

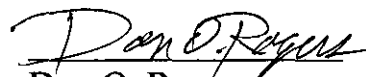
2007-CA-01870
SCT-T

1. CORRECTED CERTIFICATE OF INTERESTED PERSONS:

The undersigned counsel of record for the Appellants, Will D. Massey and Jackie Massey, certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The Appellant, Will D. Massey, individually and as co-trustee of the Massey Family Trust, P. O. Box 155, Bailey, Lauderdale County, Mississippi.
2. The Appellant, Jackie M. Massey, individually and as co-trustee of the Massey Family Trust, P. O. Box 155, Bailey, Lauderdale County, Mississippi.
3. The Appellee, Joe S. Lewis, 8622 Highway 493, Bailey, Lauderdale County, Mississippi.
4. Don O. Rogers, counsel for the appellants, P. O. Drawer 1389, Meridian, Lauderdale County, Mississippi.
5. Mark A. Scarborough, counsel for the appellee, P. O. Box 3662, Meridian, Lauderdale County, Mississippi.

This the 9th day of January, 2008.


Don O. Rogers

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4. Don O. Rogers, counsel for the appellants, P. O. Drawer 1389, Meridian, Lauderdale County, Mississippi.
5. Mark A. Scarborough, counsel for the appellee, P. O. Box 3662, Meridian, Lauderdale County, Mississippi.

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2. TABLES:

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3. STATEMENT OF THE ISSUES:

1. The Chancellor erred in holding that the December 10, 1996, quitclaim deed from Massey to Washington included land south and east of the old fence line. Despite specifically finding facts that reveal a different intention, the chancellor erroneously concluded that the 1996 quitclaim deed from Massey to Washington was without limitations or restrictions; and therefore, passed title to the entire N1/2 of the South ½ of the SW1/4 of the NW1/4.

2. The Chancellor erred in not reforming the December 10, 1996 quitclaim deed description to exclude all land south and east of the old fence line. All of the evidence including all testimony clearly shows that the 1996 quitclaim deed was not intended to include the area between the deed (section) line and the fence line.

4. STATEMENT OF THE FACTS:

This is a real property line dispute between neighbors (Lewis and Massey). The old fence line (in place since at least the 1950's), long considered as the dividing line between their lands, was not on the deed line. The fence line encroached over the deed line in favor of Massey and onto the Lewis tract in varying widths for a total of 1.33 acres. This discrepancy was unknown by those neighbors until a survey by Lewis in 2004. Ownership of the 1.33 acres would have clearly been decided by Section 15-1-13 of the Mississippi Code (our adverse possession statute), except for a 1994 unredeemed tax sale of the Lewis tract. A 1996 quitclaim deed in settlement of Massey's suit to confirm the tax title gives to Lewis this opportunity to make a claim to ownership of the property on the other side of the fence.

[The factual basis for this lawsuit are well summarized by the Chancellor in his Memorandum Opinion. Unless otherwise stated all of the quotes are from the Chancellor's Opinion. Interposed within brackets are names (to better identify the parties), words (to make complete sentences), or a phrase (to link up another factual finding). The Chancellor's fact findings are also placed in chronological order rather than following the order in the Chancellor's Opinion. The language from the Chancellor's written opinion is in quotations. The Opinion can be found in the Record Excerpts

beginning at page 8].

“[Lewis] and [Massey] are adjacent landowners of real property located in the SW 1/4 of the NW 1/4 and the SE 1/4 of the NW 1/4 of Section 1, Township 7 North, Range 15 East, Lauderdale County, Mississippi. [Lewis] was conveyed the ... North ½ of the South ½ of the Southwest 1/4 of the Northwest 1/4 ... by the Washingtons ...on August 13, 2002. ...

“The SE 1/4 of the NW 1/4 and the S1/4 of the SW1/4 of the NW1/4... was owned by... [Mr. Massey’s] father, who died in October, 1957. Then ... owned by Mr. Massey’s mother ...who subsequently conveyed...[it] to Mr. Massey and his wife.

“Lewis and past Lewis owners ... relied upon an old fence as the boundary line separating the Lewis property from the Massey property. ...Massey and past Massey owners ... relied upon an old fence line as the boundary line separating the Massey property from the Lewis property. The Lewis family claimed north and west of the fence and the Massey family claimed south and east of the fence. The Massey family maintained the fence for many years and the fence was used to control their livestock south of the fence.

“However, the fence is not located on the east/west and north/south boundary lines. These litigants did not realized the difference in the actual property line and the fence line.

“[Massey] had a mature and ripened title by adverse possession to the real property ... south and east of the fence [that is between the fence line and the section line].... The adverse possession claim to the aforesaid real property had matured and

ripened before October 12, 1994.

“Washington [Lewis predecessor in title] failed to pay the 1991 real property taxes for the real property [N1/2 of the S1/2 of the SW1/4 of the NW1/4].... The real property was purchased at a tax sale ... on August 31, 1992, and the real property was not redeemed. The highest bidder was Hot Properties.... The Chancery Clerk ... conveyed the aforesaid real property to Hot Properties ... [The property was described] as follows:

“#9-B; N1/2S1/2SWNW1/4 LESS 1A IN NWC & LESS
THAT PT S 7 W RD S 1 T 7 R 15"...

RE 11, 12

“[By] a Quitclaim deed signed on December 26, 1994,... Hot Properties ... conveyed the following described real property to ...[Massey]:

“#9-B; N ½ S ½ SW NW 1/4 LESS 1A IN NWC & LESS
THAT PT S&W RD SECTION 1 TOWNSHIP 7 RANGE 15,
LAUDERDALE COUNTY, MISSISSIPPI.
PARCEL # 121010000000015
Being the interest acquired by HOT PROPERTIES, INC. through
Chancery Clerk’s Conveyance recorded and filed at Book 1361,
Page 29, in the Chancery Clerk’s office of LAUDERDALE COUNTY,
MISSISSIPPI.

RE 12

“The purchase price paid... was \$10,000.00.

“Massey filed a Complaint to Confirm Title in the Chancery Court of Lauderdale County, Mississippi, civil action number 95-492-M.... The defendants were Washington.... Washington filed a Counterclaim and Crossclaim to Cancel and Void Tax Deed.... [Washington] alleged that they did not receive statutory notice at their correct address.... [Massey’s] attorneyconcluded that the notice to the Washingtons was

insufficient and the tax sale was void.... Civil action number 95-492-M was ... settled ... by
an

[1] Agreed Order of Dismissal...;

[2] Massey signed ... the Quitclaim Deed ... to Washington...[for]:

“#9-B; N ½ S ½ SW NW 1/4 LESS 1A IN NWC & LESS THAT PT S&W RD
SECTION 1 TOWNSHIP 7 RANGE 15, LAUDERDALE COUNTY,
MISSISSIPPI. PARCEL # 121010000000015 ... together with all improvements situated
thereon and all appurtenances thereunto belonging, being the interest acquired by HOT
PROPERTIES, INC. through Chancery Clerk’s Conveyance record and filed at Book
1361, Page 29, and being the same interest acquired by the grantors herein by
instrument recorded in Book 1365 at page 411, all among the land records in the office of
the Chancery Clerk of Lauderdale County, Mississippi; RE 13,14

[3] and, Washington paid \$7,600.00 to Massey.

“The real property was not surveyed prior to the negotiation ... or prior to the
consummation of the settlement agreement....

Regarding the intentions of the parties in the execution of the quitclaim deed and
the settlement of the Complaint to Confirm Title, three witnesses testified. The Court’s
Opinion makes the following findings relative to that testimony:

“Mrs. Washington did not recall any dispute between her family and the Massey
family as to the location of the common boundary lines.... The location of the property
lined was not discussed during the time of the settlement negotiation William M.
Washington and Mildred L. Washington in 1996 were not aware that any real property
conveyed to them was located south and east of the fence.

“[Massey’s] attorney.... was not informed about any dispute or concern about a
dispute relevant to the location of the property lines.... He answered that the purpose [of