IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES CRAIG PALCULICT — APPELLANT

VS. — NO. 2007-CA-01954

LUCIANA GASCON CURTIS-PALCULICT — APPELLEE

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

APPEAL FROM THE CHANCERY COURT
OF DESOTO COUNTY, MISSISSIPPI

Mrs. LuciAna G. Curtis-Palculict,
Appellee, Pro-Se of Record

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES CRAIG PALCULICT	APPELLANT
VS.	NO. 2007-CA-01954
LUCIANA GASCON CURTIS-PALCULICT	APPELLEE

CERTIFICATE OF INTERESTED PERSONS

I, the Appellee, the undersigned *Pro-Se* of record, certify that the following listed persons have an interest in the outcome of this case. These representations are made so that the Judges of this Court may evaluate, itemize, and apply all the qualifications of the facts in this case to each of the factors set forth.

1. LuciAna Gascon Curtis-Palculict, the Plaintiff and Appellee
2. H. R. Garner, Garner & Garner Attorneys at Law, Hernando, MS, trial counsel for LuciAna Gascon Curtis-Palculict.
3. L. Anne Jackson, Meacham & Jackson, Attorneys at Law, Southaven and Hernando, MS, trial counsel for LuciAna Gascon Curtis-Palculict.
4. James Craig Palculict, the Defendant and Appellant.
5. Lee Ann S. Turner, Winfield & Wolfe, P.A., Starkville, MS, appellate counsel for James Craig Palculict.
6. Jay Westfaul, The Westfaul Law Firm, LLC, Oxford, MS, trial counsel for James Craig Palculict.
7. Chancellor Mitchell M. Lundy, Jr., the Trial Judge.

_____

LuciAna Gascon Curtis-Palculict, Appellee, Pro-Se

STATEMENT REGARDING ORAL ARGUMENT

The Appellee does not request oral argument. However, I, the Appellee of record, LuciAna Gascon Curtis-Palculict, *Pro- Se*, will make myself available if the Court desires to hear oral argument on of the issues in this appeal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

APPELLEE'S STATEMENT OF THE ISSUES

I. THE CHANCELLOR ORDERED, ADJUDGED AND DECREED BY THE COURT GRANTING THE APPELLANT AND I, THE APPELLEE A DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES FILED SEPTEMBER 17, 2007.

A. THE PARTIES FOLLOWED THE STATUTORY REQUIREMENTS FOR ENTERING INTO A CONSENT AGREEMENT.

B. THE CHANCELLOR REACHED HIS STATUTORY AUTHORITY BY ADJUDICATING ISSUES WITH MUTUAL WRITTEN CONSENT.

C. THE CONTESTS AND DENIALS TO AN IRRECONCILABLE DIFFERENCES DIVORCE WERE DRAWN AND AN ORDER WAS ENTERED DENYING SUCH WITHDRAWAL.

D. THE TAX CONSEQUENCES OF THE SPOUSAL SUPPORT ORDER CLAIMING THE CHILD AS A DEPENDENCY, EXEMPTION OF STATE & FEDERAL INCOME TAX RETURNS, WOULD BE OF A TAX ADVANTAGE FOR APPELLANT AND PUT I, THE APPELLEE, AT A SEVERE FINANCIAL DISADVANTAGE.

E. THE CHANCELLOR ERRED ON GROUNDS OF IRRECONCILABLE DIFFERENCES WIITH EMPHASIS ON CRUEL AND INHUMANE TREATMENT.

F. THE CHANCELLOR HAS ERRED IN THE APPELLANT'S WILLFUL ABANDOMENT OF THE APPELLEE BY HIS REFUSAL TO HELP SUPPORT THE MINOR CHILD. WHEREFORE, THE APPELLEE'S ENTITLEMENT TO SEPARATE MAINTENANCE IS FOR A MONETARY AMOUNT AND SHOULD HAVE BEEN INCLUDED IN ADDITIONAL ATTORNEY FEES, ETC.

II. THE CHANCELLOR APPROPRIATELY USED HIS DISCRETION AND APPLIED ALL LEGAL STANDARDS IN HIS EQUITABLE DIVISION AND FINANCIAL AWARDS.

A. EQUITABLE DISTRIBUTION

B. LUMP SUM ALIMONY

C. PERMANENT ALIMONY

D. MEDICAL & DENTAL INSURANCE / REHABILITATIVE ALIMONY

E. CHILD SUPPORT

III. THE CHANCELLOR APPROPRIATELY AWARDED LEGAL CUSTODY

INTRODUCTION

This matter involves the divorce of I, the Appellee, LUCIANA GASCON CURTIS-PALCULICT, *Pro-Se,* victim of domestic violence, and the abuser, JAMES CRAIG PALCULICT, the Appellant, who separated upon initial restraining order (TRO), January 25, 2006, was placed in a shelter with our son (the minor child) for safety, after ten plus years of being together in a domestic violent marriage, after the Appellant was confronted for his involvement in extramarital affairs on and off through our entire marriage. Even through those infidelities, (we) the parties have a son who was ten when the judgment of divorce on September 17, 2007, was entered.

The Appellant admitted, boasting to the Appellee he had moved prior to the initial TRO and legal separation, to an apartment in Jackson, Mississippi, stating he moved away so that the Appellee couldn't see him with his mistress(s), (a nurse consultant who was at the time a co-worker and employee of Beverly Healthcare), in question and know what they were doing or having to worry about what people we knew were to think of this unacceptable behavior in front of the minor child. At that time, the Appellee, devoted wife, and loving mother, filed for divorce of irreconcilable differences on grounds of habitual domestic violence, verbal, emotional & mental abuse, so cruel and inhumane treatment, fits of raging anger and tyrant-controlling/bullying, and unacceptable behavior by the Appellant.

The minor child witnessed this upon secretly exiting his bedroom, seeking his mother, to see for himself if she was not injured. (Minor child had stated to the Appellee he heard all the screaming, cursing profanities, including the hitting & kicking that the Appellant did). The minor child stated to Appellee that he was afraid his father might hurt her, his mother, which the minor child expressed extreme fear and situational depression. At this time in the marriage, minor child and Appellee were conditioned and learned not to say anything whenever asked a

question, unless in agreement with Appellant. The Appellant got to the point of where he would make suggestion(s) and if one of us did not agree, he would manipulate the situation so that he would always get what he wanted. The Appellee and minor child never questioned his choices or knew would suffer a berate consequence.

During the entire marriage, the Appellant had to travel for work, but he never would complete any of the necessary paperwork to process his job relocation moves, so that they could receive entire reimbursement allowed for our out-of pocket expenses. Also, the fact that the Appellant refused to communicate to the Appellee whenever he used his debit/credit cards, made her question and the banks question frequently all of the non-sufficient funds, overdraft fees, and especially all of the credit cards over-the-limit charges & fees, and causing our below credit rating and poor FICA Credit History Score. This would put the Appellee behind, blind trying to figure out where the monies were being spent which ultimately caused them to live beyond the budget she had been managing and beyond their financial means. Of course the Appellee was ultimately blamed for these errors with their finances and punished with severe consequences of verbal abuse, intimidation during fits of rage, bullying, and especially, most hurtful, alienation of affection.

In the midst of all this chaos and stress the Appellee was diagnosed with breast cancer in June 2003, (currently in remission). During their entire marriage she was gainfully employed as a domestic engineer per the Appellant, quoting him: *"that's your job, to take care of us and our household!"*... The Appellant lied to her when he manipulated and convinced her to sell the Appellee's Colorado home and moved the family to his state of Arkansas in September 1999, on the pretense that they as a family would be closer and continue to be involved with his two daughters from his previous marriage. But instead when asked to have contact with his two daughters, the Appellant would resist any of the Appellee's encouragement to have any contact

with his two daughters and get very upset and angry at her, blaming the Appellee for everything that went wrong with his daughters, including their finances during this time. The Appellee had to use her inheritance to support our family while the Appellant, soon after they arrived in Arkansas, was accepted as a long-term healthcare trainee (because of his military medic-nursing background), and worked in the office manager-in-training program, with Beverly Healthcare, Inc. The Appellant also went to school to get his long term care license, then was offered a director's position in 2001, which he accepted and continued his training through the long term care corporation, and finally was promoted to director of operations, in 2004. Meanwhile the Apellee provided the monies from her home estate sale in Colorado, along with her family's inheritance, upon Appellee's mother's expiration back in November 1996, to live on while the Appellant was training and going to school.

The Appellee also worked part-time/full-time outside the home before the marriage and during their entire marriage so that the Appellant could continue his education in his career field. With exception to the thirteen moves for the Appellant's job promotions, the Appellee independently administrated & physically relocated their belongings each and every time; The Appellee never stopped working as domestic engineer of our household even during her chemo-therapy and radiation treatments.

Per the Appellant's job promotions/advancement with the long-term healthcare corporation he represented and worked for, the Appellant stated to the Appellee, each and every time they moved, that he was unable to assist the Appellee in any of our relocation moves, so it was up to her to take care of matters, which the Appellee never complained about and did unconditionally, lovingly as his wife and mother of the minor child. All the while the Appellant continued to scrutinize, demean, belittle, get easily angered toward the Appelle at the slightest disagreement, to the point of bullying, through severe threats of intimidation, (the Appellant

would scream, curse stating this was grounds for divorce, he was leaving me, or threaten to kick me out of the home and keep the minor child from ever seeing her again), psychologically controlling the Appellee. Then the Appellant would physically frighten the minor child and the Appellee when throwing objects or putting his fists near the Appellee's body, causing extreme fear in her and the minor child, who could hear the Appellant screaming, using profanity, and heard the Appellant hitting the furniture, walls, stomping up and down with his feet and using his hands to hit things in his path, in a fit of rage. The Appellee lost count at how many times the Appellant would throw a fit and cause a scene and then blame the Appellee for his inappropriate behaviors, in front of not only the minor child, but also in front of the Appellant's two daughters. Things only escalated and got worse during these very difficult times throughout their marriage. The Appellee always accepted the Appellant's forgiveness, stating that he was stressed, full of anxiety, and that it would never happen again. It always did.

The Appellee was always afraid of the Appellant for fear of his volatile rages if she dare question his authority. Because the Appellant stated frequent quotes: *It's my money!!!...I can do whatever I want with it!"*.... It got so very bad that the Appellant left a list of what the Appellee was responsible for. Everything, starting with all the medical bills, credit cards which the Appellant used to buy his work clothes and spend on dinners out with his employees and the Appellant's personal use whenever his two daughters would visit; the Appellant stated to the Appellee that he had to spend money to buy his girls clothes and take them out to eat every time they would visit us. The Appellant told the Appellee in January 2006 that she did not have permission to go to the grocery store to buy any food, only if she asked and got permission from the Appellant. The Appellant was forced to give up the vehicle car keys she was privy to their entire marriage in January 2006.

The Appellant refused any help during their entire marriage from counselors, officiating priests, or any police and shelter Director's recommendations toward assistance with Appellant's alcoholism or domestic violent issues. Then after the entry of the temporary legal separation and the TRO, back in January 25, 2006, the Appellee and minor child were forced to move into a shelter because the Appellant verbally threatened her, quoted by the Appellant: *"If I stay in this marriage, LuciAna, I'm going to kill you!"*...during another one of the Appellant's tyrant fit of rages, over trying to control their whereabouts. The Appellee lost count of the number of phone calls and interrogatory voicemail messages. It was to the point of harassment. Per the consented court order on June 16, 2006, the Appellee and minor child went to California to be with my family, who supported them while the Appelle had her hysterectomy and continued her breast cancer care. Appellant had been denying the Appellee the right to have this important surgery since 2004 because as he stated to her on several occasions that it wasn't a necessary procedure and it would be inconvenient for him. (R.E. 187-190)

Since the minor child and the Appellee have been established in their home in California, continue to be successful in recovering and healing from a recent full hysterectomy and breast cancer remission, while minor child continues his catholic faith at a parochial school, his academic grades show significant improvement. Minor child and the Appellee have supportive-loving large family and are very close to their family and they have also established and been blessed with a wonderful loving church family-community here in California, which has helped them tremendously during this difficult time of recovering from a very serious domestic violent marriage, initial TRO, legal separation, non-amicable divorce, and again another current TRO in place through June 17, 2011 (R.E. 143-189). The cruelty and inhumane treatment still allowed by the Appellant, and the combination of his employment ignoring the attached wages for child

support by the Appellant holding all alimonies and/or child support monies as ransom has been intolerable. The Appelle must wait until this Court of Appeal makes its decision. (R.E.101).

Also, per my current TRO in effect through June 17, 2011, this Divorce has not stopped the Appellant stalking, threatening to take minor child from her, trying to control her and she can not afford all the interrogatory e-mails, voicemail messages, text messages, and statements made to minor child directed toward the Appellee. The verbal abuse continues and so does the lack of obligatory financial support from the Appellant is intolerable. (R.E.143-186). Since the move to California, the minor child and the Appellee are on the road to healing and recovery. They are truly better for it and minor child's education and grades are proof of a healthier life style-both emotionally and psychologically. Through the Domestic Violence and Safe Program(s) they are getting the professional assistance to get them back on their feet, so that the Appellee and minor child can continue to live a simple safe and secure life comfortably. This is a new beginning for minor child and the Appellee, and they pray the court will not let this abuse continue and enforce what the judgment of divorce, case number #2007-CA-01954, decreed on August 22, 2007 and filed September 17, 2007. (R.E. 41-100).

The Appellant is asking to deny Appellee any entitled relief and has answered and counterclaimed for custody. The Appellee is the sole physical and legal custodial parent, a mother who truly loves and cares for the minor child and has done so his entire life (eleven years). The Appellee and minor child have never been separated except with visitation. I, the Appellee am praying and asking for lump sum alimony, permanent alimony, rehabilitative alimonies, medical and dental coverage for minor child and the Appellee, also to insure a life insurance policy in the same amount of one million dollars, that the Appellant likewise has on the Appellee, and to have all medical bills paid, (entire out of pocket expenses less our medical insurance, be paid directly to me to finally pay off all medical balances that are severely past

due), and to include the Appellee's marital interests in all bonus' commissions, all pension plans, stocks, bonds, 401K's, etc., of the Appellant's, upon the divorce decree of August 22, 2007; to be vested, with at least twenty-nine percent or more interest accrued (the cost of present debt this marriage incurred and still owing), in arrears, during the time it was held ransom and in possession by the Appellant, to be released to me, paid in full, upon judgment of this appeal, soon after October 23, 2008.

"This is about as patently frivolous and appeal taken for purposes of delay as is imaginable". [See generally, Cosenza v. Kramer (1984) 152 CA3d 1100, 200 CR18, where indisputably had no merit." After several dilatory tactics pursued appeal solely to delay payment of judgment; and delayed discussion]; See Rules of Court on Appeal CCP §907; CRC 8.276(a); [11:52]. WHEREFORE, the Appellee moves this Court to deny and dismiss this Appeal and to remand this case to the Trial Court for enforcement of the Decree, September 17, 2007, Court Case Number # 2007-CA-01954, heretofore entered.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

The Appellee is not in agreement with the first paragraph of the Appellant's Brief, with what was stated by the counsel for the Appellant. It is only the interpretation of the Appellant's views stated and should not be considered or included in this Court's Appeal. The Appellee did file for divorce on January 25, 2006, but with the Trial Court entering a Temporary Restraining Order in effect through February 14, 2006, as fact of the Appellant's habitual cruel, inhumane treatment, and irreconcilable differences, with notice given to the Appellant. On the 23rd day of January 2006 the Appellee filed for relief from the Appellant and was awarded injunctive relief against the Appellant. (R.E. 23-40).

In the second paragraph I refute the statements that the Appellee left our home and took all of the personal property in the home; when the TRO was in place, the Appellee and the minor child went back to our home and found everything the same as it was left; and never ever has she ever made any statements threatening to prevent the Appellant from visitation with the child. On the contrary the Appellant stated verbally to the Appellee, in front of the child several times, statements of threatening to leave weekly, without providing the Appellee any financial means to sustain the Appellee with their minor child; The Appellant also made several statements to have the Appellee live on the streets and take minor child from the Appellee, in front of the minor child. The Appellant stated over and over again that he was going to race the Appellee to the bank and was going to leave her penniless. The Appellant stated that taking their minor child to his friend's 8th Birthday party and then wanting to go participate in the minor child's Cub Scouts activities were grounds for divorce. That the Appellant stated over and over again, he had sought for legal representation to get permanent custody of the minor child and divorce the Appellee. The Appellant went so fare as to state to the Appellee if she agreed to cooperate with Appellant's control of her and the minor child, then the Appellee could still live in their home until it was sold. The Appellant boldly made the statement that the Appellee beat the Appellant to seek a divorce from the Appellant to her.

In the third paragraph the Appellee disagrees on the last sentence. The Appellant only agreed while in Court on February 14, 2006, then refused to cooperate and put the former house in Monticello, Arkansas, on the market for sale, ignoring the realtors and the Appellee's requests when asked to fill paperwork and sign real estate agreements, also causing once again another seen in front of the minor child upon one of the visitations with the Appellant. The house wasn't put on the market for sale and to this day is still unaware of such action ever taken place.

In the fourth paragraph, it was not until June 19, 2006's court appearance that the Appellee was granted permission to go to California with the minor child, and did in fact have the required recommendations by the Appellee's oncologists, to have complete hysterectomy, to stay while in the care of relatives during rehabilitation from surgery and breast care remission. (R.E.187-190).

In the sixth, seventh, and eighth paragraphs the Appellee is not in agreement with what was stated by the counsel for the Appellant. "This is about as patently frivolous an Appeal taken for purposes of delay as is imaginable". [See generally, Cosenza v. Kramer (1984) 152 CA3d 1100, 200 CR18, where indisputably had no merit." After several dilatory tactics pursued appeal solely to delay payment of judgment; and delayed discussion]; See Rules of Court on Appeal CCP §907; CRC 8.276(a); [11:52]. WHEREFORE, the Appellee moves this Court to deny and dismiss this Appeal and to remand this case to the Trial Court for enforcement of the Decree, September 17, 2007, Court Case Number # 2007-CA-01954, heretofore entered.

B. STATEMENT OF FACTS

The Appellee is not in agreement with what was stated by the counsel for the Appellant, in its' entirety. It is only the interpretation of the Appellant's views stated and should not be considered or included in this Court's Appeal. Appellate Courts have inherent authority to dismiss a frivolous and dilatory appeal. "The dismissal must be granted. "This is about as patently frivolous and appeal taken for purposes of delay as is imaginable". [See generally, Cosenza v. Kramer (1984) 152 CA3d 1100, 200 CR18, where indisputably had no merit." After several dilatory tactics pursued appeal solely to delay payment of judgment; and delayed discussion]; See Rules of Court on Appeal CCP §907; CRC 8.276(a); [11:52]. WHEREFORE, the Appellee moves this Court to deny and dismiss this Appeal and to remand this case to the Trial Court for enforcement of the Decree, September 17, 2007, Court Case Number # 2007-CA-01954, heretofore entered.

SUMMARY OF ARGUMENT

I, the Appellee, am not in agreement with what was stated by the counsel for the Appellant, in its' entirety. It is only the interpretation of the Appellant's views stated and should not be considered or included in this Court's Appeal. Appellate Courts have inherent authority to dismiss a frivolous and dilatory appeal. "The dismissal must be granted. "This is about as patently frivolous and appeal taken for purposes of delay as is imaginable". [See generally, Cosenza v. Kramer (1984) 152 CA3d 1100, 200 CR18, where indisputably had no merit." After several dilatory tactics pursued appeal solely to delay payment of judgment; and delayed discussion]; See Rules of Court on Appeal CCP §907; CRC 8.276(a); [11:52]. WHEREFORE, the Appellee moves this Court to deny and dismiss this Appeal and to remand this case to the Trial Court for enforcement of the Decree, September 17, 2007, Court Case Number # 2007-CA-01954, heretofore entered.

Again, the Trial Court fairly and factually awarded equitable division and financial awards by considering all marital property and items divided in mutual agreement, and all debt both marital and separate, when dividing properly, and correctly awarded the Appellee lump sum alimonies, rehabilitative alimony, providing health insurance coverage, appropriated Mississippi Code for child support obligations, were accurately taken into combining consideration for the reasonable benefit of the parties thereto.

Finally, the Court appropriately granted the Appellee permission to go to California with the minor child, and did in fact have the required recommendations by the Appellee's oncologists, to have complete hysterectomy, to stay in California while in the care of relatives during rehabilitation from surgery and breast care remission. Whereby the Appellee and the minor child live in our established home in California and are truly blessed to have several relatives who are emotionally supportive and have their loving and caring support, too, from our church family

community. The Court appropriately granted the Appellee, upon the facts and grand evidence that it is in the child's best interest, to award sole legal-primary custody of the minor child, Anthony Carlos Palculict, to the Appellee, LuciAna Gascon Curtis-Palculict.

ARGUMENT

The Chancellor awarded lump sum alimony just as in Tutor v. Tutor, 494 So.2d 362 (Miss. 1986), the Appellee, who worked and contributed to the Appellant's financial status, but had no more assets of my own; the Appellee's separate estate pales in comparison to the Appellant's. This award was made by the Chancellor to give the Appellee, financial security. See also, Cheathum v. Cheathum, 537 So.2d 435, 437-38 (Miss. 1988). This explanation represents the basis of this award and helped this Court determine the appropriate discretion distribution, supported by the record.

In light of pronouncement of these guidelines for the equitable distribution method of division of marital assets, this Court found the issues relating to marital property division and the determination of value of all assets were considered of division in light of the principles established herein.

Finally, the Chancellor was not manifestly wrong in ordering the Appellant to maintain health and dental insurance(s) on the Appellee, and the minor child, under the COBRA plan for as long as the law allowed, which is for thirty-six (36) months from the time of her divorce from the Appellant. 29 U.S.C.S. 1162 (2) (A)(iv) (1993) and 29 U.S.C.S. 1163(3) (1993). The granting a divorce to the Appelee, together with child custody and all support awards, and the award of attorney fees are affirmed in this Appellee's Brief.

This Court held that under existing case law the Chancellor was within his authority to order, adjudged, and granted....guided by the factors promulgated today.

"We have long recognized that, incident to a divorce, the Chancery Court has authority, where the equities so suggest, to order a fair division of property accumulated through the joint contributions and efforts of the parties." Brown v. Brown, 574 So.2d 688, 690 (Miss. 1990). In Draper, 627 So.2d at 305, this Court held that the Chancery Court has authority to effect the divesting of title to real estate to achieve an equitable distribution of marital assets. This is a matter committed to the discretion and conscience of the Court, having in mind all the equities and other relevant facts and circumstances. Bowe v. Bowe, 557 So.2d 793, 974 (Miss. 1990). Moreover, the Chancery Court "has the authority to order an equitable division of jointly accumulated property and in doing so to look behind the formal state of title." Johnson v. Johnson, 550 So.2d 416, 420 (Miss. 1990).

"A spouse who has made a material contribution toward the acquisition of property which is titled in the name of the other may claim an equitable interest in such jointly accumulated property incident to a divorce proceeding." Jones v. Jones, 532 So.2d 574, 580 (Miss. 1988) (citing Watts v. Watts, 466 So.2d 889 (Miss. 1985); Chrismond v. Chrismond, 211 Miss. 746, 52 So.2d 624 (1951)). Since June 19, 2007, the Appellant gave written notice to the Appellee at the California Restraing Hearing that his property address of record is and continues to be at 102 Serenity Court, Brandon, MS 39042, with a cellular number only of (601) 850-8366. On July 5, 2008, upon civil exchange of minor child the Appellant, hand delivered to police authority a copy of another change with his physical address currently at 565 Old Walthall Road, Euphora, MS 99744, and with a line number of (662) 552-6737. The copy had an alleged move in date effective as of June 26, 2008. The minor child later called the Appellee and notified her that on that same evening of July 5, 2008, the Appellant decided to inform the minor child that he no longer lives at the Brandon, MS property address above and hasn't since his recent marriage to his 3rd wife, Heather, back in Spring 2008. The minor child also stated upon his safe

return home to California on July 30, 2008, that the Appellant is trying to sell the house at 102 Serenity Court, Brandon, MS 39042. The minor child also stated that the Appellant said that it cost him too much to travel back and forth to visit the minor child in California, therefore the minor child is to live with him now and the appellant also stated to the minor child he is going to quit his job soon. See Also, Brendel v. Brendel, 566, So.2d 1269, 1273 (Miss. 1990), where this Court affirmed the lower court's decision ordering a husband to convey to his wife one-half interest in a home titled only in the husband's name.

The Appellee's final proposition is simply a restatement and summary of the previous errors alleged. The Appellee is not in agreement with what was stated by the counsel for the benefit of the Appellant, in its' entirety. It is only the alleged interpretation of the Appellant's views stated and should not be considered or included in this Court's Appeal. Appellate Courts have inherent authority to dismiss a frivolous and dilatory appeal. "The dismissal must be granted. This is about as patently frivolous an Appeal taken for purposes of delay as is imaginable." [See generally, Cosenza v. Kramer (1984) 152 CA3d 1100, 200 CR18, where indisputably had no merit." After several dilatory tactics pursued appeal solely to delay payment of judgment; and delayed discussion]; See Rules of Court on Appeal CCP §907; CRC 8.276(a); [11:52]. WHEREFORE, the Appellee, move this Court to deny and dismiss this Appeal and to remand this case to the Trial Court for enforcement of the September 17, 2007 Decree heretofore entered.

"On Appeal this Court is required and did respect the findings of fact made by a Chancellor supported by credible evidence and was not manifestly wrong." *Newsom v. Newsom*, 557 So. 2d 511, 514 (Miss. 1990). This is particularly true "in the areas of divorce and child support." *Nicholas v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989).

I. THE CHANCELLOR ORDERED, ADJUDGED AND DECREED BY THE COURT GRANTING THE APPELLANT AND I, THE APPELLEE A DIVORCE ON THE GROUNDS OF IRRECONCILABLE DIFFERENCES FILED SEPTEMBER 17, 2007.

After proposed findings of fact and conclusions of law were submitted by the Appellant filed August 2, 2007 and the Appellee filed same August 6, 2007, the Chancellor considered of the mutual convenant, governed by Mississippi Code Annotated Section 93-5-2, clearly set forth, and filed those findings of fact and conclusions of law on August 29, 2007. The Chancellor ordered, adjudged, and decreed on August 22, 2007, by the Court granting the Appellant and the Appellee a divorce on the grounds of irreconcilable differences filed September 17, 2007. This Court held that under existing case law the Chancellor is within his authority to order, adjudge, decree, and grant, guided by the factors promulgated today. (R 248)

A. THE PARTIES FOLLOWED THE STATUTORY REQUIREMENTS FOR ENTERING INTO A CONSENT AGREEMENT.

The Consent Agreement made and entered into on the 19th of July 2007, by and between the Appellant and the Appellee was considered of the mutual convenant, agreed and consented, in writing, of the parties hereto, pursuant to provisions of Section 93-5-2 (3) of the Mississippi Code of 1972, Annotated, as amended, as follows to wit. This Court held that under existing case law the Chancellor is within his authority to order, adjudge, decree, and grant, guided by the factors promulgated today. (R193-196, SEE EXHIBIT "A").

B. THE CHANCELLOR REACHED HIS STATUTORY AUTHORITY BY ADJUDICATING ISSUES WITH MUTUAL WRITTEN CONSENT.

The Consent Agreement made and entered into on the 19th of July 2007, by and between the Appellant and the Appellee was considered of the mutual convenant, agreed and consented to in writing, of the parties hereto, pursuant to provisions of Section 93-5-2 (3) of the Mississippi Code of 1972, Annotated, as amended, as follows to wit. (R193-196 SEE EXHIBIT "A").

C. THE CONTESTS AND DENIALS TO AN IRRECONCILABLE DIFFERENCES DIVORCE WERE DRAWN AND AN ORDER WAS ENTERED DENYING SUCH WITHDRAWAL.

The Court considered the motions, and heard the arguments of counsel, and being otherwise fully informed in the premises, the Court found that both motions for new trial and/or to alter or amend the judgment, be denied, pursuant to Rule 59 of the Mississippi Rules of Civil Procedure, filed on November 6, 2007. This Court held that under existing case law the Chancellor is within his authority to order, adjudge, decree, and grant, guided by the factors promulgated today. (R193-196 SEE EXHIBIT "A"; R 286-290, R 293-299; R 305).

D. THE TAX CONSEQUENCE OF THE SPOUSAL SUPPORT ORDER CLAIMING THE CHILD AS A DEPENDENCY, EXEMPTION OF STATE & FEDERAL INCOME TAX RETURNS, WOULD BE OF A TAX ADVANTAGE FOR APPELLANT AND PUT THE APPELLEE, AT A SEVERE FINANCIAL DISADVANTAGE.

The tax effects of dissolution in divorce related to children is the same provided by federal income tax law and properly characterized §160.21 Dependency Exemption under Internal Revenue Code Section 151(c), applicable to tax years beginning after December 31, 2004, P.L. 108-311, §208, a taxpayer is entitled to an exemption for each individual who is a dependant, as defined in Internal Revenue Code Section 152, for the taxable year. "Dependant" is defined as either a "qualifying child" or "qualifying relative." I.R.S. §152 (a).

The special rule for divorced parents applies when all of the following conditions are satisfied; refer to §152 (e)(2)(3). The child must be in the custody of one or both the parent(s) for more than half the year. The parents are divorced under a decree of divorce, or live apart at all times during the last six months of the calendar year.

The "custodial parent" is defined as the parent having custody for the greater portion of the calendar year and the "non-custodial parent" is defined as the parent who is not the custodial parent, refer to I.R.S. §152 (e)(4).

In this case a child who lives with the custodial parent over half the time will be a qualifying child without regard to what portion of support the custodial parent provides, reference I.R.S. §152(c)(1)(B).

There is authority that legal custody alone to be considered in determining that the child is the sole legal custody of the custodial parent for more than half a year and the parties child is with I, the Appellee, for more than ten and half months out of the year; the minor child has visitation with the Appellant in month of July, alternate visitation with every other Thanksgiving Holiday (five days), and Christmas (ten days); and any weekend the minor child is out of school, given the proper week's written notice. The Appellant has never been denied visitation. This Court believes that based upon the fact that the parties live several hundred miles away and the mother has paramount custody it would not be in the parties' or the child's best interest to award joint legal custody and therefore is denied. This Court held that under existing case law the Chancellor is within his authority to order, adjudge, decree, and grant, guided by the factors promulgated today.

E. THE CHANCELLOR ERRED IN GRANTING AN IRRECONCILABLE DIFFERENCES WITHOUT EMPHASIS OF HABITUAL CRUEL AND INHUMANE TREATMENT.

The Appellee contends the chancellor only erred in denying a divorce on the grounds of habitual cruel and inhuman treatment. The Appellee complained that it was not permitted to question the Appellant pertaining to his acts of adultery. (See Ex."D & E"; R 9-15,16-21,36-40).

The standard applicable to a divorce sought on the ground of habitual cruel and inhuman treatment is found in *Wilson v. Wilson*, 547 So.2d 803, 805 (Miss. 1989), where was stated:

> In years gone by, this Court consistently held that habitual cruel and inhuman treatment could be established only by a continuing course of conduct on the part of the offending spouse which was so unkind, unfeeling or brutal as to endanger, or put one in reasonable apprehension of danger to life, limb or health, and further, that such course of conduct must be habitual, that is, done so often, or continued so long that it may reasonably be said a permanent condition.

See also *Haralson v. Haralson*, 483 So.2d 378, 379 (Miss. 1986); *Stennis v. Stennis*, 464 So.2d 1161,1162 (1985); *Galaspy v. Galaspy*, 459 So.2d 283, 285 (Miss. 1984); *Marble v. Marble*, 457 So.2d 1342, 1343 (Miss. 1984).

The Appellee has shown proof that the Appellant has a habit of assaultive behaviors and inappropriate conduct which the Appellee and the minor child continue to be in fear of, which has had an adverse effect on the Appellee with her health, trying to heal from on the stress inflicted upon her from this volatile relationship by the Appellant.

Finally, the initial TRO and legal separation documents filed back in January 25, 2006 suggested sexual misconduct years earlier to present was not presented as evidence of the Appellant's ongoing adultery, it was only proffered, and not admitted, which is relevant to the issues of child custody and moral unfitness. From all the incident police reports filed since the initial TRO and legal separation, back on January 25, 2006, and to the present current TRO in effect through June 17 2011, in this case the Chancellor at bar fell short of including this documentation, in making the court's decisions for supervised visitation only. The Appellee is praying this Court advise on mediation with counseling on anger management and the Appellant's abusive alcoholism, which the minor child continues to be exposed to. This is a very serious matter inside the scope of this Appeal, as all of my request is a proper *ex parte* to record the facts contained therein is "necessary to convey, a fair, accurate, and complete account of what transpired in trial with respect to those issues that are the bases of Appeal." M.R.A.P.10 (f).

F. THE CHANCELLOR HAS ERRED IN THE APPELLANT'S WILLFUL ABANDONMENT OF THE APPELLEE BY HIS REFUSAL TO HELP SUPPORT THE MINOR CHILD. WHEREFORE, THE APPELLEE'S ENTITLEMENT TO SEPARATE MAINTENANCE IS FOR A MONETARY AMOUNT SHOULD HAVE BEEN CONSIDERED IN ADDITIONAL ATTORNEY FEES, ETC.

Suits for separate maintenance are tried in Chancery Court under the general jurisdiction of its equity powers. **Miss. Const. Sec. 159, and see Miss. Code Ann Section** 9-5-81 (1972).

"Separate Maintenance is a judicial command to one's ex-spouse to provide support." **Weiss v. Weiss**, 579 So.2d 539 (Miss. 1989).

For the Court to award Separate Maintenance to the wife two criteria must be met... "(a) Separation without fault on the wife's part and (b) willful abandonment of her by her husband with refusal to support her." **Robinson v. Robinson**, 554 So.2d 300 (Miss. 1989).

(a) Separation without fault on the wife's part was awarded the Appellee. There was no misconduct materially contributed to the separation by the Appellee either. **Lynch v. Lynch**, 616 So.2d 294 (Miss. 1993) citing **Robinson v. Robinson**, 554 So.2d 300 (Miss. 1989). See also, **Daigle v. Daigle**, 626 So.2d 140 (Miss. 1993).

(b) However, the Appellant was Willful in his abandonment and is refusing to support the Appellee.

The Court has held that the purpose of separate maintenance to be awarded the Appelle "....is to provide as nearly as possible, the same sort of normal support and maintenance for the wife, all things considered, as she would have received in the home, if the parties had continued normal cohabitation, and the wife had helped in a reasonable way, in view of her health and physical condition, to earn her own support and that of the family. It is merely an enforcement as near as may be, of the same rights the Appellee had before separation. "**Robinson v. Robinson**, 554 So.2d 305 (Miss. 1989)".

It being the duty of the Appellant to support the Appellee, and the Appellant can not avoid that duty to see that the Appellee does not suffer; The Appellant is able to do so manifesting a disposition to meet the needs and wants of the Appellee, mother of a minor child.

Robinson v. Robinson, 554 So.2d 305, citing **McNeil v. McNeil**, 127, Miss. 616, 90 So. 327 (1921) at 90 So at page 329.

The Factors the Court did apply in the amount of the award of Separate Maintenance to the Appellee were best set forth from the evidence, including any other factor deemed by the Court to be "just and equitable" in connection with the setting of spousal support, permanent alimony, lump sum alimony, rehabilitative alimony, not including child support. See also, **Daigle v. Daigle**, 626 So.2d 140 (Miss. 1993). Also compare the twelve factors used in determining alimony, by the Courts in **Hammonds v. Hammonds**, 597 So.2d 653 (Miss. 1993).

The Court also has authority to impose liens on the assets and profit sharing, retirement, pension, and other assets of the Appellant to insure payment in cases where equity demands it. As part of the equitable division of all marital property, the Chancellor shall hold that the Appellee be entitled to and be awarded fifty percent (50%) of the interest of value in the stocks pension(s), 401k, retirement, security plan, etc., under a Qualified Domestic Relations Order (QDRO) can be entered purporting to assign an interest pursuant to the Internal Revenue Code. U.S.C.A 414 (p)(11). The QDRO states that the Appellee shall receive her portion of the pension when the Appellant reaches the earliest retirement age under the plan. See also Retirement Equity Act (REA) U.S.C.A 414 (p)(4)(A)(B). Under a present order, and after approval, the QDRO by the pension plan administrator, the value of the Appellee's portion, is determined and separated in an accounting procedure.

Any stock value owned with the Appellant's past and current employment prior to the divorce decree shall be made available upon the time the Appellant left any of his employment(s) either via retirement [**31] or termination. The Chancellor shall award the Appellee ownership of one-half of the Appellant's stock, 401k, retirement, pension, security plan etc. Pursuant to the Retirement Equity Act (REA), U.S.C.A 414 (p)(4)(A)(B).

Daigle v. Daigle, 626 So.2d 140, 146-147 (Miss. 1993). Also sureties for payment of amounts. **Miss. Code Ann Section** 93-5-23 (Cumm. Supp. 1993).

The Court also has authority attorney fees and costs in a Separate Maintenance proceeding to the Appellee. **Daigle v. Daigle**, Supra.

Separate Maintenance does not include matters of child support, which are separate matters, but is handled along with separate maintenance where children are involved. **Robinson v. Robinson**, Supra.

In **Daigle v. Daigle**, 626 So.2d 140 (Miss. 1993) held husband not entitled to divorce, but wife entitled to separate maintenance, lien, and attorney fees. **Serio v. Serio**, 94 So.2d 799 (Miss. 1957) held wife entitled to separate maintenance separation from husband justified, along with other criteria met of awarding separate maintenance to wife including attorney fees.

The Appellee, by and through my counsel of record, and filed this sworn motion for suit money and security of costs, pursuant to section 11-52-3, Mississippi Code Annotated (1972 as amended), and in support of said motion, shown unto the Honorable Court Filed a complaint May 26, 2006 for Divorce and Separate Maintenance against the Appellant. (R 9-21).

The Court erred, at the time of trial, that the Appellee, was denied my request for additional attorney's fees because my attorney failed to introduce a "burden of Proof" to the Court, which my attorney, the honorable Randal Garner, at that time was not feeling well at all, had stepped down from his position as Honorable Judge of this Court, who was still in recovery from his heart attack and emergency heart surgery within the recent year. That the Court did find evidence to support my request for additional attorney's fees as required under the *McKee v. McKee*, 418 So.2d 764 at page 767 (Miss. 1982). Therefore additional attorney's fees and expenses should be paid to the Appellee, by the Appellant. As it was necessary to file a motion to appoint attorney(s) and motions for extension of time for appointed attorney(s), because I am

without a law degree and am doing all of this Appellees Brief, *Pro-Se*, and because I was not made aware and did not learn how to properly make my requests known via legal protocol. This Court held that under existing case law the Chancellor is within his authority to order, adjudge, decree, and grant, guided by the factors, but forgot to include due consideration as such.

This is a very serious matter inside the scope of this Appeal, as all of her request is a proper *ex parte* to record the facts contained therein is "necessary to convey, a fair, accurate, and complete account of what transpired in trial with respect to those issues that are the bases of Appeal." M.R.A.P.10 (f).

II. THE CHANCELLOR APPLIED ALL LEGAL STANDARDS IN HIS EQUITABLE DIVISION AND FINANCIAL AWARDS.

The judgment and its provisions correctly applied the facts using Mississippi law resulting in the equitable division and financials were appropriately awarded within the acceptable range of Mississippi judicial discretion for making such division and awards incident to a divorce. The Consent Agreement made and entered into on the 19th of July 2007, by and between the Appellant and the Appellee, was considered of the mutual convenant, agreed and consented to in writing, of the parties hereto, pursuant to provisions of Section 93-5-2 (3) of the Mississippi Code of 1972, Annotated, as amended, as follows to wit. This Court held that under existing Mississippi Case Law the Chancellor is within his authority to order, adjudge, decree, and grant judgment of divorce, guided by the facts and conclusions of law promulgated today. (R 248-257, 258-282; TR 8-122, R. E. 191-201).

A. EQUITABLE DIVISION OF MARITAL ASSETS:

1. INTRODUCTION

At the issue in this domestic relations case is the division of marital property (both personal and real), alimony (both periodic and lump-sum), and future interest in

retirement/pension plans. Pursuant to the Retirement Equity Act (REA), U.S.C.A 414 (p)(4)(A)(B).

The recent opinions have eroded adherence to that of separate property method of division. This Court has "long recognized that, incident to a divorce, [**2] the chancery court has authority, where the equities so suggest, to order a fair division of property accumulated through the joint contributions and efforts of the parties." *Brown v. Brown*, 574 So. 2d 688, 690 (Miss. 1990), *Brendel v. Brendel*, 566 So. 2d 1269, 1273 (Miss. 1990); *Jones v. Jones*, 532 So. 2d 574, 580-581 (Miss. 1988); *Clark v. Clark*, 293 So.2d 447, 450 (Miss. 1974). This Court adopts guidelines for application of the equitable distribution method of division of marital assets. (R 197-222, See Exhibit "B & C").

The Court affirmed the granting of a divorce to the wife, together with custody and support of the minor child. With adoption of guidelines to aid chancellors in division of martial property under the equitable property division method, this Court.

FOOTNOTES

See, Brake, supra at 765.

The non-monetary contributions of a traditional housewife have been acknowledged by this Court, and to some extent, case law has helped lessen the unfairness to a traditional housewife in the division of marital property.3

FOOTNOTES

3South Carolina judicially created a "special equity doctrine" by holding that "where a spouse has made "marital contributions" of industry and labor during the marriage to acquisition of property, a special equity or equitable interest favoring that party can be found." *Parrot v. Parrot*, 278 S.C. 60, 292 S.E. 2d 182 (S.C. 1982). Florida preceded South Carolina with this action. *Canakaris v. Canakaris*, 382 So. 2d 1197, (Fla. 1980). West Virginia adopted equitable

distribution method in *LaRue v. LaRue*, 172 W. Va. 158, 304 SE 2d 312, (W.Va. 1983), 41 ALR 4th 445. Virginia also recognizes equitable distribution. *Williams v. Williams*, 4 Va. App. 19, 354 S.E. 2d 64 (1987).

[**6] The mechanism applied by this Court to prevent unfair division is the resulting trust. *Jones v. Jones*, 532 So. 2d 574, 582 (Miss. 1988) (Prather, J., cocurring).

2. THE FACTS:

"*Marital Property*" is defined in *Hemsley v.Hemsley*, 639 So.2d at page 915 (Miss. 1994) for purposes of divorce as being any and all property accumulated or acquired during the marriage and are subject to equitable distribution by the Chancellor.

The Court was required to evaluate the division of marital assets and support the Chancellor's decision with findings of fact and conclusion of law. The Chancellor followed all the applicable guidelines, effected an equitable division of marital property. Using *Ferguson v. Ferguson*, 639 So2s 928 (Miss. 1994), guidelines for attempting to effect the equitable division of marital property were used by the Chancery Court are as follows: First, the needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and, second, any other factored in all equity and was thoroughly considered.

The Court took into account: a.) The 1999 Dodge Ram 1500 truck with over 156,000 miles, has over $2,500.00 still owing for repair and maintenance to operate such vehicle, at a current trade-in value of les than $2,000.00, considering today's economy cost of gasoline now at a record high national average of $3.59/10 per gallon for 25 gallon tank, which will cost approximately $120.00 or more. b.) The proceeds form the sale of the marital home in Southaven that were not divided equally: Appellant received $5,000.00 + 50% of the proceed upon the June 2006 sale of this property; the Appellee's portion is still with Ann L. Jackson, Attorney, held in Chancery Court. c). Equitable division and financials were appropriately

awarded within the acceptable range of judicial discretion for making such division are awarded incident to a divorce.

The issues determined by the Court pursuant to Appellant and the Appellee are in agreement on an equitable division of all marital property assets and debts accumulated or acquired during the parties' marriage.

The Court found as fact that the only marital assets to be divided is the house and lot in Monticello, Arkansas. The only marital debts are of the Appellee, the wife and her outstanding medical bills.

There is a difference in the fair market value of the home. Averaging both figures together dividing the same combination of mortgage balance and you had the Court's value of equity of $21,560.05.

Property division in divorce cases is governed by the law enunciated in *Hemsley v. Hemsley,* 639 So.2d 909 (Miss. 1994) and *Ferguson v. Ferguson,* 639 So.2d 921 (Miss94). *Johnson v. Johnson,* 650 So.2d 1281, 1287 (Miss.1994). The Chancellor's initial step was to classify each asset as marital or non-marital. *Id.* Then, the Chancellor equitably divided the marital property according to the factors provided in *Ferguson. Id.* The factors are: (1) substantial contribution to the accumulation of the property, under which the Chancellor considered: (a) the parties' direct or indirect economic contribution to the acquisition of the property, (b) the parties' 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) the contribution to the education, training or other accomplishments by the other spouse 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) absent equitable factors to the contrary, the value of assets not ordinarily 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 utilize 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 *Ferguson*, 639 So.2d at 928. After equitable division, a deficiency remained for one party, and alimony was considered. *Id.*

As stated in *Ward*, 825 So.2d at 719 (21); *Dunaway v. Dunaway*, 799 So.2d 1112, 1118 (14) (Miss. Ct App. 1999), "The principal that findings on valuation do not require expert testimony and may be accomplished by adopting the values cited in the parties' 8.05 Financial Disclosure, in the testimony, or in other evidence."

In applying the Ferguson Factors to the evidence presented at trial by both parties the Court made the following findings:

(1) Substantial contribution to the accumulation of the property, under which the Chancellor did consider (a) the parties' direct or indirect economic contribution to the acquisition of the property, (b) the parties' 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) the contribution to the education, training or other accomplishments by the other spouse 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;

Because the Appellant stated over and over again in one of his many tyrant rages against the Appellee, quotes of: *"I am going to kill you, if I stay in this marriage... I'm coming after you, and I'm going to race you to bank & leave you penniless, on the streets, ...and you'll never see your son again!"* (This rage done by the Appellant was over the minor child wanting to attend another child's 8th birthday party and then wanting to participate in his Boy Scouts activities). The Appellee, took this threat seriously, but responsibly leaving all monies in our joint checking account toward our monthly expenses for mortgages, utilities, other personal bills and loans, including medical and cancer insurances. The Appellee then withdrew exactly ten thousand dollars ($10,000) from one of the parties other joint accounts and also withdrew exactly one thousand from our joint credit card account, no more than that at the time of the separation, which was used toward living expenses or we would have been on the streets, without our any financial assistance. After an incident report was filed we were advised by the police to stay in a safe house, which is where the Appellee along with the minor child were forced to stay, upon enforcement of the initial restraint order. The Appellee had to also use a most of this money to pay attorney fees, as well as employ a psychologist, Dr. Hutt, because the Appellant had been verbally abusive, bullying and threatened to do bodily harm to the Appellee to take my son from her, leave them without any monies or in a safe home to sustain them.

The Appellant, after the parties' separation sold the parties hot tub and paid same off. The Appellant was ordered to give half of that back to the Appellee, instead ignored court orders. The Appellant bought a brand new BMW automobile because he wanted one, ignoring court orders. The Appellant bought and moved into a house that he claimed his mortgage was $1,800.00 per month, against Court orders. Changed jobs, and got a new one paying more, prior to the TRO and legal separation. Appellant some how managed to have gross earnings for the year 2006 of over two hundred forty three thousand, eight hundred and sixty nine dollars, and 18

cents ($243,869.18, most of which was from bonus', stocks, commissions, etc.) after taxes, out of which the Appellant gave twenty thousand dollars ($20,000.00) to his daughters "for college" and also paid his youngest daughter's tuition to afford her to attend and participate of her choice at a nearby Christian Middle School, in Crossett, Arkansas. However, the Appellant admitted in Court that he was not under a Court order to do so, at the same time refusing and ignoring the Court orders to continue paying for parties only son's Catholic School Education, which the Appellant had always agreed to during the entire length of the marriage. The Appellant told the Appellee that he was paying for his younger daughter's private school education, lied under oath at the Trial, and is now paying five hundred dollars more in child support to his first ex-spouse so as to not have to pay the Appellee any more monies; stated verbally to the Appellee the day of court hearing on February 14, 2006.

(3) The market value and the emotional value of the assets subject to distribution:

Both the parties presented different market values on the Monticello property in their respective financial disclosure statements. See Exhibits B & C. Therefore, the Court felt that a combination of both valuations must be taken in consideration as to the value to assign, as well as the incumbrance and net equity assigned by each party to the property. Now in all fairness to the parties the net equity was decided as twenty one thousand five hundred sixty dollars 5/100 ($21,560.05).

(4) Absent equitable factors to the contrary, the value of assets not ordinarily 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 and individual spouse:

Evidence revealed that the funds to purchase the Monticello, Arkansas house was primarily from the Appellee's inheritance, a portion of which she co-mingled and used to purchase the home.

(5) Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution:

The Appellant took over primary management of the house or rental property in Monticello, Arkansas, per the discovery Court hearing in July 2006, and if it is sold at a loss could use same to a tax advantage. See Exhibit B. By same token, the Appellee, has not managed the house or rental property in Monticello, Arkansas, since July 2006, and any funds expended or if the house was sold to a third party would realize very little tax advantage, since the Appellee's sources of income are very limited. See Exhibit C.

(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:

The conveyance of the property and all equity of the same to the Appellant would abate any source of friction between us, the parties, in the future. The Appellant is be permitted to either sell or continue to use the Monticello, Arkansas house, as a rental property, whichever he so chose to do. Free and clear from any interference on the part of the Appellee.

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

Income and earning capacity of the Appellant is at the present time one hundred sixty thousand dollars ($160,000.00) per year, in the long term healthcare as Vice President, in Jackson, Mississippi, and the previous year, his earnings were two hundred forty three thousand eight hundred and sixty nine dollars and eighteen cents ($243,869.18) gainfully employed in the long term healthcare field as director of operations for Beverly Healthcare, Inc., representing the state of MS. See Exhibit B, the Appellee's income and earning capacity is limited. Due to her health problems, is not out of the woods completely with my bout with Breast Cancer or Pre-Ovarian Cancer. The Appellee has not been termed or diagnosed as "cured," but am presently in

remission. The Appellee's lack the education, training, and experience, without finishing her college education, to obtain gainful employment in my career field of nursing and teaching. The Appellee had estimated that it will take about eighteen months to 24 months, or longer, dependent upon this Court's decision(s). And all the living expenses of the Appellee and minor child, continue to remain the same living arrangements in California, as it was when we were temporarily stationed in Southaven, Mississippi, being that the expense to pay for a home is near the same or less because of all the foreclosures in the state of California now. Common knowledge would dictate that employers are reluctant to employ a person that has or had cancer. They are afraid that the potential employee would revert out of remission back to cancer. To award the ownership of the house and equity to the Appellee, would afford her no financial security. By the same token the Appellant would have income producing assets and tax write offs on his income tax and would ultimately increase his financial security.

(8) Any other factor which in equity should be considered. *Ferguson*, 639 So.2d at 928. After equitable division, deficiency remained for one party, I, the Appellee, therefore alimony is considered. *Id.*

By awarding the ownership and equity in the Monticello, Arkansas, home to the Appellant, it would have created and economic deficiency in the marital assets, whereby the Appellee would receive nothing and the Appellant would receive the real property in Arkansas having equity of at least twenty one thousand one hundred and twenty dollars ($21,120.00) equity.

The house and lot in Monticello, Arkansas are jointly owed by the parties was conveyed unto the Appellant, including all equity, and the Appellant was Court ordered to take all action necessary to remove the Appellee, from any liability whatsoever on the indebtedness owed on

said property, but the Appellant has ignored and refuses to do the Court's judgment of quit claiming the Appellee of the deed of such property.

This Court in awarding the house and lot as well as the equity to the Appellant, that this left the Appelle, in an economic deficiency situation. Since the Appellee was divested of all of her equity in the Monticello, Arkansas house, that this deficiency is adjusted in the award of alimony.

The Court found that the parties had previously divided certain marital property of personal nature, (all of the Appellant's personal and sentimental belongings, including his entire business attire & wardrobe were returned to him prior to the June 2006 sale of the Southaven, MS home), and that the only marital property to be addressed by the Court was the Monticello, Arkansas house and lot jointly owned by the parties, which this Court has done by ordering that all of same be awarded to the Appellant.

3. SUMMARY:

"On Appeal this Court is required to respect the findings of fact made by a Chancellor supported by credible evidence and was not manifestly wrong." *Newsom v. Newsom*, 557 So. 2d 511, 514 (Miss. 1990). This is particularly true "in the areas of divorce and child support." *Nicholas v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989).

B. LUMP SUM ALIMONY:

Also, this Court has allowed lump sum alimony as an adjustment to property division to prevent unfair division. *Reeves v. Reeves*, 410 So. 2d 1300 (Miss. 1982); *Clark v. Clark*, 293 So. 2d 447, 449 (Miss. 1974; *Jenkins v. Jenkins*, 278 So. 2d 446, 449 (Miss. 1973). The lump sum award has been described as a method of dividing property under the guise of alimony. Stephen J. Brake, supra at 766. See also, *H. Clark*, Domestic Relations, § 14.8 at 450 (1976). In *Bowe v. Bowe*, 557 So. 2d 793, 794 (Miss.1990), this Court acknowledged that a chancellor had the

authority and discretion to divide the marital assets by awarding periodic or lump sum alimony, or both, or by dividing the personal property, or awarding the exclusive use and possession of the homestead. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1990). The full development [**7] of our jurisprudence in this arena culminated in *Draper v. Draper*, 627 So. 2d 302, 305 (Miss. 1993), in which this Court abandoned the prohibition against the Chancery Court's divestment [*927] of the title to real property, which was the last vestige of the separate property method of distribution of marital assets.

Thus, through an evolution of case law, this Court has abandoned the title theory method of distribution of marital assets and evolved into an equitable distribution system. 4

FOOTNOTES

While the issue can be simply stated, it is impossible to give a precise definition to the phrase "equitable distribution." Basically, the doctrine refers to the authority of the Courts to award property legally owned by one spouse to the other spouse, and recognizes that a non-working spouse's efforts contribute to the acquisition of the marital estate. Divorce-Equitable Distribution, 41 ALR 4th 481, 484. Under the equitable distribution system, the marriage is viewed as a partnership with both spouses contributing to the marital estate in the manner in which they have chosen.

[**B] B. Chancery Court Authority

Courts have acknowledged that the power and authority of the Chancery Court to award alimony and child support have been historically derived from the legal duty of the husband to support the family. As to division of marital assets, it is the broad inherent equity of the Chancery Court that gave it the authority to act. General equity principles of fairness undergird this authority. That duty was codified in Miss. Code. Ann. Ss 93 – 5- 23 (Supp. 1993) as follows: 5

FOOTNOTES

5 Other statutes require the contribution of both parents toward support of their children. Miss. Code Ann. Ss 93 – 13 – 1 (1972).

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife or husband, or [**9] any allowance to be made to her or him, and shall, if need be, require bond, sureties or other guarantee for the payment of sum so allowed.

However, where proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each. (Emphasis added).

Of particular significance is the verbiage "any allowance"...to him or her."

Additionally, the statutory authority granted to the Chancery Court to award divorce on no-fault grounds and to approve the parties agreement regarding marital property division or to make such division, on submission of that issue to the court by the parties, further undergirds the inherent equitable power of the Chancery Courts to address this issue of division of marital assets. The development of equitable doctrines is not foreclosed by these statutes. Under *Draper*, Chancellors are empowered to address realty assets and to divest title, including that of the family home. In Draper, this Court said:

It is well established by this Court that the Chancery Court has the authority to order **[**10]** an equitable division of property that was accumulated through the joint efforts and contributions of the parties. Brown v. Brown, 574 So. 2d 688, 690 (Miss. 1990). However,

there is no automatic right to an equal division of jointly accumulated property, by rather, the division is left to the discretion of the court. Id. At 691.

Guidelines for lump sum alimony were specifically addressed in *Tiley v. Tiley*, 610 So 2d 348, 351-52 (Miss. 1992 and in *Cheatham v. Cheatham*, 537 So. 2d 435, 438 (Miss. 1988).

Lump sum alimony is necessary n this case as the only basic marital asset was the home in Arkansas awarded to the Appellant.

In determining lump sum alimony this Court looks to the factors outlined in *Cheatham vs. Cheatham*, 537 So.2d 435. (Miss. 1988).

1. Substantial contribution to accumulation of total wealth of the payor either by quitting a job to become a housewife, or by assisting in the spouse's business.
2. A long marriage.
3. Where recipient spouse has no separate income or the separate estate is meager by comparison.
4. Without lump sum award the receiving spouse would lack any financial security.

The Appellee, quit her job on numerous occasions during the parties marriage to please the Appellant. The Appellee moved to Arkansas from Colorado giving up my secure career and military job, and my personal home because the Appellant mislead the Appellee in believing he wanted to move to Arkansas to be near his other children. The Appellee did in fact work, and used a portion of my inheritance to support the family while the Appellant was obtaining his nursing home license, along with his yearly lateral job career promotions. The Appellee quit her job on each and every occasion the Appellant received a promotion and moved with the Appellant to where he was employed with the parties' child. The Appellee always put the Appellant first in her life and supported him in every way as a loving and caring wife and mother of the parties child sharing what the Appelee had to live on when times were hard. That up and

until the Appelee was diagnosed with breast cancer she maintained full time and/or part time employment, while also taking care of all the domestic needs in support of the family, and used all of her earnings for the benefit of the family. The Appellee is entitled to lump sum alimony from the Appellant, James Craig Palculict.

The second factor a long time marriage did not particularly favor the case at bar because the marriage was of only 10 years and 9 months as of the date on judgment of divorce.

However, the single most important factor in deciding to award lump sum alimony is the disparity of the separate estates. Cheatham. Supra

The evidence is uncontraindicated at trial that the Appellee had no separate estate having used her entire inheritance for the benefit of the family, and very little income. See exhibit C. By comparison, the Appellant, is employed as an executive at a long term health care organization earning more than one hundred forty thousand dollars ($140,000.00) plus benefits. The Appellant also was awarded by the Court the entire equity and ownership of the parties' house and lot located in Monticello, Arkansas, worth several thousand dollars.

Without the lump sum awarded the Appellee would lack any financial security whatsoever. No job, no assets, and no health with a young son at home.

The Court found and so holds that the Appellee, should be awarded lump sum vested alimony from the Appellant, James Craig Palculict, in the amount of sixty thousand dollars ($60,000.00) non dischargeable by bankruptcy or death of one or both of the parties, but shall insure to the benefit of the estate of the Appellee and an obligation of the estate of the Appellant, James Craig Palculict, to the Appellee, LuciAna Gascon Curtis Palculict as follows:

1. Upon the entry of the final judgment of divorce, the Appellant, James Craig Palculict, shall pay unto the Appellee, LuciAna Gascon Curtis Palculict, eleven thousand five hundred sixty dollars ($11,560.00) within thirty (30) days entry of the final judgment.

2. That the remaining balance of forty eight thousand four hundred forty dollars ($48,440.00) shall be paid by the Appellant, James Craig Palculict, to the Appellee, LuciAna Gascon Curtis Palculict, in sixty (60) equal month installments of eight hundred seven dollars and thirty four cents ($807.34), each on the 1st day of October 2007, with a like payment in a like amount, every month after until paid in full. Because the Appellant has refused and ignored all court orders, the Appellee is praying the court will reconsider, in light of this devastation, to award her the entire lump sum, paid in full, upon remand back to the Chancery Court to be enforced thereto.

That should the Appellee, LuciAna Gascon Curtis Palculict, predecease the Appellant, James Craig Palculict, prior to the payment in full of the balance of said lump sum vested alimony, then the balance owed shall insure to the benefit of the Appellee's estate. That the Appellant shall obtain a decreasing term life insurance policy in the amount of sixty thousand dollars ($60,000.00) which shall be made payable to the Appellee, LuciAna Gascon Curtis Palculict and/or my estate, which shall remain in effect until such time as the lump sum vested alimony is paid in full to the Appellee, LuciAna Gascon Curtis Palculict or to my estate. That if the Appellant, James Craig Palculict, should predecease the Appellee, LuciAna Gascon Curtis Palculict, prior to the payment in full of the balance of said lump sum vested alimony, that same shall be a debt of his, the Appellant, James Craig Palculict's estate. The Appellant has refused and is ignoring court orders, therefore the Appellee is praying the court will reconsider, in light of this devastation, to award her the entire amount of sixty thousand dollars ($60,000.00), paid in full, upon remand back to the Chancery Court to be enforced thereto.

C. AWARD OF PERMANENT ALIMONY TO WIFE:

This Court has previously promulgated guidelines in the awarding of periodic/ permanent alimony. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993); *Hammonds v. Hammonds*, 597 So. 2d 653, 655 (Miss. 1993). Guidelines for lump sum alimony were specifically addressed in *Tiley v. Tiley*, 610 So 2d 348, 351-52 (Miss. 1992 and in *Cheatham v. Cheatham*, 537 So. 2d 435, 438 (Miss. 1988). Given the development of domestic relations law, this Court recognizes the need for guidelines to aid chancellors in their adjudication of marital property division. Therefore this Court directed [**13] the chancery courts to evaluate the division of marital assets by the following guidelines and to support their decisions with findings of fact and conclusions of law for purposes of appellate review. Although this listing is not exclusive, this Court suggests the chancery courts consider the following guidelines, where applicable, when attempting to effect an equitable division of marital property:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows.

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

    ii. 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

    iii. Contribution to the education, training or other accomplishments 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.

[14]**

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 in which equity should be considered.

[*929] This Court cannot contemplate every situation that may present itseft in future cases; therefore, the Court will address other questions as they arise, taking into consideration that fairness is the prevailing guideline in marital division. For example, interspousal gifts are not part of this factual situation. The Chancellor determined for this Court's review that it was an interspousal gift is a highly personal one or whether **[*15]** some type of property, i.e., stocks and bonds, may require something beyond a gift analysis. *LaRue*, 304 S.E. 2d at 335-36 (Neely, J., concurring).

There are some observations which need to be made in regard to division of marital assets. Initially, this Court notes that existing law regarding periodic alimony and child support is not altered. Upon dissolution of a marriage, the chancery court has the discretion to award permanent and/or lump sum alimony, divide real and personal property, including the divesting

of title, and may consider awarding future interest to be received by each spouse. Additionally, homemaker contributions are not to be measured by a mechanical formula, but on the contribution to the economic and emotional well-being of the family unit. *LaRue v. LaRue*, 172 W.Va. 158, 304 S.E. 2d 312, 322 (W. Va. 1983); 41 ALR 4th 445.

Some courts have held that equitable distribution of property has as its goal not only a fair division based upon the facts of the case, but also an attempt to finalize the division of assets and conclude the parties' legal relationship, [*16] leaving them each in a self-sufficient state, where the facts and circumstances permit total dissolution.

Property division should be based upon a determination of fair market value of assets, and these valuations should be the initial step before determining division. Therefore, expert testimony may be essential to establish valuation sufficient to equitable divide property, particularly when the assets are as diverse as those at issue in the instant case. All property division, lump sum or periodic alimony payment, and mutual obligations for child support should be considered together. "Alimony and equitable distribution are distinct concepts, but together they command the entire field of financial settlement of divorce. Therefore, where one expands, the other must recede." *LaRue*, 304 S.E. 2d at 334 (Neely, J., concurring). Thus, the chancellor may divide marital assets, real and personal, as well as award periodic and/or lump sum alimony, as equity demands. To aid appellate review, findings of fact by the chancellor, together with the legal conclusions drawn from those findings, are required.

The Mississippi Supreme Court has ruled that the following twelve (12) factors shall be considered by the Court in awarding periodic or permanent alimony in a divorce proceeding. *Hammonds v. Hammonds*, 597 So2d 653 (Miss. 1993) and *Armstrong v. Armstrong*, 618 So.2d 1278, 1280 (Miss. 1993).

The Guidelines to be used in awarding periodic or permanent alimony by the Court are:

II. The income and expenses of the parties;

III. The earning capacities of the parties;

IV. The needs of each party;

V. The obligations and assets of each party;

VI. The length of the marriage;

VII. The presence or absence of minor children in the home, which may require that one or both parties either pay, or personally provide, child care;

VIII. The age of the parties;

IX. The standard of living of the parties both during the marriage and at the time of the support determination;

X. The tax consequences of the spousal support order;

XI. Fault or Misconduct;

XII. Wasteful dissipation of assets by either party, or

XIII. Any other factor deemed by the court to be "just and equitable' in connection with the setting of spousal support.

The Court applied the Armstrong Factors in awarding alimony to I, the Appellee, from the Appellant.

1. The income and expenses of the parties:

The Appellant, earned before taxes in the year 2006, the sum of two hundred forty three thousand eight hundred and sixty nine dollars and eighteen cents ($243,869.34). In the year 2007, the Appellant testified that from his current employer he would earn one hundred forty thousand dollars ($140,000.00) before taxes. According to the Appellant's Financial Disclosure Statement Exhibit "B", he has gross earnings of eleven thousand one hundred nineteen dollars

and twenty three cents ($11,119.23) per month. However, when you multiply it by 12, you come up with $133, 430.76. To earn $140,000.00 per, the Appellant's gross monthly earnings would be $11,666.67 per month. The Appellant stated that his federal taxes were $2,407.16 per month; his social security $704.51; and apparently is "mandatory insurance" which Medicare was $363.73. In addition thereto, the Appellant claimed the he paid $164.75 Mississippi state Medicaid.

In reference to the Appellant's expenses, he stated that he paid $1,800.00 per month toward rent in Starkville, Mississippi. He stated the he spends $400.00 per month on food and household supplies, $100.00 on water and sewer, $185.00 on electricity, $95.00 on gas, $255.00 on telephone, laundry and dry cleaning of $120.00, $500.00 on child support, $750.00 on alimony, $400.00 on gasoline and oil, claimed he did not get mileage allowance for, $288.00 a month on a automobile insurance, and $540.57 on auto care loan payments for his brand new BMW automobile, that he acquired after the separation, just because the Appellant stated in Court, "*just because I wanted one!*" The Appellant alleged that he paid the Appellee's medical bills of $50.00 per month, credit cards of $1,000.00 per month, 2nd mortgage of $265.00 per month, a mortgage on the Monticello, Arkansas property $785.50 per month. The Appellant did not list the BMW automobile under automobiles. The Appellant alleged that he owns a Met Life Insurance Policy with a face amount of $1 million dollars on the Appellee, his wife and mother of my son, also on his children named as the beneficiaries. The Appellee, was shocked to hear of this during the trial Court and was never aware of any such policies were obviously were kept hidden from my view. The Appellant listed several bills.

The Appellee by the same token, (see in Exhibit "C"), stated that the Appellee had income averaged in the last few months of $1,429.25 a month of which $750.00 was alimony and $500.00 was child support. The Appellee had no other source of income. The Appellee and

the parties' child are living with church family and the Appellee, testified that she paid about $350.00 and up to $1,200 or more per month toward rent & household expenses when she had it. The Appellee's Financial Disclosure Statement (see Exhibit "C") revealed that the Appellee estimated the cost of a home or apartment in Mississippi or in California, to be payment of the 1st and 2nd mortgage, etc. The Appellee testified that she had approximately $480.00 a month in food and household expense & supplies for the Appellee and my child. The Appellee had gasoline expenses of $350.00 a month. That the average phone service bill is $150.00. The Appellee paid an average of $150.00 a month toward unpaid medical bills not paid by medical insurance coverage from my doctors and not including all of the cost of my prescriptions. The Appellee paid $491.00 of tuition a month for the parties' child to continue to attend his parochial school in California. The Appellee has a credit card with Key Visa having a balance of $2,000.00, a target credit card having a balance of $6,600.00, Bank of America credit card that she had been using for living expenses having a balance of $6,000.00, an American Express Card having a balance of $1,000.00. The Appellee testified from the witness stand that my living expenses for the Appellee and my child were between $4,000.00 and $5,000.00 per month. The Appellee testified that I had no insurance other than through the Appellant, my husband at the time.

There is no question based upon the evidence, that the Appellant, James Craig Palculict has a much greater earnings and earning capacity than the Appellee. The Appellant's lifestyle is much more expensive or luxurious than that of the Appellee and the parties' child. The Appellant, James Craig Palculict drives a brand new BMW, and that the Appellee drives an old wore out Dodge pickup truck, which needs major truck repair and is an expense to keep running, just so that the Appellee can have transportation to and from school, church, and after school activities for minor child.

2. The earning capacities of the parties:

There is no question that the Appellant, James Craig Palculict, has a greater earning capacity and capability of earning more thanthe Appellee. The Appelle who is in bad health, but is attempting to work as an Independent Health/Life Insurance Licensed Representative, while in college has earned very little, and does not expect to earn much more until the Appellee completes the necessary requirements to become a licensed insurance broker/ Registered Representative in the State of California, and completes her degrees, where she estimates would be about two or more years to complete if her health holds up.

3. The needs of each party:

The needs of the parties are set forth in (see Exhibits "B" and "C"), that the Appelle has very few assets and now has none. The Appellant, James Craig Palculict does not have a great deal of assets for his earnings, but earns a substantial amount each month from his job and from his previous jobs.

4. The obligations and assets of each party:

The obligations and assets of the parties are set forth (see Exhibit "B" and "C"). The Appellee had very few assets and now has none. The Appellant, James Craig Palculict does not have a great deal of assets for his earnings, but earns a substantial amount each month from his job and from his previous jobs.

5. The length of the marriage:

The parties have been married ten years and seven months as of the date of the trial. That marriage produced a son one year after the marriage. The Appelle was gainfully employed, had an inheritance and other assets at the time of the marriage. The Appellant, James Craig Palculict had no assets or inheritance. That during the marriage the Appellee developed health problems from stage three breast cancer. In addition thereto, while the Appellee is now in remission from

cancer, that the Appellee had to have operations related thereto in July 2006 after the parties' separation.

6. The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide child care:

The parties' son is in legal and physical sole custody of the Appellee. That the child attended has always attended parochial school, except for kindergarten, and also attended parochial school in Southaven, Mississippi, which the Appellant, his father always paid for. That now the child continues to attend parochial school in California, which the Appellant refuses to pay, and that the Appellee is paying same by using credit cards. The child has no physical or mental problems and does well in school.

7. The age of the parties:

The Appellee, LuciAna Gascon Curtis Palculict is presently 48 years of age, born January 19, 1960. The Appellant is presently 38 years of age, born January 10, 1970.

There is a ten year difference in the parties ages. The Appellee is in bad health and earns very little. The Appellant is in good health and earns a large amount of money.

8. The standard of living of the parties both during the marriage and at the time of the support determination:

That at the time of the parties' separation on January 25, 2006, the Appellant, James Craig Palculict, and the Appellee, LuciAna Gascon Curtis Palculict along with the parties' son, Anthony Carlos Palculict, lived in a up-to-date house in a good neighborhood valued at between $160,000.00-$200,000.00, in Southaven, DeSoto County, Mississippi. Anthony continued his parochial education at school in Southaven, MS. The Appellant was employed as a Director of Operations for Beverly Healthcare, Inc., earning a salary, commissions, and bonus' in excess of $140,000.00 a year. The Appellant was furnished an automobile through his employment. The

Appellant chose and did travel on the job and was gone during the week and a lot of the time on the weekends. The Appellant depended upon the Appellee to handle the family finances and bills, which she concurred and did have a budget and kept to it, paying by e-bill on-line, through their banks. The Appellee was recovering and continues to be in remission from my bout with breast cancer and was in need of another operation, but was denied by the Appellant, stating it was inconvenient. The Appellee worked part-time as a substitute teacher at the parochial school minor child attended and also worked as a substitute teacher for the public school elementary, middle, and high school. The Appellee was also required to be involved as part of their paid tuition to volunteer and participate in school activities & projects, care, etc. In addition thereto, the parties owned a rental house in Monticello, Arkansas, on which the Appelle received rent to pay the mortgage payments. The Appellee had access to credit cards and joint bank accounts of the parties.

After the parties separated on January 25, 2006, several hearings were had, and the Appellant was ordered to pay alimony and child support as well as medical bills for the Appellee and the parties' minor child, the parties subsequently sold their home in Southaven, Mississippi and were to divide the equity. The Appellant received $5,000.00 plus another $2,500.00 from the equity. The Appellee was to receive the remainder $2,500.00, but is being held by Anne L. Jackson, former attorney. In May 2006, an order was entered and the Appellee, and the parties' minor child moved to California to live with my relatives. In March 2006, the Appellant, James Craig Palculict, verbally stated to the Appellee, that he was asked to leave his job due to conflict of interest and fraternization with an employee (a nurse consultant at Beverly Healthcare, Inc., Jackson, Mississippi). Prior to leaving Beverly, the Appellant accepted a new position and job, which paid him the salary of $140,000.00 per year plus benefits, including a company car maintenance & upkeep of personal automobile. At the time the Appellant left Beverly

Healthcare, Inc., in March 2006, the Appellant received a substantial severance package of $133,889.16. He subsequently moved to Jackson, Mississippi, then the following year moved to Brandon, MS, where he alleged he was renting a house for $1,800.00 per month, for himself. The Appellant purchased a brand new BMW just because he always wanted one. The Appellant gave $20,000.00 of his severance package to his two children by a prior marriage for them to go to college. One of the children is still in high school. The Appellant testified that he paid alimony to the Appellee of $750.00 per month and that he the Appellant pays her medical bills, (however the Appellee is the one who was and is paying the medical bills and not the Appellant), and insurance, and another $500.00 for child support per month to the Appellee. That the Appellant gave me the old broke down Dodge pickup truck owned by the family.

The Appellee and the minor child are at the present time living in California with family. The Appellee paid about $550.00 per month plus utilities for living expenses. Minor child continues to attend his parochial school in California which the Appellee has paid for through her credit cards and is still owing on them with a twenty-nine percent interest in accrued charges). The Appellee had testified that she had received alimony of $750.00 and child support of $500.00, in the past, but not since September 17, 2007. The Appellee testified that she went to some kind of schooling to obtain a Health & Life Insurance License, that she had been attending, to further education, complete her degree, and in order to obtain my broker's and registered representative license(s), which would take approximately 24 months or more to complete. The Appellee testified that she had sold two health or life policies and received on commission check in April 2007 for a little over $150.00; and commission check in May 2007, for approximately $500.00. The Appellee testified that the minor child and Appellee had been living off of credit cards and with the assistance of our church community and family. The Appellee testified that she had to undergo another operation in California in July 2006, to have a

hysterectomy, was recommended by her oncologist(s) to prevent a reoccurrence of having breast cancer again. The Appellee testified that her mother and grandmother had died of breast cancer, and her oncologist informed her, the Appellee, would be a good future candidate for cervical cancer unless she had this operation. The Appellee testified she is currently in remission for breast cancer and testified she has no assets of any kind, and that all of her inheritance that the Appellee received was used for the benefit of the Appellant, James Craig Palculict, and the family.

There is no question that the Appellee and their son, Anthony Carlos Palculict, the minor child, live a much less lavish lifestyle than the Appellant, James Craig Palculict, the father of parties' child, at the present time.

9. The tax consequences of the spousal support order:

An award of periodic alimony to the Appellee, LuciAna Gascon Curtis Palculict from the Appellant, James Craig Palculcit would be a tax advantage to James Craig Palculict. This would make the Appellee have to pay more taxes, causing undeserving financial burden and strained losses of income, which will directly affect the already minimal living situation of the Appellee and the minor child are now currently in.

10. Fault or Misconduct:

The initial TRO and legal separation documents filed back in January 25, 2006 suggested sexual misconduct years earlier to present was not presented as evidence of the Appellant's ongoing adultery, it was only proffered, and not admitted, which is relevant to the issues of child custody and moral unfitness. The Appellee blamed the Appellant for the breakup of the parties' marriage, but only agreed to an irreconcilable differences divorce on the basis of cruel and inhumane treatment. I, the Appellee am asking this Honorable Court to consider all that has taken place since the initial TRO to present. (R.E. 143-186).

11. Wasteful dissipation of assets by either party, or:

The Appellee did not wastefully dissipate any marital assets, although the Appellant James Craig Palculict, could have lived in a much cheaper place to rent or lease, and could have driven an automobile much less expensive than his BMW, whereas the Appellant stated that since the Appellee gave her own personal vehicle for the Appellant to use during our entire marriage, for him to run around traveling to and from work in my reliable Ford Taurus company style car, that the Appellant verbally agreed and stated to her on several occasions, after our legal separation to cooperate in that he would purchase another vehicle that the Appellee could use in her name, to have reliable transportation for the parties' minor child to and from school, church, and after school activities, or otherwise.

12. Any other factor deemed by the Court to be "just and equitable" in connection with the setting of spousal support;

The Appellee and the parties' minor child as stated are living basically on a minimal lifestyle. The Appellee have no home, no estate, nor a reliable vehicle for transportation. The Appellee has no medical insurance except through the Appellant, James Craig Palculict. For all practical purposes, the Appellee, LuciAna Gascon Curtis Palculict, and their son, Anthony Carlos Palculict, the minor child, are destitute and one step from being homeless people.

The Appellant, James Craig Palculict is required to pay permanent alimony to the Appellee in the amount of $1,500.00 per month until further Orders of the Court or the death or remarriage of the Appellee or the death of the Appellant, James Craig Palculict. Since this order was judged on September 17, 2007. That the first of said alimony payments were to commence on September 1, 2007, in the sum of $1,500.00, with a like payment in like amount being due and payable on the 1st day of each month thereafter until further Orders of this Court. However,

the Appellee, has not received such payments and/or been consistent to pay her per the court orders and to date only have received $980.00 per month since January 2008. (R.E. 101)

D. MEDICAL & DENTAL INSURANCE / REHABILITATIVE ALIMONY:

The Court also believes that rehabilitative alimony is appropriate. In this case it is hopeful that the wife has her cancer in remission. The Appellee had recently since the separation had surgeries to hopefully prevent future recurrences, came with doctor bill balances after insurances were paid, as well.

In *LeBlanc v. Andrews*, 931 So.2d 683 (Miss. Ct App. 2006). The Court of Appeals affirmed a Chancellor's award of debt repayment as rehabilitative alimony.

In the case at bar the Court feels that it is certainly equitable and is necessary to award as rehabilitative alimony the payment of all outstanding medical bills of the Appellee, wife & mother, at the time of divorce not paid by insurance and payment of medical insurance for a period of at lease twenty-four to thirty-six months, or upon the Appellee, LuciAna Gascon Curtis Palculict obtaining a job or employment that offers the Appellee, group medical benefits with minimal co-pay and/or deductible less than five hundred dollars ($500.00) for the Appellee & minor child, with no rider for pre-existing conditions, ie. Cancer, whichever occurs first. The Appellee shall pay nay and all sums not covered by insurance, for the Appellee, and to include the minor child; Whereas the Appellant continues his obligation for full coverage, and is to pay for any and all out of pocket expenses of co-pays, deductibles, over the counter medications, after the divorce.

That in addition thereto, the Appellant, shall maintain medical insurance at all times on the parties' son, Anthony Carlos Palculict, and shall be responsible for the payment of any and all reasonable and necessary medical, dental, and drug expenses incurred for and in behalf of

said child not covered by insurance. The Appellant, James Craig Paculict, is appealing all adjudication of the Court.

The Appellant was ordered to continue with medical insurance and dental insurance coverage, but has ignored and cancelled the Appellee without any proper written Court Order Authority, denying and leaving her without any coverage legally allowed the Appellee, all the while she is still in breast cancer remission, not cured yet. The Appellant also stopped Court Ordered payments to the Dental Insurance coverage before any legal decisions were drawn back in June 2007, and again the Appellee was denied any medical assistance for the Appellee and the minor child who are still without any coverage and dire need of dental work. It is their legal right for the Appellant to maintain on their behalf and/or to transfer coverage so that the Appellee can maintain coverage for the benefit and welfare of the minor child and the Appellee.

E. CHILD SUPPORT:

Once again stated, the Courts have acknowledged that the power and authority of the Chancery Court to award alimony and child support have been historically derived from the legal duty of the husband to support the family. As to division of marital assets, it is the broad inherent equity of the Chancery Court that gave it the authority to act. General equity principles of fairness undergird this authority. That duty was codified in Miss. Code. Ann. Ss 93 – 5- 23 (Supp. 1993) as follows: [5]

FOOTNOTES

[5] Other statutes require the contribution of both parents toward support of their children. Mississippi Code Ann. Ss 93 – 13 – 1 (1972).

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the

children of the marriage, and also touching the maintenance and alimony of the wife or husband, or [**9] any allowance to be made to her or him, and shall, if need be, require bond, sureties or other guarantee for the payment of sum so allowed.

However, where proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each. (Emphasis added).

Of particular significance is the verbiage "any allowance"...to him or her."

Additionally, the statutory authority granted to the Chancery Court to award divorce on no-fault grounds and to approve the parties agreement regarding marital property division or to make such division, on submission of that issue to the court by the parties, further undergird the inherent equitable power of the Chancery Courts to address this issue of division of marital assets. The development of equitable doctrines is not foreclosed by these statutes. Under *Draper*, Chancellors are empowered to address realty assets and to divest title, including that of the family home. In Draper, this Court said:

It is well established by this Court that the Chancery Court has the authority to order **[**10]** an equitable division of property that was accumulated through the joint efforts and contributions of the parties. Brown v. Brown, 574 So. 2d 688, 690 (Miss. 1990). However, there is no automatic right to an equal division of jointly accumulated property, by rather, the division is left to the discretion of the court. Id. At 691.

Child support is to be $980.00 per month based upon the Appellant's 8.05 Financial Declaration and also the fact that he was paying $500.00 per month child support by previous Order. Since the Appellant earns in excess of $50,000.00 per year income the Court found that the guidelines are applicable in the Court proceeding based upon the Appellant, James Craig

Palculict's earnings and his ability to pay, as well as the reasonable needs of the Appellee's child to be fed, clothed, sheltered, and educated.

The Appellant, James Craig Palculict, shall pay unto the Appellee, LuciAna Gascon Curtis Palculict, for the support and maintenance of the parties' minor child, Anthony Carlos Palculict, a male child, nine years of age, at the time of the Court, the sum of $980.00 per month child support. The first of said child support payments shall commence on the 1st day of September, 2007 in the amount of $980.00 with a like payment in a like amount being due and payable on the 1st day of each month thereafter until further Orders of the Court unto I, the Appellee, LuciAna Gascon Curtis Palculict. Unfortunately this was not the case and the Appellant refused to abide by the court orders, ignoring decree. (R.E. 101).

That in addition thereto, the Appellant, shall maintain medical and dental insurance at all times on the parties' son, Anthony Carlos Palculict, and shall be responsible for the payment of any and all reasonable and necessary medical, dental, and drug expenses incurred for and in behalf of said child not covered by insurance. The Appellant, James Craig Paculict, is appealing all adjudication of the Court. The Appellant is in contempt of this Court and an order for withholding was drawn on September 10, 2007, for non-compliance. The Appellant since has not been consistent still will his alimony and /or child support payments to help feed, cloth, provide shelter, and educate the minor child. The welfare departments in California are currently investigating Mississippi Court Orders and preparing to enforce withholdings, but is still pending procedure and at best is unbelievably intolerable for the Appellee and the minor child. (R283-285).

"On Appeal this Court is required to respect the findings of fact made by a Chancellor supported by credible evidence and was not manifestly wrong." *Newsom v. Newsom*, 557 So. 2d

511, 514 (Miss. 1990). This is particularly true "in the areas of divorce and child support." *Nicholas v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989).

III. The Chancellor Appropriately awarded Legal Custody

In the Appellant's counterclaim for divorce, requested custody of the minor child solely on the ground it was the Appellant's preference of the child to live with him. The Appellant made no allegations that [**25] that the Appellee was an unfit mother. On the other hand, stated in the Appellee's complaint that the Appellant was neither a fit, suitable, nor a proper person to have permanent custody. [See initial restraining order on January 25, 2006 and also current restraining order in effect till July 2011].

One of the prerequisites for invocation provided in *Miss. Code Ann.* § 93-11-65 reads, in its pertinent parts, that if the Court shall find that both parties are fit and proper persons to have custody of the children, and that either party is able to adequately provide for the care and maintenance of the children, and that it would be to the best interest and welfare of the child. . [See *Polk v. Polk*, 589 So. 2d 123, 130 (Miss. 1991)]. The Court did not find this to be an abuse of judicial discretion.

In *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983), this Court reaffirmed "the rule that the polestar consideration in child custody cases is the best interest and welfare of the child." After application of the various evidentiary [**26] factors contained in Albright, including the moral fitness of the parties, the Chancellor held "that it would be in the best interest of Anthony Carlos Palculict, that the permanent sole legal and physical custody be awarded to LuciAna Gascon Curtis-Palculict."

The Chancellor's findings looked to the evidence and testimony regarding each *Albright* Factor and determined those rulings were supported by the record. *Hollon v. Hollon*, 784 So.2d 943, 947 (13) (Miss.2001). As the Chancellor was in the best position to evaluate the credibility

of the witnesses, we give due deference to the Chancellor's credibility determinations. *Ivy v. Ivy,* 863 So.2d 1010, 1013 (10) (Miss. Ct. App.2004).

The Chancellor found that the minor child has been primarily raised by the Appellee, who is a loving and caring mother, remains best suited to raise a young child. *Id.* At (14). The Chancellor found the factor of the continuity of care weighed one hundred percent on the Appellee because the Appellant was never home consistently through the entire time of the marriage and since the separation this did not factor a change.

The Chancellor found from testimony that the Appellee did all of the parenting skills, the bathing, feeding, disciplining, help with homework, participates in all the minor child's after school activities, including his religious faith, and that this factor favored the Appellee. There was substantial evidence of the Chancellor's findings to support his discretion.

The Courts have held that the presence of an extended family structure contributes to the stability of the child's life and was considered as supporting the award to one parent, the Appellee. The Chancellor found that there is no question in that the Appellee has always had the willingness and capacity to provide primary child-care and continues to love and appropriately care for the minor child. Also, the Appellee's family lives in close proximity and that the Appellee has a very large church family community nearby, who are all very close and supportive to the minor child and the Appellee. *Messer v. Messer*, 850 So.2d 161, 167 (18) (Miss. Ct. App. 2003); *Neville v. Neville*, 734 So.2d 352, 354 (10) (Miss. Ct. App. 1999).

The Chancellor found that the Appellee responsibly contributed her time and energies as domestic engineer for the family's benefit, while working full-time and/or part-time, (as a substitute teacher) contributing financially, all the while volunteering and participating, assisting in the minor child's activities. Even when the Appellee was sick and recovering from her bout with breast cancer (now in remission), she still managed to take care of her family.

and that the Appellant can his counsel unreasonably violated the Rules of Court on Appeal. [CCP §907; CRC 8.276(a); [11:52]. Appellate Courts have inherent authority to dismiss a frivolous and dilatory appeal. "The dismissal must be granted. This is about as patently frivolous and appeal taken for purposes of delay as is imaginable."

WHEREFORE, I, the Appellee, move this Court to deny and dismiss this Appeal and to remand this case, number #2007-CA-01954, to the Trial Court for enforcement of the Decree on September 17, 2007, heretofore entered.

In closing, I, the Appellee, under extreme duress have completed this Appellee's Brief, Pro-Se, to the best of my abilities, as truthfully and respectful of this Court, without any legal assistance whatsoever. I pray this Court takes this into thorough consideration that my breast cancer is now in remission, but am not considered well, and that all the chemo-therapy and radiation, along with the multiple surgeries and medications up till now, along with this volatile marriage and now divorce is causing me to have unnecessary strain on my current health situation. I can't do anymore of this legal battle or have any more abusive confrontations directly from the Appellant and through our son, the minor child. I, the Appellee am begging this Honorable Court, to please I beg of you, to end the madness or I'm afraid my breast cancer will surface once again. This would be horrific for not only my son, but for me who wants to live on past this abuse for the sake of our son. Our son is truly a beautiful, loving and kind soul and deserves better than this and to have a future with his mother & her health in tact, and with our finances and monies due us in order. (It is medically documented that stress can kill you and can encourage one to get cancer and become ill and or die from it).

Please, I beg without going into detail, I, the Appellee am not asking for anymore than the 14% from what this Mississippi Court already has validated, and knows to be true and correct. I, the Appellee just want it justified and enforced for the sake and benefit of the minor

child, our son, Anthony's, safety, well-being, and security and for ultimately, both of us and our sanity.

I thank the Court, sincerely, for your thorough considerations in this very serious matter inside the scope of this Appeal, as all of my request is a proper *ex parte* to record the facts contained therein is "necessary to convey, a fair, accurate, and complete account of what transpired in trial with respect to those issues that are the bases of Appeal." M.R.A.P.10 (f).

CERTIFICATE OF SERVICE TO APPELLANT'S ATTORNEY

I, the undersigned, have serviced a copy of the foregoing Brief of I, the Appellee, by mail via in a United States Post Office, postage prepaid, on this the 21th day of October 2008, the Honorable Judge Mitchell Lundy, Jr., P O Drawer 471, Granada, MS 38901 and to Lee Ann Turner, MB# 10438, 224 East Main Street, P O Box 80281, Starkville, MS 39759.

SIGNATURE LINE

LuciAna Gascon Curtis-Palculict

CERTIFICATE OF FILING

Comes, now the undersigned, pursuant to Miss. R. App. Page 25 (a) and the hereby certifies that I, the Appellee, Pro-Se, have personally caused the foregoing Brief of Appellee and Record Excerpts of Appellee to be filed with the Clerk of the Supreme Court of Mississippi by placing the original and three (4) copies of said Brief and Record Excerpts in the mail, postage prepaid or other more expeditious form of delivery, This 21st day of October 21, 2008.

SIGNATURE LINE

LuciAna Gascon Curtis-Palculict