29TH ANNUAL • 2025

FAMILY LAW

CONTINUING LEGAL EDUCATION

Seminar Leader

Deborah Hodges Bell

Guest Speakers

Mediation

Susan Steffey

Ethics Panel

David Calder, Shirley Kennedy, Adam Kilgore

6 Hours CLE Credit • 1 Hour Ethics Credit

Gulfport, MS • Jackson, MS • Oxford, MS

Online, On Demand

2025 Bell Family Law CLE
Schedule of Presentations

8:00 – 9:00	Registration
9:00 – 10:30	Family Law Update (Divorce, Property Division, Alimony, Custody) Debbie Bell
10:30 – 10:45	Break
10:45 – 11:50	Ethics Hour: Representing Children (Video presentation) Panel: Debbie Bell, David Calder, Shirley Kennedy, Adam Kilgore
11:50 – 12:30	Family Law Update (Custody; Child Support) Debbie Bell
12:30 – 1:45	LUNCH on your own
1:45 – 3:00	Alimony Refresher
3:00 – 3:15	Break
3:15 – 4:00	Mediation and Collaborative Law Susan Steffey
4:00 – 4:45	Family Law Update (Child Support, TPR, Jurisdiction & Procedure) Debbie Bell

2025
BELL FAMILY LAW CLE

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FAMILY LAW DEVELOPMENTS
2024

I. Separate maintenance actions

Turner v. Turner, 385 So. 3d 827 (Miss. Ct. App. 2024). The court of appeals reversed and remanded a chancellor's dismissal of a husband's divorce action. His wife was awarded separate maintenance in a November 2021 judgment. He did not file an answer or appear. He subsequently filed for divorce based on habitual, cruel, and inhuman treatment and adultery. Six months later, his wife sought to dismiss his petition. She argued that res judicata barred him from seeking divorce based on events that predated the separate maintenance judgment. The chancellor agreed and dismissed his petition.

The court of appeals reversed the dismissal for two reasons. Because the chancellor considered evidence outside of the pleadings, the wife's motion to dismiss should have been converted to a summary judgment motion and the husband given ten days' notice of the hearing. In addition, the court held that evidence prior to the separate maintenance judgment could be used for some purposes. The court agreed that the husband's divorce claim could not be based solely on conduct that predated the judgment. A separate maintenance award is based on a court's finding that the plaintiff was not substantially at fault in the separation. However, he could present evidence of conduct after the judgment which, aggregated with conduct before the judgment, proved habitual cruelty. In addition, he could present evidence of adultery of which he had no knowledge at the time of the separate maintenance action.

Hasley v. Hasley, 385 So. 3d 1258 (Miss. Ct. App. 2024). A chancellor erred in converting a six-year-old temporary order of separate maintenance into a permanent order based on the passage of time. The chancellor relied on cases in which temporary child custody orders were converted to permanent orders because they had been in place for years. The court of appeals declined to extend that practice to temporary separate maintenance awards. To order separate maintenance, a court must find that the defendant abandoned the marriage, and that the petitioner was not materially at fault in the separation. The temporary order was entered without an evidentiary hearing on the basis for separate maintenance or the husband's allegation that his wife's conduct caused their separation.

II. Divorce grounds

A. Habitual, cruel, and inhuman treatment

Nettles v. Nettles, 402 So. 3d 759 (Miss. Ct. App. 2024), *cert. granted,* 394 So. 3d 923 (Miss. 2024), *cert. dismissed*, No. 2023-CT-00041-SCT (Miss. Feb. 18, 2025). A chancellor properly granted a husband's Rule 41 motion to dismiss his wife's petition for divorce based on habitual cruelty. The evidence showed, at most, incompatibility. The couple disagreed over parenting of their

infant child, whether to stay with the wife's parents during storms, whether diesel fumes were harmful to the child, and whether to take the boy to the emergency room or wait until the next day. Her husband embarrassed her family by not greeting anyone at a family wedding. Once, when she was driving to her parents' house during a hurricane, he followed and passed her, stopping his car to block hers. However, she agreed that it was not a "chase" and that his car did not touch hers. She testified that she suffered weight loss and hair loss because of his behavior. However, the court noted that this occurred in the nine-month period after her child was born. And, although she testified that his behavior caused her anxiety, there was also evidence that she had taken anxiety medication since college. Four judges dissented without written opinion.

B. Irreconcilable differences divorce

Osing v. Osing, 392 So. 3d 442 (Miss. Ct. App. 2024). A husband was not entitled to withdraw his consent to irreconcilable differences divorce. The statute provides that a party may not withdraw consent to divorce without permission of court after the court has commenced any proceeding on the consent. After the parties submitted their agreement, the court approved the consent, held two hearings, and issued a temporary order and an amended temporary order. The court of appeals affirmed the trial court's denial of his request.

III. Property Division

A. *Ferguson* Findings of fact

Thompson v. Thompson, 380 So. 3d 945 (Miss. Ct. App. 2024). The court of appeals reversed a chancellor's division of marital assets for failure to conduct an analysis under *Ferguson*, failure to classify certain assets as marital or separate, failure to value assets, and omission of certain assets from the final judgment, including vehicles, accounts, and personal property. The court also reversed because the chancellor failed to explain the reason for choosing January 2019 as the demarcation date – the couple was separated from 2013 to 2022. The court reversed and remanded for a new trial on all financial aspects of the case, including property division, alimony, child support, and college tuition.

Stacy v. Stacy, 393 So. 3d 1133 (Miss. Ct. App. 2024). The court of appeals reversed a chancellor's division of a couple's marital assets, including land, home, retirement accounts, and other items, for failure to consider the *Ferguson* factors for property division. The court also reversed the chancellor's twenty-four-month award of $250 a month in rehabilitative alimony for failure to consider the *Armstrong* factors governing alimony awards.

Ware v. Ware, 387 So. 3d 1050 (Miss. Ct. App. 2024). The court of appeals rejected a wife's argument that property division should be reversed because the court's final judgment mentioned *Ferguson* but did not include an

analysis of the factors. The chancellor's oral ruling from the bench referred to and analyzed each factor.

B. Assets acquired during a previous marriage and cohabitation

McGee v. McGee, 399 So. 3d 163 (Miss. 2024). A wife was not entitled to division of assets accumulated by the couple during their three-year first marriage or a brief cohabitation prior to their second marriage. The chancellor properly awarded her a portion of her husband's pension accumulated during their four-year second marriage. The property settlement agreement from their first divorce divided all property accumulated from 2011 until their divorce in 2014. No marital property remained after the divorce. They subsequently dated for six months, then lived together for eight months, and remarried in December of 2017. There was no evidence that they accumulated property together during the period of cohabitation. The supreme court distinguished *Pickens v. Pickens*, 490 So. 2d 872 (Miss. 1986), in which the court divided assets between a couple who lived together for a decade after their divorce, holding themselves out as husband and wife and working together to acquire assets.

C. Classification

1. Failure to classify and divide

Osing v. Osing, 392 So. 3d 442 (Miss. Ct. App. 2024). A chancellor erred in failing to address and value the marital portion of a wife's retirement account. The account was linked to her employment as a nurse for four years, two years prior to the marriage and two years after. The court divided her husband's retirement account. She testified that he should be entitled to some portion of her account, which contained approximately $19,000. The court reversed and remanded for the chancellor to classify and value the retirement account. The court also reversed for the court to consider and address whether various debts were marital or separate. Because the court reversed property division, it also reversed alimony and denial of college expenses for the couple's son.

Separate property can be converted to marital by commingling, by family use, by agreement, or because marital funds, property, or efforts have been used to acquire the asset or increase its value.

2. Conversion through marital funds or efforts

Osing v. Osing, 392 So. 3d 442 (Miss. Ct. App. 2024). A husband argued unsuccessfully that his wife's inherited $500,000 was converted to marital through family use. The wife announced her intention to keep the money separate and deposited the inheritance into an account in her name alone. She used funds from the account for plastic surgery, trips with her children (but not her husband), and to purchase a boat for her son. The husband argued that although the funds were not used directly for him, they were used for the family in gen-

eral and, as a part of the family, he benefitted. The court of appeals affirmed the chancellor's finding that the $500,000 was the wife's separate property, finding substantial evidence to support the decision. However, the court reversed the chancellor's finding that income from her inheritance was separate. The husband testified that he paid taxes on her inheritance income, converting the appreciated value of the inheritance to marital through his active efforts.

Franks v. Franks, 394 So. 3d 467 (Miss. Ct. App. 2024). The court of appeals held that a chancellor did not err in classifying a rental property owned by the husband prior to marriage as marital. The wife signed a promissory note for a loan on the property when one of the husband's businesses sold it to another.

Smith v. Smith, 379 So. 3d 954 (Miss. Ct. App. 2024). A chancellor erred in classifying a husband's business as separate. During the marriage, the husband acquired land for a boat and RV storage facility, borrowing money from his father and a bank. He repaid his father by taking out a line of credit on the marital home for $100,000. His wife operated a clothing store on the property and helped with his business. He also admitted that he contributed marital funds to the business. Because the asset was acquired during the marriage, he had the burden of proof to show that it was not acquired with marital funds or efforts, which he failed to do. The proof showed marital efforts, marital funds, and marital collateral were used.

3. Conversion through commingling

Until 2024, the Mississippi Supreme Court consistently held that when separate and marital property are commingled, the separate property becomes marital through commingling. A few court of appeals cases, however, permitted tracing of commingled separate funds to create a mixed asset. In Cassell, the supreme court adopted a rule that parties may trace commingled accounts.

Cassell v. Cassell, 389 So. 3d 305 (Miss. 2024). The supreme court held that a husband met the burden of tracing commingled separate funds to the purchase of land. During the marriage, he regularly deposited all funds into his primary bank account, including his marital business income and the income from his separate premarital business. He withdrew funds from the account during the marriage to purchase land with his brother. The wife argued that the funds were commingled and converted to marital and therefore the land was marital. The husband testified that he used separate funds in the account to purchase the property. He did not identify separate deposits or provide evidence of the amount of separate and marital funds in the account.

The supreme court held that he met the burden of proving that separate funds were used. The court held: "In *Oliver,* the Court of Appeals, . . . held that the transmutation of property does not automatically occur 'simply because they are placed in the same account. We opine that the intent of the court in *Johnson* and other cases of its kind was that a party must prove that these com-

mingled funds were not only present in a joint marital account but were being used for the benefit of the other spouse and/or the entire family.' "

Ware v. Ware, 387 So. 3d 1050 (Miss. Ct. App. 2024). The court of appeals agreed with a trial court's determination that the equity in a couple's home was marital property. The wife sold her home at the beginning of their five-year marriage, deposited $110,000 into a separate account, and used some of the funds to pay the home mortgage. She also transferred funds back and forth between her separate account and the couple's joint account, which contained her husband's marital income. She was unable, because of the commingling, to trace the exact payments made on the mortgage, some of which may have come from the husband's income. In addition, the husband testified that he contributed $20,000 to the mortgage. The court noted that "the burden of tracing an asset to a separate property source is on the party seeking to classify it as such." The funds, which were originally separate, were converted by commingling to marital. Accordingly, money that she withdrew to purchase the family home was marital. The court also held that, even in the absence of commingling, the house was converted to marital by family use. The chancellor did not err in dividing the $151,000 equity equally between the spouses, even though the wife may have paid substantially more of the mortgage.

4. Burden of proof

Mississippi cases have been inconsistent on who has the burden of proving that property is marital or separate. Some cases hold that a spouse claiming separate property bears the burden of proof with regard to all assets. Others hold that for premarital assets, the non-owner must prove that the other's premarital property was somehow converted to marital. Cassell adopts the latter approach.

Cassell v. Cassell, 389 So. 3d 305 (Miss. 2024). The supreme court explained in this case that the burden of proving whether an asset is separate or marital depends on when the asset was acquired. The court held that there is a presumption that property "acquired during the marriage" is marital. The presumption does not apply to property acquired prior to the marriage. Accordingly, the court rejected the wife's argument that her husband bore the burden of proving that his premarital business was not converted to marital. The burden of proof was on her to show that it was converted to marital. In contrast, he had the burden of proving that land he purchased during the marriage was acquired with separate funds. In its conclusion, the court stated, "the party claiming property excluded from marital property has been commingled and transformed into marital property bears the burden of proof."

The court rejected the wife's request that the court adopt a clear and convincing standard of proof to rebut the presumption that assets owned by the spouses are marital. The court noted that division of marital assets does not present the same concerns as in other family law areas, such as the natural par-

ent presumption, for which Mississippi has adopted a higher standard.

Smith v. Smith, 379 So. 3d 954 (Miss. Ct. App. 2024). A chancellor properly classified an LLC established by the husband during the marriage as his separate property. It was established as a tax and legal structure for his premarital landscaping business. The value of the business at the time of the marriage was his separate property. It was the non-owner wife's burden to show that the premarital business had appreciated, and that the appreciation was caused by the efforts of one of the spouses. She did not offer any proof to that effect, other than her bare testimony that it had appreciated.

5. Retirement benefits: Premarital benefits

The Mississippi Supreme Court and Court of Appeals have, in several cases, placed the burden of proof on the owner of a premarital retirement benefit to prove the portion of the current value that is separate. No case has directly addressed this issue since Cassell was decided.

Brecheen v. Brecheen, 384 So. 3d 567 (Miss. Ct. App. 2024).The court of appeals affirmed a chancellor's classification of a husband's severance package from a former employer as marital. The husband's position with his employer was terminated while the divorce was pending. He worked for the employer for a number of years prior to the couple's marriage but offered no testimony regarding his total years in service for the employer and total years during the marriage. There was no evidence showing how the severance package was calculated. The court noted that a spouse seeking separate property classification has the burden of proving that an asset is nonmarital.

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024), *cert. granted,* 398 So. 3d 874 (Miss. 2025). A divided court of appeals affirmed a chancellor's separate property classification of the post-separation appreciation in a wife's retirement account. The chancellor classified the wife's retirement account, owned prior to the marriage, as a mixed asset. The account value was $140,577 when the parties married. The court agreed that the chancellor properly designated that portion as separate. The account increased to $828,733 at the time of the court's temporary support order, which was designated as the marital property cutoff date. The chancellor classified the $698,156 increase as marital even though some of the growth was clearly passive appreciation on the wife's premarital portion. She did not introduce evidence to identify the appreciation attributable to the $140,577. The account increased by $256,461 after the temporary support order. The wife did not present documentary evidence of her contributions after the temporary support order but did testify that she con-

tributed about $13,000 during that period. The majority held that the chancellor properly classified the $256,461 as the wife's separate property, considering the lack of expert testimony to separate the appreciation between the separate and marital portions. The dissent, joined by a majority of the judges in whole or in part, argued that the appreciation should have been classified as marital. Most of the $256,461 was passive growth on the marital share of the account, which was 83.4 percent of the value of the account on the cutoff date. The court also affirmed the chancellor's separate property classification of a vehicle gifted to her a decade earlier by her father. The dissenters argued that it was converted to marital through family use, based on her testimony that they both drove the vehicle equally.

D. Valuation

Smith v. Smith, 379 So. 3d 954 (Miss. Ct. App. 2024*)*. A wife argued that a chancellor should have used an income-based approach to value her husband's business. The court of appeals agreed with the chancellor that an asset-based valuation, which excludes goodwill, was appropriate. The income-based approach includes goodwill, which the Mississippi Supreme Court prohibits as part of divorce valuations.

E. Division: Unequal division

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024) *cert. granted,* 398 So. 3d 874 (Miss. 2025). A chancellor properly awarded a high-earning wife forty-one percent of the marital estate, even though she made most of the financial contributions to the nine-year marriage. She earned $300,000 a year as a medical sales representative and had a significant separate property inheritance. Her husband, who historically earned between $35,000 and $38,000 a year, contributed little financially. And in the last five years of the marriage, his income dropped sharply after the couple moved to Mississippi and he became primary caregiver for their child. He testified that there was less work available to him as a private investigator than in metropolitan Atlanta. Because he worked throughout the marriage, the homemaker presumption of equal contribution did not apply. However, he made significant contributions by caring for their child when his wife traveled for work. And, her affair contributed significantly to the marriage breakdown. The chancellor awarded him $545,550 in marital assets and her $379,354, stating that the unequal award would eliminate the need for alimony.

Manor v. Manor, 404 So. 3d 1256 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's award of sixty percent of the marital estate to a lower-income wife to avoid the need for alimony. The court rejected her husband's argument that the chancellor erred in finding that both parties contributed to the accumulation of assets. In addition to working multiple jobs later in the marriage, she raised their children, ran the household, and handled financial matters. The husband worked in the oil industry and was gone much of the time. His testimony that he "had no idea where the funds went" was not sufficient

to raise an issue of dissipation of assets. The chancellor properly found that the wife, with monthly income of $2,452, was at a deficit as compared to the husband. It was appropriate to address the deficit through an unequal property division to avoid the need for alimony. The court also affirmed the chancellor's decision to award her an additional $7,500 in property division to pay a portion of her attorneys' fees so that she would not deplete her retirement fund to pay the fees.

Franks v. Franks, 394 So. 3d 467 (Miss. Ct. App. 2024). The court of appeals rejected a husband's argument that a chancellor erred in awarding his wife a greater share of marital assets. The chancellor awarded the wife $73,651 and the husband $63,519, with each responsible for their own business debts. The chancellor considered that the husband had an affair with an employee in his business who embezzled $150,000, resulting in the loss of marital assets. The court rejected his argument that the chancellor charged him with dissipation of assets based on her embezzlement. The chancellor did not charge him with dissipation – she considered as a factor that his affair may have prevented earlier discovery of the loss. The court also considered that the wife, with monthly income of $2,841 and expenses of $6,240, had greater need than the husband, who earned $6,862 a month and had expenses of $7,368. The court also rejected his argument that he should have been credited with $9,202 in mortgage payments made on the marital home after the cutoff date for marital property accumulation. Under the temporary order, he occupied the home during this time and was ordered to pay the mortgage.

F. Modification

Pace v. Pace, 387 So. 3d 1067 (Miss. Ct. App. 2024). The court of appeals rejected a wife's argument that a court erred in modifying its 2019 judgment of property division. The judgment ordered the couple to sell an abandoned commercial building previously used for the husband's medical practice. The wife was awarded $120,000 to maintain and sell the property after her husband moved to California. She was to maintain receipts for her expenses and her husband was to reimburse her for one half of the costs. The husband appealed. While the appeal was pending, he returned to Mississippi and resumed his practice. For the next several years, the couple litigated over whether the property should be sold, and the proceeds divided, or whether the husband should buy out the wife. She attempted to sell the building without success. On several occasions, she told the chancellor she wanted her husband to buy out her one half. Both filed contempt motions against the other related to the property.

After several years, the court ordered that if the property was not sold by a certain date, either spouse could purchase the other's half. The husband deposited funds for the purchase on the required date and the chancellor ordered the wife to execute a quitclaim deed to him. The chancellor also ordered that the husband reimburse his wife for 2020 taxes but declined to require him to reimburse her for alleged expenses related to her attempts to sell the house.

The court of appeals rejected the wife's argument that a chancellor may not modify property division. A court has the power to alter a property division

by fashioning an equitable solution when unforeseen circumstances frustrate the purpose of the original order. The property could not be sold as the 2019 order contemplated. The chancellor gave the parties every opportunity to sell the property. The court also rejected her argument that the court erred in denying her request for reimbursement. She did not provide evidence that her expenses exceeded the $120,000 she was awarded for the purpose of maintaining the building.

IV. Alimony

A. Findings of fact

Stacy v. Stacy, 393 So. 3d 1133 (Miss. Ct. App. 2024). The court of appeals reversed a chancellor's award of $250 a month in rehabilitative alimony for two years, for failure to consider the *Armstrong* factors governing alimony awards. The court noted that in some cases, awards have been affirmed without an *Armstrong* analysis; however, in those cases, the trial court's discussion addressed the factors even though *Armstrong* was not mentioned.

Cassell v. Cassell, 389 So. 3d 305 (Miss. 2024). The Mississippi Supreme Court rejected a wife's argument that a chancellor should have considered her request for lump sum alimony under the *Cheatham* factors rather than the *Armstrong* factors. The *Cheatham* factors, adopted in 1988 to govern lump sum alimony awards, predated equitable distribution. The test was fashioned to allow courts to make lump sum awards similar to property division in other states. The court overruled *Cheatham* and instructed that all alimony awards, including lump sum awards, should now be analyzed using the *Armstrong* factors.

B. Award of permanent alimony

Anderson v. Grabmiller, 394 So. 3d 493 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's award of $1,000 a month in periodic alimony from a physician wife with net monthly income of $12,969 to her forty-one-year-old husband of fourteen years. He had been a homemaker, provided childcare, and renovated their home. He earned $2,995 a month at the time of divorce and was ordered to pay $600 a month in child support. The court awarded him $105,306 in marital assets and the wife $172,982 and ordered her to make an equalizing payment of $34,172. The chancellor denied her post-trial argument that the court should have awarded rehabilitative rather than permanent alimony.

The court of appeals rejected the wife's argument that the factors of marriage length and age dictated rehabilitative alimony. The chancellor found a significant disparity in their incomes and their earning potential. She had a medical degree while he had a high school diploma. His role as a homemaker facilitated her training. She had $2,050 in disposable income after paying her reasonable expenses. He was short $1,004 in meeting his. The court found that the parties' ages and health were neutral factors, and their fourteen-year mar-

riage was "a relatively long one." Neither was at fault in the marriage breakup or dissipated assets.

The court also rejected her argument that the chancellor should have expressly applied the *Armstrong* alimony factors to consider rehabilitative alimony in ruling on her post-trial motion. The chancellor relied on findings in his judgment to deny the motion, including findings on the *Armstrong* factors related to disparity in income. He was not required to repeat a full *Armstrong* discussion focused on rehabilitative alimony.

C. Award of rehabilitative alimony

McKenzie v. McKenzie, 397 So. 3d 510 (Miss. Ct. App. 2024). A chancellor properly awarded a thirty-six-year-old homemaker wife and mother of three children $5,000 a month in rehabilitative alimony for three years. Her husband's income dropped steeply after he developed an addiction to alcohol, entered an in-patient treatment program, and subsequently moved to a new practice. The chancellor calculated that his future adjusted gross income would be $163,850, less than one-third of his previous income. The court divided marital assets of $3,402,008 almost equally, with the wife receiving 49%, including $1,000,000 in cash assets. The court found that the husband's alcohol use caused the marriage to fail and that they contributed equally to the accumulation of assets.

The court rejected the wife's argument that she should have been awarded permanent alimony that would sustain the marital standard of living. She was thirty-six years old, had a marketing degree, and had previously worked. Because of the reduction in her husband's income, neither party would be able to sustain the marital standard of living. An award of rehabilitative alimony was appropriate to assist her to reenter the workplace and become self-sufficient.

D. Denial of alimony

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024) *cert. granted,* 398 So. 3d 874 (Miss. 2025). A chancellor properly refused to award a husband alimony after ordering that he receive a greater share of marital assets. The wife earned $300,000 a year as a medical sales representative and had a significant separate property inheritance. The husband had an adjusted gross monthly income of $3,391. The chancellor awarded him $545,550 in marital assets and her $379,354, stating that the unequal award would eliminate the need for alimony. The court of appeals affirmed, holding that he was not left with a deficit, considering the unequal property division and his earning capacity.

The court also rejected his argument that the court should have engaged in an *Armstrong* analysis. Trial courts should consider *Armstrong* factors only if, after property division, the court finds that one party is left at a deficit.

E. Modification

Weeks v. Weeks (Weeks IV), 401 So. 3d 195 (Miss. Ct. App. 2024). A chancellor properly denied a former husband's request to modify periodic alimony of $3,566, awarded in his 2001 divorce. This was the fourth appeal in the couple's ongoing litigation of twenty-three years. He alleged that his former employer's bankruptcy resulted in his monthly retirement pension being "eliminated." The chancellor temporarily reduced the payment to $2,250. When the former husband produced tax records from his CPA, his ex-wife objected that he had previously submitted CPA returns that did not accurately reflect his income because the returns were amended later. The chancellor ordered that he produced certified returns from the IRS and sworn documentation from his pension administrator to prove that his retirement had been reduced. He produced a tax transcript from the IRS, which included a notation that the document did not reflect any amendments made after the filing. His statement from the plan administrator showed only his current pension amount, not the amount of reduction. The chancellor denied his petition for failure to submit proof of a reduction in income and ordered that he pay his former wife $26,000 in arrears, representing the amount of the temporary reduction. The court of appeals affirmed. Chancellors have authority to make a decrease in alimony retroactive to the date of filing. Similarly, they can order reimbursement of alimony reduced by a temporary order retroactive to that date.

F. Termination: *De facto* marriage

Collins v. Collins, 397 So. 3d 856 (Miss. Ct. App. 2024). An ex-wife's alimony terminated automatically when she entered a *de facto* marriage. Four years after their 1988 divorce, the ex-wife began living with a man who remained her partner until his death in 2020. Her former husband stopped paying alimony when he learned of the relationship. After her partner's death, she filed a petition for contempt for nonpayment of alimony, limiting her request to the seven years prior to filing the petition. The court of appeals affirmed the chancellor's grant of summary judgment to the husband, holding that alimony automatically terminates upon entry into a *de facto* marriage. The court rejected her argument that he was required to file a petition to trigger termination. The Mississippi Supreme Court has stated that *de facto* marriages end alimony as if the former spouse entered a *de jure* marriage. Because *de jure* marriage automatically terminates alimony, so does *de facto* marriage. The court distinguished petitions to terminate or modify alimony based on cohabitation, which may or may not justify modification, depending on how the cohabitation affects the recipient's financial circumstances.

Blackwell v. Reed, 381 So. 3d 1108 (Miss. Ct. App. 2024). A husband was not entitled to reduce or terminate permanent alimony of $800 a month. Although he alleged that he had been laid off in November of 2021, his bank records showed that he earned $32,000 a month as a consultant in the six months leading up to the trial. He had also purchased a camper and a dozer. When

asked whether he was laid off, he stated that he was periodically laid off but then called back to work. The chancellor properly refused to reduce alimony to his ex-wife, whose monthly income consisted of the $800 alimony payment and $1,100 in Social Security payments. The court also held that the pro se husband's arguments were procedurally barred because he cited no authority, did not cite to the record, and made no meaningful argument.

V. Custody

A. Pleadings

Patrick v. Patrick, 391 So. 3d 1220 (Miss. Ct. App. 2024). The court of appeals rejected a mother's argument that a chancellor could not award the father sole legal custody because he did not request it in the pleadings. The issue was raised and tried in court – when asked at trial what he sought, the father stated, "full custody." Furthermore, a chancellor has authority to make a custody award that is in the children's best interest.

B. Age of majority for custody awards

Wilbourn v. Wilbourn, 388 So. 3d 580 (Miss. Ct. App. 2024). The court of appeals held that a chancellor had authority to award parents joint custody of their twenty-year-old daughter. The custody action began in 2006 and was tried between 2009 and 2017 before five chancellors. During that time, the parties shared joint custody under a temporary order. In the final hearing, the chancellor limited testimony to circumstances occurring since the last hearing date three years earlier. Finding most of the *Albright* factors to be neutral, the chancellor awarded the parents joint custody, with the father to have custody in the summer and the mother during the school year. By the time of the decision, the oldest daughter was emancipated. The youngest was twenty and in college. The dissenters argued that it was pointless to determine custody of a twenty-year-old who could live where she pleased. The majority held, however, that custody is a viable issue so long as a child is not emancipated.

C. Temporary orders

Wilbourn v. Wilbourn, 388 So. 3d 580 (Miss. Ct. App. 2024). The court of appeals rejected a mother's argument that a chancellor erred in denying her motion to treat a five-year-old temporary order as permanent. Ordinarily, a temporary order is not a final, appealable order. In some cases, however, when an order has remained unchallenged for a long period of time it may become permanent. In this case the order did not remain unchallenged – the parties actively litigated the order during the five-year period.

D. *Albright* analysis

McLellan v. McLellan, 397 So. 3d 860 (Miss. Ct. App. 2024). The court of appeals reversed and remanded a chancellor's award of split custody. The chancellor found that the father was favored on moral fitness, because the mother had been involved in public altercations at the children's sporting events and had assaulted the paternal grandmother at a family outing. He was also rated higher on parenting skills, because the mother allowed a teenaged son to drive without a license and use marijuana. The oldest son testified that he wanted to live with his father because his household was more stable, and his father helped him with schoolwork. All other factors were neutral – none favored the mother.

The father argued that it was error to award the mother custody of their daughter and separate the siblings, when no factors favored her. The court of appeals agreed. The chancellor did not explain why the mother was awarded custody in spite of the *Albright* analysis. Nor did the chancellor explain why it was appropriate to separate the siblings. The court of appeals noted that if the judge had supported the award with reasons for the decision, it would not have reversed. "But absent any evidence or reason that the chancellor's decision is in Ruth's best interest, we are compelled to say that the chancellor's decision was arbitrary and an abuse of discretion."

Morland v. Morland, 396 So. 3d 501 (Miss. Ct. App. 2024). A chancellor did not abuse his discretion in awarding a mother sole custody of a thirteen-year-old girl who testified that she wanted to live with her mother. The mother was a teacher and more able to help her daughter, who had dyslexia, with homework. In addition, she provided a calmer home environment than the father, who lived with two adults and six children. The court also rejected the father's argument that the court should have awarded joint physical custody. The father made communication difficult by blocking the mother's cell phone and showed an unwillingness to engage in the cooperation necessary for joint custody

The chancellor's failure to state which parent won on each factor did not automatically require reversal. He considered each factor, and the findings were supported by the record. The court of appeals declined to review the chancellor's findings on the *Albright* factors in detail, stating, "[W]e are not permitted to re-weigh the evidence to make our own independent determination."

Nor was it error to allow the girl to testify regarding her wishes. The chancellor interviewed her, found that she was competent to testify, that the mother had not exercised undue influence over her choice, and that her wishes were rational, mature, and in her best interest.

Tilley v. Gibbs, 387 So. 3d 64 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's decision to award custody of a three-year-old girl to her father. The father rebutted the presumption that a female child of tender years should be cared for by her mother, presenting evidence of the mother's absence and his ability to care for the girl. The chancellor found that the father had

been the child's primary caregiver prior to the couple's separation. In the last year of their marriage, the mother spent 170 nights away from home to be with another man. The court of appeals rejected her argument that she should have been favored as primary caregiver because she had custody under the court's temporary order. The father continued to spend time with his daughter during that period. The chancellor properly found for the father on parenting skills based on the mother's choice to spend time with another man, her attempts to interfere with the father's custodial time, and the fact that she lost custody of her first child for ten years. The father was favored on employment responsibilities because he had a flexible job close to home and extended family. The mother planned to move out of state to secure better employment. The court rejected her argument that the factor of moral fitness should not have been found against her because there was no showing the girl was adversely affected by her affair – it caused her to be absent from the girl for significant periods of time. In finding for the father on the child's home, school, and community record, the chancellor properly considered that he took the girl to church and lived near extended family while the mother planned to move. The court acknowledged that there is a preference to keep siblings together and considered that the award would separate the girl from her half-brother. However, the court noted that the boy had only recently come to live with his mother.

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024) *cert. granted,* 398 So. 3d 874 (Miss. 2025). The court of appeals affirmed a chancellor's award of physical custody of a nine-year-old boy to his mother. There was no error in finding that the boy's age and sex was a neutral factor. The chancellor found that the child would benefit from the guidance of both parents. Nor did the chancellor err in finding that the mother was favored on parenting skills. The father had a short temper. The mother spent more time helping their son with schoolwork and projects, took him to church, and attended all his events. She was also rated higher on the child's home, school, and community record – she was the force behind his involvement in school and the community. The court found the mother was favored on stability of the home, even though her job required some overnight travel. She had an established routine to provide care during her absences and lived in the marital home where the boy grew up and had friends. The court was not required to find for the father on continuity of care even though he provided additional childcare for the three years before their separation. Because both parents were involved and active in the boy's life, the chancellor properly found the factor was neutral.

Dixon v. Dixon, 383 So. 3d 1271 (Miss. Ct. App. 2024). The court of appeals rejected a father's argument that a chancellor erred in application of three *Albright* factors. First, the chancellor did not abuse her discretion in finding that a girl's emotional ties with her mother were stronger even though the children were close to both parents. The daughter sought out her mother during the day and when she was upset. The chancellor also found that the mother's parenting skills and capacity to provide primary childcare were stronger. She was a teacher in the children's school system and was more available to them during the

day. The father had changed jobs frequently and his current job required travel. The chancellor found that the father was slightly favored on the moral fitness factor because of the mother's post-separation affair. However, the chancellor was not required to give that factor more weight – there was no evidence that the affair affected the children.

Smith v. Smith, 379 So. 3d 954 (Miss. Ct. App. 2024). The court of appeals rejected a mother's argument that a court should have awarded the parents joint legal and physical custody. They were unable to work cooperatively under a two-year temporary order of joint custody. The evidence included hundreds of text messages showing their disagreement. During the proceedings, the mother was found in contempt for sending the father harassing messages. The chancellor stated that he would have liked to award joint custody but because of their ongoing conflicts awarded the father sole legal and physical custody. He lived in the marital home near extended family and the children's church and school. His home and employment were stable, while the mother had moved several times and changed her employment.

E. Award of joint physical and legal custody

McGee v. McGee, 399 So. 3d 163 (Miss. 2024). A chancellor did not err in awarding a couple joint physical and legal custody. The mother, who objected to the award, did not present evidence that the parents were unable to work cooperatively. The court rejected her argument that the chancellor placed too much emphasis on her adultery – the court found against her on the factor of moral fitness, but did not mention adultery.

F. Visitation

1. Supervised visitation

Brecheen v. Brecheen, 384 So. 3d 567 (Miss. Ct. App. 2024). A chancellor properly ordered supervised visitation for a father based on proof of his pattern of family violence. The couple divorced after ten months of marriage. The husband's abuse began on their honeymoon when he grabbed his pregnant wife by the hair and punched her. She recounted multiple incidents of violence, corroborated by photographs and the testimony of her work supervisor. She testified that, during one argument, he grabbed and shook their baby, threatening to prevent her from leaving the house with the child. When her parents arrived at the house, he shoved his mother-in-law and threw his father-in-law against a wall.

The chancellor awarded the mother physical custody and ordered that the father's visitation be supervised by his parents until he completed a batterer's intervention program and until criminal charges against him were resolved. The father argued that supervised visitation was error because there was no showing that he posed a threat to the child. The court of appeals affirmed. Miss. Code Ann. δ 93-5-24 authorizes chancellors to order supervised visitation upon

a showing that a parent has a pattern of family violence. Family violence includes violence toward any family household member, not just children. Nor did the court err in ordering him to attend classes and to resolve the criminal matter. The statute authorizes courts to order abusers to attend classes and to impose "any other condition" necessary for the family's safety.

2. Transportation costs

Fortner v. Bratcher, 394 So. 3d 452 (Miss. Ct. App. 2024). A chancellor did not err in requiring a father to transport his child to and from visitation. At divorce, the parents agreed that the noncustodial father would "bear the expenses related to the exercise of his visitation rights, including all transportation expenses." Over the next few years, the father filed multiple unsubstantiated reports of abuse. The mother petitioned for contempt and to modify visitation. In addition, she petitioned for contempt based on the father's refusal to provide transportation for their son's return. As a result, she had to make a three-hour round trip to pick him up. The father argued that their agreement only required that he pay the expenses of transportation, which he did by offering to reimburse the mother for her costs of meeting him for the exchange. The second chancellor on the case held that he was responsible for transportation, in keeping with an order of the first chancellor stating that the father would continue to be responsible "for the transportation of [the child] back and forth." The court of appeals affirmed, holding that the second chancellor did not abuse his discretion in interpreting prior orders of the court.

The court also rejected the father's argument that the chancellor erred in awarding him only four weeks of summer visitation. Some decisions state that five weeks of summer visitation is "standard;" however, chancellors have discretion to set visitation that is in the child's best interest. The court also noted that the parties' original agreement provided for four weeks of summer visitation.

G. Modification

1. Of visitation

Briggs v. Weary, 396 So. 3d 1246 (Miss. Ct. App. 2024). The court of appeals held that a chancellor's order modifying the visitation schedule for joint custodial parents as unworkable amounted to a modification to sole custody in the mother. The chancellor erred in modifying their parenting times without first finding a material change in circumstances adverse to the child and conducting an *Albright* analysis.

The parents shared equal custody of their daughter for a decade until the mother petitioned for modification to sole custody based on the father's relationship and living arrangements. The girl was diagnosed with anxiety and severe depressive disorder. However, she was doing well in school. The guardian ad litem concluded that she struggled in part because of her parents' "non-existent" co-parenting relationship and recommended a change in their complex visita-

tion schedule. The chancellor ordered that the parties continue joint custody, with the father having the child every other week from Wednesday to Sunday and two weeks in the summer.

The court of appeals agreed with the father that reducing visitation from fifteen nights a month to eight constituted a modification to sole custody in the mother, regardless of the label. The change required that the chancellor find a material change in circumstances adverse to the child and conduct an *Albright* analysis.

W*alker v. Hasty*, 395 So. 3d 424 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's modification of parents' four-year-old visitation order. The original order provided the noncustodial father with substantial visitation, including the first, third, and fifth weekends for three nights and every other week from Tuesday to Thursday. It also provided the parents with a "right of first refusal" option if one parent was unable to exercise visitation. The order became difficult to manage when both moved, and the father changed jobs and work schedules. The changes led to multiple contempt actions regarding visitation. The mother made two unsubstantiated reports of physical abuse. The father alleged that he had missed visitation because of her actions. The chancellor awarded the father visitation on the first, third, and fourth weekends from Wednesday to Monday and for two months in the summer, in part to make up for missed visitation.

On appeal, the mother argued that the chancellor's order effectively created joint physical custody because of the substantial time awarded the father. The court of appeals rejected the claim, noting that the modification contained fewer overnights than the original order. The court also emphasized the discretion afforded chancellors to craft an order in the best interest of the child. There was substantial evidence in the record to support that the order was not working. In addition, the parents had contemplated in their original agreement that the father would have substantial visitation.

2. Based on relocation

May v. Brown, 390 So. 3d 996 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's modification of custody of a six-year-old boy from his mother to his father when the mother moved to Texas. She did not notify the father of her move in advance and refused to give him her Texas address after she moved. She denied him visitation for three months after moving and continued after that to make visitation difficult. She did not tell him about the boy's Memphis doctor's appointment, which the father would have attended. She misled him about dates on which she and the boy would be in Mississippi during the trial. The chancellor found that the totality of circumstances showed a material adverse change in circumstances, including the mother's move, her lack of notice of the move and refusal to give her address, and the fact that the move separated the boy from his family in Mississippi.

The court held that the mother was procedurally barred from challenging the court's *Albright* analysis. She argued that there was no proof that the

change was in the boy's best interest, but did not support the general statement with meaningful argument or authority. The court also noted that the modification was supported by substantial evidence. Prior to her move, the father exercised more than standard visitation, sometimes keeping the boy for weeks or months while the mother worked out of state. He had extended family that lived within minutes of his house, including his grandmother, with whom the boy had a close relationship. He and his girlfriend had two children and were planning to be married. She stayed at home with the children.

3. Based on parental interference

Patrick v. Patrick, 391 So. 3d 1220 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's modification of custody from joint legal and physical custody to sole legal and physical custody in the father. Following their 2012 divorce, the couple engaged in six years of contentious litigation over custody of their two sons. The mother filed multiple unsubstantiated reports of physical abuse by the father and sexual abuse by his mother. The court-appointed psychologist opined that the mother was not trustworthy and had made repeated untrue statements. He also believed that the repetition of abuse allegations had affected the boys' relationship with their father.

The court rejected the mother's argument that the chancellor erred in considering events occurring after the father's unsuccessful 2017 petition to modify custody. A chancellor is limited to considering circumstances after the last order that modified custody. The 2017 order denied modification. The 2014 original custody order had never been modified. Nor did the chancellor fail to make findings of fact to support modification. He wrote a forty-one page judgment and extensive findings of fact and conclusions discussing the mother's credibility, her history of making unfounded allegations, taking the boys to multiple healthcare providers and counselors without consulting the father, and recruiting the boys to spy on and record their father. He found that her behavior "created a custodial environment detrimental to the children's well-being."

The chancellor found that the mother was favored on capacity to provide childcare and on parenting skills based on her involvement with the boys' schoolwork. The father was favored on mental health, moral fitness, and stability of the home. The most significant factor was the mother's ongoing, single-minded parental alienation and interference with the father's relationship with the boys, in contrast with the father's "incredible restraint."

4. Of joint custody

Jones v. Curtis, 394 So. 3d 511(Miss. Ct. App. 2024). The court of appeals affirmed an order modifying custody from joint physical custody to sole physical custody in the father. By agreement, the unmarried couple shared equal custody until the child was three. At that point, the father requested and was awarded emergency custody because the mother was involved in an abusive relationship. The emergency order was later dissolved, and the prior alternating schedule resumed by agreement, reflected in a January 2022 order. Both parties

subsequently sought to modify the order to sole custody. The mother sought custody in part because the child would soon start school, and the parents lived in different counties and school districts.

The parents stipulated that they considered the 2022 agreed order to be a permanent order of custody. The chancellor stated that he did not – it was not styled as a final order and did not specify an award of custody. The parties also stipulated that the court should consider evidence that predated the January 2022 order. The chancellor awarded the parties joint legal custody with sole physical custody to the father.

The court of appeals rejected the mother's claim that the chancellor erred in considering evidence prior to the January 2022 order. She waived the issue by failing to object to evidence predating the order. Furthermore, she and the father had agreed to the introduction of evidence prior to the order. And, as the chancellor pointed out, the order was not a final order.

In response to the mother's argument that the father presented "no evidence" that her conduct was harmful to the child, the court noted that a child reaching school age may be a material change that warrants modifying joint custody.

H. Third party custody

1. Based on *in loco parentis*

Horn v. Seeden, 383 So. 3d 1266 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's award of joint legal and physical custody to a mother and her former partner who had believed himself to be the child's father, and who had acted *in loco parentis* to the boy since his birth. The mother argued that a man may be awarded custody under the *in loco parentis* doctrine only if the biological father is unknown. She stated that a man named Antrae was the father; however, he was not served and did not come forward during the action. The court of appeals agreed that the presumed father met the criteria for *in loco parentis* custody: (1) the non-biological father stood *in loco parentis*, (2) he had cared for and supported the child as his own and established a strong relationship with the child, (3) he could have been required to pay child support, and (4) the biological father had not been conclusively determined or was not really in the picture. In these "limited, unique" situations, *in loco parentis* status may help rebut the natural parent presumption to allow an award of custody. The court rejected the mother's argument that the biological father was known and therefore the award improper. He was not seeking to be acknowledged as the boy's father and had not been conclusively proven to be his biological father.

2. Grandparent visitation

In re Adoption of J.J.W.B., 396 So. 3d 1142 (Miss. 2024). The supreme court addressed grandparents' visitation rights following adoption. The child in question was removed from her parents because of their drug use and placed in the custody of her maternal grandfather and his second wife. The maternal

grandmother was granted visitation. Two years later, the custodial grandfather and his wife petitioned for adoption without notice to the maternal grandmother. The petition was granted in December 2020. The maternal grandmother filed a contempt petition in January 2021, alleging that the adopting grandparents would not allow her to exercise visitation. Two years later, she filed a petition to set aside the adoption for lack of notice to her. The adopting grandparents filed a motion to dismiss, arguing that the statute of limitations to set aside an adoption had passed and that notice to her was not required. The chancery court denied their motion to dismiss, finding that the grandmother was entitled to notice as a person "who may have been awarded custody" and that her visitation rights were not terminated by the adoption. The supreme court granted the adopting parents' request for an interlocutory appeal.

The supreme court held that the petition to set aside the adoption was properly dismissed. Except for jurisdictional issues, actions to set aside adoptions must be brought within six months after the adoption. The only parties entitled to notice in an adoption are the parents, anyone with physical custody of the child, a guardian ad litem, or "any person to whom custody of the child may have been awarded." Miss. Code Ann. δ 93-17-5(1). The grandmother was not entitled to notice under the statute. However, the supreme court agreed with the chancellor that the adoption did not terminate the grandmother's previously granted visitation rights. Miss. Code Ann. δ 93-16-3 provides that the grandparent visitation statute does not apply if a child has been adopted, unless one of the legal parents is the child's natural parent or was related to the child by blood or marriage. Adoption by the child's grandfather did not terminate the grandmother's visitation rights.

I. Guardians ad litem

Patrick v. Patrick, 391 So. 3d 1220 (Miss. Ct. App. 2024). The court of appeals rejected a mother's argument that a chancellor should have asked the guardian ad litem to provide a recommendation on custody modification. The guardian was appointed for the limited basis of determining whether abuse and neglect had occurred, not to give an opinion on modification. Nor was the chancellor required to provide reasons for not following the guardian's recommendation. The court's ruling was consistent with the guardian's report. EXPAND?

VI. Child support

A. Adjusted gross income

Brecheen v. Brecheen, 384 So. 3d 567 (Miss. Ct. App. 2024). The court of appeals rejected a father's argument that a chancellor erred in basing his child support on pay stubs showing income of $5,166 a month, from a job that ended a month before trial. He testified that his current income was $4,000 a month. However, he presented no documentary evidence. He did not update his 8.05 financial statement, submitted eight months before trial, which listed his monthly income as $1,500. Considering his failure to provide evidence of cur-

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rent income, his evasiveness, and the failure to update his financial statement, the chancellor did not err in relying on documentary proof of his income.

Chapman v. Chapman, 395 So. 3d 447 (Miss. Ct. App. 2024). A chancellor erred in finding that a father's monthly adjusted gross income was $6,939, based on his 8.05 Financial Statement. That figure referred to only one job, which lasted a month. The father, who did not graduate from high school, worked multiple temporary jobs as a pipe fitter and welder during the year, interspersed with periods of unemployment. On a motion for reconsideration, his attorneys presented evidence that during the previous year, he worked seven jobs and earned gross income of $58,875. His adjusted gross income for that year, the highest in six years, was $44,303, or $3,691 a month. A chancellor must consider all evidence of income – in the face of clear contradictory evidence, it was error to rely on his 8.05 Financial Statement. The court also noted that in cases involving fluctuating income, courts often average income over a period of years, which the chancellor did not do. In addition, the chancellor erred in including in income amounts that the father received as a travel per diem.

McKenzie v. McKenzie, 397 So. 3d 510 (Miss. Ct. App. 2024). The court of appeals rejected a wife's argument that child support should have been based on her husband's salary prior to his treatment for alcohol addiction rather than his anticipated lower salary with a new firm. The chancellor used the best evidence available to determine the father's new salary and applied the statutory percentage even though his adjusted gross income would be over $100,000. The court also noted that the resulting figure – $3,000 a month – was higher than the expenses the mother listed for the children on her 8.05 financial statement.

Myles v. Lewis, 388 So. 3d 598 (Miss. Ct. App. 2024). A chancellor erred in calculating a self-employed father's adjusted gross income for purposes of child support. The truck-driver father calculated his adjusted gross income of $1,733 a month based on his previous year's tax return adjusted gross income of $24,464. However, bank statements for the first eight months of 2022 showed $150,000 in gross income and large withdrawals during that period. He also paid himself $400 a week and paid most of his personal expenses through the business. The chancellor determined his adjusted gross income by adding the $1,733 he claimed as business income and the $1,600 he drew a month, less state and federal taxes, and ordered that he pay fourteen percent in child support. The mother appealed, arguing that the court ignored evidence that his income was higher than he claimed.

To calculate adjusted income for self-employed payors, chancellors should consider all evidence of income and expenses and scrutinize tax returns to determine whether tax deductions should be deductions for purposes of child support, particularly when a payor commingles personal expenses with business expenses. In addition, courts may impute additional income if a payor takes withdrawals from the business in an amount that exceeds the income shown on tax returns. The father's 8.05 Financial Statement was based on his 2021 income, which was far lower than his income for the first eight months of 2022.

B. Deductions from income

Briggs v. Weary, 396 So. 3d 1246 (Miss. Ct. App. 2024). The court of appeals reversed an award of child support because the chancellor's custody order was reversed. The court instructed the chancellor to obtain updated financial information for the parties and make detailed findings on the calculation of support. The court stated that the chancellor should reduce the father's monthly adjusted gross income by $1,700 to reflect his obligation for other children. The court also instructed the chancellor to consider expenses that the father incurred in generating rental income on which support was based. Generally, self-employment income "amounts to gross income less ordinary and reasonable expenses incurred in producing the income."

Morland v. Morland, 396 So. 3d 501 (Miss. Ct. App. 2024). A chancellor properly awarded a mother $567 a month in child support, a reduction from the $692 per month that the statutory guidelines would have produced. The chancellor considered that the father supported two children in his home, a proper consideration under the statute.

C. Deviations based on private school tuition

Chapman v. Chapman, 395 So. 3d 447 (Miss. Ct. App. 2024). The court of appeals reversed a chancellor's order that a father should pay $400 a month in private school tuition and one half of the school's activity and sports fees, even though he agreed for the children to attend the school. Private school tuition should be included as part of the support to which the child support guidelines apply. If an award of monthly support plus private school tuition and expenses exceeds the guidelines, the court must justify the deviation based on statutory criteria. The fact that a father agreed that children should stay in private school is not in itself sufficient to support a deviation. There must also be a finding that the expense is reasonable.

Myles v. Lewis, 388 So. 3d 598 (Miss. Ct. App. 2024). The court of appeals agreed that a chancellor properly refused to order a father to pay a portion of his child's private school tuition. The mother placed their daughter in private school against the father's wishes so that she could play sports. Ordinarily parents are not ordered to pay tuition if they did not agree to private school enrollment, unless the school provides special needs resources not available in public school. And, even if a parent agrees to private school, the court must also consider the parent's reasonable needs.

The chancellor also properly declined to order the father to pay the costs of sports fees associated with the private school or the cost of the traveling sports team to which she belonged. He should not be responsible for fees associated with a private school to which he did not consent. The traveling team

did not qualify as an extracurricular activity, which is an activity sponsored by a school. The mother did not present sufficient evidence that would justify a deviation from the guidelines to pay for costs associated with the team.

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024) *cert. granted,* 398 So. 3d 874 (Miss. 2025).). A chancellor property ordered a father to pay 14% of his adjusted gross income of $3,391 plus one third of the child's private school tuition. The parents agreed that the boy should attend private school, and it was reasonable that the father should contribute. The chancellor also noted that the father was not working at full capacity. The court of appeals agreed with the father that private school tuition is part of child support and should not be calculated separately. However, the chancellor made the proper findings of fact to support the upward deviation from the statutory guidelines.

D. Add-ons to support under the guidelines

1. Health insurance

Osing v. Osing, 392 So. 3d 442 (Miss. Ct. App. 2024). The court of appeals agreed with a mother that a chancellor erred in failing to address health insurance for a minor child. The court remanded the case, noting that Miss. Code Ann. δ 43-19-101(7) provides that support orders "shall include reasonable medical support." Chancellors are required to address medical support in all child support cases.

Myles v. Lewis, 388 So. 3d 598 (Miss. Ct. App. 2024). A chancellor erred in failing to address payment of medical insurance premiums. The mother had been paying the child's health insurance premium, but the father testified that he would be willing to pay half of the costs. The judgment discussed payment of out-of-pocket medical costs but did not address payment of the health insurance premium.

E. Child support between joint custodial parents

Franks v. Franks, 394 So. 3d 467 (Miss. Ct. App. 2024). A court awarded divorcing spouses joint legal and physical custody of their son. To determine child support, the court calculated 14% of each spouse's adjusted gross income and ordered the higher-income father to pay the difference of $407 a month. The court of appeals rejected the father's argument that the chancellor should have ordered him to pay fifty percent of $407 since the mother only had custody fifty percent of the time, a calculation approved in *Rayner v. Sims,* 228 So. 3d 353 (Miss. Ct. App. 2017). The court noted that *Rayner* did not establish a per se rule for determining child support between joint custodial parents – child support awards are withing the discretion of the chancellor.

F. Modification

The legislature amended Miss. Code Ann. δ 43-19-34(4) to comply with federal law and DHS policy. The statute now provides that "Any order for the support of minor children, whether entered through the judicial system or through an expedited process, shall not be subject to a retroactive modification except from the date that notice of such petition to modify has been given, either directly or through the appropriate agent, to the obligee or to the obligor where the obligee is the petitioner." Laws 2024, Ch. 322 (S.B. No. 2262), § 1, eff. from and after passage (approved April 15, 2024).

G. Termination

Stewart v. Stewart, 382 So. 3d 531 (Miss. Ct. App. 2024). A father was obligated under his divorce settlement agreement to pay child support until his children completed six years of college. Provision 3 of the agreement stated that he would pay $730 a month in child support, to increase to 22% as he received promotions. It also stated that "said child support . . . shall continue for all three minor children through six (6) years of college education." Provision 12 stated that the parents would each pay one half of the children's college expenses for six years and that the obligation "may extend past the twenty-first birthday of any of the children."

When the oldest child was almost twenty-four and had completed college, the father sought to terminate child support, arguing that it terminated at twenty-one for all three children. He argued that the child support provision did not specifically state that it might extend past twenty-one, as the college support provision stated. The chancellor found, and the court of appeals agreed, that the child support provision was unambiguous and obligated him to pay support past the age of majority. Although child support terminates at majority, parties may agree to extend support into adulthood. The court also noted that a parent's continued payment of support after majority demonstrates that they believed the agreement to provide for ongoing support. The father continued to pay support for the oldest child almost three years after she was twenty-one. The chancellor properly terminated support for the oldest child, who had completed college, but held that the other two, who were currently attending college, were entitled to support past the age of twenty-one.

The father also argued that the youngest child, who was nineteen and attending college, should be emancipated because she lived with her older boyfriend over her father's objections. The chancellor held that the girl was not emancipated – she was attending college and not employed. In addition, her mother testified that she did not live with the boyfriend, although she had stayed with him several times. The emancipation statute allows a chancellor to find emancipation when a child cohabits without the payor's consent. It does not require a finding of emancipation. The chancellor had discretion to determine that the girl was not emancipated even if she was living with her boyfriend.

VII. Enforcement

A. Judgments

Richardson v. Estate of Richardson, 392 So. 3d 1272 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's grant of summary judgment to an estate, rejecting the deceased's former wife's attempt to collect amounts allegedly owed from their sixteen-year-old judgment of divorce. She was awarded a Grand Prix and nineteen head of cattle. He was ordered to pay $175 a month in child support. On appeal of the divorce judgment, the court of appeals reversed in part, ordering the chancellor to value the cattle, order them sold, and award the wife one-third of the proceeds of the sale. No further action was taken in the chancery court.

When the former husband died, his ex-wife filed notices of liens with the chancery court against property held by his estate. She alleged that he owed her $99,869 for the cattle, the Grand Prix, and unpaid child support. The court of appeals agreed with the chancellor that there was no judgment on which a lien could be based – there was no judgment establishing the value of the cattle or the amount of past due child support. Even if the divorce judgment was sufficient to create a lien, the seven-year statute of limitations had run. Furthermore, to create a lien under Miss. Code Ann. δ 11-7-197, a judgment must be recorded in the circuit clerk's office. The court rejected the petitioner's argument that it is the chancery court's duty to record its judgments in the circuit clerk's office.

B. Contempt

Mazie v. Mazie, 400 So. 3d 503 (Miss. Ct. App. 2024). A chancellor did not err in holding an ex-husband in contempt for failure to make $153,262 in payments under a court's order of divorce and property division. He sold marital properties after the divorce and used the proceeds for charitable donations and to pay $100,000 for a new Corvette. He also transferred titles to two properties to family members. The court found that he was in willful contempt, ordered him to make scheduled payments, and required that title to the Corvette be held by the court until the payments were made. He appealed. The court refused to consider his argument that the chancellor erred in its valuation of certain properties – he did not appeal the division of assets. On appeal from a judgment of contempt, the only questions are whether the appellant had the ability to comply with the judgment and willfully failed to do so and whether the order was clear. The appellant cannot collaterally attack the underlying judgment.

The court of appeals also held that the chancellor's order placing the car title in escrow did not violate the takings clause. Courts have authority to enforce a judgment by providing security for compliance. The car was purchased with funds from marital properties while he was under an order to make payments to his former wife. The court did not take possession of the vehicle, merely ordered the title held until the payments were made.

C. Restrictions on abuse allegations

Fortner v. Bratcher, 394 So. 3d 452 (Miss. Ct. App. 2024). A chancellor did not err in ordering that neither parent should contact CPS with allegations of abuse or neglect without first contacting local law enforcement. The father argued that the order conflicted with Miss. Code Ann. δ 43-21-353, which provides that any person having reason to suspect abuse or neglect "shall cause" a report to be made to CPS immediately. The court of appeals held that the order was a reasonable exercise of the chancellor's power, particularly considering the ten to fifteen unsubstantiated reports filed by the father. The order did not prevent a report to CPS – it required notice to law enforcement first. The court concluded, though, that "such orders should be rare" and that, while there was no abuse of discretion, "we expect such orders will be uncommon."

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VIII. Termination of parental rights

A. Jurisdiction

Hattie T. v. Matthew R., 387 So. 3d 90 (Miss. Ct. App. 2024). The court of appeals rejected a mother's argument that a chancery court lacked jurisdiction to terminate her parental rights because a youth court action was pending. Exclusive youth court jurisdiction applies only to county courts sitting as a youth court. The case was heard before a youth court referee. In addition, the youth court expressly relinquished jurisdiction to the chancery court. The court also rejected her claim that the youth court had already decided the issue of termination of parental rights in her favor. In the permanency hearing, the court noted that CPS had presented compelling evidence that termination would not be in the child's best interest. However, no petition for termination was ever filed and no adjudication on the merits was made. The court of appeals held that the chancellor's termination was supported by clear and convincing evidence.

B. Abandonment

Smith v. Mitchell, 396 So. 3d 1193 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's termination of a father's parental rights regarding his seven-year-old son. The father was incarcerated when the boy was one month old. The mother brought the boy to visit his father during his three-year incarceration. They shared custody informally for three months after his release. However, the mother refused to allow visitation after August of 2018 because she suspected the father was using drugs. Over the next few years he was incarcerated, released, and re-incarcerated for drug use several times. At the time of trial, he had spent five years of the boy's life in prison. The court granted the mother and stepfather's petition to terminate the father's parental rights, finding that the father's behavior caused him to have no relationship with the child, and that he had no contact with him for four years. The father appealed, arguing that it was error for the chancellor to base his decision solely on his incarceration. The court of appeals affirmed, holding that the decision was not based solely

on incarceration. The chancellor based termination on his failure to change the pattern of reincarceration and failure to maintain contact with his child.

Hattie T. v. Matthew R., 387 So. 3d 90 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's termination of a mother's parental rights based on abandonment and desertion. She abused alcohol and drugs and had multiple DUIs, some with the children in the car. She continued to abuse alcohol during the youth court proceedings and failed to comply with the DCPS reunification plan. The children's foster parents testified that the mother joked about kidnapping her children and was intoxicated on one visit. The chancellor found that the mother had abandoned her children by failing to demonstrate, within a reasonable time after their births, a full commitment to parenthood. The fact that she completed a substance abuse program after the youth court proceedings were over was "too little too late." In addition, her continued use of alcohol and drugs instead of complying with the reunification plan constituted abandonment.

C. Unfitness

S.D.P. v. Harrison County Dep't of Child Prot., 397 So. 3d 466 (Miss. 2024). The supreme court affirmed a youth court's termination of the parental rights of parents of a medically fragile child. At eight months of age, the boy was injured at his grandmother's home while under his mother's care. The mother delayed several hours in taking him to the hospital because of his vomiting, not realizing it was due to a brain bleed. The mother stated that the grandmother said that he fell from a bed. The physicians did not find that explanation to be consistent with his injuries. The child was placed in DCPS custody based on the finding that his injuries resulted from a nonaccidental injury. He suffered a catastrophic brain injury that left him quadriplegic, blind, deaf, and with multiple medical issues that required constant care. The child was placed with foster parents who were a paramedic and nurse. For two and a half years, CPS worked with the parents to prepare them to care for their son. They were ordered to attend his appointments to prepare them for his care, which included detecting hard-to-recognize seizures. They attended the monthly visitation (two hours a month), and the mother completed all requirements of the service plan. Nonetheless, both parents admitted to their caseworker that they were not yet prepared to undertake his care. The father testified that he thought it was in the boy's best interest to remain with his foster parents without terminating the parents' rights. The court found that the parents were not able to provide the care the child needed to survive and that they were "physically, mentally, or otherwise" unfit to care for the child.

The parents argued that unfitness requires a showing that parents committed an act that made them unfit – not that they lacked resources to provide care for a medically needy child. The supreme court affirmed the termination. Although the parents' resources were a consideration, the decision was based primarily on their inability to care for their son after two years of preparation. They did not know all the conditions with which he had been diagnosed, the

medications he took, or how to care for him. The court emphasized that, for this child, "This is a matter of life or death."

S.Z.O. v. Harrison County Dep't of Child Prot. Servs, 396 So. 3d 1225 (Miss. Ct. App. 2024). The court of appeals affirmed a chancellor's termination of a mother's parental rights regarding her two-year-old daughter. The girl was removed from her home after she ingested cocaine rocks belonging to a household member. The mother tested positive for cocaine the following day. After two years, the youth court determined that the mother had failed to substantially comply with the reunification plan and that CPS had made reasonable efforts to assist her to comply. She had failed to maintain stable housing, living in multiple locations and sometimes moved between two houses. Her employment was sporadic. She failed four of her drug tests, including one shortly before the termination hearing. She did not obtain a vehicle, failed to complete two required programs, and did not visit with her two-year-old for the last three months prior to the hearing. There was testimony that she and the child had no bond, and that the child was thriving with her foster family. The court of appeals affirmed the youth court's finding that the mother was unfit. She exposed her child to dangerous conditions in her home, resulting in her testing positive for cocaine. She continued to use drugs and failed to establish a stable environment for the girl. The court also affirmed the youth court's finding that the mother failed to exercise visitation and that her conduct cause a substantial erosion of the parent-child relationship.

D. Bypass of efforts to reunify family

R.W. v. Mississippi Dep't of Child Prot. Servs., 395 So. 3d 63 (Miss. Ct. App. 2024). The court of appeals affirmed a county court's termination of the parental rights of biological parents of twins. The premature twins tested positive for amphetamines at birth. The parents did not have custody of any of their eight children and their rights regarding four of them had been terminated. The court held that there was substantial evidence to support the county court judge's finding that the children were neglected and that reasonable efforts to reunify should be bypassed. Both parents had their rights terminated with respect to other children, one of the reasons for bypassing reunification. In addition, the father had been convicted of attempted sexual assault on a child and failing to register as a sex offender. The court rejected the parents' argument that the county court lacked personal jurisdiction over the mother. After she could not be located and her out-of-state address could not be found, summons was issued to the guardian ad litem as required by statute.

In re Interest of A.R.H., 2024 WL 4539729 (Miss. Ct. App. Oct. 22, 2024). The court of appeals rejected a father's argument that a youth court judge impermissibly expanded the statute allowing CPS to bypass efforts to reunify a family. The father was incarcerated for felony assault when the child was born. The child tested positive for drugs at birth and was placed in CPS custody. At the disposition hearing, CPS recommended reunification efforts with the fa-

ther. However, a youth court employee and the GAL recommended bypassing reunification based on the father's violent criminal history. They introduced evidence of multiple convictions, including domestic violence convictions in 1997, involuntary manslaughter in 2024, domestic violence incidents in 2022, two convictions for disorderly conduct, and aggravated assault in 2021.

Miss. Code Ann. δ 43-21-603(7)(c) allows CPS to bypass its obligation to work for reunification if the parent has "subjected the child to aggravating circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse" and reunification would not be in the child's best interest. The youth court held that the father's violent history "was so extensive" that it warranted a finding of aggravated circumstances. The father appealed, arguing that there was no showing that the child had been subjected to violence or that the crimes had any impact on the child. The court of appeals held that the types of aggravating circumstances listed in the statute are not exclusive, focusing on the phrase "including but not limited to" and that the paramount concern is the best interest of the child, not family reunification.

The dissenters agreed with the father, focusing on the strong policy in favor of reuniting families. They also noted that the exceptions to attempting reunification are more limited at the disposition stage than at the termination stage – the statute requires that the parent have endangered the child by exposing them to aggravating circumstances. The father in this case had been incarcerated throughout the child's short life – it was impossible for him to have endangered the child. The judge instead imputed a future violent nature that would impact the child, based on his prior conduct. The father could take advantage of prison programs such as drug treatment, anger management, and parenting classes. To assume his violent nature upon release was "purely speculative."

E. Reasonable efforts to reunify

In re Matter of L.C., 394 So. 3d 517 (Miss. Ct. App. 2024). A youth court erred in finding that CPS made reasonable efforts to assist a mother in complying with its reunification plan. The mother's three girls, ages five, three, and one month, were placed in CPS custody in June 2020, after the mother was reported for driving erratically with them in the car. She admitted using drugs. The mother immediately entered a drug rehabilitation program, which she completed. The reunification plan called for her to complete a drug program, submit to random drug tests, find housing and employment, visit with her children, and keep the agency informed. At the three permanency hearings, CPS informed the court that she had complied with the plan and was doing well. When the two older girls were placed with the mother in February 2021, CPS stated that she had "done a remarkable job." At a July 2021 hearing, CPS submitted a report that she was "fully compliant." In December 2021, CPS stated that if the mother continued to make progress, it would begin steps to return the one-year-old to her. However, in April 2022, CPS recommended changing the plan from reunification to adoption of the youngest because she had been in CPS custody for fifteen months. The youth court agreed, finding, among other things, that the

mother had not maintained sufficient contact with the girl, who was living with a foster family in Rankin County, that CPS had not conducted drug screening for the last year, and that CPS had incorrectly reported that she had stable housing and employment when she had lived in seven houses and had several jobs. The court also noted that CPS failed in its responsibility to document her employment. Nonetheless, the court found that CPS had made "reasonable efforts" to assist her and instructed CPS to initiate termination proceedings. The mother appealed.

The court of appeals reversed, holding that there was not substantial evidence to support the finding that CPS exercised reasonable efforts to assist the mother to comply with the plan. For almost two years, CPS told the mother and the court that she was in compliance, had completed the plan, and was on track to get her children back. If more drug tests were needed, or better documentation of employment, that was CPS's obligation, not the mother's. If more was required of the mother, CPS should have informed her, rather than applauding her efforts.

F. Impact of termination on wrongful death suits

In re Estate of Provenza, 383 So. 3d 1200 (Miss. 2024). The supreme court affirmed a chancellor's dismissal of a father's petition to be recognized as a child's sole wrongful death beneficiary. Before her death, he voluntarily agreed to termination of his parental rights in a Texas proceeding. The judgment of termination stated that he relinquished the right to inherit from the child and "any other right or duty between parent and child existing by virtue of law." He argued that because the child had lived in Texas for less than six months at the time the petition was filed, Texas lacked jurisdiction. However, a court reviewing a foreign judgment may only review issues that could be considered on collateral attack in the state issuing the judgment. Texas law prohibits collateral attack on jurisdiction to terminate parental rights based on agreement, in the absence of fraud. Texas also places a six-month limit on any attacks on termination orders. The court also rejected his argument that the Texas decree was not enforceable because it had not been registered with the circuit clerk under Miss. Code Ann. δ 11-7-305. That statute requires enrollment for a judgment creditor to enforce a foreign judgment for collection. The court agreed with the chancellor that the father's agreement to terminate his parental rights prior to his daughter's death removed him as a potential wrongful death beneficiary. A father cannot avoid legal and financial responsibility for a child during her lifetime and then benefit financially when she dies due to another's negligence.

G. Durable legal custody

Alisha T. v. Mississippi Dep't of Child Prot. Servs., 389 So. 3d 1083 (Miss. Ct. App. 2024). A mother's appeal from a youth court's award of durable legal custody should have been filed in the youth court. The three-year-old child was placed in CPS custody when his grandmother, with whom he lived, was no

longer able to care for him. Over the next year, the mother failed to comply with the service plan requirement of finding suitable housing. She was not able to make consistent visits and tested positive twice for drugs. The child was doing well with his foster parents. CPS recommended, and the youth court ordered, that the plan change from reunification to the concurrent plan of durable legal custody in the foster parents. The court did not terminate the mother's rights and advised her that she had the right, if matters changed, to petition to modify custody. She appealed the order of durable legal custody, arguing that her circumstances had improved – she had a job with benefits, had obtained her high school diploma, and had a suitable home. She did not challenge the youth court order. The court of appeals agreed with CPS that the mother was requesting modification of the durable legal custody order based on a change in circumstances and that a petition for modification should be filed with the youth court.

Hines v. Caldwell, 384 So. 3d 1238 (Miss. 2024). Following termination of parents' rights by a youth court, foster parents filed a petition for adoption in chancery court and requested that the youth court transfer jurisdiction to the chancery court. CPS and relatives of the child sought to maintain the case in youth court with relative placement as the goal. The youth court granted the petition to transfer to chancery court. The relatives filed a petition for adoption and to intervene in the chancery action. The court met in chambers with the attorneys and the guardian ad litem in an unrecorded meeting. The chancellor terminated CPS' custody of the child and dismissed CPS from the case, stating that the order was final. The court also issued a temporary order giving the foster parents durable custody and the relatives visitation.

The supreme court reversed and remanded for two reasons. First, the court held that the chancellor erred in making a final order without holding an on-the-record hearing and findings. Second, the court noted that durable legal custody is a statutory alternative to termination of parental rights and is not appropriate after termination.

The Mississippi Legislature amended Miss. Code Ann. δ 43-21-613(3)(b), changing the time in which youth courts must hold a permanency hearing. The amended statute provides that a youth court shall conduct a permanency hearing within three months of the earlier of (1) a child's adjudication as abused or neglected or (2) the child's removal from his or her parents. The amendment also requires that a permanency hearing be conducted every three months after the initial hearing.

IX. Adoption

In re Matter of Adoption of D.A.S., 391 So. 3d 1181 (Miss. 2024). A mother's petition to set aside a five-year-old adoption of her daughter was dismissed for failure to state a claim. The adopting parents had previously adopted the girl's twin brother. Four years later, the mother agreed to allow them to adopt her daughter – based, according to her, on their promise that the adoption would be "open," allowing her to visit and communicate with her daugh-

ter. Nothing in the adoption petition discussed an open adoption. However, the mother testified that the adopting parents and a member of their attorney's staff assured her that she could see the girl. The document they emailed to her to sign was entitled "Petition for Open Adoption" and the notary statement signed by the parties referred to the "Petition for Open Adoption." The mother stated that she was permitted a ten-minute visit with her daughter in December of 2017 but was told in January 2018 that any further contact should be through letters, which were also ultimately stopped.

The supreme court affirmed the chancellor's dismissal, holding that the statute of limitations for challenging an adoption is six months, except for jurisdictional defects. The court distinguished two cases cited by the mother in which adoptions were set aside under Rule 60(b) based on fraud on the court. In those cases, the petitioner misled the court as to the identity of the biological father. In this case, the court was not misled – there was no representation in court that the adoption would be open. The court emphasized the importance of finality in adoptions and noted that, even if there was fraud, the mother did not act within a reasonable time, having waited five years to bring the action.

X. Jurisdiction and Procedure

A. Rule 81 in contempt proceedings

Bolivar v. Bolivar, 378 So. 3d 433 (Miss. Ct. App. 2024). The court of appeals reversed a judgment of contempt, holding that a petition for contempt for violation of a temporary support order in a pending action must be noticed through a Rule 81(d) summons. The court acknowledged that the caselaw on this issue is unclear, dating back to *Sanghi v. Sanghi,* 759 So. 2d 1250 (Miss. Ct. App. 2000). That case distinguished between the summons required for new matters that arise post-litigation and the notice required for hearings in pending litigation. Subsequent cases interpreted *Sanghi* as allowing notice of contempt proceedings in pending litigation through a Rule 5 notice of hearing. The court overruled those cases, holding that a contempt action for failure to comply with a temporary order in pending litigation must be noticed through a Rule 81(d) summons.

B. Lack of personal jurisdiction

Mississippi Dep't of Human Servs. v. Johnson, 396 So. 3d 1151 (Miss. 2024). The supreme court reversed a court of appeals decision setting aside a twenty-year-old paternity and support order as void for lack of service of process. The putative father was served on January 21, 2002, with a Rule 81(d) summons setting a hearing for February 19, 2002. He did not appear. The court entered a judgment of paternity and an order requiring that he pay $285 a month in child support. When his driver's license was suspended for nonpayment a year later, he contacted DHS and signed a stipulated agreement of support setting a schedule for payment. The court approved the agreement and entered a new order. Soon after, the defendant was incarcerated in Arkansas, where he

remained until June 2021. In 2020, pursuant to a new policy regarding incarcerated payors, DHS and Johnson entered an agreement suspending his support during his incarceration. When he was released, he filed a pro se petition to reduce his obligation. He then obtained counsel, who petitioned to set aside the original judgment as void because it was served twenty-nine days prior to the hearing rather than thirty days as required by Rule 81(d). The chancellor agreed, set aside the 2002 order, and ordered DHS to return funds obtained under the void order.

The supreme court agreed with the court of appeals that under Rule 60(b)(4), a party may seek to set aside a void judgment at any time – "no amount of time or delay may cure a void judgment" and that Rule 81(d) requires thirty days service to have jurisdiction over a defendant in a paternity action. Because service was not proper and the defendant did not appear, the court lacked jurisdiction to enter the order. However, the supreme court disagreed with the court of appeals' conclusion that the father did not waive the issue. The court of appeals reasoned that waiver occurs when a party appears and defends the case on the merits but held that Johnson's stipulated agreements were not defenses on the merits because the case had already proceeded to judgment. The supreme court disagreed, holding that Johnson waived the issue of jurisdiction by signing a stipulation that acknowledged the 2002 judgment without raising the issue.

Wells v. Wells, 394 So. 3d 1011 (Miss. Ct. App. 2024). The court of appeals reversed a chancellor's grant of divorce and award of marital assets to the plaintiff wife, holding that the chancellor erred in finding that the husband was properly served. The wife filed for divorce based on spousal abuse. The husband did not answer. He was not notified of the trial date and did not appear at the hearing. The court record did not include a return of service of process, although a deputy sheriff had completed an unsworn return stating that he served the defendant with the summons and complaint on October 29, 2022. The sheriff's return was later discovered in the wife's attorneys' files – it had been sent to the wife's attorney rather than filed in court. The court granted the divorce and awarded the wife most of the property held by the parties, including a home and 92.5 acres. When the husband learned of the divorce, he filed a motion to set aside for lack of personal jurisdiction. The husband, his sister, and his nephew, with whom he was living, testified that a deputy sheriff served him with the complaint in the action but that no summons was attached. The nephew, who helped his uncle with paperwork, kept the papers that were served. He provided his uncle's attorney with the papers, which included only a complaint. The chancellor found that the husband had not overcome the presumption of service and denied his motion. He appealed.

The court of appeals held that the husband effectively rebutted the presumption of service raised by the sheriff's return through the adamant testimony of three people that no summons was included in the service. The testimony was also supported by their production of the papers. Proper service of process requires service of both the complaint and the summons. Without a summons, service is ineffective, and a judgment made in the defendant's absence is void

for lack of personal jurisdiction. When the husband produced evidence that rebutted the presumption of service, the burden shifted to the wife to present evidence to the contrary, which she did not do.

Jones v. Curtis, 394 So. 3d 511(Miss. Ct. App. 2024). The court of appeals agreed with a mother that the trial court lacked jurisdiction to hear the parties' motions to modify. The father was served with a Rule 81 summons for the mother's petition. However, the action was continued several times without setting a specific date. Because no new Rule 81 summons was served, the court lacked jurisdiction. The father's counterclaim for modification was not accompanied by service under Rule 81. However, the court found that the mother appeared and defended the father's petition without raising the issue of lack of jurisdiction.

Pace v. Pace, 387 So. 3d 1067 (Miss. Ct. App. 2024). The court of appeals agreed that a chancery court lacked jurisdiction to hear a husband's motion for contempt because he did not serve his wife with a Rule 81(d) summons. A petition for contempt – even one filed in a pending divorce action—is a separate proceeding and must be noticed through a Rule 81 summons. His wife did not waive the objection by appearing in the contempt hearing – her attorney argued in the hearing that the motion for contempt was not properly served.

C. Dismissal for failure to prosecute

Hasley v. Hasley, 385 So. 3d 1258 (Miss. Ct. App. 2024*).* The court of appeals rejected a husband's argument that a chancellor should have dismissed his wife's six-year-old complaint for divorce for failure to prosecute. The wife received two Rule 41 notices that the action would be dismissed for lack of prosecution. She responded to both with a request to reinstate the action on the docket. The court of appeals held that the chancellor properly refused to dismiss the action. Over the six years, the wife had obtained a temporary order, an amended temporary order, filed for and been granted a judgment of contempt, and engaged in multiple hearings and requested continuances. She had not, as her husband alleged, failed to advance the case in any meaningful way.

D. Affirmative defenses

Turner v. Turner, 385 So. 3d 827 (Miss. Ct. App. 2024). The court of appeals rejected a husband's argument that his wife waived the affirmative defense of res judicata by failing to raise it in a timely manner. She raised the issue in her first pleading in the matter, six months after she was served. Her failure to answer the petition for divorce was not a bar – parties are not required to answer a divorce complaint. Nor did she actively participate in the divorce action by filing contempt motions in her separate action for maintenance arrearages.

E. Rule 8.05 Financial Statements

The revised Rules of Chancery Court made changes to the rules dealing with financial disclosures in family law matter, including the following:

- The requirement of a financial statement may be excused by the court (deleting the "for good cause" language) or waived by agreement of one or both parties and allowed by the court.
- The plaintiff's disclosures must be made by the time of a temporary hearing or the defendant's answer date, whichever is earlier; the defendant's by the date for which the defendant is summoned or on which an answer is due, whichever is earlier, but in no case later than 45 days after the commencing pleading was filed. The court may extend or shorten the time requirement.
- The amendment clarifies that the disclosure should include all marital and nonmarital assets and liabilities.

Miss. R. Chanc. Ct. 8.05.

F. Agreed judgments

Franks v. Franks, 394 So. 3d 467 (Miss. Ct. App. 2024). After a pretrial hearing, the court ordered – based on the husband's agreement – that the wife be allowed to purchase the marital home using a $275,000 appraisal provided by the husband's expert. The chancellor properly refused to allow the husband to withdraw his offer when a bank appraised the house at $320,000 a week later. The court of appeals rejected his argument that the oral offer made in conference did not satisfy the statute of fraud for sales of land. The offer was memorialized in the court's judgment, based on his attorney's statement that the parties had reached an agreement that should be incorporated into the judgment.

G. Appeals

1. Appealable orders

Banks v. Banks, 396 So. 3d 499 (Miss. Ct. App. 2024). The court of appeals dismissed an appeal from a judgment dividing a couple's assets and awarding the wife alimony. The judgment was not a final order because, although the couple agreed to be divorced on irreconcilable differences, the court did not grant a divorce in the judgment or a subsequent order clarifying the judgment. A judgment is not final unless all claims are adjudicated. Rule 54(b) allows a court to certify a judgment as final even though issues remain to be resolved. However, the court did not certify the judgment under Rule 54(b).

Thompson v. Thompson, 380 So. 3d 945 (Miss. Ct. App. 2024). The court of appeals rejected a wife's argument that the judgment appealed was not final because the chancellor did not divide certain assets. Finality is determined

by whether the court has disposed of all claims in the matter. The court entered a final judgment addressing the claim of property division, even if some assets were not divided. Nor did the husband waive his objections because he did not file a post-trial motion arguing that the *Ferguson* and *Armstrong* factors were not properly considered. A party is not required to file a post-judgment motion to preserve issues for appeal.

2. Waiver of argument on appeal

Myles v. Lewis, 388 So. 3d 598 (Miss. Ct. App. 2024). The court of appeals rejected a father's claim that the mother's arguments were procedurally barred because she did not file a post-trial motion raising the issues. A motion for a new trial is required to bring to the court's attention to issues that were not addressed in the court's trial rulings. If an issue has been decided by the trial court and is reflected in the transcript, it is not necessary to file a post-trial motion to raise the issue.

Walker v. Hasty, 395 So. 3d 424 (Miss. Ct. App. 2024). A mother's claim that she was denied a fair trial was procedurally barred. The second chancellor on the matter met with the parties and attorneys prior to the hearing, indicating what her likely ruling would be on visitation. The mother argued that she was denied a fair trial because the judge had decided the case before hearing the evidence. However, because she did not raise the issue at trial, she was barred from arguing it on appeal. The court also noted that the judge made clear at the beginning of the hearing that she had not yet made up her mind.

3. Trial court jurisdiction after appeal

Roley v. Roley, 394 So. 3d 985 (Miss. Ct. App. 2024). On the third appeal in this matter, the court of appeals affirmed the chancellor's dismissal of the pro se litigant's motion to reconsider a previous motion to reconsider. The court noted that it had considered his multiple claims "ranging from the mundane to the Byzantine," and had rejected them in his first and second appeals. His most recent filing in the trial court was an attempt to relitigate issues already resolved on appeal and made final by the court's mandate. The trial court had no jurisdiction to consider the issues and properly dismissed the petition. The court also affirmed the trial court's judgment of contempt and ordered that the father be incarcerated for nonpayment of child support. The chancellor found that he had failed to pay any support and that he was capable of working.

Hasley v. Hasley, 387 So. 3d 1047 (Miss. Ct. App. 2024) (*Hasley II)*. While the appeal of a wife's separate maintenance action was pending (*Hasley I*), the husband filed a motion in chancery court to modify the order of separate maintenance based on alleged serious health problems. The chancellor held that the trial court lacked jurisdiction to hear a motion to modify an order on which an appeal was pending. By the time *Hasley II* was decided, *Hasley I* had been reversed and remanded. Because the separate maintenance action was remand-

ed, the court of appeals remanded the modification action for the court to determine as part of the separate maintenance action.

XI. Attorneys' fees

McKenzie v. McKenzie, 397 So. 3d 510 (Miss. Ct. App. 2024). A chancellor did not err in denying a wife's request for her remaining $12,000 to $17,000 in attorneys' fees. Her husband had provided her with $15,000 to $20,000 from marital assets to pay a portion of her fees and she was awarded $1,000,000 in cash assets.

Morland v. Morland, 396 So. 3d 501 (Miss. Ct. App. 2024). A chancellor properly awarded a mother $2,000 in attorneys' fees with interest from the date of the divorce judgment at eight percent per annum. Her attorney provided an itemized statement, the court found that she lacked the resources to pay her remaining fees, and the court considered the *McKee* factors in making the award.

Weatherly v. Weatherly, 2024 WL 2010429 (Miss. Ct. App. May 7, 2024), *cert. granted,* 398 So. 3d 874 (Miss. 2025). A court properly held that a husband had sufficient funds from the property division of $545,550 to pay his attorneys' fees.

Pace v. Pace, 387 So. 3d 1067 (Miss. Ct. App. 2024). The court of appeals rejected a wife's argument that the chancellor erred in denying her request for attorneys' fees linked to her successful contempt petition. Although she requested fees in her 2020 petition, she did not raise the issue at the hearing or in a request for reconsideration. She presented evidence of her fees in a motion filed two years later. The chancellor stated that the bill presented to him at that point did not clearly relate to the contempt proceeding.

XII. COLLABORATIVE LAW

In re Rules for Collaborative Law, No. 89-R-99044-SCT (Miss. July 26, 2024). The Mississippi Supreme Court on July 26, 2024, granted the petition of the Mississippi Bar to approve the Mississippi Collaborative Law Rules allowing parties and their lawyers to resolve family law matters through a collaborative law process.

Parties in a collaborative law process agree to forego court intervention during the process except in certain emergencies, to hire neutral experts, and to make "timely, full, candid, and informal" disclosure without formal discovery. They also commit that if the process is terminated, a collaborative lawyer or his or her firm cannot continue as the lawyer in litigation except in defined emergencies.

An agreement to engage in a collaborative law process must be in a writing signed by the parties and must contain certain prescribed statements. Any party may terminate the process by giving notice to the other. The rules contain de-

tailed provisions discussing the information a lawyer must provide to a party considering collaborative law as an option. The rules also include provisions discussing the extent to which communications made in a collaborative process are privileged, when the privilege is waived, and exceptions to the privilege.

THE ETHICS HOUR: REPRESENTING CHILDREN

1

THE GUARDIAN AD LITEM

Historically, a guardian ad litem is an "arm of the court" (not the child's attorney) who represents the best interest of the child.

- A GAL investigates, files reports and makes recommendations, and testifies as a witness.
- A GAL may be qualified as an expert witness.
- A GAL may be appointed for limited purposes.

2

A CHILD'S ATTORNEY

An attorney for a child serves in the traditional role of an attorney and "owes the child all of the loyalty, duties, and confidentiality mandated by the attorney-client relationship." *S.G. v. D.C.,* 13 So. 3d 269, 282 (Miss. 2009).

3

THE BEST INTEREST ATTORNEY

A "best interest" attorney, like a GAL, represents the child's best interest, not the child's wishes.

A best interest attorney functions as an attorney in the matter, filing pleadings, conducting discovery, and questioning witnesses rather than filing reports and testifying.

4

MANDATED REPRESENTATION: ABUSE AND NEGLECT PROCEEDINGS

Guardians ad litem are required in every case involving an abused or neglected child that results in a judicial proceeding. MISS. CODE ANN. δ 43-21-121; Rule 13 of the Uniform Rules of Youth Court.

Attorney for child. Any child alleged to have been abused or neglected is a party and "shall be represented by an attorney at all stages of any proceedings held pursuant to this chapter." MISS. CODE ANN. δ 43-21-201(1)(c) (emphasis added).

5

DUAL ROLE

- A guardian ad litem "may serve a dual role as long as no conflict of interest is present. If a conflict of interest arises, the guardian ad litem shall inform the youth court of the conflict, and the youth court shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences as required by Uniform Rule of Youth Court Practice 13(f)." MISS. CODE ANN. δ 43-21-201(1)(c).

6

MANDATED REPRESENTATION: TERMINATION OF PARENTAL RIGHTS

Guardians ad litem are required in stand-alone terminations and in adoptions unless the parents have surrendered their rights. MISS. CODE ANN. δ 93-15-107(d); MISS. CODE ANN. δ 93-17-8(1)(b) (adoption).

There is no dual role provision.

Attorney for child. A child of twelve or over must be served with process in a termination proceeding. "The minor child shall be represented by counsel throughout the proceedings." MISS. CODE ANN. § 93-15-107(1)(c).

7

CONFIDENTIALITY

Rule 1.6(b) of the Rules of Professional Responsibility provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

8

RULE 1.6

Rule 1.6(b) of the Rules of Professional Responsibility provides:

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

. . .

(6) to comply with other law or a court order.

9

REPORTING ABUSE

MISS. CODE ANN. §§ 43-21-353(1) provides:

"Any attorney, . . . or any other person having reasonable cause to suspect that a child is a neglected child, an abused child, or a victim of commercial sexual exploitation or human trafficking shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing [to DCPS.]"

10

RULE 1.6

Rule 1.6(b) of the Rules of Professional Responsibility provides:

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;
. . .
(6) to comply with other law or a court order.

11

DUTIES OF THE GAL

Rule 13 of the Uniform Rules of Youth Court provides:

"When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that *any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court*."

12

CHANCERY COURT PROCEEDINGS

MISS. CODE ANN. 93-11-65(4) provides:

"When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge . . . . The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings . . . .

13

CONFIDENTIALITY

Attorneys for a child

- Must maintain the child's confidences
- May reveal confidences to prevent substantial physical harm or to comply with a statute or court order

Guardians ad litem

- Are not bound by child's confidences
- Must inform parents and child of nature of relationship and confidentiality

14

CLIENT DECISION-MAKING

Rule 1.2 of the Mississippi Rules of Professional Responsibility states:

"(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."

15

COMMUNICATION WITH CLIENT

- Rule 1.4 of the Mississippi Rules of Professional Responsibility states:
- "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

16

CLIENT UNDER A DISABILITY

Rule 1.14 of the Rules of Professional Responsibility provides:

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

17

CLIENT UNDER DISABILITY

"If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication."

Comment to Rule 1.14, Client Under a Disability

18

WITHDRAWAL

Rule 1.16 of the Rules of Professional Responsibility provides:

- (b) [A] lawyer may withdraw from representing a client if withdrawal can be accomplished without materially adverse effect on the interests of the client, if . . .
- (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; . . .
- (6) other good cause for withdrawal exists.

19

COMPETENCE

Rule 1.1 of the Mississippi Rules of Professional Responsibility states:

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

20

STATES THAT ALLOW DUAL ROLE

Connecticut
Georgia
Iowa
Michigan
Nebraska
West Virginia
Wyoming

Appoint new attorney in case of conflict:
Michigan
Nebraska

Appoint new GAL in case of conflict:
Connecticut
Georgia
Iowa

21

RULE 13 V. MCA 43-21-201

Rule 13: The court must appoint a GAL. If there is a conflict between the GAL and the child, the court should appoint an attorney for the child.

The GAL must inform the child that he does not represent the child and that information is not confidential.

Miss. Code Ann. 43-21-201: The court must appoint an attorney for the child at all stages. The GAL may serve in a dual role. If a conflict arises, the court should appoint an attorney for the child. The attorney owes the child the traditional duties of confidentiality and loyalty.

22

S.G. V. D.C., 13 SO. 3D 269 (MISS. 2009)

"The court's multiple references to the guardian ad litem as the children's attorney are at odds with the reference to the guardian ad litem's duty to make a report to the court, other than as any other lawyer representing a client might be required to do. If the guardian ad litem was appointed in this matter as an attorney representing the children, he owed the children all of the loyalty, duties, and confidentiality mandated by the attorney-client relationship. In describing those duties, the Mississippi Rules of Professional Conduct include no exception for a guardian ad litem."

23

CONFLICTS OF INTEREST

Rule 1.7(b) of the Mississippi Rules of Professional Responsibility states:

"A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

(1) the representation will not be adversely affected; and

(2) the client has given knowing and informed consent after consultation."

24

LAWYER AS WITNESS

Rule 3.7 of the Mississippi Rules of Professional Responsibility states:

A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client."

25

ETHICAL DUTIES IN THE DUAL ROLE

"We believe that the costs attending the appointment of both an attorney and a guardian ad litem would often be prohibitive . . . . Thus, we too acknowledge the "hybrid" nature of the role of attorney/guardian ad litem which necessitates a modified application of the Rules of Professional Conduct."

Clark v. Alexander, 953 P. 2d 145, 153-54 (Wyo. 1998).

26

CONFLICTS: FORMER CLIENT

- Rule 1.9 of the Mississippi Rules of Professional Responsibility provides:
- "A lawyer who has formerly represented a client in a matter shall not thereafter: . . .
- (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known."

27

ROLES DIVIDED

New Jersey statutes provide for appointment of both an attorney and a guardian ad litem in custody matters. The comments state: "A court-appointed counsel's services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing . . . . A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. N.J. Rules of Chancery 5:8B, Comment. See also Nev. Rev. Stat. 432B:500; S.C. Code Ann. 63-7-1620 (GAL may not be the attorney appointed for the child).

28

DUTY OF CONFIDENTIALITY

MISS. CODE ANN. 43-21-201(4) (attorney to represent child in abuse and neglect proceedings) provides:

"Attorneys for all parties, including the child's attorney, shall owe the duties of undivided loyalty, confidentiality and competent representation to the party client pursuant to the Mississippi Rules of Professional Conduct."

29

ATTORNEYS IN ABUSE AND NEGLECT PROCEEDINGS

Youth courts:

MISS. CODE ANN. 43-21-201. Youth courts must appoint an attorney for the child at all stages of the case.

Note: Rule 13, which also governs youth courts, is currently inconsistent (does not require an attorney unless there is a conflict).

Chancery courts:

Are governed by the youth court rules (including Rule 13) but not explicitly by the youth court statutes.

Requirement of an attorney is not explicitly binding on chancery courts (but will be if Rule 13 is amended to reflect the statute).

30

THE DUAL ROLE CONFLICT ISSUE

IF a GAL serves in the dual role, a conflict arises, and the GAL/attorney has received confidential information from the child:

Including the information in a GAL report would be inconsistent with 43-21-201, which requires that a child's attorney maintain confidentiality.

31

APPOINTMENT IN TPR

Chancery court:

Court must appoint an attorney for a child in TPR actions, as required in MISS. CODE ANN. 93-15-107.

There is no provision in the TPR statutes allowing the GAL to act in a dual role.

Youth courts:

Court must appoint an attorney for a child in TPR actions, as required in MISS. CODE ANN. 93-15-107(1)(c). Arguably, the youth court statute allowing dual role appointment would apply in TPR as a proceeding related to abuse and neglect.

32

RESOURCES

Statutes and rules

Mississippi

Miss. Code Ann. δ 43-21-121 (GAL in abuse and neglect proceedings)
Miss. Code Ann. δ 43-21-201 (attorney for child in abuse and neglect proceedings)
Miss. Code Ann. § 43-21-353 (duty to report abuse to CPS)
Miss. Code Ann. δ 93-11-65(4) (abuse and neglect matters in chancery confidential)
Miss. Code Ann. δ 93-15-107(d) (GAL in contested termination of parental rights)
Miss. Code Ann. δ 93-17-8(1)(b) (GAL in contested adoption)
Miss. Code Ann. δ 93-15-107(1)(c) (attorney in contested TPR)
M. Youth Ct. Rule 2 (youth court rules apply to abuse and neglect in chancery court)
M. Youth Ct. Rule 13 (guardian ad litem in youth court proceedings)'
M. R. Prof. Resp 1.1 (competence)
M. R. Prof. Resp 1.2 (scope of representation)
M. R. Prof. Resp 1.4 (communication with client)
M. R. Prof. Resp 1.6 (confidentiality)
M. R. Prof. Resp 1.7 (conflicts of interest)
M. R. Prof. Resp 1.7 (conflicts; former clients)
M. R. Prof. Resp 1.14 (client under a disability)
M. R. Prof. Resp 1.16 (withdrawal from representation)
M. R. Prof. Resp 3.7 (lawyer as witness)

Other

Conn. Gen. Stat. δ 46b-129a(2)(D) (dual role permitted)
Del. Code Ann, tit. 29, δ 9007A(b)(3) (dual role permitted; court determines how to proceed in case of conflict)
Ga. Code Ann. δ 15-11-262 (allowing dual role)
Iowa Code Ann. δ 232.89 (allows dual appointment; new GAL in case of conflict)
Mich. Comp. Laws Ann. § 712A.17D (allows dual role; new attorney in case of conflict)
Neb. Rev. Stat. Ann. § 43-272 (dual role permitted)
N.J. Rules of Chancery 5:8B, Comment (dual role not permitted)
Nev. Rev. Stat. δ 432B:500 (dual role not permitted)
S.C. Code Ann. δ 63-7-1620 (dual role not permitted)

Cases

In re Tayquon, 821 A. 2d 796 (Conn. Ct. App. 2003) (in case of conflict, dual role attorney continues as child's attorney)

In re A.P., 662 S.E.2d 739, 740 (Ga. Ct. App. 2008) (no inherent conflict in dual role)\

In re Formal Advisory Opinion 16-2, 302 Ga. 736 (Ga. 2012) (dual role permitted; new GAL in case of conflict)

S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009)

In re Jeffrey R.L., 435 S.E. 2d 162 (W.Va. 1993) (dual role permitted)

Clark v. Alexander, 953 P. 2d 145, 153-54 (Wyo. 1998) (ethics rules modified to accommodate dual role)

Books and Articles

Barbara Glesner Fines, Ethical Issues in Family Representation (Carolina Academic Press 2010)

Barbara Atwood, *Representing Children: The Ongoing Search for Clear and Workable Standards,* 19 J. Am. Acad. Matrim. Law. 183 (2005)

Marcia M. Boumil, Cristina F. Freitas, & Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian ad Litem Practice,* 13 J. L. & Fam. Stud. 43 (2011)

Bruce A. Boyer, *Representing Child-Clients With Diminished Capacity: Navigating an Ethical Minefield*, 24 No. 1 Prof. Law. 36 (2016)

Stephanie L. Tang*, Safeguarding Children's Voices,* 102 Denver L. Rev. 41 (2024)

Websites

Mississippi Judicial College, Manual for Guardians ad Litem, https://olemiss.app.box.com/s/y6fzpk9zdsu788mr4pxiu46jsxzdpib9

Thomas D. Lyon, University of Southern California School of Law, https://gould.usc.edu/faculty/profile/thomas-d-lyon/

David Calder received his B.A. in Religion from Mississippi College in 1975, and his J.D. from the University of Mississippi in 1986. After clerking for U.S. Magistrate Judge Jerry Davis, David entered private practice. From 1994 until 1996, he supervised the Fair Housing Clinical Program at the Ole Miss Law School. After another stint in private practice, in 1999 he returned to the Law School as a Visiting Clinical Professor. Since 2002, he has worked in the clinical program primarily in the area of child advocacy. David is currently a Clinical Professor and the Director of the Child Advocacy Clinic. David and his students primarily serve as Guardian ad Litem for children and disabled adults in Chancery Court and Youth Court cases, and work on family law issues that affect children or involve access to the judicial system for low-income families. Professor Calder received the 2017 "Champions for Children" Award from Children's Advocacy Centers for Mississippi in recognition of his contributions to the children of Mississippi.

Shirley Kennedy is the Director of Child Advocacy and the Director of the Family and Children's Law Center at Mississippi College School of Law. As such, she directs the Child Advocacy Clinic in which law students work under her supervision as the attorneys for adoptive families, assist youth court prosecutors and youth court guardians ad litem, and serve as guardians ad litem in chancery courts. She also teaches courses in domestic relations and juvenile law. She is the faculty advisor for the MC Law Family Law Society and for the MC Law Certificate Program in Family and Juvenile Law. Professor Kennedy has served on the Mississippi Parent Rep Task Force, the Domestic Relations Legislative Task Force, and the Mississippi Access to Justice Committee. She is currently a member of the Mississippi Commission on Children's Justice, a board member of CASA Mississippi, and a board member of Mission First Legal Aid Clinic. She authors the Adoption Chapter of West's Encyclopedia of Mississippi Law and is a frequent speaker in the area of guardians ad litem. Prior to joining MC Law in 2000, she practiced law at Brunini, Grantham, Grower & Hewes in Jackson, Mississippi.

Adam Kilgore is a Mississippi attorney renowned for his extensive service with The Mississippi Bar. He began his tenure with the Bar in 2002 as Assistant General Counsel and was elevated to General Counsel in 2004. In this capacity for over twenty years, he oversaw attorney discipline, ethics, and professionalism, managing investigations, prosecuting disciplinary cases, and representing the Bar in appeals before the Mississippi Supreme Court. Additionally, he served as a liaison to key committees, including the Board of Bar Commissioners, the Committee on Professional Responsibility, and the Ethics Committee. Kilgore graduated from Mississippi College School of Law (2000), where he was a member of the Moot Court Board. Post-graduation, he clerked for Chief Justice Edwin Lloyd Pittman at the Supreme Court of Mississippi. Kilgore has delivered numerous Continuing Legal Education lectures and seminars for various legal associations. His publications cover topics such as attorney discipline, professionalism, and ethics. Kilgore retired from The Mississippi Bar in December of 2024. He now has a private practice focused primarily on ethics and professionalism and ethics expert work. Kilgore has also served as the expert host for Mississippi Public Broadcasting's In Legal Terms since April of 2024.

ALIMONY: A REFRESHER COURSE

I. Relationship to equitable distribution

If an award of marital property is sufficient to meet the parties' needs, no alimony should be awarded. Accordingly, spousal support should be considered only after division of marital property and awarded only if one spouse is at a deficit in their ability to meet their reasonable needs after the division of assets. *Williamson v. Williamson*, 81 So. 3d 262, 274 (Miss. Ct. App. 2012) (error to consider alimony prior to completing division of marital assets). The supreme court has rejected arguments that a spouse who receives 50% of marital assets is not "at a deficit" – the question is whether they are less able than the payor to meet their reasonable needs. If property division "is insufficient to provide income . . . to approximate the lifestyle of the [parties] prior to divorce," alimony should be considered. *Layton v. Layton,* 181 So. 3d 275, 281-83 (Miss. Ct. App. 2015) (rejecting husband's argument that wife did not suffer a deficit because she received a greater share of marital assets).

II. Basis for awards

Courts are to award alimony based on factors set out in *Armstrong v. Armstrong*, including: (1) the parties' incomes and expenses; (2) the parties' health and earning capacities; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence or absence of minor children in the home, and the need for child care; (7) the parties' ages; (8) the parties' standard of living during the marriage and at the time support is determined; (9) tax consequences of the spousal support order; (10) fault or misconduct; (11) dissipation of assets by either party; or (12) any other factor deemed to be "just and equitable." *Armstrong v. Armstrong,* 618 So. 2d 1278, 1280 (Miss. 1993).

The *Armstrong* factors are used for all alimony types. The Mississippi Supreme Court in 2024 held that the *Cheatham* factors – an alternative set of factors for lump sum alimony – are no longer to be used. *Cassell v. Cassell*, 389 So. 3d 305, 316 (Miss. 2024) (overruling *Cheatham v. Cheatham,* 537 So. 2d 435, 438 (Miss. 1988)).

In applying the *Armstrong* factors, courts are to determine each spouse's income and/or earning potential and their obligations to determine the amount available to each. In making this analysis:

- All sources of income, including separate property income and assets, should be included. *Ray v. Ray,* 304 So. 3d 598, 600-01 (Miss. 2020) (considering husband's separate property military retirement income); *Sanderson v. Sanderson,* 824 So. 2d 623, 626-27 (Miss. 2002).

- Assets awarded to each spouse in property division should be considered. *Alford v. Alford,* 363 So. 3d 790, 799 (Miss. Ct. App. 2019), *rev'd in part on other grounds,* 298 So. 3d 983 (Miss. 2020).

- Unreasonable expenses should be disregarded. *Brooks v. Brooks,* 652 So. 2d 1113, 1123 (Miss. 1995); *Box v. Box,* 622 So. 2d 284, 288 (Miss. 1993).

- Child support should be deducted from the payor's income but not added to the recipient's. *Buckley v. Buckley,* 815 So. 2d 1260, 1263 (Miss. Ct. App. 2002).

- The standard of living of the marriage informs, but does not control, the award. In many cases, spouses will both have to live below the marriage standard of living. *In re Conservatorship of Geno,* 365 So. 3d 287, 294-95 (Miss. Ct. App. 2021); *Wilson v. Wilson,* 975 So. 2d 261, 266 (Miss. Ct. App. 2007).

- A payor must be left with sufficient income to meet basic needs, considering not only the alimony awarded but awards of property, child support, attorneys' fees, and other obligations. *McEachern v. McEachern*, 605 So. 2d 809, 814-15 (Miss. 1992); *Ewing v. Ewing*, 203 So. 3d 707, 715 (Miss. Ct. App. 2016).

If the court finds a disparity in ability to meet reasonable needs, it considers marriage length, health, marital fault, dissipation of assets, and contribution to schooling as factors to determine whether to award alimony, what type to award, and in what amount. A study of reported alimony decisions suggests the following trends: *First*, a disparity in income or assets is required for an award but does not automatically guarantee an award. *Second*, once a disparity is shown, the length of marriage is of great importance. Permanent alimony was typically awarded to remedy a disparity in marriages over twenty years; rehabilitative was awarded after marriages under ten years. The appellate courts reversed four cases for failure to award permanent alimony in marriages exceeding twenty years and did not reverse a single denial of permanent alimony in marriages of less than twenty years. *Third*, the amount of alimony awarded appears to increase with the length of the marriage. Awards ranged from one-fourth of the disparity in short marriages to awards that equalized or more than equalized incomes after long marriages. Bell, *Alimony Chart and Analysis* (available on request).

NOTES

III. Types of alimony

A. Permanent, or periodic alimony

Permanent alimony has no fixed ending date, terminates at remarriage or the death of either party, and may be modified based on a material change in circumstances. Historically, the purpose of awarding permanent alimony was to provide support for a lower-income spouse at the standard of living of the marriage. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1281 (Miss. 1993); *Hubbard v. Hubbard*, 656 So. 2d 124, 129 (Miss. 1995); *Wray v. Wray,* 394 So. 2d 1341, 1344-45 (Miss. 1981). Modern cases recognize that in many cases, neither spouse will live at the standard of the marriage post-divorce.

B. Lump sum alimony

Lump sum alimony is a set, nonmodifiable amount, payable in a lump sum or over time, that survives the death of the payor and the payee. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1281 (Miss. 1993); *Hubbard v. Hubbard,* 656 So. 2d 124, 129-30 (Miss. 1995). Lump sum alimony does not terminate at the payor's death, even if the award is payable in installments. It is a binding obligation of the payor's estate. *Creekmore v. Creekmore*, 651 So. 2d 513, 518 (Miss. 1995). Similarly, lump sum alimony does not terminate if the recipient remarries or dies. Any remaining installments are payable to the recipient's estate. *Wray v. Wray,* 394 So. 2d 1341, 1344-45 (Miss. 1981). Nor does lump sum alimony terminate upon a recipient's cohabitation. *Chroniger v. Chroniger*, 914 So. 2d 311, 315 (Miss. Ct. App. 2005) (three years of payments were lump sum alimony that did not terminate upon ex-wife's cohabitation).

C. Rehabilitative alimony

Rehabilitative alimony, recognized in 1995, has a fixed ending date, terminates at the death of either party, and may be modified based on a material change in circumstances. *Hubbard v. Hubbard*, 656 So. 2d 124, 129-30 (Miss. 1995). It does not terminate at remarriage unless the parties agree to termination at remarriage or the court provides for termination. *Waldron v. Waldron,* 743 So. 2d 1064, 1065 (Miss. Ct. App. 1999). Rehabilitative alimony is "an equitable mechanism which allows a party needing assistance to become self-supporting without becoming destitute in the interim." *Hubbard v. Hubbard*, 656 So. 2d 124, 130 (Miss. 1995). It is also used as transitional support for lower-income spouses who are already working full-time. *See Denham v. Denham,* 364 So. 3d 874, 894 (Miss. Ct. App. 2022), *reversed in part on other grounds*, 351 So. 3d 954 (Miss. 2022) (not error to award working wife rehabilitative alimony; appropriate to award short-term alimony to help lower-income spouse transition financially).

D. Reimbursement alimony

Reimbursement alimony may be awarded to a person who supported their spouse through school, and whose spouse left them not long after the schooling was completed and before they could benefit from the financial investment. Like lump sum alimony, it is a set amount that is nonmodifiable. *Guy v. Guy,* 736 So. 2d 1042, 1046-47 (Miss. 1999). Presumably, reimbursement alimony should have the characteristics of lump sum alimony – it should vest at the time of the order, be nonmodifiable, and should not terminate upon the death of either party or the recipient's remarriage. See *Guy*, *supra*, at 1047 (ordering payment of reimbursement alimony as lump sum alimony). In a 2023 case, the court of appeals affirmed a chancellor's $125,879 award to a husband to reimburse him for paying his wife's nursing degree student loan debt with his separate funds. The court rejected her argument that the award was not appropriate because there was a four-year lapse between her graduation and decision to leave the marriage, allowing her husband to participate for that time in her increased earnings. *Whittington v. Whittington,* 373 So. 3d 1060, 1064-65 (Miss. Ct. App. 2023).

E. Hybrid alimony

Historically, the characteristics of permanent and lump sum alimony could not be altered by court order or agreement. *See Cleveland v. Cleveland,* 600 So. 2d 193, 196-97 (Miss. 1992) (court-ordered permanent alimony of $600 a month for seven years or until remarriage or death was held to be permanent and not subject to seven-year cutoff date; payments also increased to $1,000 a month).

Mississippi appellate courts have shown a gradual willingness to allow spouses to agree to hybrid forms of alimony. Divorcing spouses may now agree to lump sum alimony payable in installments that terminate at the death of the parties or upon the payee's remarriage. The supreme court upheld an agreement for lump sum alimony that would terminate at the payor's death. *McDonald v. McDonald*, 683 So. 2d 929, 931-33 (Miss. 1996). In another, the court of appeals approved an agreement for lump sum alimony to terminate at the recipient's death or remarriage but which would survive the payor's death. *Elliott v. Rogers,* 775 So. 2d 1285, 1288 (Miss. Ct. App. 2000). In 2015, the court of appeals affirmed a hybrid alimony provision that a husband would pay $900 a month in periodic alimony until his wife's remarriage or death. If she remarried, he would pay lump sum alimony of $900 a month until a specified date. The court held that the alimony survived her remarriage. *Lowrey v. Simmons,* 186 So. 3d 907, 917-19 (Miss. Ct. App. 2015). And an agreement which specified that the husband would pay a nonmodifiable, decreasing amount of alimony until 2019 was enforced as written. The husband's petition to modify based on his income loss was denied. *Korelitz v. Korelitz,* 232 So. 3d 184, 185, 188-89 (Miss. Ct. App. 2017).

IV. Third-party payments as alimony

A payor may be ordered to make payments to third parties on the other spouse's behalf, such as health insurance premiums, insurance premiums, or mortgage or utility payments. Payment of previously incurred debt, such as credit card debt, is usually part of property division, while payment of future expenses is usually part of alimony. The nature of the payment will dictate whether the payment can be modified and whether it terminates at death or remarriage.

A. Mortgage payments

Mortgage payments assigned to one party in a divorce decree may be alimony or part of property division. The label will determine whether the obligation can be modified. *See Jones v. Jones,* 917 So. 2d 95, 102 (Miss. Ct. App. 2005) (divorce decree provision requiring husband to pay mortgage, taxes, and insurance on home awarded to wife was provision for alimony; obligation could be modified based on change in circumstances); *Logue v. Logue*, 106 So. 2d 498, 500-01 (Miss. 1958) (holding mortgage payments to be property settlement, not alimony, and therefore not modifiable or terminable at remarriage); *Smith v. Little,* 834 So. 2d 54, 60 (Miss. Ct. App. 2002) (finding payments on car and payments related to house not alimony but property division and nonmodifiable); *Wesson v. Wesson,* 818 So. 2d 1272, 1277 (Miss. Ct. App. 2002) (payments of mortgage and insurance was rehabilitative alimony).

B. Health insurance and medical costs

Payment of health insurance is a form of alimony. *Griner v. Griner*, 235 So. 3d 177, 188 (Miss. Ct. App. 2017). An order for payment of future medical expenses for a spouse must include a maximum amount. *Tillman v. Tillman,* 791 So. 2d 285, 288 (Miss. Ct. App. 2001) (error to order husband to pay wife's future medical expenses; because the amount is unknown it would be a monthly modification); *Duncan v. Duncan,* 815 So. 2d 480, 484 (Miss. Ct. App. 2002) (court may not order payment of health insurance unless cost is known).

V. Escalation clauses

Spouses may agree to alimony that fluctuates based on an escalation clause. The supreme court upheld an agreement that a husband would pay permanent alimony of $1,500 a month, to be adjusted annually based on the Consumers Cost of Living Index. *Speed v. Speed,* 757 So. 2d 221, 223, 226 (Miss. 2000). Similarly, a chancellor properly enforced an agreement that a wife's alimony award would increase as the husband's net income increased. *D'Avignon v. D'Avignon,* 945 So. 2d 401, 404, 410 (Miss. Ct. App. 2006) (increase to be in same percentage to husband's income as original alimony award). Use of an escalation clause does not prevent modification based on a material change in circumstances. *Speed v. Speed,* 757 So. 2d 221, 225-26 (Miss. 2000).

VI. Modification

A. Jurisdiction to modify

A court issuing an alimony order has permanent exclusive jurisdiction to modify the order. Miss. Code Ann. § 93-25-211. The Uniform Interstate Family Support Act, adopted by Mississippi and most states, provides that only the issuing court can modify an alimony order, even if all parties have moved from the state. The act does not address whether spouses may consent to jurisdiction in another state. The drafters' comments note that this issue is left to the individual states to determine. *See* Uniform Interstate Family Support Act § 205, cmt., 9C U.L.A. (2001). No Mississippi case was found discussing modification of alimony under UIFSA.

B. Orders subject to modification

- Permanent alimony may be modified.
- Rehabilitative alimony may be modified.
- Third-party payments that are considered permanent alimony obligations may be modified. *Jones v. Jones,* 917 So. 2d 95, 102 (Miss. Ct. App. 2005) (husband's alimony duty to pay mortgage, taxes and insurance subject to modification).
- Agreed alimony orders may be modified in the same manner as court-ordered support. *Keller v. Keller,* 230 So. 2d 808, 809 (Miss. 1970).
- Permanent alimony may be converted to rehabilitative upon a showing of a material change in circumstances. *Austin v. Austin*, 981 So. 2d 1000, 1006 (Miss. Ct. App. 2007) (based on husband's income loss and wife's free housing).
- Rehabilitative alimony may be converted to permanent alimony. *Oster v. Oster,* 876 So. 2d 428, 431-32 (Miss. Ct. App. 2004) (not clear whether conversion depended on chancellor's reservation of jurisdiction to convert).[1]

C. Test for modification

A petitioner seeking to modify alimony must prove (1) a material change in circumstances, (2) occurring since the original or last decree, (3) that was not foreseeable at the time of the decree; and (4) for a payor seeking reduction, that

[1] In other states, conversion from rehabilitative to permanent requires a finding that a basic assumption underlying the rehabilitative award was erroneous.

the material change was not voluntary. *Weeks v. Weeks,* 29 So. 3d 80, 90 (Miss. Ct. App. 2009); *D'Avignon v. D'Avignon,* 945 So. 2d 401, 414 (Miss. Ct. App. 2006). In addition, the petitioner must show that the change has affected the disparity between the parties' financial conditions. *Jones v. Jones,* 917 So. 2d 95, 100-01 (Miss. Ct. App. 2005) (court erred in finding current financial disparity without comparing circumstances at time of divorce and at hearing). Courts are to use the *Armstrong* factors for this analysis. *Shumake v. Shumake,* 233 So. 3d 234, 239 (Miss. 2017).

1. Material change

Some changes, although material, do not justify a reduction in alimony. The fact that the payor has expenses related to a new marriage or children is not a reason to reduce alimony. *Lewis v. Lewis,* 269 So. 3d 230, 239 (Miss. Ct. App. 2018). And a payor's voluntary debt or expense incurred after the award does not justify modification. *Yancey v. Yancey,* 752 So. 2d 1006, 1010 (Miss. 1999); *Rushing v. Rushing,* 909 So. 2d 155, 159 (Miss. Ct. App. 2005).

2. Foreseeability

Modification is based on a present change in circumstances – not a change anticipated in the future. For example, the court of appeals rejected a husband's argument that an alimony award to his wife would be excessive in two years when he retired – chancellors are to focus on the parties' current financial situation, not on future events. *Phang v. Phang,* 350 So. 3d 1154, 1161-62 (Miss. Ct. App. 2022). This has, in the past, created a dilemma for payors whose alimony (or child support) was based on current income even though a reduction in income was foreseeable. For example, at divorce, a military father who planned to leave service was ordered to pay child support and alimony based on his current income. His future income was unknown. When he retired from the military, he was denied modification (even though he was unable to find employment at a similar salary) because his retirement from the military was foreseeable. *Dill v. Dill,* 908 So. 2d 198, 202-03 (Miss. Ct. App. 2005).

In 2020, the Mississippi Supreme Court resolved this issue, holding that foreseeability refers to whether the impact of an event on the payor's finances is foreseeable – not whether the event itself was known at the time of the prior order. The court rejected a divorcing man's argument that in setting alimony, the court should consider that his wife would receive Social Security in two years (to avoid the result in *Dill*). The question was not whether it was foreseeable that the wife would receive Social Security – it was – the question was whether the impact of Social Security on her future finances was foreseeable. *Alford v. Alford,* 298 So. 3d 983, 990-91 (Miss. 2020).

3. Voluntariness

A payor's voluntary income loss is not a reason to reduce alimony. A chancellor properly rejected the modification petition of a payor who quit work over a dispute with his supervisor and failed to secure employment at a level based on his education and job qualifications. *Yancey v. Yancey*, 752 So. 2d 1006, 1010 (Miss. 1999). And a father's choice to violate company policy led to his firing – he was not entitled to modification of child support. *Tolliver v. Tolliver,* 334 So. 3d 1228, 1231-32 (Miss. Ct. App. 2022). In contrast, an ophthalmologist father sought reduction of alimony and child support based on his substantial income loss, occasioned in part by in-patient treatment for addiction and subsequent mandated four-day work week. The chancellor found that his income loss caused by drinking was voluntary and not a material unforeseeable change in circumstances. The court of appeals reversed – to follow the chancellor's logic, "no modification could be granted to a person whose reckless behavior leads to a loss of income." *Braswell v. Braswell*, 336 So. 3d 1121, 1131-32 (Miss. Ct. App. 2021) (some income loss caused by Covid shutdown). And a chancellor properly reduced alimony when a payor was fired and suffered a loss of two-thirds of his income. *Austin v. Austin*, 981 So. 2d 1000, 1006 (Miss. Ct. App. 2007).

D. Recipient's receipt of Social Security

Until 2018, the Mississippi Supreme Court held that an alimony payor's obligation was reduced dollar for dollar when the payee began receiving derivative Social Security benefits – benefits based on the payor's work history rather than the alimony recipient's work history. *Russell v. Russell,* 148 So. 3d 1052, 1053-54 (Miss. Ct. App. 2014). In *Harris v. Harris*, the supreme court overruled prior cases, holding that all Social Security benefits should be considered under the material change in circumstances test. Now, an alimony payor must prove that the receipt of benefits constitutes a material change in circumstances to justify modification. If the receipt of benefits is considered a material change, the court must consider the *Armstrong* factors to determine whether modification is required, including whether the disparity that existed at the time of the alimony award has been altered. *Harris v. Harris*, 241 So. 3d 622, 628-29 (Miss. 2018). Under the new rule, a wife's receipt of Social Security benefits did not require modification when her husband's income had also increased substantially. *McAdams v. McAdams,* 261 So. 3d 157, 163-64 (Miss. Ct. App. 2018).

E. Bankruptcy

The court of appeals affirmed a chancellor's finding that a husband's bankruptcy filing was a material change that warranted an increase in his former wife's monthly alimony from $2,500 to $4,000 a month. *Crittenden v. Crittenden,* 129 So. 3d 947, 957 (Miss. Ct. App. 2013). However, a payor's bankruptcy petition does not constitute a material change in circumstances to

support alimony reduction unless the court finds that the petition was filed in good faith. A husband's bankruptcy petition, filed one week after his motion to modify alimony was denied, was not a material change in circumstances. *Varner v. Varner,* 666 So. 2d 493, 497 (Miss. 1995).

F. Payor's retirement

A payor's retirement does not automatically justify reduction in alimony. A husband's retirement was foreseeable at the time of his divorce or, alternatively, he had the financial resources to continue to pay the alimony even after his retirement. He spent $10,000 a month, had recently purchased a new home and had no other debts. *Russell v. Russell,* 148 So. 3d 1052, 1053-54 (Miss. Ct. App. 2014). A former husband's alimony obligation was increased by $500 a month in spite of his recent retirement – his income was still much higher than at the time of the original decree and substantially exceeded his former wife's current income. *Austin v. Austin,* 766 So. 2d 86, 89-90 (Miss. Ct. App. 2000) (former wife diagnosed with cancer). In 2020, the supreme court held that a chancellor should not take into account a recipients' future receipt of Social Security benefits in determining an award of alimony – the receipt of benefits should be considered in a subsequent petition for modification. *Alford v. Alford,* 298 So. 3d 983, 989-90 (Miss. 2020).

G. Limits on modification

1. Divorce decree must address alimony

Alimony may not be awarded for the first time in a modification proceeding, no matter how drastically the parties' circumstances have changed since the decree. Alimony may be addressed post-divorce only if the original decree awarded alimony or reserved jurisdiction to address alimony in the future. *Hopkins v. Hopkins*, 379 So. 2d 314, 315 (Miss. 1980). In 2013, the supreme court held that chancellors may not award nominal alimony as a placeholder in case future circumstances call for alimony – alimony must be based on circumstances as they existed at the time of divorce. *Jones v. Jones,* 155 So. 3d 856, 865 (Miss. Ct. App. 2013).

A decree awarding only lump sum alimony may not be modified to include permanent alimony unless the court reserved jurisdiction for that purpose. *Hopkins v. Hopkins*, 379 So. 2d 314, 315 (Miss. 1980). The reverse is also true. A court's order modifying permanent alimony to require a lump sum payment of $10,000 to defray debts was reversed. *Austin v. Austin,* 766 So. 2d 86, 89 (Miss. Ct. App. 2000).

2. Amounts in arrears

Arrearages in alimony may not be modified or forgiven – payments are vested when due and become a debt owed to the recipient. *Tanner v. Roland,* 598

So. 2d 783, 786 (Miss. 1992); *Gregg v. Montgomery,* 587 So. 2d 928, 933 (Miss. 1991); *Brand v. Brand,* 482 So. 2d 236, 237 (Miss. 1986).

3. Out-of-court agreements are not enforceable

A private, out-of-court agreement modifying alimony or child support is unenforceable. Alimony may only be modified by an order of the court. *Armstrong v. Armstrong,* 618 So. 2d 1278, 1281 (Miss. 1993). A court properly disregarded a wife's out-of-court letter stating that she would not hold her husband to make alimony payments as agreed. *Gregg v. Montgomery,* 587 So. 2d 928, 933 (Miss. 1991).

H. Effective date of modification

Courts have discretion to order modification of alimony retroactive to the date a modification petition was filed, *Broome v. Broome,* 75 So. 3d 1132, 1138, 1142 (Miss. Ct. App. 2011), including a reduction in alimony. *Austin v. Austin*, 981 So. 2d 1000, 1007 (Miss. 2007). On the other hand, a court has discretion to refuse a retroactive reduction. *Shearer v. Shearer,* 540 So. 2d 9, 12 (Miss. 1989). A chancellor may require that a payor who is granted a temporary reduction in alimony, but denied permanent modification, repay the alimony recipient the amount by which the alimony was temporarily reduced. *Weeks v. Weeks*, 401 So. 3d 195 (Miss. Ct. App. 2024).

VII. Termination based on cohabitation or de facto marriage

Permanent alimony terminates upon a recipient's cohabitation that alters financial needs or when a recipient enters a de facto marriage. Lump sum alimony does not terminate upon cohabitation. *Chroniger v. Chroniger,* 914 So. 2d 311, 315 (Miss. Ct. App. 2005). Whether rehabilitative alimony terminates may depend upon whether the court ordered that the alimony terminate upon remarriage. No cases have addressed this issue; however, it seems that a rehabilitative alimony award that survives remarriage would also survive cohabitation.

A. Cohabitation

Until 2016, alimony was almost always terminated when a recipient cohabited with a romantic partner. The supreme court held that any cohabitation in which there was "mutual financial support" terminated alimony. Most cohabitations involved at least some amount of mutual financial support.

In 2016, the court of appeals decided three cases that established a new test for terminating alimony based on cohabitation. In each, the court stated that alimony terminates when a recipient's cohabitation alters or eliminates the need for alimony. For example, a mentally disabled wife's cohabitation did not ter-

minate her monthly $650 alimony payment. Although she received financial support from her cohabitant, the additional household income did not alter her financial need for alimony. *Heiter v. Heiter,* 192 So. 3d 992, 993, 996-97 (Miss. 2016); *see also Hughes v. Hughes,* 186 So. 3d 394, 397 (Miss. Ct. App. 2016). Similarly, alimony was not terminated when a woman cohabited with her boyfriend for four years – there was no showing that "any presumed mutual support altered [her] financial needs." *Kittrell v. Kittrell,* 201 So. 3d 1118, 1121 (Miss. Ct. App. 2016) (also finding no de facto marriage). Adding the requirement that cohabitation alter financial need is similar to using the material change in circumstances test generally used to determine whether a recipient's changed financial circumstances warrant modification or termination of alimony.

Divorcing spouses may agree that alimony will terminate if the recipient cohabits. In that case, the only question is whether cohabitation occurred. *Weathersby v. Weathersby*, 693 So. 2d 1348, 1351 (Miss. 1997) (clause terminated alimony, which could not later be reinstated through modification).

B. De Facto Marriage

The de facto marriage test, established in 1999, provides that alimony terminates when a recipient and partner "so fashioned their relationship, to include their physical living arrangements and their financial affairs, that they could reasonably be considered as having entered into a de facto marriage." Applying this test, no de facto marriage existed based on proof that a woman spent several weekends with a man, that he stayed at her house overnight five or six times, and that he purchased groceries on those occasions. *Pope v. Pope,* 803 So. 2d 499, 504 (Miss. Ct. App. 2002); *see also Lewis v. Lewis,* 269 So. 3d 230, 236-38 (Miss. Ct. App. 2018). However, alimony was properly terminated based on evidence that a couple chose not to marry so that alimony would continue. *Burrus v. Burrus,* 962 So. 2d 618, 623 (Miss. Ct. App. 2006); *see Alexis v. Tarver*, 879 So. 2d 1078, 1080 (Miss. Ct. App. 2004) (alimony terminates if recipient "becomes supported in a manner equivalent to marriage").

In 2024, the court of appeals decided the first de facto marriage case in almost twenty years. The court affirmed termination of alimony to a wife who cohabited with a man for over thirty years, based on their de facto marriage. The court agreed with the chancellor that alimony terminates automatically upon entry into a de facto marriage – the payor need not file a petition to trigger termination. The court distinguished mere cohabitation, which may or may not lead to termination of alimony, depending on its impact on the recipient's financial need. *Collins v. Collins,* 397 So. 3d 856, 860-61 (Miss. Ct. App. 2024).

VIII. Security for alimony

A. Equitable lien

An alimony award may be secured by an equitable lien on a payor's marital or separate estate. A court's award of $16,000 in lump sum alimony, secured by a lien on property given to the husband by his mother, was proper. *Morgan v. Morgan,* 397 So. 2d 894, 895 (Miss. 1981). An equitable lien does not divest the debtor of title, but is "merely a charge on the property for the purpose of security." *MacDonald v. MacDonald,* 698 So. 2d 1079, 1085 (Miss. 1997) (chancellor may impose equitable lien to secure lump sum alimony).

In 2023, the Mississippi Supreme Court held that an equitable lien created by contract need not be enrolled as a judgment or executed to be an enforceable lien – an equitable lien is effective without recording against all persons who know or should know of the lien. *West v. West,* 371 So. 3d 145 (Miss. 2023) (emphasizing contractual liens but also citing as authority case dealing with court-ordered lien).

B. Life insurance

A payor may agree to maintain life insurance in an amount sufficient to satisfy payment of alimony obligations that survive the payor's death. The obligation to maintain insurance ends when alimony terminates because of remarriage. *Patterson v. Patterson*, 915 So. 2d 496, 500 (Miss. Ct. App. 2005); *Beezley v. Beezley,* 917 So. 2d 803, 807-08 (Miss. Ct. App. 2005) (insurance policy intended as security for unpaid permanent alimony at payor's death should terminate upon recipient's remarriage). However, nothing prevents a payor from agreeing to maintain a life insurance policy for a spouse unrelated to security for alimony or other obligations. *Voulters v. Voulters,* 196 So. 3d 1019, 1026-27 (Miss. Ct. App. 2015) (agreement providing for alimony and for provision of life insurance were separate and independent).

A court may award alimony-related life insurance to secure obligations that could survive the payor's death, but the amount must be reasonable, measured by the amount that might be owed at the payor's death. A chancellor's award of $175,000 in life insurance to secure monthly alimony of $504 was excessive. Only payments that were in default could be a charge on his estate. *Coggins v. Coggins,* 132 So. 3d 636, 644-45 (Miss. Ct. App. 2014); *see also Farris v. Farris,* 202 So. 3d 223, 237 (Miss. Ct. App. 2016) ($200,000 life insurance policy excessive to secure an alimony award of $1,125 a month for 52 months). It appears that a chancellor may not order a spouse to maintain a life insurance policy for their spouse that is not linked to the amount of alimony owed. A chancellor erred in ordering a husband to maintain a $2,000,000 policy, with $1.5 to go to his wife and .$5 million to go to his daughter after his death – the amount must be linked to alimony that might remain owed at death. *Ali v. Ali,* 232 So. 3d 770, 777 (Miss. Ct. App. 2017).

NOTES

IX. Enforcement

The statute of limitations for suit on judgments, Miss. Code Ann. § 15-1-43, applies to actions to enforce alimony. *Medders v. Estate of Medders,* 458 So. 2d 685, 690 (Miss. 1984). The judgment limitations period runs from the time each alimony payment is due, not from the date of the divorce decree. An action to recover alimony payable over fourteen years was not barred entirely. Only payments due and vested more than seven years prior to the date of filing suit were barred. *Schaffer v. Schaffer*, 46 So. 2d 443, 444 (Miss. 1950).

X. Agreed alimony provisions; court approval

In many states, agreements for spousal support are treated in the same manner as property division agreements – they are matters between the spouses and will not be altered by a court absent fraud, duress, or unconscionability. However, in several decisions the Mississippi Supreme Court has stated that divorce settlement agreement provisions for property division are "contractual" and cannot be altered by the court at divorce, while agreements regarding custody, child support, and alimony remain subject to court approval and may be changed or modified by the court at divorce. *See Barton v. Barton,* 790 So. 2d 169, 172 (Miss. 2001); *Roberts v. Roberts*, 381 So. 2d 1333, 1335 (Miss. 1980); *Stone v. Stone,* 385 So. 2d 610, 614 (Miss. 1980); *Logue v. Logue,* 106 So. 2d 498, 500 (Miss. 1958). In light of these holdings, it is important to consider whether an agreement for property division and alimony should provide that if the court refuses to accept the parties' alimony agreement, the agreement regarding property division is also unenforceable.

MISCELLANEOUS MEDIATION TIPS

A. Collaborative Law and Mediation

Mediation works well in a myriad of disputes – especially family law and in our newest type of divorce proceedings – collaborative law. Collaborative law is a voluntary or contractually-based alternative dispute process. On July 26, 2024, the Mississippi Supreme Court enacted The Mississippi Collaborative Law Rules (en banc order attached). Also attached is a sample Collaborative Law Agreement found on the web. This sample is instructive, but goes beyond the requirements of our rules. Each contract should be individually tailored to the case.

B. Ethical Considerations in Mediation

Please don't ask the mediator to testify whether a party attended the mediation in "bad faith" or "good faith." *See, e.g.*, Miss. R. Mediation Civ. Lit. § VII (B).

> Mediation is confidential and no record shall be made. The parties or the mediator may not be required to testify in any proceedings relating to matters occurring during the mediation session, nor shall they be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

Remember, even a "failed" mediation is valuable. You learn strengths and weaknesses of your case, areas of agreement, work that still needs to be done, and often a settlement is achieved after a mediation as a result of building on the progress in the mediation.

Know the applicable law – do not rely on the mediator to inform you or opposing counsel of independent legal knowledge. This can put a mediator in a difficult ethical situation, *e.g.*, both parties are misunderstanding a tax consequence, application of a lien, etc.

Generally speaking, represented parties should not call the mediator directly without counsel. Purely logistical information is fine, but otherwise, the party will be told we need to have counsel on the call.

C. Irreconcilable Differences Divorce

Do you want your agreement to be enforceable regardless of whether a party withdraws his or her consent? Consider *Crosby v. Peoples Bank of Indianola*, 472 So.2d 951 (Miss. 1985) states:

> [a]lthough a divorce action was filed by the Crosbys on June 9, 1982, along with the settlement agreement, we are of the opinion that the agreement was binding and effective upon the parties even though a divorce action, subsequently, may never have been filed or a decree of divorce entered. The parties could have lived separate and apart for the rest of their lives and the instrument would have been binding upon them.

Sample language to consider if you want your agreement to be enforceable regardless of an irreconcilable differences divorce:

> This Agreement is an enforceable contract between the parties and is not contingent on either party obtaining a Judgment of Divorce in any Court, whether by irreconcilable differences or other ground for divorce. The parties agree that this Agreement may be enforced independently of whether a Judgment of Divorce is entered; however, the parties agree, stipulate, and consent that the provisions of this Agreement may be incorporated into any Judgment of Divorce entered in this action to be filed in _____ County Mississippi, or other Court, with prior consent of the Court. Further, this Agreement shall estop and preclude either party from making other or further demands and claims on the other not included herein, except that such legal action may be taken by either party as is necessary to enforce the terms and provisions hereof or to obtain a divorce. The parties specifically preserve their right to proceed with a divorce on irreconcilable differences or grounds. All matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed under the laws of the State of Mississippi.

But see, Barton v. Barton, 790 So.2d 169, 172-173 (Miss. 2001) (citing *Grier v. Grier*, 616 So.2d 337, 341 (Miss. 1993)):

> Today we hold that a property settlement agreement executed in contemplation of a divorce based upon irreconcilable differences is unenforceable when one party withdraws from the irreconcilable differences proceeding and seeks a divorce on grounds other than irreconcilable differences. Much confusion may be avoided by inserting appropriate language within the property settlement agreement which specifically addresses this contingency. It is not our intent to limit the parties' rights to contract. (emphasis added)

Without express language to the contrary, your agreement will not be enforceable if either party withdraws consent. Nevertheless, we often see parties specifically state:

> This Agreement is contingent on the parties obtaining a judgment of divorce on irreconcilable differences. This Agreement may not be enforced independently of such judgment of divorce; however, the parties agree, stipulate, and consent that the provisions of this Agreement may be incorporated into any judgment of divorce entered in this matter. Further, this Agreement shall estop and preclude either party from making other or further demands and claims on the other not included herein, except that such legal action may be taken by either party as is necessary to enforce the terms and provisions hereof or to obtain a divorce. The parties specifically preserve their right to proceed with a divorce on irreconcilable differences or grounds. All matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed under the laws of the State of Mississippi.

D. Mediation Logistics

You want your mediation to go as smoothly as possible. Consider:

1. Make time to prepare yourself and the mediator.
2. Do you need "neutral" territory?
3. Do you want the parties' conference rooms to be on separate floors?
4. Do you need to plan for more than one day?
5. Are additional parties necessary or helpful to the mediation?
6. Will there be a notary available?
7. Have your agreement and pleadings drafted as fully as possible before the mediation. Share with counsel opposite before the mediation if possible.
8. Talk to your mediator in advance regarding personalities, non-negotiables, etc.
9. Prepare your client for a long day, *i.e.*, child care.
10. If the case isn't ready to mediate, postpone the mediation. Your mediator cares more about your settlement than his or her calendar.

E. Keep Your Eyes on the Prize

We are dealing with families and their future. A good settlement rarely extracts every last ounce of flesh. Rather, the settlement is workable, and reflects true compromise. These agreements are in the best interest of your clients.

Serial: **252605**

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99044-SCT

IN RE: RULES FOR COLLABORATIVE LAW

EN BANC ORDER

Before the en banc Court is The Mississippi Bar's Petition to Create Rules for Collaborative Law.

The Mississippi Board of Bar Commissioners and Bar President created the Ad Hoc Committee on Collaborative Law of the Mississippi Bar to study Collaborative Law and to recommend if Collaborative Law is a viable, desirable option for Mississippi. After a two-year study, the Committee agreed upon a set of rules based on the Uniform Collaborative Laws, with modifications suited for Mississippi, and determined that, for now, the rules should be limited to family law. The Board unanimously adopted the proposed rules. The Bar now petitions this Court to approve them.

After due consideration, we find that the petition should be granted.

IT IS THEREFORE ORDERED that the petition is granted. The Mississippi Collaborative Law Rules set forth in the attached Exhibit A shall be effective on August 26, 2024.

IT IS FURTHER ORDERED that if a conflict arises between the Mississippi Collaborative Law Rules and the Mississippi Rules of Professional Conduct, the Mississippi Rules of Professional Conduct shall control.

SO ORDERED, this the 26th day of July, 2024.

T. KENNETH GRIFFIS, JR., JUSTICE
FOR THE COURT

TO GRANT: RANDOLPH, C.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

TO DENY: KITCHENS AND KING, P.JJ., AND COLEMAN, J.

EXHIBIT A

Mississippi Collaborative Law Rules

Rule 1: Short Title. These Rules are the Mississippi Collaborative Law Rules and may be cited as MCLR.

Rule 2: Definitions. In these Rules:

(a) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(1) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(2) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(b) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(c) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(1) sign a collaborative law participation agreement; and

(2) are represented by collaborative lawyers.

(d) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(e) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:

(1) marriage, divorce, dissolution, annulment, and property distribution;

(2) child custody, visitation, and parenting time;

(3) alimony, maintenance, and child support;

(4) adoption;

(5) parentage;

(6) premarital, marital, and post-marital agreements; and

(7) post Order actions such as modifications, enforcements, and contempts.

(f) "Law firm" means:

(1) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(2) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(g) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(h) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(i) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(j) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(k) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

Rule 3: Collaborative Law Participation Agreement; Requirements.

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intention to resolve a collaborative matter through a collaborative law process under these Rules;

(4) describe the nature and scope of the matter;

(5) identify the collaborative lawyer who represents each party in the process;

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process; and

(7) contain a statement that the parties will forego court intervention while using the collaborative family law process; a statement that they will jointly engage any professionals, experts, etc. in a neutral capacity; and a statement about mandatory disqualification of the collaborative lawyer.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with these Rules.

(c) Participation of Collaborative Law attorneys is limited in scope as permitted by Rule 1.2(c) of the Mississippi Rules of Professional Conduct.

Rule 4: Beginning and Concluding Collaborative Law Process.

(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) Collaborative law is voluntary and a tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by a:

(1) resolution of a collaborative matter as evidenced by a signed record;

(2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Rule 5: Emergency Order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or other individuals related by consanguinity or affinity who reside with a party or who formerly resided with a party. If the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.

Rule 6: Approval of Agreement by Tribunal. A tribunal may approve an agreement resulting from a collaborative law process.

Rule 7: Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

(a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c), a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or other individuals related by consanguinity or affinity who reside with a party or who formerly resided with a party if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or other individuals related by consanguinity or affinity who reside with a party or who formerly resided

with a party only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

Rule 8: Disclosure of Information. Except as provided by law other than these Rules, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Rule 9: Standards of Professional Responsibility and Mandatory Reporting Not Affected.

(a) These Rules do not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional. If a conflict arises between these Rules and the Mississippi Rules of Professional Conduct, the Mississippi Rules of Professional Conduct shall control.

(b) These Rules do not affect the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Rule 10: Appropriateness of Collaborative Law Process. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(a) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(b) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(c) advise the prospective party that:

(1) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(2) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(3) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Rule 7(c).

Rule 11: Coercive or Violent Relationship. A collaborative lawyer should be aware of the dynamics of domestic violence and take into consideration, in assessing whether to begin or continue a collaborative process, whether the parties have a history of a coercive or violent relationship and whether the safety of the parties can be protected adequately during a collaborative process.

Rule 12: Confidentiality of Collaborative Law Communication. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than these Rules.

Rule 13: Privilege Against Disclosure for Collaborative Law Communication; Admissibility; Discovery.

(a) Subject to Rules 14 and 15, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

Rule 14: Waiver and Preclusion of Privilege.

(a) A privilege under Rule 13 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a

privilege under Rule 13, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Rule 15: Limits of Privilege.

(a) There is no privilege under Rule 13 for a collaborative law communication that is:

(1) available to the public under the state open records act or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(2) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties.

(b) The privileges under Rule 13 for a collaborative law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the child protective services agency or adult protective services agency is a party to or otherwise participates in the process.

(c) There is no privilege under Rule 13 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) a court proceeding involving a felony or misdemeanor; or

(2) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under Rule 13 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Rule 16: Authority of Tribunal in Case of Noncompliance.

(a) If an agreement fails to meet the requirements of Rule 3, or a lawyer fails to comply with Rule 10 or 11, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of Rules 4 and 7; and apply a privilege under Rule 13.

Rule 17 : Relation to Electronic Signatures in Global and National Commerce Act. This Rule modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C Section 7001(c), or authorize electronic

delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Rule 18: Severability. If any provision of these Rules or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these Rules which can be given effect without the invalid provision or application, and to this end the provisions of these Rules are severable.

Family Collaborative Law

Susan Davis White, Esq.

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Collaborative Participation Agreement – SAMPLE

Below is an example of a Collaborative Participation Agreement couples would sign as they begin the collaborative divorce process. Specific terms of the agreement are adjusted to meet the needs and concerns of individual couples, but the goal of resolving the dissolution of a marriage in an open, honest and respectful way remains at the forefront.

1. Introduction

A. _____ and _____, ("the parties") have chosen to use the principles of the Collaborative Process to settle, in a non-adversarial and private manner, the issues arising from the dissolution of their marriage and the restructuring of their family. They have retained Collaborative attorneys ("the attorneys") to assist them in achieving this goal, namely, _____who represents_____; and _____ who represents_____.

B. The parties acknowledge that the essence of the Collaborative Process is the shared belief that it is in the best interests of their family to commit themselves to avoid the use of litigation and litigation-based strategic negotiation techniques.

C. The parties adopt this form of alternative dispute resolution which does not rely on a court-imposed resolution but instead relies on honesty, cooperation, integrity, civility and full disclosure, with a focus on the future well-being of the whole family in reaching an acceptable solution.

The parties commit themselves to the Collaborative Process as a better way to resolve their differences. Specifically, the parties agree as follows:

2. No Litigation

A. The parties commit themselves and agree to devote all of their efforts to settle the issues arising from the dissolution of their marriage and the restructuring of their family without adversarial court intervention. During the Collaborative Process, unless otherwise agreed, prior to reaching final agreement on all issues, no pleading or motion will be prepared or filed. If either party initiates a contested legal proceeding against the other, the Collaborative Process is immediately terminated.

B. Each party understands that the representation of his or her Collaborative attorney is limited to the Collaborative Process and non adversarial representation. While each attorney is the advisor to his or her own client and serves as that client's representative, counselor, and advocate, the parties agree that neither of the

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Feedback from Clients

"There is no way I can begin to thank you for all you've done for me and my family over the last year. Your guidance, patience, understanding and compassion were amazing. You provided a stable foundation in the face of a storm. I thank my lucky stars for having you represent me." B.M.

Susan Davis White

attorneys, nor their firms, can ever represent either party in a contested court proceeding against the other, or appear as counsel for either of them in any court other than a mutually agreed upon submission of documents to obtain an uncontested divorce or other mutually-agreed upon consent order.

3. Full Disclosure

A. The parties will promptly, and continually throughout the Process, provide full and informal disclosure of all important information, whether requested or not and whether or not it is directly considered relevant to the Process. Important information shall mean any information which either party might need to make an informed decision about each issue that needs to be resolved. The parties also agree to provide voluntarily any written authorization which may be required to obtain such information.

B. During the Process, the parties will not employ formal discovery procedures and acknowledge that by agreeing to this they are giving up certain investigative procedures and methods that would be available to them in the litigation Process. The parties give up these measures with the understanding that they will each make a full, fair and complete disclosure of all assets, income, debts and other information necessary for an informed settlement. The parties understand that if either of them knowingly misrepresents or withholds important information, whether or not he or she thinks the information is relevant, the Process will be terminated.

4. Participation with Integrity

A. The parties will work to protect the privacy and dignity of everyone involved in the Process.

B. The parties will not take advantage of any mistakes, misunderstandings, inconsistencies or miscalculations of any participant. Such mistakes will be disclosed promptly, making corrections where needed.

5. Communication

A. **Meetings**
The parties agree to work toward the resolution of issues in a series of meetings which will include the attorneys and any mental health professionals, financial professionals and/or other experts that the parties and the attorneys agree to include as part of the Process. The parties commit to meet regularly and when they do meet, they will come prepared, having done any homework assigned for that meeting. If homework cannot be completed prior to a scheduled meeting, they will inform all of the members of the group at least 48 hours before the meeting so that a decision can be made about whether or not to reschedule the meeting.

B. **Tone of Communication**
The parties' written and verbal communications will be respectful and constructive. They will not make accusations or claims which are punitive in nature. They will try to avoid taking inflexible positions, understanding that the accommodation of each other's interests and the ability to compromise are essential to the success of this Process. Neither the parties nor the attorneys, will use the threat to withdraw from the Process or to go to Court as a means of achieving a desired outcome on an issue or to try to force settlement.

C. **Focus of Communication**
The parties will try not to focus on the problems that may have contributed to the breakdown of the marital relationship but will focus instead on the issues that need to be resolved for both of them to move forward with their lives.

D. **Communication Without Criticism or Interruption**
To achieve a mutually agreeable settlement, the parties must be able to speak freely and express their respective interests, needs, desires and options without concern that they will be criticized or judged by the other. Each party will listen respectfully to the other's point of view and attempt to understand it even if they do not agree with it. They will use their best efforts not to interrupt each other or any other participant during the meetings.

E. **Communication Outside Collaborative Process**
The parties agree not to pressure each other to discuss settlement issues outside of the Collaborative meetings. They may agree in advance to discuss certain issues, such as the division of personal property or the children's schedules, as long as it is understood that the discussion will end if either party feels uncomfortable or pressured.

F. **Legal Advice**
While most legal advice will be given in the group meetings, a party may ask to communicate individually with his or her own attorney for advice and guidance. If the advice is substantive in nature, that is dealing with the law and a party's choices or potential options, the substance of that communication must be shared with the group at the next meeting. If a party wishes to communicate privately with his or her attorney on issues that do not pertain to the substantive issues being worked on in the group meetings, such as for emotional support, the substance of that communication need not be shared with the group.

G. **Privileged and Confidential Communications**
The parties understand that there is an attorney-client privilege between each party and his or her individual attorney so each has the right to instruct his or her individual attorney not to reveal specific information. However, if either party so instructs his or her attorney to keep a communication about substantive matters confidential from the group as a whole, the Collaborative Process may be subject to termination due to the violation of the full disclosure commitment.

6. Preservation of the Status Quo

A. The parties agree that they will not sell, transfer, borrow against, encumber, hypothecate, conceal, assign, remove, or in any way dispose of any property, real or personal, whether or not marital, individually or jointly held by them, without the written consent of the other, except in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this Process.

B. The parties agree that they will not borrow against, cancel, transfer, dispose of or change the beneficiaries of any insurance policy or other coverage including, but not limited to, life, health, dental, vision, automobile and disability insurance held for the benefit of either of them or their minor children, without the written consent of the other.

C. The parties agree that they will not incur any debt or liability for which the other may be held responsible, including, but not limited to, further borrowing against any credit lines secured by the family residence, further encumbering of any asset, or using credit cards or cash advances, other than in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this Process.

7. Children's Issues

The parties recognize that their children may suffer as a result of their divorce, and therefore they commit themselves to minimizing the trauma to and the disruption of their children's lives. To that end, they agree as follows:

A. **Settlement Issues Will Not Be Discussed in the Presence of the Parties' Children**
Communication with the children, or in the children's presence, regarding settlement issues will occur only if it is appropriate and done by mutual agreement and/or with the advice of a neutral mental health professional.

B. **The Children will not be Interrogated**
The parties will not question the children about the other parent or the events occurring in his or her residence.

C. **The Children Will Not Be Placed in the Middle of The Parties' Disagreements**
The parties will not criticize each other to their children or in their presence, nor will they allow others to criticize the other when the children are present. They agree that their children shall not be forced to choose between them, and will encourage them to love both parents equally. Neither party will use the children as a messenger to deliver information to the other party.

D. **Access to the Children**
The parties will not attempt to impede access of the children to the other parent. The children shall have reasonable telephone access with both parents, and each parent will have reasonable telephone access to the children when they are not with them. They agree they will not deny access of the children to extended families, unless they specifically agree otherwise.

E. **Information Regarding the Children**
The parties will promptly inform the other parent of any accident, illness or other mishap involving the children. The parties will have equal access to records and information regarding their children's education, health, activities and general welfare.

F. **Removal from Area**
The parties will not remove, or threaten to remove, the children from the area, absent the explicit written consent of the other parent. However, they further agree that consent to such removal for vacations or other legitimate activities will not be unreasonably withheld.

8. Agreements

A. During the course of the Process, the parties will arrive at "temporary" agreements that will not be binding contracts, but will be respected and followed by the parties

during the course of the Process. Not respecting and following agreements made during the Process will impede the progress of the Process and may ultimately cause it to terminate.

B. The parties understand that a written binding agreement signed by both of them during the Collaborative Process is a legally enforceable agreement to be relied on. Such agreement will survive the termination of the Process and may be presented to the court as a basis for a court order.

C. When the parties have reached an agreement on all issues, their temporary agreements will be reduced to a written document which will be an enforceable contract, binding the parties to its terms. This contract may be presented to a court in a subsequent action for divorce.

9. Team Members

A. **Team Members**
The parties may decide to use the team approach to the Collaborative Process in which case they may retain any or all of the following team members with whom they must execute separate engagement agreements.

i. Two mental health professionals who each act as a coach for each party. Their role is to facilitate communication in the process between all team members. The parties may alternatively choose to hire only one mental health professional to act as a neutral coach for both of them.

ii. A mental health professional with a practice focus on children to meet with the parties and their children in an effort to give a voice to the needs of the children and assist in resolving parenting issues.

iii. A financial neutral to gather the financial information and to assist with resolving financial issues.

B. **Communications Among Team Members**
The parties recognize and agree that their individual communications in the Process, including otherwise privileged information, may be shared by and among their respective attorneys and the other team members. Each party instructs their attorney and the other team members to have whatever discussions among themselves as are necessary to assist them in resolving their issues. This will include discussions the substance of which may or may not be shared with the parties.

C. **Future Role of Team Members**
The parties understand that no team member may act in another capacity for the parties once the Process has concluded.

D. **Subsequent Litigation**
No team member can participate in any subsequent litigation between the parties even if the parties agree otherwise and desire the team members' participation.

10. Neutral Experts

When appropriate the parties may employ neutral experts for purposes of valuation, cash flow analysis, appraisal of real or personal property, or investigation of any other issue that requires expert recommendations. They will agree in advance as to how the costs of these experts will be paid. They agree that the team members and the expert

may engage in whatever discussion is necessary for resolution of the case, including discussions outside of their presence. In the event of litigation a neutral expert may be called as a witness but only if the expert and both parties agree.

11. Confidentiality of Communication Within the Collaborative Process

A. Because the parties need to feel comfortable exchanging information freely and in testing out ideas and options within the Collaborative Process, they instruct the team members to keep all Collaborative communications exchanged within the Collaborative Process confidential and confined to this Process, except as the parties may agree. A Collaborative communication is defined as any oral, written, or recorded statement that is made to conduct, or participate in, the Collaborative Process. No Collaborative communication shall be subject to discovery or admissible as evidence in any subsequent litigation except in the following situations:

   i. If an ethics complaint, or claim of malpractice or misconduct, is filed or made against either of the parties' Collaborative attorneys or against any mental health or financial professional involved in this Process;

   ii. If a claim is filed for fees owed to a Collaborative professional;

   iii. If a threat or statement is made regarding an intention to inflict bodily injury or to commit or conceal a crime;

   iv. If a threat is made involving harm to the parties' children or removal of their children from the place where they live;

   v. If a communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of the children;

   vi. If a Collaborative communication is not provided or prepared specifically for the use of the Process as, for example, bank records, credit card statements, tax documents, insurance policies, etc.;

   vii. If a signed agreement to be relied on is made by the parties during the Collaborative Process pursuant to paragraph 8.B.;

   viii. If a communication is needed to prove or disprove the validity of a written agreement signed as part of the Process; and

   ix. If a Collaborative communication is used to assist in obtaining an uncontested divorce or other court ordered resolution of matters subject to and resolved within the Collaborative Process.

B. Subject to the exceptions set forth in 11.A, if the Collaborative Process is terminated and litigation occurs, the parties agree as follows:

   i. They will not introduce as evidence Collaborative communications, including any statements, admissions or offers disclosed during the Collaborative Process or documents generated during the Collaborative Process (including minutes from meetings, records and notes).

   ii. They will not ask or subpoena either attorney or any team member to appear in court to testify in any court proceedings, nor will they attempt to take the deposition of either attorney, or any team member with regard to matters disclosed in the Collaborative Process. A jointly retained neutral expert may be called to testify or deposed so long as the neutral expert and both parties agree.

iii. The parties will not require the production in any court proceeding any documents generated during the Collaborative Process, including any notes, records, and minutes from meetings in the possession of either attorney or any team member.

C. Notwithstanding the foregoing, if the attorney-client relationship between either of the parties and their current Collaborative attorney is terminated, then the Collaborative attorney is authorized to disclose communications made during the Collaborative Process to any successor attorney, if so requested by the party. Pursuant to Rule 1.16.4 (e) of the Rules of the Virginia Supreme Court, the Collaborative attorney must also deliver the file of the client to the client or successor attorney.

12. Termination of the Collaborative Process

A. Termination of Collaborative Process by a Party. If either party decides to withdraw from the Collaborative Process, he or she will give prompt written notice. Upon withdrawal from the Collaborative Process, unless there is an emergency, there is a thirty (30) day period, before either party can file motion in any court or administrative agency regarding an issue dealing with separation or divorce so as to permit the other party to retain another attorney and make an orderly transition. [It is agreed that either party may bring this provision to the attention of a court in requesting a postponement of a hearing.] (see 11.C.)

B. Termination of the Collaborative Process by a Party's Attorney. A Collaborative attorney must withdraw from and terminate the Collaborative Process in the event he or she learns that their client despite their advice to the contrary has withheld or misrepresented information that has a bearing on issues in the Collaborative Process as part of the Collaborative Process, or otherwise acts so as to undermine the Collaborative Process. The attorney withdrawing and terminating the Collaborative Process shall advise the other attorney that he or she is withdrawing but shall not reveal the reason for the termination. The parties understand that, if the Collaborative Process terminates, each of them has the right to his or her file from their attorney or they may direct that his or her file be provided to a successor attorney in accordance with the Rules of Professional Conduct.

13. Withdrawal of Attorney or Other Team Member from the Collaborative Process Without Terminating the Process

A. **Withdrawal of Attorney**
If either attorney deems it appropriate to withdraw from the case for any reason except that set out in 12.B. he or she agrees to do so by a written notice of withdrawal to his or her client, the other attorney, and to all other professionals involved. This may be done without terminating the Collaborative Process. The party whose client has terminated his or her representation will use his or her best efforts to replace their attorney in a timely fashion.

B. **Withdrawal of Other Team Member**
If another team member deems it appropriate to withdraw from the case for any reason except those set out in 12.B. below, he or she agrees to do so by a written notice of withdrawal to his or her client, the attorneys and to all other professionals involved. This may be done without terminating the Collaborative Process. The parties will use their best efforts to reach agreement on whether to replace the

withdrawing team member with another professional, or proceed without replacing such professional.

14. Fees and Costs

A. **Attorneys' Fees**

Each party has retained his or her own attorney and will pay for that attorney's services unless otherwise agreed to in the Collaborative Process.

B. **Coaches' Fees**

In the event that both parties retain individual coaches, they will each pay for his or her coach's services unless otherwise agreed to in the Collaborative Process.

C. **Neutrals' Fees**

In the event that the parties agree to retain a neutral coach, child specialist, financial neutral or other joint neutral expert, they shall decide in the Collaborative Process how that professional will be paid.

D. **Retainers and Outstanding Balances**

The parties will work together to provide the requested retainers and remain current in payments to each Collaborative professional and/or joint neutral expert retained to assist either or both of them. If any Collaborative professional or neutral expert has an outstanding balance that has remained unpaid for over 60 days, then the unpaid balance shall be the first subject of the next meeting, and shall be resolved before moving on to other issues.

15. Incentive to Work Toward a Successful Resolution

The parties realize that the Collaborative Process requires a considerable investment of time and money and that the possibility of having to give up, not only their respective attorneys but also the mental health professionals and neutral professionals that were involved in this Process is substantial incentive for the parties to work toward the success of the Collaborative Process.

16. Instructions to The Attorneys

Each party instructs his or her attorney to help them honor the promises made in this Agreement. Each party also instructs his or her attorney not to act in any way in a manner inconsistent with the promises they have made herein. Each party agrees to follow this Collaborative Participation Agreement and to promote both the spirit and written word of this Agreement.

MEDIATION AND COLLABORATIVE LAW
Guest Speaker Susan Steffey

Susan Steffey received her B.A. *summa cum laude*, and her J.D. from Florida State University School of Law and was admitted to the Florida Bar in 1987. She served as a law clerk to the Honorable Rhesa H. Barksdale of the United States Court of Appeals for the Fifth Circuit and was admitted to the Mississippi Bar in 1991. Ms. Steffey is currently a member of Watkins & Eager PLLC in Jackson where she has practiced since 1991.

Ms. Steffey is Peer Review rated by *Martindale Hubbell* as AV Preeminent and is recognized in Best Lawyers in multiple practice areas, including family law and mediation. She is also a member of the American Inns of Court, Charles Clark Chapter.

Ms. Steffey enjoyed a diverse litigation practice in federal and state courts, including pharmaceutical and medical device litigation, medical malpractice, mass torts and personal injury. Her longest and most extensive experience is in family matters and assisting parties in resolving domestic cases through mediation. Currently, Ms. Steffey enjoys exclusively mediating cases around the state.

CASE NAME	LENGTH OF MARRIAGE	AGE & CHILDREN	FAULT	INCOME	PROPERTY DIVISION	ALIMONY	CHILD SUPPORT	APPEAL	COMMENTS
I. Marriages over 20 years									
A. Permanent alimony awarded									
Williamson v. Williamson, 296 So. 3d 206 (Miss. Ct. App. 2020)	21	2 minor children (wife)	Irreconcilable differences	Husband: $8,617./mo; Wife: $1,384/mo	Wife: Approx $230,000	$1200/mo 22% of disparity	$1,720	Husband, aff'd	Wife unable to meet expenses; marriage ended with his affair; Husband had $180,000 in separate property
Phang v. Phang, 350 So. 3d 1154 (Miss. Ct. App. 2022)	34	Adult children; Wife 62	Irreconcilable differences	Husband: $7,997/mo; Wife: $0/month	Both: $606,000	$2,700/mo (34% of disparity)	NA	Husband, aff'd	Long marriage, great disparity in incomes
Lewis v. Lewis, 360 So. 3d 298 (Miss. Ct. App. 2023)	20	2 Adult children: Wife 51 Husband 52	H: Adultery	Husband: $125,000/yr; Wife: $3,470/mo		$2,000/mo (29% of disparity)	NA	Husband, aff'd	Husband's ongoing affair; disparity; marriage length supported award.
D. All alimony denied									
Coleman v. Coleman, 324 So. 3d 1204 (Miss. Ct. App. 2021)	20	Husband: disabled; No children	Irreconcilable differences	Husband: $1,500 Soc. Sec./mo; Wife: $2,781/mo	Equal	Denied	NA	Husband, aff'd	Property division provided adequately for both
Neely v. Neely, 305 So. 3d 164 (Miss. Ct. App. 2020)	42	Children emancipated	Irreconcilable differences	Unclear; incomes equal	Unclear	Denied	NA	Husband, aff'd	Equal incomes; neither had debt; parties kept finances separate during marriage
II. Marriages 10 - 19 years									
A. Permanent alimony awarded									
Oates v. Oates, 291 So. 3d 803 (Miss. Ct. App. 2020)	16	Wife, disabled; No children	H: Adultery Wife: disabled	Husband: $33,000/yr; Unclear		$504/mo (18% of disparity)	NA	Husband, aff'd	Wife unable to work; could not meet expenses
Gaskin v. Gaskin, 304 So. 3d 641 (Miss. Ct. App. 2020)	18	Wife; disabled; 2 minor children (wife)	H: Adultery	Husband: $12,085; Wife: $500/mo	Equal; Wife received $786,521	$1,000/mo (11% of disparity)	$2,417	Husband, aff'd	Wife disabled; substantial disparity
Ewing v. Ewing, 301 So. 3d 709 (Miss. Ct. App. 2020)	15	4 children (wife)	Irreconcilable differences	Husband: $4,752; Wife: $3,115/mo	Wife: $44,000	$500/mo (71% of disparity)	$938/mo	Husband, aff'd	Wife unable to meet expenses; custody of four children
Descher v. Descher, 304 So. 3d 620 (Miss. Ct. App. 2020)	17	2 children (wife)	Irreconcilable differences	Husband: $71,377/mo; Wife: $2,000/mo earning capacity	Equal: $1.5 million	$7,500/mo (12% of disparity)	$7,500/mo	Husband, aff'd	Extreme income disparity; standard of living of marriage
Wildman v. Wildman, 301 So. 3d 787 (Miss. Ct. App. 2020)	15	H: 39: Wife: 38; 2 children (wife)	Irreconcilable differences	Husband: $10,049; Wife: $1,726/mo higher earning capacity	Equal: $198,277	$3,000/mo (46% of disparity)	$1,800/mo	Husband, rev'd	Affirming permanent alimony but reversing amount as excessive; wife could increase earnings by working full-time
Anderson v. Grabmiller, 394 So. 3d 493 (Miss. Ct. App. 2024)	14	H: 41; W: 39; 2 children (wife)	Irreconcilable differences	Husband: $2,995; Wife: $12,969.mo	Equal: $140,000	$1,000/mo (11% of disparity)	H: $600/mo	Wife; aff'd	Physician wife had significantly higher income; marriage was long; husband cared for children and home during marriage
B. Rehabilitative alimony awarded									
Warren v. Rhea, 318 So. 3d 1187 (Miss. Ct. App. 2021)	15	1 child (husband)	W: Habitual cruelty	Husband: $4,795; Wife: $2,115	Unclear	$750/mo for 4 yrs (28% of disparity)	None	Husband; rev'd on other grounds	Disparity in incomes
Case v. Case, 339 So. 3d 796 (Miss. Ct. App. 2022).	14	H: 40; Wife: 40; 2 children (husband)	H: Adultery	Unclear	Unclear	$2,500/mo for 4 yrs	NA	Wife; aff'd	Rehabilitative alimony appropriate for wife in 40s returning to school; husband had custody and wife's support for children was suspended for four years
McKenzie v. McKenzie, 397 So. 3d 510 (Miss. Ct. App. 2024)	13	Wife: 36; 3 children (wife)	Irreconcilable differences	Husband: $13,654/mo; Wife: homemaker	Equal: $1,700,000	$5,000/mo for 3 yrs	H: $3,000/mo	Wife; aff'd	Wife was young and had worked previously; she received substantial property, including $1 million in cash assets
Denham v. Denham, 2022 WL 290890 (Miss. Ct. App. Feb. 1, 2022), reversed in part, 354 So. 3d 954 (Miss. 2022)	15	3 children (wife)	H: Adultery	Unclear	Wife: 60%; Husband: 40%	$350/mo for 2 yrs	$1,736/mo	Husband, aff'd	Husband's income was greater; wife had greater share of debt; reversed on other grounds
D. All alimony denied									
Pace v. Pace, 324 So. 3d 369 (Miss. Ct. App. 2021)	14	Wife: 43; 1 child (wife)	H: Adultery	Both currently unemployed; both with earning capacity	Wife: $720,000	Denied	$1,200	Wife; aff'd	Wife was young with earning capacity as Dietician; physician husband relinquished license after treatment for addiction
III. Marriages under 10 years									
B. Rehabilitative alimony awarded									
Garner v. Garner, 343 So. 3d 1097 (Miss. Ct. App. 2022).	8	2 children (wife)	Irreconcilable differences	H: $42,000; W: $600,000	H: 48%; W: 52%	$508/mo for 2 yrs (.1% disparity)	H: $508/mo	Husband, aff'd	Husband could earn more; Wife had care of children; Husband's abuse ended the marriage
Gussio v. Gussio, 371 So. 3d 734 (Miss. Ct. App. 2023)	9	4 children (wife); Wife 35	W: Habitual cruelty	H: Unclear; W: $0	W: 50% personal property; remaining excluded by prenuptial agreement	$250,000 lump sum $1,500 rehabilitative for 30 mo	H: $2,000/mo	Husband, aff'd	H net value of separate property: $4,721,000; wife had no income and limited assets; husband was at fault
C. Lump sum alimony awarded									
Shannon v. Shannon, 357 So. 3d 1043 (Miss. Ct. App. 2022)	1	None	W: Habitual cruelty			$26,000 lump sum alimony	NA	Wife, aff'd	Elderly man with Alzheimers granted divorce against wife based on habitual cruelty; award would support her for 13 months, the length of the marriage
IV. Reversals; type required not clear									
Hammond v. Hammond, 327 So. 3d 173 (Miss. Ct. App. 2021)	25	Wife: 47; 1 child (wife)	Husband: Adultery	Husband: $12,150/mo plus bonus; Wife: $646/mo	Wife: 55%	$500/mo for 2 years (5% of disparity)	$1167/mo	Wife, rev'd	Grossly inadequate considering marriage length, great disparity in incomes; husband's affair ended marriage