

# Preserving The Record On The Chancellor's Application of The *Ferguson* Factors In Equitable Distribution Cases

By Associate Justice  
George C. Carlson, Jr.  
Supreme Court of  
Mississippi

Justice George C. Carlson, Jr., was born on May 23, 1946, in Greenwood. After graduation from South Panola High School in Batesville in 1964, he received his undergraduate degree from Mississippi State University in 1969 and his Juris Doctor from the University of Mississippi Law School in 1972. From June, 1972 through December 1982, Justice Carlson was in private practice of law in Panola County. In November, 1982, he was elected Circuit Judge for the Seventeenth Judicial District of MS and was reelected in 1989, 1990, 1994, and 1998. Justice Carlson was appointed to the Supreme Court by Governor Ronnie Musgrove on October 29, 2001 and was reelected in November 2004.

In 1994, the Mississippi Supreme Court recognized the need to provide guidelines to the chancellors as they made decisions in marital property division. *Ferguson v. Ferguson*, 639 So.2d 921, 928-29 (Miss. 1994). These guidelines quickly became known as the *Ferguson* factors. However, in establishing these guidelines, the Supreme Court directed the chancellors "to support their decisions with findings of fact and conclusions of law for purposes of appellate review." *Id.* at 928. Unfortunately, the Supreme Court has sometimes been called upon to conduct its mandated appellate review of the chancellor's application of the *Ferguson* factors without an adequate record. The cases below are examples.

*Sandlin v. Sandlin*, 699 So. 2d 1198 (Miss. 1997):

**Summary:** In marital dissolution proceeding, the chancery court entered judgment dissolving marriage and dividing marital property. Husband appealed. The Supreme Court, Smith, J., held that: (1) dissolution court did not abuse discretion by using spouses' affidavits, not expert testimony, to value marital property; (2) court's failure to make findings of fact or conclusions of law in order dividing property required remand; and (3) court did not deny husband due process by making property division decision based on spouses' un rebutted, uncross-examined affidavits. **Holding:** Affirmed in part and reversed and remanded in part.

The chancellor mentioned the guidelines, stating that he was fol-

lowing them and applying them to the facts of the case. But in his order granting the divorce and dividing the property he made no findings of fact or conclusions of law as is required by *Ferguson*. Therefore, this Court could not evaluate the basis that he used to determine the division of property. For instance, we could not determine why the Hattiesburg marital home was awarded to Nancy when she had moved out of it and into another home in the city. Further, the chancellor did not put into the record exactly how he figured out that Nancy was entitled to forty percent of 375 shares of Gannett stock. There was some question as to the exact amount of stock that Dwight owned. Although Nancy estimated that Dwight owned 375 shares, the record shows three separate certificates showing 247 total shares. There also exists in the record a letter from Gannett documenting that it had issued Dwight \$6,548.75 worth of stock at \$42.25 per share for a total of 155 shares in late 1991. But given the fact that Dwight had purchased the print shop in part with funds from the sale of \$12,000 worth of Gannett stock in 1993, it cannot be said with certainty that Dwight owned those 155 shares. These are but two instances to show that the record would have been better served had the chan-

*Continued on next page*

## Preserving The Record On The Chancellor's Application of The *Ferguson* Factors

chancellor made findings of fact and conclusions of law on the record. He did not. As a result, this Court finds that the failure to make findings of fact and conclusions of law was manifest error requiring reversal and remand.

*Id.* at 1204.

*Johnson v. Johnson*, 823 So. 2d 1156 (Miss. 2002):

**Summary:** In divorce proceeding, the chancery court granted divorce and distributed assets. Ex-husband appealed. The Supreme Court, Smith, P.J., held that trial court's failure to make findings of fact and conclusions of law to justify its division of the property required reversing and remanding for trial court to make findings of fact. **Holding:** Reversed and remanded.

The chancellor's order in this case fails to make the specific findings of fact and conclusions of law in regards to the *Ferguson* factors of equitable distribution. The chancellor's opinion states that "the first analysis that is required under *Ferguson v. Ferguson* ... is a determination of 'marital assets' or 'marital property'." The opinion later states that "in *Ferguson*, the Court outlined the factors to be considered in the equitable distribution of properties," and then

proceeds to list the enumerated factors of the *Ferguson* analysis. The trial court then proceeds, with a cursory explanation of factual factors considered, to classify the major items of the parties as either marital or nonmarital assets. In its references to the trial testimony in the case, the court failed to clearly state which *Ferguson* factor the evidence supports. Its findings of fact on the record merely go to the classification of the property as marital, it does not instruct this Court as to which factors the trial court found helpful in performing an equitable division of the property. This failure to make findings of fact and conclusions of law to justify its division of the property, as required by *Ferguson* and *Sandlin*, requires reversing and remanding for the trial court to make findings of fact on the record. These findings of fact should go to the equitable division of the property, not to the classification of the property as marital or nonmarital.

*Id.* at 1161.

*Lauro v. Lauro*, 847 So. 2d 843 (Miss. 2003)

**Summary:** Husband appealed from decision of the chancery court granting wife a

divorce on the ground of adultery and granting wife primary physical and legal custody of their three minor children. Wife cross-appealed. The Supreme Court, Carlson, J., held that: (1) chancellor failed to comply with *Ferguson*, which set forth factors to be considered in attempting to effect an equitable division of marital property, since chancellor failed to make specific findings as to how the marital property was classified and divided, and (2) case would be remanded for chancellor to revisit the awards of alimony and child support after he had properly classified and divided the marital assets.

**Holding:** Affirmed in part; reversed and remanded in part.

Our learned chancellors are very cognizant of the fact that they must make a sufficient record for appellate review in applying the *Ferguson* factors to the particular facts of the case. However, due to workload, time constraints, and other external factors, or sometimes due to simple human error, a chancellor will on occasion fail to make an adequate record for appellate review on this issue. Thus, on such occasions, it becomes the responsibility of the attorney to preserve the record by way of a request or motion that the chancellor expand the record to include the necessary findings of fact and conclusions of law to support the decision on the equitable division of marital property. ■



### HON. NICKI MARTINSON BOLAND

Construction • Contract • Automobile • Toxic Tort • Landlord & Tenant  
Dramshop Liability • Gaming • Personal Injury • Real Estate • Oil & Gas

Mediation Arbitration  
**maps**  
Professional Systems, Inc.

For dispute resolution services contact MAPS: 800.443.7351  
E-mail: resolutions@maps-adr.com 504.831.2141  
Website: www.maps-adr.com 504.837.2566 (fax)