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IN THE SUPREME COURT OF MISSISSIPPI

BARBARA PATTON WEBB, ET AL — APPELLANTS

VS. — CASE NO. 2007-TS-01935

JOHN DREWREY, ET UX — APPELLEES

CERTIFICATE OF INTERESTED PARTIES

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 the Court may evaluate the possible disqualification or recusal.

Barbara Patton Webb ..... Appellant

Floyd Michael Johnson ..... Appellant

Melvin Eugene Johnson ..... Appellant

John Drewrey ..... Appellee

Glenda Drewrey ..... Appellee

Lawrence L. Little ..... Attorney for Appellants

Tara B. Scruggs ..... Attorney for Appellants

Omar D. Craig, P. A. ..... Attorney for Appellees

Honorable Vicki Cobb ..... Special Chancellor

Omar D. Craig, P. A., MSB [redacted]
Attorney for Appellees

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IN THE SUPREME COURT OF MISSISSIPPI

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JOHN DREWREY, ET UX — APPELLEES

STATEMENT OF THE CASE

The Appellees (Plaintiffs below) brought suit, claiming ownership of thirteen and five hundredths (13.05) acres of land located in the north one-half (N ½) of the Northeast quarter (NE 1/4) of Section 32, Township 8 South, Range 1 West, Lafayette County, Mississippi; although the only land to which they had record title was located in the South one-half (S ½) of the Northeast quarter (NE 1/4) of Section 32, Township 8 South, Range 1 West, Lafayette County, Mississippi.

The Appellees claimed ownership of the thirteen and five hundredths (13.05) acres under the Doctrine of Adverse Possession, wherein they and their predecessors had openly and actually, used, continuously possessed, and occupied said land for more than ten (10) years, in fact more than forty (40) years.

The Appellants (Defendants below) and their predecessors in title were the record title owners of the South thirty (30) acres of the North one-half (N ½) of the Northeast quarter (NE 1/4) of Section 32, Township 8 South, Range 1 West, Lafayette County, Mississippi. The Appellants, being non-resident owners of the land, had not been on the land since 1995; however, they regularly and habitually paid their taxes on the lands.

The said thirteen and five hundredth (13.05) acres was split by County Road 277 with six and 22 hundredth (6.22) acres on the East side of the road and six and 83 hundredths (6.83) acres on the West side of the County Road.

In approximately 1961-1962 a hunting camp, known as "Fort Drewrey" had been built on the West side of County Road 277, and on the South thirty (30) acres of the North one-half (N ½) of the Northeast quarter (NE 1/4), also in approximately 1981, another hunting club known as "Smokehouse" was built on the East side of County Road 277. Said clubhouses are used during hunting season, particularly deer and turkey hunting seasons, and occasionally otherwise during the year.

There is located, on both sides of County Road 277, evidence of an old fence, which had been nailed to trees, and is now embedded into the trees as the result of growth of the trees. The fences exists in places, and had been marked in places by car tags being attached to the existing fence. The car tag had been affixed by the Appellants or some of their family. The fences existed sixty-nine (69) feet North of "Fort Drewrey" and eight-three (83) feet North of "Smokehouse."

The fence has been pointed out to Appellants and some others as being the Northern boundary line of the Drewrey lands by predecessors in title. The timber had been cut South of the fence on Drewrey lands after Appellants purchased it in 1979. However, no timber was cut North of the fence line at that time. The timber had been cut in the fifties (1950s) by the Pattons (Predecessors in title to Appellants), but all cuttings were North of the fence.

Appellee cut fire wood on the thirteen (13) plus acreage, bush hogged the land, granted permission for the "Smokehouse" hunting club to be built; granted free and easy access to members of "Smokehouse" to use lands, allowed a water line to be run on the thirteen (13) acres, and exercised dominion over the land since purchased by Appellants in 1979.

Appellees responded to a letter from a lawyer written in 1986, to the effect that Appellants purchased to the fence. Nothing of any sort or kind of notice has been given or received since 1986.

Adverse Possession is clearly established.

IN THE SUPREME COURT OF MISSISSIPPI

BARBARA PATTON WEBB, ET AL — APPELLANTS

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ARGUMENT

POINT I – THE DECISION AND FINDINGS OF THE LOWER COURT WERE NOT MANIFESTLY WRONG OR CLEARLY ERRONEOUS.

The Chancellor rendered her opinion on the 30th day of August, 2007, after having heard five (5) witnesses for the Appellees and two (2) witnesses for the Appellants; after hearing brief closing arguments; and after reviewing the exhibits and her notes. The opinion contained some twenty-seven pages of the transcript; therefore, it was maturely considered.

In *Pannell v. Guess*, 671 So.2d 1310 (1996), the Supreme Court of Mississippi, speaking through Chief Justice Dan M. Lee, said:

> Upon appellate review, this court will not reverse the chancellor's decision unless manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Hill v. Southeastern Floor Company, Inc.*, 596 So.2d 874, 877 (Miss. 1992). In the case sub judice, the question is whether the lower court applied the correct legal standard, and, if so, did the lower court correctly apply the standard. . . . .

In *Cummings v. Benderman*, 681 So.2d 97 (Miss. 1996) the Supreme Court of Mississippi again speaking through Chief Justice Dan M. Lee said:

> . . . . . Our view of a chancellor's findings is well settled and very familiar. This court will always review a chancellor's finding of fact, but the court will not disturb the factual findings of a chancellor when supported by substantial evidence unless the court can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard. (Citations omitted). 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. (Citation omitted).

See also *Griffin v. Armana*, 687 So.2d 1188 (1996).

POINT II – THE COURT WAS CORRECT IN ITS FINDINGS OF FACT.

The Chancellor, in rendering her opinion, made certain findings of fact, such as:

(1) Defendants did hold record title to the disputed lands and regularly paid their taxes on said lands. For testimony supporting finding see: (TR 186; TR 198). The Defendants were absent (non-resident) land owners; however, one of the family members had, some years ago, gone around the perimeter of the property and tacked up car tags on trees and on an old fence recognizing the tagged fence as the boundary line. Witnesses for the Defendant so testified, see (TR 200-201; TR-207).

(2) Plaintiffs did not hold the record title to the disputed lands, which was 13.05 acres, and which is split by county road 277, with 6.22 acres on the East side of CR 277 and 6.83 acres being on the West side of CR 277, according to the testimony of the surveyor. (TR 51-53; TR 64).

(3) The disputed land is located in the N ½ NE 1/4 of Sec. 32, T8S, R1W, Lafayette County, Mississippi; however, the Plaintiff has record title to the S ½ NE 1/4 of Sec. 32, T8S, R1W, Lafayette County, Mississippi. (TR-41; TR-64). However, the fence with car tags thereon has been considered by Plaintiffs and their predecessors in title as being the boundary line between the N ½ and the S ½ of the NE 1/4 of Sec. 32, T8S, R1W, Lafayette County, Mississippi. (TR-120; TR-132; TR-140; TR 156). In fact, Ed Drewrey who acquired title in 1952, showed the fences as being the boundary line to others. (TR-120; TR-132; TR-140; TR-156).

(4) The fence was considered and accepted as the boundary line between predecessor in title of Appellants and Appellees for many years as neither party cut timber or wood across the boundary

line which was the fence. (TR-156-157; TR-159; TR-172; TR-201).

(5) The fence has been in existence for such a length of years that it, the fence, has at some places been embedded into the trees to which it was originally attached. (TR-44; TR-75; TR-121; TR-127; TR-144; TR-220).

(6) The fence is North of the two hunting clubs that have been built on the disputed lands. (TR-32-33).

(7) "Fort Drewrey" was built in 1962 and situated 83 feet South of the fence. (TR-32; TR-71; TR-147; TR-156; TR-173).

(8) "Smokehouse" hunting club was built in 1981 and is situated 69 feet South of the fence. (TR-33; TR-71; TR-147; TR-156; TR-173).

(9) The occupants of the two hunting clubs built in 1962 and 1981 have not, since 1986, received notice of any kind, type or manner and/or objection to their occupancy of a structure on the disputed lands. (TR-93; TR-108; TR-113; TR-126; TR-148; TR-166). The hunting clubs as well as Plaintiffs received a letter from a lawyer in 1986 to the effect they would need to be moved. (TR-243-244; TR-204-205; TR-188-189), and Plaintiffs responded that they owned to the fence. (TR-167-168) and no other action was ever taken by Defendants. (TR-166-168; TR-204-205; TR-147).

(10) Plaintiffs have had title to the S ½ NE 1/4 since 1979 and claim to the fence North of "Fort Drewrey" (TR-74; TR-80-84; TR-151-161; TR-172-174). Further, John Drewrey, Appellee, and/or his predecessors in title were in possession of the disputed lands, occupied, used and asserted ownership from 1952 to the present over the disputed lands. (TR-71-71; TR-156-158; TR-172-175).

(11) The character of the land determines the type of possession necessary to acquire title by adverse possession. (TR-242). The disputed property was not hidden property nor was the property

in the back of other property (TR-41; Tr-43; TR-49; TR-53). The disputed land had trees thereon as firewood had been cut therefrom. (TR-43; TR-74; TR-96; TR-124; TR-155; TR-157; Tr-160-161). The disputed land is virtually underdeveloped land, except, for the two hunting structures. (Tr-32; Tr-73-74; Tr-109-110; TR-124; TR-155; TR-161-162).

(12) The Drewrey's and their predecessors in title believed that they owned the land to the fence, that when purchased it was purchased to the fence, and that the fence was the Northern boundary line of the S ½ NE ¼ (TR-32-22; Tr-51-53; Tr-58; Tr-74-78; Tr-92; TR-113-114; Tr-132-134; Tr-140; TR-144; TR-156-157; TR-167; TR-171-173; TR-177). Ed Drewrey (uncle Ed) showed Plaintiffs, predecessors and others that the fence was the Northern boundary line. (TR-140; TR-156-157; TR-120).

(13) The possessor of acts relied upon by the would be adverse possessor must be sufficient to "fly his flag" over the land, or to put the record title holder on notice that the lands are held under an adverse claim of ownership. (TR-32-33; TR-72; TR-74; TR-80-81; TR-93; TR-108; TR-118-119; TR-122-124; TR-150; TR-160-162; TR-172-174).

(14) The Drewrey's cut timber on the disputed property, cut firewood, bush hogged, allowed hunters to use property, allowed hunters to build buildings on the property, ran a water line across the property and allowed hunters to dig their own well.(TR-74; TR-81; TR-93; TR-109-111; TR-118-1190; TR-124; TR-130; TR-146; TR-156-157; TR-160-161; Tr-163-164; TR-172-174).

(15) The disputed property was very visible and the Drewrey's exercised their acts of ownership in a very visible manner, particularly allowing other people to build structures on each side of the road in the deputed land. (TR-32-33; TR-72; TR-118-119; TR-128; TR-162; TR-198-199).

(16) The Patton family, at some time, had recognized the fence as the boundary line, as one of them went around the perimeter of the property that he thought was his property and tacked up car tags. (TR-144; TR-200-201; TR-207-208; TR-220)/ Both sides recognize the boundary lines to be the old fence line. (TR-43; TR-114; TR-156-157; TR-208; TR-220)

(17) There was no testimony that at any time, any of the Pattons or any of the Patton's predecessors in title attempted any acts of ownership over the disputed property, except they paid taxes. (TR-93; TR-97; TR-114; TR-125; TR-142; TR-168; TR-198). The Pattons or their predecessors in title did have a lawyer write a letter to the Drewreys and hunting club owners in 1986 about them being on the land; however, nothing was actually done afterwards. (TR-126; TR-148; TR-167; Tr-204). There was some testimony that "No Trespassing" signs were put up in 1995 along the road, but there was also testimony that the signs were never seen. (TR-204; TR-213; TR-133; TR-168).

(18) The Drewrey's could have adversely possessed the disputed property from as far back at 1935, obviously can go back until Uncle Ed started telling people that "this is my property." Appellant, started cutting timber and firewood in 1952. (TR-74; TR-80; TR-84; TR-89; TR-120; TR-134; TR-155-157; TR-164). Definitely more than ten (10) years, starting way back when Uncle Ed had the property and was exercising ownership up to the fence line, the Drewrey's adversely possessed the disputed lands. (TR-156-167).

(19) Although John Drewrey lived in Huntsville, AL when he purchased the land, he regularly came back to the property. (TR-154; TR-160-161). The Drewreys still exercised their acts of ownership, and Scott even verified that, because he has been allowed by the Drewrey's to continue to watch the property and to hunt on the property, being told, "this is our property and you are

allowed to hunt on it, you are allowed to do these things on it". (TR-119; TR-122-125).

It is obvious that the findings of facts as found by the Chancellor are supported by the testimony of witnesses, whether they were offered by the Appellees or the Appellants.

POINT III – THE COURT WAS CORRECT IN FINDING THAT THE ELEMENTS OF ADVERSE POSSESSION HAD BEEN MET BY THE APPELLEES WITH OVERWHELMING TESTIMONY.

A. Statutory Requirements For Adverse Possession:

Section 15-1-13, Mississippi Code of 1972, Annotated, Amended, styled Adverse Possession; Exception, reads in part as follows:

> (1) Ten (10) years actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance or otherwise, in whatever way such occupancy may have commenced or continued, shall rest in every actual occupant or possession of such land a full and complete title, saving to person under the disability of minority or unsoundness of mind the right to sue within ten (10) years after the removal of such disability, as provided in Section 15-1-7. . . . . .

B. Interpretation of Statute:

In *Rice v. Prichard*, 611 So.2d 869 (Miss. 1992) The Supreme Court of Mississippi speaking through Justice Prather said:

> From this statute, a six-element test has been extracted. In the recent decision, *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150, 1152-1153 (Miss. 1992), this court stated that for possession to be adverse it must be (1) under claim of ownership: (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted possession for a period of ten years; (5) exclusive; and (6) peaceful (citations omitted). The burden of proof is on the adverse possessor to show by clear and convincing evidence that each element is met (citations omitted).

C. Examples Similar to The Case Sub-judice:

In *Snowden & McSweeny Co. v. Hanley*, 195 Miss. 682, 16 So.2d 24 (Miss. 1943) it is said:

> Our statute, Section 2287, Code 1930, does not require an inclosure as an essential to adverse possession, and that our reported decisions do not so require is definitely

disclosed by *Sproule v. Alabama, etc. R. Co.*, 78 Miss 88, 29 So. 163. A hedge-row was held to be sufficient in *Jones v. Gaddis*, 67 Miss. 761, 7 So. 489. When a fence or a hedge-row, or the like, is relied upon to delineate the boundaries of the adverse claim the applicable rule is expressed in the latest text on the subject, 1 Am Jur., P. 870, wherein it is said that "The question in such cases is whether the inclosure, like other acts of possession, is sufficient to fly the flag over the land and put the true owner upon notice that this land is held under an adverse claim of ownership.

In *Kayser v. Dixon*, 309 So.2d 526 (Miss. 1975) The Supreme Court of Mississippi, speaking through Justice Broom said:

> Property belonging to another may be (without color of title) acquired by occupancy which is actual, adverse, hostile, exclusive, peaceful, uninterrupted, and continuous, under a claim of ownership, open, notorious, and visible for the statutory period of ten years. (Citations omitted). A litigant relying upon adverse possession has the burden of proof and must establish occupation either actual or constructive, and a claim of ownership. . . . . As held in *McCaughan* (*v. Young*, 85 Miss. 277, 37 So. 839, Miss. 1904) (Though the land here may not be so "wild" as there), an important question is whether the person claiming adversely exercises toward the land 'the same character of control' applied toward 'property actually his and which he would not have exercised over property which did not belong to him. . . . . .'
>
> . . . . . Such events occurred here, and additionally the appellee's attorney advised appellant in writing in 1963 that appellees claimed the land in dispute. Yet appellant took no action and substantial evidence shows that the appellees publicly exercised dominion over the land for more than ten years as owner, during which time appellant acquiesced. When agents cut timber on appellants adjacent lands, they cut only up to the line claimed by appellees. . . . . .

In *Roy v. Kayser*, 501 So.2d 1110 (Miss. 1987) the Supreme Court of Mississippi said:

> The mere existence of a fence around the property for a period of at least fifty-five years offers this court a substantial basis for its holding. In *Cole v. Burleson*, 375 So.2d 1046, 1048 (Miss. 1979) we stated, 'If a fence encloses the property for ten years, under a claim of adverse possession, title vested in the claimant and possessor, even though the fence was subsequently removed or fell into disrepair.' This is consistent with 7 Powell and Rohan, *Powell on Real Property* Sec. 1013(h)(ii) 1984, which states that 'fencing is one of the strongest indications of adverse possession.'.
> . . . . . .

In *Pieper v. Pontiff*, 513 So.2d 591 (Miss. 1987) the Court, quoting some of the factual

findings of the Chancellor, said:

> . . . . . Mrs. Pontiff's mother gave notice for more than forty years by a fence around the disputed property and continued use of the property. Once title ripened by adverse possession in Mrs. Reynolds, it is not necessary that the fence be standing or even in existence when the suit is filed. *Cole* (*Cole v. Burleson*, supra) at 1048.

D. Law Applied to Facts:

(1) Under Claim of Ownership– Ed Drewrey, beginning in 1952, claimed ownership of the disputed lands and pointed out to his successors in title where the North boundary line was and to "not cut above or North of the line." Leon Drewrey claimed the disputed land from the time he obtained title in 1970, and John Drewrey, et ux claimed ownership until present. The proof was a claim of ownership for at least fifty-five years. The predecessors to Ed Drewrey, no doubt, claimed ownership, but they are all dead.

(2) Actual or Hostile– Ed Drewrey grazed cattle and used the land for forest products being the disputed land was near wooded adjacent lands. Leon Drewrey used the land for hunting and growing timber. John Drewrey, appellee, used disputed land for forest products, namely firewood and timber, and the allowed others to hunt on and build structures thereon.

(3) Open, Notorious and Visible– fence, fence imbedded in trees, the tagged fence, the cutting of firewood, the selling of timber and the allowance of the building of a structure on the disputed land were visible.

(4) Continued and Uninterrupted Possession For a Period of Tens Years– Ed Drewrey claimed ownership from 1952 until his estate conveyed it to Leon Drewrey in 1970 who claimed ownership until he conveyed it to John Drewrey in 1979, and John Drewrey has claimed ownership since he bought it.

(5) Exclusive– No testimony was offered that any other person, particularly the appellants, have been on the land within the fifty-five years of claimed ownership by the Drewreys. Some family members of the Appellants may have been on the disputed lands or near the disputed land to put up signs; however, their being on the land was temporary.

(6) Peaceful– The predecessors of the appellants accepted the fence as being the boundary line as they put up car tags on the fence and cut timber up to the line, but not across the fence or boundary line. Likewise, the Appellees and their predecessors cut up to the line or fence, but never crossed it. No notice, claim or objection was registered by Appellants, their predecessors, or anyone else to the Drewreys' claim of ownership.

(7) Proof By Clear and Convincing Evidence– There was no proof offered by the Appellant that any questions of ownership of the disputed lands was made after 1986 (letter from attorney). Yet the Appellees offered proof by testimony of numerous witnesses as to the claim of adverse possession by the Appellees and their predecessors.

POINT IV – REBUTTAL ARGUMENT.

(A) Chancellor's Finding:

The entire brief of the Appellant is essentially a challenge to the Chancellor's findings of fact and conclusions of law and urges this Court to find the Chancellor's judgment in error; however, our appellate review of the Chancellor's decision is limited. "This court will not disturb the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied." *Apperson v. White*, 950 So.2d 1113, (Miss. App. 2007), *Sanderson v. Sanderson*, 824 so.2d 623, 625-26, Miss. 2002).

(B) Under Claim of Ownership:

The actions of Webb, et al of dominion and control over the disputed property was non-existent, but rather than evaluating whether the actions of the Drewreys, as adverse possessors, were sufficient to provide notice of the Drewrey's claim of ownership over the property they, the Webb, et al, relied on their record title.

When determining whether the Drewrey's undertook possessory acts sufficient to support a claim of adverse possession, the Chancellor must look to the quality and not the quantity of the acts indicative of possession. "Possessory acts necessary to establish a claim of adverse possession may vary with the characteristics of the land" and "adverse possession of 'wild' or unimproved lands may be established by evidence of acts that would be wholly insufficient in the case of improved or developed lands. *Apperson v. White*, supra; *Kayser v. Dixon*, supra.

There was considerable testimony relative to a wire fence, being the boundary line between the Webb (Gordon) lands and the Drewrey lands. The Chancellor was aware of the holding of this court, which has been: "This Court has long recognized that the existence of an old fence, including disputed land in which the land of the claimant, was strong evidence of the elements to prove adverse possession. Accordingly, we find the evidence that the . . . . . fence encompassing the disputed property some sixty years ago compelling evidence of adverse possession." *Apperson v. White*, supra; *Roebuck v. Massey*, 741 So.2d 375 (Miss. Ct. App. 1999).

The Drewreys had grazed cattle, harvested timber, hunted, and allowed others to hunt on the disputed land continuously for over fifty-five years. Barbara Webb, et al, Appellant, and their predecessors in interest were sufficiently placed on notice of the Drewrey's claim of ownership over the disputed land, and their claim of ownership had persisted for a period well beyond the statutory

minimum.

The Chancellor found enough credible evidence to support the Drewrey's contention that they believed they owned the property, or at least in the alternative, acted as the true owners of the land. *Buford v. Logue*, 832 So.2d 594 (Miss.App. 2002).

C. Actual Possession:

Remembering that a hunting club (Fort Drewrey) was build on one side of the gravel road in the disputed land, in about 1952 and that another hunting club (Smokehouse) was built on the opposite side of the gravel road in the disputed land, in about 1981 or 1982. "These were acts of possession sufficient to 'fly the flag' over the land and put the true owner upon notice that his land was being held under an adverse claim of ownership." Even though the Drewrey's were not members of either of the hunting clubs, they had granted permission to allow others to use the land. *Buford v. Logue*, Supra.

Under *Johnson v. Black*, 469 So.2d 88 (Miss. 1985) "The fact finder must analyze both the alleged acts of adverse possession and the qualities or the characteristics of those acts which enable them to put a title holder on notice of a claim, adverse to his own, is being made against his property. (*Askew v. Reed*, 910 So.2d 1241. *Walker v. Murphree*, 722 So.2d 1277, 1281 (Miss. Ct. App. 1998).

Drewrey's possessory acts of allowing the building of two structures, the grazing of cattle, the making of flags that the Appellants and their predecessors, the harvesting of timber, the hunting over and allowing others to hunt over disputed lands are hostile to the ownership interest of Appellants, and their predecessors in interest, and sufficient to meet the burden of proof as to this element of adverse possession (actual possession). *Apperson v. White*, Supra.

D. Open, Notorious and Visible:

"Fort Drewrey" and "Smokehouse" were located on each side of the county, gravel, public road, and the use of the members was easily seen by the true owners. *Buford v. Logue*, Supra.

Neither John Drewrey, et ux, Appellees, nor their predecessors in interest, tried to hide their use of the disputed parcels. The construction of the hunting camps and the cutting of timber to the fence were clear and visible indicators of their occupation of the disputed property. *Apperson v. White*, Supra.

E. Continuos and Uninterrupted For Ten Years:

It is true that mere sporadic noncontinuous use is insufficient to meet the statutory requirements for adverse possession. *Eastlawn Development Co. v. Wells*, 311 So.2d 334 (Miss. 1975).

The testimony was that E. Drewrey obtained title and possession in 1952 and continuous uninterrupted possession was maintained by a Drewrey to the date of trial. Clearly more than fifty years of continuous uninterrupted possession met the statutory requirement.

F. Exclusive:

Although the Drewrey's, as far back as E. Drewrey in 1952, were not members of either of the hunting camps; nevertheless, the Drewreys granted and gave permission for others to use the disputed lands. "A claimant must exclude from the land all of those except those he gives permission." *Buford v. Logue*, Supra, *Blankinship v. Payton*, 605 So.2d 817 (1992).

"Exclusive use" does not mean that no one else may use the property. *Moron v. Sims*, 873 So.2d 1067 (Miss. Ct. App. 2004). "Exclusivity, within the meaning of the statute, means that the adverse possessor's use of the property was consistent with an exclusive claim to the right to use the property. Exclusive use is at the most basic level the intent of actual and hostile possession.

The Chancellor found the evidence sufficient.

G. Peaceful:

At one point during the trial evidence was presented that an objection to the Drewrey's presence on the property was made; however, between 1952 and 1985 no objection was made, and between 1986 and 2003 no objection was made.

The mere existence of a dispute over the use of land does not present an obstacle to satisfy the element of peaceful use. Simple disputes often arise between neighboring landowners, but does not rise to the level of destroying the peaceful existence between them. *Dieck v. Landry*, 796 So.2d 1004 (Miss. 2001).

Particularly does this principal become more apparent when predecessors of the Appellants, placed car tags on the fence which apparently both parties considered to be the boundary line, whether it was or not.

H. Finally:

In *Ashew v. Reed*, supra, the fence was mistakenly placed on land belonging to the Plaintiff with the Defendant believing that, in fact, the fence was on his property. The Court quoted form an old case, *Metcalfe v. McCutchen*, 60 Miss. 145 (Miss. 1882), saying:

> We adopt the views of those courts which hold that (sic) possession is adverse in which the holder claims, and intends to claim title, without regard to the fact that the possession and claim is held and made under an honest, but mistaken, belief that the land is within the calls of his deed. It is the fact that possession is held, and that title is claimed, which makes it adverse possession, or claim, or both, though they may have resulted from a mistake, but it is their existence and not their cause that the law considers and existing, they constitute adverse possession.

CONCLUSION

Clearly the Chancellor found that the Appellants, by and through the most credible evidence and testimony, proved by clear and convincing evidence each of the six-element test required by the statute for adverse possession. In fact, the Chancellor discussed in her opinion each of said elements and the factual basis supporting each element.

No doubt, some of the strongest evidence was the length the Drewreys have possessed and/or claimed the disputed lands, which was at least from 1952 until the Complaint was filed in 2004, and the fact that predecessors of the Appellants had taken car tags, affixed them to trees and the old wire fence, marking the boundary between the Gordon land and the Drewrey land. Even though the old fence was not the true boundary line between the two properties, both sides mistakenly thought and accepted it as being the boundary line.

The acceptance by Appellants predecessor of the fence as being the boundary line was binding on Appellants.

Another important fact that no doubt was persuasive on the Chancellor was the building of the two (2) hunting camps, one in 1961-1962(Fort Drewrey) and the other in 1980(Smokehouse), without any question or attempts to relocate other than a letter from a lawyer, with no follow up.

Finally, unquestionably, the fact that the title owners being non-residents, who visited their property only sparsely, and made no asserted effort to dispute the claim of ownership by the Drewreys, evidenced to the Chancellor that Appellants and their predecessors were not protective of their land, if so they would have asserted legal action in the 1980's or thereafter. Certainly, it was unreasonable to wait more than twenty (20) years.

The Chancellor had an abundance of evidence that was clear and convincing which supports

her findings of fact and conclusions of law.

Accordingly, the Chancellor's ruling should be and must be affirmed.

Respectfully submitted,
JOHN DREWREY and wife,
GLENDA DREWREY

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Miss. State Bar No [redacted]

CERTIFICATE OF SERVICE

I, OMAR D. CRAIG, Attorney for Appellees, do hereby certify that I have this day served by United States Mail, postage prepaid, a true and correct copy of the above and forgoing Brief of Appellees to the following:

Lawrence L. Little, Esquire
Tara B. Scruggs, Esquire
Lawrence L. Little and Associates, P. A.
829 North Lamar Boulevard, Suite 6
Oxford, Mississippi 38655

Honorable Vicki Cobb
Chancellor
Post Office Box 1104
Batesville, Mississippi 38606-1104

This the _____ day of May, 2008.

OMAR D. CRAIG

CERTIFICATE OF SERVICE

I, OMAR D. CRAIG, Attorney for Appellees, do hereby certify that I have this day served by United States Mail, postage prepaid, a true and correct copy of the above and forgoing Brief of Appellees to the following:

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Honorable Vicki Cobb
Chancellor
Post Office Box 1104
Batesville, Mississippi 38606-1104

This the 23rd day of May, 2008.

OMAR D. CRAIG