

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00622 COA**

DENESE WILSON GHETTI

APPELLANT

v.

LEON VANCE GHETTI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	05/06/96
TRIAL JUDGE:	HON. PATRICIA D. WISE
COURT FROM WHICH APPEALED:	CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF HINDS COUNTY
ATTORNEY FOR APPELLANT:	PRENTISS M. GRANT
ATTORNEY FOR APPELLEE:	MARK A. CHINN
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	ENTERED AN AMENDED ORDER EQUITABLY DIVIDING THE COUPLE'S HOUSE AND LAND
DISPOSITION:	AFFIRMED-11/18/97
MOTION FOR REHEARING FILED:	12/17/97
CERTIORARI FILED:	2/24/98
MANDATE ISSUED:	5/27/98

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

Denese Wilson Ghetti appeals from a judgment of the Chancery Court of the Second Judicial District of Hinds County by which that court ordered a division of eighty-seven acres of land and a house on the land located in Clinton when that court awarded a divorce to her and her husband, Leon Vance Ghetti, on the ground of irreconcilable differences. The chancery court ordered that Mr. Ghetti receive the house on the property, the five acres surrounding the house, and an additional thirty-six acres. The chancery court awarded Ms. Ghetti the remaining forty-six acres. Ms. Ghetti asserts that because Mr. Ghetti and she signed a valid antenuptial agreement, the chancellor erred when she apportioned the eighty-seven acre tract of land as she did. Ms. Ghetti argues that because her husband had conveyed the property to her while they were married, she should retain its complete ownership. Nevertheless, this Court affirms the judgment from which Ms. Ghetti has appealed.

I. FACTS

Leon Vance Ghetti and Denese Wilson were married on June 18, 1988. Their marriage was the second for Mr. Ghetti and the fourth for Wilson. On the very day they married, Ghetti and Wilson entered into an antenuptial agreement, the heart of which read as follows:

1. That all property and property rights, real, personal and mixed of which either party may have any interest in on the date of this Agreement, and the liabilities thereon, if any, shall remain solely that party's after marriage, and shall not be construed as part of any estate acquired or obtained after marriage. This preserving shall extend to any investment, after marriage, of said property and property rights in other property and property rights, and to the income and increase of said investment but only as a ratio that said investment is to the total value of the property and property rights acquired after marriage. Each of said investments shall pertain only to that particular other property and property rights to which it applies.

The essence of this Agreement is to preserve each party's property existing before marriage, and to allow its subsequent reinvestment to be preserved as if marriage had not occurred. Beyond the intent stated, this Agreement does not extend to any other property and property rights hereafter acquired or obtained by either party.

In 1970 Mr. Ghetti purchased eighty-seven acres of land located at 6656 Jimmy Williams Road in Clinton. Mr. Ghetti then built a house containing approximately 3,400 square feet of heated area on the land, much of the labor on which was his own. He borrowed \$25,000 to finance its construction. He and his first wife had moved into the house no later than 1975, and they lived there until 1984, the year of their separation.

After Mr. Ghetti and his first wife obtained their divorce, the house on Jimmy Williams Road became unoccupied, and, after a period of neglect, it became uninhabitable. When Mr. Ghetti and Ms. Ghetti married, they moved into one of Ms. Ghetti's houses, the address of which was 5531 Spencer. Some two years later, the Ghetties decided to renovate and to re-occupy the house that Mr. Ghetti had built on Jimmy Williams Road. Their extensive renovation to the home included a new roof, sheetrock repair, carpeting, and treatment for insect infestation. To finance the restoration of the house, Mr. Ghetti applied for a loan with First Union Home Equity.

During the course of the loan closing, the attorney who closed the loan mailed a quitclaim deed and other papers relevant to closing the loan to Mr. Ghetti, who was then working in Huntsville, Alabama, on a dirt construction project. In addition to his owning two apartment complexes and other real estate, Mr. Ghetti had acquired a large fleet of dump trucks with which he engaged in hauling and construction projects. The quitclaim deed conveyed the entire eighty-seven acre tract of land at 6656 Jimmy Williams Road to Ms. Ghetti. The proceeds from the loan of \$75,200 were deposited into a special house renovation account in Sunburst Bank in the joint names of Mr. and Mrs. Ghetti. About one week later, Mr. Ghetti deposited \$100,000 into this special house renovation account.

On May 25, 1992, Ms. Ghetti moved out of the house on Jimmy Williams Road and moved into another of her houses located at 4185 Myers Road in Terry.

II. LITIGATION

A. Pre-trial

On September 21, 1992, Ms. Ghetti filed a complaint for divorce against her husband on the ground of habitual cruel and inhuman treatment or, in the alternative, irreconcilable differences. For more than two years before the trial of this case on February 15, 1995, Mr. and Mrs. Ghetti sparred with each other through a series of answers, counterclaims, depositions, other discovery, and an occasional change of counsel by both spouses. Mr. Ghetti counterclaimed against his wife for divorce on the same grounds with which his wife had charged him. Although the date of its filing was after the date of the trial, the Ghetties filed a joint motion for trial on the ground of irreconcilable differences on February 21, 1995. In their joint motion, they alleged that they "voluntarily consent[ed] to permit this Court to decide the issues upon which the parties cannot agree." Among the "specific issues" upon which the Ghetties were unable to agree was: "Ownership, division, use, and payment of obligations for the former marital abode located on Jimm[y] Williams Road in Clinton, Mississippi."

B. Trial

As his first witness, Mr. Ghetti called his wife. Under cross-examination, Ghetti's attorney asked Ms. Ghetti, "What was the purpose of placing the property in your name [by Ghetti's execution of the quitclaim deed to her]?" Ms. Ghetti replied, "Well, there were several reasons. I mean, one of the reasons was to get the loan, and the other reason was because Leon said he wanted me to have the house." Ms. Ghetti had also answered one of Ghetti's interrogatories by stating that Ghetti had executed the quitclaim deed to ensure that she would have a place to live, which answer she affirmed under cross-examination. Ghetti's counsel also asked Ms. Ghetti whether it was true that the loan processor had told her that "since Leon had a lot of rental property, that it would be very difficult to get the loan approved with his name on it because all the property would have to be appraised and there would have to be a detailed inspection of all his property, which would be expensive?" Ms. Ghetti answered, "It was mostly the paperwork that he would have to turn in, all copies of all his leases, since he was self-employed."

Ms. Ghetti acknowledged that her husband had paid his first wife \$150,000 to settle her claim to the house and land on Jimmy Williams as a part of his divorce from his first wife. After the proceeds from the loan of \$75,200 had been deposited in the house renovation account, several monthly payments on the loan were paid from that joint account. Ms. Ghetti acknowledged that after she vacated the house on May 25, 1992, Mr. Ghetti paid all of the monthly payments on the loan except for two, which she claimed that she made to prevent foreclosure. She then admitted that he had paid all the monthly payments on the \$75,200 loan since then.

Under continued cross-examination, Ms. Ghetti explained her husband's deposit of \$100,000 into the house renovation account by testifying that at the time he was in trouble with the government, that he wasn't exactly sure what would happen to him as the result of that trouble, and that he wanted to be sure that she "had enough money to finish the house and enough money to live off of . . . in case he had to go away."

On direct examination, Ms. Ghetti testified that she understood the antenuptial agreement to mean

that "whatever Leon and I had before marriage was to stay, you know, like we had whatever we in case we got a divorce, and that anything that we got during the marriage, like on our own, was ours . . ." She further testified that Mr. Ghetti completed the settlement about the land on Jimmy Williams Road with his first wife after she and he had been married. She further testified that while she first set up the house renovation account as a joint account for both her husband and her, he objected to the joint account status and insisted that she return to the bank to convert the account to her own name. She established that of the \$175,200 deposited into the house renovation account, \$106,947.87 was spent "on the house." Her husband received an additional \$61,104 from the account. She further established that the amount of the monthly payment on the loan was \$900.11. While Mr. Ghetti claimed that he had done much of the work on the house, his wife claimed that she supervised much of the work that others had done on the project. Her father, Marsh Franklin Hickson, had landscaped the yard and performed other lawn maintenance work.

Paul David Hastings, the attorney who closed the loan of \$75,200 for the renovation of the Jimmy Williams house, testified that he understood that "due to Mr. Ghetti's financial situation at that time, to expedite the approval of this loan, it was suggested by the mortgage company that the property be transferred to Mrs. Ghetti by quitclaim deed so the loan could be taken in her name." Thus, according to Hastings, the title to the land "was transferred strictly for the loan purposes only."

Catherine Walsh, who was serving as sales manager for the lender, First Union Home Equity, when the Ghetts' loan was closed, testified about the difficulties involved in approving Mr. Ghetti for the loan as follows:

He was self-employed, had rental--several rental agreements -- and he, I believe, at the time was a self-employed trucker. I believe that's correct. He was mostly out of town, and it would have been just next to impossible to get all of the income verification that we needed, three hundred lease agreements, approximately, and all the tax returns related to his business at the time, and when I spoke with him about this, to the best of my recollection he basically said, Well, you know, that's just too much to fool with; let me talk to my wife, and we'll see what we can come up with.

Ms. Walsh concluded that title to the land was transferred to Ms. Ghetti "[j]ust for the purpose of obtaining a loan." Ms. Ghetti qualified on her own for the loan.

Leon Vance Ghetti then testified in his own behalf. His counsel asked him if he had any agreement with his wife about his transferring title to her. Ghetti replied, "She more or less told me that she didn't want anything I ever had, and once we had it paid off, it would be mine, so I just took her at her word." Ghetti described the building process as follows: "I started in 1970, and it was '73 before we moved in the game room, and then I think it was '74, maybe '75, before we finished the house, actually." About the "emotional value," Ghetti explained: "Well, when you build it with your own hands, you know where everything goes, and you've lived there for, off and on, twenty-five years, or twenty years on that property, then it's got a lot of good times, a lot of bad times."

Weldon Douglas Fortner, who had worked for Mr. Ghetti as an equipment operator for three years, and Jerry Moore, a salesman for 3-M Company who once jointly owned several Corvettes with Mr. Ghetti, both testified that they had helped Mr. Ghetti build this house.

Following the divorce hearing, the chancellor entered a judgment of divorce by which she granted the Ghetties a divorce on the grounds of irreconcilable differences. She then awarded Mr. Ghetti an equitable interest in the "marital domicile and five (5) acres upon which it sits." The chancellor ordered the home and five acres to be appraised and sold, with Mr. Ghetti receiving two-thirds and Ms. Ghetti receiving one-third of the proceeds. Mr. Ghetti was awarded the first option to buy the house and five acres at the appraised price minus one-half of the closing costs. The chancellor awarded the remaining eighty-two acres to Ms. Ghetti.

After the entry of this judgment of divorce, Mr. Ghetti filed a motion for a new trial and to amend the judgment. After a hearing on Mr. Ghetti's motion, the chancellor rendered an amended memorandum opinion and entered an amended order of divorce. In her memorandum opinion, the chancellor referred to the antenuptial agreement which the Ghetties made the day they were married, with which the chancellor found she had no quarrel and that neither party had objected to during the hearing. She recited the principles which the Mississippi Supreme Court announced in *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994), and then analyzed Mr. and Ms. Ghetti's claims to the eighty-seven-acre tract of land and the house which Mr. Ghetti had built on it according to those principles. We will deal in some detail with the chancellor's analysis when we review and resolve Ms. Ghetti's issues.

Pursuant to her amended memorandum opinion and order, the chancellor entered an amended order of divorce in which she awarded Mr. Ghetti "sole exclusive title to the house and [five] acres of property located at 6656 Jimmy Williams Road, Clinton, Mississippi, free of any claim by [Ms. Ghetti]." She further ordered "that the remaining [eighty-two] acres is to be divided between [the Ghetties] with [Mr. Ghetti] to receive [thirty-six] acres and [Ms. Ghetti] to receive the remaining [forty-six] acres." Ms. Ghetti appeals from this amended order of divorce.

III. REVIEW AND ANALYSIS OF THE ISSUES

In her brief, Ms. Ghetti sets out two similar issues which we quote verbatim:

- 1. The Court committed reversible error in awarding Leon Vance Ghetti an interest in the real property titled to Denese Wilson Ghetti.**
- 2. The Court committed reversible error in awarding Leon Vance Ghetti an additional interest in the real property titled to Denese Wilson Ghetti upon reconsideration.**

Our scope of review in domestic relations matters is limited. This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Denson v. George*, 642 So. 2d 909, 913 (Miss. 1994). This is particularly true "in the areas of divorce and child support." *Nichols v. Tedder*, 547 So. 2d 766, 781 (Miss. 1989).

The chancery court's authority to divide marital assets is born from principles of fairness which are rooted in the court's inherent powers of equity. *Ferguson v. Ferguson*, 639 So. 2d 921, 927 (Miss. 1994). Chancellors are empowered to address realty assets and to divest title, including that of the marital home. *Id.* Concerning equitable division of assets at divorce, the Mississippi Supreme Court has opined:

It is well-established by this Court that the chancery court has the authority to order an equitable division of property that was accumulated through the joint efforts and contributions of the parties. However, there is no automatic right to an equal division of jointly-accumulated property, but rather, the division is left to the discretion of the court This Court, therefore, holds that the chancery court is within its authority and power to equitably divide marital assets at divorce.

Id.

In *Ferguson*, the supreme court promulgated a list of guidelines to assist chancellors in the division of marital property. The Court wrote:

[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:

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.** The supreme court has explained that, "[t]o aid appellate review, findings of fact by the chancellor, together with the legal conclusions drawn from those findings, are required." ***Id.* at 929.**

The property in question was originally purchased by Mr. Ghetti prior to his marriage to Ms. Ghetti and testimony from several witnesses established that he built a major portion of the house. The chancellor explained in her amended memorandum opinion that "[t]he mere fact that the property . . . was purchased with separate assets does not necessarily mean that it remained separate property throughout this marriage. It is possible that nonmarital assets could be converted into marital property if they are commingled with marital assets or used for familial purposes." The house on Jimmy Williams Road became the Ghetti's marital home after it was renovated until Ms. Ghetti left it and her husband. It must be remembered, as the chancellor explained in her opinion, that the equitable division of marital property does not turn on the formal state of the title. ***Hemsley v. Hemsley*, 639 So. 2d 909, 913 (Miss. 1994).** "The chancellor's authority to order an equitable division of jointly accumulated property extends to the transfer of title to real property, even when this requires divesting of title. Additionally, the chancellor is not limited to a consideration of cash contributions made by each party in determining what division is equitable." ***Parker v. Parker*, 641 So. 2d 1133, 1138 (Miss. 1994)** (citations omitted).

In her application of the *Ferguson* factors to the house, the chancellor observed that, "[o]n the whole, the contribution of Ms. Ghetti toward the acquisition of this house has been minimal. The Court . . . must now conclude that the equities touching on this house weigh mightily in favor of [Mr. Ghetti.]" The supreme court has stated "[p]roperty division should be based upon a determination of fair market value of the assets, and these valuations should be the initial step before determining division." ***Ferguson*, 639 So. 2d at 929.** The record contains evidence that the home and its five-acre curtilage were appraised at approximately \$160,000 and that the remaining eighty-two acres were valued at \$225,000.

In the opinion of the chancellor, Mr. Ghetti's effort in the construction of the house and the home's sentimental value to him "strongly militate against either its sale or some other form of equitable division." Other factors which the chancellor found to weigh in Mr. Ghetti's favor included the purchase of the property on which the house was built long before his marriage to Denese Wilson Ghetti, his second wife. Neither did Ms. Ghetti's work in and around the house go unnoticed by the chancellor. Although the chancellor originally awarded Ms. Ghetti one-third of the value of the house and a five-acre curtilage around the house and the entirety of the remaining eighty-two acres, she amended her original judgment because she concluded that "the ends of equity will be better served by a more equal division of this disputed property."

We previously noted that "the chancery court has the authority to effect the divesting of title to real estate to achieve an equitable distribution of marital assets." ***See Ferguson*, 639 So. 2d at 934.** "This is a matter committed to the discretion and conscience of the court, having in mind all of the equities and other relevant facts and circumstances." ***Id.*** This Court concludes that the chancellor did not abuse her discretion, that she was not manifestly wrong, that her resolution of this matter was not clearly erroneous, and that she applied the correct legal standard when she amended her original apportionment of ownership of the house and eighty-seven acres of land located on Jimmy Williams Road. We hold that the chancellor's review and application of the *Ferguson* factors to the

apportionment of the Ghetties' respective interests in this house and tract of land were appropriate and supported by the evidence in the record.

IV. SUMMARY

Ms. Ghetti argues that because her former husband and she executed an antenuptial agreement to keep their respective properties separate from each other's assets, she should be entitled to the ownership of the house and all eighty-seven acres of land. While it is true she owned this land and house by virtue of the quitclaim deed which Mr. Ghetti had executed and delivered preparatory to closing the loan of \$75,200 for the renovation of the house, the property was originally purchased by Mr. Ghetti. Mr. Ghetti had paid his first wife \$150,000 to settle her claim to this property. There was substantial evidence to support the chancellor's conclusion that this property "was used for familial purposes and to that extent must be viewed as marital property, and on that wise, subject to equitable distribution." Therefore, this Court resolves both of Ms. Ghetti's issues adversely to her and affirms the amended order of divorce of the Chancery Court of the Second Judicial District of Hinds County.

THE AMENDED ORDER OF DIVORCE OF THE CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF HINDS COUNTY IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.