

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2021-CA-00038-COA**

**GREGG GARNER**

**APPELLANT**

**v.**

**RACHEL GARNER**

**APPELLEE**

DATE OF JUDGMENT: 12/11/2020  
TRIAL JUDGE: HON. JACQUELINE ESTES MASK  
COURT FROM WHICH APPEALED: LEE COUNTY CHANCERY COURT  
ATTORNEYS FOR APPELLANT: D. KIRK THARP  
THOMAS A. WALLER  
ATTORNEY FOR APPELLEE: RICHARD SHANE McLAUGHLIN  
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS  
DISPOSITION: AFFIRMED - 07/26/2022  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE WILSON, P.J., McCARTY AND SMITH, JJ.**

**McCARTY, J., FOR THE COURT:**

¶1. A woman filed for a divorce against her husband. The chancery court granted the divorce on the ground of irreconcilable differences. The husband was awarded just under half of the marital assets, plus rehabilitative alimony, and visitation of their two children. He now appeals. Finding no error, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2. Gregg and Rachel were married in April 2012 and had two children. The parties were natives of Alabama but relocated to Tupelo, Mississippi. There, Rachel began her medical practice as a physician in obstetrics/gynecology. Although Gregg completed a bachelor of science degree in engineering, he did not become a licensed engineer.

¶3. Rachel’s career took off. Her yearly salary was about \$300,000, and prior to the COVID-19 pandemic, she also earned quarterly bonus payments totaling \$300,000, making her annual compensation \$600,000 or more.

¶4. Gregg worked in Australia in the early months of the marriage and earned an annual salary of about \$100,000. He left that position, and at his next job he made \$45,000 to \$50,000 annually. Several years later, Gregg left that job to begin his own construction consulting business. His annual income with his consulting business was \$42,000.

¶5. Despite the couple’s success, Rachel would later testify the marriage was tumultuous from the very beginning. She stated they had a violent argument during their honeymoon, during which Gregg “tore the room apart.” The turmoil continued throughout the marriage. After nearly eight years, Rachel filed for a divorce. In her complaint, she requested emergency relief. She asked the court for emergency temporary child custody, emergency temporary use and possession of the marital home, and an emergency temporary restraining order.

¶6. The next day, the court conducted an emergency hearing. Rachel testified Gregg was abusive, and she feared for her life. She stated there was “no normal conversation” between her and Gregg. She said Gregg was “terrorizing [her] and the children.” She also testified that throughout the marriage, Gregg verbally and physically abused her in front of their children.

¶7. The chancellor granted the temporary restraining order against Gregg, prohibiting him from going within five hundred feet of Rachel. The trial court’s order also prohibited Gregg

from contacting, stalking, abusing, or harassing Rachel. Gregg left the marital home and moved into one of the couple's other homes.

¶8. Despite the trial court's order, Gregg's erratic behavior continued. During a FaceTime call with their daughter, Gregg accused Rachel of "breaking up this family and instructed their daughter to go to a bedroom and lock the door, and that she should be careful what she told Rachel." Gregg also told their daughter he would have to get a security system and "call the cops" when he gained custody because "mommy can be dangerous." He threatened not to return the children after his visitation period and berated and yelled at Rachel during a custody exchange.

### *The Divorce Trial*

¶9. Before the trial court, Rachel testified Gregg physically abused her at least three times throughout their marriage. She first recalled an incident when she was pregnant with their first child. She said Gregg "pushed her to the floor and [she] ended up in the ER." She also recalled Gregg physically abusing her in front of their eldest child. She stated, "[H]e pushed me down and I hit my head on the wall and it scared [our daughter]." Lastly, she testified Gregg "threw a shoe at [her]," and a photograph of a bruise on her rib cage was admitted.

¶10. Video or audio recordings corroborated much of Rachel's testimony about Gregg's instability and violent actions throughout the marriage. In nearly every video, the two children were seen or heard in the background. In one video, their daughter could be heard repeatedly yelling, "Daddy, stop!" Rachel was very soft-spoken. She asked Gregg, "[W]hy are you being so mean." He shouted back, "You stop f\*\*\*ing lying. You need to get your

hearing checked. I hate a f\*\*\*ing liar. Get your lazy a\*\* upstairs. You need to apologize for being a f\*\*\*ing b\*\*\*\*.” As Gregg shouted at Rachel, he threw what appeared to be silverware at her.

¶11. Another video shows a physical struggle between the couple. As Rachel tried to record Gregg from her phone, he aggressively stated he would “break this mother\*\*\*\*er.” Rachel told Gregg, “[G]ive [the phone] to me.” Then Gregg could be seen walking closer to Rachel. In an effort to stop Gregg from grabbing and possibly “breaking” the phone, Rachel yelled “stop.” But Gregg did not stop. Instead, he told her, “[S]ee what I do.” Then, the video abruptly ended.

¶12. One of Rachel’s closest friends testified regarding conversations with Rachel about Gregg’s behavior.

Q. Prior to the separation, do you remember observing Rachel talking to – Rachel Garner when she indicated she was in fear of her life?

A. Yes.

Q. Would you tell me a bit about that?

A. On many occasions, Rachel would text me and say that . . . she was in her guest bedroom and she had furniture pushed against the door because she was afraid, and that she, quote, just wanted someone to know where she was in case something happened to her.

¶13. The Garners’ nanny testified. She stated she began working for the Garners shortly after the birth of their first child. She stated she was employed full-time and usually worked from 7:30 a.m. to 5:30 p.m. and handled most of the chores around the house. The nanny had an eleven-month-old and a three-year-old whom she would take with her to the Garners’ home. She explained she would “be with the kids, tak[e] care of them, get[] them breakfast [and] lunch,” and “help[] with school.”

¶14. The nanny further testified she would see Gregg drinking alcohol during the daytime hours while she worked. She said she observed some of the intense arguments between the Garners, and in her view, Gregg was the instigator. She recalled an occasion in which Gregg berated Rachel for buying too many groceries. The yelling and cursing from Gregg became so intense that she “asked [her own children and the Garner children] to go upstairs” to get them out of the situation.

¶15. Rachel also explained Gregg was abusing other substances beyond alcohol:

I first noticed the weight loss. It was a dramatic weight loss suddenly, and I did not see a change in [Gregg’s] diet to explain that or a change in his activity level that would otherwise explain it. I actually thought at first he was sick. And he became increasingly more paranoid and aggressive and impulsive[.]

¶16. Rachel testified she later learned the substance was Adderall. She said Gregg never told her about a prescription. After seeing charges to their account from a pharmacy, she asked Gregg if he had bought any medication. She testified Gregg told her no. Rachel then called their physician. The physician informed Rachel that Gregg had been given a prescription for Adderall.

¶17. In addition to his prescription drug use, Rachel testified Gregg was a heavy drinker. Rachel thought her husband drank the same amount despite the pill usage. She also testified Gregg once closed himself in a bedroom of their home and began drinking whiskey. She stated he later exited the room with a gun, which he put to his head in front of Rachel and their daughter. She stated Gregg caused damage around the house. She also specifically recalled an instance when Gregg broke a door in an effort to enter a room after she had locked the door.

¶18. Gregg testified regarding the couple's home life. He testified he decided to start his own company because he wanted to "set [himself] up and be successful . . . and be flexible for [his] family." Although the couple hired a nanny, in his view, he was the primary caregiver for the children. He testified that on an average day, he would "go through and check the kids' homework, check their folders, make sure they've got their homework done, [and] make sure they have been fed." He also stated that he would take the kids out to play and then bathe them at night.

¶19. Gregg also testified regarding Rachel's allegations of abuse. While he admitted the behavior on the video footage was "beyond poor conduct," he denied Rachel's allegations that he ever physically attacked her. However, he admitted he "slapped the phone out of her hand that was being used against [him]." He also admitted to pointing a gun at his head in front of his daughter. He stated, "[I]t was one of those things that very unfortunately happened, and I very much regret it."

¶20. Several neighborhood friends of the couple testified. They testified Gregg was a "good father" and spent a substantial amount of time with the children. One of the neighbors testified, "Gregg was with the kids most of the time." Each of the witnesses watched the videos of Gregg's behavior but testified it did not change their opinion of Gregg as a father.

### ***The Guardian Ad Litem Report***

¶21. The guardian ad litem gave a recommendation to the court. In his analysis, the GAL stated that Gregg's comments in the videos were "abhorrent." He further maintained there was "no excuse" for the behavior Gregg displayed in front of the children. While he stated

there was no certainty Gregg's conduct "[rose] to the level of abuse or neglect," he felt the evidence was "shocking, repulsive, and unquestionably marked adverse psychological events in the children's lives; and further, the children appear in the videos to be numb to the conduct, as if this conduct was tragically commonplace and therefore expected."

¶22. Regarding Gregg's ability to co-parent, he stated:

The [GAL] remains concerned that if Gregg could not control his impulsive explosive temper during a period of time when all incentives were to remain calm and reasonable at all costs, then it is possible that Gregg is not equipped to conform to acceptable standards of non-disparagement and co-parenting.

¶23. Nonetheless, the GAL ultimately recommended the parents share joint legal custody. But he recommended Rachel receive sole physical custody and control of the minor children and Gregg have frequent visitation.

#### ***The Trial Court's Order***

¶24. The trial court granted the divorce on the ground of irreconcilable differences. Regarding custody, the court found, "Based on the conduct by Gregg during this litigation, the [c]ourt finds an award of joint legal custody would not serve the children's best interests." Rachel was awarded sole legal and physical custody of the children, and Gregg was awarded frequent visitation with the children.

¶25. The trial court then valued the entire marital estate in an effort to determine an equitable distribution. As a result of the distribution, Gregg received (1) the Garner Valley home, valued at \$488,000; (2) his 401(k) retirement plan, valued at \$37,067; (3) a 2012 Chevrolet, valued at \$12,000; (4) a Kubota Tractor and equipment, valued at \$55,000; (5) a Kubota mower, valued at \$7,000; and (6) other personal property. He also received \$273,278

in liabilities, the majority of which was debt on the home and debt on the tractor.

¶26. Rachel received (1) the marital home, valued at \$520,000; (2) the Summerlake property, valued at \$211,000; (3) a one-fifth interest in OB-GYN Realty LLC; (4) her 401(k) retirement plan, valued at \$362,208.37; (5) a money market account, valued at \$86,000; (6) two vehicles, valued at \$45,000; and (7) other personal property. Rachel also received \$787,468.70 in debt—more than twice Gregg’s debt.

¶27. In total, Gregg received a net allocation of over 48% of the marital estate, which was \$565,319.76. Rachel received a net allocation of \$596,600.51, which was about 52% of the marital estate.

¶28. The court ordered Gregg to pay \$508 in monthly child support. After the court conducted a thorough analysis, Gregg was awarded periodic temporary alimony in that same amount for two years.

¶29. Gregg appealed, raising three issues.

## **DISCUSSION**

### **I. Gregg’s receipt of 48% of the marital estate was proper.**

¶30. Gregg argues the chancery court failed to conduct a proper *Ferguson* analysis. Specifically, he argues the chancery court committed manifest error in its failure to assess that the debt distribution placed him in a negative debt to income ratio.

¶31. “It is within the chancery court’s authority to make an equitable division of all jointly acquired real and personal property.” *Norwood v. Norwood*, 305 So. 3d 175, 178 (¶11) (Miss. Ct. App. 2020). “This Court reviews a chancery court’s division of marital assets for



an abuse of discretion.” *Id.* “We will not reverse a chancery court’s distribution of assets absent a finding that the decision was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Id.*

¶32. “[W]hen dividing marital property, chancellors are to (1) classify the parties’ assets as marital or separate; (2) determine the value of those assets; (3) divide the marital estate equitably . . . ; and (4) consider the appropriateness of alimony if either party is left with a deficiency.” *Faerber v. Faerber*, 150 So. 3d 1000, 1005 (¶12) (Miss. Ct. App. 2014). From there, the chancery court must apply the *Ferguson* factors, which include: “(1) contribution to the accumulation of the marital property; (2) dissipation of the assets; (3) the market or emotional value of assets subject to distribution; (6) the extent to which property division may eliminate the need for alimony; (7) the financial security needs of the parties; and (8) any other factor that in equity should be considered.” *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994).

¶33. “Equitable distribution does not require equal distribution.” *Spahn v. Spahn*, 959 So. 2d 8, 15 (¶14) (Miss. Ct. App. 2006). “Rather, equitable distribution is a fair division of marital assets during the marriage.” *Id.*

¶34. In the final judgment, the chancery court created a chart to track the marital assets and their respective values. After this classification, the chancery court allocated the marital assets and debts. The chancery court acknowledged Gregg’s argument he was “upside down”—his available income would not permit him to satisfy the indebtedness attached to the home and tractor. Yet the chancery court also noted Gregg’s abusive, violent and

unstable behavior. The chancery court acknowledged Gregg greatly depleted the couples' accumulated American Express points. In contrast, the chancery court reviewed Rachel's direct contributions to the accumulation of marital assets, which far exceeded anything from her husband. Ultimately, the chancery court awarded Gregg a net allocation of \$565,319.76—over 48% of the marital estate.

¶35. On appeal, Gregg argues the chancellor's award puts him in a deficit of \$41,000 a year due to the costs associated with his property award. He further argues the court erred by only awarding him \$37,067 in "accessible cash" while Rachel was awarded \$488,208.37. Yet no law or rule requires cash to be distributed equally. And the chancellor's award provided him \$565,319.76 in equity in a home, tractor, and other personal property. Gregg's award was over 48% of the net marital assets, making it almost equal to Rachel's portion.

¶36. Our precedent only requires equitable, not necessarily equal distribution. *Spahn*, 959 So. 2d at 15 (¶14). Despite the extensive evidence of Gregg's volatile behavior, the chancellor still granted Gregg an award of almost half the marital estate. Although Rachel was awarded a slightly larger share, she also received significantly more debt in the divorce, totaling over \$787,000 compared to Gregg's \$273,278.

¶37. The chancery court awarded Gregg the Garner Valley home, a car, and a plethora of personal property. There was no limitation placed on Gregg that would prohibit him from liquidating or selling the home and other assets. The harsh reality was that the assets came with mortgages.

¶38. Also, regarding the award of personal property, the chancery court simply awarded

what Gregg requested.

Q. And of all that personal property, you don't want it; is that right? - -

A. I'll take every - - I'll take every penny of it.

¶39. This Court has affirmed equitable distributions more disparate than the distribution in this case. *See Randolph v. Randolph*, 199 So. 3d 1282, 1287 (¶18) (Miss. Ct. App. 2016) (affirming an award of 60% of the marital assets to the wife when there was evidence the husband physically abused his wife throughout the marriage).

¶40. In this case, the chancery court classified and valued the contested property based on the evidence and conducted a detailed analysis of all the *Ferguson* factors in distributing the marital property. The chancery court did not abuse its discretion in doing so.

## **II. Gregg's award of rehabilitative alimony was proper.**

¶41. Gregg contends the chancery court erred as a matter of law in its failure to conduct a proper *Armstrong* analysis. He further contends the court committed manifest error in its award of alimony, as he was not awarded more "accessible cash."

¶42. "Alimony awards are within the discretion of the chancery court, and the decision will not be reversed on appeal unless the chancery court was manifestly in error in its finding of fact and abused its discretion." *Norwood*, 305 So. 3d at 179 (¶20). "In the case of a claimed inadequacy or outright denial of alimony, we will interfere where the decision is seen as so oppressive, unjust, or grossly inadequate as to evidence an abuse of discretion." *Id.*

¶43. "The Supreme Court has established a number of factors to guide courts in awarding alimony." *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993). Those factors include:

[1] the income and expenses of the parties; [2] the health and earning capacities of the parties; [3] the needs of each party; [4] the obligations and assets of each party; [5] the length of the marriage; [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; [7] the age of the parties; [8] the standard of living of the parties, both during the marriage and at the time of the support determination; [9] the tax consequences of the spousal support order; [10] fault or misconduct; [11] wasteful dissipation of assets by either party; or [12] any other factor deemed by the court to be “just and equitable” in connection with the setting of spousal support.

*Id.*

¶44. “The chancery court is not required to make both parties financially equal.” *Prestwood v. Prestwood*, 285 So. 3d 1213, 1218-19 (¶19) (Miss. Ct. App. 2019). “[T]he purpose of rehabilitative alimony is to enable a spouse to become self-supporting and prevents that party from becoming destitute while searching for a means of income.” *Id.* “Moreover, the primary purpose of rehabilitative alimony is to give the former spouse the opportunity to enter the work force.” *McCarrell v. McCarrell*, 19 So. 3d 168, 170 (¶8) (Miss. Ct. App. 2009).

¶45. The chancery court analyzed each *Armstrong* factor in its final judgment. The analysis included substantial language regarding Gregg’s earning potential. The chancery court referenced the development of Gregg’s business and his potential to earn more if he “appl[ied] himself fully to his work as a consultant.” The chancery court also stated Gregg now has “more time to invest in his business.”

¶46. Because Rachel was awarded sole legal and physical custody, the chancery court found she would need to pay for additional expenses. Furthermore, the chancery court found that although the divorce was granted on the ground of irreconcilable differences, it was

Gregg’s “unwillingness to curtail his combative temperament with Rachel” that ultimately led to the demise of the marriage. Despite those findings, the chancery court awarded him two years of rehabilitative alimony in the amount of \$508 per month.

¶47. Gregg argues he should have been awarded \$3,491.95 in monthly alimony because he was only awarded \$37,067 in “accessible cash.” He further argues the court failed to explain how he would pay the extra costs associated with the property award as well as the \$508 monthly child support payments.

¶48. Yet as set out above, the alimony award does not have to make the couple equal. *Prestwood*, 285 So. 3d at 1218-19 (¶19). In the instant case, the award ensures that Gregg is able to meet his monthly child support obligation for a period of two years.<sup>1</sup> This would curtail Gregg’s concern regarding child support payments and allow him to focus on maximizing his earning potential. And while the chancery court is not required to make the parties equal, Gregg was awarded over 48% of the marital estate despite his erratic behavior and Rachel’s direct contributions to the marital assets.

¶49. Furthermore, our caselaw establishes rehabilitative alimony is awarded to assist until the party finds a means of income. *Id.* Here, Gregg has testified under oath and submitted financial documentation that shows he was self-employed. This documentation also showed his annual income is approximately \$42,000. Not only has Gregg entered the workforce, but he has generated income. Gregg also testified that he has an engineering degree and has “completed approximately half” of the post-curricular requirements to become a licensed

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<sup>1</sup> Gregg’s monthly rehabilitative alimony award of \$508 was the same as his monthly child support payment.

engineer.

¶50. The record provides substantial evidence to support the chancellor's award. Therefore, the chancellor did not abuse her discretion.

### **III. The chancery court's custody determination was proper.**

¶51. Gregg argues the court erred in its failure to conduct a proper *Albright* analysis. He also argues the court erred by awarding sole legal custody to Rachel.

¶52. "This Court employs a limited standard of review in appeals from chancery court." *In re Dissolution of Edwards*, 189 So. 3d 1284, 1285 (¶2) (Miss. Ct. App. 2016). "In a case disputing child custody, the chancellor's findings will not be reversed unless manifestly wrong, erroneous, or the proper legal standard was not applied." *Id.*

¶53. "The Mississippi Supreme Court has established that the best interest of the child is paramount in any child-custody case." *Robles v. Gonzalez*, 246 So. 3d 945, 950 (¶20) (Miss. Ct. App. 2018). To determine what is in the child's best interest, the trial court considers the following factors:

[1] [the age,] health, and sex of the child; [2] a determination of the parent that has had the continuity of care prior to the separation; [3] which has the best parenting skills and [4] which has the willingness and capacity to provide primary child care; [5] the employment of the parent and responsibilities of that employment; [6] physical and mental health and age of the parents; [7] emotional ties of the parent and child; [8] moral fitness of the parents; [9] the home, school, and community record of the child; [10] the preference of the child at the age sufficient to express a preference by law; [11] stability of home environment and employment of each parent, and [12] other factors relevant to the parent-child relationship.

*Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983); *accord Hackler v. Hackler*, 296 So. 3d 773, 777 (¶19) (Miss. Ct. App. 2020).

¶54. “[T]he chancellor is required to address each of the *Albright* factors that is applicable to the case.” *Robles*, 246 So. 3d at 950 (¶21). “However, the chancellor need not decide that every factor favors one parent over the other.” *Id.* “Instead, the *Albright* factors exist to ensure the chancellor considers all the relevant facts before he reaches a decision.” *Id.* “All the factors are important, but the chancellor has the ultimate discretion to weigh the evidence the way he sees fit in determining where the child’s best interest lies.” *Id.* Furthermore, our Supreme Court has observed the principle that “the chancellor should not award joint custody unless the parents are capable of sharing joint custody cooperatively.” *Phillips v. Phillips*, 45 So. 3d 684, 697 (¶34) (Miss. Ct. App. 2010).

¶55. In the final judgment, the chancery court conducted a thorough analysis of each *Albright* factor. Only one factor favored Gregg: his willingness and capacity to provide care. The chancellor based this determination on Gregg having more opportunities to be available personally for the children.

¶56. Conversely, the chancery court referenced Gregg’s violent temper several times in its analysis. In analyzing which parent possesses the best parenting skills, she stated, “the court’s concern arises from the outbursts of Gregg which are depicted in the exhibits and which was corroborated by credible proof.” She also referenced the GAL’s report which described the evidence of Gregg’s verbal and emotional abuse as “shocking” and “repulsive.” In analyzing the physical and mental health of the parents, the chancellor stated Gregg “exhibited combative and aggressive behavior toward Rachel in the presence of the children.” Under the moral fitness factor, she also referenced Gregg’s behavior. She stated,

“the video evidence depicts Gregg’s repeated and extensive use of inappropriate language in the presence of the children.”

¶57. Gregg further argues that the chancery court’s award was against the GAL’s specific recommendation for joint legal custody. But “in any case where a guardian ad litem is appointed to represent a child, the chancellor’s role as fact-finder requires the evidence presented by the guardian ad litem, as well as all other relevant evidence, to be considered and given such weight *as the chancellor determines it deserves.*” *Gateley v. Gateley*, 158 So. 3d 296, 300-01 (¶22) (Miss. 2015). Therefore the question for this Court is whether the evidence in the record supports the chancery court’s decision. *Id.*

¶58. Here, the chancery court watched the videos of Gregg’s behavior. The chancery court saw and heard Gregg repeatedly berate Rachel. The chancery court also saw Gregg throw kitchen utensils at his wife. Most importantly, the chancellor saw that Gregg had difficulty managing his temper with Rachel even in the presence of the children. The court heard and saw Gregg and Rachel’s daughter beg Gregg to stop. The chancellor heard the children’s cries in the background of several videos. Furthermore, Rachel admitted a photograph of her bruised rib cage to support the claim that Gregg threw a shoe at her.

¶59. While Gregg denied Rachel’s allegations of physical abuse, he admitted under oath to placing a gun to his head in front of their daughter. There is substantial evidence in the record that shows Gregg’s inability to cooperatively share joint custody with Rachel. The chancery court’s decision was heavily supported by the evidence in the record and was based on the best interest of the children. Therefore, the chancery court did not err by awarding



sole legal and physical custody to Rachel.

### **CONCLUSION**

¶60. We find the chancery court did not err in the distribution of marital assets and debts. We also find the chancery court did not err in its award of alimony. Finally, we find the chancery court did not err in its custody determination.

¶61. **AFFIRMED.**

**BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, McDONALD, LAWRENCE, SMITH AND EMFINGER, JJ., CONCUR. WESTBROOKS, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION.**