

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2007-CA-02179**

**WILLIE GEORGE KNIGHT**

**APPELLANT**

**VS.**

**COVINGTON COUNTY, MISSISSIPPI;  
ESTATE OF HAROLD GENE JONES,  
DECEASED, SENNETT DICKENS,  
ADMINISTRATOR; AND RICHARD  
COLLINS**

**APPELLEES**

**APPEAL FROM THE CHANCERY COURT OF COVINGTON  
COUNTY, MISSISSIPPI**

**JOINT BRIEF OF APPELLEES RICHARD COLLINS  
AND THE ESTATE OF HAROLD GENE JONES**

**ORAL ARGUMENT NOT REQUESTED**

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## **STATEMENT REGARDING ORAL ARGUMENT**

As between the jointly appearing Appellees and the Appellant, this case involves issues of prescriptive rights in real property. Save for the nuance between “user” for easement claims and “possession” for ownership ones, the body of law governing prescriptive issues is the same: prescriptive rights must be shown by clear and convincing evidence demonstrating that the claimant claims under right that is adverse or “hostile” to rights of any others; claimant’s acts must be open, notorious, and visible; such acts must continue for a period of ten years; and the use or possession must be exclusive and peaceful. *Keener Properties, LLC v. Wilson*, 912 So.2d 954, 956 ¶4 (Miss. 2005).

Given prescription’s well-settled verbal formula, and that the facts about the use of the subject roadway are not materially disputed as seen through the lens of the standard of review, the case is not one that recommends itself for oral argument. Of course, Collins and the Estate do not speak for the third Appellee, Covington County.

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record hereby 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 and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

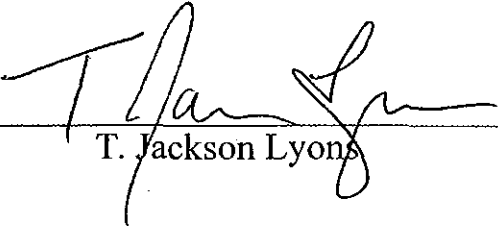
1. The Appellant, Mr. Willie George Knight, is an adult resident citizen of the State of Florida.
2. Mr. Knight's lawyer is Mr. David Shoemake, with offices in Collins, Mississippi.
3. The Estate of Harold Gene Jones, deceased, Sennett Dickens, Administrator, is an Appellee.
4. Mr. Richard Collins, an adult resident citizen of Covington County, Mississippi, is also an Appellee.
5. Representing the Estate are T. Jackson Lyons, practicing in Jackson,

Mississippi, and Mr. John Keyes, with offices in Collins, Mississippi.

6. Representing Mr. Richard Collins are T. Jackson Lyons and Mr. Danny Welch who practices from offices in Mendenhall, Mississippi.

7. The other Appellee is Covington County, Mississippi, a body politic and political subdivision of the State of Mississippi.

8. Representing the County is Mr. Tommy B. Rogers, with offices in Collins, Mississippi.

  
T. Jackson Lyons

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## **STATEMENT OF THE ISSUES**

The Appellant, Willie George Knight ("Knight") raises three issues, two of which involve the interests of the jointly appearing Appellees, Richard Collins ("Collins") and the Estate of Harold Gene Jones, deceased, Sennett Dickens, administrator ("Estate"). The case involves a country lane having been in use for a period passing beyond living memory and going back to the Civil War era.

With respect to Collins and the Estate, Knight claims first that he owns the land underlying part of the roadway by adverse possession. Second, Knight says that neither Collins nor the Estate have prescriptive rights to an easement across the allegedly adversely possessed lane.

The third issue raised by Knight concerns whether the lawsuit filed by Covington County ("the County") was frivolous and whether Knight's expenses may be shifted to the County either under Rule 11 or the Litigation Accountability Act. This joint brief will not address the third issue except as a statement of the relevant facts concerning the issues directed at Collins and the Estate reflects the nature of the case.

## **STATEMENT OF THE CASE**

### **A. Procedural History**

Acting under a resolution by the Board of Supervisors, the County filed suit against Knight in early 2001 to enjoin Knight from obstructing GK Lane. (V. 1: C.P. 6-7) The County claimed GK Lane was a public road by virtue of long-ago adverse possession by the public and that the County subsequently had adopted

maps and enacted ordinances showing the public nature of the road; the County also claimed to have worked the road over a substantial period of time. (V. 1: C.P. 7-9)

Knight answered in May of 2001, admitting the jurisdictional facts and that he did not own the land underlying the roadway. (V. 1: C.P. 26) Knight counter-claimed alleging, *inter alia*, that the roadway was a private drive which the County had never maintained. (V. 1: C.P. 28) Knight also alleged that he had appealed from a decision by the Board of Supervisors naming the road as public. (V. 1: C.P. 31) This appeal later was abandoned by stipulation when the County and Knight agreed at the outset of the hearing to submit the issue of whether the roadway was public to the Chancellor. (V. 3: T. 13-14)

Shortly after the hearing commenced on May 10, 2001, it became clear to the Chancery Court for the Thirteenth District, the Hon. Larry Buffington presiding, that the issue of the nature of the roadway affected other landowners with interests in land contiguous to it. (V. 3: T. 62-28) The other landowners were ordered joined by the County as defendants. (V. 1: C.P. 42) Collins answered in August of 2001, substantially admitting the allegations of the Complaint. (V. 1: C.P. 43) Prior to the Estate answering, Knight requested leave to file an amended pleading. (V. 1: C.P. 46) An agreed order allowing the amendment was entered in October, 2001. (V. 1: C.P. 72)

Knight's amended pleading alleged that GK Lane was his by adverse possession. (V. 1: C.P. 74-79) Also alleged, *inter alia*, was that Collins bore



responsibility for damages in the amount of \$50,000.00. This was apparently based on Knight's belief that Collins had used political influence to cause the Supervisors to authorize suit against Knight. (V. 1: C.P. 91)

The Estate<sup>1</sup> answered in December, 2001. (V. 1: C.P. 96) Among the general and specific denials was a denial that Knight owned the roadway by adverse possession. The Estate alleged, *inter alia*, that it owned rights to the land underlying the roadway. (V. 1: C.P. 96-98)

The County's answer admitted that a public hearing on a proposed official county road map and road system registry had been conducted and that following the hearing the official map had been adopted to show GK Lane as a public road. (V. 1: C.P. 105-06) Collins answered Knight's cross-claim saying, *inter alia*, that he had done nothing more than petition the relevant government to remove obstructions in a public road. (V. 1: C.P. 111)

Collins also cross-claimed, alleging that in April of 2000 he was barred from using the road by Knight's locked gate. (V. 1: C.P. 113) Collins' denied that Knight had record title to the property underlying the roadway. Collins averred that he and his predecessors had traveled the road for more than 31 years prior to Knight's unilateral claim to own the roadway in April of 2000. (V. 1: C.P. 114-15)

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<sup>1</sup>At the time of the answer, Harold Gene Jones was alive but *non compos mentis*. The Administrator, Sennett Dickens, then Jones' guardian, answered on Jones' behalf. (V. 1: C.P. 96) In May of 2003, Dickens filed a suggestion of the death of his ward. (V. 1: C.P. 122) Mr. Dickens was later appointed administrator of the Estate and it was substituted as a party in June of 2004. (V. 1: C.P. 133) The Estate then filed an answer identical save for the obvious emendations to the answer previously filed on Mr. Jones' behalf. (V. 1: C.P. 127)

Collins claimed adverse possession of the roadway based on his and his predecessors' use of the road: "[Collins] and his predecessors in title . . . along with various members of the general public, have exercised the right to travel over and along the public road known as G.K. Lane for ingress and egress to said property for more than 31 years prior to April, 2000, and have exercised actual, adverse, hostile, peaceful, visible, notorious, exclusive, open, continuous and uninterrupted possession of said road under claim of right . . . without interference by any person."<sup>2</sup> (V. 1: C.P. 114-15)

Knight's answer admitted that he had erected a locked gate and that he continued to deny Collins access to Collins' property via GK Lane. (V. 1: C.P. 117) Knight claimed that he and his predecessor, his late father George Knight, had given permission to those using GK Lane. (V. 1: C.P. 118)

After the County rested its case on the public nature of the roadway, Knight asked for judgment as a matter of law and for the County's complaint to be accordingly dismissed. (V. 4: T. 266-67) The Chancellor took the motion under advisement. (V. 4: T. 268-69) The Chancellor pointedly told the lawyers that his concern about the County's legal case related to a gate across the road first installed by one of Collins' predecessors in interest in the 1950's and the fact that the County had never lodged any objection in the succeeding fifty years to the road's being cut off by that gate. (V. 4: T. 268)

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<sup>2</sup>Collins' cross-claim did not seek to bar Knight or anyone else from traveling the road. In context, Collins' claim of adverse possession is of a prescriptive easement, not of prescriptive ownership in fee simple of the land and roadway.

Judge Buffington entered a temporary order in March of 2002 requiring the County and Knight to present legal argument concerning the evidence necessary to prove a road public or private. (V. 1: C.P. 120) Knight was also ordered to give Collins access. (V. 1: C.P. 120)

The Chancellor later ruled that the County had made out its *prima facie* case for the public nature of the road and required the Parties to go forward. (V. 1: C.P. 134-35) The Chancellor further ruled that if Knight were successful in rebutting the County's *prima facie* case, then there remained the issue of whether the landowners with property contiguous to the road were entitled to a prescriptive easement. (V. 1: C.P. 135)

The Chancellor entered an opinion and final judgment on January 5, 2007. The Chancellor enjoined Knight from further blocking GK Lane. (V. 2: C.P. 157) The trial judge found that GK Lane had been a public road prior to 1960 but that the County had acquiesced in the closure of the road when a fence was placed across the road where it had once gone to a house owned by a predecessor in title to "one of the plaintiffs [Collins]."<sup>3</sup> (V. 2: C.P. 157) After ruling that the road had been abandoned by the public, the Chancellor found that it had nevertheless remained open to "plaintiffs predecessor" for an uninterrupted period in excess of

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<sup>3</sup>Collins, the Estate, and a defaulting adjoining landowner were ordered joined by the County as defendants. (V. 1: C.P. 42) As the context makes clear, in the final judgment the Chancellor referred to Knight's co-defendants – Collins and the Estate – as "plaintiffs." No formal order realigning the parties exists in the record and the trial court's characterization of Collins and the Estate is more precisely – and perhaps pedantically – understood as "cross-plaintiffs." During the course of the hearing, the Chancellor aligned Collins and the Estate with the County in order of witness examination. (V. 3: T. 101)

ten years prior to Knight's attempted closure of the road. The trial court ruled that the "individual plaintiffs" were entitled to a prescriptive easement over GK Lane. (V. 2: C.P. 158)

Later in January, 2007, Knight, Collins, and the Estate filed timely post-judgment motions. Knight argued that the Chancellor was without power to award a prescriptive easement to Collins because Collins had never claimed one existed in Collins' pleading. (V. 1: C.P. 140-42) Knight further alleged the trial judge had erred in not awarding him damages. (V. 1: C.P. 142)

Collins' post-judgment motion asked the Chancellor to reverse his ruling on the public nature of the road. Collins requested the trial court either rule that GK Lane was public or enter a legal description of the easement. (V. 1: C.P. 148-50) The Estate objected to the Chancellor's having referred to GK Lane as being on Knight's property in the final judgment. Since the trial court had not ruled that Knight adversely possessed the land and roadway, the land belonged to the Estate. (V. 2: C.P. 153)

On April 25, 2007, the Chancellor entered an order granting the post-judgment motions in part. (V. 2: C.P. 165) The trial judge opined that GK Lane was partly on Knight's land and partly on the Estate's. (V. 2: C.P. 165) Due to the absence of public use, the Chancellor noted that equity required an examination of whether a prescriptive easement existed for the benefit of all landowners adjoining GK Lane. (V. 2: C.P. 167) As for adverse possession, the Chancellor ruled that neither Knight nor the Estate had shown adverse possession only adverse user. (V.

2: C.P. 167)

On May 4, 2007, Collins filed a second post-order motion. He asked the trial judge to reconsider the factual finding that GK Lane was partly on Knight's real property and partly on the Estate's. (V. 2: C.P. 161-62) The trial court was also asked to clarify whether its injunctive order meant that Knight had to remove the obstructing gate. (V. 2: C.P. 162)

Prior to entry of a ruling on Collins' second post-judgment motion, Knight filed a notice of appeal. (V. 2: C.P. 171) The notice states that Knight appealed from the April 25, 2007, order, not the final judgment having been entered in January. (V. 2: C.P. 171) As a consequence of the early filing, Collins asked the trial judge to clarify the time for filing an appeal. (V. 2: C.P. 175)

The Chancellor entered an order on June 4, 2007, that noted the time for appeal would run thirty days following disposition of Collins' motion. (V. 2: C.P. 179) This is, of course, consistent with Rule 4(d), Miss.R.App.P. Knight then moved to stay execution pending the appeal. (V. 2: C.P. 183)

On August 29, 2007, Knight filed a second premature notice of appeal. This one stated that Knight was appealing from an order entered on August 28, 2007, denying his motion for a new trial. (V. 2: C.P. 188) The record and docket sheets do not reveal an order entered on that date. Knight's second notice does not include an appeal from the final judgment having been entered in January, 2007.<sup>4</sup>

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<sup>4</sup>Collins and the Estate note in passing that Rule 3, Miss.R.App.P., is stated in mandatory terms: "The notice of appeal . . . shall designate as a whole or in part the judgment or order appealed from." Knight's failure to designate the final judgment as the matter being appealed –

The Chancellor entered an order on August 31, 2007 – presumably the order to which Knight’s second notice of appeal was addressed – again denying relief in part and granting it in part. The Chancellor ruled that if the final judgment were appealed and affirmed then Knight would have to remove the gate permanently. (V. 2: C.P. 193) Knight’s motion for stay was granted only to the extent that Knight would be allowed to maintain the gate pending appeal so long as Collins and the Estate were given access. (V. 2: C.P. 193) Knight’s renewed motion for rehearing, a new trial, or relief from the prior judgment was denied. (V. 2: C.P. 194)

## **B. Facts**

To set the stage, GK Lane is located near Collins, Mississippi, in Covington County. Exhibit 4, a large map, shows GK Lane in Sections 7 and 8 of Township 8 North and Range 15 West. These sections are just east of the Industrial Park at the northern end of Collins, as it stretches south along Highway 49. (Ex. 4) GK Lane branches nearly due west from the paved public Salem School Road; the greater length of GK Lane is in Section 7.

A survey of the roadway, an enlarged map focusing on GK Lane, shows that

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twice – might appear to sacrifice the substantial part of Knight’s appeal due to his failure to comply with the Rule’s mandatory terms. However, the Supreme Court in *K.D.F. v. J.L.H.*, 933 So.2d 971, 974, ¶ 12, fn. 2 (Miss. 2006), held that a mere error in the form of the notice of appeal, where it was “abundantly clear” from the appellant’s brief what the issues were, was harmless error. See also, *Foman v. Davis*, 371 U.S. 178 (1962)(where formal defect in notice of appeal does not mislead or prejudice appellee, appellate court does not lose jurisdiction notwithstanding Rule 3’s mandatory words).

most of the road runs just south of the northern boundary of southeast quarter of the southeast quarter of Section 7, Township 8 North, Range 15 West. (Exhibit 13) In other words, GK Lane runs on the south side of the boundary between the northeast and southeast quarters of the southeast quarter of Section 7. GK Lane runs a short distance in Section 8 just south of the boundary between the northwest and southwest quarters of the southwest quarter of Section 8 until it intersects Salem School Road.

For the convenience of the Court and its staff, Exhibit 13, somewhat reduced, is reproduced as an appendix to this brief. Exhibit 13 also illustrates where the various land-holdings are. As Knight's amended pleading stated, his record title to land is in the northeast quarter of the southeast quarter of Section 7 and also just west in the contiguous quarter section, the northwest quarter of the southeast quarter of Section 7. (V. 1: C.P. 76)

The Estate holds record title to land in Sections 7 and 8 over which GK Lane passes. (Ex. 13) Collins' 80 acres lies west of the Estate's land and is in the southwest quarter of the southeast quarter of Section 7 and in the southeast quarter of the southwest quarter of Section 7, Township 8 North, Range 15 West. (Ex. 13; V. 1: C.P. 113) As the survey shows, GK Lane now dead-ends at Collins' real property line. (Ex. 13) Jimmy White, the current County Supervisor for this beat, confirmed that GK Lane runs west from Salem School Road past Knight's house, the Jones' Estate land and terminates at Collins' property. (V. 3: T. 17) White also authenticated the Board's orders and map exhibits showing GK Lane as a public

road. (V. 3: T. 22-23; Exs. 1-6)

GK Lane's origin passed beyond the memory of any living witness. Mr. Allison Mooney served four terms as the County Supervisor for this beat from 1984 to 2000. (V. 3: T. 54) At the time of the first day of the hearing in May of 2001, Mooney was 74 years old. (V. 3: T. 54) Mooney remarked that while the County had maintained GK Lane from Salem School Road down to what is now Collins' property, the road used to go farther. (V. 3: T. 57) When young, Mooney visited a cousin who lived down the road, which would have been more than sixty years earlier. (V. 3: T. 58)

One Harold Bryant owned the real property then. (V. 3: T. 58) So far as Mooney could recall, only members of the Bryant household – and evidently their cousins – used the road in the thirties and forties, but no one was prohibited from traveling the road and it was open to everyone. (V. 3: T. 133-34) To Mooney's knowledge, no one had ever interfered with any person's use of GK Lane – prior to Knight's obstruction. (V. 3: T. 59)

Over Mooney's entire term in office, the County graded and graveled the road as needed. (V. 3: T. 94-95) The maintenance ended at the gate to what is now Collins' property. (V. 3: T. 103) GK Lane did not need very much maintenance due to the minimal traffic, but Mooney insisted it was serviced by the County more than once a year. (V. 3: T. 123) Mooney never sought permission from Knight's late father, George Knight, to work the road. Nor had Mooney ever seen George Knight work the road because the elder Knight knew the County was



doing it. (V. 3: T. 102)

Mooney named the road "GK Lane" after discussing the matter with George Knight. (V. 3: T. 101) According to Mooney, the elder Knight did not object to his initials being used in the road's name. (V. 3: T. 101)

Mooney recalled that the roadway used to go beyond its current terminus at Collins' property, but he could not recall if it went all the way to the creek or not. (V. 3: T. 134) The creek is shown on the map exhibits where it appears running roughly north and south near the end of GK Lane. (See, e.g., large map Ex. 4) When he was a child, Mooney and other "youngins" would walk to the creek where they saw the remains of a dam from the "silver war era." (V. 3: T. 134) Presumably the phrase the court reporter was looking for was "civil war era." When Mooney was there as a child in what would have been the late thirties or early forties, he could see timbers in the creek. (V. 3: T. 134)

John Preston Harvey, born in 1926, was familiar with GK Lane since the 1940's. (V. 3: T. 139, 148) He had been down it many times over the years and no one had ever interfered with his use. (V. 3: T. 139) Apparently the Bryant family was possessed of "some good looking girls" whom Harvey "made an effort" to see in the early forties. (V. 3: T. 146, 149) Harvey had worked for a poultry company from about 1955 to 1981. (V. 3: T. 141) During that time he traveled GK Lane many times because Knight's father maintained chicken houses and sold chickens to Harvey's employer. (V. 3: T. 141)

After leaving school for the war, Harvey returned to finish school in 1946

and married into the Maston Jones' family; Maston Jones is a predecessor in interest to the Estate. (V. 3: T. 147) Harvey went on the road whenever he wished and as far as he knew it was open to all. (V. 3: T. 148) GK Lane was not a path but a road he could drive on. (V. 3: T. 149) Even though Collins and Knight are the only ones with a need to use the road presently, Harvey never thought he would need to ask permission to use the road. (V. 4: T. 152)

John Harvey related that when his employer bought poultry from George Knight, Harvey would call the then-supervisor Ramsey McQueen to make any repairs to the road. (V. 3: T. 142) McQueen never refused his requests and the road was kept in good shape by being graded regularly. (V. 3: T. 142-43)

Lilan Norris worked with then-supervisor McQueen for more than twenty years; Norris left the County's employ when McQueen left office in 1984. (V. 4: T. 168-69, 171) Norris was familiar with GK Lane, having hauled gravel to it and dragged it with a road machine. (V. 4: T. 169) He agreed with Mooney that the work was done regularly, but only when it was needed. (V. 4: T. 169-70) And that was only perhaps once every year. (V. 4: T. 172)

Another former County worker, Robert Thompson, testified similarly that the County worked GK Lane. (V. 5: T. 323) He said that he had ditched and bush-hogged the road. (V. 5: T. 328, 332) There was an incident in about the mid-1990's, however, when he was working GK Lane and George Knight approached him. (V. 5: T. 323) George told Thompson and his crew to leave and they did. (V. 5: T. 323) They did not go back after that. (V. 5: T. 323)

William Harvey, 71 at the time of the second day of the hearing in February, 2002, testified that his father, Claude Harvey, bought the land Collins now owns in 1950. (V. 4: T. 176-77) Though Harvey was in the military from mid-1949 for three years, when he returned his family had moved to a house down GK Lane. (V. 4: T. 185) The Harvey family lived there until Harvey's sisters finished school when his father sold the land to Stanley Jones and Tony Padgett. (V. 4: T. 177) GK Lane was then, as it is now, a gravel lane and the school bus traversed it to pick up Harvey's sisters. (V. 4: T. 178) As the other elder witnesses had testified, there were never any obstructions on the road and no one interfered with its use. (V. 4: T. 179)

Even after the Harveys sold the land, Harvey had visited and never sought Knight's father's permission nor did the elder Knight ever interfere with his travel or try to stop him. (V. 4: T. 180) Harvey said his family was living down GK Lane before George Knight bought his property and built a house on the north side of the road. (V. 4: T. 180, 182) According to Harvey, the road was open to anyone who wanted to see his family or the Knights. (V. 4: T. 188)

Stanley Jones was 83 at the time of the hearing's second day. (V. 4: T. 192) He testified, consistent with Mooney's more vague memory, that the old road had at one time run farther west from Salem School Road in to the creek. (V. 4: T. 193; V. 6: T. 527) Jones was Collins' immediate predecessor in title. (V. 4: T. 193)

Jones and David Padgett<sup>5</sup> were partners in the farm and bought the property from the Harveys in 1956 or 1957. (V. 4: T. 194) At the time, there was a house and barn on the property and Jones lived there for a year or so in the late fifties while he was building a new home nearby on Salem School Road. (V. 4: T. 194-95; V. 6: T. 524) Once his new home was finished, Stanley Jones tore down the old house on GK Lane in 1960 or 1961. (V. 6: T. 528)

Jones accessed his home and property by traveling GK Lane from the time he began farming it in the fifties until he sold the property to Collins. (V. 4: T. 196; V. 6: T. 527) He had no agreement with George Knight about using the road. (V. 4: T. 196) There were no gates on the road until Jones erected one because he was running cattle on the farm. (V. 4: T. 197) The gate Jones installed closed GK Lane where it crossed onto what is now Collins' property right at the southwest corner of the northeast quarter of the southeast quarter of Section 7. (Ex. 13) No one interfered with Jones' use of the road. (V. 4: T. 198) Jones sold timber that was removed down GK Lane and hunters also used the road. (V. 4: T. 198)

Jones related that at the time they purchased the property from the Harvey family, the house had been on the land some thirty or forty years, meaning it dated from the early decades of the twentieth century. (V. 4: T. 201) George Knight approached Jones once with a proposal that they close the road and Jones told the late Mr. Knight, "No, George, we won't go that route. We'll just forget that." (V.

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<sup>5</sup>Mr. Padgett's first name is variously stated by witnesses as "Tony" (V. 4: T. 177), and "David." (V. 4: T. 193) At some point in the transcript, Padgett's name begins being spelled by the court reporter as "Pageant."

4: T. 201) According to Jones, George Knight never voiced to him any claim to own the road during the thirty-seven years Jones was on the land. (V. 4: T. 202) Nor had Jones ever required George Knight's permission to travel the road. (V. 4: T. 201)

At the time Jones first farmed the property, the Estate's land was owned by Maston Jones, the late Harold Gene Jones' father. (V. 4: T. 203) Stanley Jones never had any conversation with Maston Jones about the road. (V. 4: T. 203) Maston Jones was not using the land for anything but to keep a cow and some yearling calves. (V. 4: T. 204) Maston Jones built a fence on the south side of the roadway to enclose the cow and calves. (V. 4: T. 204, 207-08) Because Knight claims the real property underlying GK Lane to this fence line by adverse possession, additional facts about the fence will be developed separately *infra*.

Jones said he never saw George Knight bush-hog or grade the road. (V. 4: T. 210) During the time the County maintained the road, George Knight did not have equipment to maintain the road. (V. 4: T. 221) According to Jones, the County had been maintaining the road prior to his and his partner's purchase in the late fifties and continued to do so until Jones sold the land to Collins in 1993. (V. 4: T. 199)

Richard Collins was 67 at the time of the hearing's second day. (V. 4: T. 232) He had been traveling the road for fifty or sixty years, since the time the Bryants lived on the property he now owns. (V. 4: T. 232-33) Collins, like other witnesses, testified that the road ended at the Bryants' place but that it used to go

on to an old mill down on the creek. (V. 4: T. 234) According to Collins, the Stewart family lived on the place in the forties after the Bryants left and then when the Harvey family took possession he went down the road to visit. (V. 4: T. 234) No one ever interfered with his traveling the road nor were there gates on it. (V. 4: T. 235-36)

Collins testified that after he purchased the land from Stanley Jones in 1993 he had no agreement with George Knight about using the road and that he did not need any agreement because he thought he could travel the road freely as he had for many years. (V. 4: T. 237, 239) About a year after George Knight died in 1999, his son, Knight, put up a gate across GK Lane. (V. 4: T. 237, 241) Collins told Knight the locked gate could not remain. (V. 4: T. 238) Collins was appeased when George Knight's widow provided him a key. (V. 4: T. 238-39)

Knight installed a first gate on GK Lane and then later a second gate at Knight's eastern property line. (V. 4: T. 240) Collins was never given either a reason for the second gate's erection or a key to it. (V. 4: T. 241) Asked about the first gate to close the road, Stanley Jones' gate that Jones put up back in the fifties, Collins said it was not locked and as far as he knew the road onto his property was still public. (V. 4: T. 247-48)

Over the time Collins has owned the property, he has rented some acreage, sold timber, and leased pasture land. (V. 4: T. 251) Members of the Knight family, Stanley Jones, Collins and those who farmed, bought and harvested timber, and leased the pastures all had used the roadway. (V. 4: T. 253) Prior to buying the

property from Stanley Jones, Collins sought out his neighbors, including George Knight, to see if they would agree to an easement over GK Lane in order to ensure that this sort of conflict could not arise; he was not successful in this endeavor. (V. 4: T. 256, 297) A few months later he had the road surveyed and learned that it was not on Knight's property. (V. 4: T. 256)

Collins testified that he always had considered GK Lane to be a public road and, therefore, he did not want to pay to maintain it. (V. 4: T. 294) Responding to coaxing on cross-examination, Collins said if the Court declared the road to be private, then he would perforce contribute to the upkeep of the easement: "I guess I would, you know." (V. 4: T. 294)

Clarence Eubanks testified from a somewhat unique perspective of having worked both for Covington County in the late nineties, under then-supervisor Mooney, and for George Knight sporadically over a long period of time. (V. 5: T. 340-42) During his time on the County work crew, Eubanks said he never worked GK Lane. (V. 5: T. 340) Sixty-three at the time of the hearing, Eubanks first worked with George Knight when he was a teenager shortly after George bought the property in the late fifties. (V. 5: T. 342) According to Eubanks, after George Knight bought the land he procured a bulldozer and worked the road. (V. 5: T. 348)

Eubanks said he never knew where the property line was but that he had cleaned off foliage from the fence on the south side of GK Lane and assumed that was the property line. (V. 5: T. 349) He related once hearing a car drive past

George Knight's property when they were working together. (V. 5: T. 348) The elder Knight identified Stanley Jones as the driver and said that he, George Knight, had given Jones permission to go back there. (V. 5: T. 349) Since Jones and Padgett's, and their predecessors', ownership of real property contiguous to GK Lane and use of GK Lane antedated that of George Knight, this hearsay statement was either a misunderstanding on Eubank's part, an inaccurate memory, hyperbole on George Knight's part, or something else.

Eubanks' work with George Knight was generally pulpwood hauling. (V. 5: T. 350) His work was wherever the job was and not at George Knight's property. (V. 5: T. 350-51) While he never saw the County work the road, he admitted he was not there often. (V. 5: T. 352) He was unaware that there was another house down GK Lane on the property now owned by Collins, nor was he aware that Stanley Jones lived there in the late fifties. (V. 5: T. 370) Eubanks concurred with all the other witnesses that prior to Knight's gates across the roadway there were no obstructions or blockages from Salem School Road to the property Collins now owns. (V. 5: T. 359, 361)

Several members of the extended Knight family testified that they had visited George Knight and his wife Billie. Tressie Knight visited George and Billie from shortly before 1960 until Billie died in 2000 after which Tressie's visits ceased. (V. 5: T. 374-75) She never saw the County maintain the road nor anyone else using it until after George Knight died when she saw Collins use the road several times. (V. 5: T. 376) Ms. Knight testified that she visited in the early years



perhaps once a month and then later as often as once a week, sometimes spending the night. (V. 5: T. 377, 381)

Tressie said that George Knight maintained the property up to the fence line on the south side of GK Lane. (V. 5: T. 379) She was unaware of who owned the property on the other side of the road. (V. 5: T. 383) She did not know if George had cattle and never saw him sell chickens or see anyone picking them up. (V. 5: T. 385, 386)

Blakely Knight, known as "Blake," recalled visiting George since he was a child; he was forty-two at the time of the hearing and said he had visited for about 35 years. (V. 5: T. 393, 397, 403) Blake grew up in Louisiana and did not move to Mississippi until 1981. (V. 5: T. 406) During the first twenty years he did not visit every week, but every couple weeks. (V. 5: T. 406) During these visits Blake stayed with his grandparents, not with George and Billie. (V. 5: T. 406)

During the time when he visited nearly every week, he never saw the County doing roadwork nor anyone using the road. (V. 5: T. 393, 394) Stanley Jones did come visit George occasionally when Blake was there, but he never saw Stanley Jones go farther down the road. (V. 5: T. 398) He recounted that George had a tractor and a grader blade; Blake Knight opined that George performed the maintenance on the road himself because George knew how he wanted it done and – due to some steep banks – did not want anyone harmed. (V. 5: T. 395)

As for George Knight claiming the roadway, Blake never saw any obstructions on the road nor George stopping anyone from coming down the road;

there were no signs telling anyone to stay off the road. (V. 5: T. 404-05)

Candie Knight, Blake's wife, recalled visiting George many times over the past twenty years. (V. 5: T. 412, 414) She visited every weekend and sometimes during the week; often her visits were for several hours. (V. 5: T. 412, 416) She never saw anyone else use the road or anyone maintaining it. (V. 5: T. 412) She and Blake Knight had been married in 1990, but had dated since she was fifteen in the 1980's. (V. 5: T. 415) She had seen George Knight bush-hog the road and use his "tractor to straighten out the road a little bit." (V. 5: T. 415)

As for George Knight's claiming the road, Candie testified consistently with her husband: when visitors came, George would go out to greet them but she never heard him tell anyone not to use the road or see him run anyone off. (V. 5: T. 423)

Jerry McRaney testified that he had visited George many times over some thirty-five years; McRaney was related to the Knight family by marriage as his wife is George Knight's niece. (V. 5: T. 426) He had never seen the County maintain the road nor anyone challenge George Knight's use or possession of the road. (V. 5: T. 427) McRaney visited three or four times a year. (V. 5: T. 429) He never saw anyone else use the road. (V. 5: T. 436) McRaney never saw anything to give notice of George Knight's purported claim to won the land underlying GK Lane. (V. 5: T. 436)

Willie George Knight testified that George Knight was his father and George's wife, Billie, was his step-mother. (V. 5: T. 443) George died April 1, 1999, and Billie died October 12, 2000. (V. 5: T. 443-44) George had purchased

the property in 1956 and Knight, who was in the Air Force, returned from Japan in 1957. (V. 5: T. 447) Knight has visited the property since that time. (V. 5: T. 445) During the time his father owned the property, and in the ten years prior to the hearing, Knight visited the property once or twice a month. (V. 5: T. 447, 485)

Since his father died, Knight has maintained the residence and roadway with equipment his father left as well as new equipment Knight has obtained. (V. 5: T. 447-48) Knight could not recall the County ever having maintained GK Lane but knew that his father had. (V. 5: T. 448) Knight admitted that he installed his first gate down GK Lane after his father died but before his step-mother died. (V. 6: T. 459) He provided the key that Billie Knight gave to Collins. (V. 6: T. 459)

Then, according to Knight, Collins had given an electric power utility access and that entity had installed its own lock on the gate. (V. 6: T. 459) This caused Knight to terminate "permission" to use the road. (V. 6: T. 460) After Billie died, he moved the gate nearer to Salem School Road in order to secure property that his parents had left. (V. 6: T. 460)

Knight agreed with other witnesses that no one had ever challenged anyone's use of the road. (V. 6: T. 468) According to Knight, only his family consistently used the road. (V. 6: T. 469) But Padgett and Stanley Jones used the road to cut hay and dropped by to visit his father, and Collins used the road. (V. 6: T. 469, 484) Knight admitted that his father had never sought to exclude anyone from using the road. (V. 6: T. 474) Nor had Knight put up any obstruction until the electric power utility's alleged trespass caused him to try to close the road –

unsuccessfully. (V. 6: T. 474)

At the trial, Knight admitted from the witness stand that he was not making any claim to that part of GK Lane from where his property begins back out to the Salem School Road. (V. 6: T. 478) He agreed that the length of GK Lane in Section 8 was on the Estate's land. (V. 6: T. 479) As Knight admitted, he did not claim through a deed to own GK Lane as it passed south of his property; rather, the record showed that GK Lane was within the Estate's land description. (V. 6: T. 489)

He further admitted that a survey of the road done at his behest showed that his southern border on the section line of the northeast quarter of the southeast quarter of section 7 is north of GK Lane. (V. 6: T. 506) Knight admitted that he was not aware of any verbal representations to Maston Jones, Maston Jones' son Harold Gene Jones, or to the Estate that the Knights claimed the lane, at least prior to the lawsuit. (V. 6: T. 500) Knight said that the signs saying "no trespassing" were on the north side of the road. (V. 6: T. 501)

The Estate's administrator, Sennett Dickens, testified that he was familiar with the land and the road since 1945; Maston Jones was his great-uncle. (V. 6: T. 556) Dickens described Maston Jones' son, the late Harold Gene Jones, as mentally challenged. (V. 6: T. 557) At the time Maston Jones and his family lived on the road Dickens and Harold Gene used to play along the road. (V. 6: T. 557-58) To Dickens' knowledge, George Knight never claimed to own the road nor were there any signs to indicate such a claim. (V. 6: T. 560) The roadway was

always open and without obstructions. (V. 6: T. 560) While Dickens has not been regularly around the property since the early fifties, he recounted that the Maston Jones family lived in a house on the Estate's land until sometime in the 1960's. (V. 6: T. 561-62)

### **TALE OF TWO FENCES**

Dickens testified that the fence on the south side of the roadway was already there when he first visited Maston Jones and his family in 1945. (V. 6: T. 559) The fence was conventional net wire stretched along wooden posts. (V. 6: T. 559) It ran about 200 yards and marked the end of the area he and Harold Gene, as children, would go down the road. (V. 6: T. 559) The fence enclosed a pasture with a milk cow and some yearlings. (V. 6: T. 559)

Stanley Jones agreed that Maston Jones used the fenced area as a patch for the cows. (V. 4: T. 208) Jones also related that George Knight built a fence on the north side of the road. It started at the corner down GK Lane by what is now Collins' property and ran to a cattle gap where a drive branched north from the road and then continued east until reaching the Knight farmstead. The fence looped around the house and then returned to the north side of the road and ran along the north side of the road to the eastern end of Knight's property. (V. 4: T. 224)

George Knight's fence on the north side of the road was there in 1957 and remained until Knight removed it a year or two prior to the hearing. (V. 4: T. 224) Stanley Jones, who had owned the Collins property from the mid-fifties until

1993, and lived there for a time in the late fifties, said the south fence was some old posts with the wire rusted down. (V. 6: T. 524) He related that the old south fence had never extended all the way to his property but only ran about half way down GK Lane. (V. 6: T. 525) Jones said he never knew George Knight or anyone else to maintain the south fence. (V. 6: T. 528)

According to Collins, by the time he bought the property in 1993 the fence on the south side of the road had declined to a few old posts with little intact wire remaining. (V. 4: T. 242) The north side fence was well maintained until Knight removed it following his father's death. (V. 4: T. 241-42) According to Clarence Eubanks, the fence on the north side of the road was to enclose George Knight's cattle. (V. 5: T. 347)

Knight said that as far as he recalled, Maston Jones had milk cows and the old fence on the south side of the road was to enclose the cows. (V. 6: T. 467) Knight said that he had never maintained the south fence but did not know whether his father had or not. (V. 6: T. 507)

Jerry Miller, a licensed land surveyor, conducted the survey resulting in Exhibit 13. (V. 6: T. 541-42) At the time of his survey in early 2002, Miller found seven old posts remaining of the south fence with some wire remaining but not very much. (V. 6: T. 544) He explained that the old posts were "lightered" or "fat" pine and hence less subject to decay than ordinary wood posts. (V. 6: T. 544) Based on the remaining posts, Miller estimated that the old fence would have gone perhaps three-quarters of the way down GK Lane toward Collins' property. (V. 6:

T. 545)

Using a plat done by another surveyor, David Dunn, about a year earlier, Miller was able to “prove” his surveying points through his points agreeing with those that Dunn had measured. (V. 6: T. 544) Miller found that the north fence – which was still there when he conducted his survey – was very close to the Knight family’s property line and also, of course, to the section line. (V. 6: T. 552)

### **THE BACKSTORY**

Knight claimed at trial, and makes similar claims in his brief, that Richard Collins engaged in “political” manipulation to cause the County to sue Knight. The first official county record of GK Lane being “public” was an order and map entered by the Board of Supervisors in 1997, some three years prior to the course of events leading to this litigation. (V. 3: T. 22; Ex. 1) This was followed by two more orders with maps in 1999 and 2000 showing GK Lane as a public road. (V. 3: T. 23; Exhibits 2 and 3) According to Jimmy White, the beat’s County Supervisor at the time of the hearing, Collins contacted him due to Knight’s obstructions; Collins wanted the road to remain public. (V. 3: T. 30, 43)

White recalled that Collins had attended Board meetings two or three times. (V. 3: T. 44) Mooney, the Supervisor until 2000, recalled that Collins talked to the Board but was not sure whether Collins’ request was the primary reason for the inclusion of GK Lane on the public list. (V. 3: T. 106) Mooney did not recall Collins asking that the road be declared public, only that Collins had approached him about wanting an unobstructed way to his property. (V. 3: T. 120, 122)

Eventually Mooney revealed that the primary reason GK Lane and other roads were named public was so that Mooney – and presumably other supervisors – would not be fined again by the State for maintaining private ways. (V. 3: T. 125)

Knight examined the County's lawyer, Tommy Rogers, about these matters. (V. 4: T. 299) Rogers recalled that Collins attended two or three Board meetings for the purpose of asking the County to remove the obstruction erected by Knight. (V. 4: T. 300; V. 5: T. 301) Rogers said GK Lane was already on two County road maps as a public road before Collins ever appeared before the Board. (V. 5: T. 309) The problem for the County, and presumably many other Mississippi counties, was the lack of clarity about which old roadways were private or public. (V. 5: T. 308)

This then is the total of the facts relating to Collins' political machinations: some contact with the beat supervisors and two or three appearances before the entire Board asking that the Supervisors take action to remove obstructions on a roadway Collins had always believed public. Knight's accusations about political chicanery become less wild and more understandable, at least in the sense of human frailty, when facts about a public electric utility's installation of a new transmission line across Knight's and Collins' property came to light.

The "backstory" to this litigation is Knight's feud with Collins over acts of a third party, Southern Pine Electric Power Association, for which Knight blames Collins. During the hearing Knight began to testify about the Estate's lawyer's involvement in an eminent domain case whereupon Knight's lawyer interrupted



with an abrupt “No.” (V. 6: T. 474) This interjection only temporarily deterred Knight. Shortly thereafter, Knight said that one Jerry Pierce testified in the eminent domain case that Collins caused the utility to re-route its transmission lines to avoid an area on Collins’ property where Collins purportedly wanted to build chicken houses. (V. 6: T. 487)

Knight apparently believes that re-routing the line across Collins’ property led to the detrimental re-routing of the line over Knight’s property and that somehow Collins possessed the power to compel the utility to cause him harm. Knight also did not want truck loads of chickens run down GK Lane. (V. 6: T. 488)

The eminent domain case to which Knight alluded was decided by the Court of Appeals, *Knight v. Southern Miss. Elec. Power Ass’n*, 943 So.2d 81 (Miss.App. 2006). Southern Pine and its parent, South Mississippi Electric Power Association, obtained rights to allow the construction of a new transmission line in Covington County from all relevant landholders except Knight. *Id.* at 84, ¶ 3. In his appeal Knight claimed that the taking was not for public use but rather for the private use of “surrounding landowners” – read “Collins” – “who negotiated with [the utility] to not have [the new transmission line] run on their properties.” *Id.* at 85, ¶ 7.

The Court of Appeals’ opinion refutes Knight’s factual basis for his feud: Jerry Pierce was revealed to be the utility’s management official with responsibility for determining the ultimate location of the new line and he testified “that the change in route negotiated by [Knight’s] neighbors did not change the

way the route was designed to run across [Knight's] property." *Id.* at 85, ¶ 8.

Another Southern Pine employee testified in the eminent domain case that although he negotiated with Knight's neighbors about changes in the location over the neighbors' property, the changes did not affect the route on Knight's property. *Id.* The utility's policy is that if a route change will not affect other landowners, then the proposed changes are submitted to the utility's engineers. *Id.*

Not content with the engineers' assessment, Knight contended on appeal that public necessity was not served because the most economic route would be a straight line across the several properties. *Id.* at 86, ¶ 10. To this the Court of Appeals, speaking through the Chief Judge, rather puzzledly remarked that "evidence produced at trial showed that a straight line route would require taking more of [Knight's] property. Currently [the line] crosses the perimeter of [his] property, whereas a straight line cuts through the middle of the property." *Id.* For his part Collins denied ever asking the utility to re-route the line so he or a prospective buyer could build chicken houses. (V. 4: T. 252)

### **SUMMARY OF THE ARGUMENT**

Knight's claim to own fee simple rights in the land underlying GK Lane is not supported by the traditional elements of adverse possession. Knight's predecessor, his father George Knight, told no one of this purported claim and never attempted to make use of the road exclusive to himself by prohibiting others from traveling the road. The only persons George Knight excluded from the road were County workers who were there to ditch the roadside, not travel the road.

Knight's father's acts of maintaining GK Lane are in the nature of maintaining an easement but they are not acts of a nature and quality to give notice to all the world of a claim to own the land under GK Lane.

Collins and Knight proved by clear and convincing evidence that they are entitled to a prescriptive easement over GK Lane – a claim to which the Estate stipulated at trial. Knight's predecessor and Collins and his predecessors had made use of GK Lane for ingress and egress to their properties for a period far exceeding the statutory ten year period. Use of the road extends far into the past beyond living memory and under Mississippi law this use is presumed as a matter of law to have originated adversely. Given this ancient and continuing use and the open and obvious nature of the use, the Chancellor committed no reversible error in ruling that Collins and Knight enjoy a prescriptive easement over GK Lane.

### **ARGUMENT**

#### **I. Knight has not met the legal requirements of adverse possession of the land underlying GK Lane**

##### **A. Standard of Review**

As in other types of cases before Mississippi's chancellors, appellate courts do not disturb the chancellor's conclusions in adverse possession cases unless the factual findings are manifestly wrong or clearly erroneous. And of course, no deference is given where an erroneous legal standard has been applied. *Keener Properties*, 912 So.2d at 956, ¶ 3. Where the chancellor's opinion lacks specific findings on some issues, the appellate court will assume the trial court resolved

factual issues consistently with the judgment. *Id.*

**B. Knight cannot show a claim of ownership of the land extending 10 years back in time that has been exclusive, open, notorious, and visible.**

Preliminarily, Knight does not claim to own the land underlying GK Lane by record title or deed. It is not contested that record title lies with the Estate. Knight claims only that his father initiated a claim to adversely possess the land. The joint Appellees note a contradiction in Knight's arguments:

Knight argues that the trial court's ruling that he and Collins enjoyed prescriptive easements over GK Lane could not be sustained because the "overwhelming weight of evidence . . . contradicted any finding of a prescriptive easement to Collins or any other persons." (Blue brief at 13) However, Knight at trial and in his brief only claims adverse possession of the real property underlying GK Lane that is in Section 7. (Blue brief at 22; V. 6: T. 478-79) Without a public or private easement over that part of GK Lane in Section 8 Knight has no way to his property, at least without ginning up more litigation.

In order to show adverse possession, the claimant must produce evidence that the possession of the land is (1) under a claim of ownership; (2) adverse or hostile to the rights of another; (3) open, notorious, and visible; (4) continuous and uninterrupted for ten years; (5) exclusive; and (6) peaceful. The elements must be shown by clear and convincing evidence. *Keener Properties*, 912 So.2d at 956, ¶ 4.

Knight alleged that his father claimed to own the road. There is little or no

evidence in the record to support the claim. No witness could remember George Knight ever making any kind of verbal claim to the land. Stanley Jones, Collins' predecessor, was approached by George with a proposal to close the road and Jones rejected the overture. Had George Knight "claimed" to own the road he simply would have done what his son attempted to do: close it.

One County worker testified that George had run off County workers who were there to ditch the road sides. According to that worker, this episode happened some eight or nine years before the hearing. Even if this incident were some evidence of a claim of ownership of the real property, it does not satisfy the ten year prescription period. Also, given Blake Knight's testimony that George Knight worked the road himself because it was dangerous, George may simply have been concerned with the safety of the County workers.

To be sure, actions can speak louder than words. Conduct may also satisfy the element of the "claim." And in such cases the claim of ownership element necessarily overlaps with "open, notorious, and visible" and "exclusive." There is evidence that George Knight occasionally maintained GK Lane. There is also much evidence that the County did as well particularly during the time George Knight raised chickens and the road had to be in a condition to conveniently support vehicles of considerable size and weight.

According to witnesses, they observed George Knight bush-hog the right of way and also use his tractor with a blade to grade the road. Eubanks said he helped George by clearing foliage from the south fence line. Without more facts, this

shows maintenance of an existing road or perhaps of an easement, not a claim to own the land under the road. As all the witnesses, including Knight, testified, there were never any obstructions installed across GK Lane until Knight put up the gate in 2000.

In his brief at 22, Knight makes much of “no trespassing” signs that were posted on the fence on the north side of GK Lane. This might undergird a claim of owning the land behind the fence. But without some presence in the road itself, it serves no open and visible notice that the land underlying the roadway is claimed.

There is no evidence that George Knight ever visibly claimed to own GK Lane. He did not close the road and then maintain it as a private driveway; other than a single instance of running off some County road workers, he never tried to exclude others from using the road. Even Knight family members testified that George Knight never ran anyone else off or claimed a right to exclude others from using the road.

Throughout Knight’s discussion of the law in his brief he confuses adverse possession of an easement with adverse possession of ownership rights in the land itself. While the general elements of prescription are the same, the *Keener Properties* Court concluded that the distinction between “exclusive” as applied to easements meant that the claimant could show a right to use the road above other members of the general public. *Id.* at 957, ¶ 8. The Court criticized *Keener Properties*’ use of an easement case to reflect adverse possession law’s use of the word “exclusive” in ownership cases. *Id.*

The differences between “use” and a claim of ownership are little touched on in Mississippi cases. The Court of Appeals in *Simcox v. Hunt*, 874 So.2d 1010, 1015, ¶ 19 (Miss.App. 2004), observed that the elements for adverse possession of an easement and ownership are “virtually identical.” The *Simcox* Court distinguished between the two by pointing to “use of the property” for transit purposes to establish an easement, and “a claim of ownership” to show adverse possession of the fee simple. *Id.*

This difference, between use and a claim of ownership, is reflected in how the appellate courts have treated the “exclusive” element. In adverse claim of ownership cases, as suggested in *Keener Properties*, “exclusive” has a literal meaning of excluding claims of others by keeping them off the land. By contrast, “exclusive” in easement cases does not require evidence that the claimant seeks to keep everyone else out but only that the claimant – by long use – has a right to use the land for ingress and egress superior to the general public’s.

This distinction is also reflected in the kind of evidence used to show a claim of ownership as opposed to a claim of a right to use for transit. Again, no witness testified that George Knight ever verbally claimed ownership of the land underlying the road. Nor did George Knight or his predecessors build the fence on the south side of the road to evidence a claim; Maston Jones built the south fence to enclose a pasture. Also, the road and the south fence antedated the presence of the Knight family on land contiguous to the road. And in the case of the road, it was there prior to George and Bessie Knight living along it by the greater part of a

century since the road long ago went to the mill on the creek dating from the Civil War period as witnesses testified.

In *Sturdivant v. Todd*, 956 So.2d 977 (Miss.App. 2007), the Court of Appeals wrestled with a case involving three separate claims of adverse possession/claim of ownership. The *Sturdivant* Court summarized “possession” this way: “Actual possession has been defined as ‘effective control over a definite area of land, evidenced by things visible to the eye or perceptible to the senses.’” *Blankinship v. Payton*, 605 So.2d 817, 819-20 (Miss.1992). Possession includes the intent to exclude others except with the occupant's consent. *Id.* at 820. Possession is hostile and adverse when the adverse possessor intends to claim title notwithstanding that the claim is made under a mistaken belief that the land is within the calls of the possessor's deed. *Alexander v. Hyland*, 214 Miss. 348, 357, 58 So.2d 826, 829 (1952).” *Id.* at 987, ¶ 32.

Just as there is no evidence that George Knight ever made a verbal claim of ownership, there is also no evidence that he attempted to exclude others – save for those County workers – from using the road. The possessory acts referred to in *Sturdivant* are typical of the cases: planting an area, mowing it as part of a yard, placing a structure on the disputed area, installing fences – in short, indices not only of claim and possession, but of exclusive right to possess. *Id.* at 989-90, ¶¶ 37-43.

Not until Knight installed his first gate in 2000 was there any notice to anyone of a claim to exclusive right to possess the land underlying the road.



Knight cites his father's maintenance of GK Lane as some evidence of a claim to own the land. (E.g., blue brief at 22) Again, the evidence is uncontradicted that even if George did maintain the road, there is nothing to show the George Knight ever sought to prevent anyone from traversing the road, only that he prevented County workers from maintaining it. Knight's claim must fail if for no other reason than that he never excluded Stanley Jones -- or Jones' predecessors or successor Collins -- from using the road.

The *Sturdivant* Court offered one other insight of relevance here: the "quality and quantity of possessory acts necessary to establish a claim of adverse possession may vary with the characteristics of the land. Adverse possession of 'wild' or unimproved lands may be wholly insufficient in the case of improved or developed lands." *Id.* at 989, ¶ 37, quoting *Rawls v. Parker*, 602 So.2d 1164, 1168 (Miss. 1992). GK Lane is not "wild" land, but an improved gravel roadway. The question is whether acts of maintenance of the road are in the nature of possessory acts which, if "relied upon by the would-be adverse possessor" would be "sufficient to fly his flag over the lands and to put the record title holder upon notice that the lands are held under an adverse claim of ownership." *Id.*

The rule in Mississippi is that even prescriptive easement owners have a duty to maintain and repair the easement. *Fratesi v. City of Indianola*, 972 So.2d 38, 43, ¶ 14 (Miss.App. 2008), citing *Fourth Davis Island Land Co. v. Parker*, 469 So.2d 516, 523 (Miss. 1985). George Knight's maintenance might give notice of a claim to the easement because his periodic grading was the kind of act suggestive

of a duty to maintain that he met. Without more, maintenance is not the quality of action giving notice of a claim to own the land; such facts only support a claim to the easement.

Without evidence of George Knight having asserted a claim to owning the land underlying the road that was visible and exclusive, the allegation of his having adversely possessed the road must fail. At most, the evidence Knight summons for his father's claim of ownership shows that George Knight used and maintained the road. This is sufficient to show "user" and sufficient to prove that George Knight and his son enjoy a prescriptive easement over the land owned by the Estate, the issue taken up next.

**II. The trial court was correct that Collins and the Estate – and for that matter, Knight – proved through clear and convincing evidence that all owners of the property contiguous to GK Lane had an easement by prescription to use GK Lane freely and without obstruction.**

The same standard of review applies to the second issue as to the first.

Perhaps the most similar case to this one is *McCain v. Turnage*, 238 Miss. 44, 117 So.2d 454 (1960). Eva McCain and others sued Turnage and others seeking what we would call today a declaratory judgment of their right to a prescriptive easement. As in this case, McCain lived down a country lane a short distance from a public road.

The Court said, "The evidence showed without dispute that since some point in time anterior to the memory of aged citizens of the community . . . there has been a roadway extending from [McCain's lands] across [Turnage's lands] to

the Summit public road. The road . . . has been used by [McCain and her] predecessors in title, and by other persons and members of the public . . . openly, visibly, continuously, and without permission of [Turnage or his] predecessors in title, and without molestation, for more than fifty years.” *Id.* at 45-46.

Turnage admitted, as has Knight, that the road had existed for a long time and had been traversed without restriction. There, as here, the lawsuit was a result of the obstruction of the road. *Id.* at 46. The *McCain* Court first held that where the “use of the lands of another for roadway purposes has been open, visible, continuous, and unmolested since some point in time anterior to the memory of aged inhabitants of the community, such use will be presumed to have originated adversely.” *Id.* The Supreme Court went on to point out that adopting any other rule would likely stir up controversy between neighbors and lead to dissension in otherwise settled communities. *Id.* at 47.

In *McCain* the roadway at issue had been used by any person having business down the road and had been graded by the county from time to time; but the road had not been shown to be public. *Id.* at 46. Whether GK Lane was public or a private way was the subject of conflicting evidence. The Chancellor decided that it had been abandoned by the public due to its long lack of use by the general public and the County’s acquiescence in Stanley Jones’ appropriation of that part of the road running past the old Bryant house. No party has appealed from this part of the final judgment.

Given the similarities between the two cases, the Court should not be able to

find that the Chancellor manifestly erred in ruling that persons with contiguous landholdings enjoyed a prescriptive easement. Analyzing the case using the traditional elements supports the Chancellor's result. A claimant of a prescriptive easement must show (1) a claim of right to use the road, usually demonstrated by actual use or "user," (2) the use must be open, notorious and visible; (3) adverse to others' rights; (4) exclusive; (5) peaceful; and (6) continued for ten years. *Keener Properties*, 912 So.2d at 956, ¶ 4; *Dieck v. Landry*, 796 So.2d 1004, 1007 (Miss. 2001); *Arrechea Family Trust v. Adams*, 960 So.2d 501, 504, ¶ 7 (Miss.App. 2006); and *Simcox*, 874 So.2d at 1015, ¶ 19.

#### ***Continuous, Open, Notorious, and Visible User***

Continuous use of GK Lane by the owners of real property contiguous to it was established from before the Second World War, a far longer period than the decade required under Miss. Code Ann. § 15-1-13, as amended July 1, 1998. Testimony proved that the old road had once gone farther than it does now to a mill on a creek and had been in use since the Civil War.

Use by the Bryants, Allison Mooney, John Preston Harvey, Claude Harvey, Stanley Jones, Collins, the Maston Jones family, Sennett Dickens, the Knights, and by relatives of those having lived on the road and those having business there – such as George Knight's chicken buyers, Richard Collins' renters, or John Harvey's visits with the Bryant girls – was known to all. This use suffices for open, visible, and notorious use over a very long period of time.

#### ***Adverse or "Hostile" User***

The long use of GK Lane is clearly adverse to the right the Estate would otherwise enjoy to exclude trespassers from traveling over its land. As the *McCain* Court held, Mississippi employs a presumption that use, going back beyond the memory of any living person, originated adversely to the rights of the Estate's predecessors in title. Of course, legal presumptions can either be substantive rules of law or default rules subject to rebuttal by proof. *See, Crosby v. Alton Ochsner Medical Foundation*, 276 So.2d 661, 666-68 (Miss. 1973)(doctrine of dependent relative revocation not substantive rule of law but presumption of intent subject to evidentiary rebuttal).

In this instance, the presumption announced by the *McCain* Court is in the nature of a substantive rule of law. There is no suggestion in the case that evidence could be used to rebut the underlying assumption. Rather, the rule is expressly designed to foreclose efforts by disgruntled landowners from using stale evidence of long ago events to show the use originated permissively: "Any other rule . . . would be calculated to stir up dissension between neighbors and disturb the repose of communities." *McCain*, 238 Miss. at 47.<sup>6</sup>

And the final nail in the coffin to any assertion that the use was permissive is that Mississippi law does not require a user to establish the negative: lack of

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<sup>6</sup> The Court of Appeals in *Arrechea Family Trust*, 960 So.2d at 505, ¶ 10, observed that there was no evidence of any permissive use from 1959 to 1969 to rebut the presumption of adverse origin. This dicta might suggest that the presumption is a rebuttable one, but the *Arrechea* case did not involve a use "anterior to the memory of aged citizens of the community" as did *McCain* and this case. Rather, the *Arrechea* case concerned a driveway in Oxford in use from 1959 to the present.

permission. *Dieck*, 796 So.2d at 1008, ¶ 12. Rather, Knight bears the burden of showing that the use was permissive. It is hard to see how this could be done since Knight's claim of ownership of the land cannot be supported.

### *Exclusive Use*

The "exclusivity" factor has received considered attention in easement cases. Unlike cases of claimed adverse ownership with the right to exclude trespassers, the "exclusive" requirement for easements means that the claimant need only "show a right to use the land above other members of the general public." *Keener Properties*, 912 So.2d at 957, ¶ 8. As in the *Keener Properties* case, here there are multiple "exclusive" users of the prescriptive easement. In other words, "an individual may acquire an easement of way by adverse user though at the same time the public uses the way." *Id.* at 957, ¶ 9, quoting *Jenkins v. McQuaid*, 153 Miss. 185, 120 So. 814, 816 (1928).

The use by Collins and his predecessors, as well as by Knight and his predecessor, was established by testimony from members of the Harvey family, Stanley Jones, and the Parties. Stanley Jones lived on GK Lane for a time in an old house that he subsequently tore town. He and his partner accessed the property from GK Lane. Collins, Stanley Jones' successor, has also used GK Lane to access this parcel. Collins' lessees also used GK Lane for ingress and egress.

Knight's father used GK Lane from 1957 until his death in 1999. During the time George Knight raised chickens he necessarily used GK Lane to truck the birds out. The Knight family members who testified all used GK Lane to visit

George and Bessie Knight. Since the death of his step-mother in 2000, Knight continues to use the road, according to his testimony, a couple times each month. Both Collins and Knight have shown sufficient use of GK Lane to establish their right, above that of the general public, to access their properties from GK Lane. Indeed, the Estate stipulated to this right during the course of the hearing. (V. 3: T. 81-82)

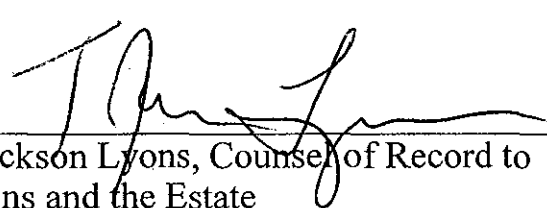
The chancellor was manifestly correct that Collins and Knight enjoy prescriptive easements over GK Lane and the Court should affirm the decision.

### **III. Conclusion**

The Court should reject Knight's effort to arrogate to himself ownership of and right to use GK Lane. Knight cannot show acts demonstrating an open, visible, and notorious claim to exclusive ownership of GK Lane. Knight and Collins have shown to a level of clear and convincing evidence that they and their predecessors enjoy a prescriptive easement over the Estate's land underlying GK Lane. The Court should affirm the trial court's rulings on these issues.

Respectfully submitted,

ESTATE OF HAROLD GENE JONES,  
DECEASED, SENNETT DICKENS,  
ADMINISTRATOR; AND RICHARD  
COLLINS

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## CERTIFICATE OF FILING AND SERVICE

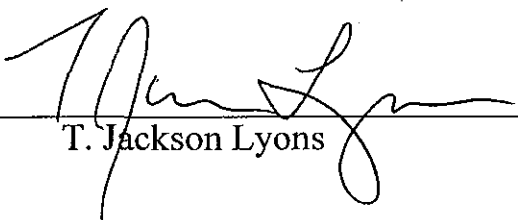
The undersigned attorney of record to the joint Appellees Richard Collins and the Estate of Harold Gene Jones hereby certifies that the original and three copies of the above and foregoing brief, as well as the electronic disk, have been filed with the Clerk of the Court by hand delivery of the undersigned, and that true and correct copies have been served upon the following addressees by first class mail:

Hon. Larry Buffington  
District 13 Chancellor  
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*Attorney for Covington County, Mississippi*

SO CERTIFIED, this the 5<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
T. Jackson Lyons

SURVEY MADE OF THE SOUTH LINE OF THE NE 1/4 OF  
THE SE 1/4 OF SECTION 7, TOWNSHIP 8 NORTH,  
RANGE 15 WEST, COVINGTON COUNTY, MISSISSIPPI.

74.45 CHAINS  
80.00 CHAINS  
**GLO  
FIELD  
NOTES**  
80.00 CHAINS  
74.45 CHAINS

WILLIE G. KNIGHT et ux

FD LIGHTERED POST  
NE CORNER OF  
SEC 7, R8N, R15W,  
COVINGTON CO., MS

SCALE: ONE INCH = 100 FEET

RALPH M. VAUGHN  
PROPERTY

FD 1/2" REBAR  
SW CORNER OF THE  
NE 1/4 OF THE SE 1/4

FD PINE KNOT  
SW CORNER OF THE  
NW 1/4 OF THE SE 1/4

S 89°36'22" W  
1228.33'

POWERPOLE  
DIRT-GRAVEL  
DRIVEWAY  
F.I.P.  
SE CORNER  
NE 1/4 OF THE SE 1/4

S 89°36'22" W  
1228.33'  
GALVANIZED GATE  
RICHARD COLLINS  
PROPERTY

CASE NO. 01-023

GALVANIZED GATE

POWERPOLE

FENCEPOST

FENCEPOST

FENCEPOST

FENCEPOST

GALVANIZED  
GATE

TREE LINE

DIRT-GRAVEL ROAD

HAROLD G. JONES PROPERTY

S 00°04'47" E  
1321.18'

HAROLD G. JONES PROPERTY

FD LIGHTERED POST  
SE CORNER OF  
SECTION 7, T8N, R15W,  
COVINGTON CO. MS

7 8  
18 17

THIS IS TO CERTIFY THAT I HAVE  
CAUSED A SURVEY OF THE  
PROPERTY LINES SHOWN ON THIS  
PLAT AND BEAT THAT SURVEY IS  
TRUE AND CORRECT TO THE BEST  
OF MY KNOWLEDGE AND BELIEF.

SURVEY FOR: RICHARD COLLINS  
MILLER STAKING, INC.  
P.O. BOX 3475 - 8811 887 46 SOUTH  
COLLINS, MS 39428  
OFFICE (601) 786-0014 FAX (601) 786-0027

REFERENCE MATERIAL  
PLAT BY:  
DAVID DUNN  
DATED 1/30/2001

PROPERTY LINE - SET 1/4" REBAR  
FENCE LINE - SET CORNER FOUND  
CONTIGUOUS - SET SET BOTTOM SPWOLE  
FENCE LINE - SET CONCRETE MONUMENT  
C - POWER POLE  
A.P.A. - AS PER RECORD A.P.B. - AS PER SURVEY

SOLAR OBSERVATION  
RECORD BEARING  
MAGNETIC COMPASS  
CLASS "A" SURVEY  
CLASS "B" SURVEY  
CLASS "C" SURVEY  
CLASS "D" SURVEY

DRAWN BY: L. MILLER-KOSER

EXHIBIT  
No. 73  
Evidence  
I.D. Only