IN THE SUPREME COURT OF MISSISSIPPI

JOHN R. HARRISON and
JAMES A. MIMS, JR.

Appellants
Brief

versus

NO. 2006-CA-01663

BOBBY JOE ROBERTS

Appellee

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for appellants hereby 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 the Supreme Court or the Court of Appeals may evaluate possible disqualifications or recusal.

John R. Harrison	Appellant
James A. Mims, Jr.	Appellant
Bobby Joe Roberts	Appellee

Arnold F. Gwin Attorney for Appellants

E. Scott Verhine Attorney for Appellee

This the 27th day of March, 2007.

Attorney for Appellants

Arnold F. Gwin [MSB 5085]
Post Office Box 1956
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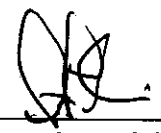
STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested simply to let the Court know that, if the Court believes such argument might be helpful, the appellants would welcome such an opportunity. Of course, the appellants defer to the Court's judgment in this matter.



Arnold F. Gwin
Attorney for Appellants

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STATEMENT OF ISSUES

The sole issue in this case is whether the lower court was manifestly in error in holding that there was no mutual mistake in the land description in the deed and that Mr. Harrison intended to convey to Roberts "all land south of the road" whether it contained more than 30 acres or not and, therefore, Harrison and Mims were not entitled to equitable relief.

STATEMENT OF THE CASE

On November 29, 2005, Bobby Joe Roberts, as the plaintiff, filed suit in the Chancery Court of Webster County, Mississippi, against John R. Harrison and James A. Mims, Jr., as the defendants, in Cause No. 2005-178. The complaint was styled "Suit to Reform Deeds, Remove Cloud from Title and Confirm Title to Bobby Joe Roberts". The complaint alleges that there is a dispute over the ownership of a certain six acres of land which the plaintiff claimed were owned by him by virtue of a conveyance from the defendant Harrison. The plaintiff alleges that the defendant Harrison conveyed to him "approximately 36 acres of land" and

"that the northernmost approximately six acres of land out of the 36-acre tract is subject to an apparent dispute of ownership".

The complaint further alleges that the 36 acres was deeded to the plaintiff in April, 2003, but that in July, 2005, the defendant Harrison attempted to deed the northernmost six acres of the 36-acre tract to the defendant James A. Mims, Jr. Shortly after that, according to the complaint, the defendant Harrison executed corrected deeds conveying to the plaintiff Roberts, only 30 acres of land (excepting the northernmost six acres) and deeding to the defendant James A. Mims, Jr., ten acres of land (including the six acres previously described in the deed to the plaintiff Roberts).

The complaint of the plaintiff asked that the two deeds to the defendant James A. Mims, Jr., (conveying him ten acres of land, being the northernmost ten acres of the 40-acre tract owned by the defendant Harrison), and the "corrected warranty deed" to the plaintiff Roberts conveying him only 30 acres be "conformed" so as to take away the six acres of land from the two deeds to the defendant Mims, and restore the six acres to the plaintiff Roberts,

so that Roberts got 36 acres of land and Mims got only four acres of land. The plaintiff also asked that the court "declare" that Roberts was the true owner of the six acres in dispute.

The defendants, Harrison and Mims, answered the complaint, admitting that there was a dispute about the six acres of land and alleging that "this six acres of land was never intended to be conveyed by the defendant Harrison to the plaintiff Roberts, and that the defendant Mims is the true owner of this six acres of land as the grantee from the defendant Harrison." And, further alleged:

> The defendants would further show unto the court that the plaintiff proposed to purchase 30 acres from the defendant Harrison at $500.00 per acre, and paid the defendant Harrison $15,000.00 for said land. The defendant Harrison did not intend to convey 36 acres to the plaintiff Roberts, nor did Roberts intend to buy, or pay for, 36 acres. The defendants would further show unto the court that the description in the deed attached hereto from Harrison to Roberts mistakenly described the land which was intended to be conveyed so as to describe six more acres than Harrison intended to convey to Roberts or that Roberts intended to buy from Harrison.

The answer of the defendants further admitted that the

defendant Harrison did, by corrected warranty deed, deed to the defendant Mims the north ten acres of Harrison's entire 40-acre tract.

The answer further alleged that the corrected warranty deed, deeding to the plaintiff Roberts, six acres less land and deeding ten acres to the defendant Mims (including the six acres) was done, because the defendant Harrison discovered a mistake in the original deed to the plaintiff; that the plaintiff's lawyer, C. P. Fortner, acknowledged that he had made a mistake in the previous description and that he prepared and filed the correction deeds. The defendants admitted that Roberts executed no deed to the defendant Harrison or the defendant Mims.

As an affirmative defense, the defendants alleged:

> That the defendant Harrison never intended to convey to the plaintiff the 30 acres of land, and never intended to convey (any part of) the north ten acres of the West Half of the Northwest Quarter of Section 30, Township 20 North, Range 11 East, and that the plaintiff never intended to purchase said land and never paid for the additional six acres. The defendants ask the court to declare that the two correction deeds (that is, the one conveying Roberts only the south

> 30 acres of the 40 acres of land and the one conveying to the defendant Mims the north ten acres of the 40-acre tract of land) correctly described the land intended to be conveyed by Harrison to Roberts and Mims, and that that is the land owned by each of them.

The case came on for trial on September 5, 2006, and the lower court decided, in substance, that there was "no mutual mistake...at that time as to what was sold and purchased or as to how it was described" and ordered that the correction deeds and the original deed from Harrison to Mims conveying ten acres be declared null and void.

The defendants appeal from this decision.

STATEMENT OF THE FACTS

The majority of the facts in this case are undisputed. It is believed that the Court will understand the facts of this case easier if the Court will refer to Exhibit "A" attached hereto. This exhibit is a copy of the tax assessor's plat, and it shows the ownership of the land as ordered and adjudged by the lower court. The land involved is the 80 acres in the northwest corner of Section 30 shown on the

plat; before the transaction involved in this case between Roberts and Harrison, Roberts owned the 40 acres shown as No. 9 on the plat and Harrison owned the 40 acres shown as 10 and 10.1 on the plat; after the transaction and, as ordered by the lower court, Roberts owned the 40 acres shown as No. 9 and the 36 acres shown as 10.1; Harrison (and now the defendant Mims) owned the four acres shown as No. 10 in the northwest corner and north of the road running generally east and west. The disputed land is the six acres immediately south of the road running east and west.

The plaintiff Roberts, and the defendant Harrison are cousins, and they both agreed that the original transaction between them occurred when Roberts approached Harrison (who was then 84 years old) about selling his 40 acres. Harrison did not wish to sell all of his 40 acres, but agreed to sell 30 acres (R 17 and R 52). Roberts testified that they both thought that he was buying 30 acres south of the road and that there was 10 acres north of the road that would be retained by Harrison (R 18 and 19). According to Harrison, the gist of the conversation with Roberts was: "First off,

I said, I didn't want to sell the 40 acres as long as I was able to take care of it, and how about me selling him 30 acres of the 40 acres, and I would keep ten acres and the house...."

Both Roberts and Harrison agreed that Roberts offered $500.00 per acre for a total purchase price of $15,000.00. Harrison testified (R 52) that he thought the land was worth more than $500.00 an acre, but he accepted Roberts' offer, because it would "keep the land in the family if he bought it". The promissory note from Bobby Joe Roberts to Harrison for $15,000.00 was admitted in evidence as Exhibit "11" and the deed of trust securing said promissory note was admitted as Exhibit "8".

The crux of this case is, of course, the intention of the parties. Roberts contends that he intended to buy all of Harrison's land south of the east-west road (identified as the Lollar Road) regardless of the acreage. Harrison, on the other hand, contends that he only intended to convey the south 30 acres (all of which was south of the road) and to retain 10 acres, and that that was all that Roberts intended to buy. The testimony concerning this issue will

be fully discussed hereinafter in the argument.

Roberts and Harrison agreed, in their testimony, that they went to C. P. Fortner, an attorney in Eupora, who had done work for Roberts in the past. There is no dispute but that Fortner was Roberts' lawyer, and he was paid by Roberts. Harrison did not have a lawyer. Roberts, Harrison and Fortner each testified that Harrison intended to convey Roberts 30 acres off the south side of his 40-acre tract (Roberts R 20; Harrison R 46-47; Fortner R 65-66). All three also agreed that Fortner was having difficulty with the description of the north boundary so as to encompass the south 30 acres; that Roberts suggested using the Lollar Road as the north boundary; that Fortner drew the deed, admitted as Exhibit "2", reciting that Harrison was conveying Roberts "a parcel of land containing 30 acres, more or less" but using as the north boundary "the south right-of-way of the public road". Harrison and Roberts both testified that they thought this did in fact convey 30 acres, and that there was ten acres left north of the road.

Parenthetically, it might be mentioned here that there was

a scrivner's error concerning the range in the land conveyed by Harrison to Roberts, so that this conveyance would not appear in the proper place in the sectional index kept in the office of the chancery clerk, because it was indexed under the wrong range (R 70 and R 80).

Approximately two years later, the defendant Mims had offered to take his distant cousin, the defendant Harrison, to a family reunion, and they drove by Mr. Harrison's residence located on the northern portion of the land retained by him. Mims and Harrison discussed Harrison selling Mims the residence and ten acres of land (Harrison R 49; Mims R 76). Mims agreed to buy the house and all the furniture in it, together with certain farm equipment and the ten acres of land for a total price of $25,000.00.

Harrison then conveyed to Mims by a deed dated July 8, 2005, the north ten acres of his 40 acres, together with the house and outside sheds, and Mims paid Harrison $25,000.00. When Mims went to file his deed, he discovered that on the tax assessor's record that Harrison did not in fact own ten acres, but only owned

four acres (R 80). Harrison and Mims went to Fortner (who was Roberts' lawyer) and informed him of the problem. Fortner then (free of charge) drew two "corrected warranty deeds", one from Harrison to Mims conveying the north ten acres of the 40-acre-tract; and the other from Harrison to Roberts conveying the south 30 acres of the 40-acre tract. These deeds were recorded. It is also undisputed that Roberts was not a party to these corrected deeds, nor was he informed of them by Mims, Harrison or Fortner. Mims testified at R 81: "I asked Mr. Fortner if I needed to go try to contact Mr. Roberts, and he said, 'No. I made this mistake. This is a mistake on my part, and I'll correct it'." Fortner testified that: "I knew that the original discussion was for 30 acres," and as to why he didn't call Mr. Roberts about the corrected deeds, he testified: "I didn't–well, of course, the only person that can sign the corrected deed is the grantor, and he was the only party that needed to sign it." (R 68)

Roberts testified that he found out about the corrected deeds, and a couple of months later when he saw a lady on a lawn

mower cutting hay on the disputed six acres, she told Roberts that Mims owned the land and asked if he would like to speak to Mims about it. Roberts said that he would and went to speak with Mims, who was on a tractor, and he said that the first thing Mims said was: "Well, that's your goddam problem, you son-of-a-bitch." When asked why Mims would say that, he didn't know why. Mims denies this.

At any rate, this caused Roberts to investigate into the matter, and he discovered the corrected warranty deeds and filed this lawsuit.

SUMMARY OF THE ARGUMENT

> It is not what description the parties intended to write but what property the parties intended to have embraced in the description they used....To hold that a court of equity could not...correct mistakes for the reason alone that the parties used the terms they actually intended to use would be to curtail its powers in a hitherto unheard extent. Most mistakes of fact in conveyances, except those caused by clerical misprision, arise in cases when descriptive terms are intentionally employed under the mistaken impression that they apply to the property sought to be conveyed.

Brimm v. McGee, 80 So. 379 at 381.

It is the contention and argument of the appellants here that the evidence in this case is clear that Harrison only intended to convey to Roberts the south 30 acres of his 40-acre tract of land, and that Roberts only intended to buy the south 30 acres. If this was in fact the intention of the parties, then it is clear that equity jurisdiction should correct the mutual mistake of the land description to conform to the intention of the parties. In short, the corrected deeds from Harrison to Mims and Harrison to Roberts should be declared valid conveyances, and that Roberts owns the south 30 acres, and Mims owns the north ten acres of Harrison's 40-acre tract,

ARGUMENT

Initially, Roberts testified that he approached Harrison about selling him "the entire place" and "he wasn't ready to sell all of it. I asked him about selling me the south part, south of the road, and we agreed on that" (R 17). Harrison, on the other hand, when asked by Roberts' counsel:

Q. But Mr. Roberts approached you about buying the land?

A. Well, we didn't mention south of the road, we just mentioned 30 acres.

(R 47)

In short, Roberts would have the court believe that the intention of the parties was that Harrison would sell and Roberts would buy all land south of the road regardless of acreage. Harrison, on the other hand, contends that he only intended to sell Roberts the south 30 acres of his property.

It is respectfully submitted that, if the court will carefully examine the testimony of the parties, there can be no doubt that the contention of Mr. Harrison is correct, i.e., he only intended to convey the south 30 acres, and Roberts only intended to buy the south 30 acres.

Obviously, the first thing that jumps out in support of Harrison's contention is the fact that everyone agrees that the purchase price was $500.00 per acre, and there was a total purchase price of $15,000.00–obviously buying 30 acres.

As to Roberts' testimony, after his initial contention that he approached Harrison about buying all the land south of the road, he admitted repeatedly that he and Harrison both thought there was 30 acres south of the road and ten acres north of the road. (R 18, R 19, R 20, R 36-37)

Harrison, Roberts and Fortner all agreed that when Harrison and Roberts first came to Fortner to draw the deed, it was understood that Harrison was to convey to Roberts the south 30 acres, all of which was south of the road, but they did not know where to put the north boundary so as to encompass 30 acres.

Harrison testified:

> Q. Did Mr. Fortner question you and Mr. Roberts about what description to use for the land for the deed?
>
> A. The only question he had was the north boundary.

Fortner testified that he knew the 30 acres was on the south side of the 40-acre tract: "I knew it was started at the southeast corner by the description" (R 65). He then stated that he knew the west boundary, the south boundary and the east

boundary, but he did not know where to draw the north boundary to comprise the 30 acres (R66).

Parenthetically, Fortner, Harrison and Roberts all agreed that Roberts suggested using the north boundary as the road, that Fortner drew the deed in this fashion, and Harrison signed it.

Roberts also testified: "Mr. Fortner was drawing the deed up, and he had some question about the north boundary." (R 19) He further testified that we "both thought there was 30 acres south of the road".

Fortner, Harrison and Roberts all agreed that there was talk about a survey being too expensive, and that is when Roberts suggested using the road as the north boundary.

At page 35 of the Record, Roberts stated: "When I approached Mr. Harrison about buying the property, he wouldn't sell me the 40 acres, that's true, and he agreed to sell me the land south of the road and retain that north of the road." He was then questioned about his statement that Mr. Fortner had some question about the north boundary, and he recalled saying that.

The point here is, if what Roberts contended was the agreement between himself and Harrison, i.e., that he was buying all the land south of the road regardless of acreage, then it is perfectly plain that there would be no problem about the north boundary–it would be the road.

Appellants submit that this testimony makes it perfectly plain that Roberts is mistaken when he says that he approached Harrison about buying all the property south of the road. He approached him about buying the whole 40 acres, and Harrison told him he wouldn't sell him 40 acres, he would sell him 30 acres.

The lower court appeared to acknowledge that the original agreement between the parties was for the purchase and sale of 30 acres of the 40-acre tract. The court stated:

> The parties declined to survey a tract of exactly 30 acres and agreed to sell and purchase the acreage within the calls of the deed, notwithstanding any inaccuracy as to acreage....This change in the terms of the sale occurred when the lawyer drawing the deed inquired of the parties about a survey or of use of a monument to set the north line of the tract. At that time, the parties changed their agreement from one of 30 acres at $500.00 per acre to the sale and purchase of the tract as

> bounded by the public road on the north side for $15,000.00....No mutual mistake existed at that time as to what was sold and purchased or as to how it was described....In this case, all parties knew that the description included all land south the road. They further knew that their original agreement was no longer valid because they were incapable of describing a 30-acre tract without a survey. They both knew what was being sold included all acreage up to the road.
>
> (Judgment of the Court at pages 1 and 2)

With respect for the lower court's judgment, the appellants submit that this finding by the lower court is simply not supported by the evidence. Both Roberts and Harrison repeatedly testified that both of them thought that the description in the deed using the road as the north boundary of the land conveyed would convey to Roberts 30 acres and that there was ten acres left north of the road. (See Roberts 18, 19, 20, 36 and See Harrison 48, 49)

The lower court notes that the difference in the acreage is 5.46 acres, so that Roberts, at $500.00 per acre, paid $2,730.00 too little. The court noted that sum is 18.2% of the purchase price. "This difference is not so large as to suggest any unconscionability or overreaching of Harrison in requesting that he sell the described

tract, subsequently learned to be 35.46 acres, for his original purchase price of $15,000.00." There are several problems with this analysis by the lower court. First, it fails to consider that Harrison intended to retain the house and ten acres of land; whereas, he only retained the house and four and a half acres of land. In short, he retained less than half of what he and Roberts intended for him to retain. Furthermore, presumably, the acreage surrounding the house would be more valuable than the acreage farther away. Moreover, Harrison testified that he sold the land to Roberts at a low price, because he wanted to keep the land in the family. Harrison was 84 years old at the time of the sale, and Fortner was Roberts' lawyer and was paid by Roberts according to Harrison, Roberts and Fortner. In this regard, it is submitted that Fortner, being primarily a real estate lawyer according to him, should have known that he did not have to use the road as the north boundary, but that he could have simply had Harrison convey to Roberts the south 30 acres of his 40 acres of land. See King v. Jones, 24 So.2d 860, 199 Miss. 666 (Miss. 1946). Obviously, when

Fortner represented Roberts and Roberts suggested using the road, Fortner did not tell Harrison that that was not necessary.

Appellants submit that it is pretty easy to understand why an 84-year-old man, who is selling his land too cheap to a family member in order to keep it in the family, would not expect to be taken advantage of. But that is what happened.

Appellants respectfully submit that, if the Court believes, as contended by the appellants, that Harrison intended to convey to Roberts 30 acres off the south of his property, that both thought, using the description they used, Harrison was in fact conveying 30 acres of land to Roberts and retaining ten acres (as they both testified), then, under the law of the State of Mississippi, all Roberts acquired was the south 30 acres of land regardless of what the legal description described.

In Brimm v. McGee, 80 So. 379 (Miss. 1919), James Alexander purchased from one Sykes property in the City of Jackson described as Lots 10 and 12. At the time of this sale, Sykes had a residence, garage, driveway and other improvements

located partially on the east side of Lot 10 and the west side of Lot 12. The driveway to the Alexander residence apparently ran north and south and was located on Lot 12 (which was the eastern lot). Lots 10 and 12 were both 80 feet wide, and the property east of the driveway on Lot 12 was 60 feet wide. Alexander conveyed a one-half interest in Lots 10 and 12 to McGee. Alexander and McGee, about a year later, decided to divide the property, but they both mistakenly believed that the driveway was the boundary between Lots 10 and 12 (whereas, the driveway was actually 20 feet east of that boundary). Because of this mistake, Alexander deeded to McGee Lot 10 and McGee deeded to Alexander Lot 12. Alexander later deeded Lot 12 to his brother, James, who erected a residence thereon and then sold what was described as Lot 12 to the appellant Brimm. The parties later learned that Lot 12 included a large portion of McGee's improvements on the land. None of the parties in this case had a survey done. McGee then sued the Alexanders and Brimm alleging a mutual mistake.

The lower court reformed the instruments so as to use the

driveway as the boundary between the two properties which is what all parties had always thought–that the driveway was the boundary between Lots 10 and 12.

In affirming the lower court, the Supreme Court stated:

> It is contended on behalf of the appellant that no definite contract was entered into by the original parties, Alexander and McGee, for the reason that while both understood that the driveway was the dividing line between Lots 10 and 12, each intended to use the very terms employed, and understood that he was getting what his deed called for. It is contended under the facts that there was no mutual mistake; that there is no ambiguity on the face of the deed, such as an error in the lot number, section, or range, and that the result of a reformation would be to make a contract which the parties themselves did not make. It is also contended that Brimm is an innocent purchaser for value, and that the complainant is guilty of negligence.
>
> Our interpretation of the facts leads us to the conclusion that appellant is wrong in his contention.

The Supreme Court stated:

> The main argument of appellant amounts to this: That since the parties intentionally used in their deeds the very terms of description written in the deeds, and there is no ambiguity on the face of the conveyances, they are now bound by the

documents as written. But the jurisdiction of the equities should not be so circumscribed. It is not the appearances, but the realities, which govern as well stated by counsel for appellee:

"It is not what description the parties intended to write but what property the parties intended to have embraced in the description they used....To hold that a court of equity could not correct the mistakes for the reason alone that the parties had used the terms they actually intended to use would be to curtail its powers to an hitherto unheard extent."

The important inquiry is, what property did appellee McGee and his co-tenant, J. A. Alexander, agree to convey one to the other...The testimony of McGee and Alexander establish a mutual mistake of fact....

Nor will the relief be denied because the parties made a mistake as to the legal sufficiency of the description.

Prudent businessmen make many mistakes, and these mistakes are found under many forms and under a variety of circumstances, but the limitations on the jurisdiction of equity to correct mutual mistakes of fact are indeed few.

We do not think appellee is precluded by any alleged negligence.

See also the case of Veterans Administration v. Bullock, 180 So.2d 610 (Miss. 1965), wherein the court quoted from other

cases as follows:

> It was not the description of the land that the parties intended to write into the deed, but what land the parties intended to embrace in the description they used.

And again:

> And a court of equity will likewise interpose and correct a mistake of fact, even though the parties employ the very terms they designed to use.

The appellants lastly would refer the court to the case of Webb v. Brown, 404 So.2d 1029 (Miss. 1981). In this case, the heirs of Annie K. Varnado and two grantees filed a bill for reformation of a warranty deed conveying property to one Brown. Brown filed a counterclaim seeking confirmation of title to the property described in her deed. In this case, Mrs. Varnado owned several buildings, which included a cleaners, beauty shop and an antique shop and additional property known as the Ainsworth Building. Mrs. Varnado executed a deed to one Wiggins and McGuffie, intending to convey all of the stores mentioned, but not the Ainsworth Building. Varnado, McGuffie and Wiggins all thought that Varnado was selling and they were buying the cleaners, beauty

shop and antique shop, but not the Ainsworth Building; whereas, in fact, the legal description used included the Ainsworth Building, as well as the other businesses. No survey was performed. This same property was later sold to Brown, using the same description. No survey was done on Brown's purchase, and McGuffie stated that he only intended to convey to Brown the cleaners, beauty shop and antique shop and not the Ainsworth Building.

The lower court found for the appellee Brown and held that she owned the Ainsworth Building.

On appeal, the Supreme Court reversed and rendered. The Court said:

> It is not necessary to consider all assignments of error for we are of the opinion the evidence unmistakenly demonstrates it was the clear intention of the original grantor, Mrs. Annie K. Varnado, not to convey the Ainsworth Building. Neither did the original grantees, Peggy Wiggins and Durwood McGuffie, intend to purchase the property in dispute nor did McGuffie intend to subsequently convey it to Elizabeth Brown. Even though the deed description after survey included part of the Ainsworth Building, it is not the description they intended to write which controls, but the property the parties intended to include in the description used. In Brimm v. McGee, 119

> Miss. 52, 57, 80 So. 379, 381 (1919), a reformation of deed suit wherein a mistake as to the description intended to be conveyed occurred, this court held "It is not what description the parties intended to write but what property the parties intended to have embraced in the description they used." Moreover, we are of the opinion the evidence demonstrates beyond a reasonable doubt a mutual mistake on the part of the original grantor and grantees. See Perrian v. Mapp, 374 So.2d 794 (Miss. 1979). Thus, we are of the opinion the mistake in description in the deed should be reformed to coincide with the description of the property intended to be conveyed.
>
> Reversed and judgment entered for appellants.

The lower court attempted to distinguish this last case by saying:

> In this case, all parties knew that the description included all land south of the road. They further knew that their original agreement was no longer valid because they were incapable of describing a 30-acre tract without a survey. They both knew
>
> what was being sold included all acreage up to the road.

With respect, appellants submit that this conclusion by the lower court wholly overlooked the testimony of both Harrison and Roberts that is repeated over and over that they both thought that

all of the land south of the road was 30 acres and all of the land north of the road was ten acres. There is no suggestion that either party ever thought that the land south of the road was going to be 36 acres and the land north of the road four acres, approximately.

Appellants would further point out to the Court the following rules of construction of deeds adopted by this Court.

> Where grantee is party that drafted instrument granting interest in land, document will be construed against grantee.
>
> McDonald v. Board of Mississippi Levy Commissioners, 646 Fed. Supp. 449, affirmed 832 F.2d 901 (N.D. Mis
>
> Instruments drawn by a party in interest must be construed most strongly against him.
>
> Hamilton v. Transcontinental Gas Pipe Line Corp, 236 Miss. 429, 110 So.2d 612 (Miss. 1959)
>
> Where deed being construed had been prepared by grantor's attorney, any doubt as to what was intended to be conveyed would be resolved in favor of grantee.
>
> McCuiston v. Blaylock, 215 Miss. 504, 61 So.2d 332 (Miss. 1952)

CONCLUSION

Appellants fail to see the equity in awarding Roberts 5.5 acres of Harrison's land that Harrison did not intend to convey and was not paid for, or the inequity in awarding to Roberts only the 30 acres he intended to receive and being the only land he paid for.

Respectfully submitted,

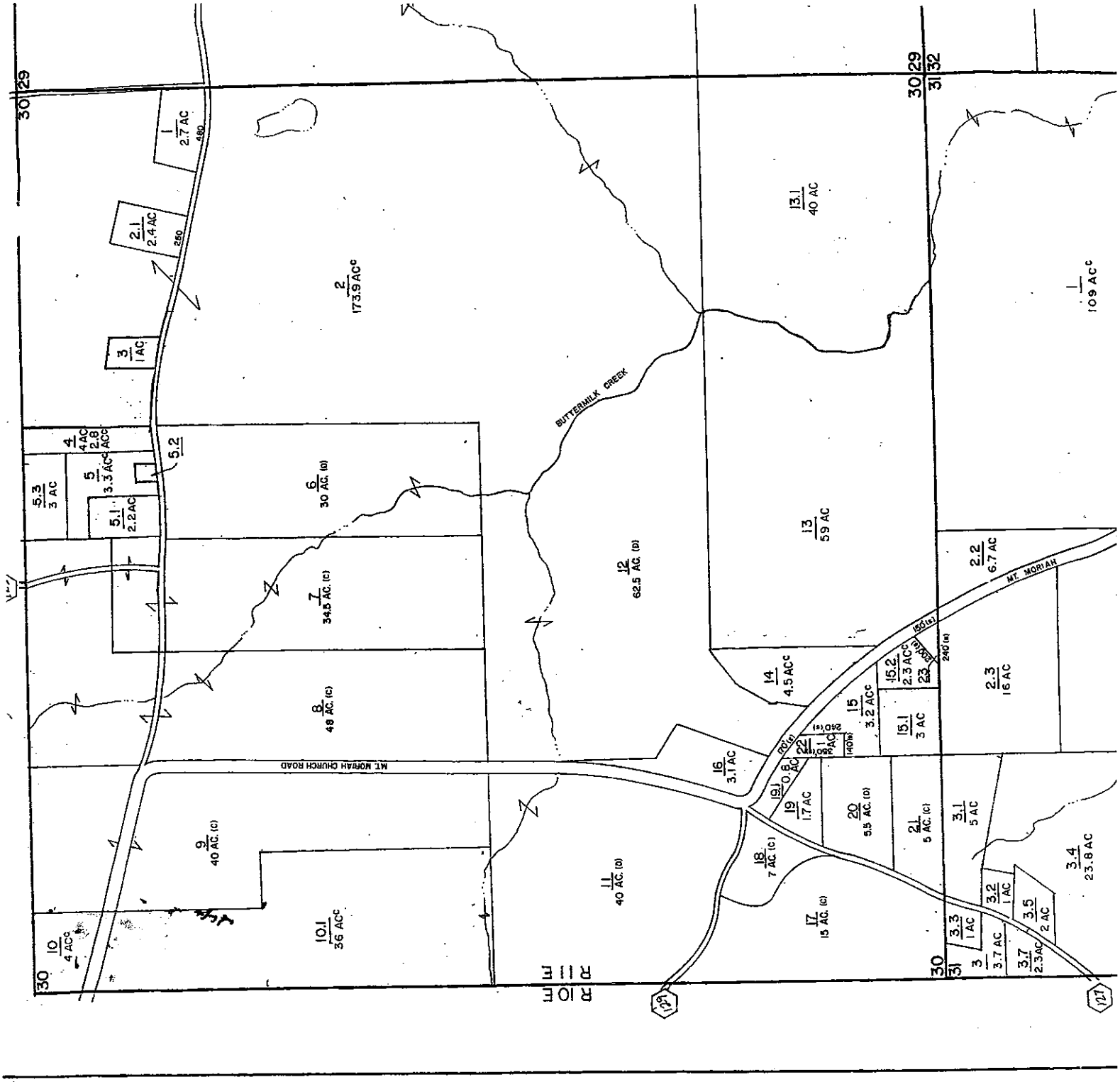
Attorney for Appellants

Certificate of Service

I, Arnold F. Gwin, attorney for the appellants, hereby certify that I have this day deposited in the United States mail, postage prepaid, a true and correct copy of the above and foregoing brief of appellants to E. Scott Verhine, 1013 Adams Street, Vicksburg, Mississippi 39183, attorney for appellee, and to Judge Robert L. Lancaster, Post Office Box 884, Columbus, Mississippi 39703-0884.

This the 27th day of March, 2007.

Arnold F. Gwin



EXHIBIT

EXHIBIT 12
ID Evid. 1
Date 9-5-06
Cause 05-178-L