IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM MARIAN THRELKELD, RANDY KEM WHITTEN AND WIFE, IVA NELL WHITTEN, EDWARD L. MAYNARD, MARY RUTH WHITTEN AND SANDRA K. FARLEY	**APPELLANTS**
VS.	**CASE NO. 2007-CA-00944**
MITCHELL L. SISK AND WIFE, GRACE SISK, JAMES BRUCE SISK, SR. AND PHYLLIS SISK GOGGANS	**APPELLEES**

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.

1. William Marian Threlkeld, Appellant
2. Randy Kem Whitten, Appellant
3. Iva Nell Whitten, Appellant
4. Edward L. Maynard, Appellant
5. Mary Ruth Whitten, Appellant
6. Sandra K. Farley, Appellant
7. Mitchell L. Sisk, Appellee
8. Grace Sisk, Appellee
9. James Bruce Sisk, Sr., Appellee
10. Phyllis Sisk Goggans, dismissed Plaintiff
11. Honorable Kenneth Burns, Special Chancellor
12. B. Sean Akins, Attorney for Appellants

13. Thomas M. McElroy, Attorney for Appellees

14. Jeremy Eskridge, deceased Attorney for Appellants

This the 13th day of November, 2007.

B. SEAN AKINS, MSB NO. 9555
ATTORNEY FOR APPELLANTS

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

The Appellants (collectively referred to herein as the "Sisks") filed a Fourth Amended Complaint alleging that they were entitled to an easement over a private drive which crosses property owned by the Appellees (collectively referred to herein as the "Whittens"). The Whittens answered seeking an injunction to prohibit the Sisks from crossing their property. Since the filing of the lawsuit in 1998, all of the judges in the First Chancery Court District recused themselves and Chancellor Kenneth Burns was specially appointed to hear the matter. A bench trial was conducted on March 1 and 2, 2007 at the Lee County Justice Center in Tupelo, Mississippi.

The Sisks' Fourth Amended Complaint outlined three causes of action. First, the Sisks claimed that they had an easement by prescription over the private drive. Second, the Sisks claimed that they had an easement by necessity over the private drive. Finally, they claimed that the private drive was actually a public road. However, at trial, the Plaintiffs abandoned their claim that the drive was a public road.

Before the trial commenced, the Sisks sought to amend their complaint to add a cause of action to claim that they possessed an express easement across the private drive. The Court took the Motion to Amend under advisement and eventually denied the amendment.

The issues before the Trial Court were whether the Sisks possessed an easement over the private drive of the Whittens, whether the Sisks were entitled to amend again on the day of trial, whether the Whittens were entitled to a permanent injunction restricting the Sisks from the use of the private drive, whether the Whittens were entitled to damages and, if the Sisks were entitled to an easement, then the extent of the easement.

The Court found that the Sisks possessed an implied easement and an easement by

prescription. The Court set the easement at a width of 16 feet on each side of center line of an existing drive. The Court's order set forth the survey description of the centerline. Since the filing of the appeal, all parties have determined that the survey outlined in paragraph 15 of the Trial Court's opinion was erroneous and the parties have agreed on a revised description of the center line to the extent that the correct description of the center line may be relevant to this Court's ruling.

The trial court entered its findings by an order dated May 3, 2007 and the Whittens timely filed a Notice of Appeal to contest the existence of the easement.

ATTACHED DIAGRAM

The following facts make reference to certain tracts of property which were identified throughout the trial using a tax map which is attached to this brief and to which direct reference is hereby made. The actual diagram was too large to copy. The attached diagram corresponds to the relevant portions of the diagram which was admitted into evidence.

On the attached diagram, the private drive which is the subject of the litigation is outlined in red ink with arrows as each end. The County Road at the top of the diagram is Lee County Road # 530. The Sisks are seeking an easement across the private drive marked in red which eventually leads to their properties which are Parcel #s 18, 8, 17 and 16. Parcels 48.01, 7 and 6.01 are owned by David and Phyliss Sisk Goggans, the nephew and niece of the Sisk Appellees. The yellow highlighted line is the alternate route described throughout the trial that crosses the Goggans to the Sisk's properties.

The diagram also identifies James Williams as the owner of Parcel #2.01 and Phillip Williams as the owner of Parcel #2.0. These parcels were purchased by the Williams after the litigation commenced. Parcel # 2.01 and 2.00 were formerly united and were referred to throughout the trial as the "Washburn" property.

FACTS

[1]In 1936, F. G. Thomas obtained title to several hundred acres of land in Sections 10, 11, 12, 14, 15, 3 and 2 in Township 11 Range 5 East in Lee County, Mississippi. All of the subject properties were originally part of the Thomas property except the tract owned by James Bruce Sisk, Jr. which is Parcel #16 on the attached diagram. All of the Thomas property was bordered on the north by what is now County Road 530 and 373 in Lee County, Mississippi. The majority of the Thomas property was used for farming. The Thomas deed specifically reserved an easement and right of way of 15 feet wide along the Chiwappa Creek from the lands conveyed.

In the early 1940's, Thomas sold two tracts of his property bordering County Road 530 totaling 49 acres. On December 27, 1941, R. M. Priest bought 40 acres described as:

> Forty acres, more or less, described as beginning at the point 20 rods east of the southwest corner of the SW 1/4 of Section 2, Township 11, Range 5 East and run thence East 64 rods, more or less, to the west side of a private roadway; thence Northeast along the west side of said private roadway to the north line of the South Half of said quarter section, which is a public orad; thence West along said public road 95 rods, mor or less, to a point 20 rods west of the northwest corner of the South Half of said quarter ;thence South 80 rods to the point of beginning.

On the same day, Donald Priest bought 9 acres which was described as:

> Beginning at the Southeast corner of the SW 1/4 of Section, 2 Township 11 South, Range 5 East, and run thence West 44 rods for a point of beginning; thence North 80 rods to the Public road; thence West 8 rods to the East line of a private roadway; thence in a s southwest direction along the east line of said private roadway; thence in a southwest direction along the east line of said private roadway to the South line of said SW 1/4 thence East 32 rods, more or less, to the point of beginning.

Clearly, the deeds indicate the existence of a private roadway of an undetermined width and the descriptions for both tracts left the ownership of the private roadway with Mr. Thomas presumably to access the 120 acre tract of land which he still owned immediately south of the

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[1]The parties stipulated to the title to the tracts of subject property. The deed references are contained in the stipulation.

Priests' property. Following the death of Mr. Thomas, his daughter inherited the property which was referred to throughout the trial as the "Washburn" property referencing the 120 acre tract which joins the Priests' property and which is located in Section 11, Township 11, Range 2 East in Lee County, Mississippi.

Mr. Washburn testified at the trial that when he and his wife (Thomas' daughter) took ownership of the 120 acre tract (Parcels 2 and 2.01)[2] in the 1960's, they did not know that they owned any land in Section 2 including the private drive and that he believed that the private drive belonged to Donald Priest. Regardless, in 1965, Donald Priest entered into a joint venture with Washburn whereby Donald Priest leased the Washburn property for a catfish farming operation. Donald Priest constructed lakes on the Washburn property and continued to control the use of the Washburn property until the mid-1980's.

By 1965, following the death of R. M. Priest, his widow, Ms. Willie Priest, became the owner of the 40 acre tract (Parcels #48, 48.01, 48.02, 48.04) along with a 27.5 acre tract (Parcel #18) which is west of the Washburn property and which is south of the 40 acre tract. In 1965, Ms. Willie Priest sold the 27.5 acre tract (Parcel #18) to Frank and Mitchell Sisk.

Several of the witnesses testified to a conversation in the late 1960's in which Donald Priest, Ms. Willie Priest's son, handled the transaction. Donald Priest in some form told the Sisks that the private drive was a public road and that they didn't need his permission to use it. All of the Plaintiff's witnesses agreed that it was this conversation that was the basis for all of the use of the private drive by the Plaintiffs for the last forty years.

For example, Mr. Mitchell Sisk testified on cross examination:

Q: That's right. Y'all asked him [Priest] if it was okay to use it [private drive] and he

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[2]Plaintiff's exhibit #1 is a tax map that identifies all of the subject properties by parcel number to which direct reference is made.

told you that it was; isn't that right?

A: Yeah, um-h-mm.

Q: Okay, And, based on that, for the last 40 years, y'all have used that road because he told you it was okay to use that road. That is true, isn't it?

A: Yeah, yeah.

Q: And y'all have never claimed to own that road; correct?

A: Yeah. That's right. That's correct.

Trial Transcript page 44, lines 8 - 17.

In 1970, Washburn sold additional tracts of the former Thomas property to the Sisks including Parcel #8 and 17 which was ultimately titled in the name of Mitchell and Grace Sisk. Parcel #18 was eventually transferred to David and Phyliss Sisk Goggans in the early 1980's.

It is clear that the Plaintiffs used the private drive as they described from 1965 until the early 1980's when Ms. Willie Priest sold 18 acres from her 40 acre tract to David and Phyliss Sisk Goggans which became Parcel #48.01. This property joins Parcel #18 which is also owned by David and Phyliss Sisk Goggan. They also own Parcel #7 and 6.01 and agreed that they must cross Parcel #48.01 and 18 to get to Parcel #6.01 and 7. The Goggans cleared a road through the tracts and along with the Sisks, used the road as their primary means of access to the subject properties until 1996.

All of the Plaintiffs' witnesses testified that they used the private drive across the Priest property beginning in 1965 to access Parcel 18 and continued to use the private drive to access Parcel #8 and 17 after they were purchased in 1970 from Washburn. According to the Sisks, they used the private drive two days in the spring to take equipment to the fields and two days in the fall when the harvest occurred. They also testified that they would periodically drive passenger vehicles across the drive to check on the fields.

For example, Paul Sisk confirmed that they have another way to get to the fields, but that the subject private drive was used primarily for two days during the spring to get large equipment to one part of their property across the Washburn property.

Q: Okay. So throughout the '80s, you don't disagree that the majority of the use of – or the road that y'all primarily used to get to your property was across Mr. Goggans' property?

A: We used it occasionally.

Q: Well, I mean, the truth is, is that you started using that as your primary way to get in rather than using the Washburn property to –?

A: Well, it wasn't the primary. It was just the way we planted beans up, and we'd just always plant them in and come plant – plant back out and –

* * *

Q: Let's talk about the number of days that you might have used or crossed that road.[private drive]. Howe many days did it take you to plant?

A: It would take about two days.

* * *

Q: . . .So that means that two days in the spring you would come across one of those ways to get into the fields, plant all day, and then come back out at the end of the day; is that right?

A: Well, we wouldn't come out at the end of the day.[across the private drive] We would leave it [heavy equipment] down there. We'd come out up at the other road most of the time.[across the Goggans property].

* * *

Q: And then the next day when you got through down there, you would bring the

equipment out?

A: Plant out to the other end; right.

* * *

Q: And sometimes when you planted out to the other end, you would use some different way to get out over some other farms if it was more convenient for you?

A: Yes, sir.

Trial Transcript page 107 line 9 through page 108, line 24.

About the same time as the Goggans purchased Parcel 48.01, Randy Kem Whitten and wife, Nell Whitten, bought virtually all of the Donald Priest property which is Parcel #48.03. According to Randy Whitten and his wife, the Sisks did not use the private drive from 1984 until 1996. The Plaintiffs confirm that after the Goggans bought Parcel #48.01 that the Goggans property was the primary path taken to get the subject properties. In fact, Phyliss Sisk Goggans was originally a Plaintiff seeking to confirm her interest in the alleged easement. However, she was voluntarily dismissed from the litigation because the Goggans had no need for the use of the private drive to access Parcel #s 7 and 6.01. David Goggans confirmed that there were some years where he and Sisks did not use the private drive at all including the year that Washburn had timber cut from his property and the private drive was impassable across the Washburn property.

David Goggans testified:

Q: And, of course, when the timber was cut so that you couldn't use the Washburn property, your property was the only was to get in and out for that entire season?

A: We pretty much used it, yeah, mine.

The remaining Appellants are owners of tracts which were formerly owned by R. M. Priest and whose homes line either side of the private drive.

The conflict over the limited use of the private drive commenced in 1996 when Randy Whitten observed the Sisks moving equipment over the private drive. Ultimately a confrontation ensued and Whitten told the Sisks that they could not use the drive to move tractors and other heavy equipment. The Sisks resisted and filed the subject lawsuit.

SUMMARY OF THE ARGUMENT

The Trial Court erred in granting the Sisks and easement by prescription over the private drive. In 1965, the current Sisks Appellees asked and obtained permission to use the private drive from the Whitten's uncle, Donald Priest. All of the Sisks agree that they never claimed any ownership interest in the private drive and that their only claim of use is through the permission granted by Donald Priest. Consent to use a road may never ripen into an easement. The Trial Court erred in finding that the Sisks own an easement across the private drive.

Second, the Trial Court found that since the Sisks obtained their property from a common owner, they possess and easement by necessity. While it is true that the Sisks originally were entitled to an easement by necessity to use the private drive, in 1981 when an alternate route became available to them, the necessity ended. Additionally, the alternate route is through property now planed in pine and is the route the Goggans use to access other properties they have. The Goggans are required to cross the Sisks to get access to their properties. Meanwhile, the Sisks use of large equipment across the private drive of the Whittens has caused damage to the road, landscape and peace of the five homeowners along the drive. The access across the Goggans property is less onerous that the private drive. The Trial Court erred in placing a 16 foot easement across the private drive of the Whittens.

LAW AND ARGUMENT

STANDARD OF REVIEW

> This Court has a limited standard of review in examining and considering the decisions of a chancellor. *Ellison v. Meek,* 820 So.2d 730, 734(¶ 11) (Miss.Ct.App.2002). "When reviewing a chancellor's decision, we will accept a chancellor's findings of fact as long as the evidence in the record reasonably supports those findings. In other words, we will not disturb the findings of a chancellor unless those findings are clearly erroneous or an erroneous legal standard was applied." *Peagler v. Measells,* 743 So.2d 389, 390(¶ 6) (Miss.Ct.App.1999). "The chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the credibility of witnesses and the weight of their testimony." *Ellison,* 820 So.2d at 734(¶ 11). The standard of review for questions of law is de novo. *Id.*

Griffin v. Brian Development Co., Inc. 938 So.2d 337, *338 (Miss.App.,2006)

LAW ON EASEMENTS

The law regarding easements is well established. Easements come in three forms: prescriptive, implied or by necessity and express.

> In order to prove that a prescriptive easement exists, a party must prove that the use is (1) open, notorious and visible; (2) hostile; (3) under claim of ownership; (4) exclusive; (5) peaceful; and continuous and uninterrupted for ten years. However, use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since adverse use, as distinguished from permissive, is lacking.

Gillespie v. Kelly, 809 So.2d 702 (Miss. 2002). (citations omitted).

The burden of proof is on the claimant to show by clear and convincing evidence that each element is met. *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150 (Miss. 1992).

Possession of real property with the record owner's permission cannot ripen into adverse possession until there is a positive assertion of a right hostile to the record owner which is made known to him. *Rice v. Pritchard*, 611 So.2d 869 (Miss. 1992)

In *Broadhead v. Terpening*, 611 So.2d 949 (Miss.,1992) our Supreme Court addressed easements by necessity by stating:

It is well-established that an easement by necessity arises by implied grant when a

> part of a commonly-owned tract of land is severed in such a way that either portion of the property has been rendered inaccessible except by passing over the other portion or by trespassing on the lands of another. Such easements or rights-of-way by necessity last as long as the necessity exists and terminate when other access to the landlocked parcel becomes available.

In *Taylor v. Hays,* 551 So.2d at 909 (Miss. 1989), the Supreme Court said, "it is well established that a way [of] necessity should be located so as to be the least onerous to the owner of the servient estate while, at the same time, being a reasonable convenience to the owner of the dominant estate."

That Court also quoted the Connecticut Supreme Court stating:

> It is a fallacy to suppose that a right of way of necessity is a permanent right, and the way a permanent way, attached to the land itself, whatever may be its relative condition, and which may be conveyed by deed, irrespective of the continuing necessity of the grantee.... It is a principle true from the very nature of the case, and as such is recognized by all the authorities, that a way of necessity, whether it originates in the necessity of the party claiming it, or from the operation of deeds furnishing evidence of the intent of parties, where a necessity exists, is limited by the necessity which creates it, and is suspended or destroyed, whenever such necessity ceases.

Easements appurtenant cannot be transferred. Our Supreme Court stated in *Wisconsin Avenue Properties, Inc. v. First Church of Nazarene of Vicksburg*, 768 So.2d 914 (Miss. 2000) that "Every state which has addressed the issue has found that an easement appurtenant cannot be transferred apart from the dominant tenement, and any attempt to do so must fail."

ISSUES

THE SISKS FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THEY POSSESSED A PRESCRIPTIVE EASEMENT OVER THE SUBJECT PROPERTY

The Court in paragraphs 13 and 14 of its opinion found that the Sisks met the elements of easement by prescription. However, trial court erred in its findings.

Easements by prescription require the same elements of proof as claims for adverse possession. The Sisks must establish each of the elements by clear and convincing evidence. The

Sisks did not establish those elements. Easements by prescription are in the nature of a statute of limitations. Essentially, if the Sisks prove that they used the road for more than ten years in a way that was continuous and gave sufficient notice to the record owner that the Sisks claimed a right of use of the road, then they will have established an easement by prescription.

The proof revealed that the Sisks and their predecessors sought permission to use the road from Donald Priest who consented to their use of the road. Donald Priest continued to control the use of the road throughout the time he leased the Washburn property by placing a wire across the road and Priest kept the road up. The Sisks never took any active step to "fly their flag" over the property to give notice to Donald Priest or anyone else that they had the permanent right to use the private drive. Additionally, the proof shows that after David Goggans acquired ownership of Parcel #48.01 that the Sisks used the Goggans property for the majority of their activity including one year when the Sisks admit that they did not use the private drive because of the logs on the Washburn property from logging. The Sisks cannot show that the use of the private road was continuous enough to make a valid claim for a prescriptive easement. None of the Plaintiffs have acquired an easement by prescription over the private drive.

The Chancellor found in paragraph 13(b) of his opinion that:

> there is no evidence that Defendants [Whittens] or their recent predecessors in title gave the Sisks consent to use the property. There was evidence that many years ago a previous owner had given consent. The Sisks proved hostility.

This finding is totally contrary to the record. As cited in the facts above, every witness confirmed that Donald Priest gave the Sisks permission to use the private drive and that they were depending on that permission to continue to use the drive 40 years later. As cited above, consent may never ripen into adverse possession. When the Sisks confirmed that they sought and obtained consent to use the private drive, their claim for a prescriptive easement ended.

Every one of the Sisks testified that they never claimed any ownership right to any part of

the private drive. Mitchell Sisk confirmed this in his testimony:

Q: And so during the course of all your negotiations with him [Priest] over how many acres you were going to buy and what the price was going to be, included in all of that was to make sure that y'all had a way to get to that property; isn't that right?

A: Yeah, yeah.

Q: And y'all wanted to make sure that it was okay with them for y'all to use this road [private drive].

A: We did, yeah.

Q: And they told you that it was okay to do that?

A: Yeah, that's what they said.

Q: And that's the basis of y'all using this road for the last 40 years.

A: Yeah, yeah.

Trial transcript of Mitchell Sisk at page 46, lines 5 - 18.

The Sisks used this private drive with permission from 1965 until 1996 when Donald Priest's grandson revoked that permission. The Sisks random use of the road two days in the spring of each year is insufficient to establish their claim of a prescriptive easement by clear and convincing evidence.

THE COURT ERRED IN FINDING THAT THE SISKS POSSESSED AN EASEMENT BY NECESSITY OVER THE WHITTEN'S PRIVATE DRIVE

The Chancellor found that since the Sisks, Washburn and Whitten tracts were all derived from the Thomas property, then the Sisks were entitled to an implied easement to cross the private drive across the Whitten property. Clearly, Mitchell and Grace Sisk can make a colorable argument

that they are entitled to an easement by necessity across the private drive.[3] In 1941, the Priest property was severed from the Thomas property in such a way as to limit Thomas' access to County Road 530. Therefore, when the Sisks acquired title to Parcel #8 and 17, they acquired an easement by necessity across **ALL** of the former Thomas property to gain access to a public road, not just the existing private drive. Additionally, the easement by necessity ends when the parties have an alternate route.

In paragraph 12 of his opinion, the Chancellor found that "The only reasonable access Mitchell and Grace Sisk have is across the roadway that is the subject of this suit and the Court finds that Mitchell and Grace Sisk have an easement by necessity." The Court's opinion is silent as to the dozen of other means to access the county road by the Sisks. The testimony was undisputed that the Sisks have other legal means of access based on the same principle as the Court applied here across the Goggans' property.

It is significant to note as the diagram reflects and the testimony confirmed, that the Sisks use of heavy equipment will require the Whittens to remove a fence and cut trees. Additionally the private drive has five residences on it. The Whittens testified that the heavy equipment destroyed the road and introduced photographs of the mud created after the lawsuit was filed. Meanwhile, the adjacent Goggans property is set out in trees with no residences and the Sisks and David Goggans testified that they used that route to cross the Sisks property to get to their own. David and Phyliss Sisk Goggans are nephew and niece to the Appellant Sisks.

Phyliss Sisk Goggans was dismissed as a Plaintiff in the lawsuit on the day of trial. She and her husband, David Goggans, own Parcel #48.01. Goggans testified that he and his wife would be

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[3]The Trial Court did not declare that James Bruce Sisk possesses an easement by necessity because the James Bruce Sisk did not obtain his title through Thomas. James Bruck Sisk's only claim is that of an easement by prescription.

required to maintain the road that crosses their property to the Sisks property so that the Goggans could have access to Parcel #s 18, 7 and 6.01. (Trial Transcript page 294, lines 5 - 24.) Goggans testified that he taught school and worked for the Sisks in the 80's and 90's in the farming operation. He testified that he recently quit farming and set Parcel 48.01 in pine. Goggans testified that the fact that he has planted trees on his Parcel 48.01 would not impair the use of the road on his tract.

Q: Okay, Well, so, when y'all [Sisks] were unable to use the Washburn property, either because of the trees, what other routes were available to you to get to the Sisk property?

A: Well, basically, we used mine coming out.

Q: Okay.

A: Which was not really why I bought it, but, I mean, but we used it to come out – well, you couldn't go up the hill. You couldn't get across because of the trees, and that's the way we came out.

Trial Transcript page 304, lines 8 - 17.

The Chancellor failed to consider that Mitchell and Grace Sisk have just as much of a right to claim an easement by necessity over the Goggans property or other former Thomas tracts as they do the private drive. While the Trial Court did not have jurisdiction over the Goggans property in this action, the Trial Court had discretion as to the location and restrictions on any easement by necessity which may be established. Additionally, the easement by necessity ends whenever the Plaintiffs have other reasonable access to their property.

The Sisks already have other reasonable access across the Goggans property. At trial, Mitchell and Grace Sisk argued that the Goggans could withdraw their permission to use the Goggans property as access. However, in 1965 when Ms. Willie Priest owned parcel 48.01, she also owned Parcel #18. When Ms. Priest severed Parcel #18 from what is now Parcel 48.01, an

easement by necessity resulted that runs with the land and that the Sisks would have had the right to cross Parcel 48.01 to gain access to County Road 530 with or without the Goggan's permission or consent.

The Court viewed the property and did not make any findings that the road across the Goggans' property would or would not be a less onerous, wider access to the farm land than the private drive in question which is now lined with several dwellings. The Goggans property is planted in pine trees which will not be disturbed by the rare trips of farm equipment while the private drive is now lined with fences which already prohibit the travel of wide equipment. While the Trial Court did not have authority to set the easement by necessity on the Goggans property, the Trial Court only had the authority to declare that no easement by necessity existed across the Defendants' property by Mitchell and Grace Sisk. The Sisks also possess an express easement found in the Thomas deed of 1936 which grants them legal access to a public road.

The Trial Court's primary motivation to grant the easement by necessity was the Whitten's testimony that they did not have a problem with the Sisks using the private drive for automobile traffic. The Whitten's objected to the wide, heavy equipment and damaged the tress, landscape and roadway. The Trial Court erred in using the Whittens offer of a license to the Sisks which the Trial Court then expanded into an easement.

When the Sisks obtained another legal means of access to their properties, their easement by necessity ended. They no longer possess an easement by necessity.

CONCLUSION

The Trial Court erred in declaring that the Sisks possessed an easement by prescription over the private drive. Additionally, the Court erred in declaring that the Mitchell and Grace Sisk possess an easement by necessity. The Supreme Court should reverse the decision of the Chancellor and remand the case to the Chancery Court of Lee County for a determination of damages for trespass

on the Whittens' property.

THIS, the 13th day of November, 2007.

Respectfully submitted,

FORTIER & AKINS, P. A.

By: _____
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CERTIFICATE OF SERVICE

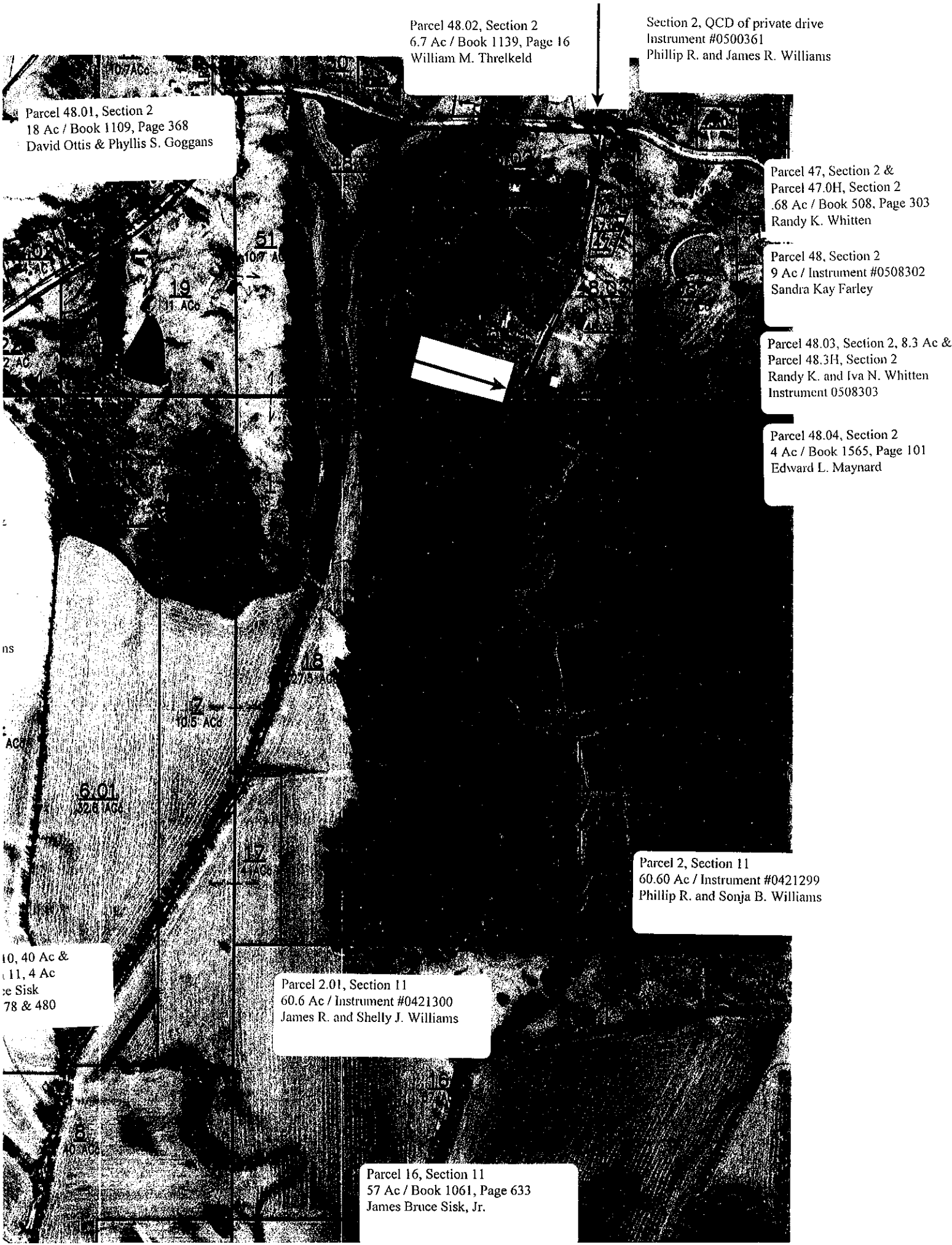
I, B. Sean Akins, attorney of record for the Appellants, do hereby certify that I have this day mailed, through United States Mail, proper postage prepaid, a true and correct copy of the foregoing document to the following:

Thomas McElroy
301 N. Broadway
P. O. Box 1450
Tupelo, MS 38802-1450

Honorable Kenneth M. Burns
Special Chancellor
P. O. Drawer 110
Okolona, MS 38860-0110

SO, CERTIFIED, this, the 13th day of November, 2007.

B. Sean Akins
Attorney for Appellants


Parcel 48.02, Section 2
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Section 2, QCD of private drive
Instrument #0500361
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