

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01199 COA

GENEVA JO MARSH SEYMOUR

APPELLANT

v.

FRANCIS L. SEYMOUR

APPELLEE

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

TRIAL JUDGE: HON. KENNETH BARKLEY ROBERTSON

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

ALBERT H. PETTIGREW

ATTORNEY FOR APPELLEE:

RICHARD W. HAMILTON

NATURE OF THE CASE: DOMESTIC RELATIONS-ALIMONY AND SUPPORT PROVISIONS

TRIAL COURT DISPOSITION: DEFENDANT ORDERED TO MAINTAIN HEALTH
INSURANCE FOR PLAINTIFF FOR A PERIOD OF EIGHTEEN MONTHS; PLAINTIFF NOT
AWARDED SEPARATE MAINTENANCE NOR ALIMONY

BEFORE FRAISER, C.J., COLEMAN, KING, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

This appeal arises from the support provisions of a divorce decree granted to Geneva Jo Marsh

Seymour (Geneva) and Francis Seymour (Francis). The divorce decree, which was entered in the Jackson County Chancery Court, granted a divorce to Francis on the ground of habitual cruel and inhuman treatment. In his final ruling, the chancellor awarded Geneva possession of a truck purchased during the marriage, together with certain jewelry purchased during the marriage. In addition, he ordered Francis to maintain medical insurance covering Geneva for a period of eighteen months, or until prior military medical benefits were restored, whichever was longer.

From that ruling, Geneva brings this appeal, asserting that (1) the trial court erred in failing to award alimony in her favor, and (2) the trial court erred in limiting Francis's obligation to provide medical insurance based on a presumption that Geneva could regain military medical benefits.

I.

FACTS

Geneva and Francis were married on September 27, 1986, and separated two years later on August 5, 1988. At the time of the divorce trial, Francis and Geneva were fifty-five and fifty-six years old respectively.

The chancellor granted Francis a divorce from Geneva on the ground of habitual cruelty. Geneva, who had serious respiratory problems requiring frequent medical attention and prescription drugs, and who was being treated for a bleeding ulcer and colon problems, was not employed outside the home. At the time of the divorce, her monthly income consisted of \$700 from her mother's estate plus \$105 in food stamps. The estate income was from a sale of assets with a portion of the sales price financed by the estate. Francis, who was employed by Ingall's Shipbuilding, had a net income of approximately \$1,650 per month.

In the final decree, Geneva was awarded possession of a truck purportedly purchased as a gift by Geneva for Francis during the marriage and possession of certain jewelry. Geneva continued to remain in possession of the home which she owned at the time the parties wed. In addition, the chancellor ordered Francis to provide medical coverage for Geneva for eighteen months, commencing May 29, 1992, or until her military privileges of being a widow from her first two marriages to military personnel were restored, whichever came first. The chancellor, however, did not make an award of periodic or lump-sum alimony in favor of Geneva. From that ruling, Geneva brings this appeal.

II.

FAILURE TO AWARD ALIMONY

Geneva argues that because of her serious medical condition, and inability to work, her monthly expenses clearly exceed her monthly income of \$805 from her inheritance and food stamps. She further notes that Francis, on the other hand, is able to provide for his needs, as well as Geneva's, on the monthly salary he receives from Ingall's Shipbuilding. Geneva asserts that the chancellor erred in

failing to award periodic alimony in her favor because: (a) she and Francis used all of her insurance proceeds to enhance their quality of life together and (b) Francis is quite able to provide for the needs of both parties with his current monthly income. She further argues that based on the factors established by the Mississippi Supreme Court for determining whether an award of alimony is proper, she is clearly entitled to such an award.

Francis argues that the majority of the \$60,000 deposited into his savings account was spent by Geneva both prior to the marriage and within the first six months of the marriage. From the record, it is clear that approximately \$14,441 was spent by Geneva for the purchase of a new truck, a 1987 Ford XLT Lariat, as a gift to Francis. This truck was awarded to Geneva in the final decree. Evidence presented at trial established that a portion of the money was spent to redecorate the kitchen in Geneva's house, which also remains in her possession. In addition, approximately \$6,700 was spent on the parties' wedding rings and jewelry. The record further reveals that a portion of the money was spent to support Geneva's youngest son while he was in college, as well as to purchase a new car for him. Francis points out that he contributed to the monthly support of the household during the marriage and also deposited \$5,000 into the parties' checking account as a result of a partial settlement in an asbestos suit. It is Francis' contention that because the divorce was granted based on the fault of Geneva, this Court should direct its attention to the Mississippi Supreme Court decision of *Retzer v. Retzer*, 578 So. 2d 580, 592 (Miss. 1990), where alimony was denied on the basis that the wife's conduct caused the divorce.

This Court, on appeal, must review the chancellor's ruling under the substantial evidence/manifest error standard. *Magee v. Magee*, 661 So. 2d 1117, 1122 (Miss. 1995). The decision of the chancellor will not be overturned unless that decision was in manifest error or the result of the application of an erroneous legal standard. *Id.* In this case, the chancellor determined that Geneva was not entitled to permanent alimony. Absent a finding of manifest error, that finding cannot be overturned. *Id.*

In *Retzer v. Retzer*, the Mississippi Supreme Court stated, "[i]t is a general rule that alimony will not be allowed a wife when the husband is granted a divorce because of her fault." *Retzer*, 578 So. 2d at 592. The Court has carved out exceptions where "the marriage has been of long duration, the husband is able to pay alimony in some amount, and the wife has no means of livelihood." *Id.* at 593 (citations omitted); *see also Smith v. Smith*, 614 So. 2d 394, 397 (Miss. 1993). However, even when an exception warrants an alimony award, "these awards have been made not to enable the wife to maintain the lifestyle to which she has been accustomed, but to prevent her from destitution." *Hammonds v. Hammonds*, 597 So. 2d 653, 654 (Miss. 1992). In addition to her fault, the chancellor should consider the other factors set out by the Mississippi Supreme Court in determining whether an award of alimony is proper. *Hammonds*, 597 So. 2d at 655. These factors include:

- (1) the income and expenses of the parties;
- (2) the 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 . . .;
- (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. (citations omitted); *see also Crowe v. Crowe*, 641 So. 2d 1100, 1102 (Miss. 1994); *Tilley v. Tilley*, 610 So. 2d 348, 353 (Miss. 1992).

According to *Retzer*, because Geneva was at fault in the divorce, she is not entitled to alimony unless she falls within an exception to the general rule. The marriage between Geneva was not one of long duration, lasting only two years, and no children were born of this marriage. Although the record indicates that Francis is able to pay some amount of alimony after paying his own monthly expenses, which include the insurance premium and past pharmacy bills, Geneva has a means of livelihood, through the payments from her mother's estate. The chancellor also determined that Geneva was apparently entitled to restoration of certain widow's benefits based upon her previous husbands' military service. She also has a home, a vehicle, and medical benefits for a minimum of eighteen months following the divorce. The evidence does not, therefore, lead to the conclusion that Geneva was rendered destitute. The chancellor determined Geneva was not entitled to alimony because the facts did not bring her under any of the limited exceptions carved out by the Mississippi Supreme Court in cases where the woman is at fault. We cannot conclude this to be manifestly in error on the proof in the record.

II.

LIMITED INSURANCE BENEFITS

Geneva also takes issue with that portion of the judgment which limited Francis' obligation to provide medical insurance for her benefit to a period of eighteen months or until Geneva was able to secure prior military medical benefits, whichever occurred first. Geneva asserts that the chancellor erred in basing his decision on the assumption that she would be able to regain military benefits which she had enjoyed prior to her marriage to Francis. Geneva further argues that due to the nature of the award, it is rehabilitative alimony, which she contends should continue long enough to allow her to become self-supporting.

In his opinion, the chancellor stated:

The main concern of the Defendant [Geneva] is the state of her health. She appears to have a serious respiratory problem which requires frequent medical attention and prescriptive drugs. She no longer has the benefit of medical privileges for medical attention which she enjoyed as being the widow of her first and second husbands, each of whom were retired military persons. She now depends upon the Plaintiff's group medical insurance from his employment. No written information was presented showing that once divorced, she could not regain those benefits.

This award for a period of eighteen months is in the nature of rehabilitative alimony, allowing Geneva a reasonable time to pursue other means to meet her medical needs. The Mississippi Supreme Court has held that rehabilitative alimony "is a separate and equitable tool for chancellors to use in their discretion. . . ." *Hubbard v. Hubbard*, 656 So. 2d 124, 130 (Miss. 1995). The purpose of

rehabilitative alimony is to allow the party needing assistance "to become self-supporting without becoming destitute in the interim." *Id.* Rehabilitative periodic alimony, as opposed to lump-sum alimony, "is not intended as an equalizer between the parties but is for the purpose of allowing the less able party to start anew without being destitute. . . ." *Id.*

In his opinion, the chancellor required Francis to maintain medical insurance covering Geneva for a period of eighteen months, noting both that no written information was presented showing that Geneva could not regain military benefits and that due to her condition, Geneva had been notified that she should qualify for social security disability benefits. Based on our limited standard of review, we are unable to conclude that this provision was manifestly wrong or the result of applying an erroneous legal standard. *Magee*, 661 So. 2d at 1122. Therefore, it is our conclusion that the chancellor's decision must be affirmed.

**THE DECISION OF THE JACKSON COUNTY CHANCERY COURT IS AFFIRMED.
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**