

SUPREME COURT OF MISSISSIPPI

Margaret Lynn Owen v. Kenneth Whiteside Owen

798 So. 2d 394 (Miss. 2001) · No. 1999-CA-01077-SCT · Decided March 1, 2001

SUMMARY

The Mississippi Supreme Court reviewed a divorce property division in which the chancery court awarded Kenneth Owen 60% and Margaret Owen 40% of specified marital assets and declined to divide Kenneth's ESOP and 401(k) plans. The court held that the chancellor failed to address the applicable Ferguson equitable-distribution factors and erred by excluding retirement benefits accumulated during the marriage from the marital estate. The judgment was reversed and remanded for a new division of marital assets.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Smith, J.; Pittman, C.J.; Banks, P.J.; Waller, J.; Cobb, J.; Diaz, J.; Easley, J.; McRae, P.J.; Mills, J.
JURISDICTION	Mississippi
DECIDED	March 1, 2001
DOCKET	1999-CA-01077-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Margaret appealed from the Union County Chancery Court's denial of her motion to reconsider the equitable division of marital assets and to include Kenneth's ESOP and 401(k) retirement benefits in the marital estate.
STANDARD OF REVIEW	A divorce-related division and distribution of property is reviewed under a limited standard and will be upheld if supported by substantial credible evidence. Findings are not disturbed unless the chancellor was manifestly wrong, clearly erroneous, or applied an erroneous legal standard. When specific findings are absent, the appellate court generally presumes that factual issues were resolved in favor of the appellee.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court en banc opinion; precedential.
PARTIES	Margaret Lynn Owen v. Kenneth Whiteside Owen

TOPICS

equitable distribution

divorce

family law procedure

standard of review

appellate procedure

PRACTICE AREAS

family law

divorce

marital property

retirement benefits

QUESTIONS PRESENTED

1. Whether the chancellor erred by relying primarily on Kenneth's financial contributions rather than making findings concerning all applicable Ferguson equitable-distribution factors.
2. Whether Kenneth's ESOP and 401(k) retirement benefits accumulated during the marriage were marital assets that had to be included in the equitable-distribution analysis.

HOLDINGS

1. The chancellor committed reversible error by failing to specifically address on the record all Ferguson factors applicable to the marital property being divided.
2. Retirement benefits accumulated during the marriage, including plans funded solely by one spouse's wages or solely by the employer, are marital assets potentially subject to equitable distribution when the other spouse made alternative contributions to the marriage.

KEY QUOTATIONS

“This Court has established equitable distribution of marital assets upon divorce as an automatic right and has delineated the following eight factors for consideration by the chancellor in equitably dividing such marital property:” (798 So. 2d at 398)

“Although contributions of domestic services are not made directly to a retirement fund, they are nonetheless valid material contributions which indirectly contribute to any number of marital assets, thereby making such assets jointly acquired.” (798 So. 2d at 400)

“When separate plans for each spouse are not in existence, it is only equitable to allow both parties to reap the benefits of the one existing retirement plan, to which both parties have materially contributed in some fashion.” (798 So. 2d at 400)

FACTUAL BACKGROUND

Margaret and Kenneth were married in 1987 and accumulated two homes, vehicles, an investment account, and other property during the marriage. Kenneth earned substantially more income and accumulated an ESOP and 401(k) through his employment; both retirement plans were titled solely in his name and had been funded or accumulated during the marriage. Margaret contributed through domestic work, employment, business income, and assistance with the homes and household. The chancellor awarded Kenneth 60 percent and Margaret 40 percent of the proceeds from the marital assets but did not include Kenneth's retirement plans in the division.

PROCEDURAL HISTORY

The parties filed a joint complaint for divorce on the ground of irreconcilable differences and submitted unresolved property-division issues to the chancery court. The chancellor divided the marital assets, generally awarding Kenneth 60 percent and Margaret 40 percent, but did not specifically divide Kenneth's ESOP or 401(k) plans. After the chancellor denied Margaret's motion for reconsideration, she appealed. The Mississippi Supreme Court reversed and remanded for a new division of marital assets.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The chancery court must conduct a new division of marital assets, include Kenneth's ESOP and 401(k) plans in the marital-property analysis, and make findings of fact concerning each Ferguson factor applicable to the property division.

CASES CITED

- Reddell v. Reddell, 696 So. 2d 287, 288 (Miss. 1997)
- Carrow v. Carrow, 642 So. 2d 901, 904 (Miss. 1994)
- Richardson v. Riley, 355 So. 2d 667, 668 (Miss. 1978)
- Bell v. Parker, 563 So. 2d 594, 596-97 (Miss. 1990)
- Maslowski v. Maslowski, 655 So. 2d 18, 20 (Miss. 1995)
- Tedford v. Dempsey, 437 So. 2d 410, 417 (Miss. 1983)
- Ferguson v. Ferguson, 639 So. 2d 921, 927-28, 934 (Miss. 1994)
- Kilpatrick v. Kilpatrick, 732 So. 2d 876, 880-81 (Miss. 1999)
- Carrow v. Carrow, 741 So. 2d 200, 202 (Miss. 1999)
- Lindsey v. Lindsey, 749 So. 2d 77, 80 (Miss. 1999)
- Trovato v. Trovato, 649 So. 2d 815, 818 (Miss. 1995)
- Chamblee v. Chamblee, 637 So. 2d 850, 863-64 (Miss. 1994)
- Pierce v. Pierce, 648 So. 2d 523, 526 (Miss. 1994)
- Draper v. Draper, 627 So. 2d 302, 306 (Miss. 1993)
- Hemsley v. Hemsley, 639 So. 2d 909, 915 (Miss. 1994)
- Johnson v. Johnson, 650 So. 2d 1281, 1285-86 (Miss. 1994)
- Hankins v. Hankins, 729 So. 2d 1283, 1287-88 (Miss. 1999)
- Traxler v. Traxler, 730 So. 2d 1098, 1102 (Miss. 1998)
- Rennie v. Rennie, 718 So. 2d 1091, 1095 (Miss. 1998)
- Tillman v. Tillman, 716 So. 2d 1090, 1094 (Miss. 1998)
- Love v. Love, 687 So. 2d 1229, 1232 (Miss. 1997)
- Voda v. Voda, 731 So. 2d 1152, 1157 (Miss. 1999)

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