

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-01420-SCT

GEORGE RAY, SR.

v.

JOHNNITA RAY

DATE OF JUDGMENT: 06/21/2019
TRIAL JUDGE: HON. SHEILA HAVARD SMALLWOOD
TRIAL COURT ATTORNEY: CAROL JONES RUSSELL
COURT FROM WHICH APPEALED: LAMAR COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT: WILLIAM L. DUCKER
ATTORNEY FOR APPELLEE: JOHNNITA RAY (PRO SE)
NATURE OF THE CASE: CIVIL - DOMESTIC RELATIONS
DISPOSITION: AFFIRMED - 09/03/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE KING, P.J., COLEMAN AND BEAM, JJ.

BEAM, JUSTICE, FOR THE COURT:

¶1. George Ray, Sr., and Johnnita Ray were divorced on the ground of irreconcilable differences, and the chancery court decided issues of property settlement. George appealed, arguing that the chancellor erred by not crediting him for supporting Johnnita’s children, by finding him solely responsible for their joint debt, and by including his military-retirement income into the alimony determination. We affirm the chancellor’s judgment.

FACTS AND PROCEDURAL HISTORY

¶2. George and Johnnita were married in 2011. They do not share any children. But

Johnnita has two children from a previous marriage.¹ Johnnita filed a fault-grounds divorce in the Chancery Court of Lamar County in 2017. George answered the complaint alleging his own fault grounds. Before the trial commenced, the parties jointly dismissed the fault grounds and agreed to an irreconcilable-differences divorce. George and Johnnita left the court to decide issues of equitable distribution of marital property, alimony, and attorneys' fees.

¶3. On June 21, 2019, the chancellor awarded Johnnita a judgment against George in the amount of \$31,984 and rehabilitative alimony in the amount of \$250 per month for a period of twelve months.

¶4. George appeals. First, George asserts that the chancellor erred by failing to credit him in the property settlement for supporting Johnnita's children. Second, George asserts that the chancellor erred by holding him responsible for their joint debt. Third, George asserts that the chancellor erred by including his military-retirement income in the alimony determination.

DISCUSSION

¶5. This Court uses a limited standard of review when examining domestic-relations cases. *Gerty v. Gerty*, 265 So. 3d 121, 130 (Miss. 2018) (citing *Wood v. Wood (In re Dissolution of Marriage of Wood)*, 35 So. 3d 507, 512 (Miss. 2010)). "This Court will not disturb the rulings of the chancellor when supported by substantial evidence unless the

¹At the time of divorce, the children were eighteen and twenty years old.

chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied.” *Shelnut v. Dep’t of Human Servs.*, 9 So. 3d 359, 363 (Miss. 2009) (internal quotation marks omitted) (quoting *Sanderson v. Sanderson*, 824 So. 2d 623, 625 (Miss. 2002)).

I. Whether the chancellor erred by not crediting George in the property settlement for supporting Johnnita’s children.

¶6. George argues that he should be given credit in the property settlement for supporting Johnnita’s children for five years equal to the amount of child support that the natural father should have paid and that Johnnita failed to attempt to collect from him.

¶7. But it was not until George’s motion for rehearing that he requested a setoff for supporting Johnnita’s children. The chancellor found no proof at trial of any funds that he spent directly and stated she was not going to credit George. We agree that credit is not warranted, and we find that George is barred from bringing this issue forward on appeal because he did not properly raise it during trial.

II. Whether the chancellor erred by holding George responsible for the joint debt.

¶8. George’s argument is twofold. First, he contends that the debt was incurred to help Johnnita consolidate her credit cards; therefore, it is not joint debt.² George argues that she violated their plan to pay the debt and that she wastefully dissipated their assets.

¶9. The Court of Appeals has held, and we agree, that “[w]hether a debt is classified as

²They were cosignors on the loan.

marital or separate depends on who benefitted from the debt.” *Walker v. Walker*, 36 So. 3d 483, 487 (Miss. Ct. App. 2010) (internal quotation marks omitted) (quoting *Fitzgerald v. Fitzgerald*, 914 So. 2d 193, 197 (Miss. Ct. App. 2005)). “The courts in this state have consistently held that expenses incurred for the family, or due to the actions of a family member, are marital debt and should be treated as such upon dissolution of the marriage.” *Griner v. Griner*, 235 So. 3d 177, 184 (Miss. Ct. App. 2017) (internal quotation marks omitted) (quoting *Shoffner v. Shoffner*, 909 So. 2d 1245, 1251 (Miss. Ct. App. 2005) (citing *Bullock v. Bullock*, 699 So. 2d 1205, 1212 (Miss. 1997))).

¶10. The chancellor found that the debt was joint because although she heard testimony of Johnnita’s spending habits, she also heard testimony that George required Johnnita to pay one-half of the household expenses, which she paid through the credit card. We find sufficient evidence in the record to support that both parties contributed to the debt and that an equal division of the marital debt was proper.

¶11. Second, George mistakenly believes that the chancellor held him solely responsible because she assigned the total debt to him. George was assigned the total debt because he expressed doubt as to Johnnita’s ability to pay, and the chancellor wanted the debt to get paid. But the chancellor credited George for one-half of the \$6,739 debt, and Johnnita’s judgment was reduced by \$3,370. Therefore, the chancellor did not erroneously hold George solely responsible.

III. Whether the chancellor erred by including George's military-retirement income into the alimony determination.

¶12. George contends that his military retirement should not have been included in his income for determination of alimony because he had retired from the military three years before having any involvement with Johnnita. The chancellor acknowledged that she found George's military retirement to be a separate asset; when the *Armstrong v. Armstrong*, 618 So. 2d 1278 (Miss. 1993), factors were considered for alimony, however, she said, "I think I'm absolutely supposed to and required to consider separate property including income, and so I'm not going to modify, amend or terminate the *one-year* rehabilitative alimony award." (Emphasis added.)

¶13. While George's military retirement is a separate asset, this does not preclude the chancellor from including it as income for the determination of alimony. In *Baker v. Baker*, 861 So. 2d 351, 353 (Miss. Ct. App. 2003), the chancellor held that military retirement was not subject to a division of marital assets but it was appropriate to use that amount in determining periodic alimony. The Court of Appeals affirmed. *Id.* at 354.

¶14. George's financial statement listed his monthly salary and wages as \$3,032 and his pension and retirement as \$2,027, a total gross monthly income of \$5,059. The first factor for determining alimony as laid out in *Armstrong* is income and expenses. *Armstrong*, 618 So. 2d at 1280. Although George testified his income was \$3,032, his financial statement stated otherwise. The chancellor did not err by including his monthly income from his military retirement regardless of its being a separate asset.

¶15. Johnnita was appropriately awarded rehabilitative alimony in the amount of \$250 per month for twelve months. Evidence in the record was sufficient to support an alimony award based on George's income and expenses.

CONCLUSION

¶16. After reviewing the record, we affirm the chancellor's judgment. The chancellor did not err by not crediting George for supporting Johnnita's children because child support is not a marital property subject to division. The credit-card debt was marital and was thus appropriately divided between George and Johnnita. Military-retirement income is not income separate from an alimony determination. We affirm the decision of the chancery court.

¶17. **AFFIRMED.**

**RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL,
CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.**