IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-00330-COA

IN THE MATTER OF THE DISSOLUTION OF THE MARRIAGE OF SUSAN B. SEGREE AND FRANK A. SEGREE, III: FRANK A. SEGREE, III — **APPELLANT**

v.

SUSAN B. SEGREE — **APPELLEE**

DATE OF JUDGMENT:	02/07/2011
TRIAL JUDGE:	HON. VICKI R. BARNES
COURT FROM WHICH APPEALED:	WARREN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	R. LOUIS FIELD WREN CARROLL WAY
ATTORNEY FOR APPELLEE:	MARK W. PREWITT
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	DIVORCE GRANTED AND WIFE AWARDED PERMANENT PERIODIC ALIMONY, EXCLUSIVE USE OF MARITAL HOME, AND CHILD SUPPORT
DISPOSITION:	AFFIRMED: 06/26/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

NO. 2009-CA-00757-COA

IN THE MATTER OF THE DISSOLUTION OF MARRIAGE: FRANK A. SEGREE, III — **APPELLANT**

v.

SUSAN B. SEGREE — **APPELLEE**

FAIR, J., FOR THE COURT:

¶1. Frank and Susan Segree were divorced by the Warren County Chancery Court in 2008. Frank appealed and this Court remanded the case for specific findings of fact.[1] A final judgment was issued by the chancellor in November 2010. Frank again appeals contending that the chancellor erred in her awards of equitable distribution, child support, and alimony. Finding no error, we affirm.

FACTS

¶2. Frank and Susan were married for twenty-five years and had three children. Their son, Robert, was emancipated at the time of their divorce, but their twin girls, Rebecca and Jacqueline, were nineteen. The girls are twenty-three at the time of this appeal.

¶3. At the time of their divorce in 2008, Susan had a high school degree, was in good health, and worked as an assistant manager at CitiFinancial. Frank had a G.E.D., was in good health, and worked as the master of the Motor Vessel *Hurley*.

¶4. Their divorce was granted on the ground of Frank's adultery. At that time, all the children still lived at home with their mother and paid nothing for their living expenses. The twins were both working and had no plans to attend college.

¶5. The 2008 judgment granted Susan the exclusive use of the marital home, child support for Rebecca, and permanent alimony to begin at the end of Frank's child-support obligation. Frank appealed, and this Court affirmed the chancellor's determination as to attorney's fees,

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[1] This appeal is "consolidated" only for use of the record in Frank's prior appeal. We only address the issues raised on Frank's second appeal. Our decision in Frank's first appeal is reported as *Segree v. Segree*, 46 So. 3d 861 (Miss. Ct. App. 2010).

insurance for the girls, and the expense of the girls' credit cards. But because the chancellor did not make specific findings of fact to support the equitable distribution, we reversed the judgment and remanded the three interdependent issues of division of marital assets, child support, and alimony to the chancellor. We directed the chancellor to make specific findings on the *Ferguson* factors and to then review each award in context of the others.

¶6. The chancellor responded with a sixty-nine-page opinion detailing her reasoning and addressing each factor under *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994), and *Armstrong v. Armstrong*, 618 So. 2d 1278,1280 (Miss. 1993).

STANDARD OF REVIEW

¶7. This Court "will not disturb a chancellor's judgment when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Benal v. Benal*, 22 So. 3d 369, 372 (¶4) (Miss. Ct. App. 2009) (quoting *Chapel v. Chapel*, 876 So. 2d 290, 292 (¶8) (Miss. 2004)). If the chancellor's findings are supported by substantial evidence, then we will affirm. *Minter v. Minter*, 29 So. 3d 840, 850 (¶36) (Miss. Ct. App. 2009).

DISCUSSION

¶8. At the outset, we note that circumstances are now significantly changed from when trial was held. Rebecca and Jacqueline are now twenty-three years old, and several of Frank's financial obligations should no longer exist.

1. Equitable Distribution

¶9. Frank first contends that the chancellor erred in distributing the marital property. He contends that it is unfair and inequitable.

¶10. The chancellor determined that all property owned by the parties was marital property under *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss. 1994), because neither party brought any assets into the marriage. All assets were acquired during their twenty-five-year marriage.

¶11. Next, the chancellor applied the *Ferguson* factors to distribute the marital property. *See Ferguson*, 639 So. 2d at 928. All eight factors were discussed, and specific factual findings were made relating to each factor. In her analysis, the chancellor awarded Susan assets totaling $172,421 and debts totaling $47,946. Susan's award included: the marital home, her checking account, her savings account, the tractor, the lawn mower, the household furnishings, the Chevy Malibu, her 401K, and $26,943 from Frank's Thrift Savings Plan. Frank was awarded assets totaling $126,989.91 and debts totaling $77,018.26. His award included: three vehicles, a travel trailer, a boat, his checking account, his savings account, a portable generator, the remainder of his Thrift Savings Plan, and credit for $7,165.91 of dissipated assets.

¶12. "We have repeatedly held that in making an equitable division of the martial property, the chancellor is not required to divide the property equally." *Love v. Love*, 687 So. 2d 1229, 1232 (Miss. 1997). "Our purpose is to determine whether the chancellor's ruling was supported by credible evidence, not whether we agree with that ruling." *Benal*, 22 So. 3d at 372 (¶4) (citing *Lee v. Lee*, 798 So. 2d 1284, 1290 (¶22) (Miss. 2001)).

¶13. Here, the parties stipulated to the valuation of their property. The chancellor properly applied *Hemsley* to determine the marital or separate nature of the property and then provided a detailed *Ferguson* analysis to distribute that property. Although the chancellor awarded Susan a greater portion of the marital assets, that does not necessarily indicate an abuse of

discretion. *See Bresnahan v. Bresnahan*, 818 So. 2d 1113, 1122 (¶31) (Miss. 2002). We find that the chancellor's division of marital assets is supported by substantial evidence and that she did not apply an erroneous legal standard.

2. Child Support

¶14. Frank argues that it was an abuse of discretion to award support for Rebecca when she was the same age, education level, and employment level as her sister, who was considered emancipated. In our prior opinion we held:

> [T]he chancery court had the discretion to consider Rebecca emancipated, without having to consider whether she was employed full time. But, the chancellor also had the discretion to take into account that Rebecca had just started work and was only earning minimum wage.

Segree v. Segree, 46 So. 3d 861, 867 (¶17) (Miss. Ct. App. 2010).

¶15. While the chancellor's decision to award support to Rebecca and not Jacquelyn is unusual, it was within her discretion, as previously adjudicated. This issue is res judicata.

3. Alimony

¶16. Finally, Frank asserts that the chancellor erred in awarding permanent alimony to Susan because the division of marital assets left Susan in a substantially better position than Frank, thereby rendering alimony unnecessary.

¶17. Our calculations that follow assume that the mortgage on the marital home was paid in full pursuant to the court's order and that neither party is now paying a note on the home. Susan's expenses include insurance for the home and property taxes. Frank's expenses include rent and insurance for the camper.

¶18. In the property division, Frank was awarded $126,989.91 in assets, and Susan was

awarded $172,421.00. Though Susan received more, these numbers are misleading. More than eighty percent of Susan's award is non-liquid equity, including her 401K, the former marital home, the Malibu, the tractor, the lawn mower, and the furniture. In considering an award of alimony for Susan, the value of the residence was minimally considered by the chancellor, an approach approved in *Arrington v. Arrington*, 80 So. 3d 160, 166-67 (¶¶21-24) (Miss. Ct. App. 2012).

¶19. The chancellor reviewed the factors set out in *Armstrong v. Armstrong*, 618 So. 2d 1278, 120 (Miss. 1993), in determining Susan's need and Frank's ability to pay support.[2] Susan's adjusted gross income (AGI) was determined to be $2,480.62 per month. Her monthly expenses, including all insurance, retirement contributions, and installment payments, totaled $3,228.78. This figure includes a $328.50 car payment for the Chevy Malibu, which we include because the chancellor included it as part of Susan's property award. Without alimony, Susan has a monthly deficit of $793.16.

¶20. Frank's AGI was determined to be $5,899 per month.[3] His expenses, including all installment payments and voluntary retirement contributions, total $4,713.57 each month. This figure includes a voluntary payment of $1,030.57 to Frank's Thrift Savings Plan.

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[2] The *Armstrong* factors are to be considered by chancellors in determining the appropriate award of periodic alimony. *Steiner v. Steiner*, 788 So. 2d 771, 776 (¶16) (Miss. 2001) (citing *Tilley v. Tilley*, 610 So. 2d 348, 353-54 (Miss. 1992)).

[3] Frank's pay stub for June 7, 2008, was entered into evidence and reflected a year-to-date income of $40,769.96. For the first five months of 2008, his monthly gross income was $8,153.99, with an AGI of $6,622.86. However, Frank's Uniform Chancery Court Rule 8.05 disclosure asserted that his AGI was $5,175.31. The chancellor averaged the AGI on Frank's pay stub with the AGI on his Rule 8.05 disclosure to reach the figure she used for calculating child support and alimony, $5,899.00. Frank's insurance and mandatory retirement contribution were included in his AGI.

Assuming that he has complied with the judgment of the chancellor, Frank is no longer responsible for child-support payments, the house note, insurance for his daughters, or his daughters' credit card bills. Without paying any alimony, Frank has a monthly surplus of $1,185.43.

¶21. If the divided assets, when considered with each party's non-marital assets, "will adequately provide for both parties, no more need be done." *Johnson v. Johnson*, 650 So. 2d 1281, 1287 (Miss. 1994). Susan was awarded approximately $26,943 in liquid assets from Frank's Thrift Savings account. This award would last for less than three years if she is forced to use it to cover her monthly deficit. In that same three years, Frank would place $37,100.52 into his Thrift Savings Plan. It cannot be said that such a division of assets adequately provides for Susan. The chancellor's award of $500 a month in alimony does not cover her deficit but will certainly help, and Frank will still be left with a monthly surplus of $685.43. In determining an alimony award, our supreme court has said: "A wife is generally entitled to periodic alimony when her income is inadequate to allow her to maintain her standard of living and when her husband is able to pay." *Kilpatrick v. Kilpatrick*, 732 So. 2d 876, 882 (¶4) (Miss. 1999) (citing *Heigle v. Heigle*, 654 So. 2d 895, 898 (Miss. 1995)). Clearly, Susan will be unable to maintain her lifestyle on her income alone, and Frank is able to pay even while contributing $1,030.57 a month to his Thrift Savings Plan. Without receiving alimony, Susan will suffer a disparity in income and a decline in her standard of living following the equitable division of martial assets. *See Lauro v. Lauro*, 847 So. 2d 843, 848 (¶13) (Miss. 2003).

¶22. The chancellor's decision, to begin alimony when child support ends and Frank's

ability to pay increases, fits within the collective consideration of child support, alimony, and equitable distribution as contemplated in *Lauro*, 847 So. 2d at 848-49 (¶13). We affirm the chancellor's decision because an award of alimony was well within her discretionary power and justified by the evidence presented.

¶23. **THE JUDGMENT OF THE WARREN COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

GRIFFIS, P.J., BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. RUSSELL, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY LEE, C.J., AND IRVING, P.J.

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

¶24. I agree with the majority's decision to affirm the chancellor's division of marital assets and the award of child support for Rebecca. However, I dissent regarding the majority's decision to affirm the award of alimony to Susan. Additionally, I disagree with assumptions made by the majority regarding the current financial status of the parties, which were not a part of the chancellor's decision or the appellate record before this Court. I find that the chancellor erred in awarding permanent periodic alimony to Susan because she was not left with a deficit. Therefore, I would reverse the award of permanent periodic alimony because neither party was left with a deficit after the chancellor equitably divided the parties' property.

¶25. "Chancellors are afforded wide latitude in fashioning equitable remedies in domestic relations matters, and their decisions will not be reversed if the findings of fact are supported by substantial credible evidence in the record." *Bond v. Bond*, 69 So. 3d 771, 772 (¶3) (Miss. Ct. App. 2011) (quoting *Henderson v. Henderson*, 757 So. 2d 285, 289 (¶19) (Miss. 2000)). This Court "will not disturb a chancellor's judgment when supported by substantial evidence

unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Benal v. Benal*, 22 So. 3d 369, 372 (¶4) (Miss. Ct. App. 2009) (quoting *Chapel v. Chapel*, 876 So. 2d 290, 292 (¶8) (Miss. 2004)). "This Court will not disturb a chancellor's findings regarding the award or amount of alimony unless there is manifest error." *McKissack*, 45 So. 3d at 718 (¶10) (citing *Rodriquez v. Rodriquez*, 2 So. 3d 720, 730 (¶26) (Miss. Ct. App. 2009)).

¶26. In determining whether alimony is appropriate, this Court has stated:

> If there are sufficient marital assets which, when equitably divided and considered with each spouse's nonmarital assets, will adequately provide for both parties, no more need be done. If the situation is such that an equitable division of marital property, considered with each party's nonmarital assets, **leaves a deficit for one party**, then alimony based on the value of nonmarital assets should be considered.

McKissack, 45 So. 3d at 723 (¶36) (citing *Johnson v. Johnson*, 650 So. 2d 1286, 1287 (Miss. 1994)) (emphasis added). Stated somewhat differently:

> One of the goals of equitable distribution is to alleviate the need for alimony. [*Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994)]. Accordingly, alimony should be considered only after the equitable division of marital property. *See Marsh v. Marsh*, 868 So. 2d 394, 398 (¶16) (Miss. Ct. App. 2004). "[T]he purpose of alimony is not punitive, but instead, is designed to assist the spouse in meeting his or her reasonable needs while transitioning into a new life." *Holley v. Holley*, 892 So. 2d 183, 185 (¶7) (Miss. 2004). Generally, permanent alimony should be considered **if one spouse is left with a deficit after the division of marital assets**. *See Kilpatrick v. Kilpatrick*, 732 So. 2d 876, 880 (¶16) (Miss. 1999) (citing *Johnson v. Johnson*, 650 So. 2d 1281, 1287 (Miss. 1994)).

Elliott v. Elliott, 11 So. 3d 784, 786 (¶8) (Miss. Ct. App. 2009) (emphasis added). *See also Williamson v. Williamson*, 81 So. 3d 262, 267 (¶14) (Miss. Ct. App. 2012) (noting that "[a]limony is considered only after the marital property has been equitably divided and the

chancellor determines one spouse has suffered a deficit").

¶27. In determining "the amount of permanent alimony, the chancellor must consider twelve factors identified in *Armstrong*." *Elliott*, 11 So. 3d at 786 (¶7) (quoting *Curtis v. Curtis*, 796 So. 2d 1044, 1051 (¶33) (Miss. Ct. App. 2001)). Those factors are:

> (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.

Pittman v. Pittman, 791 So. 2d 857, 869 (¶48) (Miss. Ct. App. 2001) (quoting *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993)).

¶28. In the instant case, the chancellor performed an *Armstrong* analysis and awarded Susan permanent periodic alimony in the amount of $500 per month commencing on the first day of the month immediately following the month Rebecca's child support ceases. The chancellor found that Susan's adjusted gross monthly income was $2,480.62, and her monthly expenses were $3,218. The chancellor also found that Frank's adjusted gross monthly income was $5,899, and his monthly expenses were $4,060.75 plus child support of $825.00 for a total of $4,885.75. Both parties appeared to be in good physical health and could continue working. As to the needs of each party, the chancellor found that Frank had sufficient funds to meet his financial needs, while Susan had reasonable monthly expenses that exceeded her wages. The chancellor noted that the parties had been married twenty-five years, that Susan

was forty-five years of age, and that Frank was forty-one years of age. As to the obligations-and-assets factor, the chancellor awarded Susan $172,421.00 in marital assets and ordered Susan to pay $47,946.00 of the marital debt. The chancellor awarded Frank $126,989.91 of the marital assets and ordered him to pay $77,018.26 of the marital debt. The chancellor noted that Susan would have custody of the parties' two minor twins, who were nineteen years of age. The chancellor found that the parties maintained a middle income standard of living during their marriage, that Frank would be able to maintain his standard of living, and that Susan would not be able to maintain her standard of living without financial support from Frank. In awarding permanent periodic alimony, the chancellor noted that Susan would be required to pay taxes on any money she received from Frank in alimony, and Frank would receive a tax credit for any money he paid to Susan in alimony. As to the fault-or-misconduct factor, the chancellor granted Susan a divorce on the ground of Frank's adultery. The chancellor further found that Frank wastefully dissipated $7,165.91 in marital assets. Finally, the chancellor noted that the assets awarded to Susan were not of a liquid nature and she would need financial support from Frank to maintain herself.

¶29. In this case, there are several manifest errors. First, the chancellor erred in finding Susan did not have any liquid assets. Susan was awarded $26,943 cash from Frank, and she was also awarded $20,868 from her 401K account. Susan's liquid assets greatly exceeded the $4,480 of liquid assets awarded to Frank.

¶30. Second, the chancellor erred in assessing Frank's assets at $126,989.91. Frank was credited with an estimated $26,944 as an asset from the remainder of the Thrift Savings account; however, the chancellor failed to take into account that she ordered Frank to pay all

penalties and taxes associated with his early withdrawal of a total of $111,227.26, which consisted of $84,284.26 (to pay off the mortgage) and $26,944 (to pay Susan). Therefore, some portion – if not all of the $26,944 – would have been used to pay the taxes and penalties. As such, Franks assets would have been less than $126,989.91.

¶31. Finally – and most importantly – I find that the chancellor and the majority, while arriving at different figures than the chancellor, erred in calculating Susan's monthly expenses. Susan's Uniform Chancery Court Rule 8.05 financial statement reflects that her expenses totaled $3,218.03 per month; however, **this amount included a monthly mortgage payment of $762.** Because the chancellor ordered Frank to pay off the mortgage, Susan's monthly expenses are only $2,456.03. Further, because her monthly income is $2,480.62 before her receipt of the $825 in child support, Susan will not be left with a deficit. *See Williamson*, 81 So. 3d at 271 (¶21) (noting that "[a]n award of alimony should only be considered if one party will suffer a deficit after the marital property has been equitably divided"). Susan was not left with a deficit and therefore is not entitled to alimony. I find that the chancellor's award of permanent periodic alimony was manifest error. Therefore, I would reverse and render the chancellor's award of permanent periodic alimony to Susan.

LEE, C.J., AND IRVING, P.J., JOIN THIS OPINION.