

**CERTIFICATE OF INTERESTED PERSONS**

I, the undersigned counsel of record, certify pursuant to Mississippi Rule of Appellate Procedure 28(a)(1), that the following persons have an interest in the outcome of the case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal:

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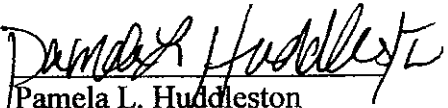
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THIS the 5th day of January, 2007.

2006-CA-00758-SCT

Appellant Brief

  
Pamela L. Huddleston

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## **STATEMENT OF ISSUES**

**ISSUE 1: THE TRIAL COURT ERRED IN FAILING TO AWARD THE DISPUTED MINERAL INTERESTS TO APPELLANT DESPITE A VALID DEED CONVEYING SAME FROM APPELLEE TO APPELLANT**

## **STATEMENT OF THE CASE**

In 2001, the Appellant filed a complaint against the Appellee to recover mineral interests. The Appellee filed a cross-complaint to recover certain personal property. That issue was decided prior to the trial of this matter, and is not a subject of this appeal. A trial on the mineral interests issue was held in the Chancery Court of the Second Judicial District of Mississippi on July 8, 2005. On April 6, 2006 the Court entered a Judgment awarding said mineral interest to the Appellee.

Aggrieved, Appellant appeals the judgment to this Honorable Court.

### **STATEMENT OF THE FACTS**

The Appellant and the Appellee began living together in approximately 1979. During this time, Appellant's father died, and Appellant inherited certain real property in Jones County. Appellant's health diminished, and he underwent a heart transplant and was ultimately rendered disabled. Due to his lack of steady employment prior to his heart problems, Appellant did not qualify for social security disability. As a result, he qualified for Medicaid assistance as a means to cover his medical expenses.. Appellant was advised that an oil well on his inherited property had begun producing, and that royalty checks therefrom would soon commence. At that time, Appellant's prescription expenses alone totaled more than \$1700.00 per month. Fearful that the prospective royalty checks might affect his Medicaid eligibility, and thus have a detrimental effect on his overall health, Appellant decided to convey said mineral interests to Appellee until his health improved and the approximate monthly income from the royalties was ascertained. Appellant testified that Appellee was to reconvey the interests to him. Appellee executed a deed reconveying the interests to Appellant immediately after he conveyed the interest to her. After the fourteen month period had passed, Appellee refused to reconvey the interests to Appellant. The parties then separated. Appellant filed a complaint to recover mineral rights from the Appellee in July 1999. The Appellee filed a Cross-Complaint to recover certain personal property. The personal property matter was resolved prior to the trial of this matter. The cause was continued in order to join the Mississippi Medicaid Commission as a party hereto. The Medicaid Commission declined to participate as a party and was subsequently

dismissed. Following the trial, the Court ruled for the Appellee on the grounds of the “unclean hands” doctrine.

### **SUMMARY OF THE ARGUMENT**

The Appellant, Ellzey, raises one issue for this Court to consider as error during the trial in the lower Court:

The trial court erred in failing to award the disputed mineral interests to the Appellant despite a valid deed conveying same from Appellee to Appellant. Accordingly, the lower court’s judgment must be reversed.

### **LAW AND ARGUMENT**

#### **PROPOSITION I.**


At the trial, the Appellant testified that on the same day that his deed to Appellee was executed, Appellee executed a deed re-conveying the mineral interests to Appellant. Appellant’s testimony was corroborated by Sam Ellzey, the notary who witnessed the executions of the deeds. Appellant never recorded the deed reconveying the interests, and the original had been lost at the time of the trial. When confronted with the testimony of Appellant and Sam Ellzey, Appellee admitted that it was her signature on the deed reconveying the mineral interests to the Appellant. It is settled law in this state that a deed defectively acknowledged may still be good between the parties to it. See *Kelly v. Wilson*, 36 So.2d 817 819 (1948); and *Campbell v. State Highway Commission*, 54 So.2d 654, 656 (1951), *Cotton v. McConnell*, 435 So.2d 683 (Miss. 1983). The only effect of deeds with no acknowledgment or a defective

acknowledgment is that such deeds they are not entitled to be recorded in the chancery court records and, as a result, cannot serve as constructive notice to bona fide creditors without notice. The principle of law is also well established and it is elementary that a deed must be delivered and accepted in order to constitute a valid conveyance. *Odom v. Forbes*, 500 So.2d 997, 1001 (Miss.1987); *Salmon v. Thompson*, 391 So.2d 984, 986 (Miss.1980); *McMillan v. Gibson*, 76 So.2d 239, 240 (1954). In *McMillan, supra*, the Court held that words, acts and circumstances surrounding the transaction may manifest the intention of the grantor to deliver the instrument.

In the case at bar, the chancellor found that Appellee did execute and deliver the deed in question, despite the defective acknowledgment and the fact that the deed was not recorded. Accordingly, Appellant was entitled to the mineral interests, and the Chancellor erred in not awarding same to him.

#### **CONCLUSION**

For the foregoing reasons, and any other plain error this Court may notice from its own independent review of the record, this court should set aside the Judgment of the lower court and award the mineral interests at issue to the Appellant.

Respectfully submitted,  
  
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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that I have this date delivered a true and correct copy of the foregoing Original Brief of Appellant, via United States mail, postage pre-paid to:

Hon. John Jeffries  
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Hon. Henry Davis  
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This the 5th day of January, 2007.

  
Pamela L. Huddleston

**CERTIFICATE OF MAILING**

I, Pamela L. Huddleston, Attorney of Record for Appellant in Cause No. 2006-CA-00758, do hereby certify that pursuant to Miss. Rules of Appellate Procedure 25 and 31, I have this day delivered for filing, the original and three copies of the foregoing Original Brief of Appellant , by placing same in the United States mail, postage pre-paid, to

Hon. Betty Sephton  
Clerk of the Mississippi Supreme Court and Court of Appeals  
P.O. Box 249  
Jackson, MS 39205-0249

This the 5th day of January, 2007.

  
PAMELA L. HUDDLESTON