

THE SUPREME COURT OF THE STATE OF MISSISSIPPI

S. L. ROBINSON

APPELLANT

VS.

CASE # 2006-TS-01261

LINCOLN COUNTY BOARD  
OF SUPERVISORS

APPELLEE

Appeal from the Circuit Court  
of Lincoln County, Mississippi

APPELLANT'S BRIEF

Oral Argument Not Requested

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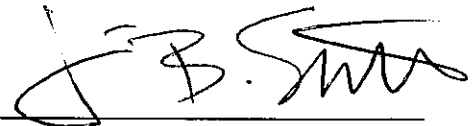
LINCOLN COUNTY BOARD  
OF SUPERVISORS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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 justices of this court may evaluate possible disqualification or recusal.

1. **Robert O. Allen**, Appellee's Attorney  
Brookhaven, Mississippi
2. **Jose' B. Simo**, Appellant's Attorney  
McComb, 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

  
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## **BRIEF FOR THE APPELLANT**

### **I. INTRODUCTION**

This appeal arises from the Order entered by the Circuit Court of Lincoln County, Mississippi, on July 6, 2006, affirming the Resolution of the Lincoln County Board of Supervisors (“the Board”). C.P. 108. The Board, through the subject Resolution, refused to delete Greenwich Lane from the Lincoln County Road System Register and Official Map of Lincoln County Roads, or to order abandonment of Greenwich Lane as a public road. C.P. 19.

### **II. FACTS**

Appellant, S.L. Robinson (“Robinson”), owns a five-acre parcel of real property located northwest of Brookhaven in Lincoln County, Mississippi. T. 10-11. Jakes Trail, a hard-surfaced, two-lane public road, runs in a west to east direction along the southern boundary of Robinson’s property, then turns abruptly northward and runs along the eastern boundary of the Robinsons’ land. Jakes Trail continues northward and provides ingress and egress for several families residing north of the Robinsons. T. 12.

Greenwich Lane commences near the southeastern corner of the Robinsons’ land, then runs northerly along and just inside the eastern boundary of the Robinsons’ property. *See* Survey labeled Volume 3 of 4. Greenwich Lane runs parallel to the northward portion of Jakes Trail for approximately one thousand (1,000) feet, then dead-ends at property owned by Robert Earl Robinson. No more than fifteen (15) feet separate Greenwich Lane and Jake’s Trail at any point. Greenwich Lane provides access only to the property of Robert Robinson which may also be, and at times has been, accessed from Jakes Trail. T. 36-37.

### **III. STATEMENT OF THE CASE**

On or about November 17, 2003, the Board, without notice to the Robinsons, caused

Greenwich Lane to be added to the Lincoln County Road System Register and “colored in” on the Official Map of Lincoln County Roads. On December 29, 2003, the Robinsons filed their Petition before the Board, seeking deletion of Greenwich Lane from the register and map, or alternatively, abandonment of Greenwich Lane as a public road. C.P. 14. The Robinsons alleged, *inter alia*, that: (1) Greenwich Lane is a private drive that has never been dedicated as a public road; (2) there is no use of Greenwich Lane by the general public, rather, Greenwich Lane has been used solely and permissively as a private driveway to the residence of Robert Robinson; (3) there is no public necessity for Greenwich Lane since it runs parallel to and within fifteen (15) feet of Jakes Trail, a public road; (4) the Board failed to properly publish notice before adoption of the official map and register as required by Mississippi Code Annotated (MCA) §65-7-4; (5) the Board improperly added Greenwich Lane to the map and register without appropriate action spread on its minutes as required by MCA §65-7-1 and §65-7-4(b); and, (6) the inclusion of Greenwich Lane on the official map and register amounts to a taking of the Robinsons’ property without due process or just compensation in violation of the constitutions and laws of the State of Mississippi and the United States of America. C.P. 14. Alternatively, the Robinsons sought abandonment of Greenwich Lane as a public road because: (1) Greenwich Lane does not provide primary access to occupied property; (2) traffic on Greenwich Lane for at least ten (10) years has been intermittent and of such low volume that no substantial public purpose is being served thereby; (3) the Board has not, for at least five (5) years, maintained Greenwich Lane as part of the county road system; (4) public interest and convenience does not require Greenwich Lane to remain open to the public; and, (5) it is in the public interest and convenience to close, vacate and abandon Greenwich Lane as a public road. C.P. 14.

On March 1, 2004, the Board conducted a public hearing at which it considered both oral and documentary evidence in support of and in opposition to the Robinsons’ Petition. On March 15,

2004, the Board entered its Resolution declaring Greenwich Lane to be a public road, refusing to order abandonment of Greenwich Lane, and dismissing the Robinsons' Petition. C.P. 19. The Robinsons timely filed their Bill of Exceptions and Notice of Appeal to the Circuit Court of Lincoln County, Mississippi. C.P. 6,8.

The Circuit Court of Lincoln County entered its Order Affirming the Decision of the Lincoln County Board of Supervisors on July 6, 2006. C.P. 108. The Lincoln County Circuit Court stated that the six (6) factors necessary for a road to become public by prescription had been met. The Court also stated that the construction and maintenance of Greenwich Lane with public funds deemed it a public road. Robinson timely filed his Notice of Appeal to the Supreme Court of Mississippi on July 26, 2006. C.P. 111.

#### **IV. ARGUMENT**

##### **A. INTRODUCTION**

At the public hearing conducted by the Board of Supervisors, unrefuted testimony by S.L. Robinson and Robert Robinson established that Greenwich Lane first came into existence in 1968. S.L. Robinson testified that Greenwich Lane first began in 1968 when former Lincoln County Supervisor, Grady Tarver, agreed to "build me a driveway." T. 13. S.L. Robinson further testified that in the 1980's Greenwich Lane was paved. T. 17, 24-25.

Robert Robinson testified that Greenwich Lane was constructed by Grady Tarver in 1967. T. 30. According to Robert Robinson, Mr. Tarver agreed to build the drive after Jake Case refused to allow the Robinsons to use Jakes Trail. T. 30-31. Robert Robinson further testified that Greenwich Lane was "built for me." T. 38. Both S.L. and Robert Robinson testified that Greenwich Lane dead-ends at the property of Robert Robinson. T. 22, 36.

From the testimony of S.L. and Robert Robinson, the Board concluded, and the Circuit Court



of Lincoln County affirmed, that since public funds were expended for its construction and maintenance, Greenwich Lane is a public road. C.P. 19. As the following discussion will demonstrate, the Board's conclusion and the Circuit Court's affirmance is contrary to both Mississippi statutory law and decisions of the Mississippi Supreme Court.

#### B. LAW

The Mississippi Supreme Court has addressed the proper standard of review of an appeal from a circuit court's review of a board of supervisors' decision. This standard of review is substantial evidence, the same standard which applies in appeals from decisions of administrative agencies and boards. *Lee County Board of Supervisors v. Scott*, 909 So.2d 1223, 1225 (Miss. Ct. App. 2005)(citing *Barnes v. Board of Supervisors*, 553 So.2d 508, 511 (Miss. 1989)). "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 powers; or violated the constitutional or statutory rights of the aggrieved party." *Scott*, 909 So.2d at 1225; (quoting *Board of Law Enforcement Officers Standards & Training v. Butler*, 672 So.2d 1196, 1199 (Miss. 1996)). 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." *Scott*, 909 So.2d at 1225; (quoting *Johnson v. Ferguson*, 435 So.2d 1191, 1195 (Miss. 1983)).

Under well-settled Mississippi law, there are only three methods by which a public road may be established: (1) by dedication; (2) in accordance with statutory procedures; or, (3) by prescription. *George County v. J.B. Davis*, 721 So.2d 1101, 1106 (Miss. 1998); *Coleman v. Shipp*, 223 Miss. 516, 530, 78 So.2d 778, 784 (1955)(citing *Armstrong v. Itawamba County*, 195 Miss. 802, 16 So.2d 752, 757-58 (1944)). Since Greenwich Lane has not been established as a public road by any of the legally

cognizable methods, it is, and always has been, simply a private driveway. Each of the methods by which a public road may be established are addressed below.

### 1. By Dedication

Dedication of a county public road requires donation or conveyance of a right of way by a landowner and acceptance by the Board of Supervisors. *Coleman v. Shipp*, 223 Miss. 516, 78 So.2d 778, 784 (1955). In the case at bar, professional title abstractor, Becky Buie, testified that she checked all land records concerning the property upon which Greenwich Lane is situated. T. 7-9. According to Mrs. Buie, no recorded document indicates that either the Robinsons or their predecessors in title ever conveyed any interest in the subject real property to Lincoln County, Mississippi. T. 8-9.

No evidence challenging Mrs. Buie's testimony was presented to the Board. Likewise, no evidence that the Board had accepted a grant of right of way for Greenwich Lane was presented. Since the Board had no evidence of either a conveyance of right of way for Greenwich Lane or acceptance of same by the Board, the Board had no reasonable basis to conclude that Greenwich Lane is a public road established by dedication.

### 2. In Accordance with Statutory Procedure

The statutory procedure for establishment of public roads is set forth in MCA §65-7-57. In pertinent part, the statute provides:

When any person shall desire to have a public road other than a road being maintained by the State Highway Department laid out, altered, or changed, a Petition shall be presented to the Board of Supervisors of the county signed by ten or more freeholders or householders of the county interested in the road, setting forth the commencement and termination and general course thereof, and that the public interest and convenience requires the road to be laid out and opened or altered or changed, as shown by the Petition.

The statute goes on to require a public hearing of the petition, and if appropriate, appointment of a committee to view the route of the road and, if practical, lay out and mark the road or alteration thereto.

MCA §65-7-61 provides for compensation to a landowner whose property is taken for a public road. Upon petition for such compensation, the board is required to “go upon the premises and assess the damages....” MCA §65-7-61.

In the case at bar, there exists no evidence that the statutory procedures set out in MCA §65-7-57 and §65-7-61 were followed. Instead, Greenwich Lane was apparently constructed in accordance with an agreement between the Robinson family and then-supervisor Tarver. The Mississippi Supreme Court has consistently condemned such practice. For instance, in *Coleman v. Shipp*, the Court considered just such an agreement. The Court stated:

The legislative policy of this state... indicates that it has never been contemplated that a supervisor and a private landowner should establish a public road by the procedure of the landowner asking the member of the board of supervisors in which the road is located to ‘build him a road’ by or to his residence upon the landowner consenting to furnish the land.... Such procedure is unauthorized where the public generally, or other freeholders or householders, are not interested in the road.

*Shipp*, 78 So.2d at 783-784. The Court in *Shipp* goes on to say:

The question here is whether or not the predecessor in office of the defendant supervisor had the lawful right to accept the offer of the landowner to furnish the land for the construction ‘of him a road’ leading from the public road to his residence... and to build or maintain same at public expense. *We do not think so.* To so hold would mean that the road fund of a supervisor’s district could be diverted from its legitimate purpose to the building or maintaining at public expense a road to the home of every citizen residing in such supervisor’s district, and to the neglect of the roads which the public interest and convenience require to be maintained.

*Shipp*, 78 So.2d at 784-85 (emphasis added).

In the instant case, there exists no evidence that the statutory procedure for establishment of public roads was followed. Consequently, the Board had no basis upon which to conclude that Greenwich Lane was established as a public road in accordance with statutory procedure.

### 3. By Prescription

In *Myers v. Blair*, 611 So.2d 969, 971 (Miss. 1992), the Court stated the necessary elements to establish a public road by prescription. Those elements are: (1) open, notorious and visible; (2) hostile; (3) under claim of ownership; (4) exclusive; (5) peaceful; and, (6) continuous and uninterrupted for ten years. *Blair*, 611 So.2d at 971. The Court also set forth additional requirements which must be met before finding a road to be public:

Since 'the road' is not shown to be a dedicated public road under the statutes, and therefore under the supervision and control of the board of supervisors, the road must be habitually used by the *public in general* for a period of ten years; and such use must be accompanied by evidence, other than mere travel thereon, of a claim by the public of the right so to do. *Brooks v. Sanders*, 243 Miss. 46, 137 So.2d 174, 175 (1962). The owner must know of and acquiesce in the adverse claim, or the use must be so open, notorious, visible and interrupted that knowledge and acquiescence will be presumed. *McIntyre v. Harvey*, 158 Miss. 16, 128 So. 572, 573 (1930).

*Blair*, 611 So.2d at 971 (emphasis added).

In the case now before the Court, there is no evidence that Greenwich Lane has ever been used by the *public in general*. To the contrary, testimony by S.L. Robinson and Robert Robinson establishes beyond any doubt that Greenwich Lane dead-ends at the property of Robert Robinson and has been used solely as a means of ingress and egress by Robert Robinson and other visitors to his residence. There was testimony that a school bus once traveled along Greenwich Lane, but when and for how long were not disclosed. Furthermore, there was no evidence presented from which the Board could have concluded that any use of Greenwich Lane was hostile to the interest of S.L. and

Jo Dell Robinson, upon whose property the road is situated.

There was also testimony that customers of Robert Robinson's vegetable farm travel along Greenwich Lane. The fact that Robert Robinson conducts a business at his residence provides no support for the contention that prescriptive use has established Greenwich Lane as a public road.

In *Saxon v. Harvey*, 190 So. 2d 901 (Miss. 1966) (superseded on other grounds by *Canton Farm Equipment, Inc. v. Richardson*, 501 So.2d 1098 (Miss. 1987)), the Court considered whether business use justified expenditure of public funds for construction and maintenance of a road. In *Saxon*, the defendant supervisor argued that the public interest justified expenditure of public funds to construct a road to a business closely allied to the main industry of the county. While somewhat sympathetic, the Supreme Court held that while the argument:

is logical and perhaps in conformity with the practices of some other supervisors of the state who yield to the ever-insistent demands of their constituents for unauthorized private benefits, and though the construction of a road to private industry might actually help the populus of the community and be carried out in utmost good faith, yet withal, it must be denounced, as it is beyond the pale of the law since it is not in harmony with the regulations prescribed by the legislature as authorized by Mississippi Constitution §170.

*Saxon*, 190 So.2d at 906.

The only reasoning provided by the Board and the primary reasoning provided by the Lincoln County Circuit Court for the decisions that Greenwich Lane is public is that public funds were expended for construction and maintenance of the road. C.P. 19, 108. The Mississippi Supreme Court has found such reasoning to be error. In *George County v. J.B. Davis*, 721 So.2d 1101 (Miss. 1998), the Court emphatically ruled:

It is error for the board to rely solely on the fact that it has maintained the roads for more than ten (10) years. If the roads do not have all the required elements of prescription *and* have not been properly acted upon by the board of supervisors, under established law in this state,

they can only be considered private roads.

*George County*, 721 So.2d at 1107 (emphasis added).

The Court has also held that testimony by individual supervisors that county funds have been used to maintain a road is insufficient. *Myers v. Blair*, 611 So.2d 972 (Miss. 1992). Instead, the Court ruled that a board of supervisors can speak only through its minutes and that the county's actions in constructing and maintaining roads should be deduced from its minutes. *Id.*; *See also*, *Turner v. Duke*, 736 So.2d 495 (Miss. 1999); *Hunter v. Lake Mor-Ri-Lo, Inc.*, 224 Miss. 220, 79 So.2d 836 (1955). The Court further ruled that it is error to permit individual supervisors to testify concerning the public versus private nature of roadways. Quoting *Smith v. Board of Supervisors of Tallahatchie County*, 124 Miss. 36, 41, 86 So. 707 (1920), the Court concluded:

We also think it error for the Court to permit individual members of the board of supervisors to testify what the board did, and what the board understood, and what the board had authorized to be done in the premises. A board of supervisors can only act as a body, and its act must be evidenced by an entry on its minutes. The minutes of the board of supervisors are the sole and exclusive evidence of what the board did. The individuals comprising the board cannot act for the county, nor officially in reference to the county's business, except as authorized by law, and the minutes of the board of supervisors must be the repository and the evidence of their official acts.

*Id.*, citing MCA §19-3-27 (1972); MCA §65-7-121 (1972).

In the case at bar, there exists absolutely no evidence that the public in general has used Greenwich Lane for the requisite ten (10) year prescriptive period. Likewise, there exists no minute entry by the Board authorizing construction and/or maintenance of Greenwich Lane. Consequently, it is abundantly clear that Greenwich Lane has not been established as a public road by prescription.

#### 4. Service to Only One Residence Equals Private Road

In the instant case, uncontradicted evidence reveals that Greenwich Lane intersects Jakes

Trail, crosses property owned by the Robinsons, and dead-ends at the residence of Robert Robinson. It is also undisputed that Greenwich Lane provides ingress and egress only to the residence of Robert Robinson, and that Robert Robinson's property may be, and has been accessed from Jakes Trail as necessary.

Regardless of the method of establishment of a road, the Court, in *Coleman v. Shipp*, 223 Miss. 516, 78 So.2d 778 (1955), established what has since become a bright line rule that a road which serves but one residence is not a public road, but merely a private drive. The *Shipp* Court found use of such drives by others, such as mail carriers, school buses, doctors, "rolling grocers", and peddlers, to be insufficient to constitute a one-residence road as public. *Shipp*, 78 So.2d at 784.

In *George County v. J.B. Davis*, 721 So.2d 1101 (Miss. 1998), the Court followed the one-residence rule of *Shipp* in determining that several George County roads were private rather than public as contended by the George County Board of Supervisors. The Court repeatedly stated that since the roads served but one residence, they were private, not public roads. *Id.* at 1108-1110. The Court also consistently ruled that such roads were private rather than public because use of the roads was not necessitated by convenience and necessity to the public in general. *Id.* The Court further ruled that maintenance of a road by the board "for a substantial number of years... does not make it a public road in the absence of any evidence of public use." *Id.* at 1109.

In summary, it is clear that the Board and the Lincoln County Circuit Court wholly disregarded existing authority and clearly erred by determining that Greenwich Lane is a public road. This Court should reverse the Order of the Lincoln County Circuit Court and enter its Order declaring Greenwich Lane to be a private drive, and ordering that it be deleted from the Lincoln County Road System Register and Official Map of Lincoln County Roads.

## 5. Road System Register and Map

Effective July 1, 1998, the Mississippi Legislature enacted MCA §65-7-4, requiring the boards of supervisors of each county to prepare and adopt an official map and road system register on or before July 1, 2000. The official map was required to designate and delineate all public roads on the county road system. MCA §65-7-4 (1). The road system register was required to contain:

(a) The number and name of each public road on the county road system; (b) a general reference to the terminal points and course of each such road; (c) a memorandum of every proceeding in reference to each such road, with the date of each such proceeding, and the page and volume of the minute book of the board of supervisors where it is recorded....

MCA §65-7-4(2)(a)(b) and (c).

Lincoln County has adopted the required map and register. C.P. 49-60. Any reliance placed upon the map and register by the Board in determining that Greenwich Lane is a public road is, however, for several reasons, misplaced.

First, prior to adopting the map and register, the Board was required to hold a public hearing concerning the contents thereof. MCA §65-7-4 (3). Furthermore the Board was required to publish notice of the hearing, not less than two (2) weeks before the date of the hearing. *Id.* Instead, the Board published its Notice of Hearing on June 15, 2000, and according to the Affidavit of Tillmon Bishop, purportedly adopted the official map and register one day later, on June 16, 2000. C.P. 44.

Second, MCA §65-7-4 (6) provides:

It is the intention of the legislature that the initial official record of the county road system prepared and adopted in accordance with this section shall include all public roads that the board of supervisors determines, consistent with fact, as of July 1, 2000, or such date the initial official record is adopted, are laid out and open according to law.



The Statute goes on to provide:

From and after July 1, 2000, no road shall be added or deleted from the county road system or otherwise changed except by order or other appropriate action of the board of supervisors and such action shall be recorded in the minutes of the board.

MCA §65-7-4 (6).

MCA §65-7-4 (6) is buttressed by MCA §65-7-1 (3) which provides:

From and after July 1, 2000, no road shall be included as part of the county road system until and unless the board of supervisors, by appropriate action spread on its minutes, has established or accepted such road, and caused the road to be included in the official record of the county road system, as provided in §65-7-4.

In violation of MCA §65-7-4, requiring preparation and adoption of a county road map and road system register by July 1, 2000, according to the Affidavit of David Fields, County Administrator of Lincoln County, the Lincoln County Board of Supervisors first prepared its road system register on November 17, 2003, and it did so without notice to the public. C.P. 61. Furthermore, in clear violation of MCA 65-7-4 (6) and 65-7-1 (3), the board haphazardly added roads to the register from July 1, 2000 through the present time, all without the required “appropriate action spread on its minutes.” *Id.*; *See*, MCA §65-7-1 (3); MCA §65-7-4 (6).

Third, the delinquently prepared Lincoln County Road System Register does not contain the required information concerning the “terminal points and general course” of Greenwich Lane. C.P. 53; MCA §65-7-2 (6). Nor does it contain a record of proceedings referenced to the Board’s minutes with regard to any road. C.P. 53.

Finally, since Greenwich Lane was not established as a public road by dedication, statutory procedure or prescription prior to July 1, 2000, it could not be so established by adoption of the county map and road system register. MCA §65-7-4.1 provides:

The legislature of the State of Mississippi finds and determines as a matter of public policy and legislative intent that the proceedings and public hearing required for initial adoption of the official map and county road system register required by section 65-7-4, Mississippi Code of 1972, are not intended to lay out, open, designate or otherwise establish new public roads, but to document and record existing roads which are, at the time of the initial adoption of said map and register, adjudicated by the board, consistent with fact, to be public roads by dedication, under the methods provided by statute, or by prescription *and* required by public convenience and necessity.

MCA §65-7-4.1 (emphasis added).

It is apparent that Greenwich Lane was inappropriately added to the Lincoln County Road System Register and Map sometime after July 1, 2000. Further, it was so added without appropriate notice and minute entry as required by law. This Court should reverse the decision of the Lincoln County Circuit Court and enter its order requiring deletion of Greenwich lane from the Official Map and Register of Lincoln County Public Roads.

#### V. ABANDONMENT

The Robinsons pled alternatively that if the Board determined Greenwich Lane to be a public road, it should order abandonment of the road. MCA §65-7-121 allows abandonment of any section of a county's road system upon finding that one or more of the following factors are applicable:

(a) the section does not provide primary access to occupied properties; (b) traffic on the section has for a period of at least ten (10) consecutive years been intermittent and of such low volume that no substantial public purpose is being served thereby; (c) the board of supervisors has, for a period of at least five (5) consecutive years, not maintained such section as part of the county road system; or (d) for any reason, the public interest or convenience does not require the section to remain open to the public or that it is in the public interest or convenience to close, vacate and abandon the section.

In its Resolution, the Board ruled that it was incumbent upon the Robinsons "to show unto the Board the requirements of Miss. Code. Annotated Sec. 65-7-121, as amended, had been met, and

this Board finds that they have failed so to do.” Through its Order, the Lincoln County Circuit Court affirmed the Board’s Resolution and all its provisions. C.P. 108. By the Board’s use of the plural “requirements”, it is obvious that it believed each of the factors listed by MCA §65-7-121 must be found applicable before a public road may be abandoned. Such belief is clearly in error since the statute provides for abandonment if *one or more* of the listed factors are applicable.

The Board and the Circuit Court’s finding notwithstanding, it is submitted that all the factors listed by MCA §65-7-121 are applicable in this case. Each of the factors will be briefly discussed.

#### A. Greenwich Lane Does Not Provide Access to Occupied Properties

The legislature’s choice to use the plural “properties” is enlightening, particularly so when it is considered that the Mississippi Supreme Court has consistently and repeatedly ruled that roads providing access to only one property are private rather than public. In the case at bar, the proof clearly established that Greenwich Lane provides access only to the property of Robert Robinson. Furthermore, Jakes Trail provides alternate access to the property owned by Robert Robinson and primary access for others living north of Robert Robinson. In *George County v. J.B. Davis*, the Court relied upon such alternate access to one of two residences served by a road in holding such road to be private rather than public. *George County v. J.B. Davis*, 721 So.2d 1101, 1108 (Miss. 1998).

#### B. Intermittent and Low Volume Traffic

Undisputed evidence presented to the Board indicates that Greenwich Lane is used only by Robert Robinson, his family and other visitors to his residence, including customers of his seasonal vegetable farm. While no traffic count is available, common sense dictates that the volume of traffic on Greenwich Lane is insufficient to require its maintenance as a public road. It should also be noted that there exists no evidence that the traveling public in general has ever used Greenwich Lane.

### C. Not Maintained for Five (5) Consecutive Years

While there was testimony that the county has occasionally patched a pothole or two in Greenwich Lane, there is no evidence that the County has regularly maintained Greenwich Lane as a public road. To the contrary, there was ample evidence presented that the road has not been maintained to the statutorily mandated level.

MCA §65-7-1 dictates that all public roads “shall be opened and worked at least sixteen (16) feet wide whenever practicable, and in any case, not less than twelve (12) feet, and any greater width that may be necessary.” Photographs of Greenwich Lane presented to the Board clearly indicate that Greenwich Lane is less than the required twelve (12) feet in width. See Exhibits, Photographs labeled 9, 10, 12, 15, and 17. Furthermore, testimony by S.L. Robinson that Greenwich Lane is approximately nine (9) feet wide was not disputed. T. 18.

### D. Public Interest and Convenience

Greenwich Lane provides access only to the residence of Robert Robinson. As heretofore established, the road has never been traveled by the general public. It is certainly not in the interest or convenience of the traveling public that Greenwich Lane continue as a public road. It is even more certain that it is not in the interest of the taxpayers of Lincoln County to continue to finance maintenance of two roads which run side by side and within fifteen (15) feet of each other, particularly since one of the roads serves only one residence which may also be accessed from the other.

All factors listed by MCA §65-7-121 as justifying abandonment of a public road are applicable to Greenwich Lane.

## VI. CONCLUSION

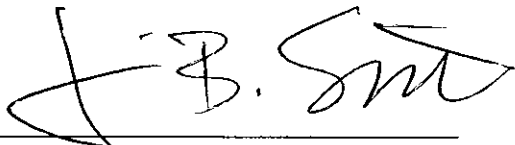
As demonstrated by the preceding, the decision of the Circuit Court of Lincoln County

affirming the Resolution of the Lincoln County Board of Supervisors is contrary to long held precedence of the Mississippi Supreme Court. There is no deed by which the road was declared public by dedication. In addition, the statutory procedure by which a road is declared public was not followed, and none of the factors by which a road is declared public by prescription are present. The Appellant respectfully asks that this Court reverse the decision of the Circuit Court of Lincoln County and order removal of Greenwich Lane from the Lincoln County Road System Register, or in the alternative, order the abandonment of Greenwich Lane as a public road.

Respectfully submitted,

S.L. ROBINSON

BY: ROBISON & HOLMES, PLLC

  
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CERTIFICATE OF SERVICE

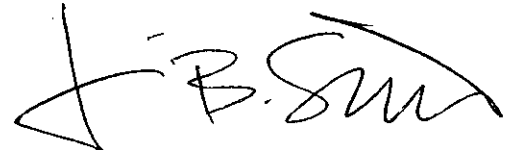
I, JOSE' B. SIMO, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing APPELLANTS' BRIEF to the following:

Robert O. Allen, Esquire  
Post Office Box 751  
Brookhaven, Mississippi 39602-0751.

Honorable Mike Smith  
Post Office Box 549  
McComb, Mississippi 39649

Honorable David H. Strong, Jr.  
CIRCUIT COURT JUDGE  
Post Office Drawer 1387  
McComb, Mississippi 39648

THIS the 7th day of February, 2007.

A handwritten signature in black ink, appearing to read "J. B. Simo", written over a horizontal line.

JOSE' B. SIMO