

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-~~TS~~-01381

CA

DESOTO COUNTY, MISSISSIPPI (DESOTO TIMES)

APPELLANT

V.

MEMPHIS PUBLISHING COMPANY, PUBLISHER
OF THE DESOTO APPEAL; PH PUBLISHING LLC,
PUBLISHER OF THE DESOTO TIMES TODAY; and
DAVID GRISHAM, PUBLISHER OF THE DESOTO
COUNTY TRIBUNE

APPELLEE

APPELLEE'S BRIEF

APPEALED FROM THE CIRCUIT COURT
OF DESOTO COUNTY, MISSISSIPPI

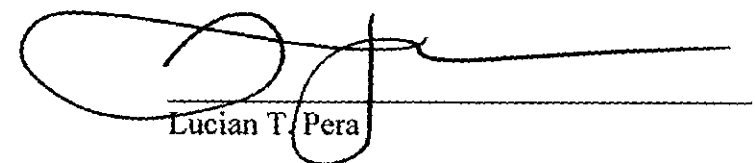
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Certificate of Interested Persons

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 Judges of this Court may evaluate possible disqualification or recusal:

1. PH Publishing LLC, Publisher of *The DeSoto Times Today*, Appellant;
2. Memphis Publishing Company, Publisher of *The DeSoto Appeal*, Appellee
3. Mary Lynn Damaré, attorney for Appellant;
4. Lanier Hurdle, trial attorney for Appellant;
5. Adams and Reese LLP; Lucian T. Pera and John S. Hooks, attorneys for Appellee;
6. Honorable Andrew C. Baker, Circuit Court Judge, Trial Judge.



Lucian T. Pera

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Statement of Issues

- I. Appellant *The DeSoto Times Today* lacks standing to appeal the circuit court's decision.
- II. The circuit court's factual determination that *The DeSoto Appeal* is authorized to publish legal notices under Mississippi Code Annotated § 13-3-31 is supported by substantial evidence and is not manifestly wrong.
- III. The circuit court did not err in its application of Mississippi Code Annotated § 13-3-31. *The DeSoto Appeal* is not an "insert" or a "section" of another newspaper, but instead is a bona fide newspaper in its own right, and independently meets all of the requirements of § 13-3-31.

Factual Overview and Standard of Review

The origins of this litigation, and the purpose of this appeal, are both crystal clear: Appellant PH Publishing, LLC, publisher of *The DeSoto Times Today*, (“Appellant *The DeSoto Times Today*” or “*The Times*”) does not want a rival newspaper, *The DeSoto Appeal*, to publish legal notices of municipal governments.

Beginning in 2000, the county attorney for DeSoto County requested a number of opinions from the Mississippi Attorney General to clarify whether *The DeSoto Appeal* could publish legal notices. Although these opinions were favorable to *The DeSoto Appeal*, the Attorney General’s office was careful to point out that the issue of whether *The DeSoto Appeal* met the qualifications to publish legal notices set out in Mississippi Code Annotated § 13-3-31 was a *factual* matter, beyond the power of the Attorney General to resolve in giving guidance through its opinions.

Because *The Times* continued to dispute the ability of *The DeSoto Appeal* to publish legal notices, DeSoto County filed suit in the circuit court of DeSoto County and sought a declaratory judgment as to whether *The DeSoto Appeal* met the requirements of § 13-3-31. The county named as parties Memphis Publishing Company, publisher of *The DeSoto Appeal*; PH Publishing LLC, publisher of *The Times*; and David Grisham, publisher of *The DeSoto County Tribune*.¹

At the bench trial, the circuit court heard live testimony and considered other evidence from both *The DeSoto Appeal* and *The Times*. The circuit court found that *The DeSoto Appeal* was entitled to publish legal notices because it met all requirements of § 13-3-31. The evidence established that *The DeSoto Appeal* has an office in DeSoto County at which ordinary newspaper functions occur and where employees work to create the *The*

¹ Neither David Grisham nor *The DeSoto County Tribune* participated in the litigation.

DeSoto Appeal. *The DeSoto Appeal* has its own masthead identifying itself as “*The DeSoto Appeal*.” Testimony also showed *The DeSoto Appeal* is not inserted into any other newspaper, but actually has another newspaper inserted into it as a free supplement.

Apparently satisfied with the guidance it received from the court’s ruling, DeSoto County did not appeal.² Instead, *The Times*, a co-defendant in the declaratory judgment action, has brought this appeal.

While *The Times* makes no mention of it, the applicable standard of review is clear: The circuit court’s decision should be affirmed unless it lacks substantial evidence to support its decision or its decision was manifestly wrong. *UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., Inc.*, 525 So.2d 746, 753-54 (Miss. 1987). This Court alternatively refers to the scope of the standard of review of factual determinations made by a trial judge sitting without a jury as the “substantial evidence rule” or the “manifest error rule.” *Id.* at 753. “Employing substantial evidence parlance, we have said repeatedly that we will not disturb a trial judge’s findings of fact where there is in the record substantial evidence supporting the same.” *Id.* at 753 (omitting citations). Further, the findings of fact of a trial court “should and must be accepted unless they are manifestly wrong.” *Id.* In sum, the scope of review of factual determinations made by a trial judge sitting without a jury is “limited.” *Id.* at 753.

The Times erroneously contends that the court should not have applied § 13-3-31 in the first place. Instead, *The Times* would have the circuit court treat *The DeSoto Appeal* as an “insert” or “section” of *The Commercial Appeal*, then ask whether *The Commercial Appeal* meets the requirements of § 13-3-31. This question, because it concerns an application of law, is reviewed by this Court *de novo*.

² Although *The DeSoto Appeal* has, in this brief, adopted the style used by Appellant *The DeSoto Times Today* in its brief, DeSoto County is not an appellant in this appeal (as this style might suggest), *The Times* is the only appellant, and *The DeSoto Appeal* is the sole appellee.

Under the appropriate standard of review, because the factual findings of the circuit court are clearly supported by substantial evidence and are not manifestly wrong, and because the circuit court's legal conclusions are legally sound, the circuit court's decision should be affirmed.

Summary of the Argument

Appellant *The DeSoto Times Today* lacks standing to appeal the circuit court's decision. Here, one co-defendant newspaper publisher seeks to appeal a judicial determination regarding the legal status of a newspaper published by another co-defendant newspaper publisher, in a matter not involving an actual controversy between the two newspaper publishers in the sense intended by Mississippi Rule of Civil Procedure 57. Mississippi Code Annotated § 11-3-37 also forbids one co-defendant from appealing a judgment or decree affecting another litigant.

Assuming that *The Times* has standing to bring this appeal, however, the circuit court's factual determination that *The DeSoto Appeal* is authorized to publish legal notices under Mississippi Code Annotated § 13-3-31 is supported by substantial evidence and is not manifestly wrong.

Further, the circuit court did not err in its application of § 13-3-31. *The DeSoto Appeal* is not an "insert" or a "section" of another newspaper, but a bona fide newspaper in its own right, independently meeting all requirements of § 13-3-31.

For these reasons, *The DeSoto Appeal* respectfully requests the decision of the circuit court be affirmed.

Argument

I. Appellant *The DeSoto Times Today* lacks standing to appeal the circuit court's decision.

DeSoto County sued in the circuit court of DeSoto County and sought a declaratory judgment as to whether *The DeSoto Appeal* met the requirements of Mississippi Code Annotated § 13-3-31. DeSoto County did not appeal the circuit court's determination that *The DeSoto Appeal* is a newspaper under § 13-3-31. Instead, *The Times*, one of the co-defendants named by the county in its declaratory judgment action, has now appealed. *The Times* lacks standing to appeal because there is no case or controversy between *The Times* and *The DeSoto Appeal*. *The Times* simply does not like the decision the circuit court rendered because the decision permits DeSoto County to advertise legal notices in its competitor, *The DeSoto Appeal*.

Tom Pittman, one of the individual partners of Appellant PH Publishing, LLC, the publisher of *The Times*, testified in a deposition in this case. (R. 276-301). When asked whether *The Times* was taking a position on whether *The DeSoto Appeal* qualifies under the statute for legal advertising in DeSoto County, Mr. Pittman made clear that his company was not taking a position on this issue, stating that his company's newspaper and *The DeSoto Appeal* were "just both defendants in the case" and commenting that "we have no legal standing to that effect," but further testifying, "I don't understand that we have any legal objection to anything" (R.E. 4 at 285-286).³

Despite Pittman's testimony, *The Times* now seeks to step into the shoes of DeSoto County and appeal a decision that the county did not appeal or contest. *The Times* is trying to create a case or controversy where none exists. This it cannot do.

³ Consistent with this position, *The Times* did not assert or seek to assert any cross-claim or counter-claim in this action.

In *S & F Publishing Co., Inc. v. Gulf Publishing Co.*, 760 So.2d 38 (Miss. App. 2000), the Mississippi Court of Appeals invalidated a declaratory judgment action brought by one newspaper challenging the rights of another newspaper to publish legal notices under § 13-3-31. Because the case was nothing more than a “running feud between business competitors . . . that could never ripen into a situation where either could obtain a coercive remedy against the other” the case was reversed. *Id.* at 41. If either newspaper were wrongfully deprived of the right to compete for the legal notice publishing business of a governmental body, “the coercive legal remedy would be against the public body contracting for the publication and not against the company that obtained the contract.” *Id.*

In this case, DeSoto County initiated the declaratory judgment action that resulted in the circuit court’s decision and did not appeal that decision. Here, the business dispute that *The Times* seeks to perpetuate “does not involve ‘an actual controversy’ between these litigants in the sense intended by Rule 57.” *Id.* at 41. *The Times* simply does not like the decision the circuit court rendered because the decision permits DeSoto County to advertise legal notices in its competitor, *The DeSoto Appeal*. The “crucial relief sought” is “against the contracting governmental body,” not against *The DeSoto Appeal*. *Id.*

Mississippi Code Annotated § 11-3-37 also forbids one co-defendant from appealing a judgment or decree affecting another litigant: “In all cases, civil and criminal . . . one of several appellants shall not be entitled to a judgment of reversal because of an error in the judgment or decree against another, not affecting his rights in the case.” Construing this provision, this Court did not permit a master found liable in negligence to appeal a finding of no liability on the part of his servant: “Of what avail should it be to appellant that its co-defendant (servant) was so fortunate as to be let out or even given a windfall? The appellee

(plaintiff) is the only one who has posture to raise such a complaint and he has not cross-appealed.” *Capitol Transport Co. v. McDuff*, 319 So.2d 658, 661 (Miss. 1975).

The Times, as a co-defendant, cannot challenge the determination of the circuit court because (1) there never was an “actual controversy” between these litigants, and (2) Mississippi Code Annotated § 11-3-37 does not permit one co-defendant to appeal a judgment or decree affecting another litigant.

II. The circuit court’s factual determination that *The DeSoto Appeal* meets all of the requirements of § 13-3-31 is supported by substantial evidence and is not manifestly wrong.

To publish legal notices, a newspaper must meet the requirements of Mississippi Code Annotated § 13-3-31. At the trial level, *The DeSoto Appeal* presented evidence demonstrating that it satisfied all of the statutory elements. The circuit court concluded, based on the evidence presented to it at trial, that *The DeSoto Appeal* “has met the requirements of Miss. Code Ann. § 13-3-31.” (R.E. 1 at 258.) In this appeal, *The Times* only challenges the circuit court’s factual finding as to one of the several distinct requirements of § 13-3-31, arguing that *The DeSoto Appeal* fails to satisfy § 13-3-31(1)(e). *The Times’* argument is based on its contention that the principal public place of business of *The DeSoto Appeal* is actually the Memphis headquarters of its parent company, Memphis Publishing Company. This argument is wholly without merit, as demonstrated below.

A. *The DeSoto Appeal* is issued from a “known office of publication,” the principal public business office of the newspaper, in DeSoto County.

The Times’ only argument that *The DeSoto Appeal* does not meet the several requirements of § 13-3-31 is that, under § 13-3-31(1)(e), the principal public place of business of *The DeSoto Appeal* is actually in Memphis. The circuit court rejected this argument, and its finding is amply supported by substantial evidence in the record.

Section 13-3-31(1)(e) requires that, in order to carry legal notice advertising, a newspaper must be

issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the newspaper's printing presses are physically located. A newspaper shall be deemed to be 'published where its known office of publication is located.

The Times offers a two-pronged argument that the principal public business office of *The DeSoto Appeal* is not in DeSoto County. First, *The Times* claims the "principal public business office of the newspaper" is at 495 Union Avenue, in Memphis, Tennessee, the headquarters of *The Commercial Appeal*, another newspaper published by Memphis Publishing Company, the publisher of *The DeSoto Appeal*.

The second prong of the argument is that, because the principal public business office of *The DeSoto Appeal* is allegedly in Memphis, *The DeSoto Appeal* cannot also have another principal public business office in DeSoto County. To support this argument, *The Times* claims (as it must) that the Mississippi Attorney General's opinions construing § 13-3-31(1)(e) are simply wrong. In particular, *The Times* challenges an opinion dated December 15, 2000, stating that "[a] newspaper may have a principal public business office in more than one location" Op. Miss. Att'y Gen. No. 2000-0731, 2000 WL 1918854 (Miss. A.G.). The Attorney General reaffirmed this principle in later opinions attached to *The Times'* brief as Exhibits A and B.

The Times' entire argument is a red herring. The location of the business office of Memphis Publishing Company is irrelevant. According to *The Times'* logic, the principal public business office of any parent company is automatically the principal public business office for all of its subsidiary companies. This argument is absurd. Under *The Times'*

theory, neither *The Clarion-Ledger* nor *The Hattiesburg American* would meet the requirements of § 13-3-31(1)(e) because their parent company, Gannett Publishing, is located in McClean, Virginia.

There is ample evidence to support a finding that – regardless of the validity of the Attorney General’s opinions – the principal public business office of *The DeSoto Appeal* is in DeSoto County, not in Memphis. The circuit court specifically noted testimony that the majority of the editorial and policy decisions as well as the majority of the business functions are conducted from the office of *The DeSoto Appeal* in DeSoto County. (R.E. 1 at 257).

According to Chris Ratliff, General Manager of *The DeSoto Appeal*, “*The DeSoto Appeal* is issued from a known office of publication, located at its principal public business office at 230 East Goodman Road, Building 2, Southaven, DeSoto County, Mississippi 38671.” (R.E. 3 at 56 – 57). At the hearing, Warren Funk, General Counsel and Human Resources Director of *The DeSoto Appeal*, testified about the various operations occurring at the Goodman Road facility and the employees who work out of the office of *The DeSoto Appeal* in DeSoto County. Funk also explained the various staff who work out of the DeSoto County office: a general manager, an editor, approximately twenty employees, an advertising employee, an advertising manager, advertising sales people, a deputy editor, several reporters, clerical staff, circulation staff, including two circulation district managers plus at least one, possibly two, field representatives. (Ex. A at 17).

According to the circuit court “Mr. Funk and Mr. Ratliff testified that the majority of the editorial and policy decisions of *The DeSoto Appeal* are made, and the majority of the business functions in preparing *The DeSoto Appeal* for publication are carried out from the Goodman Road location.” (R.E. 1 at 257).

Funk further testified about the plans of *The DeSoto Appeal* to establish an even greater presence in DeSoto County. Funk reported that *The DeSoto Appeal* had signed a lease for new office space then being constructed at the corner of Church Road and Interstate 55 in DeSoto County. (Ex. A at 18). The new office space would increase the square footage from 3,000 square feet to 10,000 square feet. *Id.*

Although *The Times* offered proof that some functions of *The DeSoto Appeal* are performed in Memphis, the circuit court was not persuaded that the principal business office of *The DeSoto Appeal* was in Memphis.

Because the circuit court heard evidence sufficient to find that the principal public business office of *The DeSoto Appeal* is in DeSoto County, there is no need for this Court to determine the validity of the various opinions of the Attorney General regarding the permissibility of more than one principal public business office.

Even so, the Attorney General's opinions are entirely consistent with § 13-3-31(1)(e). The statute itself contemplates that newspapers may have different functions occurring at more than one office: Printing presses, for example, need not be physically located at the principal place of business, and the newspaper can be printed at an off-site location. Miss. Code Ann. § 13-3-31(1)(e). Moreover, the opinions of the Attorney General cited in *The Times'* brief state clearly that the office of the Attorney General does not make "factual determinations as to whether a particular newspaper meets all of the requirements for a paper to publish legal notices." Op. Miss. Att'y Gen. No. 2000-0731, 2000 WL 1918854 (Miss. A.G.).

The evidence presented to the circuit court was clearly sufficient to support its factual determination that *The DeSoto Appeal* had a known office of publication and a principal public place of business in DeSoto County.

B. The trial court had before it substantial evidence to support its factual determination that the remaining requirements of § 13-3-31 were met.

Section 13-3-31 also imposes eight other requirements on publications that would be considered newspapers for purposes of legal-notice advertising, and, after a full trial, the circuit court made a factual determination that all of these requirements were met. (R.E. 1 at 258). Further, the trial court had before it clear and undisputed evidence of the benefit that would likely accrue to the taxpayers of DeSoto County. *The Times* never contested the evidence presented by *The DeSoto Appeal* regarding the benefit of increased competition to the taxpayers of DeSoto County. “For example, *The DeSoto Appeal*’s bid accepted by the Mayor and Board of Alderman of Southaven in 2001 resulted in a savings of 44% for all first insertions and 18% for all subsequent insertions over the rate paid during the previous year for publishing legal notices.” (R.E. 3 at 58).

Although *The Times* does not contend in this appeal that the circuit court erred in its factual determination that *The DeSoto Appeal* meets the other requirements of § 13-3-31, in the interest of allowing this Court to understand the full context of the trial court’s decision, we will briefly address the evidentiary support demonstrating that the trial court’s findings as to those other requirements of § 13-3-31 are supported by substantial evidence and are not manifestly wrong.

1. *The DeSoto Appeal* maintains a general circulation to paying subscribers within DeSoto County.

To publish legal notices, the first test for a newspaper is whether it “maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required.” Miss. Code Ann. § 13-3-31(1)(a).

Chris Ratliff, General Manager of *The DeSoto Appeal* testified that “*The DeSoto Appeal* is a daily newspaper serving the cities of Hernando, Horn Lake, Olive Branch, and surrounding communities in DeSoto County, with a general circulation of approximately 14,000 daily and 21,000 on Sundays.” (R.E. 3 at 56). Ratliff also confirmed that “*The DeSoto Appeal* maintains a general circulation that is numerically substantial, geographically widespread, and demographically diversified. Its circulation is predominately to bona fide paying subscribers within DeSoto County, who have subscribed at a rate that is not nominal.” *Id.*

According to Warren Funk, General Counsel and Human Resources Director of *The DeSoto Appeal*, “daily circulation is around 15,000, maybe just over, and Sunday circulation . . . is something in excess between 22 and 23,000.” (Ex. A at 16). The subscription rate is “a little over \$12 for the weekends and \$17.50 for the daily.” *Id.* at 22.

2. *The DeSoto Appeal* maintains a list of bona fide subscribers.

Section 13-3-31(1)(b) requires a newspaper qualified to publish legal notices to maintain a legitimate list of its bona fide paying subscribers that includes the following categories: (1) mail subscribers; (2) dealers and carriers; and (3) street vendors and counter sellers. Evidence established that *The DeSoto Appeal* maintains a “legitimate list of its bona

fide paying subscribers” categorized by “(1) mail subscribers; (2) dealers and carriers; and (3) street vendors and counter sellers.” (R.E. 3 at 56).

During the hearing, Warren Funk confirmed that *The DeSoto Appeal* maintains a legitimate list of its bona fide paying subscribers including the required categories: “That’s the way that newspapers are traditionally distributed, either what they call single copy either through location sales or street sales, or home delivery, which is your base of your subscribers, the people that take the newspaper everyday.” (Ex. A at 22).

3. *The DeSoto Appeal* is not published primarily for advertising.

Section 13-3-31(1)(c) requires a newspaper to contain no more than 75% advertising in more than half of its issues during the twelve-month period before publishing a legal notice. This requirement excludes separate advertising supplements.

Chris Ratliff’s testimony confirmed that this requirement was met: “*The DeSoto Appeal* is not published primarily for advertising purposes and does not contain more than 75% advertising in more than half of its issues during the period of 12 months next prior to November 1, 2002, excluding separate advertising supplements inserted into, but separately identifiable from, any regular issue or issues.” (R.E. 3 at 56).

Warren Funk also confirmed that *The DeSoto Appeal* did not contain more than 75% advertising: “A publication that would fail that test would be something that you call a shopper, and this is definitely not a shopper; this is a newspaper.” (Ex. A at 22-23).

4. *The DeSoto Appeal* meets the history and frequency of publication requirements.

To publish legal notices, §13-3-31(1)(d) requires a newspaper to have been established and published continuously for at least twelve months before publishing legal

notices and to be “regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively.”

Evidence proving publication history and frequency requirements was undisputed: At trial, Warren Funk testified that publication began in January 2000 and is issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively. (Ex. A at 22-23; R.E. 3 at 56).

5. *The DeSoto Appeal* is “formed of printed sheets.”

The DeSoto Appeal met § 13-3-31(1)(f)’s requirement that it be “formed of printed sheets.” According to Ratliff, “*The DeSoto Appeal* is formed of printed sheets.” (R.E. 3 at 57; Ex. A at 23).

6. *The DeSoto Appeal* looks like an ordinary newspaper and has the type of content one would expect to find in a newspaper.

Section § 13-3-31(1)(g) sets out the test regarding the content of a newspaper seeking to publish legal notices. The test requires a newspaper to be “originated and published for the dissemination of current news and intelligence of varied, broad, and general public interests, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.”

Funk and Ratliff testified *The DeSoto Appeal* contains general news, sports, opinions, and includes a daily opinion column. (Ex. A at 24; R.E. 3 at 57).

7. *The DeSoto Appeal* is not free.

To publish legal notices, a newspaper cannot be distributed for free. Miss. Code Ann. § 13-3-31(1)(h). *The DeSoto Appeal* is not free. Funk testified that the rate at the time of the hearing was “a little over \$12.00 for the weekend and \$17.50 for the daily.” (Ex. A at 22).

Ratliff also confirmed that “*The DeSoto Appeal* is not designed primarily for free circulation or for circulation at nominal rates.” (R.E. 3 at 57).

8. *The DeSoto Appeal* is not published for any particular organization, but is widely circulated throughout DeSoto County.

The purpose of § 13-3-31(2) is to ensure that legal notices are not published in publications circulated among narrow groups or organizations. A newspaper cannot meet this requirement if it is:

published, sponsored by, is directly supported financially by, or is published to further the interest of, or is directed to, or has a circulation restricted in whole or in part to any particular sect, denominating, labor or fraternal organization or other special group or class of citizens, or which primarily contains information of a specialized nature rather than information of varied, broad and general interest to the general public, or which is directed to any particular geographical portion of any given political subdivision within which publication of such legal notice is required, rather than to such political subdivision as a whole.

Miss. Code Ann. § 13-3-31(2).

The DeSoto Appeal is not designed and circulated to a particular group or organization and does not contain a specialized content. At the time of the hearing, the daily circulation of *The DeSoto Appeal* was around 15,000 with a Sunday circulation of approximately 22,000-23,000. (Ex. A at 16). The newspaper is not published, sponsored by, directly supported financially by or published to the further the interest of any particular sect, denomination, labor or fraternal organization. (*Id.* at 24.) *The DeSoto Appeal* does not primarily contain information of a specialized nature, rather it contains information of a very broad and general interest to the general public. (*Id.*) *The DeSoto Appeal* is not directed to any particular geographical portion of DeSoto County, rather than to DeSoto County as a whole. (*Id.* at 24-25.)

III. The circuit court properly determined that § 13-3-31 was dispositive of the issues presented by DeSoto County's declaratory judgment action.

Perhaps recognizing the substantial evidence supporting the circuit court's factual determination that *The DeSoto Appeal* meets the statutory requirements to publish legal notices, *The Times* claims that the circuit court erred by applying § 13-3-31 in the first place. According to *The Times*' novel theory, the circuit court erred by not first deciding whether *The DeSoto Appeal* was somehow merely a section or insert of *The Commercial Appeal*. According to *The Times*' argument, if *The DeSoto Appeal* is a section or insert of *The Commercial Appeal*, then it could not be a "newspaper" in its own right for purposes of § 13-3-31, and then legal notices could not be published in *The DeSoto Appeal* because *The Commercial Appeal* does not meet the requirements of § 13-3-31(1)(e).

The Times relies on *Gannett River States Publishing Corp. v. Jackson Advocate*, 856 So.2d 247, 251 (Miss. 2003), to support its position that § 13-3-31 should not be applied if *The DeSoto Appeal* is a section of *The Commercial Appeal*. But *Gannett* deals with a different question from the question presented to the circuit court in this case and now before this Court.

In *Gannett*, the trial court had determined that a section called the "Focus," inserted into *The Clarion-Ledger* newspaper, could not independently meet the requirements of § 13-3-31 when analyzed separate and apart from the newspaper into which it was inserted. The "Focus," therefore, could not publish legal notices. *Gannett*, 856 So.2d at 251. This Court disagreed, however, holding that § 13-3-31 should not be applied to the "Focus" independently because the "Focus" was nothing more than "a typical section of *The Clarion-Ledger*." *Id.* The "Focus" section even bore the masthead of "*The Clarion-Ledger*." *Id.* *The Clarion-Ledger/Focus* was, therefore, permitted to advertise legal notices because it was

part of a larger newspaper whose qualification to publish legal notices under § 13-3-31 was apparent. *Id.* at 252.

In reaching its decision, the Court examined authority from Alabama, *Gulf Coast Media, Inc. v. The Mobile Press Register, Inc.*, 470 So.2d 1211 (Ala. 1985), that addressed whether a publication called *Baldwin People*, inserted into Thursday editions of *The Mobile Press-Register*, was qualified to publish legal notices under Alabama law. The Alabama court held that *Baldwin People* lost its status as a newspaper as to Alabama's legal notice statute when it was inserted into *The Mobile Press-Register*. 470 So.2d at 1214. "Much like the sports section or any other special interest section, the *Baldwin People* carries a section letter designation, 'Section G.'" *Id.* at 1215. Further, a "majority of the editorial and policy decision[s] are made in Mobile," not in Baldwin County. *Id.*

This case differs significantly from both *Gannett* and *Gulf Coast Media*. *Gannett* establishes only that a section of a larger newspaper need not be required to satisfy the requirements of § 13-3-31 in order for advertising to be placed in the section. *Gulf Coast Media* concluded that a publication that was merely a once-a-week insert in another newspaper could also be a "newspaper" under Alabama law.

Here, *The DeSoto Appeal* is not an insert in another newspaper. (Ex. A at 59-60). In fact, the opposite was proven in the trial proceedings: *The Commercial Appeal* is inserted into *The DeSoto Appeal* as a free supplement to *The DeSoto Appeal*. (*Id.*) *The DeSoto Appeal* even has its own masthead. (*Id.* at 18.) Because *The DeSoto Appeal* is not an "insert," *The Times'* arguments premised upon the analysis in *Gannett* and *Gulf Coast Media* are unavailing. Mississippi Code Annotated § 13-3-31 controls, and there was ample

evidence to conclude *The DeSoto Appeal* independently met each requirement under the statute.

IV. Conclusion

The Times lacks standing to appeal the circuit court's decision, and the circuit court's decision could be affirmed on that basis alone. Even if *The Times* had standing, the circuit court's decision should still be affirmed because it is supported by substantial evidence and is not manifestly wrong. Further, the circuit court did not err by applying Mississippi Code Annotated § 13-3-31. For these reasons, *The DeSoto Appeal* respectfully requests the decision of the circuit court be affirmed.


Respectfully submitted, this 13th day of March, 2008.

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CERTIFICATE OF SERVICE

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