

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00637 COA**

**STEVE A. WOOLDRIDGE**

**APPELLANT**

**v.**

**DEBRA K. WOOLDRIDGE**

**APPELLEE**

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

DATE OF JUDGMENT:	05/28/96
TRIAL JUDGE:	HON. WOODROW WILSON BRAND JR.
COURT FROM WHICH APPEALED:	CHICKASAW COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	JOHN P. FOX C. MICHAEL MALSKI
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: REX F. SANDERSON
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	ON ACTION FOR CUSTODY, SUPPORT, MAINTENANCE, CHANCELLOR APPLIED EQUITABLE DIVISION OF ASSETS, DIVESTING APPELLANT OF CERTAIN REAL PROPERTIES AND GRANTING INTEREST TO APPELLEE. THE PARTIES WERE NOT MARRIED.
DISPOSITION:	REVERSED IN PART AND REMANDED IN PART - 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

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

BRIDGES, C.J., FOR THE COURT:

Debra Wooldridge and Steve Wooldridge were married October 26, 1973. They divorced on October 31, 1983. One child was born during the marriage. In November 1983, one month after their divorce,

Steve and Debra began living together and continued cohabitating off and on without the benefit of remarriage until their final separation in June 1994. Their second daughter was born while they were cohabitating.

In August 1994, Debra filed suit for custody and support of the two minor children and equitable distribution of assets supposedly accumulated during a period of cohabitation with her ex-husband. While opining that mere cohabitation does not create in and of itself an equitable interest, the chancellor stated in his opinion that "our law authorizes and sanctions an equitable division of property accumulated by two persons as a result of their joint efforts. . . ." However, the chancellor emphasized that the plaintiff had the burden of proving with convincing evidence "that properties accumulated were the result of their joint effort." Despite his holding that Debra had failed to prove that accumulated assets were a result of joint effort, the chancellor nonetheless awarded her half of Steve's interest in the former marital residence for services rendered in the way of homemaking and child rearing.

Steve presents the following issues on appeal:

**I. DID THE CHANCELLOR ERR IN AWARDING TO THE PLAINTIFF, AN UNMARRIED COHABITANT, AN INTEREST IN REAL PROPERTY TITLED IN THE NAME OF THE DEFENDANT COHABITANT?**

**II. DID THE CHANCELLOR ERR IN DIVESTING THE DEFENDANT COHABITANT OF HIS TITLE TO HIS PROPERTY?**

On her cross-appeal, Debra presents the following complaint:

**I. DID THE COURT ERR IN FAILING TO AWARD APPELLEE/CROSS-APPELLANT AN EQUITABLE INTEREST IN OTHER OF THE APPELLANT/CROSS-APPELLEE PROPERTY ACQUIRED DURING THE MARRIAGE, DIVORCE, AND LATER COHABITATION OF THESE PARTIES?**

### **FACTS**

Steve and Debra married in 1973 and settled in Okolona, Mississippi. One daughter, Laura, was born in 1976. One month after their divorce in 1983, Steve and Debra resumed cohabitation and a second daughter, Leigh Ann, was born in 1985. The couple finally separated in June 1994. However, at least four witnesses testified that Debra left Steve anywhere from four to ten times during their period of cohabitation. While they were together, Debra and Steve were both employed at the Wooldridge Superette, a store reportedly owned by Steve's father, O.L. Wooldridge. Steve was the manager and brought home \$200 a week. Debra was a cashier and brought home \$104 a week. The testimony is undisputed that Steve worked at the store seven days a week, approximately ten to eleven hours a day. The testimony is disputed as to how many hours a day Debra worked: Steve stated that she only worked three hours a day if she felt like it; Debra stated that she worked full eight hour days during the week. Nonetheless, Steve and Debra were employees, not owners of the store. During their times of separation, however, Debra would not work at the store.

During their marriage and a portion of their cohabitation, Steve and Debra lived in a house on Gann

Street, herein referred to as the Gann Street property. A year before the Gann Street property was sold, Steve and his father purchased a 90 acre piece of property from the Bowles, herein known as the Bowles property. Steve renovated an old farmhouse on the Bowles property and he and Debra and their children moved into it. Debra was not named as a grantee on the deed, nor did she contribute any money to the purchase of the Bowles property. In fact, both Steve and Debra testified that the Bowles property was bought with money from the store. The proceeds from the sale of the Gann Street property was used for household expenses. Subsequently, the 69 acres adjacent to the Bowles property became available and Steve purchased that land, herein known as the Sullivan property.

Steve currently lives in the renovated farmhouse on his 160 acres. He no longer works at the Superette, but drives a truck for a living. Since the final separation, Steve has paid \$150 a month for Laura's college expenses, and approximately \$150 a month for Leigh Ann's private school tuition. Debra is currently employed and brings home \$1,000 a month, with her only asset being a car. Neither party owes any money.

Debra filed suit in the Chickasaw County Chancery Court requesting among other things, equitable distribution and one-half of all money, personal property, and real property accumulated by the parties. She also requested that certain provisions of the 1983 divorce decree pertaining to proceeds from the sale of the marital residence and child support be enforced. In the trial of the case, Debra tried to prove a common-law partnership or joint venture for which there was no foundation. The chancellor held that the fact that she received a salary, without proof of more, did not create a common-law partnership or a joint venture. Additionally, the chancellor, in reliance on *Davis v. Davis*, 643 So. 2d 931 (Miss. 1994), stated that "the mere fact of cohabitation does not reach to that level [of common-law partnership or joint venture], and she is not entitled to the rights and privileges of a married woman." The following excerpt from the chancellor's opinion addresses Debra's claim to an equitable distribution of property:

The plaintiff, among other things, alleges that she is entitled to an equitable interest in and to one half of all money, personal and real property accumulated by the defendant since their resumed cohabitation in November, 1983. The burden of proof rests with the plaintiff. The mere fact of resumption of cohabitation does not create in and of itself an equitable interest. Common law marriages were abolished in this state on April 5, 1956. Although our law authorizes and sanctions an equitable division of property accumulated by two persons as a result of their joint efforts, the burden of proof rests on the party making such a demand to present convincing evidence that properties accumulated were the result of their joint effort. In this, the plaintiff has failed.

Perhaps it should be stated at this point that the Legislature of this state has not extended the rights enjoyed by married people to those who have chosen merely to cohabitate or to carry on an affair.

The divorce decree held that Debra would have custody of the minor daughter and Steve would pay monthly child support. Additionally, at the sale of the marital residence, Steve and Debra were to split one half of the proceeds, and the other half was to be put in trust for the minor daughter. In the current case, the chancellor awarded Debra custody of the two children, with Steve having reasonable rights of visitation. Steve was directed to pay child support in the amount of \$200 per child each month as well as the reasonable educational expenses for each daughter. Additionally,

Steve was ordered to pay all medical, dental and drug expenses for the children.

Despite his refusal to award an equitable division of property, the chancellor did not totally deny Debra relief. The chancellor recognized that Debra was the homemaker and principal caretaker of the children, as well as Steve's companion. The chancellor held that she was entitled to credit for services rendered. The chancellor held that Debra entered the residence (presumably the cohabitation) with a half interest in the former marital residence. "Accordingly, the Court is of the opinion that she is entitled to and will be awarded one half of the defendant's interest in the residence of the parties, being the Bowles property." The chancellor denied Debra any interest in Steve's other assets. On appeal, Steve claims that the chancellor erred in granting Debra any interest in his property, while Debra claims that the chancellor did not award her enough.

**I. DID THE CHANCELLOR ERR IN AWARDING TO THE PLAINTIFF, AN UNMARRIED COHABITANT, AN INTEREST IN REAL PROPERTY TITLED IN THE NAME OF THE DEFENDANT COHABITANT?**

**II. DID THE CHANCELLOR ERR IN DIVESTING THE DEFENDANT COHABITANT OF HIS TITLE TO HIS PROPERTY?**

"This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Brennan v. Brennan*, 638 So. 2d 1320, 1323 (Miss. 1994). It is under this familiar standard of review that we examine the chancellor's ruling and applicable law. The Mississippi Supreme Court has definitively spoken on the issue of so-called palimony, declaring that equitable division of property between two cohabitating partners is not allowed, and that it is the province of the legislature, not the courts, to create such a right. *Davis v. Davis*, 643 So. 2d 931, 936 (Miss. 1994). However, in light of unique factual situations, the supreme court has allowed division of property for couples cohabitating without the benefit of marriage. In *Pickens v. Pickens*, the court held:

Notwithstanding [the lack of a legal marriage], upon permanent separation, our law authorizes and sanctions an equitable division of property accumulated by two persons as a result of their joint efforts. This would be the case were a common law business partnership breaking up. It is equally the case where a man and woman, who have accumulated property in the course of a non-marital cohabitation, permanently separate.

490 So. 2d 872, 875 (Miss. 1986). In *Pickens*, the couple had been married for several years before they divorced. After their divorce, they resumed twenty years of uninterrupted cohabitation, with both partners gainfully employed. Unlike the chancellor in the present case, the *Pickens* court held that their accumulated wealth was a result of their joint efforts.

The supreme court, despite the rather broad pronouncement in *Pickens*, has appeared somewhat reluctant to invoke its authority to grant relief of this nature, historically doing so only when the inequity of not providing some form of relief is apparent. In *Chrismond v. Chrismond*, 211 Miss. 746, 52 So. 2d 624 (1951), the court dealt with a situation where the parties had undergone a

ceremonial marriage and the woman had believed in good faith that they were married. The man had concealed the fact that he had a previous undissolved marriage. The woman had worked closely with the man in a successful sales business whose profits permitted the accumulation of valuable real estate holdings, all in the man's name. *Id.* at 626. On those facts, the chancellor ordered the woman to receive title to the home occupied by the parties and ordered the man to discharge all liens against the property. *Id.* at 627. In affirming that award, the supreme court was careful to restrict the applicability of the case.

In *Taylor v. Taylor*, 317 So. 2d 422, 422 (Miss. 1975), the parties went through a ceremonial marriage and lived together for eighteen years. The woman, however, had been married to another person so that this second marriage was void. Nevertheless, on a finding that the woman "was sick and unable to work" at the time of the separation, the chancellor awarded her \$75 per month for thirty-six months. *Id.* The supreme court affirmed, being careful to say that the chancellor only "did what a decent regard for the sensibilities of humanity demanded" under "the particular circumstances" of the case. *Id.* at 423.

Recently, the supreme court dealt with a case where the chancellor declined to make an equitable distribution of assets when a non-married couple ended a thirteen-year relationship that produced a child. *Davis v. Davis*, 643 So. 2d 931 (Miss. 1994). The court framed the issue and answered it very succinctly.

At issue is whether an individual who has cohabited with another without the benefit of marriage is entitled to a share of the assets accumulated during the relationship. Because the endorsement of any form of "palimony" is a task for the legislature and not this court, we affirm the chancellor's decision.

*Id.* at 932.

In *Davis*, the man's net worth had grown, during the term of the relationship, from approximately \$850,000 to over \$7,000,000. *Id.* at 931. The court recognized, and even quoted, the broad language from the *Pickens* case that we quoted above, but refused to apply it, saying that "[t]he *Pickens* Court noted that it was faced with 'an arguably unique factual setting.'" *Id.* at 935. The court also commented on the fact that, in *Davis*, there was never a ceremonial marriage, nor was the woman "an innocent partner to a void marriage." *Id.* at 936.

In the instant case, there was a ceremonial marriage as well as the birth of a second child. But unlike *Pickens*, the chancellor in this case held that Debra failed to prove that Steve's real estate and other property holdings were a result of their joint efforts. In fact, he went further, stating that she did not deserve the benefits and protection afforded married people. Still he awarded her one half interest in Steve's Bowles property. While we agree that Debra is not entitled to an equitable division of property, there is some credence to the chancellor's holding that Debra expended considerable time, energy, and her own money to raise and tend to the children as well as taking care of Steve and the family home. The supreme court spoke to such contributions in *Pickens*:

As any freshman economics student knows, services and in kind contributions have an economic value as real as cash contributions. In such situations, where one party to the relationship acts without compensation to perform work or render services to a business

enterprise or performs work or services generally regarded as domestic in nature, these are nevertheless economic contributions.

*Pickens*, 490 So. 2d at 876 (citations omitted).

However, the law does not support the chancellor's decision to divest Steve of title to his property. Recent decisions of the Mississippi Supreme Court have not favored divestiture of title in divorce cases absent a showing of commingled funds. *Johnson v. Johnson*, 650 So. 2d 1281, 1286 (Miss. 1994) (property obtained by one party through inheritance not subject to equitable distribution unless commingling proven.); *Hemsley v. Hemsley*, 639 So. 2d 909, 914 (Miss. 1994) ("Assets acquired or accumulated during the course of a marriage are subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage.") The proof in the instant case showed that Steve acquired the Bowles property with money from the store, not with money from the sale of the Gann Street property. Additionally, the Sullivan property was also acquired by Steve with his own funds. The chancellor cannot divest Steve of title to his property.

However, equity demands that Debra be awarded some compensation for the duties she performed. Like *Pickens*, the facts in this case reflect that Steve and Debra resumed cohabitation after their divorce. They stayed together for eleven years before their final separation. Steve and Debra had another child during their reconciliation and raised her along with her big sister. They lived together as a family. It cannot be overlooked that Debra was the main care giver to their children, and she made sacrifices for their well-being. While the facts in *Pickens* are not identical to the instant case, it is upon that equitable basis that we conclude that the chancellor was not in error in holding that Debra was entitled to some relief. This is especially so in light of the fact that the proceeds from the Gann Street property, which was titled in both Steve and Debra's names, were used for household expenses such as food and clothes. Debra did not keep any of the profits.

We therefore reverse in part and remand this cause for an appraisal of Steve's property known as the Bowles property where the family lived during their cohabitation. In answer to Debra's cross-appeal, while she is not entitled to an equitable division of Steve's property, the chancellor is instructed to award her a reasonable money judgment for her contribution to raising and taking care of the family, as well as her using her proceeds from the sale of the Gann Street property for the needs of the children. Instead of divesting Steve of title to his property, the chancellor may place a lien upon the Bowles property to ensure payment of the judgment. *See Maslowski v. Maslowski*, 655 So. 2d 18, 21 (Miss. 1995) (holding that chancery court has power to impress lien as security for judgment.)

**THE JUDGMENT OF THE CHICKASAW COUNTY CHANCERY COURT IS AFFIRMED IN PART AND THE JUDGEMENT DIVESTING STEVE WOOLDRIDGE OF TITLE TO HIS PROPERTY IS REVERSED AND THIS CAUSE REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS OF THIS APPEAL TAXED TO APPELLEE.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., NOT PARTICIPATING.**

