

SUPREME COURT AND COURT OF APPEALS
STATE OF MISSISSIPPI

NO. 2013-CA-01631

DRAKE L. LEWIS, APPELLANT

VERSUS

TONIA D. LEWIS, APPELLEE

APPEAL FROM

The Chancery Court of Harrison County, Mississippi
First Judicial District

Honorable Carter Bise, Presiding Trial Judge

APPELLANT'S REPLY BRIEF

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REPLY BRIEF

Drake Lewis, the Appellant, stands by the arguments in his brief to this court, and would reply only briefly to Appellee's argument.

LEGACY VALUATION AND EQUITABLE DISTRIBUTION

First, Drake Lewis is unclear why the Appellee Pagel and trial court, insist on referring to tax returns that both the Court of Appeals and the Mississippi Supreme Court have indicated are not to be used in the determination of a Legacy value. This is error that permeates all facets of this case.

As our appellate courts have stated, a company's tax return gross receipts has no intrinsic bearing on the value of a business. Although Pagel bangs on the tax return drum, those documents as explained by the CPA Dori Triplett, clearly show that that Legacy had no substantial assets. In fact, they clearly show that Tonia presented a patently false explanation of Legacy value and, in the current case on remand—perhaps most important-, Tonia offered no evidence of Legacy assets and made no claim that Legacy owned any assets. Therefore, the only attempt to establish any value in Legacy is by the trial court in its order on remand and the Appellee in its brief before this Court, neither of which follow the orders of this Court and the Mississippi Supreme Court on the issue. Yet, when we follow the clear dictates of this court and the Mississippi Supreme Court, the conclusion

can only be that Legacy has no value, which is consistent with Drake's assertion in the 2007 trial.

Thus, the permeating error is the false and inflated valuation of Pagel, accepted by the trial court's original order of divorce, that the couple had in excess of 2.6 million dollars of marital assets, to which it applied the *Ferguson* and *Armstrong* factors. As should be obvious now, the court was in error on the valuation and marital status of several properties. The court's errors left the actual marital assets between 1 and 1.2 million dollars after deducting the value of legacy, non-marital assets, and non-existing assets.¹ The reduction of marital assets, well below one-half of the amount originally found by the court, has a devastating effect on the court's original *Ferguson* and *Armstrong* analysis, making it impossible for it to apply to the actual marital estate as it existed.

As the Mississippi gulf coast well knows after Hurricane Katrina, when a structure is gutted by devastation it requires that it be completely rebuilt, usually starting from the foundation. The Appellee suggests that by adopting its original 2008 erroneous order the trial court intends to apply its original *Ferguson* and *Armstrong* factors to the distribution. If true, then the trial court on remand has attempted to place some paint on the sparse remaining skeletal structure of its original order and tossed the appellants the keys for permanent occupancy. The only way to obtain an equitable distribution is to re-evaluate the entire marital estate according to the laws of Mississippi, instead of picking and choosing what errors to compensate for and what prior orders to adopt or what errors and orders to ignore. And, a fair, accurate, equitable distribution is all Drake Lewis wants.

¹ Appellant Drake Lewis must also note that the court failed to indicate a finding of the total value of the marital estate in its remand order.

INCOME AND CHILD SUPPORT

Similar to the Appellee Pagel obfuscating of assets, she also confused the issue of income and child support. Drake appealed the finding of the trial court assessing him income due to the reduction of a loan asset, resulting in child support of \$1,606.00 monthly due to a finding of net income of \$7,300.00 monthly. This court affirmed the trial court's use of the loan to Legacy asset as income but recognized, in its footnote "2", that child support would need to be adjusted once this asset was depleted. Unbeknownst to this Court, Legacy Holdings Inc. had already been closed at the time of its order, due to the nationwide housing crash, and Drake was not able to continue to deplete his then non-existing asset. Thus the original child support carried on through this court, despite attempts to change it. Appellant Drake Lewis urges the court to review the child support, the acts of the Appellee after court, and the attempts of Drake Lewis to correct the support issue.

CONCLUSION

Appellant Drake Lewis would reiterate those request from the original Appellant's Brief.. The appellant prays that this court rule on the issues presented as all evidence necessary for the determination of equity is before the court. The parties have been separated since 2006 and have waited well over 6 years since the judgment of divorce for this matter's proper conclusion.

RESPECTFULLY SUBMITTED, this the 25th day of August, 2014.

DRAKE LEWIS, APPELLANT

BY: /s/ THOMAS WRIGHT TEEL

THOMAS WRIGHT TEEL

CERTIFICATE OF SERVICE

I, Thomas W. Teel, Attorney for the Defendant/Appellant, do hereby certify that I have on this date filed this Brief of the Appellant with the Clerk of this Court, and have served a copy of same via MEC filing to the Honorable Carter Bise, Chancellor, Harrison County Chancery Court and Dean Holleman, Esquire, Boyce Holleman & Associates, Attorney for the Plaintiff/Appellee.

So certified this the 25th day of August, 2014.

/s/ THOMAS WRIGHT TEEL
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CERTIFICATE OF SERVICE

I, Thomas W. Teel, Attorney for the Defendant/Appellant, do hereby certify that I have on this date filed this Brief of the Appellant with the Clerk of this Court, and have served a copy of same via hand-delivery to the Honorable Carter Bise, Chancellor, Harrison County Chancery Court, 1801 23rd Avenue, Gulfport, Mississippi 39501 and to Dean Holleman, Boyce Holleman and Associates, 1720 23rd Avenue, Gulfport, Mississippi, Attorney for Appellee.

So certified this the 25th day of August, 2014.

/s/ THOMAS WRIGHT TEEL
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