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NO. 2007-CA-02179

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**IN THE SUPREME COURT OF MISSISSIPPI**

**WILLIE GEORGE KNIGHT**

**Appellant**

**V.**

**COVINGTON COUNTY, MISSISSIPPI,  
RICHARD COLLINS, SENNETT DICKENS,  
GUARDIAN OF HAROLD GENE JONES, NCM, AND  
RALPH M. VAUGHN, TRUSTEE OF THE RALPH MURPHY  
VAUGHN REVOCABLE TRUST**

**Appellees**

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**ON APPEAL FROM THE CHANCERY COURT OF COVINGTON COUNTY, MISSISSIPPI  
CAUSE NO.: 01-023**

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**BRIEF OF APPELLEE, COVINGTON COUNTY, MISSISSIPPI**

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**Tommy B. Rogers, MSB [REDACTED]  
Attorney for Appellee  
Covington County, Mississippi**

**TOMMY B. ROGERS  
403 Second Street South  
P. O. Box 1415  
Collins, MS 39428  
Telephone (601)765-8235  
Fax (601)765-8237**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIE GEORGE KNIGHT

APPELLANT

VS.

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APPELLEES

CERTIFICATE OF INTERESTED PERSONS

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

1. Tommy B. Rogers, Esq., attorney for the Appellee, Covington County, Mississippi.
2. Covington County, Mississippi.
3. John Keyes, Esq., attorney for the Appellee, Estate of Harold Gene Jones, deceased, Sennett Dickens, Administrator.
4. Danny Welch, Esq., attorney for the Appellee, Richard Collins.
5. Estate of Harold Gene Jones, deceased, Sennett Dickens, Administrator.
6. Richard Collins.
7. Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust.
8. Willie George Knight, the Appellant.
9. David Shoemake, Esq., attorney for the Appellant, Willie George Knight.
10. Honorable J. Larry Buffington, Chancellor.
11. T. Jackson Lyons, Esq., attorney for Richard Collins and Harold Gene Jones Estate

Respectfully submitted,

  
TOMMY B. ROGERS

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APPELLEES

**BRIEF OF THE APPELLEE COVINGTON COUNTY, MISSISSIPPI**

**STATEMENT OF ISSUES**

**ISSUE 1: The Chancellor erred in finding the Appellees had acquired a prescriptive easement to G. K. Lane which runs across property owned by the Appellant, Willie George Knight**

This issue does not pertain to the Appellee, Covington County, Mississippi.

**ISSUE 2: The Chancellor erred in not entering a Judgment for Willie George Knight to confirm title in and to G. K. Lane, and/or to remove cloud from his title, and/or vesting fee simple title in and to G. K. Lane by virtue of a finding that he acquired said property by adverse possession.**

This issue does not pertain to the Appellee, Covington County, Mississippi.

**ISSUE 3: The Chancellor did not err in not awarding the Appellant damages and/or attorney's fees against Covington County, Mississippi.**

**STATEMENT OF THE CASE**

Covington County, Mississippi, acting by and through the Board of Supervisors of Covington County, Mississippi, on or about February 9, 2001, filed its Complaint pursuant to Section 65-7-7 of the Mississippi Code of 1972, against Willie George Knight for injunctive relief to compel the removal of certain gates placed across a public road known as "G. K. Lane". By

order of the Court on May 10, 2001, Richard Collins, Harold Gene Jones and Ralph M. Vaughn, Trustee of the Ralph Murphy Vaughn Revocable Trust were ordered joined as additional parties to said proceeding. The Appellant, Willie George Knight, filed an Answer in this Cause denying that G. K. Lane is a public road and sought damages and attorney's fees from and against Covington County, Mississippi. At the trial of this cause on February 21, 2002, Harold Gene Jones, upon whose property G. K. Lane is located, stipulated that G. K. Lane is a public road (R.79) and the Chancellor, from the bench, granted a judgment in favor of Covington County, Mississippi against Ralph M. Vaughn, as Trustee of the Ralph Murphy Vaughn Revocable Trust (R.80). The remaining defendant, Richard Collins, admitted in his pleadings that G. K. Lane is a public road. At the trial of this Cause, Covington County presented substantial evidence to support a finding that G. K. Lane is a public road and notwithstanding that there was clear and convincing evidence that G. K. Lane is a public road, the Chancellor, in his final judgment dated April 25, 2007, found that G. K. Lane was not a public road. In said final judgment, the Chancellor awarded no attorney's fees to the Appellant, Willie George Knight. Covington County elected not to appeal the Chancellor's ruling, however, the Appellant, Willie George Knight, is contending that the suit filed by Covington County, Mississippi, was a frivolous lawsuit entitling Willie George Knight to receive attorney's fees and damages from the County to which the County strenuously objects.

#### **STATEMENT OF FACTS**

The evidence at the trial of this Cause established that G. K. Lane is a public road running in an easterly-westerly direction from a point on the western boundary of Salem School Public Road across the property of Harold Gene Jones and terminating at a point on the property

of Richard Collins. Evidence further established that the driveway to the home of Murphy Vaughn commences at a point on G. K. Lane, that Willie George Knight has property abutting G. K. Lane and has a circle driveway that commences at a point on G. K. Lane and goes to the home previously occupied by his father, George Knight, and back to a point on G. K. Lane, that an additional driveway commences at a point on G. K. Lane and formerly served chicken houses of George Knight, and that G. K. Lane presently terminates at a point past the George Knight property on the property of Richard Collins (R.17, 18).

Jimmy White, Supervisor in the district in which G. K. Lane is located, testified that he took office in January 2000 and was familiar with G. K. Lane (R.17) and was prepared to maintain G. K. Lane (R.28, 29), however, gates were placed across the road in March 2000 prior to his doing any maintenance work on said road (R. 31).

Allison Mooney, a former supervisor of Covington County, Mississippi, testified that said road had been in existence since the Civil War (R. 97) and formerly went across what is now the Richard Collins property and across Rogers Creek where you could see the old timbers still in the creek (R.134), and that when he first became personally familiar with the property in the late 1930's or 1940's he went down G. K. Lane on visits to a cousin and that the public was traveling said road, no-one interfered with his travel of the road and there were no gates on the road (R.98), that there was a dwelling house on the property now owned by Richard Collins in the 1930's and 1940's (R.128), that there was free access to that residence (R.129), and that he maintained G. K. Lane for other parties than just the Knights (R.129). Allison Mooney further testified that he served as supervisor in the district where said road is located for sixteen years from 1984 until 2000 and that during the years he was supervisor he maintained G. K. Lane by

graveling and grading said road with a motor grader as often as it was needed (R.94), that during the time that he was supervisor there were no gates on G. K. Lane except at the point of termination upon the property of Richard Collins (R.96), that the Board of Supervisors of Covington County, Mississippi, on October 27, 1997, adopted a map naming the public streets, roads and highways within Covington County, Mississippi, establishing G. K. Lane as a public road within the County (R.99, 100), that on January 8, 1999, the Board of Supervisors of Covington County, Mississippi, revised the county road map adopted on October 22, 1997, and again officially adopted a map naming G. K. Lane as a public road within the County (R.100), that he named the road G. K. Lane and his men placed a road sign on G. K. Lane (R. 101), that he performed work on G. K. Lane without the permission of anyone (R.102), and that during the time that he was supervisor no order was ever passed by the Board in an attempt to abandon G.K. Lane as a public road (R.100, 101).

Lilan Norris testified that he worked for Ramsey McQueen, supervisor in the district in which G. K. Lane is located for the twenty years that Mr. McQueen served as supervisor from 1964 to 1984 (R.168, 169) and that during said period of time the County maintained G. K. Lane and that he hauled gravel and drug it with a road machine when needed (R.169) for the entire twenty year period he worked for Supervisor McQueen (R.170). He further testified that mail was delivered down said road (R.174).

William Harvey testified that his father Claude Harvey purchased the land now owned by Richard Collins at the termination of G. K. Lane in 1950 (R.176, 177), that his father had a house and barn on said property (R.177), that his mother and two sisters lived with his father on said property and that the school bus came down G. K. Lane and picked up his sisters (R.178), that



the County maintained the road during the seven or eight years that his father owned the property by graveling and grading the road and put a culvert in it (R.178), that there were no gates on the road while his father owned the property at the end of G. K. Lane (R.179), that no-one ever interfered with him going down the road (R.179), that he considered it to be a public road (R.179), that his father lived on what is now the Collins property prior to George Knight buying and building a house on his property (R.180), that George Knight never stopped him from using the road and he never considered having to have the permission of George Knight to go down the road (R.180).

Stanley Jones (Little Tater Jones) testified that David Padgett purchased from Claude Harvey the property now owned by Richard Collins at the end of G. K. Lane in 1956 or 1957 (R.194) and that he, Stanley Jones, moved into the house located on said property and lived there a year and a half while he built his own house (R.194), that he had a son and that during the period that he lived there, the school bus came all the way down G. K. Lane to his house to pick up his child (R.194), that the mail carrier came all the way down G. K. Lane to his house (R.194,195), that the supervisors maintained G. K. Lane (R.195), that after the completion of his home he has lived about one-fourth mile from G. K. Lane to the present (R.195) and that he and David Padgett were partners and had cattle on the property now owned by Richard Collins (R.196), that there was no agreement with George Knight about the use of the road as Stanley Jones considered it a public road and had no reason to have an agreement with George Knight (R.196), that he put up a gate at the termination point of G. K. Lane to keep his cattle in (R.197), and there was never any other gate on G. K. Lane (R.197), and that no-one ever interfered with his use of the road, that he sold timber off of said property and that the timber people used said

road to get the timber out, and that hunters used the road to go back on his property and hunt (R.198), that he used G. K. Lane to access his property to fertilize his pasture (R. 218), and that he sold the property to Richard Collins in 1993 (R.193).

Richard Collins testified that he purchased his property at the end of G. K. Lane in 1993 (R.236) but that he had been familiar with said property and had been going up and down said road for fifty or sixty years (R.232), first becoming familiar with said property when Harold Bryant had a house and lived on said property in the 1940's (R.233), and that during the 1940's G. K. Lane ended at the Bryant place, now owned by Richard Collins (R.234), but that he understood that it previously went to an old water mill down on Rogers Creek (R.234), that during the 1940's no-one interfered with him going down the road and that he considered it a public road (R.234), that up until the time that he purchased the property in 1993, there were no gates on G. K. Lane except the gate at the end of G. K. Lane at the property line of the property he purchased (R.236), that he had no agreements with George Knight about the use of the road and did not think he had to have any kind of agreement with George Knight (R.237), that George Knight had mail service all the way down G. K. Lane to his house (R.238), that Willie George Knight moved his mail box from his house on G. K. Lane out to Salem School Road after he put up the gate (R.261), that he, Richard Collins, rented out his fields and had timber cut after he purchased the property in 1993, and that the timber people and people renting the fields used G. K. Lane without interference (R.251), that the County maintained the road (R.261), that he allowed hunters to go on his property, and that they used said road (R.262).

The Appellant, Willie George Knight, a resident of the State of Florida (R. 443) became the owner of certain land located in Covington County, Mississippi, abutting a portion of G. K.

Lane after the death of his father, George Knight, in April of 1999, and the death of his stepmother, Billie Knight, in October of 2000 (R.443, 444). At the trial of this Cause, Willie George Knight testified that his father, George Knight, purchased the property abutting a portion of G. K. Lane in the year 1956 (R.478) and that during the lifetime of his father, George Knight, there was never any problem with the use of said road by anybody nor was there ever any gate on G. K. Lane to keep anyone from going down to the property of Richard Collins (R.486). Willie George Knight further testified that he placed a gate upon G. K. Lane as a result of a dispute with an electric power company (R.487). Mr. Knight testified as follows, to-wit:

“Q. So during the lifetime of your father, there never was any problem about that road, was there?

A. No, sir. Nobody tried to take the road.

Q. But there was never any gate there to have a problem about the road, was there?

A. There was nowhere they could go except to the Knight farm, sir.

Q. Well, there wasn't a fence to keep them from going on down to the turn of that road at the Collins' property, was there?

A. No, it's just a dead end.

Q. It dead ended right there. All right. But there was nothing there to prevent them from going down to that dead end, was there?

A. No, sir.

Q. And there never was any fuss or anything else with anybody else about going down to the turn of that road?

A. Nobody tried to go down that road, sir.

Q. Until you became in possession of the property after your father dies; is that right?

A. This started before my father died.

Q. It was all out of dispute with the power company, correct?

A. Yes, sir.

Q. And it was (not) the fault of Mr. Collins or anybody else, it was a dispute between you and the power company; is that correct?

A. Could I answer that completely?

Q. Go ahead.

A. Mr. Jerry Pierce testified in Circuit Court that he re-routed that power line and spent thousands of dollars that Richard Collins insisted so that power line wouldn't go out in that field because they had plans for rows of chicken houses in that field as soon as he got a right-of-way through the Knight property.

Q. That doesn't have anything to do with the County as far as maintaining a public road down there, does it?

A. But it has a lot to do with running chicken houses through my driveway, sir.

Q. Didn't you have chicken houses when your father was living?

A. Yes, sir, and he got rid of them.

Q. But he had chicken houses too?

A. But he didn't run through nobody else's (sic) driveway, sir.

Q. But has there been any evidence that there is going to be any chicken houses or ever thought there was going to be any chicken houses?

A. There's Mr. Pierce' testimony.

Q. Did he own that property?

A. Mr. Pierce testified in Circuit Court that he changed the power line because of chicken houses that were planned for that property down there.

Q. But he didn't own that property?

A. No, I guess Mr. Collins owns it." (R.486, 487, 488)

Mr. Knight further testified as follows, to-wit:

"Q. And that's one point is and you testified, I believe, in your deposition there was never a problem with this road. Mr. Tony Pageant could use the road and did, in fact, use the road, Mr. Stanley Jones did, in fact use the road unrestricted, Mr. Richard Collins used the road until this episode with the power company came into play?

A. Until the power company employee testified that they moved that power line so it wouldn't interfere with those rows of chicken houses - -

Q. He hadn't testified at the time you put up the gate up?

A. I put the gate up because the power company cut a trail across my planted pine timber and I ran them off. They came back the next day so I went and put a gate up to keep them out and gave Mr. Collins a key. As soon as I left to go back to Florida he turned around and told them put their own lock on there and unlock it so they could hook their lock into his. Mr. Keys took three and a half acres of my property? MR, KEYES: Your honor, I object to that. I didn't take any of his property. JUDGE BUFFINGTON: Okay. Mr. Welch (Continuing.):

Q. But until that time though, you haven't had any problem, you or your father hadn't had any problem - -

A. No, sir." (R.509, 510)

After the dispute between Mr. Knight and the electric power company and his placing of gates upon G. K. Lane, a complaint was made to the County by Richard Collins, the owner of the property at the termination point of G. K. Lane, that Willie George Knight had placed gates upon a public road of the County known as G. K. Lane. Section 65-7-7 of the Mississippi Code of 1972, prohibits the obstruction of any public highway, road or ditch draining the roadway and places a duty on the County to remove the obstruction and, if necessary, to cause suit to be commenced therefor. The County requested preliminary and permanent injunctions against Willie George Knight enjoining and restraining him from obstructing and interfering with the free use of the public road known as G. K. Lane. At the trial of this Cause, Willie George Knight contended that G. K. Lane was not a public road but rather was a private road.

The County, at the trial of this cause, produced evidence to establish that G. K. Lane was a public road of the County established by prescription over a long period of time, entered orders establishing G. K. Lane as a public road, and never vacated or abandoned said road.

### **SUMMARY OF THE ARGUMENT**

The evidence in this case clearly establishes that G. K. Lane was a very old public road that dated back to the Civil War era with the County having not only established said road as a public road by prescription but having entered three separate orders in 1997, 1999 and 2000 establishing G. K. Lane as a public road within the County. Notwithstanding said clear and convincing evidence, the Chancellor found that G. K. Lane was not a public road, however, the Chancellor did not find said case to be a frivolous case insofar as the County is concerned and awarded no damages and attorney's fees to Willie George Knight. The County chose not to appeal the decision of the Chancellor, however, the Appellant, Willie George Knight, on appeal,

has assigned as an error that the lower court did not find that the filing of said case by the County was a frivolous case and assigned as error that Willie George Knight was not awarded damages and attorney's fees.

The cases of the Supreme Court of the State of Mississippi and the Court of Appeals of the State of Mississippi are very plain that the County can establish a road by prescription, and the evidence is clear in this case that the County did acquire G. K. Lane as a public road by prescription and maintained said road over the years up until the time that Willie George Knight placed gates on said road.

Willie George Knight, at the trial of this Cause, never presented any evidence to establish that the Board of Supervisors of Covington County, Mississippi, have ever entered any order on their minutes removing and/or vacating G. K. Lane as a public road of the County, and never presented any evidence of the abandonment by the County of said road as a public road of the County. It was proved by the evidence at the trial of this case that G. K. Lane was not even on the property of Willie George Knight. The evidence in this case reflects that Murphy Vaughn and the owners of the property at the end of G. K. Lane and past the property of the Knights, as well as the Knights, freely used said road, school buses traveled said road, mail carriers traveled said road, hunters traveled said road, timber haulers used said road, pasture renters used said road, and the public in general used said road freely and without interference from George Knight or any other parties up until the time that Willie George Knight acquired title to the property and placed said gates on said road.

The Chancellor was certainly not in error in not awarding damages and attorney's fees to Willie George Knight.

## ARGUMENT

The Chancellor in the lower court ruled that the road in question was not a public road, however, the Chancellor did not award any attorney's fees and/or damages to Willie George Knight against Covington County, Mississippi. Willie George Knight contends that the county filed a frivolous lawsuit in which it knew it could not win against Willie George Knight and, therefore, he should be entitled to receive attorney's fees and damages from the county resulting from said suit. It is submitted that the county at the trial of this case clearly proved that the road in question was a public road, however, the county chose not to appeal the decision of the Chancellor. The lawsuit filed by the county against Willie George Knight was certainly not a frivolous lawsuit nor was it interposed for delay or harassment, rather said suit was filed upon substantial justification.

It is well settled law in this State that a public road can be established by prescription. See the case of *Joachim v. Villa Santini, Inc.*, 353 So.2d 767,768 (Miss. 1977), which held in part as follows, to-wit:

"It is well settled in this State, that a public road can be established by prescription. *Rylee v. State*, 106 Miss. 123, 63 So. 342 (1913), and *Coleman, Atty. Gen., et al, vs. Ship*, 223 Miss, 516, 78 So.2d 778 (1955).

See also the case of *Armstrong, et al, v. Itawamba County*, 16 So.2d, 752,757 (Miss. 1944) which held in part as follows, to-wit:

"And in the case of *Rylee v. State*, 106 Miss. 123, 63 So. 342, the Court said: "It seems to be well settled that a highway may be created by prescription or by dedication, as well as by being laid out and established in accordance with statutory provisions. In his work on Roads and Streets (3d Ed.) Vol. 1, par. 3, Judge Elliott says, referring to the establishment of a highway, that "the mode of



its creation does not of itself invariably determine its character, for this, in general, is determined by the rights which the public have in it." In American & English Ency. of Law, (2d Ed.) Vol. 15, p. 494, we find the following regarding the mode of creation of highways: "Provided the road is a highway, the mode in which it became such is immaterial, and consequently there may, in the absence of a statutory limitation, be an obstruction of a highway (acquired) by prescription or by dedication, provided, the dedication has been accepted." It has been decided that a highway may be established by immemorial usage.

In the case of *Reed v. Northfield*, 13 Pick., Mass., 94, 23 Am. Dec. 662, cited with approval in the Rylee case, supra, our Court quoted therefrom the following: "But if an uninterrupted use of a highway and the support of it by the town for 40 years, which is now the longest term of prescription known to the law, would not establish it, it would be equivalent to declaring that there can be no highway proved in any mode but by the record of its being laid out, which, in regard to many, and those the most important and ancient highways of the commonwealth, would be utterly impossible."

The road in question in this case, G.K. Lane, is one of those very old county roads that apparently was not laid out by the statutory method. However, it is quiet clear from the evidence that it is a road that has been established as a public road by "immemorial usage." The uncontradicted testimony at the trial of this cause was to the effect that G.K. Lane, many years ago, was a public road that went further than the point where it now terminates and crossed Rogers Creek. The Court in its own questioning of Allison Mooney elicited the fact that evidence of the old road bed could still be seen west of the present termination point of G.K. Lane and the old bridge timbers crossing Rogers Creek could still be identified. See the case of *Armstrong v. Itawamba County*, supra. Page 754, which discussed such roads as follows:

"When it is considered that a good portion of our present state highway system of paved roads and other public highways are located in counties where, in some instances, the public records have been destroyed by fire, and in others where the establishment

of all the public roads does not affirmatively appear of record, due to a failure in earlier times to recognize the importance of making a complete record in many instances, and that the facts thereof are not within the memory of living witnesses, it will be readily seen that the public would be without remedy, after having maintained a highway for many years at public expense, to prevent such obstructions as are here complained of if it were requisite that the county should prove the existence of its public roads by orders on the minutes of the board of supervisors, reciting the establishment thereof. . .”

and the case of *Medina v. State Ex Rel. Summer*, 354 So.2d 779, 782 (Miss. 1977) which held in part as follows:

“It is settled that a public road may be created by prescription or by dedication, as well as by being laid out and established in accordance with statutory provisions, where the general public or several freeholders or householders of the county are interested in the road, and where public interest for convenience requires the road to be established. *Coleman v. Shipp*, 223 Miss. 516, 78 So.2d 778 (1955); *Armstrong v. Itawamba County*, 195 Miss. 802, 16 So.2d 752 (1944); *Rylee v. State*, 106 Miss. 123, 63 So. 342 (1913). Cook Landing Road has been used by the public since the days of the Indians. More recently residences were established adjacent to it and were served by a mail route, and the testimony of a former supervisor evidences that it was public during the time of his service from 1924 to 1932. Consequently, we conclude the public character of Cook Landing Road was clearly established.”

What is necessary to establish a public road by prescription? See the general rule in 39 *Am Jur2d*,

*Highways, Streets and Bridges*, Section 29, which provides in part as follows:

“Use is the sole test in considering whether or not a public road has been established by user. Frequency of use or number of users is unimportant; it is enough if the road is free and common to all who have occasion to use it as a public way.”

This general rule is followed by the decisions of the Supreme Court of the State of Mississippi.

See the case of *Joachim v. Villa Santini, Inc.*, 353 So.2d 767, 768 (Miss. 1977), which held in

part as follows, to-wit:

“In the case of *Armstrong, et al, v. Itawamba County*, 195 Miss. 802, 16 So.2d 752 (1944), the Court said “. . .and it was this user and the action of the public authorities in exercising such jurisdiction over the road for so many years, that gave it the status of a public road. . .” 195 Miss. at 814, 16 So.2d at 756. And the Court also said, “Continued user when taken in connection with the working of the road for nearly twenty years at public expense should be deemed to have been a sufficient acceptance.” 195 Miss. At 816, 817, 16So.2d at 757.”

The use and the elements necessary to establish a public road by prescription are set forth in the case of *Turner v. Duke*, 736 So.2d 495, 498 (Miss. App. 1999) which held in part as follows, to-wit:

“The supreme court stated the elements necessary to establish a public road by prescription in *Myers v. Blair*, 611 So.2d 969, 971 (Miss. 1992) (citations omitted):

- (1) open, notorious and visible;
- (2) hostile;
- (3) under claim of ownership;
- (4) exclusive;
- (5) peaceful; and
- (6) continuous and uninterrupted for ten years.

*Myers v. Blair*, 611 So.2d at 971 (Miss. 1992), also set out additional requirements to finding a road to be a public road;

[s]ince “The Road” is not shown to be a dedicated public road under the statutes and therefore under the supervision and control of the Board of Supervisors, “the road must be habitually used by the public in general for a period of ten years; and such use must be accompanied by evidence, other than mere travel thereon, of a

claim by the public of the right so to do.” *Brooks v. Sanders*, 243 Miss. 46, 137 So.2d 174, 175 (Miss. 1962). “The owner must know of and acquiesce in the adverse claim, or the use must be so open, notorious, visible and uninterrupted that knowledge and acquiescence will be presumed.” *McIntyre v. Harvey*, 158 Miss. 16, 128 So. 572, 573 (1930). . .

The case of *Turner v. Duke*, *supra*, factually is very similar to the present case. In that case the Turners purchased a tract of land which the Duke Road bisected. The Turners placed two gates across the Duke Road and the Dukes filed suit alleging that Duke Road was a public road and requested the trial court to enjoin the Turners from blocking it and to declare Duke Road to be a public road. The testimony in that case was that the Duke Road had at one time “run all the way from Hill Top Road which bounded the Turner property to the Tioc Road” and “at some point part of this road fell into disuse, yet the portion which ran through the property of the Turners and Dukes up to the Harpers’ property remained continuously in public use through 1994.” Other witnesses testified that houses accessed by Duke Road received mail services on said road, and that school buses traversed the road to transport children living there and county personnel were observed maintaining Duke Road. One witness testified that he had delivered butane on the road and met with no interference, a county supervisor testified that he had maintained Duke Road from 1976 to 1994 when the Turners asked the county to stop, a road maintenance foreman of 16 years testified that the county regularly maintained the road and that the Dukes and Harpers used it to reach their homes. The Court, at Page 498, in finding that the facts in that case were sufficient to meet the test of establishment of a public road held in part as follows:

“Additionally, the first five enumerated criteria of *Myers v. Blair*, 611 So.2d at 971 (Miss. 1992) are met in this case. The public’s use was open and notorious because the county acted to maintain

the Duke Road, and testimony showed the community utilized the Duke Road as a public road. See 2 *C.J.S. Adverse Possession*, Section 49 (1972). The public's use was hostile because the public acted adversely to the interest's of the owners of the land by entering onto and using the Duke Road without subservience to these owners. See *C. J.S. Adverse Possession*, Section 60, (1972). The public's use was under claim of ownership because the public acted to appropriate the land for its use. See 2 *C.J.S. Adverse Possession*, Section 61 (1972). The public's use was exclusive because the public's maintenance of the Duke Road and use as a public road were acts asserting ownership. See 2 *C.J.S. Adverse Possession*, Section 54. (1972). The public' use of the Duke Road was peaceful because the use was undisturbed. See 2 *C.J.S. Adverse Possession*, Section 169 (1972). Therefore, all elements for acquisition of a public road were present."

In the present case, if the holding in the *Turner v. Duke*, supra, case is compared to the uncontradicted testimony elicited in the present case, all elements for acquisition of a public road are present.

(1) The public's use of G.K. Lane was open, notorious and visible because the county acted to maintain G.K. Lane continuously for at least since 1950, and the uncontradicted testimony of all witnesses showed the community utilized G.K. Lane as a public road;

(2) The public's use of G.K. Lane was hostile because the public acted adversely to the interest's of the owners of the land (Maston Jones and now, Harold Gene Jones) as well as the adjoining landowner, Willie George Knight and his predecessors in title, by entering onto and using G.K. Lane without subservience to these owners.

(3) The public's use of G.K. Lane was under claim of ownership because the public acted to appropriate the land for its use.

(4) The public's use of G.K. Lane was exclusive because the public's maintenance of G.K.

Lane and use as a public road were acts asserting ownership.

(5) The public's use of G.K. Lane was peaceful because the use was undisturbed until Willie George Knight placed gates across said lane.

(6) The public's use of G.K. Lane was continuous and uninterrupted for ten years as the evidence showed that the county had continuously maintained G.K. Lane at least since the year 1950, school buses had traversed said road since the 1950s, and mail carriers had traveled said road until approximately the time that Willie George Knight placed the gate across said lane, the road was named as a public road by the county by orders in the minutes of the Board of Supervisors on three separate occasions, and road name signs were placed on G.K. Lane by the county.

All of the above elements are fully established by the testimony of Lilan Norris who worked for Supervisor Ramsey McQueen for a period of twenty years prior to 1984, and that said road was maintained by the county during all of said period of time; former supervisor Allison Mooney who testified that he maintained G.K. Lane from the period 1984 through 1999; Stanley Jones, who lived at the end of G.K. Lane approximately forty years ago and on adjoining land to the present, testified that the county maintained said road at that time and continuously since that time, that the mail carriers traversed G.K. Lane delivering mail to his home at the end of G.K. Lane, that school buses traversed the road picking up his children at the end of G.K. Lane and that hunters, timber buyers and the general public had use of said road undisturbed for at least the past fifty years. Other witnesses, Richard Collins, and William J. Harvey, both testified similarly as to the county's maintenance of G.K. Lane as well as the use of the road by school buses, mail carriers and the public in general for at least the past fifty years.

At the trial of this case, Willie George Knight, in his cross-examination, seemed to imply that infrequent use of the road prevented G.K. Lane from being a public road. However, frequency of use is not the test. As set forth above at *39 Am Jur2d, Highways, Streets and Bridges, Section 29*, the general rule is as follows:

“Frequency of use or number of users is unimportant; it is enough if the road is free and common to all who have occasion to use it as a public way.”

The Mississippi Supreme Court in the case of *Barrett v. Pilgrim*, 317 So.2d 382, 383 (Miss. 1975) held in part as follows:

“... Mere non-user by a part or all the general public of a public road, or use by some members of the general public of a public road as a “lovers” lane, whiskey cache or as a place for dumping garbage, will not constitute such an abandonment as to deprive it of its public character or justify its closing by a court in private litigation between individuals. As early as 1878 this Court, in a case involving a county road, held ‘...until an unequivocal surrender by the Board of Supervisors of the right of the public to the road, the owner of the fee had no right to close it.’”

See also the case of *McNeely v. Jacks*, 526 So.2d 541, 545 (Miss. 1988) which held in part as follows, to-wit:

“If a public road runs through the property of one and dead-ends on the property of another, and for ten years the latter (and persons acting on his behalf and with his permission) are the only ones to use the road, no abandonment occurs. It is not necessary that interlopers or sightseers or persons without any ownership interest or business on the latter’s property use the road, for the owner of the land on whose property the road dead-ends is as much as any other a member of the general public, as able in law to interrupt the period of prescription. The point for the moment is that we are without evidence of non-use sufficient in law to generate any presumption of abandonment.”

It is submitted that, in the present case, Richard Collins, the owner of the property where

G.K. Lane dead-ends and his predecessors in title have used G.K. Lane for at least the last fifty years.

It is further noted that the Court at the trial of this case indicated that it had concerns in the present case that Richard Collins and his predecessors in title at times had placed a gate at the point where G.K. Lane now terminates but east of where the old public road extended further onto the property of Richard Collins and across Rogers Creek. The Court in *McNeely v. Jacks*, supra, Page 546, held in part as follows:

“The Jacks placed the wire gaps across the road to control their livestock. Where a gate or gap has been placed across the road to control livestock, it does not “cause a road to lose its character as a public way, when it was evident that by placing such obstacle there was no interruption of the way by those traveling it.”

The testimony in the present case indicated that said gate was placed at the termination point of G.K. Lane, to control livestock and said gate was unlocked.

See also the case of *Ann May Enterprises, Inc., v. Caples*, 724 So.2d 1127, 1130, 1131, (Miss. App. 1998) which held in part as follows:

“The *McNeely v. Jacks* decision makes the point that there is no minimum number of members of the public, nor any particular volume of public traffic, that must be shown in order to defeat a claim of abandonment. The *McNeely* court observed that use of a road by anyone other than the abutting property owner when that use is under a claim of right said to be vested in the general public is, by definition, an instance of public use. ‘If a public road runs through the property of one and dead-ends on the property of another, and for ten years the latter (and persons acting on his behalf and with his permission) are the only ones to use the road, no abandonment occurs. . .

Because the use of this road was uninterrupted and because the overwhelming evidence suggests that those persons using the road



to gain access to the May Enterprises tract were doing so in reliance on the public character of the road and were not doing so under any permissive right granted by Caples, we are compelled to conclude that, rather than having created a private easement by prescription, this use has necessarily continued the public character of the roadway under the *McNeely v. Jacks* decision.

It is interesting to note that in the *Ann May Enterprises, Inc. v. Caples*, supra, that the court found that the county had not maintained the road for long periods of time, unlike the continuous maintenance of G.K. Lane in the present case, and held at Page 1131 in part as follows, to-wit:

“Even were it shown beyond dispute that the county had not performed any maintenance on the road for more than ten years and had no intention of ever doing so again, that is not enough to demonstrate unequivocally a *de facto* abandonment. Lack of upkeep is certainly a factor in a determination of abandonment, but the public may continue to use a road that grows more and more impassable through the neglect of the maintaining authority. That use, though progressively more difficult, is enough to prevent a finding of *de facto* abandonment so long as it is shown to be continuous in nature.”

It is submitted that in the present case, the county met and established all elements set forth in the various decisions of the Supreme Court of the State of Mississippi to establish G.K. Lane as a public road.

At the trial of this cause, the only legal authority cited by the defendant whatsoever was the case of *Myers v. Blair*, 611 So.2d 969 (Miss. 1992), which is authority for the well settled principle under Mississippi law that boards of supervisors can only speak through their minutes. The plaintiff has no argument with this well settled principle of law. However, the contention by the defendant that the *Myers* case is dispositive of the present case is erroneous. The facts in the

*Myers v. Blair* case reveal that the road in question was one upon which “little, if any, maintenance was done by the county”, “was never used by the county school bus to pick up school children nor was it used by mail carriers to deliver the mail”, and with conflicting testimony of former and present supervisors and their employees whereby “some concluded the road private; others stated that it was public.” With the lack of evidence concerning use and maintenance of the road, the Court quoted from the case of *Smith v. Board of Supervisors of Tallahatchie County*, 124 Miss. 36, 41, 86 So. 707 (1921), concerning the fact that individual supervisors, past and present, were permitted to testify that the road was public or private in the *Myers* case. In the *Smith v. Board of Supervisors of Tallahatchie County* case, supra, the facts reveal that the county undertook to lay out a public highway and contended that it had a deed to a right of way from a former owner of the land, however, such deed was not of record and there was nothing on the minutes of the Board of Supervisors to show that it had acquired the right of way over such land. The Court held that it was error to permit the individual members of the board of supervisors to testify concerning the unrecorded deed that they contended allowed them to lay out the road without the payment of any damages. In the present case concerning G.K. Lane, the plaintiff is not asserting that it has any right of way deed, petition and/or affidavit concerning G.K. Lane that is not of record, therefore, the *Myers v. Blair* case, supra, does not apply. The present case is based on prescription which is determined by the use of said road. There have been several cases decided by the Mississippi Supreme Court since *Myers v. Blair*, supra, such as *Turner v. Duke*, supra, that recite the testimony of supervisors concerning maintenance of a road. In fact, in the later case of *Ladner v. Harrison County Board of Supervisors*, 793 So.2d 637, 640, 641 (Miss. 2001), in which the Court found that a particular road which had been contended to be a public

road by virtue of affidavits was not a public road, the Court citing *Myers v. Blair*, supra, held in part as follows:

“ . . . The only evidence before the Board, and now before us, are the affidavits and the photographs. Assuming arguendo the public had used this road for at least the ten year minimum, this is simply not enough. The Board has not offered any evidence establishing that the public has claimed a right to use the roadway as a public road. The Board has not shown any county exertion of dominion over the roadway in question, such as whether the county maintained the road, whether mail carriers used it to deliver the mail, whether school buses used it to pick up school children, etc. See also *Myers v. Blair*, 611 So.2d 969 (Miss. 1992); *Armstrong v. Itawamba County*, 195 Miss. 802, 16 So.2d 752 (1944), *Gulf & S.I.R. Co. V. Adkinson*, 117 Miss. 118, 77 So. 954 (1918).”

It is submitted that in the present case concerning G.K. Lane, the Board has shown maintenance of the road for over fifty years, that mail carriers used the road to deliver mail and school buses used it to pick up school children. The *Ladner* case citing the *Myers* case criticizes the fact that the board did not show maintenance of the road in question. The limited applicability of *Myers v. Blair*, supra, pertaining to the testimony of supervisors concerning and explaining board minutes is not applicable whatsoever in the present case. In addition, all matters testified to by the supervisors were proven by witnesses who were not supervisors.

The fact that the Covington County Board of Supervisors considers G.K. Lane a public road is also specifically found in the minutes of the Board by orders adopted on three separate occasions designating G.K. Lane as a public road, certified copies of board minutes were introduced into evidence in this cause which reflects that the Covington County Board of Supervisors, pursuant to Section 65-7-143 of the Mississippi Code of 1972, by ordinance dated October 22, 1997, officially adopted a map naming the public streets, roads and highways within

Covington County, Mississippi, outside the corporate limits of any municipality, with said map having established G.K. Lane as a public road within the county. In addition, there was introduced into evidence in this cause, an ordinance adopted by the Board of Supervisors of Covington County, Mississippi, dated January 8, 1999, pursuant to said Section 65-7-143 of the Mississippi Code of 1972, revising the county road map adopted on October 22, 1997, and again officially adopted a map naming G.K. Lane as a public road within the county. Plaintiff further shows unto the Court that the 1998 session of the Mississippi Legislature, by virtue of Chapter 539 enacted Section 65-7-4 of the Mississippi Code of 1972, effective July 1, 1998, requiring the Board of Supervisors of each county to prepare and adopt an official map designating and delineating all public roads of the county road system and preparing and adopting a county road system registry. In accordance with said statute, the Board of Supervisors of Covington County, Mississippi, prepared an official map in accordance with such requirements, prepared a county road system registry and entered an order dated May 5, 2000, directing that a public hearing on the content of the official map and the county road system registry be conducted on Wednesday, May 31, 2000, at 10:00 o'clock a.m. in the board room of the Covington County Chancery Building in the City of Collins, Covington County, Mississippi, a copy of said order being entered into evidence in this cause. Pursuant to the order dated May 5, 2000, a notice of public hearing was duly published in the News-Commercial, a newspaper published in and having general circulation in Covington County, Mississippi, same having been published in the issues of said newspaper dated May 10 and May 17, 2000. On said date of May 31, 2000, the Board of Supervisors of Covington County, Mississippi, conducted a public hearing concerning the proposed official map, and the proposed county road system registry and there being no

objections made to the proposed map nor the proposed registry, an order was duly adopted on May 31, 2000, by the Covington County Board of Supervisors adopting the official map designating and delineating all public roads of the county road system and adopting a county road system registry, a copy of said order being introduced into evidence in this cause. G.K. Lane was designated as a public road on said map and registry. It is submitted that Section 65-7-1 of the Mississippi Code of 1972, provides that "all roads now laid out and opened or hereafter laid out and opened according to law shall be deemed public roads and highways . . ."

It is submitted that the county met all requirements of the law necessary to make G.K. Lane a public road. All factual testimony in this case has strongly supported and met all necessary elements necessary to establish same as a public road by prescription and, in addition, Supervisor Mooney testified that public funds which were approved by the Board of Supervisors of Covington County, Mississippi, were used to maintain G.K. Lane and, the Board on three separate occasions has passed orders adopting official maps recognizing and adopting G.K. Lane as a public road within the county road system of Covington County, Mississippi.

### **CONCLUSION**

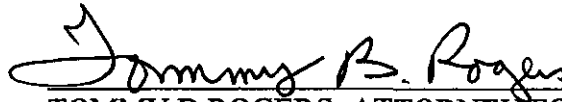
It is submitted that in the present case: (1) Covington County, Mississippi, contends that G.K. Lane is a public road; (2) that a judgment has been taken against Ralph M. Vaughn, Trustee of the Ralph Murphy Vaughn Revocable Trust, one of the landowners adjoining G.K. Lane in favor of the county; (3) Harold Gene Jones, the sole owner of the land upon which G.K. Lane is situated, has stipulated in Court that G.K. Lane is a public road, and (4) Richard Collins, upon whose property G.K. Lane terminates contends that G.K. Lane is a public road. The only person who contends that G.K. Lane is not a public road is the Appellant, Willie George

Knight, who came into possession of certain lands adjoining a portion of G.K. Lane after the death of his father and step-mother. The testimony in this case, which is uncontradicted, fully establishes that G.K. Lane is a very old county public road that has been used by the public for time "immemorial" with there being no evidence of board action when the road was originally laid out many, many years ago. The uncontradicted evidence in this case further evidences that G.K. Lane was once a public road that went further than the point of its present termination and crossed the Richard Collins' property and crossed Rogers Creek. Willie George Knight now desires to change the entire nature of G.K. Lane by denying that it is a public road. The sole test of establishing a road by prescription is use. The uncontradicted testimony in this case shows that the county has continuously maintained G.K. Lane at public expense for at least the last fifty years, that school buses traveled said road, that mail carriers delivered mail on said road, that hunters traveled the road, that Sanderson Farm employees traveled G.K. Lane, and that the public in general had the right to and did utilize G.K. Lane, including Richard Collins, upon whose land G.K. Lane terminates and who is as much a member of the public as anyone else. All without any requirement of permission of Willie George Knight and/or his father, George Knight. Even Willie George Knight and his father used this road over the Jones' property for access to their property. In addition, G.K. Lane has been designated a public road by three separate orders in the minutes of the Board of Supervisors and road name signs have been placed on the road by the county. The facts in this case supporting establishment of G.K. Lane as a public road by prescription are much stronger than the facts in most of the cases decided by the Supreme Court of the State of Mississippi in similar situations.

It is submitted that this Honorable Court should follow the weight of legal authority and

the clear facts in this case and affirm the lower Court's denial of damages and attorney's fees to the Appellee, Willie George Knight.

Respectfully submitted,

A handwritten signature in cursive script, reading "Tommy B. Rogers". The signature is written in black ink and is positioned above a horizontal line.

TOMMY B ROGERS, ATTORNEY FOR THE  
APPELLEE COVINGTON COUNTY,  
MISSISSIPPI

**CERTIFICATE OF SERVICE**

I, Tommy B. Rogers, attorney of record for the Appellee, Covington County, Mississippi, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the Appellee's Brief, to the following persons:

Honorable Larry Buffington  
13<sup>th</sup> District Chancellor  
P. O. Box 924  
Collins, MS 39428


David Shoemake, Esq.  
Shoemake & Blackledge, PLLC  
Post Office Box 1678  
Collins, MS 39428

John Keyes, Esq.  
Attorney at Law  
P. O. Box 1569  
Collins, MS 39428

Danny Welch, Esq.  
Attorney at Law  
224 North Main  
Mendenhall, MS 39114

T. Jackson Lyons, Esq.  
Jackson Lyons & Associates  
120 North Congress St., Ste. 620  
Jackson, MS 39201

This the 7<sup>th</sup> day of July, 2008.

  
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TOMMY B. ROGERS,  
ATTORNEY FOR APPELLEE,  
COVINGTON COUNTY, MISSISSIPPI

Tommy B. Rogers, MSB No. [REDACTED]  
Attorney at Law  
P. O. Box 1415  
Collins, MS 39428  
Telephone (601)765-8235  
Fax (601)765-8237