IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00055

IN THE MATTER OF THE ESTATE OF
GROVER SUMMERLIN, DECEASED

BARBARA ANN LYNCH, **APPELLANT**

V.

CURTIS SUMMERLIN, **APPELLEE**

BRIEF OF APPELLEE CURTIS SUMMERLIN

APPEAL FROM THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI
HONORABLE WILLIAM J. LUTZ, PRESIDING

Durwood E. McGuffee, Jr.
MS BAR NO.: [redacted]

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel for the Appellee, Curtis Summerlin, does hereby certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Curtis Summerlin, Appellee;
2. Durwood McGuffee, Jr., and McGuffee Law Firm, attorney for Appellee;
3. Barbara Ann Lynch, Appellant;
4. James M. Crews, III., and the law firm of Herring, Long & Crews, P.C., attorneys for Appellant; and
5. The Honorable William J. Lutz, former Madison County Chancery Judge.

CURTIS SUMMERLIN, APPELLEE

BY: _____

Durwood E. McGuffee, Jr.,
Attorney for Appellee

STATEMENT REGARDING ORAL ARGUMENT

The Appellee does not request oral argument.

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IN THE MATTER OF THE ESTATE OF GROVER SUMMERLIN, DECEASED

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STATEMENT OF THE ISSUES

I. THE TRIAL COURT PROPERLY DETERMINED THAT A CONFIDENTIAL RELATIONSHIP DID NOT EXIST BETWEEN THE DECEDENT AND CURTIS SUMMERLIN.

II. THE TRIAL COURT DID NOT ERR IN FAILING TO FIND THAT A PRESUMPTION OF UNDUE INFLUENCE EXISTED WITH REGARD TO THE PROCUREMENT OF THE QUITCLAIM DEED.

III. THE TRIAL COURT PROPERLY GRANTED APPELLEE'S MOTION TO DISMISS AT THE CONCLUSION OF THE APPELLANT'S CASE IN CHIEF.

IV. THE TRIAL COURT DID NOT ERR IN REFUSING TO ENTER A DECLARATORY JUDGMENT AND/OR OTHER APPROPRIATE FINDING THAT THE QUITCLAIM DEED IS VOID.

STATEMENT OF THE CASE

On June 11, 2004, Barbara Ann Lynch filed a Petition for Appointment of Administrator in the Estate of Grover S. Summerlin, deceased, in the Madison County Chancery Court. (R.E. 1). Grover Summerlin is the father of the Appellant, Barbara Ann Lynch, and Appellee, Curtis Summerlin, Sr. On June 18, 2004, Chancellor Lutz granted the Petition and authorized Letters of Administration upon Barbara obtaining an Administratrix Bond. (R.E. 4). Letters of

Administration were issued on March 10, 2005. (R.E. 6). On June 1, 2005, Appellant filed a Summary Petition to Discover Assets. (R.E. 8). On June 20, 2005, Appellee filed a Petition for Probate of Last Will and Testament and for Issuance of Letters Testamentary. (R.E. 11). In the Petition, Curtis alleged that on or about March 16, 2004, he delivered unto Barbara a copy of Grover Summerlin's Last Will and Testament and a copy of a quitclaim deed. Curtis also alleged that he received a letter on June 30, 2004, that an estate had been opened. (R.E. 11). Curtis alleged that he contacted an attorney to discuss the matter and was given legal advice that since there were no estate assets other than personalty, he should just wait to see what happened with the estate. (R.E. 11).

On June 20, 2005, Curtis Summerlin filed a Response to Summary Petition to Discover Assets. (R.E. 18). In said Response, Curtis stated that he did not conceal assets of the estate and stated he had previously spoken with Barbara and asked her what she wanted in terms of Grover Summerlin's personalty. (R.E. 18). Curtis also responded that no real property of the estate existed as Grover Summerlin, on August 29, 2003, conveyed to his son, via quitclaim deed, all the land he owned and reserved himself a life estate in said real property. (R.E. 18). An Inventory of personalty is attached to the response. On July 21, 2005, Barbara filed a Petition to Set Aside Conveyance of Real Property and Other Relief on the grounds of lack of testamentary capacity, that consideration was lacking, and the conveyance was the product of undue influence. (R.E. 21).

On July 29, 2005, the Chancery Court entered a Decree Admitting Last Will and Testament to Probate and Granting Letters Testamentary. (R.E. 26). Also on July 29, 2005, Letters Testamentary were issued and Curtis filed an Inventory. (R.E. 28). On August 19, 2005,

Curtis filed his Answer to Petition to Set Aside Conveyance of Real Property. (R.E. 34).

On August 28, 2006, Barbara filed a Motion to Amend Petition to Set Aside Conveyance of Real Property in order to claim that certain conveyances of land were void due to an inaccurate legal description. (R.E. 37). On October 23, 2006, Curtis filed an Answer to the Amended Petition to Set Aside Conveyance of Real Property and a Counter-Claim for Reformation of Deed based upon a mistake or scrivener's error in the drafting of the deed. (R.E. 42). On October 24, 2006, Barbara filed her Answer to Counterclaim for Reformation of Deed. (R.E. 47).

The trial of this action was held on October 26, 2006, in the Madison County Chancery Court. After the conclusion of Barbara's case in chief, a Motion for Directed Verdict, which the Court characterized as a Motion to Dismiss was presented to the Court. After arguments of counsel, the Court issued a bench opinion dismissing Barbara's Petition and granted the Counterclaim for Reformation of Deed. (R.E. 49). On December 19, 2006, an Order was entered. (R.E. 57).

STATEMENT OF FACTS

The decedent, Grover S. Summerlin, Jr., passed away on January 3, 2004. (R.E. 11). Grover Summerlin was married to Alton Summerlin at the time of his death, and he had two children, Appellant, Barbara Lynch and Appellee, Curtis Summerlin, Sr. (R.E. 11). On August 29, 2003, Grover Summerlin was the owner of a three hundred and twenty (320) acre tract of land in Madison County.

On August 29, 2003, Grover Summerlin executed a quitclaim deed conveying the land to his son Curtis Summerlin, Sr., and reserved himself a life estate in said real property. (R.E. 66). On the same day Grover Summerlin also executed a Last Will and Testament. (R.E. 14). Said

Last Will and Testament named Curtis Summerlin as the Executor, and made a specific bequest of his tractor, two bushhogs and discs to his son Curtis Summerlin. The rest of his personal property was bequeathed in equal parts to Curtis Summerlin, Barbara Ann Lynch, and Alton Summerlin. (R.E. 14).

Sometime around early August of 2003, Curtis Summerlin, Sr. went to pick his father up to drive him to the farm. (T. 17-8, 133). Upon arriving at his father's home, Grover walked out and said, "I want to see an attorney." (T. 18). At this point they proceeded to the farm as they were supposed to meet Curtis Jr. at the farm that morning. (T. 18). At lunch time, Grover brought the subject up again about seeing an attorney. (T. 18). Curtis asked his father if he knew any attorneys, and he stated Christopher, but he did not know where his office was, and did not know any other attorneys when asked by Curtis. (T. 18). Curtis Summerlin suggested Steve Ratcliff as he had closed on a couple of houses for him in the past. (T. 18). They contacted Mr. Ratcliff's office and he told them to come to the office. After arriving at his office, the three of them met in the conference room to discuss the purpose of meeting. (T. 23). Grover Summerlin stated: "I want my son to have my farm." (T. 23). At this point, Curtis Summerlin asked his father if he really wanted to do that and said that his dad sort of came up out of his chair and said "it is my blank farm and I'll do whatever the blank I want to with it." (T. 23-24).

Curtis testified that his father was agitated with him for asking him the question if he was sure. (T. 32). Curtis said "From the way he reacted and he just – I should not have gone there, I shouldn't have said that. He was very personal with his property, with his things. He was very, I guess, you would say protective and you just didn't help him make decisions." (T. 32). Curtis testified his father never discussed with him what he wanted to do with his land when he passed

away prior to the meeting with Mr. Ratcliff. (T. 31).

Curtis Summerlin testified that Mr. Ratcliff immediately asked him to leave the conference room so he could speak with Grover Summerlin alone. (T. 24, 32). Curtis left the room and went to the waiting area while Grover Summerlin and Steve Ratcliff met privately for roughly twenty-five minutes. (T. 24, 35). Curtis testified that he could not hear what Steve Ratcliff and Grover discussed. (T. 35). About twenty-five minutes later, Curtis was invited back into the conference room and Mr. Ratcliff informed him of what Grover requested him to do. (T. 35-36).

Curtis initially paid the bill of Mr. Ratcliff, but was later reimbursed the money from his father. (T. 27-28). Curtis tried not to take the money, but Grover Summerlin insisted. (T. 28). The testimony showed that Grover instructed Mr. Ratcliff on how to list the names on the deed. (T. 37-38). Grover also told Mr. Ratcliff how to list the addresses and to mail the deed to Curtis because someone kept hitting his mailbox. (T. 37-38).

Curtis went to the courthouse and obtained a description of the land. (T. 25). Curtis drove his father back to Mr. Ratcliff's office on August 29, 2003 to execute the documents. (R.E. 14, 66). During the execution of the documents, Curtis was outside the room at the signing of the deed and will. (T. 26). Grover Summerlin was not able to see Curtis during the signing of the will. (T. 26). Curtis was not able to observe what went on in the room. (T. 27). There is some dispute as to whether Curtis or Steve had the deed recorded. (T. 76). Curtis believes that Mr. Ratcliff recorded the deed and Mr. Ratcliff believes he gave Curtis the deed to record. (T. 62).

Mr. Ratcliff testified that based upon his observations, Grover was the dominant party in

the father-son relationship. (T. 71). Mr. Ratcliff further testified that based on his observations during the times he met with Grover Summerlin, Grover was not the type of person who could have been easily influenced by others. (T. 71). Mr. Ratcliff stated that Grover was very sharp mentally. (T. 57). Mr. Ratcliff further stated Grover knew the consequences of drafting the deed and leaving the land to his son, to the exclusion of his daughter. (T. 68). When asked about Grover Summerlin's intent at to what he wanted to do with his land, Mr. Ratcliff testified that he had no doubt as to what Grover wanted to do with the land; it's what he did, he conveyed it to Curtis. (T. 68).

After the execution of the quitclaim deed, Grover placed the deed and will on the table next to his chair at his and Alton's home. (T. 39). Curtis never discussed this with his sister because, as he stated, his dad was very personal about his property and did not want any help with his decision making. (T. 51). Alton, likewise, knew about the deed but did not discuss it with Grover, Barbara or Curtis. Alton stated that she noticed it on the table and read it. (T. 138). Alton assumed that her children would get her property and Grover's would get his. (T. 138).

Grover Summerlin suffered from physical ailments in the last years of his life. Grover had tremors in his hands from Parkinson's disease, fluid buildup in his legs from congestive heart failure, and suffered hearing loss in one of his ears. (T. 10-13). As a result of these physical ailments, Grover was somewhat limited in his day to day activities, but could still get around and dress and clean himself. (T. 43). He was likewise so independent that he thought he could still drive and did on occasions. (T. 41). Alton was Grover's primary care giver and saw to most of Grover's medical care, transportation, day-to-day activities and business. (T. 14, 130). While Curtis did take his father to medical appointments for eye surgery and followup visits, most of

the care was provided by Alton or Barbara.

Alton stated she had assumed that Barbara and Curtis would receive equal shares of Grover's estate. (T. 139). Alton also stated that Barbara and Grover's relationship was a loving father-daughter relationship; however, she testified that it became very strained about six or so months before Grover passed away. (T. 128). Alton stated that Grover and Barbara got into an argument on Father's Day, regarding her bringing some World War II items and guns back so he could show them off to some kids. (T. 128, 129). Alton stated that Barbara called his special items nothing but a bunch of junk. (T. 145). Alton further stated that this argument may have influenced Grover to have the deed drafted. (T. 148).

The trial of this matter took place on October 26, 2006. The Madison County Chancery Court found that no confidential relationship existed between Grover Summerlin and Curtis Summerlin. The court also found that a presumption of undue influence did not arise because a confidential relationship was not proven. The court also granted the Counterclaim for Reformation and dismissed the Amended Petition to Set Aside Conveyance of Real Estate. (R.E. 57).

SUMMARY OF THE ARGUMENTS

The trial court was correct in holding that Appellant did not prove that a confidential relationship existed between Grover Summerlin and Curtis Summerlin at the time of the execution of the Quitclaim Deed and Last Will and Testament. While it was established by testimony at trial that Grover was of advanced age, had hearing loss in one ear, had to be driven to doctors appointments, and was dependent upon his wife; the great weight of the testimony proved that Grover was very sharp mentally, strong-willed and not easily influenced by others.

The testimony of Steve Ratcliff, who drafted the documents, established conclusively that Grover Summerlin did exactly what he intended to do with his land by executing the legal documents in question. There was no doubt in Steve Ratcliff's mind that this is what Grover wanted to do with his land and estate. The testimony established that Grover Summerlin was the dominant party in the father and son relationship. Grover Summerlin was dependent upon his wife, not Curtis. Accordingly, the trial court made the proper decision in dismissing the Appellant's Petition.

The trial court was also correct in holding that the Appellee was entitled to a reformation of the deed. The testimony of the attorney drafting the deed established that there was a mistake in drafting, and that there was no doubt in his mind that Grover intended to convey all the land he owned in the deed to Curtis Summerlin. Accordingly, there was substantial evidence in support of Chancellor Lutz's decision.

STANDARD OF REVIEW

When reviewing a Chancellor's decision, the Court's role is to determine if there is substantial evidence to support said decision, and when there is substantial evidence to support the Chancellor's findings, the Court is without authority to disturb the Chancellor's conclusions, even though as an original matter the Court might have found otherwise. *Jim Murphy Associates, Inc. v. Lebleu*, 511 So.2d 886, 894 (Miss. 1987). A Court must determine that a Chancellor was manifestly wrong against the overwhelming weight of the evidence before the Court will reverse. *Shaw v. Ladner*, 447 So.2d 1272, 1274 (Miss. 1984).

ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT A CONFIDENTIAL RELATIONSHIP DID NOT EXIST BETWEEN THE DECEDENT AND CURTIS SUMMERLIN.

II. THE TRIAL COURT DID NOT ERR IN FAILING TO FIND THAT A PRESUMPTION OF UNDUE INFLUENCE EXISTED WITH REGARD TO THE PROCUREMENT OF THE QUITCLAIM DEED.

III. THE TRIAL COURT PROPERLY GRANTED APPELLEE'S MOTION TO DISMISS AT THE CONCLUSION OF THE APPELLANT'S CASE IN CHIEF.

On August 29, 2003, Grover Summerlin, Jr., executed a Last Will and Testament and made an inter vivos gift by quitclaim deed conveying all of his real property to his son Curtis Summerlin. (R.E. 14).

This Court has long recognized that an inter vivos gift is a lawful means of transferring real property. *Longtin v. Witcher*, 352 So.2d 808, 810-11 (Miss. 1977); *Anderson v. Burt*, 507 So.2d 32, 36 (Miss. 1987). Such gifts between family are a normal occurrence and the courts will not act when the conveyance is a voluntary act on behalf of the parent. *Id.* In *Thomas v. Jolly*, 170 So.2d 16, 19 (Miss. 1964), the Court stated that "[a] deed from a parent to a child alone and of itself raises no presumption of undue influence since, in the absence of evidence to the contrary, the parent is presumed the dominant party. This is true even though the parent is aged, or aged and infirm." In review of a deed or will contest, the "polestar consideration is to give effect to the testator's intent. *Costello v. Hall*, 506 So.2d 293, 297 (Miss. 1987); *See also In re Estate of Granberry*, 310 So.2d 708, 711 (Miss. 1975) (finding that when the intent of the testator has been ascertained, then all minor, subordinate and technical rules of construction yield to the paramount intent thus ascertained).

In order to set a deed aside, the petitioner must prove that the will and free agency of the grantor was destroyed and that the deed in fact reflects the will of the person who exerted the influence. *Greenlee v. Mitchell*, 607 So.2d 97, 105 (Miss. 1992). "The party asserting that a confidential relationship exists has the burden of establishing such a relationship by clear and convincing evidence." *Foster v. Ross*, 804 So.2d 1018, 1021 (Miss. 2002).

A confidential relationship arises when a dominant influence controls a dependent person. *Hendricks v. James*, 421 So.2d 1031, 1041 (Miss. 1982). Confidential relationship was defined as "[n]ot confined to any specific association of parties but appears when 'on the one side there is an overmastering influence, or on the other, weakness, dependence, or trust.'" *In re Estate of Bilello*, 317 So.2d 916 (Miss. 1975). The court looks to a number of factors in determining whether a confidential relationship exists: (1) whether one person has to be taken care of by others, (2) whether one person maintains a close relationship with another, (3) whether one person is provided transportation and has their medical care provided for by another, (4) whether one person maintains joint accounts with another, (5) whether one is physically or mentally weak, (6) whether one is of advanced age or poor health, and (7) whether there exists a power of attorney between the one and another. *Wright v. Roberts*, 797 So.2d 992, 998 (Miss. 2001); *In re Estate of Dabney*, 740 So.2d 915, 919 (Miss. 1999); *In re Conservatorship of Moran*, 821 So.2d 903, 906-07 (Miss. Ct. App. 2002).

1. *Whether one person has to be taken care of by others.*

The testimony of the witnesses at trial established that Grover Summerlin needed help physically in the last years of his life. He had tremors in his hands from Parkinson's disease, fluid build up in his legs from congestive heart failure, and hearing loss in one ear. His wife

Alton was Grover's primary care giver and took care of their household, day-to-day personal affairs, and business matters. (T. 14). Alton stated that she discussed the business and financial decisions with Grover and then she did it "with his permission." (T. 135). Alton and Grover lived together at Alton's home in Canton, and Grover also owned a little farmhouse located on the land of this subject dispute. (T. 39). Alton also provided most of Grover's transportation for day-to-day things and for his medical appointments. (T. 130). During the last year and a half, Barbara would often meet Alton at the doctor's office to help with Grover. (T. 130). Barbara also assisted Alton and helped take care of Grover when Alton had a stroke in 2002 for a few weeks while Alton recovered. (T. 130, 136). Alton testified that Barbara helped for a period of two weeks after her stroke, then she hired someone to come to the house and assist for a while. (T. 136). Curtis Summerlin drove his father to doctor's appointments related to his eye surgery. (T. 13, 131). Curtis also helped his father cut the grass and do minor work on the farm land. Curtis stated that his father expected him to maintain the land. (T. 40). Alton testified that Curtis never drove Grover to run his errands. (T. 131).

The testimony showed that the primary care giver of Grover Summerlin was Alton first, and then Barbara during the period of time after Alton's stroke for a few weeks. When Alton had a stroke in 2002, Grover did not want Barbara to stay with him in the house and he did not want to stay at her house. (T. 87). Also, Grover Summerlin did not want Barbara to handle his personal business and mail. Grover told her to put it in the kitchen and to leave it there for Alton to handle when she felt better. (T. 88). Grover was dependent upon his wife and would not let others assist him with the day-to-day matters.

The Appellant asserts that Curtis Summerlin was in an "opportune position to unduly

influence his father." (Appellant Brief p. 13). However, the testimony at trial revealed that it was Grover who suggested several times to his son that he wanted to go see an attorney. (T. 17-18). Curtis Summerlin asked his father if he knew of any attorneys, but Grover only knew of one and could not remember where he was located. (T. 18). Curtis had previously used Steve Ratcliff on real estate closings and called his office for an appointment for his father. (T. 18). Curtis did not know what the meeting was about until they were in the conference room with Steve Ratcliff and Grover stated to Mr. Ratcliff that he wanted his son to have the farm. (T. 23, 31). Mr. Ratcliff made Curtis Summerlin leave the room while he discussed this matter in some detail with Grover Summerlin. (T. 34-35). They stayed in the conference room for roughly twenty-five minutes while Curtis waited down the hall. (T. 35).

It is correct that Curtis Summerlin drove his father to this initial appointment and the second appointment when the subject will and deed were executed. (T. 33). Curtis was present in the office while the will was signed but he was not in the conference room with Grover, the two witnesses, and notary public when the will was executed. However, Curtis Summerlin exercised good faith in his dealings with his father regarding assisting him to visit Mr. Ratcliff; Mr. Ratcliff testified that it was all done in good faith. (T. 72).

The testimony established that while Grover had to be taken care of to a certain extent, most of this care was provided by his wife, Alton, who was his day-to-day care giver. Grover was not dependent upon Curtis. Grover never lived with Curtis, and Curtis did not handle or assist his father with any of his business or personal activities other than helping with the upkeep on the farm land. Curtis did not shop, cook, or clean for his father. Curtis did not actively feed or clean his father. Curtis did not help his father with his day to day activities. He did not help

his father with financial decisions. He did not pay his father's bills. He did not help his father with his medication. Grover's wife was his primary care giver and took care of the day-to-day activities.

2. *Whether one person maintains a close relationship with another.*

Curtis Summerlin testified that he had a normal father-son relationship with Grover Summerlin. Appellant states that after Grover Summerlin married Alton that Curtis maintained no relationship whatsoever with Grover until the last few years of his life; however, that is not a true statement. While Curtis did spend more time with his father in the last years of his life, there was no motive other than spending time with his father. Alton testified that she never saw any disagreements between Curtis and Grover. (T. 132-33). Alton further stated that she never saw Curtis put any pressure on Grover to give him the land. (T. 140). Steve Ratcliff recalled that when he spoke with Grover Summerlin about Curtis, he believed that Curtis was close to his father. (T. 59). Mr. Ratcliff also stated that it was his impression that Grover was closer to Curtis than to Barbara, and that Grover had made a statement, but he could not remember it. (T. 68).

Alton testified that Barbara would call her father once a week and would visit once a month. (T. 127). Alton testified that Grover and Barbara had a loving father-daughter relationship; however, she also testified this changed during the last year of Grover's life and spoke of an incident which happened on Father's Day in 2003. (T. 128). On Father's Day, Grover Summerlin asked Barbara to bring some guns and World War II knives/items, that he had given to her son, back to him so he could put on an exhibit for some children in Vicksburg. (T. 129, 145). Alton testified that Barbara Ann did not want that to happen, she did not want to

bring the guns back. (T. 129-30). Alton stated this happened in the last six to eight months of Grover's life. (T. 130). Alton stated that it got to be a very unpleasant situation were cuss words were used. (T. 130, 149). Appellant states that it was a small argument and that apologies were accepted on the same day. (Appellant's Brief, p. 14). However, Appellee disputes the validity of this statement as Alton testified that after Barbara and her husband Malcolm left that day, that Grover made the statement that "If I had had a gun, I would have shot him." (T. 148). Grover was referring to shooting Malcolm, Barbara's husband.

Alton stated that this argument may have influenced Grover to have the deed drawn up. (T. 145-46). The quitclaim deed and will was executed on August 29, 2003, and Grover first visited Mr. Ratcliff at the end of July or early part of August. This was roughly one month or so after Father's Day and roughly six months before he passed away. This was the same time frame as the argument wherein Barbara called her father's World War II items, "junk". Alton also testified that after the litigation in this matter began that Barbara contacted her and stated that she needed to have her on her side or she wouldn't have a chance. (T. 146).

When asked her opinion as to why Grover left the farm to Curtis via deed, Alton Summerlin testified:

> I think that he – he and Barbara Ann got in a little argument, a fuss one day when they came up. I don't know if was Father's Day or what it was, and he asked her if she had brought the pistol, the guns back, and she said no. From that, it got started, and it wasn't very pleasant. And Barbara had told – had told him – you know, G.S. loved his things that he got from the service, the guns and the knives, and he loved it. And Barbara told him that it was just a bunch of junk. (T. 145).

The trial testimony showed that Grover and Curtis had a normal relationship, but that he was closer to Barbara at least until Father's Day in 2003. Curtis did not run errands or provide

Grover's day to day care. Grover likewise never sought out and Curtis never helped his father with business or financial decisions.

There was no secrecy involved in the making of the deed and will as alleged by the Appellant. Curtis believed that it was not his place to tell Barbara, and therefore he did not tell her. Curtis believed it was Grover's place to tell Barbara about it if he wanted to, as this was his father's decision, not his. Curtis stated that Grover has very protective of his property and you just didn't help him make decisions. (T. 32). There was an understanding between Alton and Grover that what was her was hers and what was his was his. Grover never discussed with Alton what he was going to do with the land when he passed away. (T. 150). While Grover and Curtis had a normal father-son relationship, Grover did not rely and depend upon Curtis to help with his transportation, medical needs, basic day-to-day activities, or business needs. For that, Grover relied upon his wife.

3. *Whether one person is provided transportation and has their medical care provided for by another.*

As previously stated, Alton Summerlin provided the majority of Grover's transportation and medical care. There was a period of two weeks after Alton had her stroke in 2002 that Barbara helped Alton by taking care of Grover. Alton also hired someone to come three times a week to help her with Grover for a period of time. Curtis took his father to the doctor when he had eye surgery. However, Alton was Grover's primary care giver. Alton or Barbara usually took care of Grover's transportation and medical care. (T. 130). Grover was not dependent on Curtis to provide transportation. Curtis never cooked, cleaned, or helped Grover with his medical care as far as taking care of his daily needs. Alton testified that Curtis never took Grover

to run his errands. (T. 131). Grover Summerlin still occasionally drove until the last few weeks of his life, until he backed into a pine tree on the farm. (T. 12). However, when running errands or going to doctor's appointments, Alton usually drove him on these type matters because of the fluid buildup in his legs.

4. *Whether one person maintains joint accounts with another.*

The testimony at trial established that Grover Summerlin and Curtis Summerlin did not have joint accounts with one another.

5. *Whether one is physically or mentally weak.*

As previously mentioned, the testimony established that Grover Summerlin was physically weak. Grover had tremors in his hands from Parkinson's disease, and fluid in his legs due to congestive heart failure. Grover was also shell shocked by artillery fire during World War II and had to wear a hearing aid in one ear, the other ear was okay. (T. 12, 42, 134). In speaking with him, he would sometimes ask you to repeat your yourself and talk in a louder tone of voice. (T. 42-43). However, Grover Summerlin was able to carry on normal conversations. (T. 43). His physical conditions did limit the things he was able to do in his later life. He was no longer able to perform strenuous activity such as working on the farm. However, he was able to physically get around somewhat and sit on the porch and enjoy the day. Grover was also able to carry on conversations. Appellant states that during the last year of his life that Grover was house bound and stayed in his pajamas all day. Such is not the case. Grover got up and about and went to the farm and spent the days sitting on porch talking and enjoying the country surrounding. Grover was still able to dress and clean himself on a daily basis.

However, the testimony at trial by the vast majority of witnesses showed that Grover

Summerlin was not mentally weak. Grover Summerlin was a ninety-year-old man; however, the testimony conclusively established that he was an extraordinary ninety-year-old as to his mental acuity. He was able to engage in conversations regarding current events and what he did in World War II. (T. 114).

The testimony established that Grover was very independent. (T. 12). While Grover went to the doctor a good bit in his last few years, not once in his life did her ever have to stay in the hospital. (T. 13). Curtis, Alton, and Malcolm Lynch all testified that Grover was a strong willed person. (T. 42, 113, 147). Malcolm and Alton further testified that Grover was not the type of person you could talk into doing things if he did not want to do them. (T. 113, 147). Grover was described as a very head strong person and not the type of person that could be manipulated into doing something. (T. 147). When Alton was asked if Grover mentally knew what he was doing in August of 2003, she stated: "I'm sure he did. I mean, I don't know any reason why he wouldn't." (T. 147). However, Barbara testified that he was extremely weak and easily deceived in his last years. (T. 93).

Steve Ratcliff testified that most of the statements made in the meeting while Curtis was present were made by Grover Summerlin. (T. 57). Mr. Ratcliff further testified that based upon his observations, Grover was the dominant party in the father-son relationship. (T. 71). Mr. Ratcliff further testified that based on his observations, Grover was not the type of person who could have been easily influenced by others. (T. 71).

Mr. Ratcliff testified that Grover Summerlin was: "mentally very coherent. I felt like he knew what he was doing ... I made it a point to make sure that he did know what he was doing because he was executing this deed and this will." (T. 57). Mr. Ratcliff further stated:

> I try to ascertain what their – just like I do on any transaction, what their mental capacity is. As far as that transaction goes, if it is their intent to, as you say, cut a sibling out of a land transaction or a will or anything to that effect, if I feel like they know what they're doing and that that is their intent, then we do prepare the documents. I give them a draft of the documents, let them go over the draft, make any changes they need to and then execute it. (T. 67).

Steve Ratcliff further testified that he absolutely makes sure they know the nature and effect of drafting such a document. (T. 67). Mr. Ratcliff also testified that it is his standard policy in drafting deeds and wills to make sure that the client understands the consequences of their actions in drafting such a deed, and that he did in fact discuss the full consequences with Grover Summerlin. (T. 68). Mr. Ratcliff also testified that, in his opinion, Grover Summerlin knew the consequences of drafting the deed and leaving the land to his son and not leaving it to his daughter. (T. 68). When asked about Grover Summerlin's intent at to what he wanted to do with his land, Mr. Ratcliff testified that he had no doubt as to what Grover wanted to do with the land and, "it's what he did, and he conveyed it to Curtis." (T. 68).

When asked about drafting a deed or will that excludes one sibling over another, Mr. Ratcliff stated that he makes sure that is the intention and that they know the consequences and results of their actions. (T. 58). Ratcliff testified that he thought Grover Summerlin's state of mind was very sharp. "I distinctly remember that it was sharper than I thought maybe somebody as an elderly person would be. He, in my opinion, knew what he was doing. We talked about it at some length and he executed it." (T. 67-68). Mr. Ratcliff testified it was very possible, if not probable that he asked Curtis Summerlin to leave the room. (T. 70). Mr. Ratcliff also recalled Curtis asking his father if he was sure he wanted to do this. (T. 71). Mr. Ratcliff did not remember Grover's response verbatim, but did remember Grover stating this is what he wanted

to do with his land. (T. 71).

Steve Ratcliff further testified that Grover was not the type that could be easily influenced, because the times that he saw him, he seemed like a "very strong willed person. He was a – he was an impressive elderly gentleman." (T. 71-72). Mr. Ratcliff also stated that Grover was the dominant party. (T. 71). Steve Ratcliff further testified that based upon his observation, that it was his opinion that Curtis Summerlin acted in good faith. (T. 72). Holly Ratcliff, also an attorney, was a witness to the Grover Summerlin's will. (T. 79). Mrs. Ratcliff stated that based on her observations that Grover Summerlin was not unduly influenced and possessed testamentary capacity. (T. 80).

Alton Summerlin likewise stated that Grover was very strong willed. This testimony was corroborated by most of the witnesses. The testimony and evidence indicated that this was a man who did what he wanted to do and was not influenced by others. Alton also testified that he was mentally strong and mentally sharp. Steve Ratcliff also testified that Grover Summerlin was mentally coherent, and that he understood completely what he was doing and that is what he wanted to do as to his intent. Holly Ratcliff also testified that Grover knew what he was doing. Steve Ratcliff further testified that Grover Summerlin was very sharp, more so than he expected of an elderly person.

Therefore, while the testimony shows that Grover suffered from physical ailments, the testimony proved that these ailments did not allow him to be influenced by others due to his sharp mental acuity and strong willed nature.

6. *Whether one is of advanced age or poor health.*

As previously noted, Grover Summerlin was of advanced age, had physical health

problems, and his hearing was impaired in one ear. However, as previously stated Grover Summerlin was a strong willed man who was exceptionally sharp mentally. The testimony established that Grover Summerlin was not the type of person to be influenced by others. The testimony showed that the intent of Grover Summerlin was to convey his son the farm.

Steve Ratcliff testified that Grover was very sharp mentally and that he had no doubt in his mind that Grover wanted to leave Curtis all of the land in question. Accordingly, Grover's age and health had no bearing as he still possessed the ability to assert his will and was not influenced by others.

7. *Whether there exists a power of attorney between the one and another.*

No power of attorney existed between Grover Summerlin and Curtis Summerlin, Sr. (T. 42). The testimony at trial and the pretrial deposition of Curtis Summerlin, Sr., established that Grover Summerlin did enroll eleven acres of his land into the federal government CRP program and granted his grandson, Curtis Summerlin, Jr., a power of attorney on this matter. (R.E. 68; T. 15).

The Appellant states that the omission of the suffix "Jr." on the power of attorney is suspicious, and that the Court should have insisted upon additional verification. However, Curtis Summerlin, Jr., an officer with the Mississippi Department of Wildlife, was present at Court that day to testify in this matter. Appellant did not call Curtis Summerlin, Jr., in her case and did not request the court for further verification of the power of attorney. (T. 157-58). Grover Summerlin wanted to enroll his land in the CRP program and plant some trees. His grandson, Curtis Summerlin, Jr., was the logical choice given his background as a biologist and conservation officer for the State of Mississippi. Appellee submits that there is nothing

suspicious about this power of attorney. Further, on the power of attorney it lists the address for Curtis Summerlin as 17 Peachtree Lane, Madison, MS 39110. (R.E. 68). This is the address of Curtis Summerlin, Jr.

In most cases where a confidential relationship is found, the beneficiary is usually involved in a combination of the following: cooking, cleaning, shopping, actively feeding, providing transportation, helping with medical care, assisting with medications, and holding joint banking accounts and power of attorneys. See *Estate of Grantham* 609 So.2d 1220, 1224 (Miss. 1993) (finding confidential relationship when testatrix depended on beneficiary and maintained a close relationship, provided her transportation and arranged medical care, handled her finances and business concerns, joint accounts existed, and she was of advanced age and in poor health); *Hale v. Bradley,* 539 So.2d 1040, 1041 (Miss. 1989) (finding confidential relationship when testator relied upon beneficiaries to manage business affairs and assist her in going to and from wherever she needed to go).

In the present case, Curtis did not shop, cook, or clean for his father. Curtis did not actively feed or clean his father. Curtis did not help his father with his day to day activities. He did not help his father with business or financial decisions. He did not pay his father's bills. He did not help his father with his medications. Grover's wife was his primary care giver and took care of the day to day activities. Alton provided the majority of Grover's transportation to and from medical visits. Barbara sometimes assisted Alton. Curtis did not have a joint bank account with his father, and he did not hold a power of attorney. He did provide medical transportation concerning eye surgery for a short period of time, and helped maintain the farm by cutting the grass and doing minor work.

Appellant points out that Steve Ratcliff had previously handled legal transactions on behalf of Curtis. However, as the court pointed out, these transactions were just simple real estate closings, and were different from a normal attorney-client relationship. Curtis never used Steve Ratcliff for anything other than real estate matters such as closings. (T. 34). Curtis and Steve Ratcliff do not socialize together. (T. 34). These prior loan closings did not render Mr. Ratcliff unable to give Grover independent legal advice concerning his estate. *See Blissard v. White*, 515 So.2d 1196, 1200 (Miss. 1987) (holding that the fact that an attorney who advised the testator had previously done legal work for the beneficiary, by preparing a deed and two wills for the beneficiary, did not render said attorney incompetent to give independent advice when there was evidence of testator's independence and ability to make her own decisions).

The evidence in this case demonstrates that Grover Summerlin was in control of his mental faculties and maintained dominance in the relationship between he and his son. Curtis in no way overmastered or controlled his father. Grover maintained his will and free agency. As the testimony of Steve Ratcliff established, the intent of Grover was clear and Curtis acted in good faith in dealing with his father. Grover was the dominant party. Accordingly, the trial court was correct in holding that no confidential relationship existed between Grover and Curtis.

Even if the Chancellor had determined that a confidential relationship existed, which he did not, the evidence demonstrated that the will and deed were not the product of undue influence.

To overcome the presumption of undue influence, the proponent must demonstrate by clear and convincing evidence: (1) good faith on the part of the grantee/beneficiary; (2) grantor's full knowledge and deliberation of his actions and their consequences; and (3) that the

grantor/testator exhibited independent consent and action. *Mullins v. Ratcliff*, 515 So.2d 1183, 1193 (Miss. 1987); *Murray v. Laird*, 446 So.2d 575, 578 (Miss. 1984). In *Isom v. Canedy*, 88 So. 485, 489 (Miss. 1921), the Court found that undue influence must necessarily be proved largely by the circumstances, by taking one fact in connection with another fact, and weighing the whole of the surrounding facts in determining whether or not one person has acquired that influence which dominates the mind of another.

In *Miner v. Bertasi*, 530 So.2d 172 (Miss. 1988), the Court found the presumption of undue influence was negated because grantor was very mentally sharp, strong-willed, and not susceptible to outside influence. In *Estate of Grantham* 609 So.2d 1220, 1225 (Miss. 1993), the Court found that the presumption had been overcome and noted that the attorney established independent consent and action by asking the testator who she wished as her beneficiaries, and she pointed to them in the attorney meeting and verbally confirmed the choice. The Court held that the evidence clearly and convincingly proved that beneficiaries did not substitute their intent for that of the testator, and further noted that the case for independent consent and action would have even been stronger had the attorney asked the beneficiaries to leave the room. *Id.*

In *Sandlin v. Sandlin*, 790 So.2d 850, 854 (Miss. Ct. App. 2001), the Court of Appeals found that a confidential relationship existed when the beneficiary had a close relationship with his father and took care of his father by cooking, cleaning, shopping, actively feeding and cleaning, provided transportation, helped with medications, maintained a joint bank account and held his father's power of attorney. However, the court also found that the son overcame the presumption of undue influence, even though son drafted the will and procured the execution of the will by obtaining the notary and witnesses, and was present in the hospital when his father

signed the will. *Sandlin,* 790 So.2d at 854-855. The court reasoned that the testimony at trial established that testator was not mentally infirm, and was described by many as "strong-willed, strong-headed and stubborn." *Id.* The court also noted that the testimony established that the testator never did anything he did not want to do and was in control of his mental faculties. *Id.* The court found that testator had full knowledge of his actions, had independent consent and that the beneficiaries actions were in good faith. *Id.*

The testimony at trial revealed that Curtis exercised good faith in his relationship with his father. Steve Ratcliff testified that he believed that Curtis acted in good faith in assisting his father. Mr. Ratcliff stated that Grover did most of the talking when they were in the conference room, and that Curtis asked his father if he was sure this was what he wanted to do. Mr. Ratcliff and Grover met together in his conference room for twenty-five minutes and discussed what Grover wanted to do with his estate. Mr. Ratcliff testified that he discussed the consequences of his actions by leaving all the land to one sibling and that Grover understood his actions. He further testified that Grover was the dominant party in the father-son relationship. Mr. Ratcliff also testified that he made sure that Grover knew what he wanted to do with his estate. Mr. Ratcliff stated he had no doubt at all about Grover's intent, and that his intent and actions were to convey all the farm land to Curtis. Mr. Ratcliff further testified that Grover was very sharp mentally and knew he was doing. The testimony also showed that Grover was a particularly strong-willed man, and not the type of person who could be influenced by others. Accordingly, even if the presumption of undue influence was present, which it was not, the testimony presented at trial would overcome such a presumption.

Chancellor Lutz heard all of the testimony, viewed the witnesses as they testified, and

likewise examined all of the evidence presented at trial. His ruling in this matter is support by the evidence and the law of the State of Mississippi.

IV. THE TRIAL COURT DID NOT ERR IN REFUSING TO ENTER A DECLARATORY JUDGMENT AND/OR OTHER APPROPRIATE FINDING THAT THE QUITCLAIM DEED IS VOID.

On March 20, 1957, Grover Summerlin acquired title, by warranty deed, recorded in the land records of Madison County at Book 67 Page 404, the following real property situated in Madison County, Mississippi, described as "W ½ of NE 1/4 and NW 1/4 of SE 1/4 and NW 1/4 of Section 4, and Lot 9 E.B.L. of Section 5, all being in Township 9 North, Range 5 East."

On August 29, 2003, Grover Summerlin conveyed to Curtis Summerlin by Quitclaim Deed, recorded in the land records of Madison County at Book 541 Page 139, the following real property situated in Madison County, Mississippi, described as "W ½ of NE 1/4 and NW 1/4 of SE 1/4 and NE 1/4 of Section 4, and Lot 9 E.B.L. of Section 5, all being in Township 9 North, Range 5 East."

Said land description in the conveyance of the Property on August 29, 2003, contains what is known as a scrivener's error. A mistake was made in the drafting of the deed. The deed should have been drafted to read "W ½ of NE 1/4 and NW 1/4 of SE 1/4 and NW 1/4 of Section 4, and Lot 9 E.B.L. of Section 5, all being in Township 9 North, Range 5 East."

Appellant argues that the conveyance of an interest in the NW 1/4 of Section 4, Township 9 North, Range 5 east, Madison County, Mississippi, is void. However, the testimony at trial showed this to be nothing more than a scrivener's error and mistake in the drafting of the document.

In an action to reform a deed, the party asserting reformation must prove (1) a mistake on

the part of both parties; or (2) a mistake on the part of one party with fraud or inequitable conduct on the part of the other party; or (3) an error on the part of the scrivener. *Bacot v. Duby*, 724 So.2d 410, ¶ 35 (Miss. Ct. App. 1998); (*citing Perrien v. Mapp*, 374 So.2d 794, 796 (Miss. 1979); *Veterans Admin. v. Bullock*, 180 So.2d 610, 614 (Miss. 1965); *Allison v. Allison*, 203 Miss. 15, 33 So.2d 289 (1948). However, the mistake that will justify a reformation must be in the drafting of the instrument. *Johnson v. Consolidated American Life Ins. Co.*, 244 So.2d 400, 402 (Miss. 1971). A scrivener's error may be sufficient to warrant the reformation of an instrument. *See Sunnybrook Children's Home, Inc. v. Dahlem*, 265 So.2d 921, 925 (Miss.1972). The Court has stated that to prove a mistake in a deed, the party seeking to reform the deed must prove the mistake beyond a reasonable doubt. *McCoy v. McCoy*, 611 So.2d 957, 961 (Miss. 1992). A mutual mistake exists "[w]here there has been a meeting of the minds of the parties and an agreement actually entered into but the agreement in its written form does not express what was really intended by the parties." *Black's Law Dictionary* (6th ed. 1990). In *Sunnybrook Children's Home, Inc. v. Dahlem*, 265 So.2d 921, 925 (Miss.1972), the Court held that the evidence showed that grantor intended to convey land located in Range 7 East and that the omission of the range number was a scrivener's error justifying reformation of the description.

In *McAllister v. Richardson*, 60 So. 570, 571 (Miss. 1913), the Court held that equity has the power to reform a deed to make it express the real intention of the parties. In *McAllister*, the controversy centered around a incorrect description of land numbers. The Court stated: "a court of equity will entertain a suit for the reformation of a deed when there is a material mistake in the description of lands intended to be conveyed, so that more or less, or different, property is included than the parties, in fact, intended, and the inaccuracy of the description will be

corrected." *Id.* The Court went on to note that it is easy to understand that the drafter of a deed, who copies in a mechanical way the description of the land from a tax receipt, could easily make an error in description, and that it is proper for a court of equity to correct such a mistake. *Id.*

In *Veterans Administration v. Bullock*, 180 So.2d 610, 613-14 (Miss. 1965) the Court found that when a surveyor made an error of 1,000 feet in locating the point of beginning for a one acre tract, improved with a house owned by vendor, and that acre actually described was wild unimproved land also owned by vendor, it showed that there had been a mutual mistake of fact in the description contained within the deed.

Appellant argues that the mistake was one by Curtis Summerlin and is therefore a unilateral mistake. The same argument was made in *Veterans,* where one party asserted that since they had nothing to do with hiring the surveyor who made the error that the mistake was a unilateral mistake and not a mutual mistake. However, the Court in Veterans stated: "the intention of the parties is manifest and will be given effect since it clearly appears from the whole record what their intention was, especially where every consideration of equity demands it, as it does in this case." *Id.* at 614; *See also Birchett v. Anderson*, 133 So. 129, 131 (1931) (stating that it is 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); *Miles v. Miles*, 37 So. 112, 114 (1904) (stating that a court of equity will correct a mistake of fact even if the parties employ the very terms they designed to use, and that the rule is not different where there is a mistake in the omission or insertion of words contrary to the intention of the parties); *Webb v. Brown*, 404 So.2d 1029, 1031-32, (Miss. 1981), (stating that it is not the description they intended to write that controls, but the property the parties intended to include in the description); *Brimm v.*

McGee, 80 So. 379 (Miss. 1919) (stating it is not the description the parties intended to write but what property the parties intended to have embraced in the description they used, and relief will not be denied because of a mistake as to the legal sufficiency of the description); *In re Estate of Granberry*, 310 So.2d 708, 711 (Miss. 1975) (finding that when the intent of the testator has been ascertained, then all minor, subordinate and technical rules of construction yield to the paramount intent thus ascertained.)

As in *Sunnybrook*, the evidence showed that Grover Summerlin intended to convey all the land he owned to Curtis Summerlin. Steve Ratcliff testified that he had no doubt as to Grover Summerlin's intentions. Steve Ratcliff stated that the error was made by his secretary in drafting the quitclaim deed. Such would be a scrivener's error made by his office. In proofing this document, Steve Ratcliff did not notice the mistake. Likewise, Grover Summerlin did not notice the mistake when he proofed the documents on the date when he signed the documents. Mr. Ratcliff stated that he had Grover Summerlin, like all clients, proof the documents for errors or corrections before the documents are executed. Grover Summerlin executed the deed.

Steve Ratcliff stated that he assumed, very accurately so, that his secretary in the office typed the quitclaim deed. (T. 59). Mr. Ratcliff also stated that he believed the "legal description was provided to me in the form of an old deed, and I do believe that Curtis did provide me with that deed." (T. 61). Mr. Ratcliff also stated he did have a copy of an old deed. (T. 62). When asked how the variation in the deed occurred, Mr. Ratcliff testified that he strongly believed that it was just an error in his office. (T. 74). Steve also testified that he had no doubt that Grover Summerlin intended to convey all the land he owned to Curtis Summerlin via the quitclaim deed. (T. 74). Mr. Ratcliff further stated that "when we executed this deed, we looked

at this legal description, obviously not close enough as far as that error goes, but this is the legal description that he wanted to convey. And it was generally based on this old deed." (T. 76).

Even assuming as Appellant asserts that Curtis Summerlin made the mistake in copying down the land description, a scrivener's error exists. Steve Ratcliff reviewed the document and did not notice any errors. Grover Summerlin also reviewed the document. Neither Steve Ratcliff nor Grover Summerlin noticed a mistake in the land description and Grover Summerlin executed the quitclaim deed. It was Grover Summerlin's intent to convey all of the land he owned to Curtis. Steve Ratcliff in preparing the quitclaim deed intended for the document to convey all the land Grover Summerlin owned. At the execution of the quitclaim deed, both Grover Summerlin and the attorney that drafted the deed intended for the quitclaim deed to convey all property owned by Grover Summerlin to Curtis Summerlin. A mutual mistake is present.

As the Appellant states, in all fairness, it can be conceded that a solo practitioner can not be expected to remember all of the details of a routine land transaction. However, given the importance of the legal description, it would be easy to see that great care was taken by Curtis Summerlin in obtaining the legal description for the property. Curtis Summerlin stated he went to the tax office in Madison County and got the tax receipts for the legal description, and copied them. (T. 38). It could also be argued that Mr. Ratcliff did in fact have a copy of an old deed, as he twice testified that he based the land description upon an old deed. Not only did he mention the old deed several times in his testimony, standard practice for attorneys is to have a copy of the old deed.

Moreover, a review of a standard keyboard illustrates how the error in drafting the deed probably occurred. On a keyboard, the letter "E" is located right next to the "W". It is easy to

see how the mistake could have happened and how the incorrect "NE" ended up in the legal description instead of "NW".

The Chancellor found: "There is nothing that indicated to me and there is no evidence at all that indicates to me that this – the error in the deed from the warranty deed to the quitclaim deed was anything more than a scrivener's error. There is nothing that I've been presented that would indicate that it was his intent not to include his whole farm in that thing." (T. 165). The intent of Grover Summerlin is clear. Mr. Ratcliff testified that he had no doubt as to Grover's intent. Grover Summerlin intended to convey all the land he owned to his son.

CONCLUSION

The Chancery Court of Madison County, Mississippi should be affirmed.

RESPECTFULLY SUBMITTED,

BY: _____

DURWOOD E. MCGUFFEE, JR.,
Attorney for Appellee

CERTIFICATE OF SERVICE

I, Durwood E. McGuffee, Jr., attorney for Appellee, do hereby certify that I have this day filed this Brief of Appellee with the Clerk of this Court to be received on behalf of the Mississippi Supreme Court and have mailed a true and correct copy of the Brief to the following:

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CERTIFIED, This the 5th day of October, 2007.

_____

DURWOOD E. MCGUFFEE, JR.