

THE SUPREME COURT OF THE STATE OF MISSISSIPPI

S. L. ROBINSON

APPELLANT

V.

CSE NO. 2006-CA-01261

Appellee Bizef

LINCOLN COUNTY BOARD
OF SUPERVISORS

APPELLEE

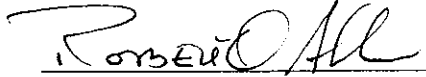
CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court of Appeals may evaluate possible disqualification or recusal.

1. Stewart Robison, Esq., Appellant's attorney
Jose' B. Simo, Appellant's attorney
McComb, Mississippi
2. Robert O. Allen, Appellee's attorney
Brookhaven, Mississippi
3. Honorable Mike Smith, former Circuit Court Judge
McComb, Mississippi
4. Honorable David H. Strong, Jr. Circuit Court Judge
McComb, Mississippi
5. Lincoln County Board of Supervisors, Appellee
6. S. L. Robinson, Appellant

Respectfully submitted,

LINCOLN COUNTY BOARD OF
SUPERVISORS

BY: 
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STATEMENT OF ISSUES

Whether the Circuit Court of Lincoln County, Mississippi, was correct in affirming the order of the Lincoln County Board of Supervisors which found that Greenwich Lane was a public road in Lincoln County, Mississippi.

BRIEF OF APPELLEE

I. INTRODUCTION

This is an appeal from a judgment of the Circuit Court of Lincoln County, Mississippi, confirming the decision of the Lincoln County Board of Supervisors in their rejecting S. L. Robinson's Petition to Delete Greenwich Lane from the Lincoln County Road System Register and the Official Map of Lincoln County Roads or, Alternatively, for Abandonment of Greenwich Lane as a Public Road.

II. STATEMENT OF THE CASE

S. L. Robinson filed a petition to have the actions of the Lincoln County Board of Supervisors declared void insofar as their adoption of the official Lincoln County map and road register or, alternatively, to have Greenwich Lane closed and abandoned. After a full hearing, the Board found that the records reflect that the requirements of Miss. Code Ann. § 65-7-4 were substantially complied with in adopting the official road map and further found that Greenwich Lane had been a public road for over thirty (30) years at the time the official register and map were required to be done. The matter was appealed to the Circuit Court, raising the same issues that are raised before this Court. The Judge found that all elements for a prescriptive easement had been met and the Board's decision should be affirmed.

III. STATEMENT OF THE FACTS

The Robinson brothers (S. L. and Robert) both own real property in Lincoln County, Mississippi. Appellant S. L. Robinson resides at 303 Greenwich Lane on property conveyed to him by his parents in 1968, T.18, and Robert Earl Robinson resides

at 353 Greenwich Lane on property he received from his parents in 1967. T. 28. Greenwich Lane, which is the public road in dispute, originates from a point on a road named Jakes Trail at the property of S. L. Robinson and runs northerly from Jakes Trail ending at the lands of Robert Earl Robinson. T. 11-14.

The road was originally built by then Lincoln County road supervisor, Grady Tarver, in 1967, T. 30, and was later paved by then supervisor, Roland Ross, in 1984, T. 23, 32, and used by the general public (Affidavit of Roland Ross). C.P. 74.

In 2000 Greenwich Lane was designated on the Lincoln County road map as required by statute by minutes adopted on June 16, 2000 (Affidavit of Tillmon Bishop). C.P. 44. Further, it was listed as a public road on the Official Road Register kept by the county (Affidavit of David Fields). C.P. 61.

Thereafter an apparent dispute arose between the brothers and a petition was filed on December 28, 2003, by S. L. Robinson to delete Greenwich Lane from the Lincoln County road system or, alternatively, to abandon the road. A hearing was held before the entire Board on March 1, 2004, and thereafter an order entered.

IV. ARGUMENT

A. Standard of Review

When reviewing a circuit court's order based upon its decision that pertains to actions taken by a board of supervisors, the Mississippi Supreme Court has stated the proper standard of review in the case of *Lee County Board of Supervisors v. David Scott, et al*, 909 So.2d 1223 (CA 2005) wherein they cite *Hooks v. George County*, 748 So.2d 678 (Miss. 1999), which held:

The standard of review for this case is substantial evidence, the same standard which applies in appeals from decisions of administrative

agencies and boards. The decision of an administrative agency is not to be disturbed unless the agency order was unsupported by substantial evidence, was arbitrary or capricious, was beyond the agency's scope or power; or violated the constitutional or statutory rights of the aggrieved. (citations omitted)

Substantial evidence has been defined as "such relevant evidence as reasonable minds might accept as adequate to support a conclusion" or, to put it simply, more than a "mere scintilla of evidence." *Johnson v. Ferguson*, 435 So.2d 1191-1195 (Miss. Ct. App. 1983).

Likewise, the circuit court's review of a board of supervisors' findings, as set forth in *Hinds County Board of Supervisors v. Leggett*, 833 So.2d 586 (Miss. Ct. App. 2002), provides:

A board of supervisors' conclusion must remain undisturbed unless the board's order (1) is beyond the scope of power granted to the board by statute, (2) violates the constitutional rights or statutory rights of the aggrieved party, (3) is not supported by substantial evidence, or (4) is arbitrary or capricious. (citations omitted).

B. The Circuit Court's Ruling

In this case, the Circuit Court, in reviewing the entire record, found none of the factors necessary to disturb the Board's findings and, therefore, by implication, found that there was substantial evidence to support those findings and allowed them to stand.

As pointed out by Appellant, the law is very well settled that for a road to be considered public, it has to be established by (1) dedication, (2) in accordance with the statutory procedure, or (3) by prescription. Greenwich Lane obviously is a road that became public by prescription as well as being included on the official map required in 2000.

Turner v. Duke, 736 So.2d 495 (Miss. 1999), citing *Myers v. Blair*, 611 So.2d 969, 971 (Miss. 1992), points out that the six (6) factors necessary for a road to become public by prescription and they are when the use is (1) open, notorious, and visible, (2) hostile, (3) under claim of ownership, (4) exclusive, (5) peaceful, and (6) continuous and uninterrupted for ten (10) years. Greenwich Lane obviously met all of those six requirements in that it was (1) open, notorious, and visible to the entire world, especially S. L. Robinson and his wife because of its proximity to their house and the traffic that went by, (2) hostile to the ownership of both Robinsons, (3) under claim of ownership, (4) exclusive because the county built and maintained the road from 1967, paved it in 1986, and did what maintenance was done on the road (5) peaceful because there was never an objection during the whole period of time through its being built, maintained, and paved until approximately a year within the time of filing of the petition, and (6) it was continuous and uninterrupted for a period of thirty-five (35) years.

Nowhere in the record does S. L. Robinson show that he did not know of any of the conditions set forth above being made, especially that it was an adverse claim or that it was continuously used for in excess of ten years. To the contrary, his only complaint came in the year 2003.

The affidavits mentioned earlier of Bishop and Fields which are part of the record and not objected to are competent evidence to show that there are minute notations in the year 2000 speaking to the public roads of Lincoln County. The June 16, 2000, minutes included as an exhibit the official map that designated Greenwich Lane as public and labeled a public road. Likewise, the November 17, 2003, minutes contain the printed version of the Lincoln County Road Register which designated Greenwich Lane.

At one point S. L. Robinson even admits that since the 1980's Mr. Ross had made a public road out of Greenwich Lane. T. 25. Although he did not agree that he considered it a public road, he certainly was put on notice that Mr. Ross was making it that way so he recognized that it was hostile and waited approximately eighteen (18) years before he took steps to stop it.

With regard to Appellant's position that the road should be closed because it met the statutory criteria to be abandoned, again Appellant completely fails to meet his burden on this issue. In reviewing the entire record, there is conflicting evidence as to the use and volume of traffic on the road, that it has been maintained and how much maintenance had been done, and therefore neither the Board nor the Court had substantial evidence to determine that the road should be abandoned. The affidavit testimony of Roland Ross is especially significant regarding the necessity for the road remaining public and the use of the road. The Board and the Circuit Court both had the availability of the large map showing the property lines that pertain to both Greenwich Lane and Jakes Trail and showing that Greenwich Lane is on property owned by S. L. Robinson, Roland Ross, and Robert Robinson as does Mr. Ross's affidavit.

Likewise, Mr. Ross also made an unobjected comment in which he discussed the traffic that is created by the use of Robert Robinson's customers going to his house and its affect on Jakes Trail showing the necessity of both of the roads. T. 40-41.

Appellant finally argues that there were deficiencies in the Road System Register Map and procedure pertaining to the adoption of same. Inasmuch as the Circuit Court found that the road was public by prescription, any procedural complaint pertaining to the adoption of the road register is a moot point.

V. CONCLUSION

It is, therefore, concluded that the acts of the Board of Supervisors were not beyond the scope of power granted to them by statute, did not violate the constitutional statutory rights of any aggrieved party, was supported by substantial evidence, and was not arbitrary or capricious. Further, the Circuit Court's decision held that the Board of Supervisors' order should be upheld inasmuch as the factors for a prescriptive easement had been met. Therefore, this appeal should be dismissed.

Respectfully submitted,

LINCOLN COUNTY BOARD
OF SUPERVISORS

BY: 
Its Attorney

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CERTIFICATE

I, the undersigned, of Allen, Allen, Breeland & Allen, PLLC, attorneys of record for Lincoln County Board of Supervisors, hereby certify that I have this day mailed a copy of the above and foregoing Appellee's Brief to the following counsel of record:

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This the 12th day of April, 2007.



OF COUNSEL