

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2007-CA-01549

BETTY REED

DEFENDANT/APPELLANT

V.

CHARLES RAY FLORIMONTE

PLAINTIFF/APPELLEE

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

ALEXANDER IGNATIEV, ESQ.
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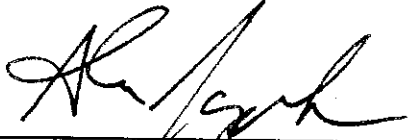
CHARLES RAY FLORIMONTE

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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 Supreme Court may evaluate possible disqualification or recusal.

1. Hon. Eugene Love Fair, Jr.
Chancery Judge of Forrest County
2. Penny Jones Alexander, Esq.
Attorney for Appellee Charles Ray Florimonte
3. Alexander Ignatiev, Esq.
Attorney for Appellant Betty Reed
4. Jimmy C. Havard
Chancery Clerk of Forrest County



ATTORNEY FOR APPELLANT

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ARGUMENT

This Court should reverse the judgment of the Chancery Court of Forrest County finding that the tax deed of Betty Reed was defective for improper statutory notice by the Chancery Clerk. Florimonte argues correctly that the statute strictly construes the statutory notice requirements in favor of the landowner. However, Florimonte ignores that there is no prescribed formula for the clerk's affidavit.

None.

Florimonte also fails to address the fine point of law that the affidavit of the clerk was not impeached, and dismisses the case law that affirmatively states to controvert such an affidavit. Florimonte also erroneously describes Reed's argument in connection with *Viking Investments, LLC v. Addison Body Shop*, as well as misstating the ruling in that matter. 931 So. 2d 679 (Miss. 2006). *Viking* stands for the proposition that when the landowner is not served with both personal service and by mail, the Chancery Clerk is required to make a diligent search and file the appropriate affidavit. *Id.* At 683 (¶110).

Viking does not stand for the proposition that landowners need be personally served; nor does it stand for the proposition that an affidavit under Miss. Code Ann. 27-43-3 an affidavit must take a particular form. The statute is silent on the form of the affidavit; the case law is clear that an affidavit that purports to describe a diligent search must be taken at its face value, unless it is duly impeached. *Rush v. Wallace Rentals, LLC*, 837 So.2d 191 (Miss 2003). In *Rush* the Chancery Clerk used a form affidavit which had errors in construction, but sufficed to meet the requirements of the statute, even though the affidavit was partially false. *Rush*, 837 So. 2d 199-200 (¶¶25-7).

In *Roach v. Goebel*, the court found that a Chancery Clerk's office did not perform a due and diligent search where the Clerk that signed the affidavit stated on the record that she did not perform the due diligent search, repudiating the affidavit itself. 856 So.2d 711 (Miss. Ct. App 2003). "As noted earlier, there was an affidavit from Ms. Ladner in which it was claimed that Ms. Ladner personally examined the phone directories, land records and tax rolls. However, this affidavit was repudiated by Ms. Ladner at Trial." *Id.* at 715 (¶25). Further, in that case the Court found that, based on proof presented by the Defendant, "had the land and tax records been searched as alleged in Ms. Ladner's affidavit, a diligent search should have indicated that on March 31, 1995, Trussell filed an application for homestead exemption." *Id.* at 716 (¶26). To controvert an affidavit by the Clerk, Mississippi has required some sort of affirmative proof that a due and diligent search did not occur. This evidence has generally taken the form of proof that the Chancery Clerk should have found the land owner and had done the search. Florimonte produced no such evidence.

CONCLUSION

There is no repudiation of the Clerk's affidavit; there is no evidence that the Clerk did not conduct a due and diligent search; there is no authority to support Florimonte's argument that he was entitled to perfect notice, or that the Clerk's affidavit had to take a particular form to comply with statute. Florimonte received the benefit of the doubt when the law clearly demanded ratification of a properly vested tax deed. This Court's duty is to correct the error of law of the Chancery Court of Forrest County, and reverse and render the judgment of that Court.

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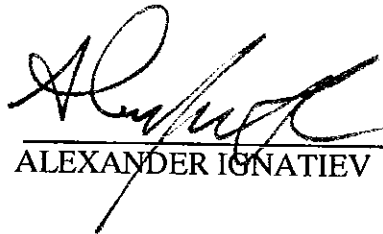
PLAINTIFF/APPELLEE

CERTIFICATE OF SERVICE

I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed for filing, via United States mail, postage prepaid, the original and four (4) copies of the foregoing Reply Brief of the Appellant to the Clerk of the Supreme Court of Mississippi, Ms. Betty Sephton, Post Office Box 249, Jackson, Mississippi, 39205-0249.

THIS the 25th day of March, A.D. 2008.

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CERTIFICATE OF SERVICE

I, Alexander Ignatiev, attorney for Appellant, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a copy of the foregoing Reply Brief of the Appellant to the following:

Hon. Eugene Love Fair, Jr.
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Hattiesburg, MS 39401

THIS the 25th day of March, A.D. 2008.



ALEXANDER IGNATIEV