IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO. 2007-CA-01537

DOUBLE J. FARMLANDS — APPELLANT

v.

PARADISE BAPTIST CHURCH, ET AL
AND BETTY DOWNS TYLER — APPELLEE

ON APPEAL FROM THE CHANCERY COURT OF
TATE COUNTY, MISSISSIPPI
CIVIL ACTION NO. 06-2-45(PL)

APPELLEE'S BRIEF

ORAL ARGUMENT NOT REQUESTED

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v.

PARADISE BAPTIST CHURCH, ET AL
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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 may evaluate possible disqualification or recusal:

Percy Lynchard, Jr., Chancery Judge

Paradise Baptist Church, Et. Al., Appellee

Mildred J. LeSure, Attorney For Appellee

Double J. Farmlands, Inc. Appellant

Parker H. Still, Attorney for Appellant

Rebecca S. Thompson, Attorney for Appellant

Betty Downs Tyler, Appellee

Leigh Ann Darby, Attorney for Appellee

CERTIFIED, this the 20th day of March, 2008.

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STATEMENT OF THE CASE

A. Procedural History

On March 2, 2006 in the Chancery Court of Tate County, Mississippi Double J Farmlands, hereinafter referred to as Double J, Appellants, filed a Complaint to Quiet and Confirm Title against Paradise Baptist Church, hereinafter, referred to as Paradise, Appellee. (R. 10) Paradise answered and filed a Motion to Allow a Third Party Complaint followed by an Amended Third Party Complaint against Betty Downs Tyler the Grantor and owner of the property in dispute. (R. 21, 23) An Order was entered March 22, 2006 granting the Motion to Allow the Third Party Complaint joining Betty Downs Tyler as a Third Party Defendant. (R. 27) The Third Party Complaint was filed April 25, 2006. (R. 29)

Double J, Appellants, filed A Motion for Summary Judgment March 30, 2007. (R. 45) Paradise, Appellee filed their Response to said Motion and attached among other documents an affidavit from the Third Party Defendant alleging her ownership and conveyance of the disputed property to Paradise, Appellee. (R.85) Double J, Appellants, filed a Rebuttal Memorandum to Plaintiff's Motion for Summary Judgment May 16, 2007 where they alleged

fraud on the part of Paradise Baptist Church and Betty Downs Tyler, Third Party Defendant. Double J asserted that because Ms. Tyler claimed actual, hostile, open, notorious, visible, continuous, uninterrupted, exclusive and peaceful possession of the 6.5 acres it was a false allegation fraud and preposterous.

The hearing on the Motion was held June 13, 2007 the Court denied the Motion for Summary Judgment and obviously found there was a genuine issue of material fact. There was no transcript of proceedings or an Order submitted on record. On July 27, 2007 Double J, Appellants, filed a Motion to Reconsider. The Motion was overruled from the bench on the date of trial because the matter had already been set for trial on June 13, 2007. (TR. 2)

The case proceeded to a non-jury trial before Chancery Judge Percy Lynchard on August 23, 2007. Upon the close of Double J's, Appellants case Plaintiff/Double J moved for directed verdict. The Court overruled the Motion. (TR. 107) Paradise moved for a directed verdict. The Court correctly stated the proper Motion to be a Rule 41 Motion to Dismiss the Complaint to Confirm and Quiet Title by Adverse Possession. The Court granted the motion by a signed Order dated September 5, 2007. Double J, Appellants, perfected an Appeal aggrieved by the ruling of the Court on two basic

grounds, the failure of the Court to grant Summary Judgment against the Defendants and the Court's denial of Double J's Motion for Directed Verdict, properly a Motion To Dismiss.

B. FACTS OF THE CASE

The 6.5 acres of property, the subject of this action, was first obtained by Harvey E. Tyler, deceased, and his wife, Betty Jean Tyler, Defendant/Co-Appellee, by Warranty Deed from Mrs. Omega Thomas in 1961. (TR. Exhibit 9) Betty Jean Tyler, Co-Appellee, testified that she and her husband intended to give this property to Paradise Church because the Church was land locked. Harvey Tyler died in January 2005. (TR. 86-87) Ms. Tyler, Co-Appellee executed a Warranty Deed to the Paradise Baptist Church through its Trustees, July 27, 2005. (R. 92) She sold the property to Paradise Church, instead of the gift she and her husband intended, because she was in a car wreck and needed the funds. (TR. 86) A survey was conducted on said property which consisted of 6.5 acres of a larger 50 acre tract of land belonging to Betty Jean Tyler. (TR. Exhibit 1) Betty Jean Tyler has continued to pay taxes on the 6.5 acres as evidence by tax receipts. (TR. Exhibit 6) Mr. Herbert Whalen testified the property was surveyed, posts and markers were put up to mark the boundary lines. He was

notified by the Defendant Paradise to move his cows so a fence could be built. (TR. 59) Double J was made aware of the survey when they received a zoning request. (TR. 7) Neither Double J nor Mr. Whalen took action against the surveyor's or Ms. Tyler to evict them or put them on notice of any claim of ownership until the law suit was filed.

Double J, the Appellant, acquired the adjoining property in 1995 from Joyce Roseborough White by Warranty Deed of Exchange. (R. 97) (TR. Exhibit 5). Johnny H. White, Jr., the vice-president and stockholder of Double J Farms testified. Double J claimed fee simple title of the property and believed the 6.5 acres was a part of a larger tract of six hundred (600) acres. (TR. 54) Yet by his testimony Double J declared they paid taxes on the 6.5 acres, it was included in the fenced in portion of six hundred (600) acres. More importantly, he admitted they were not claiming the property by adverse possession because Double J owned it.

> Q. We're talking about 6.5 acres, and what I'm asking you is how did you come to own this 6.5 acres.
>
> A. It's - I assume that if it is within our fence line, it's part of our tract of land that we've owned since the late thirties.
>
> Q. So you assume that it is?
>
> A. If it's within our fence, it is.

> Q. And you also assuming that you are paying taxes on it?
>
> A. We do pay taxes on it. I don't assume.
>
> Q. Okay. You do pay - so you're saying you're the record owner? You're not claiming adverse possession, your're (sic) saying you own it, Double J owns the property. (TR. 20)

They claim the fence line was used as a boundary line between Double J, and the Tyler property. However, testimony revealed Double J never believed they held the property as an adverse possessor but used this action as a strategy to obtain the property. (TR. 55)

Mr. White testified that Mr. Tyler and his son replaced the fence and that he had some notes (that were not produced at trial) that Double J paid up to $1000.00 to share the cost. (TR. 53, 54) It is important note the admission by Mr. White that a normal practice, when dealing with cattle, is to have cross fences on large tracts of land. (TR. 49) The other witnesses testified about cross-fences as well. (TR. 61-62)

The Judge then interjects his concern in the following colloquy with Mr. White:

> **THE COURT:** Let me ask just a couple. I'm a little confused. Tell me, sir, is it your contention that with respect to this 6.5 acres, that it was deeded to Double J, or did Double J - or is it your position that Double J without permission and with a

hostile intent took the property by adverse possession?

THE WITNESS: It's always been our property. We -- I'm, a real estate appraiser by trade. When we first got into this issue, we talked about how best to resolve it. It seemed like - I've seen surveys done where two surveyors had different opinions. We thought why not use the factual existing fence line as saying that is the property line because it's been there for over 50 years. It's always been - I wasn't around when my grandfather and his neighbors established that fence line. It's just always been the fence line. That's always been the property line. So we figured that was adverse and it's not like taking something that is not ours, but that's not our intention. It's just always been a part of the larger tract that we've owned there.

THE COURT: I'm still confused, I guess. Your're (sic) not maintaining an adverse possession of it?

THE WITNESS: Well, legally, that's what we're claiming, but I think this was the easiest way to go about resolving this issue because -

THE COURT: I understood you earlier to say that is was your understanding that the property had - was included in one of your deeds.

THE WITNESS: Yes, I do. I think that all that property that's within our fence line is contained - it's a large tract of land with a long description that we get three different tax bills on and described different acreages, but none of those acreages on the tax bills are kind of defined. But adding up, it adds up to the total amount we think we had there. We've always had that property.

THE COURT: If it was deeded to you, would there be a reason to adversely possess it?
THE WITNESS: Only on the advice of counsel that they thought that was the easiest thing to show as factual. The property line is there. **No need to go in and survey the 600-acre tract only to have different people argue over that.** (Emphasis added) Deal with the fence line because that's - that sets the property line.

THE COURT: So your position is because it's - because there is a fence line and you own everything - because there is a fence line, you own everything up to that fence line?

THE WITNESS: That's the way we've always operated. We've maintained it that way. We've always considered - nobody has ever told me anything different up until this issue. We never heard of anybody owning property beyond that fence line.
(TR. 54-57)

Two other witnesses, Herbert Whalen and Walter McKeller testified on behalf of Double J, both of these witnesses testified that it was Harvey Tyler that replaced the fence and performed maintenance on the fence. Mr. Whalen testified that he remembers when Harvey Tyler put the new posts and wire up. (TR. 60) He also stated that at one time he rented the place from the Tylers and Mr. Tyler used the property for cattle and cut hay off of it. (TR. 64)

Mr. McKeller testified:

> **Q.** Now, have you ever noticed that this fence had been down? Has it ever been down, Mr. McKeller?
>
> **A.** Not to my knowledge. You know, it had been replaced, but never down that I know of. (TR. 70)

Further in his testimony he states:

> **Q.** Have you ever seen Double J or any representative out there maintaining that fence, doing any work on that fence?
>
> **A.** No. They don't have anybody present… (TR. 74)

Again, McKeller testified:

> **Q.** Have you ever seen anybody working or mending this fence, Mr. McKeller?
>
> A. I've seen Mr. Harvey work on it.
>
> **Q.** I think he more or less rebuilt it, and I can't tell you how many years ago, but he's worked, I don't know, in, you know, building or repairing a fence, you might - you could be on either side. I guess he would be on both sides of it because if you - depending on where you would cut brush or stretch wire, you would be on either side building a fence. (TR. 77-78)

The Judge determined to disregard the contradictory testimony of Ms. Tyler. (TR. 114) However, Ms. Tyler stated repeatedly that the property belonged to her, she paid taxes on that 6.5 acres and the fence was not the boundary line just a fence. (TR. 86, 88, 89) In her affidavit two things were consistent. She paid taxes on the property. She

and her husband owned this property and they intended to give it to Paradise Church. (81, 83, 84, 85, 86-87) There was even a time she testified they had cattle on the property which was unwittingly corroborated by Mr. Whalen. (TR. 64)

Jody Tyler, Betty Tyler/Co-Appellee's son, testimony was discounted because of the estranged relationship existing between him and Ms. Tyler and the efficacy of his testimony on behalf of Double J, Appellant. He may have stated that he loved his mother yet he testified:

> Q. Okay. So let me get this straight. Your testimony is that you found out there was something going on and you called Mr. White; is that right?
>
> A. Yes.
>
> Q. And what did you tell Mr. White?
>
> A. I told him I heard through the grapevine that my mother was trying to push over on him like she had pushed over on me, and I wanted to -- I wanted to see what I could do or to show how she's doing everybody. (TR. 104)

The Court found that there was no hostile intent shown to claim adverse possession because Double J believed the deed from the predecessor included the 6.5 acres. The Plaintiff-Appellant never complained about the fence that was constructed by the Tyler's in 1985. Merely, maintaining

a fence without the other elements of adverse possession does not meet the standards to support a judgment for adverse possession. (TR. 114)

SUMMARY OF ARGUMENT

The Court was correct in ruling against Double J Farms, Appellant in this action. Double J failed to meet their burden of proof in establishing adverse possession of the subject 6.5 acres of land. There were genuine issues of material fact to be determined by the trier of fact, thereby the Summary Judgment, the Rebuttal Motion and Motion to Reconsider were properly denied.

The ruling of the Court should be affirmed and judgment properly rendered in favor of Paradise Church giving them fee simple title of the 6.5 acres transferred to them by Warranty Deed from Betty Jean Tyler.

ARGUMENT

1. STANDARD OF REVIEW

The Court of Appeals quoted ***Ellison v. Meek,*** 820 So. 2d 730 (¶11) (Miss. 2002) to set out the standard of review by stating, "This Court has a limited standard of review in examining and considering the decisions of a chancellor… The Chancellor, as the trier of fact evaluates the

ivsufficiency of the proof based on the credibility of witnesses and the weight of their testimony." ***Cook v. Robinson***, 924 So. 2d 592 (¶9) (Miss. App. 2006). The ***Cook*** court also stated, "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 finding are clearly erroneous or an erroneous legal standard was applied." ***Peagler v. Measels***, 743 So. 2d 389(¶6)(Miss.Ct.App.1999). On questions of law, the scope of review is *de novo*. ***Planters Bank & Trust Company v. Sklar***, 555 So.2d 1024, 1028 (Miss. 1990); ***Simmons*** at 195.

The Supreme Court held in, ***Alexander v. Brown*** 793 So. 2d 601, 603, (¶6)(Miss.2001), "This Court applies the substantial evidence/manifest error standards to an appeal of a grant or denial of a motion to dismiss pursuant to M.R.C.P. 41(b)"

The "...appellate review of chancellor's decision to dismiss claim is limited to ascertaining whether record reveals substantial evidence to support trial court's findings in support of its decision." ***Singing River Electric Power Assn v. State ex rel. Miss. Department of Environmental Quality***, 693 So. 2d 368 (Miss. 1997)

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT TYLER BECAUSE OF TYLER'S FAILURE TO RESPOND TO THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WHEN SHE DID PRESENT EVIDENCE IN THE PLEADINGS, INTERROGATORIES OR ADMISSIONS TO RAISE A TRIABLE ISSUE OF MATERIAL FACT AND THE DEFENDANT TYLER WAS JOINED TO SUBSTANTIATE PARADISE'S CLAIM OF OWNERSHIP AS THEIR PREDECESSOR IN TITLE?

The Plaintiff/Appellant has conceded that failure to answer the Motion is not grounds in itself to grant summary judgment. ***Stuckey v. The Provident Bank,*** 912 So. 2d 859, 864 (¶15)(Miss. 2005)The Court goes on to say if there is no response to the summary judgment motion "summary judgment, **if appropriate**, shall be entered against the non-moving party. (emphasis added) In this case it was clearly not appropriate considering the pleadings filed by Paradise and the deeds presented.

"When considering a motion for summary judgment, the deciding court must view all evidence in light most favorable to the non-moving party." ***Buzby v. Mazzeo,*** 929 So. 2d 369, 372 (¶8)(Miss.App.2006), "Only when the moving party has met its burden by demonstrating that there are no genuine issues of material fact should summary judgment be granted." ***Tucker v. Hinds County,*** 558 So. 2d 869 (Miss. 1990). In fact, Betty Tyler did respond. Her responses contained genuine issues of material fact. The affidavit,

her testimony and her deposition were consistent in that she claimed ownership to this property. She had tax receipts showing that she continuously paid taxes on the property since they obtained the property. She also corroborated that she and her husband discussed giving the property to Paradise Church before his death.

Moreover, Betty Tyler was brought in as a Third Party Defendant, to establish her as the predecessor in title in Paradise Church under ***Mississippi Rules of Civil Procedure Rule 19*** of the. In pertinent part, it reads as follows:

> (a) Persons to Be Joined if Feasible. A person who is subject to the jurisdiction of the court shall be joined as a party in the action if:
> (1) in his absence complete relief cannot be accorded among those already parties, or
> (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Therefore, not only were genuine issues of material fact to be brought before the Court as the trier of fact, Ms. Tyler's involvement as the predecessor of title to the subject property was so intricately intertwined with

Paradise that whether Tyler responded or not she would still be a witness on behalf of Paradise.

II.

THE DISPUTED 6.5 ACRE TRACT HAD NEVER BEEN UNDER A CLAIM OF OWNERSHIP BY THE PLAINTIFF, AND THE PLAINTIFF HAD NOT BEEN IN ACTUAL, HOSTILE, OPEN, NOTORIOUS, VISIBLE, CONTINUED AND UNINTERRUPTED, EXCLUSIVE AND PEACEFUL POSSESSION OF SAID 6.5 ACRES IN EXCESS OF FIFTY (50) YEARS, AND DEFENDANT TYLER DID NOT RECOGNIZE THE EXISTING FENCE AS THE BOUNDARY LINE, DID THE TRIAL COURT ERR IN DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT TYLER AND DEFENDANT PARADISE?

Evident from the testimony of the Plaintiff/Appellant is the fact that Double J always thought they owned the subject 6.5 acres as part of the larger 600 acre tract. Double J Farms acquired their property by a Warranty Deed of Exchange deed in 1995. (TR. Exhibit 5).

The first paragraph reads:

Tract I

> All, less the South 50 acres of the East Half of the Northeast Quarter, and less 27 acres in the NE corner of the Northeast Quarter of Section 35, Township 5, Range 8 West, Tate County, Mississippi…

By this deed, there was no indication that Double J's predecessor in interest had any claim or interest in the property belonging to the Tylers. Double J could not have been in actual, hostile, open notorious visible continued and uninterrupted, exclusive and peaceful possession of said 6.5 acres in excess of fifty (50) years, if the record

owner had no knowledge of it. In ***Ellison, Id.,*** the Court determined it is "whether the possessory acts relied upon are sufficient to put the record title holder on notice…" Even the Plaintiff's witnesses testified that they mistakenly believed the property belonged to Double J and the Whites.

Ms. Tyler testified that there were once trespassing signs on the property yet we are left to assume that she and her husband were responsible for the "no-trespassing" signs. (TR. 94)

All of the witnesses, except Defendant Tyler's estranged son, testified about the fence that was rebuilt and maintained by Harvey Tyler. The Co-Appellee Tyler testified that they had cattle and two buffalo. (TR. 84) The fence was not a property line just a fence. (TR. 89). Double J admitted that there were cross fences placed on property for this very purpose. (TR. 49)

III.

BECAUSE THERE IS NO RECORD TO DETERMINE WHETHER THE TRIAL COURT DENIED THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SOLELY BASED ON THE AFFIDAVIT OF DEFENDANT TYLER WHICH WAS ATTACHED TO DEFENDANT PARADISE'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT, NOR A DETERMINATION THAT IT WAS SUBMITTED IN BAD FAITH, DID THE TRIAL COURT ERR IN DENYING THE PLAINTIFF'S MOTION TO RECONSIDER DENYING SUMMARY JUDGMENT?

The only record on the Motion for Summary Judgment is the dialogue of the Judge on the day of trial as follows:

> **THE COURT:** …I have first a motion to reconsider an order with respect to summary judgment which was denied. Mr. Still, I'm not going to spend a whole lot of time with that. Tell me this. When was the motion for summary judgment argued and denied?
>
> **MR. STILL:** Your Honor, the summary judgment motion was approximately argued, I believe in July, and then the subsequent motion to reconsider was filed, I believe in August. It was after the ten day time period, Your Honor, but I went under Rule 60 which allowed for anytime within six months on discovery of new evidence.
>
> **THE COURT:** Inasmuch as this matter is set for trial and was set for trial on June 13 - by order dated June 13 for this time, I'm going to overrule your motion to reconsider and move directly to trial on its merits…

The only reference we have from the Court on the matter of his denying the Motion To Reconsider is the Court's determination that since the trial was set and had been set for trial since June 13, the Motion was overruled. There is nothing in the record to indicate that any

determination was made by the Court that the affidavit was filed in bad faith or some fraud occurred in submitting Defendant/Co-Appellee's affidavit.

There were contradictory statements made by Defendant Tyler, who believed every one of them was true until she was pressured. However, again, it is our contention that the mere fact that she continued to pay taxes on this property, that she and her husband made plans to give this property to Paradise Church outweigh any inconsistencies and for this reason the absence of the flying flag of ownership by Double J negated any theory of the hostile taking of from her.

Absent a written opinion from that hearing there is nothing in the record that the Court made its ruling in denying the Motion for Summary Judgment solely on the basis of the affidavit of Betty Tyler.

Had there been no answer to the Motion for summary judgment, the Court could have still denied the Motion. ***Id.*** at ***Stuckey***.

IV.

WHERE THE PLAINTIFF PRESENTED CONTRADICTED EVIDENCE THAT THE 6.5 ACRE TRACT HAD BEEN UNDER A CLAIM OF OWNERSHIP AND THE PLAINTIFF HAD NOT BEEN IN ACTUAL, HOSTILE, OPEN, NOTORIOUS, VISIBLE, CONTINUED AND UNINTERUPTED, EXCLUSIVE AND PEACEFUL POSSESSION OF SAID 6.5 ACRES IN EXCESS OF FIFTY (50) YEARS AND DEFENDANT TYLER DID NOT AGREE THE PLAINTIFF OWNED THE LAND, DID THE TRIAL COURT ERR IN GRANTING THE DEFENDANTS' MOTION FOR A DIRECTED VERDICT (RULE 41 DISMISSAL)?

The underlying question in determining adverse possession is whether the possessory acts relied upon by the would-be adverse possessor are sufficient to put the record title owner upon notice that the lands are held under and adverse claim of ownership. ***Id.*** *at* ***Cook.*** Clearly, in this case there was no notice given to the record title owner. Had this been the case, when the property was conveyed to Double J in 1995, by Joyce Roseborough White, there would have been an exclusion of the description of Tract I of the property as set out above. There was none. Mr. Harvey Tyler would not have been concerned about replacing the fence and if in fact he contacted Double J about repairing the fence, he would not have been justified in doing so if he had been put on notice that Double J was claiming ownership of the property.

The Chancellor cited two cases to support his conclusions. (TR. 114-115). The first case the Court cites is ***Roy v. Kieser***, 501 So.2d 1110(Miss. 1987):

> "In order to show adverse possession, a party must show possession which is open, notorious, and visible, exclusive, peaceful, and continuous and uninterrupted for a period of ten years."

The next case was ***McSweeney Company, v. Hanley***, 16 So. 2d 24 (Miss. 1943) as follows:

> "When a fence or hedge row is relied upon to delineate the boundary of an adverse claim, the applicable rule is whether the enclosure like other acts of possession is sufficient to fly the flag over the land and put the true owners on notice that his land is held be an adverse claim of ownership."

The Chancellor points out the fence was maintained by the Tylers, there was no indication of a hostile intent to possess the property. Double J believed the property already belonged to them. Double J, through their witness, Mr. White, believed the property conveyed to them in 1995 included the 6.5 acre tract and that they paid taxes on this property. The Court compared the Deeds submitted in evidence in Exhibit 5 and Exhibit 9 to be the same property, therefore the 6.5 acres did not belong to Double J Farms (TR. 112) The survey was conducted in 2005 and there was no attempt by the leaseholder and the so-called

adverse possessor, Double J, to evict, eject or take up any flags to support a claim of ownership. The hostile possession must be hostile in all respects and it simply was not.

The Chancellor' ruling is reasonably supported by the evidence and his findings of fact sound. There was no claim of ownership by the Plaintiff/Appellant per adverse possession because Double J, Plaintiff/Appellant, already thought they owned the 6.5 acres of land by the deed containing 600 acres; therefore, there was no adverse claim to the property. The record owner was unaware of any claim of ownership by Double J or its predecessor in interest. No flags were flown over the property to indicate an open, notorious or visible occupation to own the 6.5 acres. The existence of a fence which was maintained by the Tyler's was insufficient to show a continuous, uninterrupted possession the property to uphold a claim of adverse possession.

The Court in ***Simmons v. Cleveland,*** 749 So. 2d 192, (¶19)(Miss. App. 1999), considered an action which involved a line dispute about a driveway not a large tract of land as the case at bar. The Court of Appeals opined, "The record is not clear as to how long the parties have accepted this as their common boundary; however, adjoining

landowners who occupy their respective premises up to a certain line, if continued for a sufficient length of time, are precluded from claiming that the boundary thus recognized and acquiesced in is not the true one. ***Id.*** at 197 (¶9). Clearly, there was no acquiescence by the Double J when there was no intent of Double J to take property they thought they already owned. The Tylers had no idea of, nor notice of an effort on the part of Double J to possess the 6.5 acres adversely. If there was any peaceful possession, it was because the Tylers were unaware that an adverse taking was intended by Double J because in fact it was not.

The ***Cook*** Court set out the requirements of ***Miss. Code Ann. § 15-1-13 (Rev. 2003)*** by stating: "Our Supreme Court has firmly established the following six essential elements which must be met in order to successfully make a claim of adverse possession: the property must be (1) under a 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. Citing ***Elison***. Each and every one of these elements must be met and the Plaintiff/Appellant has failed to withstand these elements to warrant a finding of adverse possession.

V. and VI.

WAS IT PROPER FOR THE TRIAL COURT TO CONCLUDE THAT DEFENDANT TYLER WAS EXPERIENCING MENTAL PROBLEMS AND DETERMINE THAT HER TESTIMONY WAS UNRELIABLE WITHOUT ANY MEDICAL TESTIMONY OR PROOF THEREOF; and DISCOUNT THE TESTIMONY OF PLAINTIFF'S WITNESS, JODY TYLER, SOLELY BASED ON HIS RELATIONSHIP WITH DEFENDANT TYLER?

The ***Simmons*** Court was very instructive on the issue of the Chancellors' ability to weigh questions of fact and the Appellate Court's limitation in making those determinations. "…where the Chancellor was the trier of facts, his findings of fact on conflicting evidence cannot be disturbed by this Court on appeal unless we can say with reasonable certainty that these findings were manifestly wrong and against the overwhelming weight of the evidence. Even if this Court disagreed with the lower court on the finding of fact and might have arrived at a different conclusion, we are still bound by the chancellor's findings unless manifestly wrong." Id. at 195 (¶195)

The Chancellor was not manifestly wrong in making this determination as the Co-Defendant Tyler; it was solely within his discretion as the trier of fact.

Furthermore, the Supreme unequivocally stated as a footnote to the case of ***Crenshaw v. Roman***, 942 So.2d 806, 809 (¶13)(Miss. 2006), "This Court has repeatedly held that

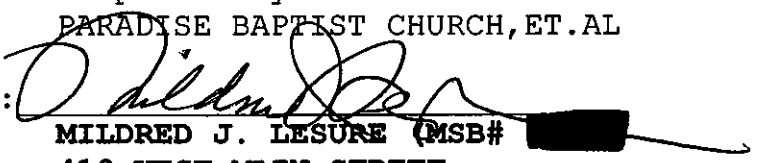
the Court is under no obligation to consider an issue concerning which the party has failed to cite authority.

These two issues were in the sound discretion of the Chancellor as the trier of fact. No authority was cited to support the contention that the Court erred in this regard and this Court should not consider them.

CONCLUSION

Paradise/Appellee's assert that the Chancellor's ruling is supported by substantial credible evidence; the ruling should be affirmed by this Honorable Court, allowing them to take possession in fee simple to the 6.5 acres properly deeded to them by Warranty Deed from Betty Tyler, to the exclusion of all others; and any other relief that is warranted in the premises.

Respectfully submitted:
PARADISE BAPTIST CHURCH,ET.AL

BY: 

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