IN THE COURT OF APPEALS 4/22/97

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01021 COA

ELISA TERRELL HARRIS

APPELLANT

v.

PAUL JOSEPH HARRIS

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GLENN BARLOW

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

THOMAS WRIGHT TEEL

ATTORNEY FOR APPELLEE:

GARY L. ROBERTS

NATURE OF THE CASE: DIVORCE

TRIAL COURT DISPOSITION: UNCONDONED ADULTERY DIVORCE GRANTED; WIFE AWARDED CUSTODY AND CHILD SUPPORT; WIFE AWARDED PERIODIC AND LUMP-SUM ALIMONY

BEFORE BRIDGES, C.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

Elisa and Paul Harris were granted a divorce on the grounds of uncondoned adultery after eight years of marriage. Elisa was awarded both periodic and lump-sum alimony, custody of their two minor children, and child support. Aggrieved, Elisa raises a single assignment of error on appeal: the chancellor erred in limiting the alimony to a term of six years. In a subsequent motion to this Court, Elisa prayed for statutory damages and attorney's fees for this appeal. Paul cross-appeals contending that the chancellor erred in: (1) awarding $4,000.00 in alimony for six years when a much shorter period was warranted; (2) awarding $200,000.00 in lump-sum alimony; and (3) awarding $2,000.00 per month in child support for two small children. Because the chancellor did not make a clear finding as to whether the alimony award was periodic or rehabilitative, nor did he make a finding on the record as to whether the child support guidelines were applicable, we remanded this matter to the chancellor requesting that he supplement the record with specific findings on those matters. The chancellor has now supplemented the record as requested. Having received that supplement, we now consider all issues raised on direct appeal and cross-appeal.

FACTS

On April 24, 1985, Elisa and Paul Harris were married. At the time Elisa was an emergency room nurse, and Paul was an emergency room doctor in Macon, Georgia. Soon after marriage, Paul decided to go to anesthesiology school in Gainesville, Florida; Elisa quit work, sold their house and got them moved. Paul was in school for two and a half years. As an emergency room doctor, Paul earned up to $100,000.00 a year, but during anesthesiology school his income dropped to as low as $22,000.00 per year. After completing school, he earned $639,000.00 his first year in Ocean Springs, Mississippi as an anesthesiologist. Within a year he entered into a partnership, and earned $416, 000.00 that year.

While Paul attended anesthesiology school, Elisa continued to work. As an emergency room nurse, she earned around $25,000.00 per year. After marriage, Elisa's life centered around Paul's work and school schedules. She cooked, cleaned, entertained, managed the household, attended functions associated with Paul's residency, and arranged her work schedule around Paul's hospital schedule. Elisa's income fell to $16,000.00 when she moved to Florida with Paul. She worked in Gainesville for two years and showed income from $25,000.00 to $28,000.00. With the birth of their first child, Elisa ceased being gainfully employed. The two agreed that Elisa would remain home until that child and a second child born to the marriage became school age.

In April 1991, the marriage experienced problems after Paul had an affair with an emergency room nurse. Paul and Elisa separated, reconciled, then separated again before filing for divorce. The chancellor granted the divorce and after several motions granted, *inter alia,* Elisa custody of the couple's two minor children and child support of $2,000.00 per month; exclusive use and possession of the parties' home, directing Paul to pay the mortgage in the amount of $1,760.00 per month and to be responsible for all major repairs on the home; lump-sum alimony in the amount of $200,000.00 and alimony in the amount of $4,000.00 per month for six years.

I.

THE CHANCELLOR ERRED IN LIMITING ELISA HARRIS'S AWARD OF ALIMONY TO A TERM OF SIX YEARS.

"Our scope of review of an alimony award is well-settled. Alimony awards are within the discretion of the chancellor, and his discretion will not be reversed on appeal unless the chancellor was manifestly in error in his finding of fact and abused his discretion." *Ethridge v. Ethridge*, 648 So. 2d 1143, 1145-46 (Miss. 1995) (quoting *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993) (citation omitted)). "This Court will not disturb a chancellor's ruling if the findings of fact are supported by credible evidence in the record." *Ethridge*, 648 So. 2d at 1146 (citations omitted). "In the case of a claimed inadequacy or outright denial of alimony, we will interfere only where the decision is seen as so oppressive, unjust or grossly inadequate as to evidence an abuse of discretion." *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993) (citations omitted).

In the present case, the chancellor awarded Elisa rehabilitative alimony in the amount of $4,000.00 per month for a term of six years. Our review of the record indicates that when the chancellor first considered the order of alimony he was concerned with Elisa's ability to rehabilitate herself. He stated, "And this is really the primary question before the court is how the court can equitably divide the assets to allow Dr. And Mrs. Harris to live, to allow her to be rehabilitated, to allow her to live in the manner to which she has become accustomed, ..." He then awarded Elisa $4,000.00 per month in periodic alimony for an indefinite period of time. After ruling on a motion to reconsider the judgment, the chancellor placed a fixed date on the termination of the periodic alimony. On reconsideration, the chancellor determined that Elisa should receive rehabilitative alimony as oppose to permanent periodic alimony. The chancellor concluded that Elisa should have something more than lump-sum alimony to assist her through the four or five years of school that she planned to undertake for the purpose of becoming self-sufficient. Further, the chancellor deemed an additional year of alimony necessary to place Elisa on a firm financial foundation.

"Our law vests in the chancery courts of this state broad authority to provide for the material needs of spouses incident to divorce." *Hubbard v. Hubbard*, 656 So. 2d 124, 129 (Miss. 1995) (quoting *Bowe v. Bowe*, 557 So. 2d 793, 795 (Miss. 1990)). We have also held that periodic alimony cannot have a fixed termination date. *Cleveland v. Cleveland*, 600 So. 2d 193, 196 (Miss. 1992). Recognizing the fact that something other than periodic alimony would be more appropriate in the resolution of this matter, the chancellor in his wisdom and experience with matters of this type struggled to fashion an equitable device to provide for the support of Elisa while she underwent a significant change in her income and family status. The chancellor's efforts resulted in what has become known as rehabilitative alimony. Our supreme court has since explicitly recognized this remedy as a tool to provide for the needs of spouses in divorce. "[A]n equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim." *Hubbard*, 656 So. 2d at 130. We have upheld an award of rehabilitative alimony where the chancellor has clearly indicated that the purpose of such is to allow the spouse to become self-sufficient. In *Hubbard*, the court upheld a thirty-six month period of periodic rehabilitative alimony for the purpose of allowing Mrs. Hubbard financial assurance until she could become self-sufficient. *Id*. Even though the chancellor was without the guidance of *Hubbard's* precept, we find that he acted well within his discretion to fashion an equitable remedy that is neither unjust or grossly inadequate.

We commend the chancellor on his diligent efforts to fashion an such a equitable remedy and affirm his ruling on this issue.

II.

STATUTORY DAMAGES AND ATTORNEY'S FEES

Elisa has entered motions before this Court for statutory damages pursuant to Section 11-3-23, of the Mississippi Code, and attorney's fees. We received briefs from the parties on both motions, and we decline to grant either statutory damages, or additional attorney's fees to Elisa in regard to this appeal.

The statutory damage award is in the nature of compensation to the successful appellee for expenses incurred incident to the appeal--and for being put to all of the trouble of an appeal. *Lowicki v. Lowicki*, 429 So. 2d 917, 919 (Miss. 1983) (quoting *Canal Bank & Trust Co. v. Brewer*, 114 So. 127, 128 (Miss. 1927). Because Elisa initiated the appeal, we find that she is not entitled to statutory damages or additional attorney's fees. Any delay in payment was caused by her as opposed to Paul's delaying his payment of a final judgment. Therefore, we decline to grant statutory damages as well as additional attorney's fees on this appeal.

CROSS-APPEAL

I.

THE CHANCELLOR WAS MANIFESTLY ERRONEOUS AND ABUSED HIS DISCRETION BY AWARDING ELISA $4,000.00 PER MONTH IN ALIMONY AND FOR EXTENDING REHABILITATIVE ALIMONY BENEFITS FOR A PERIOD OF SIX YEARS, WHEN A MUCH SHORTER REHABILITATIVE PERIOD IS WARRANTED.

AND

II.

THE CHANCELLOR WS MANIFESTLY ERRONEOUS AND ABUSED HIS DISCRETION BY AWARDING ELISA $200,000.00 IN LUMP-SUM ALIMONY.

Because we addressed Paul Harris's first issue in Elisa's direct appeal we will not revisit a discussion of it in the cross-appeal. Paul's second assignment of error is easily disposed of by our standard of review in cases dealing with lump-sum alimony. "Alimony awards are within the discretion of the chancellor, and his discretion will not be reversed on appeal unless the chancellor was manifestly in error in his finding of fact and abused his discretion." *Ethridge*, 648 So. 2d at 1145-46. We do not find that the chancellor abused his discretion in awarding Elisa $200,000.00 in lump-sum alimony considering the assets held by the parties were in excess of $1,000,000.00 and Paul's income was at least $400,000.00 per year. Considering the fact that Elisa was without income, a housewife, and full-time mother to the couple's two minor children, this award was equitable and we will not disturb it. We affirm this issue.

III.

> THE CHANCELLOR WAS MANIFESTLY ERRONEOUS AND ABUSED HIS DISCRETION IN AWARDING CHILD SUPPORT TO ELISA HARRIS IN THE AMOUNT OF $2,000.00 PER MONTH FOR TWO SMALL CHILDREN.

Paul argues that the chancellor committed manifest error and abuse of discretion by awarding Elisa $2,000.00 per month in child support for their two minor children. We have held that "an award of child support is a matter within the discretion of the chancellor and we will not reverse that determination unless the chancellor was manifestly wrong in his finding of fact or manifestly abused his discretion." *Gillespie v. Gillespie*, 594 So. 2d 620, 622 (Miss. 1992). "The process of weighing evidence and arriving at an award of child support is essentially an exercise in fact finding, which customarily significantly restrains this Court's review." *Id.* This process of fact finding is primarily structured by the child support guidelines of Section 43-19-101, of the Mississippi Code. Section 43-19-101 states in pertinent part:

> (4) In cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars (50,000.00) or less than Five Thousand Dollars ($5,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

The chancellor determined that subsection (4) of section 43-19-101 would be unjust and inappropriate if applied to Paul Harris since no extraordinary medical, psychological, education, or dental expenses were deducted out of the child support itself. The chancellor ruled that requiring Paul to pay more for the care of two children of tender age would be an act in futility because he had ordered him to pay $200,000.00 lump-sum alimony, a mortgage payment of $1760.00 per month, and awarded Elisa exclusive use and possession of the house. In addition, Paul was required to pay all medical insurance and any medical expenses not covered by the insurance. Because we find that the chancellor's findings are supported by substantial evidence, we will not disturb his rulings. Therefore, we affirm the chancellor's judgment in this case.

THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS AFFIRMED

ON DIRECT APPEAL AND ON CROSS-APPEAL. COSTS OF THIS APPEAL ARE ASSESSED ONE-HALF TO APPELLANT AND ONE-HALF TO APPELLEE.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, AND SOUTHWICK, JJ., CONCUR.

PAYNE, J., CONCURS WITH SEPARATE WRITTEN OPINION.

HINKEBEIN, J., NOT PARTICIPATING.