IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIE GEORGE KNIGHT	**APPELLANT**
VS.	**NO. 2007-CA-02179-COA**
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**

REPLY BRIEF OF THE APPELLANT WILLIE GEORGE KNIGHT

ORAL ARGUMENT IS NOT REQUESTED

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COMES NOW, the Appellant, Willie George Knight, and files this his Reply Brief in response to the brief of the Appellee Covington County, and to the brief of the Appellees Richard Collins and the Estate of Harold Gene Jones, and would show the following unto this Honorable Court.

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.

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.

ISSUE 3: The Chancellor erred in failing to address the issue of attorney's fees and erred in failing to award the Appellant damages and/or attorney's fees against Covington County after entering a finding that the evidence presented by Covington County failed to establish the private drive in question was actually a public road.

ARGUMENT

1. BRIEF OF COVINGTON COUNTY:

Issue number three (3) deals directly with Covington County, and Covington County alone and therefore will be addressed first. The Chancery Court of Covington County found that Covington County failed to prove its case that it acquired G. K. Lane by prescription. The issue now pending before this Court is the matter of attorney's fees due the Appellant Willie George Knight. In its brief Covington County states, "It is submitted that the count 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**." [Brief of Appellee Covington County p. 12] However, the entire brief of Covington County attempts to establish why it believes that it met its burden of proof.

The issue raised on appeal by Willie George Knight is the Chancery Court's failure to properly address the issue of attorney's fees in its Judgments based on the fact that Covington County failed to prove its case. Furthermore, the brief of Covington County (hereinafter "the County") contains numerous mistaken assertions and/or erroneous contentions. For example, the County asserts, "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 the 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...." [Brief of Appellee Covington County p. 26] This statement and many other contentions by the County are simply not supported by the overwhelming weight of the evidence presented to the trial court.

There was not only contradictory testimony against the few witnesses called by the county, but even county employees admitted that George Knight did not let the County work the road. The testimony at trial by the current supervisor reflected that he never maintained G. K. Lane. [R.E.

90, 91] The current supervisor also described G.K. Lane as a "two rut road". [R.E. 95] The former supervisor Allison Mooney admitted that G.K. Lane was not reflected on the official county map prepared by the county surveyor in 1992 (a year before Collins purchased his property). [R.E. 92] Mr. Mooney also testified that he never examined the road nor made any reports regarding its condition, but most importantly is the fact that there was never any official record on the minutes prior to 1997 showing that G. K. Lane was considered and/or that the county was attempting to designate it as a public road by the county. [R.E. 93, 94] Mr. Mooney, upon further questioning, admitted that the only interest in it being a public road was brought forward by Collins after he purchased the adjoining property. [R.E. 94]

Other employees of the County testified that the county never worked the road. In fact, Robert Thompson, a county road hand, worked for Supervisor Allison Mooney and/or the County for about fourteen to fifteen years. [R.E. 130] Mr. Thompson testified that he attempted to work on the road for the County on one occasion, but Mr. George Knight stopped the county employees from working the road. Mr. Thompson testified that George Knight stated, "Get out of this road, don't you be down in here, you ain't got no business down in here." [R.E. 128, 129, 130,] Mr. Thompson went on to testify that the reason he was working the road is because Collins wanted it "ditched". [R.E.129] Mr. Thompson further testified that the county did not work the road like a public road and that during his 15 years with the county he never ran a motor grader, or placed any gravel on the road.[R.E 130, 131,132,133] Mr. Thompson's testimony also reflects the general sentiment of most all other witnesses that this was a private drive to the Knight's house. Thompson testified that G. K. Lane was not a public road because there was the only one house on G. K. Lane.[R.E. 132]

The County contends that because "mail carriers delivered mail on said road" and "school buses traveled said road" that it makes it a public road. The evidence presented clearly showed that

the United States Postal Service Mail Carrier delivered mail to George Knight, and to George Knight **ONLY**. The evidence presented clearly showed that no one used the road without George Knight's permission, *hunters included.* Furthermore, the Sanderson Farms vehicles were going to George Knight's home/chicken houses. None of these assertions by the County establish a public road. Finally, there are two telling pieces of evidence which clearly establish that G. K. Lane was not a public road. First, is the fact that the county refused to come down the road to pick up Mr. George and Mrs. Billie Knight's garbage but made them take it out to the paved public road. [R.E. 156,171] §17-17-5 and §19-5-17 establishes that the Board of Supervisors shall provide for the collection and disposal of garbage. When the county owned and operated solid waste disposal system refused to come down the road to George Knight's home, the County effectively declared that it was not going to go on private property. The second piece of evidence is the fact that George Knight had placed "No Trespassing" and/or "Posted" signs on both sides of the entrance to the road. Mr. Clarence Eubanks, another county employee who had personal knowledge of G.K. Lane and its reputation in the community, testified that it was a private road. [R.E. 134] Mr. Eubanks worked for Supervisor Allison Mooney on the road crew, but stated that crew never worked G.K. Lane. [R.E. 134] Interestingly, Mr. Eubanks was also a former employee of George Knight back in the 1950's. [R.E. 135] Mr. Eubanks recalled posted/no trespassing signs at the entrance to G.K. Lane when exiting off of the paved public road onto G. K. Lane. Mr. Eubanks was questioned about the signs and testified;

Q. What did the signs say?

A. Had a posted sign on the right side of the road there that said posted, keep out, no trespassing. And then on the left side there was a quarantine sign for the chicken houses to keep out, no admittance, something like that best I remember.

Q. Do you remember it saying disease-free flock?

A. Yes, Disease-free flocks. No trespassing, something like that. [R.E. 136]

Finally, Mr. Eubanks was very clear that he never saw any public use of the road, and that only George Knight maintained the road.[R.E 136, 137,138]

The County clearly knew that it never attempted to claim G. K. Lane as a public road. In fact, several witnesses who were employees and/or former employees of the county testified that either they never worked the road, or the one time Mr. Thompson tried to work the road (at the request of Collins) George Knight denied him access. Supervisor Mooney admitted that the only interest in G. K. Lane being declared a public road was by Collins after he purchased the adjoining property. [R.E. 94] The evidence presented to the trial court is clear that Covington County knew that this was not a county road before filing this action against Willie George Knight. At trial, the attorney for the Board of Supervisors for Covington County testified regarding the fact the Richard Collins, Haskel Collins and Stanley Jones came to the board meeting on several occasions and "were there to get the County to take action to remove the obstruction that was there." [R.E. 120] The attorney for the board was asked regarding a newspaper article wherein he advised Collins to get his own lawyer during one of the board meetings indicating that it was not a county matter and that Collins should file suit himself. [R.E. 124, 125, 178]

The Chancellor made no determination regarding this issue whatsoever, although it was addressed in the post-judgment motions by Willie George Knight. **This is the issue raise by this appeal as it relates to the County.**

Rule 11 of the Mississippi Rules of Civil Procedure states in part,

> If any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay to the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorneys' fees.

This is codified in §11-55-5 of the Mississippi Code Ann., which provides in pertinent part,

> Except as otherwise provided in this chapter, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under the Mississippi Rules of Civil Procedure.

§11-55-3 provides, "'Without substantial justification,' when used with reference to any action, claim, defense or appeal, including without limitation any motion, means that it is frivolous, groundless in fact or in law, or vexatious, as determined by the court." Because the Chancery Court made no determination, on this issue, and/or no on the record findings, this Court should remand this issue to the Chancery Court of Covington County with instructions to determine an award of attorneys fees which should be paid by the County.

2. BRIEF OF COLLINS AND ESTATE OF HAROLD GENE JONES

Issues One (1) and Two (2) relate directly to the remaining Appellants and to the Ralph Murphy Vaughn Revocable Trust. The Chancellor's ruling that the Appellants and/or Ralph Murphy Vaughn Revocable Trust acquired any interest in the road and/or that George Knight had not acquired the road by adverse possession is clearly erroneous and should be reversed. Any award of relief and/or ruling in favor of Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn Revocable Trust, is clearly erroneous because he never filed any pleadings, Answer or Counterclaim for relief, nor did he or any representatives appear and offer any evidence, or witnesses as to his use of the road known as G. K. Lane. An award of prescriptive easement to Vaughn is clearly erroneous. Furthermore, Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn Revocable Trust, failed to file any brief or other arguments to this court in support of the Chancellor's ruling. As such, this Court should reverse the decision of the Chancery Court

and render a decision finding that Willie George Knight, and/or George Knight, acquired exclusive use, possession and/or control via adverse possession as to Vaughn.

Furthermore, at trial the attorney for Harold Gene Jones, *non compos mentis*, stipulated to Covington County's prescriptive use of the road. By doing this, he clearly did not attempt to claim any personal rights in and/or to the road and/or the surrounding property. Once the Chancellor found that Covington County had no rights to the road, the trial court should have also found that, due to the stipulation of Harold Gene Jones, *non compos mentis*, neither he nor his guardian had any prescriptive rights to the road over George Knight or Willie George Knight. In essence, because of Jones' stipulation to the County's rights over his own, when Covington County's claim was denied/dismissed, any claim Jones may have had died with the County's claim. Further, there was no testimony by either Harold Gene Jones, *non compos mentis*, or Ralph M. Vaughn entered at trial of any use of the road which would establish any prescriptive rights to which the Chancellor found they were entitled. Finally, and possibly what is most important, neither Harold Gene Jones, *non compos mentis* (hereinafter Jones), or Ralph M. Vaughn, nor any representative, attorney, or witness for these two parties offered any evidence to contradict Willie George Knight's adverse possession of the road. The Chancery Court should have found in favor of Willie George Knight as to his adverse possession claim against Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn Revocable Trust by way of default, and against Sennett Dickens, Guardian of Harold Gene Jones, *non, compos mentis,* due in part to the stipulation of the County's use, and/or because he offered no testimony which would entitle him and/or prove any prescriptive use by Jones or his guardian. Finally, the Chancery Court should have entered a judgment in favor of Willie George Knight on his claim for adverse possession against Jones and Vaughn because neither offered any testimony or evidence which contradicted George Knight's and/or Willie George Knight's open, notorious, visible, hostile, under claim

of ownership, exclusive, peaceful, and continuous uninterrupted use of the road for ten (10) years.

The Chancery Court's grant of a prescriptive easement to Richard Collins was also in error as it was contrary to the overwhelming weight of the evidence. In the brief of Collins and Jones, several assertions are made which are not supported by the evidence presented at trial. First and foremost is the section of the brief entitled "The Backstory", contained in the Statement of the Case. Collins asserts that there is a "backstory" to the litigation and "Knight's feud with Collins over acts of a third party". [Reply Brief of Collins/Jones p. 25-26] While this may have been touched on briefly in the testimony, this was not the issue pending before the trial court, nor was the case Knight v. Southern Miss. Elec. Power Ass'n, 943 So.2d 81 (Miss.App. 2006). This "Backstory" was not before the Chancery Court and is improperly argued in the reply brief of Collins/Jones. In the recent case of Amsouth Bank v. Quimby, 963 So.2d 1145, 1155 (Miss.2007), this court restated its position that it would only consider arguments on appeal which were put before the trial court.

> This Court has stated, "[w]e accept without hesitation the ordinarily sound principle that this Court sits to review actions of trial courts and that we should undertake consideration of no matter which has not first been presented to and decided by the trial court." Educ. Placement Serv. v. Wilson, 487 So. 2d 1316,1320 (Miss. 1986) We find no reason to depart from this practice now.

Quimby, at 1155.

Collins and Jones make unsupported assertions and/or unfounded speculations in portions of their brief regarding any "Backstory". As such, this court should strike any and all portions of the Appellee's brief which was not presented to the trial court and/or which have no direct bearing on this case.

Collins and Jones assert that Willie George Knight has not met the legal requirement of adverse possession for G. K. Lane. Collins/Jones argue that Knight cannot show a claim of

ownership of the land extending 10 years back in time that has been exclusive, open, notorious and visible. In this argument Collins/Jones argue that the running off of one county worker did not establish this ownership, and that all of the testimony from numerous witnesses that George Knight would not allow anyone else to work and/or maintain the road other than himself *may only show* that he was concerned with the safety of county workers. [Collins/Jones Reply Brief p. 31] This *assumption* by the appellees Collins and Jones again was not presented by them to the trial court. Interestingly, Collins/Jones go on to state,

"To be sure, actions can speak louder than words. Conduct may also satisfy the element of the claim." [Collins/Jones Reply Brief p. 31] The argument then continues to admit that George Knight maintained G. K. Lane but erroneously assert that so did the county. The County's work of the road, back 20-30 years ago was done at the request of Knight and/or Sanderson Farms to allow the chicken trucks to turn in off of the public road, not as an attempt to claim ownership or public use of the road. Nevertheless, this allegation does not disprove George Knight's use and ultimate adverse possession of the road against Collins and/or Jones. It is important to remember that because the County lost on its assertion that G.K. Lane was a public road, any relevance of any work by the County is irrelevant to Jones, Collins, and/or Vaughn. Collins and/or Jones' arguments regarding what the county may or may not have done have no bearing on their claims because the County did not appeal the decision of the Chancery Court. Jones' stipulation and Collins assertions that it was a public road does not establish their own prescriptive easement of the road. Likewise, the County's alleged actions years ago do not defeat George Knight's and Willie George Knight's adverse possession, against Jones, Collins and Vaughn.

As Collins/Jones so aptly point out, actions can speak louder than words. Conduct may also satisfy the element of the claim. George Knight kept "No Trespassing" signs and signs

advising everyone, including Collins, Collins' predecessors in title, Jones, Vaughn and/or the County to keep out and/or off of this road. Again, it is important to remember the testimony of Mr. Clarence Eubanks regarding George Knight's claim of ownership of the road. Mr. Eubanks testified;

Q. What did the signs say?

A. Had a posted sign on the right side of the road there that said posted, keep out, no trespassing. And then on the left side there was a quarantine sign for the chicken houses to keep out, no admittance, something like that best I remember.

Finally, Mr. Eubanks was very clear that he never saw any public use of the road, and that only George Knight maintained the road.[R.E 136, 137,138] George Knight kept two signs up at the entrance to G.K. Lane, one on the right and one on the left. These signs put the whole world on notice that he was claiming this road as his. These signs had been up since the 1950's according to Mr. Eubanks, and other witnesses.

Collins' predecessor in title, Stanley Jones also testified that he never made any claim of ownership to the road. [R.E. 173] Neither Stanley Jones nor Collins ever did any work on the road to which would subvert George Knights use and adverse possession of the road. Collins' assertions that George Knight did not prove his case for adverse possession also fall very short when considering an important fact presented to the Chancery Court. Collins testified that **he asked George Knight for an easement to the road.** [R.E. 119] It is also important to note that Collins himself cannot claim any ownership rights to the road because he testified time and again that he believed the road was a public road and that was all he wanted it to be. [R.E. 105, 111, 117, 118, 177] This is essentially the same stipulation made by Jones to the County with the ultimate result of any right he may have had being voided at the denial of the County's pleadings. Collins cannot acquire a prescriptive easement if he (1) always thought it was a public road, and (2) he cannot

successfully argue that George Knight had not established his claim for adverse possession of the road because he asked him for an easement. If Collins thought it was a public road, he would have **never** asked for permission from Knight to use the road. Further, if he thought that George Knight did not have the exclusive use of the road, which was open, notorious visible, hostile, under claim of ownership peaceful and continuous he likewise would not have asked for permission and/or an easement but rather simply used the road. Truly actions do speak louder than words. Collins has attempted to argue "out of both sides of his face". These two positions by Collins do not support a finding that he had (1) acquired a prescriptive easement, or (2) that Willie George Knight did not have the property on, along, and under G.K. Lane by virtue of adverse possession.

The only people who used G. K. Lane were those with George Knight's permission. Witness after witness testified that George Knight would either grant permission to people or he would not. Candie Knight testified that she never saw Stanley Jones, a/k/a Tater Jones go past George Knight's house, and when he would come visit, and George would go out and meet him. "People did not come down the road unless he wanted them to." [R.E. 158, 159].

Clarence Eubanks, Blakeney Knight, and Robert Thompson all testified that the reputation of the road in the community was that it was a private road [R.E. 132, 134, 150] Clarence Eubanks, Tessie Knight, Blakeney Knight, Candie Knight, and Jerry McRaney all testified that they never saw anyone else make a claim to the road or use the road without George Knight's permission. [R.E 136, 137, 148, 153, 154, 158, 159, 161,163] Those same witnesses testified that no one other than George Knight ever maintained the road. [R.E 138,147, 148, 151, 155, 157, 161] Collins never established that he nor his predecessor in title used the road for 10 years sufficient to establish a claim for a prescriptive easement. Because there was no continuous use by Collins for 10 years the Chancery Court erred in finding that he had established a prescriptive use of the road.

CONCLUSION

The Chancery Court erred in finding that the Appellees, Richard Collins, Harold Gene Jones, *non compos mentis,* care of Sennett Dickens, Guardian of Harold Gene Jones, and Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust, were entitled to a prescriptive easement on and/or along G. K. Lane. The Chancery Court also erred in not issuing a finding of fact and/or rendering a decision on the issue of attorney's fees that Covington County should be liable to the Appellant, Willie George Knight. Finally, the Chancery Court erred in not finding that Willie George Knight, and/or George Knight had acquired G. K. Lane by and through adverse possession against the Appellees herein.

The Chancery Court also erred in not finding that George Knight, Willie George Knight's predecessor in title, had fee simple title to G. K. Lane and the surrounding area which was maintained by George Knight from 1957 through 1999, the time of his death. The testimony of numerous witnesses showed that George Knight, and the surrounding community considered the road to be his private drive. George Knight would either grant people permission to use his road or he would not. George Knight's use was open, notorious and visible, under a claim of ownership for more than ten years. It was also hostile as he confronted a county employee and ran him off of the property. He had posted and no trespassing signs at the entrance to the road advising people that it was private property and/or to "keep out". The road was his exclusive driveway to his home and chicken houses which he, and his family used since 1957. The overwhelming weight of the evidence presented to the trial court showed that George Knight's use was also peaceful in that he got along with his neighbors and there were never any disputes regarding this road, prior to the time Collins purchased his property in 1993. Willie George Knight produced sufficient evidence at trial to establish that he and/or his father had used this property as their own in a manner sufficient to be awarded a Judgment removing any cloud from the Appellant's title and to confer fee simple title to him by way of a Judgment. Further a finding should have been made that George Knight acquired

any property on the road known as G. K. Lane and the surrounding area up to neighboring fences which he worked and maintained for over 40 years. The trial court's ruling was also in error when it awarded any prescriptive easement to Ralph M. Vaughn, as trustee of the Ralph Murphy Vaughn, Revocable Trust as he failed to answer the cross-claim and/or present any evidence whatsoever. Instead, the trial court should have entered a judgment in favor of Willie George Knight for adverse possession against Vaughn.

Further, as to Harold Gene Jones, *non compos mentis,* care of Sennett Dickens, Guardian of Harold Gene Jones, by his stipulation that it was a public road consented to the fact that he had no personal and/or private and/or prescriptive rights to G. K. Lane. His rights, if any, terminated at the time the County was found to have no interest in the road. Therefore, the Chancery Court should have found in favor of Willie George Knight and against Harold Gene Jones, on this issue. George Knight's use of the road, was open, notorious, and visible; hostile; under claim of ownership; exclusive; peaceful; and continuous and uninterrupted for ten years. His maintenance of the road, posting of no trespassing signs, granting and/or denying its use to individuals, all the way back to the 1950's, disallowing the county to work the road as recently as the late 1980's/early 1990's and the denial of an easement to Collins is evidence the he and the community at large considered G. K. Lane to be the private drive of George Knight and ultimately his son Willie George Knight.

As such, Willie George Knight respectfully requests that this Court reverse the clearly erroneous decision of the Chancery Court and render a decision granting him fee simple title to said road up to the neighboring properties. Further, because the County knew prior to filing suit that it was not a county public road, the County should be taxed with Willie George Knight's attorney fees, expenses and/or damages resulting from the suit. Willie George Knight respectfully requests this Court to enter a finding that he is entitled to recover his attorney's fees and/or to remand it to the Chancery Court of Covington County for a ruling on the attorney's fees due from the County.

Respectfully submitted,

DAVID SHOEMAKE
ATTORNEY FOR THE APPELLANT
WILLIE GEORGE KNIGHT

CERTIFICATE OF SERVICE

I, David Shoemake, attorney of record for the Appellant, do hereby certify that I have this day, mailed, via U.S. Postal Service, postage prepaid, a true and correct copy of the Appellant's Brief, to the following persons:

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This the 19th day of August, 2008.

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