IN THE SUPREME COURT OF MISSISSIPPI
NO. 2007-[redacted]-00102

CA

LEROY CALVERT, JR. APPELLANT

VS.

BRIAN D. GRIGGS AND TANYA N. GRIGGS APPELLEES

APPEAL FROM THE CHANCERY COURT OF CLAY COUNTY, MISSISSIPPI

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of 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 disqualifications or refusal.

1. Leroy Calvert, Jr., Appellant
2. Brian D. Griggs and Tanya N. Griggs, Appellees
3. Gary Street Goodwin, Esq., Attorney for Appellant
4. Thomas B. Storey, Esq., Attorney for Appellees

So certified, this the 8th day of October, 2007.

GARY STREET GOODWIN,
ATTORNEY FOR APPELLANT
[redacted]

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STATEMENT OF THE ISSUES

APPELLANT'S PROPOSITION

WAS THE CHANCELLOR MANIFESTLY IN ERROR IN AWARDING SUMMARY JUDGMENT TO THE APPELLEES DUE TO THE EXISTENCE OF MATERIAL FACTS IN DISPUTE REGARDING THE INTENT OF THE PARTIES FOR THE EASEMENT OWNED BY APPELLANT AND/OR WERE THE APPELLEES ENTITLED TO JUDGMENT AS A MATTER OF LAW, SINCE THE CHANCELLOR APPLIED AN ERRONEOUS LEGAL STANDARD TO DETERMINE THE RELATIVE RIGHTS OF THE PARTIES UNDER THE EASEMENT?

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COURSE OF PROCEEDINGS AND DISPOSITION BELOW

This action was commenced in the Chancery Court of Clay County, Mississippi by Appellees Brian D. Griggs and Tanya N. Griggs (hereinafter "the Griggs") against their neighbor and adjacent landowner, the Appellant, Leroy Calvert, Jr. (hereinafter "Calvert"). The Griggs and Calvert are adjacent landowners. In their Complaint, the Griggs complained that Calvert had pulled down a fence that Griggs had established between the properties, although he had left areas open for gates which would be later installed, and to which Calvert would have keys. The Griggs sought injunctive relief, damages and a declaratory judgment against Calvert for installing gates on the property. [R 2-11, E 9-18] Calvert answered and counterclaimed, requesting the Court recognize his 40 foot wide easement that ran across the Griggs property adjoining their property line, to be free from obstructed access by the placement of fences and gates, due to the inconvenience caused him to access his newly built residence. Calvert also, in his counterclaim, sought the removal of several improvements that the Griggs had placed within the easement area, such as a gazebo and shrub plantings, or for a judgment of the Court that the same would not begin the running of the limitation of actions against removal of those obstructions in the future. [R 12-15, E 19-22] The Griggs then filed a Motion for Partial Summary Judgment on their claim. [R 30-85, E 37-76] Calvert responded to the Motion for Summary Judgment, [R 134-181, E 83-130] and at the hearing, the Court granted summary judgment for the Griggs. [R 105-108, E 131-134] The Griggs' next moved for summary judgment on Calvert's counterclaim, positing that since they were granted summary judgment on their claim against Calvert, that

Calvert's counterclaim was therefore precluded, all previous issues having been addressed. [R 109-119, E 135-145] Calvert responded [R 122-124, E 148-150] and the Court then granted summary judgment for the Griggs. [R 125-126, E 151-152] Calvert duly noticed his appeal to this Court. [R 127]

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STATEMENT OF THE FACTS

In ruling on the Motions for Summary Judgment, the Chancellor relied upon the Plaintiffs' Proposed Findings of Fact and Proposed Judgment, and adopted the Proposed Judgment as his Judgment, *in toto*. [T 27] Accordingly, Calvert submits that the only findings contained in the Judgment are those favorable to Griggs. Calvert submits that the Chancellor had before him a genuine dispute as to material facts or applied the wrong standard of law, or both, to the case *sub judice*. Calvert submits that the Court should therefore be reversed. Accordingly, the facts, both disputed and undisputed, will be summarized here. This Court, utilizing a *de novo* standard of review in reviewing appeals based on summary judgments, can glean from the record that there were facts in dispute and that the lower court applied the wrong standard of law in determining this action, i.e., the Griggs were not entitled to judgment as a matter of law.

The situs of the dispute between these parties is located on Hamlin Road in the Western part of the City of West Point in Clay County, Mississippi. Hamlin Road is a North/South road on the Westerly side of which is located the two acre tract of land upon which the Griggs' residence is located. However, all of the land that is owned by the Griggs that is in dispute in this action lies immediately North of the Griggs' line fronting Hamlin Road. The front acre on Hamlin Road is owned by a neighbor of both parties and is an unoccupied tract of land. The one acre immediately West of the unoccupied tract, and located off Hamlin Road is a one acre tract of land owned by Calvert. The parties deraign their title from a common source. There is no dispute that Calvert owns an easement across the North 40 feet of the Griggs' property to the

back or West property line of his 1 acre tract. Thus, one can imagine this property in a virtual sense by imagining standing on the roadway, which is Hamlin Road, and looking westward. The Griggs' home is adjacent to the roadway. Between the home and the property line is the easement location. Immediately North of the easement location are two lots running Westerly from the road. Calvert accesses his property through his easement by coming across the Griggs property on a driveway located on Hamlin Road, and then going along the 40 foot easement to the West, and then turning North into his one acre tract of land. [R 2-11, 12-15, 16-20, 30-103, 134-181, E 9-18, 19-22, 23-28, 37-79, 83-130]

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SUMMARY OF THE ARGUMENT

APPELLANT'S PROPOSITION

WAS THE CHANCELLOR MANIFESTLY IN ERROR IN AWARDING SUMMARY JUDGMENT TO THE APPELLEES DUE TO THE EXISTENCE OF MATERIAL FACTS IN DISPUTE REGARDING THE INTENT OF THE PARTIES FOR THE EASEMENT OWNED BY APPELLANT AND/OR WERE THE APPELLEES ENTITLED TO JUDGMENT AS A MATTER OF LAW, SINCE THE CHANCELLOR APPLIED AN ERRONEOUS LEGAL STANDARD TO DETERMINE THE RELATIVE RIGHTS OF THE PARTIES UNDER THE EASEMENT?

In ruling on the Motion for Summary Judgment, the Court found that the following material facts were not in dispute: (1)during the Fall of 2004, after Labor Day, the Griggs began construction of a perimeter fence around their home and property; (2)the Griggs' property was subject to an easement owned by Calvert for ingress and egress, 40 feet wide along the North side of the Griggs' property; (3) the easement gave Calvert access to Hamlin Road across the Griggs' property; (4) Calvert owned property North of the Griggs' property, and his property was adjacent to the Griggs' property and his easement; (5)Calvert was building a house on his property during this same period of time; (6) the Griggs, on more than one occasion, advised Calvert of the fence construction, and assured him that when any gates were installed, he would be given a key; (7) gates had not been installed by the Griggs as of the time of the filing of the Complaint; (8) at no time during the period of construction was Calvert prohibited access to his property within the 40 foot easement; (9) on September 22, 2004, December 15, 2004 and January 10, 2005, Calvert and/or his agents, without authority of law or permission of the Griggs, cut the wire fence that had been installed by the Griggs, and on December

15, 2004 and January 10, 2005, did, without permission, remove fenceposts from the easement, and failed to return the posts to the Griggs, and in all three instances, left the fence down after cutting wire; (10) the Griggs were damaged in an amount totaling $11,336.23 for the posts and the wire; (11) the zoning for the property within the City of West Point, was an A-O Zone, or agricultural open district that permits farming, i.e., cattle, horses, hay, etc. [R 105-108, E 131-134]

The Court denied that part of the Plaintiffs' motion with regard to the utilities being erected within the 40 foot easement, which consisted of an electrical line to the Calvert home. [R 107, E 133] The Court mandated in its ruling that it was reasonable for there to be need for fences around the Griggs property in order to keep cattle from crossing their yard and to keep their horse in, and that they should be permitted to erect fences around their entire property, including the land within the easement, subject only to the Griggs' furnishing keys to Calvert as to any gates or locks installed and constructed by the Griggs. Calvert and members of his family and others under his control were enjoined and mandated to keep the gates closed and locked except when accessing the easement. The Griggs and Calvert were ordered to not unreasonably interfere with each other's use and enjoyment of the land within the 40 foot easement, and Calvert was enjoined to keep his access road within the easement in a reasonable state of repair, refrain from parking vehicles or equipment within the easement, and erecting any fence. Calvert was not enjoined or required to remove the existing utilities installed or constructed by him within the 40 foot easement area. [R 107-108, E 133-134]

Calvert submits that the Chancellor was in error for two reasons. First, in determining what the parties' joint predecessor in title meant for the easement to encompass, should be examined based upon any evidence of intent of the parties. "Facts regarding intent are to be determined from circumstances surrounding the transaction." *Bivens v. Mobley*, 748 So. 2d 458, 462-463 (Miss. App. 1998) Calvert submits that he submitted evidence of intent that would have been sufficient for the Court to deny the Motion for

Summary Judgment, thusly establishing that there are material facts in dispute. Secondly, the Court appeared to rule as a matter of law by ignoring evidence of the intent of the parties, if it ever considered it in the first place, that estates servient to easements, if capable of an agricultural use, automatically carry with them the right to obstruct with gates and fences, an otherwise valid easement for ingress and egress.

In his Response to the Motion for Summary Judgment, Calvert submitted sufficient evidence that would have established the following facts:

this is not in record response

A. That the parties have a common source of title, i.e., Nevel Dailey. [R 135-136, E 83-84 and R 139-166, E 88-115]

B. That Nevel Dailey died, leaving his wife as his devisee to the subject property under his will. [R 135-136, E 83-84 and R 139-166, E 88-115]

C. That Mary Dailey, whose husband had predeceased her, died, leaving Elden Dailey as her devisee to her property, under her will, subject to the provision that he pay five persons the sum of $100.00, or convey them one acre of land, whichever they desired. [R 135-136, E 83-84 and R 139-166, E 88-115]

D. That subsequently, Elden Dailey conveyed to three persons, named in the will, a one acre tract of land, and two of those persons were conveyed an easement. [R 135-136, E 83-84 and R 139-166, E 88-115]

E. That through various conveyances, Calvert became the owner of the middle tract of land, and built a house upon the property, and accesses the same through the easement defined in his deed. [R 135-136, E 83-84 and R 139-166, E 88-115]

F. That in the mesne conveyances referenced above, there is no limitation or restrictions upon the use of the easement. It is a general easement, and does not even use the term "ingress and egress". [R 135-136, E 83-84 and R 139-166, E 88-115]

G. That the obvious intent of the easement was to provide an access to Hamlin Road for the two

rear lots conveyed by Elden Dailey to the devisees of his mother. [R 135-136, E 83-84 and R 139-166, E 88-115]

H. Absent evidence of intent, these parties are bound by the Mississippi Supreme Court Rule enunciated in *Bivens v. Mobley*, 748 So. 2d 458 (Miss. App. 1998).

I. That the Affidavit of Leroy Calvert, Jr., the deposition testimony, and a court inspection of the property, along with the other discovery, would have revealed that the placing of a fence along the North line of the Griggs' property and the North line of the easement, would preclude access by motor vehicle traffic, as well as foot traffic to Calvert's land. [R 173, E 122]

J. That the placement of gates therein, which would have to be unlocked and opened for a car or person to pass through, and then closed and re-locked in two different places to access Calvert's property, is an unreasonable burden upon Calvert and is not consistent with enjoyment of the servitude for its intended purpose. [R 173, E 122]

K. Further, that the removal of the electrical power lines therefrom, would be an unreasonable burden upon Calvert, and the inconvenience of these things to Calvert outweighs any inconvenience to the Griggs for the purposes of keeping cattle off their land, and for the purpose of keeping a horse on their land, as the fence can be placed on the South line of the easement and inconvenience no one. [R 135-136, E 83-84 and R 139-166, E 88-115]

The Court did not undertake any analysis as appears to be required by the *Bivens* case cited above. If the Court had done so, the Court would have been aware of the fact that the focus of what was intended by the parties granting the easement, i.e., what could be done on the dominant estate and what could be done on the servient estate should have been established by proof of intent at the time the easement was executed. The affidavits of Mary Dailey [R 168, E 117] and Gertrude Gibson [R 169, E 118] submitted by Calvert clearly indicate that the use of the Calvert lot was to be for residential purposes and, since the easement was

general and contained no provisions reserving rights of gates or fences for supposedly agricultural uses on the property South of the Calvert property but within the easement, the Court should not have allowed the Griggs to construct a fence and gates in the future, nor award the Griggs any damages for Calvert's action in removing the offending fences. In *Bivens, supra*, the Mississippi Court of Appeals discussed a previous decision of the Mississippi Supreme Court, *Rowell v. Turnage*, 618 So.2d 81 (Miss. 1993). In that case, the Mississippi Supreme Court stated as follows:

damages for fence destruction

> Scant authority has been discovered for this issue. One appeal dealt with a private right-of-way granted by a board of supervisors. *Rowell v. Turnage*, 618 So.2d 81 (Miss. 1993). Rowell had purchased landlocked property and decided that he wanted to develop a residential subdivision. He could not negotiate an adequate right-of-way. He invoked the procedures of a statute that authorizes a county board to grant a "private road laid out through the land of another, when necessary for ingress and egress..." The appellate issues were whether the right-of-way Rowell acquired would prevent the owner of the servient estate from placing gates across the property, and whether the right-of-way could be used to lay a water-line.
>
> Determining the rights gained under a statutory easement starts with the meaning of the statute itself. The statute is unadorned, i.e., it does not refer to anything but a "private road" and does not grant the board the right to grant a right of way with, for example, such reasonable conditions as the circumstances require Had the board nonetheless written into the easement document some terms that were broader than the statutory language, then the validity of such terms would be an issue under statutory interpretation principles. The intent of the parties to the easement would not matter any more than would the intent of a landowner whose property was condemned as to how much property he wished to convey. What was evident was that when a right-of-way is taken involuntarily, the easement is narrowly construed
>
> Though the facts of *Rowell* are readily distinguishable, there is some general language in the case that is applicable. What is important for an arms-length, negotiated easement is the intent of the parties. Facts regarding intent are to be determined from the circumstances surrounding the transaction. The relevant circumstance to the *Rowell* court was that the property was being used at the time of the creation of the easement as a cattle ranch, which made the right to erect gates indispensable. Even as to the involuntary easement in *Rowell*, the court found that the contemplation of the parties should be considered.
>
> The court then stated that it was proper to deny the use of the right of way for laying water or sewer lines. Since the court had already discussed for several pages of its opinion that the extent of the rights granted under an easement depended on intent, an intent that was discernible from the documents and the circumstances, the court must have been finding that the evidence supported the chancellor's conclusion. One of the authorities cited was a Mississippi case in which the owner of a pipeline easement successfully blocked the

> servient estate owner from flooding the right of way for a lake. *Sumrall v. United Gas Pipe Line Co.*, 232 Miss. 141, 97 So.2d 914 (1957). The *Sumrall* court held that the owner of an easement has "the right to exercise all the incidents necessary for the full enjoyment of the easement," which means as to a pipeline easement the right for "ready accessibility to the line for maintenance and repair." However, each owner also was required to use the property in such a manner as to minimize the interference with the other estate owner's use.
>
> We find in *Rowell* the simple requirement that the intent of the parties, based on the surrounding circumstances, must be examined to determine the rights granted under this easement.

As shown by the above, and discussed by the Court in *Bivens*, the Appellant Turnage in that case, had the absolute right to place fences across the Rowell easement. As noted by the Court, Turnage was utilizing his property that was servient to the easement as a cattle operation where gates and fences were necessary. There is no evidence before the Court in the case *sub judice* that the Griggs or their predecessors in title had ever used the land for agricultural purposes which required a fence, prior to the time that Calvert started building his house. true In other words, the Griggs expanded their use of the servient estate to the detriment of Calvert. maybe As noted in Calvert's Affidavit submitted in opposition to the Motion for Summary not in record Judgment, Calvert clearly made the rational argument that in order to access his property after gates and fences were installed, he would have to exit a motor vehicle at the intersection of his driveway and Hamlin Road, enter the easement by foot, open the gate, return to the vehicle, drive the vehicle through the gate, return to the gate on foot, close the gate, return to his vehicle and then drive another 150 to 300 feet and repeat the same process all over again to get into his driveway from his easement and access his home. ? Clearly, this was not the impediment that the parties' predecessor in title intended when conveying the what proof easement. In fact, this type of onerous burden would have been so significant that the right to install a new fence and gates to block such an easement, should have been put in the instrument itself. Accordingly, then the purchaser of the two one-acre tracts conveyed by the parties' predecessors in title, which had the general easement for their use for ingress and egress, would have a pretty fair opinion of what they were "getting into" by constructing a dwelling that could be blocked in two places by a fence and gates.

Accordingly, there are material facts in dispute, and/or the Chancellor failed to apply the proper standard of law to the questions presented, and the Motion for Summary Judgment granted the Griggs should be reversed. Since the Motion for Summary Judgment on Calvert's counterclaim in favor of the Griggs was subsequently granted by the Court, bringing this action to an appealable status was based wholly upon the facts found by the Court in the first ruling, then the summary judgment granted the Griggs on Calvert's counterclaim should also be reversed. This matter should be remanded to the Chancery Court of Clay County, Mississippi for trial.

counterclaim

calvert basically withdrew counterclaim (cp 122-123)

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ARGUMENT (is repeat of summary)

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In ruling on the Motion for Summary Judgment, the Court found that the following material facts were not in dispute: (1) during the Fall of 2004, after Labor Day, the Griggs began construction of a perimeter fence around their home and property; (2) the Griggs' property was subject to an easement owned by Calvert for ingress and egress, 40 feet wide along the North side of the Griggs' property; (3) the easement gave Calvert access to Hamlin Road across the Griggs' property; (4) Calvert owned property North of the Griggs' property, and his property was adjacent to the Griggs' property and his easement; (5) Calvert was building a house on his property during this same period of time; (6) the Griggs, on more than one occasion, advised Calvert of the fence construction, and assured him that when any gates were installed, he would be given a key; (7) gates had not been installed by the Griggs as of the time of the filing of the Complaint; (8) at no time during the period of construction was Calvert prohibited access to his property within the 40 foot easement; (9) on September 22, 2004, December 15, 2004 and January 10, 2005, Calvert and/or his agents, without authority of law or permission of the Griggs, cut the wire fence that had been installed by the Griggs, and on December

15, 2004 and January 10, 2005, did, without permission, remove fenceposts from the easement, and failed to return the posts to the Griggs, and in all three instances, left the fence down after cutting wire; (10) the Griggs were damaged in an amount totaling $11,336.23 for the posts and the wire; (11) the zoning for the property within the City of West Point, was an A-O Zone, or agricultural open district that permits farming, i.e., cattle, horses, hay, etc. [R 105-108, E 131-134]

The Court denied that part of the Plaintiffs' motion with regard to the utilities being erected within the 40 foot easement, which consisted of an electrical line to the Calvert home. [R 107, E 133] The Court mandated in its ruling that it was reasonable for there to be need for fences around the Griggs property in order to keep cattle from crossing their yard and to keep their horse in, and that they should be permitted to erect fences around their entire property, including the land within the easement, subject only to the Griggs' furnishing keys to Calvert as to any gates or locks installed and constructed by the Griggs. Calvert and members of his family and others under his control were enjoined and mandated to keep the gates closed and locked except when accessing the easement. The Griggs and Calvert were ordered to not unreasonably interfere with each other's use and enjoyment of the land within the 40 foot easement, and Calvert was enjoined to keep his access road within the easement in a reasonable state of repair, refrain from parking vehicles or equipment within the easement, and erecting any fence. Calvert was not enjoined or required to remove the existing utilities installed or constructed by him within the 40 foot easement area. [R 107-108, E 133-134]

Calvert submits that the Chancellor was in error for two reasons. First, in determining what the parties' joint predecessor in title meant for the easement to encompass, should be examined based upon any evidence of intent of the parties. "Facts regarding intent are to be determined from circumstances surrounding the transaction." *Bivens v. Mobley*, 748 So. 2d 458, 462-463 (Miss. App. 1998) Calvert submits that he submitted evidence of intent that would have been sufficient for the Court to deny the Motion for

Summary Judgment, thusly establishing that there are material facts in dispute. Secondly, the Court appeared to rule as a matter of law by ignoring evidence of the intent of the parties, if it ever considered it in the first place, that estates servient to easements, if capable of an agricultural use, automatically carry with them the right to obstruct with gates and fences, an otherwise valid easement for ingress and egress.

In his Response to the Motion for Summary Judgment, Calvert submitted sufficient evidence that would have established the following facts:

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A. That the parties have a common source of title, i.e., Nevel Dailey. [R 135-136, E 83-84 and R 139-166, E 88-115]

B. That Nevel Dailey died, leaving his wife as his devisee to the subject property under his will. [R 135-136, E 83-84 and R 139-166, E 88-115]

C. That Mary Dailey, whose husband had predeceased her, died, leaving Elden Dailey as her devisee to her property, under her will, subject to the provision that he pay five persons the sum of $100.00, or convey them one acre of land, whichever they desired. [R 135-136, E 83-84 and R 139-166, E 88-115]

D. That subsequently, Elden Dailey conveyed to three persons, named in the will, a one acre tract of land, and two of those persons were conveyed an easement. [R 135-136, E 83-84 and R 139-166, E 88-115]

E. That through various conveyances, Calvert became the owner of the middle tract of land, and built a house upon the property, and accesses the same through the easement defined in his deed. [R 135-136, E 83-84 and R 139-166, E 88-115]

F. That in the mesne conveyances referenced above, there is no limitation or restrictions upon the use of the easement. It is a general easement, and does not even use the term "ingress and egress". [R 135-136, E 83-84 and R 139-166, E 88-115]

G. That the obvious intent of the easement was to provide an access to Hamlin Road for the two

rear lots conveyed by Elden Dailey to the devisees of his mother. [R 135-136, E 83-84 and R 139-166, E 88-115]

H. Absent evidence of intent, these parties are bound by the Mississippi Supreme Court Rule enunciated in *Bivens v. Mobley*, 748 So. 2d 458 (Miss. App. 1998).

I. That the Affidavit of Leroy Calvert, Jr., the deposition testimony, and a court inspection of the property, along with the other discovery, would have revealed that the placing of a fence along the North line of the Griggs' property and the North line of the easement, would preclude access by motor vehicle traffic, as well as foot traffic to Calvert's land. [R 173, E 122]

J. That the placement of gates therein, which would have to be unlocked and opened for a car or person to pass through, and then closed and re-locked in two different places to access Calvert's property, is an unreasonable burden upon Calvert and is not consistent with enjoyment of the servitude for its intended purpose. [R 173, E 122]

K. Further, that the removal of the electrical power lines therefrom, would be an unreasonable burden upon Calvert, and the inconvenience of these things to Calvert outweighs any inconvenience to the Griggs for the purposes of keeping cattle off their land, and for the purpose of keeping a horse on their land, as the fence can be placed on the South line of the easement and inconvenience no one. [R 135-136, E 83-84 and R 139-166, E 88-115]

The Court did not undertake any analysis as appears to be required by the *Bivens* case cited above. If the Court had done so, the Court would have been aware of the fact that the focus of what was intended by the parties granting the easement, i.e., what could be done on the dominant estate and what could be done on the servient estate, should have been established by proof of intent at the time the easement was executed. The affidavits of Mary Dailey [R 168, E 117] and Gertrude Gibson [R 169, E 118] submitted by Calvert clearly indicate that the use of the Calvert lot was to be for residential purposes and, since the easement was

general and contained no provisions reserving rights of gates or fences for supposedly agricultural uses on the property South of the Calvert property but within the easement, the Court should not have allowed the Griggs to construct a fence and gates in the future, nor award the Griggs any damages for Calvert's action in removing the offending fences. In *Bivens, supra*, the Mississippi Court of Appeals discussed a previous decision of the Mississippi Supreme Court, *Rowell v. Turnage*, 618 So.2d 81 (Miss. 1993). In that case, the Mississippi Supreme Court stated as follows:

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>
> The court then stated that it was proper to deny the use of the right of way for laying water or sewer lines. Since the court had already discussed for several pages of its opinion that the extent of the rights granted under an easement depended on intent, an intent that was discernible from the documents and the circumstances, the court must have been finding that the evidence supported the chancellor's conclusion. One of the authorities cited was a Mississippi case in which the owner of a pipeline easement successfully blocked the

> servient estate owner from flooding the right of way for a lake. *Sumrall v. United Gas Pipe Line Co.*, 232 Miss. 141, 97 So.2d 914 (1957). The *Sumrall* court held that the owner of an easement has "the right to exercise all the incidents necessary for the full enjoyment of the easement," which means as to a pipeline easement the right for "ready accessibility to the line for maintenance and repair." However, each owner also was required to use the property in such a manner as to minimize the interference with the other estate owner's use.
>
> We find in *Rowell* the simple requirement that the intent of the parties, based on the surrounding circumstances, must be examined to determine the rights granted under this easement.

As shown by the above, and discussed by the Court in *Bivens*, the Appellant Turnage in that case, had the absolute right to place fences across the Rowell easement. As noted by the Court, Turnage was utilizing his property that was servient to the easement as a cattle operation where gates and fences were necessary. There is no evidence before the Court in the case *sub judice* that the Griggs or their predecessors in title had ever used the land for agricultural purposes which required a fence, prior to the time that Calvert started building his house. In other words, the Griggs expanded their use of the servient estate to the detriment of Calvert. As noted in Calvert's Affidavit submitted in opposition to the Motion for Summary Judgment, Calvert clearly made the rational argument that in order to access his property after gates and fences were installed, he would have to exit a motor vehicle at the intersection of his driveway and Hamlin Road, enter the easement by foot, open the gate, return to the vehicle, drive the vehicle through the gate, return to the gate on foot, close the gate, return to his vehicle and then drive another 150 to 300 feet and repeat the same process all over again to get into his driveway from his easement and access his home. Clearly, this was not the impediment that the parties' predecessor in title intended when conveying the easement. In fact, this type of onerous burden would have been so significant that the right to install a new fence and gates to block such an easement, should have been put in the instrument itself. Accordingly, then the purchaser of the two one-acre tracts conveyed by the parties' predecessors in title, which had the general easement for their use for ingress and egress, would have a pretty fair opinion of what they were "getting into" by constructing a dwelling that could be blocked in two places by a fence and gates.

Accordingly, there are material facts in dispute, and/or the Chancellor failed to apply the proper standard of law to the questions presented, and the Motion for Summary Judgment granted the Griggs should be reversed. Since the Motion for Summary Judgment on Calvert's counterclaim in favor of the Griggs was subsequently granted by the Court, bringing this action to an appealable status was based wholly upon the facts found by the Court in the first ruling, then the summary judgment granted the Griggs on Calvert's counterclaim should also be reversed. This matter should be remanded to the Chancery Court of Clay County, Mississippi for trial.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Calvert prays that this Honorable Court reverse and remand the granting of the summary judgments herein and remand this matter to the Chancery Court of Clay County, Mississippi for trial.

Respectfully submitted, this the 8th day of October, 2007.

LEROY CALVERT, JR., APPELLANT

BY: _____
GARY STREET GOODWIN,
HIS ATTORNEY

GOODWIN LAW FIRM
POST OFFICE BOX 524
COLUMBUS, MS 39703-0524
(662) 328-1101 Telephone
(662) 328-1102 Facsimile
goodwinlawfirm@bellsouth.net

CERTIFICATE OF SERVICE

This will certify that I, Gary Street Goodwin, have this day, pursuant to Rule 25 of the *Mississippi Rules of Appellate Procedure*, hand delivered a true and correct original and three copies of the foregoing Brief for Appellant and Record Excerpts to the Supreme Court Clerk, Betty Sephton, Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201, and have mailed via United States mail, postage prepaid, a true and correct copy of the foregoing BRIEF FOR APPELLANT to: Honorable Kenneth M. Burns, District 14 Chancellor, Post Office Box 110, Okolona, Mississippi 38860-0110 and to Thomas B. Storey, Esq. Post Office Box 835, West Point, Mississippi 39773-0835.

So certified, this the 8th day of October, 2007.

_____
GARY STREET GOODWIN