

IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM ANTHONY CARTER

APPELLANT

VS.

CAUSE NO. 2011-CA-00463

LINDA McCLURE CARTER

APPELLEE

RT


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CERTIFICATE OF INTERESTED PERSONS

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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. Linda McClure Carter, Appellee
3. Marcie T. Southerland, Esq., Attorney for the Appellee
4. William Anthony Carter, Appellant
5. M. Craig Robertson, Esq., Attorney for the Appellant
6. Jeremy P. McNinch, Esq., Attorney for the Appellant
7. Matthew S. Easterling, Esq., Attorney for the Appellant

  
Matthew S. Easterling, Esq.  
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### **STATEMENT OF THE ISSUES**

1. The trial court committed manifest and mathematical error in awarding the Appellee an \$11,000 credit by considering the sale of the Appellee's separate property in its distribution of the marital estate.
2. The trial court inequitably divided the parties' marital estate by distributing seventy-two percent (72%) of the marital debt and zero percent (0%) of the marital assets to the Appellant.

## **SUMMARY OF THE ARGUMENT**

In reply to the Linda's Brief, William now resubmits that this Honorable Court reverse the trial court's manifest and mathematical error in (1) considering the sale of Linda's separate property by crediting her \$11,000 and (2) inequitably distributing the parties' marital assets and debt based upon that erroneous credit. Due to the trial court's decision to credit Linda \$11,000, William's marital debt was increased to seventy-two percent (72%) while Linda's marital debt decreased to twenty-eight percent (28%). Linda was awarded one hundred percent (100%) of the marital assets through the sole ownership and possession of the marital home and one-acre lot, and William received nothing. Besides the standard of review for this Honorable Court, Linda has submitted no substantive authority which supports or is comparable to her position.

In the interest of equity, this Honorable Court should re-evaluate the trial court's distributions and render a decision to (1) correct the trial court's mathematical error by eliminating the \$11,000 credit to Linda, (2) equitably divide the marital estate and (3) award William the sole ownership and possession of the marital home.

## **ARGUMENT**

### **I. THE TRIAL COURT COMMITTED MANIFEST ERROR IN MISTAKENLY AWARDING THE APPELLEE AN \$11,000 CREDIT FOR THE SALE OF HER OWN SEPARATE PROPERTY.**

The trial court erred by considering the sale of Linda's separate property in its distribution of the parties' marital estate and \$11,000 credit to Linda. Property division is governed by the law articulated in *Hemsley v. Hemsley*, 639 So. 2d 909 (Miss. 1994) and *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994). *Johnson v. Johnson*, 650 So. 2d 1281, 1287 (Miss. 1994). However, assets are not subject to equitable distribution if "it can be shown that such assets are attributable to one of the parties' separate estate *prior to the marriage or outside the marriage.*" *Hemsley*, 639 So. 2d at 914 (emphasis added).

***A. The trial court erred because separate property is not subject to equitable distribution, and the trial court derived the \$11,000 credit from the sale of the Appellee's separate property.***

Before the parties' marriage, Linda used her own funds to purchase a one-acre lot of real estate and a mobile home. (Tr. 83; R.E.35.) According to Linda, her first mobile home was valued at \$15,000, although this value is unknown due to its depreciating nature. (Final J. of Divorce and Other Relief at 8; R.E. 9.) Linda voluntarily sold her mobile home to her neighbor for \$4,000, almost one-third (1/3) of its original value. (Tr. 71-72; R.E. 31-32.) William did not request Linda to sell her property, and he certainly did not request her to sell it for only \$4,000. These assertions by Linda are unfounded. Linda stated, "*I* sold the mobile home because we got a bigger home." (Tr. 43; R.E. 23) (emphasis added). Even the trial court acknowledged Linda was the "sole owner" of the first mobile home as it belonged to her before she married William. (Final J. of Divorce and Other Relief at 11; R.E. 12.)

According to *Hemsley*, Linda's mobile home or its value should not be subject to equitable distribution because it was attributable to Linda's separate estate *prior to the marriage*. 639 So. 2d at 914 (emphasis added). There is no evidence that William ever contributed to the purchase of Linda's \$15,000 mobile home or that he had acquired it as marital property. Thus, Linda's mobile home remained her separate property. The parties purchased a second mobile home for approximately \$55,000. (Tr. 128; R.E. 40.) The \$4,000 proceeds from Linda's first mobile home were used to buy furnishings for their new mobile home. (Tr. 43; R.E. 23.) The trial court found the parties' mobile home and one-acre lot were their only marital assets but awarded Linda sole ownership and possession of them. (Final J. of Divorce and Other Relief at 12; R.E. 13.) The debt remaining between the parties included \$49,000 for the mobile home. (Final J. of Divorce and Other Relief at 12; R.E. 13.) Once the debt was divided between the parties, the trial court granted

Linda a financial credit of \$15,000 for Linda's first mobile home that she had voluntarily sold at the beginning of the parties marriage. (Final J. of Divorce and Other Relief at 11-12; R.E. 13-14.)

The trial court amended its Judgment by lowering Linda's \$15,000 credit to \$11,000, thereby allocating seventy-two percent (72%) of the marital debt to William and only twenty-eight (28%) of the marital debt to Linda. (Order Am. Final J. of Divorce and Other Relief ¶ 6; R.E. 18-19.) The trial court did not give Linda this credit because she "lost her separate asset" or had to "quickly sell" her mobile home as Linda claims in her Brief. See Brief of Appellee at 3-4. These assertions by Linda are completely absent from the Record.

Instead, the trial court admits Linda's former mobile home and land were her separate property, but mistakenly found she "traded [her mobile home and land] for marital debt" when she sold it." (Order Am. Final J. of Divorce and Other Relief ¶ 4; R.E. 18.) However, Linda voluntarily sold her mobile home for \$4,000, which is far less than \$15,000. See Final J. of Divorce and Other Relief at 8; R.E. 18. Linda commingled these proceeds with the marital estate by using the proceeds to furnish the new mobile home. Therefore, the \$4,000 would be subjected to equitable distribution since both parties contributed to purchasing the second mobile home.

As a result of the trial court's erroneous consideration of the sale of Linda's separate property in its credit to Linda, it expanded William's marital debt to seventy-two percent (72%) and decreased Linda's marital debt to twenty-eight percent (28%). The trial court has essentially given Linda a second bite of the apple. Linda sold her original mobile home over fifteen years ago and received \$4,000 in consideration. Keeping in mind that *fairness* is the prevailing guideline in marital property division under *Ferguson*, William should not be burdened by the decisions Linda made regarding her separate property. 639 So. 2d at 929. It was manifest error for the trial court to consider the sale of Linda's separate property when distributing the marital estate and, therefore, Linda should not receive an \$11,000 credit.

***B. In the alternative, even if the sale of Linda's separate property is considered, the trial court made a mathematical error in awarding the Appellee an \$11,000 credit.***

Essentially, the trial court made a mathematical error in awarding Linda an \$11,000 credit. As discussed above, the trial court considered the sale of Linda's separate property when determining the credit and thus, has mistakenly overvalued the marital estate. It failed to see that only \$4,000 was put back into the marital estate, not \$11,000. Linda claims William would be unjustly enriched if the trial court had not considered Linda's contribution. However, both parties benefitted from the furnishings bought with the \$4,000. If anyone has been unjustly enriched, it is Linda as she continues to benefit the \$4,000 proceeds while living in the home.

The trial court's mathematical error requires William to pay \$11,000 for property that was clearly classified by the trial court as Linda's separate property and property he never enjoyed. Essentially, the trial court overvalued the parties' marital estate using a value from fifteen years ago. Therefore, even if this Honorable Court finds the trial court correctly considered the sale of Linda's property in its distribution, it should reverse and render to eliminate Linda's \$11,000 credit due to the trial court's mathematical discrepancy.

**II. THE TRIAL COURT INEQUITABLY DISTRIBUTED THE PARTIES' MARITAL ASSETS AND DEBT BY AWARDING ONE-HUNDRED PERCENT (100%) OF THE MARITAL ASSETS AND TWENTY-EIGHT PERCENT (28%) OF THE MARITAL DEBT TO THE APPELLEE.**

The trial court grossly and disproportionally distributed the marital property accumulated by William and Linda jointly to only Linda; thus, this Honorable Court should reverse. "In the final analysis, all awards should be considered together to determine that they are equitable and fair." *Ferguson*, 639 So. 2d at 629.

While Linda provides no substantive authority to support her position, William contends that *Davis v. Davis* is analogous to the instant case. 638 So. 2d 1288 (Miss. 1994). The Mississippi Supreme Court found inequitable distribution of marital property and reversed and remanded the lower court's decision. *Id.* at 1293-94. It found the chancellor had "ignored or



undervalued” a spouse’s contribution when dividing the parties’ marital property. *Id.* at 1293. The net worth of either spouse and the grounds for divorce that Linda points to in *Davis* are immaterial. The fact that one spouse was awarded ninety-five percent (95%) of the marital assets while the other received five percent (5%) of the marital assets created the inequitable distribution in *Davis*. This grave disparity was indeed inequitable to the Mississippi Supreme Court then, and the trial court’s distribution of William and Linda’s property presents an even larger disparity now. Linda received one-hundred percent (100%) of the marital assets (both the marital home and one-acre lot) and only twenty-eight percent (28%) of the marital debt, while William received zero percent (0%) of the marital assets and seventy-two percent (72%) of the marital debt.

The trial court’s decision does not “enable the parties to continue their separate lives as equally and fairly as possible” as Linda declares to this Honorable Court. While a 50/50 split of the parties’ assets may not be warranted, Linda receiving one hundred percent (100%) of the parties’ marital assets is against fundamental fairness, especially in light of William’s greater financial contributions to the acquisition of the marital home and co-ownership of the property for which it sits upon. For the next ten (10) years, William will make payments on marital debt associated with marital assets that he did not receive and will not enjoy. This financial burden will prevent him from obtaining any other financing to secure another residence. Instead, Linda will enjoy the home and will live there cost free for the next ten (10) years. Linda is essentially receiving a double benefit through the trial court’s property distribution.

Additionally, the trial court seemed to rely largely on William’s separate estate when making its distribution. *See* Order Am. Final J. of Divorce and Other Relief ¶ 7; R.E. 20-21. However, William’s property could not be accurately valued. *See* Order Am. Final J. of Divorce and Other Relief ¶ 7; R.E. 20-21. Courts are to consider the separate estate of each spouse when

dividing marital assets according to the fifth *Ferguson* factor, but may not solely rely on the separate estate in its distribution.

The trial court's decision was wholly inequitable by distributing one-hundred percent (100%) of the marital assets and only twenty-eight percent (28%) of the marital debt to Linda while distributing zero percent (0%) of the marital assets and seventy-two percent (72%) of the marital debt to William. Therefore, this Honorable Court should reverse and render to equitably divide the marital estate.

### CONCLUSION

In the interest of equity, we submit that this Honorable Court reverse the trial court's decision and re-evaluate its distributions by rendering a decision to (1) correct the trial court's manifest and mathematical error by eliminating the \$11,000 credit to Linda, (2) equitably divide the marital assets and debts to Linda and William, and (3) award William the sole ownership and possession of the marital home.

Respectfully submitted, the 21<sup>ST</sup> day of February, 2012.

By:



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**CERTIFICATE OF SERVICE**

I certify that I mailed a true and correct copy of the above and foregoing, via First Class

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So certified, this the 21<sup>ST</sup> day of February, 2012.

  
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