

IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM ANTHONY CARTER

APPELLANT

VS.

CAUSE NO. 2011-CA-00463

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. 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
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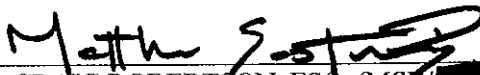

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ATTORNEYS FOR APPELLANT

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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.

STATEMENT OF THE CASE

I. PROCEDURAL POSTURE

This Brief is set forth by the Appellant, William Anthony Carter (“William”), after the timely filing of his Notice of Appeal on March 30, 2011 against the Appellee, Linda McClure Carter (“Linda”). This Brief stems from the September 14, 2011, Final Judgment of Divorce and Other Relief entered by the Chancery Court of Claiborne County, Mississippi, (Final J. of Divorce and Other Relief, *Carter v. Carter*, Cause No.2010-0037GN; R.E. 2-16)¹ and from the Order Amending Final Judgment of Divorce and Other Relief (Order Am. Final J. of Divorce and Other Relief, *Carter v. Carter*, Cause No.2010-0037GN; R.E. 17-21) on the March 2, 2011.

II. STATEMENT OF FACTS

William and Linda were married on June 21, 1997. (Trial Tr. vol. 1, 34, Sept. 2, 2010; R.E. 22.) Linda had one daughter at the time of the marriage, Audrey Thompson (“Audrey”), and together, the parties had one daughter, D’Erra Carter (“D’Erra”) on March 15, 1995. (Tr. 87, 93; R.E.) The family lived together in a mobile home located on a one-acre lot in Claiborne County, Mississippi.

William served in the military for six years before being hired as an engineer at Entergy. (Tr. 106; R.E. 38.) Between 1997 and 1998, William was regrettably diagnosed with a mental condition which left him disabled and unable to continue his performance at Entergy. (Tr. 107; R.E. 39.) As a result, he receives \$2,195.40 a month in Social Security Disability payments, and Linda receives an additional \$1,097.00 a month in Social Security for D’Erra. (Tr. 75; R.E. 33.) Yet, Linda does not exclusively use this money for D’Erra. (Tr. 76; R.E. 34.) She has used it to pay utilities bills. (Tr. 76; R.E. 34.) Although Linda has a certificate in Social Work and an Associate’s

¹ The grounds for divorce, child custody and support, private school tuition, alimony, and attorneys’ fees were also determined in the Final Judgment of Divorce and Other Relief but are sufficient for both parties and not at issue in the Appellee’s Brief.

Degree in general studies, she sells clothing and accessories and hosts a local ministry. (Tr. 45-46, 51; R.E. 24-25, 27.) She receives approximately \$800 a month from these ventures. (Tr. 48; R.E. 26.)

Prior to their marriage, William and Linda signed a valid and binding Premarital Agreement ("Agreement") (See Tr., vol. 1, Ex. 3, Sept. 2, 2010; R.E. 51-67.) Under the Agreement, any separate property of the parties remained separate and could not become marital property. (Final J. of Divorce and Other Relief at 8; R.E. 9.) Linda's separate estate included a one-acre lot of real estate located in Claiborne County, Mississippi, and a mobile home located on the land. (Tr. 83; R.E. 35.) The trial court valued Linda's land at \$9,000. (Order Am. Final J. of Divorce and Other Relief ¶ 5; R.E.18.) Linda's mobile home was valued at \$15,000. (Final J. of Divorce and Other Relief at 8; R.E. 35.) William's separate estate included property for which there was no offer of value. (Order Am. Final J. of Divorce and Other Relief ¶ 7; R.E. 20.) William also had an Entergy retirement account that remained separate property. (Tr. 55; R.E. 28.)

Once married, Linda and William agreed to live in Claiborne County because it was closer to their work and Linda "felt better." (Tr. 68; R.E. 29.) However, Linda voluntarily sold her mobile home for \$4,000 to her neighbor. (Tr. 71-72; R.E. 31-32.) William and Linda then 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.) Additionally, Linda added William to the deed of the one-acre lot where their new mobile home was located, thereby establishing their entire marital property. (Final J. of Divorce and Other Relief at 8; R.E. 35.) William made payments toward the home's mortgage and insurance while Linda paid the utility bills. (Tr. 70; R.E. 30.) William also paid the taxes on the mobile home except for one year. (Tr. 70; R.E. 30.)

Linda filed a Complaint for Divorce and Motion for Temporary Relief on February 22, 2010. (Final J. of Divorce and Other Relief at 1; R.E. 2.) The Claiborne County Chancery Court held trial proceedings, and the Honorable E. Vincent Davis presided. (See Trial Tr. vol. 1, 1- 28, Mar. 9, 2010; Trial Tr. vol. 1, 29-187, Sept. 2, 2010.) Both parties entered their Rule 8.05 Financial Statements as exhibits. (See Tr. vol. 1, Ex. 1, 4, Sept. 2, 2010; R.E. 41-50, 68-76.) Following these proceedings, the trial court delivered its Judgment. It 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.)

However, the trial court made William pay for this credit by expanding William's marital debt to eighty-one percent (81%) and decreasing Linda's marital debt to nineteen percent (19%). (Final J. of Divorce and Other Relief at 12; R.E. 13.) After retaining new counsel, William filed a Motion to Reconsider on September 24, 2010. (Order Am. Final J. of Divorce and Other Relief ¶ 3; R.E.18.) The trial court held a preliminary hearing on the motion on December 9, 2010, and the parties' counsel presented oral arguments. (See Trial Tr. vol. 1, 187-207, Dec. 9, 2010.) The trial court amended its previous 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.)

SUMMARY OF THE ARGUMENT

William now comes before this Honorable Court and prays that it 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. 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). First, a court must determine whether or not the property is a marital or non-marital asset pursuant to *Hemsley*. Then, *Ferguson* sets forth the following guidelines for courts to consider when dividing property characterized as marital:

1) 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 the emotional value of the 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; and, 8) Any other factor which in equity should be considered.

Id. at 928.

However, marital property must also be valued before a court may consider these factors. *Id.* at 929. The trial court overlooked this step. The trial court quoted *Ferguson* and declared, "[f]airness is the prevailing guideline in marital property division." *Id.*; see Final J. of Divorce

and Other Relief at 15. However, its judgment does not reflect this declaration. 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%). Additionally, Linda was awarded one hundred percent (100%) of the marital assets through the sole ownership and possession of the marital home and lot, and William received nothing.

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. STANDARD OF REVIEW

The standard of review for domestic relations matters is reviewed de novo. *Chesney v. Chesney*, 910 So. 2d 1057, 1060 (Miss. 2005). A chancellor's "division and distribution will be upheld if it is supported by substantial credible evidence." *Owen v. Owen*, 928 So. 2d 156, 160 (Miss. 2006). "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." *Id.*

II. 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. Marital property is any and all property acquired or accumulated during the marriage and subject to equitable distribution. *Hemsely*, 639 So. 2d at 915. 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." *King v. King*, 760 So. 2d 830, 836 (Miss. Ct. App. 2000).

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.

The trial court originally awarded Linda a \$15,000 credit in its Final Judgment of Divorce and Other Relief. (Final J. of Divorce and Other Relief at 11-12; R.E. 12-13.) Although the trial court amended this amount in its Order Amending Final Judgment and Other Relief by awarding Linda an \$11,000 credit instead, its decision is still erroneous because it was based upon the sale of Linda's separate property. 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).

In *Common v. Common*, the Mississippi Supreme Court found that the lower court erred in characterizing marital property. 42 So. 3d 59, 62 (2010). Although no harm was committed by the court's incorrect classification, it found no evidence that the husband had contributed to the purchase of the property or that he had acquired it as marital property. *Id.*

Moreover, in *Thweatt v. Thweatt*, the Mississippi Court of Appeals held that the home purchased by the wife with non-marital funds prior to remarriage made the home non-marital property. 4 So. 3d 1085, 1090 (2009). Before the parties' remarriage, the wife had been the sole possessor of the property. *Id.* Thus, the court found the husband had no claim to any of the proceeds from the home and land when they were sold and the home had not been commingled into a marital asset. *Id.*

In *Dobbs v. Dobbs*, one spouse exclusively paid the down payment for a home that became the marital home four years after the purchase. 912 So. 2d 491, 492 (Miss. Ct. App. 2005). Once married, the parties lived in the same home for twenty-two years, and both made significant contributions to the home. *Id.* The spouse who originally purchased the home argued that he should have received credit for his down payment. However, the *Dobbs* court affirmed the lower court's classification of the home as a marital asset due to the parties' contributions. *Id.* Therefore, it awarded no credit for the down payment to the purchasing spouse. *Id.*

Before the parties' marriage in the instant case, Linda used her own funds to purchase a one-acre lot of real estate and a mobile home. (Tr. 83; R.E.35.) This mobile home was valued at \$15,000 by the trial court. (Final J. of Divorce and Other Relief at 8; R.E. 9.) Once married, Linda voluntarily sold her mobile home for \$4,000, not \$15,000. (Tr. 71-72; R.E. 31-32.) Together, the parties purchased a second mobile home. (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.)

Linda also added William to the deed of the one-acre lot where their new mobile home was located. (Final J. of Divorce and Other Relief at 8; R.E. 9.)

Linda's first mobile home was her separate property. Just as the *Thweatt* court noted and the trial court itself pointed out, Linda was the "sole owner" of the first mobile home. (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). The parties' Premarital Agreement supports this position. Under the Agreement, "separate property of the parties shall remain separate and not become marital property." (Agreement at 2, R.E. 52.) As the courts in *Common* and *Dobbs* found, 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. William was not even added to the deed of the one-acre lot until the second mobile home was purchased. Thus, Linda's mobile home remained her separate property.

Although the trial court admits Linda's former mobile home and land were separate property, it mistakenly found Linda "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.) Linda voluntarily sold her mobile home for \$4,000, which is inconsistent with her valuation of the mobile home and far less than \$15,000. *See* Final J. of Divorce and Other Relief at 8; R.E. 18. The \$4,000 proceeds used from the sale of her mobile home is the only amount that could possibly be considered as a credit to Linda. However, Linda commingled these proceeds with the marital estate by using the proceeds to furnish the new mobile home. Additionally, the trial court awarded Linda sole ownership of the home and Linda will keep those furnishings. Therefore, the \$4,000 would not be credited to Linda and would be subjected to equitable distribution since both parties contributed to purchasing the second mobile home, as seen in *Dobbs*. Unlike the court in *Common*, William has been harmed by

the trial court's erroneous consideration of the sale of Linda's separate property in its credit to Linda. The trial court 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. Despite her valuation, her first mobile home's value is unknown due to its depreciating nature and any amount most certainly should not have been a factor in the court's distribution. 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.

The Mississippi Court of Appeals faced a valuation mistake in *Redd v. Redd*. 774 So. 2d 492, 495 (2000) *affirmed on other grounds*. The marital asset values adopted in the lower court's judgment did not correctly add up to the total value of the marital estate. *Id.* In fact, the court found the lower court's discrepancy exceeded \$400,000. *Id.* Thus, it held the lower court had committed manifest error and reversed and remanded the case. *Id.* at 496. The court further instructed the lower court to reconsider the distribution of marital assets to the other spouse in light of the valuation error. *Id.* On remand, the lower court reasoned the undervaluation was a "mathematical error in tallying the various assets that constituted the marital estate." *Redd v. Redd*, 828 So. 2d 1273, 1276 (Miss. Ct. App. 2002).

Here, the trial court has incorrectly overvalued the parties' marital estate for a second time. The trial court admitted its original mistake after awarding Linda \$15,000 credit. (Order Am. Final J. of Divorce and Other Relief ¶ 6; R.E. 18-19.) Following William's Motion to Reconsider, the trial court reduced said credit to \$11,000 in an attempt to correct its mistake. (Order Am. Final J. of Divorce and Other Relief ¶ 6; R.E. 19.) It reasoned that Linda had received \$4,000 from selling her mobile home. (Order Am. Final J. of Divorce and Other Relief ¶ 6; R.E. 19.) Although it is true Linda received \$4000, the trial court failed to correct its mistake. There continues to be a discrepancy in the values as seen in *Redd*. The trial court failed to see that only \$4,000 was put back into the marital estate, not \$11,000. Further, both parties benefitted from the furnishings bought with the \$4,000, and Linda continues to benefit from them 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. Most importantly, the value of the mobile home would have depreciated over time. 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.

III. 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 interest of equity, a chancellor has authority to order an equitable division of property "accumulated through joint contributions and efforts of the parties" even though either spouse is

not automatically entitled to an equal division of jointly accumulated property. *Ferguson*, 639 So. 2d at 934. “Equitable division is the fair determination of the division of marital property based on both spouses’ contributions during the marriage.” *Tate v. Tate*, 875 So. 2d 257, 261 (Miss. Ct. App. 2004) (emphasis added). “In the final analysis, all awards should be considered together to determine that they are equitable and fair.” *Ferguson*, 639 So. 2d at 629.

The Mississippi Supreme Court found inequitable distribution of marital property in *Davis v. Davis*. 638 So. 2d 1288, 1294 (Miss. 1994). Of the \$400,000 total in marital assets, the husband was awarded \$380,000 while the wife was only awarded \$20,000. *Id.* at 1293. However, the court found that the husband’s wife of eleven years had made “financial and in-kind contributions” to the marital property and “equity demand[ed] that she receive her just share” *Id.* (quoting *Lenoir v. Lenoir*, 611 So. 2d. 200, 204 (Miss. 1992)). Therefore, the court held the chancellor had “ignored or undervalued” the wife’s contribution when dividing the parties’ marital property and reversed and remanded the lower court’s decision. *Id.*

The Mississippi Supreme Court in *Brooks v. Brooks* held an award of more than half of all marital assets, including the parties’ marital home and its contents, periodic alimony and litigation costs was inequitable. 652 So. 2d 1113, 1124 (Miss. 1994). It found the lower court’s decision resulted in a “burden” upon the other spouse and “yielded a wholly inequitable result,” and therefore, not equitable or fair. *Id.* at 1124-25.

Faced with a close percentage distribution (60% and 40%), the Mississippi Supreme Court reversed and remanded the lower court’s decision in *Owen v. Owen*. 928 So. 2d 156, 169 (Miss. 2006) (*Owen II*). The lower court originally focused on just one Ferguson factor – financial contribution. *Owen II* at 169; see *Owen v. Owen*, 798 So. 2d 394 (Miss. 2001) (*Owen I*). It found that one spouse had worked sporadically while the other had been the “primary financial contributor to the assets of marriage and that he should receive a greater percentage of

any distribution of the marital assets.” *Owen II* at 158, *Owen I* at 397. Even after the lower court had an opportunity to apply all the relevant Ferguson factors, the court found the lower court failed to provide any explanations for its 60/40 distribution decision. *Owen II* at 169.

In *Davis*, one spouse was awarded ninety-five percent (95%) of the marital assets while the other received five percent (5%) of the marital assets. 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.

Throughout their fifteen (15) year marriage, William and Linda both made financial and in-kind contributions to their property. However, William’s contribution was extremely significant in comparison to Linda’s contribution. William paid the home’s mortgage and insurance payments. (Tr. 70; R.E. 30.) William also paid the taxes on the mobile home except for one year. (Tr. 70; R.E. 30.) Linda was only responsible for the utility bills. (Tr. 70; R.E. 30.) Just as the court noted in *Davis*, equity demands William receive his “just share” after making significant contributions to the marital home. 638 So. 2d at 1293. Additionally, both parties own the property where the marital home is located. Linda transferred William’s name to the deed when they purchased the new mobile home. (Final J. of Divorce and Other Relief at 8; R.E. 9.) 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.

Similar to *Brooks*, the trial court's distribution of seventy-two percent (72%) of marital debt to William and twenty-eight percent (28%) of debt to Linda is an unfair burden upon William. 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.

Even with a close percentage distribution like in *Owen*, the Mississippi Supreme Court found it inequitable after the lower court focused heavily on one *Ferguson* factor. *Owen II* at 158. Similarly, 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. William's financial accounts are the direct result of working for fifteen (15) years at Entergy up until the time he was diagnosed with his mental condition. He has worked hard to save his earnings and due to his mental condition he is unable to maintain employment. The trial court's distribution of debt jeopardizes his financial support in a time that William needs it the most. 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.

Furthermore, "in the final analysis, all awards should be considered together to determine that they are equitable and fair." *Ferguson*, 639 So. 2d at 629. The *Brooks* court considered other awards received by the parties. *Id.* at 1124-25. Although the trial court in the present case considered other awards before making its distribution, we submit that the Social Security Disability payments of \$1,097.00 Linda receives a month for D'Erra's expenses should have also

been considered in its distribution. (Tr. 75; R.E. 33.) Linda does not exclusively use this money for D'Erra. (Tr. 76; R.E. 34.) She has used it to pay utilities bills in the past. (Tr. 76; R.E. 34) Although Linda has an \$800 a month income, she also listed these payments on her 8.05 Financial 8.05 Declaration. See Exhibit 2, Linda Carter's Financial Statement "Exhibit A," Form 8.05; R.E. 42.




The trial court "yielded a wholly inequitable result" 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. *Brooks*, 652 So. 2d at 1125. 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 5th day of November, 2011.

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
U.S. Mail, postage prepaid, to the following:

Honorable E. Vincent Davis
P.O. Box 494
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Marcie T. Southerland, Esq.
1200 Grove Street
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So certified, this the 7th day of November, 2011.


MATTHEW S. EASTERLING, ESQ.