

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 1999-CA-01741-COA**

**DONNA RAGLAND BROWN**

**APPELLANT**

v.

**CHARLES WAYNE BROWN**

**APPELLEE**

DATE OF JUDGMENT: 08/30/1999  
TRIAL JUDGE: HON. VICKI R. BARNES  
COURT FROM WHICH APPEALED: WARREN COUNTY CHANCERY COURT  
ATTORNEY FOR APPELLANT: SHARON PATTERSON THIBODEAUX  
ATTORNEY FOR APPELLEE: PAUL KELLY LOYACONO  
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS  
TRIAL COURT DISPOSITION: DIVORCE AWARDED; PROPERTY DISTRIBUTION  
DISPOSITION: AFFIRMED - 01/16/2001  
MOTION FOR REHEARING FILED:  
CERTIORARI FILED:  
MANDATE ISSUED: 2/6/2001

BEFORE SOUTHWICK, P.J., LEE, AND THOMAS, JJ.

THOMAS, J., FOR THE COURT:

¶1. Donna and Wayne Brown were granted a divorce for irreconcilable differences. On appeal, Donna asserts a number of errors pertaining to the chancellor's classification of marital property and the distribution of that property. These errors can be condensed in the following manner:

**I. THE LOWER COURT ERRED IN THE CLASSIFICATION OF MARITAL AND SEPARATE PROPERTY.**

**II. THE LOWER COURT ERRED IN THE EQUITABLE DISTRIBUTION OF THE MARITAL ESTATE.**

Finding no error, we affirm.

**FACTS**

¶2. Donna and Wayne Brown were married on February 14, 1991. This was the second marriage for both parties. On August 30, 1999, the lower court granted the divorce on grounds of irreconcilable differences and divided the property based on equitable distribution. The chancellor offered a lengthy thirty page opinion which shows the careful consideration and effort to fairly and justly distribute the property. The chancellor distributed the property in the following manner:

## **NON-MARITAL ASSETS**

### **Mrs. Brown**

Stationary bike \$150.00

Emerson VCR 180.00

Refrigerator

TV (purchased after separation) 79.00

Oak table and six chairs 260.00

Iron bed

Computer desk

Piano 200.00

TOTAL 869.00

### **Mr. Brown**

Saddle (Billy Cook) \$ 600.00

Massey Ferguson 210 Tractor, tiller & clipper (disk missing) 8,500.00

16 foot trailer 1,000.00

Guns 10,000.00

TV 350.00

Stereo Speakers 400.00

Filing Cabinet 100.00

African drum 150.00

Gun cabinet 500.00

Oriental Artwork and frame 750.00

Antique engines 6,400.00

Other engines 2,900.00

Hunting & Camping equipment 300.00

Air Compressor 800.00

Panasonic video camera 1,000.00

Minolta 35mm camera 450.00  
Box tools, hand tools & special tools 10,000.00  
Drill press 450.00  
Valve grinder 3,000.00  
Parts washer 250.00  
Oxygen and acetylene system 500.00  
Airco welder and Heliarch attachment 2,000.00  
Craftsman radial arm saw 650.00  
Skill saw 50.00  
Router and bits 350.00  
Mogul metal spraying gun 2,500.00  
12 foot steel bed shop made single axle trailer 1,500.00  
Horse (Snickers) 1,000.00  
Smith-Corona typewriter 400.00  
Band Saw 300.00  
4-wheeler 6,000.00  
TOTAL 63,150.00

Below is a list of items that Mr. Brown contends were acquired before their marriage that he wants returned.

Tractor disk \$ 450.00  
Husky chain saw 500.00  
Antique Anvil 450.00  
Portable Coleman gas generator 450.00  
Craftsman paint air compressor 250.00  
Oat crimper 500.00  
Knife cut corn chopper 500.00  
Wooden 9-foot shop-made trailer 800.00

Assorted air craft parts 15,000.00

Vise 250.00

Battery charger 300.00

Bench grinders (2) 400.00

TOTAL 19,400.00

## **MARITAL ASSETS**

### **Mrs. Brown**

Efforts in South Delta Aviation (Mr. Brown's crop-dusting business) \$10,000.00

1995 Saturn 5,140.00

1996 Saturn 2,330.00

Antique Bell 1,000.00

Treadmill 200.00

Kenmore stove with hood 400.00

TV

Hoover upright vacuum 100.00

(1)Couch 500.00

(2)Computers 2,500.00

Regina carpet cleaning system 300.00

Jacuzzi 1,700.00

(2)cell phones 250.00

(6)Antique Rockers 400.00

Oak hutch

(3)Bed side tables 130.00

(4)Dressers 400.00

Desk 25.00

(2)Beds 120.00

Diamond earrings 3,850.00  
Opal earring(one is lost) 300.00  
(3)9-inch TVs and Atari 650.00  
Chest freezer 300.00  
Color TV with VCR for teaching 400.00  
Courtyard fountain 200.00  
Linens and towels 1,000.00  
Lamps 300.00  
Kitchen dishes, pans, utensils, appliances 2,000.00  
China and crystal 1,500.00  
Sheet music, albums, tapes and books 700.00  
Teaching supplies 600.00  
Portable chain link fence 200.00  
Diamond Pendant 400.00  
Dulcimer 450.00  
Antique Furniture (3)dressers 500.00  
(3)bedroom suites 2,500.00  
IBM Selectric typewriter 500.00  
Iron bed  
Washer/Dryer  
Antique Saddle 100.00  
Den couch 200.00  
Horse (Heather) 1,000.00  
Saddle (Billy Cook barrel ladies) 700.00  
50% ownership in Ring Road property  
50% ownership in Ag Cat

50% ownership in GPS

50% ownership in Louisiana airstrip

Female Dalmation (Belle) 400.00

Interest in Computer & Printer 1,027.50

Retirement

TOTAL 73,772.50

**Mr. Brown**

Efforts in Wright Road House (construction of) \$10,000.00

TV 350.00

Couch 500.00

Cell phone 150.00

Tables made by Mr. Brown 1,000.00

Magnavox TV

Den Couch 200.00

Sofa table 150.00

Interest in Computer & printer 472.50

9.8 Carat Diamond ring 7,000.00

50% ownership in Ring Road property

50% ownership in Ag Cat

50% ownership in GPS

50% ownership in Louisiana Airstrip

Thrush airplane 22,850.00

Social Security

30 gallon Trailer Tank Sprayer 500.00

South Delta Aviation (business)

South Delta equipment 2,100.00

TOTAL 73,772.50

The Court finds that Mr. Brown shall be awarded all other property of South Delta Aviation not otherwise described herein.

The Court finds that Mr. Brown and Mrs. Brown shall each pay the Tensas State Bank Loan executed by them. That Mr. Brown shall pay any other Tensas State Bank loans executed by him. That Mr. Brown shall pay the loan to Merchants Bank on the Thrush airplane engine and the loan to Trustmark Bank on the Ag Cat airplane engine.

The Court finds that the whereabouts of the following items are in dispute:

**Mr. Brown**

Tractor disk

Huskey chain saw

Antique Anvil

Portable Coleman gas generator

Craftsman paint air compressor

Oat crimper

Knife cut corn chopper

Wooden 9-foot shop-made trailer

Assorted air craft parts

Vise

Battery charger

(2)Bench grinders

The Court finds that said items are non-marital and when they are located, they shall be returned to Mr. Brown as his exclusive property.

The Court finds that the 2.10 carat diamond ring is missing. The Court hereby awards each party a fifty percent interest in same or fifty percent of any insurance proceeds that may be obtained from said ring.

¶3. Donna now appeals, asserting that the classification of marital and separate property, as well as the distribution of marital property was improper.

**ANALYSIS**

¶4. An appellate court will not reverse a chancellor's classification and equitable division of marital property absent a determination that the chancellor's decision was manifestly wrong, clearly erroneous, unsupported

by substantial, credible evidence, or a showing that the chancellor applied an erroneous legal standard. *Burnham-Steptoe v. Steptoe*, 755 So. 2d 1225 (¶15) (Miss. Ct. App. 1999). See also *Singley v. Singley*, No. 1999-CA-00754-COA. (Miss. Ct. App. Sept. 26, 2000); *Franks v. Franks*, 759 So. 2d 1164 (Miss. 1999); *McEwen v. McEwen*, 631 So. 2d 821, 823 (Miss. 1994); *Parker v. Parker*, 641 So. 2d 1133, 1137 (Miss. 1994); *Bell v. Parker*, 563 So. 2d 594, 596-97 (Miss. 1990); *Newsom v. Newsom*, 557 So. 2d 511, 514 (Miss. 1990).

## **I. THE LOWER COURT ERRED IN THE CLASSIFICATION OF MARITAL AND SEPARATE PROPERTY.**

¶5. Assets acquired or accumulated during the course of the marriage are considered marital assets. *Hemsley v. Hemsley*, 639 So. 2d 909, 914 (Miss. 1994). "Marital partners can be equal contributors whether or not they both are at work in the marketplace." *Id.* at 915. "A spouse who has made a material contribution toward the acquisition of an asset titled in the name of the other may claim an equitable interest in such jointly accumulated property." *Id.* at 913. See also *White v. White*, 557 So. 2d 480, 484 (Miss. 1989); *Johnson v. Johnson*, 550 So. 2d 416, 420 (Miss. 1989); *Jones v. Jones*, 532 So. 2d 574, 580-81 (Miss. 1988). Such assets are subject to equitable distribution by the chancellor. *Hemsley*, 639 So.2d at 915.

¶6. If credible proof can be shown that an asset was acquired or accumulated prior to the marriage, such an asset is attributable to that parties' separate estate. *Id.* at 914. Gifts of highly personal nature are also considered to be separate property. *Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994). Separate property is not subject to equitable distribution. *Id.*

¶7. However, assets which initially fit into the category of separate property may be converted into marital assets if they are commingled with marital property or utilized for domestic or familial purposes, absent an agreement to the contrary. *Heigle v. Heigle*, 654 So. 2d 895, 897 (Miss. 1995); *Johnson v. Johnson*, 650 So. 2d 1281, 1286 (Miss. 1994). See also *Franks v. Franks*, 759 at 1169; *Maslowski v. Maslowski*, 655 So. 2d 18, 20 (Miss. 1995). Commingled property, which has become marital property, is subject to equitable distribution. See *Johnson*, 650 So. 2d at 1286; *Heigle*, 654 So. 2d at 897; *Maslowski*, 655 So. 2d at 20.

¶8. In the case sub judice, the chancellor made a thorough and proper classification of marital and separate property. There is no merit to this assignment of error.

## **II. THE LOWER COURT ERRED IN THE EQUITABLE DISTRIBUTION OF THE MARITAL ESTATE.**

¶9. "A chancery court has authority, where equity so demands, to order a fair division of property accumulated through the joint contributions and efforts of the parties." *Hemsley*, 639 So. 2d at 915. See also *Brown*, 574 So. 2d at 690; *Brendel v. Brendel*, 566 So. 2d 1269, 1273 (Miss. 1990); *Jones v. Jones*, 532 So. 2d 574, 580-81 (Miss. 1988); *Regan v. Regan*, 507 So. 2d 54, 56 (Miss. 1987); *Watts v. Watts*, 466 So. 2d 889, 891 (Miss. 1985); *Clark v. Clark*, 293 So. 2d 447, 459 (Miss.1974).

¶10. "Fairness is the prevailing guideline in marital division." *Ferguson*, 639 So. 2d at 929. The Court went on to explain that:

Property 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. Therefore, expert testimony may be essential to establish valuation sufficient to equitably divide property, particularly when the assets are as diverse as those at issue in the instant case.

*Id.* at 929.

¶11. The Mississippi Supreme Court has outlined and firmly established the factors to be considered when dividing marital property. *Ferguson*, 639 So. 2d at 928. Those factors are:

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. *McGee v. McGee*, 726 So. 2d 1220, 1223-24 (Miss. Ct. App. 1998).

¶12. In the case sub judice, the chancellor split the marital estate in half right down to the penny. There could be no more of an equitable distribution than this.

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

**McMILLIN, C.J., KING AND SOUTHWICK, P.JJ., BRIDGES, IRVING, LEE, MYERS, AND PAYNE, JJ., CONCUR. CHANDLER, J., NOT PARTICIPATING.**

