SUPREME COURT OF MISSISSIPPI

COURT OF APPEALS OF THE STATE OF

MISSISSIPPI

ROGERS SIMMONS

Defendant - Appellant

-Against-

MARLENE HARRELL

Plaintiff - Appellee

****

On Appeal from the Chancery Court

District Four for Franklin County

****

BRIEF OF APPELLEE – MARLENE HARRELL

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IN THE SUPREME COURT OF MISSISSIPPI

ROGER SIMMONS, ADOPTIVE FATHER OF MATTHEW JORDAN SIMMONS — **APPELLANT**

V. — **CASE NO. 2007-CA-01624**

MARLENE HARRELL — **APPELLEE**

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 Judge of this Court may evaluate possible disqualification or recusal.

1. **ROGER SIMMONS, APPELLANT, herein;**
2. **MARLENE HARRELL, APPELLEE, herein;**
3. **CLYDE HARRELL, HUSBAND OF APPELLEE, herein;**
4. **DOLL DEDEAUX, DAUGHTER OF APPELLEE, herein;**
5. **R. AYRES HAXTON, ATTORNEY FOR APPELLANT;**
6. **K. MAXWELL GRAVES, ATTORNEY FOR APPELLEE;**
7. **WALTER F. BEESLEY, ATTORNEY FOR APPELLEE;**
8. **CHANCERY COURT JUDGE DEBBRA K. HALFORD**

K. Maxwell Graves, Jr.

K. Maxwell Graves

Walter F Beesley

Walter F. Beesley

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STATEMENT OF THE ISSUE

Whether the trial court properly ruled that the contents of the safe deposit box properly belonged to the Appellee since the Appellee put all the money in the safe deposit box and was the only one who ever accessed the safe deposit box; and, in the alternative, that the contents of the safe deposit box belong to the Appellee because she was the survivor of a joint tenancy in the safe deposit box.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case comes before the Supreme Court of Mississippi from the Chancery Court of Franklin County, Mississippi. Appellee, [hereinafter Ms Harrell] filed a Petition to Adjudicate Safe Deposit Box as not part of the Estate against Appellant, [hereinafter Mr. Simmons]. The District Court granted the relief sought by Ms. Harrell on September 7, 2007. Mr. Simmons appealed from the District Court's granting of Ms. Harrell's Petition on September 12, 2007.

II. COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

Mr. Simmons was appointed Administrator for the Estate of Marsha Paulette Grover (deceased) on the 3rd day of November 2006. (R at 14-15) Mr. Simmons petitioned the Court to secure the contents of First Bank Safe Deposit Box #207 (R at 10-11) and the contents of the safe deposit box were secured by an Order Securing Assets (R at 12-13) dated the 1st day of November, 2006. Ms. Harrell filed a Petition to Adjudicate Safe Deposit Box As Not Part of the Estate. (R at 18-25) After a hearing on the 18th day of December 2006, the Court issued an Agreed Order Adjudicating Half Interest In Safe Deposit Box (R at 40) to Ms. Harrell. A hearing on the Petition was held on March 19, 2007. The Chancery Court issued an Order (R at 56-57) on the 7th day of September, 2007 finding that the contents of the First Bank Safe Deposit Box #207 were the sole property of Ms. Harrell and that there is no evidence that she ever made any transfer of ownership in such property to her cotenant. Mr. Simmons' appealed this order on the 12th day of September 2007.

STATEMENT OF FACTS

On the 5th day of October 2005, Ms. Harrell was planning a trip to Texas to be with her husband who had a job there. She leased a safe deposit box with her daughter, Paulette Grover, as a joint tenant. (R. at 24) Ms. Harrell placed $17,000 in the Safe Deposit Box #207 to be used in the event of an emergency since Ms. Harrell had experienced health problems and wanted her daughter to have access to the money in the event something happened to Ms. Harrell. On the 22nd day of October 2006, her husband murdered Paulette Grover and then killed himself. According to the log from First Bank, (R. at 25) Ms. Harrell is the only person who signed the entrance record to access the Safe Deposit Box. (R. at 25)

SUMMARY OF THE ARGUMENT

This Court should affirm the Chancery Court's holding that the money in the First Bank Safe Deposit Box #207 belongs to Ms. Harrell and not to the Decedent's estate. The Chancery Court properly found that the evidence adduced at the hearing showed very clearly and convincingly that the only tenant who ever exercised any possession of the safe deposit box and made entry was Ms. Harrell, (R. at 25) the contents of the safe deposit box were the sole property of Ms. Harrell, and there was no evidence that she ever made any transfer of ownership in such property to her cotenant, the Decedent. (R. at 56-57). Ms. Harrell does not contend that the language of the Safe Deposit Box Lease is ambiguous and neither does Mr. Simmons, however, since both parties interpret the language differently the Chancellor was correct to allow parole evidence to show that Ms. Harrell was the only person to access the safe deposit box. (R. at 25). The Mississippi Supreme Court outlined the test that a Chancellor should follow in determining whether to consider allowing parole evidence in *In re: Estate of Harris,* 840 So.2d 742, 745. (Miss. 1989).

> ¶ 14. The primary purpose of all contract construction principles and methods is to determine and record the intent of the contracting parties. *Kight v. Sheppard Bldg. Supply, Inc.*, 537 So.2d 1355, 1358 (Miss.1989). Our supreme court has set out a three-tiered approach to contract interpretation. *Pursue Energy Corp. v. Perkins,* 558 So.2d 349 (Miss.1990).
>
> ¶ 15. First, the "four corners" test is applied, wherein the reviewing court looks to the language that the parties used in expressing their agreement. *Id.* at 352 (citing *Pfister v. Noble,* 320 So.2d 383, 384 (Miss.1975). If the language used in the contract is clear and unambiguous, the intent of the contract must be realized. *Id.* Legal purpose or intent should first be sought in an objective reading of the words

> employed in the contract to the exclusion of parol or extrinsic evidence. *City of Grenada v. Whitten Aviation, Inc.*, 755 So.2d 1208, 1214(¶ 16) (Miss.Ct.App.1999) (citing *Cooper v. Crabb*, 587 So.2d 236, 241 (Miss.1991)). Thus, the courts are not at liberty to infer intent contrary to that emanating from the text at issue. *Id.* (citing *Cooper*, 587 So.2d at 241). On the other hand, if the contract is unclear or ambiguous, the court should attempt to "harmonize the provisions in accord with the parties' apparent intent." *Pursue Energy Corp.*, 558 So.2d at 352.
>
> ¶ 16. Secondly, if the court is unable to translate a clear understanding of the parties' intent, the court should apply the discretionary "canons" of contract construction. *Id.*
>
> ¶ 17. Finally, if the contract continues to evade clarity as to the parties' intent, the court should consider extrinsic or parol evidence. *Id.* It is only when the review of a contract reaches this point that prior negotiations, agreements and conversations might be considered in determining the parties' intentions in the construction of the contract.

Since, Ms. Harrell and Mr. Simmons were before the Chancellor with different interpretations of the contract, clearly if the Chancellor followed the steps allowed then she properly allowed parol evidence. (R. at 56-57).

The parties entered into a valid enforceable single page contract. Both parties signed the contract agreeing, "Each, or either of them is the joint owner of the present and future contents of said box." (R. at 24). The contract also included the words "that in the event of the death of either of the undersigned the survivor shall have the right to withdraw said contents."(R. at 24).

The Supreme Courts of Pennsylvania, Rhode Island, and Arkansas have all decided cases similar to the case at the bar and allowed parol evidence to determine who placed the money in the safe deposit box and then decided that the money in said box belonged to the person who placed the money in said box. Further, the Court of Appeals

of Kentucky concluded that the agreement was meant to govern access to the box and protect the bank and not to enunciate any right to the contents and decided that the bonds belonged to the person who placed the bonds in the said box.

Alternatively, the Court should decide that the money in the First Bank Safe Deposit Box #207 belonged to Ms. Harrell by virtue of the lease agreement that created a Joint Tenancy with right of survivorship. In fact, in the lower court, the Appellee originally argued that the First Bank for the Safe Deposit Box Lease containing a "Joint Tenancy" was not ambiguous and clear and certain in its terms in providing "that in the event of the death of either of the undersigned, the survivor shall have the right to withdraw said contents..." However, the Chancellor applying the four corners rule did find in the Safe Deposit Box Lease ambiguity requiring findings as to the ownership of the money. There was never a serious contention in the lower court that the money was ever the property of the deceased in her lifetime, and the ownership of Ms. Harrell originally was uncontested.

The Supreme Court of Arkansas, the Courts of Appeal of Ohio and Indiana have decided that a true joint tenancy with the right of survivorship existed and the money in the safe deposit box belongs to the survivor.

For the above reasons, this Court should affirm the Chancery Court's holding that the contents of the First Bank Safe Deposit Box #207 belongs to Ms. Harrell.

ARGUMENT

I. STANDARD OF REVIEW

As a general rule, on appeal the Court will not reverse a Chancery Court's findings, be they of evidentiary fact, where there is substantial evidence, supporting those findings. *Cooper v. Crabb,* 587 So.2d 236, 239(Miss.1991); *Mullins v. Ratcliff,* 515 So.2d 1183, 1189(Miss.1987). The findings will not be disturbed unless the Chancellor abused his discretion, was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied. See *Bowers Window and Door Co., Inc. v. Dearman,* 549 So.2d 1309, 1313(Miss.1989)(Citing *Culbreath v. Johnson,* 427 So.2d 705, 707-08(Miss.1983); *Bullard v. Morris,* 547 So.2d 789, 791(Miss.1989); *Johnson v. Hinds County,* 524 So.2d 947, 956(Miss.1988). And the Chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is to judge their credibility. He is best able to determine the veracity of their testimony, and this Court will not undermine the Chancellor's authority by replacing his judgment with its own. See *Mullins v. Ratcliff,* 515 So.2d 1183, 1189(Miss. 1987); *Hall v. State, ex Rel.; Waller,* 157 So.2d 781, 784(Miss.1963). We will exercise **de novo review** on matters of law. *KLLM, Inc. v. Fowler*, 589 So.2d 670, 675 (Miss. 1991).

II. THE CHANCERY COURT CORRECTLY DECIDED THAT THE MONEY IN THE FIRST BANK SAFE DEPOSIT BOX BELONGED TO MS. HARRELL BECAUSE SHE PLACED THE MONEY IN THE SAFE DEPOSIT BOX AND NEVER INTENDED TO MAKE A GIFT TO THE DECEASED.

The Chancellor correctly allowed parol evidence to resolve the ambiguity of the Lease Agreement. (R. at 56). Language in a contract is "ambiguous" when it is reasonably capable of being understood in more than one sense. *City of Sioux Falls v. Henry Carlson Co., Inc.*, 258 N.W. 2d 676, 679(S.D. 1977). Test for determing whether a contract is "ambiguous" is whether reasonable persons would find the contract subject to more than one interpretation. *Tastee Freeze Leasing Corp. v. Milwid, Inc. App.*, 365 N.E. 1388,1390(1977). Mr. Simmons states that no argument has been made that the lease agreement is ambiguous, however, Mr. Simmons argues that there is no right of survivorship created while Ms. Harrell argues that a right of survivorship was created by the lease agreement. The Chancellor correctly found that the evidence adduced at the hearing showed very clearly and convincingly that the only tenant who ever exercised any possession of the safe deposit box and made entry was the Ms. Harrell. Ms. Harrell was the only person who testified before the Chancellor and upon hearing the testimony and observing her demeanor, the Chancellor correctly concluded that Ms. Harrell was the sole owner of the contents of the safe deposit box and there was no evidence that she ever made any transfer of ownership in such property to her cotenant, the decedent herein. (R. at 56). In this case the Chancellor did not abuse her discretion, was not manifestly wrong or clearly erroneous, and did not apply an erroneous legal standard.

Although there are no cases on point in Mississippi, Ms. Harrell cited several cases in other Jurisdictions that have addressed this particular issue.

The Supreme Court of Pennsylvania in *Chadrow v. Kellman*, 106 A.2d 594 (PA. 1954), decided a case where the facts are similar to the case at bar. There the Court

decided the case on the theory that the person who put the cash in the Safe Deposit Box retained ownership since the joint owner never had access to the Safe Deposit Box.

In a similar case, the Rhode Island Supreme Court held that a lease agreement did not create a joint tenancy with right of survivorship and that the money placed in the box belonged to the person who placed the money in the Safe Deposit Box. *Millman v. Streeter,* 66 R.I. 341 (R.I. 1941).

Also, the Arkansas Supreme Court in *Newton County v.* Davison, 709 s.w.2d 810 (Ark. 1986), observed that other Courts have held that the deposit of certain articles in a jointly leased safe deposit box, in and of itself, works no change in title, absent an express agreement that the contents of the box shall be joint property. Annotation, 14 A.L.R. 948, 954 Section 2(1950). This is so even if the language in the lease describes a joint tenancy with the right of survivorship, unless it specifically refers to the contents. *Id.* Similarly, it is generally held that a joint lease of a Safe Deposit **Box**, in and of itself, is insufficient to the contention that a gift has been made of the contents. Annotation, 40 A.L.R. 3d 462, 465 Section 2(1971).

Further, the Court of Appeals of Illinois Fourth District, *In re Estate of Wittmond,* 732 N.E.2d 659(Ill. C.A. 2000), followed the general rule that the estate bears the initial burden of proof that the Decedent owned the assets in question. The estate, in the present case, offered no evidence that the Decedent owned the money in the Safe Deposit Box.

Also, in *James v. Webb,* 827 S.W.2d 702, (KY C. A. 1991) the Court of Appeals of Kentucky considered a lock box lease agreement that was very similar to the lease agreement in the present case and concluded that the language in this agreement was meant to govern access to the box and protect the bank from liability for alleged wrongful

access, but not enunciate any rights in the contents. The Court found that some bonds in a safe deposit box belonged to the Decedent's estate since the Decedent placed the bonds in the Safe Deposit box. *Id.*

III. THE CONTENTS OF THE SAFE DEPOSIT BOX BELONGED TO MS. HARRELL BY VIRTUE OF THE LEASE AGREEMENT CREATING A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.

The Appellee submits that there is a second prong on which the Appellee is entitled to recover the money from the Safe Deposit Box. The Safe Deposit Box Lease provides for a Joint Tenancy and the terms of the Joint Tenancy in phrases separated by a comma and it is from this language that an ambiguity is said to exist. Appellee submits that an analysis of this Joint Tenancy clearly leaves no ambiguity as each phrase thereof was intended by the preparer of the form to stand on its own as follow, to wit:

1. "... The undersigned agree that each, or either of them is a joint owner of the present and future contents of said box and said bank is hereby authorized to permit access by either of the undersigned..."
2. "... That in the event of the death of either of the undersigned the survivor shall have the right to withdraw said contents..."
3. "... And upon said withdrawal said bank shall be automatically relieved of any other obligation or responsibility..."

The Appellee submits that this, in an unambiguous manner, creates a Joint Tenancy with the right of survivorship and was not for the sole purpose of simply protecting the bank under the statute. The language is in accord with our laws generally concerning Joint Tenancy with the full right of survivorship found in both banking law

and in land deeds. The first paragraph above creates a Joint Tenancy in the contents of the box; the second paragraph above creates a modified Joint Tenancy to provide for the right of survivorship; and the third paragraph above is concerned with relieving the bank of any responsibility to the parties.

The general rule of law is that in instances where a joint tenancy has been created by clear and unambiguous agreement, and the evidence of the existence of a contrary intention is not present, the courts have held that a true Joint Tenancy has been created with respect to the contents of a safe deposit box and that the surviving tenant becomes vested with title thereto. *Duling v. Duling's Estate,* 52 So.2d 39(Miss. 1951). The Court went on to say that the Annotation A.L.R. (2d) 948 has this to say, "the cases gathered in this section (of the annotation) present the naked question of whether or not persons can by contract or declaration purposely fasten survivorship to effects kept in a safe deposit box. By the preponderance of authority they can." The binding effect of such agreement on the parties thereto is sustained by the following cases: *Young v. Young,* 14 P.2d 580(Cal. App.1932); *Brown v. Navarre,* 16 P.2d 85(Ariz.1946); *In re Gaines Estate,* 100 P. 2d 1055(Cal. 1940); *In re Kroester's Estate*, 3 N.E.2d 102(Ill. App.1936); *In re Watkins' Estate,* 108 P.2d 417(Cal. 1940); 12 Am. Jur. 747; Contracts, Sec. 227.

In this case, Ms. Harrell, along with the Decedent, signed the agreement that stated,

> "The undersigned agree that each, or either of them is the joint owner of the present or future contents of said box and said bank is hereby authorized to permit access to said box by either of the undersigned and that in the event of the death of either of the undersigned the survivor shall have the right to withdraw said contents...."

The co-tenants in this case, created a joint tenancy by clear and unambiguous agreement and there is no evidence that there ever existed any evidence of their contrary intentions. In spite of the original argument of the Appellee as to the language contained in the Safe Deposit Box Lease, the lower court found ambiguity requiring an evidentiary hearing as to whether the money belonged to Ms. Harrell or Paulette Grover. The Appellee followed the lead of the Court in this regard and proved the money to be that of Ms. Harrell. This was not difficult as there was absolutely no proof to the contrary. For instance, the Safe Deposit Box entrance record revealed that the box was never opened by anyone but Ms. Harrell (R. at 25) and that Ms. Harrell did make entrance into the said box on 13 occasions between November 4, 2005 and December 18, 2006. (R. at 25). Paulette Grover never made entrance into the said box. Appellee only reluctantly surrendered her argument that there was no ambiguity in the terminology creating the Joint Tenancy in the safe deposit box lease. But the Appellee knew that there was not a scintilla of evidence of Paulette Grover ever claiming said money as her own.

The Court in *Vaughn v. Vaughn,* 118 So.2d 620(Miss.1960) stated that the distinguishing characteristic of a joint tenancy is the right of survivorship. A provision for survivorship is strong evidence that a joint tenancy is created. 48 C.J.S., Joint Tenancy, Sec. 3d, Page 919. In *Wolfe v. Wolfe,* 207 Miss. 480, 42 So.2d 438 (Miss.1949), the deed conveyed a lot "unto Willis Wolfe and Della Wolfe and the survivor of them." The Court held this was an estate in joint tenancy; it was impossible to have the right of survivorship in an estate in common, and the parties expressly intended to create that right. The language of a joint tenancy in the present case is almost similar to the Language in *Wolfe.*

The Court in *The Estate of Baker v. Baker,* 760 So.2d 759(Miss. 2000) answering the question of whether the information was sufficient to satisfy the requirements of a joint tenancy as opposed to a tenancy in common quoted the following cases: A presumption of joint tenancy "does not apply... in absence of expressed intent on certificate to create such joint tenancy." *In Re Estate of Holloway,* 515 So.2d 1217, 1222-23 (Miss. 1987). "[I] N absence of any survivorship provision, a joint tenancy will not be presumed...." *In re Estate of Isaacson,* 508 So.2d 1131, 1134 (Miss. 1987). However, precise form is not essential for the creation of a joint account with **Right of Survivorship** when formal deficiencies are balanced by definite proof of intention to create such an account. *Leverette v. Ainsworth,* 23 So.2d 798, 799 (Miss.1945). "[W] hen there is a clear intention to create a right which embraces the essential elements of joint ownership and survivorship in respect to a particular... account, the intention, when lawfully evidenced, will be given effect and the survivor held entitled to the fund." *Stephens v. Stephens,* 8 So.2d 462, 463(Miss. 1942).

The Court stated that the Statutes of Mississippi have now abolished the need to prove "intent" in determining ownership of joint accounts. In 1988, the Legislature amended Statutes to expressly state the establishment of any such joint accounts creates an automatic presumption of "intent" to give ownership to the person or persons named on the accounts, whether living or as survivors. *Madden v.* Rhodes, 626 so.2d 608 at 616 (Miss. 1993).

In addition to the Mississippi Cases, Ms. Harrell cited several cases from other Jurisdictions that considered this issue.

The Supreme Court of Arkansas in *Kulbeth v. Purdom,* 805 W.2d 622 (Ark.1991) decided a Safe Deposit Lease Agreement with language **identical** to the Safe Deposit Lease Agreement in the case at bar. The Court stated, "the clause clearly and unequivocally denotes a joint tenancy agreement with right of survivorship between the lessees as it contains specific references to the joint ownership of the contents of the box and the right of withdrawal of the contents after the death of either party.

Also, the Ohio Court of Appeals in *Steinhauser v. Repko,* 277 N.E.2d 73 (Ohio App. 1951), found that where the Decedent placed currency in a Safe Deposit Box that was rented from the bank pursuant to a lease agreement signed by the decedent and his sister-in-law as "joint tenants with right of survivorship" which agreement also recited that all property placed in such box was declared to be the joint property of both lessees and upon the death of either party passes to the survivor, and the only testimony concerning the statements of the Decedent made at the time such arrangement was made confirmed his intention to establish a right of survivorship, it is effective to vest title in such survivor upon his death. The Ohio case is almost identical to the case at bar since Ms. Harrell and the Decedent signed a lease agreement as joint tenants with rights of survivorship and the agreement also provided that either of them as joint owner of the present and future contents of said box. (R. at 24). Ms. Harrell gave the only testimony as to the source of the funds that were placed in the box. (Court Reporter's Transcript Vol. 1 at page 3 line 21-page 4 line 13).

Further, the Court of Appeals of Indiana, First District in *In re Langley*, 546 N.E.2d 1287(Ind.1989), stated, "we align ourselves with the majority of jurisdictions and hold that a safe deposit lease agreement that specifically provides for joint ownership of

and survivorship rights in the contents is sufficient to serve as a contract between the parties to establish survivorship rights in co-tenant."

The case that Mr. Simmons relied on in the Chancery Court was the *Admin. Of Abernathy, Jr.,* 778 So.2d 123(Miss. 2001) that dealt with a joint tenancy in a safe deposit box. In *Abernathy,* the actual safe deposit box rental agreement paragraph states that

> "[I] F the lessee consists of two or more persons as joint tenants, it is acknowledged and agreed that said joint tenancy is created and exists solely with respect to the use and occupancy of the herein described safe deposit box, and does not extend to, nor attempt to create an interest in, the contents of said safe deposit box."

The Court, then, went on to say that Deposit Guaranty's form was poorly drafted. It did refer to the lessees as joint tenants but specifically stated that no rights are to be created in regards to the contents of the box. Our Court has held that a distinguishing characteristic of a joint tenancy is the right of survivorship. In other words, Deposit Guaranty seems to have mistakenly referred to McLellan and Abernathy as joint tenants when, in fact, no rights of survivorship were actually created. The Court then held that the contract did not create a joint tenancy with regard to the contents of the Safe Deposit Box. It did, in fact, specifically prevent the creation of survivorship rights. *Admin.Of Abernathy* at 130.

The case, at bar, can be distinguished from *Abernathy* since in *Abernathy* the agreement clearly and specifically did not create an interest in the contents of the safe deposit box, whereas the case at bar did specifically state that each or either of them is joint owner of the present and future contents and that in the event of the death of either of the undersigned the survivorship shall have the right to withdraw said contents. (R. at

24). Therefore, a true joint tenancy with right of survivorship was created clearly and unambiguously.

CONCLUSION

There are two prongs on which this Court could be presented the theory of the Appellee as being the sole owner of the contents of the safe deposit box.

As to the first prong, this Court would only have to affirm the finding of the lower court following the case law of Arkansas, Ohio, and Indiana, under which the money in the First Bank Safe Deposit Box # 207 belongs to Ms. Harrell by right. There was no evidence to the contrary in the record. The Appellant makes improper speculation in his brief as to the ownership based on factual scenarios that were not even contended in the lower court, and there is not a scintilla of evidence that this was ever money of the deceased. This decision would be in accordance with the Courts of Pennsylvania, Rhode Island, Arkansas, and Kentucky.

A second prong for the decision before this Court is that the Appellee's argument that the Safe Deposit Box Lease is unambiguous and created a normal Joint Tenancy with a normal modification to expressly and explicitly provide the right of survivorship in a manner and form using the language customary for such purposes found throughout not only banking laws, but, as well our land laws. This clause is explicit and not meant purely for the protection of the bank as used in this form. Justice is served in this particular instance without a problem as the Appellee submits that if this form for the Safe Deposit box Lease is found to be ambiguous, there is no evidence that the money in the Safe Deposit Box belonged to anyone other than Ms. Harrell and the lower court should be affirmed. If the Court follows the case law of Mississippi, Arkansas, Ohio, and Indiana, then they will decide that the money in the First Bank Safe Deposit Box #207 belongs to Ms. Harrell by right of survivorship.

Under either prong of the argument, the Court should decide that the money in the First Bank Safe Deposit Box #207 belongs to Ms. Harrell.

Respectfully submitted,

K. Maxwell Graves, Jr.

Walter F. Beesley

Walter F. Beesley
Attorneys for Marlene Harrell

CERTIFICATE OF SERVICE

I, Walter F. Beesley, Attorney At Law, hereby certify, that I have this day mailed by U. S. Postal Service, postage prepaid, a true and correct copy of the above and foregoing BRIEF OF APPELLEE to the following, to-wit:

R. Ayers Haxton,
Attorney At Law
Post Office Box 2929
Jackson, Mississippi 39207.

The Honorable Debbra Halford
Chancery Judge
P.O. Box 578
Meadville Ms 39653

This the 24th day of April, 2008.

Walter F Beesley
WALTER F. BEESLEY