IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CA-00183-COA

DAVID EUGENE BOWMAN **APPELLANT**

v.

ROBIN SILLS BOWMAN **APPELLEE**

DATE OF JUDGMENT:	12/19/2019
TRIAL JUDGE:	HON. MICHAEL CHADWICK SMITH
COURT FROM WHICH APPEALED:	LAMAR COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	NATALIE J. GIDEON
ATTORNEY FOR APPELLEE:	S. CHRISTOPHER FARRIS
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED IN PART; REVERSED AND REMANDED IN PART - 08/05/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

WILSON, P.J., FOR THE COURT:

¶1. David Bowman and Robin Sills were married in February 2012. At the time of their marriage, David was 48 years old and had separate assets with a value of approximately $3,188,456. He was disabled but received income from disability insurance and other sources. Robin was 46 years old and had separate assets with a value of approximately $1,378,000. She worked as an attorney prior to and throughout the marriage with an annual salary of approximately $92,000. The parties signed an antenuptial agreement shortly before they were married. Prior to their marriage, the parties had started a business, Rainbow Ventures LLC, to "flip" houses. Each party was a fifty percent owner of the LLC.

¶2. The parties separated in August 2015, and in October 2015 Robin filed a complaint for a divorce. In January 2016, the chancellor entered a temporary order. In August 2017, the chancellor appointed the Koerber Company P.A. to serve as a forensic accounting expert for the court. In November 2018, the parties filed a joint consent to an irreconcilable differences divorce. They agreed to submit the equitable division of the marital estate to the chancellor for a decision. The case proceeded to trial in June 2019.

¶3. In December 2019, the chancellor entered a final opinion and judgment. The chancellor applied the parties' antenuptial agreement, classified their assets and liabilities as marital or nonmarital, and then divided the marital estate. The chancellor awarded David marital assets with a value of $318,213.53 and awarded Robin marital assets with a value of $248,313.53. There were no marital debts. David subsequently filed a motion to alter or amend the judgment, which was denied, and a notice of appeal.

¶4. On appeal, David argues that the chancellor (1) misinterpreted the antenuptial agreement and erred in classifying assets as marital or nonmarital; (2) failed to analyze the *Ferguson*[1] factors; (3) made a clearly erroneous finding of fact regarding the parties' respective contributions to their joint bank accounts; (4) erred by refusing to award David interest on a loan he made to Robin during the parties' marriage; and (5) erred in failing to establish a value or a date for valuing a car that was a marital asset. We address these issues below, providing additional facts as necessary. We find no reversible error as to issues (1), (2), (4), or (5), but we do conclude that the chancellor made clearly erroneous findings of fact

[1] *Ferguson v. Ferguson*, 639 So. 2d 921 (Miss. 1994).

regarding the parties' respective contributions to their joint bank accounts. Those findings may have impacted the chancellor's *Ferguson* analysis. Therefore, we reverse and remand for the chancellor to determine whether correction of the error warrants a different division of the bank accounts or any other marital asset.

ANALYSIS

I. The chancellor correctly concluded that the parties' antenuptial agreement is ambiguous, and the chancellor's resolution of the ambiguity is supported by substantial evidence.

¶5. An antenuptial agreement is a contract and should be interpreted just like any other contract. *Smith v. Smith*, 656 So. 2d 1143, 1147 (Miss. 1995). Contract interpretation involves "a two-step inquiry." *Royer Homes of Miss. Inc. v. Chandeleur Homes Inc.*, 857 So. 2d 748, 751 (¶7) (Miss. 2003). First, the court must "determine whether a contract is ambiguous and, if not, enforce the contract as written." *Id.* Whether the contract is ambiguous is a question of law that we review de novo. *Id.* Second, "[i]n the event of an ambiguity, the subsequent interpretation presents a question of fact for the [fact-finder] which we review under a substantial evidence/manifest error standard." *Id.* at (¶8). "If the terms of a contract are subject to more than one reasonable interpretation," their meaning presents a question of fact for the fact-finder. *Id.*

¶6. "[The Mississippi Supreme] Court has set out a three-tiered approach to contract interpretation." *Id.* at (¶10). First, we attempt to determine the "[l]egal purpose or intent" of the contract based solely on the "four corners" of the contract—that is, based on "an objective reading of the words employed in the contract to the exclusion of parol or extrinsic

evidence." *Id.* If the language of the contract is clear and unambiguous, it must be enforced as written. *Id.* at 752-53 (¶10). Second, if the terms of the contract are ambiguous, "the court should apply the discretionary 'canons' of contract construction." *Id.* at 753 (¶11). Third, only if traditional canons of construction do not resolve the ambiguity, "the court should consider extrinsic or parol evidence" of the parties' intent. *Id.*

¶7. As relevant in this appeal, the parties' antenuptial agreement states, "Each party desires to keep all of his or her nonmarital property, whether now owned or hereafter acquired from whatsoever source, free from any claim of the other arising from their forthcoming marriage, unless specifically treated otherwise [in the agreement]." Schedules to the agreement list the parties' respective nonmarital assets at the time of the marriage. In addition, section 2(b) of the agreement stated that any property "acquired in exchange for property listed on [those schedules]" would also be "considered nonmarital." Section 3 states in part that the parties "specifically reject the concept of unintentional transmutation of nonmarital property into marital property by commingling such property." Next, section 4 of the agreement specifically addresses the status of property acquired during the marriage and titled in one spouse's name or titled jointly. In relevant part, section 4 states:

> All property, including but not limited to, realty, money accounts, investments, professional holdings, business interests and professional partnership assets, acquired by either party after their marriage shall be nonmarital property if the asset is one that traditionally titled, e.g., realty, vehicles, boats, etc., and is separately titled in one of the parties' individual names. If such property is jointly titled, it shall be deemed marital.

Finally, section 9 of the agreement states in relevant part that "the presumption . . . under Mississippi common law . . . that all property acquired by either party during the marriage

is marital property, shall not apply; and . . . that the doctrine that nonmarital property may become marital property by commingling shall not apply."

¶8. These provisions of the parties' antenuptial agreement are relevant to certain assets acquired by the parties during their marriage, including most notably three disputed properties that they acquired as part of their house-flipping business—referred to by the parties and the chancellor as 42 Bridgewater, 35 Clipper Drive, and 101 North 22nd Avenue. Those properties were acquired by the parties during the marriage with David's separate funds but then jointly titled in the names of both parties. The chancellor classified those properties as marital property and then equitably divided them. David argues that the chancellor erred because the properties are considered nonmarital property under section 2(b) of the antenuptial agreement.

¶9. In his opinion, the chancellor concluded that the above-quoted provisions of the antenuptial agreement were "contradicting" but also held that the agreement as a whole was enforceable and would "govern the distribution of property." Although the chancellor did not specifically say that the terms were "ambiguous," his determination that they are contradictory is tantamount to a finding of ambiguity. *See Dalton v. Cellular S. Inc.*, 20 So. 3d 1227, 1233 (¶¶11-12) (Miss. 2009). Furthermore, the chancellor did not err by holding that the terms of the contract—in particular, sections 2(b) and 4—are contradictory and ambiguous in how they apply to the disputed properties. Both section 2(b) and section 4 apply to property that the parties acquired during their marriage. Section 2(b) provides that property acquired during the marriage "in exchange for [nonmarital] property" will also be

"considered nonmarital." Section 4 then provides that certain types of property—including realty—acquired during the marriage "shall be deemed marital" if the property is "jointly titled." The ambiguity arises with respect to property that was *both* acquired "in exchange for [nonmarital] property" *and* "jointly titled." The agreement is ambiguous with respect to whether such property should be considered nonmarital or marital.

¶10. It is evident that the chancellor concluded that section 4 was controlling with respect to such property. The chancellor reasoned that under section 4, "property acquired during the marriage that is jointly-titled shall be deemed marital property, *regardless of how acquired*." (Emphasis added). In addition, the chancellor ruled that "per the antenuptial agreement," 42 Bridgewater, 35 Clipper Drive, and 101 North 22nd Avenue were all "marital property" because they were all acquired "during the marriage" and "jointly titled to the parties." This was so even though the parties used David's separate funds to purchase the three properties.

¶11. Because the chancellor properly determined that the relevant provisions of the antenuptial agreement were conflicting and ambiguous, his subsequent interpretation of those provisions "presents a question of fact . . . which we review under a substantial evidence/manifest error standard." *Royer Homes*, 857 So. 2d at 752 (¶8). As noted above, a "court should apply the discretionary 'canons' of contract construction" to resolve an ambiguity in a contract. *Id.* at 753 (¶11). One such canon is that when "the language of an otherwise enforceable contract is subject to more than one fair reading, the reading applied will be the one most favorable to the non-drafting party." *Id.* The canon applies here

because the antenuptial agreement was prepared by David's attorney and presented to Robin prior to the parties' wedding. Another canon of construction is that "specific language controls over general inconsistent language in a contract." *Union Planters Bank, Nat'l Ass'n v. Rogers*, 912 So. 2d 116, 120 (¶10) (Miss. 2005). That canon also supports the chancellor's decision because section 2(b) applies generally to all types of property, while section 4 applies specifically to assets that are "traditionally titled, e.g., realty." Section 4 provided the parties with a way to clearly designate such property as marital property by jointly titling it. In the absence of any other compelling evidence of the parties' intent, the chancellor did not manifestly err by interpreting the agreement in the light most favorable to Robin and finding that section 4's more specific language controlled the classification of the disputed properties as marital assets.[2]

II. The chancellor sufficiently addressed the *Ferguson* factors.

¶12. In *Ferguson*, our Supreme Court stated,

> [T]his Court directs 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:

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[2] David also argues that "the chancellor adopted contradictory interpretations of the agreement" by ruling that Robin's home prior to the marriage (40 Acadian Circle) remained her separate property even though Robin had conveyed title to her and David as joint tenants with rights of survivorship. However, section 4 of the antenuptial agreement only applies to property acquired by the parties *during* their marriage. Unlike the properties that the parties acquired in their house-flipping business, Robin acquired 40 Acadian Circle prior to the marriage, and it was specifically listed as her separate property on her schedule to the antenuptial agreement. Accordingly, section 4 of the antenuptial agreement does not apply to 40 Acadian Circle.

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

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

    b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and

    c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

3. The market value and the emotional value of the assets subject to distribution.

4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;

5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;

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

8. Any other factor which in equity should be considered.

Ferguson, 639 So. 2d at 928.

¶13. The Court has stated that "[t]he failure to consider all applicable *Ferguson* factors is

error and mandates reversal." *Lowrey v. Lowrey*, 25 So. 3d 274, 286 (¶29) (Miss. 2009). However, the Court has also held that "not every case requires consideration of all eight of the [*Ferguson*] factors" because "the chancellor may consider only those factors he finds 'applicable' to the property in question." *Owen v. Owen*, 798 So. 2d 394, 399 (¶13) (Miss. 2001) (other quotation marks omitted); *see also Seghini v. Seghini*, 42 So. 3d 635, 641 (¶21) (Miss. Ct. App. 2010) ("[T]he supreme court has held that the chancellor is only required to address those [*Ferguson*] factors that are relevant to the case at hand."). Therefore, the "failure to make an explicit factor-by-factor analysis does not necessarily require reversal where we are satisfied that the chancellor considered the relevant facts." *Seghini*, 42 So. 3d at 641 (¶21).

¶14. David argues that we must reverse the division of property in this case because the chancellor failed to analyze the *Ferguson* factors. We disagree.

¶15. The chancellor's opinion is sufficient to show that he "considered the relevant facts." *Seghini*, 42 So. 3d at 641 (¶21). Within his discussion of the properties that the parties acquired as part of their house-flipping business, the chancellor specifically discussed and compared the parties' respective contributions to the accumulation of those assets. As part of this discussion, the chancellor noted David's greater financial contributions to the purchase of certain assets, and he gave David credit for those contributions. The chancellor also found that "[t]here was no evidence that either spouse had disposed of the funds in" their primary marital bank account, the EverBank savings account. The chancellor also discussed the values of the parties' various marital assets. In addition, within his discussion of the

parties' antenuptial agreement, the chancellor discussed the values of the parties' respective nonmarital assets. No evidence was presented of any "[t]ax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution." *Ferguson*, 639 So. 2d at 928. The extent to which property division could be used to eliminate the need for alimony, *id.*, was also irrelevant because the parties did not submit the issue of alimony to the chancellor for a decision.[3] Finally, the need to provide "financial security," *id.*, was not much of a factor in this case given that David had significant separate assets, and Robin also had significant separate assets, earned more than $90,000 annually, and testified that she was in excellent health.

¶16. The chancellor could have provided a more deliberate, factor-by-factor *Ferguson* analysis, and he could have more clearly identified those factors that were inapplicable. However, multiple *Ferguson* factors were largely or entirely irrelevant in this case due the parties' relatively short marriage and antenuptial agreement. In addition, the chancellor's otherwise thorough opinion touched on the substance of the relevant *Ferguson* factors in a manner sufficient to demonstrate "that the chancellor considered the relevant facts." *Seghini*, 42 So. 3d at 641 (¶21). Therefore, the issue does not require reversal.

III. The chancellor's findings of fact regarding the parties' joint checking account and joint savings account are clearly erroneous.

[3] The parties' antenuptial agreement waived any claim for alimony, and both parties acknowledged during the trial that they had not submitted the issue of alimony to the chancellor for a decision. *See Myrick v. Myrick*, 186 So. 3d 429, 434 (¶22) (Miss. Ct. App. 2016) (holding that when the parties' consent to an irreconcilable differences divorce does not submit the issue of alimony to the chancellor for decision, the chancellor lacks authority to award periodic alimony).

¶17. The chancellor made the following findings of fact regarding a joint checking account and joint savings account that the parties opened and used during the marriage:

> During the marriage, the parties had two joint accounts with EverBank, a checking account (ending in 5980) and a savings account (ending in 5079). According to the report,[4] the balance in the joint checking account, as of September 30, 2017, was $1,005.02. The remaining balance is to be split evenly between the parties. The remaining balance of the savings account, as of September 30, 2017, was $79,282.83. The report prepared by Koerber indicated that unidentified deposits and deposits from the checking account represented approximately eighty-four percent (84%) of the total deposits to this account (the savings account). Under *Ferguson*, it is impossible to determine which, if either, party had a more active role in the contribution to the accumulation of the balance of that account. There was no evidence presented that either spouse had disposed of the funds in the account. Likewise, there was no evidence presented that the balance of this account was premarital property as it was a business operating account. As such, the Court finds this account is marital property and that an equal division of the remaining balance is appropriate . . . .

¶18. On appeal, David argues that the chancellor's findings are clearly erroneous because the court-appointed expert's report and uncontradicted testimony show that David contributed significantly more to the EverBank accounts than Robin contributed. Specifically, the expert, Robert King, found and testified that David directly contributed $228,723.84 to the checking account, while Robin directly contributed $135,400.[5] In addition, David directly contributed $162,873.84 to the savings account, while Robin made no deposits to that account. As David argues, the chancellor clearly erred to the extent that he found that it was "impossible to determine which, if either, party had a more active role

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[4] The report was prepared by the court-appointed forensic accounting expert, Robert King of the Koerber Company P.A.

[5] Robin deposited the rest of the salary she earned during the marriage in a separate, nonmarital account.

in the contribution to the accumulation of the balance of [the savings] account." Rather, King testified, without contradiction, that David contributed more to that account and that Robin made no separate deposits or contributions to that account. In addition, King found that thirty-two percent of the deposits in the savings account were transfers from the parties' EverBank checking account, and David also made greater contributions to that account than did Robin. David argues that this erroneous finding impacts not only the EverBank accounts but also other assets related to the parties' house-flipping business because the EverBank accounts were used as operating accounts for the business.

¶19. A division of marital property will be reversed if it is based on findings of fact that are "manifestly wrong or clearly erroneous." *E.g.*, *Lowrey*, 25 So. 3d at 285 (¶26) (quoting *Sanderson v. Sanderson*, 824 So. 2d 623, 625 (¶8) (Miss. 2002)). Here, the chancellor's division of the EverBank accounts was based in part on clearly erroneous findings. It is also possible, as David argues, that this error impacted the chancellor's division of other marital assets. Therefore, we reverse and remand for the chancellor to consider whether, under *Ferguson*, the correction of this error should result in a different division of the EverBank accounts or any other marital assets.

IV. The chancellor did not err by declining to award David interest on a loan that David made to Robin during the marriage.

¶20. Robin owned a rental property, 22 Carriage Park Drive, prior to the marriage. It was listed on her schedule of assets attached to the antenuptial agreement. During the marriage, David paid off the original mortgage on the property with funds wired directly from his separate bank account. After the mortgage payoff, Robin began repaying David, and she

made monthly payments to David from March 2013 to May 2017. According to the Koerber report, as of May 2017, the remaining balance of the loan from David to Robin was $180,962.02. Robin sold the property in May 2017 and deposited the proceeds ($194,580.56) in her separate checking account, where they remained at the time of trial. At trial, Robin admitted that the mortgage payoff constituted a loan from David to her. Robin further admitted that she had orally agreed to repay the loan.

¶21. At trial, David asked the chancellor to order Robin not only to repay the principal balance of the loan but also to pay him more than $40,000 in interest. David's claim for interest was based on an electronic backup copy of a signed promissory note that purported to require Robin to pay interest on the loan. David testified that he witnessed Robin sign the original note but that he could not locate the original because it was in a file that had "disappeared." In contrast, Robin denied that she ever signed the promissory note or agreed to pay David interest.

¶22. In the final judgment, the chancellor ordered Robin to repay David the principal balance of the loan. However, the chancellor denied David's request for interest, stating that "since the validity of the note is disputed, the terms of the note and additional interest will not be considered." On appeal, David argues that the chancellor erred by denying his request for interest. David contends that even "setting aside the question of whether [Robin] signed the note," he is entitled to interest "under the old-time action of Money Had and Received, or the more modern theory of Unjust Enrichment."

¶23. We find no error or abuse of discretion in the chancellor's ruling. In the chancery

court, David did not assert claims for "Money Had and Received" or "Unjust Enrichment." Therefore, those issues are waived on appeal. *E.g.*, *City of Hattiesburg v. Precision Constr. LLC*, 192 So. 3d 1089, 1093 (¶18) (Miss. Ct. App. 2016). More important, when the parties filed their joint consent to an irreconcilable differences divorce, the sole issue that they submitted to the chancellor for a decision was the "[e]quitable division of the . . . marital estate." Because the promissory note is not part of the marital estate, the parties' dispute regarding its validity was not within the scope of the issues they submitted to the chancellor for a decision. Likewise, the common-law claims that David asserts for the first time on appeal are not within the scope of the issues that the parties submitted to the chancellor. Therefore, the chancellor did not err when he declined to consider the terms of the disputed promissory note or David's claim for interest. *Myrick*, 186 So. 3d at 433 (¶17) ("A chancellor may decide contested issues in a divorce based upon irreconcilable differences. However, he is limited to the resolution of those issues specifically identified and personally agreed to in writing by the parties." (quoting *Wideman v. Wideman*, 909 So. 2d 140, 146 (¶22) (Miss. Ct. App. 2005))); *accord Leblanc v. Leblanc*, 271 So. 3d 494, 509 (¶70) (Miss. Ct. App. 2018).

V. The chancellor did not err by ordering the parties to sell a car and divide the repair cost and proceeds of the sale equally.

¶24. During their marriage, the parties acquired a 2011 Mercedes C300. The chancellor awarded Robin temporary use, ownership, and possession of the car in his January 2016 temporary order. By the time of the trial in June 2019, Robin testified that the vehicle was in the repair shop and inoperable. The chancellor noted that both parties owned other

vehicles and that neither of them expressed any interest in retaining the car. The chancellor did not make any findings regarding the car's value or award it to either party. Rather, he simply ordered Robin to have the vehicle repaired and then attempt to sell it at Kelley Blue Book value, and he ordered the parties to split the cost of the repairs and the proceeds of the sale equally.

¶25. On appeal, David argues that the chancellor committed reversible error by failing to set the date of demarcation as the date of the temporary order, value the car as of that date, and then "charge" Robin with the loss in value of the car during the period between the temporary order and the trial. David argues that chancellor's ruling resulted in him "being charged one-half (½) of [the car's] loss in value." He argues that "[t]his is unjust."

¶26. The chancellor committed no reversible error in his ruling regarding the car. "The proper date for valuation is a matter within the chancellor's discretion," and subject to some exceptions, "assets should generally be valued as close to the trial date as feasible." Deborah H. Bell, *Bell on Mississippi Family Law* § 6.07[3], at 177 (3d ed. 2020). Further, "[i]t is not necessary that every asset be valued as of the same date." *Id.*; *Stout v. Stout*, 144 So. 3d 177, 185 (¶15) (Miss. Ct. App. 2013) ("We can find no case law that a chancellor must use the same date when valuing all the property."). By simply ordering the parties to split the cost of repairs and then split the proceeds of the sale, the chancellor effectively valued the car as of the date of the trial and then divided its value evenly between the parties. Such a decision was well within the chancellor's discretion. David cites no authority that would require the chancellor to "charge" Robin with the reduction in the car's value that occurred between the

temporary order and the time of trial. Moreover, given that the chancellor ordered the parties to sell the car and divide the proceeds evenly, a formal finding of fact regarding the car's value would have served no material purpose. Nor would it have impacted the chancellor's division of other assets. In sum, the disposition of this asset was within the chancellor's discretion and is affirmed.

CONCLUSION

¶27. We find no error in the chancellor's interpretation and application of the antenuptial agreement or classification of assets as marital or nonmarital. In addition, the chancellor did not err by denying David's claim for interest on the disputed promissory note or by ordering the parties to sell the Mercedes and split the proceeds evenly. However, the chancellor's division of the EverBank accounts was based in part on clearly erroneous findings of fact regarding those accounts. Therefore, we reverse and remand the division of property so that the chancellor may consider whether, under *Ferguson*, the correction of that error requires a different division of the EverBank accounts or any other marital asset.

¶28. **AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

CARLTON, P.J., GREENLEE, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. WESTBROOKS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, C.J., AND McDONALD, J.; SMITH, J., JOINS IN PART.

WESTBROOKS, J., CONCURRING IN PART AND DISSENTING IN PART:

¶29. I respectfully concur in part and dissent in part from the majority's opinion. I agree with the majority that the chancellor properly concluded that some provisions of the antenuptial agreement were ambiguous. However, because the rationale behind the

chancellor's interpretation of the antenuptial agreement was not provided, I maintain that this issue should be remanded for further findings regarding the resolution of the conflicting provisions of the antenuptial agreement. I also disagree with the majority's ruling that the chancellor's finding regarding the funding of the EverBank accounts was not supported by substantial evidence. I believe the chancellor erred in not specifically addressing the *Ferguson* factors he relied on in making his decision about asset allocation, and the issue should be addressed on remand. I also maintain that the chancellor should have set a specific demarcation date for valuation of the Mercedes, and this issue, too, should be resolved on remand. Lastly, I agree with the majority's decision to uphold the chancellor's ruling on repayment of the loan to David without interest.

I. The Antenuptial Agreement

¶30. In this instance, the chancellor found three provisions of the antenuptial agreement to be contradictory, thus rendering the agreement ambiguous. Given his finding of ambiguity, the chancellor was then tasked with interpreting the contract. "[W]here terms of a contract are ambiguous, the contract will be interpreted in a reasonable manner[,]" and our review is based on the "substantial evidence/manifest error standard." *Harris v. Harris*, 988 So. 2d 376, 378 (¶10) (Miss. 2008) (quoting *Tupelo Redev. Agency v. Abernathy*, 913 So. 2d 278, 283 (¶12) (Miss. 2005)). This Court uses a three-tiered approach to contract interpretation. *Id.* at 378-39 (¶10) (citing *Tupelo Redev. Agency*, 913 So. 2d at 284 (¶13)). The first step is to look to the four corners of the agreement to attempt to translate a clear understanding of the parties' intent. *Id.* at 379 (¶10). If the parties' intent remains elusive,

a court applies the canons of contract construction. *Id.* If the parties' intent is still unclear, a court considers extrinsic or parol evidence. *Id.*

¶31. It is clear from the face of the document that the antenuptial agreement was entered into so the parties could ensure continued separate ownership of certain assets. The relevant portion of the agreement states as follows: "Each party desires to keep all of his or her nonmarital property, whether now owned or hereafter acquired from whatsoever source, free from any claim of the other arising from their forthcoming marriage, unless specifically treated otherwise below." David's nonmarital property was listed in Exhibit "A" to the agreement, and Robin's nonmarital property was listed in Exhibit "B." The chancellor had to interpret the agreement only in such a way as to give effect to the parties' intent when forming it.

¶32. Despite knowing the parties' intent, interpreting the agreement in accordance with that intent is challenging where, as here, all provisions of the agreement do not follow the same path in arriving at that intent and, as such, may have differing outcomes if they cannot be harmonized. *See Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 352 (Miss. 1990) (explaining that where provisions are contradictory, if possible, a court should harmonize them according to the parties' apparent intent). David points out in his briefs to this Court that there are numerous ways in which the antenuptial agreement can be interpreted, yet he finds only one interpretation to be reasonable. The chancellor plainly indicated which provisions of the agreement he found contradictory and then stated that "the terms of the agreement shall govern the distribution of property." The chancellor's opinion, however,

fails to clearly specify how he ultimately chose to interpret the conflicting provisions. Without the benefit of a specific finding or, indeed, any insight into the chancellor's thought process, I cannot say with certainty that his interpretation of the agreement was reasonable and based on substantial evidence. I believe this issue should be remanded so the chancellor can make further findings regarding the resolution of the conflicting provisions of the antenuptial agreement.

II. The EverBank Accounts

¶33. I respectfully disagree with the majority on this issue. David argues that the funds in the EverBank joint accounts *5079 and *5980 should not have been considered to be marital property because the funds can be traced to him. The issues David raised with regard to these accounts overlap somewhat, and this seems to be presented as an alternate argument: in the event the chancellor's interpretation of the antenuptial agreement does not view these accounts as nonmarital, they should still be David's separate property because the funds can be traced back to his pre-marital funds. He specifically questions whether the chancellor's finding regarding the funding of the EverBank accounts was supported by substantial evidence. I believe it was.

¶34. It should be noted at the outset that David has provided no authority in support of his argument in favor of asset tracing. The Mississippi Rules of Appellate Procedure require that the argument section of an appellant's brief contain "the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on." M.R.A.P. 28(a)(7). Although asset tracing is not

a novel concept under Mississippi law, it has yet to be boiled down to black-letter law, and we are not required to supply research where it is lacking. Mississippi caselaw has consistently held that the "[f]ailure to cite any authority is a procedural bar, and [a reviewing court] is under no obligation to consider the assignment." *Taylor v. Kennedy*, 914 So. 2d 1260, 1262 (¶4) (Miss. Ct. App. 2005); *see also Russell Real Prop. Servs. LLC v. State*, 200 So. 3d 426, 430 (¶10) (Miss. 2016) (finding claims of error unsupported by citation or authority to be abandoned). David's brief is completely devoid of legal authority on this issue; as such we are not required to address this assignment of error. Notwithstanding this, even if the procedural bar were disregarded, there was no abuse of discretion or manifest error by the chancellor regarding ownership of the EverBank accounts.

III. *Ferguson* Factors

¶35. With respect to the application of the *Ferguson* factors to the situation at hand, I deviate from the majority's opinion. David argues that he contributed more to the accumulation of marital assets than Robin and that the chancellor erred in his division of the marital estate because he made no findings pursuant to *Ferguson*. In and of itself, there is little value to David's statement that he made the greater contribution to the accumulation of assets. *Ferguson* mandates that all applicable factors (including the contributions of each party) should be considered. *Ferguson*, 639 So. 2d at 928. To the extent David's and Robin's assets were not allocated to one or the other of them pursuant to the antenuptial agreement, the *Ferguson* factors should have been applied to the Bowmans' marital assets to determine the proper manner of distribution. This did not happen. The chancellor stated

that "[r]egarding property which is not listed as a separate asset in the antenuptial agreement, an equitable division is necessary." The final judgment lists all of the factors enumerated in *Ferguson,* and the chancellor refers in several instances to his analysis under *Ferguson*; but the final judgment contains no analysis of the *Ferguson* factors in light of the facts presented in this case.

¶36. The Supreme Court addressed a situation in which the chancellor (like here) made only a "blanket statement" saying that he had considered the *Ferguson* factors. *Ballard v. Ballard*, 255 So. 3d 126, 134 (¶23) (Miss. 2017). The Court held:

> *Ferguson* provides eight factors a chancery court must consider when attempting to effect an equitable division of marital property. *Ferguson* requires consideration of the eight factors, or a finding of inapplicability. The Court has held in no uncertain terms . . . [that] [t]he failure to consider all applicable *Ferguson* factors is error and mandates reversal. Moreover, factor tests, such as provided in *Ferguson* for property division, must be considered on the record in every case.

Id. at 134 (¶22) (citations, emphasis, and internal quotation marks omitted). I note that the majority specifically acknowledges the fact that the chancellor could have provided a clearer discussion of the *Ferguson* factors. But I respectfully disagree that it is unnecessary for him to do so. Precedent calls for this issue to be reversed and remanded to the chancery court for a proper, specific application of the *Ferguson* factors to the assets not allocated pursuant to the antenuptial agreement.

IV. The Mercedes

¶37. The Bowmans bought a Mercedes while they were married. The chancellor classified the car as marital property but did not place a value on the car, nor did he set a date of

demarcation (effectively a date when marital assets become separate assets) by which to establish the sale price. The majority would affirm the chancellor's decision, stating that the disposition of the car is within his discretion. While I agree that the chancellor acted within his discretion in disposing of the car, he should not be relieved from the requirement of setting a date of demarcation.

¶38. David argues that the demarcation date should have been the date of the temporary order—January 15, 2016. He further maintains that because Robin used the car for three years, it would be "unjust" to use the lower sales figure, which resulted from the loss in value, that occurred after Robin was given sole use of the Mercedes. Robin makes no responsive argument.

¶39. The chancellor is tasked with choosing a date of demarcation. *Cuccia v. Cuccia*, 90 So. 3d 1228, 1233 (¶11) (Miss. 2012). But as to David's argument that the date of the temporary order should be the demarcation date, that is not for us to decide. The Supreme Court's rulings are instructive on this issue.[6] David points to *Collins v. Collins*, 112 So. 3d 428 (Miss. 2013), in support of his argument. In *Collins*, the Supreme Court held that a chancellor should give a specific date in the record but did not remand the issue because the date the chancellor meant for the parties to use as the demarcation date—the date of divorce—was unambiguous. *Id.* at 432-33 (¶13). The Supreme Court also stated, "[W]e reaffirm our holding in *Lowrey* and hold that it is necessary that a chancellor maintain discretion to

[6] The law in Mississippi is that "either the date of separation (at the earliest) or the date of divorce (at the latest)" can serve as the point of demarcation. *Lowrey v. Lowrey*, 25 So. 3d 274, 285 (¶27) (Miss. 2009).

decide in each instance whether a temporary order is the proper line of demarcation." *Id.* at 432 (¶11). Based on the foregoing, this issue should be remanded to the chancery court with instructions to determine a date of demarcation so that a sale price can be established for the car and also so that the car can be subject to equitable distribution after the chancellor undertakes an analysis of the *Ferguson* factors.

V. Interest on the Loan

¶40. David requested that the court order Robin to pay him interest on the loan, but it was incumbent on him to prove his case (i.e., that the promissory note was valid, thus entitling him to interest). I agree with the majority that the chancellor acted within his discretion in awarding David repayment of the loan amount (without interest) based on the oral agreement rather than the disputed promissory note and accompanying amortization schedule.

CONCLUSION

¶41. For the foregoing reasons, I respectfully concur in part and dissent in part.

BARNES, C.J., AND McDONALD, J., JOIN THIS OPINION. SMITH, J., JOINS THIS OPINION IN PART.