

IN THE COURT OF APPEALS 04/09/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00863 COA

CARRIE E. MORRIS

APPELLANT

v.

LARRY B. MORRIS

APPELLEE

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

TRIAL JUDGE: HON. WILLIAM H. MYERS

COURT FROM WHICH APPEALED: CHANCERY COURT OF JACKSON COUNTY

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEE:

THOMAS E. ROBERTSON

NATURE OF THE CASE: DOMESTIC RELATIONS; DIVORCE

TRIAL COURT DISPOSITION: DIVORCE GRANTED BASED UPON ADULTERY; \$60.00
PER WEEK TEMPORARY ALIMONY GRANTED TO WIFE; SALE OF MARITAL HOME
ORDERED WITH FIRST \$30,000 EQUITY PROCEEDS TO GO TO HUSBAND AND NEXT \$8,
000 TO WIFE

BEFORE THOMAS, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Larry B. Morris was granted a divorce from Carrie E. Morris on the ground of adultery. The chancellor awarded Carrie alimony in the amount of \$60.00 per week until she received her share of the proceeds from the sale of the marital home, but no longer than six months; ordered the sale of the marital home with the first \$30,000 of equity proceeds to be awarded to Larry and the next \$8,000 of equity proceeds to be awarded to Carrie with the remaining proceeds to be divided equally between the parties; and made provisions for the division of personal property. Feeling aggrieved, Carrie appeals *pro se* to this Court assigning the following issues on appeal:

I. THE COURT ERRED BY FAILING TO AWARD THE WIFE ADEQUATE ALIMONY

II. THE CHANCELLOR'S APPLICATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF MISSISSIPPI ARTICLE 3, SECTION 14 STATES THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY EXCEPT BY DUE PROCESS OF LAW

III. THE CHANCELLOR'S APPLICATION OF THE MISSISSIPPI ALIMONY STATUTE, SECTION 93-5-23, VIOLATES THE WIFE'S RIGHT TO EQUAL PROTECTION UNDER THE LAW AND UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Finding error, we affirm in part and reverse and remand in part for calculations on the issue of the distribution of equity proceeds from the sale of the marital home.

FACTS

Larry B. Morris and Carrie E. Morris were married April 12, 1985. The parties separated in August of 1993. At the time of trial, the parties had been married nine years. Originally, the parties jointly filed an irreconcilable differences divorce, both agreeing and signing the complaint and property agreement. Larry later amended his complaint for divorce on the ground of adultery, or in the alternative, on the ground of irreconcilable differences. At trial, the chancellor granted a divorce on Carrie's admitted adultery.

The chancellor determined that Carrie had made a material contribution to the marriage. The chancellor granted the divorce on the ground of adultery, awarding Carrie \$60.00 per week in alimony until she received her share of the proceeds from the sale of the marital home, but no longer than six months. The chancellor also ordered the sale of the marital home with the first \$30,000 of equity proceeds to be awarded to Larry and the next \$8,000 of equity proceeds to be awarded to Carrie with the remaining proceeds to be divided equally between the parties. The chancellor also made provisions for the division of personal property.

STANDARD OF REVIEW

Our standard of review in regard to a chancellor's findings is well settled. The Mississippi Supreme Court has held that, on appellate review, a chancellor's findings of fact will not be disturbed if substantial evidence supports those factual findings. *Brooks v. Brooks*, 652 So. 2d 1113, 1124 (Miss. 1995) (citations omitted). The appellate scope of review is limited since this Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong or clearly erroneous, or if an erroneous legal standard was applied. *Steen v. Steen*, 641 So. 2d 1167, 1169 (Miss. 1994) (citation omitted).

We note, however, that Carrie is proceeding *pro se* on appeal. The Mississippi Supreme Court has recognized that failure of a *pro se* litigant to precisely state her appeal will not harm her case. See *McFadden v. State*, 580 So. 2d 1210, 1214 (Miss. 1991); *Moore v. Ruth*, 556 So. 2d 1059, 1061 (Miss. 1990). We, too, will credit Carrie with her not so well-pleaded allegations to insure that those issues fairly, but imperfectly, asserted receive due consideration. *Moore*, 556 So. 2d at 1061.

DISCUSSION

Carrie argues that she is left almost penniless by the chancellor's order and that the circumstances dictate more alimony. Carrie recognizes that while Larry was granted the divorce based on her misconduct, she is still entitled to alimony in light of her contributions to the marriage. Carrie argues that her admission of adultery should not preclude her from receiving any money from the marriage. Carrie also argues that she was denied the benefit of the marriage's only liquid asset, the marital home.

Carrie argues that she was deprived of all monetary benefit of a nine-year marriage. She argues that as a female spouse, she is being treated differently in that a husband who has been determined to have committed adultery would not lose all of his financial contribution to a marriage which is what she claims that chancellor did in this case. She argues that this violates her equal protection rights under the Constitution. She asks this Court to carefully review the record.

A. ALIMONY

As to Carrie's argument that the chancellor's alimony award is inadequate, we find that the chancellor's award is not so inadequate as to require reversal. "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 at 1280 (citation omitted).

Carrie is correct in her position that adultery is not a *per se* preclusion of receiving an alimony award. *Carrow v. Carrow*, 642 So. 2d 901, 904 (Miss. 1994) (citing *Hammonds v. Hammonds*, 597 So. 2d 653, 655 (Miss. 1992)). In fact, had the chancellor denied her any alimony until the time she was to receive her equity proceeds from the sale of the marital home, Carrie would have been left destitute because she was unemployed with no assets outside of the marriage. See *Hammonds*, 597 So. 2d at 654 (citing *Retzer v. Retzer*, 578 So. 2d 580, 593 (Miss. 1990)). "However, marital misconduct is a viable factor entitled to be given weight by the chancellor when the misconduct places a burden on the stability and harmony of the marital and family relationship." *Carrow*, 642 So. 2d at 904-05 (citing *Ferguson v. Ferguson*, 639 So. 2d 921, 927 (Miss. 1994)). In *Carrow*, the chancellor determined that the wife's adultery precluded her from being entitled to equitable distribution at the

time of the divorce, and the Mississippi Supreme Court reversed. The present cause does not present a situation in which Carrie was precluded from being awarded alimony or some other means of equitable distribution. To the contrary, the chancellor made an alimony award and recognized Carrie's interest in the marital home. Thus, Carrie's argument that she was somehow prohibited from consideration of monetary proceeds from the marriage is without merit.

B. DISTRIBUTION OF THE MARITAL ASSETS

The chancellor found that Carrie had made a substantial contribution to the marriage and was entitled to an interest in the marital home. The record contains ample support for this finding and it is not challenged on appeal. The chancellor set a six-month period in which the marital home would be sold, allowing the parties the opportunity to settle the matter between them. If no such sale occurred, then the chancellor provided that the home would be sold by judicial sale with the proceeds to be divided among the parties. The chancellor's allocation of the equity proceeds from the sale of the marital home was as follows: Larry was to receive the first \$30,000 of equity proceeds and Carrie was to receive the next \$8,000 of equity proceeds, the remaining proceeds were to be divided equally between the parties. We find error in the chancellor's subordination of Carrie's equity claim to the equity claim of Larry. Each of the parties' individual contributions to the building of the marital home is roughly related to the chancellor's determination of the dollar amount of equity to be awarded each party. As there is support in the record for the chancellor's dollar amount determination, we find that the chancellor was within his discretion in so deciding. However, the chancellor erred in his prioritization of the equity proceeds from the sale of the marital home. The chancellor provides no support for the subordination of Carrie's equity claim, and we find that in doing so, he committed manifest error. While this error would prove harmless in the event that the sale produces at least \$38,000 in equity proceeds, we note that the judgment contemplates the possibility of a judicial sale. We take judicial notice that such sales at public outcry carry with them no assurance that a price even approaching fair market value will be obtained. We know from *Ferguson* that the overall goal of equitable distribution is fairness. *Ferguson*, 639 So. 2d at 929. We do not think that giving priority to Larry's equity claim over that of Carrie's equity claim is fair. It produces the possibility of completely depriving Carrie of her fair portion of the equity before Larry risks so much as one dollar loss of his equity. Another directive of the *Ferguson* decision is that the parties should be allowed to part ways. *Id.* We hold that should the equity at the sale of the home be less than \$38,000, then Carrie should receive her pro rata share of eight thirty-eighths (8/38) and Larry his pro rata share of thirty thirty-eighths (30/38) of the equity proceeds recovered from the sale of the marital home. We find no error in the chancellor's order for equal division of net proceeds in excess of \$38,000.

C. CHANCELLOR'S SUPPLEMENTAL OPINION

The chancellor included in his opinion that both Carrie and Larry were joint owners of the two parcels of land which adjoin the marital home and its four acres. Then some days later, the record contains a "Supplemental Opinion" of the chancellor which finds that the two parcels of land are owned by Larry alone since Larry owned them prior to the marriage. The chancellor's original opinion found that Larry owned the two parcels in question prior to the marriage. Carrie challenges the chancellor's award of the two parcels to Larry. However, Carrie presented this issue to the trial court on a motion to reconsider which was overruled by the chancellor after a hearing. We can find no basis for manifest error or an abuse of discretion in that ruling. Thus, this issue is without merit.

D. COURT'S REVIEW OF THE RECORD REVEALS AN ERROR

Our careful review of the record reveals an error in the chancellor's judgment of May 2, 1994. This judgment followed a petition for contempt filed by Carrie. It is apparent from the court papers which preceded the hearing and the transcript of the hearing on the petition that the chancellor used incorrect terminology in making the award of \$2,710 to the "plaintiff." The correct party to receive the reward is Carrie E. Morris who was the *Defendant* in the original action. While this error was not brought to this Court's attention by either of the parties, we find it necessary to correct the error in light of Carrie's difficulty (which is evidenced by the numerous motions, etc. contained in the record) in collecting the monies owed to her. Accordingly, we reverse and render to correct the judgment dated May 2, 1994, which shall read that Carrie E. Morris is awarded \$2,710 to be paid by Larry E. Morris.

CONCLUSION

This is a disturbing case with many thorny issues in regard to finances. Larry left this marriage with high equity in the home, two parcels of land, savings he accumulated in his name alone, retirement funds and income producing work (he testified that he made over \$200 a day). Carrie has nothing from this marriage except the relief granted herein and some personalty, although Larry sold part of the personalty designated for Carrie. There is no way to "unscramble this egg." The one thing that is obvious from the record is that there needs to be finality between these parties including compliance with court orders. Larry has used such excuses for nonpayment of court ordered temporary alimony as saying the order signed by one judge is not binding after the case was assigned to another judge. The record shows that Larry failed to pay any court ordered alimony necessitating multiple garnishments. We hold that Carrie is entitled to (1) an amount equal to 8/38 of the equity recovered from any sale of the marital home that results in the net proceeds of less than \$38,000, with interest at the legal rate from the date of this decision or the date of the sale, whichever occurs first and (2) \$2,710 in vested alimony with interest at the legal rate from and after May 2, 1994 until paid, less any net sums previously recovered by garnishment or otherwise. We would encourage the chancellor to employ methods at his disposal to insure the swift enforcement of the collection of this judgment against Larry. The only matter at issue on remand concerns the computation of Carrie's 8/38 interest in the first \$38,000 equity proceeds from the marital home. Payment to Carrie of the \$2,710 plus interest shall not be delayed until that matter of equity proceeds distribution is resolved.

THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS AFFIRMED IN PART AND REVERSED AND REMANDED IN PART. ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLEE.

FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, JJ., CONCUR. BRIDGES, P.J., CONCURS WITH SEPARATE WRITTEN OPINION.

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BRIDGES, P.J., CONCURRING:

I concur with the results and discussion of the law by the majority. I, however, would like to note that the Mississippi Supreme Court has often suggested that alimony should not be awarded to the wife when the divorce is granted by reason of the wrongful conduct of the wife. *Wood v. Wood*, 495 So. 2d 503, 505 (Miss. 1986); *Beacham v. Beacham*, 383 So. 2d 146, 147 (Miss. 1980). However, exceptions have been made in those cases "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." *Hammonds v. Hammonds*, 597 So. 2d 653, 654 (Miss. 1990). These exceptions have generally been made not to enable the wife to maintain the lifestyle to which she has been accustomed, but to "*prevent her from destitution.*" *Id.* (emphasis added).

In light of the case law concerning such an awards, I feel compelled to point out that the purpose for meager alimony awards is to allow one to rehabilitate oneself in order to join the workforce. See *Retzer v. Retzer*, 578 So. 2d 580, 593 (Miss. 1990) (citing *Wires v. Wires*, 297 So. 2d 900, 902 (Miss. 1974) (alimony may be awarded to wife who was guilty of adultery until she could reasonably earn her livelihood)). It is of paramount importance that chancellors recognize the reason for the award and grant such alimony accordingly. I think that the chancellor should have spoken to this issue and ruled that the award was specifically for rehabilitative purposes instead of granting Mrs. Morris a general award of alimony.