the witnesses and the weight of their testimony, as well as the interpretation of evidence where it is capable of more than one reasonable interpretation, are primarily for the chancellor as the trier of facts. *Rodriguez v. Rodriguez*, 2 So.3d 720 (Miss App. 2009), citing *Rainey v. Rainey*, 205 So.2d 514, 515 (Miss.1967). The chancellor's factual findings are " insulated from disturbance on appellate review" if they are " supported by substantial credible evidence."\_

*McAdory v. McAdory*, 608 So.2d 695, 699(Miss.1992) (citing *Jones v. Jones*, 532 So.2d 574, 581 (Miss.1988)).

The trial court applied the correct legal standard.

## **II. THE TRIAL COURT EQUITABLY DIVIDED THE PARTIES' MARITAL ESTATE.**

- a. The trial court equitably distributed to the appellant and the appellee one-half of the one marital debt of \$49,000.00 on the jointly owned mobile home.
- b. The trial court was equitable in its award to the appellee the credit of \$11,000.00 against the appellee's debt of \$24,500.00 due to her contribution of her separate property, a mobile home owned prior to the marriage valued at the undisputed value of \$15,000.00.

Division of marital assets is now governed under the law as stated in *Hemsley* and *Ferguson*. First, the character of the parties' assets, i.e., marital or non-marital, must be determined pursuant to *Hemsley*. The marital property is then equitably divided, employing the *Ferguson* factors as guide lines, in light of each party's non-marital property.

*Johnson v. Johnson*, 650 So.2d 1281, 1287 (Miss. 1994) citation omitted.

The Chancellor did not err or commit manifest error in granting Linda an \$11,000 credit for the sale of her own mobile home. Though the trial court originally gave her credit for the entire value of the mobile home (\$15,000), the Chancellor amended his ruling to reduce the credit by the amount of \$4,000.00, the funds received from the sale of the mobile home. *R.E.17*. The original mobile home was valued at \$15,000.00 at the time the pre-marital agreement was executed and at the time of the hearing, the value remained uncontradicted. By giving Linda credit for \$11,000.00 against the debt of \$49,000.00, the Chancellor was being fair and equitable.

The vast discrepancy between Linda's and William's separate property grew over the years. Under *Johnson*, the value (or as close as possible) of each marital and separate asset must be determined before any division of assets can be made. The division of marital property is calculated only after the value of separate property is determined. Due to the restraints of the pre-marital agreement, the Chancellor had little to work with in making an equitable division of assets and debt. *Id.*

William cites *Davis v. Davis*, 638 2.d 1288 (Miss. 1994) in his argument that the trial court's judgment was inequitable. The instant case and *Davis* are comparing apples to oranges. In *Davis*, the marital property consisted of over 20 different assets with a net worth of \$402,960.00. In this instant case, there was one marital asset, the mobile home. In awarding that asset to Linda, the trial court considered that any other division of marital property would have made Linda and D'Erra homeless.

In *Davis*, the husband was granted a divorce on the grounds of adultery and received almost all of the assets and custody of his child. The wife was granted only \$20,500, with the husband getting the rest of the \$402,960.00 in assets. In that case, the Supreme Court reversed

because it was clear that the wife had contributed substantially to the marriage and was simply being punished for committing adultery. *Id.* There was no pre-nuptial agreement as in this instant case. *Id.*

In the instant case, Linda's divorce was granted on the grounds of habitual cruel and inhuman treatment. *R.E. 4.* Linda sold her non-marital asset valued at an uncontradicted value of \$15,000.00 for a quick sale price of \$4,000.00. Linda used the \$4,000.00 to buy items of necessity to set up the new mobile home that William wanted them to purchase. *Tr. 43 at 18.*

The Chancellor is required to look at the parties' non marital assets in making his division of marital property. *Hemsley vs. Hemsley*, 639 So.2d (1994). The mobile home awarded to Linda has no equity value as more is owed on the mobile home than it is worth.

"Fairness is the prevailing guideline in marital property division." *Ferguson vs. Ferguson*, 639 So.2d 929 (1994). *R.E. 11.* Prior to Linda and William marrying, Linda owned a mobile home and an acre of land. *R.E. 12.* Linda sold that home and but for the Chancellor's ruling, Linda and D'Erra would have been homeless.

The Chancellor fashioned a remedy in this unusual case that enabled the parties to continue their separate lives as equally and fairly as possible. The Chancellor did not err or commit manifest error in his division of the one marital asset in the marriage which had ZERO equity and requiring Linda and William to each pay one-half of the one marital debt of \$49,000.00 but also giving Linda the credit of \$11,000.00 against her debt.

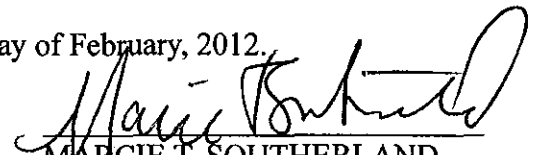
### CONCLUSION

The Chancellor made an equitable division of Linda and William's one and only marital asset, that is, the mobile home and one acre of land purchased during the marriage with a debt of \$49,000.00 and ZERO equity value. The Chancellor considered the prenuptial agreement, found

that William was entitled to keep his Entergy investment account valued at \$108,000.00, his checking account balance of \$10,000.00, his 50 acres in Rankin County. In addition, the Chancellor found that Linda was not entitled to alimony. Requiring William to pay one-half of the mobile home debt and crediting Linda with \$11,000.00 on her one-half of the marital debt was the only fair and equitable result that could have been made in this case.

The Chancellor has discretion in the matters of divorce, property distribution, alimony. Absent an abuse of discretion, the Chancellor's decisions must stand. The Chancellor issued a thorough and complete memorandum opinion and order outlining all relevant facts and conclusions. The decision of the trial court should be affirmed.

RESPECTFULLY SUBMITTED, this the 10 day of February, 2012.

  
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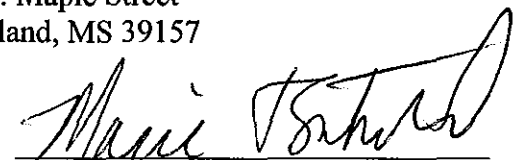
**CERTIFICATE OF SERVICE**

I, Marcie T. Southerland, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Chancellor E. Vincent Davis  
PO Box 494  
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M. Craig Robertson, Esq.  
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So certified this the 10 day of February, 2012.

  
MARCIE T. SOUTHERLAND