

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00327 COA

JIMMIE BREAKFIELD

APPELLANT

v.

MARJORIE BREAKFIELD

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 ROBERT TAYLOR JR.

COURT FROM WHICH APPEALED: MARION COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

JAMES R. HAYDEN

ATTORNEY FOR APPELLEE:

SAMUEL E. FARRIS

NATURE OF THE CASE: CIVIL: DIVORCE

TRIAL COURT DISPOSITION: DIVORCE GRANTED; WIFE AWARDED LUMP SUM
ALIMONY OF \$112,500 AND \$3,581.25 TOWARD ATTORNEYS FEES

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

DIAZ, J., FOR THE COURT:

Jimmie and Marjorie Breakfield were married on February 16, 1978. Marjorie filed a complaint for divorce on February 25, 1994 on the grounds of irreconcilable differences, habitual cruel and inhuman treatment, adultery, and desertion. Jimmie filed a cross-complaint alleging irreconcilable differences, willful, continuous, and obstinate desertion for the space of one year, and habitual cruel and inhuman treatment. The parties agreed, by written consent, filed on December 22, 1994, to be divorced on the ground of irreconcilable differences. The parties also consented to submit the remaining contested issues to the chancellor for his determination. These issues included the ownership and division of all real and personal property owned by the parties, whether Jimmy should be made to pay for Marjorie's monthly prescription drug bill, attorney's fees, and alimony. Following the presentation of all evidence during the December 22, 1994 hearing, a final decision was rendered on February 23, 1995. Among other things, the chancellor awarded Marjorie lump-sum alimony in the amount of \$112,500.00 and attorney's fees in the amount of \$3,581.25. Feeling aggrieved, Jimmie appeals the chancellor's ruling. Finding no error, we affirm.

FACTS

Jimmie and Marjorie Breakfield were married on February 16, 1978 in Marion County, Mississippi. During the marriage, the couple resided in Marion County and separated on June 20, 1991. The marriage produced no children. Following the separation, Marjorie filed a complaint for divorce and requested that the court (1) grant her possession and use of the homestead; (2) order the Defendant to maintain medical insurance on the Plaintiff and pay all costs not covered by said insurance; (3) award her lump-sum and periodic alimony; (4) equitably divide all property accumulated by the parties during the marriage; (5) assess all the debts of the marriage against Jimmie; and (6) award Marjorie court costs and attorney's fees. Jimmie filed a cross-complaint on April 22, 1994.

On December 22, 1994 the parties proposed a consent agreement whereby they agreed that there were irreconcilable differences between them and consented to a divorce based on these grounds. The parties consented to the chancellor resolving the remaining issues of the divorce.

The chancellor filed his final judgment on February 23, 1995 granting the parties a divorce on the ground of irreconcilable differences, and the division of marital property was delineated. Additionally, the chancellor awarded Marjorie \$112,500.00 in lump-sum alimony and \$3,581.25 in attorney's fees. Jimmie is appealing from the final judgment of divorce awarded to the parties.

DISCUSSION

1. Did the Trial Court Err in Awarding Wife Lump-Sum Alimony?

"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). Lump-sum alimony is allowable in either a single lump sum or fixed periodic payments. *Armstrong v.*

Armstrong, 618 So. 2d 1278, 1281 (Miss. 1993). We are instructed that "[i]n the final analysis, all awards should be considered together to determine that they are equitable and fair." *Hubbard v. Hubbard*, 656 So. 2d 124, 130 (Miss. 1995).

The Mississippi Supreme Court has set forth four factors which are to be considered in awarding lump-sum alimony:

- 1) Substantial contribution to accumulation of wealth by quitting job to become housewife or assisting in husband's business; 2) long marriage; 3) separate income or separate estate meager in comparison to that of payor spouse; and 4) financial security without lump-sum alimony.

Creekmore v. Creekmore, 651 So. 2d 513, 517 (Miss. 1995); *Crowe v. Crowe*, 641 So. 2d 1100, 1103 (Miss. 1994) (citations omitted); *Bland v. Bland*, 629 So. 2d 582, 587 (Miss. 1993) (citation omitted). "Most important is a comparison of the estates." *Creekmore*, 651 So. 2d at 517. In *Heigle v. Heigle*, the court stated that "[i]n the case of property settlement and lump sum alimony, the court's decision must hinge on the value of the marital estate, or the spouses' separate estates." *Heigle v. Heigle*, 654 So. 2d 895, 898 (Miss. 1995) (citing *Ferguson v. Ferguson*, 639 So. 2d 921, 928-29 (Miss. 1994); *Cheatum v. Cheatum*, 537 So. 2d 435, 438 (Miss. 1988)).

In applying these factors to the case at bar, the record reveals that the parties were married for sixteen years and that Marjorie substantially contributed to the accumulation of wealth acquired during the marriage by keeping the books for Haven House, a retirement home operated by the parties during the marriage, working in another nursing home for approximately ten years of the marriage, and maintaining the household during the marriage. Additionally, the financial statement provided by Marjorie reveals that her total monthly expenses are \$1,830.00 and her monthly income is \$1,020.00. The financial statement also reveals that all of Marjorie's assets are mortgaged for an amount equaling their appraised value. The only income determinative documents found in the record for Jimmy are two financial statements which the Appellant provided to First Federal Bank. The 1991 financial statement shows total assets in excess of \$630,000.00 and the 1994 financial statement reveals assets in excess of \$525,000.00.

Jimmie argues that the trial court erred in its decision because it did not have accurate information as to his income, assets, and liabilities. We will not overturn a trial court's decision simply because the Appellant failed to comply with mandatory discovery, and now on appeal, claims that the lower court had incorrect information. In balancing the equities as contained in the record, the disparity of the estates of the parties confirms that the trial court correctly determined that Marjorie was entitled to lump-sum alimony. This issue is without merit.

2. Did the Trial Court Err in its Award of Partial Attorney's Fees to the Wife?

The chancellor awarded Marjorie \$3,581.25 toward payment of her attorney's fees. Jimmy contends that this award was error by the chancellor because Marjorie failed to establish that she was unable to pay her attorney.

Attorney's fees are a matter entrusted to the sound discretion of the chancellor. *Brooks v. Brooks*, 652 So. 2d 1113, 1120 (Miss. 1995) (citation omitted); *Armstrong v. Armstrong*, 618 So. 2d 1278,

1282 (Miss. 1993); *McKee v. McKee*, 418 So. 2d 764, 767 (Miss. 1982). The fee should be based upon: (1) the relative financial abilities of each party; (2) the skill and standing of the attorney; (3) the nature of the case; (4) the novelty and difficulty of the issues; (5) the degree of responsibility in managing the case; (6) the labor and time required; (7) the usual and customary charges in the community; and (8) the preclusion of other employment by the attorney due to acceptance of the case. *McKee*, 418 So. 2d at 767. The fee must be fair and just, and the legal work must be determined to be reasonably required and necessary. *Id.* Sufficient evidence must exist to accurately assess a proper fee. *Id.*

Marjorie introduced into evidence a detailed accounting of her attorney's fees including time, services, and expenses. The total time accounted for prior to trial was 35.25 hours. Marjorie showed insufficient resources from which to pay her attorney's fees and testified that she had borrowed \$1,700.00 to pay his retainer. The record reveals that her only real income is her social security disability income and any rental payments she receives. From this evidence, the chancellor found that Marjorie was without sufficient income to pay her attorney. The evidence submitted at trial reflects \$5,281.00 in attorney's fees and expenditures. We do not find that the chancellor abused his discretion in awarding Marjorie partial attorney's fees in the amount of \$3,581.25. Thus, this issue is without merit.

THE JUDGMENT OF THE CHANCERY COURT OF MARION COUNTY IS HEREBY AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. THE APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.

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