

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WAREHOUSING MANAGEMENT, LLC. and  
R. W. CASTENS

APPELLANTS

VS.

APPEAL NO.: 2007-CA-00438

HAYWOOD PROPERTIES, L.P.,  
HAYWOOD TRUCKING, INC., and  
R. CHARLES HAYWOOD

APPELLEES

APPEAL FROM DECISIONS OF THE CHANCERY COURT  
OF RANKIN COUNTY, MISSISSIPPI

RESPONSE BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

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**CERTIFICATE OF INTERESTED PERSONS**

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

R. W. Castens and Warehousing Management, LLC

Appellants

Richard Redfern

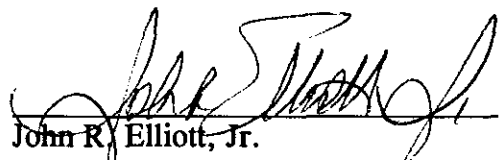
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Appellees

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## **TABLE OF CONTENTS**

Certificate of Interested Persons . . . . .	i
Table of Contents . . . . .	ii
Table of Cases . . . . .	iii
Table of Statutes . . . . .	iii
Statement of the Case . . . . .	1
Summary of the Argument . . . . .	4
Argument . . . . .	6
Conclusion . . . . .	11
Certificate of Service . . . . .	13

## TABLE OF CASES

<i>Alexander v. Hyland</i> , 58 So.2d 826 (Miss. 1952) . . . . .	9
<i>Apperson v. White</i> , 950 So.2d 1113 (Miss. Ct. App. 2007) . . . . .	6, 8, 10
<i>Blankinship v. Payton</i> , 605 So.2d 817 (Miss. 1992) . . . . .	8
<i>Bryan v. Holzer</i> , 589 So.2d 648 (Miss. 1991) . . . . .	5
<i>Gillespie v. Kelly</i> , 809 So.2d 702 (Miss. Ct. App. 2001) . . . . .	8
<i>Hulbert v. Fayard</i> , 92 So.2d 247 (Miss. 1957) . . . . .	7
<i>In re Estate of Taylor</i> , 609 So.2d 390 (Miss. 1992) . . . . .	6
<i>Keener Properties, LLC v. Wilson</i> , 912 So.2d 954 (Miss. 2005) . . . . .	11
<i>Metcalf v. McCutchen, et al.</i> , 60 Miss. 145 (Miss. 1882) . . . . .	8
<i>Moran v. Sims</i> , 873 So.2d 1067 (Miss. Ct. App. 2004) . . . . .	11
<i>Nichols v. Funderburk</i> , 883 So.2d 554 (Miss. 2004) . . . . .	6
<i>Sturdivant v. Todd</i> , 956 So.2d 977 (Miss. Ct. App. 2007) . . . . .	6, 7
<i>Wakefield v. Ross</i> , 28 F.Cas. 1346 (U. S. 1827) . . . . .	6
<i>Walker v. Murphree</i> , 722 So.2d 1277 (Miss. 1998) . . . . .	6
<i>Wicker v. Harvey</i> , 937 So.2d 983 (Miss. Ct. App. 2006) . . . . .	9, 10
<i>York v. Haire</i> , 112 So.2d 245 (Miss. 1959) . . . . .	8

## TABLE OF STATUTES

<i>Miss. Code Ann.</i> §15-1-13 . . . . .	4, 11
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## **I. STATEMENT OF THE CASE**

Appellees (collectively referred to as "Haywood") and Appellants (collectively referred to as "Castens") each own neighboring parcels of land situated within the City of Pearl, County of Rankin, State of Mississippi. At issue is a small strip of land between the parties' respective properties that Haywood was awarded by virtue of adverse possession.

Haywood acquired title to his two (2) acres parcel in 1971 by Warranty Deed from Dale Yeager and John F. Mills, dated January 22, 1991. At that time, the property was surveyed and staked off by Reynolds Engineering, and encompassed the property at issue (T. 46). Thereafter, Haywood conveyed the property to one of his companies, Haywood Properties, L.P., by deed dated December 3, 1997. Haywood's parcel is north and contiguous to Castens's parcel.

The parcel presently owned by Castens was originally owned by Gertie Blackmon (f/k/a Gertie P. Moore) and her late husband, Erbie D. Moore. The Moores acquired the parcel around 1970 (T. 14). In 1986, the Moores conveyed the property to Kenneth Bush and Jay Bush (T. 14, 31, 32). By deed dated May 15, 1998, the Bushes conveyed the property to Castens (T. 106, Exhibit G-9).

The disputed area is twenty-eight (28) feet in width running north to south, and extends east and west the length of Haywood's and Casten's respective properties. A utility pole marks the southwest corner of the disputed area and the beginning of what Castens's predecessors in title believed was the common boundary line (T. 15, 16, 18, 20, 21, 33, 34). At trial, the parties stipulated that the true location of the mutual boundary line, based upon the calls within each parties' respective deed, was as shown by the T. E. McDonald survey (Exhibit G-

1). Nonetheless, Haywood maintained that he acquired the disputed property through adverse possession.

Since purchasing his parcel in 1971, Haywood improved same, including the disputed area, by filling it with sand and gravel, granting an easement to the City of Pearl over the disputed area, paying ad valorem taxes, installing lights along the southern boundary line of the disputed area, keeping the disputed area lit at night, grading the gravel within the disputed area, keeping weeds off the disputed area, maneuvering his trucks within the disputed area, and parking trailers within the disputed area (T. 46, 50, 56, 95; R.E. 148). Also, others used the disputed area from time to time, but only with Haywood's permission (T. 18, 19, 22, 34, 36, 37; R.E. 148-149).

Though the common boundary line between these two (2) parcels was never questioned for almost three (3) decades, Castens became suspicious of his true boundary lines sometime in the year 2000 (T. 106); however, he did not act upon these suspicions until October 2003 when he obtained a survey from Charles Craft (T. 107). This survey revealed that Castens's true northern and southern boundary lines were each about twenty-eight (28) feet North of where they had been recognized for over thirty (30) years (T. 107). In fact, Charles Craft's survey revealed that Castens's building encroached upon his southerly neighbor's property (T. 101, 107). Like everyone else familiar with the properties, learning that the property lines were incorrect surprised Castens (T. 111).

Thereafter, Castens's neighbors to the South, the Barnetts, entered into a Boundary Line Agreement with Castens, whereby it was agreed that they would recognize their common boundary to be thirty (30) feet south of the true boundary line (T. 108). Castens did not pay any consideration to the Barnetts for this Boundary Line Agreement (T. 108). Unfortunately,

Castens did not adopt the Barnetts' graciousness, and was not willing to recognize the long standing, albeit mistaken, boundary line to his north as the common boundary line between him and Haywood.<sup>1</sup>

Castens's predecessors in title, the Moores and Bushes, all recognized the disputed area as being owned by Haywood (T. 15, 19, 34). These two witnesses testified that during their combined twenty-eight (28) years of neighboring Haywood's parcel, they always recognized the utility pole as marking the southwest corner of Haywood's parcel and the northwest corner of their parcel. In fact, for over five (5) years, Castens did not dispute the location of the common boundary, until he obtained a survey in October 2003. This period of occupancy by Haywood far exceeds the ten (10) year statutory requirement set forth in *Miss. Code Ann.* §15-1-13.

The Chancery Court found that Haywood maintained effective control, perceptible to the eyes and senses of his adjoining neighbors, over the disputed property for an uninterrupted

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<sup>1</sup> Although Castens had a legitimate and ripe adverse possession claim against the Barnetts, his encroachment could have been interpreted as a trespass by the Barnetts. Nonetheless, the Barnetts were gracious neighbors and, at no cost to Castens, conveyed him thirty (30) feet of road frontage on Bierdeman Road, thus curing his encroachment. However, Castens would not do the same for Haywood. This situation is akin to the parable found in Matthew 18:23-34: "Therefore is the kingdom of heaven likened unto a certain king, which would take account of his servants. And when he had begun to reckon, one was brought unto him, which owed him ten thousand talents. But forasmuch as he had not to pay, his lord commanded him to be sold, and his wife, and children, and all that he had, and payment to be made. The servant therefore fell down, and worshiped him, saying, Lord, have patience with me, and I will pay thee all. Then the lord of that servant was moved with compassion, and loosed, and forgave him the debt. But the same servant went out, and found one of his fellowservants, which owed him an hundred pence: and he laid hands on him, and took him by the throat, saying, Pay me that thou owest. And his fellowservant fell down at his feet, and besought him, saying, Have patience with me, and I will pay thee all. And he would not: but went and cast him into prison, till he should pay the debts. So when his fellowservants saw what was done, they were very sorry, and came and told unto their lord all that was done. Then his lord, after that he had called him, said unto him, O thou wicked servant, I forgave thee all that debt, because thou desiredst me: Shouldest not thou also have had compassion on thy fellowservant, even as I had pity on thee? And his lord was wroth, and delivered him to the tormentors, till he should pay all that was due unto him."

period of approximately thirty-two (32) years prior to Castens ever voicing any disagreement (R.E. 150). The Chancery Court acknowledged that Haywood's possession became hostile and adverse when he intended to claim title, which began in 1971, even though this claim was made under the mistaken belief that the disputed area was within the calls of his deed. (R.E. 151). The Chancery Court was persuaded by the testimony of Castens's predecessors in title, and found that Haywood's occupation of the property was uninterrupted and exclusive from 1971 through 2003 (R.E. 151-152). Also, the Chancery Court found that these predecessors in title corroborated Haywood's assertion that he exercised possession analogous to the "running up of his flag of possession" on the disputed property for a period in excess of ten (10) years (R.E. 152).

After hearing testimony from various witnesses, considering numerous exhibits, and personally viewing the subject real property, the Chancery Court found by clear and convincing evidence that Haywood satisfied all elements to prove adverse possession, and therefore adjudicated Haywood the sole owner of the disputed property.

## **II. SUMMARY OF THE ARGUMENT**

Castens is requesting that this Court abandon long standing principles regarding adverse possession, and establish a new legal standard. Castens's predecessors in title each testified that they recognized the disputed property as being owned by Haywood (T.15, 19, 34). Thus, for a period of about twenty-eight (28) consecutive years, Castens's predecessors in title believed that Haywood owned the disputed property. The recurring theme to Castens's argument is that his predecessors in title were mistaken as to the true location of the common boundary line, and if they did not know they actually owned the disputed property, then they



could not know that something was being taken from them; and, therefore, adverse possession cannot apply. However, Castens's reasoning is contrary to well established authority.

Long ago, in ***Wakefield v. Ross***, 28 F.Cas. 1346 (U. S. 1827), our United States Supreme Court held that a person claiming property to be his "from ignorance or mistake as to where that line . . . would (sic) fall . . ." could disseize the property from the actual owner, even if the actual owner who is being disseized recognizes the incorrect boundary line through the same ignorance. Since then, the Mississippi Supreme Court and Court of Appeals have been equally persuaded in numerous cases that are discussed herein.

This Court has repeatedly stated that it will examine the record and accept the evidence reasonably tending to support the findings made below, along with all reasonable inferences which may be drawn therefrom which favor the trial court's finding of fact. ***In re Estate of Taylor***, 609 So.2d 390, 393 (Miss. 1992). The chancery court is the trier of fact. ***Bryan v. Holzer***, 589 So.2d 648, 659 (Miss. 1991). A finding that the proof was sufficient to sustain a claim of adverse possession is a fact-finding that requires application of the substantial evidence/manifest error test. ***Sturdivant v. Todd***, 956 So.2d 977, 982 (Miss. Ct. App. 2007), citing ***Walker v. Murphree***, 722 So.2d 1277, 1280 (Miss. 1998). If substantial evidence supports the chancellor's fact-finding, this Court must affirm, even though we "might have found otherwise as an original matter." *Id.*, quoting ***Nichols v. Funderburk***, 883 So.2d 554, 556 (Miss. 2004). And, where the chancellor has failed to make specific findings, we will assume that the chancellor resolved such issue in favor of the appellee. *Id.*

The Chancery Court did not err in finding that Haywood proved each element of adverse possession by clear and convincing evidence, and "...maintained effective control, perceptible to the eyes and senses, of his adjoining neighbors over the disputed property for an

uninterrupted period of approximately 32 years prior to Castens ever asserting any claim thereto whatsoever. That evidence was undisputed at trial.” (R.E. 150)

### III. ARGUMENT

In *Apperson v. White*, 950 So.2d 1113, 1116 (Miss. Ct. App. 2007), this Court addressed the six-part test for determining whether adverse possession has occurred. For possession to be adverse, it must be:

1. Under claim of ownership;
2. Actual or hostile;
3. Open, notorious, and visible;
4. Continuous and uninterrupted for a period of ten years;
5. Exclusive; and
6. Peaceful.

#### Under Claim of Ownership

Gertie Blackmon (f/k/a Gertie Moore), one of Castens’s predecessors in title, testified that she and her late husband, Erby Moore, recognized the utility pole as their northern boundary for almost sixteen (16) consecutive years (T.15, 16, 18). Also, she testified that she worked alongside her husband almost everyday, and that during those sixteen (16) years (T. 28), Haywood used the property everyday; and she never saw anyone use the disputed property except for themselves and Haywood (T. 18). Castens’s immediate predecessor in title, Kenny Bush, testified that for the twelve (12) years he was neighbors with Haywood, he recognized the utility pole as the common boundary (T. 33, 34, 42).

Granted, acquiescence in a wrong boundary line will not establish it as the true line, but such acquiescence for a long period of time is evidence that such line is the true line. *Sturdivant*

at 991, citing *Hulbert v. Fayard*, 92 So.2d 247, 251 (Miss. 1957). Also, recognition of and acquiescence in a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line. *Id.*, citing *York v. Haire*, 112 So.2d 245, 247 (Miss. 1959). Here, Ms. Blackmon and Mr. Bush recognized and acquiesced in, for a period of twenty-eight (28) consecutive years, the utility pole marking the true boundary line. Surely, almost three (3) decades is a sufficient length of time to afford a conclusive presumption that the line acquiesced in is the true boundary.

Both Ms. Blackmon and Mr. Bush acknowledged that they only used the disputed property with Haywood's permission (T. 18, 19, 22, 34, 36, 37), and that they always believed Haywood to be the sole owner of the disputed property (T. 19, 34, 40). The testimonies of these two (2) witnesses were uncontradicted.

Although Blackmon, Bush, Haywood, and even Castens from 1998 through 2003, were all honestly mistaken about the correct location of their mutual boundary line, this does not affect Haywood's claim for adverse possession, as "[i]t is the intention to claim title that makes the claim adverse." *Metcalfe v. McCutchen, et al.*, 60 Miss. 145 (Miss. 1882).

Additionally possessory acts by Haywood over the disputed property are that he (1) granted an easement to the City of Pearl over the property; (2) paid ad valorem taxes on the property; (3) had lights installed on the property; (4) kept the property lit at night; (5) filled the property with sand and gravel; (6) kept the gravel graded; (7) kept weeds off the property; (8) used the property to maneuver his trucks; and (9) parked trailers on the property (T. 46, 50, 56, 95).

Simply put, for about three (3) decades, Haywood held the disputed property under claim of ownership by holding himself out as the owner of the property, being recognized as the owner of the property, and granting unto the actual/record owners permission to enter the property.

*Actual or Hostile*

“Actual possession has been defined as ‘effective control over a definite area of land, evidenced by things visible to the eye or perceptible to the senses.” **Wicker v. Harvey**, 937 So.2d 983, 994 (Miss. Ct. Ap. 2006), quoting **Blankinship v. Payton**, 605 So.2d 817, 819-820 (Miss. 1992). Also, this Court has stated that “the actual or hostile occupation of land necessary to constitute adverse possession requires a corporeal occupation, accompanied by a manifest intention to hold and continue to hold the property against the claim of all other persons, and adverse to the rights of the true owner.” **Apperson**, at 1118. Here, Haywood showed that he held the property without permission of the true title owner, because “permission defeats adverse possession.” *Id.*, quoting **Gillespie v. Kelly**, 809 So.2d 702, 706-07 (Miss. Ct. App. 2001).

A careful examination of the record clearly shows that neither Gertie Blackmon or Kenny Bush testified to granting Haywood permission to use the disputed property during their combined twenty-eight (28) consecutive years. However, the record does reflect that Haywood granted permission to Gertie Blackmon and Kenny Bush to use the disputed property (T. 18, 19, 22, 34, 36, 37).

Additionally, Castens submits that this “*actual or hostile*” element was not proven by clear and convincing evidence because the parties mistakenly believed that Haywood was the record owner, and therefore, Castens’s predecessors in title cannot lose something that they did not know they owned. “Possession is hostile and adverse when the adverse possessor intends to claim title notwithstanding that the claim is made under a mistaken belief that the land is within the calls of the possessor’s deed.” *Wicker*, at 994, citing *Alexander v. Hyland*, 58 So.2d 826, 829 (Miss. 1952).

Like Harvey in *Wicker v. Harvey*, Haywood’s possession “. . . was *hostile* because he claimed title to the property with the belief it was embraced by the legal description in his deed.” *Id.*, at 994.

#### *Open, Notorious, and Visible*

Nobody ever claimed that Haywood hid his use of the property. To the contrary, Haywood (1) granted an easement to the City of Pearl over the property; (2) paid ad valorem taxes on the property; (3) had lights installed on the property; (4) kept the property lit at night; (5) filled the property with sand and gravel; (6) kept the gravel graded; (7) kept weeds off the property; (8) used the property to maneuver his trucks; (9) parked trailers on the property; (10) granted permission unto others to cross the property; and (11) held himself out as the owner of the property. All of these are clear, visible indicators of Haywood’s occupation of the property (T. 46, 50, 56, 95).

*Continuous and Uninterrupted for a Period of Ten Years*

Based upon Gertie Blackmon's testimony, it was proven that Haywood possessed the disputed property from 1971 (the date he purchased the property) until August 22, 1986 (when the Moores sold to Bush, et al.) Based upon Kenny Bush's testimony, it was proven that Haywood possessed the disputed property from August 22, 1986 (the date Bush, et al. purchased the property from the Moores) until May 15, 1998 (the date Bush sold to Castens). Based upon Castens's testimony, it was proven that Haywood possessed the disputed property from May 15, 1998 (the date Castens purchased his property from Bush) until sometime after October 2003 when Castens obtained his survey. Therefore, Haywood *actually* possessed the disputed property from 1971 until 2003, totaling **thirty-two (32) consecutive years**.

This claim of ownership is well in excess of the ten (10) years statutory period set forth in *Miss. Code Ann.* §15-1-13 (1).

*Exclusive*

Castens submits in his brief that "...while Haywood may have occupied the disputed property in excess of ten years, Castens and his predecessors in title did so as well" (Pg. 21 of Appellant's brief). However, "exclusive use" does not mean that others cannot use the property. *Apperson*, at 1119, citing *Moran v. Sims*, 873 So.2d 1067, 1069 (Miss. Ct. App. 2004), especially when these "others" are using the property with the adverse possessor's permission.

Exclusive possession shows "... an intention to possess and hold land to the exclusion of, and in opposition to, the claims of all others, and the *claimant's conduct must afford an unequivocal indication that he is exercising dominion of a sole owner.*" ***Keener Properties, LLC***

*v. Wilson*, 912 So.2d 954, 956 (Miss. 2005). All of the evidence shows that this was Haywood's intention. In fact, Haywood's ownership of the property was challenged for the first time after Castens obtained a survey in October 2003.

There is absolutely no proof that Haywood's claim of ownership from 1971 until 1998 (i.e., the period when Blackmon or Bush were neighbors) was anything but exclusive. In fact, the evidence shows that Haywood's claim of ownership was exclusive until sometime after October 2003 when Castens obtained a survey.

#### *Peaceful*

Gertie Blackmon testified that she never contested Haywood's ownership of the property during the sixteen (16) years she and Haywood were neighbors. Also, Kenny Bush testified that he never contested Haywood's ownership of the property during the twelve (12) years he and Haywood were neighbors. Castens himself testified that he did not contest the common boundary line until October 2003, which was about five (5) years after he purchased his parcel from Kenny Bush. The evidence shows that nobody contested Haywood's ownership for a period of thirty-two (32) consecutive years.

#### **IV. CONCLUSION**

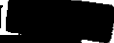


The Chancery Court's decision was not manifestly wrong, clearly erroneous, nor was an erroneous legal standard applied. Instead, the Chancery Court's Opinion (R.E. 144) was thorough, cited numerous facts that supported its conclusions, and applied the proper legal

principles to these facts. Based upon this Court's standard of review, the Chancery Court's ruling should be affirmed.

Respectfully submitted, this the 17<sup>th</sup> day of August, 2007.

**HAYWOOD PROPERTIES, L.P.,  
HAYWOOD TRUCKING, INC., and  
R. CHARLES HAYWOOD**

By: 

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**CERTIFICATE OF SERVICE**

I, the undersigned, one of the attorneys for the Appellees, do hereby certify that I have this day mailed, postage prepaid, via United States Mail, a true and correct copy of the above and forgoing to the following:

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Chancellor, Rankin County  
Post Office Box 1437  
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Mr. Richard Redfern  
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This the 17<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
John R. Elliott, Jr.